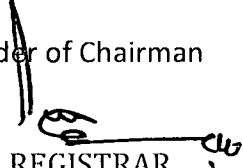


FORM OF ORDER SHEET

Court of _____

C.O.C application No. 562/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	21/09/2022	<p>The C.O.C application of Mr. Muhammad Tahir submitted today by Sardar Muhammad Akmal Advocate. Original file be requisitioned. It is fixed for hearing before touring Single Bench at A.Abad on _____. Notices be issued to appellant and her counsel.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

AA G

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHUTNKHWA

Muhammad Tahir

C.O.C. Appli. No. 562/2022

...PETITIONER

V E R S U S

Muhammad Abid Majeed and others

...RESPONDENTS

IMPLEMENTATION / COC APPLICATION

INDEX

S#	Description of Document	Annexure	Page No.
1.	Implementation / COC Application alongwith Verification and affidavit	--	1-4
2.	Copy of the judgment of this Honorable Court	"A"	
3.	Vakalat Nama	--	

(Signature)
...PETITIONER

Through:

Dated:-20/09/2022

(Signature)
(SARDAR MUHAMMAD AKMAL)

&

(Signature)
(FAKHIR ALI TURK)

Advocates High Court, Abbottabad

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHUTNKHWA

Muhammad Tahir S/o Taj Muhammad Forest Guard Incharge Larri
Beet Thandiani, Forest Sub Division Abbottabad.

...PETITIONER

V E R S U S

1. Muhammad Abid Majeed Secretary Forest Department KPK
Peshawar.
2. Arif Muhammad Chief Conservator of Forest Department KPK
Peshawar.
3. Yousaf Khan Conservator of Forest lower Hazara Forest
Circule Abbottabad.
4. Tanweer Ilyas Divisional Forest Officer Gallis Forest Division
Abbottabad.
5. Range Forest Officer, Gallis Forest Division Abbottabad.
6. Muhammad Asif Sub-Divisional Forest Officer Thandiani District
Abbottabad.

...RESPONDENTS

IMPLEMENTATION / COC APPLICATION
AGAINST THE RESPONDENTS IN LIGHT
OF THE JUDGMENT OF THIS HONORABLE
COURT DATED 20.01.2021 VIDE WHICH
THIS HONORABLE COURT RE-INSTATED
THE APPLICANT / APPELLANT IN HIS
SERVICE WITH ALL HIS BACK BENEFITS.

Respectfully Sheweth;-

1. That applicant / appellant filed a service appeal against the impugned order dated 22.05.2017 vide which the applicant / appellant was removed from his service.
2. That honorable court allowed the service appeal of the applicant/appellant dated 20.01.2021 and directed the respondent to reinstate the applicant / appellant for the purpose of de-novo inquiry strictly within 90 days. **(Copy of the judgment of this Honorable Court is annexed as Annexure "A")**
3. That after acceptance of the appeal of the applicant / appellant, respondent neither conducted de-novo inquiry within 90 days, nor the applicant / appellant reinstated in his service up till now. This act of the respondent comes into Contempt of Court, hence the respondent intentionally and deliberately disobeying the judgment of this Honorable Court and committed Contempt of Court and which liable for the punishment of Contempt of Court proceeding.
4. That respondent has no authority to refuse the applicant / appellant for reinstatement of

his service after acceptance of service appeal of the appellant.

PRAYER:

It is therefore humbly prayed that on acceptance of instant implementation / COC application respondent may kindly be directed to reinstate the applicant in the light of judgment dated 20-01-2021 passed by this honorable court and contempt of court proceeding may kindly be initiated against the respondent as per law.

Handwritten signature
Muhammad Tahir
S/o Taj Muhammad
...Applicant / Appellant

Through Council:

Dated:- _____/2022

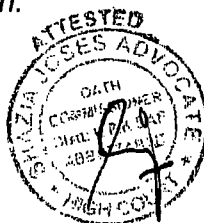
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(SARDAR MUHAMMAD AKMAL)

Handwritten signature
(FAKHIR ALI TURK)
Advocates High Court, Abbottabad

VERIFICATION:-

Verified that the contents of **Application** are true and correct to the best of my knowledge and belief and that nothing has been concealed therein.

