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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION NO _____

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Kifayatullah vs *Govt of K.P*

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Muharin
Muharin Compilation
05/07/24

[Signature]
Incharge Judicial Branch
5/7/24

Phone: 9210100

GOVERNMENT OF KHYBER PAKHTUNKHWA,
DIRECTORATE OF ARCHIVES & LIBRARIES;
PESHAWAR.
No. 1855-76/3/52/DA Dated 30 October, 2012.

27

To,

1. Anwar Ul Haq, Jr. Clerk (BS-07), Mardan Public Library, Mardan.
2. Nasim Sikandar, J/C (BPS-07), Abbottabad Public Library, Abbottabad.
3. Noor Ul Basar, Jr. Clerk (BS-07), Mardan Public Library, Mardan.
4. Shabana, Jr. Clerk (BPS-07), Directorate of Archives & Libraries, Peshawar.
5. Muhammad Zulfikar, Jr. Clerk (BS-07), Directorate of Archives & Libraries, Peshawar.
6. Muhammad Yousaf, J/C (BS-07), Mardan Public Library, Mardan.
7. Naheed Ullah Khan, J/C (BS-07), Bannu Public Library, Bannu.
8. Saleh Mahmood, J/C, (BPS-07), Bannu Public Library, Bannu.
9. Saima Kiran, Jr. Clerk (BPS-07), Directorate of Archives & Libraries, Peshawar.
10. Khalid Usman, Jr. Clerk (B-07), Swabi Public Library, Swabi.
11. Sajila, Jr. Clerk (BPS-07), Directorate of Archives & Libraries, Peshawar.
12. Fazal Wahab, Jr. Clerk (B-07), Swabi Public Library, Swabi.
13. Wajid Ullah, Junior Clerk (BPS-07), Directorate of Archives & Libraries, Peshawar.
14. Shams Ul Islam, Jr. Clerk, Swat Public Library, Swat.
15. Hidayat Ullah, Jr. Clerk (B-07), Mufti Mahmood Public Library, D.I. Khan.
16. Hafiz Ghulam Mohjuddin, Katib (B-05), Directorate of Archives & Libraries, Peshawar.
17. Shair Muhammad Zikria, Jr. Clerk (B-07), Directorate of Archives & Libraries, Peshawar.
18. Sheikh Muhammad Jehanzeb, Mufti Mahmood Public Library, D.I. Khan.
19. Abdur Rahman, J/C (B-07), Swat Public Library, Swat.
20. Ashraf Ali, Junior Clerk, Directorate of Archives & Libraries, Peshawar.
21. Gul Paras, Junior Clerk, Directorate of Archives & Libraries, Peshawar.
22. Asad Ullah, Junior Clerk, Junior Clerk, Directorate of Archives & Libraries, Peshawar.

Subject: -

SENIORITY LIST OF JUNIOR CLERK (BPS-07)/KATIB (BPS-05)

A revised seniority list of the incumbents of Junior Clerk (BPS-07), Directorate of Archives & Libraries, Khyber Pakhtunkhwa on overleaf is forwarded for your information/authentication. Error(s) if any may be pointed out with documentary proof for correction/rectification by 23-10-2012, otherwise, the seniority list may be considered undisputed and final.



(Sarir Ud Din)
Superintendent,

Directorate of Archives & Libraries, Peshawar.

Endst: No. & Date Even.

Copy forwarded to:

1. The Deputy Director, Directorate of Archives & Libraries, Peshawar.
- The Incharge Librarian (s) of Public Libraries of Mardan, Abbottabad, Swat, Swabi, Bannu for

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR
AT CAMP COURT SWAT

BEFORE: RASHIDA BANO ... MEMBER (J)
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 1254/2022

Date of presentation of Appeal.....26.08.2022
Date of Hearing.....03.06.2024
Date of Decision.....03.06.2024

Kifayat ullah S/o Abdul Haleem (Ex-Forest Guard) R/o Shah Narai P.O Khar,
Tehsil Khar District Bajur.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary, Forestry, Environment & Wildlife Department Peshawar.
2. The Chief Conservator of Forest Central Southern Forest Region I Shami Road Peshawar.
3. The Conservator of Forest Merged Area, Shami Road Peshawar.
4. The Budget and Accounts Officer, Forestry, Environment & Wildlife Department Peshawar.....(Respondents)

IMRAN KHAN,
Advocate

--- For appellant.

MUHAMMAD JAN,
District Attorney

--- For respondents

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;

"On acceptance of this appeal the temporary service of the appellant i.e. from initial appointment, may please be counted towards regular service for the purpose of adding it to the pensionable service, the respondents may further be directed to

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Khyber Pakhtunkhwa
Peshawar

enter necessary entries in their service record to this effect w.e.f the date of his appointment as temporary/fixed pay basis. Or any remedy deem just and proper under the circumstances may also be allowed in favor of the appellant and against the respondents."

02. Brief facts of the case are that the appellant was initially appointed as Forest Guard (BPS-02) in the respondent department vide order dated 15.04.1993. Later on the services of the appellant was converted/adjusted into regular service vide order dated 31.07.2002. The appellant retired from service on attaining the age of superannuation i.e. 60 years on 31.12.2021 but his temporary service was not counted towards regular service for the purpose of pension. Feeling aggrieved the appellant filed departmental appeal on 28.03.2022 which was not responded, hence preferred the instant service appeal on 26.08.2022

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned Additional Advocate General for the respondents 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).

05. It is evident from the record that the appellant was appointed as Forest Guard in BPS-02 on contract basis against the project post. Condition No. 1 of his appointment order is reproduced below:-

Their appointments are purely temporary and on contract basis. Their services can be terminated without giving notice or assigning any reason at any time or on expiry/completion of scheme abolition of the post whichever is earlier. They will not confer any right of continuity on post/absorption else-where or regularization of their services.

06. Record further reveals that the contract of the appellant had been terminated and re-appointed having several service break. The services of the appellant alongwith his post were converted into BPS-05 from Developmental Scheme into regular budget w.e.f. 01.07.2002 vide order dated 31.07.2007. The appellant has taken the stance of his service rendered against the project post be counted towards his service for purpose of pension in accordance with rule 2.3 of the West Pakistan Civil Service Pension Rules. Rule 2.3 of the ibid rules provide as under:-

Temporary and officiating services shall count for pension:

Government servants borne on temporary establishment who have rendered more than 5 years continues service shall count such service for the purpose of pension of gratuity

07. The provision of above rule clearly spells out more than five year continuous service to be eligible for the pension or gratuity whereas in case of the appellant his contract services as a project employee since 1993 to the year 2000 have been terminated and re-appointed several times, therefore, we hold that when there is broken period than no regularization or any benefits of the

contractual appointment against the project post could be given to civil servants appointed on regular basis after the broken period.

08. In view of the above the appeal in hand stands dismissed. Costs shall follow the event. Consign.

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



(RASHIDA BANO)
Member (J)
Camp Court Swat



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat

ORDER

- 03rd June, 2024
1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.
 2. Vide our detailed judgment of today, separately placed on file, the appeal in hand is dismissed. 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 June, 2024.*



(RASHIDA BANO)
Member (J)
Camp Court Swat



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat

6

01.01.2024

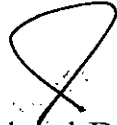
Appellant in person present. Mr. Muhammad Jan,
District Attorney for the respondents present.

Appellant seeks adjournment on the ground that his
counsel has not turned up from Peshawar. Adjourned. To
come up for arguments on 04.03.2024 before the D.B at
Camp Court Swat. Parcha Peshi given to the parties.

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Peshawar**



(Rashida Bano)
Member (J)
Camp Court Swat



(Salah-ud-Din)
Member (J)
Camp Court Swat

Naeem Amin

04th March, 2024

1. Appellant in person present. Mr. Muhammad Jan, District
Attorney for the respondents present.

2. Appellant seeks adjournment on the ground that his counsel
is busy in Peshawar High Court, Peshawar and is unable to attend
this Tribunal today. Adjourned but as a last chance. To come up
for arguments on 03.06.2024 before the D.B at Camp Court Swat.
Parcha Peshi given to the parties.

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(Salah-ud-Din)
Member (J)
Camp Court Swat



(Kalim Arshad Khan)
Chairman
Camp Court Swat

Naeem Amin

05.10.2023

Appellant in person present. Mr. Inayatullah Khan, Assistant Advocate General for the respondents presents.

Appellant requested for adjournment on the ground that his counsel has not turned up from Peshawar. Adjourned. To come up for arguments on 04.12.2023 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.

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Peshawar

Naeem Amin



(Rashida Bano)
Member (J)
Camp Court Swat



(Salah-ud-Din)
Member (J)
Camp Court Swat

04.12.2023

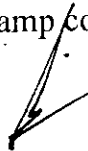
1. Appellant in person present. Mr. Muhammad Jan, learned District Attorney for the respondents present.

2. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 01.01.2024

before D.B at camp court Swat. P.P given to the parties.

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Peshawar

kamranullah



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



(Rashida Bano)
Member (J)
Camp Court Swat

9th June, 2023

1. Appellant in person present. Mr. Fazal Shah Mohmand, Additional Advocate General alongwith Mr. Said Ahmad, SDFO for respondents present.

2. Lawyers are on strike, therefore, case is adjourned. To come up for arguments on 07.07.2023 before D.B at Camp Court, Swat. P.P given to the parties.

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(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman
Camp Court, Swat

Mutazem Shah

07.07.2023

Appellant in person present. Mr. Saeed Ahmad, SDFO alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 05.10.2023 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.

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Peshawar

(Fareeha Paul)
Member (E)
Camp Court Swat

(Salah-ud-Din)
Member (J)
Camp Court Swat

Naqem Amin

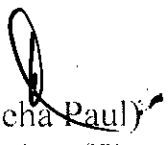
04.05.2023 Appellant in person present.

Muhammad Jan, learned District Attorney for respondents present.

Former made a request for adjournment as his counsel is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned.

To come up for arguments on 09.06.2023 before D.B at Camp Court, Swat. Parcha Peshi given to the parties.

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Peshawar



(Farecha Paul)
Member (E)
Camp Court, Swat



(Rozina Rehman)
Memsber (J)
Camp Court, Swat

Mutazem Shah

9th June, 2023 1. Appellant in person present. Clerk Mr. Fazaal Shah Mohmand, Additional Advocate General alongwith Mr. Said Ahmad, SDFO for respondents present.

2. Lawyers are on strike, therefore, case is adjourned. To come up for arguments on 07.07.2023 before D.B at Camp Court, Swat. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman
Camp Court, Swat

Mutazem Shuh


08.03.2023


Appellant present in person.

Umair Azam learned Additional Advocate General for respondents present.

Former requested for adjournment on the ground that his counsel is indisposed today. Adjourned. To come up for arguments on 05.04.2023 before D.B at camp court Swat. P.P given to the parties.

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(Fareeha Paul)
Member (F)
Camp Court Swat



(Rozina Rehman)
Member (J)
Camp Court Swat

05th April, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Learned counsel for the appellant seeks adjournment for preparation of arguments. To come up for arguments on 04.05.2023 before the D.B at Camp Court Swat. Parcha Peshi is given to the parties.

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Peshawar


(Salah-ud-Din)
Member (J)
Camp Court Swat


(Kalim Arshad Khan)
Chairman
Camp Court Swat

04.05.2023

Appellant present through counsel.

Muhammad Jan, learned District Attorney for respondents present.

made a request for adjournment as his counsel is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 09.06.2023 before D.B at Camp Court, Swat. Parcha Peshi given to the parties.

(Farceha Paul)
Member (E)
Camp Court, Swat

(Rozina Rehman)
Memsber (J)
Camp Court, Swat

Mutazem Shah


W

02nd Jan. 2023

Appellant present in person. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Reply/comments on behalf of the respondents have not been submitted. Learned AAG requested for further time to contact the respondents and submit reply/comments on the next date. To come up for reply/comments on 06.02.2023 before the S.B at camp court, Swat.


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(Fareeha Paul)
Member(E)
(Camp Court, Swat)

6th Feb, 2023

Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents.


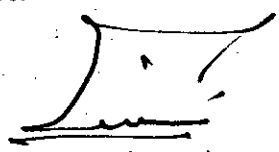
There is no representative present on behalf of the respondents nor did they submit written reply/comments. The time provided in Rule-12 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 for filing reply is seven days before the date fixed but despite providing opportunity the respondents have not filed the comments. They are thus placed ex-parte and their right to file reply stands struck off. To come up for arguments on 08.03.2023 before D.B at camp court Swat.


