

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No. 720/2020

Date of Institution ... 16.01.2020

Date of Decision ... 23.12.2020

Akhtar Muhammad, Forester Bandagai Check Post, Timergarah, Lower Dir.
... (Appellant)

VERSUS

Conservators of Forests, Malakand West Circle, Timergarah and three others.
... (Respondents)

Present:

MR. HAYATULLAH, --- For Appellant.
Advocate

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL, --- For respondents.
Assistant Advocate General

MR. MIAN MUHAMMAD, --- MEMBER(Executive)
MR. HAMID FAROOQ DURRANI --- CHAIRMAN

JUDGEMENT.

MIAN MUHAMMAD, MEMBER:- This service appeal has been instituted under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974 against the impugned order of the Competent Authority dated 27.09.2019 and decision made on his departmental appeal by Appellate Authority vide office order dated 11.12.2019. These two office orders have been impugned and assailed in the instant service appeal.

FACTS.

02. Brief facts of the instant case, as per memorandum of service appeal, are that the appellant has been serving as Forester (BS-10) in the respondent-department. He

was transferred to Toormang block and made incharge of compartments No. 6 to 10 vide office order dated 02.08.2019. The appellant was performing his duty when a notice of absence from duty was communicated vide letter dated 12.09.2019 to which he replied on 16.09.2019. His period of absence from duty w.e.f 30.08.2019 to 15.09.2019 was ordered to be treated as leave without pay vide impugned office order of respondent No.2 dated 27.09.2019. The appellant preferred departmental appeal on 08.10.2019 which did not find favourable response and was rejected by the appellate authority (respondent No.1) on 11.12.2019, hence, the instant service appeal instituted on 16.01.2020.

03. Respondents were summoned to produce relevant record and connected documents. They attended the Services Tribunal through their legally authorized representatives who contested the appeal on their behalf. We have heard the pro and counter arguments addressed by the learned counsels for the parties and perused the available record minutely and in detail with their assistance.



ARGUMENTS.

04. The learned counsel for the appellant contended that the appellant has been very punctual and devoted government servant and no adverse or negative service track is available in the respondent-department against him. He was on duty on 15.09.2019 and registered a case against Mair Khan S/o Bahadar Khan R/o Yar Khan Banda, Timergara for illicit cut timber and fined him Rs. 6100/- vide receipt No.346/02 as it ^{is} evident from record available and annexed with the memorandum of appeal. This speaks of his devotion and dedication to his duty and performance in the department. He vehemently contended that the ends of justice have not been met

while awarding the appellant the impugned penalty because neither charge sheet/statement of allegations, show cause have been issued nor an opportunity of personal hearing and cross examination provided to him. He has, therefore, been condemned unheard and the penalty awarded on his back. The impugned orders therefore, having no legal standing are liable to be set aside and the penalty so awarded be quashed away.

05. On the other hand, the learned Assistant Advocate General did not press the case and relied on reply of respondents stating therein that all codal formalities have been fulfilled and opportunity of defense including personal hearing was provided to the appellant.

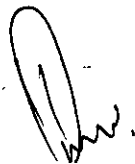


CONCLUSION.

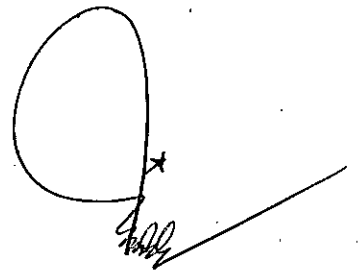
06. There is no denying the facts that explanation was called of the appellant on 12.09.2019 seeking his reply within three days. The appellant accordingly explained his position vide his reply dated 16.09.2019. Where-after the impugned order dated 27.09.2019 was passed in a cursory and summarily manner without issuance of proper charge sheet/statement of allegations, appointing an enquiry officer or committee as is required under Rule-5 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011. Equality before law, fair trial and due process of law are the inalienable fundamental rights of the appellant as citizen of the country duly guaranteed by the constitution. The mandatory provisions under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 have not been observed rather ignored altogether in the instant case.

07. As a sequel to the above, we have arrived at the conclusion that the opportunity of fair trial has not been afforded to the appellant being his fundamental and inalienable right under Article-4 and 25 of the Constitution. Similarly, he has not been proceeded against under the administrative law i.e Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 and as such the ends of natural justice have neither been observed nor followed. He has been prematurely convicted in the instant case which is against the canons of law and natural justice. The impugned orders dated 27.09.2019 and 11.12.2019 are therefore set aside with the directions to the respondents to conduct de-novo enquiry to be concluded within three months from receipt of copy of this judgment strictly in accordance with law and rules. Parties are left to bear their own costs. File be consigned to the record room.


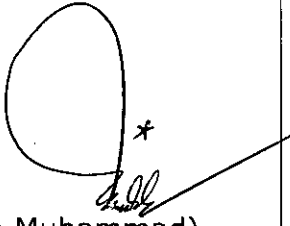
ANNOUNCED
23.12.2020



(HAMID FAROOQ DURRANI)
CHAIRMAN



(MIAN MUHAMMAD)
MEMBER(E)

