

**BEFORE THE COURT OF LEARNED SERVICE TRIBUNAL,  
KHYBER PAKHTUNKHWA, PESHAWAR.**

Service Appeal No.5/2023

Safdar Ali Shah.....**APPELLANT**

**VERSUS**

Govt. of Khyber Pakhtunkhwa & others.....**RESPONDENTS**

**I N D E X**

<b>S.No</b>	<b>Description of Documents</b>	<b>Annexure</b>	<b>Page</b>
1.	Application along with affidavit		1-4
2.	Copy of impugned letter dated: 12.02.2024		5
3.	Copy of Seniority List of BPS-20		6-7
4.	Copy of judgment of Honorable Supreme Court in Suo Moto Case No.17/2016		8-9

Through Respondent No.6

  
**AMANULLAH MARWAT**

Advocate Supreme Court.

Dated: 15.02.2024

**BEFORE THE COURT OF LEARNED SERVICE TRIBUNAL,  
KHYBER PAKHTUNKHWA, PESHAWAR.**

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal No.5/2023

Diary No. 11168

Dated 15-02-2024

Safdar Ali Shah.....**APPELLANT**

**VERSUS**

Govt. of Khyber Pakhtunkhwa & others.....**RESPONDENTS**

**APPLICATION FOR SUSPENSION OF  
IMPUGNED LETTER DATED: 12.02.2024**

whereby official respondent have recommended creation of one post of Chief Conservator Wildlife (BPS-20) on the direction of caretaker government being violative of article 224 and 224A of 1973 constitution, violative of Supreme Court judgment Civil Petition Nos.3656 of 2020 & 177-P of 2021 vide order dated: 12.04.2022, and decision of Supreme Court in Suo Moto case No. 17/2016 vide judgment dated: 08.03.2023.

**Respectfully Sheweth:**

1. That the titled case is pending adjudication before this Honorable Tribunal, which is fixed for arguments for today i.e. 15.02.2024.
2. That the appellant has challenged impugned order dated: 26.12.2018 and 17.01.2019, whereby, respondent No.6 was regularly promoted to the post of Chief Conservator Wildlife, which is single cadre post. Prior to this, appellant has also challenged the same order before Honorable Peshawar High Court, Peshawar in Writ Petitions the detail of which is

mentioned at Page No.81 of the appeal of the appellant. These writ petition were disposed-off through consolidated judgment by the Honorable Peshawar High Court, Peshawar vide order dated: 26.11.2020 which is on page 81 of the main file.

3. That feeling aggrieved from the para 19 of the judgment of Honorable Peshawar High Court, Peshawar, respondent No.6 has challenged the same before Honorable Supreme Court of Pakistan through appeal No.3656, which was allowed and disposed of with certain directions, the judgment of Supreme Court is on page 94 of main appeal, thereafter, review was preferred by the appellant which was dismissed vide order dated: 28.07.2022.
4. That after dismissal of review petition by the honorable Supreme Court of Pakistan, the appellant filed appeal before this Honorable Tribunal to challenge the promotion of respondent No.6, it is pertinent to mention here that in the meanwhile, official respondents issued seniority list of BPS-20 on 07.06.2023, which has not been challenged by the appellant, so after issuance of seniority list of BPS-20, he is to be treated in BPS-19, but still official respondents are reluctant to issue seniority list of BPS-19 for the reasons best known to them.
5. That during pendency of titled appeal, official respondents has recommended creation of one post of BPS-20 of Chief Conservator Wildlife to adjust the appellant, that too on the directions and recommendations of caretaker government, despite the fact that he is still in BPS-19 after issuance of seniority list of BPS-20.
6. That recommendations for creation of post of Chief Conservator Wildlife BPS-20 on the directions and recommendations of the caretaker government is clearly out

of mandate of the caretaker setup, which is violative of article 224 and 224A of the Constitution, which is only empowered to run day to day affairs and not allowed to take major decisions i.e. creation of post for special person for limited period.

7. That the recommendations of post by the caretaker government for the appellant is also indirectly violative of the decision of Supreme Court referred above in which the appellant case has attained finality after dismissal of his review petition.
8. That on one side, he has challenged promotions before Service Tribunal through the titled appeal in which respondents submitted their comments and prayed for dismissal of his appeal, meaning thereby, he is not entitled for BPS-20 but on the other side, recommended creation of post to adjust him against the post of BPS-20 Chief Conservator Wildlife that too on the direction of caretaker government, so the stance of official respondents is self-contradictory and violative of the rule of business and service laws.
9. That Honorable Supreme Court of Pakistan in Suo Moto case bearing No.17/2016 categorically held that penalty of disqualification from holding public office is equally applicable by Section 25(a) as well as section 25(b) vide order dated: 08.03.2023. The appellant was appointed conditionally on acting charge basis subject to outcome of the Suo Moto case 17/2016, because he has entered into VR with NAB, so keeping in view the mandate of the Supreme Court, the appellant is not entitled by any canon of law to hold the public office and this court is under obligation to implement the decision of the Supreme Court in letter and spirit, keeping in view article 189 of 1973 Constitution, but official respondent on the other side recommended a creation

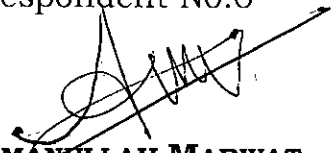
of new post for him, thus the action of the respondent is violative of the decision dated: 08.03.2023 passed in Suo Moto case 17/2016 by Honorable Supreme Court.

