

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT COMP COURT ABBOTTABD

Service Appeal No. 1556/2019

BEFORE: MR. SALAH UD DIN ... MEMBER (J)
MRS. RASHIDA BANO ... MEMBER (J)

Sultan Mehmood S/O Fida Mohammad, R/O Gulfam Town, Mian-de-Deri,
Tehsil & District Abbottabad.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Forestry, Environment & Wildlife Department, Peshawar.
2. Divisional Forest Officer, Agror and Tanawal, Mansehra.
3. Head of Budget & Accounts (Pension) Forestry, Environment and Wildlife Department, Peshawar.
4. Chief Conservator of Forest. Central Southern Region-I, Shami Road, Peshawar.
5. Chief Conservator of Forest Region-II, Abbottabad.
6. Conservator/Project Director Watershed Management Abbottabad.
7. Divisional Forest Officer, Unhar Watershed, Mansehra.

... (Respondents)

Mr. Ibad Ur Rehman Qadir
Advocate

... For appellant.

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents.

Date of Institution	...	18.11.2019
Date of Hearing	...	25.07.2023
Date of Decision	...	25.07.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of instant appeal respondents may graciously be directed to exonerate the illegal and unfounded allegations levelled against the appellant regarding missing timber and stolen Kalashnikov and respondent No.3 be directed to release



the pension/post retirement emoluments of the appellant forthwith in the best interest of justice.”

2. Brief facts of the case are that appellant served the Forest Department for forty years and was retired on 07.04.2018 on attaining the age of superannuation but till date, the appellant has not been paid his pension/post retirement emoluments by the respondent No. 3. Although his retirement order was issued by respondent No. 4 on 10.04.2018 with direction to respondent No. 5 to recover an amount of Rs. 72490/- from appellant for an alleged missing timber as well as one Kalashnikov stolen from Range Office Sherghargh. On receipt of retirement order, appellant applied for issuance of NOC to the Competent Authority, however instead of issuance of NOC, he was asked to deposit amount of missing timber as well as of Kalashnikov. The appellant submitted an application on 06.11.2018 to Chief Conservator Forest Peshawar denying his involvement in missing of timber as well as stolen Kalashnikov which was not responded. Feeling aggrieved, he filed writ petition before Hon'ble Peshawar High Court, Abbottabad Bench on 25.07.2019. The Hon'ble Peshawar High Court, Abbottabad Bench vide order dated 07.11.2019 treat the writ petition as service appeal and sent the same to this Tribunal, hence the instant service appeal.

3. 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that stoppage of appellant's pension is illegal, unlawful and against the rules. He contended that no opportunity of personal hearing was afforded to the appellant and he was condemned unheard which is violation of principle of natural justice. Lastly, he submitted that the appellant was neither charge sheeted nor statement of



allegation was issued and respondent blamed appellant for unfounded and baseless allegation of missing timber and stolen Kalshnikov, which is against the law and rules. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Deputy District Attorney contended that the appellant had been treated in accordance with law and rules. He further contended that before issuance of pension letter the appellant had time and again directed to deposit outstanding amount of recovery of missing timber and of stolen Kalshnikov but he failed to pay the same.

6. Admitted situation on the record is that initially inquiry was initiated against accused officials M/S Zulfiqar Khan Forester the then Incharge Shergarh Forest Sub-Division, Mr. Dost Mohammad and Mr. Sher Bahadar Foresters by appointing Mr. Mohammad Riaz, DFO Siran Forest Division as inquiry officer. After conclusion of inquiry said official Dost Mohammad filed departmental appeal. Appellate authority in his decision upon appeal filed by Dost Mohammad held responsible appellant for missing timber on the ground that he had failed to prepare proper sizewara of timber/lot for submission to Divisional Offices for ensuring its disposal through open auction on scheduled date. Appellant was retired on 07.04.2018 and when his pension papers reached to the office of Account Officer concerned his pension was withheld because letter was written to the Director Budget & Account Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department by the respondent for recovery of amount of Rs. 72490/- alongwith one Kalashnikov which was stolen from the room of the office of the appellant situated at Shergarh when he was on official visit of Darband, about which he lodge proper FIR and was regularly pursuing the case in court of law till his posting there.



7. Record further reveals that the appellant was incharge Shergarh Forest Sub-Division on 01.06.2012 when timber of 21 Kail Scant =72.49Cft, was transported from Shergarh Sub-Division to Central Sale Depot Mansehra. It was allegation against him that proper sizewara of timber/lot was not prepared by the appellant due to which timber was missed without auctioning. Disciplinary proceeding were initiated and after detail inquiry under Khyber Pakhtunkhwa Government Civil Servants (E&D) Rules, 2011 and in pursuance of recommendations of enquiry officers, Competent Authority imposed penalty of Rs. 72490/- on Mr. Dost Mohammad on account of shortage of 72.49-Cft Kail timber at prevailing market rates of Rs. 1000/- vide office order dated 15.06.2017. Dost Mohammad, Forester submitted an appeal to the appellate authority who decide it on 15.09.2017 according to which the appellant was burdened with the responsibility to arrange transportation of seized/confiscated or departmentally procured timber. Appellant being incharge of sub-division is required to produce it either form Sub-Divisional Headquarter or elsewhere to timber sales Depot. Appellant was held responsible for the missing of timber from central sales depot Mansehra and he was directed to immediately deposit the recovery amounts of Rs. 72490/- into government treasury and provide challan. Appellant was also warned that in case of failure disciplinary proceedings will be imitated against him under Khyber Pakhtunkhwa Civil Servants (E&D) Rules, 2011. Appellant had not deposit said amount, then in such a situation disciplinary proceeding will have to be initiated against him under (E&D) Rules, 2011 but no such proceedings was initiated.

8. In accordance with settled norms of justice and rules on the subject a civil servant cannot be condemned unheard. In the instant case no explanation, charge sheet and statement of allegation was issued to the appellant. Even fact finding inquiry to the extent of appellant was not conducted what to say about



regular inquiry. It is demand of law that said allegation of missing of timber and failure on the part of appellant not to prepare proper sizewara of timber/lot for submission of Divisional Offices for its open auction on date fixed will have to be put to the appellant by issuing formal charge sheet, statement of allegations by appointing inquiry officer and to provide him opportunity to defend himself but without observing settled rules and procedure appellant was penalized which is against the rules and principle of justice. This act of the respondent is also against the principle of justice because first proper inquiry was required to have been conducted and if allegations were proved, after providing proper opportunity of self defense then letter could have been issued to the Account Office for recovery of said amount of missing timber.

9. In our view, appellant was condemned unheard, therefore, impugned order of recovery is not sustainable in the eyes of law is hereby set aside and respondents are directed to release the pension of the appellant. Costs shall follow the events. Consign.

10. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of July, 2023.*



(SALAH UD DIN)
Member (J)
Camp Court, Abbottabad



(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad