

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**FAREEHA PAUL ... MEMBER (Executive)**

***Service Appeal No.533/2019***

Date of presentation of appeal .....23.04.2019  
Dates of Hearing.....19.02.2024  
Date of Decision.....19.02.2024

**Mr. Safeer Ullah Khan, Son of Malik Mir Dad Khan Ex-Deputy Ranger, Bannu Sub Division, Forest Bannu R/O Sero Bada Khel, Tehsil & District Bannu .....(Appellant)**

Versus

1. **Secretary to Government of Khyber Pakhtunkhwa, Environmental Department, Civil Secretariat, Peshawar.**
2. **Chief Conservator of Forest Southern Region-I, Peshawar.**
3. **Conservator of Forests, Southern Circle, Peshawar.**
4. **Divisional Forest Officer, Bannu.....(Respondents)**

Present:

Mr. Inayat Ullah Khan, Advocate .....For appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For the respondents

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED OFFICE ORDER NO.56 DATED 16.01.2019 RECEIVED BY THE APPELLANT ON 21.01.2019, WHEREBY, THE PENALTY OF RECOVERY OF RS.37,61,125/- (THIRTY SEVEN LACS, SIXTY ONE THOUSANDS, ONE HUNDRED AND TWENTY FIVE RUPEES) WAS IMPOSED UPON THE APPELLANT TO BE RECOVERED FROM HIS PENSION THROUGH OFFICE ORDER NO.56 AGAINST WHICH DEPARTMENTAL APPEAL DATED 22.03.2019 WAS REFERRED TO RESPONDENT NO.3, BUT THE SAME COULD NOT BE DECIDED ON MERIT BEING TIME BARRED CONSEQUENTLY WAS FILED IN OFFICE VIDE ORDER NO.4640/E DATED 11.04.2019, HENCE PRESENTS THIS SERVICE APPEAL BEFORE THIS HON'BLE TRIBUNAL WITHIN STIPULATED PERIOD OF 30 DAYS, WHICH IS WELL WITHIN TIME.**

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***Service Appeal No.534/2019***

Date of presentation of appeal .....23.04.2019  
Dates of Hearing.....19.02.2024  
Date of Decision.....19.02.2024



**Mr. Safer Ullah Khan**, Son of Malik Mir Dad Khan Ex-Deputy Ranger, Bannu Sub Division, Forest Bannu R/O Sero Bada Khel, Tehsil & District Bannu .....(*Appellant*)

Versus

1. **Secretary to Government of Khyber Pakhtunkhwa**, Environmental Department, Civil Secretariat, Peshawar.
2. **Chief Conservator of Forest Southern Region-I**, Peshawar.
3. **Conservator of Forests**, Southern Circle, Peshawar.
4. **Divisional Forest Officer**, Bannu. ....(*Respondents*)

Present:

Mr. Inayat Ullah Khan, Advocate .....For appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney.....For the respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED OFFICE ORDER NO.57 DATED 16.01.2019 RECEIVED BY THE APPELLANT ON 21.01.2019, WHEREBY, THE PENALTY OF RECOVERY OF RS.30,41,057/- (THIRTY SEVEN LACS, FORTY ONE THOUSAND AND FIFTY SEVEN RUPEES) WAS IMPOSED UPON THE APPELLANT TO BE RECOVERED FROM HIS PENSION THROUGH OFFICE ORDER NO.57 AGAINST WHICH DEPARTMENTAL APPEAL DATED 22.03.2019 WAS REFERRED TO RESPONDENT NO.3, BUT THE SAME COULD NOT BE DECIDED ON MERIT BEING TIME BARRED CONSEQUENTLY WAS FILED IN OFFICE VIDE ORDER NO.4640/E DATED 11.04.2019, HENCE PRESENTS THIS SERVICE APPEAL BEFORE THIS HON'BLE TRIBUNAL WITHIN STIPULATED PERIOD OF 30 DAYS, WHICH IS WELL WITHIN TIME.

*Service Appeal No.535/2019*

Date of presentation of appeal .....23.04.2019

Dates of Hearing.....19.02.2024

Date of Decision.....19.02.2024

**Mr. Safer Ullah Khan**, Son of Malik Mir Dad Khan Ex-Deputy Ranger, Bannu Sub Division, Forest Bannu R/O Sero Bada Khel, Tehsil & District Bannu .....(*Appellant*)

Versus

1. **Secretary to Government of Khyber Pakhtunkhwa**, Environmental Department, Civil Secretariat, Peshawar.
2. **Chief Conservator of Forest Southern Region-I**, Peshawar.
3. **Conservator of Forests**, Southern Circle, Peshawar.
4. **Divisional Forest Officer**, Bannu. ....(*Respondents*)

Present:

Mr. Inayat Ullah Khan, Advocate .....For appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney.....For the respondents


**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED OFFICE ORDER NO.58 DATED 17.01.2019 RECEIVED BY THE APPELLANT ON 21.01.2019, WHEREBY, THE PENALTY OF RECOVERY OF RS.255,021/- (TWO LACS, FIFTY FIVE THOUSAND AND TWENTY ONE) WAS IMPOSED UPON THE APPELLANT TO BE RECOVERED FROM HIS PENSION THROUGH OFFICE ORDER NO.58 AGAINST WHICH DEPARTMENTAL APPEAL DATED 22.03.2019 WAS REFERRED TO RESPONDENT NO.3, BUT THE SAME COULD NOT BE DECIDED ON MERIT BEING TIME BARRED CONSEQUENTLY WAS FILED IN OFFICE VIDE ORDER NO.4640/E DATED 11.04.2019, HENCE PRESENTS THIS SERVICE APPEAL BEFORE THIS HON'BLE TRIBUNAL WITHIN STIPULATED PERIOD OF 30 DAYS, WHICH IS WELL WITHIN TIME.**

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**CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Through this single judgment this appeal and the connected service appeals No.534/2019 and 535/2019 titled "Safeer Ullah Khan Vs. Secretary to Government of Khyber Pakhtunkhwa, Environmental Department, Civil Secretariat, Peshawar & others" are decided as all the appeals have been filed by the same appellant and can, thus conveniently, be decided together.

2. According to the facts gathered from the record, the appellant was serving in the Forest Department. That by reaching the age of superannuation on 07.09.2017 vide order dated 16.10.2017, he was retired from service, however, his pension was not paid for the reason that after finalization of disciplinary proceedings, pension paper etc. would be processed. That the statement of allegations was served upon the appellant, wherein, appellant was charged with the allegation of improper maintenance, less watering and lack of interest being Incharge of plantation area. That the said charge sheet was replied by the appellant. That inquiry was conducted and Mr. Abid Mumtaz, Divisional Forest Officer (DFO) submitted his inquiry report vide letter dated 11.05.2018. That vide letter dated 04.07.2018, respondent



No.3 again asked for de-novo inquiry. That Mr. Muhammad Shakeel, DFO instead of conducting de-novo inquiry, submitted the earlier inquiry report. That for release of his pension, the appellant approached this Tribunal by filing Service Appeal No.613/2018. That the said appeal was disposed of by setting aside the note regarding withholding of pensionary benefits mentioned in the office order dated 16.10.2017 with the remarks that in case any pecuniary loss to the government had been proved against the appellant, the same might be recovered from the him in accordance with law. That vide three different office orders, punishments in shape of recovery were given to the appellant, the details of which is as under:

Sr #	Office Order No. & Date	Amount of Recovery
1.	1021-25/G Dated 16.01.2019	Rs.37,61,125/- Assailed in S.A #.533/2019
2.	1026-30/G Dated 16.01.2019	Rs. 3041058/- Assailed in S.A #.534/2019
3.	1048-51/G Dated 17.01.2019	Rs.255021/- Assailed in S.A #.535/2019

Feeling aggrieved, he filed separate departmental appeals against the above orders, which were rejected, hence, the instant service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).



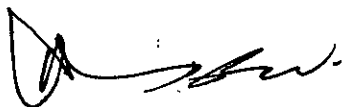
6. Perusal of record reveals that inquiry was conducted by the Divisional Forest Officer D.I.Khan Forest Division D.I.Khan. The inquiry record shows that statement of not a single witness was recorded in support of the allegations leveled against the appellant. Even the statement of departmental representative was not recorded by the inquiry officer. The appellant has categorically denied the charges leveled against him. The respondents were required to have produced relevant record during the inquiry for confronting the appellant but the same has not been done.

7. The appellant was not issued any show cause notice and he was not 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 ibid rule has created material dent in the inquiry proceedings. Non issuance of final show cause notice 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.

8. Admittedly, the appellant had retired before conclusion of disciplinary proceedings, therefore, reliance of the appellant on FR-54A also strengthens his case. FR-54A is reproduced below:

*"[54A. If a Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty."*

Besides, reliance is placed on 2006 SCMR 600 wherein, the Supreme Court of Pakistan in a case titled "Secretary Education (Schools), Government of the Punjab, Lahore Versus Muhammad Akhtar, Ex-Headmaster", wherein, while refusing grant of leave the Supreme Court of Pakistan has found as under:

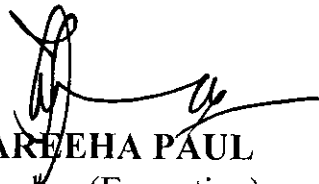


*"It has also been observed with grave concern that the joint inquiry was conducted against dozen of Headmasters without specifying the nature of allegation and moreso, the proper prescribed procedure was never followed which resulted in serious miscarriage of justice which aspect of the matter must be taken care of by the Secretary, Education Department in order to avoid repetition of such instances to eliminate the hardship of Government employees and appropriate action be initiated against those by whom such a defective inquiry proceedings were got initiated which speaks the inefficiency of the Secretary and Director, Education and also depicts lack of supervision, coordination and knowhow of relevant rules. The Department has failed to examine as to whether such disciplinary inquiry could have been initiated after a lapse of one year of the retirement of the respondent and if so under what circumstances in view of the relevant pension rules."*

9. The Departmental 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 especially when appeal before the Tribunal is within time.
10. In view of the above discussion, the appeals are allowed and the impugned recovery orders dated 16.01.2019 and 17.01.2019 stand set aside. Consign.
11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19<sup>th</sup> day of February, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



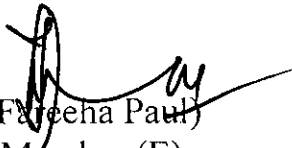
**FAREEHA PAUL**  
Member (Executive)

\*Mutazem Shah\*

ORDER

19<sup>th</sup> Feb. 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today, placed on file, the appeal is allowed and the impugned recovery order dated 16.01.2019 stands set aside. Consign. (Copy of judgment be placed on file of connected appeals)
3. *Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 19<sup>nd</sup> day of February, 2024.*

  
(Fareeha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*