

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP  
COURT ABBOTTABAD

Service Appeal No. 271/2016

Date of Institution... 21.03.2016

Date of decision... 20.06.2017

Ejaz Hussain Shah, Forest Guard, Ghazi Kot Forest Check Post.  
Forest Sub-Division, Mansehra. ... (Appellant)

Versus

1. Province of Khyber Pakhtunkhwa through Secretary Environment Department, Peshawar.
2. Chief Conservator of Forests-I, Khyber Pakhtunkhwa, Peshawar.
3. Conservator of Forests, Lower Hazara Forest Circle, Abbottabad.
4. Divisional Forest Officer, Siran Forest Division, Mansehra (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR  
MODIFICATION OF THE ORDER DATED 24.02.2016 ONLY TO  
THE EXTENT THAT INTERVENING PERIOD FROM REMOVAL  
FROM SERVICE TO REINSTATEMENT INTO SERVICE BE  
TREATED AS LEAVE WITH FULL PAY.

MR. SHAHZADA IRFAN ZIA,  
Advocate ... For appellant.

MR. MUHAMMAD BILAL,  
Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN  
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN:- This appeal has been filed by Mr. Ejaz Hussain Shah, appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 24.02.2016 of departmental appellate authority vide which the intervening period from removal till reinstatement of the appellant in service was treated as leave without pay.

2.. Arguments heard and record perused.

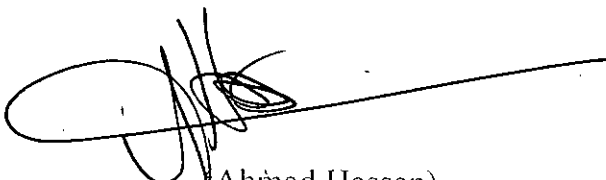
3. The only question involved in the appeal is that the appellant was reinstated in service by the Departmental Appellate Authority but appellant was aggrieved from that portion of the order of the Departmental Authority which has treated the period out of service of the appellant as leave without pay.

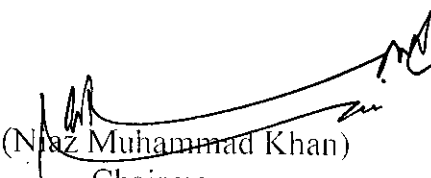
4. Learned counsel for the appellant argued that when the appellant was reinstated into service then there was no reason for treating the intervening period as leave without pay.

5. On the other hand the learned Deputy District Attorney argued that it is a well settled principle that no work no pay.

6. After hearing both the learned counsel for the parties and perusal of the record this Tribunal reaches the conclusion that when the Departmental Appellate Authority had held that the enquiry proceedings have not been properly conducted and had reinstated the appellant in service then there was no justification to treat the intervening period as leave without pay. No work was not the fault of the appellant but due to the fault of the department, hence the aforementioned principle is not applicable in the instant case..

7. Resultantly, the appeal is accepted and the appellant is entitled for salary during the intervening period subject to fulfillment of codal formalities of furnishing affidavit of his non-employment as per rules. The costs to follow the event. File be consigned to the record room.

  
(Ahmad Hassan)  
Member

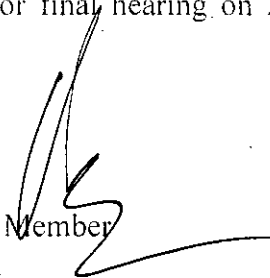
  
(Niaz Muhammad Khan)  
Chairman  
Camp Court, A/Abad.


ANNOUNCED

20.06.2017

16.01.2017

Appellant in person and Mr. Muhammad Parvaiz, RFO alongwith Ms. Shazia Mughal, GP for respondents present. Rejoinder submitted. Appellant requested for adjournment as his counsel is not in attendance. To come up for final hearing on 20.06.2017 before D.B at camp court A/Abad.

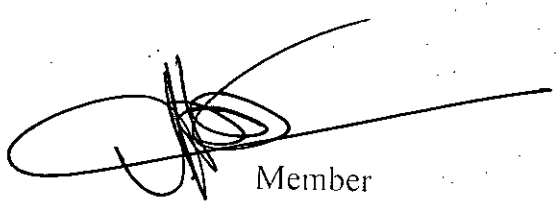
  
Member


  
Chairman  
Camp court A/Abad.

20.06.2017

Counsel for the appellant, AND Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr. Muhammad Pervaiz, RFO for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of to-day, the appeal is accepted and the appellant is entitled for salary during the intervening period subject to fulfillment of codal formalities of furnishing affidavit of his non-employment as per rules. The costs to follow the event. File be consigned to the record room.

  
Member

  
Chairman  
Camp court. A/Abad

ANNOUNCED  
20.06.2017

29.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Forest Guard when subjected to inquiry on the allegations of inefficiency, professional misconduct and involvement in corrupt practices and removed from service vide impugned order dated 31.7.2015 where-against he preferred departmental appeal which was accepted vide order dated 24.2.2016 thereby exonerating the appellant from all charges but treating the intervening period as leave without pay and hence the instant service appeal on 21.3.2016.

That the impugned order regarding leave without pay is against facts and law as the appellant was exonerated of the charges and was therefore entitled to reinstatement with all back benefits.


Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 20.7.2016 before S.B at Camp Court Abbottabad as the matter pertains to the territorial limits of Hazara Division.

