

13.04.2015

Counsel for the appellant present and submitted an application for restraining the respondents from filling the post of Forest Guard advertised on 2.4.2015. Notice of application be issued to the respondents for the date fixed i.e. 21.5.2015.


MEMBER


MEMBER

21.05.2015

Counsel for the appellant and Addl. A.G for respondents present. Arguments heard. Judgment reserved.


Member


Member

03.06.2015

To come up for order on 11.06.2015. Notices be issued to the parties for the date fixed.


Member

12.6.2015

Appellant with counsel (Mr. Muhammad Asif Yousafzai, Advocate) and Addl. Advocate General (Mr. Muhammad Adeel Butt) for the respondents present. Arguments heard. Record perused. Vide our detailed judgment of to-day in connected appeal No. 526/2013, Inayatullah Versus The Secretary Environment Department, Khyber Pakhtunkhwa, Peshawar etc.", this appeal is also accepted as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

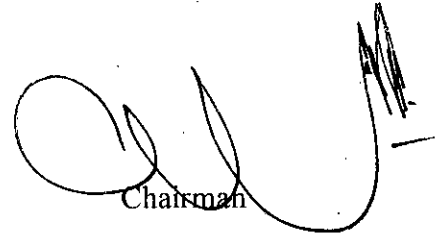
ANNOUNCED
12.06.2015


MEMBER


MEMBER

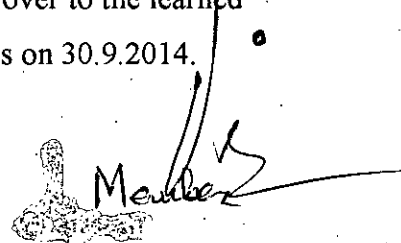
12.2.2014

Counsel for the appellant and Mr. Iltaf Qureshi, SDFO Upper Kohistan on behalf of respondents with AAG present. Written reply on behalf of respondents received, copy whereof is handed over to the learned counsel for the appellant for rejoinder alongwith connected appeals on 2.5.2014.


Chairman

2.5.2014

Counsel for the appellant and Mr. Iltaf Qureshi, SDFO on behalf of respondents with AAG present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments alongwith connected appeals on 30.9.2014.


Member

30.09.2014

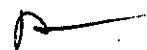
Clerk of counsel for the appellant and Mr. Iltaf Qureshi, SDFO on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Arguments could not be heard due to strike of the Bar. To come up for arguments alongwith connected appeals on 25.02.2015.



Member

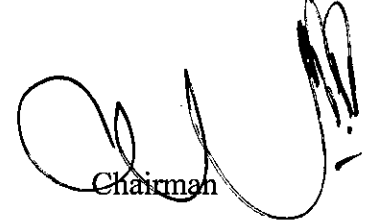
25.2.2015

Counsel for the appellant, and Addl. A.G with Gohar Ali, DFO for the respondents present. The learned Judicial Member is on official tour to D.I.Khan, therefore, case is adjourned to 21.5.2015 for arguments.



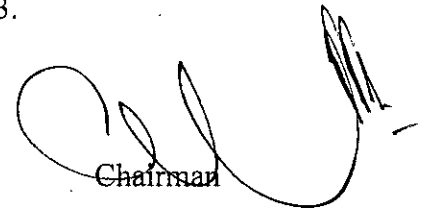
MEMBER

07.06.2013. Mr.Afzal Khan on behalf of the appellant and Mr.Tauheed-ul-Haq, DFO Kohistan on behalf of the respondents with Mr.Usman Ghani, Sr.G.P present. To come up for written reply/comments on 02.08.2013.


Chairman

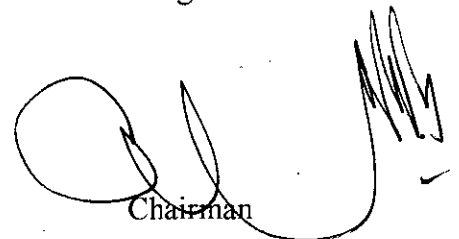
02.8.2013

Clerk of counsel for the appellant and Mr. Iltaf Qureshi, SDFO with Mr. Muhammad Jan, G.P for the respondents present. Written reply has not been received, and request for further time made on behalf of respondents. Another chance is given for written reply/comments, positively, on 6.12.2013.


Chairman

06.12.2013

Clerk of counsel for the appellant and Mr. Altaf Qureshi, SDFO, Komila Forest Sub Division on behalf of respondents with Mr. Muhammad Jan, GP present. Written reply has not been received, but the representative of the respondents stated that written reply has been prepared, which requires vetting and signature of the concerned authorities. Therefore, a last chance is given for written reply/comments on 12.2.2014.


Chairman

Appeal No. 530/2013
Mr. Umair Yousaf

3.

23.4.2013

Counsel for the appellant present and heard. He contended that the appellant was appointed by the competent authority as Forest Guard vide order dated 11.7.2011. He was sent for training which he did successfully and was awarded the certificate by the concerned institution. While serving on the said post, one Mr. Ziaul Haq (a candidate) filed a writ petition against the appointment of the appellant and others; that one sided inquiry was conducted on the basis of which services of the appellant were terminated without adopting proper procedure and law. The appellant file departmental appeal on 24.1.2013, which was rejected on 12.2.2013 for no good grounds. Points raised need consideration; subject to all objections, the appeal is admitted to regular hearing. Process fee and security be deposited within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 7.6.2013.

Member

4.

23.4.2013



This case be put up Before the Final Bench for further proceedings.

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 530 /2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12/03/2013	<p>The appeal of Mr. Umar Yar resubmitted today by Mr. M.Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	20-3-2013	<p>This case is entrusted to primary Bench for preliminary hearing to be put up there on <u>23-4-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Umar Yar Ex- Forest Guard received today i.e. on 05/03/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- In the memo of appeal places have been left blank which may be filled in.
- 2- Annexures of the appeal may be attested.

No. 378 /S.T,

Dt. 5/3 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR.M.ASIF YOUSAFZAI, ADV; PESH.

Re submitted after compliance

Mr. Asif

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 530 /2013.

Umar Yar

VS

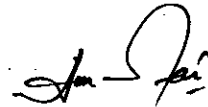
Environment Deptt:

INDEX.

S.NO	DOCUMENTS	ANNEXURE	PAGE
1-	Memo of appeal.	---	1 - 4
2-	Advertisement.	<i>A</i>	5
3-	Appointment order	<i>B</i>	6
4-	Training certificate.	<i>C</i>	7
5-	High court order.	<i>D</i>	8 - 11
6-	Inquiry report.	<i>E</i>	12
7-	Termination order.	<i>F</i>	13
8-	Joint appeal.	<i>G</i>	14 - 17
9-	Returning order	<i>H</i>	18
10-	Individual appeal.	<i>I</i>	19 - 20
11-	Rejection order.	<i>J</i>	21
12-	Affidavit.	<i>K</i>	22
13-	Wakalat nama	<i>L</i>	23.

APPELLANT

THROUGH:



M.ASIF YOUSAFZAI
ADVOCATE.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 530 /2013.

522
05/03/13

Umar Yar, Ex- Forest Guard,
Upper Kohistan Forest Division,
Dassu Kohistan.....(Appellant.)

VERSUS

- 1- The Secretary Environment Deptt: , KPk Peshawar.
- 2- The Chief Conservator of Forests- II, KPK Peshawar.
- 3- The Conservator of Forests Upper Hazara Forests Circle Mansehra.
- 4- The Divisional Forest Officer, Upper Kohistan Forest Division Dassu Kohistan.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 AGAINST THE ORDER DATED. 21.12.2012 WHERE BY THE APPELLANT HAS BEEN TERMINATED FROM SERVICE AND AGAINST THE FINAL REJECTION ORDER DATED. 12.2.2013 WHERE BY THE DEPARTMENTAL APPEAL OF APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

5/3/13

PRAYER:

That on acceptance of this appeal the order dated 21.12.2012 and 12.2.2013 may be set-aside and the appellant may be reinstated with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of appellant.

re-submitted to and filed.

12/3/13

R.SHEWETH.

- 1- That the respondent No.4 advertised some vacancies of forest guards in daily news paper Nawai Waqat dated. 22.4.2010. The appellant applied for the said post, appeared in test and interview and was finally successful. Copy of the advertisement is attached as Annexure – A.
- 2- That after being successful in test & interview, the appellant was appointed by the competent authority as forest guard vide order dated. 11-7-2011. The appellant was also sent for training which he did successfully and was awarded the certificate by the concerned institution. Copies of the order and certificate are attached as Annexure – B & C.
- 3- That the appellant had performed his duty up to the entire satisfaction of his superior and there were no complaints against the appellant.
- 4- That one Mr. Zia-ul-Haq (a candidate) had filed a writ petition against the appointment of petitioner and other selected candidates, which was heard on 7.3.2012. The august High Court while disposing of the writ petition directed the Govt; to (i)- *resolve the factual controversy regarding appearance of petitioner before the selection committee, (ii)- to conclude the issue within thirty days, and (iii)- if the matter is not concluded within thirty days the petitioner should be informed about the reasons in writing.* Copy of the order is attached as Annexure – D.
- 5- That then one sided inquiry was conducted which in violation of four corners of the august High Court's order, did not resolve the matter but recommended to roll back the entire process of appointment of the appellant and other successful candidates. Copy of the report is attached as Annexure – E.
- 6- That after the report of the inquiry committee, the appellant was terminated from service vide order dated. 21.12.2012 without adopting proper procedure and law. Copy of the order is attached as Annexure – F.
- 7- That firstly the appellant and his other colleagues filed a joint departmental appeal on 7.1.2013 which was returned to the appellant on 22.1.2013 with the objection to file every affected official his separate departmental appeal. The appellant, thereafter, filed separate appeal on 24.1.2013 which was finally rejected on 12.2.2013 for no good grounds. Copies of the joint appeal, returning order, individual appeal and rejection order are attached as Annexure – G, H, I, & J.

- 8- That now the appellant comes to this august Tribunal on the following grounds amongst the others.

GROUND:

- A- That the order dated. 21.12.2012 and 12.2.2013 are against the law rules and norms of justice, therefore not tenable and liable to be set-aside.
- B- That the appellant has not been treated according to law and rules meant for the Civil Servants. Thus the impugned orders are liable to be set-aside.
- C- That the so called inquiry committee had not acted as directed by the august high Court, rather transgressed from the four corners of the mandate given by the august Court.
- D- That the so called inquiry committee had not associated the appellant with the inquiry proceedings.
- E- That no charge sheet, statements of allegation served on the appellant for his alleged illegal appointment, nor the appellant was given any show cause notice or the chance of personal hearing. Thus the appellant has been totally condemned unheard.
- F- That the Mr. Ziaul Haq (complainant) was also not inquired by the inquiry committee for which the august High Court directed the respondent Deptt: This aspect is clearly proved from the affidavit given by the complainant, the copy of which is attached as Annexure – K.
- G- That the appellant has been punished for the faults of others because if there was any discrepancy in the appointment procedure , the appellant could not be blamed for that.
- H- That the appellant has been punished for no faults on his part. More over he appellant had also completed his training successfully and at the time of termination, the appellant was a trained forest guard.
- I- That even the final rejection order is not well reasoned order which could attribute any fault on the part of appellant.

J- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

APPELLANT.

Umar Yar
Umar Yar

THROUGH;

M. Asif Yousafzai
M.ASIF YOUSAFZAI
ADVOCATE.

5

کونسل برائے فارغ التحصیل طلبہ اور نوجوانانِ پاکستان

10 YEARS

http://www.nawalwaqt.com.pk
omail:lab@nawalwaqt.com.pk

DAILY NAWALWAQT
RAWALPIND
ISLAMABAD

روزنامہ نوائے وقت

THURSDAY, 22 APRIL, 2010

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روز شمار	003
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UAN III	222 007

جلد 56

روزنامہ نوائے وقت

مندرجہ ذیل آسامیوں کیلئے نئے چٹکات سونپنے کے لئے حکومت کی پالیسی کے مطابق ریگولر کنٹریکٹ کی بنیاد پر ضلع کوہستان کی شہریت کی حامل ان امیدواروں سے درخواستیں منظور ہیں۔ درج ذیل آسامیوں کے ساتھ ساتھ رجسٹرڈ اور غیر رجسٹرڈ امیدواروں سے درخواستیں منظور کی جائیں گی۔

نمبر شمارہ نام آسامی
فارس کاروباری بی ایس ایس کسی تعلیم شدہ روزانہ سیکھو ری 18-25 سال
5 نمبر

عمومی شہادت

- 1- ٹیسٹ دفتر ذیلی ایف اے کوہستان کے دفتر میں سرورق 12 مئی 2010 کو لیا جائے گا۔
- 2- کامیاب امیدواروں کی لسٹ مرتب کر کے کونسل برائے فارغ التحصیل طلبہ اور نوجوانانِ پاکستان کو پیش کیا جائے گا۔
- 3- صرف کامیاب امیدواروں سے انٹرویو شروع ہوگا۔
- 4- امیدوار اپنی درخواستیں مع مفیدہ تقویٰ متعلقہ دستاویزات ڈیڑھ گھنٹہ فارم سے آفس آف اے ڈی کوہستان کو پیش کریں اور اصل دستاویزات ٹیسٹ انٹرویو کے موقع پر پیش کریں۔
- 5- درخواستوں کی وصولی کی آخری تاریخ 4 مئی 2010ء ہے۔
- 6- تربیت یافتہ اور تجربہ کار افراد کو ترجیح ملے گی۔
- 7- ٹیسٹ انٹرویو کیلئے آنے والوں کو کوئی ٹی اے ڈی اے نہیں دیا جائے گا۔

کونسل برائے فارغ التحصیل طلبہ اور نوجوانانِ پاکستان

5 کاپی

1. عبدالکامی
2. عبدالرشید اللہ
3. عنایت اللہ
4. محمد راز
5. محمد یار

ATTESTED

ATTESTED

Handwritten signature

16

B (6)

OFFICE ORDER NO 03 DATED PATTAN THE 11 /07/2011 ISSUED BY
AZHAR ALI KHAN DIVISIONAL FOREST OFFICER LOWER KOHISTAN FOREST
DIVISION PATTAN

Consequent upon the recommendation of Departmental Selection Comm., constituted vide DFO Upper Kohistan Forest Division Dasso office order No. 116 dated 12.4.2010, following candidates are hereby appointed as Forest Guard in BPS-7 (Rs. 3530-190-9230) against the existing vacancies in Lower Kohistan Forest Division Pattan with effect from the date of arrival:

1. ✓ Mr. Sirangzeb S/O Aman Mir of Pattan, Tehsil Pattan, District Kohistan
2. ✓ Mr. Umar Yar S/O Abdul Qahar of Jijal, Tehsil Pattan District Kohistan
3. ✓ Mr. Sarzhab S/O Mir Alam of Jijal, Tehsil Pattan, District Kohistan

There appointment is subject to the following terms and conciliations:

1. There appointment is purely on ad-hoc basis against the vacancies created due to compulsory retirement/termination of Forest Guards vide Govt. of Khyber Pakhtunkhwa, Environment Department order No. SO (Estt) Envt/-1-50(70)/2k10/1677-84, 1685-92 and 1693-1700 dated 03/06/2011 respectively. In case the appellate authority or the Court order for the re-instatement of any one or all of those Forest Guards, the services of incumbent(s) stand terminated observing the mentioned sequence. They are not entitled to claim continuation of their service in any court or any way.
2. There services will be governed by such rules and orders relating to Leave, Traveling Allowance, Medical Attendance Rules, Pay & Transfer etc In respect of other service matters as may be issued by the Government for Civil Servants to which they belong.
3. In case they wish to resign at any time, they will have to serve one month notice for the purpose or one month pay will be forfeited in lieu thereof.
4. Their appointment is further subject to the conditions that they must have bonafide domicile of District Kohistan and production of Health Certificate, Age Certificate, Character Certificate, Computerized National Identity Card, Domicile Certificate, School leaving certificate and an undertaking to the effect that they can be removed from service at any time without assigning any reason and they will not claim the right for continuation of their service in any court or any way. All these documents should be completed within one month from the date of appointment/arrival.
5. They will have to undergo the prescribed training of Forest Guards from Sarhad Forest School (Thai) Abbottabad

Sd/- (Azhar Ali Khan)
Divisional Forest Officer
Lower Kohistan Forest Division
Pattan

Memo

Copy forwarded to:

1. Conservator of Forests, Upper Hazara Circle Mansehra for favor of information, please.
 2. Divisional Forest Officer, Upper Kohistan Forest Division, Dasso for information.
 3. Mr. ~~Mir Alam~~ S/O ~~Abdul Hakeem~~ ^{Mir Alam} of Jijal, Tehsil Pattan, District Kohistan
 4. Mr. Umar Yar S/O Abdul Qahar of Jijal, Tehsil Pattan District Kohistan
 5. Mr. Sirangzeb S/O Aman Mir of Pattan, Tehsil Pattan, District Kohistan for information and necessary action.
- The Divisional Accountant for information.

362
Divisional Forest Officer

SUBJECTS: -

- | | | | |
|-----|--------------------|-----|--------------------------|
| 1. | Islamiat | 2. | Soil Conservation |
| 4. | Forest Survey | 5. | Env: Forestry & Wildlife |
| 7. | Forest Botany | 8. | First Aid |
| 10. | Forest Protection | 11. | Range Management |
| 13. | Forest Utilization | 14. | Forest Management |
| 16. | Forest Force | | |

No. 1537/GE Dated 29-09-07



CERTIFICATE



This certificate is awarded to

MR. UMAR YAR.

On successful completion of

"61ST REGULAR COURSE FOR FOREST GUARDS"

Session January 2007 to June, 2007

at Sarhad Forest School, Abbottabad, Thai

*Head Master
G. H. S. Jijal
Distt: Kohistan*

[Signature]
ABDUL QUDDUS KHAN SADDUZAI
PRINCIPAL
SARHAD FOREST SCHOOL
ABBOTTABAD, THAI

[Signature]
MUHAMMAD HANEF KHAN
DIRECTOR
ID/HUMAN RESOURCE DEVELOPMENT
PESHAWAR

MA MI

107

SUBJECTS: -

- | | | | | | |
|-----|--------------------|-----|--------------------------|-----|--------------------------------|
| 1. | Islamiat | 2. | Soil Conservation | 3. | Forest Engineering |
| 4. | Forest Survey | 5. | Env: Forestry & Wildlife | 6. | Forest Mensuration & Inventory |
| 7. | Forest Botany | 8. | First Aid | 9. | Forest Law |
| 10. | Forest Protection | 11. | Range Management | 12. | General Silviculture |
| 13. | Forest Utilization | 14. | Forest Management | 15. | Institutional Reforms |
| 16. | Forest Force | | | | |

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

W.P No. 533 of 2011

JUDGMENT

Date of hearing. 07-03-2012

Appellant(s)/Petitioner (s) (Zia-ul-Haq) by M/s Haji Sabir
Hussain Tanoli and Muhammad
Arshad Awan, Advocates.

Respondent (s) _____

YAHYA AFRIDI:-J:- Zia-ul-Haq seeks the
constitutional jurisdiction of this Court praying that;

*“on acceptance of instant
petition, impugned
appointment order may kindly
be declared illegal and
respondent No.3 may
graciously be directed to issue
appointment order of
petitioner according to law an
policy of the Government of
Khyber Pakhtunkhwa or any
other relief, which this
Honourable Court deems fit
and proper in the
circumstances of the case, may
also be granted.”*

ATTESTED

2. In essence, the grievance of the petitioners is
that in response to the public advertisement made by

ATTESTED

respondent No.3 inviting applications for recruitment as 'Forest Guards' in Lower Kohistan Forest Division, Pattan Kohistan, he had applied for the said post alongwith other candidates; that the petitioner appeared before the 'Departmental Selection Committee' ("DSC"); and that the merit list was prepared, wherein, petitioner was placed in higher position, having better qualification than respondents No.5 to 9; and in addition thereto, petitioner was also the son of a retired employee of the Forest Department and yet he was not consider for appointment as a 'Forest Guard'.

3. Respondents No.1 and 3 were asked to submit their comments. In response thereto, Respondent No.1, Secretary Environment, Government of Khyber Pakhtunkhwa, Respondent No.2, Chief Conservator of Forests, Kyber Pakhtunkhwa and Respondent No.3 Divisional Forest Officer, Lower Kohistan Forest Division, Pattan Kohistan have submitted their requisite para-wise comments. It was, *inter alia*, alleged in the comments that petitioner had failed to appear before the DSC for interview, as such, he was not considered.

4. The petitioner filed rejoinder to the comments and controverted the said factual assertions of

~~ATLAS~~

the respondents, in particular, his appearance before the DSC. The petitioner, in support of his said claim, annexed copy of the minutes of meeting of the DSC, wherein the petitioner was named with other persons, who had appeared for the interviewed before the DSC for the said appointment.

5. In peculiar circumstances of the present case, when there are two documents purporting to be official minutes of the DSC, having contradictory information, this Court cannot dilate upon the said factual controversy in constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

6. Accordingly, without passing any findings on the said matter, which may prejudice the case of the petitioner before the competent authority, we treat the present petition as representation and refer the same to the worthy Chief Secretary, Government of Khyber Pakhtunkhawa with the directions that;

- i. to resolve the factual anomaly regarding appearance of the petitioner before the 'Departmental Selection Committee' and consider his grievance in accordance with law and proceed in the matter in a

~~TESTED~~

~~TESTED~~

'transparent manner' to ensure the cherished goal of 'good governance' and 'rule of law'.

- ii. to conclude the matter, within a period of thirty days, if not earlier, from the date of receipt of this judgment.
- iii. in case the relief sought by the present petitioner can not be positively considered or resolved within the stipulated period, the petitioner be communicated reasons in writing for the same.

7. Accordingly, for the reasons stated hereinabove, this petition is disposed of in the above terms.

SD. JUDGE

Announced:
07.03.2012

(*MSA*)

Certified to be True Copy
Examiner
08.3.12
Peshawar High Court
Abbottabad Bench
Authorized Under Section 17, Acts Ordms

ATTESTED
[Signature]

WRITE PETITION NO. 553/2011 BY ZIA-UL-HAQ REGARDING HIS SELECTION FOR THE POST OF FOREST GUARD, APPOINTMENT OF ENQUIRY COMMITTEE VIDE CHIEF CONSERVATOR OF FORESTS-II KHYBER PAKHTUNKHWA PESHAWAR OFFICE ORDER NO. 34 DATED 13/4/2012, REPORT THERE-OF.

BRIEF HISTORTY OF THE CASE

The Director Information, Government of Khyber Pakhtunkhwa was requested for publication of vacant posts of Forest Guards in Upper Kohistan Forest Division vide Divisional Forest Officer Upper Kohistan Forest Division letter No. 2925/GE dated 12.04.2010. Accordingly advertisement appeared in daily Nawa-e-Waqt Rawalpindi on 22.04.2010 and in daily Mashraq Peshawar on 23.04.2010.

As a result of discussion dated 19.04.2010, the Divisional Forest Officer, Lower Kohistan also requested DFO Upper Kohistan vide his letter No. 2963/GE dated 21.04.2010 to include the cases of appointment of his Division in the same process. The process materialized jointly and applications from 157-inhabitants of District Kohistan were received upto 04.05.2010 (Copy of list enclosed as Annex-1).

The Departmental Selection committee conducted written test on 12.05.2010 wherein 102-Nos. candidates appeared (Copy of list enclosed as Annex-2). Meeting of the Departmental Selection Committee was held on 08.06.2011 whereas interview etc from 23-Nos. short listed candidates was conducted on 8/6/2011, (copy of list enclosed as Annex-3).

Out of total 23-Nos. candidates, S.No. 1, 2 & 3 (3-Nos.) were recommended for appointment in Upper Kohistan Forest Division Dasso, while S.No. 4 to 11 (8-Nos.) were recommended for recruitment in Lower Kohistan Forest Division Pattan. The record revealed that (13 No) thirteen candidates have been appointed up-to 14/11/2011 in both Forest Divisions.

DISCUSSIONS

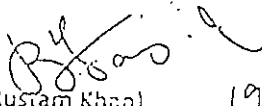
In compliance with Chief Conservator of Forests-II Khyber Pakhtunkhwa office order NO.34 dated 13/4/2012 the committee held its meeting in the office of DFO Unhar Watershed Division Mansehra on 19.04.2012. All relevant record of both the Forest Divisions has been produced by Mr. Sajjad Ahmad Head Clerk of Upper Kohistan Forest Division.


The said record has been examined by the committee in detail and fully analyzed the gravity of the case. The committee reached to the conclusion that:

1. Working papers have not been prepared by the concerned Forest Divisions.
2. There is no mention of vacant posts in any paper prepared and meant for appointment of Forest Guards in both the Forest Divisions.
3. The office orders for appointment of Forest Guards have not been found issued in time.
4. The minutes of D.S.C meeting indicates that interview has been conducted on 8.6.2011 instead of 18.05.2010 after a lapse of more than one year period.
5. The procedure contained in GOVERNMENT OF KHYBER PAKHTUNKHWA, SERVICES AND GENERAL & ADMINISTRATION DEPARTMENT (REGULATION WING) Notification No. SOR-I(S&GAD)4-1/75 dated Peshawar the 17.06.1989 has not been found followed properly.

RECOMMENDATIONS

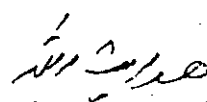
In the light of foregoing facts and material on record, the committee recommend to Rollback the entire incomplete process adopted for appointment of Forest Guards and to direct the competent authorities for initiating the process a fresh as per rules.


(Rustam Khan)
19/4/2012
Divisional Forest Officer
Unhar Watershed Division, Mansehra
(Chairman)


(Khurshid Ahmad)
Superintendent
Lower Hazara Circle, Abbottabad
(Member)

TESTED





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25/4/12

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OFFICE ORDER NO. 54 DATED DSSU THE 21st DECEMBER, 2012
ISSUED BY MR. AZHAR ALI KHAN, DIVISIONAL FOREST OFFICER
UPPER KOHISTAN FOREST DIVISION, DASSU

A recruitment process was completed for the posts of Forest Guards in Lower & Upper Kohistan Forest Divisions during 06/2011. One Mr. Zauq-Haq S/O Chulam Qadir Resident of Village Jijal Tehsil Pattan District Kohistan challenged the recruitment process in August High Court Peshawar Circuit Bench Abbottabad vide WP. 553/2011. The court treated the petition as representation and referred the case to Chief Secretary Khyber Pakhtunkhwa to resolve the matter. The Administrative Department vide No. SO (Lit) ED/2-165/2011 dated 17/03/2012, directed the CCF-II to hold enquiry to ascertain factual position, grant relief if any. The CCF-II constituted an enquiry committee vide office order No. 34 dated 13/04/2012. The enquiry committee based on certain procedural flaws recommended to roll back the entire recruitment process. Before the recommendation of the committee could have been acted upon, the matter was subjudiced in the court as the incumbent employees agitated before the High Court through a writ petition No. 339-A/2012. However the petition held premature and dismissed. Meanwhile the petitioner of WP 553/2011 furnished an affidavit through which he resiled from his previous stance. Construing that the cause of action was disappeared, it was recommended to file the case. The Administrative Department by disagreeing the proposal of closing the case, constituted an Enquiry Committee vide notification No. SO (Lit) ED/2-165/2011 dated 14/06/2012. Based on the findings of the Enquiry Committee the Administrative Department vide No. SO (Lit) ED/2-165/2011/1281-82 dated 11/12/2012 and No. SO (Lit) ED/2-165/2011/1284-85 dated 11/12/2012, communicated by Conservator Upper Hazara office No. 2963-64/GE dated 19/12/2012 directed "implement the decision of the earlier enquiry committee and report compliance" i.e. to roll back the entire recruitment process adopted for appointment of Forest Guards.

Therefore, in compliance of the above order of the administrative Department, the said appointment process is rolled back and the following Forest Guards appointed under the mentioned process and working in Upper Kohistan Forest Division are hereby terminated from their services with immediate effect:-

#.	Name of Forest Guards	Fathers Name
1.	Mr. Abdul Kafi	Abdul Hadi
2.	Mr. Aziz-ur-Rehman	Rehman Khan
3.	Mr. Hidayatullah	Umer Draz
4.	Mr. Inayatullah	Abdul Hakeem
5.	Mr. Umer Draz	Gul Sadbar
6.	Mr. Abdul Qadir	Malik Tajan
7.	Mr. Umer Yar	Abdul Qahar

Sd/- (AZHAR ALI KHAN)
DIVISIONAL FOREST OFFICER
UPPER KOHISTAN FOREST DIVISION
DASSU

Memo

Copy forwarded to the:-

1. P.S to Secretary Environment, Department Khyber Pakhtunkhwa, Peshawar for information please.
2. Chief Conservator of Forests, Northern Forest Region-II Abbottabad for favour of information, please.
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra, with reference to his endst. No. 2963-64/GE, dated 19/12/2012. please.
4. Section Officer (Litigation) for information with reference to his Notification SO (Lit) ED/2-165-2011 received vide endst. No. 10336-92 dated 14/06/2012.
5. All concerned Forest Guards for information.
6. All the SDFOs Upper Kohistan Forest Division for necessary action.

