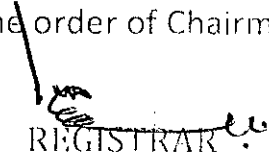


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 264/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.04.2023	<p>The execution petition of Mr. Asghar Khan submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

8

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Execution petition No. 264 /2023
In Service Appeal No.15579/2020

Asghar Khan

V/S

Forest Department

RESPECTFULLY SHEWETH:

1. That the petitioner has filed the instant execution petition for implementation of judgment dated 06.02.2023 of this Honorable Tribunal which was allowed by the Honorable Tribunal at Principal seat at Peshawar.
2. That the appellant engaged counsel which belong to Peshawar and the appellant also wants to pursue his execution Petition at principal Seat at Peshawar.
3. That it will be convenient for appellant as well as counsel for the appellant if the instant execution petition fix in the Principal Seat at Peshawar.

It is therefore most humbly prayed that on acceptance of this application, the instant execution petition may kindly may be fixed at Principal Seat at Peshawar.

APPELLANT

THROUGH:


**TAIMUR ALI KHAN
ADVOCATE HIGH COURT**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 264 /2023
In Service Appeal No. 15579/2020

Asghar Khan

V/S

Forest Department

INDEX

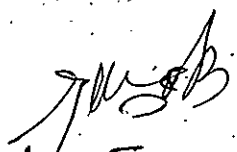
S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	-----	1-3
2	Copy of memo of appeal	A	4-8
3	Copies of order dated 05.04.2021 and 02.02.2022	B&C	9-10-12
4	Copy of judgment	D	13-22
5	Vakalat Nama	-----	23

THROUGH:

APPELLANT


TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

Cell# 0333-9390916


Shaukatullah Torani
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Execution petition No. 264 /2023
In Service Appeal No.15579/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4983

Dated 26/4/2023

Asghar Khan, Retired Forest Ranger (BPS-16),
Lower Kohistan Forest Division, Pattan.

PETITIONER

VERSUS

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

RESPONDENTS

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 06.02.2023 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

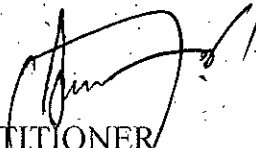
RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No.15579/2020 in this Honorable Tribunal with the prayer that the respondents may kindly directed to consider to consider the petitioner for promotion to the post of Deputy Ranger (BPS-12) w.e.f 01.03.2017, when his junior namely Altaf Qureshi and Zia-Ud-Din were promoted and for promotion to the post of Forest Ranger (BPS-16) w.e.f 14.04.2020, when Altaf Qureshi was further promoted to the post of Forest Ranger (BPS-16) with all back and

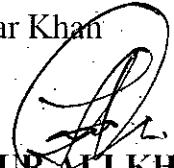

- consequential benefits. **(Copy of memo of appeal is attached as Annexure-A)**
2. That during the pendency of the service appeal of the petitioner, the petitioner was promoted to the post Deputy Ranger (BPS-12) on regular with effect from 01.03.2017 i.e the date the next juniors were promoted as Deputy ranger vide order dated 05.04.2021, however the intervening period i.e from 01.03.2017 to 05.01.2021 was count toward increment under FR-26, but without arrears and was further promoted to the post of Forest Ranger (BPs-16) along with other officials on regular basis, but immediate effect vide order dated 02.02.2022. **(Copies of order dated 05.04.2021 and 02.02.2022 are attached as Annexure-B&C)**
 3. That as the petitioner was promoted to the post of Deputy Ranger (BPS-12) w.e.f 01.03.2017 on 05.04.2021, but without arrears w.e.f 01.03.2017 to 05.04.2021 and was further promoted to the post of Forest Ranger (BPS-16) on 02.02.2022, but immediate effect and the petitioner in his service appeal prayed that respondents may kindly directed to consider to consider the petitioner for promotion to the post of Deputy Ranger (BPS-12) w.e.f 01.03.2017, when his junior namely Altaf Qureshi and Zia-Ud-Din were promoted and for promotion to the post of Forest Ranger (BPS-16) w.e.f 14.04.2020, when Altaf Qureshi was further promoted to the post of Forest Ranger (BPS-16) with all back and consequential benefits, therefore, he proceed his service appeal which heard and decided by this Honorable Tribunal on 06.02.2023, which was allowed as prayed for. **(Copy of judgment is attached as Annexure-D)**
 4. That the Honorable Tribunal accepted the appeal of the petitioner as prayed for, therefore as per judgment dated 06.02.2023, the petitioner is entitle of arrears of the post of Deputy Ranger (BPS-12) w.e.f 01.03.2017 to 05.01.2021 for 25.01.2022 and also entitle for promotion to the post of Forest ranger (BPS-16) w.e.f 14.04.2020.
 5. That the in-action and not fulfilling the formal requirements by the respondents after passing the judgment of this honorable Service Tribunal, is totally illegal, amount to disobedience and contempt of Court.
 6. That the judgment is still in filed 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 06.02.2023 of this Honorable Tribunal in letter and spirit.

7. That the petitioner having no other remedy except to file this execution petition for full implementation of judgment dated 06.02.2023 of this Honorable Tribunal.

It is therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 06.02.2023 of this Honorable Service Tribunal in letter and spirit. Any other remedy, which this Honorable Tribunal deems fit and appropriate that, may also be awarded in favour of the petitioner.

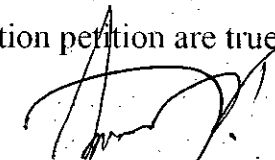

PETITIONER
Asghar Khan

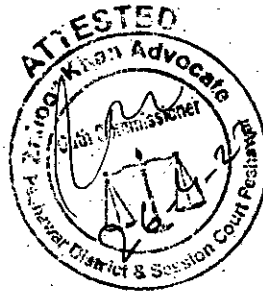
THROUGH:


TAIMUR ALI KHAN
ADVOCATE HIGH COURT
&
SHAKIR ULLAH TORANI
ADVOCATE 

AFFIDAVIT

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


DEPONENT



(A) (4)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 15579 /2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15523

Dated 24/11/2020

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)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS 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 WITHIN THE STATUTORY PERIOD NINETY-DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY KINDLY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF DEPUTY RANGER (BPS-12) WITH EFFECT FROM 01.03.2017, WHEN HIS JUNIOR NAMELY ALTAF QURESHI

Filed to-day
Registrar
24/11/2020

Re-submitted to-day
and filed.

Registrar
24/11/2020

5

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. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is working on the post of Forster (BPS-10) in the respondents department and is performing his duty up to the entire satisfaction of his superiors and no complaint has been filed against him. The appellant was at serial No.5 of the seniority list of the forester issued on 31.12.2013, while Altaf Qureshi & Zia Ud Din were at serial No.6&7 respectively in that seniority list and as promotion rule, the post Deputy Ranger (BPS-12) will be filled by 75% by promotion on the basis of seniority-cum-fitness from amongst Forester (BPS-10) having five years service and the post of Forest Ranger (BPS16) will be filled by one-third by promotion on the basis of seniority-cum-fitness from amongst holders of posts of Deputy Forest Ranger (BPS-12). (Copies of seniority list & rules are attached as Annexure-A&B)
2. That the appellant while serving in the said capacity, charge sheet was issued to him on some baseless allegations and no proper and regular inquiry was conducted against the appellant to dig out the realty about those baseless allegations and on the basis of that irregular inquiry, the appellant was compulsory retired from service vide order dated 30.06.2016 which was challenged by the appellant in this august service Tribunal in Service appeal No.1247/2016. (Copy of order dated 30.06.2016 are attached as Annexure-C)
3. That 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). (Copy of order dated 01.03.2017 is attached as Annexure-D)

(6)

4. That service appeal No.1247/2016 of the appellant was finally decided along with other connected appeals on 17.12.2018. The Honourable was kind enough to 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 the period of 90 days from the receipt of the judgment and 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. (Copies of judgment dated 17.12.2018 and 25.07.2019 are attached as Annexure-F&F)

