

SCANNED
KPST
Peshawar

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 738/2019

Execution Petition No. _____/2021

Service Appeal No. 738 & 739/2019.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7160

Dated 24/8/2023

Muhammad Junaid,

Forest Guard, BPS-08, Buner Forest Division, Chamlla Range.

Miraj Khan

Forest Guard, BPS-08, Buner Forest Division

..... APPELLANTS

VERSUS

1. Govt of KPK through Secretary Forestry, Environment & Wildlife Department, Peshawar.
2. Chief Conservator of Forests, Malakand Forest Region-III, Saidu Sharif Swat.
3. Divisional Forest Officer. Buner Forest Division, Daggar, Buner.

..... RESPONDENTS

EXECUTION PETITION FOR IMPLEMENTATION OF THE ORDER
DATED 24.11.2021 IN SERVICE APPEAL NO. 738/2019-

REFERENCE

Order sheet dated: 15.08.2023 in the Service Appeal bearing No. 738 & 739/2019

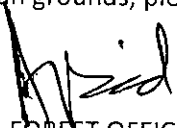
IMPLEMENTATION REPORT

Respectfully Sheweth,

Submitted with due reverence that in compliance with the Hon'ble Khyber Pakhtunkhwa Service Tribunal decision dated 24.11.2021 wherein, it was decided that the appellants are held entitled to promotion with all back benefits and with direction to the respondents to promote the appellants from the date, their juniors were promoted (Copy of the decision attached as Annexure-A), the DFO Buner (Respondent No. 2) ensured implementation of the decision with immediate effect.

- I. Promotion to the rank of Forester was granted to the appellants vide DFO Buner Office Order No. 41 dated 22-04-2022 (**Annexure-B**).
- II. One appellant (Muhammad Junaid) has been placed on his due position at Serial No. 05 of the seniority list of foresters in respect of Buner Forest Division vide DFO Buner office letter No. 729/G dated 06-08-2023 (**Annexure-C**).
- III. Whereas, the other appellant Mr. Miraj Khan has already been retired vide DFO Buner office order No.47, dated 09-05-2022 (**Annexure D**) and as such does not require to be placed in the seniority list of foresters.
- IV. Furthermore, financial Back benefits were allowed to the appellants vide DFO Buner office order No. 12, dated 22.09.2022. However due to non-availability of fund in the relevant heads, payment could not be realized until 18.08.2023, Nevertheless, the concerned quarter was requested for the timely release of fund vide DFO Buner letter No. 1776/G dated: 22-09-2022 (**Annexure E**).
- V. Now subsequent upon the under reference order sheet payment to the appellants has been made vide Cheque No. 456194, dated: 18.08.2023 (**Annexure F**).

In the light of the above explanation, it is humbly submitted that the court decision has been fully implemented in its true spirit with the prayer that decision of attaching of Respondents No. 2 & 3 salaries to the District Account Officers Swat & Buner under relevant rules, may kindly be reversed on humanitarian grounds, please.


DIVISIONAL FOREST OFFICER
BUNER FOREST DIVN: DAGGAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 738/2019

Date of Institution ... 13.05.2019

Date of Decision ... 24.11.2021



Muhammad Junaid, Forest Guard, BPS-08 Buner Forest Division, Chamalla Range
 ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary, Forest Department,
 Peshawar and four others. ... (Respondents)

Attested
Attested

Asad Mehmood,
 Advocate

... For Appellant

Mr. Muhammad Adeel Butt,
 Additional Advocate General

... For official respondents No. 1 to 3

Irfan Ali Yousaf Zai,
 Advocate

... For private respondents No. 4 & 5

ROZINA REHMAN

... MEMBER (JUDICIAL)

ATIQ-UR-REHMAN WAZIR

... MEMBER (EXECUTIVE)

JUDGMENT**ATIQ-UR-REHMAN WAZIR MEMBER (E):-**

This single judgment shall dispose of the instant service appeal as well as connected service appeal bearing No. 739/2019 "titled Miraj Khan Versus Government of Khyber Pakhtunkhwa through Secretary, Forest Department, Peshawar and four others", as common question of law and facts are involved therein.

