

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No.1638/2023**

Muhammad Idrees (Forest Guard).....**Appellant**

**V E R S U S**

Govt. of Khyber Pakhtunkhwa  
Through Secretary Forest & others.....**Respondents**

**I N D E X**

S#	Description of Documents	Annex	Pages
1.	Parawise Comments	--	1-4
2.	Affidavit	--	5
3.	Letter by DFO Orakzai to Conservator of Forest Kohat Forest Circle	<b>A</b>	6
4.	SO. Estab: CC, Forestry, Environment & Wildlife Department Khyber Pakhtunkhwa Peshawar Letter	<b>B</b>	7
5.	Appointment Order issued by DFO Orakzai	<b>C</b>	8-9
6.	Appointment, Promotion & Transfer Rules, 1989	<b>D</b>	10-11

  
Divisional Forest Officer  
Orakzai Forest Division  
Hangu

31-1-24

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

**Service Appeal No.1638/2023**

Diary No. 10089

Dated 1-1-2024

Muhammad Idrees (Forest Guard).....**Appellant**

**V E R S U S**

Govt. of Khyber Pakhtunkhwa  
Through Secretary Forest & others.....**Respondents**

**JOINT PARAWISE COMMENTS ON BEHALF**  
**OF THE RESPONDENTS NO.1 TO 4.**


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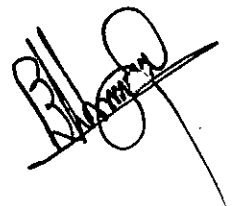
**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS:**

- I. That the appellant has no locus standi and cause of action.
- II. That the appellant did not come to this Honorable Tribunal with clean hands.
- III. That the appellant has submitted incorrect and irrelevant documents and concealed the facts from this Hon'ble Tribunal.
- IV. That the appeal is not maintainable.
- V. That the appeal is time barred.
- VI. That the instant appeal is bad for misjoinder and non-joinder of necessary and proper parties.



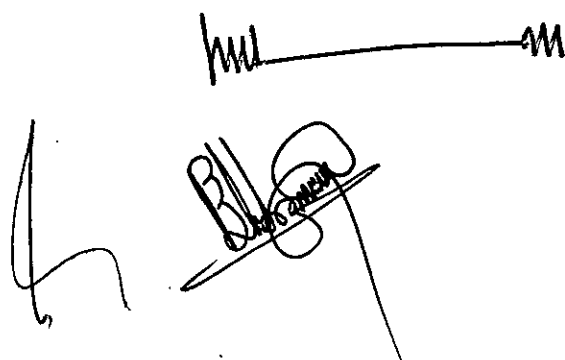




VII. That this Hon'ble Tribunal lacks jurisdiction to adjudicate upon the matter.

**ON FACTS:**


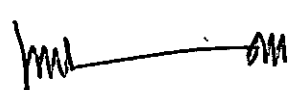
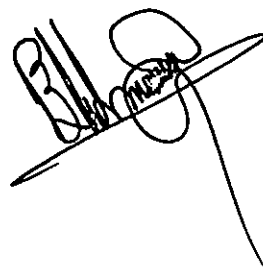
1. Pertains to record; hence no comments.
2. Pertains to record, hence no comments.
3. Incorrect. The mentioned letter was referred back by DFO Orakzai to Conservator of Forests Kohat Forest Circle vide his office letter No.1031/E dated 07/2/2023, **(Annex-A)** with the request to take advice of Administrative Department. The Administrative department clearly directed to maintain seniority on the basis of merit drawn by Departmental Selection Committee(s) according to Rule-17 (1)(a) of Khyber Pakhtunkhwa Civil servants (Appointment, Promotion and Transfer) Rules, 1989 vide Section Officer Establishment, Climate Change, Forestry, Environment & Wildlife Department letter No.SO(Estt)/FE&WD1-38/2020/KC 2973-75 dated 28/3/2023, endorsed by Chief Conservator of Forests Khyber Pakhtunkhwa Forest Region-I vide No.10191-96/E dated 20/4/2023 as well as Conservator of Forests Kohat Forest Circle endorsement No.2442/E dated 04/5/2023. **(Annexure-B).**

A handwritten signature in black ink, consisting of a stylized 'h' followed by a large, circular flourish that overlaps the text below.

