

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 452 / 2022

Bakht Amin

VERSUS

Govt of Khyber Pakhtunkhwa etc.

=====
APPELLANT'S REJOINDER
=====

REPLY TO PRELIMINARY OBJECTIONS

1. All the preliminary objections taken in the reply are incorrect and are hence denied in detail.

PARAWISE REPLY

1. Admitted correct by the department.
2. Needs no reply.
3. Denied. Para 3 of the appeal is correct and that of the reply is incorrect. For the seniority list of Forest Guard as it stood on 31-12-2021, the department has quoted sub rules 2 of Rules 8 provided in the APT Rules 1989, under heading (Inter Provincial transfer) which is irrelevant for determination of seniority of civil servant except for those who are transferred from Federal to the Provincial Government or from one province to another province, that also after fulfillment of prescribed pre-requisite criterion laid down under the law.

In the instant case the appellant has been transferred within the district on administrative grounds strictly under the provision contained in rule 10 of laid down in Khyber Pakhtunkhwa civil servant Act 1973. Hence reason-being he did not object on his transfer. The respondent No. 1 has already expressed their opinion vide letter dated 09-01-2023 addressed to the respondent No. 3.

(Copy annexed "R1")

4. Para 4 has been admitted correct.
5. Para 5 of the appeal is correct and that of the reply is incorrect. Plea of the department for determination of seniority under **sub rule 4 of rule 8** is irrelevant. The quoted rules are applicable in the (inter provincial transfer) and within province, Circle or Division. Relevant rules applicable for fixation of seniority is **sub rule 4 of rule 8 provided in the Khyber Pakhtunkhwa Civil Servant Act 1973 and sub rule 2 & 4 of Rules 17 of Appointment, Promotion and Transfer Rules 1989.**

The department had acted in arbitrary manner in order to grant unlawful relief to the respondents No. 4 & 5, which deprived the appellant of his due right of promotion to the rank of Forester.

6. Paras 6 of the appeal are correct and that of the reply is incorrect.

REPLY TO THE GROUNDS

- a. The ground taken in para "a" of the appeal is correct and that of the reply is incorrect.
- b. The ground taken in para "b" of the appeal is correct and that of the reply is incorrect. The respondent department has failed to controvert the judgements referred to in para "b" of the appeal. It is necessary to mention that in the similar nature case the respondent department vide its office order No. 33 of 30-06-2022 had allowed relief to Jahangir, Shams Ur Rehman and Aqal mand Forest Guards of the defunct Dir-Swat Watershed Management Project, when they were transferred to Swat Forest Division, they were allowed seniority w.e.f the date of their initial appointment. **(Copy annexed "R2")**
- c. Para "c" has been admitted correct by the department.
- d. The ground taken in para "d" of the appeal is correct and that of the reply is incorrect. It is necessary to mention that the seniority of Forest Guards of Demarcation Forest Division Swat as it stood on 31-07-2022, the appellant has been placed at his proper place at serial No. 02 of the seniority list. However, due to the impugned seniority list as it stood on 31-12-2021 respondents No. 3& 4 have been unlawfully promoted to the post of Forester while arbitrarily ignoring the appellant. **(Copy annexed "R3")**
- e to j. The ground taken in para "e to j" of the appeal is correct and that of the reply is incorrect.

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

Appellant,

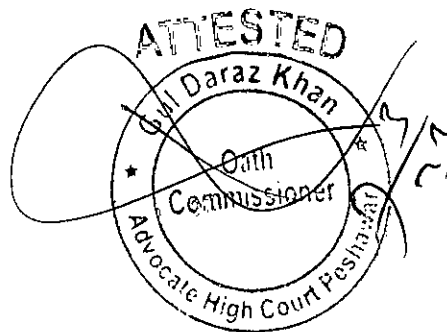
Through,

Peshawar, dated
7th March, 2023

Muhammad Zafar Khan (Tahirkheli)
ASC

Affidavit

I, the appellant, do hereby state on Oath that the contents of the above rejoinder are true and correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.



DEPONENT

(3) ANNEXURE R

**MOST IMMEDIATE
COURT MATTER**



**GOVERNMENT OF KHYBER PAKHTUNKHWA
CLIMATE CHANGE, FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT
(LITIGATION SECTION)
(091-9212103)**

NO. SO(Lit:)/CCFE&WD/3-380/2022/Bakht Amin
Dated Peshawar: 9th January, 2023

To

The Divisional Forest Officer,
Demarcation Forest Division,
Mingora Swat.


Subject:

DEPARTMENTAL COMMENTS ON SERVICE APPEAL NO. 452/2022

I am directed to refer to your letter No. 1328/G dated 4th January, 2023 on the subject noted above and to return the parawise comments (in original) with the clarification that said the comments have been examined and found not in order. The relevant attached Annexures are not readable. Moreover, the rules quoted in para-3 & 5 in the facts are also incorrect as the said rules relates to Inter Provincial Transfer.

2. It is therefore, advice that the Parawise comments may be revised according to facts and grounds position and resubmit to this Department for perusal / modification before vetting from Advocate General office.

Being **Court matter** may please be treated as **Most Urgent**.


(Hafiz Abdul Jalil)
Section Officer (Litigation)

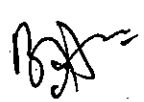
Encls as above. (in original)
Endst: of even No. & Date

Copy of the above is forwarded to the:

1. Chief Conservator of Forests, Malakand Region-III, Saidu Sharif, Swat, for similar **necessary action**.
2. Conservator of Forests Malakand Forest East Circle, Saidu Sharif Swat, for similar **necessary action**.
3. PS to Secretary Climate Change, Forestry, Environment & Wildlife Department.
4. Master file.

Section Officer (Litigation)

TRUE COPY



(4)

ANNEXURE R₂

OFFICE ORDER NO. 33 DATED SAIDU SHARIF THE: 30/6/2022 ISSUED BY MR. GOHAR ALI, CONSERVATOR OF FORESTS, MALAKAND EAST FOREST CIRCLE, SAIDU SHARIF SWAT.

READ WITH, Appeal preferred by M/S Jehangir, Shamsur Rehman, and Aqal Mand Forest Guards. Dated 21.01.2022, 08.03.2022 and Nil, respectively.

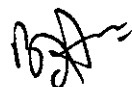
Comments offered by DFO Swat vide his letter No. 687/E, dated 06.08.2022, No. 6491/E, dated 22.03.2022 and No. 6490/E, dated 22.03.2022.

BRIEF HISTORY OF THE CASE, M/S Jehangir, Shamsur Rehman, and Aqal Mand Forest Guards were appointed in defunct Dir-Swat Watershed Management Project on 23.04.1988, 22.02.1988 and 03.03.1988, respectively. On closure of the said project their services remained intact in defunct Environmental Rehabilitation Project (ERP) and on closure of ERP, they were adjusted in Forestry Sector Project Swat/RMU on 01.07.2000 and 18.01.2000, respectively. Mr. Shamsur Rehman was adjusted on regular post during 2004, while M/S Jehangir and Aqal Mand Forest Guards were adjusted on regular posts in Kalam Forest Division during 2006. These Forest Guards performed their duties in Kalam, Swat and Patrol Squad Forest Division from the date of their adjustment. Their last postings were in Swat Forest Division which is intact till date. Their seniority was fixed by DFO Swat vide his office No. 712-14/E, dated 20.10.2021, as per given detail.

S. No.	Name of F/Guard	Division	Seniority position		Remarks.
			S.No	Date	
01.	Shamsur Rehman	-do-	44	20.03.2014	-do-
02.	Aqal Mand	Swat Forest Division	42	11.11.2014	Transferred from Kalam Forest Division.
03.	Jehangir	-do-	47	24.04.2016	-do-

DISCUSSION, Being aggrieved from the above seniority position, they preferred Departmental appeals to the undersigned (being appellant authority) thereby requested for grant of relief (seniority) from the date of their initial appointment as referred above. The comments offered by DFO Swat on all these appeals reveal that their seniority have been fixed from the date of their posting and arrival in Swat Forest Division as per part-II section-8 sub section-(2) of Appointment Promotion and Transfer (APT) rules 1989. The relevant record i.e Service Books etc reveal that these Forest Guards were appointed before 30.03.1989 and they have availed all financial benefit of regular service as per Finance Department N.W.F.P (now Khyber Pakhtunkhwa) Peshawar letter No. SOSR-III(FD)4-141/98 dated 11.07.1998, which reveals that the project employees who were recruited/appointed before 30.03.1989, will be eligible pensionary benefits as regular employees.

TRUE COPY



(65)

As far as posting/transfer of said Forest Guards from one Division to other Division is concerned, such posting/transfer were made on Administrative grounds and not on their request. Hence their seniority fixed in Swat Forest Division from the date of their arrival is not justified.


ORDER, From the above discussions, it is clear that these Forest Guards are entitled seniority from the date of their initial appointment as per rules 7 sub rules 3 and 4 of APT Rules 1989. DFO Swat is therefore directed to fix the seniority of the above Forest Guards from the date of their initial appointment i.e, 22.02.1988, 03.03.1988 and 23.04.1988.

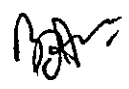
Sd/-
(GOHAR ALI)
CONSERVATOR OF FORESTS,
MALAKAND EAST FOREST CIRCLE,
SAIDU SHARIF SWAT.

No. 10912-14 /E,

Copy forwarded to the:-

1. Divisional Forest Officer Lower Swat Forest Division, Mingora for information and necessary action with reference to his letter Nos. cited above.
2. Divisional Forest Officer Upper Swat Forest Division, Matta for information and necessary action.
3. Officials concerned C/O Divisional Forest Officers Lower/Upper Swat Forest Divisions, Mingora, for information and necessary action with reference to their appeal dated cited above.


CONSERVATOR OF FORESTS,
MALAKAND EAST FOREST CIRCLE,
SAIDU SHARIF SWAT.





ANNEXURE

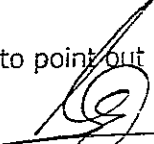
(6)

SENIORITY LIST OF FOREST GUARDS OF DEMARCATION FOREST DIVISION SWAT AS IT STOOD ON 31/07/2022.

SNo	Name of Forest Guard	Academic qualification	Date of birth	Domicile	Trained/un trained	Date of 1st entry into Govt. service	Joined Demarcation Forest Division.	Remarks.
1.	Mr. Alam Zeb	FA	01//04/1967	Swat	Un trained	04/11/1989	09/5/2014	Transfer from Alpuri Forest Division.
2.	Mr. Bakht Amin	FA	10/6/ 1971	Swat	Trained	28/12/1990	30/12/2020	Transfer from Swat Forest Division.
3.	Mr. Mohammad Ibrahim	FA	12/04/1974	Swat	Trained	04/02/1993 23/08/2016	18/10/2017	Transferred from Kalam Forest Divn
4.	Mr. Amjad Ali	Matric	03/07/1967	Swat	Un trained	26/11/2011	26/11/2011	
5.	Mr Abdullah Shah	FA	30/12/1998	Malakand	Trained	05/08/2019	05/08/2019	Parent Division & not completed 5 years service.
6.	Abbas Khan	B.Tech.in Civil Engineering	20/3/1993	Swat	Under training	24/10/2019	24/10/2019	Parent Division & not completed 5 years service.
7.	Mohammad Naeem	BS Forestry	05/12/1997	Swat	NA	01/10/2019	07/04/2022	-do-.Also not completed 5 years service.

No. 357/G, dated Mingora the 30/8/2022.

Copy forwarded to all concerned for their information and to point out any error omission for rectification.


 DIVISIONAL FOREST OFFICER
 DEMARCATION FOREST DIVISION
 MINGORA SWAT

