

11.01.2021

Mr. Taimur Ali Khan, Advocate, for petitioner is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Qasim Khan, Assistant Treasury Officer, on behalf of respondent No. 3 is also present.

Representatives of respondents No. 1 & 2 are absent, therefore, learned Additional Advocate General is directed to contact the respondents No. 1 & 2 and furnish implementation report on the next date positively. File to come up for implementation report on 08.03.2021 before S.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

*The grievance of the petitioner has been redressed according to the judgment dated 03/02/2020 and the petitioner wants to withdraw the instant Petition. (Dr 8/3/21)*

08.03.2021

Mr. Taimur Ali Khan, Advocate for petitioner is present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

Learned counsel for the petitioner submitted before the court that grievances of the petitioner have been redressed and does not want to further pursue his case. In this respect his statement also recorded on the margin of order sheet. Since grievances of the petitioner have been redressed therefore, the instant execution petition is hereby disposed of being executed. File be consigned to the record room.

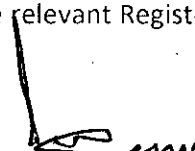


Announced:  
08.03.2021

(Mian Muhammad)  
Member (E)

FORM OF ORDER SHEET

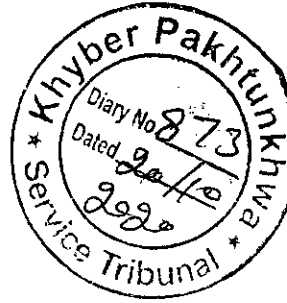
Court of \_\_\_\_\_

Execution Petition No. 155 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20.10.2020	<p>The Execution Petition submitted by Mr. Tabiullah through Mr. Taimur Ali Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	20.11.2020	<p>This Execution Petition be put up before S. Bench on <u>20/11/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Nemo for the petitioner.</p> <p>Notices be issued to the parties for 11.1.2021. The respondents shall submit implementation report on the <u>date fixed</u>.</p> <p style="text-align: right;"> Chairman</p>

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

Execution Petition No. 155 /2020  
In Service Appeal No.137/2018



Tabiullah, Forest Guard,  
Dir Kohistan, Forest Division.

**PETITIONER**

**VERSUS**

1. The conservator of Forest, Malakand Forest Circle West Timergara.
2. The Divisional Forest Officer, Dir Kohistan Forest Division.
3. The District account Officer, Dir Kohistan.

**RESPONDENTS**

.....  
**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO IMPLEMENT THE  
JUDGMENT DATED 03.02.2020 OF THIS  
HONOURABLE TRIBUNAL IN LETTER AND  
SPIRIT.**  
.....

**RESPECTFULLY SHEWETH:**

1. That the petitioner has filed service appeal No.137/2018 against the order dated 20.09.2017, whereby the penalty of reduction to initial pay scale and stoppage of annual increment were imposed upon the petitioner and against not taking action on the departmental appeal of the petitioner within the stipulated period of ninety days.
2. The said appeal was finally heard by this august Service Tribunal on 03.02.2020 and the august Service Tribunal partially accepted the appeal, set aside impugned order and directed the respondent-department to conduct a de-novo inquiry in accordance with the rules prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) rules, 2011 within a period of ninety days from the receipt of the judgment with further direction to fully associate the appellant in inquiry proceeding. **(Copy of judgment dated 03.02.2020 is attached as Annexure-A)**

3. That since the announcement of the judgment, the petitioner waited for more than 08 months to implement the judgment dated 03.02.2020 of this august Tribunal, but the respondent department did not finalized the inquiry proceeding against the petitioner so for.
4. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 03.02.2020 of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 03.02.2020 of this august Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

  
PETITIONER

THROUGH:

  
(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT  
&

(MEHRAN ALI SHAH)  
ADVOCATE HIGH COURT

**AFFIDAVIT:**

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

  
DEPONENT

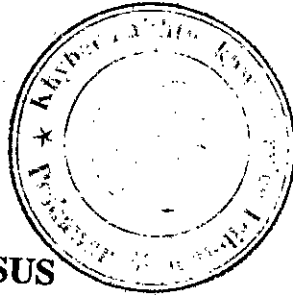


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**BEFORE THE KHYBER PAKHTU NKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 137 /2018

Mr. Tabiullah Forest Guard,  
Dir Kohistan, Forest Division.



Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 148

Dated 25/1/2018

(Appellant)

VERSUS

1. The Conservator of forest, Malakand Forest Circle west Timergara.
2. The Divisional Forest Officer, Dir Kohistan Forest Division.
3. The District Account Officer, Dir Kohistan.

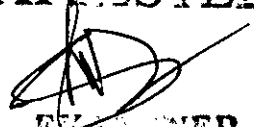
(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 20.09.2017 WHEREBY THE PENALTY OF REDUCTION TO INITIAL PAY SCALE AND STOPPAGE OF ANNUAL INCREMENT WERE IMPOSED UPON THE APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 20.09.2017 MAY BE SET-ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO RESTORE THE CURRENT BASIC PAY SCALE i.e BEFORE THE PENALTY ORDER DATED 20.9.2017 AND TO RESTORE THE ANNUAL INCREMENTS WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS TRIBUNAL FIT AND PROPER MAY ALSO BE AWARDED IN THE FAVOUR OF APPELLANT.

**ATTESTED**

  
REGISTRAR  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

filed to-day

Registrar

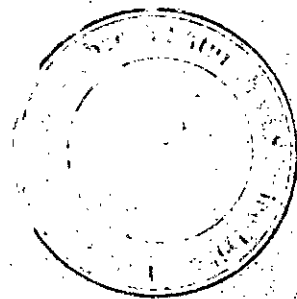
25/1/18

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

**SERVICE APPEAL NO. 137/2018**

Date of institution ... 25.01.2018

Date of judgment ... 03.02.2020



Tabiullah Forest Guard,  
Dir Kohistan, Forest Division

... (Appellant)

**VERSUS**

1. The Conservator of Forest, Malakand Forest Circle West Timergara.
2. The Divisional Forest Officer, Dir Kohistan Forest Division.
3. The District Account Officer, Dir Kohistan.

... (Respondents)

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 20.09.2017 WHEREBY THE PENALTY OF REDUCTION TO INITIAL PAY SCALE AND STOPPAGE OF ANNUAL INCREMENT WERE IMPOSED UPON THE APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.**

Mr. Taimur Ali Khan

.. For appellant.

Mr. Ziaullah, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

**JUDGMENT**

1. MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving as Forest Guard in Forest Department. He was imposed punishments (I) Current Basic Pay reduced to initial pay scale. (II) No annual

*M. Amin*  
3.2.2020

*[Signature]*

Peshawar

increment shall be allowed till successful completion of Forest Guard training course from Khyber Pakhtunkhwa Forest School Thai Abbottabad by the competent authority vide order dated 20.09.2017 on the allegation of absence from duty as well as non-joining of Forest Guard regular course from Khyber Pakhtunkhwa Forest School Thai Abbottabad. The appellant filed departmental appeal to the departmental authority on 03.10.2017 but the same was not responded hence, the present service appeal on 25.01.2018.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was appointed as Forest Guard in Forest Department vide order dated 02.06.2009.

It was further contended that he was performing his duty with zeal and zest. It was further contended that the appellant was nominated for the Forest Guard course but he ~~was~~ <sup>became</sup> seriously ill, therefore, he was struck off from the school vide order dated 20.09.2016. It was further contended that neither proper inquiry was conducted nor he was associated in inquiry proceeding. It was further contended that he ~~was~~ <sup>m</sup> reported on 05.09.2016 for course to the Forest School but he was told that Eid-ul-Azha was <sup>in m</sup> near future, therefore, the classes will be started after holidays of Eid-ul-Azha. It was further contended that the appellant suddenly became ill and started his treatment. It was further contended that medical report has been annexed by the appellant and was also shown to the inquiry officer but the same was not taken into

consideration. It was further contended that he again reported at his office but he was not allowed to perform duty. It was further contended that that appellant never remained absent from duty. It was further contended that as