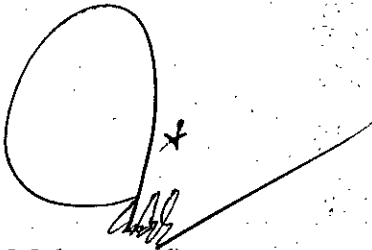
S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	23.12.2020	<p><u>Present.</u></p> <p>Mr. Hayat Ullah, ... For Appellant Advocates</p> <p>Mr. Muhammad Riaz Khan Paindakhel, ... For respondents Assistant Advocate General</p> <p>Vide our detailed judgment of today consisting of four pages placed on file, we have arrived at the conclusion that the opportunity of fair trial has not been afforded to the appellant being his fundamental and inalienable right under Article-4 and 25 of the Constitution. Similarly, he has not been proceeded against under the administrative law i.e Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 and as such the ends of natural justice have neither been observed nor followed. He has been prematurely convicted in the instant case which is against the cannons of law and natural justice. The impugned orders dated 27.09.2019 and 11.12.2019 are therefore set aside with the directions to the respondents to conduct de-novo enquiry to be concluded within three months from receipt of copy of this judgment strictly in accordance with law and rules. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 23.12.2020</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  Chairman </div> <div style="text-align: center;">  (Mian Muhammad) Member (E) </div> </div>

16.07.2020

Appellant in person present. Addl: AG for respondents present.

Appellant submitted an application for extension of time to submit security and process fee. Allowed. He is directed to deposit the same within one week, thereafter notices be issued to the respondents for submission of written reply/comments.

Adjourned to 20.08.2020 before S.B.


(Mian Muhammad)
Member(E)

20.08.2020

Appellant in person present. Addl: AG alongwith Mr. Shakeel Ahmad, SDFO for respondents present.

Written reply not submitted. Representative of the respondents seeks time to submit the same on the next date.

Adjourned to 02.10.2020 before S.B.


(Mian Muhammad)
Member(E)

02.10.2020

Appellant in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Mr. Hakim Gul Superintendent for respondents present. Representative of respondents submitted written reply/comments, placed on file. To come up for rejoinder, if any, and arguments on 23.12.2020 before D.B.


(Mian Muhammad)
Member (E)

Appellant Deposited
Security & Process Fee
11/7/20

09.03.2020

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Forester) has approached this Tribunal being aggrieved against the order dated 27.09.2019 whereby he was considered absent w.e.f 30.08.2019 to 15.09.2019 and the absence period was treated as leave without pay. The appellant has also assailed the order dated 11.12.2019 through which his departmental appeal against the order dated 27.09.2019, was rejected.

Submissions made by the learned counsel for the appellant, need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 22.04.2020 before S.B.


Member

22.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 16.07.2020 for the same. To come up for the same as before S.B.

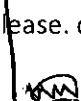


Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 720/2020


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/01/2020	<p>The appeal of Mr. Akhtar Muhammad resubmitted today by Mr. Hayat Ullah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. decrease</p> <p style="text-align: right;"> REGISTRAR 30/1/2020</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>09/03/2020.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

The appeal of Mr. Akhtar Muhammad Forester Bandagai Check Post Timergarah received today i.e. on 16.01.2020 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellatant.
- 2- Approved file covers is not used.
- 3- Two more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 199 /S.T,

Dt. 17-01 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Hidayatullah Khan Adv. Pesh.

Re-Submitted after copies

[Handwritten mark]

BEFORE THE CHAIRMAN SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 720 /2020

Akhtar Muhammad

VERSUS

Conservators of forests and others

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7.	Copy of office latter No. 12/09/2019	D	10
8.	Copy of reply	E	11-12
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10.	Copy of departmental Appeal	G	14-16
11.	Copy of the Impugned order dated 17/12/2019	H	17
12.	Wakalat Nama		In original

Dated: 16/01/2020

Appellant

Through



Office # 5/10-5th Floor
Pak-Medical Centre
Khyber Bazar Peshawar

Hayat Ullah Khan ASC
03005820669
03110578157

BEFORE THE CHAIRMAN SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 720 /2020

Akhtar Muhammad Forester, Bandagai Check post Timergarah
Lower Dir.

Khyber Pakhtunkhwa
Service Tribunal Appellant

Diary No. 508

VERSUS

Dated 16/01/2020

1. Conservators of forests Malakand west circle Timergarah.
2. Divisional forest officer, Lower Dir forest Division, Timergarah.
3. SDFO, Timergarah.
4. Divisional Head Clerk/Accountant Lower Dir Forest Division Timergarah.

.....Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT
1974 AGAINST THE ORDER OF THE RESPONDENT
NO.1 DATED 11/12/2019, WHERE BY THE
IMPUGNED ORDER, DEPARTMENTAL APPEAL OF
THE APPELLANT AGAINST THE ORDER OF THE
RESPONDENT NO.2 HAD BEEN REJECTED AND
THE PENALTY IMPOSED BY THE RESPONDENT
NO.2 WAS UP HELD.

Prayers:-

ON ACCEPTANCE OF THIS APPEAL THE
IMPUGNED ORDER OF THE RESPONDENT MAY
KINDLY BE SET ASIDE AND THE PENALTY
IMPOSED UPON THE APPELLANT MAY KINDLY
BE WAIVED OFF.

Respectfully Sheweth:-

Appellant submits as under.

1. That the appellant is serving in the forestry department since long and 3 year back, he was promoted from beat guard to as forester.
2. That through out entire service of carrier, he has excellent service record without any stigma, appellant always deemed forest as

Filed to-day
Registrar
Re-submitted to-day
and filed.

Registrar
30/11/2020

national aside and tried his best to save the forestry and due to his sincerity and dedication with job he always suffer a lot because there was conflict of interest between the appellant and the mafia therefore they have inimical attitudes against the appellant and his presents they could not succeeded in their ill-will design.

3. That being civil servant, he always accepted transfer posting order without any hesitation because it is a part o job and even he never objected to perform his duty under the supervision of his junior.
4. That the respondent No.3 through office order dated 02/08/2019 transfer/posting him from Timergarah block to Tour Mang block compart No. 6-10 as beat guard without caring that he has been promoted as forester 3 years back, in spite of this he remained silent and given preference to the duty and resume charged on 16/08/2019.
5. That latter on the respondent No.2 through office order No.20 dated 20/08/2019 posted Ahmad Jan forest guard at Tour Mang compart No. 6-10.
6. That latter on verbal order of the respondent No.3 he perform his duty at Timergarah block alongwith Khalil Ahmad forest guard and during this period they initiated legal proceeding against one accused namely Maidar Khan as evident from dairy report annexed.
7. That during this time he has no intimation, information or notice regarding office order dated 12/09/2019 where by through the said office order he has been transfer order to Bandagai Check Post, he got knowledge when he was serve by the notice to explain his absentee from the service.
8. That already he was regularly performing his duty but to office latter dated 12/09/2019 as discussed in upper para, he was shocked to know that he was consider absent from 27/08/2019 at Bandagai Check Post and was directed to explain his position.
9. That in response to said latter he replied that he has no knowledge about his transfer order to Bandagai Check Post and

on acquiring knowledge on the following day he resumed charged and performed the duty.

10. That inspite of the explanation of the absentee from service, the respondent No.2 impose penalty upon him and was considered absent from 30/08/2019 to 15/09/2019 as leave without pay.
11. That against the said order, appellant preferred departmental appeal before the respondent No.1, however his appeal was rejected and order of the subordinate official was upheld.
12. That the impugned order is totally illegal, void and without lawful authority and is liable to be set a side on the following grounds inter alia.

Grounds:-

- A. That the impugned order is totally against law and facts on record hence liable to be set aside kindly it may be set aside.
- B. That the impugned order is not tenable before the eyes of law, natural justice and is violation of the principal/maxim "Audi Altrum Partem" because he was no given in opportunity of hearing or defence, all proceeding were carried out on his back.
- C. That the superior court including law of land, prescribed a specific process for initiating departmental proceeding against and official, which consist of the following four main stages.
 - i. Charge (S)
 - ii. Investigation of the charge
 - iii. Finding and punishment
 - iv. AppealMeaning thereby that before imposing any penalty, he must opportunity of personal hearing, of cross examination of the witnesses, of rebuttal of the documentary evidence, beside it the principal of natural justice will have to be adhered to not only in the first stage ending with issue of show cause notice but also in the second stage which comments with the issue of show cause notice.

- D. That in appellant case no such principal was followed and with malafide intention penalty was imposed upon him not only to bring stigma in his service record but to also blemished his future service.
- E. That the personal grudge of the superior is also involve in the case, because many time he was enforce to serve under his junior the inspite of the facts that he has been promoted as forester.
- F. That when their no intimation office transfer order then how he was consider absent from the service it was their malafide of the respondent that the said order was not convey to the appellant and latter on departmental proceeding on his back.
- G. That already petitioner has good service record only to damage his repo, this drama was staged.
- H. That due to the above stated reason and other grounds it would be taken before the tribunal after its permission.

It is therefore humbly prayed that on acceptance of the instant appeal, the impugned order may kindly be set aside and the penalty imposed upon the appellant may kindly be waived.

Any other relief which this Hon'ble court deem fit and proper may also be awarded to the appellant.

Dated:16/01/2020

131
Appellant

Through



Hayat Ullah Khan ASC

BEFORE THE CHAIRMAN SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____/2020

Akhtar Muhammad

VERSUS

Conservators of forests and others

Application for condonation of delay

Applicant/appellant submits as under

1. That the applicant/appellant has filed above captioned appeal before this honourable Tribunal, no dated of hearing has been fixed yet.
2. That since impugned order was not convey in time to the applicant, which caused a few day delay in filing of the appeal however this delay was not intentional.
3. That valuable rights of the applicant is involve in the case however superior courts always stressed upon decision of the cases on merits instead of knocking out the litigants on technicalities.

It is therefore humbly prayed that on acceptance of the instant application, if there is any delay, kindly it may be condone and appeal may be decided on merit.

Appellant

Through



Hayat Ullah Khan ASC

(6)

BEFORE THE CHAIRMAN SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____/2020

Akhtar Muhammad

VERSUS

Conservators of forests and others


AFFIDAVIT

I, Akhtar Muhammad Forester, Bandagai Check post Timergarah Lower Dir, do hereby solemnly affirm and declare on oath that the contents of the instant Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

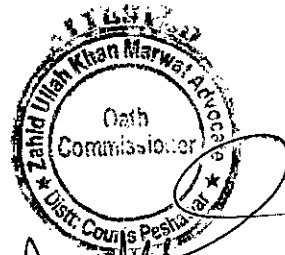
(3.7)

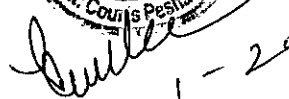
Deponent

AKHTAR MUHAMMAD

Identified by: - 

HAYAT ULLAH KHAN ASC,




18-1-2020

⑦

A

OFFICE ORDER NO. 93 DATED TIMERGARA THE 13/04/2016 ISSUED BY MR. ASGHAR KHAN DIVISIONAL FOREST OFFICER LOWER DIR FOREST DIVISION TIMERGARA.

As recommended by Departmental Promotion Committee (DPC) in the meeting held under the chairmanship of Divisional Forest Officer Lower Dir Forest Division Timergara on 06/04/2016, Mr. Akhtar Muhammad Forest Guard is hereby promoted to the Rank of Forester BPS-10 (8275-544-2455) on the regular basis with immediate effect.