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DIVISIONAL FOREST OFFICER
UPPER KOHISTAN FOREST DIVISION
DASSU

بخدمت جناب کنزرویٹر صاحب اپر ہزارہ فارسٹ سرکل مانسہرہ

3 ماہ - p

عنوان: اپیل برخلاف آفس آرڈر نمبر 54 مجریہ مورخہ 21 دسمبر 2012ء از دفتر
DFO اپر کوہستان فارسٹ ڈویژن داسو و آفس آرڈر نمبر 20 مجریہ
مورخہ 21 دسمبر 2012ء از دفتر لوئر کوہستان فارسٹ ڈویژن پٹن۔

جناب عالی!

اپیل کی جاتی ہے کہ آفس آرڈر نمبر 54 مجریہ مورخہ 21 دسمبر 2012ء از دفتر DFO
اپر کوہستان داسو اور آفس آرڈر نمبر 20 مجریہ 21 دسمبر 2012ء از دفتر DFO
لوئر کوہستان منسوخ فرما کر اپیل کنندگان کو ان کے جملہ سابقہ حقوق و رعایتوں
کے ساتھ سروس پر بحال فرمایا جائے۔

مختصر روئیداد اپیل۔

عالیجاہ۔

جناب DFO اپر کوہستان نے بذریعہ اخبارات "روزنامہ نوائے وقت"
مورخہ 22 اپریل 2010ء اور روزنامہ "مشرق" مورخہ 23 اپریل 2010ء
اپر کوہستان فارسٹ ڈویژن میں فارسٹ گارڈان (بی پی ایس 5) کی بھرتی کے
لئے اشتہار دیا۔ (عکس نقل شامل اپیل ہے)۔

ہم جملہ اپیل کنندگان نے دیگر امیدواران کے ہمراہ تحریری امتحان اور زبانی
انٹرویو دیا اور محکمہ سلیکشن کمیٹی کی سفارش پر ہم اپیل کنندگان کو مختلف حکم ناموں
کے ذریعے محکمہ میں بحیثیت فارسٹ گارڈ بھرتی کیا گیا۔

ازاں بعد امیدواران سے سنی ضیاء الحق ولد عبدالغفار نے پشاور ہائی کورٹ ایبٹ آباد بنچ
میں رجسٹرڈ

ATTESTED

میں رٹ پیشین نمبر 533/2011 دائر کردی جس میں اس نے استدعا کی کہ اپیل کنندگان کی تعیناتی شفاف طریقہ سے نہیں کی گئی اور ضیاء الحق نے رٹ پیشین میں یہ بھی استدعا کی کہ وہ بھی امتحان میں شریک ہوا اور اس نے بھی امتحان پاس کیا لیکن اسے تعینات نہیں کیا گیا۔ عدالت سے استدعا کی کہ اس کی تعیناتی کے لئے احکامات جاری کئے جائیں۔

ضیاء الحق کی رٹ پیشین کو صورت حال کی وضاحت تصور کر کے فاضل عدالت نے چیف سیکرٹری کو بھیج دی کہ درخواست دہندہ کے تحفظات پر تحقیق کر کے ان کو دور کیا جائے اور اگر ممکن نہ ہو تو وجوہات کے ساتھ اسکو مطلع کیا جائے۔

اس پر چیف کنزرویٹور راجن (II) نے ایک کمیٹی قائم کی جس نے یہ سفارش کی کہ تعیناتی کے لئے اپنایا گیا طریقہ مروجہ طریقہ سے مطابقت نہیں رکھتا۔ اس لئے اس سارے عمل کو لپیٹ دیا جائے اور بھرتی کا عمل نئے سرے سے شروع کیا جائے۔

جناب عالی!

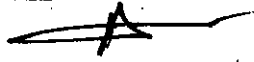
DFO صاحبان اپر کوہستان اور لوہور کوہستان نے بالترتیب آفس آرڈر نمبر 54 اور آفس آرڈر نمبر 20 مجریہ 21 دسمبر 2012ء کے ذریعہ ہم اپیل کنندگان کو سروس سے سبکدوش کر دیا۔

وجوہات اپیل۔

(1) یہ کہ کمیٹی کی رپورٹ (جس کی عکسی نقل) شامل اپیل کی جاتی ہے، سے عیاں ہے کہ وہ رپورٹ بلا تحقیق اور حقائق کو تلاش کئے بغیر مفروضوں پر مبنی ہے اور جانبدارانہ ہے۔ اس بناء پر ناقابل عمل ہے۔

(2) یہ کہ رپورٹ کے مندرجات سے پتہ چلا ہے کہ مذکورہ کمیٹی نے نہ تو سلیکشن کمیٹی سے پوچھ گچھ کی اور نہ ہی مدعی ضیاء الحق سے استفسار کیا۔

(3) یہ کہ بقول کمیٹی کے کہ ورکنگ پیپر تیار نہیں کیا گیا اور انٹرویو دیر سے کئے گئے ہیں

ATTESTED


اور یہ جاننے کی کوشش نہ کی کہ وہ کیا حالات تھے جن کے تحت انٹرویو لیٹ ہوئے۔ لیکن یہ بات نظر انداز کر دی گئی کہ انٹرویوز تحریری امتحان کے نتیجہ میں مرتبہ فہرست کے مطابق ہوئے اور اس تحریری امتحان اور اس کے نتیجہ میں مرتبہ فہرست کو غلط قرار نہیں دیا گیا۔

(۴) یہ کہ اپیل کنندگان کی تعیناتی کے لئے تمام مروجہ قواعد و ضوابط کو ملحوظ خاطر رکھا گیا اور ان پر کمیٹی نے عمل کیا۔ جس میں آسامیوں کا مشتمل کرنا، تحریری مقابلہ کا امتحان، زبانی انٹرویو اور فزیکل ٹیسٹ شامل ہیں جو ریکارڈ سے ثابت ہے۔

(۵) یہ کہ مدعی ضیاء الحق نے پشاور ہائی کورٹ کے ایبٹ آباد بنچ میں اپنا تحریری بیان اسٹامپ کاغذ پر داخل کیا کہ وہ اپنا دعویٰ واپس لیا ہے اور مزید یہ کہ اس نے یہ بھی لکھ دیا کہ اپیل کنندگان کی تعیناتی نہایت شفاف طریقہ سے ہوئی ہے اور مدعی کو اس پر کسی قسم کا نہ اعتراض ہے اور نہ ہی وہ اس ضمن میں محکمہ سے کوئی رعایت مانگتا ہے۔ (ضیاء الحق کے بیان کی عکسی نقل شامل اپیل کی جاتی ہے)۔

(۶) یہ کہ اپیل کنندگان سے اکثر نے سرحد فارسٹ سکول تھائی سے تربیت بھی حاصل کر لی ہے۔ (تربیتی بیٹیفیکٹ کی عکسی نقول شامل اپیل کی جاتی ہیں)۔

(۷) یہ کہ اگر بحث کی خاطر یہ بھی مان لیا جائے کہ مروجہ طریقہ کار میں کچھ امور کو صرف نظر انداز کیا گیا تو بھی وہ ایسے امور نہیں کہ ان پر سہو آ یا لاعلمی کی وجہ سے عمل پیرا نہ ہو کر خدا نخواستہ سارا عمل ہی غارت ہو یا کسی کی جان بوجھ کر کوئی حق تلفی کی گئی ہو۔

(۸) یہ کہ اپیل کنندگان نے قریباً 1 تا 2 سال محکمہ میں سروس بھی کر لی ہے اور اب جبکہ ان میں سے کچھ عمر کی اس حد کو بھی پار کر چکے ہیں جو فارسٹ گارڈ کی نئی تعیناتی کے لئے مختص ہے۔ نیز یہ کہ نئے قواعد میں نئی بھرتی کے لئے تعلیمی معیار میں بھی تبدیلی آگئی ہے۔ جس کی بناء پر اپیل کنندگان دوبارہ تعیناتی کے لئے مقابلہ کے امتحان کے اہل ہی نہیں رہے۔

(۹) یہ کہ اگر سلیکشن کمیٹی سے طریقہ کار میں کوئی غلطی ہوئی ہے تو اس کی سزا ہم اپیل

کنندگان کو نہ دی جائے بلکہ سلیکشن کمیٹی سے باز پرس کی جائے۔

(۱۰) یہ کہ آفس آرڈر نمبر 54 اور 20 مجریہ 21 دسمبر 2012ء (مندرجہ عنوان

اپیل) صریحاً قانونی تقاضوں کے منافی ہونے کی بناء پر قابل تفسیح ہیں۔

لہذا اپیل کی جاتی ہے، اگر طریقہ کار میں سہو یا لاپرواہی کی بناء پر سلیکشن کمیٹی سے

کوئی کوتاہی ہوئی ہے جس سے کسی بھی امیدوار کی حق تلفی نہیں ہوئی ہو تو اسے

صرف نظر فرما کر اپیل کنندگان کو جملہ سابقہ حقوق و مراعات کے ساتھ سروس پر

بجال کر دیا جائے۔ اپیل کنندگان آپ کے اقبال کے لئے دعا گو ہیں گے۔

المرقوم 07.01.2013

.....
 (۱) عبدالکافی ولد عبدالہادی۔
 E. A. P. S.

.....
 (۲) عزیز الرحمن ولد رحمان خان۔
 عزیز الرحمن صاحب کار

.....
 (۳) ہدایت اللہ ولد عمر دراز۔
 H. A. P. S.

.....
 (۴) عنایت اللہ ولد عبدالکیم۔
 A. T. P. S.

.....
 (۵) عمر دراز ولد گل صدر۔
 M. A. P. S.

.....
 (۶) عبدالقادر ولد ملک تاجان۔
 القادر

.....
 (۷) عمر یار ولد عبدالقہار۔
 Umar Yar

.....
 (۸) نواب علی ولد نور الہدیٰ۔
 Nawab Ali

.....
 (۹) آفرین ولد جمعہ خان۔
 A. P. S.

.....
 (۱۰) محمد زیب ولد حاجی یار دار۔
 M. Zeb

.....
 (۱۱) سرنگ زیب ولد امن میر۔
 S. Zeb

.....
 (۱۲) سرزباب ولد میر عالم۔
 S. Zeb

ATTESTED



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OFFICE OF THE CONSERVATOR OF FORESTS, UPPER HAZARA FOREST
CIRCLE MANSEHRA.

To,

1. Mr. Abdul Kafi s/o Abdul Hadi of Sazin Kohistan
2. Mr. Aziz-ur-Rehman s/o Rehman Khan of Jalkot
3. Mr. Hidayatullah s/o Umer Draz of Jijal Tehsil Pattan
4. Mr. Inayatullah s/o Abdul Hakeem of Jijal Tehsil Pattan
5. Mr. Umer Daraz s/o Gul Sadbar of Jijal Tehsil Pattan
6. Mr. Mr. Abdul Qadar s/o Malik Tajan of Khandia Kohistan
7. Mr. Umar Yar s/o Abdul Qahar of Jijal Tehsil Pattan
8. Mr. Nawab Ali s/o Noor ul huda of Pattan Kohistan
9. Mr. Afreen s/o Juma Khan of Jijal Tehsil Pattan
10. Mr. Mohammad Zaib s/o Haji Yardad of Pattan
11. Mr. Sarangzeb s/o Aman Mir of Pattan
12. Mr. Sarzahab s/o Mir Alam of Jijal Tehsil Pattan

No: 3746-57/GE dated Mansehra the 22/01/2013.

Subject: APPEAL AGAINST THE DFO LOWER KOHISTAN OFFICE ORDER NO.20, DATED 21/12/2012 AND DFO UPPER KOHISTAN OFFICE ORDER NO.54, DATED 21/12/2012.

Memo:

Reference your appeal dated 07/01/2013.

You have preferred a joint appeal against DFO Upper Kohistan office order No.54, dated 21/12/2012 and DFO Lower Kohistan office order No.20, dated 21/12/2012 before the undersigned. Under rule 3(2) of NWFP Civil Servants (appeal Rules 1986) every affected civil servant shall prefer the appeal separately, hence the appeal in hand can not be entertained.

You are therefore directed to prefer your appeals separately for further course of action/

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

No: /GE

Copy forwarded to:

1. DFO Upper Kohistan Forest Division Dassu
2. DFO Lower Kohistan Forest Division Pattan

For information.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

ATTESTED

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بخدمت جناب کنزرویٹرز صاحب اپر ہزارہ فارسٹ سرکل مانسہرہ

(19)

عنوان: اپیل بر خلاف آفس آرڈر نمبر 54 مجریہ مورخہ 21 دسمبر 2012ء

دفتر DFO اپر کوہستان فارسٹ ڈویژن داسو

جناب عالی!

اپیل کی جاتی ہے کہ آفس آرڈر نمبر 54 مجریہ 21 دسمبر 2012ء از دفتر DFO اپر کوہستان داسو کو منسوخ فرما کر اپیل کنندہ کو ان کے جملہ سابقہ حقوق اور رعایتوں کے ساتھ سروس پر بحال فرمایا جائے۔

مختصر روئیداد اپیل:

عالیجاہ!