Appellant Deposited  
Security & Process Fee

  
Chairman

20.07.2016

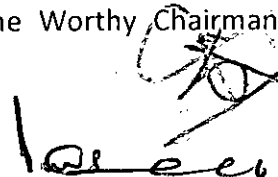
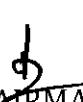
Appellant in person and Mr. Aminul Islam, SDFO for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.01.2017 at camp court, Abbottabad.

  
Chairman  
Camp court, A/Abad,

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 271/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21.03.2016	<p>The appeal of Mr. Ejaz Hussain Shah presented today by Mr. Shahzada Irfan Zia Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	22.3.16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>29.3.16</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

IN RE:  
Service Appeal No. 271 / of 2016

Ejaz Hussain Shah, Forest Guard...

Appellant

VERSUS

Province of Khyber Pakhtunkhwa through  
Secretary Environment Department Peshawar & others...

Respondents

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4.	Order dated 31.08.2015	'C'	7 - 8
5.	Departmental Appeal	'D'	9 - 10
6.	Final Order dated 24.02.2016	'E'	0 - 11
7.	Vakalat Nama		

Through:

اعجاز حسین شاہ

Appellant

(Shahzada Irfan Zia)  
Advocate High Court,  
13-C Haroon Mansion  
Khyber Bazar, Peshawar  
Cell # 0300-9345297

Dated: 19.03.2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. 271 / of 2016

**N.W.F. Province  
Service Tribunal**

Diary No. 244

Dated 21-03-2016

Ejaz Hussain Shah, Forest Guard,  
Ghazi Kot Forest Check Post,  
Forest Sub-Division, Mansehra...

Appellant

VERSUS

1. Province of Khyber Pakhtunkhwa  
through Secretary Environment Department,  
Peshawar.
2. Chief Conservator of Forests-I,  
Khyber Pakhtunkhwa, Peshawar.
3. Conservator of Forests,  
Lower Hazara Forest Circle, Abbottabad.
4. Divisional Forest Officer,  
Siran Forest Division, Mansehra...

Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
FOR MODIFICATION OF THE ORDER DATED  
24.02.2016 ONLY TO THE EXTENT THAT  
INTERVENING PERIOD FROM REMOVAL FROM  
SERVICE TO REINSTATEMENT INTO SERVICE  
BE TREATED AS LEAVE WITH FULL PAY.

Respectfully Sheweth:-

FACTS OF THE CASE.

1. That while the appellant was posted as Incharge of Ghazi Kot Forest  
Check Post, he was served with a Show Cause Notice, wherein certain

Filed to-  
21/3/16

21/3/16

charges of inefficiency, mis conduct and corruption were alleged against him. (Annex: A).

2. That the appellant submitted his reply to the Show Cause Notice and vindicated his plea and position and denied the alleged charges, but his reply went unheeded and respondent No.4 hurriedly passed the impugned order dated 31.8.2015, whereby the major penalty of removal from service imposed upon the appellant, without holding the regular inquiry. (Annex: B&C).
3. That feeling aggrieved the appellant filed his Departmental Appeal against the impugned order dated 31.08.2015 before respondent No.3. The respondent No.3 called comments from respondent No.4 and after hearing the appellant passed his order dated 24.02.2016, whereby the departmental appeal of the appellant was accepted and the impugned order dated 31.08.2015 was set aside and the appellant was reinstated into service, however, the intervening period from removal from service to reinstatement into service was treated as leave without pay. (Annex: D&E).
4. That the departmental appeal of the appellant was accepted and he was reinstated into service by the Appellate Authority, setting aside the impugned order dated 31.08.2015. Naturally the order of removal was washed away, therefore, the appellant is entitled for the back benefits of intervening period, which have not been allowed to the appellant for which he is legally entitled.
5. That the appellant is entitled for his back benefits of the intervening period from the date of removal to reinstatement into service, therefore, the omission on the part of the department needs to be rectified by this Honourable Tribunal under the rules. The order dated 24.02.2016 needs to be modified only to the extent that the intervening period be treated as Leave With Full Pay, as the appellant was illegally stopped from performing his statutory duties due to illegal order dated 31.08.2015.



6. That during the intervening period the appellant was not gainfully employed elsewhere, therefore, he is entitled for the back benefits of that period and he must not suffer for an illegal action of the departmental authority.

In view of the aforesaid facts and circumstances of the case it is, therefore, most humbly prayed that the order dated 24.02.2016 may graciously be modified only to the extent that the intervening period from removal from service to reinstatement into service may very kindly be treated as Leave With Full Pay.

Through:

ایجاز حسین شاہ

Appellant

(Shahzada Irfan Zia)  
Advocate High Court,  
13-C Haroon Mansion  
Khyber Bazar, Peshawar  
Cell # 0300-9345297

Dated: 19.03.2016

CERTIFICATE:

1. It is certified on Oath that the appellant was not gainfully employed elsewhere during the intervening period, from removal from service to reinstatement into service.

ایجاز حسین شاہ  
Appellant

2. Certified that as per instructions of my client, no such Service Appeal on behalf of the appellant has earlier been filed in this Honourable Service Tribunal on the subject matter.

Advocate

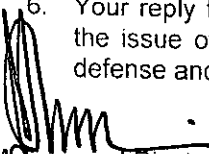
ایجاز حسین شاہ

<p>SIRAN FOREST DIVISION MANSEHRA FOREST DEPARTMENT KHYBER PAKHTUNKHWA Ph. &amp; Fax #. 0997-920140</p>		<p>NO. <u>213</u> /GE Dated <u>08</u> /07/2015</p>
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Ejaz Hussain Shah Forest Guard c/o  
Sub-Divisional Forest Officer  
Mansehra Forest Sub-Division

Subject: - APPREHENSION OF TRUCK LOADED WITH ILICIT DEODAR TIMBER AT LORA -  
SHOW CAUSE NOTICE THEREOF

1. A Truck bearing No. 2948/ Swat apprehended by Custom Squad and then after handed over to Divisional Forest Officer Galis Forest Division between night of 3/4-7-2015 at Lora Chowk loaded with illicit Deodar timber. You being Incharge of Ghazikot Forest Check post were required to properly check the trucks and then allow to cross the Barrier, but instead you found indulged in timber smuggling and providing safe passage and ways to the timber smugglers.
2. It is also assured that you remained involved in planning and arranging the timber smuggling in safe way, resultantly you kept yourself outside the barrier and deliberately overlooked the passing of Truck loaded with illicit timber. It is also clear enough that you were fully aware of the fact and involved in facilitating the timber smugglers to cross the Barriers safely with your connivance.
3. The mode of illicit timber loading its hiding through different material like clothes and large size bags full of empty guise bottles with admixture of podina bags just to defragment the smell of Deodar timber is really astonishing one which has been engineered by the specialized peoples. All this situation reveals that the permanent skilled professional hands are involved in this meance which not only faciilitate the timber ~~smugglers~~ rather a bed name to Forest Department at all corners.
4. This act on your part is really showing and undesired at all cost which clearly reflects your In-efficiency, Misconduct and Corruption for which you are liable to be proceeded against for the above charges under the provisions of E&D Rules, 2011.
5. However, before further action taken in the matter, the undersigned in the capacity of authority and under the provisions of E&D Rules, 2011, hereby serve you with this Show Cause Notice to explain as to why the Major penalty i.e. Removal from Service may not be imposed upon you.
6. Your reply to the Show Cause notice should reach to the undersigned within Seven (07) days of the issue of this notice falling which, it will be presumed that you have nothing to state in your defense and ex-party action shall be initiated against you.


  
(Muhammad Riaz)  
Divisional Forest Officer  
Siran Forest Division Mansehra

No. \_\_\_\_\_ /GE

Copy forwarded to :-

1. The Conservator of Forests Lower Hazara Forest Circle Abbottabad for favour of information please.
2. The Sub-Divisional Forest Officer Mansehra Forest Sub-Division for information and necessary action with reference to his No. 03/MA dated 06-7-2015. He is directed to deliver the attached letter to the above named officials under proper receipt which should be sent to this office for further course of action.

Divisional Forest Officer  
Siran Forest Division Mansehra

*attested.*  


# بخدمت جناب ڈی ایف او صاحب سرن فارسٹ ڈویژن مانسہرہ

بوساطت

جناب SDFO صاحب مانسہرہ فارسٹ سب ڈویژن

عنوان: شوکاژ نوٹس

بحوالہ چھٹی نمبر 213/GE مجریہ مورخہ 08-07-2015

جناب عالی چھٹی محولہ بالا میں فدوی پر یہ الزام عائد کر کے کہ مورخہ 04-07-2015 کو ٹرک نمبر 2948/swat کسٹم حکام نے پکڑ کر تلاشی لی جس میں کسٹم سامان کے علاوہ ناجائز دیودار کی لکڑی پا کر ٹرک DFO گلینر کے حوالہ کیا۔ یہ ٹرک فدوی کی ملاوٹ سے غازی کوٹ بیریر سے بغیر پڑتال واگزار ہوا۔ اس الزام کی بنیاد پر فدوی کے خلاف نااہلی بدانتظامی اور کرپشن کی فرد جرم عائد کر کے اظہار وجوہ کے لیے کہا گیا ہے کہ کیوں نہ اسے سروس سے سبکدوش کر دینا چاہیے۔

جناب عالی فدوی بوجہ زیل و دیگر صحت جرم سے انکاری ہے۔

- (1)۔ یہ کہ فدوی کی 22 سال سروس ہو چکی ہے اور فدوی کا سروس ریکارڈ اس بات پر گواہ ہے کہ فدوی کبھی بھی ڈیوٹی میں غفلت کا مرتکب نہیں ہوا اور نہ ہی فدوی نے سمگلروں کا ساتھ دیا ہے۔
- (2)۔ یہ کہ غازی کوٹ بیریر یا کسی بھی فارسٹ بیریر پر ایسا کوئی انتظام موجود نہیں کہ گاڑیوں ان لوڈ کر کے انکی پڑتال کی جاسکے۔
- (3)۔ بیریر سے مختلف سامان والی گاڑیاں آتی ہیں اور فدوی اپنی بساط کے مطابق تمام گاڑیوں کی پڑتال کرتا ہے اکثر سر یا وغیرہ مار کر پڑتال کی جاتی ہے کہ کہیں کوئی بیدار جنگل نہ ہو۔
- (4)۔ فدوی نے اپنی تعیناتی کے دوران مختلف گاڑیوں، بسوں اور ٹرکوں ناجائز عمارتی لکڑی پا کر ان کے خلاف کردائی کی گی جو اس بات کا ناقابل تردید ثبوت ہے کہ فدوی نے سمگلروں سے کبھی بھی چشم پوشی نہیں کی۔

(5)۔ علیجاہ جہاں تک ٹرک متذکرہ عنوان کا تعلق ہے وہ فدوی کی ڈیوٹی کے دوران غازی کوٹ بیریر سے نہیں گزرا اس لیے فدوی اس کا ذمہ دار نہیں۔

(6)۔ جناب عالی جہاں تک اس الزام کا تعلق ہے کہ فدوی جان بوجھ کر بیریر سے باہر رہا ہے بنیاد اور بلا ثبوت ہے کہ ڈیوٹی رجسٹر کے مطابق فدوی 02-07-2015 بجے بعد دوپہر سے

attested  
(18)

لے کر مسلسل 04-07-2015 سات بجے صبح تک ڈیوٹی کر رہا۔ کیوں کہ اس کا ہمراہی بوجہ بیماری ڈیوٹی کے قابل نہ تھا فدوی نے مسلسل 38 گھنٹے ڈیوٹی انجام دی جس کے بعد آرام کرنا ضروری ہو گیا تھا۔

جناب عالی فدوی نے نہ تو کبھی کسی سمگلر سے ساز باز کیا ہے اور نہ ہی گاڑی متذکرہ سوکاز نوٹس میں ملوث ہے۔

جناب عالی اس بات کا ذکر بھی ضروری ہے کہ کشم سامان والی گاڑیوں کو ہم ضرور چیک کرتے ہیں لیکن اس چیک کرنے پر بھی فارسٹ کے اہلکاروں کے خلاف شکایات بھی آتی رہی ہیں کہ یہ ان کو خواہ مخواہ تنگ کرتے ہیں لیکن اس کے باوجود بھی ہم فدوی بے کبھی بھی کوئی کوتاہی نہیں کی۔  
درج بالا حقائق سے واضح ہے کہ الزامات کے بنیاد اور بلا ثبوت ہیں لہذا استدعا کی جاتی ہے کہ فدوی کے خلاف عائد کردہ الزامات اور ان کے نتیجے میں عائد کردہ فرد جرم سے فدوی کو بری فرمایا جائے۔

مزید استدعا کی جاتی ہے کہ فدوی کو ذاتی طور پر پیش ہو کر مزید وضاحت کی اجازت مرحمت فرمائی جائے۔

ارض  
اعجاز حسین شاہ فارسٹ گارڈ عازی کوٹ فارسٹ چیک پوسٹ مانسہرہ

اعجاز حسین شاہ  
(۲۰)

OFFICE ORDER NO 42 DATED MANSEHRA THE 31 /08/2015  
ISSUED BY MUHAMMAD RIAZ DIVISIONAL FOREST OFFICER, SIRAN  
FOREST DIVISION MANSEHRA

And whereas, Mr. Ejaz Hussain Shah Forest Guard being incharge of Ghazikot Forest Check post was required to check each and every vehicle/truck very minutely/thoroughly while crossing the forest barrier and to ensure that no illicit forest produce is allowed to cross over the forest check posts at all;

Whereas a truck bearing No. 2948/Bannu loaded with illicit timber measuring 25 Deodar Scants= 298.06 Cft was apprehended by the Custom Squad near Lora Chowk in between night of 3-4/7/2015 and handed over the Divisional Forest Officer, Galis for further proceedings under the relevant clauses of Forest Ordinance 2002.

And whereas, the DFO Galis Forest Division Abbottabad chalked out damage report No. 98/71 dated 4.7.2015 and prosecuted the case in the Court of Senior Civil Judge through Prosecution Challan No. 01/2015-16 (Abbottabad Forest Sub-Division) on which Court of Senior Civil Judge Abbottabad dated 27.7.2015 imposed fine of Rs. 300000/- and ordered for confiscation of timber measuring 25 Deodar Scants= 298.06 Cft in favor of Government;

And whereas, the apprehension of truck and mode of illicit timber loading, its hiding with different material like clothes and large size bags full of empty guise bottles with admixture of podina bags just to defragment the smell of Deodar timber clearly indicates that the timber smugglers were engineered by the specialized peoples and the truck was allowed to cross over the forest check post by the skilled professional hands including the staff posted on forest barriers;

And whereas, Mr. Ejaz Hussain Shah Forest Guard incharge Ghazikot forest check post was served with a Show Cause notice under the provisions contained in rules-7 of Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011 vide DFO Siran letter No. 213/GE dated 8.7.2015 as to why a major penalty i.e Removal from service may not be imposed upon him;

And whereas, Mr. Ejaz Hussain Shah Forest Guard furnished his reply to the Show Cause notice on 03.8.2015 and also heard in person on 18.8.2015 but he failed to produce any substantial evidence to prove himself innocent. The undersigned conducted detailed enquiry into the matter and according to the evidences collected through different sources confirmed that the accused Forest Guard Mr. Ejaz Hussain Shah incharge Ghzikot Forest Check Post alongwith Mr. Safeer Ahmad Chowkidar/daily labor employed on Ahl Forest Check post remained in league and allowed the timber smuggler to cross the forest check posts Ahl and Ghazikot Siran Forest Division peacefully rather they fully supported the forest offenders to cross the entire jurisdiction of Siran Forest Division without any hindrances/impediments or difficulty for their ulterior motives.