5. That the respondent department did not reinstated into service as per judgment dated 17.12.2018, therefore he filed execution petition No.174/2019 in this august Service Tribunal which still pending before this august Tribunal and during the pendency of execution petition, an order dated 24.10.2019 was passed, whereby the notification dated 30.06.2016 has withdrawn with immediate effect and the appellant was reinstated into service with immediate and the issue of back benefits will be decided after the outcome of de-novo inquiry. (Copy of notification dated 24.10.2019 is attached as Annexure-G)

6. That junior to the appellant namely Altaf Qureshi was further promoted from the post Deputy Ranger (BPS-12) to the post of Forest Ranger (BPS-16) vide order dated 14.04.2020. (Copy of Order dated 14.04.2020 is attached as Annexure-H)

7. That de-novo inquiry was conducted against the appellant along with other officials in which charge of corruption were not proved against the officials, but despite that minor punishment of stoppage of two annual for the period of two years has been imposed upon the appellant along other officials and his intervening period with effect from 01.07.2016 to 23.10.2019 was treated leave on half pay vide order dated 24.07.2020 (Copies of inquiry report and order dated 24.07.2020 are attached as Annexure-I&J)

8. That no charge of corruption has been established against the appellant in denovo inquiry and the appellant was reinstated into service from the date of compulsory retirement i.e 30.06.2016 and juniors to him were promoted to the post of Deputy Ranger (BPs-12) and Ranger (BPS-16), therefore he filed departmental appeal on 07.08.2020 for promotion to the post Deputy Ranger (BPS-12) w.e.f

*ep appeal to
Conservator
Forest
order
11-12-2020*

7

17.03.2018 and Forest Ranger (BPS-16) w.e.f 14.04.2020 which was not responded within the statutory of 90 days. (Copy of departmental appeal is attached as Annexure-K)

9. That the appellant has no other remedy for redressal of his grievance, but except to file the instant appeal on the following grounds amongst others.

GROUND:

- A) That not taking action on the departmental appeal of the appellant within the statutory period of ninety days and not promoting the appellant to the post of Deputy Ranger (BPS-12) w.e.f 17.03.2018 and Forest Ranger (BPS-16) w.e.f 14.04.2020 are against the law, promotion rules, material on record and principle of natural justice and fair play.
- B) That the appellant was reinstated into service from the date of compulsory retirement i.e 30.06.2016 meaning by that the appellant was on the same position as before penalty order and it is his legal right to be promoted to the post of Deputy Ranger (BPS-12) and Forest Ranger (BPS-16) from the date, when his juniors were promoted.
- C) That the allegation of corruption on which the appellant was compulsory retired from service has not proved in the denovo inquiry which shows that the appellant was remained out of service for the fault of the others and as such the appellant could not be deprived from his legal right of promotions on the fault of others.
- D) That the appellant was at serial No.5 of the seniority list of 2013, while the officials who were promoted to Deputy Ranger (BPS-12) and Forest Ranger (BPS-16) were at serial No.6&7 respectively in that seniority list and which shows that the officials who were promoted were juniors to the appellant and if the appellant was not compulsory retired from service for the fault of the others he would be promoted along with his juniors.
- E) That as per Superior Courts judgments when a official person was dismissed/removed or compulsory retired from service and reinstated into service after not proving allegations against by the inquiry, then such official is entitle 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 is entitle for legal right of promotions from the date when his juniors were promoted.

