

18.05.2022

Learned counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant contended that the appellant is aggrieved of the impugned seniority list of Forest Guard Demarcation Forest Division Swat as is stood on 31.12.2021. The appellant, on the basis of entry into service (28.12.1990) is senior to private respondents No. 4, 5, 6 & 7 whose names are appearing at serial No. 6-9 of the said seniority list whereas the appellant's name is reflected at serial No. 10 of the impugned seniority list. The appellant submitted departmental appeal to respondent No. 2 which was rejected vide office order dated 10.03.2022 whereafter the instant service appeal was instituted in the service Tribunal on 29.03.2022. It was further argued that the appellant has been transferred to various Forest Divisions without the expressed desire for transfer to other Forest Division therefore he was not to be placed at the bottom of seniority list of Forest Guards of that Forest Division. In support of his arguments he relied on the Service Tribunal judgment dated 17.04.2013 delivered in service appeal No. 456/2012 "titled Mian Karim Shah Versus Government of Khyber Pakhtunkhwa through Chief Secretary and others.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments. To come up for reply/comments before the S.B on 22.07.2022.

(Mian Muhammad)
Member(E)


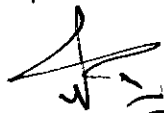

Rs-900/-
Appellant Deposited
Security & Process Fee
A. H. H. H.
19/5/22

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 452 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	29/03/2022	<p>The appeal of Mr. Bakht Amin presented today by Mr. Muhammad Zafar Tahirkheli Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p>	<p>Noted  Amser Ali Advocate 21/4/22</p>	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put up there on <u>18-05-2022</u>. Notice be issued to the appellant and his counsel.</p> <p style="text-align: right;"> CHAIRMAN</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Bakht Amin vs Govt of K.P

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: <u>Mohammad Zafar</u>		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?		✓
17	Whether list of books has been provided at the end of the appeal?		✓
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?		✓
20	Whether complete spare copy is filed in separate file cover?		✓
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?		
24	Whether Security and Process Fee deposited? On		
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		
26	Whether copies of comments/reply/rejoinder submitted? On		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Mohammad Zafar

Signature: [Signature]

Dated: 29-03-2022

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. US2/2022

Bakht Amin,

VERSUS

Govt of Khyber Pakhtunkhwa etc.

=====
I N D E X
—

S.No	Particulars	Annexure	Pages
1	Memo of Petition	-	1-4
2	Seniority list dated 05-01-2022	"A"	5
3	Departmental Appeal dated 07-01-2022	"B"	6-7
4	Rejection dated 10-03-2022	"C"	8
5	Appointment Order dated 27-12-1990	"D"	9
6	Order Dated 02-09-2003	"D1"	10
7	Order dated 13-10-2009	"E"	11
8	Transfer order dated 08-05-2012	"E1"	12
9	Order dated 07-12-2020	"F"	13
10	Regularization order dated 28-12-1990	"G"	14
11	Judgment dated 31-12-2009	"G1"	15-18
12	ST Judgment dated 25-05-2009	"H"	19-22
13	Notification dated 05-11-2014	"H1"	23
14	Vakalatnama	-	24

Date:- 29/3 March, 2022


(Muhammad Zafar Tahirkheli)
Advocate, Supreme Court of Pakistan

(1)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. _____/2022

Bakht Amin,
Forest Guard, Demarcation Forest Division, Mingora, SwatAppellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar.
2. Conservator of Forest, Malakand Circle East, Saidu Sharif, Swat.
3. D.F.O., Demarcation Forest Division, Mingora, Swat.
4. Ghani Rehman, Forest Guard, Demarcation Forest Division, Mingora, Swat.
5. Muhammad Ibrahim, Forest Guard, Demarcation Forest Division, Mingora, Swat.
6. Abdullah Shah, Forest Guard, Demarcation Forest Division, Mingora, Swat.
7. Abbas khan, Forest Guard, Demarcation Forest Division, Mingora, Swat.

.....Respondents

=====

SERVICE APPEAL U/S 4 OF NWFP SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED SENIORITY LIST OF FOREST GUARD OF DEMARCATION FOREST DIVISION SWAT, AS IT STOOD ON 31-12-2021, (Annex "A"), WHEREIN THE APPELLANT'S DEPARTMENTAL APPEAL DATED 07-01-2022 (Annex "B") AGAINST THE SAID LIST, WAS REJECTED VIDE ORDER DATED 10-03-2022(Annex "C").

=====

PRAYER :

By accepting this appeal;

- i. Setting aside the impugned seniority list as it stood on 31-12-2021, and rejection order dated 10-03-2022; and
- ii. Further, modifying the impugned seniority list and placing the appellant at S No. 6 of the said list of Forest Guard of Demarcation Forest Division Mingora Swat on the basis of his initial appointment on 27-12-1990, being senior to all the respondents' No. 4 to 7, who have been arbitrarily placed at S. No. 6 to 9 of impugned seniority list.