(Kalim Arshad Khan)
Chairman
Camp Court Swat

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1254/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/08/2022	<p>The appeal of Mr. Kifayat Ullah presented today by Mr. Zartaj Anwar Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on 03.10.22 ^{3.10.22} Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>
	03.10.2022	<p>Learned counsel for the appellant present. Preliminary arguments heard.</p> <p>Points raised need consideration, hence the appeal in hand is admitted to regular hearing subject to all legal and valid objections. The appellant is directed to deposit security and process fee within 10 days. Out district respondents be summoned through TCS, the expenses of which be deposited by the appellant within three days. To come up for submission of written reply/comments on 05.12.2022 before the S.B at Camp Court Swat.</p> <p style="text-align: right;"> (Salah-Ud-Din) Member (J) Camp Court Swat</p> <p style="text-align: center;"><i>Tour is hereby cancelled, therefore the case is adjourned to 2-1-2023.</i></p>

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Peshawar**

Rs-100/-
Appellant Deposited
~~Security & Process Fee~~
A. Kifayat Ullah
12/10/22

**SCANNED
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Peshawar,**

5 - 12 - 22



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Case Title: *Rifayat Allah vs Govt of KPIC.* CHECK LIST

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?		
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	✓	
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?		✓
24	Whether Security and Process Fee deposited? On	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On	✓	
26	Whether copies of comments/reply/rejoinder submitted? On		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Zohra Amro

Signature:

Dated:

[Signature]

14

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1254/2022

**SCANNED
KPST
Peshawar**

Kifayat ullah S/O Abdul Haleem (Ex Forest Guard) R/O Shah
Narai P.O Khar, Tehsil Khar Disrtict Bajaur.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary,
Forestry, Environment & Wildlife department Peshawar and
others

(Respondents)

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Appellant

Through


ZARTAJ ANWAR

Advocate Supreme Court of
Pakistan

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Bilour Plaza Peshawar Cantt.

Cell.0331-9399185

E.mail Zartaj9@yahoo.com

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1254/2022

Diary No. 1100

Dated 26-8-2022

Kifayat ullah S/O Abdul Haleem (Ex Forest Guard) R/O Shah
Narai P.O Khar, Tehsil Khar District Bajaur.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Forestry, Environment & Wildlife department Peshawar.
2. The Chief Conservator of Forest Central southern forest region I, Shami Road Peshawar.
3. The Conservator of Forest Merged Area, Shami Road Peshawar.
4. The Budget and Accounts Officer, Forestry, Environment & Wildlife Department Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the inaction of the respondents by not counting temporary service toward the regular service of the appellant for the purpose of pension, against which the appellant filed departmental appeal on 19.05.2022 before the competent authority which is still not responded after laps of statutory period on 90 days.

Prayer in Appeal: -

Filed to-day

Registrar

26/8/2022

On acceptance of this appeal the temporary service of the appellant i.e. from initial appointment, may please be counted towards regular service for the purpose of adding it to the pensionable service, the respondents may further be directed to enter necessary entries in their service record to this effect w.e.f the date of his appointment as temporary/ fixed pay basis.

or any remedy deem just and proper under the circumstances may also be allowed in favour of the appellant and against the respondents.

Respectfully Submitted:

1. That initially the appellant was appointed on the post of Forest Guard in the Divisional Forest Officer FATA I forest division Peshawar vide appointment order dated 15.04.1993 on temporary basis..(*Copy of the appointment order dated 15.04.1993 is attached as annexure A*).
2. That since his appointment the appellant has performed his duties with great zeal and devotion and to the entire satisfaction of his superiors without any complaint whatsoever regarding his performance.
3. That while serving in the said capacity the services of the appellant was converted/adjusted into regular post through office order dated 31.07.2002 by the order of the competent authority. (*Copy of the office order dated 31.07.2002 is attached as annexure B*).
4. That the appellant has retired from his service by attaining the age of superannuation i.e. 60 years on 31.12.2021, but his temporary service has not counted toward his regular service for the purpose of pension.(*Copy of the retirement order is attached as annexure C*).
5. That thereafter the appellant has submitted his departmental appeal vide dated 28.03.2022, before the competent authority by requesting that his temporary service may be count towards his regular service for the purpose of pension, which is not yet responded even after the laps of statutory period of 90 days (*Copy of the departmental appeal dated 19.03.2022 is attached as annexure D*).
6. That being aggrieved from the acts and omission of the respondents, the appellant has filed this appeal on following grounds inter alia

GROUND OF SERVICE APPEAL:

- A. That the Appellant has not been treated in accordance with law and her rights secured and guaranteed under the law have been badly violated.

- B. That the appellant remained temporary employees of the respondents department, which was regularized in the year 2002 thus in view of the provision contained in Article 371-A of the CSR the appellant is also entitled that his service shall be counted for the purpose of pension.
- C. That as per the recent judgment of August Supreme Court of Pakistan in Civil appeal No. 1072/2005 decided on 14.4.2016, the larger bench of august Supreme Court of Pakistan has specifically held that temporary service followed by confirmation count for the purpose of pension, thus the appellant is entitled for the grant of monthly pension by counting his service w.e.f the date of his initial appointment. *(Copy of the judgment and order dated 14.4.2016 is attached as annexure E).*
- D. That there are a number of judgments of the Honourable Peshawar high Court in identical cases, therefore the Respondents are bound to have followed the same and should have acted in accordance with law and the judgment of the August Supreme Court of Pakistan reported as 1996 SCMR 1185, 2009 SCMR Page 1.
- E. That according to the West Pakistan Civil Service Pension Rules chapter II, service qualifying for pension, according to rule 2.3, temporary and officiating service :

Temporary and Officiating service shall count for pension:

- I. Government servants borne on temporary establishment who have rendered more than 5 years continues temporary service shall count such service for purpose of pension or gratuity and**
- II. Temporary and officiating service followed by confirmation shall also count for pension or gratuity.**

- F. That the temporary service followed by confirmation/regular appointment gave the appellant a right that his service be carry forward and added to the present service.
- G. That the appellant seek the permission of this Honourable Tribunal to rely on additional grounds at the hearing of the instant Appeal.

It is, therefore, prayed that on acceptance of this appeal the temporary service of the appellant i.e. from initial appointment, may please be counted towards regular service for the purpose of adding it to the pensionable service, the respondents may further be directed to enter necessary entries in their service record to this effect w.e.f the date of his appointment as temporary/ fixed pay basis. or any remedy deem just and proper under the circumstances may also be allowed in favour of the appellants and against the respondents.

Appellant

Through

ZARTAJ ANWAR
Advocate Supreme Court
Of Pakistan

IMRAN KHAN
Advocate High Court

Certificate

Certified that no Service Appeal on the same subject and between the same parties has been filed previously or concurrently.

Appellant

(20)

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. _____/2022

Kifayat ullah S/O Abdul Haleem (Ex Forest Guard) R/O Shah
Narai P.O Khar, Tehsil Khar Distrtict Bajaur.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary,
Forestry, Environment & Wildlife department Peshawar and
others

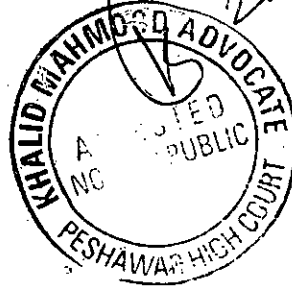
(Respondents)

AFFIDAVIT

I, Kifayat ullah S/O Abdul Haleem (Ex Forest Guard) R/O
Shah Narai P.O Khar, Tehsil Khar District Bajaur., do hereby
solemnly affirm and declare on oath that the contents of the
above noted appeal are true and correct to the best of my
knowledge and belief and that nothing has been kept back or
concealed from this Honourable Tribunal.

Identified by:

Zartaj Anwar
ZARTAJ ANWAR,
Advocate, Peshawar.



On the 17th of 1958, the following appointments were made as Forest Guards in the Forest Department, Bajaur Agency on temporary basis to perform the duties:-

1. Mr. Saeed S/O Bahadur of Bajaur Agency.
2. Mr. Iqbal S/O Sultan Wali of Bajaur Agency.
3. Mr. Afayaz S/O Abdul Halim of Bajaur Agency.
4. Mr. Mohammad Wajid Khan S/O Sultan Wali of Bajaur Agency.
5. Mr. Syed Basim S/O Pacha Wali of Bajaur Agency.

The above appointments are subject to the following terms and conditions:-

1. These appointments are purely temporary and on contract basis. Their services can be terminated without giving notice on assignment, expiry of any time or on expiry/completion of scheme abolition of the post which ever is earlier. They will not confer any right of continuity of post/regularization or elsewhere or regularization of their services.
2. They will join their duty on their own expenses.
3. They will be on probation for a period of six months.
4. Their appointment are subject to production of original Education/Health and Domesticity Certificate, etc.
5. In case they wish to resign at any time, notice will be necessary and their pay will be forfeited.
6. They will be governed by the rules relating to leave, travelling, medical, and other (R&D) Rules etc as may be issued by Government from time to time.

68/- (Mr. Shaukat Khan)
Divisional Forest Officer
FATA-1, Peshawar
Peshawar.

30/5/58

Copy forwarded for information to:-

Conservator of Forests FATA/Social Forests, Peshawar.

Range Officer, Bajaur at Khar.

All concerned. They are directed to join their duty within a week time.

Personal File.

Divisional Accountant.

ATTESTED

DFO Bajaur

ATTESTED

OFFICE ORDER NO.117 DATED PESHAWAR THE 15/4/1993 ISSUED BY

MR. SHABIR HUSSAIN DIVISIONAL FOREST OFFICER FATA FOREST DIVI: PESH

On the recommendation of Departmental Selection Committee vide minutes dated:6.3.1993, the following candidate hereby appointed as Forest Guards in BPS-12 i.e Rs.945-42-1425 with usual allowances admissible under the rules against the existing vacancies in FATA-I Forest Divn: under provincial scheme namely Watershad in Bajaur Agency" on purely on temporary basis with effect from the date they arrived for duties:-

1. Mr. Sher Zada S/O Bakhtiar of Yousaf Abad Bajaur Agency.
2. Mr. Perviz Khan S/O Subhan Vill Hayati, Bajaur Agency.
3. Mr. Kifayatullah S/O Abdul Haleem Vill: Salatai Bajaur Agency.
4. Mr. Mohammad Janas Khan S/O Subar Khan-Vill: Khar Bajaur Agency.
5. Mr. Syed Badshah S/O Pacha Vill: Garo Bajaur Agency.

Their appointments are subject to the following terms and conditions:-

1. Their appointments are purely temporary and on contract basis. Their services, can be terminated without giving notice or assigning any reason at any time or on expiry/completion of scheme abolition of the post whichever is earlier. They will not confer any right of continuity on post/absorption or else-where or regularization of their services.
2. They will join their duty on their own expenses.
3. They will be on probation for a period of six months.
4. Their appointment are subject to production of original Education/Health and Domicile and Character, Certificate etc.
5. In case they wish to resign at any time, 30 days notice will be necessary or in lieu thereof 30 days pay will be forfeited.
6. They will be governed by the rules and order relating to leave, travelling, medical attendance and to (E&D) Rules pay etc as may be issued by Government from time to time.

Sd/(Mr. Shabir Hussain)
Divisional Forest Officer
FATA-I, Forest Division,
Peshawar

No.3556-59/E,

Copy forwarded for information to the:-

1. Conservator of Forests FATA/Social Forestry Circle, Peshawar.
2. Range Officer, Bajaur at Khar
3. All concerned. They are directed to join their duty within a week time.
4. Personal file.
5. Divisional Accountant.

Divisional Forest Officer
FATA-I, Forest Division,
Peshawar

~~TESTED~~

23

8 Approved C

OFFICE ORDER NO. 37 DATED KHAR THE 23 /DECEMBER-2021
ISSUED BY MR. MUHIB ULLAH DAWAR DIVISIONAL FOREST OFFICER BAJAUR
FOREST DIVISION KHAR.

Mr. Kifayatullah Forest Guard is hereby retired from Government service on superannuation basis after attaining the age of 60 years with effect from the afternoon of 31/12/2021 and rendering of 28 years 08 months and 14 days qualifying service. He is also allowed encashment of Leave salary equal to 365 days pay in lieu of Leave preparatory to Retirement (LPR) as admissible to him vide Rules-20 of the NWFP (now KPK) Civil servant Leave Rules 1981 as amended vide Government of Khyber Pakhtunkhwa Finance Department Notification No.FT-SO(SR-V)5-54/81 Vol:III dated 15/04/1988 and No.SO (FR)FD-592/2005/Vol-5 dated 13/12/2012.

