KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 184/2015

Said Kamal, Deputy Conservator, Wildlife Division, Peshawar.
(Appellant)

Versus

Secretary Environment & Wildlife, Khyber Pakhtunkhwa, Peshawar and 03 others. *(Respondents)*

Date of presentation of Appeal.....04.03.2015
Date of Decision.....12.01.2024

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Service Appeal No. 185/2015

Muhammad Faique Khan, Deputy Conservator, Wildlife Division, Peshawar. *(Appellant)*

Versus

Secretary Environment & Wildlife, Khyber Pakhtunkhwa, Peshawar and 03 others. *(Respondents)*

Date of presentation of Appeal.....04.05.2015
Date of Decision.....12.01.2024

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Service Appeal No. 238/2015

Iftikhar-uz-Zaman, Deputy Conservator, Wildlife Division, Peshawar.
(Appellant)

Versus

Secretary Environment & Wildlife, Khyber Pakhtunkhwa, Peshawar and 03 others. *(Respondents)*

Date of presentation of Appeal.....13.03.2015
Date of Decision.....12.01.2024

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Service Appeal No. 963/2015

Said Kamal, Deputy Conservator, Wildlife Division, Peshawar.
(Appellant)

Versus

Secretary Environment & Wildlife, Khyber Pakhtunkhwa, Peshawar and 03 others. *(Respondents)*

Date of presentation of Appeal.....31.07.2015
Date of Decision.....12.01.2024

Service Appeal No. 964/2015

Iftekhar Uz Zaman, Deputy Conservator, Wildlife Division, Peshawar. *(Appellant)*

Versus

Secretary Environment & Wildlife, Khyber Pakhtunkhwa, Peshawar and 03 others. *(Respondents)*

Date of presentation of Appeal.....31.07.2015
Date of Decision.....12.01.2024

Service Appeal No. 965/2015

Muhammad Faique Khan, Deputy Conservator, Wildlife Division, Peshawar. *(Appellant)*

Versus

Secretary Environment & Wildlife, Khyber Pakhtunkhwa, Peshawar and 03 others. *(Respondents)*

Date of presentation of Appeal.....31.07.2015
Date of Decision.....12.01.2024

Present:

Mr. Naveed Akhtar, Advocate .....For the appellants
Mr. Asad Ali Khan, Assistant Advocate General .....For respondents

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CONSOLIDATED JUDGMENT

SALAH-UD-DIN, MEMBER: This single judgment will dispose of the above titled service appeals as common questions of law and facts are involved therein.

2. Precise facts giving rise to the appeals in hand are that the appellant namely Iftikhar-uz-Zaman had remained posted as Divisional Wildlife Officer with effect from 01.01.2006 to 12.09.2006, 15.08.2008 to 31.12.2008 and from 30.09.2010 to 24.01.2013, while the appellants Said Kamal and Muhammad Faique Khan had also remained posted as Divisional Wildlife Officers Mansehra with effect from 12.09.2006 to 15.08.2008 and 17.03.2010 to 30.09.2010 respectively. The appellants

namely Said Kamal and Muhammad Faique Khan were proceeded against departmentally on the allegations reproduced as below:-

"a. That he failed to safeguard the interest of the government in managing the Saiful Malook National Park in a way to preserve its ecological significance and its outstanding scenery, flora and fauna in a natural state. Similarly, the tourist facilities and other buildings within the park have been developed in a way, which is impairing the objectives of the park. The kiosks and tuck shops have been developed outside the service area and those too were giving a disorderly look. A large number of boats were there in the pristine lake, which was again definitely beyond the capacity of the lake. A large number of horses were freely roaming all around the lake and its surrounds. The ground flora was also not observed due to intense grazing. All these factors contributed towards compromising the outstanding scenery of the park.

b. That he failed to control haphazard boating within the lake. In the light of status quo granted by the court, the number of boats should have been kept at the level when the status quo was granted (3-4 boats). However the number of boats within the lake increased to 35 or more. This indicates that he failed to limit the number of boats within the park. His ineffective management not only altered the natural values of the park but in doing so he also violated the status-quo granted by the court.

c. That due to his loose administration and poor management, the number of horses within the park could not be controlled to the lowest possible number. Initially he made registration of fifty horses, however later-on the number of horses increased upto 200 during the peak tourist season. This uncontrolled horse riding played havoc with the ecological values of the park by wiping out the entire ground flora and in absence of any animal waste disposal arrangements, these dropping/feces of horses were spread all over the park area and was also contaminating the pristine lake of the national park.