4. Relates to record, however the department corrected the seniority list according to Rules as reflected in Para No.3 of the facts.
5. Incorrect. It has clearly been mentioned in his appointment order that seniority would be according to the order of merit **(Annexure-C)**. Thus the seniority has been granted as per section 17 (1)(a) of Khyber Pakhtunkhwa Civil servants (Appointment, Promotion and Transfer) Rules, 1989. **(Annexure-D)**.
6. Pertains to record, however his departmental appeal was processed and rejected hence no merit.
7. Incorrect. The petitioner and respondents No.5, 6, 7, 8, 9 and 10 are appointed in one Forest Division. Therefore Rule-17(4) not applies in the instant seniority case.
8. In view of the above service appeal of the petitioner may kindly be dispose of on the following grounds.

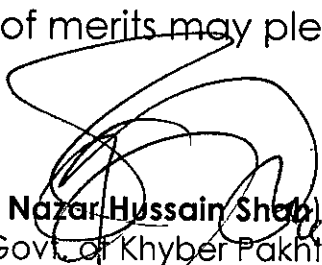
**GROUND S.**

- A. Incorrect. The seniority list dated 23.05.2023 of Forest Guard of Orakzai Forest Division Hangu is well in accordance with law.

- B. Incorrect. The seniority list of Forest Guard of Orakzai Forest Division Hangu is according to law and according to section 8 of the Civil Servant Act 1973 and Rules 17(1)(a) of the appointment, Promotion and Transfer Rules 1989.
- C. Incorrect. As already explained in Para 3-4 of the facts.
- D. Incorrect. As already explained in Para 3-4 of the facts.
- E. Needs no comments, and the answering respondents will agitate any other legal and factual points at the time of arguments with the prior permission of this Hon'ble Tribunal.

It, is therefore, humbly prayed that the instant service appeal of appellant being devoid of merits may please be dismissed with cost please.



**(Syed Nazar Hussain Shah)**

Secretary to Govt. of Khyber Pakhtunkhwa  
Climate Change, Forestry, Environment &  
Wildlife Department, Peshawar

**Respondent No.1**



**(Syed Muqtada Shah)**

Chief Conservator of Forests  
Central Southern Forest Region-I  
Khyber Pakhtunkhwa, Peshawar

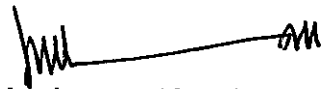
**Respondent No.2**



**(Mr. Fazal Wahid)**

Conservator of Forests  
Kohat Forest Circle at Peshawar

**Respondent No.3**



**(Mr. Jan-e-Alam)**

Divisional Forest Officer  
Orakzai Forest Division Hangu

**Respondent No.4**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No.1638/2023**

Muhammad Idrees (Forest Guard).....**Appellant**

**V E R S U S**

Govt. of Khyber Pakhtunkhwa  
 Through Secretary Forest & others.....**Respondents**

**A F F I D A V I T**

I, **Jan-e-Alam** Divisional Forest Officer Orakzai Forest Division, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Comments/Reply** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



D E P O N E N T

CNIC No.17201-7740943-1

Cell No. 0342-1133000

*Respondent No-4*

**ATTESTED**



Annex - A (6)

<p>(SHAHID NOOR) Divisional Forest Officer Orakzai Forest Division Hangu</p>		<p>Baber Mela, Hangu ☎ 0925-690081 FAX-0925-690081 E-mail dfoorakzai@yahoo.com No. 1031 /E Dated 07/02/2023</p>
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To

The Conservator of Forests  
Kohat Forest Circle at Peshawar

Subject:- **SENIORITY LIST OF FOREST GUARDS**

Memo: -

Reference to Chief Conservator of Forests Region-I Khyber Pakhtunkhwa Peshawar letter No.3671/E dated 15/12/2022 and your office endstt: No.1542/E dated 23/12/2022.

