

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.3991/2021

BEFORE: MR. KALIM ARSHID KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Abdul Ghani S/o Khani Zaman, Forester, Havelian Watershed Range, Daur
Division, Abbottabad. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Forestry, Environmental & Wildlife Department, Peshawar.
2. Chief Conservator Forest Department, Peshawar.
3. Conservator of forest Water Shed, Management Circle, Abbottabad.
4. Divisional Forest Officer, Daur Forest Division, Abbottabad.
5. Budget & Accounts Office, Environmental Department, Government of Khyber Pakhtunkhwa, Peshawar.
6. Range Forest Officer, Sherwan, Abbottabad. (Respondents)

Arshad Khan Tanoli
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....24.03.2021
Date of Hearing.....16.05.2024
Date of Decision.....16.05.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of instant appeal, the impugned office order No.15 dated 19.03.2020 as passed by respondent No.3 may graciously be declared as null and void and may kindly be set-aside. Any other relief which this honorable Tribunal deems fit



and proper in the circumstances of the case may also be granted in favor of appellant.”

2. Brief facts leading to the instant appeal are that appellant was appointed as Forest Guard in the respondent department and served the department with best of his ability. That DFO Duar Water Shed Division Abbottabad inspected Billion Tree Afore-station Project plantation area during the monsoon and spring 2016-17 and monsoon 2017 in Sherwan, Water shed Range on 09.10 and 25.04.2018. During inspection of the said area some irregularities were found, upon which departmental proceedings were initiated against the appellant by issuing charge sheet alongwith statement of allegation. He submitted his reply to the charge sheet. Thereafter, a show cause notice was service upon him, to which he also replied. Inquiry committee was constituted who assessed the loss and recommended amount of Rs. 1089167/- to be recovered from the appellant. In light of inquiry report, respondent No. 3 recommended imposed one and half of the total recoverable amount worth Rs. 5444,584/- upon the appellant vide impugned order dated 19.03.2020. Feeling aggrieved, he filed departmental appeal, which was rejected on 11.01.2021, hence the present service appeal.
3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.
4. We have heard learned counsel for the appellants and learned 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 District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of records reveals that appellant was appointed as Forest Guard in the respondents department. The D.F.O Duar Water Shed Division Abbottabad (respondent No.4) inspected Billion Tree Afore-station Project (BTAP) plantation area carried out during the Monsoon and Spring 2016, and the Monsoon 2017 in Sherwan, Water Shed Range on 9, 10 and 25.04.2018. During inspection of the above said area some irregularities were found. Due to the said reason the respondent No.4 reported the matter to respondent No.3 that none of these activities have been carried out in professional manner. That on receipt of the said report the respondent No.3 constituted an inquiry committee, who initiated proceedings vide letter No.8309 dated 07.06.2018. Thereafter the appellant was served with charge sheet with following allegations which are reproduce here;

- a) As per report of Special monitoring team shared with DFO Daur Watershed Division Abbottabad the difference between charged and actual area is 55acre out of 81 acre, which seems that the amount of 55 acre has been misappropriated by the Incharge Forest Guard.
- b) No replacement works were carried out despite the instructions and directions of the DFO Daur Watershed Division, during visits, various meeting to this contest was held and clear cut instructions regarding safety and rehabilitation of plantation were issued by concerned but miseries are still intact and no improvement had been noticed.
- c) The survival percentage of Talhar area is 25.27% same is badly below and unsatisfied and apparently seems that the amount charged against the abovearea on account of plantation and watch and ward was misappropriated which needs to be recovered and remitted in Government Treasury.
- d) No boundary pillars were erected on the site due to which the site identification isnot possible.
- e) Pit to pit spacing found more than 10x10 which is not according to standard of PC-I, resultantly the charged amount against the plantation seem fake and bogus.
- f) No sign board was installed on site which is necessary according to PC-I and directives regarding this issue has also been issued time to time.
- g) Plantation journals was not updated and maintained according to the requirements.
- h) Site selection was made on gossips and nothing has been done as per requirements.
- i) No additional sowing was carried out and in this regards directions of



- higher ups was neglected badly.
- j) No BTAP writing was seen on site which shows your utter negligence and disinterest in Government Works.
 - k) Watch Ward charged apparently bogus as none of progress has been traced out on site.
 - l) The survival percentage is seemed so less and undesirable.