جناب DFO اپر کوہستان نے بذریعہ اخبارات روزنامہ ”نوائے وقت“ مورخہ 22 اپریل 2010ء اور روزنامہ ”مشرق“ مورخہ 23 اپریل 2010ء اپر کوہستان فارسٹ ڈویژن میں فارسٹ گارڈان (بی پی ایس 5) کی بھرتی کے لئے اشتہار دیا۔ (عکسی نقل شامل اپیل ہے)۔

میں نے دیگر امیدواروں کے ہمراہ تحریری امتحان اور زبانی انٹرویو دیا اور محکمہ سلیکشن کی سفارش پر مجھے اپیل کنندہ کو حکم نامہ کے ذریعے بحیثیت فارسٹ گارڈ بھرتی کیا گیا۔ بعد ازاں امیدواران سے مسمی ضیاء الحق ولد غلام قادر نے پشاور ہائی کورٹ ایبٹ آباد پنج میں رٹ پٹیشن نمبر 533/211 دائر کر دی جس میں اُس نے استدعا کی کہ اپیل کنندہ کی تعیناتی شفاف طریقہ سے نہیں کی گئی اور ضیاء الحق نے رٹ پٹیشن میں یہ بھی استدعا کی کہ وہ بھی امتحان میں شریک ہو اور اُس نے بھی امتحان پاس کیا۔ لیکن اسے تعینات نہیں کیا گیا۔ عدالت سے استدعا کی کہ اُس کی تعیناتی کے لئے احکامات جاری کئے جائیں۔

ضیاء الحق کی رٹ پٹیشن کو صورتحال کی وضاحت تصور کر کے فاضل عدالت نے چیف سیکرٹری کو بھیج دی کہ درخواست دہندہ کے تحفظات پر تحقیق کر کے ان کو دور کیا جائے اور اگر ممکن نہ ہو تو وجوہات کے ساتھ اس کو مطلع کیا جائے۔

اس پر چیف کنزرویٹرز ریجن (ii) نے ایک کمیٹی قائم کی جس نے یہ سفارش کی کہ تعیناتی کے لئے اپنایا گیا طریقہ مرہبہ طریقہ سے مطابقت نہیں رکھتا۔ اس لئے سارے عمل کو لپٹ دیا جائے اور بھرتی عمل نئے سروے سے شروع کی جائے۔

جناب عالی!

DFO صاحب اپر کوہستان نے آفس آرڈر نمبر 54 مجریہ 21 دسمبر 2012ء کے ذریعے مجھے اپیل کنندہ کو سروس سے

سبکدوش کر دیا۔

ATTES,

وجوہات اپیل:

یہ کہ کمیٹی کی رپورٹ (جس کی عکسی نقل) شامل اپیل کی جاتی ہے سے عیاں ہے کہ وہ رپورٹ بلا تحقیق اور حقائق کو تلاش کئے

بغیر مفروضوں پر مبنی ہے اور جاہلدار نہ ہے۔ اس بناء پر ناقابل عمل ہے۔

2- یہ کہ رپورٹ کے مندرجات سے پتہ چلا ہے کہ مذکورہ کمیٹی نے نہ تو سلیکشن کمیٹی سے پوچھ گچھ کی ہے اور نہ ہی مدعی ضیاء الحق سے استفسار کیا۔

3- یہ کہ بقول کمیٹی کے کہ درکنگ پیپر تیار نہیں کیا گیا اور انٹرویو دیر سے کئے گئے ہیں اور یہ جانے کی کوشش نہ کی گئی کہ وہ کیا حالات تھے جن کے تحت انٹرویو لیٹ ہوئے۔ لیکن یہ بات نظر انداز کر دی گئی کہ انٹرویو یوز تحریری امتحان کے نتیجہ میں مرتبہ فہرست کے مطابق ہوئے اور اس تحریری امتحان اور اس کے نتیجے میں مرتبہ فہرست کو غلط قرار نہیں دیا گیا۔

4- یہ کہ اپیل کنندہ کی تعیناتی کے لئے تمام مروجہ قواعد و ضوابط کو ملحوظ خاطر رکھا گیا اور ان پر کمیٹی نے عمل کیا۔ جس میں آسامیوں کا مشہر کرنا، تحریری مقابلہ کا امتحان، زبانی انٹرویو اور فزیکل ٹیسٹ شامل ہیں جو ریکارڈ سے ثابت ہے۔

5- یہ کہ مدعی ضیاء الحق نے پشاور ہائی کورٹ کے ایٹ آبادیج میں اپنا تحریری بیان سٹامپ پیپر پر داخل کیا کہ وہ اپنا دعویٰ واپس لیتا ہے اور مزید یہ کہ اس نے یہ بھی لکھ دیا کہ اپیل کنندہ کی تعیناتی نہایت شفاف طریقہ سے ہوئی ہے اور مدعی کو اس پر کسی قسم کا نہ اعتراض ہے اور نہ ہی وہ اس ضمن میں محکمہ سے کوئی رعایت مانگتا ہے۔ (ضیاء الحق کے بیان کے عکس نقل شامل اپیل کی جاتی ہے)۔

6- یہ کہ اپیل کنندہ نے سرحد فارسٹ سکول تھائی سے تربیت بھی حاصل کر لی ہے۔ (تربیتی شیفٹیٹ کی عکس نقل شامل اپیل کی جاتی ہے)۔

7- یہ کہ اگر بحث کی خاطر یہ بھی مان لیا جائے کہ مروجہ طریقہ کار میں کچھ امور کو صرف نظر کیا گیا تو بھی وہ ایسے امور نہیں کہ ان پر سہو آیا لا علمی کی وجہ سے عمل پیرانہ ہو کر خدانخواستہ سارا عمل ہی غارت ہو یا کسی کی جان بوجھ کو حق تلفی کی گئی ہے۔

8- یہ کہ اپیل کنندہ نے تقریباً ایک سے دو سال محکمہ میں سروس بھی کر لی ہے۔ نیز یہ کہ نئے قواعد میں نئی بھرتی کے لئے تعلیمی معیار میں بھی تبدیلی آگئی ہے۔ جس کی بناء پر اپیل کنندہ دوبارہ تعیناتی کے لئے مقابلہ کے امتحان کے اہل ہی نہیں رہے۔

9- یہ کہ اگر سلیکشن کمیٹی سے طریقہ کار میں کوئی غلطی ہوئی ہے تو اس کی سزا مجھ اپیل کنندہ کو نہ دیا جائے بلکہ سلیکشن کمیٹی سے باز پرس کی جائے۔

10- یہ کہ آفس آرڈر نمبر 54 مجریہ 21 دسمبر 2012ء (مندرجہ عنوان اپیل) صریحاً قانونی تقاضوں کے منافی ہونے کی بناء پر قابل تنسیخ ہیں۔ لہذا اپیل کی جاتی ہے اگر طریق کار میں سہو آیا لا علمی کی بناء پر سلیکشن کمیٹی سے کوئی کوتاہی ہوئی ہے جس سے کسی بھی امیدوار کی حق تلفی نہیں ہوئی ہو تو اسے صرف نظر فرما کر اپیل کنندہ کو جملہ سابقہ حقوق و مراعات کے ساتھ سروس پر بحال کر دیا جائے۔

المرقوم: 24-1-2013

اپیل کنندہ آپ کے اقبال کے لئے دعا گو رہے گا۔

العارض

عمریار ولد عبد القہار

MAHARAJA

ساکن جیجال تحصیل پٹن ضلع کوہستان

OFFICE OF THE CONSERVATOR OF FORESTS, UPPER HAZARA FOREST CIRCLE
MANSEHRA.

J
= (21)

To,

Mr. Umar Yar s/o Abdul Qahar
Residence Jijal PO Ranolia
Tehsil Pattan District Kohistan.

No: 4460 /GE dated Mansehra the 12/02/2013.

Subject: APPEAL OF MR. UMAR YAR S/O ABDUL QAHR THE DFO UPPER
KOHISTAN OFFICE ORDER NO.54, DATED 21/12/2012.

Memo:

Reference your appeal dated 24/01/2013.

Upon termination from service of one Mr. Umar Yar s/o Abdul Qahar preferred an appeal dated 24/01/2013 before the undersigned being appellate authority against the DFO Upper Kohistan office order No.54, dated 21/12/2012. The DFO Upper Kohistan offered comments upon the appeal vide No.1645/GE, dated 12/02/2013.

I, in the capacity of appellate authority in the instant case have gone through the relevant documents available on record upon which the order appealed against is based and found that:

A committee was constituted by CCF-II vide office order No.34, dated 13/04/2012 with the mandate to enquire in the Writ Petition No.533/2011 which recommended rolling back of entire recruitment process based on certain procedural flaws. Subsequently another enquiry committee on higher level was constituted by Administrative Department vide Notification No.SO(Lit)ED/2-165/2011, dated 14/06/2012 for the same purpose which detected further irregularities in addition to the flaws pointed out by previous committee. Based on the recommendation of above committee, the Administrative Department directed vide No. SO(Lit)ED/2-165/2011/1281-82, dated 11/12/2012 for implementation of recommendation of earlier committee.

In light of the absolute recommendations by the two successive committees, direction of the Administrative Department, and comments of the DFO/competent authority, the facts on which the termination order is based found established. Hence, the action taken vide office order No.54, dated 21/12/2012 is appropriate as no other action can satisfy the recommendations so made which is, therefore, neither excessive nor inadequate:

Keeping in view the above facts on record the appeal is rejected and order appealed against is confirmed.

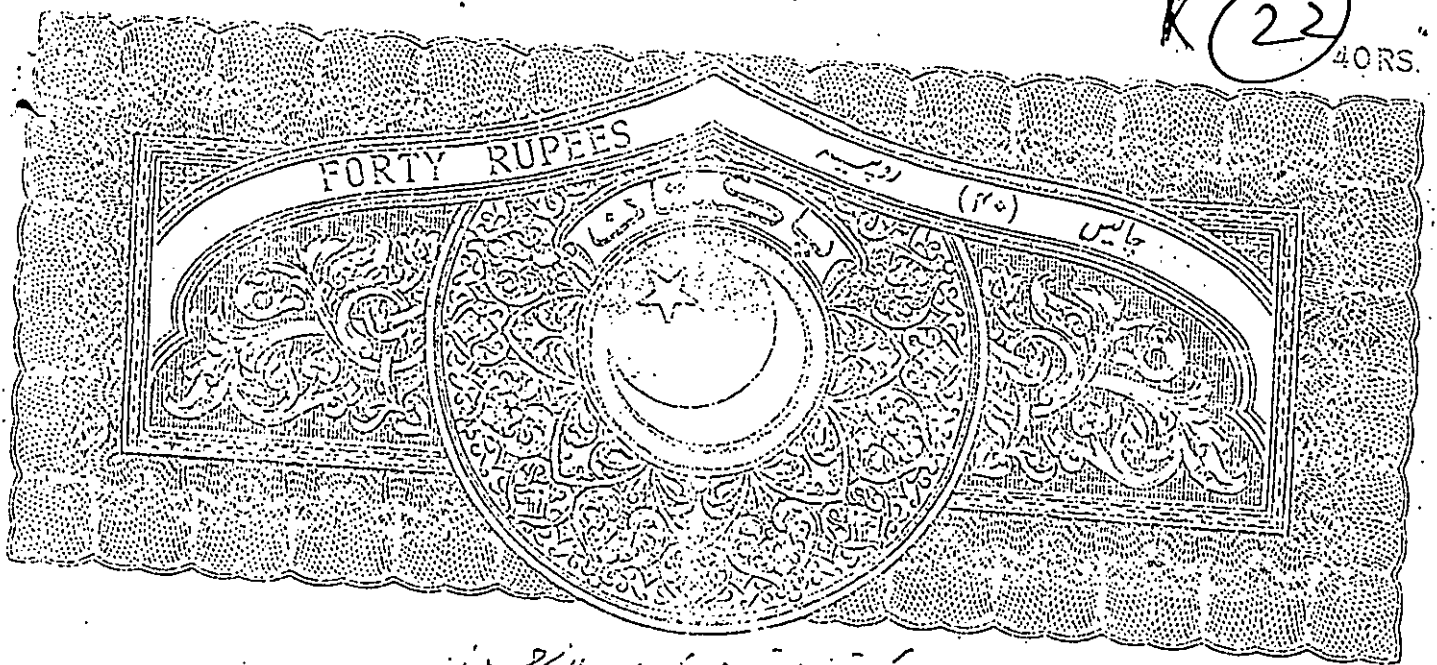
Conservator of Forests
Upper Hazara Forest Circle
Mansehra

No: /GE

Copy forwarded to DFO Upper Kohistan Forest Division Dassu for information with reference to his letter cited above.

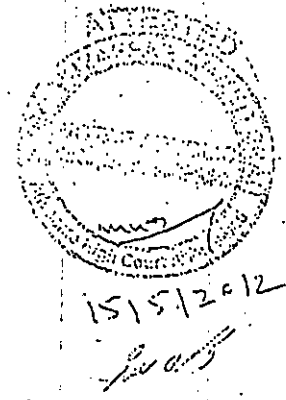
ATTES T
A

Conservator of Forests
Upper Hazara Forest Circle
Mansehra



یہ قطعہ مابین احمد یار علی بیگ حسن

منہ فیضان الحق و در خدمت قادریوں میں جہاں کوستان عہدہ بیانی میں کمر بستہ
 پیشینہ ۱۱/۱۰/۵۳۳ء جبکہ بعد ازاں درانتہا میں دریا کی کراچی ایسٹ ایئر پورٹ بیج سہ ماہی
 کا ادراک کیے ہوئے ہیں۔ فقیر فقیر خواتین کو بھیجا تھا۔ اس کے بعد دریا میں کمر بستہ
 میں۔ مذکورہ اسٹیشن ۱۱/۱۰/۵۳۳ء میں کراچی اور ایئر کوستان میں کمر بستہ
 میں جن کا دستگاہ گورنمنٹ کی شہرتی کا ذکر کیا گیا ہے ان کا تعلق میں کمر بستہ
 کوئی دستہ نہیں ہے۔ یہ دریا کا دستگاہ گورنمنٹ میں جوڑ کر پیشینہ ۱۱/۱۰/۵۳۳ء
 میں دریا میں ہے۔ ان کا دستگاہ ۱۱/۱۰/۵۳۳ء میں کمر بستہ ہے۔
 فقیر ان کے پاس یا شہادت سے ہم کو اسٹیشن کوئی دستہ میں کمر بستہ
 فقیر جسٹس نے فقیر فقیر خواتین کے پاس آکر دستگاہ ۱۱/۱۰/۵۳۳ء
 بیانی کی دستگاہ کوئی دستہ میں کمر بستہ ہے۔ بیانی میں کمر بستہ
 ۱۱/۱۰/۵۳۳ء کے تمام دستگاہوں سے میں دستگاہوں میں کمر بستہ
 دستگاہوں میں کمر بستہ ہے۔ دستگاہوں میں کمر بستہ ہے۔
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۱۳۹۳ - ۰۱۶۱۹۹۶ - ۶
 دفتر فقیر خواتین
 سپرنٹنڈنٹ فقیر خواتین
 دستگاہوں میں کمر بستہ

۱۳۹۳ - ۰۵۳۳۳۳ - ۶
 دستگاہوں میں کمر بستہ
 جہاں میں کمر بستہ

S.M. BAGHTI
 Registration # 12-1956
 Nature of License: Public Utility Grade 1st
 Place of License: Abbottabad
 Issue Date: 12-02-2012
 Serial No: 488
 Fee Received: Rs. 1000/-

ATTES..

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Umar Yar (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Environment Dept. (Respondent)
(Defendant)

I/We Umar Yar (Appellant)

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Umar Yar
(CLIENT)

ACCEPTED

M. Asif Yousafzai
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI

Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

RECEIVED

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

Service Appeal No. 532/2013

Umar Yar

VS

Govt: of KPK etc

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-4) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted, hence no comments.
- 2 Admitted, hence no comments.
- 3 Admitted, hence no comments.
- 4 Admitted, hence no comments.
- 5 Incorrect, moreover the august High Court's order was not followed by respondents in its real spirits.
- 6 Incorrect, while para 6 of the appeal is correct. The appellant cannot be held responsible for the faults and irregularity committed by others.

7 Incorrect and replied according to para 7 of the appeal.

GROUNDS:

- A) Incorrect. Both orders are not according to law and liable to be set aside.
- B) Incorrect, the appellant have status of Govt: servant as he was appointed after fulfilling all requirements. Therefore the impugned orders are liable to be set aside.
- C) Incorrect. The inquiry committee did follow the order of High Court in its true sense, therefore the report of the inquiry committee is against the order of High Court.
- D) Incorrect, as it was the right of the appellant to associate with inquiry proceeding before any decision taken against the appellant.
- E) Incorrect, while Para-E of appeal is correct
- F) Incorrect. High Court directed the respondent deptt: to inquire the Ziaul Haq (complainant) by inquiry committee but the did bother to do so.
- G) Incorrect, while Para-G of appeal is correct.
- H) Incorrect and not replied according to para H of the appeal.
- I) Incorrect, while Para-I of appeal is correct.
- J) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT

Through:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



Rai
DEPONENT

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

Service Appeal No. 532/2013

Umar Yar

VS

Govt: of KPK etc

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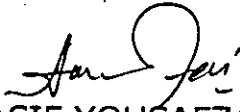
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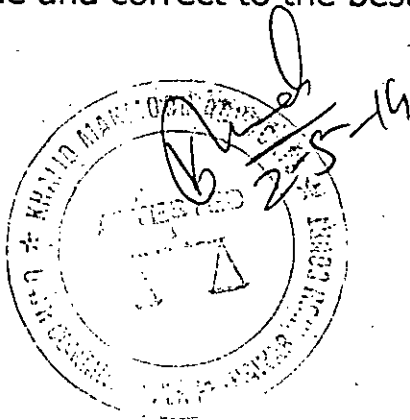
APPELLANT

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.




DEPONENT

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

Service Appeal No. 532/2013

Umar Yar

VS

Govt: of KPK etc

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- J) Legal.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 531/2013

Abdul Kafi Ex-Forest Guard
Upper Kohistan Forest Division

APPELLANT

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa Environment Department, Peshawar.
2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad Khyber Pakhtunkhwa
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Dassu

RESPONDENTS

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth;

PRELIMINARY OBJECTION

1. The appeal is not maintainable in the present form
2. The appellant has no locus standi to bring the present appeal.
3. The appellant is legally estopped by his own conduct to bring the present appeal
4. The appeal is time barred

FACTS

Parawise comments are as under:

1. Pertains to record hence no comments.
2. Pertains to record hence no comments.
3. Needs no comments
4. It is correct.

5. In-correct. An independent enquiry committee was constituted on the direction of the competent authority by Chief Conservator of Forests-II, Khyber Pakhtunkhwa Peshawar vide office order No.34 dated 13.4.2012 and committee concluded vide its report dated 19.4.2012 as under:

"In light of foregoing facts and material on record, the committee recommended to roll back the entire incomplete process adopted for appointment of forests guards and direct the competent authorities for initiating the process afresh as per rules"(Annex-1 & 2)

6. Committee constituted by Chief Conservator of Forests, -II Khyber Pakhtunkhwa, Peshawar vide office order No. 34, dated 13/4/2012 with the mandate to enquire in the Writ Petition No. 533/2011 which recommended rolling back of entire recruitment process on certain procedural flaws. Subsequently another committee on higher level was constituted by Administrative Department vide Notification No. SO(Lit)ED/2-165/2011, dated 14/6/2012 for the same purpose which detected further irregularities in addition to the flaws pointed out by previous committee. Based on the recommendation of above committee, the Administrative Department directed vide No. SO(Lit)ED/2-165/2011/1281-82 dated 11/12/2012 ordered for implementation of recommendation of earlier committee. **(Annex-3 & 4)**
7. On recommendation of two successive committees directives of Administrative Department and the facts on which the termination order is based found established, the appeal was rejected by the Appellant Authority vide No.4468/GE, dated 12/2/2013 **(Annex- 5)**

GROUND

- A. In-correct. Both of the said orders are justified.
- B. In-correct. Since the recruitment process abinitio found faulty, therefore, the appellant did not have status of Government servants.
- C. In-Correct. The committee examined the whole record of test and interview and after fully analyzing the gravity of the case, the committee points out certain flaws in the recruitment process and recommended to roll back the entire process adopted for appointment of forest guards.

- D. As explained above, the committee examined the record of appointment process and found certain shortfalls; hence the appellant had not been associated with the inquiry proceedings.
- E. In-Correct. The committee pointed out procedural flaws in recruitment process which implies that the appellant did not gain status of Govt. servant abinitio. In such a situation there was no need of adopting the process meant for Government Servant.
- F. Since the entire process was found faulty, therefore the (complainant) was not inquired into.
- G. In-Correct. When the Enquiry Committee found inconsistencies in recruitment process, the issue of anomaly got secondary position. Therefore the committee did not consider the issue and recommended rolling back the entire recruitment process.
- H. As in Para-G.
- I. In-Correct. The rejection order is well reasoned.
- J. That the respondents also seek permission to advance other ground and proof at the time of arguments.

PRAYERS

In view of the above facts available on record it is humbly prayed that the appeal is being unjustified and against the law may please be dismissed with cost in the best interest of the state.




Secretary

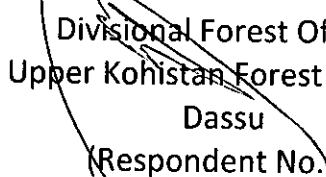
Govt. of Khyber Pakhtunkhwa
Environment Department Peshawar
(Respondent No. 1)



Chief Conservator of Forests
Northern Forest Region-II
Abbottabad Khyber Pakhtunkhwa
(Respondent No. 2)



Conservator of Forests
Upper Hazara Forest Circle
Manshera
(Respondent No. 3)



Divisional Forest Officer
Upper Kohistan Forest Division
Dassu
(Respondent No. 4)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 531/2013

Abdul Kafi Ex-Forest Guard
Upper Kohistan Forest Division

APPELLANT

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa Environment Department, Peshawar.
2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad Khyber Pakhtunkhwa
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Dassu

RESPONDENTS

COUNTER AFFIDAVIT

The undersigned do hereby solemnly affirms and declare on oath that the contents of our written reply in the appeal is correct to the best of my knowledge and record and nothing has been concealed from the Honorable Tribunal.

Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 531/2013

Abdul Kafi Ex-Forest Guard
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VERSUS

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3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Dassu

RESPONDENTS

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth;

PRELIMINARY OBJECTION

1. The appeal is not maintainable in the present form
2. The appellant has no locus standi to bring the present appeal.
3. The appellant is legally stopped by his own conduct to ^ebring the present appeal
4. The appeal is time barred

FACTS

Parawise comments are as under:

1. *Particulars to Record hence no comments.*
~~It is correct. However the posts were advertised by Respondent No. 4 through Director Information Peshawar (Annex-1&2).~~
2. *Particulars to Record hence no comments.*
~~It is correct. Needs no comments.~~
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4. It is correct.

- incorrect.*
5. ~~That~~ An independent enquiry committee was constituted on the direction of the competent authority by Chief Conservator of Forests-II, Khyber Pakhtunkhwa Peshawar vide office order No.34 dated 13.4.2012 and committee concluded vide its report dated 19.4.2012 as under:

"In light of foregoing facts and material on record, the committee recommended to roll back the entire incomplete process adopted for appointment of forests guards and direct the competent authorities for initiating the process afresh as per rules"(Annex-3 & 4)

6. Committee constituted by Chief Conservator of Forests, -II Khyber Pakhtunkhwa, Peshawar vide office order No. 34, dated 13/4/2012 with the mandate to enquire in the Writ Petition No. 533/2011 which recommended rolling back of entire recruitment process on certain procedural flaws. Subsequently another committee on higher level was constituted by Administrative Department vide Notification No. SO(Lit)ED/2-165/2011, dated 14/6/2012 for the same purpose which detected further irregularities in addition to the flaws pointed out by previous committee. Based on the recommendation of above committee, the Administrative Department directed vide No. SO(Lit)ED/2-165/2011/1281-82 dated 11/12/2012 ordered for implementation of recommendation of earlier committee. **(Annex-5 & 6)**
7. On recommendation of two successive committees directives of Administrative Department and the facts on which the termination order is based found established, the appeal was rejected by the Appellant Authority vide No.4468/GE, dated 12/2/2013 **(Annex- 7)**

GROUND

- A. ~~is~~ *incorrect.* in-correct. Both of the said orders are justified.
- B. Since the recruitment process abinitio found faulty, therefore, the appellant did not have status of Government servants.
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D. As explained above, the committee examined the record of appointment process and found certain shortfalls; hence the appellant had not been associated with the inquiry proceedings.

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E. The committee pointed out procedural flaws in recruitment process which implies that the appellant did not gain status of Govt. servant abinitio. In such a situation there was no need of adopting the process meant for Government Servant.

F. Since the entire process was found faulty, therefore the (complainant) was not inquired into.

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G. When the Enquiry Committee found inconsistencies in recruitment process, the issue of anomaly got secondary position. Therefore the committee did not consider the issue and recommended rolling back the entire recruitment process.

H. ~~Needs no comments.~~ *As in para G.*

I. ~~Needs no comments.~~ *incorrect. The rejection order is well reasoned. That the respondents also seek permission to advance PRAYERS other grounds and pray at the time of arguments.*

In view of the above facts available on record it is humbly prayed that the appeal is being unjustified and against the law may please be dismissed with cost in the best interest of the state.

note subject to correction and annexure

21/5/2017

Secretary
Govt. of Khyber Pakhtunkhwa
Environment Department Peshawar
(Respondent No. 1)

Chief Conservator of Forests
Northern Forest Region-II
Abbottabad Khyber Pakhtunkhwa
(Respondent No. 2)

Conservator of Forests
Upper Hazara Forest Circle
Mansehra
(Respondent No. 3)

Divisional Forest Officer
Upper Kohistan Forest Division
Dassu
(Respondent No. 4)

XVI

Annex - ~~II~~

OFFICE ORDER NO 34 DATED PESHAWAR THE 13 / 4 / 2012 ISSUED BY
MR. GUL MOHAMMAD KHAN CHIEF CONSERVATOR OF FORESTS-II KHYBER
PAKHTUNKHWA PESHAWAR

A committee of the following officers/officials is hereby constituted to conduct impartial enquiry in the writ petition No. 553/2011 by Zai-ul-Haq regarding his selection for the post of Forest Guard:

- | | | |
|----|---|----------|
| 1) | Mr. Rustam Khan DFO Unhar Watershed Division | Chairman |
| 2) | Mr. Khurshid Ahmad Superintendent Lower Hazara Circle | Member |

The committee shall submit its report within a week complete in all respect.

Sd/-
(Gul Mohammad Khan)
Chief Conservator of Forests-II
Khyber Pakhtunkhwa Peshawar

No. 553-56 /E

Copy forwarded for information and necessary action to the:-

1. CF Upper Hazara Circle Manasehra.
2. CF Lower Hazara Circle Abbottabad. He is requested to direct the Superintendent of his office of needful.
3. Mr. Rustam Khan DFO Unhar Watershed Division Mansehra.
4. Mr. Khurshid Ahmad Superintendent office of the CF Lower Hazara Circle Abbottabad.

Gul Mohammad Khan
Chief Conservator of Forests-II
Khyber Pakhtunkhwa Peshawar

EC
[Signature]

*Handy enclosed to concerned
DFOs. This may be the file.*

CF Filed
[Signature]

[Signature]
17/4

Annex - II

WRITE PETITION NO. 553/2011 BY ZIA-UL-HAQ REGARDING HIS SELECTION FOR THE POST OF FOREST GUARD, APPOINTMENT OF ENQUIRY COMMITTEE VIDE CHIEF CONSERVATOR OF FORESTS-II KHYBER PAKHTUNKHWA PESHAWAR OFFICE ORDER NO. 34 DATED 13/4/2012, REPORT THERE-OF.

BRIEF HISTORTY OF THE CASE

The Director Information, Government of Khyber Pakhtunkhwa was requested for publication of vacant posts of Forest Guards in Upper Kohistan Forest Division vide Divisional Forest Officer Upper Kohistan Forest Division letter No. 2925/GE dated 12.04.2010. Accordingly advertisement appeared in daily Nawa-e-Waqt Rawalpindi on 22.04.2010 and in daily Mashriq Peshawar on 23.04.2010.

As a result of discussion dated 19.04.2010, the Divisional Forest Officer, Lower Kohistan also requested DFO Upper Kohistan vide his letter No. 2963/GE dated 21.04.2010 to include the cases of appointment of his Division in the same process. The process materialized jointly and applications from 157-inhabitants of District Kohistan were received upto 04.05.2010 (Copy of list enclosed as Annex-1).

The Departmental Selection committee conducted written test on 12.05.2010 wherein 102-Nos. candidates appeared (Copy of list enclosed as Annex-2). Meeting of the Departmental Selection Committee was held on 08.06.2011 whereas interview etc from 23-Nos. short listed candidates was conducted on 8/6/2011, (copy of list enclosed as Annex-3).

Out of total 23-Nos. candidates, S.No. 1, 2 & 3 (3-Nos.) were recommended for appointment in Upper Kohistan Forest Division Dasso, while S.No. 4 to 11 (8-Nos.) were recommended for recruitment in Lower Kohistan Forest Division Pattan. The record revealed that (13 No) thirteen candidates have been appointed up-to 14/11/2011 in both Forest Divisions.

DISCUSSIONS

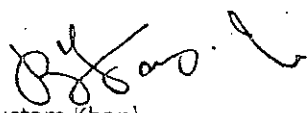
In compliance with Chief Conservator of Forests-II Khyber Pakhtunkhwa office order NO.34 dated 13/4/2012 the committee held its meeting in the office of DFO Unhar Watershed Division Mansehra on 19.04.2012. All relevant record of both the Forest Divisions has been produced by Mr. Sajjad Ahmad Head Clerk of Upper Kohistan Forest Division.


