

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1407 of 2017

Muhammad Farash Forest Guard

Appellant

Versus

1. Chief Conservator of Forest Central Southern Forest Region-I Peshawar.
2. Conservator of Forests, Lower Hazara Forest Circle Abbottabad.
3. Divisional Forest Officer, Kaghan Forest Division Jabba.

Respondents

Preliminary objections.

1. The appellant has got no cause of action because the appeal has become in-fructuous.
2. The appellant is legally stopped by his own conduct to bring the present appeal.
3. The appellant has no locus standi.
4. The appeal is time barred.

FACTS OF THE CASE.

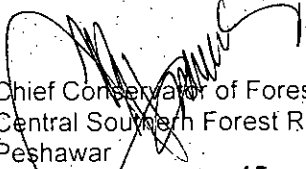
1. Correct. The appellant was appointed purely on contract basis vide office order No.16 dated 17/09/1991 (Annexure-A).
2. In-correct. The appellant was appointed on 17/09/1991 after eight (08) years on completion of Project on 30/06/2000 termination notice was issued.
3. Correct.
4. The adjustment from surplus pool was made on seniority basis and Social Forestry employees were senior from the appellant and the Social Forestry Division is also working under the administration of Siran Kaghan Forestry Project as the official himself admitted in Paragraph No.3 of the appeal in which he stated that the Conservator of Forests, Siran Kaghan Forestry Circle move a case to Chief Conservator of Forests Peshawar vide No.326/PA dated 26/06/2001 (Annexure-B) with the request that appellant as well as other may be surplus pool.
5. On existence of vacant post the appellant was adjusted by respondent No.2 vide office order No.125 dated 07/06/2003 (Annexure-C) with clear direction that the intervening period from the date of termination to date of arrival is treated as extra ordinary leave. The appellant reported arrival in Galies Forest Division after acceptance of condition as mentioned adjustment order but no appeal was preferred during fourteen (14) years therefore the appeal of appellant is time by bared.
6. In-correct. The appellant received the adjustment order and reported arrival but he failed to preferred any appeal.
7. The appeal preferred by the appellant after fourteen (14) years which are bared by time.
8. In-correct.


Divisional Forest Officer
Kaghan Forest Division
JABBA

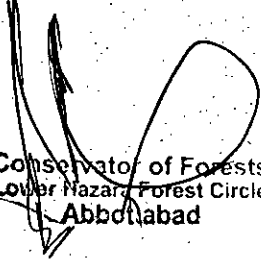
GROUND.


- A. In-correct. The competent authority vide office order No.125 dated 07/06/2003 has decided about the intervening period from the date of termination to date of arrival as extra ordinary leave.
- B. As explained in Para-A above.
- C. In-correct. The appellant was required to preferred appeal before the appellate authority at that time and wait for decision upto 90 days in case of no reply then he was required to prefer an appeal before Service Tribunal under Service Tribunal Act, 1974 but the appellant failed to do so now the case is time by bard.
- D. In-correct. The appellant was adjusted in Forest Department due to his previous services in Project and the intervening period treated as extra ordinary leave without pay.
- E. As explained Para-A to D above
- F. In-correct as explained above.
- G. The Act of department is under the rule as during intervening period the appellant was not performed his duty due to abolishing of Project post. On existing vacancy the appellant was adjusted against vacant posts and after his adjustment/arrival he receiving his emoluments till to date.
- H. Need no comments.

In view of the aforementioned narrated facts and circumstances of the case, due to time by barred. It is therefore, humbly prayed that appeal is not competent, unjustified and against the law may kindly be dismissed in the honorable Service Tribunal please.


Chief Conservator of Forests
Central Southern Forest Region-I
Peshawar

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


Conservator of Forests
Lower Nazim Forest Circle
Abbottabad


Divisional Forest Officer
Kaghan Forest Division
Jabba

COUNTER AFFIDAVIT.

I the undersigned do hereby solemnly affirm and declare on oath that the contents of my written reply in the appeal is correct to the best of my knowledge and record and nothing has been concealed from the Tribunal.

Respondent



Divisional Forest Officer
Kaghan Forest Division
Jabba

Service Appeal No.1407 of 2017

Muhammad Farash Forest Guard

Appellant

Versus

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

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8. In correct.

GROUNDS.

- A. In correct. The competent authority vide office order No.125 dated 07/06/2003 has decided about the intervening period from the date of termination to date of arrival as extra ordinary leave.
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The instant S.A is corrected and same matters with S.A 1260/17 Shah Almi vs Forest already vetted

[Signature]
Divisional Forest Officer
Kaghan Forest Division
Jabba

[Signature]
25/3/2018
Assistant Advocate General
Hyder Paktia
Service Tribunal Peshawar

Annex-A

OFFICE ORDER NO. 16 DATED ABBOTTABAD THE 12/9/1991, ISSUED BY
MR. H. S. KHAN, PROJECT DIRECTOR / D.F.O., AFFORESTATION AND
INTRODUCTION OF SOCIAL FORESTRY IN HAZARA A'ABAD

Consequent upon recommendation of the Departmental Selection Committee constituted vide this office order No.6 dated 8.8.1991 the following persons having qualified the Test/Interviews are hereby appointed as Forest Guard on contract basis, as provided in the Ministry of Planning and Development Division Islamabad Letter No. 4(35) 91 dated 6.8.1991, in Revised Basic Pay Scale No.2 (Rs: 945-32-1425) per month with usual allowances as admissible under the rules against the existing vacancies in Development Project titled " Afforestation and Introduction of Social Forestry in Hazara " with effect from the date of their arrival.

