

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1445/2023

Saleem Khan S/O Zareen Khan
of Upper Kohistan Forest Division

APPELLANT

VERSUS


1. Government of Khyber Pakhtunkhwa through Secretary Forests, Peshawar.
2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad.
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Dasso.
5. Jameer Khan Son of Ahmad present incharge Harban Forest Sub Division Upper Kohistan Forest Division Dasso.

RESPONDENTS

WRIT PETITION

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(Suleman Khan)
Divisional Forest Officer
Upper Kohistan Forest Division, Dasso
CNIC No. 17301-712397357
Cell No. 03449587247

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Diary No. 8846Dated 2-11-23

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RESPONDENTS

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth;

PRELIMINARY OBJECTION

1. That the appellant has got no cause of action to file instant Service Appeal.
2. That the appellant is stopped by his own conduct to file Service Appeal.
3. That the appellant has not come to the court with clean hands.
4. That the appeal is misconceived and based on malafide, intentions.
5. That with the utmost respect this Honorable court has got no jurisdiction to adjudicate upon the subject appeal.

FACTS

Parawise comments are as under:

1. Incorrect. The actual position is that the appellant was appointed as Forest Guard in Upper Kohistan Forest Division Dassu and recently promoted against the vacant post of Forester vide DFO Upper Kohistan Forest Division Dassu Office Order No. 74 dated 16/06/2022. He was serving as Forest Guard in Forest Department till 15/06/2022 instead of Forester.

(Copy of promotion Order No. 74 dated 16/06/2022 is attached as Annexure – "A").

2. Incorrect. As per practice in vogue in Forest Department, SDFO (BPS-17) is posted as incharge of Forest Sub Division instead of Deputy Ranger or Forester, and due to shortage of SDFO the subordinate officers available in a Forest Division like RFO/Deputy Ranger or Forester are posted against the vacant post of SDFO under stop gap arrangement for a short duration. The appellant ^{is} Forester^{who} was entrusted the look after charge of Komila Forest Sub Division as stop gap arrangement vide DFO Upper Kohistan letter No. 613/E, dated 23/12/2022 and not posted on regular basis. Furthermore, the appellant is serving as Forester in BPS-10, while the said post of SDFO is meant for BPS-17 officer thus the appellant cannot be posted against the post of BPS-17 on regular basis.

(Copy of posting/adjustment letter No. 613/E, dated 23/12/2022 is attached as Annexure – "B").

3. Incorrect. The Conservator of Forests, Upper Hazara Forest Circle, Mansehra posted the appellant as incharge Harban Forest Sub Division vide Office Order No. 38 dated 23/05/2023 under stop gap arrangement.

(Copy of posting/transfer Office Order No. 38 dated 23/05/2023 is attached as Annexure – "C").

4. Incorrect. That appellant filed an appeal dated 29/05/2023 to the Chief Conservator of Forests Northern Forest Region-II Abbottabad, which was baseless and unjustified and the same was rejected by the Chief Conservator of Forests vide office letter No. 123/E, dated 07/07/2023.

(Copy of vide letter No. 123/E, dated 07/07/2023 is attached as Annexure – "D").

5. Incorrect. The appellant has no cause of action as he was posted on stop gap arrangement which does not give any right to him as such.

It is further added that the appellant i.e. Mr. Saleem Khan, Forester being a co-accused and involved in the incident of timber smuggling from Upper Kohistan Forest Division to down area, has been placed under suspension vide Notification No. SO (Estt:) FE&WD/1-50 (200) PF: dated 02/08/2023, the enquiry proceedings are under way and not finalized as yet.

(Copy of Notification No. SO (Estt:) FE&WD/1-50 (200) PF: dated 02/08/2023 attached as Annexure "E").

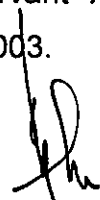
GROUNDS


- A. It is incorrect. The Government servant is bound to perform his duty on daily basis where he is posted.
- B. Incorrect. Appellant being Forester BPS-10 (Not SDFO/RFO) was posted on stop gap arrangement basis, due to shortage of SDFOs/RFOs in the Forest Division in the best public interest. It does not render confer any right of appeal to any Forster (BPS-10) posted on stop gap arrangement in his own pay scale.
- C. Incorrect. Already explained above.
- D. Incorrect. Already explained above.
- E. Incorrect. The transfer was ordered in the best public interest.
- F. Incorrect. Respondent No. 03, being competent authority has issued order of posting/transfer adjustment of appellant in the best public interest, hence there is no need for proposals in this regard.