Keeping in view the above exposition, I Muhammad Riaz Divisional Forest Officer, Siran Forest Division in the capacity of authority reached to the conclusion that the charges of Inefficiency, Misconduct & Corruption or fully proved against Mr. Ejaz Hussain Shah Forest Guard incharge Ghazikot Forest Check Post and do hereby order to impose a major penalty as defined in Rule-4(b) of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011 i.e "Removal from service" with immediate effect.

Mr. Muhammad Safeer S/o Muhammad Maroof Chowkidar/daily labor deployed on Ahl Forest Check post for watch and ward and chain pulling duties also connived with the timber smuggler and facilitated them to cross the forest check

attested  
18/8

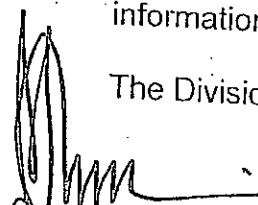
post for ulterior motives but he left the job since the date of apprehension of instant truck, therefore SDFO Hilkot should apprehend him and register an FIR under relevant sections of Cr. PC in Police Station Battal for initiating criminal proceedings against him.

Sd/- (Muhammad Riaz)  
Divisional Forest Officer  
Siran Forest Division, Mansehra

Memo

Copy forwarded to:

1. The Chief Conservator of Forests, Northern Forest Region-II Abbottabad for favor of information. This is with reference to his office letter No. 104-08/GB dated 7.7.2015.
2. The Conservator of Forests, Lower Hazara Circle Abbottabad for favor of information. This is with reference to his office letter No. 271-72/GE dated 13.7.2015.
3. The SDFO Mansehra for information. Please deliver the enclosed order to the Forest Guard under proper receipt and send the same to this office for record and further course of action.
4. The SDFO Hilkot for information. He is directed to apprehend Mr. Muhammad Safer S/o Muhammad Maroof the then Chowkidar/daily labor deployed on Ahl Forest Check post and get register an FIR against him under relevant sections of Cr.PC in Police Station Battal for initiating criminal proceedings.
5. Mr. Ejaz Hussain Shah Forest Guard C/o SDFO Mansehra for information.
6. The Divisional Accountant for information.

  
Divisional Forest Officer  
Siran Forest Division, Mansehra

attested.  
187

بخدمت جناب کنزرویٹور لوئر ہزارہ فارسٹ سرکل ایبٹ آباد

(9)

عنوان: اپیل برخلاف آفس آرڈر نمبر 42 مجریہ مورخہ 31.08.2015

از دفتر مہتمم جنگلات سرن فارسٹ ڈویژن

جناب عالی!

اپیل کنندہ سرن فارسٹ ڈویژن میں بحیثیت فارسٹ گارڈیوٹی سرانجام دے رہا تھا کہ مورخہ 04.07.2015 کو ٹرک نمبر 2948 بنوں جس میں چائے سے آمدہ مال لوڈ تھا۔ غازی کوٹ بیریر سے بعد پڑتال گزرا۔ ٹرک مذکورہ کو حویلیاں کے نزدیک چمبہ پل پر کسٹم حکام نے چیک کیا پڑتال پر اس ٹرک میں 25 ٹنک = 298.06 ٹنک فٹ ناجائز لکڑی دیودار پائی گئی کسٹم حکام نے ٹرک DFO صاحب گلنر کے حوالہ کیا جنہوں نے ٹرک کے خلاف باقاعدہ قانونی کارروائی کی۔

جناب عالی!

جناب DFO صاحب سرن فارسٹ ڈویژن نے اپیل کنندہ کو شوکاز نوٹس بذریعہ چٹھی نمبری GE/213 مجریہ مورخہ 08.07.2015 جاری کیا اور اپیل کنندہ کو اظہار وجوہ کیلئے کہا گیا کہ کیوں نہ اسکو بڑی سزا سروس سے سبکدوش کر دیا جائے۔

اپیل کنندہ نے شوکاز نوٹس کا جواب دیا اور یہ عرض پیش کی کہ ایک تو بیریر پر بے تحاشہ ٹریفک کی وجہ سے چائے مال کی پڑتال اس طرح نہیں کی جاسکی جس طرح دوسری گاڑیوں کی پڑتال کی جاتی ہے دوسرا چائے مال والی گاڑیوں کو ان لوڈ کر کے پڑتال کا انتظام بھی بیریر پر موجود نہیں۔ ہم اپنے طور پر سلاح گزار کر مختلف طریقوں سے پڑتال کرتے رہتے ہیں اپیل کنندہ کی ڈیوٹی کے دوران نہیں گزرا بلکہ اپیل کنندہ کے ساتھ جو ہمراہی گارڈ <sup>فارسٹ</sup> گاڑ ہے اس کی ڈیوٹی کے دوران بیریر سے گزرا ہے۔

لیکن جناب ڈی ایف او صاحب نے سائل کا موقف نامنظور کرتے ہوئے سائل کو سروس سے بحوالہ آرڈر نمبر 42 مجریہ مورخہ 31.08.2015 سے سبکدوش کر دیا ہے۔ (آفس آرڈر کی عکسی

نقل شامل اپیل کی جاتی ہے)۔

attested.  
187

جناب عالی!

