

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT SWAT

Service Appeal No. 452/2022

BEFORE: AURANGZEB KHATTAK --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Bakht Amin, Forest Guard, Demarcation Forest Division, Mingora Swat..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar.
2. Conservator Forest, Malakand Circle East, Saidu Shari, Swat.
3. D.F.O Demarcation Forest Division, Mingora Swat.
4. Ghani Rehman, Forest Guard, Demarcation Forest Division, Mingora Swat.
5. Muhammad Ibrahim, Forest Guard, Demarcation Forest Division, Mingora Swat.
6. Abdullah Shah, Forest Guard, Demarcation Forest Division, Mingora Swat.
7. Abbas Khan, Forest Guard, Demarcation Forest Division, Mingora Swat..... (*Respondents*)

Present:-

MUHAMMAD ZAFAR TAHIRKHELI,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For official respondents.

Date of Institution.....29.03.2022
Date of Hearing..... 03.07.2024
Date of Decision.....03.07.2024

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

- (1) *By setting aside the impugned seniority list as it stood on 31.12.2021, and rejection order dated 10.03.2022; and*

- (i) *Further modifying the impugned seniority list and placing the appellant at S. No. 6 of the said list of Forest Guard of Demarcation Forest Division Mingora Swat on the basis of his initial appointment on 27.12.1990, being senior to all the respondents' No. 4 to 7, who have been arbitrary placed at S. No. 6 to 9 of impugned seniority list."*

02. Brief facts of the case are that appellant was initially appointed as Forest Guard on 27.12.1990 and was adjusted against the post at District Government Shangla vide order dated 02.09.2003. He was transferred to District Government Swat vide order dated 13.10.2009 and subsequently transferred to Swat Forest Division vide order dated 08.05.2012. Again he was transferred to Swat Demarcation Forest Division Mingora vide order dated 07.12.2020. His services were regularized vide order dated 06.07.1992 w.e.f. date of his initial appointment i.e. 28.12.1990. The respondent department issued the impugned seniority list dated 05.01.2022 as stood on 31.12.2021 whereby the appellant was placed at serial No. 10 of the said list instead of Serial No. 6. Feeling aggrieved from the impugned seniority list dated 05.01.2022 the appellant filed departmental appeal on 07.01.2022 which was rejected vide order dated 10.03.2022, hence preferred the instant service appeal on 29.03.2022.

03. Notices were issued to the respondents, the official respondents submitted their comments wherein they refuted the assertions raised by the appellant in his appeal, while the private respondent No. 4 to 7 have failed to submit their comments despite being summoned through registered post,

therefore, they were placed ex-parte vide order dated 01.12.2022. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

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

05. It is admitted fact that the appellant was appointed as Forest Guard on 27.12.1990. During course of service the appellant was adjusted against the post of Forest Guard in the District Government Shangla vide order dated 02.09.2003. He was subsequently transferred to District Government Swat vide order dated 13.10.2009. He was again transferred to Swat Forest Division vide order dated 08.05.2012 and last transferred to Forest Demarcation Mingora vide order dated 17.12.2020. All these transfer orders do no imply that the said orders were made on the request of the appellant and that as a result of these transfers he will be placed at the bottom of seniority list of Forest Guard working in the Forest Divisions. The posting/transfer of the appellant as Forest Guard from one Division to other Division were made on Administrative grounds and not on his request. Hence his seniority fixed from the date of his arrival is not justified. The Conservator of Forest Malakand Division East Forest Circle, Saidu Sharif Swat decided the departmental appeal of the three similarly placed persons namely (1) Shamsur Rehman (2) Aqal Mand (3) Jehangir vide order dated 30.06.2022 whereby the said Forest Guards were found entitled to seniority from the date of their initial appointment as per rule 7 sub rules 3 & 4 of the

Khyber Pakhtunkhwa (Appointment Promotion & Transfer) Rules, 1989 and the District Forest Officer, Swat was directed to fix the seniority of the above Forest Guard from the date of their initial appointment. Moreover, this Tribunal had already decided similar nature Service Appeal No. 456/2012 titled "Mian Karim Shah versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others", which was accepted. Para- 7, 8 & 9 of the said judgment are reproduced below;

7. The Tribunal while agreeing with the arguments advanced by the learned counsel for the appellant observes that the appellant was posted as Forest Guard in Swat Forest Division. He was performing his services smoothly. Meanwhile one Abdul Jalil, Forest Guard, submitted application for transfer from Demarcation Forest Division to Swat Forest Divisional. Respondent No. 4 issued No Objection Certificates for the transfer and effected the same. The said Abdul Jalil was placed in Swat Forest Division while the appellant got transferred to Demarcation Forest Division in place of Abdul Jalil. Record shows that the appellant had not expressed any desire for the transfer nor was he otherwise taken into confidence.


8. The appellant then approached the respondent No. 3 for giving him seniority w.e.f. his date of appointment. Agreeing to the request, respondent No. 3, directed respondent No. 4 accordingly. In compliance with the directions, respondent No. 4 issued seniority list placing the appellant at the top. But a sudden some result occurred and newly issued seniority list was withdrawn and the old one was restored. Thereby, the appellant was found from the top to the bottom of the list.


9. Keeping the above narration in view, the appeal is accepted and the respondent No. 4 is directed to consider the seniority of the appellant from the date of appointment and the impugned promotion order be reviewed accordingly. Parties are left to

*bear their own costs. Parties are left to bear their own costs.
File be consigned to the record.*

06. In view of foregoing findings the appeal in hand is accepted with direction to the respondents to fix seniority of the appellant at his due place. Costs shall follow the event. Consign.

07. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 03rd day of July, 2024.*


(Aurangzeb Khattak)
Member (J)
Camp Court Swat



(Muhammad Akbar Khan)
Member (E)
Camp Court Swat


Kamranullah

ORDER

03.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present. Arguments heard and record perused.
2. Vide our detailed judgment of today separately placed on file, the appeal in hand is accepted with direction to the respondents to fix seniority of the appellant at his due place. Costs shall follow the event. Consign.
3. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 03rd day of July, 2024.*


(Aurangzeb Khattak)
Member (J)
Camp Court Swat


(Muhammad Akbar Khan)
Member (E)
Camp Court Swat

Kamranullah