It is clarified that the seniority of staff appointed to a cadre on merit basis is decided as per order of merit and not through age as clearly mentioned in part-VI (seniority) section 17 (a) of ESTA Code which narrates "in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or, as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection;


Necessary guidance may also kindly be solicited to the effect that date of arrival may also be considered alongwith order of merit for fixing of seniority amongst the staff.

Therefore, it is requested that the opinion/guidance already communicated by your above referred letter may please be reconsidered and referred to Section Officer Establishment Branch of Climate Change, Forestry, Environment and Wildlife Department Khyber Pakhtunkhwa Peshawar for his views to avoid any legal complications at a later stage in case any aggrieved party approaches Service Tribunal or any other forum, please.

Encl As: Tentative Seniority list of Forest Guards.

*Attested*

  
Divisional Forest Officer  
Orakzai Forest Division  
Hangu

  
Divisional Forest Officer  
Orakzai Forest Division  
Hangu

*Annex - B*

To  
 Chief Conservator of Forests,  
 Northern Forest Region-II,  
 Civil Line Forest Offices,  
 Abbottabad.

Subject: SENIORITY LIST OF FOREST GUARDS

I am directed to refer to the Conservator of Forests, Upper Hazara Forest Circle, Mansehra letter No. 6571/R-56, dated 22<sup>nd</sup> March, 2023, addressed to your office and copy thereof endorsed to this department as well, requesting for advice to maintain the seniority list of Forest Guards of Hazara Tribal Forest Division, Battagram.

In this regard, it is requested that the seniority list of Forest Guards of Hazara Tribal Forest Division, Battagram may be maintained as per the merit drawn by the Departmental Selection Committee(s) read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, please.

SECTION OFFICER (ESTT)

Encl: No. & Date given.

Copies forwarded to:-

1. Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
2. DFO Hazara Tribal Forest Division, Battagram.
3. PS to Secretary, CC, FE&W Department, Khyber Pakhtunkhwa for Information.

*Attested*

SECTION OFFICER (ESTT)

*[Signature]*  
 Divisional Forest Officer  
 Kohat Forest Division  
 Mansehra

No. 10191-96 /E, Dated Peshawar the 20 /04/2023.

Copy forwarded for information and strict compliance to the:-

1. Chief Conservator of Forests Northern Forest Region-II, Abbottabad.
2. Chief Conservator of Forests Malakand Forest Region-III, Saidu Sharif Swat.
3. Conservator of Forests Forestry Planning and Monitoring Circle Peshawar.
4. Conservator of Forests Central Forest Circle Peshawar.
5. Conservator of Forests Kohat Forest Circle at Peshawar with reference to his letter No. 2092/E-16, dated 13/3/2023.
6. Conservator of Forests Southern Forests Circle Bannu.
7. Conservator of Forests Range Management Circle Peshawar.

They are requested to decide the similar nature cases as per instruction/advice of Administrative Department letter para-2 as above.

*No come*  
 Chief Conservator of Forests  
 Central Southern Forest Region-I  
 Khyber Pakhtunkhwa Peshawar

*Encl all for info & strict compliance*

No. 2442 /E

Dated Peshawar the 4 /05/2023.

Copy forwarded to all the Division Forest officers in Kohat Forest Circle for information and strict compliance.