10. That eligibility for promotion to BPS-20 of the appellant is subjudice before this Honorable Court, which has not yet decided but official respondents for the reason best known to them, recommended and created special post for BPS-20 to adjust the appellant, that too on the direction of caretaker government for limited time will further complicate the issue of this case and will further create administrative problems within the department, thus needs urgent attention of this Honorable Court.
11. That it would be in the interest of justice, fair play and equity if the instant application is allowed.

It is, therefore, most humbly prayed that on acceptance of this application, the impugned letter dated: 12.02.2024 may very kindly please be suspended till final disposal of titled appeal.

Through

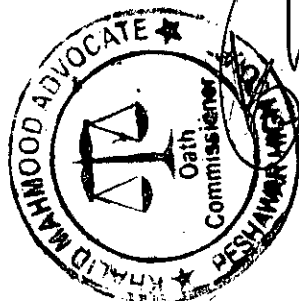
Respondent No.6

  
**AMANULLAH MARWAT**  
 Advocate Supreme Court.

Dated: 15.02.2024

**AFFIDAVIT:**

I, do hereby solemnly affirm and declare on oath that all the contents of the above **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



  
**DEPONENT**

5



# GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar

finance.gov.pk

finance.gov

finance.gov

No. BO-II/FD/1-5(A)/WL/SNE/2023 24

Dated Peshawar, the 12.02.2024

To

The Secretary to Government of Khyber Pakhtunkhwa,  
Forestry, Environment & Wildlife Department

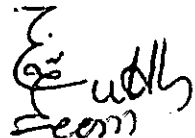
SUBJECT: CREATION OF ANOTHER ONE POST OF CHIEF CONSERVATOR  
WILDLIFE (BPS-20).

Dear Sir,

I am directed to refer your letter No. B&A/Bud-II/22-23/SNE/3385 Dated 29 12 2023 and No. B&A/2022-23/Bud/SNE/W-L/4059 dated 29.01.2024 on the subject noted above and to state that in pursuance of approval by the Caretaker Provincial Cabinet, Finance Department agrees to the creation of one post of Chief Conservator Wildlife (BS-20) in the Forestry, Environment & Wildlife Department during the Current Financial Year 2023-24 with the condition that the created post shall stand downgraded to the post of Conservator (BS-19) after the retirement of Mr. Safdar Ali Shah.

3. The Administrative Department may kindly furnish audit copy incorporating therein accurate financial implication and DDO code for authentication, please.


Yours faithfully,

  
(KALEEM ULLAH)  
BUDGET OFFICER-II

Endst: No & Date Even:

Copy forwarded to the:

- 1) Accountant General, Khyber Pakhtunkhwa
- 2) Director FMIU, Finance Department.
- 3) Assistant Director-II & III, FMIU, Finance Department.
- 4) Master File.

  
ATTESTED

BUDGET OFFICER-II

6

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

NOTIFICATION

No. SO (Estt) FE&WD/II-26/2023: 5450-62

In pursuance of Section-8(1) of Khyber Pakhtunkhwa Civil Servant Act, 1973, read with Rule-17 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) is pleased to notify/circulate final seniority list of Chief Conservator Wildlife, Khyber Pakhtunkhwa of Khyber Pakhtunkhwa Wildlife Department (as stood on 31-12-2022) for general information.

S#	Name of Officer and Academic Qualification	Date of Birth and Domicile	Date of 1 <sup>st</sup> Entry into Govt. Service	Regular Appointment/Promotion to the present post			Remarks
				Date	BPS	Method of Recruitment/ Appointment	
1	2	3	4	6	7	8	9
1.	Dr. Mohsin Farooque, (i) Ph.D Environmental Planning (Cadre) (ii) M.Sc Conservation Biology (United Kingdom) with merit. (iii) M.Sc Forestry (iv) B.Sc (Hons) Agriculture (Gol Medalist) (v) Post Graduate Diploma GIS & Remote Sensing	31-3-1968 Bannu	10-3-1996 BPS-17	17-1-2019	20	By promotion	Chief Conservator Wildlife, Khyber Pakhtunkhwa Peshawar.

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

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Personal copy

5106-107  
Endst: No. SO (Estt)FE&WD/II-26/2023

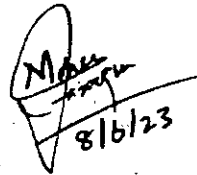
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Dated Peshawar the, 7<sup>th</sup> June, 2023

Copy is forwarded to:

1. Chief Conservator Wildlife, Khyber Pakhtunkhwa Peshawar.
2. Director Budget & Accounts Cell, CC, FE&W Department, Khyber Pakhtunkhwa.
3. Officer concerned.