02.. Brief facts of the case are that the appellants were initially appointed as Forest Guard in Forest Department and put in more than 31 years service in the

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 BUNER FOREST DIVISION DAGGAR

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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 DIVISIONAL FOREST OFFICER
 BUNER FOREST DIVISION DAGGAR

same grade. As per seniority list, appellants were the senior most amongst their colleagues, but respondent No. 4 and 5 were promoted vide impugned order dated 11-01-2019 and the appellants were not considered for promotion being the senior most. Feeling aggrieved, the appellants filed departmental appeals dated 21-01-2019, which were not responded, hence the instant service appeals with prayers that the impugned orders may be set aside and the respondents may be directed to consider the appellants for promotion to the post of Forester being senior to respondents No. 4 and 5.

03. Learned counsel for the appellants has contended that consideration for promotion, being a vested right is protected/conferred on appellants under section-9(1) of Civil Servant Act, 1973, which cannot be refused or denied. Reliance was placed on 2010 SCMR 1301; that the appellants being eligible were not even considered for promotion, which is gross violation of law and rule; that the appellants being senior to respondents No. 4 and 5 and having more than 31 years service are preferably entitled to promotion against the post of Forester; that the required length of service is five years, whereas the appellants have more than 31 years service at their credit were not even considered for promotion; which is violation of promotion policy and rules.

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04. Learned Additional Advocate General for official respondents has contended that cases of the appellants were considered for promotion by departmental selection committee in its meeting held on 01-01-2019, but their cases were deferred on the grounds that the appellants were awarded major punishment by divisional forest officer vide order dated 31-01-2002, against which the appellants filed appeals to the appellate authority, which were decided by the appellate authority vide order dated 03-07-2002 and as per order, inter alia, the appellants were awarded with a punishment that they should not be considered for promotion during the remaining service period till their retirement; that the appellants challenged the order dated 03-07-2002 in this Tribunal, which

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was dismissed vide judgment dated 15-01-2004, however the appellants have not challenged such order in the Supreme Court; hence such order has gained finality and the appellants cannot be promoted to the next grade in the light of court decision; that departmental appeals of the appellants were rejected by conservator of forest vide order dated 23-11-2018; that the impugned orders dated 11-01-2019 are legal and in accordance with law; hence the appellants are not justified to challenge the promotion order of respondents No. 4 and 5.

05. Learned counsel for private respondents No. 4 & 5 has contended that the judgment of this tribunal dated 27-07-2002 had maintained the order dated 31-01-2002 through which the penalty of barring the appellants from further promotion till their retirement is still intact, as such the appellants have no cause of action. He contended that it is correct that the appellants are senior to the private respondents but mere seniority does not confer any right of promotion, as promotion is based on seniority cum fitness, whereas the appellants are otherwise not fit for promotion due to the penalty imposed upon them vide order dated 31-01-2002; that the appellants have already been declared ineligible for further promotion due to judgment of this Tribunal, hence the appellants were treated in accordance with law.

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06. We have heard learned counsel for the parties and have perused the record.

07. Record reveals that the appellants were proceeded against on the charges of negligence and were awarded with punishment of reduction in pay ten stages below time scale, against which the appellants filed appeals to the appellate authority and the appellate authority vide order dated 03-07-2002 modified the penalties and ten stages were reduced to six stages with cumulative effect with a censure to be vigilant in future. The appellants were further penalized for barring their promotion for their entire service until retirement and they were kept under observation for six months. The appellants filed service appeal No. 693/2002;

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Kerala Public Service Commission

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REGIONAL FOREST OFFICER
BY FOREST OFFICER

which was decided vide judgment dated 15-01-2004, operative part of which is reproduced as under:

"There seems no irregularity or illegality in the impugned order, except that it has been passed with cumulative effect, which is not lawful. The impugned order is accordingly modified to the extent of imposing penalty of six stages without cumulative effect. With this modification/variation in the impugned order, the instant appeal as well as the connected two appeals, referred to above, are fail and dismissed."