d. That due to his loose administration, cattle grazing could not be checked. Due to this free grazing, the ecological values of the park were further deteriorated and all this contributed towards disappearance of ground flora.

e. That he failed to utilize the public money for recuperating the overall ecology of the park and improving the tourist facilities within the park. Two developmental schemes were executed with a total expenditure of Rs. 16.064 Million, to check the mushroom growth of kiosks, tuck shops and

restaurants; regulate boating in the lake and ensure cleanliness in the park. These schemes should have resulted in some improvement within the national park. But the miserable condition of the park clearly indicates that an amount of Rs. 7.242 million has gone down the drain due to poor execution of the developmental schemes by him.

f. That due to his loose administration and ineffective management the park has been exposed to multiple disturbances and irrational development, resulting in compromising the ecological significance of the park. As such, there is no hope that the park can fulfill its objectives in protecting its scenery, flora or fauna."

3. Similarly, the appellant namely Iftikhar-uz-Zaman was also proceeded against departmentally on the same allegations reproduced above as well as other allegations reproduced below:-

"b. That he failed to obtain appropriate administrative approval from the competent authority/forum for erecting a barrier in the park to collect entry fee from the visitors. Through his illegitimate act, he also developed difference with the district administration. Instead of having a workable liaison, he developed an environment of confrontation and mudslinging with the district administration and they were left with no choice except to intervene and control the situation by imposing section-144 in the National Park.

c. That he without any authorization and approval of the competent authority/forum had utilized the entry fee to a tune of Rs. 24,000/- on POL."

4. On receipt of the inquiry report, the competent Authority ordered recovery of an amount of Rs. 06,66,038/- from the appellant Said Kamal as well as an amount of Rs. 14,05,022/- and amount of Rs. 01,12,700/- from the appellants namely Iftikhar-uz-Zaman and Muhammad Faique Khan respectively and the impugned letter dated 28.10.2023 was addressed by Section Officer (ESTT) to the Director Budget & Accounts Cell, Environment Department for making recovery of the said amounts from the appellants. The appellants were further awarded minor penalties of withholding of three annual increments for a period of three years

vide the impugned orders dated 28.01.2024 passed by the competent Authority. The impugned recovery letter dated 28.10.2013 as well as the impugned orders dated 28.01.2014, whereby the appellants were awarded penalty of withholding of 03 annual increments for a period of 03 years were challenged by the appellants through filing of separate review petitions, however the same remained undecided, constraining the appellants to file service appeals before this Tribunal. The Service Appeals bearing No. 184/2015, 185/2015 and 238/2015 have been filed against the impugned orders dated 28.01.2014, while the impugned letter dated 28.10.2023 regarding recovery from the appellants have been challenged through filing of Service Appeals bearing No. 963/2015, 964/2015 and 965/2015.

5. On receipt of the appeals and its admission to regular hearing, respondents were summoned, who put appearance through their representatives and contested the appeals by way of filing written replies raising therein numerous legal as well as factual objections.

6. Learned counsel for the appellants has addressed his arguments supporting the grounds agitated by the appellants in their service appeals. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellants and has supported the comments submitted by the respondents.

7. Arguments have already been heard and record perused.

8. A perusal of the record would show that Mr. Akbar Khan Marwat the then Additional Secretary Law Khyber Pakhtunkhwa was appointed as inquiry officer in the matter. We have carefully gone through the inquiry report submitted by the inquiry officer, which would show

that the inquiry officer had not recorded statement of even a single witness, who could support the allegations leveled against the appellants. The inquiry officer had not bothered to record even the statement of departmental representative so as to confront the appellants with any material supporting the allegations leveled against them. It is interesting to note that the inquiry officer has mentioned in his report that 165 horses were present at Lake Saiful Malook, which were counted by his nephew Muhammad Iqbal. Even the statement of the said Muhammad Iqbal was not recorded by the inquiry officer. Instead of recording statement of any witness regarding the allegations leveled against the appellants, the inquiry officer had adopted a novel procedure by recording statements of the appellants in the form of questionnaire, which procedure was not in line with the procedure provided in Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, which is required to be followed by the inquiry officer or inquiry committee. Supreme Court of Pakistan in its judgment reported as 2023 SCMR 603 has observed as below:-