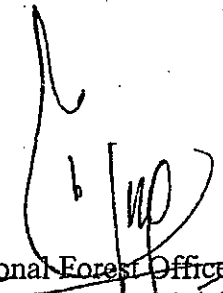
In case of abolition of the post the newly promoted Forester will be reverted to his original cadre. The promotion is purely temporary and will not confer any right for continuity. He will be on probation for the period of one (01) year in terms of section-6(2) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15 (1) of the Khyber Pakhtunkhwa Civil Servants (Appointment, promotion & Transfer) Rules, 1989.

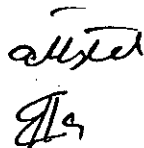
Sd/(Asghar Khan)
Divisional Forest Officer,
Lower Dir Forest Division,
Timergara.

No. 3475-78 /E,

Copy forwarded to the :-

- 1- Conservator of Forests Malakand West Forest Circle Timergara for favour of information please.
- 2- SDFO Timergara for information and necessary action.
- 3- Divisional Accountant for information and necessary action.
- 4- Official concerned for information and necessary action.


Divisional Forest Officer,
Lower Dir Forest Division,
Timergara.



(2)

b

OFFICE ORDER

Akhtar Muhammad Forester is hereby transfer from Timergara Block to Toormang Block, in Toormang he will be ,In-charge of Compartments No-6 to-10 in the interest of public service with immediate effect.

Sub Divisional Forest Officer
Timergara Forest Sub Division

No-12---/T Dated 02-03-2019

Copy forwarded to:

Divisional Forest Officer, Lower Dir Forest Division at Timergara for favor of information

~~Sub~~
Sub Divisional Forest Officer
Timergara Forest Sub Division

abir
II

(9) . C

**OFFICE ORDER NO. 9-c DATED TIMERGARA THE 25/08/2019 ISSUED BY MR. IJAZ-UR-REHMAN
DIVISIONAL FOREST OFFICER LOWER DIR FOREST DIVISION TIMERGARA.**

Posting/transfer of the following officials of to the place noted against each is hereby ordered in the interest of public service with immediate effect

S.No.	Name and designation	From	To
1	Habib-ul-Haq Forester	Bandagai Forest Check Post	Talash Block (Block Officer)
2	Shereen Muhammad Fg	Under transfer	Talash Beat Guard Compart: No. 1-7
3	Raza Khan Fg	Sub Division Timergara office	Talash Beat Guad 8-17
4	Kurshid Munir Forester	Under transfer	Block Officer Maidan with additional charge of FPP
5	Muhenudin Fg	Beat Guard Lower Maidan	Beat Guard Maidan
6	Raheem Sha Fg	Beat Guard Laram	Rabat Beat Guard 1-5
7	Hazrat Muhamamd Fg	Talash Block	Rabat Beat Guard 6-10
8	Muhammad Israr Forester		Toormang Block Officer
9	Rahmat Jan Fg	Beat Guard Toormang	Toormang Block 6-10
10	Shah Zada Fg	Beat Guard Upper Maidan	Toormang Block 1-5
11	Khalid Khan Forester	Rabat Block	Joint Police Check Post Shaipalam as incharge
12	Atbar Khan Fg	Shamardin Forest Check Post	---do---
13	Ali Muhammad Fg	---do---	---do---
14	Aziz-ur-Rahman Fg	Timergara Block	Laj Book and Luqman Banda Beat
15	Races Khan Fg	---	Bandagai
16	Zubair Shah Fg	---	---do---
17	Niaz Muhammad Fg	---	Bandagai (Incharge) with addition to his own
18	Nasib Dar B/M	----	Bandagai
19	Yaseen Fg	----	Goro Talash B/R Nursery
20	Pervez Fg	----	Khaima B/R Nursery
21	Taj Muhammad Forester	----	Thrai Fruit, Ornamental, B/R and Tube Nursery
22	Ghulam Hussain Fg	----	---do---

Sd/-
(Ijaz-ur-Rehman)
Divisional Forest Officer,
Lower Dir Forest Division,
Timergara.

No 458-60 IG,

Copy forwarded to the:

1. Conservators of Forests Malakand West Circle Timergara for favour of information please..

✓ 1. SDFO Timergara for information and necessary action. He is directed to submit proper departure/arrival and complete charge report of the official.

2. Official concerned.

Divisional Forest Officer,
Lower Dir Forest Division
Timergara

dele
Ita

[Signature]

10



OFFICE OF THE
DIVISIONAL FOREST OFFICER,
LOWER DIR FOREST DIVISION,
TIMERGARA
Phone No.0945-9250105

No. /Acctt: Dated Timergara the 12/9/2019

To
Mr. Akhtar Muhammad Forester,
C/O
SDFO Timergara.

SUBJECT:- ABSENCE FROM GOVT: DUTY.

Memo:
As reported by Mr. Rafiqullah the then SDFO Timergara in his Charge Report that you have been posted at Bandagai Forest Check Post but since 27.08.2019 your where about is not known to this office.

27.08.2019
?

Therefore, you are directed to explain your position within three (03) days, otherwise ex-party action will taken against you under E&D Rules, 2011.

Divisional Forest Officer,
Lower Dir Forest Division,
Timergara

No. 721 /Acctt:

Copy forwarded to SDFO Timergara for information and further necessary action.

alite
2/9/19

[Signature]
Divisional Forest Officer,
Lower Dir Forest Division,
Timergara

(11)

خدمت صواب SDFD سیکرٹریہ صوبہ تعلیم سیکرٹریہ

عنوان !