=====

RESPECTFULLY SHEWETH;

1. Being qualified and eligible, the appellant was selected and appointed as Forest Guard on 27-12-1990, in Bisham Watershed Division. The appellant was adjusted against the post at District Government Shangla as Forest Guard in view of the

judgment of this Hon'ble Tribunal dated 28-11-2001 vide order dated 02-09-2003. (Copy annexed hereto marked "D & D1")

2. That the appellant was then transferred to District Government Swat vide order dated 13-10-2009. He was again transferred to Swat Forest Division vide order dated 08-05-2012. Copy annexed hereto marked "E & E1"
3. The appellant was finally transferred to Swat Demarcation Forest Division Mingora vide order dated 07-12-2020. It is necessary to mention that all of aforementioned orders were made without the implied or expressed consent of the appellant. (Copy annexed hereto marked "F")
4. That while serving as Forest Guard Buner/Bisham watershed division, his services were regularized with effect from 28-12-1990 i.e the date of his initial appointment vide order dated 06-07-1992. The observation regarding the same was also recorded by the august Supreme Court of Pakistan in CP No. 65-P/2006 in para 8 of judgment dated 31-12-2009. (Copies annexed hereto marked "G & G1")
5. That the worthy department issued the impugned seniority list dated 05-01-2022 as it stood on 31-12-2021, wherein the appellant was arbitrarily placed at S. No. 10 of the list instead of his actual place at S. No. 6.
6. Feeling aggrieved the appellant filed departmental representation dated 07-01-2022 which was rejected vide impugned order dated 10-03-2022.

Feeling aggrieved and finding no other appropriate remedy, the appellant has been constrained to approach the Hon'ble Service Tribunal for the redress of his grievance, inter-alia, for the following,

Grounds

- (a) The respondent department has acted arbitrarily while issuing the impugned seniority list, which is in complete disregard to the appellant's inter-se-seniority in accordance with his initial date of appointment.
- (b) That the Hon'ble Service Tribunal vide its Judgment dated 25-05-2009 in Service Appeal No 776 / 2006 and Judgment dated 17-04-2013 in Service Appeal No 456 / 2012 titled "Mian Karim Shah Vs Govt etc" has already allowed seniority to the Forest Guard from the date of his initial appointment, notified on 05-11-2014. The impugned seniority list is thus arbitrary and discriminatory being in affective upon the rights of the appellant. (Copy annexed hereto marked "H & H1")
- (c) The Hon'ble Tribunal vide its earlier judgment dated 25-05-2009, in appeal No.776/2006 has already settled the issue in question and had considered the seniority of the person promoted from the date of his recruitment and not from the date of his deputation or transfer to the other Forest Division.
- (d) The appellant never expressed any desire for transfer nor was he otherwise taken into confidence by the respondent department while transferring him from one forest division to another, several times.

Respondents have to act according to the law. Any design harmful to the Appellant's service interest cannot be imposed arbitrarily, in violation of the Appellant's vested rights of service.

- (e) That the appellant has been serving the department honestly and diligently to the utmost satisfaction of his superiors. No complaint of any sort was ever filed against him, he was neither served with any adverse remarks, nor has been served with any show cause or charge sheet till date.

- (f) That the impugned seniority list dated 31-12-2021 has been issued in haste, without considering the seniority of the appellant, earlier decisions of the Service Tribunal and other material facts on record, subject to correction by the worthy authority.
- (j) Appellant seeks permission to take several other grounds at the time of arguments.

In view of the above, it is most humbly requested that by accepting this appeal the impugned seniority list as it stood on 31-12-2021 and impugned rejection order dated 10-03-2022 may kindly be set aside and the respondent department may be directed to amend the impugned seniority list by placing the appellant at S No. 6 above respondent No. 4 to 7.

Any other relief deemed appropriate may also be granted in addition to the relief claimed above.


Appellant

Through,

Peshawar, dated
29/4 Mar, 2022


(Muhammad Zafar Tahirkheli)
Advocate Supreme Court of Pakistan

Certificate

Certified that no other appeal on the same subject matter has been filed prior to the instant appeal.


Appellant



(4)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2022

Bakht Amin,

VERSUS

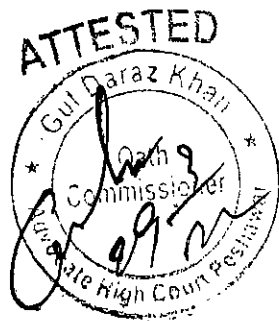
Govt of Khyber Pakhtunkhwa etc.

=====

I N D E X

Affidavit

I, the appellant, Bakht Amin, Forest Guard, Demarcation Forest Division, Mingora, do hereby state on Oath that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Tribunal.



DEPONENT

CNIC No. 15602-0371986-9

Date:- ^{7th}29 March, 2022

(Muhammad Zafar Tahirkheli)
Advocate, Supreme Court of Pakistan

(15)

ANNEXURE 'A'

Annexure 15

SENIORITY LIST OF FOREST GUARDS OF DEMARCATION FOREST DIVISION SWAT AS IT STOOD ON 31-12-2021.

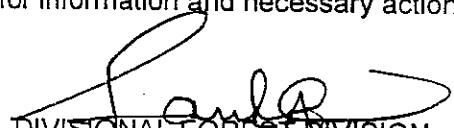
S.No	Name of Forest Guard	Academic Qualification	Date of Birth	domicile	Trained/untrained	Date of 1 st entry of the service	Reported arrival in Demarcation F/Divin:	Remarks.
1.	Mr. Alam Zeb-I	FA	05.04.1969	Mardan	Trained	28.01.1990	28.01.1990	Parent Division.
2.	Mohammad Saleem	Matric	02.05.1970	Swabi	Trained	27.05.1990	27.05.1990	Parent Division.
3.	Mr. Amjad Ali	Matric	03.07.1967	Swat	Untrained	26.11.2011	26.11.2011	Reinstated on service.
4.	Mr. Anwar Zeb	FA	15.06.1969	Swat	Trained	20.02.1988	06.02.2012	Transfer from Working Plan Unit-III, Peshawar.
5.	Mr. Alam Zeb-II	FA	01.04.1967	Swat	Untrained	04-11-1989	09.05.2014	Transfer from Alpurai F/D.
6.	Mr. Ghani Rehmen	Matric	19.04.1974	Swat	Trained	18.09.1994	13.02.2017	Transfer from Swat Forest Division
7.	Mohammad Ibrahim	FA	12.04.1990	Swat	Trained	04.02.1993 23.08.2016	10.10.2017	Transfer from Kalam Forest Division.
8.	Mr. Abdullah Shah	FA	30.12.1998	Malakand	Trained	05.08.2019	05.08.2019	Parent Division.
9.	Mr. Abbas Khan	B.Tech in Civil Engineering	20-3-1993	Swat	Untrained	24-10-2019	24-10-2019	Parent Division.
10.	Mr. Bakht Amin	FA	10-06-1971	Swat	Trained	28-12-1990	30-12-2020	Transfer from Swat Forest Division.

No 863-72 IG;

Dated

Mingora the 05/01/2021.

Forwarded to all Forest Guards of Demarcation Forest Division, Swat for information and necessary action.


DIVISIONAL FOREST OFFICER,
DEMARCATION FOREST DIVISION,
MINGORA SWAT

TRUE COPY

ANNEXURE

B⁶

To

The Conservator of Forest
Malakand East Forest Circle
Saidu Sharif at Shagai

Through Proper Channel

Subject: APPEAL FOR DETERMINATION OF SENIORITY

Respected Sir

It is humbly prayed that I was initially appointed as Forest Guard in Besham Water Shed Division vide DFO Besham Office order No. 140-M dated 27/12/1990 (copy attached as annexure-I). Later on I was transferred from Besham water shed Division to Buner Water Shed Division; by the conservator Water Shed Abbottabad and subsequently transferred me to defunct ERP vide Chief Conservator of Forest NWFP Peshawar office order No. 93, dated 15/01/1994 (Copy attached as annexure-II).

On completion of ERP on 30/06/2000 I along with other staff were served upon with notice. Accordingly waiting list was prepared and it was committed that all the terminated staff will gradually be adjusted against the vacant position in the territorial Forest Division, of Malakand Forest Circle. Waiting for a long time when no positive response was received from the department, I filed service appeal in the Honorable Service Tribunal Peshawar Vide service appeal No. 2368/2000 and after hearing my appeal was accepted vide judgment dated 28/11/2001 (copy attached as annexure-III) and my posting was ordered by the Chief Conservator of Forest NWFP, Peshawar in the district government Shangla against the post of Forest Guard vacated on the transfer of on Mr. Ali Haider Eg vide Office order No. 61, dated 02/09/2003 (copy attached as annexure-IV). Later on I was transferred to distract government Swat vide CCF Peshawar officer Order No. 44, dated 13/10/2009 (Copy attached as annexure -V) and ultimately transferred from the District government Swat to Swat Forest Division, vide CCF Peshawar office Order No. 145, dated 08/05/2012 (copy enclosed as annexure-VI).

Aggrieved of the decision of service tribunal in which no back benefit to the intervening period from 01/07/2000 to 01/09/2003 and seniority was allowed, I prepared an appeal against the judgment of Service tribunal in the August Supreme Court of Pakistan, where my request was accepted and beside restoration my seniority payment of all back benefits were allowed vide decision dated 31/12/2009 (copy attached as annexure-VII), in compliance all back benefits were granted and paid by the department and necessary entries made in my service book (which is readily available in the office of DFO Demarcation Mingora Swat). Furthermore in response to the decision of August Supreme Court of Pakistan, I approached your good office vide my appeal dated 25/06/2010 (copy attached as annexure-VIII) and in light of Court decision, your kind Honor has also directed the DFO Swat to comply with the Court order and grant to the appellant his seniority vide your office Memo No. 4491/E Dated 03/11/2010 (copy attached as annexure- IX) Else the above order and rules a precedence of Mian Karim Shah is also on the record of DFO Demarcation who

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[Signature]

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was transfer from Swat Forest Division, and like me was deprived from his seniority rights. The Forest Guard lodged an appeal before Service Tribunal and The Honorable Court favored the appellant for the grant of seniority from the date of his appointment and accordingly in compliance of the court order the appellant was promoted by the DFO Demarcation vide his office order No. 08 Dated 05/11/2014. (Copy available in DFO Demarcation Office)

Furthermore taking Administrative decision, the worthy Chief Conservator Central Sothern Forest Region-I, issued my transfer order from Swat Forest Division to Demarcation Forest Division vide his office order No. 78 Dated 07/12/2020. (Copy attached as annexure-X) under the provision of standing rules circulated vide notification No. SOR-Vi(E&AD)I-3/2008 dated 19/11/2009 (copy attached as annexure-XI) and judgment of the August Supreme Court of Pakistan refer to above I am entitle for the seniority status from the date of my regular appointment i.e 27/12/1990, but contrary to the facts , the DFO Demarcation has circulated seniority list of the Forest Guards and placed my name at the bottom of the seniority list and declared me junior from all the Forest Guards specially appointed during the year 2019 as is evident from the seniority list attached as annexure-XII). It is also added that I have not been transferred to Demarcation Forest Division on my own choice or request, rather my transfer was ordered on Administrative grounds, hence action of the DFO Demarcation is un warranted and against the spirit of valid rules as provided in rules 17 sub rules (3&4) of appointment, promotion and transfer rules 1989, (copy already attached above)

It is therefore requested to look into genuine stance on humanitarian and compassionate grounds set aside the baseless seniority list may also kindly be directed to postponed constitution of DPC till the nomination in the seniority has as rectified and to exist my name at appropriate position in the seniority list from the date of my regular appointment and obliged please.


Obediently Yours

(Bakht Amin)
Demarcation Forest Division
Mingora Swat.

