

always is whether the party has vigilantly set the law in motion for redress. The Court under Section 3 of the Limitation Act is obligated independently rather as a primary duty to advert the question of limitation and make a decision, whether this question is raised by other party or not. The bar of limitation in an adversarial lawsuit brings forth valuable rights in favour of the other party. In the case of Dr. Muhammad Javaid Shafti Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself."

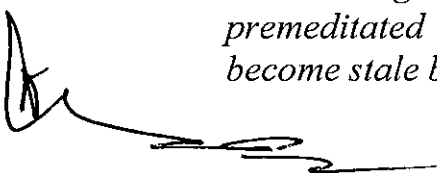
7. In view of above, instant service appeal, being barred by time, is dismissed with costs. Consign.
8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 6th day of November, 2024.*


KALIM ARSHAD KHAN
Chairman


RASHIDA BANO
Member (Judicial)

Mutazem Shah

the order or action void with the articulation that no limitation runs against the void order. If such tendency is not deprecated and a party is allowed to approach the Court of law on his sweet will without taking care of the vital question of limitation, then the doctrine of finality cannot be achieved and everyone will move the Court at any point in time with the plea of void order. Even if the order is considered void, the aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period, authorizing a litigant to enforce his existing right within the period of limitation. The Court is obliged to independently advert to the question of limitation and determine the same and to take cognizance of delay without limitation having been set up as a defence by any party. The omission and negligence of not filing the proceedings within the prescribed limitation period creates a right in favour of the opposite party. In the case of Messrs. Blue Star Spinning Mills LTD -Vs. Collector of Sales Tax and others (2013 SCMR 587), this Court held that the concept that no limitation runs against a void order is not an inflexible rule; that a party cannot sleep over their right to challenge such an order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings. In the case of Muhammad Iftikhar Abbasi Vs. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent. While in the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others (2022 SCMR 933), it was held that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact this law has been premeditated to dissuade the claims which have become stale by efflux of time. The litmus test therefore



The appellant challenged the delay in his promotion through various appeals, including Service Appeal No. 1311/2018, and the Tribunal ruled in his favor on 02.08.2021, ordering his promotion to the post of Sub-Inspector effective from 13.08.2013, the date when the promotion order was originally issued. Following this, the appellant filed a departmental appeal on 15.10.2021, seeking antedation of his promotion to Officiating Inspector (BPS-16) to 29.09.2017, when the post of Inspector became vacant due to the retirement of Ikram Ullah. However, his appeal has not been responded to, leading the appellant to file the current service appeal seeking redressal of this issue.

6. The appellant filed departmental appeal on 15.10.2021 against the order dated 12.07.2021. The period spent between the passing of impugned order and filing the departmental is more than three months. While law of limitation prescribes the period for filing departmental appeal against an original order, as thirty days. So the appellant has preferred departmental appeal at a belated stage rendering this appeal incompetent. We in this respect rely on a recent judgment of Supreme Court of Pakistan reported as 2023 SCMR 291 titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala versus Khalid Mehmood and others" the relevant para is reproduced below:

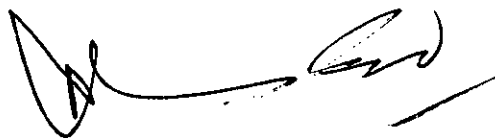
"12. The law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur and when no sufficient cause for such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. There is no relaxation in law affordable to approach the court of law after deep slumber or inordinate delay under the garb of labeling

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

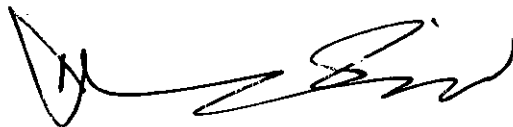
3. We have heard learned counsel for the appellant and learned Assistant Advocate General for respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

5. The appellant, who joined the respondent department on 13.12.1998, was promoted to Head Constable on 01.12.2001 and subsequently to Assistant Sub-Inspector (ASI) on 14.01.2011. He was among the officials recommended for promotion to the post of Inspector (BPS-14) in the Photography Section, but his promotion was withheld due to adverse remarks in his Annual Confidential Report (ACR) for the period from 01.01.2012 to 31.12.2012. These adverse remarks were later expunged by the Tribunal in its judgment dated 27.10.2017, which resulted in the appellant being confirmed as an ASI effective 13.01.2013. Despite this, his promotion to the post of Officiating Sub-Inspector (SI) was delayed until 08.06.2018, rather than being granted on the date his colleagues were promoted, 13.08.2013.



of Head Constable on 01.12.2001 and later on promoted as ASI on 14.01.2011; that two posts of Inspector (BPS-14) were lying in Photography Section for which, alongwith other officials, appellant was also recommended; that promotion for the post of Inspector was made vide order dated 13.08.2013, however, the appellant was not promoted due to the reason of Adverse remarks in his ACR reported from 01.01.2012 to 31.12.2012 by the reporting officer; the said issue was challenged by the appellant through filing Service Appeal No.1153/2013 and this Tribunal vide its judgment dated 27.10.2017 accepted his appeal and the adverse remarks were expunged; that accordingly, he was confirmed in the rank of ASI w.e.f 13.01.2013 and was promoted as Officiating SI on 08.06.2018 with immediate effect instead of 13.08.2013, the date on which appellant and his colleagues were promoted; that the said order was assailed by the appellant through departmental appeal dated 21.06.2018 followed by Service Appeal No.1311/2018; that the Tribunal vide order dated 02.08.2021, by accepting the appeal, set aside the impugned order dated 08.06.2018 and held the appellant entitled for promotion to the post of Sub Inspector w.e.f 13.08.2013; that for the purpose, he filed departmental appeal on 15.10.2021 for antedation of his promotion to the post of Officiating Inspector (BPS-16) we.f 29.09.2017, the date on which the post of Inspector became vacant due to the retirement of Ikram Ullah, but the same was not responded, hence, the instant service appeal.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
RASHIDA BANO ... **MEMBER (Judicial)**

Service Appeal No.216/2022

Date of presentation of Appeal.....09.02.2022
Date of Hearing.....06.11.2024
Date of Decision.....06.11.2024

Tazi Gul Offig: Inspector (BPS-16) Photography Section FSL,
Peshawar.....(**Appellant**)

Versus

1. **The Provincial Police Officer**, Khyber Pakhtunkhwa, Peshawar.
2. **The Addl: Inspector General of Police**, Head Quarter, Khyber Pakhtunkhwa, Peshawar.
3. **The Director**, Forensic Science Laboratory, Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

Present:

Mr. Taimur Ali Khan, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 12.07.202 WHEREBY THE NAME OF APPELLANT WAS INCLUDED IN LIST "F" AND PROMOTED HIM TO THE POST OF OFFICIATING INSPECTOR (BPS-16) WITH IMMEDIATE EFFECT INSTEAD OF HIS DUE DATE I.E. 29.09.2017 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant joined the respondent department on 13.12.1998 and was promoted to the post

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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Tazi Gul Offig: Inspector (BPS-16) Photography Section FSL,
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2. **The Addl: Inspector General of Police, Head Quarter, Khyber Pakhtunkhwa, Peshawar.**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.


PRESENT

1. Mr. Taimur Ali Khan, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General, for respondents

| Appellants | Amount | Respondent | Amount |
|-----------------------------------|------------------|-----------------------------------|----------------|
| 1. Stamp for memorandum of appeal | Rs. Nil | 1. Stamp for memorandum of appeal | Rs. Nil |
| 2. Stamp for power | Rs. Nil | 2. Stamp for power | Rs. Nil |
| 3. Pleader's fee | Rs. Nil | 4. Pleader's fee | Rs. Nil |
| 4. Security Fee | Rs. 100/- | 4. Security Fee | Rs. Nil |
| 5. Process Fee | Rs. Nil | 5. Process Fee | Rs. Nil |
| 6. Costs | Rs. Nil | 6. Costs | Rs. Nil |
| Total | Rs. 100/- | Total | Rs. Nil |

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 6th day of November, 2024.


Rashida Bano
Member (Judicial)


Kalay Arshad Khan
Chairman





KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.216/2022

Taza Gul

versus

Government of Khyber Pakhtunkhwa

| S.No. of Order & Date of proceeding | Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary |
|--|--|
| <p>Order-17 6th November, 2024.</p> | <p><u>Kalim Arshad Khan, Chairman</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Mr. Taimur Ali Khan, on behalf of appellant.2. Mr. Naseer Ud Din Shah, Assistant Advocate General, on behalf of respondents.3. Vide our detailed judgment of today, placed on file, instant service appeal, being barred by time, is dismissed with costs. Consign.4. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 6th day of November, 2024</i> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Mutazem Shah*</small></p> |