جواب طلبی سوالہ خصوصی نمبر 720 مورخہ 12/09/2019

صواب عالی !

تشریح حسب ذیل ہے

1) کہ بندہ محبت فارسیٹر سیکرٹریہ بلاک ڈیپارٹمنٹ سرفایم کے رہا ہے

2) یہ ایک نعرہ 16/09/2019 کو بندہ کو راجہ بالا جی کے ذریعہ معلوم ہوا کہ بندہ کا شامل ہانڈنگی فارسیٹ ڈیپارٹمنٹ کو ہوا ہے لیکن اس کے بارے میں بندے کو ابھی تک کوئی شہینہ احد نے کہ زمانہ آدھ ملے ہے۔

3) راجہ بالا جی سے جواب طلبی مستخرج فرمائیں۔ چونکہ ہانڈنگی ڈیپارٹمنٹ کو ہوا ہے اور راجہ بالا جی سے جواب طلبی مستخرج فرمائیں۔

تاریخ

الحاج احمد علی فارسیٹ ہانڈنگی ڈیپارٹمنٹ

Forwarded to DFO(D) Dir for information with Reference to his letter NO: 721/A/ctt: dt: 12/09/2019 please.

Handwritten signature

SDFD T/9/9/19

16/09/2019

(12)

حاجت خان پور

خدمت جناب ڈی ایچ او، فارمہ ایگریکلچرل ٹریڈنگ کمپنی

درخواست بک ارا حاجت خان پور

بجانب آفیس آرڈر نمبر 227 مورخ 12/9/2018

بانڈہ فارمہ ایگریکلچرل ٹریڈنگ کمپنی

حاجت خان پور

حاجت خان پور سٹیٹ بینک

16/9/2018

العارضہ، کمانڈر ایگریکلچرل ٹریڈنگ کمپنی

فارمہ ایگریکلچرل ٹریڈنگ کمپنی

Forwarded to DPO (C) Dir for favour of information please.

SDPO

SDPO T. J. Jinnah

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OFFICE ORDER NO. 34 DATED TIMERGARA THE 27/09/2019 ISSUED BY MR. EJAZ-UR-REHMAN
DIVISIONAL FOREST OFFICER LOWER DIR FOREST DIVISION TIMERGARA.

Mr. Akhtar Muhammad Forester was found absent from Government duty w.e.f 30.08.2019 to 15.09.2019, therefore, the absence period is hereby treated as leave without pay in the interest of public service.

Sd/-
(Ejaz-ur-Rehman)
Divisional Forest Officer,
Lower Dir Forest Division,
Timergara.

No. 928-31/G,

Copy forwarded to the:

1. Conservators of Forests Malakand West Circle Timergara for favour of information please..
2. SDFO Timergara for information and necessary action.
3. Official concerned.
4. Divisional Head Clerk/Accountant for information and necessary action.

Divisional Forest Officer,
Lower Dir Forest Division
Timergara

27/09/2019

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جناب کنزرویٹر صاحب ملاکنڈ ویسٹ سرکل بمقام تیمرگرہ

مضمون؛ آپیل برخلاف DFO صاحب لوئیر دیر حکمنامہ نمبر 34 مورخہ 27-9-2019

جناب عالی؛

گزارشات ذیل ہیں

یہ کہ جناب DFO صاحب لوئیر دیر نے بزرگیہ حکمنامہ مذکورہ بالا سائیل کو مورخہ 30-8-019 سے 15-9-019 تک ڈیوٹی سے غیر حاضر تصور کر کے مزکورہ پیرڈ کیلئے تنخواہ کے بغیر چھٹی کے احکامات جاری کئے ہیں۔ جس کے لئے بزرگیہ درخواست ہذا آپ صاحبان سے داری کیلئے آپیل کرتا ہوں۔

(1) SDFO تیمرگرہ نے بزرگیہ چھٹی نمبر 12 مورخہ 2-8-2019 (نقل لف ہے) تیمرگرہ بلاک سے طور منگ بلاک کپارٹ نمبر 6 تا 10 بحیثیت بیٹ گارڈ تبدیل کیا۔ حالانکہ سائیل تین سال سے زائد عرصہ ہوا کہ بحیثیت فارسٹر ترقی پا کر ڈیوٹی سرانجام دے رہا ہے۔ (نقل لف ہے)۔ سائیل نے احکامات کے تعمیل میں مزکورہ بیٹ پر ڈیوٹی کیلئے 16-8-019 کو حاضری دی۔

(2) مورخہ 20-8-019 کو جناب DFO صاحب لوئیر دیر نے بزرگیہ حکمنامہ نمبر 20 (نقل لف ہے) طور منگ بیٹ کے کپارٹ نمبر 6 تا 10 پراحمد جان فارسٹ گارڈ کی تبدیلی کے احکامات جاری کئے۔

(3) DFO صاحب کے حکمنامہ نمبر 20 کے اجراء کے تین، چار دن بعد سائیل SDFO صاحب کے زبانی احکامات کے تعمیل پر تیمرگرہ بلاک پر ڈیوٹی کے لئے حاضر ہوا۔ اس دوران خلیل احمد فارسٹ گارڈ کے ہمراہ ڈیوٹی دیتا رہا اور مورخہ 15-9-019 پر جرم جنگل کے سلسلہ میں ملزم میدرخان کے خلاف قانونی کارروائی کی (نقل DR لف ہے)۔

(4) DFO صاحب لوئیر دیر کے چھٹی نمبر 721 مورخہ 12-9-019 (نقل لف ہے) سے معلوم ہونے پر اس کے تعمیل مورخہ 16-9-019 کو بائڈہ گئی فارسٹ چیک پوسٹ پر ڈیوٹی کیلئے حاضر ہوا۔ جہاں سائیل کو بلحاظ عہدہ جو تیسرا ساتھی کے سربراہی میں ڈیوٹی انجام دینے کیلئے مجبور کیا گیا۔

استدعا ہے کہ رپورٹ کردہ ایام کے دوران سائیل نے باقاعدہ سرکاری ڈیوٹی انجام دی ہے جس کی وضاحت جاچکی ہے۔

ملاکنڈ
DFO

(جاری)

(15)

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مگر SDFO صاحب نے ذاتی عناد (جس کا سائیل کو علم بھی نہیں) کا نشانہ بنایا ہے۔ ثبوت کے طور پر جملہ احکامات میں سائیل کا بحیثیت فارسٹر تعیناتی نہیں کی بلکہ جو نیئر فارسٹ گارڈ کے طرح برتاؤں کیا جو کہ سائیل کیلئے ذہنی کرب کا باعث بنا۔ لیکن پھر بھی افسران بالا کے احکامات کی تعمیل کو مقدم جانا۔

درجہ بالا گزارشات کو مد نظر رکھتے ہوئے سائیل کے خلاف DFO صاحب لوئیرویر کے طرف سے دی گئی سزا کو ختم کر کے احکامات جاری فرمائیں۔ نیز گزارش یہ بھی ہے کہ سائیل کو ذاتی طور پر سننے کا موقع دیا جائے۔

8 $\frac{16}{019}$

تاریخ:

13-1-19

العارض:

اختر محمد فارسٹر بانڈ گئی چیک پوسٹ

تیمر گرہ دیروئیرویر

بالتا
ب

CC No = 111-19-80-85

ابتدائی اطلاعی رپورٹ بابت نقصان جنگل - نئی دہلی - ریجنل کمشنر - فارسٹ ڈویژن - لوئر دکن

مقام/نام جنگل	تاریخ و وقت وقوعہ	نام ولدیت و سکونت ملزم	مختصر کیفیت بابت جرم معروضہ
تنگی روہ	15-09-1980 قبل از دوپہر	میدرخان ولد بھادرخان ساکن یارخان ناندوہ محفل تیرگر قلعہ دیہ باشینہ	دفعات قانون جس کے تحت مقدمہ درج ہوا
			نا جائز کلان سبز درخت از قسم کھڈو قطر 8 - 600 م فٹ

جناب عالی مفصل رپورٹ یوں ہے کہ آج کو 15⁹ بوقت قبل از دوپہر مجھ نے اطلاع دی کہ تنگی روہ

جنگل میں ملزم میدرخان ولد بھادرخان ساکن یارخان ناندوہ نے ایک عدد سبز درخت کاٹنے کاٹنے سے
میں ہمراہ اختر محمد فارسی تنگی روہ جنگل کو اور نہ ہوئے اور کلانی سے درخت

کاٹنے کو دیکھی تو ملزم بالا کو قہر سے ہی پھینکا۔ ملزم سے جرم کی بابت میں پوچھا

تو ملزم نے بیان کیا کہ یہ درخت میں اپنے زیر تعمیر گھر کو کیجے گا ٹھیک سے

سرکار سے اجازت نام طلب کیا تو کچھ دن پستیں نہ کر سکا۔ پھر ملزم بالائی

صحت سماعت شروع کی کہ میں غریب آدمی ہوں جو سرکاری جہانہ میں

دینے کو تیار ہوں اسلئے مجھ کو عدالت کے بجائے موقع ضم کرنے کی درخواست آ

تو ملزم بالائی سے رسید فارم چوردہ ³⁴⁶/₈ پر مبلغ 100 روپے قیمت مال

اور حقانہ وصول کر کے اسے کو چھوڑا۔ لہذا رپورٹ ارسال شدت ہے

M. A. Khan
فیس ضمیمہ نمبر

اللہ

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old DFO UDI
Akhtar
Mehd

OFFICE ORDER 17 DATED 11 /12/2019 ISSUED BY MUHAMMAD YOUSAF KHAN
CONSERVATOR OF FORESTS MALAKAND WEST FOREST CIRCLE TIMERGARA

Whereas Akhtar Muhammad Forester was proceeded being found absent from Government duty w.e.f from 30.08.2019 to 15.09.2019.

Whereas the said official was awarded punishment of absent from Government duty by DFO Lower Dir vide office order No. 34, dated 27.09.2019 as leave without pay.

Whereas aggrieved with the penalty awarded by the DFO Lower Dir, the accuse official filed appeal with the undersigned being appellate authority to set-aside the penalty awarded by DFO Lower Dir and accordingly comments was asked from DFO lower Dir with a chance of personal hearing on 04.12.2019 .

Whereas after perusal of records, comments of the DFO Lower Dir and personal hearing of the official it is ascertained that the official avoiding his posting order and remained absent from Government duty without any prior permission from the competent authority.

Therefore, I Muhammad Yousaf Khan Conservator of Forests Malakand West Forest Circle Timergara in the capacity of appellate authority reject the appeal of Mr. Akhtar Muhammad Forester and endorse the order of DFO lower Dir bearing No.34 dated 27.09.2019.