B.A.
07/01/2022

F. O.
7/01/2022

**DESPATCHER
D.F.O Demarcation
Mingora Swat.**

<p>OFFICE OF THE CONSERVATOR OF FORESTS, MALAKAND EAST FOREST CIRCLE, SAIDU SHARIF SWAT.</p>		<p>ANNEXURE C</p> <p>Phone: 0946-9240281 Fax: 0946-9240239</p> <p style="text-align: right;">(8)</p>
<p>No. <u>7402</u> /E, Dated <u>Saidu Sharif</u>, the: <u>10</u> /<u>02</u> /2022.</p>		


To

Mr. Bakht Amin Forest Guard,
C/O Divisional Forest Officer,
Demarcation Forest Division, Mingora.

SUBJECT: APPEAL FOR DETERMINATION OF SENIORITY.

Memo: Reference DFO Demarcation letter No.1123 /G, dated 18.02.2022.

On perusal of the appeal, hard in person and comments offered on the appeal by DFO Demarcation, it has been transpired that your seniority has rightly been fixed in Demarcation Forest Division. Hence, your appeal is hereby rejected.


 CONSERVATOR OF FORESTS,
MALAKAND EAST FOREST CIRCLE,
SAIDU SHARIF SWAT.

No. /E,

Copy forwarded to the Divisional Forest Officer Demarcation Forest Division, Mingora for information with reference to his letter No. cited above.

CONSERVATOR OF FORESTS,
MALAKAND EAST FOREST CIRCLE,
SAIDU SHARIF SWAT.

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ANNEXURE 7
OFFICE ORDER NO. 139 DATED 27/12/1990, BY, MR. IHSAN - ULLAH DIVISIONAL FOREST OFFICER ROHISTAN WATERSHED DIVISION BABELI

As recommended by the selection committee of Kohistan Watershed Division appointed by the Divisional Forest Officer, Kohistan Watershed Division, Babeli vide this office order No. dated . The following persons are hereby appointed as Forest Guards in Basic pay scale of Rs:625-10-945 on temporary basis with effect from the date of arrival:-

Sl. No.	Name and Father's Name.
1. ✓	Bakht Asim s/o Ashtamund of Jalpur, Teh: Muzoi, District Swat.
2.	Bashir Ahmad s/o Mohamud Ishaq of Laloni, Behraipuri, District Swat.

Their appointment as Forest Guards in Kohistan Watershed Division, Babeli is purely temporary and their services can be terminated at any time in accordance with the Govt of West Pakistan and General Administration Department Notification No. 20-XXIII 18/65 dated 10.9.1968 at any time irrespective of the facts that they are holding the charge of post other than that for which they are originally recruited.

They will be Governed by such rules and orders relating to leave travelling allowance medical attendance pay and transfer etc, prevailing at the time of the issue of this office order and any other orders issued, by the Government in future for the category of the Govt's servants to which they belongs.

In case they wish to resign at any time they will have to serve one month's Notice for the purpose, otherwise their one month's pay should be forfeited in lieu of that.

Their appointment is subject to the following conditions,

- i. They have to produce original certificates in support of their qualification and age.
- ii. They have to join their duties at their own expenses.
- iii. They have to produce their Medical Certificates of fitness.

Sd/--

(IHSAN - ULLAH)
DIVISIONAL FOREST OFFICER
KOHISTAN WATERSHED DIVISION
BABELI

Memorandum:

Copy forwarded to :-

- 1- The Conservator of Forests, Watershed Management Project, Abbottabad for information.
- 2- ✓ All concerned officials for information.
- 3- Divisional Accountant/Head Clerk for information and further necessary action.

runy
DIVISIONAL FOREST OFFICER
KOHISTAN WATERSHED DIVISION
BABELI

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ANNEXURE "D"

(9)

Office Order No. 140/M Dated: Bisham, The 27/12/1990 by Mr. Ihsanullah Divisional Forest Officer Kohistan Watershed Division, Bisham.

As recommended by the selection committee of Kohistan Watershed Division appointed by the Divisional Forest Officer Kohistan Watershed Division Bisham vide this office, office order No. Dated: the following persons are hereby appointed as Forest Guards on Basic Pay Scale of Rs. 625-16-945/- on temporary basis with effect from the date of arrival.

SL. No. Name and Father Name

1. Bakhti Amin S/O Ashtamand of Islampur Tehsil Babuzai District Swat.
2. Bashir Ahmad S/O Muhammad Ishaq of Lelawnai Tehsil Alpuri District Swat.

Their appointments as Forest Guards in Kohistan Watershed Division Bisham is purely temporary and their services can be terminated at any time in accordance with the Govt: of West Pakistan and general administration department notification No; SO-SXIII 18/65 Dated: 10/09/1968 at any time irrespective of the facts that they are holding the charge of post other than that for which they are originally recruited.

They will be governed by such rules and orders relating to leave travelling allowance Medical attendance pay and transfer etc, prevailing at the time of the issue of this office order and any other orders issued, by the Govt: in future for the category of the Govt: servants to which they belongs.

In case they wish to resign at any time they will have to serve one month notice for the purpose, otherwise their one month pay should be forfeited in lieu of that.

Their appointment as subject to the following conditions,

1. They have to produce original certificate and support of their qualification and age.
2. They have to join their duties at their own expenses.
3. They have to produce their medical certificates of fitness.

Sd/--

(IHSAN- ULLAH)

Divisional Forest Officer

Kohistan Watershed Division Besham

Memorandum.

Copy forwarded to:-

- 1 The Conservator of Forest, Watershed Management project, Abbotabad for Information.
- 2 All concerned officials for information.
- 3 Divisional Accountant/Head Clerk for information and further necessary action.