Dated:- _____/2022



19/9/2022

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHUTNKHWA

Muhammad Tahir

...PETITIONER

V E R S U S

Muhammad Abid Majeed and others

...RESPONDENTS

IMPLEMENTATION / COC APPLICATION

AFFIDAVIT

I, Muhammad Tahir S/o Taj Muhammad Forest Guard Incharge Larri Beet Thandiani, Forest Sub Division Abbottabad, **Applicant**, do hereby solemnly affirm and declare on Oath that the contents of instant **Application** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated:- /2022



19/9/2022

Shazia Joses
Tahir
 ...DEPONENT

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Appeal No. 697/2017

Muhammad Tahir, Forest Guard Incharge Larri
Beet Thandiani, Forest Sub-Division,
AbbottabadPetitioner

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 710

Dated 21-6-2017

1. The Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Forest Department Peshawar.
3. Chief Conservator of Forests, Peshawar.
4. Conservator of Forests, Lower Hazara Forest Circle, Abbottabad.
5. Divisional Forest Officer, Gallis Forest Division, Abbottabad.
6. Range Forest Officer, Siran Galli Forest Division, Abbottabad.
7. Sub Divisional Forest Officer Thandiani, District AbbottabadRespondents.

SERVICE APPEAL UNDER SECTION 4 OF
SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ORDER NO.84 DATED 02.02.2017
PASSED BY RESPONDENT NO.4 VIDE
WHICH THE APPELLANT WAS
REMOVED FROM SERVICE AND
AGAINST THE ORDER NO.35 DATED
22.05.2017 WHEREBY THE APPEAL OF
THE APPELLANT WAS DISMISSED BY
RESPONDENT NO.4 AND THE ORDER
NO.84 WAS UPHELD.


Filed to-day

Registrar
21/6/17

Re-submitted to-day
and filed.

Registrar
3/7/17

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No. 697/2017

Date of Institution ... 21.06.2017

Date of Decision ... 21.01.2021

Muhammad Tahir, Forest Guard Incharge Larri Beet Thandiani, Forest Sub-Division, Abbottabad. ... (Appellant)

VERSUS

The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and six others. ... (Respondents)

Present:

MR. MUHAMMAD TAHIR, --- In person.
MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General --- For respondents.
MR. MIAN MUHAMMAD, --- MEMBER(Executive)
MR. MUHAMMAD JAMAL KHAN --- MEMBER(Judicial)
MR. ATIQ-UR-REHMAN WAZIR --- MEMBER(Executive)

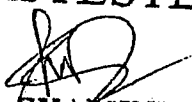
JUDGEMENT.

MIAN MUHAMMAD, MEMBER:- The office order dated 02.02.2017 of Respondent No.5 and appellate decision there on by Respondent No.4 dated 22.05.2017 have been assailed and challenged under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974.

ATTESTED

FACTS.

02. Brief facts of the instant case, as per memorandum of appeal are that the appellant was appointed as Forest Guard (BS-07) on 18.03.2013 on contract basis whose services were regularized on 26.11.2013. He was posted and given the charge of Larri Beet Thandiani, Forest Sub-Division, Abbottabad on 24.04.2016. On the basis of a written complaint against him regarding illicit cutting of five trees (one deodar and four kail), the SDFO Thandiani (Respondent No.7) wrote a letter to DFO


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(Respondent No.5) on 23.10.2016. Consequently and in pursuance of that, disciplinary proceedings against the appellant were initiated under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 which culminated on the impugned order dated 02.02.2017 passed by Respondent No.5 awarding him the major penalty of removal from service. The appellant preferred departmental appeal on 06.03.2017 which did not meet a favourable consideration and was rejected by the appellate authority (Respondent No.4) on 22.05.2017, hence, the instant service appeal submitted in the services Tribunal on 21.06.2017.

03. Respondents were summoned to produce relevant record and connected documents. They attended the Services Tribunal through their legally authorized representatives who contested the appeal on their behalf. Last time arguments were heard by Division Bench on 23.10.2019 which resulted in dissenting note by the respective Hon'ble Members, hence, the instant service appeal was heard afresh by the Larger Bench on 03.12.2020. We have heard the pro and counter arguments of the parties and perused the available record minutely and in detail.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ARGUMENTS.