1. Tahir Farooq Abbasi s/o
Dilber Abbasi of village Shergran Cum Kokang
Teh: and Distt: Abbottabad.
c/o
Hussain Traders, Iqbal Shoping Complex A'Abad.
2. Syed Arshad Hussain Shah s/o
Syed Muzammal Shah of village Tori, Post Office
Teh: and Distt: Abbottabad.
3. Mr. Mohammad Shabir s/o
Yar Mohammad of Village Karmang Post Office Qaziabad
(Battal) Teh: and Distt: Mansehra.
4. Mohammad Haroon s/o
Shahzaman of Village and Post Office Tarnwai
Teh: and Distt: Abbottabad.
5. Mohammad Farash Khan s/o
Abdul Gayum Khan of Village and Post Office Talhata,
Tehsil Balakot Distt: Mansehra.

Their appointment is subject to the following condition

1. The posts are purely temporary and shall cease to exist on the expiry of the Project. Their service/employment in Forest Department is therefore, purely temporary and as such their services can be terminated in accordance with the Service and General Admin: Department Notification no. SO-XVII-1-8166 at any time irrespective of the fact that they are holding the charge of the post other than that for which they are originally recruited.
2. They will remain on probation for a period of two years (extendable by one year) during which their services can be terminated at any time with one month notice or on payment of one month salary in lieu therefore, if they fail to perform their duties to the satisfaction of the appointing authority.
3. They will be governed by such rules, regulations or orders relating to pay allowances etc, as are applicable to the class of service to which they belong.
4. The incumbents shall have no claim for transfer to

ATTESTED

[Signature]
Divisional Forest Officer
Kaghan Forest Division

5. The incumbents shall produce the following documents :
- i. Educational Certificates attested by the Gazetted Officer.
 - ii. Medical Fitness from the Medical Superintendent of Distt: Head Quarter Hospital.
 - iii. Domicile Certificate.
 - iv. Character Certificate from two responsible persons not being the relatives of the candidate, duly countersigned at least by the Assistant Commissioner /Sub Divisional Magistrate.
6. If they wish to resign, they will have to serve one month's notice or remit an amount equal to months salary in lieu thereof.
7. They will join the duty at their own expenses.
8. The incumbents fail(s) to report arrival for duty within (7) days of the receipt of this letter the appointment shall stand cancelled.

Sd/-Haider Zaman
Project Director / D.F.O
AFFORESTATION and Introduction
of Social Forestry in Hazara
Abbottabad

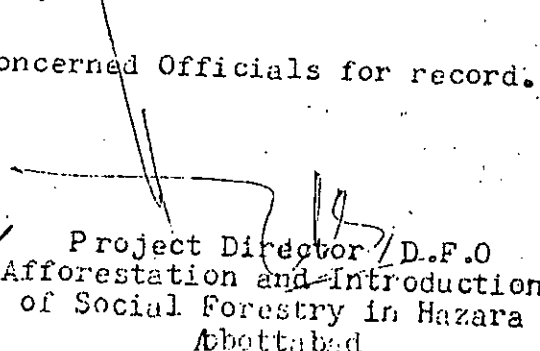
No. 355-59/HSF,

Copy forwarded to :-

1. The Conservator of Forests Watershed Management Circle, Abbottabad for favour of information please.
2. All Concerned Officials for immediate necessary action/ compliance.
3. Head Clerk / Divisional Accountant for information and necessary action.
4. Personal File of concerned Officials for record.
5. Office Order file.

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Divisional Forest Officer
Kaghan Forest Division


Project Director / D.F.O
Afforestation and Introduction
of Social Forestry in Hazara
Abbottabad

Anna-B

(Handwritten marks)

OFFICE OF THE CONSERVATOR OF FORESTS, SIRNA KAGHAN FOREST CIRCLE
ABBOTTABAD.

To,

The Chief Conservator of Forests,
Territorial Conservation, NWFP,
Peshawar.

No. 326 /PA, dated Abbottabad the 26/06/2001.

Subject :- STAFF OF SIRAN KAGHAN FORESTRY PROJECT.

It is submitted that the following staff of Siran Kaghan Forestry Project could not be adjusted in Siran Kaghan and Abbottabad Circle, due to non-availability of the posts. It is requested that they may be placed in surplus pool so that they can be adjusted later on against the vacant posts.