Sd/-
(Muhammad Yousaf Khan)
Conservator of Forests
Malakand West Forest Circle
Timergara

No. 1900-02/E




Copy forwarded to the:-

1. Chief Conservator of Forests Malakand Forest Region-III Saidu Sharif Swat for favour of information please.
2. Divisional Forest Officer Lower Dir Forest Division Timergara for information and necessary action.
3. Official concerned for information with reference to is appeal dated 08.10.2019

E.c.
Already received on FAX
Seen in file.
[Signature]

attest's
[Signature]

[Signature]
Conservator of Forests
Malakand West Forest Circle
Timergara

قیمت 50 روپے	37512	  
ایڈوکیٹ: <u>صہب اللہ خان ایڈووکیٹ</u> بار کونسل ایسوسی ایشن نمبر: <u>300820669</u> رابطہ نمبر: _____		
پشاور بار ایسوسی ایشن، خیبر پختونخواہ		

بعدالت جناب: صہب اللہ خان ایڈووکیٹ KDC

منجانب: <u>امید اللہ</u>	دعویٰ:
اصغر محمد	علت نمبر: <u>سم کیس ال ایس</u>
بنام	مورخہ:
کنسرو میسر	جرم:
	تھانہ:

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام صہب اللہ خان ایڈووکیٹ کیلئے AKC کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زوریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 16-01-2020

_____ گواہ شد _____
 _____ مقام _____

_____ کے لیے منظور ہے۔

افضلہ
 03459362964

الحمد لله - سرور کرمین و خیر کثیرین و انوار

احقر محمد (نام) فارسی نثر اور سیر و سفر

در خواست عمارت عطا کتب مکتب و
ادائیگی ضمیمہ سرور کرمین و خیر کثیرین
فونٹ گائے

ضامیہ
بابت (امیٹ) حد تک عم فی اسات

یہ کہ اپنی تعینات بلڈ زپر کورٹر ٹر میونل صدارت، جس کے لئے

تاریخ مئی 16⁵⁷ 2020 طرہ

یہ کہ لوم راک ڈاؤن نہ تو اذکار فونٹ ہری ہوئے اور نہ ہی

صاف ضمیمہ ضمیمہ فونٹ گائے جمع ہوئی

یہ کہ لوم راک ڈاؤن نہ تو اذکار فونٹ ہری ہوئے اور نہ ہی

ادکار ضمیمہ سرور کرمین و خیر کثیرین جمع کرنا صاف نہ ہوئی

یہ کہ لوم راک ڈاؤن نہ تو اذکار فونٹ ہری ہوئے اور نہ ہی

استدعا کر در خواست طلبا لوم صاف

ادکار صاف صاف فونٹ گائے

16⁵⁷ 2020 (14)

بابت (امیٹ) احقر محمد سرور کرمین و خیر کثیرین

(1)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

SERVICE APPEAL NO.720/2020.

AKHTAR MUHAMMAD FORESTER

BANDAGAI FOREST CHECK POST

TIMERGARA DIR LOWER.....APPELLANT.

VERSUS.

1. CONSERVATOR OF FORESTS,
MALAKAND WEST FOREST CIRCLE
AT TIMERGARA LOWER DIR.
2. DIVISIONAL FOREST OFFICER
LOWER DIR FOREST DIVISION
AT TIMERGARA LOWER DIR.
3. SUB DIVISIONAL FOREST OFFICER
TIMERGARA.
4. DIVISIONAL HEAD CLERK/ACCOUNTANT
LOWER DIR FOREST DIVISION TIMERGARA.....RESPONDENTS.

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

PARA WISE COMMENTS/WRITTEN REPLY
ON BEHALF OF RESPONDENT NO.1 TO 4.

RESPECTFULLY SHEWEETH.

The Respondents No.1 to 4 respectfully submit as under :-

PRELIMINARY LEGAL OBJECTION.

- a) That the appellant has no cause of action or locus standi to file the instant appeal, as such the same is liable to be dismissed.
- b) That the appellant narrated concocted story in the departmental representation and the same has been reproduce in the instant appeal, the appellant concealed the material facts from this Hon'ble Tribunal, in fact the appellant was transferred from Timergara Block to Toormang Block as Incharge of Compartment No.6 to 10 vide office order No. 12/T, dated 02/02/2019, but the appellant failed to submit taking over charge of Toormang block which is necessary under the law, in fact from the date of transfer of the appellant to Toormang Block remain absent and in this regard the matter was reported by the SDFO Timergara, even then the appellant directed to be present regularly on his duty and due to his request he was transferred to Bandagai Forest Check Post on 30/08/2019, but he was remain absent from his duty being not devoted to the job as such under compelling circumstances minor punishment was imposed and the appellant was declared to be on leave without pay due to his absence from Government duty with effect from 30/08/2019 to 15/09/2019 as such on this ground too the appeal is liable to be dismissed.
- c) That without prejudice to the above the order dated 11/12/2019 has been challenged without lawful justification, no ground has been mentioned on the basis of which the order has been challenged, as such it is evident that the appeal is based on mala fide and liable to be dismissed.
- d) That the appeal of the appellant is hopelessly time barred as such in the circumstances the present appeal is not maintainable and liable to be dismissed on this ground alone.
- e) That the respondent No.4 have been unnecessarily impleaded as a party, even both the post of Head clerk which is now Assistant and the post of Accountant are being run by two(2) different person as such the appeal in present form is not competent and liable to dismissed forthwith on this ground alone.

FACTS.

- 1) That the contents of Para No. 1 pertain to record, hence need no reply.
- 2) That the contents of Para No.2 are denied. The service record of the appellant is very bad, even the reporting officer mentioned in Annual

(3)

Confidential Report of the incumbent appellant that he is good for himself but not for the Forest Department as such the averment contrary to the above are vehemently denied.