*M Amin*  
3.2.2020

*[Signature]*  
Poshwar

per inquiry report, the inquiry officer had allegedly recorded the statement of representative of the department but neither the same was recorded in his presence nor he was given opportunity of cross examination nor respondent-department had furnished any attendance register etc which shows that the appellant was absent from duty. It was further contended that the respondent-department was bound to handover copy of inquiry report with the show-cause but no inquiry report was sent with the show-cause notice, therefore, the whole proceeding is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was directed to appear in the Forest Guard regular course at Khyber Pakhtunkhwa Forest School Thai Abbottabad, on 05.09.2016 but he remained absent and did not attend the course, therefore, his name was struck off. It was further contended that the appellant also remained absent from duty therefore, he was imposed aforesaid penalties after fulfilling all the codal formalities and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Forest Department since 2009. There is nothing on the record to show that earlier he remained absent from duty or he was imposed any penalty. The record further reveals that the appellant was nominated for Forest Guard regular course in Khyber Pakhtunkhwa Forest School Thai Abbottabad and was directed to report for the said forest course on 05.09.2016 but as per plea of the respondent-department the appellant did not report on the said date and remained absent from the said course therefore, his name was truck off by the

3.2.2020

*[Handwritten signature]*



Incharge Khyber Pakhtunkhwa Forest School Thai Abbottabad vide order dated 20.09.2016 while the plea of the appellant is that he had reported on 05.09.2016 but he was told that due to Eid-ul-Azha holidays regular classes will be started after Eid-ul-Azha but after Eid-ul-Azha he became ill and started his treatment and ultimately he was discharged on 28.09.2016 and when he reported for Forest School in the school he was told that his name was struck off. The record further reveals that the inquiry was conducted by the inquiry officer but neither the medical report furnished by the appellant was taken into consideration nor any statement of concerned doctor was recorded who issued medical prescription. The record further reveals that the inquiry officer has stated in the inquiry report that he also recorded the statement of representative of the department but neither the statement of representative of the department is available on the record nor record indicate that the same was recorded in the presence of the appellant or he was provided opportunity of cross examination. The record further reveals that appellant was also imposed aforesaid punishments on the allegation of absence from duty but the inquiry officer has also not requisitioned his attendance register from the respondent-department. Moreover, the competent authority was also bound to sent/annexed copy of inquiry report with the show-cause notice but the alleged show-cause notice available on the record also reveals that no copy of inquiry was handed over to the appellant at the time of giving show-cause notice. Meaning thereby, that the inquiry was not conducted in the mode and manners prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, therefore, we partially accept the appeal, set-aside the impugned order and direct the respondent-department to

*M Amin*  
3.2.2020

conduct a de-novo inquiry in accordance with rules prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 within a period of ninety days from the date of copy of receipt of this judgment with further direction to fully associate the appellant in inquiry proceeding. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
03.02.2020

*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

*[Signature]*  
(AHMAD HASSAN)  
MEMBER

**Certified to be true copy**  
*[Signature]*  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of ..... 18-02-2020  
Number of Wa ..... 2000  
Copying Fee ..... 27-00  
Urgent ..... 4-00  
Total ..... 26-00  
Name of C ..... [Signature]  
Date of Completion ..... 18-02-2020  
Date of Delivery of Copy ..... 18-02-2020

**VAKALAT NAMA**

NO. \_\_\_\_\_/2020

IN THE COURT OF KP Secura Tribunal, Peshawar

Tabi Ullah

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Forest Dept.

(Respondent)  
(Defendant)

I/We, Tabi Ullah

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court 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 \_\_\_\_\_/2020



(CLIENT)

ACCEPTED



**TAIMUR ALI KHAN**  
**Advocate High Court**  
**BC-10-4240**

**CNIC: 17101-7395544-5**  
**Cell No. 0333-9390916**

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