S.#	Name	BPS	Date of Appointment	Place of appointment
JUNIOR CLERKS				
1.	Abdur Rashid	5	16.12.1998	Lower Kaghan Division Balakot
DRIVERS				
2.	Muhammad Yaqoob	7	02.07.1979	Unhar W/shed Division Mansehra
3.	Muhammad Javeri	6	15.05.1982	Siran Forest Division Mansehra
4.	Abdullah	7	05.12.1982	Unhar W/shed Division Mansehra
5.	Arwarzeb	4	12.03.1988	Siran W/shed Division Mansehra
6.	Mushtaq Hussain	6	12.07.1988	Lower Kaghan Division Balakot
7.	Muhammad Azeem	4	20.09.1988	P. M W/shed Mgt. A-Abad
8.	Muhammad Fiaz	4	14.01.2000	Upper Kaghan Division Balakot
CLEARNER				
9.	Abdul Jallil	2	15.11.1982	Unhar W/shed Division Mansehra
NAIB QASID				
10.	Muhammad Javed	1	16.10.1990	Upper Kaghan Division Balakot.
11.	Janvaiz	1	03.03.2000	Lower Kaghan Division, Balakot.
CHOWKIDARS				
12.	Shamraiz	2	08.01.1987	Siran W/Shed Division, Mansehra.
13.	Muhammad Afzal	1	01.10.1987	Upper Kaghan Division, Balakot.
14.	Ailaf Hussain	1	16.12.1987	Afforestation Division, Mansehra.
15.	Muhammad Tamaz	1	12.12.1988	Upper Kaghan Division, Balakot.
16.	Abdul Latif	1	07.11.1989	Upper Kaghan Division, Balakot.

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Divisional Officer
Kaghan

17	Muhammad Javed	15.10.1990	Upper Kaghan, Division, E
18	Far Zaman	16.10.1990	Upper Kaghan, Division, E
19	Bader Salam	15.12.1990	Lower Kaghan Division-Balakot.
20	Tahir Hussain	16.03.1996	Lower Kaghan Division-Balakot.
21	Jehanzab-Il	16.06.1998	Upper Kaghan, Division Balakot.
22	Asmat	14.07.1999	Lower Kaghan Division Balakot.
DAK RUNNER			
23	Ajmal	15.10.1990	Upper Kaghan Division-Balakot.
MALI			
24	Gul Khilab	03.04.1993	Upper Kaghan Division, Balakot.
25	Muhammad Tariq	19.08.1998	SKFP, Abbottabad.
BUDDER			
26	Manawar Khan	20.11.1985	Siran W/Shed Division, Mansehra.
SWEEPERS			
27	Munroof	12.09.1993	Upper Kaghan Division, Balakot.
28	Khurshid	09.08.1993	Lower Kaghan Division, Balakot.
FOREST GUARDS			
29	Shah Alam	19.05.1990	Upper Kaghan Division Balakot.
30	Rafiqullah	17.09.1990	Lower Kaghan Division Balakot.
31	Manzoor Hussain	18.09.1990	Lower Kaghan Division Balakot.
32	Muhammad Saleem	28.02.1991	Upper Kaghan Division Balakot.
33	Noor-ul-Afreen	01.04.1991	Upper Kaghan Division Balakot.
34	Muhammad Farash	18.09.1991	Social Forestry, Mansehra.
35	Shah Nawaz	08.07.1996	Lower Kaghan Division, Balakot.
36	Faisal	18.09.1996	Upper Kaghan Division Balakot.
37	Mikhan Hussain	30.10.1996	Lower Kaghan Division Balakot.
38	Dawood	14.02.2000	Lower Kaghan Division Balakot.

APPROVED

[Signature]
 Divisional Forest Officer
 Kaghan Forest Division

[Signature]
 Conservator of Forests,
 Siran Kaghan Forest Division,
 Abbottabad.

OFFICE ORDER NO. 125 DATED 07/6/2003 BY JALAL-UD-DIN, CONSERVATOR OF FORESTS, ABBOTTABAD CIRCLE, ABBOTTABAD.

Mr. Muhammad Farash Forest Guard declared surplus Conservator of Forests/PD, former Siran Kaghan Forest Circle, Abbottabad letter No. 326/PA, date 26.6.2001 is hereby appointed in Kaghan Forest Division, Balaket against the vacancy created to retirement of Mr. Muhammad Farooq, Forest Guard w.e.from 1.7.2003.

The intervening period from the date of termination to date of arrival is hereby treated as Extra Ordinary leave.

Sd(Jalal-ud-Din)
Conservator of Forests,
Abbottabad Circle,
Abbottabad.

Memo.

Copy forwarded to:

- 1- The Divisional Forest Officer, Kaghan Forest Division, Balaket for information and necessary action.
- 2- Mr. Muhammad Farash, Forest Guard for information and compliance.

ATTESTED

Divisional Forest Officer
Kaghan Forest Division

CONSERVATOR OF FORESTS,
ABBOTTABAD CIRCLE,
ABBOTTABAD.

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