04. The appellant started pleading his case personally and addressed the arguments. He contended that the proceedings were initiated on personal grudges, malafide intentions and ends of natural justice were not met by the Respondents. It was submitted that on 22.10.2016 i.e the day of reported visit of SDFO, the appellant due to ailment was not available on the spot which was taken adversely against him though he was performing duty throughout with dedication and devotion. He produced Handing/taking over of charge report dated 25.04.2016 showing beside others the details regarding damages to trees including Larri No:2(i). Three reports dated 02.06.2016, 06.08.2016 and 27.09.2016 mentioning names of the accused responsible for the offence of cutting of trees illicitly, were

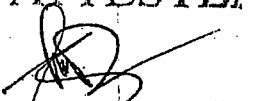
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produced as evidence to have been submitted to his immediate seniors in official hierarchy for taking appropriate action. He contended that he has not been given the opportunity of fair trial and his performance with produced evidence was not considered and appreciated; neither at the level of enquiry nor by the appellate authority. Moreover, the enquiry officer did not verify on the spot the damages reported by SDFO on 23.10.2016. It was strongly contended that he has been discriminated and the block officer who was recommended to be proceeded against, was not taken to task and only the appellant was targeted in the inquiry proceedings. The impugned orders being devoid of merit and passed on discreet ex parte/ one side enquiry are liable to be set aside.

05. Learned Assistant Advocate General on the other hand, rebutted arguments advanced by the appellant and contended that fair chance of defense was provided to the appellant but he could not prove his innocence particularly for unauthorized absence on 22.10.2016 as there was no prior intimation whether formal or informal about his ailment on that very day. He argued that all codal formalities such as issuance of charge sheet/statement of allegations, show cause notice and opportunity of personal hearing, have been fulfilled before awarding him the major penalty of removal from service and as such the instant service appeal may be dismissed.

CONCLUSION.

06. It is observed that the impugned order of Competent authority refers to "enquiry committee" whereas the enquiry was assigned to enquiry officer i.e Abdur Rasheed, Range Forest Officer. Similarly, the concept of enquiry officer or enquiry committee seems to have been misconstrued even by the enquiry officer who under paragraph on "discussion" portion of his enquiry report dated 28.12.2016 refers to it as enquiry committee though it is quite clear in Rule-10 of the Khyber Pakhtankhwa Government Servants (Efficiency and Discipline) Rules, 2011. The enquiry officer

ATTESTED

EXAMINER
Khyber Pakhtankhwa
Service Tribunal,
Peshawar

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has taken into account the reports dated 02.02.2016, 10.02.2016 and 12.03.2016 regarding illicit cutting of trees and which have been termed as reports submitted before his charge assumption but he has ignored the reports dated 02.06.2016, 06.08.2016 and 27.09.2016 submitted by the appellant after his charge assumption and during his tenure as Forest Guard holding the charge of Larri Beet Thandiani, Forest Sub-Division Abbottabad. A pertinent and relevant question therefore arises that what action has been taken on those reports nominating the offenders by name to have been involved in illicit cutting of trees? Also important is the question as to what is the proportionate quantum of responsibility of a Forest Guard vis-à-vis Block officer and other senior officials in the hierarchy when occurrence of the offence is duly reported by a Forest Guard? Moreover, the appellant was proceeded against for the charges of inefficiency, misconduct and corruption as per charge sheet/statement of allegations dated 16.11.2016. The aspect of efficiency and misconduct is exhibited and discussed in the enquiry report with regard to absence on 22.10.2016 but that too without evidence. However, absence of appellant on 22.10.2016 i.e on the day of visit of SDFO, making it as basis for misconduct and subsequently award of major penalty of removal from service does not commensurate to the quantum of guilt let alone the charge of corruption which has not been touched at all in the enquiry report. The enquiry officer could not be able to do justice to the assigned task as an enquiry officer. He was under obligation to have associated SDFO/ Complainant (as star witness) and recorded his statement during the inquiry proceedings but he miserably failed on this score. It is astonishing to note how could he arrive at the conclusion to have found the appellant "guilty of the allegation of inefficiency" and recommended that "the charges of inefficiency, misconduct and corruption established". The impugned order of 22.05.2017 passed on departmental appeal of the appellant by the appellate authority in an arbitrary,