7. The appellant submitted reply to the charge sheet and after hearing appellant, the inquiry committee submitted his findings to the respondent No.3 vide letter No.105/BWS dated 03.05.2019. Appellant was served with a show cause notice, to which he submitted reply. The inquiry committee assessed the loss and recommended amount of Rs.1089167/- to be recoverable from the officials involved in the matter. In the light of inquiry committee report, respondent No.3 recommended to impose one and half of the total recoverable amount worth Rs.544584/- upon appellant vide impugned office order No.15 dated 19.03.2020.

8. From the record it is evident that charge sheet alongwith statement of allegation were issued to the appellant by conservator of Forests who was not the competent authority as per appendix "A" attached to NWFP Forest Subordinate Service Rules 1943, DFO is the competent authority. Appellant was awarded impugned penalty in view of inquiry reports orders by the authority, who was not competent to impose any penalty upon appellant.

9. Moreover, Service Appeal No.1220/2018 of the block officer Gulzar Ahmad Shah one of the officials who were proceeded against on the same allegations of 60% area failed due to subtended work at site.was accepted by this Tribunal vide order dated 16.02.2021, wherein it was held that;

"Allegations were of the nature, which required specific proof; but no such effort was made by the inquiry officer to substantiate his findings with concrete evidence. The inquiry officer totally relied upon the report of monitoring team and we could not ascertain from the record that any field visit or physical verification was conducted. Reasons for failure of

the project as recorded in the charge sheet are due to sub-standard work. Obviously duty and responsibility of a forest guard is limited to the extent of surveillance and sub-standard work if any, surely fall in the list of responsibilities of officers above the scale of forest guard in the hierarchy. Besides, other important factors to be considered were ignored i.e. Site selection, edaphic, climate and socio-economic inhibitions."

When inspection was carried out after two years then there must be same difference in plants planted.

11. The appellate authority in his order dated 06.10.2022 categorically mentioned that reproduced here;

- ii. The deficiencies in plantation areas, if any was required to be detected by the Divisional Forest Officer Daur Watershed before processing bills/muster rolls for sanction and release of funds demanded by the Ex-Forest Ranger for further disbursement amongst the laborers deployed on the activity;
- iii. The areas in question were required to be got monitored by the Divisional Forest Officer, Daur Watershed for his due satisfaction before entertaining the claim of appellant which has not been done;
- iv. The activity is carried out during Monsoon 2016, but Divisional Forest Officer Daur Watershed checked the concerned areas during July 2018 after almost two years of handing over the charge of Sherwan Range by the appellant to his successor i.e. 27.09.2016.

12. When charge of the post was handed over to new Forest Ranger by the appellant it was his duty to properly measure all the areas and then takes the charge. No such charge assumption report was produced by the respondent that some work was not done in-accordance with master roll which means that there was no short fall in plantations, which were properly planted.

11. Moreover, when area was inspected after two years than due to seasonal climate

change some trees must have been damaged. Short coming in the inquiry is evident from appellate order then it will be in the fitness of things and in the interest of justice to look into the matter with broad view and decide it on merit strictly in accordance with law. Therefore, we are unison to accept the appeal and refer the matter back to respondent department to decide it afresh after evaluating all the aspects of the case in hand. Costs shall follow the event. Consign.

12. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 16th day May, 2024.*


(KALIM ARSHID KHAN)
CHAIRMAN


(RASHIDA BANO)
MEMBER (J)

ORDER

16.05.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to accept the appeal and refer the matter back to respondent department to decide it afresh after evaluating all the aspects of the case in hand. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 16th day May, 2024.*



(KALIM ARSHID KHAN)
CHAIRMAN



(RASHIDA BANO)
MEMBER (J)