

18.06.2019

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Addl: Advocate General present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 07.08.2019 before D.B.


Member


Member

07.08.2019

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Rashid Iqbal Block Officer present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourn. To come up for arguments on ~~31~~ 31.10.2019 before D.B.


Member


Member

31.10.2019

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Learned counsel for the appellant submitted copy of office order dated 11.09.2019 and stated that vide said office order dated 11.09.2019, the appellant has been exonerated from the charges leveled against him hence the grievance of the appellant has been redressed and therefore, the appellant is no more interested in the present service appeal.

In view of the above the present service appeal is dismissed being not pressed. No order as to costs. File be consigned to the record room.


Member


Member

Announced
31.10.2019

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1.

SEP 10 2019

~~I carried counsel for the appellant pursuant to Mr. Usman
 Ghani learned District Attorney for the respondents present.
 I carried counsel for the appellant submitted a writ of office order
 dated 08/07/2019 and stated that vide said office order dated
 07/09/2019, the appellant has been exonerated from the charges
 leveled against him hence the grievance of the appellant has
 been redressed and therefore the appellant is no more interested
 in the present service appeal.~~

~~In view of the above the present service appeal is
 dismissed being not pressed. No order as to costs file to
 be consigned to the record room.~~

Member

Member

Announced
SEP 10 2019

08.01.2019

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Mir Faraz DSB for the respondents present. Due to general strike of the bar, the case is adjourned. To come up for rejoinder and arguments on 07.03.2019 before D.B



Member



Member

07.03.2019

Clerk to counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available. Adjourn. To come up for arguments on 26.04.2019 before D.B



Member



Member

26.04.2019

Clerk to counsel for the appellant and Adll: AG for the respondents present.

Due to general strike on the call of Bar Association instant matter is adjourned to 17.06.2019 before D.B.



(Ahmad Hassan)
Member



(M. Amin Khan Kundi)
Member


09.08.2018

Clerk to counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. Learned AAG sought some time to submit the same. Granted. To come up for written reply/comments on 05.10.2018 before S.B.


Chairman

05.10.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Rashid Iqbal, Block Officer for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 21.11.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member

21.11.2018

Since 21.11.2018 has been declared as public holiday on account of 12th Rabi-ul-Awal. Therefore, the case is adjourn. To come on 08.01.2019 before D.B.


Reader

19.03.2018

Learned counsel for the appellant present.
Preliminary arguments heard.

Learned counsel for the appellant argued that the Conservator of forests is the competent authority to attach/transfer the appellant from one Forest Division to another, however the Divisional Forest Officer Peshawar Forest Division Nowshera by assuming the powers of Conservator of Forests, has issued the orders of attachment of appellant from Forest Division Nowshera to Divisional Forest Officer D.I.Khan Forest Division vide order dated 07.11.2017. Further argued that the order dated 07.11.2017 to the extent of attachment of the appellant to the Divisional Forest Officer D.I.Khan Forest Division is Corum Non Judice.

Points raised need consideration. The appeal is admitted for regular hearing subject to all just/legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on ^{14.05}~~19.03~~ 2018 before S.B

Appellant Deposited
Security & Process Fee


Member

14.05.2018

The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 09.07.2018.


Reader

09.07.2018

Junior counsel for the appellant and Mr. Sardar Shoukat Hayat, Addl: AG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 9.08.2018 before S.B.


Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 308/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06/03/2018	<p>The appeal of Mr. Mian Taj Gul presented today by Mr. Muhammad Ijaz Khan Sabi Advocate may be entered in the Institution Register and put up to Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 6/3/18</p>
2-	12/03/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24/03/18.</u></p> <p style="text-align: center;"><i>[Signature]</i></p> <p style="text-align: right;"><i>MA</i> MEMBER</p>

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 308 /2018


Taj Mian Gul, Forester.....**Appellant**

V E R S U S

Divisional Forest Officer & others.....**Respondents**

I N D E X


S#	Description of Documents	Annex	Pages
1.	Service Appeal		1-7
2.	Affidavit		8
3.	Addresses of parties		9
4.	Copy of Order dated 07.11.2017	A	10
5.	Copy of Order dated 23.11.2017	B	11
6.	Copy of the departmental appeal/representation	C	12-13
7.	Copies of Writ Petition and order dated 18.01.2018	D & E	14-25
8.	Wakalatnama		26

Through  Appellant

Muhammad Ijaz Khan Sabi
Advocate
Supreme Court of Pakistan

&

Dated 05.03.2018


Adnan Aman
Advocate High Court
Cell No.0300-9596713

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 308 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 317

Dated 06-3-2018

Taj Mian Gul, Forester, Incharge Shabqadar
Forest Department, Check Post, Shabqadar.... **Appellant**

V E R S U S

1. Divisional Forest Officer Peshawar, Forest Division at Nowshera
2. Conservator of Forest, Southern Circle Shami Road, Peshawar
3. Sub Divisional Forest Officer Charsadda
4. Sub Divisional Forest officer Nizampur *Nowshera*
5. Sub Divisional Officer Petrol Squad F
Forest Department Shami Road Peshawar
6. Divisional Forest Officer, D.I.Khan... .. **Respondents**

**SERVICE APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT,
1974 AGAINST THE ORIGINAL ORDER
DATED 07.11.2017 PASSED BY RESPONDENT
NO.1 WHEREBY THE APPELLANT WAS
ATTACHED WITH OFFICE OF DIVISIONAL
FOREST OFFICER D.I.KHAN & OF APPELLATE
AUTHORITY WHEREBY HE DID NOT**

Filed to-day

Registrar

6/3/18

**RESPOND TO DEPARTMENTAL APPEAL/
REPRESENTATION OF THE APPELLANT**

Prayer

By accepting this appeal, the impugned order of respondent No.1 dated 07.11.2017 and respondent No.2 whereby he did not respond to the departmental appeal may be set aside and consueqnetly the appellant may be allowed to perform hid duty at Shabqadar Forest Check post.

Respectfully Sheweth:

1. That the Appellant was inducted in Forest Department as Forester way back in 1982 and thus he has thirty five (35) years of service in his credit.
2. That in long carrier of the appellant, no complaint has ever been reported against him and thus he is having an unblemished service record.
3. That all of sudden on 07.11.2017, respondent No.1 issued the impugned order whereby the appellant was attached with Divisional Forest Office, D.I.Khan. (Copy of Order dated 07.11.2017 is attached as annexure "A").

4. That it also pertinent to mention here that aforesaid attachment order was passed as punishment as transpired from impugned order dated 07.11.2017 to the effect that three number of trucks loaded with timber were allegedly smuggled from FATA to the settled area.
5. That there are many check posts in between Shabqadar & Khairabad one at Ring road, Peshawar, Nisatta Interchange Charsadda & thirdly, at Khairabad. Similarly on other hand, there are many check posts which fall before Shabqadar i.e. Bajour Check post at Khaar & Yakaghund Forest check post at Mohmand Agency.
6. That appellant was never informed before passing of impugned order dated 07.11.2017 when all of sudden his salary was attached vide order dated 23.11.2017. (Copy of Order dated 23.11.2017 is attached as Annexure-B).
7. That the appellant submitted departmental appeal/representation to respondent No.2 but till date the same has not been responded so far. (Copy of the departmental appeal/representation is attached as annexure "C").

8. That on one hand, appellant was waiting for the outcome of his departmental appeal and on the other, he alongwith his other colleagues, filed Writ Petition No.5009/2017 before Peshawar High Court which came up for hearing before Hon'ble Court on 18.01.2018 which was disposed off in terms that order of attachment of salary dated 23.11.2017 was declared as ineffective whereas as for the second part of pray i.e. attachment, the Hon'ble Peshawar High Court Peshawar abstain itself from passing any order on the ground of lack of jurisdiction. (Copies of Writ Petition and order dated 18.01.2018 are attached as annexure "D" & "E").
9. That the appellant after exhausting the departmental remedy of filing departmental appeal and waiting for statutory period i.e. ninety (90) days is preferring the instant service appeal before this Hon'ble Tribunal for following amongst other grounds:

G R O U N D S :-

- A. That as transpired from the impugned order that there are allegations of illegal movement of 3 trucks of timber from FATA to settled area which allegations were out rightly rejected and denied

by the appellants but respondents unilaterally passed the impugned order as a punishment to the appellants and thus on this score alone the impugned order of respondent No.1 is illegal, unlawful and thus ineffective upon the rights of the appellants.

- B. That through the impugned order appellants services were ordered to be "attached" with the office of Divisional Forest Officer, D.I. Khan which word is alien to the Rules and Regulation governing the service of the appellant and thus on this ground too, the impugned order is liable to be set aside.
- C. That on one hand there are serious allegations which may questions the conduct and efficiency of the appellant but on other hand they have not been issued any show cause notice to explain their position viza-a-via the truthfulness or otherwise of allegations made against them therefore on this ground too, the impugned order is liable to be struck down.
- D. That the impugned order dated 07.11.2017 was passed in a unilateral manner without confronting the appellant with the allegations of illegal movement of timber. In this view of the matter, the

impugned order is prima facie illegal which is not sustainable in the eyes of law.

- E. That appellants have been subjected to discrimination as other employees posted at Ring Road Check post Peshawar, Nisata Check post Charsadda and Rashakai Check Post Nowshera have not been disturbed or attached to a far flung division where as the appellants have been singled out, therefore, the impugned order is smacked with ill will and malafide. Similarly employees posted at Bajour check post Khaar and Yakaghund check post Mohmand Agency have also not been touched.
- F. That the impugned order has been passed in vacuum without having solid, cogent and convincing evidence of illegal movement of timber, therefore, the impugned order is illegal, unlawful and is the result of colorable exercise of powers vested in respondent No.1.
- G. That the impugned order of attachment dated 07.11.2017 has been passed without any regular inquiry, therefore the same has no legal footing to stand upon.
- H. That no opportunity of hearing has been provided to appellants before passing of impugned order.

- I. That impugned order of respondent No.1 is void ab-initio, coram-non-judice as respondent No.1 is not legally authorized to sent the appellant to another Division and thus on this ground too, the impugned order is liable to be struck down.
- J. That any other ground will be raised at the time of arguments with the prior permission of this Hon'ble Tribunal.