  
(HAFIZ ABDUL JALIL)  
SECTION OFFICER (ESTT) 7/6/23

  
8/6/23

  
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8

**IN THE SUPREME COURT OF PAKISTAN**  
(Original/Appellant Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial, CJ  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi  
Mrs. Justice Ayesha A. Malik

SMC NO.17 OF 2016, CMA NO.6374 OF 2016 IN SMC NO.17 OF 2016, CMA NO.7308 OF 2016 IN CRP NIL OF 2016 IN SMC NO.17 OF 2016, CMAs NO.7312, 7581, 7815, 7852, 7270, 7274, 7278 AND 7647 OF 2016 IN CRP NIL OF 2016 IN SMC NO.17 OF 2016, CIVIL PETITION NO.1338 OF 2014 AND CMA NO.6210 OF 2014, CIVIL APPEALS NO.67 AND 150 OF 2015, CIVIL PETITIONS NO.4356 AND 5104 OF 2017, CIVIL APPEAL NO.24 OF 2018, CRIMINAL ORG. PETITION NO.123 OF 2018 IN SMC 17 OF 2016 AND CP NO.548-K OF 2018

*Suo Moto Action to examine the vires of Section 25(a) of NAB Ordinance, 1999, etc.*

In attendance : Mr. Mumtaz Yousaf  
Additional Prosecutor General NAB  
Ch. Aamir Rehman  
Additional Attorney General for Pakistan  
Malik Waseem Mumtaz  
Additional Advocate General Punjab  
Sardar Ali Raza  
Additional Advocate General, KP  
Mian Aziz Ahmed,  
Director Legal (Prosecution), KP  
Rana M. Faisal, AAO  
Syed Zulfiqar Abbas Naqvi, ASC  
Khawaja Azhar Rasheed, ASC  
Mr. Liaqat Ali Tareen, ASC  
Mr. Farooq H. Naek, Sr.ASC  
Mr. M. Shoaib Shaheen, ASC  
Mr. Shozib Masud, ASC

Mr. Saulat Rizvi  
Additional Advocate General Sindh  
Mr. Saleem Akhtar Buriro  
Additional Prosecutor General Sindh  
(via video link, Karachi)

Mr. Zaheer-ud-Din Babar  
Deputy Secretary S&GAD

Date of Hearing : 08.03.2023

**ORDER**

**UMAR ATA BANDIAL, C.J.-**

**SMC NO.17 OF 2016 AND CMA NO.6374 OF 2016**

The vires of Section 25(a) of the National Accountability Ordinance, 1999 (NAO) are under challenge in

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

**ATTESTED**

9

SMC.17/2016, etc

-2-

these *suo moto* proceedings. Learned Additional Attorney General for Pakistan has pointed out that as a result of the amendments made in June, 2022 in the NAO 1999, proviso to Section 15(a) has been amended to apply to Section 25 of the NAO 1999 as a whole. As a result, the penalty of disqualification from holding public office is equally applicable to the situation covered by Section 25(a) as well as section 25(b).

2. From the foregoing amendment in the law it is clear that the objection of the *suo moto* proceedings initiated vide our order dated 24.10.2016 has been addressed. Consequently, these proceedings have fructified and are disposed of accordingly. C.M.A. No.6374 of 2014 for impleadment is also disposed of.

CMA NO.7308 OF 2016 IN CRP NIL OF 2016 IN SMC NO.17 OF 2016, CMAs NO.7312, 7581, 7815, 7852, 7270, 7274, 7278 AND 7647 OF 2016 IN CRP NIL OF 2016 IN SMC NO.17 OF 2016, CIVIL PETITION NO.1338 OF 2014 AND CMA NO.6210 OF 2014, CIVIL APPEALS NO.67 AND 150 OF 2015, CIVIL PETITIONS NO.4356 AND 5104 OF 2017, CIVIL APPEAL NO.24 OF 2018, CRIMINAL ORG. PETITION NO.123 OF 2018 IN SMC 17 OF 2016 AND CP NO.548-K OF 2018

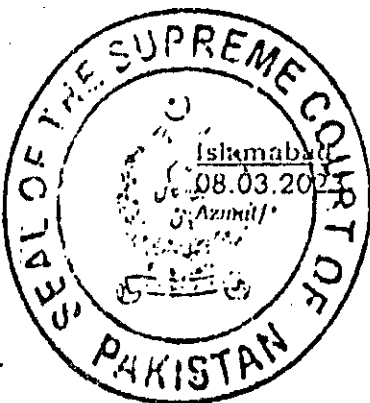
3. These matters are connected with SMC No.17 of 2016 which has been disposed of by our above order. Parties in these matters are not present. Office shall notify the learned AORs/ASCs and fix these matters separately.

Certified to be True Copy/-HCJ

Sd/-J

Sd/-J

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad



5024/2023  
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Compared by: \_\_\_\_\_  
Received by: \_\_\_\_\_

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