- (8)
- F) That the appellant was reinstated for the purpose of denovo inquiry on 24.10.2019 and after denovo inquiry the respondent department passed an order dated 24.07.2020 wherein intervening period of compulsory retirement from service i.e 30.06.2016 till his reinstatement i.e 24.10.2019 was treated on as leave on half pay which show that there is no break in the service of the appellant and the appellant is fully entitle for promotions from the date when his juniors were promoted. ✓
- G) That although allegations were not proved on the appellant during inquiry proceeding, but despite that minor punishment of stoppage on two annual increments were imposed upon the appellant, however minor punishment cannot be made hurdle in the way of promotion as per superior court judgments and such as the appellant cannot be deprived from his promotions on this ground.
- H) That depriving the appellant from his legal right of promotions from the date when some juniors to him were promoted will suffer a lot the appellant, both in promotion chances as well as monetary benefits in the shape of pension and gratuities.
- I) That the appellant has not been treated according to law and rules and has been kept deprived from his genuine right of promotion to the post of Deputy ranger (BPS-12) w.e.f 17.03.2018 and Forest Ranger (BPS-16) w.e.f 14.04.2020 by the respondents in an arbitrary manner.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT
Asghar Khan

THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,

(ASAD MAHMOOD)
ADVOCATE PESHAWAR

&

(ABDUL WAHID)
ADVOCAT

B (9)

OFFICE ORDER NO. 64 DATED MANSEHRA THE 05 /04/2021 ISSUED BY
KIFAYAT ULLAH BALOCH, CONSERVATOR OF FORESTS, UPPER HAZARA FOREST CIRCLE
MANSEHRA

In pursuance with the directives of Chief Conservator of Forests, Central Southern Region-I Peshawar contained in letter No. 2306/E dated 26.10.2020 received vide Chief Conservator of Forests, Northern Forest Region-II Abbottabad letter No. 3714/GB dated 9.11.2020 and No. 4555/E dated 8.3.2021 received vide Chief Conservator of Forests, Northern Forest Region-II Abbottabad letter No. 7176/E dated 19.3.2021 on the appeal of Muhammad Asghar the then Forester dated 7.8.2020 and in terms of Para-V(d) of Promotion Policy, 2009 read with sub-section (4) of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act 1973, the inter-se-seniority of Mr. Muhammad Asghar Deputy Ranger is hereby restored on regular basis with effect from 01.03.2017 i.e the date his next juniors were promoted as Deputy Rangers on regular basis vide Conservator of Forests, Upper Hazara Forest Circle office order No. 24 dated 1.3.2017.

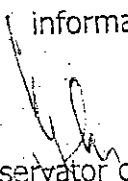
The intervening period i.e from 1.3.2017 to 5.01.2021 would count towards increment under FR-26(c) but without arrear.

Sd/- (Kifayat Ullah Baloch)
Conservator of Forests
Upper Hazara Forest Circle
Mansehra

Memo:

Copy forwarded to:

1. The Chief Conservator of Forests, Central Southern Forest Region-I Peshawar for favor of information.
2. The Chief Conservator of Forests, Northern Forest Region-II Abbottabad for favor of information. This is with reference to his office letter No. 7176/E dated 19.3.2021.
3. The DFO Lower Kohistan at Pattan for information.
4. Mr. Muhammad Asghar Deputy Ranger C/o DFO Lower Kohistan at Pattan for information.


Conservator of Forests
Upper Hazara Forest Circle
Mansehra

C
10

OFFICE ORDER NO. 143 DATED PESHAWAR THE 02/02/2022
ISSUED BY MR. EJAZ QADIR, CHIEF CONSERVATOR OF FORESTS CENTRAL
SOUTHERN FOREST REGION-I, KHYBER PAKHTUNKHWA PESHAWAR

On the recommendations of Departmental Promotion Committee (DPC), the following Deputy Rangers (BPS-12) are hereby promoted to the post of Forest Rangers (BPS-16) on regular basis, with immediate effect:-

1. Muhammad Riasat
2. Muhammad Asghar
3. Mr. Khurshid Khan
4. Muhammad Asad ✓
5. Mr. Aurangzeb
6. Mr. Umar Farooq
7. Mr. Javed-ur-Rahman
8. Muhammad Ali Hilal
9. Muhammad Anwar
10. Muhammad Ghayoor
11. Mr. Shoukat Hussain
12. Mr. Ishfaq Ahmad
13. Mr. Baqir Hussain

This order is purely temporary and will not constitute any right for continuity in case of abolition of the post. In such an eventuality they will automatically stand reverted to original post without any notice.