No. 1649-50 /E  
 dt. 07/06/23

*Forwarded to CDFO/PFO for*

Conservator of Forests  
 Kohat Forest Circle  
 Peshawar

*Information and Necessary Action to be taken*

Divisional Forest Officer  
 Kohat Forest Division  
 Mansehra



(Annex-9) 9

OFFICE ORDER NO. 12 DATED HANGU THE 02 / 11 / 2016, ISSUED BY MR. AMJAD ALI  
DIVISIONAL FOREST OFFICER ORAKZAI FOREST DIVISION HANGU.

Consequent upon the final merit list of candidates based upon aggregate marks secured by them as well as recommendations of the Departmental Selection Committee, the following candidates are appointed as Forest Guards in BPS-07 (9220-510-24520) in Orakzai Forest Division at Baber Mela Hangu against the presently available vacant posts of Forest Guards in the best interest of public service.

Merit order will be determined by the aggregate marks obtained by them.

S#	Name and address	Aggregated marks obtained
1	Siraj Khan S/O Eisa Khan Sec: Akhel Ghiljo, Mohsin Khel, PO Ghiljo, Tehsil Ismailzai Upper Orakzai Agency	86
2	Liaquatullah S/O Khan Sarif Village Sheraki Landi wal Dara Adam Khel PO H.School Sheraki FR Kohat	83
3	Ishrat Ali S/O Ibrahim Khan Section Bar Muhammad Khel Tapa Terai PO Kadda Bazar Lower Orakzai Agency.	81
4	Zain Khan S/O Bakht Ali Shah Section Mula Khel Tapa CharKhela Dabbori Ghazano Tang Tehsil & Distt: Upper Orakzai Agency.	76
5	Imtiaz Ali S/O Amirullah Khan Village Sulamin Khel PO Kurez Lower Orakzai Agency.	75
6	Farmanullah S/O Naved Khan Section Mishti Tapa Mamazai Village Sarkotai Mishti Bazar PO Mishti Mela Central Orakzai Agency.	71
7	Muhammad Sadiq S/O Rahm Dad Khan Section Ali Khel Tapa Punjum Zanka Khel PO Ghiljo Upper Orakzai Agency	69
8	Muhammad Nawab S/O Sahib Zada Village Ajab Khel Kalay Section Bosti Khel Seb-Section Chaman Khel PO Dara Adam Khel FR Kohat	69
9	Muhammad Idrees S/O Abdul Badshah Village Dran Sheikhan (Samozai) Alwara Mela Centerl Orakzai Agency.	68
10	Rokhan Ali S/O Ali Haider Section Bar Muhammad Khel Tapa Alat Khel Village Azam Morcha PO Kadda Bazar Lower Orakzai Agency	67
11	Nasir Khan S/O Ahmed Nabi Village Subzai Khel Sub-section Main Khel PO Kalaya Loer Orakzai Agency/	67
12	Ihsanullah S/O Lahor Shah Section Mishti Tapa Haider Khel Sironi Mishti Bazar PO Mishti Mela Tehsil Central Agency.	61


**Terms & Conditions:**

- 1- They will remain on probation for a period of one year.
- 2- Their appointment is subject to the production of medical fitness certificate from Agency Surgeon as prescribed vide Govt:KPK (Formerly NWFP) Notification No.SOAI (FAD) 1-(421)/72, dated 25-01-1973.
- 3- They will have to join duty on their own expenses.
- 4- In case of resignation fourteen (14) days notice will be necessary or in lieu thereof fourteen days pay will be forfeited.
- 5- After joining their duties they will have to under- go Forest Guard training course at KP Forest School Abbottabad at Thai as and when deputed by the Department for the said course.
- 6- They will produce original educational certificates to prove their academic qualification.
- 7- They will be governed by such rules & regulations as issued by the Govt: from time to time.

