

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 944/2018
Date of Institution ... 31.07.2018
Date of Decision... 27.10.2023

Iftikhar-ud-Din, Forest Guard LSC, Forest Sub-Division, Mardan. (Deceased) through L.Rs namely 1.Mst. Raida Begum (Widow), 2. Mst. Saba Gul D/O Iftikhar ud Din, 3. Mst. Aiman Noor D/O Iftikhar ud Din, 4. Mst. Laiba Gul D/O Iftikhar ud Din, 5. Mst. Hiba Gul D/O Iftikhar ud Din, 6. Mst. Ayesha Siddiqa D/O Iftikhar ud Din, 7. Mst. Sabiha Gul (Widow), 8. Muhammad Maaz S/O Iftikhar ud Din, 9. Muhammad Saad S/O Iftikhar ud Din and 10. Muhammad Ammar S/O Iftikhar ud Din, All residents of Mohallah Barcham, Village Kalabat, P.O Lalabat, Tehsil Toppi District Swabi.
... (Appellants)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 05 others. ... (Respondents)

MR. ADNAN AMAN,
Advocate

For L.Rs of the deceased appellant.

MR. MUHAMMAD JAN,
District Attorney

For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to the instant appeal are that the appellant was inducted as Forest Guard in Forest Department in the year 1991. He while serving as Forest Guard/Incharge of Lower Swat Canal (LSC) Forest Sub-Division was proceeded against departmentally on the allegations reproduced as below:-

"1. You have incurred expenditure to the tune of Rs. 1262716/- on raising of Forty (40) hectares Linear Plantation under Phase-II of "Billion Trees Afforestation Project" along Ring Road from Rashakai, Nisatta and Rashakai to Swabi Road Section. The Conservator of Forest Southern Circle Peshawar during inspection of the said plantation in company with DFO Mardan on 03.07.2017 found the said plantation in worst condition. You were given a chance of 15 days for beating up of failures vide DFO

Mardan letter No. 17/A dated 03.07.2017, but you did not do the needful within more time than the said stipulated period.

2. *The said 15 days duration/period was extended upto one (01) month as the Conservator of Forests Southern Circle Peshawar again inspected the said plantation in company with the DFO Mardan on 30.08.2017 and it was observed that the plantation was still in worst condition.*

3. *Your aforementioned attitude regarding non compliance with the directives of higher authorities clearly speaks of your inefficiency and misconduct which is a clear token to the effect that you have embezzled a handsome amount of the Govt; to the tune of Rs. 1262716/-.*

2. On conclusion of the inquiry, the appellant was awarded minor penalty of stoppage of 02 annual increments with cumulative effect as well as recovery of Rs. 793500/- for its payment to the Labourers vide order dated 16.11.2017 passed by the competent Authority. The penalty so awarded to him was challenged by the appellant through filing of departmental appeal, however the same was not responded within the statutory period of 90 days, hence the instant appeal.

3. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

4. It is pertinent to mention here that the appellant died during the pendency of the instant appeal and the application submitted by his L.Rs for impleadment as appellants in the instant appeal was allowed vide order dated 15.11.2022.

5. Learned counsel for Legal heirs of the deceased appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned District

Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

6. Arguments have already been heard and record perused.

7. The inquiry in the matter was conducted by Sub-Divisional Forest Officer Patrol Squad, Sothern Circle Peshawar. The inquiry record would show that statement of not a single witness was recorded in support of the allegations leveled against the deceased appellant. Even statement of the departmental representative was not recorded by the inquiry officer. The appellant to a question put to him during the inquiry had categorically denied the receiving of the alleged embezzled amount and had stated that the same was neither paid to him through a cheque nor any receipt in this respect has been obtained from him. In this scenario, the respondent-department was required to have produced relevant record during the inquiry for confronting the deceased appellant with the same but the same has not been done. Moreover, statement of the appellant was recorded in question answer form, which procedure has been deprecated by Supreme Court of Pakistan in various verdicts.

8. The appellant was not issued final show-cause notice and he was neither handed over copy of the inquiry report nor was he provided any opportunity of personal hearing as required under sub-rule 4 of Rule 14 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The non-compliance of the afore-mentioned sub-rule 4 of Rule 14 of Khyber Pakhtunkhwa Government Servants

(Efficiency & Discipline) Rules, 2011 has created material dent in the inquiry proceedings. Non issuance of final show cause notice and non-provision of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.

9. The appeal was though filed with some delay, however the issue in question is one of financial nature, therefore, the appeal in hand is not hit by bar of limitation.

10. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order and the two annual increments due on 01.12.2017 and 01.12.2018 stand restored with all consequential/back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

27.10.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)




(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


ORDER
27.10.2023

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned order and the two annual increments due on 01.12.2017 and 01.12.2018 stand restored with all consequential/back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
27.10.2023


(Muhammad Akbar Khan)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)