اپیل کی جاتی ہے کہ آفس آرڈر نمبر 42 مجریہ مورخہ 31.08.2015 جانبدارانہ ہے اسلئے قابل تنسیخ ہے آفس آرڈر منسوخ فرما کر اپیل کنندہ کو جملہ سابقہ حقوق اور مراعات کے ساتھ بحال فرمایا جاوے۔

وجوہات اپیل!

(۱)۔ یہ کہ ٹرک مذکورہ جس میں ناچائز لکڑی پائی گئی اپیل کنندہ کی ڈیوٹی کے دوران پیریر سے نہیں گزرا۔ اس لئے اپیل کنندہ کو ناکردہ گناہ کی سزا دی گئی ہے جو نہ صرف انصاف کے تقاضوں کے منافی ہے بلکہ جانبدارانہ بھی ہے۔

(۲)۔ یہ کہ جناب ڈی ایف او صاحب نے یہ موقف اختیار کیا کہ اپیل کنندہ اہل پیریر کے مزدور کے ساتھ مل کر سمگلروں کو پیریر سے گزارتا ہے۔

(۳)۔ عالیجا! ایسی کوئی انکوائری نہیں ہوئی جس میں اپیل کنندہ کو مجرم ٹھہرایا گیا ہو مزید یہ کہ اپیل کنندہ کی ڈیوٹی غازیکوٹ پیریر پر ہے جبکہ اہل پیریر ہٹل ریج کی حدود میں SDFO ہٹل کی نگرانی میں کام کر رہا ہے۔

یہ مفروضہ من گھڑت ہے اور بے بنیاد اور بلا ثبوت ہے جو جناب DFO صاحب کی جانبداری کا واضح ثبوت ہے۔

(۴)۔ یہ کہ جس فارسٹ گارڈ کی ڈیوٹی میں ٹرک پیریر سے گزرا ہے اسے تو صاف شفاف قرار دے کر معاف کر دیا گیا اور اپیل کنندہ جو ڈیوٹی پر بھی موجود نہ تھا اسکے خلاف سخت تادیبی کارروائی کرتے ہوئے اس سے سروس سے سبکدوش کر دیا گیا ہے جو انصاف کے تقاضوں کے منافی ہے اور فیصلہ جانبدارانہ ہے۔

لہذا حکمنامہ نمبر 42 مجریہ مورخہ 31-08-2015 قابل تنسیخ ہے۔

لہذا اپیل کی جاتی ہے کہ آفس آرڈر نمبر 42 مجریہ مورخہ 31-08-2015 منسوخ فرما

کر اپیل کنندہ کو اسکے جملہ سابقہ حقوق اور مراعات کے ساتھ سروس پر بحال فرمایا جائے۔

مزید استدعا ہے کہ سائل کو اصلاتاً پیش ہو کر مزید وضاحت کی اجازت مرحمت فرمائی جائے۔

اعجاز حسین شاہ ولد سید مسکین شاہ سکنہ کٹھہ دیوبندی گڑھی حبیب اللہ تحصیل بالا کوٹ ضلع مانسہرہ  
اپیل کنندہ

attested  
18/



(Annex: E)

(11)

**OFFICE ORDER NO. 30 DATED ABBOTTABAD THE 24, 2 / 2016**  
**ISSUED BY MR. AZHAR ALI KHAN CONSERVATOR OF FORESTS, LOWER**  
**HAZARA FOREST CIRCLE ABBOTTABAD**

Mr. Ejaz Hussain Shah Forest Guard hereinafter called appellant was proceeded against by Divisional Forest Officer Siran for the allegations of connivance in timber smuggling through a truck which was apprehended by Divisional Forest Officer Galis with assistance of Custom Intelligence on 04-07-2015. Prosecution case was registered in the Court of Special Forest Magistrate which was decided in favour of Government on 27-07-2015 by imposing Rs. 300,000/- as fine and confiscating contraband timber measuring 298.6 Cft. The appellant was incharge of Ghazikot Check post, wherefrom the truck loaded with illicit timber under the garb of different articles and cloths passed. The Divisional Forest Officer Siran, being competent authority after completion of enquiry removed the appellant from service vide office order No. 42, dated 31-08-2015. The appellant being aggrieved of said office order preferred an appeal before Conservator of Forests Lower Hazara Forest Circle. Comments of Divisional Forest Officer Siran on appeal were obtained through his letter bearing No. 2845/GE dated 20-10-2015. The appellant was heard personally on 15-12-2015.

**Order**

Based on facts on record, contents of impugned order of Authority bearing No 42, dated 31-08-2015 and comments offered on appeal, it precipitate into an undeniable inference that the appellant was punished on the basis of evidences which have neither been recorded nor been produced for cross questing and cross examining by the appellant. Further no evidence of any action against co-accused persons is available on record.

Keeping in view the mentioned lacunae in enquiry, the benefit of doubt is given to appellant, hence, the impugned order of Divisional Forest Officer bearing No 42, dated 31-08-2015 is set-aside and appellant is re-instated in to service. The intervening period is treated as leave without pay. Moreover the authority is competent to conduct re-enquiry afresh for removal of lacunas as highlighted.

Sd/- Azhar Ali Khan  
Conservator of Forests  
Lower Hazara Forest Circle  
Abbottabad

Memo.