> *"9. Despite the handiness and accessibility of well guided procedure for conducting the inquiry under the E&D Rules, the inquiry officer did not adhere to it religiously and conducted the inquiry in a slipshod manner. The Inquiry Report dated 18.07.2014 reflects that Shaikh Zahid Masood, Additional Director, Intelligence and Investigation, Inland Revenue, Karachi was appointed as an Inquiry Officer, whereas Mr. Abdul Qadeer Abbasi, Deputy Commissioner (H.Qs) Zone-II, Regional Tax Office, Karachi was appointed as Departmental Representative in the inquiry. In paragraph No. 7 of the Inquiry Report, it is pointed out that the respondent/accused Zahid Malik submitted his written defence in response to the charge sheet and statement of allegations on which the departmental representative submitted his comments on 29.01.2014, but the inquiry report does not depict that any witness including any assessee/tax payer*

was called for recording evidence in support of the allegations leveled against the accused officer. On the contrary, the inquiry report put on view that against each charge only the defence of the accused officer is mentioned along with the rebuttal of the departmental representative and thereafter the finding of the inquiry officer is recorded and finally, the accused officer was found guilty of inefficiency, misconduct and corruption on account of charges. Mere reproduction of charge with defence submitted in writing by the accused and then the rebuttal submitted by the departmental representative in the inquiry report was not sufficient to prove the accused's guilt as there was no evidentiary value except two statements on record and allegations vice versa (words against words) which could only be proved one way or the other. Had the evidence been recorded, both the statements would have subjected to the cross-examination accompanied by other oral and documentary evidence for sifting the grain from the chaff. Without exploring the finding guilt of accused into the charges of misconduct, neither the inquiry report can be construed as fair and impartial, nor is it commensurate to the procedure provided under the E&D Rules for conducting an inquiry into allegations of misconduct. It is undoubtedly revealing from the inquiry report that no opportunity was provided to the accused to conduct cross-examination even on the departmental representative who allegedly rebutted the defence of the accused in writing before the inquiry officer and also produced evidence against the accused; at least he should have been subjected to the cross-examination by the accused officer, particularly when no other witness was called for recording evidence. The learned Tribunal has judiciously scanned the inquiry report and also discussed all factual aspects in Paragraphs 6 to 10 of the impugned judgment and rightly reached the conclusion that the inquiry was conducted in violation of Rule 6 of the 1973 E&D Rules."

9. Moreover, on receipt of the inquiry report, show-cause notices were issued to the appellants on 08.10.2013, according to which they were held liable only for inefficiency and mis-conduct. Nothing is mentioned in the show-cause notices that they had made any unjustified expenditure and such amount was to be recovered from them. Similarly, according to the show-cause notice, only penalty of withholding of three annual

increments for a specific period of three years was tentatively decided to be imposed upon the appellants. In such a situation, when nothing regarding any recovery was mentioned in the show-cause notices issued to the appellants, the order of making the recovery from the appellants was legally not justified.

10. Vide letter No. 3223 WL(E) dated 06.12.2023, replies of the appellants to the show-cause notices issued to them were forwarded by Chief Conservator Wildlife Khyber Pakhtunkhwa, Peshawar to the Section Officer (Establishment) Khyber Pakhtunkhwa Environment Department, Peshawar. In the afore-mentioned letter, Chief Conservator Wildlife Khyber Pakhtunkhwa, Peshawar had also expressed concern regarding the inquiry carried out in the matter. Relevant paragraphs of the aforementioned letter are reproduced as below:-

> *"It is submitted that this department has never been consulted while framing/drafting of the charge sheets and initiation of the disciplinary proceedings against the accused officers/officials despite being Head of Attached Department and their controlling officer.*
>
> *The Administrative Department acted directly merely on the basis of an enquiry conducted by Conservator of Forest with all his professional rivalry and prejudice. Neither the enquiry officer involved this office during the course of enquiry nor has the report of the enquiry officer submitted by him been shared with the Khyber Pakhtunkhwa Wildlife Department.*
>
> *As contained in section 143 of the Manual of Secretariat and established procedure, either the Head of Attached Department initiates the proceedings against its officers and submits draft*

charge sheet for further processing or the Administrative Department asks the attached Department to draft and submit charge sheet for processing as was required in the instant case. Instead the Head of Attached Department was kept uniformed and isolated while initiating the process and the charge sheets were framed by the Administrative Department directly."

11. So far as the question of limitation is concerned, the issue being one of financial nature, therefore, the appeals are not hit by law of limitation.

12. Consequently, the impugned orders are set-aside and the appeals in hand are allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.01.2024

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(FAREEHA PAUL)
MEMBER (EXECUTIVE)

Naeem Amin

ORDER
12.01.2024

Appellant in person present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our consolidated judgment of today separately placed on file, the impugned orders are set-aside and the appeals in hand are allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.01.2024

(Fareeha Paul)
Member (Executive)

(Salah-Ud-Din)
Member (Judicial)

Naeem Amin