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Divisional Forest Officer
Kohistan Watershed Division Besham

Annexure IV

(10)

As decided by the NWFP Service Tribunal vide their judgement dated 28.11.2001 and authorized/rotation recorded by the Honorable Chief Minister NWFP, Mr. Babt Khan Forest is hereby adjusted against the vacant post of Forest Guard class due to transfer of Mr. Ali Waider Forest Guard, in District Government Shingla in the interest of public service with immediate effect.

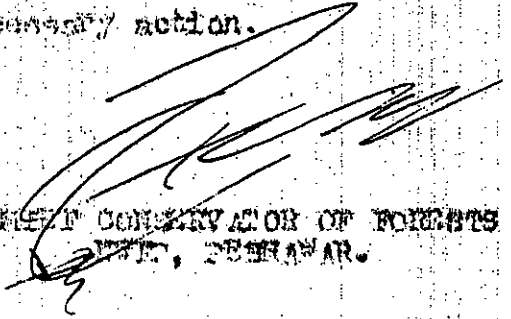
SD/-(Mustaz Khan)
Chief Conservator of Forests
NWFP, Peshawar.

No. 1149-53 P.

Copy forwarded to the :

- 1. Secretary to Government of NWFP, Environment Department Peshawar with reference to his remarks on the application of the above named Forest Guard dated 27.8.2003.
- 2. ✓ Conservator of Forests Malakand Circle, Mingora.
- 3. DDO Shingla with reference to this office order No.56 dated 22.8.2003.
- 4. EDO Agri, Matti, Shingla.
- 5. Budget & Accounts Head Office, Peshawar.

For information and necessary action.


CHIEF CONSERVATOR OF FORESTS
NWFP, PESHAWAR.

TRUE COPY

15
ANNEXURE
(Both copy)

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(10)

OFFICE ORDER NO. 61, DATED: PESHAWAR THE 02/09/2003, BY MR. MUMTAZ KHAN CHIEF CONSERVATOR OF FOREST NWFP PESHAWAR.

As decided by the NWFP Service Tribunal vide their judgment Dtaed: 28/11/2001 and authorized/ Relaxation accorded by the Honorable chief Minister NWFP Mr. Bakhti Amin Forest Guard is hereby adjusted against the vacant of Forest Guard caused due to transfer of Mr. Ali Haider Forest Guard in District Govt: Shangla in the interest of public service with immediate effect.

SD/-(Mumtaz Khan)
Chief Conservator of Forest
NWFP Peshawar.

No. 1149-53/E.

Copy forwarded to the:

- 1 Secretary to Government of NWFP, Environment Department Peshawar with reference to his remarks on the application of the above named of Forest Guards Dated: 27/08/2003.
- 2 Conservator of Forest Malakand Circle, Mingora.
- 3 DCO Shangla with reference to this office Order No.56 Dated 22/08/2003.
- 4 EDO Agri: Distt: Shangla.
- 5 Budget and Accounts Head Office, Peshawar.

For Information and necessary action.

Chief Conservator of Forest
NWFP Peshawar.

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Annexure

17
dated 13.10.2009

As recommended by CF Malakand transfer of Mr. Bakht Amin Forest Guard from District Government Shangla to District Government Swat already made vide this office order No.34 dated 30.7.2004 is hereby ordered on permanent basis due to vacancy created by dismissal from service of Mr. Saecdullah Forest Guard.

Sd/-
(Nazir Muhammad)
Chief Conservator of Forests,
NWFP Peshawar.

No. 1450 + 52 /E.

Copy forwarded for information and necessary action to the:

1. CF Malakand with reference to his letter No.3013/E, dated 7.10.2009.
2. DCO District Government Shangla.
3. DCO District Government Swat.

Sd/- As above.

No. 3485-87 /E, dated Saidu Sharif, the 13 /October, 2009.

Copy for information and further necessary action forwarded to the:

1. Divisional Forest Officer, Swat Forest Division Mingora with reference to his letter No.487/G, dated 17.9.2009.
2. Divisional Forest Officer, Alpuri Forest Division, Alpuri.
3. District Officer Fisheries, Forestry District Swat with reference to his letter No.428/DOF, dated 18.8.2009.

27/10/09
CONSERVATOR OF FORESTS,
MALAKAND CIRCLE SHAGLA,
SAIDU SHARIF SWAT

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Annexure E, (12)

OFFICE ORDER NO 145 DATED PESHAWAR THE 8 15 2019 ISSUED BY
MR. HAIDER ALI KHAN CHIEF CONSERVATOR OF FORESTS-I KHYBER PAKHTUNKHWA
PESHAWAR

The following posting/transfer amongst the Forest Guards is hereby ordered in the interest of public service with immediate effect.

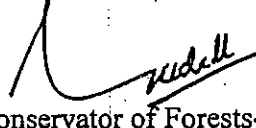
S.No.	Name	From	To
1.	Mr. Ajmal Khan	Swat Forest Division	District Govt. Swat
2.	Mr. Bakhat Amin	District Govt. Swat	Swat Forest Division.

Sd/-
(Haider Ali Khan)
Chief Conservator of Forests-I
Khyber Pakhtunkhwa, Peshawar.

No. 3666 /E,

Copy forwarded to:-

1. The CF-Malakand East Forest Circle Saidu Sharif Swat.
2. The District Coordination Officer Swat.
3. The DFO Swat .
4. The EDO Agriculture District Govt. Swat.


Chief Conservator of Forests-I
Khyber Pakhtunkhwa, Peshawar.

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ANNEXURE
~~ANNEXURE~~

F
15

OFFICE ORDER NO. 78 DATED PESHAWAR THE 07 /12/2020 ISSUED BY
MR. ALI GAUHER KHAN, CHIEF CONSERVATOR OF FORESTS CENTRAL SOUTHERN
FOREST REGION-I, KHYBER PAKHTUNKHWA PESHAWAR.