While interpreting the judgment dated 15-01-2004, the learned counsel for the appellants reiterated his stance that the issue in hand involves interpretation of the said judgment. As per counsel of the appellants, the appellants have interpreted the judgment that penalties of the appellants were reduced and confined only to one penalty of reduction in pay by six stages without cumulative effect; hence, impliedly the other penalty of barring them from promotion for their entire life is no more in field, as it was not discussed in the said judgment and due to the reason, the appellants did not challenge the judgment in the Supreme Court, but the respondents interpreted it otherwise, thus caused irreparable loss to the appellants. Stance of counsel for the appellants is logical and appeals to the prudent mind, as the penalty of barring the appellants from promotion for their entire service until retirement is also illegal and such penalty is

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

not specified in rules and any penalty not specified in the law would make the order void ab initio. Reliance is placed on 2007 SCMR 229. In other words, such penalty also carry cumulative effect, which too is illegal. It also would be violative of settled principle of law that no one can be vexed twice for one and the same cause. Reliance is placed on NLR 1995 Service-6(a). In a situation, where literal construction or plain meaning caused hardship, futility or uncertainty, the purposive or contextual construction was to be preferred to arrive at a more just, reasonable and sensible result. Wisdom in this respect derived from the judgment

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reported as 2016 PLC (CS) 155. In a situation, we agree with the interpretation made by the counsel for the appellants and construe that the penalty of barring the appellants from promotion, being illegal is no more in field. It otherwise would be illegal to uphold an illegal punishment, which is not specified in rules and no adverse action could be taken which was not prescribed by law/rule/regulation. Reliance is placed on 2016 PLC 97. We have noted that the appellants have been deprived of promotion only on the issue of interpretation of the said judgment; the appellants however, are otherwise fit for promotion on the basis of seniority cum fitness.

08. In view of the foregoing discussion, the instant appeal as well as connected Service Appeal bearing No. 739/2019 "titled Miraj Khan Versus Government of Khyber Pakhtunkhwa through Secretary, Forest Department, Peshawar and four others", are accepted. The appellants are held entitled to promotion with all benefits and with direction to the respondents to promote the appellants from the date, their juniors were promoted. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.11.2021

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(ROZINA REHMAN)
MEMBER (J)

[Signature]
(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Verified to be true copy
[Signature]
Divisional Forest Officer
Khyber Pakhtunkhwa
Peshawar

13/12/21
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13/12/21

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DIVISIONAL FOREST OFFICER
KHYBER PAKHTUNKHWA

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ATTESTED
DIVISIONAL FOREST OFFICER
KHYBER PAKHTUNKHWA

OFFICE ORDER NO. 41 /DATED DAGGAR THE: 22/04/2022 ISSUED BY
MR. ARSHAD ALI KHAN DIVISIONAL FOREST OFFICER BUNER FOREST DIVISION
DAGGAR.

On the recommendation of Departmental Promotion Committee contained in minutes of the meeting held under the Chairmanship of Divisional Forest Officer Buner Forest Division on 21.04.2022, the following Forest Guards (BPS-8) are hereby promoted to the rank of Forester (BPS-10) on regular basis with immediate effect.

They will be on probation for a period of one year in terms of section-6(2) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with rule-5 of the Government of Khyber Pakhtunkhwa (Appointment, Promotion and Transfer rules, 1989).

- 1- Mr. Miraj Khan Forest Guard.
- 2- Muhammad Junaid Forest Guard.
- 3- Muhammad Tariq Forest Guard.
- 4- Mr. Saeedullah Forest Guard.
- 5- Mr. Noor Wahid Forest Guard.

Note: Mr. Miraj Khan Forest Guard (BPS-08) and Mr. Muhammad Junaid Forest Guard (BPS-08) have been conditionally promoted to the rank of Forester (BPS-10) subject to the filing of CPLA and subsequent judgement of the August Supreme Court of Pakistan.

SD/-
(MR. ARSHAD ALI KHAN)
DIVISIONAL FOREST OFFICER
BUNER FOREST DIVN: DAGGAR

No. 9150-18/G.

Copy forwarded to the:

- 1- Chief Conservation of Forest Malakand Forest Region-III Swat for favour of information, please.
- 2- Conservator of Forests Malakand Forest Circle East Swat for favour of information, please.
- 3- Section Officer Establishment Forestry, Environment and Wildlife Department Govt. of Khyber Pakhtunkhwa Peshawar for favour of information, please.
- 4- Divisional Forest Officer Buner Wildlife Division, Representative of SO Establishment for favour of information.
- 5- SDFO Dagggar and RFO Chamla for information and necessary action.
- 6- Official concerned for information and necessary action.
- 7- Divisional Assistant/Accountant for information.
- 8- Personal Files.
- 9- Office Order File.