They will remain on probation for a period of one year extendable for another one year in terms of Section-6 (2) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, read with Rules 15 (1) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989.

On their promotion the following postings /transfers are hereby ordered in the interest of public service with immediate effect:-

S.No	Name	From	To
1.	Muhammad Riasat	On promotion	The Forest Ranger is allowed to actualize his promotion against the post of Ghari Watershed Range of Kunhar Watershed Division for one day and there after he will continue on Abbottabad Watershed Sub-Division of Daur Watershed Division.
2.	Muhammad Asghar	--do--	The Forest Ranger is allowed to actualize his promotion against the post of Gidarpur Range of Agror Tanawal Forest Division for one day and there after he will continue on Pattan Forest Sub-Division of Lower Kohistan Forest Division.
3.	Khurshid Khan	--do--	The Forest Ranger is allowed to actualize his promotion against the post of Kandari Range of Torghar Forest Division for one day and there after he will continue on

			Haripur Forest Sub-Division Haripur Forest Division.
4.	Muhammad Asad	--do--	The Forest Ranger is allowed to actualize his promotion against the post of Darora Range of Upper Dir Forest Division for one day and there after he will continue as SDFO Litigation of Upper Dir Forest Division.
5.	Mr. Aurangzeb	--do--	The Forest Ranger is allowed to actualize his promotion against the post of Rustam Range of Mardan Forest Division for one day and there after he will continue on Mardan Forest Sub-Division of Mardan Forest Division.
6.	Umar Farooq	--do--	The Forest Ranger is allowed to actualize his promotion against the post of Kulachi Range of D.I.Khan Forest Division for one day and there after he will continue on Nizampur Forest Sub-Division of Peshawar Forest Division.
7.	Javed-ur-Rahman	--do--	Working Plan Unit-III Peshawar
8.	Muhammad Ali Hilal	--do--	To continue on FR Kohat Range of Orakzai Forest Division
9.	Muhammad Anwar	--do--	The Forest Ranger is allowed to actualize his promotion against the post of Garhi Range of Kaghan Forest Division for one day and there after he will continue on Komila Forest Sub-Division of Upper Kohistan Forest Division.
10	Muhammad Ghayoor	--do--	Lower Kurram Range of Kurram Forest Division.
11.	Mr. Shoukat Hussain	--do--	Nawagai Range of Bajaur Forest Division
12	Mr. Ishfaq Ahmad	--do--	To continue as RFO Working Plan Unit-VI Mingora Swat
13	Mr. Baqir Hussain	--do--	The Forest Ranger is allowed to actualize his promotion against the post of Kohistan Range of Kohistan Watershed Division for one day and there after he will continue on Shergarh Watershed Sub-Division of Unhar Watershed Division.
14	Mr. Shabir Ahmad Forest Ranger	Lower Kurram Range of Kurram Forest Division.	Utror Range of Kalam Forest Division

Sd/-
(Ejaz Qadir)

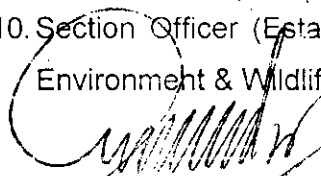
Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar

C.O. J. 4 (11/11)

No. 3919—28/E. B-X-III

Copy forwarded for information and necessary action to the:-

1. Chief Conservator of Forests Northern Forest Region-II Abbottabad.
2. Chief Conservator of Forests Malakand Forest Region-III Saidu Sharif Swat.
3. Conservator of Forests Watershed Circle Abbottabad.
4. Conservator of Forests Malakand East Forest Circle Saidu Sharif Swat.
5. Conservator of Forests Malakand West Forest Circle Timergara.
6. Conservator of Forests Forestry Planning & Monitoring Circle Peshawar
7. Conservator of Forests Southern Circle Peshawar.
8. Conservator of Forests Newly Merged Areas Forest Circle Peshawar.
9. Budget & Accounts Officer, Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department Peshawar.
10. Section Officer (Establishment) Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department Peshawar.