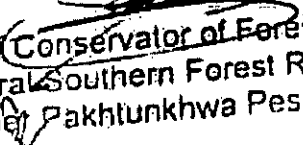
Mr Bakht Amin Forest Guard is hereby transferred from Swat Forest Division to Demarcation
Forest Division Swat in the interest of public service with immediate effect .


Sd/-
(A.G. Khan)
Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar

No 3078-80/E

Copy forwarded for information and necessary action to the -

1. Chief Conservator of Forests Malakand Forest Region-III, Saidu Sharif Swat
2. Conservator of Forests Malakand East Forest Circle Saidu Sharif Swat
3. DFOs concerned


Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar

TRUE COPY


ANNEXURE 6
14

OFFICE ORDER NO. 58 DATED BESHAM THE 6 /7/1992, BY,
SARDAR MOHAMMAD ILYAS DIVISIONAL FOREST OFFICER KOHISTAN WATERSHED DIVISION
BESHAM.

Mr. Bakht Amin s/o Ashtamand of Islampur, Tehsil Babozai, District Swat was appointed as Forest Guard vide office order No. 140 - dated 27.12.1990. While conducting office inspection of Kohistan Watershed Division during 12/1991, the Conservator of Forests Watershed Circle A'Abad pointed out that the said appointment, being made in violation of proper procedure as required under the rules, was fraudulent and irregular and further desired vide his letter No. 3356-57 dated 31-12-1991, to regularise the same.

In order to regularise the appointment, a departmental selection committee was constituted by the undersigned vide office order no. 47 dated 7.5.1992, and the said Forest Guard was served with a notice vide no. 2117/KWS, dated 6-5-1992, calling upon him to re-appear before the selection committee for tests and interviews on 18.6.1992 at Divisional office Besham.

After conducting the tests and interview, the selection committee recommended him to be appointed as Forest Guard. Therefore keeping in view the recommendation of the departmental selection committee, the appointment of Mr. Bakht Amin s/o Ashtamand of Islampur, presently serving as Forest Guard in Hunair Watershed Division, is hereby regularised w.e.f. 28-12-1990, the date of his appointment.

SD/- (SARDAR MOHAMMAD ILYAS)
DIVISIONAL FOREST OFFICER
KOHISTAN WATERSHED DIVISION
BESHAM.

Memorandum

Copy forwarded to :-

1. The Conservator of Forests, Watershed Management Project Abbottabad for favour of information please.
2. The Divisional Forest Officer, Hunair Watershed Division, Swari Dargah for information.
3. Divisional Accountant for information.
4. Mr. Bakht Amin s/o Ashtamand of Islampur, Tehsil Babozai, District Swat, for information, and necessary action.
5. Personal file.

M. M. Ilyas
6/7/92
DIVISIONAL FOREST OFFICER
KOHISTAN WATERSHED DIVISION
BESHAM.

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ANNEXURE 91
(15)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Sardar Muhammad Raza Khan

Mr. Justice Tariq Parvez Khan

CIVIL PETITION NO.65-P OF 2006

(On appeal from the judgment dated 23.12.2005 of the N.W.F.P.
Service Tribunal, Peshawar passed in Service Appeal No.352/2004)

Bakht Amin

... Petitioner

Versus

Chief Conservator of Forests,
NWFP, Peshawar and others

... Respondents

For the Petitioner:

Mr. Atiq-ur-Rehman, ASC.

For the Respondents:

Mr. Qasir Rasheed, Addl: A.G., NWFP.

Date of hearing:

31.12.2009

ORDER

TARIQ PARVEZ KHAN, J.- The petitioner on the recommendation of Selection Committee of Kohistan, Watershed Division was appointed as Forest Guard in basic pay scale of Rs.625-16-945 under the order of Divisional Forest Officer, Besham and he was posted in district Kohistan at Besham.

2. On 6.7.1992 the Divisional Officer with reference to an office inspection note by the Conservator of Forests Watershed Circle A: Abad pointed out that appointment of the petitioner was in violation of proper procedure as required under the rules but desired through letter No.3356-57 dated 31.12.1991 that the same be regularized.

3. In order to regularize the appointment, a departmental selection committee was constituted. The petitioner was asked to appear before the committee which he did and after conducting the test and interview the departmental selection committee recommended his appointment. The order dated

ATTESTED

Officer Incharge
Supreme Court of Pakistan
Peshawar

(17)

30.3.1989 only those Forest Guards shall be treated as regular/permanent who were in service before the said date i.e. 30.3.1989 and because the petitioner was inducted in service in the year 1990 i.e. after cut-date, he could not be considered as regular employee, thus, not entitled to back benefits.

10. Learned Additional Advocate General, NWFP appearing for the respondent department has relied on said letter dated 30.3.1989 and argued that this cut-date has been given by the Provincial Government and Forest Guard employed thereafter would not be entitled to back benefits. It was next argued that the terms 'regularization' of the service as spelt out from the letter dated 6.7.1992 was only for limited purposes i.e. to regularize his initial appointment which was made without following the proper procedure and that same can not be take to be regularize appointment for the purpose of making the petitioner entitle to back benefits etc.

11. We have repeatedly asked the learned counsel for the respondents as to the source of authority behind letter dated 30.3.1989 but he could not.

12. We have to go by the record as it is before us. When the petitioner was taken back as Forest Guard on 2.9.2003 mere use of word 'adjustment' would not disentitled him to hold that he remained in continuous service in respondent department in the light of letter dated 6.7.1992 where his services were regularized w.e.f. 28.12.1990.