Divisional Forest Officer
Bajaur Forest Division
Khar.

No. 1159-1163 /E Dated:

Copy forwarded to:

- 1- The Conservator of Merged Areas Peshawar for favour of information please.
- 2- The Director Budget & Accounts Environment Department Government of Khyber Pakhtunkhwa Peshawar for favour of information.
- 3- Divisional Accountant for information and necessary action.
- 4- Official concerned.
- 5- Personal file.

Divisional Forest Officer
Bajaur Forest Division
Khar.

ATTESTED

خدمت جناب کنزرو میٹر جاہ فارسٹ ڈیپارٹمنٹ شامی روڈ پشاور

عنوان - Departmental Appeal برائے شمولیت عارضی سروس
مستقل پنشن میں

جناب عالی!

سائل حسب ذیل عرض رساں ہے

① یہ کہ سائل محکمہ جنگلات/Forest میں 15-4-1993 عارضی/کنٹریکٹ بنیاد پر بحیثیت فارسٹ گارڈ بھرتی ہوا

② یہ کہ سائل کو بعد ازاں 1-7-2002 پر مستقل کیا گیا اور اسی پوسٹ پر 31-12-2021 تک 60 سالہ مدت ملازمت پورا کر کے ریٹائر ہو گیا

③ یہ کہ سائل کی عارضی اور مستقل مدت ملازمت یعنی 29 سال کی پنشن تیار کرنے محکمہ نے جنسوروی کاروائی کے لیے آپ کے دفتر میں بھیجا۔ لیکن سائل کو بعد ازاں معلوم ہوا کہ سائل کے پنشن میں سے عارضی مدت ملازمت جو تقریباً 10 سال بنتی ہے کو منہا کرتے صرف مستقل مدت ملازمت یعنی 1-7-2002 سے 31-12-2021 تک پنشن دیا گیا ہے اور سائل کو عارضی مدت ملازمت کی پنشن سے محروم کیا گیا ہے جو کہ سراسر نا انصافی ہے اور جس کی وجہ سے سائل کو یکمشت اور مایانہ پنشن میں کافی نقصان اٹھانا پڑا ہے۔

④ یہ کہ سائل کی عارضی/کنٹریکٹ سروس مستقل سروس میں شامل کرنے میں کوئی قانونی آمر بھی مانع نہیں۔

لہذا آپ سے استدعا ہے کہ سائل کی عارضی سروس کو مستقل سروس میں شامل کر کے پورے پنشن کا حق دیا جائے۔ سائل دعا گو رہے گا۔

کفایت اللہ فارسٹ گارڈ

19-5-2022

ATTESTED

25 10 ANNEX E

P L D 2016 Supreme Court 534

Present: Anwar Zaheer Jamali, C.J.; Mian Saqib Nisar, Amir Hani Muslim, Iqbal Hameedur Rahman and Khilji Arif Hussain, JJ

Civil Appeal No.1072/2005

CHAIRMAN, PAKISTAN RAILWAY, GOVERNMENT OF PAKISTAN, ISLAMABAD and others---Appellants

Versus

SHAH JEHAN SHAH---Respondent

(On appeal against the judgment dated 29-12-2003 passed by the Federal Service Tribunal, Islamabad in Appeal No. 6(P)/CS/2003)

Civil Appeal No.686/2012

Mst. ROBINA SHAHEEN---Appellant

Versus

DIRECTOR EDUCATION (E&SC) KHYBER PAKHTUNKHWA and others---Respondent

(On appeal against the judgment dated 9-4-2012 passed by the KPK Service Tribunal, Peshawar, in Appeal No.1539/2009).

Civil Appeals Nos. 1072 of 2005 and 686 of 2012, decided on 14th April, 2016.

(a) Interpretation of statutes ---

----When a word had not been defined in the statute, its ordinary dictionary meaning was to be looked at.

(b) Words and phrases ---

----"Count"---Definition.

Chambers 21st Dictionary and Oxford Advanced Learner's Dictionary of Current English 7th Edn. ref.

(c) Civil Service Regulations (CSR)---

----Art. 371-A---Pensionary benefits---Government servants rendering temporary service in a temporary establishment for more than five years---Entitlement to grant of pensionary benefits within the meaning of Art.371-A of the Civil Service Regulations (CSR)---Scope--Article 371-A of the Civil Service Regulations (CSR) would not ipso facto or simpliciter allow government servants rendering temporary service in a temporary establishment for more than five years to be entitled to grant of pension, rather such period would only be counted towards such government servants' pension if otherwise entitled to pension. Mir Ahmad Khan v. Secretary to Government and others (1997 SCMR 1477) declared to be per incuriam]

Service rendered for more than five years as contemplated by Article 371-A of the Civil Service Regulations (CSR) would only be added, included, or taken into account for the purposes of pensionary benefits, and not make such government servant qualify for pension per se. Article 371-A of Civil Service

ATTESTED

Regulations (CSR) by itself did not provide for the entitlement for the purposes of pension, rather, it was restricted to the counting of the period of a minimum of five years which had been rendered by the temporary employee that once he was appointed on a permanent basis, such period (of five years) shall be taken into account for the object of calculating his entitlement to pension with respect to the requisite minimum period under the law.

Mir Ahmad Khan v. Secretary to Government and others 1997 SCMR 1477 declared to be per incuriam

Article 371-A cannot be used as a tool to bypass the conditions for qualifying service of pensionary benefits, and such government servant had to fulfill the minimum number of years for grant of pension. This was due to the use of the word "count" as opposed to "qualify" or "eligible" in Article 371-A of the Civil Service Regulations (CSR).

It was absurd, ludicrous and inconceivable that a government servant, who was in regular employment, would become entitled to pension after serving the minimum years of qualifying service as prescribed by the law, whereas while interpreting Article 371-A of the Civil Service Regulations (CSR), a government servant who had served as a temporary employee could be given preference over a regular employee, and after a minimum service of only five years would automatically become entitled to pension. Holding so would be against the object and spirit of the concept of pension.

PLD 2013 SC 829 ref.

(d) Civil Service Regulations (CSR)---

---Art. 371-A---Pensionary benefits---Government servants rendering temporary service in a temporary establishment---"Temporary establishment"---Meaning---Temporary establishment could be said to mean an organisation or institution which was not permanent, rather effective for a certain period only.

Hafiz S.A. Rehman, Senior Advocate Supreme Court for Appellants (in C.A. No.1072 of 2005).

Riaz Sherpao, Advocate Supreme Court and Mir Adam Khan, Advocate-on-Record for Appellant (in C.A.No.686 of 2012).

Abdur Rehman Siddiqui, Advocate Supreme Court for Respondent (in C.A. No.1072 of 2005).

Ijaz Anwar, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondent No.5 (in C.A.No.686 of 2012).

Waqar Ahmed Khan, Addl. A.G. (on behalf of Khyber Pakhtunkhwa).

Dates of hearing: 14th and 15th March, 2016.

JUDGMENT

MIAN SAQIB NISAR, J:- These appeals, by leave of the Court, involve a similar question of law, hence are being disposed of together. The key question involved herein is whether persons who have rendered more than five years' service in a temporary establishment are entitled to the grant of pensionary benefits within the meaning of Article 371-A of the Civil Service Regulations (CSR), and a re-visitation of the judgment of this Court reported as Mir Ahmad Khan v. Secretary to Government and others (1997 SCMR 1477).

Civil Appeal No.1072/2005:

ATTESTED

2. This appeal entails the facts in that the respondent was appointed as an Assistant Executive Engineer (BPS-17) in Pakistan Locomotive Factory Risalpur, Pakistan Railways on 11.7.1989 on an ad hoc basis

whereafter his employment was converted into a contract employment for two years with effect from 1.7.2000. Subsequently, due to the respondent's failure to qualify for regularization before the Federal Public Service Commission, his services were terminated on 4.9.2002. He filed a departmental appeal on 8.10.2002 for the grant of pensionary benefits which (departmental appeal) was dismissed vide order dated 9.1.2003. Subsequently, the respondent approached the learned Federal Service Tribunal (Tribunal) challenging not the termination of his services or the conversion of services from ad hoc to contractual, rather only non-payment of pensionary benefits. The learned Tribunal while relying upon the case of Mir Ahmad Khan (supra) accepted the respondent's service appeal on 29.12.2003 through the impugned judgment holding as follows:-

"7. In view of the clear provision available in Civil Service Regulations as CSR 371-A(i) and in the light of the judgment of Honourable Supreme Court, reproduced below, there is no ambiguity that the Appellants who have put in more than 10 years of uninterrupted service were entitled to pension as per rules

9. In view of the rulings of Honourable Supreme Court, we accept the appeals, set aside the impugned orders and direct the respondents to give pension to the Appellants as admissible to them under CSR 371-A (i). They are also entitled to receive their other legal dues like General Provident (GP) Fund etc. However, Respondents would be at liberty to deduct any valid/legal dues outstanding against them from amount payable to them."

Aggrieved of the above order, the appellants approached this Court, and leave was granted on 15.9.2005 in the following terms:-

" Since interpretation of a number of provisions of Civil Service Regulations as to entitlement to pension of the government servants, which will have impact on a large number of cases, is involved leave is granted to consider whether temporary service rendered by the three respondents qualified for pension"?"

Subsequently, this Court on 21.2.2012 was of the view that a larger bench should hear the matter for the following reason(s):-

".....The learned counsel for the appellant states that admittedly respondent is not a Civil Servant and he cannot claim pensionary benefits thus the judgment in the case of Mir Ahmed Khan (ibid) needs to be revisited in that if such wide interpretation is given to Regulations 371-A all contractual and temporary employees working in the Government Department would become entitled to pensionary benefits on termination of their employment, without being regularly employed. Since Mir Ahmed Khan's case was decided by three members' Bench, the matter be placed for consideration of the Hon'ble Chief Justice for placing the case before a larger Bench."

3. The basic argument of the learned counsel for the appellants was that Article 371-A was an enabling, as opposed to charging provision, and that the use of the word "count" in Article 371-A of the CSR, as opposed to "eligible" or "qualify", does not mean that government servants who have rendered more than five years' continuous temporary service in a temporary establishment are entitled to the grant of pension, rather that such period of service would only be counted/added for the purposes of calculating pension, which the government servant has to nevertheless qualify for by fulfilling the three conditions of qualification for pension as provided in Article 361 of the CSR. In support of his arguments, he made reference to various Articles of the CSR and Fundamental Rules (FR). Learned counsel attempted to buttress his submissions by drawing an analogy with the judgment reported as Federation of Pakistan and others v. Rair Khan (1993 SCMR 609), in which it was held that the period of ad hoc service followed by regular service in the same scale shall be counted towards length of service prescribed for promotion or move-over in the next higher scale, thus in the same manner, the period of temporary service of more than five years would be counted towards pension if it was followed by regular service.

4. On the other hand learned counsel for the respondent argued that the word "count" can be used

interchangeably with "qualify" or "eligible", and in fact "count" is more often than not the precise word used for the purposes of pensionary benefits. Further, the appellants' interpretation of Article 371-A of the CSR that the period of temporary service of more than five years would be counted towards pension if it was followed by regular service would only be true if the said article specifically provided "temporary followed by permanent service", but this is not the case. Further, the words "except as otherwise provided" in Article 368 of the CSR gives sanction to the grant of pensionary benefits to temporary employees. In support of his arguments, learned counsel placed reliance upon two office memorandums issued by the Ministry of Finance at Serial Nos.5 and 6 of Chapter V of Section VI of the Compendium of Pension Rules and Orders. 13

5. Heard. Before resolving the proposition at hand, we find it expedient to reproduce the relevant articles of the CSR which read as under:-

"361. Except as otherwise provided in these Regulations, the service of an officer does not qualify for pension unless it conforms to the following three conditions:-

First.- The service must be under Government.

Second.- The employment must be substantive and permanent. Third.- The service must be paid by Government.

These three conditions are fully explained in the following Articles.

368. Except otherwise provided in these Regulations services does not qualify unless the officer holds a substantive office on a permanent establishment.