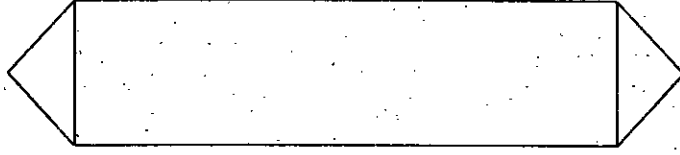
Copy forwarded to:-

- 1- Divisional Forest Officer Siran Forest Division Mansehra for information with reference to his letter No. 2845/GE dated 20-10-2015. The enquiry file from page-1 to 130 is returned herewith, which may be acknowledged.
- 2- Mr. Ejaz Hussain Shah Forest Guard for information with reference to his appeal dated nil.

Enc. As above  
For serial No. 1

Conservator of Forests  
Lower Hazara Forest Circle  
Abbottabad

attested  
18/12



Ejaz Hussain Shah 2 منجانب

19. 3. 2016

مورخہ

Province of KPK بنام  
etc

Ejaz Hussain Shah

مقدمہ

Service Appeal.

دعویٰ

جرم

## باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام Peshawar کیلئے Shahzada Irfan Zia  
Advocate Peshawar.

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی کی

Accepted  
*Irfan*

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی 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 مذکورہ باختیارات حاصل ہوں گے

اعجاز حسین شاہ

اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوا نے Shahzada Irfan Zia

سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب Advocate Peshawar

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 19th March 2016

العبد گواہ العبد

مقام Peshawar کے لئے منظور ہے۔

1

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNAL PESHAWAR CAMP COURT  
ABBOTTABAD

Appeal No.271/2016

Ejaz Hussain Shah **VERSUS** Govt: of Khyber Pakhtunkhwa and others

Written on behalf of respondents

PRELIMINARY OBJECTION

1. That the appellant has no cause of action.
2. The appellant has no locus standi to file the appeal.
3. The appeal is bad for non joinder and mis-joinder of necessary parties.
4. That the appellant is estopped by his own conduct to file the appeal.
5. That the appeal is badly bared by time.
6. That the appeal is not maintainable in its present forum.
7. That the Honorable Tribunal has no jurisdiction to entertain the appeal
8. The appellant was proceeded as per prevailing services, laws including the issuance of a show cause notice and provision of an opportunity of personal hearing where after the decision was made against him.
9. That appellant has not performed his duty during the period of removal from service and reinstatement (i.e from 31.8.2015 to 24.2.2016) for the reason, the appellate authority has not granted any benefits to appellant for the said period. The said period was treated as "leave without pay".
10. The appellant has suppressed the original facts from this Honorable Tribunal, hence not entitled for any relief and appeal is liable to be dismissed on this score.
11. That any other ground and case law will be presented at the time of humble submission at the bar.

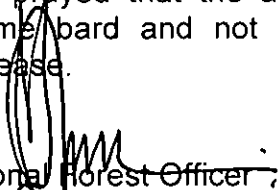
REPLY BY THE RESPONDENTS

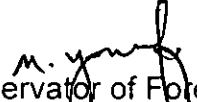
1. It is correct.
2. Incorrect as stated. The appellant furnished his reply to the Show Cause Notice but has failed to produce any substantial evidence to

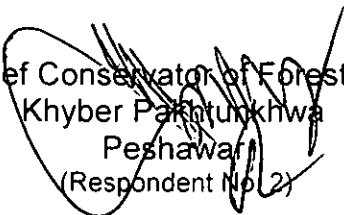
prove himself innocent. After providing the opportunity of personal hearing as per provision of Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, major penalty of "Removal from service" was imposed vide Divisional Forest Officer Siran Forest Division Mansehra Office Order No.42 dated 31.8.2016. Since there was no necessity to hold enquiry through Enquiry Officer or Committee therefore the issue was finalized properly under the provision contained in Rule-7 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011.

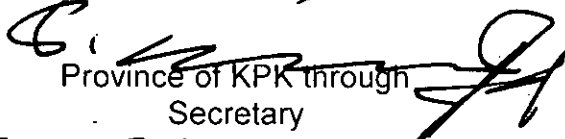
3. It is correct to the extent that the appellant has filed an appeal before the appellate authority which was accepted and the impugned order of competent authority has been set-a-side. It is pertinent to mentioned that the appellant has not performed any official duty during intervening period therefore the decision of appellate authority is quite appropriate under the provision contained in Appeal Rules,1981. Moreover, the appellant was required to provide an Affidavit duly attested by the Oath Commissioner to the effect that he has not did any private job during the intervening period in order to authenticate his stance but he failed, therefore the decision of appellant authority is quite correct.
4. Incorrect as stated. The appellate authority has accepted the appeal, set-a-side the decision of competent authority but the appellant has not performed any official duty during the period therefore, the appellate authority has rightly decided the intervening period as leave without pay, which is legally justified.
5. As explained in Para-3 & 4 above, the appellant has not performed any official job as hence the intervening period has rightly been decided the intervening period as **Extra Ordinary Leave/without pay**. The decision of competent authority has never been considered as illegal by the appellate authority but impugned order has been set-a-sided only. Since the disciplinary proceedings was finalized in accordance with the provisions contained in item-7 of Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011 under which the enquiry was not required through Enquiry Officer/Committee.
6. The appellant is legally not entitled for the benefits applied for. The decision of appellate authority is legal and correct as per rules. Further the Honorable Supreme Court has set a golden rule that "no work no pay" for the reason the appeal in hand is not entertainable.

It is humbly prayed that the appeal being infructious, based on conjecture, surmises, time bard and not maintainable under the rules may kindly be dismissed please.