The said record has been examined by the committee in detail and fully analyzed the gravity of the case. The committee reached to the conclusion that:

1. Working papers have not been prepared by the concerned Forest Divisions.
2. There is no mention of vacant posts in any paper prepared and meant for appointment of Forest Guards in both the Forest Divisions.
3. The office orders for appointment of Forest Guards have not been found issued in time.
4. The minutes of D.S.C meeting indicates that interview has been conducted on 8.6.2011 instead of 18.05.2010 after a lapse of more than one year period.
5. The procedure contained in GOVERNMENT OF KHYBER PAKHTUNKHWA, SERVICES AND GENERAL & ADMINISTRATION DEPARTMENT (REGULATION WING) Notification No. SOR-I(S&GAD)4-1/75 dated Peshawar the 17.06.1989 has not been found followed properly.

RECOMMENDATIONS

In the light of foregoing facts and material on record, the committee recommend to **Rollback** the entire incomplete process adopted for appointment of Forest Guards and to direct the competent authorities for initiating the process a fresh as per rules.


(Rustam Khan)
Divisional Forest Officer
Unhar Watershed Division, Mansehra
(Chairman)


(Khurshid Ahmad)
Superintendent
Lower Hazara Circle, Abbottabad
(Member)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT
(ESTABLISHMENT SECTION)

Dated Peshawar: 14/06/2012.

Annex

NOTIFICATION

NO.SO(Lit:ED/2-165/2011: The competent Authority is pleased to constitute a committee, comprising Mr. Allamgir Khan Gandapur, CF and Mr. Mir Zali Khan, Section Officer(Litigation), Environment Department, to conduct facts finding inquiry in the case of irregularities/delay in submission of report to Secretary Environment and Chief Secretary, Khyber Pakhtunkhwa in the case tilted W.P No. 553 Zia-ul-Haq versus Govt: of Khyber Pakhtunkhwa and fix responsibility for the same, the committee shall specifically probe into following aspects of the case:

- a. Delay in submission of the response in the case, despite repeated reminders.
- b. Failure to submit the case for decision of the Chief Secretary, as directed by the Court.
- c. Factual position of appearance of the petitioner Mr. Zia-ul-Haq before the DSC, as pointed out in the Court order dated: 7.3.2012.
- d. Concealment of the subsequent two orders of the Peshawar High Court in the case in the reports/record submitted to the Environment Department.
- e. Failure to follow up on the inquiry report pin-pointing irregularities in the recruitment process and fixing responsibility for the same.
- f. Failure to terminate the appointment of the Forest Guard through irregular process, as per submission/commitment of the relevant officers in the Peshawar High Court through their comments.
- g. Submission of misleading evasive and deceptive report by CF-Upper Hazara in the case
- h. Any other related point.

The committee shall submit its report within 07 days to Environment Department for further necessary action

Secretary to Govt: of
Khyber Pakhtunkhwa
Environment Department

Endst: of even No. & Date:

10386-92

Copy forwarded to: -

- 1) Mr. Allamgir Khan Gandapur C/O Chief Conservator of Forests-II, Peshawar.
- 2) Chief Conservator of Forests, Peshawar-II, Peshawar.
- 3) Section Officer(Litigation) Environment Department.
- 4) CF-Upper Hazara Circle, Mansehra.
- 5) Divisional Forest Officer, Upper Kohistan Dassu.
- 6) Divisional Forest Officer, Lower Kohistan Pattan.
- 7) PS to Secretary Environment Department.

Section Officer (Establishment)

(Litigation)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT
(LITIGATION SECTION)

IV
Annex-~~IV~~

SO(Lit:)/E.D/2-165/2011
Dated Peshawar: 11/12/2012.

To

The Chief Conservator of Forests,
Northern Region-II, Abbottabad.

Subject: WRIT PETITION NO. 553/2011 ZIA-UL-HAQ VERSUS GOVT: OF
KHYBER PAKH TUNKHWA.

- f. **Failure to terminate the appointment of the Forest Guard through Irregular process as per submission/commitment of the relevant officers in Peshawar High Court through their comments.**

I am directed to refer to this department Notification No. SO(Lit)/ED/2-165/2011 Dated: 14/06/2012 and to state that the above point was looked into by the Inquiry Committee.

It was observed that in compliance of the orders of the Admin: Department an Inquiry Committee was constituted for conducting impartial enquiry. The committee conducted the enquiry and recommended to roll back the entire incomplete process adopted for appointment of Forest Guards and to direct the competent authorities for initiating the process afresh as per rules.

The CF Upper Hazara informed the petitioner accordingly and requested to him to re-appear in the test and interview for the post of Forest Guard on the date and time to be advertised shortly through print media by the competent authority. He has also directed the DFO Lower Kohistan Forest Division, Pattan and DFO Upper Kohistan Forest Division, Dassu to follow the recommendations of the Committee and initiate the process for the appointment/recruitment of Forest Guard against the vacant post on 19/4/2012. The same recommendations have not been implement as yet.

Therefore, both DFOs of lower Kohistan Forest Division and Upper Kohistan Forest Division should implement the decision of the earlier Inquiry Committee and report compliance.

MIR ZALI KHAN
Section Officer (Litigation)

Endst: of even No. & Date

1281-82

Copy forwarded to the:

CF-Upper Hazara Circle, Mansehra.

PS to Secretary Environment Department.


Section Officer (Litigation)

OFFICE OF THE CONSERVATOR OF FORESTS, UPPER HAZARA FOREST CIRCLE
MANSEHRA.

To:

Mr Abdul Kafi s/o Abdul Hadi
Residence: Sazin PO Shatial
Tehsil Dassu District Kohistan.

No. 4468 /GE dated Mansehra the 12/02/2013.

Subject: APPEAL OF MR. ABDUL KAFI S/O ABDUL HADI THE DFO UPPER
KOHISTAN OFFICE ORDER NO.54, DATED 21/12/2012.

Memo:

Reference your appeal dated 24/01/2013.

Upon termination from service of one Mr. Abdul Kafi s/o Abdul Hadi preferred an appeal dated 24/01/2013 before the undersigned being appellate authority against the DFO Upper Kohistan office order No.54, dated 21/12/2012. The DFO Upper Kohistan offered comments upon the appeal vide No.1647/GE, dated 12/02/2013.

I, in the capacity of appellate authority in the instant case have gone through the relevant documents available on record upon which the order appealed against is based and found that:

A committee was constituted by CCF-II vide office order No.34, dated 13/04/2012 with the mandate to enquire in the Writ Petition No.533/2011 which recommended rolling back of entire recruitment process based on certain procedural flaws. Subsequently another enquiry committee on higher level was constituted by Administrative Department vide Notification No.SO(Lit)ED/2-165/2011, dated 14/06/2012 for the same purpose which detected further irregularities in addition to the flaws pointed out by previous committee. Based on the recommendation of above committee, the Administrative Department directed vide No. SO(Lit)ED/2-165/2011/1281-82, dated 11/12/2012 for implementation of recommendation of earlier committee.

In light of the absolute recommendations by the two successive committees, direction of the Administrative Department, and comments of the DFO/competent authority, the facts on which the termination order is based found established. Hence, the action taken vide office order No.54, dated 21/12/2012 is appropriate as no other action can satisfy the recommendations so made which is, therefore, neither excessive nor inadequate.

Keeping in view the above facts on record the appeal is rejected and order appealed against is confirmed.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

No: /GE

Copy forwarded to DFO Upper Kohistan Forest Division Dassu for information with reference to his letter cited above.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 530/2013

Umar Yar Ex-Forest Guard
Upper Kohistan Forest Division

APPELLANT

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa Environment Department, Peshawar.
2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad Khyber Pakhtunkhwa
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Dassu

RESPONDENTS

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth;

PRELIMINARY OBJECTION

1. The appeal is not maintainable in the present form
2. The appellant has no locus standi to bring the present appeal.
3. The appellant is legally estopped by his own conduct to bring the present appeal
4. The appeal is time barred

FACTS

Parawise comments are as under:

1. Pertains to record hence no comments.
2. Pertains to record hence no comments.
3. Needs no comments
4. It is correct.

5. In-Correct. That an independent enquiry committee was constituted on the direction of the competent authority by Chief Conservator of Forests-II, Khyber Pakhtunkhwa Peshawar vide office order No.34 dated 13.4.2012 and committee concluded vide its report dated 19.4.2012 as under:

“In light of foregoing facts and material on record, the committee recommended to roll back the entire incomplete process adopted for appointment of forests guards and direct the competent authorities for initiating the process afresh as per rules”(Annex-1 & 2)

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7. On recommendation of two successive committees directives of Administrative Department and the facts on which the termination order is based found established, the appeal was rejected by the Appellant Authority vide No.4460/GE, dated 12/2/2013 **(Annex- 5)**

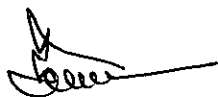
GROUND

- A. In-correct. Both of the said orders are justified.
- B. In-Correct. Since the recruitment process abinitio found faulty, therefore, the appellant did not have status of Government servants.
- C. The committee examined the whole record of test and interview and after fully analyzing the gravity of the case, the committee points out certain flaws in the recruitment process and recommended to roll back the entire process adopted for appointment of forest guards.

- D. As explained above, the committee examined the record of appointment process and found certain shortfalls; hence the appellant had not been associated with the inquiry proceedings.
- E. In-Correct. The committee pointed out procedural flaws in recruitment process which implies that the appellant did not gain status of Govt. servant abinitio. In such a situation there was no need of adopting the process meant for Government Servant.
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- G. In-Correct. When the Enquiry Committee found inconsistencies in recruitment process, the issue of anomaly got secondary position. Therefore the committee did not consider the issue and recommended rolling back the entire recruitment process.
- H. As in Para-G
- I. In-Correct. The rejection order is well reasoned.
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PRAYERS

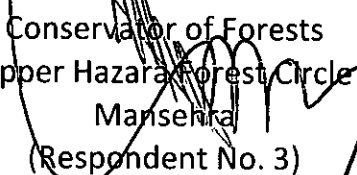
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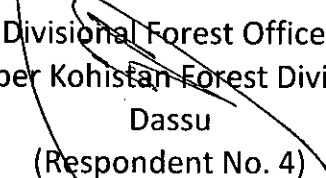
Secretary
Govt. of Khyber Pakhtunkhwa
Environment Department Peshawar
(Respondent No. 1)



Chief Conservator of Forests
Northern Forest Region-II
Abbottabad Khyber Pakhtunkhwa
(Respondent No. 2)



Conservator of Forests
Upper Hazara Forest Circle
Mansehra
(Respondent No. 3)



Divisional Forest Officer
Upper Kohistan Forest Division
Dassu
(Respondent No. 4)

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

APPEAL NO. 530/2013

Umar Yar Ex-Forest Guard,
Upper Kohistan Forest Division

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2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad
Khyber Pakhtunkhwa
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
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RESPONDENTS

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Divisional Forest Officer
Upper Kohistan Forest Division
Dassu



BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

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Upper Kohistan Forest Division

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Upper Kohistan Forest Division
Daska

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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GROUND

- A. ~~It is~~ in-correct. Both of the said orders are justified.
- incorrect.*
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Govt. of Khyber Pakhtunkhwa
Environment Department Peshawar
(Respondent No. 1)

Chief Conservator of Forests
Northern Forest Region-II
Abbottabad Khyber Pakhtunkhwa
(Respondent No. 2)

Welle subject to correction and attachment of all records
Conservator of Forests
Upper Hazara Forest Circle
Mansehra
(Respondent No. 3)

[Signature]
Divisional Forest Officer
Upper Kohistan Forest Division
Dassu
(Respondent No. 4)

Annexure - I

Annex - I

OFFICE ORDER NO 34 DATED PESHAWAR THE 13 / 4 / 2012 ISSUED BY
MR. GUL MOHAMMAD KHAN CHIEF CONSERVATOR OF FORESTS-II KHYBER
PAKHTUNKHWA PESHAWAR

A committee of the following officers/officials is hereby constituted to conduct impartial enquiry in the writ petition No. 553/2011 by Zai-ul-Haq regarding his selection for the post of Forest Guard:

- | | | |
|----|---|----------|
| 1) | Mr. Rustam Khan DFO Unhar Watershed Division | Chairman |
| 2) | Mr. Khurshid Ahmad Superintendent Lower Hazara Circle | Member |

The committee shall submit its report within a week complete in all respect.

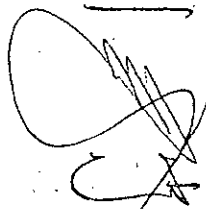
Sd/-
(Gul Mohammad Khan)
Chief Conservator of Forests-II
Khyber Pakhtunkhwa Peshawar

No. 533-56 / E

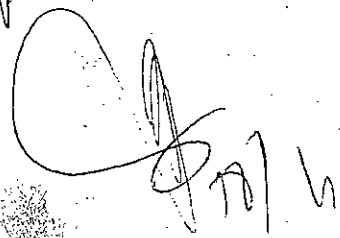
Copy forwarded for information and necessary action to:-

1. CF Upper Hazara Circle Manasehra.
2. CF Lower Hazara Circle Abbottabad. He is requested to direct the Superintendent of his office of needful.
3. Mr. Rustam Khan DFO Unhar Watershed Division Mansehra.
4. Mr. Khurshid Ahmad Superintendent office of the CF Lower Hazara Circle Abbottabad.

Chief Conservator of Forests-II
Khyber Pakhtunkhwa Peshawar

EC


Handwritten note: Hurry enclosed to concerned
DFOs. This may be the report

Handwritten notes: Filed

17/4

Annexure-2

Annex-1

WRITE PETITION NO. 553/2011 BY ZIA-UL-HAQ REGARDING HIS SELECTION FOR THE POST OF FOREST GUARD, APPOINTMENT OF ENQUIRY COMMITTEE VIDE CHIEF CONSERVATOR OF FORESTS-II KHYBER PAKHTUNKHWA PESHAWAR OFFICE ORDER NO. 34 DATED 13/4/2012, REPORT THERE-OF.

BRIEF HISTROY OF THE CASE

The Director Information, Government of Khyber Pakhtunkhwa was requested for publication of vacant posts of Forest Guards in Upper Kohistan Forest Division vide Divisional Forest Officer Upper Kohistan Forest Division-letter No. 2925/GE dated 12.04.2010. Accordingly advertisement appeared in daily Nawa-e-Waqt Rawalpindi on 22.04.2010 and in daily Mashriq Peshawar on 23.04.2010.