369. An establishment, the duties of which are not continuous, but are limited to certain fixed periods in each year, is not a temporary establishment. Service in such an establishment, including the period during which the establishment is not employed, qualifies; but the concession of counting as service the period during which the establishment is not employed does not apply to an officer who was not on actual duty when the establishment was discharged, after completion of its work, or to an officer who was not on actual duty on the first day on which the establishment was again re-employed.

370. An officer transferred from a temporary to a permanent appointment can count his service in the temporary office, it, though at first created experimentally or temporarily, it eventually becomes permanent.

371. An officer without a substantive appointment officiating in an office which is vacant, or the permanent incumbent of which does not draw any part of the pay or count service, may, if he is confirmed without interruption in this service, count his officiating service.

371-A. Notwithstanding anything contained in Articles 355(b), 361, 368, 370 and 371 of these Regulations, temporary and officiating service, in the case of Government servants who retired on or after the 1st January, 1949, or who joined service thereafter, shall count for pension according to the following rule:-

(i) Government servants borne on temporary establishments who have rendered more than 5 years continuous temporary service shall count such service for the purpose of pension or gratuity excluding broken periods of temporary service, if any, rendered previously, and

(ii) Continuous temporary and officiating service of less than five years immediately followed by confirmation shall also count for gratuity or pension, as the case may be." (Emphasis supplied)

We begin with the basics. The CSR pertains to salary, leave, pension and travelling allowance of those

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... serving in the civil departments. Despite the nomenclature used, i.e. Civil Service Regulations, the application of the CSR is not restricted to "civil servants" as defined in the Civil Servants Act, 1973 (Act), but also applies to "government servants". Interestingly, "government servants" has neither been specifically defined in the Act nor in the CSR. However, we are not treading those waters, rather leaving it for an appropriate case, as the applicability of the CSR to the respondent is not disputed in the instant matter. Although we would like to observe that whether or not a particular Article of the CSR applies only to a civil servant or extends to the broader pool of government servants would ultimately depend on the particular wording of the article under consideration. The CSR classifies pension into four basic types:- compensation pension, invalid pension, superannuation pension and retiring pension. In order to be able to claim pensionary benefits, one must fulfill the three conditions of qualifying service for pension stipulated in Article 361 of the CSR:- (i) the service must be under the Government; (ii) the employment must be substantive and permanent; and (iii) the service must be paid by the Government. An interpretation of the provisions pertaining to the second condition is relevant to the matter at hand. Article 368 of the CSR provides that the officer must hold a substantive office on a permanent establishment. Articles 370 and 371 of the CSR in essence allow for temporary and officiating services respectively, to be counted towards an officer's service if such service (temporary or officiating) becomes permanent.

6. Article 371-A(i) allows for governments servants who have rendered temporary service for more than five years at a temporary establishment to count such service for the purposes of their pension (or gratuity), but the temporary service must be continuous, and excludes broken periods of temporary service rendered previously. By way of example, Article 371-A(i) would attract to a government servant who rendered continuous temporary service at a temporary establishment for six years and was subsequently confirmed at the end of his temporary service, those six years would be counted towards his service for the purposes of pensionary benefits. The said article would also encompass the situation where a government servant rendered continuous temporary service at a temporary establishment for six years but was not confirmed at the end of his temporary service, rather two years after his temporary service ended he was taken back and confirmed, then again those six years would be counted towards his service for the purposes of pensionary benefits, excluding the broken period of two years (the interregnum). On the other hand, Article 371-A(ii) provides that government servants who have rendered temporary and officiating service for less than five years immediately followed by confirmation shall also count for gratuity or pension (as the case may be), which (service) must also be continuous. By way of illustration, where a government servant rendered continuous temporary or officiating service for three years and was subsequently immediately confirmed, those three years would be counted towards his service for the purposes of pension. However, due to the inclusion of the word "immediately" and the omission of the words "excluding broken periods of temporary service" in clause (ii) of the Article 371-A, in a situation where a government servant rendered continuous temporary or officiating service for three years but was not confirmed at the end of his temporary service, rather two years after his temporary service ended he was taken back and subsequently confirmed, then those three years would not be counted towards his pensionary benefits. However, it is important to note that Article 371-A presupposes that such a government servant, whether falling under clause (i) or (ii), is otherwise entitled to pension (or gratuity, as the case may be). In other words, Article 371-A cannot be used as a tool to bypass the conditions for qualifying service of pensionary benefits, and such government servant has to fulfill the minimum number of years for grant of pension. This is due to the use of the word "count" as opposed to "qualify" or "eligible", as rightly argued by the learned counsel for the appellant. As per the settled rules of interpretation, when a word has not been defined in the statute, the ordinary dictionary meaning is to be looked at. Chambers 21st Dictionary defines "count" as "to find the total amount of (items), by adding up item by item; to include". Oxford Advanced Learner's Dictionary of Current English (7th Ed.) defines "count" as "to calculate the total number, of people, things, etc. in a particular group; in include sb/sth when you calculate a total; to consider sb/sth in a particular way; to be considered in a particular way". Thus in light of the above, service rendered for more than five years as contemplated by Article 371-A would only be added, included, or taken into account for the purposes of pensionary benefits, and not make such government servant qualify for pension per se. This interpretation is bolstered by logic, reason and common sense. If we were to accept the reasoning of the learned Service Tribunal in the impugned judgment and the arguments of the learned counsel for the respondents, it would create a bizarre and

anomalous situation, where a government servant who has rendered temporary service in a temporary establishment for, let us say, seven years, would be entitled to pensionary benefits, and on the other hand, a government servant rendering services as a regular employee for fifteen years would not (yet) have completed the requisite number of years to qualify for grant of pension. It is absurd, ludicrous and inconceivable that a government servant, who is in regular employment, would become entitled to pension after serving the minimum years of qualifying service as prescribed by the law, whereas while interpreting Article 371-A, a government servant who has served as a temporary employee could be given preference over a regular employee, and after a minimum service of only five years would automatically become entitled to pension. Holding so would be against the object and spirit of the concept of pension which has been discussed by this Court in Regarding pensionary benefits of the Judges of Superior Courts from the date of their respective retirements, irrespective of their length of service as Judges (PLD 2013 SC 829) as follows:-

"...pension is not the bounty from the State/employer to the servant/ employee, but it is fashioned on the premise and the resolution that the employee serves his employer in the days of his ability and capacity and during the former's debility, the latter compensates him for the services so rendered. Therefore, the right to pension has to be earned and for the accomplishment thereof, the condition of length of service is most relevant and purposive." (Emphasis supplied)

Thus, we are not inclined to interpret Article 371-A in such a way so as to render the provisions stipulating minimum years for grant of pensionary benefits superfluous and redundant. As far as the provisions of Article 371-A are concerned, which is a non-obstante clause to Articles 355(b), 361, 368, 370 and 371 stipulated therein, suffice it to say that such article by itself does not provide for the entitlement for the purposes of pension, rather, at the cost of repetition, it is restricted to the counting of the period of a minimum of five years which has been rendered by the temporary employee that once he is appointed on a permanent basis, such period shall be taken into account for the object of calculating his entitlement to pension with respect to the requisite minimum period under the law. Therefore we are not persuaded to hold the words "Notwithstanding anything contained in Articles 355(b), 361, 368, 370 and 371 of these Regulations..." in Article 371-A to allow those who do not fulfill the requisite conditions for qualifying for pension to bypass such conditions, so as to render the articles of the CSR providing for such conditions unnecessary and surplus. Therefore, we are of the candid view, that Article 371-A of the CSR would not ipso facto or simpliciter allow government servants rendering temporary service in a temporary establishment for more than five years to be entitled to grant of pension, rather such period would only be counted towards such government servants' pension if otherwise entitled to pension.

7. It is not disputed that the respondent rendered continuous temporary service and that his length of service was continuous and for more than five years. However, the question that needs to be answered is whether he was working in a "temporary establishment" or not. "Temporary establishment" has not been defined in the CSR, the Fundamental and Supplementary Rules issued by the Government of Pakistan, the ESTA Code or the Compendium of Pension Rules and Orders. In this context Article 369 of the CSR mentions temporary establishment but only explains what it is not and thus is not very helpful. Therefore as mentioned earlier in the opinion, as per the settled rules of interpretation, the dictionary meaning of the words has to be resorted to. The Concise Oxford Dictionary (6th Ed.) has defined "temporary" as "lasting, meant to last, only for a time", and "establishment" as an "organized body of men maintained for a purpose". Chambers 21st Century Dictionary defines "temporary" as "lasting, acting or used, etc for a limited period of time only", and "establishment" as "a public or government institution". Oxford Advanced Learner's Dictionary of Current English (7th Ed.) defines "temporary" as "lasting or intended to last or be used only for a short time; not permanent" and "establishment" as "an organisation, a large institution..." In light of the above dictionary meanings, "temporary establishment" can be said to mean an organisation or institution which is not permanent, rather effective for a certain period only. Admittedly the respondent was serving in Pakistan Locomotive Factory Risalpur, Pakistan Railways, which does not in any way fall within the meaning and purview of "temporary establishment". Thus the respondent could not rely upon Article 371-A of the CSR. Besides, if hypothetically speaking Pakistan Locomotive Factory Risalpur was a temporary establishment, even then the respondent would not be able to take the benefit of Article 371-A (supra) as he otherwise does not qualify for pensionary benefits having wit been

subsequently taken into permanent employment, which is sine qua non for the grant thereof.

8. Adverting to the law laid down in the case of Mir Ahmad Khan (supra) wherein it was held:-

"Admittedly the appellant put in more than ten years' temporary service before his services were terminated he was, therefore, entitled to pensionary benefits under Regulation 371-A(i) of Civil Service Regulations."

In light of the discussion in paragraph No.6, the judgment delivered in Mir Ahmad Khan's case (supra) is declared to be per incuriam.

9. In view of the foregoing, we find that the respondent was not entitled to the grant of pensionary benefits in terms of Article 371-A of the CSR, and the learned Service Tribunal had erroneously allowed him pension by wrongly relying upon the case of Mir Ahmad Khan (supra) which is declared to be per incuriam.

10. The above are the detailed reasons for our short order of even date whereby the appellants' appeal was accepted and the impugned judgment was set aside, which reads as follows:-

"We have heard the arguments of learned ASCs for the parties. For the reasons to be recorded later, this appeal is allowed, the impugned judgment of the Federal Service Tribunal dated 29.12.2003 is set aside and the service appeal preferred by the respondent is dismissed."

Civil Appeal No.686/2012:

11. The brief facts of the instant appeal are that the appellant was a Professional Teaching Certification (PTC) Teacher in the Commissionerate for Afghan Refugees, Peshawar (Commissionerate), from 28.2.1987 to 17.1.2005, i.e. approximately 18 years. During her employment at the Commissionerate, she applied for two months leave on 20.1.2004, after which she was appointed as a PTC Teacher in the Schools and Literacy Department, Government of Khyber Pakhtunkhwa (department) and she assumed charge of her post on 25.11.2004 and tendered her resignation with the Commissionerate on 10.1.2005. Thereafter she filed a departmental appeal to respondent No.1 claiming that her 18 years' service with the Commissionerate be counted for the purposes of her pension, which (departmental appeal) was accepted vide order dated 24.6.2008. However, the said order stated that her 10 years' service be counted towards calculation of her pension, as opposed to 18 years, which the appellant was dissatisfied with thus she filed a corrigendum application for correction of the said mistake. However, in response, the department on 20.7.2009 informed the appellant that her prior service with the Commissionerate could not be counted towards her pension. Aggrieved, the appellant filed an appeal before the learned Khyber Pakhtunkhwa Service Tribunal which was dismissed vide the impugned judgment dated 9.4.2012 whereafter she approached this Court. Leave was granted on 5.7.2013 in the following terms:-

".....Prima facie, it is difficult to understand that admittedly when the petitioner had served for a period of about 18 years in the Commissionerate and thereafter joined the Education Department and initially the Education Department had also accepted her claim allowing computing of her previous service for the purpose of pension then what prevailed with the department subsequently in disallowing continuity. In view of the judgment cited by the learned counsel in the case of Zafar Shah (2003 SCMR 686) in such like circumstances, continuity for the purpose of extending the benefit of pension is permissible.

3. Inter alia, to examine this aspect of the case, leave to appeal is granted in this case...."

Subsequently on 19.9.2013, it was decided that this case was to be heard along with Civil Appeal No.1072/2005 before the larger bench as they both involved similar questions of law.

12. Learned counsel for the appellant primarily submitted that the time spent at the Commissionerate is to be counted towards her pension in terms of Article 371-A of the CSR.

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13. On the other hand, learned counsel for the respondents stated that due to the special facts and circumstances prevalent at that time, the decision rendered in the case of Mir Ahmad Khan (supra) is good law, however in the instant matter, the appellant is not entitled to inclusion of the period she spent as an employee of the Commissionerate for the purposes of pensionary benefits for the reason that she was in fact a project employee of a non-governmental organisation called Basic Education for Afghan Refugees (BEFARe), and not an employee of the Federal Government, and that she had resigned from the Commissionerate on 10.1.2005 after which she joined the department.

14. Learned Additional Advocate General, KPK adopted the arguments of Mr. Hafiz S. A. Rehman, learned counsel for the appellants in Civil Appeal No.1072/2005.

15. Heard. The appellant's main grievance is that the eighteen years she spent at the Commissionerate be counted towards her service at the department for the purposes of the grant of pensionary benefits as per Article 371-A of the CSR, suffice it to say that the Commissionerate for Afghan Refugees does not in any way fall within the meaning of "temporary establishment" as defined in Civil Appeal No.1072/2005 above to mean an organisation or institution which is not permanent, rather effective for a certain period only as described. Even otherwise, the appellant's service with the department was temporary and on a contract basis, and there is nothing on the record which suggests that she was subsequently confirmed or made permanent within the department. Therefore keeping in view the interpretation of Article 371-A of the CSR explained above with regard to Civil Appeal No.1072/2005 in that the said article would not ipso facto allow government servants rendering temporary service in a temporary establishment for more than five years to be entitled to grant of pension, rather such period would only be counted towards such government servants' pension if otherwise entitled to pension, we are of the opinion that the appellant is not entitled to pensionary benefits as claimed by her.

16. In light of the above, we find no infirmity in the impugned judgment warranting interference by this Court, therefore this appeal is dismissed as being devoid of merit.

MWA/C-6/S

Appeal dismissed.

~~ATTESTED~~

18



IN THE PESHAWAR HIGH COURT PESHAWAR

3394/P (3)

WRIT PETITION No. 3394/P (3) 2016

Amir Zeb,
Widower of Asiya Shafi,
R/o Fazal Ganj, Siace Mandi,
Risalpur, District Nowshera.....Petitioner

Versus

- ✓ 1. The District Account Officer,
District Nowshera.
- ✓ 2. The Accountant General,
Khyber Pakhtunkhwa, Peshawar.
- ✓ 3. The District Education Officer (Female),
District Nowshera.
- 4. The Director,
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
- ✓ 5. The Secretary,
Govt: of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department,
Peshawar.
- ✓ 6. The Secretary,
Govt: of Khyber Pakhtunkhwa,
Finance Department, Peshawar.....Respondents

WRIT PETITION UNDER ARTICLE, 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973.

FILED TODAY

Deputy Registrar

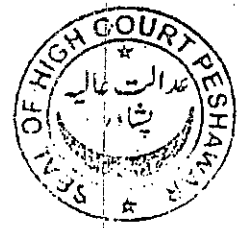
03 SEP 2016

Respectfully Sheweth,

ATTESTED
EXAMINER
Peshawar High Court

WP3394P2016-GROUNDS

~~ATTESTED~~



**IN THE PESHAWAR HIGH COURT,
PESHAWAR,
Judicial Department.**

Writ Petition No.3394-P/2016

Date of hearing:- 22.06.2017

Petitioner(s):- Amir Zeb Widower of Mst. Asiya Shafi by
Mr. Khush Dil Khan, Advocate.

Respondent (s):-The District Account Officer, Nowshera & 05
others by Syed Qaisar Ali Shah, AAG.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this Common judgment, we, propose to decide the following Constitutional Petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), as identical questions of law and facts are involved therein and the writ sought by the petitioners is also one and the same.

1. Writ Petition No.3394-P/2016
(Amir Zeb Vs District Account Officers Nowshera etc)
2. Writ Petition No.2867-P/2016
Mst. Akhtar Bibi Vs District Education Officer (M) Kohat etc).
3. Writ Petition No.3143-P/2014
(Muhammad Shah Zaib etc Vs Govt of Khyber Pakhtunkhwa through Chief Secretary and others)
4. Writ Petition No.2872-P/2014.
Hakeem Khan through LRs Vs Govt of KPK through Sectary Elementary & Secondary Education, Peshawar etc)
5. Writ Petition No.1339-P/2014
(Mst. Rani Vs Sub-Division Education Officer etc).
6. Writ Petition No.55-P/2015
(Mst. Bibi Bilqees Vs Govt of KPK through Secretary Finance, Peshawar).

M. S. Khan

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Peshawar High Court

WP3394P2016-Judgements

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2. Amir Zeb petitioner in W.P. No.3394-P/2016 is the widower of Mst. Asiya Shafi (late). His grievance is that on 28.02.2003, his wife was initially appointed as PTC on contract basis and, later on, by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, her service was regularized. On 31.07.2015, during her service, she met her natural death, therefore, he being her widower/LR applied for payment of her all admissible retirement benefits, in pursuance whereof, leave encashment, GP fund and other admissible funds were paid to him by the respondents, but his pension claim was refused by the respondents on the ground of lack of prescribed length of her regular service, excluding the period of her service on contract, hence, this petition.

3. Mst. Akhtar Bibi, the petitioner in Writ Petition No.2867-P/2016, is the widow of (late) Lal Din Class-IV employee. She has averred in her writ petition that her late husband was initially appointed as Chowkidar on 01.10.1995 on contract basis, however, later on, his service was regularized vide Notification No.BO1-1-22/2007-08 dated 05.08.2008. On 15.05.2010, the deceased died during his service, so she applied for her pension but the same was refused to her on the ground that the regular service of the deceased employee was less than the prescribed length of regular service, hence, this petition.

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 Peshawar High Court

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4. Muhammad Shah Zaib and Muhammad Afnan Alam are the LRs of deceased Fakhar Alam. Their grievance is that their deceased father was appointed as Chowkidar on 13.01.1998 in Mother Child Health Centre Tank, who, later on, during his service was murdered, for which FIR was registered against the accused. Petitioners applied for retirement of the deceased. Vide notification dated 31.12.2013, the deceased was retired from service on account of his death w.e.f 21.10.2013. The family pension of the deceased was prepared and processed, however, the same was refused to the petitioners, hence, this petition.

5. Petitioners in Writ Petition No.2872-P/2014, are the LRs of deceased Hakeem Khan Class-IV employee, who died during pendency of the instant writ petition. Grievance of the petitioners is that their predecessor was appointed as Chowkidar on fixed pay in Education Department on 24.04.1993. Vide order dated 29.01.2008, service of the deceased alongwith his counterparts was regularized by virtue of Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 w.e.f 30.06.2001. On attaining the age of superannuation, the deceased got retired on 31.12.2012, so petitioner applied for grant of his pension but the same was refused, hence, this petition

6. Mst. Rani, petitioner in Writ Petition No.1339-P/2014, is the widow of Syed Imtiaz Ali Shah (late) Class-IV employee. She has averred in her writ

petition that on 15.01.1996 her late husband was appointed as Chowkidar in the respondents department on adhoc basis/fixed pay, whose service was, later on, regularized on 30.07.2008. During his service, the deceased met his natural death on 15.01.2012, hence, the petitioner applied for her pensionary benefits, but the same was refused on the ground that though service of the deceased was regularized but without pension gratuity, hence, this petition.

7. Mst. Bibi Bilqees, petitioner in Writ Petition No.55-P/2015, is the widow of Saif ur Rehman deceased. Her grievance is that her deceased husband was initially appointed as Chowkidar on 09.07.1995 in Public Health Department Nowshera on contract basis, however, his service was regularized on 01.07.2008. The deceased died during his service on 05.05.2012, so when petitioner applied for his pensionary benefits, the same was refused to her on the ground that the deceased was lacking the prescribed length of regular service, hence, this petition.

8. Respondents in the above writ petitions have filed their respective Para-wise comments, wherein they have admitted the fact that the pensions have been refused to the petitioners/LRs of the deceased employees because they were lacking the prescribed length of their regular service, whereas period of adhoc or contract service cannot be counted towards regular service for the purpose of pension.

WP3394P2016-Judgements

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Peshawar High Court

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The learned Addl. A.G. also questioned the maintainability of the writ petitions on the ground that section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Acts deal with right of pension of deceased civil servant, which squarely falls in Chapter-II, pertaining to terms and conditions of service, therefore, jurisdiction of this Court under Article 212 of the Constitution is barred.

9. Having heard the arguments of learned counsel for the parties, record depicts that undisputedly the deceased employees were the Civil Servants and instant writ petitions have been filed by their LRs qua their pensions. Since the controversy pertains to pension of the deceased employees which according to the contention of worthy Law Officer is one of the terms and conditions of a civil servant under section 19 (2) of the Civil Servants Act, 1973, hence, before determining the eligibility of the deceased employees to the pension or otherwise, we, would like to first meet the legal question qua maintainability of the instant writ petitions on the ground of lack of jurisdiction of this Court under Article 212 of the Constitution. To answer the question, it would be advantageous to have a look over the definition of "Civil Servant" as contemplated under section 2(b) of Khyber Pakhtunkhwa Civil Servants Acts, 1973 and section 2 (a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974. For the sake of convenience and ready reference, definition

WP3394P2015-Judgements

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Peshawar High Court

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given in both the Statute are reproduced below one after the other

"2(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include--

- (i) A person who is on deputation to the Province from the Federation of any other Province or other authority;
- (ii) A person who is employed on contract or on work charged basis, or who is paid from contingencies; or
- (iii) A person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VII of 1923)".

"S.2(a) "Civil Servant" means a person who is or has been a civil servant within the meaning of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), but does not include a civil servant covered by the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991;]

As per the definitions of a "civil servant" given in the two Statutes referred to above, the petitioners neither holding any civil post in connection with the affairs of the Province nor have been remained as civil servants, thus, do not fall within the definition of "civil servant".

10. Though section 19(2) of the Khyber Pakhtunkhwa Civil Servants Acts, 1972, in the event of death of a civil servant, whether before or after retirement conferred a right of pension on his/her family who shall be entitled to receive such pension or gratuity or both as prescribed by Rules. It is also undeniable fact that pension and gratuity fall within the ambit of terms and conditions of a civil servant, but a legal question would arise as to whether the legal heirs i.e. family of a deceased civil servant would be competent to agitate his/her/their grievance regarding pension before the Service Tribunal, particularly, when

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Peshawar High Court

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he/she/they do not fall within the definition of Civil Servant. The Service Tribunals have been constituted under Article 212 of the Constitution for dealing with the grievances of civil servants and not for their legal heirs. The question regarding filing appeal by the legal heirs of deceased's civil servant and jurisdiction of Service Tribunal, cropped up before the Hon'ble Supreme Court in case titled, "Muhammad Nawaz Special Secretary Cabinet Division through his Legal Heirs Vs Ministry of Finance Government of Pakistan through its Secretary Islamabad" (1991 SCMR 1192), which was set at naught in the following words:-

"A 'civil servant' has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act, 1973 has been given to a civil servant aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his serve. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the service Tribunals Act of 1973 to provide any remedy to the successors-in-interest of a civil servant, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained".

In case titled, "Rakhshinda Habib Vs Federation of Pakistan and others" (2014 PLC (C.S) 247), one Habib ur Rehman Director General in Ministry of Foreign Affairs, aggrieved by his supersession filed appeal before the worthy Service Tribunal, but unfortunately, during pendency of appeal he died, therefore, his appeal before the Federal Service Tribunal Islamabad was abated. Rakhshinda Habib, the widow of

deceased then filed constitution petition No.1021 of 2010 before the Islamabad High Court, but the same was dismissed vide judgment dated 13.06.2013, against which she preferred aforesaid appeal before the Hon'ble Supreme Court, which was allowed and it was held by the worthy apex court that:-

"That civil servant could not be promoted after his death, however, pensionary benefits of promotion could be extended to the legal heirs of the deceased employees".

