

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

12(2) Application No. 467/2023 in S.A No.7608/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
 MISS FAREEHA PAUL ... MEMBER (E)

Zahid Mehmood S/O Mr. Daryab Khan, Divisional Forest Officer,
 Demarcation Region-I, Forestry Planning & Monitoring Circle,
 Peshawar. (Petitioner)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
 2. The Secretary Forestry, Environment & Wildlife Department, Civil Secretariat.
 3. The Director General, Pakistan Forest Institute, Khyber Pakhtunkhwa, Peshawar.
 4. Muhammad Waqas Khan (SDFO), Unit-3, Forestry Planning & Monitoring Circle, Peshawar.
 5. Saeed Anwar, SDFO Karak Kohat Forest Division.
 6. Bilal Ahmad, SDFO Besham Kohistan Watershed Division.
 7. Sardar Muhammad Saleem, DFO Hazara Tribal Forest Division Battagram.
 8. Sardar Muhammad Saleem, DFO Hazara Tribal Forest Division, Battagram.
 9. Ihsan Ud Din, SDFO Darosh, Chitral Forest Division.
- (Respondents)

Sajjad Ahmad Mahsood
 Advocate

... For Petitioner

Amin Ur Rehman Yousafzai
 Advocate

... For private respondent

Muhammad Jan
 District Attorney

... For official respondents

Date of Institution.....06.07.2023

Date of Hearing.....06.03.2024

Date of Decision.....06.03.2024



JUDGMENT

RASHIDA BANO, MEMBER (J): The instant petition is under section 12(2) CPC 1908 against the impugned order/judgment dated 03.05.2023 passed in Service Appeal No.7608/2021 by not considering the true and correct date of appointment which is 14.12.2017 of applicant/respondent No.4, advertisement issued by the Khyber Pakhtunkhwa Public Service Commission, appointment letters of the candidates and rules established there under, by which the applicant will suffer irreparable loss by ignoring his appointment letter in the titled appeal. Moreover, the seniority of respondent No. 4 has been decided with the applicant when he does not fall within the ambit of the civil servant, and the same may be decided with his batch mate i.e Mr. Shah Fahad, instead of 2017 batch appointee.

2. Perusal of record reveals that petitioner filed instant petition under section 12(2) code of civil procedure 1908 by the Judgment and order passed on 03.05.2023 in Service appeal bearing No 7608/2021 titled as Muhammad Waqas Khan Vs. Forestry, Environment & Wild life Department obtained by practicing fraud and mis-representation.

3. Two grounds have taken by the petitioner's counsel. One, the address of the petitioner was not correctly mentioned in the memo of appeal due to which service of the process issued against him was not effected upon him and second, the rules applicable to the employees of Forest department i.e West Pakistan Forest Service Rules 1965 were concealed by the petitioner due to which this Tribunal wrongly



relied upon APT Rules, 1989 and delivered the impugned judgment in favour of respondent No.4.

4. Perusal of record of entire appeal reveals that present petitioner was arrayed party as respondent No 4 by the present respondent No.4, the then appellant, with his designation as SDFO Tank, D.I Khan Division. Notice was issued to the respondents including present petitioner on 5th November, 2021 for attendance on 18.11.2021 through registered post having receipt No 714 with RGL No. 76600719 which was not served upon him, therefore, second notice was issued through registered post to the petitioner having receipt No. 1289 with RGL No 76515806 which was duly received by his office clerk Rehmat Ullah at his office i.e SDFO Tank who properly signed it, which means that service of notice issued by this Tribunal against the appellant for appearance was duly sent upon at his official address and service of the same is duly affected, therefore, the arguments of the learned counsel for the petitioner that present/respondent given wrong address of the present procedure have no legal force in it. Otherwise too, case pertains to the employees of Forest Department then SDFO Tank D.I Khan Division definitely means SDFO Forest Tank and not any other official of any department.

5. Petitioner's second contention is that present respondent No. 4, the then appellant, concealed rules which were applicable to the employees of Forest Department i.e West Pakistan Forest Service Rules,1965. In this respect it is pertinent to mention here that in 1965 general rules were not frame, therefore, separate rules for Forest



Department were issued to deal with the matters of the department and its employees but in the year 1989 consolidated/uniform rules for all the civil servants were issued by the government which were equally applicable to the employees of Forest Department too. That is why rules applicable of Forest department are (Appointment, Promotion & Transfer) Rules, 1989 and not the West Pakistan Forest Service Rules, 1965 because vide notification dated 26.01.1993 published in official gazette on gazette on 8th April 1993, Forest Department lays down method of recruitments, qualification and other conditions which reads as:

"In pursuance of the provision contained in sub-rule(2) of Rule 3 of the NWEP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, and in supersession of all previous rules made in this behalf, the Forests, Fisheries & Wildlife Dept: in consultation with the Services & General Admn; Department and the Finance Department, here by lays down the method of recruitment, qualification and other conditions specified in column 3 to 5 of the Appendix to this Notification, which shall be applicable to posts in column-2 of the said Appendix in the Forest Department.

Department further introduce amendments in the rules and appendix of 1993 vide notification dated 4th June, 2021 wherein two references to APT Rules were given in these words:

"In pursuance of the provisions contained in sub-rule(2) of Rule 3 of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, Forestry, Environment & Wildlife Department in consultation with the Establishment Department and the Finance Department, hereby directs that in this

*Department Notification No. S0.(FT;11)AD/1-465/88/Vol-1V,
dated 26.01.1993."*

6. Rules applicable to the case of the parties are (Appointment, Promotion and Transfer) Rules 1989 and not West Pakistan Forest Service Rules, 1965, therefore, this contention of the petitioner has no for in it. It is concluded that there was no concealment of facts and mis-representation on the part of respondent No 4. Section 12 (2) of the C.P.C requires that fraud or mis-representation be established before the court and that consequently the order obtained is through fraud or mis-representation. In this context, the application under section 12(2) of the C.P.C was filed against judgment passed by this Tribunal against respondents No 4 in favour of appellant, who had filed appeal against the order dated 07.10.2021 for correction of his seniority position in the final seniority list of SDFO issued on 26.06.2021 for determination of seniority position in the light of merit order drawn by Khyber Pakhtunkhwa Public Service Commission, and no case of fraud or mis-representation is made out in that case against respondent No.4.

7. As a sequel to above discussion, we dismiss the instant application being devoid of merits. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of March, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER

6th Mar, 2024 1. Learned counsel for the petitioner present. Mr. Muhammad
'Jan, District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we
dismiss the instant 12(2) application being devoid of merits.

Consign.

3. *Pronounced in open court in Peshawar and given
under our hands and seal of the Tribunal on this 6th day of
March, 2024.*


(Fakeeha Paul)
Member (E)


(Rashida Bano)
Member (J)

Kaleemullah