As a result of discussion dated 19.04.2010, the Divisional Forest Officer, Lower Kohistan also requested DFO Upper Kohistan vide his letter No. 2963/GE dated 21.04.2010 to include the cases of appointment of his Division in the same process. The process materialized jointly and applications from 157-inhabitants of District Kohistan were received upto 04.05.2010 (Copy of list enclosed as Annex-1).

The Departmental Selection committee conducted written test on 12.05.2010 wherein 102-Nos. candidates appeared (Copy of list enclosed as Annex-2). Meeting of the Departmental Selection Committee was held on 08.06.2011 whereas interview etc from 23-Nos. short listed candidates was conducted on 8/6/2011, (copy of list enclosed as Annex-3).

Out of total 23-Nos. candidates, S.No. 1, 2 & 3 (3-Nos.) were recommended for appointment in Upper Kohistan Forest Division Dasso, while S.No. 4 to 11 (8-Nos.) were recommended for recruitment in Lower Kohistan Forest Division Pattan. The record revealed that (13 No) thirteen candidates have been appointed up-to 14/11/2011 in both Forest Divisions.

DISCUSSIONS

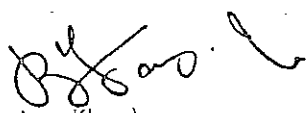
In compliance with Chief Conservator of Forests-II Khyber Pakhtunkhwa office order NO.34 dated 13/4/2012 the committee held its meeting in the office of DFO Unhar Watershed Division Mansehra on 19.04.2012. All relevant record of both the Forest Divisions has been produced by Mr. Sajjad Ahmad Head Clerk of Upper Kohistan Forest Division.


The said record has been examined by the committee in detail and fully analyzed the gravity of the case. The committee reached to the conclusion that:

1. Working papers have not been prepared by the concerned Forest Divisions.
2. There is no mention of vacant posts in any paper prepared and meant for appointment of Forest Guards in both the Forest Divisions.
3. The office orders for appointment of Forest Guards have not been found issued in time.
4. The minutes of D.S.C meeting indicates that interview has been conducted on 8.6.2011 instead of 18.05.2010 after a lapse of more than one year period.
5. The procedure contained in GOVERNMENT OF KHYBER PAKHTUNKHWA, SERVICES AND GENERAL & ADMINISTRATION DEPARTMENT (REGULATION WING) Notification No. SOR-I(S&GAD)4-1/75 dated Peshawar the 17.06.1989 has not been found followed properly.

RECOMMENDATIONS

In the light of foregoing facts and material on record, the committee recommend to Rollback the entire incomplete process adopted for appointment of Forest Guards and to direct the competent authorities for initiating the process a fresh as per rules.


(Rustam Khan)
Divisional Forest Officer
Unhar Watershed Division, Mansehra
(Chairman)


(Khurshid Ahmad)
Superintendent
Lower Hazara Circle, Abbottabad
(Member)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT
(ESTABLISHMENT SECTION)

Annex - III

Dated Peshawar: 14/06/2012.

NOTIFICATION

NO.SO(Lit:)ED/2-165/2011: The competent Authority is pleased to constitute a committee, comprising Mr. Allamgir Khan Gandapur, CF and Mr. Mir Zali Khan, Section Officer(Litigation), Environment Department, to conduct facts finding inquiry in the case of irregularities/delay in submission of report to Secretary Environment and Chief Secretary, Khyber Pakhtunkhwa in the case titled W.P No. 553 Zia-ul-Haq versus Govt: of Khyber Pakhtunkhwa and fix responsibility for the same, the committee shall specifically probe into following aspects of the case:

- Delay in submission of the response in the case, despite repeated reminders.
- Failure to submit the case for decision of the Chief Secretary, as directed by the Court.
- Factual position of appearance of the petitioner Mr. Zia-ul-Haq before the DSC, as pointed out in the Court order dated: 7.3.2012.
- Concealment of the subsequent two orders of the Peshawar High Court in the case in the reports/record submitted to the Environment Department.
- Failure to follow up on the inquiry report pin-pointing irregularities in the recruitment process and fixing responsibility for the same.
- Failure to terminate the appointment of the Forest Guard through irregular process, as per submission/commitment of the relevant officers in the Peshawar High Court through their comments.
- Submission of misleading evasive and deceptive report by CF-Upper Hazara in the case
- Any other related point.

The committee shall submit its report within 07 days to Environment Department for further necessary action

Secretary to Govt: of
Khyber Pakhtunkhwa
Environment Department

Endst: of even No. & Date: 10386-92

Copy forwarded to: -

- 1) Mr. Allamgir Khan Gandapur C/O Chief Conservator of Forests-II, Peshawar.
- 2) Chief Conservator of Forests, Peshawar-II, Peshawar.
- 3) Section Officer(Litigation) Environment Department.
- 4) CF-Upper Hazara Circle, Mansehra.
- 5) Divisional Forest Officer, Upper Kohistan Dassu.
- 6) Divisional Forest Officer, Lower Kohistan Pattan.
- 7) PS to Secretary Environment Department.

Section Officer (Establishment)

(Litigation)

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Annexure - 6
GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT
(LITIGATION SECTION)

Annex-^{IV}~~10~~

SO(Lit:)/E.D/2-165/2011
Dated Peshawar: 11/12/2012.

To
The Chief Conservator of Forests,
Northern Region-II, Abbottabad.

Subject: WRIT PETITION NO. 553/2011 ZIA-UL-HAQ VERSUS GOVT: OF
KHYBER PAKH TUNKHWA.

- f. **Failure to terminate the appointment of the Forest Guard through Irregular process as per submission/commitment of the relevant officers in Peshawar High Court through their comments.**

I am directed to refer to this department Notification No. SO(Lit)/ED/2-165/2011 Dated: 14/06/2012 and to state that the above point was looked into by the Inquiry Committee.

It was observed that in compliance of the orders of the Admin: Department an Inquiry Committee was constituted for conducting impartial enquiry. The committee conducted the enquiry and recommended to roll back the entire incomplete process adopted for appointment of Forest Guards and to direct the competent authorities for initiating the process afresh as per rules.

The CF Upper Hazara informed the petitioner accordingly and requested to him to re-appear in the test and interview for the post of Forest Guard on the date and time to be advertised shortly through print media by the competent authority. He has also directed the DFO Lower Kohistan Forest Division, Pattan and DFO Upper Kohistan Forest Division, Dassu to follow the recommendations of the Committee and initiate the process for the appointment/recruitment of Forest Guard against the vacant post on 19/4/2012. The same recommendations have not been implement as yet.

Therefore, both DFOs of lower Kohistan Forest Division and Upper Kohistan Forest Division should implement the decision of the earlier Inquiry Committee and report compliance.

MIR ZALI KHAN
Section Officer (Litigation)

Endst: of even No. & Date 1281-82

Copy forwarded to the:

CF-Upper Hazara Circle, Mansehra.

PS to Secretary Environment Department.


Section Officer (Litigation)

OFFICE OF THE CONSERVATOR OF FORESTS, UPPER HAZARA FOREST CIRCLE
MANSEHRA.

21

To,

Mr. Umar Yar s/o Abdul Qahar
Residence Jijal PO Ranolia
Tehsil Pattan District Kohistan

No: 4460 /GE dated Mansehra the 12/02/2013.

Subject: APPEAL OF MR. UMAR YAR S/O ABDUL QAHAR THE DFO UPPER
KOHISTAN OFFICE ORDER NO.54, DATED 21/12/2012.

Memo:

Reference your appeal dated 24/01/2013.

Upon termination from service of one Mr. Umar Yar s/o Abdul Qahar preferred an appeal dated 24/01/2013 before the undersigned being appellate authority against the DFO Upper Kohistan office order No.54, dated 21/12/2012. The DFO Upper Kohistan offered comments upon the appeal vide No.1645/GE, dated 12/02/2013.

I, in the capacity of appellate authority in the instant case have gone through the relevant documents available on record upon which the order appealed against is based and found that:

A committee was constituted by CCF-II vide office order No.34, dated 13/04/2012 with the mandate to enquire in the Writ Petition No.533/2011 which recommended rolling back of entire recruitment process based on certain procedural flaws. Subsequently another enquiry committee on higher level was constituted by Administrative Department vide Notification No.SO(Lit)ED/2-165/2011, dated 14/06/2012 for the same purpose which detected further irregularities in addition to the flaws pointed out by previous committee. Based on the recommendation of above committee, the Administrative Department directed vide No. SO(Lit)ED/2-165/2011/1281-82, dated 11/12/2012 for implementation of recommendation of earlier committee.

In light of the absolute recommendations by the two successive committees, direction of the Administrative Department, and comments of the DFO/competent authority, the facts on which the termination order is based found established. Hence, the action taken vide office order No.54, dated 21/12/2012 is appropriate as no other action can satisfy the recommendations so made which is, therefore, neither excessive nor inadequate.

Keeping in view the above facts on record the appeal is rejected and order appealed against is confirmed.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

No: /GE

Copy forwarded to DFO Upper Kohistan Forest Division Dasso for information with reference to his letter cited above.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 530/2013

Umar Yar Ex-Forest Guard
Upper Kohistan Forest Division

APPELLANT

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa Environment Department, Peshawar.
2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad Khyber Pakhtunkhwa
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Dassu

RESPONDENTS

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth;

PRELIMINARY OBJECTION

1. The appeal is not maintainable in the present form
2. The appellant has no locus standi to bring the present appeal.
3. The appellant is legally estopped by his own conduct to bring the present appeal
4. The appeal is time barred

FACTS

Parawise comments are as under:

1. Pertains to record hence no comments.
2. Pertains to record hence no comments.
3. Needs no comments
4. It is correct.

5. In-Correct. That an independent enquiry committee was constituted on the direction of the competent authority by Chief Conservator of Forests-II, Khyber Pakhtunkhwa Peshawar vide office order No.34 dated 13.4.2012 and committee concluded vide its report dated 19.4.2012 as under:

"In light of foregoing facts and material on record, the committee recommended to roll back the entire incomplete process adopted for appointment of forests guards and direct the competent authorities for initiating the process afresh as per rules"(Annex-1 & 2)

6. Committee constituted by Chief Conservator of Forests, -II Khyber Pakhtunkhwa, Peshawar vide office order No. 34, dated 13/4/2012 with the mandate to enquire in the Writ Petition No. 533/2011 which recommended rolling back of entire recruitment process on certain procedural flaws. Subsequently another committee on higher level was constituted by Administrative Department vide Notification No. SO(Lit)ED/2-165/2011, dated 14/6/2012 for the same purpose which detected further irregularities in addition to the flaws pointed out by previous committee. Based on the recommendation of above committee, the Administrative Department directed vide No. SO(Lit)ED/2-165/2011/1281-82 dated 11/12/2012 ordered for implementation of recommendation of earlier committee. (Annex-3 & 4)
7. On recommendation of two successive committees directives of Administrative Department and the facts on which the termination order is based found established, the appeal was rejected by the Appellant Authority vide No.4460/GE, dated 12/2/2013 (Annex- 5)

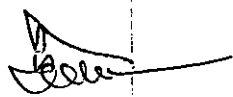
GROUND

- A. In-correct. Both of the said orders are justified.
- B. In-Correct. Since the recruitment process abinitio found faulty, therefore, the appellant did not have status of Government servants.
- C. The committee examined the whole record of test and interview and after fully analyzing the gravity of the case, the committee points out certain flaws in the recruitment process and recommended to roll back the entire process adopted for appointment of forest guards.

- D. As explained above, the committee examined the record of appointment process and found certain shortfalls; hence the appellant had not been associated with the inquiry proceedings.
- E. In-Correct. The committee pointed out procedural flaws in recruitment process which implies that the appellant did not gain status of Govt. servant abinitio. In such a situation there was no need of adopting the process meant for Government Servant.
- F. Since the entire process was found faulty, therefore the (complainant) was not inquired into.
- G. In-Correct. When the Enquiry Committee found inconsistencies in recruitment process, the issue of anomaly got secondary position. Therefore the committee did not consider the issue and recommended rolling back the entire recruitment process.
- H. As in Para-G
- I. In-Correct. The rejection order is well reasoned.
- J. That the respondents also seek permission to advance other ground at the time of argument.

PRAYERS

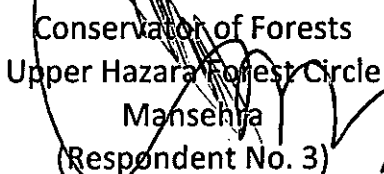
In view of the above facts available on record it is humbly prayed that the appeal is being unjustified and against the law may please be dismissed with cost in the best interest of the state.



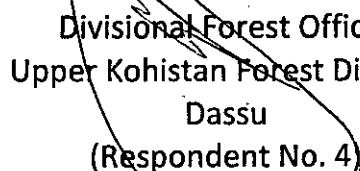
Secretary
Govt. of Khyber Pakhtunkhwa
Environment Department Peshawar
(Respondent No. 1)



Chief Conservator of Forests
Northern Forest Region-II
Abbottabad Khyber Pakhtunkhwa
(Respondent No. 2)



Conservator of Forests
Upper Hazara Forest Circle
Manshera
(Respondent No. 3)



Divisional Forest Officer
Upper Kohistan Forest Division
Dassu
(Respondent No. 4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 530/2013

Umar Yar Ex-Forest Guard
Upper Kohistan Forest Division

APPELLANT

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa Environment Department, Peshawar.
2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad Khyber Pakhtunkhwa
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Dassu

RESPONDENTS

COUNTER AFFIDAVIT

The undersigned do hereby solemnly affirms and declare on oath that the contents of our written reply in the appeal is correct to the best of my knowledge and record and nothing has been concealed from the Honorable Tribunal.

Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 230/2013

Umar Yar Ex-Forest Guard
Upper Kohistan Forest Division

APPELLANT

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa, Environment Department, Peshawar.
2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad, Khyber Pakhtunkhwa.
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Daska.

RESPONDENTS

COUNTER AFFIDAVIT

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Divisional Forest Officer
Upper Kohistan Forest Division
Daska

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 530/2013

Umar Yar Ex-Forest Guard
Upper Kohistan Forest Division

APPELLANT

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa Environment Department, Peshawar.
2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad Khyber Pakhtunkhwa
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Dassu

RESPONDENTS

**PARAWISE COMMENTS ON BEHALF OF
RESPONDENT NO. 01 TO 04**

Respectfully Sheweth;

PRELIMINARY OBJECTION

1. The appeal is not maintainable in the present form
2. The appellant has no locus standi to bring the present appeal.
3. The appellant is legally stopped by his own conduct to bring the present appeal
4. The appeal is time barred

FACTS

Parawise comments are as under:

1. ~~It is correct. However the posts were advertised by Respondent No. 4 through Director Information Peshawar (Annex-1&2).~~
Partains to record hence no comments.
2. ~~It is correct. Needs no comments.~~
Partains to record hence no comments.
3. Needs no comments
4. It is correct.