11. Going through the law on the subject and deriving wisdom from the principles laid down by the Honble apex Court in the judgments (supra), we are firm in our view that petitioners/legal heirs of the deceased employees have locus standi to file these petitions because the pensionary benefits are inheritable which under section 19 (2) of the Khyber Pakhtunkhwa Civil Servant Act, on the demise of a civil servants, devolves upon the legal heirs. The petitioners, as stated earlier, being LR's of the deceased civil servants do not fall within the definition of "Civil Servant", and they having no remedy under section 4 of the Service Tribunal Act to file appeal before the Service Tribunal, the bar under Article 212 of the Constitution is not attracted to the writ petitions filed by them and this Court under Article 199 of the Constitution is vested with the jurisdiction to entertain their petitions. Resultantly, the objection regarding non-maintainability of the petitions stands rejected.

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EXAMINER
Peshawar High Court

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12. Adverting to question of entitlement of the deceased employees to the pension, we, would like to reproduce the relevant rules of the West Pakistan Civil Services Pensions Rules, 1965 below, as these would be advantageous in resolving the controversy:-

"2.2. Beginning of service- Subject to any special rules the service of Government servant begins to qualify for pension when he takes over charge of the post to which he is first appointed."

Rule 2.3 Temporary and officiating service—Temporary and officiating service shall count for pension as indicated below:-

- (i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service for the purpose of pension or gratuity; and
- (ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity.

13. The rules ibid reveal that the service of government servant begins to qualify for pension from the very first day of his/her taking over the charge, irrespective of the fact whether his/her appointment and entry in to service was temporary or regular. It is also clear from sub-rule (i) that continuous temporary service of a civil servant shall also be counted for the purpose of pension and gratuity and by virtue of sub rule (ii), temporary and officiating service followed by confirmation shall be counted for pension and gratuity. It is undeniable fact that the NWFP Civil Servant (Amendment Bill), 2005 was passed by the provincial assembly on 5th July 2005 and

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assented by the Governor of the Province on 12th July 2005 whereby section 19 was amended and all the employees of the Provincial Government selected for appointment in the prescribed manner to the post on or after 1st day of July 2001, but on contract basis were deemed to be appointed on regular basis. They were declared Civil Servants, however, were held disentitled for the pensionary benefits. Section 19 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was further amended by Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013. The text of section 19 (4) (proviso 1 and 2) are reproduced as below:-

"Provided that those who are appointed in the prescribed manner to a service or post on or after the 1st July, 2001 till 23rd July, 2005 on contract basis shall be deemed to have been appointed on regular basis:

Provided further that the amount of Contributory Provident Fund subscribed by the civil servant shall be transferred to his General Provident Fund."

14. From bare reading of section 19 of Amendment Act, 2005 and 2013 respectively, it is manifest that the persons selected for appointment on contract basis shall be deemed as regular employee and subsequently were held entitled for pensionary benefits. The deceased employees have completed the prescribed length of service as their service towards pension shall be counted from the first day of their appointment and not from the date of regularization of their service.

Justice S. J. Khan

M. J.
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EXAMINER
Peshawar High Court

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15. We deem it appropriate to mention here that question of interpretation and true import of the term pension was raised before the august Supreme Court of Pakistan in case titled "Government of NWFP through Secretary to Government of NWFP Communication & Works Department, Peshawar Vs Muhammad Said Khan and others (PLD 1973 Supreme Court of Pakistan 514) wherein it was held that:

"It must now be taken as well settled that a person who enters government service has also something to look forward after his retirement to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well settled that pension like salary of a civil servant is no longer a bounty but a right acquired after putting a satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."

16. In case titled "Secretary to Govt: of the Punjab, Finance Department Vs M. Ismail Tayer and 269 others" 2015 PLC (CS) 296, the august Supreme Court of Pakistan was pleased to held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

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EXAMINER
Peshawar High Court

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17. For what has been discussed above, we by allowing these writ petitions, issue a writ to the respondents departments to pay pension of the deceased employees to the petitioners/LRs of the deceased.

Announced:
22.06.2017
SUDJ APJW P.S.

Prof. Roshul Amir Khan
JUDGE

Ed. Lalander Ali
JUDGE

Prof. S.M. Attique Sahib
JUDGE

[Signature]
EXAMINER
Sudhewar High Court, Peshawar
Authorized Under Article 97 of
the Constitution of Pakistan
01 FEB 2022

No. 22919
Date of Presentation of Application 01/02/22
No of Pages 13
Copying fee 152
Total 152
Date of Preparation of Copy 01/02/22
Date of Delivery of Copy 01/02/22
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OFFICE ORDER NO. 37 DATED KHAR THE 23 /DECEMBER-2021
ISSUED BY MR. MUHIB ULLAH DAWAR DIVISIONAL FOREST OFFICER BAJAUR
FOREST DIVISION KHAR.

Mr. Kifayatullah Forest Guard is hereby retired from Government service on superannuation basis after attaining the age of 60 years with effect from the afternoon of 31/12/2021 and rendering of 28 years 08 months and 14 days qualifying service. He is also allowed encashment of Leave salary equal to 365 days pay in lieu of Leave preparatory to Retirement (LPR) as admissible to him vide Rules-20 of the NWFP (now KPK) Civil servant Leave Rules 1981 as amended vide Government of Khyber Pakhtunkhwa Finance Department Notification No.FT-SO(SR-V)5-54/81 Vol:III dated 15/04/1988 and No.SO (FR)FD-592/2005/Vol-5 dated 13/12/2012.

Divisional Forest Officer
Bajaur Forest Division
Khar.

No. 1159-1163 /E Dated:

Copy forwarded to:

- 1- The Conservator of Merged Areas Peshawar for favour of information please.
- 2- The Director Budget & Accounts Environment Department Government of Khyber Pakhtunkhwa Peshawar for favour of information.
- 3- Divisional Accountant for information and necessary action.
- 4- Official concerned.
- 5- Personal file.

Divisional Forest Officer
Bajaur Forest Division
Khar.

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27

Chief Conservator
Central Southern Forest Region
Khyber Pakhtunkhwa Peshawar



MIAMI ROAD PESHAWAR
☑ OUT USE JOHN PAX OUT 021 2500
E Mail: chiefconservator@kfwfd.com
No. 1888 / 16 dated 01/02/2022

The Chief Conservator of Forests,
Central Southern Forest Region I
Khyber Pakhtunkhwa Peshawar

**RE: PENSION CASE IN RESPECT OF MR. KIFAYAT ULLAH
EX FOREST GUARD.**

Reference your office letter No. 1105/16 Dated 28/01/2022.

The observation raised by your good office vide above cited letter, in the pension case of Mr. Kifayat Ullah Ex Forest Guard which is clarified by DFO Bajaur through its letter No. 2020/16 Dated 07/02/2022 (copy enclosed) for ready reference. All the documents alongwith Service Book (in original) are returned herewith for further course of action, please.

Enclos above.

[Signature]
Conservator of Forests
Merged areas
Peshawar

/16

Copy for information forwarded to DFO Bajaur Forest Division Khar with reference to his letter cited above.

[Signature]
Conservator of Forest
Merged areas
Peshawar

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Conservator of Forests
Merged Areas Forest Range
Khyber Pakhtunkhwa Peshawar



44
Shana Road Peshawar
Ph: 091-9212177 Fax: 9211478
Email: office@peshawar.gov.pk

Dated Peshawar this 17/02/2022

28

The Budget & Accounts Officer
Government of Khyber Pakhtunkhwa
Forestry, Environment & Wild Life Department
Peshawar

PENSION CASE IN RESPECT OF MR. KIFAYAT ULLAH EX-FOREST GUARD

No. 1

Following person documents in respect of Mr. Kifayat Ullah Ex-Forest Guard retired from government service with effect from 31/12/2021 are sent herewith for further necessary action in this regard.

100

- | | |
|--|----------------|
| 1. Pension forms | (in duplicate) |
| 2. Photographs | (in duplicate) |
| 3. Photograph of CNIC | (in duplicate) |
| 4. Recommendation order | (in duplicate) |
| 5. Retirement order | (in duplicate) |
| 6. Last Pay Certificate | (in duplicate) |
| 7. List of Legal heirs | (in duplicate) |
| 8. Finger thumb impression | (in duplicate) |
| 9. No Dues receipt/anti-corruption Certificate | (in duplicate) |
| 10. Undertaking | (in duplicate) |
| 11. Declaration Certificate | (in duplicate) |
| 12. D/O | (in duplicate) |
| 13. D/O Form for Direct Credit | (in original) |
| 14. Indemnity Bond on Stamp Paper | (in duplicate) |
| 15. Supplier receipts | (in original) |
| 16. Affidavit on Stamp Paper | (in original) |
| 17. Section Bond (100/-) | (in original) |

Encl: As above

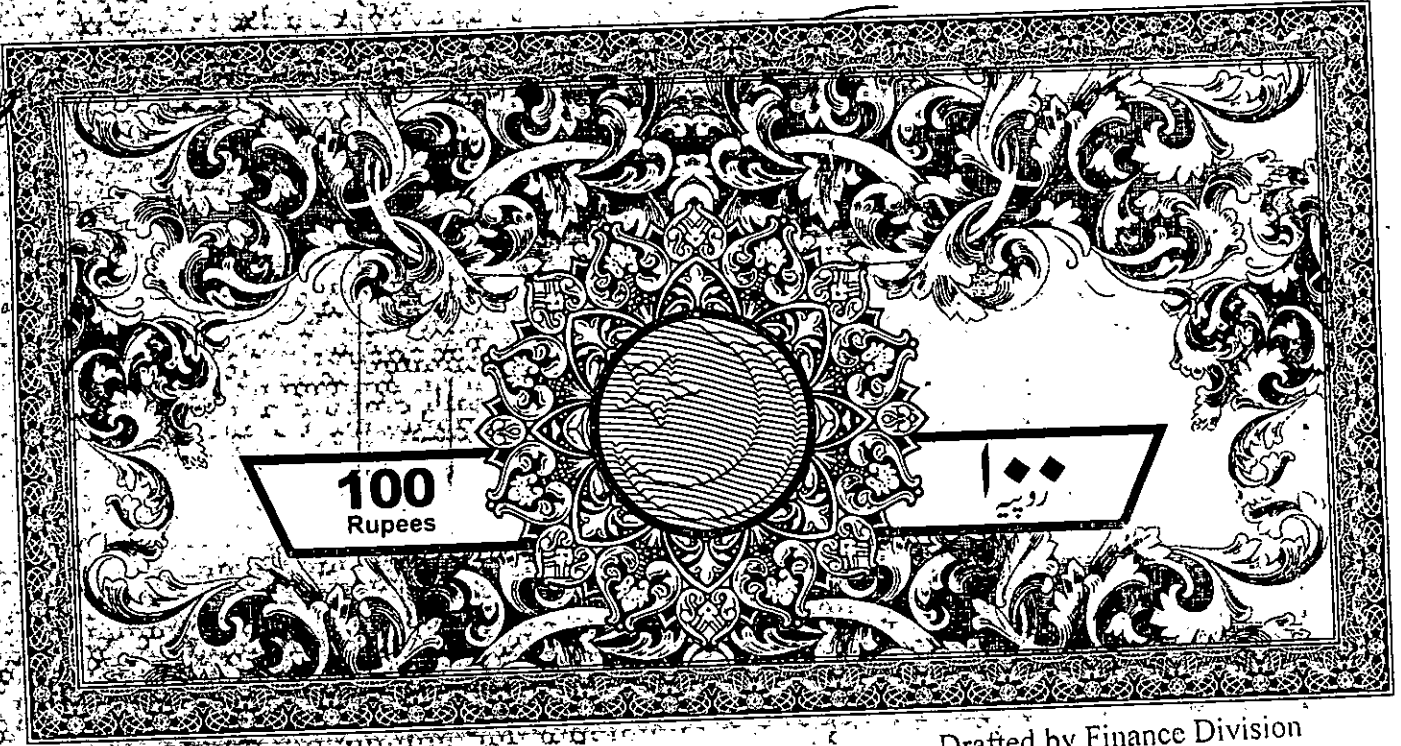
Conservator of Forests
Merged Areas Forest Range
Khyber Pakhtunkhwa Peshawar

No. 14225/E

Copy forwarded to the Conservator of Forests Merged Areas Forest Circle Peshawar for information and reference to his letter No 2555/E dated 14/02/2022

[Signature]
Conservator of Forests
Merged Areas Forest Range
Khyber Pakhtunkhwa Peshawar

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Drafted by Finance Division

"INDEMNITY BOND"

To

The Manager,

HBP (Name of Bank)

Khari (Branch)

Khari City)

In compliance with the SBP's instructions for payment of pension through your bank branch, I/we agree to indemnify you and keep you indemnified about liabilities with all sums of money whatsoever including mark-up of my Pension Account. I/we further undertake that my/our legal heirs, successors, executors shall be liable to refund excess amount, if any, credited to my/our Pension Account either in full or in installment equal to such excess amount.

Co-indemnifier/Nominee/SUCCESSOR/

Next of Kin: Ruhama Bibi

CNIC: 21103-2233546-8

Address: Shah Nawaz Teh, Khari Bajaur

Signature:

Signature:

Name of Pensioner: Rizayatullah

Date of Retirement: 31-12-2021

PPO No: _____

Bank Account No. _____

CNIC: 21103-2300734-7

ATTESTED

WITNESS 1

CNIC: 21103-0712641-1

Signature:

Date: 31-12-2021
(Munir Beel Shah)

WITNESS 2

CNIC: 21103-1853034-3

Signature:

Date: 31-12-2021

ATTESTED
Shah Khalid Advocate
No. 494
Date 4-02-2022
Dist: _____

31

on Calculation in respect of Kifayatullah Forest Guard (BPS-8)

Retired from Government of Khyber Pakhtunkhwa on Superannuation Pension
Opted for 35% commutation

	Year - Month - Day
Date of Retirement :	2021 - 12 - 31
Date of Birth :	1962 - 01 - 01
Age at Retirement :	59 y, 11 m, 30 d

Date of Retirement :	2021 - 12 - 31
Date of Appointment :	1993 - 04 - 17
Length Service :	28 y, 8 m, 14 d

Qualifying Service :	29 years
Basic Pay :	29,470.00

Total Emoluments :	29,470.00
Gross Pension :	19,941.37
35% Commuted Portion :	6,979.48
Net Pension :	12,961.89
Commutation Rate :	148.4628
Commutation Amount :	1,036,193.14
Date of Restoration :	31-12-2033

Net Pension :		12,961.89
15% increase of 2010	0.00	12,961.89
15% increase of 2011	1,944.28	14,906.17
20% increase of 2012	0.00	14,906.17
15% increase of 2013	0.00	14,906.17
10% increase of 2014	0.00	14,906.17
10% increase of 2015	1,490.62	16,396.79
10% increase of 2016	1,639.68	18,036.47
10% increase of 2017	1,803.65	19,840.12
10% increase of 2018	1,984.01	21,824.13
10% increase of 2019	2,182.41	24,006.54
10% increase of 2021	2,400.65	26,407.19
25% Medical Allowance of 2010	3,240.47	
25% increase on Medical Allowance	810.12	
Net Pension Payable Rs.		30,457.78

Divisional Forest Officer
Bajaur Forest Division
Kohat

48

GOVERNMENT OF KHYBER PAKTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

No. B & A / Pen-

1397

Dated Pesh: the

19-5-20

Pension Admissibility Report

To

DFO Bajour Forests Division at Khar, BAJAUR AGY

Remarks: 1. Adjustment Order No. 15 dated 31/07/2002.

2. Pension papers may be revised according to Admissibility Report.

Subject: Pension Case of Kifayat Ullah (Ex- Forest Guard(BPS-08))

32

Personal Id:	8818	Pension Type:	Superannuation Pens	Deptt: Name:	FOREST
Emp Name:	Kifayat Ullah	Father Name:	Abdul Haleem	Emp CNIC:	21103-2300734-7
Designation:	Forest Guard	Scale:	(BPS-08)	Date of Birth:	01/01/1962
Appointt: Date	01/07/2002	Retirement Date:	31/12/2021	Total Service:	19Y 5M 30D /
N.Q. Service:	0Y 0M 0D	Net Service:	19Y 5M 30D	Retirement Age:	59Y 11M 30D
Basic Pay +PP:	29470	Increment	0	Total Emolument:	29470
Gross Pension: (29470X19X7)/300	13,065	35% Comuted	4573	65% Net Pension	8492
		Restoration :	31/12/2033	Emp Death Date:	

1. Certified that subject to the remarks recorded above duly verified of Kifayat Ullah that Superannuation Pension not exceeding Rs. 8,492 (Rupees): after surrendering of 35% Comuted original pension of Rs: 4,573 of which is equal to Rs: 13065.
2. Last pay of Rs: 29470 is admissible under the Civil Service Pension Rules.
3. The pension is charge-able to Provisional Revenue of Khyber Pakthunkhawa is voted and will commence from 01/01/2022.
2. A commutation of Rs: 678920 is also admissible in lieu of the surrendered portion of the pension.
3. Attention is invited to Rules-1.8(c) and 4.2 ibid.
4. In the even of the death of his retirement his family will be entitled to a pension under the pension rules.
6. Administrative sanction may please be furnished in-duplicate.
7. A ligible copy of the Service Book may be retained in your office for record and future correspondence.

Authorization of Monthly Pension Rates Due From: 01/01/2022

S#	Particulars	Values	Total
1	65% Net Pension	8492	8492
2	15% increase 07/2011	1274	9766
3	10% increase 07/2015	977	10742
4	10% increase 07/2016	1074	11817
5	10% increase 07/2017	1182	12998
6	10% increase 07/2018	1300	14298
7	10% increase 07/2019	1430	15728
8	10% increase 07/2021	1573	17301
9	25% Medical Allow of 2010	2123	19424
10	25% Increase on Medical 07/2015	531	19954

Total Monthly Pension:: 19954/-- (Nineteen Thousand Nine Hundred Fifty-Four Only)

BUDGET & ACCOUNTS OFFICER,

ATTACHED

Note - The entries in this page should be renewed or re-attested at least every five years and the Signature to lines 9 and 10 should be attested.

1. Name *Mr. Kifayatullah*
2. Race *Muslim*
3. Residence *Village Salorzi Bajaur Agency.*

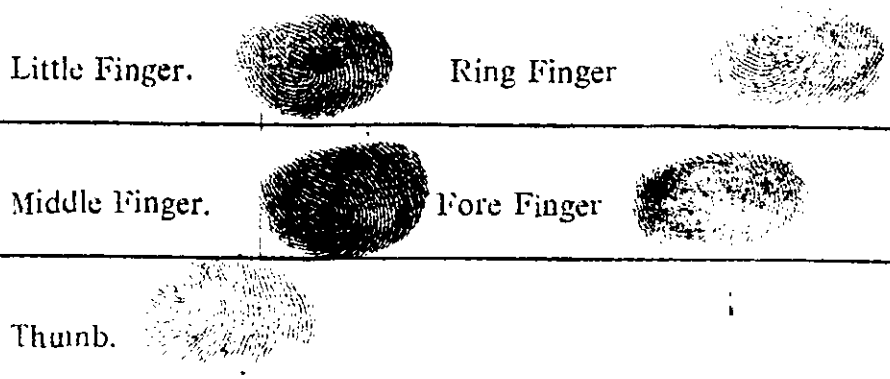
4. Father's name and residence *Abdul Haleem*

5. Date of birth by Christian era as nearly as can be ascertained .. *1-1-1962*

6. Exact height by measurement .. *5' 4"*

7. Personal marks for identification *Two scars on Rt knee*

8. Left hand thumb and Finger impression of (non-gazetted) officer



9. Signature of Government servant *[Handwritten signature]*

10. Signature and designation of the Head of the Office, or other Attesting Officer. *[Handwritten signature]*

9	10	11	12	13		14	15
				Leave			
				Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitible to another Government.		

Signature and name of the head of the office or other attesting officer in cases 1 to 8

Date of termination of appointment

Reason of termination (such as promotion, transfer, dismissal, etc.)

Signature of the head of the office or other attesting Officer

Period

Government to which debitible

Signature of the head of the office or other attesting officer

Reference to any recorded punishment or censure, or reward or praise of the Government Servant

17 ⁴/₉₃

Appointed as F/guard in BPS-2 (Rs. 945-32-1425) vide do No. 117 dt: 15 ⁴/₉₃

Divisional Forest Officer, FATA-I Forest Division, Peshawar.

Divisional Forest Officer, FATA-I Forest Division, Peshawar.

31 ⁵/₉₃

Pay fixed in BPS-5 vide NWFP Finance Deptt No. FD (OR-I) 1-9/88 dt: 27 ⁶/₉₃

Reviewed 17 ⁴/₉₃ to 31 ¹²/₉₃ verified for pay roll

Divisional Forest Officer, FATA-I Forest Division, Peshawar.

Divisional Forest Officer, FATA-I Forest Division, Peshawar.

Allowed in advance qualification increment vide Finance Deptt No. FD (PRE) 1-1/89 dt: 11-8-91

Divisional Forest Officer, FATA-I Forest Division, Peshawar.

30 ¹¹/₉₃

Allowed Annual increment

Divisional Forest Officer, FATA-I Forest Division, Peshawar.

Stamp: RECEIVED

53
POWER OF ATTORNEY

in the Court of

Khyber Pakhtun Khwa Province Peshawar

Khajayat Ullahi

} For *Peshawar*
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of Khyber Pakhtun Khwa
and others

} Defendant
} Respondent
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

ZARAJ ANWAR & IMRAN KHAN ADVOCATES, my true and lawful attorney, for me in my same and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so. any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

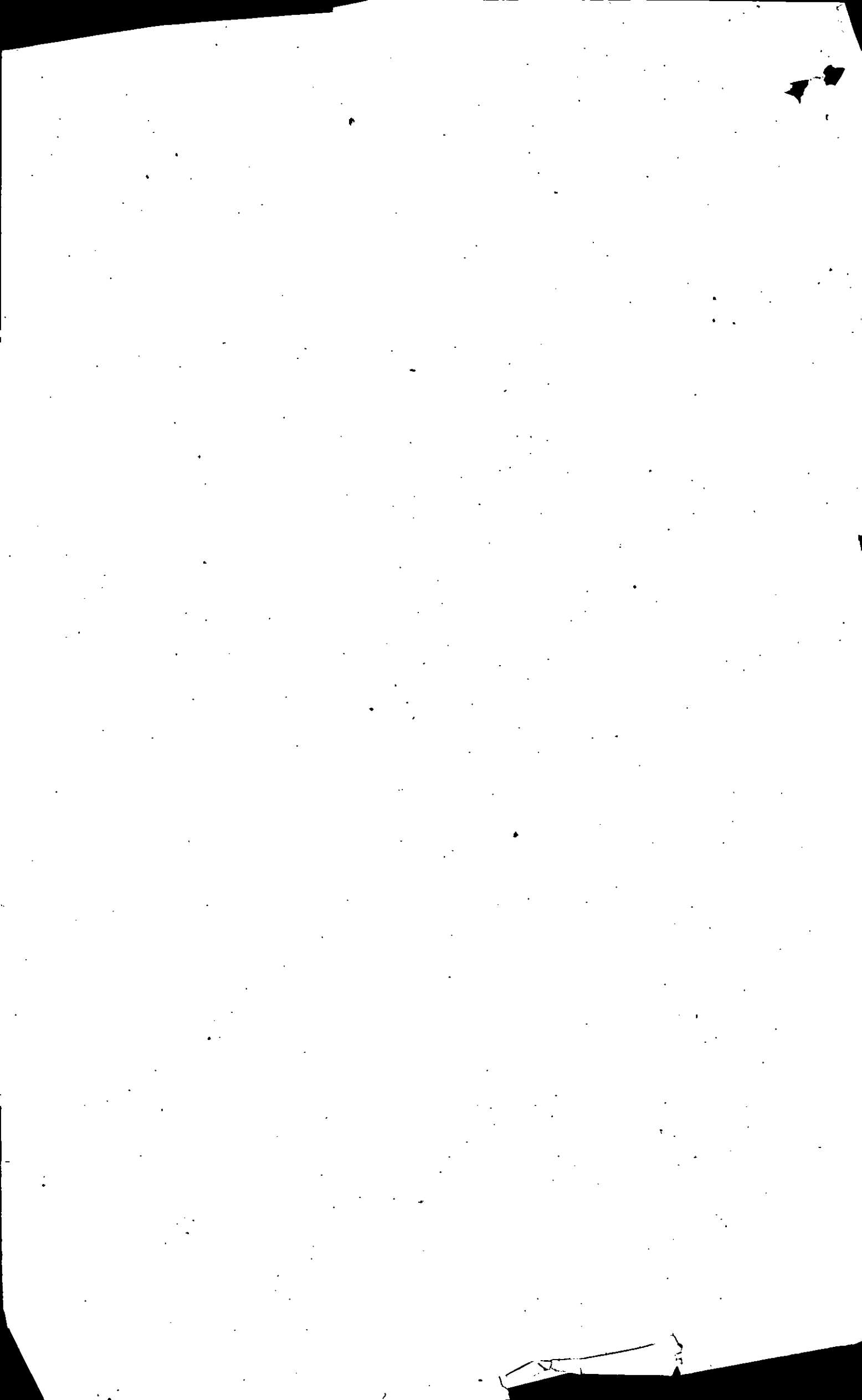
AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year *2015*
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Imran Khan
IMRAN KHAN
Advocate High Court
Mob. 0315-9090648

Zaraj Anwar
ZARAJ ANWAR
Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Mobile-0331-9399185
BC-10-9851
CNIC: 17301-1610451-5



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20/3/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SCANNED
KPST
Peshawar

SERVICE APPEAL NO. 1254/2022

20/3/23

KIFAYAT ULLAH S/O ABDUL HALEEM VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH SECRETARY AND OTHERS

Khyber Pakhtunkhwa
Service Tribunal

Diary No.