(Amjad Ali)  
Divisional Forest Officer  
Orakzai Forest Divn:Hangu

Con.t page....2

*Attested*

  
Divisional Forest Officer  
Orakzai Forest Division  
Hangu


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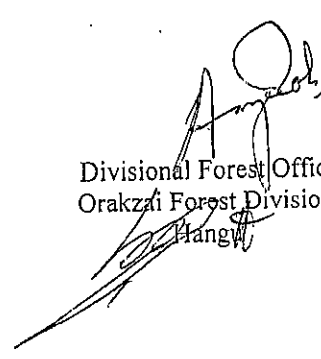
No. 248-54/E

Copy forwarded to:-

- 1- Conservator of Forests FATA Circle Peshawar for favour of information please.
- 2- Mr.Nasir Ali.Khan Section Officer Deptt: of P&LDD FATA Secretariat warsak Road Peshawar for information please.
- 3- Political Agent Orakzai Agency at Baber Mela Hangu for favour of information please.
- 4- Range Forest Officer Orakzai Forest Range at Hangu.
- 5- Range Forest Officer FR Kohat Forest Range at KDA Kohat.
- 6- All Concerned Forest Guards for information.
- ✓ 7- Head Clerk/Divisional Accountant for information.

Attested

  
Divisional Forest Officer  
Orakzai Forest Division  
Hangu

  
Divisional Forest Officer  
Orakzai Forest Division  
Hangu

(2) On the successful completion of probation period, prescribed in sub-rule (1), the appointing authority may extend the probation for another year by specific order within two months of the expiry of first year of probation period.

(3) In case no specific order of extension of probation period under sub-rule (2), is issued, on the expiry of one year within two months, the probation shall stand automatically terminated.

(4) In case of extension of probation period, through specific order for another year, under sub-rule (2), the probation shall stand automatically terminated on the completion of extended period.]

**16. Confirmation.**---After satisfactory completion of the probationary period, a civil servant shall be confirmed; provided that he holds a substantive post, provided further that a civil servant shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course or has failed to complete successfully a training prescribed within the meaning of sub-section (3) of Section 6 of the Khyber Pakhtunkhwa Civil Servants Act, 1973.

**PART-VI  
 SENIORITY**

**17. Seniority.**---(1) The seniority inter se of civil servants [appointed to a service, cadre or post] shall be determined.---

(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or, as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and

(b) in the case of civil servants appointed otherwise, with reference to the dates of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

**Explanation-I.**---If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Provided that if no specific order regarding termination of the probation period of the official or officer concerned is issued within two months, the period of probation shall be deemed to have been extended under sub-rule (2):

Provided further that if no specific order is issued on the expiry of the extended period of probation, the period of probation shall be deemed to have been successfully completed

1. Substituted for the words "appointment to post in the same Basic Pay Scale in a cadre" by Notification No. SOR.I(S&GAD)4-1/80, dated 17-05-1989.
2. Inserted by Notification No: SORI(S&GAD)4-1/80(V.II), dated 04-02-1996.

Accepted  
 Div. H.W.  
 Orakzai

**Explanation-II.**---If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributing to his fault or demerit.

**Explanation-III.**---A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-a-viz those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

<sup>1</sup>[(3) In the event of merger/restructuring of the departments, attached departments or subordinate Offices, the inter se seniority of civil servants affected by the merger / restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.]

<sup>2</sup>[(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the lower post is the same, the civil servant older in age, shall be treated senior.]

**18. General Rules.**---In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

**19. Repeal.**---The Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

### **Initial Appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 2008**

[Gazette of Khyber Pakhtunkhwa, Extraordinary, Page No. 504-506, 15<sup>th</sup> March, 2008]

**NO.SOE-III(E&AD)2-1/2007, Dated 01-03--2008.**---In pursuance the powers granted under Section 26 of the Khyber Pakhtunkhwa Civil Servants Act

1. Added by Notification No. SOR-I(E&AD)4-1/80 (Vol. IV), dated 28-05-2002.

2. Sub-rule (4) of Rule 17, added vide Notification No. SOR-VI (E&AD) 1-3/2008 dated 19.11.2009.

*M. S. Khan*  
Divisional Forest Officer  
Civil Division