It is, therefore most humbly prayed that by accepting this appeal, the impugned order of respondent No.1 dated 07.11.2017 and respondent No.2 whereby he did not respond to the departmental appeal may please be set aside and consueqnetly the appellant may be allowed to perform hid duty at Shabqadar Forest Check post.

Through


Appellant

 93
Muhammad Ijaz Khan Sabi
Advocate
Supreme Court of Pakistan

&


Adnan Aman
Advocate High Court

Dated 05.03.2018

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. _____/2018

Taj Mian Gul, Forester.....**Appellant**

VERSUS

Divisional Forest Officer & others.....**Respondents**

AFFIDAVIT

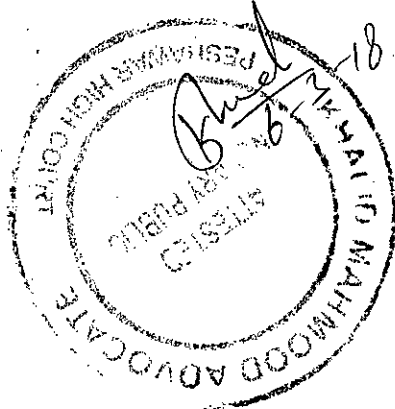
I, Taj Mian Gul, Forester, Incharge Shabqadar Forest Department, Check Post, Shabqadar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT

Identified by

CNIC#:

Muhammad Ijaz Khan Sabi
Advocate Supreme Court



BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. _____/2018

Taj Mian Gul, Forester.....**Appellant**

V E R S U S

Divisional Forest Officer & others.....**Respondents**

ADDRESSES OF PARTIES

APPELLANT:

Taj Mian Gul, Forester, Incharge Shabqadar
Forest Department, Check Post, Shabqadar

R E S P O N D E N T S


1. Divisional Forest Officer Peshawar, Forest Division at Nowshera
2. Conservator of Forest, Southern Circle Shami Road, Peshawar
3. Sub Divisional Forest Officer Charsadda
4. Sub Divisional Forest officer Nizampur
5. Sub Divisional Officer Petrol Squad
6. Divisional Forest Officer, D.I.Khan

Through


Appellant


Muhammad Ijaz Khan Sabi
Advocate
Supreme Court of Pakistan

&


Adnan Aman
Advocate High Court
Cell No.0300-9596713

Dated 05.03.2018

Annex "A"

OFFICE ORDER NO. 16 DATED NOWSHERA, THE 07/11/2017, ISSUED BY MR. GULZAR-UR-REHMAN, DIVISIONAL FOREST OFFICER, PESHAWAR FOREST DIVISION, NOWSHERA.

10

Consequent upon illegal movement of timber through 03 Nos. trucks from FATA to settled area via Shabqaddar Forest Check Post and Khairabad Forest Check Post, the following Officers/Officials are hereby placed under suspension with immediate effect on account of inefficiency, misconduct and corruption. They are attached with the office of Divisional Forest Officer, D.I.Khan Forest Division.

1. Mr. Taj Mian Gul Forester I/C Shabqaddar Forest Check Post.
 2. Mr. Faheem Shah Forest Guard Shabqaddar Forest Check Post.
 3. Muhammad Raheem Forest Guard Shabqaddar Forest Check Post.
 4. Mr. Nisar Muhammad Forester I/C Khairabad Forest Check Post.
 5. Mr. Mamoor Gul Forest Guard Khairabad Forest Check Post.
 6. Mr. Dilawar Shah Forest Guard Khairabad Forest Check Post.
- Mr. Arshad Ali Khan SDFO Lower Swat Canal Mardan is also appointed Enquiry officer.

Sd/-
 (Gulzar-ur-Rehman)
 Divisional Forest Officer
 Peshawar Forest Division
 Nowshera.

No. 748-59/E

Copy forwarded to the:-

1. Conservator of Forests, Southern Circle for favour of information with reference to his letter No. 3386/GB, dated 01.11.2017, please.
2. Divisional Forest officer, D.I.Khan Forest Division for information and necessary action, please.
3. Mr. Arshad Ali Khan SDFO Lower Swat Canal Mardan for information and necessary action. He is requested to enquire into the matter and submit his finding within stipulated period, please.
4. SDFO Charsadda for information and necessary action.
5. SDFO Nizampur for information and necessary action.
6. Divisional Accountant for information and necessary action.
7. Officials Concerned for information and necessary action.

Gulzar-ur-Rehman
 Divisional Forest Officer
 Peshawar Forest Division
 Nowshera

Op 93
Arshad to be

OFFICE ORDER NO. 19 DATED NOWSHERA, THE 23 /11/2017, ISSUED BY
MR. GULZAR-UR-REHMAN, DIVISIONAL FOREST OFFICER, PESHAWAR FOREST
DIVISION, NOWSHERA.