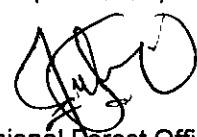
PRAYERS

In view of the above facts available on record, it is humbly prayed that the appeal is being unfounded, unjustified and against the law thus it may please be dismissed with cost in the best interest of the state as posting/transfer is the part of job in light of Section-10 of Civil Servant Act, 1973 and posting/transfer policy of the Provincial Government, 2003.


Secretary
Govt. of Khyber Pakhtunkhwa
Environment Department Peshawar
(Respondent No. 1)


Chief Conservator of Forests
Northern Forest Region-II
Abbottabad Khyber Pakhtunkhwa
(Respondent No. 2)


Conservator of Forests
Upper Hazara Forest Circle
Mansehra
(Respondent No. 3)


Divisional Forest Officer
Upper Kohistan Forest Division
Dassu
(Respondent No. 4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
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Saleem Khan S/O Zareen Khan
of Upper Kohistan Forest Division

APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Forests, Peshawar.
2. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad.
3. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
4. Divisional Forest Officer, Upper Kohistan Forest Division, Dassu.

RESPONDENTS

COUNTER AFFIDAVIT

The undersigned do hereby solemnly affirms and declare on oath that the contents of our written reply in the appeal is correct to the best of my knowledge and record and nothing has been concealed from the Honorable Tribunal. *It is further stated on the that in this appeal, the answering respondents have neither been placed ex-parte nor their defence has been struck off.*



Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

ATTESTED

 DISTRICT COURT
 MANSEHRA
 PUBLIC
 2-11

Annex-A

OFFICE ORDER NO. 74 DATED UPPER KOHISTAN THE 16/06/2022
ISSUED BY HAYAT ALI DIVISIONAL FOREST OFFICER UPPER KOHISTAN FOREST
DIVISION DASSU

As recommended by the Departmental Promotion Committee constituted vide office order No.72 dated 31/05/2022 in its meeting held on 15/06/2022 and in pursuance of the Service Rules for recruitment/promotion to the post of Foresters promulgated vide Environment Department Notification No. SO (Estt) Env: /1-465/2k12/2113 dated 14/3/2013 and further amendment vide Notification No. SO (Estt) FE&WD/1-465/2021 dated 04/06/2021, the following Forest Guards having qualified and satisfactory service record are hereby promoted to the rank of Forester in BPS-10(Rs.12160-800-36160) against the existing vacancies with immediate effect:-

1. Mr. Mohammad Saleem
2. Mr. Saleem Khan

The Foresters will remain under probation for a period of one year in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servant Act, 1973, read with Rules 15(1) of the Khyber Pakhtunkhwa Civil Servant (Appointment Promotion and Transfer Rules, 1989) In case of any lapse in service matters and negligence in discharge of official duty, he will be reverted to the rank of Forest Guard.

His promotion is purely temporary and will be liable to reversion at any time without assigning any reasons what-so-ever. Moreover it will be binding upon him to join his new place of posting within specified time period. In case of non compliance, the promotion order will be withdrawn.

Sd/-
(Hayat Ali)
Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

Memo:

Copy forwarded for information to:-

1. The Chief Conservator of Forests, Northern Forest Region-II Abbottabad.
2. The Conservator of Forests Upper Hazara Forest Circle Mansehra.
3. The Section Officer (Estt :) Govt: of Khhyber Pakhtunkhwa Environment Department Peshawar for information with reference to his No. SO (Estt)/FE&WD/1-3/2022 dated 07/06/2022.
4. The SDFO, Komila.
5. The SDFO, Harban.
6. The Range Officer Jalkot Range.
7. The Divisional Accountant Upper Kohistan Forest Division Dassu.
8. The Official concerned.

Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

Naseer Gul
Assistant / Head Clerk
Upper Kohistan Forest Division
Dassu



DIVISIONAL FOREST OFFICER
UPPER KOHISTAN FOREST DIVISION DASSU

Ph # 0998-407022
Fax # 0998-407022
dfoukforest@gmail.com

No. 613

Dated Dassu, 23 / 12 / 2022

Mr. Saleem Khan,
Forester,
Komila Forest Sub-Division

Subject: POSTING TRANSFER OF FOREST RANGER TAKING THE CHARGE OF KOMILA FOREST SUB-DIVISION THEREOF

Consequent upon the transfer of Mr. Muhammad Anwar Forest Ranger from Komila Forest Sub-Division to Patrol Squad Upper Hazara Forest Division Mansehra vide Chief Conservator of Forests, Central Southern Forest Region-I, Peshawar office order No. 137, dated 23/12/2022 and as per telephonic discussion with the Chief Conservator of Forests, Northern Forest Region-II Abbottabad on 23/12/2022, you are hereby directed to look over the charge of Komila Forest Sub-Division as stop-gap arrangement and till further order.

Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

No. 514-15 /E

Attested
[Signature]
7/7/23

[Signature]
Nasir Gul
Assistant / Head Clerk
Upper Kohistan Forest Division
Dassu

Copy forwarded to:

1. The Chief Conservator of Forests, Northern Forest Region-II Abbottabad for favour of information with the request for the posting of suitable SDFO/RFO on Komila Forest Sub-Division please.
2. The Conservator of Forests, Upper Hazara Forest Circle, Mansehra for favour of information please.

Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

OFFICE ORDER NO 38 DATED MANSEHRA THE 23 /05/2023 ISSUED BY
MR. FARRUKH SAIR CONSERVATOR OF FORESTS, UPPER HAZARA FOREST CIRCLE
MANSEHRA

As desired by Minister for Climate Change, FE&WD Khyber Pakhtunkhwa Peshawar and communicated through telephonic message of Chief Conservator of Forests Region-I Peshawar and Chief Conservator of Forests Region-II Abbottabad dated 23.05.2023, the following posting/transfer amongst the Foresters is hereby ordered in the interest of public service with immediate effect till further orders:

S.#	Name of Forester	From	To
1.	Mr. Saleem Khan	Incharge Komilla Forest Sub Division of Upper Kohistan Forest Division	Incharge Harban Forest Sub Division of Upper Kohistan Forest Division in his own pay scale.
2.	Mr. Jamalr Khan	Incharge Harban Forest Sub Division of Upper Kohistan Forest Division	Incharge Komilla Forest Sub Division of Upper Kohistan Forest Division in his own pay scale.

Sd/- (Farrukh Sair)
Conservator of Forests
Upper Hazara Forests Circle
Mansehra

Attested
(Signature)

7/7/2023

Memo:

Copy forwarded to:-


1. The Chief Conservator of Forests, Central Southern Forest Region-I Peshawar for information with reference to telephonic message dated 23.05.2023.
2. The Chief Conservator of Forests, Northern Forest Region-II Abbottabad for information with reference to telephonic message dated 23.05.2023. It is requested to kindly approach the competent authority to post suitable SDFOs on both Forest Sub-Divisions on urgent basis to ensure forest conservancy. The affairs of both Forest Sub-Divisions cannot be left at the mercy of Foresters.
3. The Divisional Forest Officer Upper Kohistan Forest Division Dasso for information and necessary action.

(Signature)
Conservator of Forests
Upper Hazara Forests Circle
Mansehra

(Signature)
Naseer Ghani
Assistant Head Clerk
Upper Kohistan Forest Division
Dasso

Annex-D

8

<p>(KIFAYATULLAH BALOCH) CHIEF CONSERVATOR OF FORESTS NORTHERN FOREST REGION-II ABBOTTABAD</p>		<p>Civil Line Forest Offices Abbottabad ☎ 0992-9310410 Fax 0992-9310343 E-mail: ccfnorth@gmail.com</p>
<p>No. 123 /E dated Abbottabad the 7 / 7 / 2023</p>		

Mr. Saleem Khan
s/o Gul Zareen Khan of Dassu
Upper Kohistan
Incharge Komela Forest Sub-Division

Subject: **APPEAL AGAINST OFFICE ORDER NO. 38 DATED 23.5.2023 ISSUED BY CONSERVATOR OF FORESTS UPPER HAZARA FOREST CIRCLE MANSEHRA**

Memo Reference your appeal on the subject dated 29.5.2023

Your appeal against office order No. 38 dated 23.5.2023 has been considered in the light of comments offered by Conservator of Forests Upper Hazara Forest Circle Mansehra vide his letter No. 83/E dated 6.7.2023 and hereby rejected.