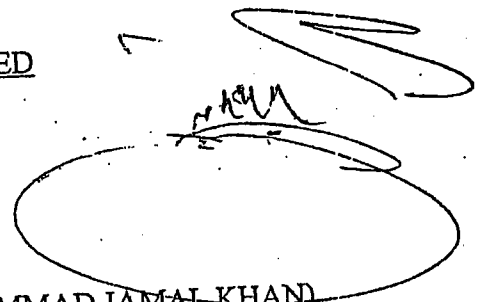
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

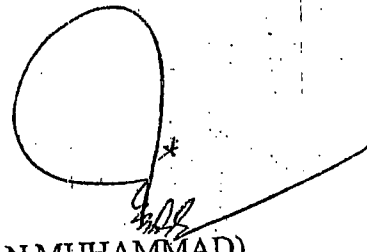
whimsical and nonsensical manner, is not a speaking order in its true sense because exposition of documents/papers received to DFO (Respondent No.5) and impugned order of the competent authority have been made as the basis for rejection of his departmental appeal and up-holding of the impugned order dated 02.02.2017. Reliance is placed on Section-24-1 of the General Clauses Act, 1897 as well as plethora of judgements of Apex Court including 2009.PLC(CS) 966, 2010 SCMR 511, 2010 SCMR 1475, 2011 SCMR 1 AND 2020 YLR 42.

07. As a sequel to the lacunae identified and discussed on the touchstone of circumstances, merit and legal position, we are of the considered view that the ends of justice have not been met and the appellant stands condemned without affording him opportunity of free, fair and impartial inquiry proceedings. The service appeal is therefore allowed and the appellant is reinstated in service for the purpose of de-novo enquiry to be conducted by the Respondents strictly in accordance with the law and rules within ninety days of the receipt of this judgement. The question of back benefits shall however, be subject to the outcome of de-novo enquiry. Parties shall, however, bear their respective costs. File be consigned to the record room.

ANNOUNCED
20.01.2021




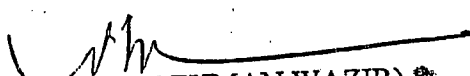
(MUHAMMAD JAMAL KHAN)
MEMBER(JUDICIAL)



(MIAN MUHAMMAD)
MEMBER(EXECUTIVE)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


(ATIQ-UR-REHMAN WAZIR) *
MEMBER(EXECUTIVE)

S.No. 176782

Name of Advocate

فازلی



وکالت نامہ 12

DBA NO. 1015

TBA NO.

BC No.

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R.s.200/=

بعدالت ضماں سروس ٹریڈینگز پرائیویٹ لمیٹڈ اور
عنوان: محمد طاہر بنام گورنمنٹ آف خلیج بحریہ انجوان
منجانب: شیخ زین نوعیت مقدمہ تحریر ملالہ

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے بیروی و جوابدہی برائے پیش کیا تصفیہ مقدمہ بمقام اسٹیٹس آنرز کے لیے
سردار محمد اظہار علی قریب اللہ و سہیل نور
کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بروقت پکارے
جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ
سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کچہری کے
علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیروی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ کچہری کے علاوہ کسی اور جگہ
سماعت ہونے پر یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے
کسی معاوضہ کے ادا کرنے یا معائنہ کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داختمہ صاحب موصوف
مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجراءے ڈگری و نظر جانی اپیل نگرانی و ہر قسم
درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے
اور ہر قسم کے بیان دینے اور اس پر ثالثی و راضی نامہ و فیصلہ و حلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے بیر و نجات
از کچہری صدر اپیل و آرمڈی مقدمہ یا منسوخی ڈگری یا کٹرفہ درخواست حکم امتناعی یا قرقی یا گرفتاری قبل از گرفتاری و اجراءے ڈگری بھی صاحب
موصوف کو بشرط ادا بیگی علیحدہ مختارہ بیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکور یا اس کے
کسی جزوی کارروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو بھی ہر امر میں
وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جانہ التوا پڑے گا وہ صاحب موصوف
کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ
کی بیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے کہ سندر ہے۔
مورخہ: 19/10/2022
مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔ دن ماہ سال

نوٹ: وکالت نامہ کی فوٹو کاپی قابل قبول نہ ہوگی
Accepted
Accepted