The following foresters and forest guards suspended vide this office order No. 16
dated 07.11.2017 and attached with Divisional Office D.I.Khan. But due to non-compliance of the
above cited order, their salaries are stopped with immediate effect till further orders:-

1. Mr. Taj Mian Gul Forester I/C Shabqaddar Forest Check Post.
2. Mr. Faheem Shah Forest Guard Shabqaddar Forest Check Post.
3. Muhammad Raheem Forest Guard Shabqaddar Forest Check Post.
4. Mr. Nisar Muhammad Forester I/C Khairabad Forest Check Post.
5. Mr. Mamoor Gul Forest Guard Khairabad Forest Check Post.
6. Mr. Dilawar Shah Forest Guard Khairabad Forest Check Post.

SD/-
(Gulzar-ur-Rehman)
Divisional Forest Officer
Peshawar Forest Division
Nowshera.

No. 9/0-16 /E,

Copy in-continuation of this office Endstt: No. 745-51/E, dated 07.11.2017 forwarded to the:-

1. Conservator of Forests, Southern Circle for favour of information, please.
2. Divisional Forest officer, D.I.Khan Forest Division for information and necessary action, please.
3. Mr. Arshad Ali Khan SDFO Lower Swat Canal Mardan for information and necessary action. He is once again requested to enquire into the matter and submit his finding within stipulated period, please.
4. SDFO Charsadda for information and necessary action.
5. SDFO Nizampur for information and necessary action.
6. Divisional Accountant for information and necessary action.
7. Officials Concerned for information and necessary action.

Arshad
Divisional Forest Officer
Peshawar Forest Division
Nowshera

To

The Divisional Forest Officer
Peshawar Forest Division at Nowshera

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Through Proper Channel

No. 06 / LSC Dated 30/01/2018

Subject: - INQUIRY PROCEEDINGS AGAINST STAFF OF PESHAWAR FOREST DIVISION.

Memo: - Reference your good office order No.16 dated 07-11-2017.

It is submitted that due to my multifarious engagement regarding different forestry activities particularly Motorway and Ring Road Plantation, Woodlot inspections and other works, I am not in a position to finalize the inquiry proceedings with free minded and smoothly. Therefore, it is requested to kindly assign the subject Inquiry to another Inquiry Officer so as to enable me to accomplish my tasks successfully.

Inquiry file from page-01 to 71 is returned herewith in original.

Encl: as above

Arshad
(Arshad Ali Khan)

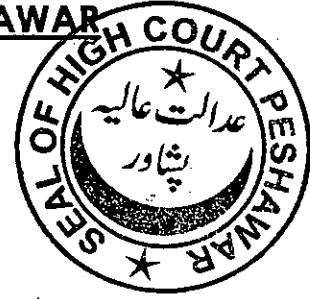
SUB DIVISIONAL FOREST OFFICER
LSC FOREST SUB DIVISION

Arshad Ali Khan

14

Annex D

IN THE PESHAWAR HIGH COURT, PESHAWAR



Writ Petition No. 5066 /2017

1. Taj Mian Gul, Forester, Incharge Shabqdar
2. Faheem Shah, Security Guard
3. Muhammad Raheem, Security Guard
4. Nisar Muhammad, Forester Incharge
Khairabad Forest Check post
5. Manoor Gul, Forest Guard
6. Dilawar Shah, Forest Guard,
All Employees of Forest Department,
Government of Khyber Pakhtunkhwa, Peshawar
.....Petitioners

VERSUS

1. Divisional Forest Office Peshawar, Forest Division at
Nowshera
2. Conservator of Forest, Southern Circle Shami Road,
Peshawar
3. Sub Divisional Forest Officer Charsadda
4. Sub Divisional Forest officer Nizampur
5. Sub Divisional Officer Petrol SquadRespondents

FILED TODAY
Deputy Registrar

06 DEC 2017

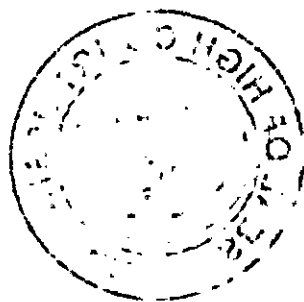
ATTESTED
EXAMINER
Peshawar High Court

20 JAN 2018

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PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF PAKISTAN, 1973 FOR A DECLARATION/ ORDER/DIRECTION TO THE EFFECT THAT THE IMPUGNED ORDERS OF RESPONDENT NO.1 DATED 07.11.2017 WHEREBY THE PETITIONERS WERE "ATTACHED" WITH THE OFFICE OF DIVISIONAL FOREST OFFICER, D.I.KHAN AND ORDER DATED 23.11.2017 WHEREBY RESPONDENT NO.1 STOPPED THE SALARY OF PETITIONERS BE DECLARED AS ILLEGAL, UNLAWFUL AGAINST THE PRINCIPLE OF GOOD GOVERNANCE AND THUS INEFFECTIVE UPON THE RIGHTS OF THE PETITIONERS AND CONSEQUENTLY RESPONDENTS MAY BE DIRECTED TO ALLOW THE PETITIONERS TO PERFORM THEIR DUTIES AT THEIR RESPECTIVE STATION OF DUTY I.E. SHABQADAR FOREST CHECK POST AND KHAIRABAD FOREST CHECK POST.

Respectfully Sheweth:

1. That the petitioners No.1 and 4 were inducted in the Forest Department as Forester whereas petitioners No.2, 3, 5 and 6 were inducted as a Forest Guard and thus they have performed their duties for a period ranging from 26 to 34 years.

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06 DEC 2017

ATTESTED
EXAMINER
Peshawar High Court
20 JAN 2018

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2. That in the long career of the petitioners no complaints whatsoever has ever been reported against them and thus they have an unblemished service record.
3. That all of sudden on 07.11.2017, respondent No.1 issued the impugned order whereby petitioners were "attached" with the office of Divisional Forest Officer D.I.Khan Forest Division. It merits to mention here that their attachment order has been passed as a punishment as allegedly there was an illegal movement of Timber. (Copy of impugned Order is attached as annexure "A").
4. That it also merits to mention here that there are many check posts in between Shabqadar and Khair Abad i.e. one at Ring Road Peshawar, Nisatta Interchange Charsadda and thirdly at Rashakai Forest Check post. It is also worthy to note that there are several other check posts which come fall before Shabqadar check post namely Bajour Forest Check Post at Khaar, Yakaghund Forest check Post at Mohmand Agency.
5. That despite the fact that petitioners were never served or informed before passing of the impugned order dated 07.11.2017 when all of sudden their

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Deputy Registrar

06 DEC 2017

ATTESTED

EXAMINER
Peshawar High Court

20 JAN 2018

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salaries were also stopped through the impugned order dated 23.11.2017. (Copy of the impugned order is attached as annexure "B").

6. That all the petitioners submitted their representation to respondent No.2 however initially he refused to entertain the same so the petitioners sent through TCS courier service but the same have not been responded so far. (Copies of Representation are attached as annexure "C").
7. That petitioners being mortally aggrieved of the impugned orders of respondent No.1 dated 07.11.2017 and 23.11.2017 therefore they are constrained to move this Hon'ble Court for following amongst other grounds:

GROUNDS:

- A. That as transpired from the impugned order that there are allegations of illegal movement of 3 trucks of timber from FATA to settled area which allegations were out rightly rejected and denied by the petitioners but respondent unilaterally passed the impugned order as a punishment to the petitioners and thus on this score alone the impugned order of respondent No.1 is illegal, unlawful and thus ineffective upon the rights of the petitioners.

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06 DEC 2017

ATTESTED
EXAMINER
Peshawar High Court

20 JAN 2018

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- B. That through the impugned order petitioners services were ordered to be "attached" with the office of Divisional Forest Officer, D.I. Khan which word is alien to the rules and regulation governing the service of the petitioner and thus on this ground too, the impugned order is liable to be set aside.
- C. That on one hand there are serious allegations which may questions the conduct and efficiency of the petitioners but on other hand they have not been issued any show cause notice to explain their position viza-a-via the truthfulness or otherwise of allegations made against them therefore on this ground too, the impugned order is liable to be struck down.
- D. That it is an established law that transfer or attachment could not be made as a punishment but the same must be made in the larger interest of public but the impugned order has been passed as a punishment for their duty alleged failure of at their respective station i.e. at Shabqadar and Khair Abad.
- E. That on one hand the impugned order dated 07.11.2017 was passed in a unilateral manner without confronting the petitioners with the allegations of illegal movement of timber but on the other hand respondent No.1 has gone a step further by making stoppage of their salaries by another impugned order dated 23.11.2017. In this view of the matter,

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Deputy Registrar
06 DEC 2017

ATTESTED
EXAMINER
Peshawar High Court
20 JAN 2018

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both the impugned orders are prima facie illegal which are not sustainable in the eyes of law.

- F. That petitioners have been subjected to discrimination as other employees posted at Ring Road Check post Peshawar, Nisata Check post Charsadda and Rashakai Check Post Nowshera have not been disturbed or attached to a far flung division where as the petitioners have been singled out, therefore, the impugned order is smacked with ill will and malafide. Similarly employees posted at Bajour check post Khaar and Yakaghund check post Mohmand Agency have also not been touched.
- G. That the impugned order has been passed in vacuum without having solid, cogent and convincing evidence of illegal movement of timber, therefore, both the impugned orders are illegal, unlawful and is the result of colorable exercise of powers vested in respondent No.1.
- H. That the Petitioners have been treated against the law and they have also been deprived of equal protection of law.

It is, therefore, prayed that by accepting this petition, the impugned orders of respondent No.1 respectively dated 07.11.2017 and 23.11.2017 may please be declared as illegal, unlawful and thus ineffective upon the rights of the petitioners and consequently respondents may be directed to allow

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06 DEC 2017

ATTESTED

EXAMINER
Peshawar High Court

20 JAN 2018

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the petitioners to perform their duty at their respective station of duty i.e. Shabqadar Check post and Khairabad Check post. OR

Any other relief deems fir and appropriate in the circumstances of the case may please be passed.

INTERIM RELIEF:

By way of Interim Relief, the impugned orders of respondent No.1 respectively dated 07.11.2017 and 23.11.2017 may please be suspended till the final decision of instant writ petition.

Through

Petitioners

[Handwritten signature]
- a3
5.12.2017

Muhammad Ijaz Khan Sabi
Advocate Supreme Court

Dated: 05.12.2017

CERTIFICATE:

Certified on instructions of my client that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter, thus the titled Writ Petition may kindly be fixed before the worthy D.B of this Hon'ble Court.

[Handwritten signature]
- a3
5.12.2017
ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law books according to need

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Deputy Registrar

06 DEC 2017

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- a3
5.12.2017
ADVOCATE
ATTESTED

EXAMINER
Peshawar High Court

20 JAN 2018

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IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 666 /2017

Taj Mian Gul & others.....**Petitioner**

Versus

Divisional Forest Office Peshawar & Others....**Respondents**

AFFIDAVIT

I, Dilawar Shah S/o Zewar Shah R/o Miangan P.O Nowshera Cantt BAdrashi Tehsil and district Nowshera (Petitioner No 6), do hereby solemnly affirm and declare on oath that the contents of the accompanying **Writ Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by

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93

Muhammad Ijaz Khan Sabi
Advocate Supreme Court

DEPONENT

CNIC#: 17201-1793162-1

No. 10858
Certified that the above was verified on solemnly affirmation before me on this 17 day of Dec s/o. Dilawar Shah who was identified by M. Ijaz Khan Who is personally known to me:

[Handwritten signature]
Commissioner
5/12/17

FILED TODAY
Deputy Registrar

06 DEC 2017

ATTESTED
EXAMINER
Peshawar High Court

20 JAN 2018

22

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IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 5066 /2017

Taj Mian Gul & others.....**Petitioner**

Versus

Divisional Forest Office Peshawar & Others....**Respondents**

ADDRESSES OF PARTIES

PETITIONER:-

1. Taj Mian Gul, Forester, Incharge Shabqadar
2. Faheem Shah, Security Guard
3. Muhammad Raheem, Security Guard
4. Nisar Muhammad, Forester Incharge Khairabad Forest Check post
5. Manoor Gul, Forest Guard
6. Dilawar Shah, Forest Guard,
All Employees of Forest Department,
Government of Khyber Pakhtunkhwa, Peshawar

RESPONDENTS:-

1. Divisional Forest Office Peshawar, Forest Division at Nowshera
2. Conservator of Forest, Southern Circle Shami Road, Peshawar
3. Sub Divisional Forest Officer Charsadda
4. Sub Divisional Forest officer Nizampur
5. Sub Divisional Officer Petrol Squad

Through Petitioner

Dated: 05.12.2017

Muhammad Ijaz Khan Sabi
Advocate Supreme Court

FILED TODAY
Deputy Registrar

06 DEC 2017

ATTESTED
EXAMINER
Peshawar High Court
20 JAN 2018

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Annex E

**IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].**

Writ Petition No.5066-P/2017
With C.M. No.81-P/2018

*Taj Mian Gul, Forest Incharge,
Shabqadar and others.*

Petitioner (s)

Versus

*Divisional Forest Office, Peshawar,
Forest Division at Nowshera and others.*

Respondents



*For Petitioner :-
For Respondent :-*

Mr. Muhammd Ijaz Khan Sabi, Advocate.
Mr. Moeen ud Din Hamayoun, AAG along
with Mr. Jawad Munitaz SDFO.

Date of hearing: 18.01.2018

JUDGMENT

ROOH-UL-AMIN KHAN, J:- By this common judgment, we, propose to decide C.M. No.81-P/2018 and the main writ petition.

2. Petitioners are the employees of Forest Department, out of whom, petitioners No.1 and 4 are serving as "Foresters" while petitioners No.2,3, 5 and 6, as "Forest Guard" in the respondents-department. They have filed the aforesaid C.M. for release of their monthly salaries, stopped by the respondents vide order dated 23.11.2017, on the ground of their failure to comply with the order dated 07.11.2017.

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3. Mr. Meen ud Din Hamayoun, the learned AAG present in the Court was put to notice. He contended that

ATTESTED
EXAMINER
Peshawar High Court
20 JAN 2018



(24)

due to illegal movement/ smuggling of timber through different vehicles from FATA to settle area, the petitioners were placed under suspension along with their attachment order with the office of Divisional Forest Officer, D.I. Khan Forest Division. Further contended that since the petitioners were adamant to obey the orders of the authority, hence, their monthly salaries were stopped.

4. Admittedly, the petitioners have been placed under suspension and payment of full pay to a civil servant under suspension has been resolved by the Hon'ble Hon'ble Supreme Court in case titled, "Government of NWFP Vs I.A Sherwani and another" (PLD 1994 SC 72), in the following words:-

"that rule 53 of the Fundamental Rules and rule mentioned in S. No.106 and all the parallel rules of the Provinces were repugnant to injunction of Islam to the extent that they deprive Governments Servants of their full salary and other benefits during the period of suspension. Suspended Government Servant was entitled to full amount of his salary and all other benefits and facilities provided to him under the contract of service."

Looked Same

5. In view of the judgment (supra) of the Hon'ble apex Court, the C.M. is allowed and the respondents are

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Peshawar High Court
28 JAN 2018

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Directed to release the salaries/pays of the petitioners with immediate effect.

6. In the writ petition, the petitioners have asked for issuance of the following writ:-

"It is therefore, prayed that by accepting this petition, the action/orders of respondent No.1, with regard to their suspension and attachment with the Office of Divisional Forest Officer, DI Khan, Forest Division, may please be declared as illegal, unlawful and without lawful authority and that the respondents may be directed to allow them to perform their duties at their respective stations of duty i.e. Shabqadar and Khairabad Check-Posts."