13. Otherwise too, for ten long years the petitioner has been serving as Forest Guard with the Forest Department on different project and if it all letter dated 30.3.1989 had any authority behind it, it was sort of advisory note sent to different hierarchy of the Forest Department and other departments to the effect that henceforth when appointing a person on a project, their terms and conditions shall clearly specify that their services are hired for specified periods or that after the completion of project their services would be terminated.

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ATTESTED
D. S. KHAN
Deputy Registrar
Supreme Court of Pakistan

(18)

14. The above advisory note was not followed in the case of present petitioner, if one would look into his appointment order dated 27.12.1990.

15. Based on our proceeding observation it is hold that petitioner was working on project, not one but different, and remained working for ten years and when in the year 1992 his services were regularized, but on termination he approached the Service Tribunal and the respondent department accepted to adjust him again, would clearly demonstrate that for all practical purposes the respondent have admitted the petitioner to be their regular employee. If this be so then for the period he has allegedly removed and was reinstated, he would be entitled to back benefits and in this behalf we rely upon a judgment of this Court reported as Umer Said and others vs. Director Education Officer (Female) and others (2007 SCMR 296).

For the foregoing reasons, the petition is converted into appeal and allowed. Order of NWFP Service Tribunal, Peshawar passed in Service Appeal No.352 of 2004 is set aside. Parties are left to bear their own costs.

sd/- Sardar Muhammad Razid Khan, J
sd/- Tariq Parvez Khan, J

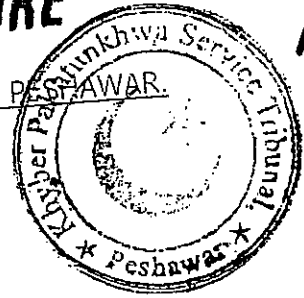
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Peshawar:
December 31, 2009
Not approved for reporting
Nayeed Ahmad
20/11/09

Certified to be true copy
[Signature]
Officer in Charge
Supreme Court of Pakistan
Peshawar

ANNEXURE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.



Appeal No. 456/2012
Date of Institution. ... 12.4.2012
Date of Decision. ... 17.4.2013

Mian Karim Shah, Forest Guard, Demarcation Forest Division,
Saidu Sharif Shagai, Swat. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Chief Conservator of Forests, Government of Khyber Pakhtunkhwa, Peshawar.
3. Conservator of Forests, Malakand Circle East, Saidu Sharif, Swat.
4. DFO Demarcation Forest Division, Saidu Sharif Shagai, Swat.
5. Faridullah, Forester, Demarcation Forest Division, Saidu Sharif Shagai, Swat.
6. Alamzeb Forest Guard, Demarcation Forest Division, Shagai, Saidu Sharif, Swat. (Respondents)

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

MR. MUHAMMAD ZAFAR TAHIRKHELI, Advocate	...	For appellant.
MR. ARSHAD ALAM, Government Pleader	...	For official respondents.
MR. KHALID RAHMAN, Advocate	...	For private respondents No. 5 and 6.
MR. FAREEDULLAH KHAN, MR. SULTAN MAHMOOD KHATTAK,	...	MEMBER MEMBER

JUDGMENT

FAREEDULLAH KHAN, MEMBER.- This appeal has been filed by Mian Karim Shah, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order No. 32 dated 15.11.2011, whereby seniority list dated 25.10.2011 has been withdrawn and against the order No. 34 dated 25.11.2011, whereby private respondent No. 5 is promoted as Forester (BPS-9). It has been prayed that on acceptance of the appeal, the impugned orders may be set aside and the respondent department may be directed to

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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(21)

Swat Forest Division, one Abdul Jalil, Forest Guard of Demarcation Forest Division, Swat submitted an application for his transfer to Swat Forest Division. He was accordingly, transferred and the appellant was posted in Demarcation Forest Division without his consent. Hence his seniority had rightly been fixed from the date of appointment. He further argued that private respondents are junior to the appellant because private respondent No. 5 was initially appointed on 22.8.1988 while private respondent No. 6 was appointed on 28.1.1990. The appellant was placed at the top of seniority list as it stood on 25.10.2011 while private respondent No. 5 and 6 at S.No. 2 and 3 respectively on the basis of initial appointment. The appellant being senior and eligible had right to be considered for promotion as Forester while his junior has been considered and promoted as Forester and he has been discriminated against. He stated that the appellant belongs to the same Division while private respondent No. 5 belongs to District Karak and was transferred from FATA. He further stated that the appellant was transferred from Swat Forestry Division Swat to Demarcation Forest Division Swat in exigencies of service without his consent. So he could not be deprived of his legal right of seniority on the basis of such transfer. He also stated that vide office Order No. 48, dated 10.3.2012 another post of Forester is lying vacant since 3.4.2012 due to transfer of Muhammad Iqbal Forester to Kalam Forest Division. He requested that the appeal may be accepted as prayed for.

6. The learned counsel for private respondents argued that the appellant while serving as Forest Guard in Swat Forest Division, a post of Forester lying vacant in the Demarcation Forest Division, so he managed his transfer/adjustment in Demarcation Forest Division in which he succeeded. Due to such transfer/adjustment in Demarcation Forest Division his name should be placed at the bottom of the seniority list as per law/rules. So his name was placed at the bottom of the seniority list. Later on due to extraneous pressure a tentative seniority list as it stood on 25.10.2011 was issued, and his name was brought to S.No.1 of the list. On objections of the other permanent Forest Guards of Demarcation Forest Division, the matter was clarified and subsequently his seniority was withdrawn. His name was brought at the bottom of the seniority list vide letter dated 10.11.2011 and seniority list issued on 18.7.2011 restored. On the basis of his seniority, private respondent No. 4 was considered for promotion as Forester and after observing all the codal formalities, he was promoted as Forester on 25.11.2011 on the recommendations of the Departmental Promotion Committee. He served on the post for some time and valuable rights accrued in his favour, which could not be snatched from him. He

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 Zaidi Pakhuni
 Service Division
 Swat

stated that similar nature Service Appeal No. 18.15/2011 titled "Muhammad Saleem-II Versus Secretary Forests, Khyber Pakhtunkhwa, Peshawar etc.", has also been dismissed by this Tribunal vide judgment dated 15.7.2011. The learned Government Pleader also relied on the arguments of the learned counsel for private respondents. They both requested for dismissal of the appeal.