Ad
DIVISIONAL FOREST OFFICER
BUNER FOREST DIVN: DAGGAR

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BUNER FOREST DIVN: DAGGAR

Received by
Esia
Muzahid
Noor Wahid

Annex C

LIST OF FORESTERS OF BUNER FOREST DIVISION DAGGAR AS IT STOOD ON 04/08/2023

S NO.	NAME OF FORESTER	DISTRICT OF DOMICILE	EDUCATIONAL QUALIFICATION	TECHNICAL QUALIFICATION	DATE OF BIRTH	DATE OF 1 ST ENTRY INTO GOVERNMENT SERVICE	DATE OF APPOINTMENT / PROMOTION TO THE PRESENT POST	REMARKS
1.	Muhammad Zada	Buner	Matric	Trained	20.03.1969	02.04.1988	24.04.2014	
2.	Muhammad Zubair	Buner	B.A	Trained	13.03.1969	17.06.1992	04.08.2007	
3.	Mr. Liaqat Ali	Buner	FSc	Un-Trained	13.01.1966	26.09.1987	13.10.2010	
4.	Bahrul Said	Buner	Matric	Un-Trained	28.04.1967	05.10.1987	14.10.2016	
5.	Muhammad Junaid	Buner	Matric	Un-Trained	01.04.1965	13.10.1987	11.01.2019	In the light of the decision of honorable Service Tribunal Peshawar and subsequent DFO Buner Order No. 41 dated 22.04.2022 promotion was granted to Muhammad Junaid, whereas vide DFO Buner office order No. 12 dated 22.09.2022 he was entitled to receive all the back benefits from the date his junior were promoted. Resultantly he is place at the right posting of the seniority list for Buner. It is therefore requested that he may kindly be place at his due position in the seniority list at circle level, please.
6.	Noor-ul-Amin	Buner	B.A	Un-Trained	15.01.1972	26.02.1992	11.01.2019	
7.	Parwanat Khan	Buner	Matric	Un-Trained	01.08.1965	14.06.2003	11.01.2019	
8.	Mr. Anwar-ul-Haq	Buner	Matric	Un-Trained	14.06.1971	14.06.2003	12.08.2021	
9.	Mr. Sabz Ali	Buner	Matric	Un-Trained	09.04.1973	14.06.2003	12.08.2021	
10.	Muhammad Tariq	Buner	Matric	Un-Trained	27.12.1981	25.02.2005	22.04.2022	
11.	Mr. Saeedullah	Buner	Matric	Un-Trained	12.07.1971	28.12.2006	22.04.2022	
12.	Mr. Noor Wahid	Buner	Matric	Un-Trained	08.01.1976	28.12.2006	22.04.2022	
13.	Mr. Kawsar Ali	Buner	F.A	Un-Trained	02.02.1976	13.03.2007	30.05.2022	
14.	Fida Hussain	Buner	B.A	Un-Trained	07.02.1976	27.10.2007	14.09.2022	
15.	Syed Amir Sultan	Buner	B.A	Un-Trained	20.04.1976	27.10.2007	14.09.2022	
16.	Mr. Abdul Wahid	Buner	B.A	Un-Trained	13.04.1977	27.10.2007	14.09.2022	

No. 729 /G, dated Daggar the 04/08/2023
 Copy forwarded for favour of information to the Conservator of Forests Malakand Forest Circle East Swat for favour of information, Please.

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 DIVISIONAL FOREST OFFICER
 BUNER FOREST DIVISION DAGGAR

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 DIVISIONAL FOREST OFFICER
 BUNER FOREST DIVISION DAGGAR

Annex-D

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OFFICE ORDER NO. 47 / DATED 09 / 05 / 2022, ISSUED BY MR. ARSHAD ALI KHAN
DIVISIONAL FOREST OFFICER BUNER FOREST DIVISION AT DAGGAR.

Consequent upon completion of age of his superannuation (60 years of his age) on 30.04.2022 (FN), Mr. Miraj Khan Forester is hereby retired from service with effect from 01.05.2022 (AN) in the best public interest.

Sanction is also granted for encashment of 365 days leave salary in lieu of L.P.R.

Sd/-
(Mr. Arshad Ali Khan)
DIVISIONAL FOREST OFFICER
BUNER FOREST DIVISION DAGGAR

No. 9668-7416

Copy forwarded for information to the:

1. Chief Conservator of Forests, Malakand Forest Region-III Swat for favour of information, please.
2. Conservator of Forest Malakand Forest Circle East Swat for favour of information, please.
3. Director Budget and Account, Govt: of Khyber Pakhtunkhwa Environment, Forestry and Wildlife Department Peshawar.
4. Range Forest Officer Chamla for information.
5. District Account Officer Buner for information.
6. Divisional Accountant/ Assistant for information.
7. Mr. Miraj Khan Forester for information.