7. It appears from the impugned order that the petitioners have been placed under suspension on the ground of their involvement in a case of misconduct, hence, the writ sought in this regard by the petitioners, is not amenable to the constitutional jurisdiction of this Court under Article 199 of the Constitution. Accordingly, the writ petition being not maintainable is hereby dismissed.



Announced:
18.01.2018

Siraj Afridi P.S.

Handwritten signature of Siraj Afridi P.S.

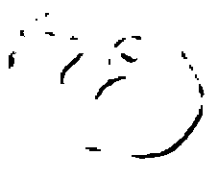
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JUDGE
JUDGE

No. 7170
Date of Presentation of Application 12/1/18
No of Pages 12
Copying Fee 48.00
Urgent Fee 48.00
Total 96.00
Date of Preparation of Copy 20/1/18
Date of Delivery of Copy 20/1/18
Received By [Signature]

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorised Under Article 8.7 of
The Gazetted Shariat Order 1984

20 JAN 2018

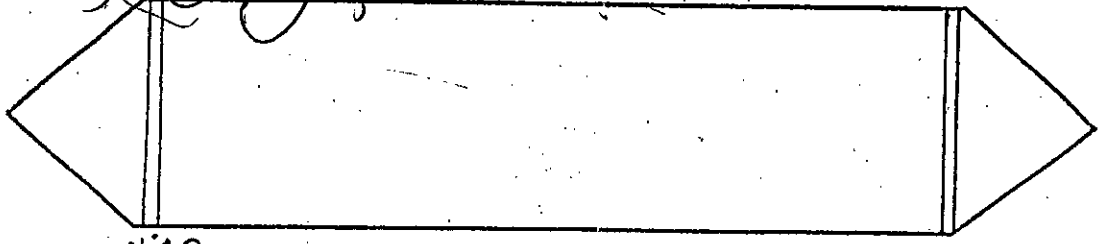


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بعدالت صا سروس ریسٹریول لٹریچر



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2-2 صا سروس ریسٹریول لٹریچر

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کے لئے لکھا گیا ہے۔

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو رضی نامہ کرنے و تقرر ثالت ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا ساختہ
پر داخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانش التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم _____ ماہ _____ 2012

وہ العبد العبد
کے لئے منظور ہے۔

بمقام (Accepted) Attested

[Signature]

SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

BEFO

8/2018

Gul Forester, Forest Department, Check Post
.....(Appellant)

VERSUS

Divisional Forest Officer, Peshawar Forest Division, Nowshera.

Conservator Forests, Southern Circle, Shami Road Peshawar.

Sub-Divisional Forest Officer, Charsadda.

4. Sub-Divisional Forest Officer, Nizampur Sub-Division.

5. Sub-Divisional Forest Officer, Patrol Squad.

6. Divisional Forest Officer, D.I.Khan.....(Respondents)

Reply on behalf of Respondents No. 01 to 06.

PRELIMINARY OBJECTIONS.

1. The appellant has got no locus standi to file the instant appeal.
2. The appellant has not come to the Court with clean hand and concealed material facts from this Honorable Court.
3. The appellant is allegedly involved in smuggling and through connivance of the appellant illegal timber were transported from FATA to settled area.
4. The appeal is bad due to mis-joinder and non-joinder of necessary parties.
5. The appeal is premature and appears to be an attempt to stifle/influence the inquiry proceedings.
6. The appeal is not maintainable as per Sec.4 of the KPK Service Tribunal Act as no final order has been passed as yet.

FACTS:

1. Para-1 pertains to service record of appellant.
2. Incorrect. Appellant service is full of complaints and bad entries.
3. Incorrect. The appellant was suspended on 07.11.2017 on account of allegation of illegal smuggling of timber and inquiry constituted which is still underway.
4. Incorrect. The impugned order 07.11.2017 has been passed according to law as admitted by the respondent that appellant was involved in 03 No. of trucks loaded with illegal timber and smuggled from FATA to settled area. The appellant has not been punished as yet and any final order will be passed after conclusion of the inquiry.
5. Incorrect. The appellant is well advised to raise/address these facts before the inquiry committee.
6. Incorrect. The impugned order has been passed according to law and appellant was informed according to law.
7. Incorrect. The appellant has not filed any departmental appeal/representation to respondent. The answering respondent has not received any such appeal and ostensibly it appears that the appeal is an afterthought.
8. Correct to the extent that Peshawar High Court Peshawar have passed an order for the release of the salary of the appellant and Peshawar High Court has upheld the order of suspension and order passed by the authority as the same pertains to terms and conditions of the service of the appellant.
9. Incorrect. The appellant has not invoked the jurisdiction of Honorable Tribunal with proper intention. No appeal has been submitted/received by the answering respondent.