 Chief Conservator of Forests
 Central Southern Forest Region-I
 Khyber Pakhtunkhwa Peshawar

B

B

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, Manshra.
4. The Divisional Forest Officer, Lower Kohistan Forest Division,
Pattan. (Respondents)

Mr. Faimur 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, Dassu 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.

SCANNED
KPSST
Peshawar

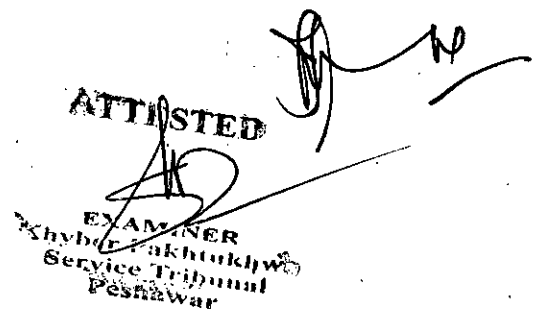
TESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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.

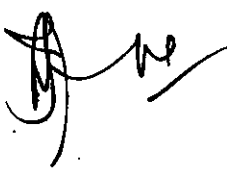
3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was working on the post of Forester (BPS-10) in the respondent department and was performing his duty up to the entire satisfaction of his superiors and no complaint had been filed against him. The appellant was 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

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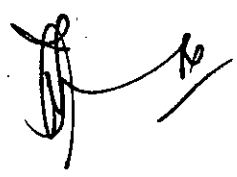
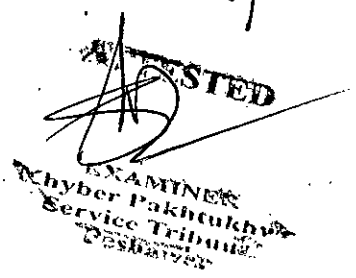
respectively in that seniority list. As per promotion rules, the post of Deputy Ranger (BPS-12) would be filled 75% by promotion on the basis of seniority-cum-fitness from amongst the Foresters (BPS-10) having five years service and the post of Forest Ranger (BPS-16) would be filled one-third by promotion 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.

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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.e.f. 17.03.2018 and Forest Ranger (BPS-16) w.e.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.

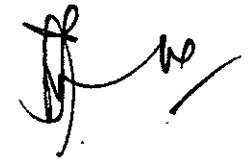
6. Learned counsel for the appellant, after presenting the case in detail, contended that not taking action on the departmental appeal of the appellant within the statutory period of ninety days and not promoting him to the post of Deputy Ranger (BPS-12) w.e.f. 13.03.2018 and Forest Ranger (BPS-16) w.e.f. 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.

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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


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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

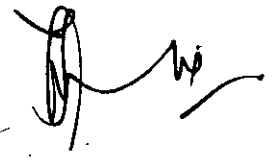
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to the outcome of denovo inquiry. The denovo inquiry was conducted in which no charges could be proved against the appellant, but still he was awarded penalty of stoppage of two annual increments, falling due on 01.12.2020 and 01.12.2021, for a period 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, Mansehra 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, Mansehra 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,

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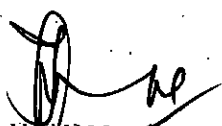
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converting his compulsory retirement to minor punishment and later on setting aside the order of minor punishment also.

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, Mansehra 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.

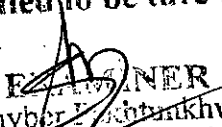
11. In view of the above discussion, the appeal in hand, as well as connected appeal mentioned above, is allowed as prayed for. Parties are left to bear their own costs. Consign.

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


(FARIHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)

Certified to be true copy


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بعثت

K.P. سروس ٹریبونل پشاور

۱. افسر خان سے 2۰ منجانب
۲. افسر خان بنام جنگلات

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام پشاور کیلئے تیسرے علی خان، اسٹاکہ اللہ لہاری

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کال اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے
سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے
کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم

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ماہ

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