Ad
DIVISIONAL FOREST OFFICER
BUNER FOREST DIVISION DAGGAR

*Attested
Arshad*

Arshad
DIVISIONAL FOREST OFFICER
BUNER FOREST DIVISION DAGGAR

Annex - E

OFFICE ORDER NO. 12 DATED 22/09/2022, ISSUED BY MR. ARSHAD ALI KHAN DIVISIONAL FOREST OFFICER BUNER FOREST DIVISION AT DAGGAR

Consequent upon the decision of the honorable Service Tribunal Peshawar dated 21/11/2021 and subsequent order dated 04/08/2022 in the execution petition No. 35 & 36/2021, the following officers of Buner Forest Division are hereby entitled to receive all the back benefits from the date their juniors were promoted i.e. from 11/01/2019.

- 1. Mr. Miraj Khan
- 2. Mr. Muhammad Jumaid

The above mentioned order is conditional subject to the final judgment of the August Supreme Court of Pakistan in the CPLA filed by the government of Khyber Pakhtunkhwa against the decision of the Khyber Pakhtunkhwa Service Tribunal Peshawar dated 24/11/2021. In case the August Supreme Court of Pakistan decides the case against the above mentioned foresters, they shall be liable to be placed in the seniority list as per this office order No. 41 dated 22/04/2022 and the arrears allotted to them shall be recovered from their salaries/GP Fund etc.

S/D:-

(MR. ARSHAD ALI KHAN)

DIVISIONAL FOREST OFFICER

BUNER FOREST DIVISION DAGGAR

(Copy forwarded for favour of information to the:-)

- 1. Chief Conservator of Forests Malakand Forest Region-III Swat.
- 2. Conservator of Forests Malakand Forest Circle East Swat.
- 3. Divisional Assistant/Accountant.

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DIVISIONAL FOREST OFFICER
BUNER FOREST DIVISION DAGGAR

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OFFICE OF THE DIVISIONAL FOREST OFFICER
BUNER FOREST DIVISION DAGGAR

Ph: 0939-510114 Fax: 0939-510104
Email: dlobuner@gmail.com

No. 1776 IG. Dated Daggar the 22 /09/2022

The Conservator of Forests
Malakand Forest Circle East Swat

Subject: - E.P. NO. 35 & 36 OF 2022 MIRAJ KHAN & ONE (01) OTHERS
THROUGH SECRETARY FOREST GOVERNMENT OF KHYBER
PAKHTUNKHWA

Enclosed please find herewith decision of the honorable Service Tribunal dated 24/11/2021 and subsequent order dated 04/08/2022 in the subject execution petition, which has been decided in favour of the concerned officials with the directives that all back benefits may be provided to them. Detail of back benefits is furnished as under.

S No.	NAME OF BUDGET HEAD	AMOUNT Rs.
1.	Basic Pay	Rs. 78400/-
2.	HRA	Rs. 9360/-
3.	ARA 2018	Rs. 10800/-
4.	ARA 2019	Rs. 1872/-
5.	ARA 2021	Rs. 1872/-
	TOTAL:	Rs. 102304/-

It is therefore requested that the quarter concerned may kindly be approached for the release of the mentioned amount in order to obey court decision, please.

Abdullah

Ad
DIVISIONAL FOREST OFFICER
BUNER FOREST DIVISION DAGGAR

No. 1774-28/IG

Copy forwarded to the:

1. Chief Conservator of Forests Malakand Forest Region-III Swat.
2. Section Officer Litigation Government of Khyber Pakhtunkhwa FE&WD Peshawar.

Ad
DIVISIONAL FOREST OFFICER
BUNER FOREST DIVISION DAGGAR

Ad
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BUNER FOREST DIVISION DAGGAR

ANNEX - F

20

BOOK NO
04562

FOR OFFICIAL USE ONLY

Normal
CHECK
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OFFICE OF THE

DATED 18 OF August, 2023

ON THE STATE BANK OF PAKISTAN
NATIONAL BANK OF PAKISTAN
TREASURY OFFICER
Daggar

PAY TO The Manager

RUPEES 204608/-

ON ACCOUNT OF Sick Benefits

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SUNDER FOREST DIVISION