  
Divisional Forest Officer,  
Siran Forest Division  
Mansehra  
(Respondent No. 4)

  
Conservator of Forests  
Lower Hazara Forest Circle  
Abbottabad  
(Respondent No. 3)

  
Chief Conservator of Forests-I  
Khyber Pakhtunkhwa  
Peshawar  
(Respondent No. 2)

  
Province of KPK through  
Secretary  
Forestry, Environment and Wildlife  
Department Peshawar  
(Respondent No. 1)

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PERSHAWAR CAMP COURT ABBOTTABAD.

Appeal No.271/2016

Ejaz Hussain Shah, Forest Guard  
Ghazikot Forest Check Post

**Appellant**

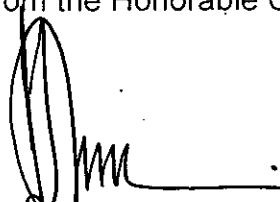
VERSUS

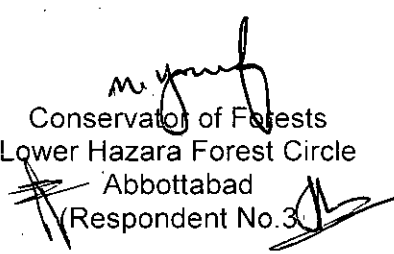
1. Province of Khyber Pakhtunkhwa  
Thorough Secretary Environment Department  
Civil Secretariat Peshawar
2. Chief Conservator of Forests-I  
Khyber Pakhtunkhwa, Peshawar
3. Conservator of Forests  
Lower Hazara Forest Circle  
Abbottabad
4. Divisional Forest Officer  
Siran Forest Division, Mansehra

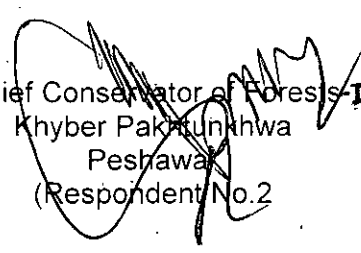
**Respondents.**

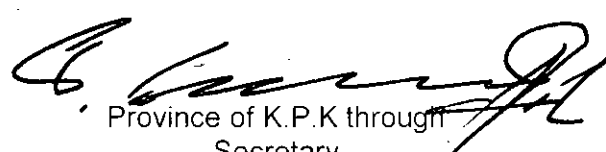
COUNTER AFFIDAVIT

We the undersigned hereby solemnly affirm that the contents of Para-wise comments are correct to the best of our knowledge and nothing has been concealed from the Honorable Court.

  
Divisional Forest Officer  
Siran Forest Division  
Mansehra  
(Respondent No.4)

  
Conservator of Forests  
Lower Hazara Forest Circle  
Abbottabad  
(Respondent No.3)

  
Chief Conservator of Forests-I  
Khyber Pakhtunkhwa  
Peshawar  
(Respondent No.2)

  
Province of K.P.K through  
Secretary  
Forestry, Environment & Wildlife  
Department Peshawar  
(Respondent No.1)

Ejaz Hussain Shah vs Province of KPK etc.

Rejoinder of the appellant

Respectfully Sheweth:

Reply of objections

All the objections taken by respondents are factually incorrect and legally untenable. The appellant has legal cause of action and valid locus standi, and his appeal is maintainable in its present form. All the parties properly been impleaded and appeal is within time. The appellant appeared before the court with clean hands with a bonafide claim. Since he was not gainfully employed elsewhere during the intervening period, therefore he is entitled for the relief claimed in the appeal.

ON FACTS

Para 1. Needs no reply.

Para. 2. Incorrect. No regular Enquiry was conducted by respondents, therefore impugned order was set aside by the Appellate authority and the appellant was reinstated into service.

Para. 3. Incorrect. The appellant was not gainfully employed elsewhere during the intervening period from removal from service to reinstatement into service and a certificate to this extent is given in the appeal, therefore he is entitled for the back benefits of the intervening period. It is pertinent to mention that no Counter Certificate has been given by respondents, thus the fact is not denied rather admitted by the respondents.

Para. 4. Incorrect. As stated in reply of para-3 above.

Para. 5. INCORRECT. AS stated in reply of Para-3 above.

Para. 6 INCORRECT. The impugned order has already been Set aside by the Appellate authority and the appellant was reinstated into Service, therefore he is entitled for the back benefits, as he was not gainfully employed elsewhere during the intervening period.

It is therefore humbly prayed that the relief may kindly be granted as prayed for in the appeal.

ایجاز شاہ

Appellant

Through

Shahzada Irfan Lia  
Advocate Peshawar.

AFFIDAVIT

I Ejaz Hussain Shah, Forest guard (appellant) do hereby declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

ایجاز شاہ  
Defendant.



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1638 /ST

Dated 3 / 7 / 2017

To

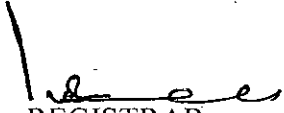
The Conservator of Forests Lower Hazara Forest Circle,  
Government of Khyber Pakhtunkhwa,  
Abbottabad.

Subject: -

JUDGMENT IN APPEAL NO. 271/2016. MR. EJAZ HUSSAIN SHAH.

I am directed to forward herewith a certified copy of Judgement dated 20.6.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.