- 3) That the contents of Para No.3 are denied, the report of SDFO Timergara is sufficient to prove that, that the appellant while transferred to Toormang Block, he was remain absent and further more he never submitted his charge report of the said Block, that when on what date he took the charge and to that effect no such document has been annexed with the appeal, the averment contrary to the above are denied.
- 4) That the contents of Para No.4 are denied. the appellant narrated concocted story in the departmental representation and the same has been reproduce in the instant appeal, the appellant concealed the material facts from this Hon'ble Tribunal, in fact the appellant was transferred from Timergara Block to Toormang Block as Incharge of Compartment No.6 to 10 vide office order No. 12/T, dated 02/02/2019, but the appellant failed to submit taking over charge of Toormang block which is necessary under the law, in fact from the date of transfer of the appellant to Toormang Block remain absent and in this regard the matter was reported by the SDFO Timergara, even then the appellant directed to be present regularly on his duty and due to his request he was transferred to Bandagai Forest Check Post on 30/08/2019, but he was remain absent from his duty being not devoted to the job as such under compelling circumstances minor punishment was imposed and the appellant was declared to be on leave without pay due his absence from duty with effect from 30/08/2019 to 15/09/2019 to the imposition of penalty and passing of the office order No.34 dated 27/09/2019, rest of the contents are denied, all the legal course was adopted before passing of the order.
- 5) In reply to Para No.5, it is submitted that the said Rahmat Jan incorrectly mention as Ahmad Jan is a Forest Guard/Beat Guard in the said Compartment, whereas the appellant was Block Officer responsible for all acts being incharge of the Compartments, but he failed to fulfill his obligation and duties, the averment contrary to the above are denied.
- 6) That the contents of Para No.6 are denied, no such verbal order to posting can be issued in Govt: Department, the appellant just to save his skin from illegal act done by the appellant as such due to his absence from the duty which was reported by the SDFO Timergara as such no ground is available to the appellant to challenge the lawful order before this Hon'ble Tribunal.

(4)

Moreover the respondents No.1 to 4 reserve their right to argue any other point at the time of hearing of this appeal with the permission of this Hon'ble tribunal.

- 7) That the contents of para No.7 to 12 are vehemently denied, all the legal formalities has been fulfilled, even on 12/09/2019 the explanation was called from the appellant in respect of his absence from Government duty but up no avail, as such by way of proper and legal order a minor penalty was imposed vide office order No.34 dated 27/09/2019, which has not been challenged even in the instant appeal, the averment contrary to the above are denied.

REPLY TO THE GROUNDS OF APPEAL.

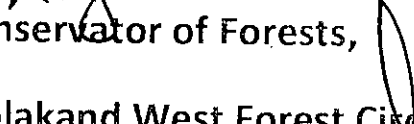
- A) That the contents of ground (a) of the appeal are incorrectly mentioned, the order dated 11/12/2019 has been issued according to the record and facts, it is worthwhile to mention here that, that the basic order dated 27/09/2019 has not been challenged as such the ground (a) is not tenable in the eyes of law.
- B) That the contents of ground (b) is incorrectly mentioned, the appellant was given opportunity of written reply to the show cause notice and further detail opportunity of personal hearing was provided and the appellant was appeared before the competent authority as such the question of condemned unheard does not arises.
- C) That the contents of ground (c to h) are also denied, the appellant being Government servant was duty bound to remain on compartment/check post and due to his negligence there was heavy loss to public exchequer as such he was rightly punished in a due course of law.

It is accordingly respectfully prayed that the appeal being misconceived, may kindly be ordered to be dismissed with cost in the interest of justice.

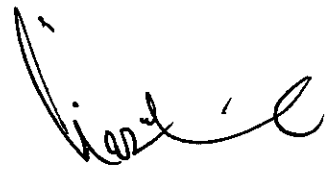
Respondent No. 1 to 4.

(5)


Respondent No.1


Conservator of Forests,
Malakand West Forest Circle,
at Timergara Lower Dir.


Respondent No.2


Divisional Forest Officer
Lower Dir Forest Division
At Timergara Lower Dir.

Respondent No.3


Sub Divisional Forest officer
Timergara.

Respondent No.4


Divisional Head Clerk/
Accountant Lower Dir.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 43 /ST Dated 11/01/2021


To

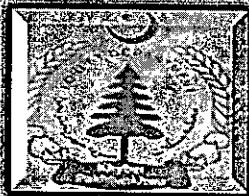
The Divisional Forest Officer,
Government of Khyber Pakhtunkhwa,
Lower Dir Forest Division Timargarah.

Subject: JUDGMENT IN APPEAL NO. 720/2020, MR. AKHTAR MUHAMMAD.

I am directed to forward herewith a certified copy of Judgement dated 23.12.2020 passed by this Tribunal on the above subject for strict compliance.


Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

OFFICE OF THE DIVISIONAL FOREST OFFICER LOWER DIR FOREST DIVISION TIMERGARA		BALAMBAT COLONY LOWER DIR TIMERGARA Ph. 0945-9250105 Fax. 0945-9250119
No	/E	Dated Timergara the _____/2020

CERTIFICATE/COURT ATTENDENCE.

It is certified that Mr. Abdul Hakim Jan Assistant to DFO Lower Dir at Timergara is hereby authorized to attend the Service Tribunal Peshawar on 23/12/2020 in connection with Service Appeal No. 720/2020 "titled as Akhtar Muhammad Forester versus Conservator of Forests Malakand West Forest Circle and others.


Divisional Forest Officer,
Lower Dir Forest Division,
Timergara.