- incorrect.*
5. That an independent enquiry committee was constituted on the direction of the competent authority by Chief Conservator of Forests-II, Khyber Pakhtunkhwa Peshawar vide office order No.34 dated 13.4.2012 and committee concluded vide its report dated 19.4.2012 as under:

"In light of foregoing facts and material on record, the committee recommended to roll back the entire incomplete process adopted for appointment of forests guards and direct the competent authorities for initiating the process afresh as per rules"(Annex-3 & 4)

6. Committee constituted by Chief Conservator of Forests, -II Khyber Pakhtunkhwa, Peshawar vide office order No. 34, dated 13/4/2012 with the mandate to enquire in the Writ Petition No. 533/2011 which recommended rolling back of entire recruitment process on certain procedural flaws. Subsequently another committee on higher level was constituted by Administrative Department vide Notification No. SO(Lit)ED/2-165/2011, dated 14/6/2012 for the same purpose which detected further irregularities in addition to the flaws pointed out by previous committee. Based on the recommendation of above committee, the Administrative Department directed vide No. SO(Lit)ED/2-165/2011/1281-82 dated 11/12/2012 ordered for implementation of recommendation of earlier committee. (Annex-5 & 6)
7. On recommendation of two successive committees directives of Administrative Department and the facts on which the termination order is based found established, the appeal was rejected by the Appellant Authority vide No.4460/GE, dated 12/2/2013 (Annex- 7)

GROUNDS

- A. ~~It is~~ in-correct. Both of the said orders are justified.
- incorrect.*
- B. Since the recruitment process abinitio found faulty, therefore, the appellant did not have status of Government servants.
- C. The committee examined the whole record of test and interview and after fully analyzing the gravity of the case, the committee points out certain flaws in the recruitment process and recommended to roll back the entire process adopted for appointment of forest guards.

D. As explained above, the committee examined the record of appointment process and found certain shortfalls; hence the appellant had not been associated with the inquiry proceedings.

incorrect
E. The committee pointed out procedural flaws in recruitment process which implies that the appellant did not gain status of Govt. servant abinitio. In such a situation there was no need of adopting the process meant for Government Servant.

F. Since the entire process was found faulty, therefore the (complainant) was not inquired into.

incorrect
G. When the Enquiry Committee found inconsistencies in recruitment process, the issue of anomaly got secondary position. Therefore the committee did not consider the issue and recommended rolling back the entire recruitment process.

H. ~~Needs no comments.~~ *As in Para G.*

I. ~~Needs no comments.~~ *incorrect. The rejection order is well reasoned. J. Let the respondents also seek permission to advance other grounds at the time of arguments.*

PRAYERS

In view of the above facts available on record it is humbly prayed that the appeal is being unjustified and against the law may please be dismissed with cost in the best interest of the state.

Secretary
Govt. of Khyber Pakhtunkhwa
Environment Department Peshawar
(Respondent No. 1)

Chief Conservator of Forests
Northern Forest Region-II
Abbottabad Khyber Pakhtunkhwa
(Respondent No. 2)

Conservator of Forests
Upper Hazara Forest Circle
Mansehra
(Respondent No. 3)

Divisional Forest Officer
Upper Kohistan Forest Division
Dasu
(Respondent No. 4)

*held subject
corrected and attached
of all under*

Signature

Annexure-1

Annex-1

OFFICE ORDER NO 34 DATED PESHAWAR THE 13 / 4 / 2012 ISSUED BY
MR. GUL MOHAMMAD KHAN CHIEF CONSERVATOR OF FORESTS-II KHYBER
PAKHTUNKHWA PESHAWAR

A committee of the following officers/officials is hereby constituted to conduct impartial enquiry in the writ petition No. 553/2011 by Zai-ul-Haq regarding his selection for the post of Forest Guard:

- | | | |
|----|---|----------|
| 1) | Mr. Rustam Khan DFO Unhar Watershed Division | Chairman |
| 2) | Mr. Khurshid Ahmad Superintendent Lower Hazara Circle | Member |

The committee shall submit its report within a week complete in all respect.

Sd/-

(Gul Mohammad Khan)
Chief Conservator of Forests-II
Khyber Pakhtunkhwa Peshawar

No. 553-56 / E

Copy forwarded for information and necessary action to the:-

1. CF Upper Hazara Circle Manasehra.
2. CF Lower Hazara Circle Abbottabad. He is requested to direct the Superintendent of his office of needful.
3. Mr. Rustam Khan DFO Unhar Watershed Division Mansehra.
4. Mr. Khurshid Ahmad Superintendent office of the CF Lower Hazara Circle Abbottabad.

Chief Conservator of Forests-II
Khyber Pakhtunkhwa Peshawar

Struckly enclosed to concerned
D/O's. This may be kept

Filed
17/4

Annexure -2

Annex-13

WRITE PETITION NO. 553/2011 BY ZIA-UL-HAQ REGARDING HIS SELECTION FOR THE POST OF FOREST GUARD, APPOINTMENT OF ENQUIRY COMMITTEE VIDE CHIEF CONSERVATOR OF FORESTS-II KHYBER PAKHTUNKHWA PESHAWAR OFFICE ORDER NO. 34 DATED 13/4/2012, REPORT THERE-OF.

BRIEF HISTROY OF THE CASE

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As a result of discussion dated 19.04.2010, the Divisional Forest Officer, Lower Kohistan also requested DFO Upper Kohistan vide his letter No. 2963/GE dated 21.04.2010 to include the cases of appointment of his Division in the same process. The process materialized jointly and applications from 157-inhabitants of District Kohistan were received upto 04.05.2010 (Copy of list enclosed as Annex-1).

The Departmental Selection committee conducted written test on 12.05.2010 wherein 102-Nos. candidates appeared (Copy of list enclosed as Annex-2). Meeting of the Departmental Selection committee was held on 08.06.2011 whereas interview etc from 23-Nos. short listed candidates was conducted on 8/6/2011, (copy of list enclosed as Annex-3).

Out of total 23-Nos. candidates, S.No. 1, 2 & 3 (3-Nos.) were recommended for appointment in Upper Kohistan Forest Division Dassu, while S.No. 4 to 11 (8-Nos.) were recommended for recruitment in Lower Kohistan Forest Division Pattan. The record revealed that (13 No) thirteen candidates have been appointed up-to 14/11/2011 in both Forest Divisions.

DISCUSSIONS

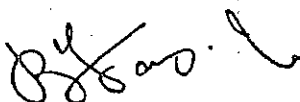
In compliance with Chief Conservator of Forests-II Khyber Pakhtunkhwa office order NO.34 dated 13/4/2012 the committee held its meeting in the office of DFO Unhar Watershed Division Mansehra on 19.04.2012. All relevant record of both the Forest Divisions has been produced by Mr. Sajjad Ahmad Head Clerk of Upper Kohistan Forest Division.


The said record has been examined by the committee in detail and fully analyzed the gravity of the case. The committee reached to the conclusion that:

1. Working papers have not been prepared by the concerned Forest Divisions.
2. There is no mention of vacant posts in any paper prepared and meant for appointment of Forest Guards in both the Forest Divisions.
3. The office orders for appointment of Forest Guards have not been found issued in time.
4. The minutes of D.S.C meeting indicates that interview has been conducted on 8.6.2011 instead of 18.05.2010 after a lapse of more than one year period.
5. The procedure contained in GOVERNMENT OF KHYBER PAKHTUNKHWA, SERVICES AND GENERAL & ADMINISTRATION DEPARTMENT (REGULATION WING) Notification No. SOR-(S&GAD)4-1/75 dated Peshawar the 17.06.1989 has not been found followed properly.

RECOMMENDATIONS

In the light of foregoing facts and material on record, the committee recommend to Rollback the entire incomplete process adopted for appointment of Forest Guards and to direct the competent authorities for initiating the process a fresh as per rules.


(Rustam Khan)
Divisional Forest Officer
Unhar Watershed Division, Mansehra
(Chairman)


(Khurshid Ahmad)
Superintendent
Lower Hazara Circle, Abbottabad
(Member)

Annexure-3

GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT
(ESTABLISHMENT SECTION)

Annex-III

Dated Peshawar: 14/06/2012.

NOTIFICATION

NO.SO(Lit):ED/2-165/2011: The competent Authority is pleased to constitute a committee, comprising Mr. Allamgir Khan Gandapur, CF and Mr. Mir Zali Khan, Section Officer(Litigation), Environment Department, to conduct facts finding inquiry in the case of irregularities/delay in submission of report to Secretary Environment and Chief Secretary, Khyber Pakhtunkhwa in the case tilted W.P No. 553 Zia-ul-Haq versus Govt: of Khyber Pakhtunkhwa and fix responsibility for the same, the committee shall specifically probe into following aspects of the case:

- Delay in submission of the response in the case, despite repeated reminders.
- Failure to submit the case for decision of the Chief Secretary, as directed by the Court.
- Factual position of appearance of the petitioner Mr. Zia-ul-Haq before the DSC, as pointed out in the Court order dated: 7.3.2012.
- Concealment of the subsequent two orders of the Peshawar High Court in the case in the reports/record submitted to the Environment Department.
- Failure to follow up on the inquiry report pin-pointing irregularities in the recruitment process and fixing responsibility for the same.
- Failure to terminate the appointment of the Forest Guard through irregular process, as per submission/commitment of the relevant officers in the Peshawar High Court through their comments.
- Submission of misleading evasive and deceptive report by CF-Upper Hazara in the case
- Any other related point.

The committee shall submit its report within 07 days to Environment Department for further necessary action

Secretary to Govt: of
Khyber Pakhtunkhwa
Environment Department

Endst: of even No. & Date:

10386-92

Copy forwarded to: -

- Mr. Allamgir Khan Gandapur C/O Chief Conservator of Forests-II, Peshawar.
- Chief Conservator of Forests, Peshawar-II, Peshawar.
- Section Officer(Litigation) Environment Department.
- CF-Upper Hazara Circle, Mansehra.
- Divisional Forest Officer, Upper Kohistan Dassu.
- Divisional Forest Officer, Lower Kohistan Pattan.
- PS to Secretary Environment Department.

Section Officer (Establishment)

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Annexure-4

GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT
(LITIGATION SECTION)

Annex-^{IV}
④

SO(Lit:)/E.D/2-165/2011
Dated Peshawar: 11/12/2012.

To

The Chief Conservator of Forests,
Northern Region-II, Abbottabad.

Subject : WRIT PETITION NO. 553/2011 ZIA-UL-HAQ VERSUS GOVT: OF
KHYBER PAKH TUNKHWA.

- f. Failure to terminate the appointment of the Forest Guard through Irregular process as per submission/commitment of the relevant officers in Peshawar High Court through their comments.

I am directed to refer to this department Notification No. SO(Lit)/ED/2-165/2011 Dated: 14/06/2012 and to state that the above point was looked into by the Inquiry Committee.

It was observed that in compliance of the orders of the Admin: Department an Inquiry Committee was constituted for conducting impartial enquiry. The committee conducted the enquiry and recommended to roll back the entire incomplete process adopted for appointment of Forest Guards and to direct the competent authorities for initiating the process afresh as per rules.

The CF Upper Hazara informed the petitioner accordingly and requested to him to re-appear in the test and interview for the post of Forest Guard on the date and time to be advertised shortly through print media by the competent authority. He has also directed the DFO Lower Kohistan Forest Division, Pattan and DFO Upper Kohistan Forest Division, Dassu to follow the recommendations of the Committee and initiate the process for the appointment/recruitment of Forest Guard against the vacant post on 19/4/2012. The same recommendations have not been implement as yet.

Therefore, both DFOs of lower Kohistan Forest Division and Upper Kohistan Forest Division should implement the decision of the earlier Inquiry Committee and report compliance.

MIR ZALI KHAN
Section Officer (Litigation)

Endst: of even No. & Date

1281-82

Copy forwarded to the:

CF-Upper Hazara Circle, Mansehra.

PS to Secretary Environment Department.


Section Officer (Litigation)

Annex-5

21

OFFICE OF THE CONSERVATOR OF FORESTS, UPPER HAZARA FOREST CIRCLE
MANSEHRA.

To,

Mr. Umar Yar s/o Abdul Qahar
Residence Jijal PO Randia
Tehsil Pattan District Kohistan

No: 4460 /GE dated Mansehra the 12/02/2013.

Subject: APPEAL OF MR. UMAR YAR S/O ABDUL QAHR THE DFO UPPER
KOHISTAN OFFICE ORDER NO.54, DATED 21/12/2012.

Memo:

Reference your appeal dated 24/01/2013.

Upon termination from service of one Mr. Umar Yar s/o Abdul Qahar preferred an appeal dated 24/01/2013 before the undersigned being appellate authority against the DFO Upper Kohistan office order No.54, dated 21/12/2012. The DFO Upper Kohistan offered comments upon the appeal vide No.16-5/GE, dated 12/02/2013.

I, in the capacity of appellate authority in the instant case have gone through the relevant documents available on record upon which the order appealed against is based and found that:

A committee was constituted by CCF-II vide office order No.34, dated 13/04/2012 with the mandate to enquire in the Writ Petition No.533/2011 which recommended rolling back of entire recruitment process based on certain procedural flaws. Subsequently another enquiry committee on higher level was constituted by Administrative Department vide Notification No.SO(Lit)ED/2-165/2011, dated 14/06/2012 for the same purpose which detected further irregularities in addition to the flaws pointed out by previous committee. Based on the recommendation of above committee, the Administrative Department directed vide No. SO(Lit)ED/2-165/2011/1281-82, dated 11/12/2012 for implementation of recommendation of earlier committee.

In light of the absolute recommendations by the two successive committees, direction of the Administrative Department, and comments of the DFO/competent authority, the facts on which the termination order is based found established. Hence, the action taken vide office order No.54, dated 21/12/2012 is appropriate as no other action can satisfy the recommendations so made which is, therefore, neither excessive nor inadequate.

Keeping in view the above facts on record the appeal is rejected and order appealed against is confirmed.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

No: /GE

Copy forwarded to DFO Upper Kohistan Forest Division Dasso for information with reference to his letter cited above.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra