

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 15579/2020

BEFORE: MRS. ROZINA REHMAN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Asghar Khan, Forester (BPS-10) Lower Kohistan Forest Division,
Pattan. (Appellant)

Versus

1. The Secretary Forestry, Environment & Wildlife Department,
Khyber Pakhtunkhwa, Peshawar.
2. The Chief Conservator of Forests Central Southern Forest Region-I,
Khyber Pakhtunkhwa, Peshawar.
3. The Conservator of Forests Upper Hazara Forest Circle, Mansehra.
4. The Divisional Forest Officer, Lower Kohistan Forest Division,
Pattan. (Respondents)

Mr. Taimur Ali Khan,
Advocate ... For appellant

Mr. Naseerud Din Shah,
Assistant Advocate General ... For respondents

Date of Institution..... 24.11.2020
Date of Hearing..... 06.02.2023
Date of Decision..... 06.02.2023

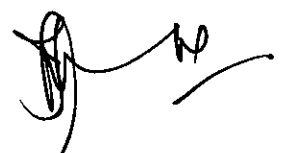
JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected Service Appeal No. 15877/2020, titled "Umar Khan Forest Guard (BPS-08) Upper Kohistan Forest Division, Dasso Versus the Secretary, Forestry, Environment & Wildlife Department, Khyber Pakhtunkhwa, Peshawar and others" as common questions of law and facts are involved in both the appeals.

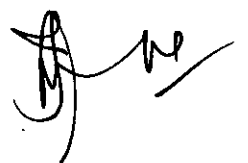


2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 to consider the appellant for promotion to the post of Deputy Ranger (BPS-12) with effect from 01.03.2017, when his juniors namely Altaf Qureshi and Zia-ud-Din were promoted to the post of Deputy Ranger (BPS-12) and for promotion to the post of Forest Ranger (BPS-16) with effect from 14.04.2020 when Altaf Qureshi was further promoted to the post of Forest Ranger (BPS-16) and against not taking action on the departmental appeal of the appellant within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the respondents might be directed to consider the appellant for promotion to the post of Deputy Ranger (BPS12) with effect from 01.03.2017, when his junior Altaf Qureshi and Zia-ud-Din were promoted and for promotion to the post of Forest Ranger (BPS-16) with effect from 14.04.2020, when Altaf Qureshi was further promoted to the post of Ranger (BPS-16), with all back and consequential benefits alongwith any other remedy which this Tribunal deems fit and appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was working on the post of Forester (BPS-10) in the respondent department and was performing his duty up to the entire satisfaction of his superiors and no complaint had been filed against him. The appellant was at Serial No. 5 of the seniority list of Foresters issued on 31.12.2013, while Altaf Qureshi & Zia-ud-Din were at serial No. 6 & 7



respectively in that seniority list. As per promotion rules, the post of Deputy Ranger (BPS-12) would be filled 75% by promotion on the basis of seniority-cum-fitness from amongst the Foresters (BPS-10) having five years service and the post of Forest Ranger (BPS-16) would be filled one-third by promotion on the basis of seniority-cum-fitness from amongst holders of the post of Deputy Forest Ranger (BPS-12). While serving in the said capacity, the appellant was served with a charge sheet. No proper and regular inquiry was conducted against him to dig out the reality about those baseless allegations and on the basis of that irregular inquiry, he was compulsory retired from service vide order dated 30.06.2016 which was challenged by the appellant in the Service Tribunal in Service Appeal No. 1247/2016. During the pendency of service appeal of the appellant, respondent No. 3 passed an order dated 01.03.2017, whereby juniors to the appellant namely Altaf Qureshi and Zia-Ud-Din were promoted to the post of Deputy Ranger (BPS-12). The Service Appeal No. 1247/2016 of the appellant was finally decided alongwith other connected appeals on 17.12.2018. The Tribunal set aside the impugned order of compulsory retirement of the appellant and reinstated him into service and directed the respondents to conduct de-novo inquiry, strictly in accordance with law and rules within a period of 90 days from the receipt of the judgment. CP No. 170-P/2019 filed by the respondent department against the judgment dated 17.12.2018 was also dismissed by the Apex Court on 25.07.2019. The respondent department did not reinstate the appellant in service as per judgment dated 17.12.2018, therefore, he filed Execution Petition No.



174/2019 in the Service Tribunal during the pendency of which, an order dated 24.10.2019 was passed, whereby the notification dated 30.06.2016 was withdrawn and the appellant was reinstated in service with immediate effect. The reinstatement order further stated that the issue of back benefits would be decided after the outcome of denovo inquiry. In the meantime, junior to the appellant, namely Altaf Qureshi, was further promoted from the post of Deputy Ranger (BPS-12) to the post of Forest Ranger (BPS-16) vide order dated 14.04.2020. Denovo inquiry was conducted against the appellant alongwith other officials in which charges of corruption were not proved against the officials, but despite that, minor punishment of stoppage of two annual increments for the period of two years was imposed upon the appellant, alongwith other officials, and the intervening period with effect from 01.07.2016 to 23.10.2019 was treated as leave on half pay vide order dated 24.07.2020. Feeling aggrieved, the appellant filed departmental appeal on 07.08.2020 for promotion to the post of Deputy Ranger (BPS-12) w.c.f. 17.03.2018 and Forest Ranger (BPS-16) w.c.f 14.04.2020 which was not responded within the statutory period of ninety days; hence the instant service appeal.

5. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.



6. Learned counsel for the appellant, after presenting the case in detail, contended that not taking action on the departmental appeal of the appellant within the statutory period of ninety days and not promoting him to the post of Deputy Ranger (BPS-12) w.e.f. 13.03.2018 and Forest Ranger (BPS-16) w.e.f. 14.04.2020 were against the law and rules. He further contended that the appellant was reinstated in service from the date of compulsory retirement i.e. 30.06.2016 meaning thereby that the appellant was on the same position as before the order of penalty and it was his legal right to be promoted to the post of Deputy Ranger (BPS-12) and Forest Ranger (BPS-16) from the dates when his juniors were promoted. He further contended that the allegations of corruption on which the appellant was compulsory retired from service were not proved in the denovo inquiry. The appellant was at Serial No. 5 of the seniority list of 2013, while the officials who were promoted were at serial No. 6 & 7 respectively in the seniority list. He further contended that as per Superior Courts' judgments when an official was dismissed/removed or compulsory retired from service and reinstated into service after the allegations were not proved against him in the inquiry, then such official was entitled for all back benefits, including promotion, because absence of the official during dismissal/removal or compulsory retirement was not voluntary on his part but it was due to the order of his high ups which restrained him from attending his job/duty and as such the appellant was entitled for legal right of promotions from the dates when his juniors were promoted. He requested that the appeal might be accepted as prayed.



7. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, contended that while the appellant was serving in Harban Forest Sub-Division during 2013 there was an incident of theft of 18000 Cft precious species of deodar within his administrative jurisdiction. As a result of departmental inquiry initiated under the provisions of Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, the appellant was compulsorily retired from service vide notification dated 30.06.2016 which was subsequently challenged before the Tribunal through Service Appeal No. 1247/2016. Since the appellant was not in service during the year 2017, therefore, the mentioned senior most Foresters having satisfactory record and those fulfilling other pre-requisites/criteria were promoted to the rank of Deputy Ranger (BPS-12) by respondent No. 3 on 01.03.2017 which was quite correct and justified under the provisions contained in Promotion Policy 2009 promulgated by the Government of Khyber Pakhtunkhwa. The appellant was reinstated in service vide notification dated 24.10.2019 after receipt of the decision of Apex Court dated 25.07.2019 and completion of other codal formalities. He further contended that though the charge of corruption was not established against the appellant but the charge of inefficiency was proved against him by the denovo inquiry committee on the basis of which minor punishment was awarded to him vide order dated 27.07.2020, treating the intervening period as half pay under the provisions contained in Khyber Pakhtunkhwa Leave Rules 1981, as admitted by the appellant. He further contended that the