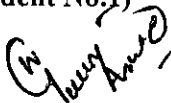
GROUND:

- A. Incorrect. The authority have passed the impugned order according to law; as per allegations the appellants have facilitated and transported illegal timber of trucks to settled area. However no final order with respect to the appellants' exoneration/ punishment has been passed as yet.
- B. Incorrect. The services of the appellants has been rightly attached with D.I.Khan Forest Division as postings and transfer is a routine matter within the competence of the answering respondent.
- C. Incorrect. The appellants should associate himself with inquiry proceedings. The departmental inquiry is underway whereafter the appellants will be either punished or exonerated.
- D. The impugned order 07.11.2017 is passed according to law and appellants services have been attached to D.I.Khan Forest Division. Posting and transfer is a routine matter and in normal circumstances is not amicable to interference by this Honorable Tribunal.
- E. Appellants has been treated according to law. No discrimination has been made against the appellants. The appellants is required under the law to serve wherever he is posted. In the meanwhile appellants has been attached to D.I.Khan Forest Division.
- F. Incorrect. The appellants has not been punished as yet. The impugned order is legal and according to law.
- G. The impugned order dated 07.11.2017 has all the legal formalities. Attachment is not a punishment. The inquiry is underway and appellants is advised to join the same.
- H. Transfer/Posting/attachment is not a punishment and there is no need of prior hearing.
- I. The impugned order 07.11.2017 is according to law and passed by the rightful authority and appellants attachment order is rightly passed by the respondent No.01 and the appellants, being a Civil Servant, is obliged under the law to serve where he is transferred/posted.
- J. Needs no reply.

In view of the above ex-position, it is therefore most humbly prayed that on acceptance of this reply, the appeal of the appellants may be dismissed with cost.



Divisional Forest Officer
Peshawar Forest Division
Nowshera.
(Respondent No.1)



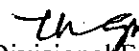
Sub-Divisional Forest Officer
Charsadda Forest Sub-Division
(Respondent No.3)



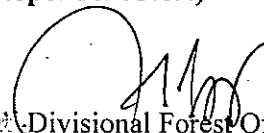
Sub-Divisional Forest Officer
Patrol Squad Forest Sub-Division
(Respondent No.5)



Conservator of Forests,
Southern Circle Peshwar.
(Respondent No.2)



Sub-Divisional Forest Officer
Nizampur Forest Sub-Division
(Respondent No.4)



Divisional Forest Officer
D.I.Khan Forest Division
(Respondent No.6)

Whereas the following staffs of Peshawar Forest Division were proceeded against under Rule-3 of the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheets issued by the undersigned in the capacity of authority under the power vested in me vide Rule-7 through letter No. 1272-73/E, dated 02.01.2018.

Whereas the accused official submitted their replies to the charge sheets dated 24.01.2018.

Whereas the accused officials were called for personal hearing vide DFO working Plan Unit-III Peshawar office letter No. 215/WP-III dated 21.05.2019 and they were heard in person on 28.05.2019 wherein they denied the charges leveled against them.

- I. Mr. Taj Mian Gul Forester the then Incharge Shabqaddar Forest Check Post.
- II. Mr. Faheem Shah Forest Guard Shabqadar Forest Check Post.
- III. Muhammad Raheem Forest Guard Shabqadar Forest Check Post.
- IV. Mr. Nisar Muhammad Forester, the then I/C Khairabad Forest Check Post
- V. Mr. Mamoor Gul Forest Guard, Khairabad Forest Check Post
- VI. Mr. Dilawar Shah, Forest Guard, Khairabad Forest Check Post

Whereas the Enquiry officer vide his letter No. 18/WP-III dated 08.08.2019 has furnished the enquiry report and exonerated all the officials from the charges leveled against them and advised to be vigilant and to be careful in future.

In view of above exposition being competent authority and as recommended by the Enquiry officer vide letter No. 18/WP-III dated 08.08.2019, the officials concerned are exonerated from the charges leveled against them and warned to be vigilant and careful in future in performing their duties.

sdl
(Gulzar-ur-Rehman)
Divisional Forest Officer
Peshawar Forest Division
Nowshera

No. 656-61 /E.

Copy forwarded to the:-


1. Conservator of Forests, Southern Circle Peshawar for favour of information, please.
2. Mr. Jan-e-Alam DFO Working Plan Unit-III Peshawar for information w/r to his letter dated 18/WP-III, dated 08.08.2019, please.
3. SDFO Charsadda for information. He is directed to close watch is necessary on Shabqaddar Forest Check Post and its surrounding area on the smuggling of Afghan Timber to avoid future complications specially after the ban on Afghan Timber Policy.
4. SDFO Nizampur for information and necessary action.
5. Divisional Accountant for information and necessary action.
6. Officials concerned for information and further necessary action.

Q. Rehman
Divisional Forest Officer
Peshawar Forest Division
Nowshera

AUTHORITY LETTER.

The following Officer/Official of Peshawar Forest Division is hereby authorized to attend the honorable Service Tribunal Peshawar on behalf of undersigned in case titled "Service Appeal No. 308, 309,310, 311, 312 & 313 of 2018-Taj Mian Gul and five others versus Govt. of Khyber Pakhtunkhwa ETC" till final decision of the case:-

1. Mr. Jawad Mumtaz SDFO Nizampur.
2. Mr. Rasheed Iqbal FPP.


**Divisional Forest Officer
Peshawar Forest Division
Nowshera**