

09.08.2023 01. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (07) pages, we are, therefore, constrained to set aside the orders dated 04.02.2019, 08.04.2019 and allow the appeal as prayed for. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 09th day of August, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

09. Since the above factual and legal points have been ignored by the enquiry officer in the conduct of enquiry and the competent authority in passing order passed on the enquiry report and the appellate authority passing rejection orders on the departmental representation of the appellant, we are, therefore, constraint to set aside the orders dated 04.02.2019, 08.04.2019 and allow the appeal as prayed for. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 09th day of August, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

ibid allows non-gazetted government servant even to undertake a small enterprise. Moreover, the JFMC rules, 2004 also do not restrict the government servant to be a member of the JFMC. Record also reveals that the appellant being forest share holder of his area, which is the requisite criteria for becoming a Member of JFMC, has been working as Member, Vice Chairman and Chairman of the JFMC for quite long time. Moreover, his name for inclusion in the JFMC has been cleared and recommended by the Divisional Forest Officer (Chitral) as per mechanism given under JFMC Rules, 2004. Record also reveals that there were other government servants having been nominated to work as Member, Vice Chairman and Chairman of JFMC in their respective areas of Tehsil Drosh, District Chitral which makes it clear that this fact was in the knowledge of the relevant departmental authorities and that neither the conduct rules nor the JFMC rules prohibit a government servants to be a member of voluntary organization like JFMC. The inquiry report is completely silent as to how and in what manner the appellant's official duties were compromised being member of voluntary village organization. Regarding allegation No. II it is clear that it was the responsibility of Revenue Tehsildar/Staff to verify the antecedents of the forest royalty beneficiaries before making payment to them. During the course of arguments it also came to limelight that the two families comprising of two widows, who are Pakistani nationals married to Afghan nationals, are residing inside the Pakistani territory of Ursoon Valley of Drosh Tehsil for the last 40 years. They are availing such benefits for quite long period and penalizing only the appellant on this score is contrary to the norms of justice.

government employee, the conduct of the appellant has been examined under rule 16 of the Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987 which is reproduced below;

16. Private trade, employment or work:---(1) No Government servant shall, except with the previous sanction of the Government, engage in any trade or undertake any employment or work, other than his official duties:

Provided that he may, without such sanction, undertake honorary work of a religious, social or charitable nature or occasional work of a literary or artistic character, subject to the condition that his official duties do not thereby suffer and that the occupation or undertaking does not conflict or is not inconsistent with his position or obligations as a Government servant but he shall not undertake or shall discontinue such work if so directed by Government. A Government servant who has any doubt about the propriety of undertaking any particular work should refer the matter for the orders of Government.

Provided further that non-gazetted Government servant may, without such sanction, undertake a small enterprise which absorbs family labour and where he does so shall file details of the enterprise alongwith the declaration of assets.

08. The proviso of rule 16(1) of the rules ibid provide that no prior sanction of the government is required for honorary work of a religious, social or charitable nature. More particularly the second proviso of the rules

gazetted) and retired from service as Assistant (BS-16) office of the Deputy Commissioner Chitral. During service he was proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on the basis of following allegations/charges.

(i) On the basis of Enquiry report under the chairmanship of Settlement Officer Chitral, the Commissioner, Malakand Division, Saidu Sharif, Swat had reported vide his office letter No. 7904-08/3/9/AG-I/Vol-VI dated 25.05.2018, that you have been found guilty during the payment of forest royalty amongst the royalty holder using the power of Chairman of JFMC Ursoon being serving Government employee compromised on official duties.

(ii) Paid Forest royalty to 34 Afghan Nationals showing them residents of Ursoon.

Allegation No. I above basically compromise two parts i.e. payment of forest royalty amongst the royalty holders using the power of Chairman of Joint Forest Management Committee (JFMC) and compromising of official duties being a serving government employee.