Chief Conservator of Forests
Northern Forest Region-II Abbottabad
Khyber Pakhtunkhwa

No. /E
Copy forwarded to the Conservator of Forests Upper Hazara Forest Circle Mansehra for information and necessary action w/r to his letter no. referred above.

Chief Conservator of Forests
Northern Forest Region-II Abbottabad
Khyber Pakhtunkhwa

Accepted
(Signature)
7/7/23

(Signature)
Naseer Gul
Assistant / Head Clerk
Upper Kohistan Forest Division
Dassu



GOVERNMENT OF KHYBER PAKHTUNKHWA
CLIMATE CHANGE, FORESTRY, ENVIRONMENT & WILDLIFE
DEPARTMENT

Dated Peshawar (Ho), 2nd August, 2023

NOTIFICATION

No. SO (Estt)/FE&WD/1-50 (200)/PE:

In continuation of this department's earlier Notification of even No. (5937-43), dated 19th June, 2023 and in pursuance of the Conservator of Forests, Upper Hazara Forest Circle, Mansehra report bearing letter No. 8201/BSA, dated 22nd June, 2023, forwarded by Chief Conservator of Forests, Northern Forest Region-II, Abbottabad vide letter No. 10074/E, dated 22nd June, 2023, and in exercising his powers conferred under Rule-8 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority (Secretary Climate Change, Forestry, Environment & Wildlife, Government of Khyber Pakhtunkhwa) is pleased to place under suspension the services of Saleem Khan, Forester / Incharge Komila Forest Sub Division of Upper Kohistan Forest Division (being a co-accused and responsible for the incident of timber smuggling in Upper Kohistan Forest Division), for a period of 120-Days, with immediate effect.

2. Consequent to above, Mr. Javed Iqbal, Deputy Ranger/Incharge Range Forest Officer, Jalkot Forest Range, is hereby authorized to look after the work of the post of Sub Divisional Forest Officer, Komila Forest Sub Division of Upper Kohistan Forest Division, in the best public interest, with immediate effect, till further orders.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
CLIMATE CHANGE, FORESTRY, ENVIRONMENT &
WILDLIFE DEPARTMENT

Encls: No. and date of even

Copy is forwarded to:-

- 1) Chief Conservator of Forest, Central Southern Forest Region-I, Peshawar.
- 2) Chief Conservator of Forests, NFR-II, Abbottabad w/r to his letter quoted above, with the request to furnish draft charge sheets and statement of allegations with specific charges against the above accused official forthwith, for initiating disciplinary proceedings against them under the said rules.
- 3) Conservator of Forest, Upper Hazara Forest Circle, Mansehra
- 4) Divisional Forest Officer, Upper Kohistan Forest Division, Dasso
- 5) Director Budget & Accounts Cell, FE&W department.
- 6) PS to Secretary, CC, FE&W department
- 7) Official concerned C/O CCF-II, Abbottabad.
- 8) Master file.
- 9) Office order file.

(HAFIZ ABDUL JALIL)
SECTION OFFICER (ESTT)

2/8/23

Naseer Gul
Assistant / Head Clerk
Upper Kohistan Forest Division
Dasso

Annex-F

10

AUTHORITY LETTER

I, **Naseer Gul S/o Gul Hasan** representative of forest department upper Kohistan forest division Dassu is hereby authorize to submit para wise comments on behalf of secretary to Government of Khyber Pakhtunkhwa forestry environment and wild life department and others in service appeal no 1445/2023 in case titled Saleem khan Vs Govt. of KPK.

Whatever stated above is true and correct to the best of my knowledge and belief and nothing has been concealed here in.

Dated: - 02-11-2023


Handwritten signature and official stamp of the Forest Department, Upper Kohistan Forest Division, Dassu.