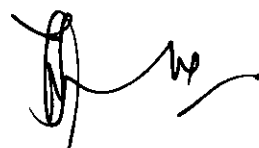
appellant had been promoted to the rank of Deputy Ranger on the recommendation of DPC vide office order dated 25.01.2021. His seniority in the cadre of Deputy Ranger had been restored vide Conservator of Forests, Upper Hazara Forest Circle Mansehra office order dated 05.04.2021. He had subsequently been promoted to the rank of Forest Ranger (BPS-16) on the recommendation of Departmental Promotion Committee by respondent No. 2 vide office order dated 02.02.2022. So far as his stance regarding promotion to the rank of Deputy Ranger (BPS-12) with effect from 17.03.2018 and then as Forest Ranger (BPS-16) with effect from 14.04.2017 was concerned, admittedly he was not in service on 17.03.2018 when his juniors were promoted to the rank of Deputy Ranger while he was Forester (BPS-10). He invited the attention to Para-VI of the Promotion Policy 2009 promulgated by the Provincial Government which stated that promotion would always be notified with immediate effect and hence his request for promotion from retrospective dates was contrary to the rules and policy, therefore not entertainable. He requested that the appeal might be dismissed.

8. From the record and arguments presented before us, it transpires that the appellant while working as Forester in the Forest Department was proceeded against departmentally on certain allegations and was awarded the penalty of compulsory retirement. His service appeal No. 1247/2016 before this Tribunal was decided on 17.12.2018 whereby the order of compulsory retirement was set aside, he was reinstated in service and the respondents were directed to conduct de-novo inquiry. Issue of back benefits was subject



to the outcome of denovo inquiry. The denovo inquiry was conducted in which no charges could be proved against the appellant, but still he was awarded penalty of stoppage of two annual increments, falling due on 01.12.2020 and 01.12.2021, for a period of two years, alongwith treating the period he remained out of service as leave on half pay, by the DFO Upper Kohistan vide his order dated 24.07.2020. During the hearing, learned counsel for the appellant produced a copy of an order dated 11.12.2020 of the Conservator Forests, Upper Hazara Forests Circle, Manshra which indicates that a departmental appeal was submitted to him by the appellant against the order dated 24.07.2020 of DFO, Upper Kohistan. The Conservator Forests, Manshra has termed the penalty imposed on the appellant as "hypothetical and arbitrary in nature", and states that he cannot support the punishment awarded to the accused which is purely against the norms of justice and therefore he accepted the appeal in favour of the appellant.

9. During the pendency of Service Appeal No. 1247/2016, respondents promoted Altaf Qureshi and Zia-ud-Din, who were junior to the appellant, to the post of Deputy Ranger (BS-12) on 01.03.2017 and later on 14.04.2020, Altaf Qureshi was further promoted to the post of Forest Ranger (BS-16). The present appeal is for considering the appellant for promotion to Deputy Ranger and Forest Ranger from the dates when his juniors were promoted. Record is clear about the reinstatement of appellant for denovo inquiry,



converting his compulsory retirement to minor punishment and later on setting aside the order of minor punishment also.

10. In view of all the above mentioned facts, there is no second opinion that when all the penalties, major and minor, have been set aside and the appellant has been reinstated from the date he was compulsory retired from his service, he is entitled to all the service benefits to which he was entitled had he not been compulsory retired. The order dated 11.12.2020 of the Conservator of Forests, Manshra clearly indicates that the appellant was compulsory retired from service for a fault that was not committed by him, a fact that was proved with evidence in the denovo inquiry, and to which his appellate authority agreed and set aside all the penalties. This Tribunal in its various judgments has declared such reinstatements effective with all back benefits, which inter-alia include seniority also, and when seniority of any officer/official is restored from any back date, he is entitled to promotions also, with effect from that date.

11. In view of the above discussion, the appeal in hand, as well as connected appeal mentioned above, is allowed as prayed for. Parties are left to bear their own costs. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 06th day of February, 2023.*


(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)