07. As per JFMC Rules the appellant was not responsible for payment to royalty holders rather it was the duty of Revenue Tehsildar of the area to make payment to the beneficiaries. Enquiry report did not establish that the appellant was involved in the payment at any stage. The detail fact finding enquiry report of the enquiry committee rather reveal that the entire exercise for payment to the beneficiaries was carried out by the Revenue Tehsildar as per mechanism given under JFMC Rules, 2004 and the appellant was not directly involved in anyway. Regarding the second part of the allegation i.e. compromising of official duties being a serving

the concessioners of Forest Royalty. Learned counsel for the appellant argued that the impugned order is illegal, without jurisdiction and based on malafide intentions, that has caused stigma on the professional career of the appellant. No opportunity of personal hearing or cross examination provided to the appellant as per provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. No inquiry report provided to the appellant as such the impugned order is a void order and no limitation runs against a void order.

05. Learned Additional Advocate General on the other hand contended that the appellant being a government servant became chairman of the JFMC and paid royalty to 34 Afghan National in Ursoon Valley which is violation of the Khyber Pakhtunkhwa Government Servants (Conduct Rules) 1987. The inquiry was conducted into the matter and on the basis of inquiry report the appellant was imposed minor penalty of "withholding of three (03) increments for a period of three (03) years alongwith recovery of the royalty amount to the tune of Rs. 204204/-paid to 34 Afghan nationals vide order dated 04.02.2019. The order passed by the competent authority is proper and in accordance with the law and rules. No proper procedure for payment of royalty amount had been adopted by the appellant/revenue officer, which is provided in Forest Ordinance 2002 and JFMC rules 2004. He further contended that the penalty was imposed after fulfilling all the codal and legal formalities as laid down in the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011.

06. Perusal and scrutiny of record reveals that the appellant is a bonafide resident of Ursoon Valley and forest owner. He was civil servants (non-

was awarded the penalty of "withholding of three increments for a period of three years alongwith recovery of the royalty amount to the tune of Rs/ 204204/- paid to 34 Afghani nationals". The appellant preferred departmental appeal on 26.02.2019 which was rejected vide order dated 08.04.2019. Thereafter the instant service appeal was filed in the Service Tribunal on 03.06.2019.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant elected as Chairman of the Joint Forest Management Committee (JFMC) Ursoon Valley, Chitral vide Notification No. 1293/G dated 14.09.2018, and such forums are being established by the Forest Department for the management of Forests and normally the land holders of forests are the members of such forums. That as per JFMC Rules 2004 and 2005 notified on 24.12.2004, there is no bar on the government official member of JFMC which is a kind of social activity. He further contended that the distribution of Royalty was made by the revenue officer and the local community after proper identification of the concessioners. Learned counsel for the appellant contended that there are two families consisting of 34 individuals who are taking the forest royalty and who are residing there for last 40 years and the jirga of local community has decided that these 34 peoples have inter relations with community of Ursoon Valley, therefore, they are included in

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No879/2019

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Abdul Salam Assistant BPS-16, Deputy Commissioner, District
Chitral.....(*Appellant*)

VERSUS

1. Senior Member Board of Revenue, Civil Secretariat, Peshawar.
2. Deputy Commissioner, Lower Chitral.
3. District Accounts Officer, Lower Chitral.....(*Respondents*)

Present:-

MUHAMMAD ADEEL BUTT,
Advocate --- For Appellant.

FAZAL SHAH MOHMAND,
Additional Advocate General --- For respondents.

Date of Institution.....03.06.2019
Date of Hearing.....31.07.2023
Date of Decision..... 09.08.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of the appeal, this Honorable Tribunal may kindly set aside the impugned order dated 04.02.2019 and appellate order dated 08.04.2019.”

02. Brief facts of the case are that the appellant was serving as Assistant (BPS-16) in the office of Deputy Commissioner Office, Chitral. The appellant is aggrieved of the impugned order dated 04.02.2019 whereby he