7. The Tribunal while agreeing with the arguments to the arguments advanced by the learned counsel for the appellant observes that the appellant was posted as Forest Guard in Swat Forest Division. He was performing his services smoothly. Meanwhile one Abdul Jalil, Forest Guard, submitted application for transfer from Demarcation Forest Division to Swat Forest Divisional. Respondent No. 4 issued No Objection Certificate for the transfer and effected the same. The said Abdul Jalil was placed in Swat Forest Division while the appellant was got transferred to Demarcation Forest Division in place of Abdul Jalil. Record shows that the appellant had not expressed any desire for the transfer nor was he otherwise taken into confidence.

8. The appellant then approached the respondent No. 3 for giving him seniority w.e.f. his date of appointment. Agreeing to the request, respondent No. 3, directed respondent No. 4 accordingly. In compliance with the directions, respondent NO. 4 issued seniority list placing the appellant at the top. But a sudden somersault occurred and newly issued seniority list was withdrawn and the old one was restored. Thereby the appellant was found from the top to the bottom of the list.

9. Keeping the above narration in view, the appeal is accepted and the respondent No. 4 is directed to consider the seniority of the appellant from the date of appointment and the impugned promotion order be reviewed accordingly. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
17.4.2013.

Self. Faridullah Khan
Member
Self. Sultan Mahmood
Member

~~Certified to be true copy~~

EMERSON
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Application 22.4.2013
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2-5-2013
2-5-2013

ANNEXURE

H,

(23)

OFFICE ORDER NO. 08 DATED 05/11/2014 ISSUED BY MR. MUHAMMAD RIAZ
DIVISIONAL FOREST OFFICER DEMARICATION FOREST DIVISION AT SAIDU SHARIF
SWAT.

In pursuance with the Honourable Services Tribunal Khyber Pukhtunkhwa Peshawar decision dated 17.0.4.2013, opinion arrived from the Section Officer (Opinion II) Government of Khyber Pukhtunkhwa Law Parliamentary Affairs & Human Right Department No.SO(OP II)LD/5-6/2012-Vol-II dated 20.08.2014, and subsequent recommendation of the Departmental Promotion Committee during its meeting held on 31.10.2014 in the office of the undersigned, Mian Karim Shah Forest Guard of Demarcation Forest Division, Swat is hereby promoted to the rank of Forester (BPS-09) against the vacant post with immediate effect.

He will be on probation for the period of one year in terms of section -6 (2) of the Khyber Pukhtunkhwa Civil Servant Act, 1973 read with rules 15 (I) of the Khyber Pukhtunkhwa Civil Servant (Appointment, promotion and transfer) Rules, 1989.

The promotion order is purely temporary and will not constitute any right of continuity on abolition of the post. He will be reverted to original post with out any notice.

The promotion is subject to ^{the} final decision of the Supreme court of Pakistan as per opinion given above, whereas an appeal in the case has already been filed by the department in August, Supreme Court.

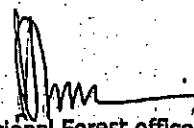
Sd/-

(Muhammad Riaz)
Divisional Forest officer
Demarcation Forest Divn.
At Saidu Sharif Swat

No. 382-85
/G,

Copy forwarded to the:-

- 1) Conservator of Forests, Malakand Circle East at Saidu Sharif Swat for favour of information with reference to his letter No.9128/E, dated 23.05.2014. Copy of the decision of Services Tribunal Khyber Pakhtunkhwa Peshawar dated 17.4.2013 alongwith opinion detailed given above are also enclosed herewith please.
- 2) Head Clerk/Divl; Acctt: for information and necessary action.
- 3) Mian Karim Shah Forester Demarcation Forest Division Swat for Information.
- 4) Personal file for record.


Divisional Forest officer
Demarcation Forest Divn.
At Saidu Sharif Swat

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"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No. 452 of 20 22

SB

Bakht Amin.

Appellant/Petitioner

Versus

Govt of KPK through Secy. Forest Peshawar

RESPONDENT(S)

Respondent (1)

Notice to Appellant/Petitioner

Govt of KPK through Secy Forest

Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 27/07/2022 at 9:00am

(Copy Attached)

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply

Ca/B
19/7/22

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

VAKALATNAMA

BC-10-7764
17301-1639615-3
0300-9597620

In the Court of

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No. ____/2022

Petitioner
Plaintiff
Applicant
Appellant
Complainant

Bakht Amin

Decree-Holder

VERSUS

In the Court of

Service

Respondent
Defendant
Opponent
Accused

Govt of Khyber Pakhtunkhwa etc.

Judgment-Debtor

I / We **Bakht Amin** the above noted Appellant do hereby appointed and constitute, **Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court**, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

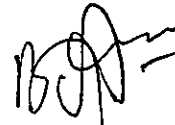
withd.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Dated 29/3/2022

Office

ATIQU LAW ASSOCIATES,
87, Al-Falah Street, Besides State Life Building,
Peshawar Cantt, Phone: 091-5279529
E-mail : zafark.advocate@gmail.com



Client
M. Zafar Tahir

Attested & Accepted (Advocates)



Ansar Ullah Khan