4463

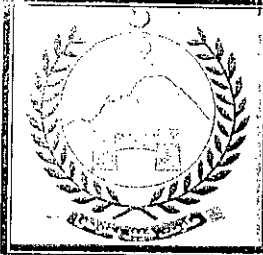
Dated

20/3/2023

INDEX

S#	Documents	Annexure	Page
1	Para wise Comments (01 Sets).	---	01-02
2	Appointment Order No. 117/1993	---	03
3	Legible copy of Appointment Order No. 117/1993	I	04
4	Termination and adjustment orders.	II	05-11
5	Service Book Pages	III	12-15
6	Regularization order 15/2002	IV	16
7	Instruction of Finance Department dated; 11-07-1998	V	17
8	Para wise Comments duly approved by AAG.	---	19-20

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MOST IMMEDIATE
COURT MATTER

GOVERNMENT OF KHYBER PAKHTUNKHWA
CLIMATE CHANGE, FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT
(LITIGATION SECTION)

Phone No 091-9212103

NO. SO(Lit:)/CCFE&WD/3-381/Kifayat Ullah /2022
Dated Peshawar: 13th March, 2023

To,

The Conservator of Forests,
Central Forest Circle, Peshawar.


Subject:

**SUBMISSION OF WRITTEN REPLY IN APPEAL NO. 1254/2022 TITLED
"KIFAYAT ULLAH S/O ABDUL HALEEM VS GOVT OF KHYBER
PAKHTUNKHWA THROUGH SECRETARY & OTHERS**

I am directed to refer to your letter No. 4105/E-Kifayat Ullah/Bajour dated 24th February, 2023 on the subject noted and to return parawise comments in the subject case **(in original)** duly signed by Secretary to Govt. of Khyber Pakhtunkhwa, Climate Change, Forestry, Environment & Wildlife Department for onward submission to the Hon'ble Court concerned **within stipulated time period**. A copy of "receipt" may be furnished to this Department for record and perusal of high ups.

2. Moreover, an officer posted in Peshawar not below the rank of BPS-17 may please be deputed / authorized to attend hearing of the subject case on each date of hearing with complete record / documents on behalf of the Secretary Climate Change, Forestry, Environment & Wildlife Department under intimation to this department.

Being **High Court** matter may please be treated as **Most Urgent**.


(Hafiz Abdul Jalil)
Section Officer (Litigation)

Encs. As above. (in original)

Endst: of even No & dated:

Copy of the above is forwarded to the:

1. Chief Conservator of Forests, Central Southern Forest Region-I, Peshawar w/r to his letter No. 9014/E dated 27th February, 2023.
2. Divisional Forest Officer Bajour for information.
3. Budget & Accounts Officer, Forestry, Environment & Wildlife Department.
4. PS to Secretary Climate Change, Forestry, Environment & Wildlife Department.
5. Master File.

Section Officer (Litigation)

Est

Azeem

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

REF: IN SERVICE APPEAL NO.1254/2022

Kifayat Ullah S/O Abdul Haleem (Ex-Forest Guard)
Resident of Shah Narai P.O Khar, Tehsil Khar

(APPELLANT)

VERSUS

1. Secretary
to Government of Khyber Pakhtunkhwa
Climate Change, Forestry, Environment & Wildlife department Peshawar.
2. Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar
3. Conservator of Forests
Central Forest Circle Peshawar
4. Budget & Account Officer
to Government of Khyber Pakhtunkhwa
Climate Change, Forestry, Environment & Wildlife department
Peshawar

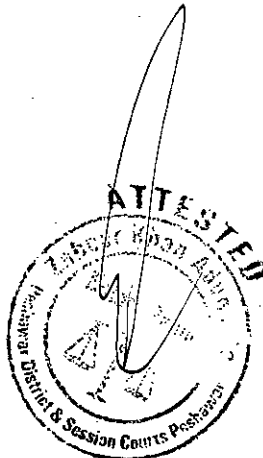
(RESPONDENTS)

AFFIDAVIT

I, Muhammad Ilyas SDFO Khar Forest Sub-Division, do hereby solemnly affirm and declare on oath that the contents of the accompanying Reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court



DEPONENT



CINC No. 16102-2274761-7

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①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

REF: IN SERVICE APPEAL NO.1254/2022

Kifayat Ullah S/O Abdul Haleem (Ex-Forest Guard)
Resident of Shah Narai P.O Khar, Tehsil Khar _____ (APPELLANT.)

VERSUS

1. Secretary
to Government of Khyber Pakhtunkhwa
Climate Change, Forestry, Environment & Wildlife department Peshawar.
2. Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar
3. Conservator of Forests
Central Forest Circle Peshawar
4. Budget & Account Officer
to Government of Khyber Pakhtunkhwa
Climate Change, Forestry, Environment & Wildlife department
Peshawar _____ (RESPONDENTS)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1,2,3&4

PRELIMINARY OBJECTION

- i. That the appellant has got no cause of action.
- ii. That the appellant has no locus standi to file this Service Appeal.
- iii. That the appellant has not come to this court clean hand.

ON FACTS:-

- 1- That it is admitted by the appellant he had been appointed on purely temporary basis as Forest Guard in developmental PC-I Scheme titled as **Watershed Management in Bajaur Agency**. The services of a PC-I Project Staff are constrained to the Project period. Besides, as per terms and condition of the then DFO FATA-I Peshawar office order No. 117 dated 15/4/1993, he was liable to the condition not to claim any right for regularization in to service (**Annex-I**). Furthermore, the services of the appellant had been terminated time and again by the competent authority (**Annex-II**) having several service breaks, making him not eligible for pensionary benefits as is evident from his service book (**Annex-III**).
- 2- That it pertains to his service record.
- 3- That it is incorrect rather services of the appellant were converted / adjusted in to regular post through office order No. 15 dated 31/07-2002, w.e.f 01/07/2002, is simply meant to have join the civil service since his date of regularization (**Annex-IV**), making him entitled for all the benefits of a civil servants
- 4- Correct to the extent that the appellant has got retired on 31/12/2021 vide, DFO Bajaur officer order No.37 dated 23/12/2021 on attaining the age of 60 years as per Government Policy. But as per instruction of Govt: Khyber Pakhtunkhwa Finance Department circulated vide letter No. SOSR-III(FD)4-141/98 dated 11.07.1998, the services of the employees appointed after 30.03.1989 would not be counted for pension and the appellant had been employed initially on 15-04-1993 which is in contradiction of the instruction of Finance Department (**Annex-V**)


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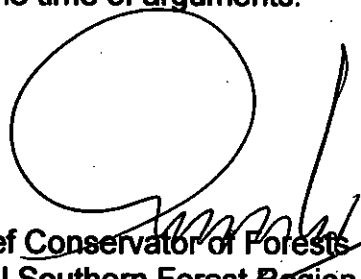
5- Pertains to record.

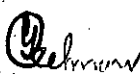
6- The appellant has got no cause of action to file instant appeal.

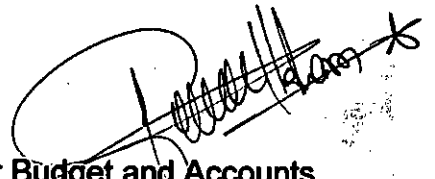
GROUNDS OF SERVICE APPEAL

- A. Incorrect that the appellant has been treated in accordance with law and nothing has been violated.
- B. Incorrect that the appellant's services shall not be counted for the purpose of pension, as explained under Para 1 & 4.
- C. Incorrect as explained and referred under Para (B).
- D. Incorrect as explained and referred under Para (B).
- E. Incorrect as explained and referred under Para (B).
- F. Incorrect as explained and referred under Para (B).
- G. The respondents seek leave to raise additional grounds at the time of arguments.


Secretary
to Govt; of Khyber Pakhtunkhwa
Climate Change Forestry, Environment & Wildlife
Department Peshawar
(Respondent No.1)


Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar
(Respondent No.2)


Conservator of Forests,
Central Forest Circle Peshawar.
(Respondent No.3)


Director Budget and Accounts
to Govt; of Khyber Pakhtunkhwa
CFE&WD Peshawar
(Respondent No.4)

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On the recommendation of the Departmental Committee vide minutes dated 12.12.1970, the following appointments are appointed as Forest Guards in BGS-2 i.e. Rs. 1000/- per month with allowances admissible under the rules against them. They are: -
1. Mr. BAGE ZADA S/O Sakhtiar of Bajaur Agency.
2. Mr. Nerval Khan S/O Subhan Vill, Mayal, Bajaur Agency.
3. Mr. Fayazullah S/O Abdul Hafeez, Bajaur Agency.
4. Mr. Mohammad Janas Khan S/O Subhan Khan, Bajaur Agency.
5. Mr. Saeed Ahmad S/O Pacha Vill, Bajaur Agency.

These appointments are subject to the following terms and conditions:-

1. These appointments are purely temporary and on contract basis. Their services can be terminated without giving notice or assigning any reason whatsoever or on expiry/completion of scheme about which they are posted which ever is earlier. They will not acquire any right of continuity or post/assignment or seniority or regularization of their services.
2. They will join their duty on their own responsibility.
3. They will be on probation for a period of six months.
4. Their appointments are subject to production of original education/Health and Domicile and other certificates etc.
5. In case they wish to resign at any time, notice will be necessary and in that case their pay will be forfeited.
6. They will be governed by the rules and bye-laws relating to leave, travelling, medical attendance and to (A-D) Rules pay etc. as may be issued by Government from time to time.

So/- (Mr. Shabir Missal)
Divisional Forest Officer,
PATA - Forest Division,
Peshawar.

Ms. 3136-59/E.

Copy forwarded for information to the:-

1. Conservator of Forests PATA/Social Forestry, Peshawar.
2. Range Officer, Bajaur at Khan.
3. All Concerned. They are directed to join their duty within a week time.
4. Personal File.
5. Divisional Accountant.

Mr. C. Bajaur

Divisional Forest Officer
PATA
PESHAWAR

OFFICE ORDER NO.117 DATED PESHAWAR THE 15/4/1993 ISSUED BY

MR. SHABIR HUSSAIN DIVISIONAL FOREST OFFICER FATA FOREST DIVI:PESH

On the recommendation of Departmental Selection Committee vide minutes dated:6.3.1993, the following candidate hereby appointed as Forest Guards in BPS-12 i.e Rs.945-42-1425 with usual allowances admissible under the rules against the existing vacancies in FATA-I Forest Divn: under provincial scheme namely "Watershad in Bajaur Agency" on purely on temporary basis with effect from the date they arrived for duties:-

1. Mr. Sher Zada S/O Bakhtiar of Yousaf Abad Bajaur Agency.
2. Mr. Perviz Khan S/O Subhan Vill Hayati, Bajaur Agency.
3. Mr. Kifayatullah S/O Abdul Haleem Vill: Salatai Bajaur Agency.
4. Mr. Mohammad Janas Khan S/O Subar Khan-Vill: Khar Bajaur Agency.
5. Mr. Syed Badshah S/O Pacha Vill: Garo Bajaur Agency.

Their appointments are subject to the following terms and conditions:-

1. Their appointments are purely temporary and on contract basis. Their services, can be terminated without giving notice or assigning any reason at any time or on expiry/completion of scheme abolition of the post whichever is earlier. They will not confer any right of continuity on post/absorption or else-where or regularization of their services.
2. They will join their duty on their own expenses.
3. They will be on probation for a period of six months.
4. Their appointment are subject to production of original Education/Health and Domicile and Character, Certificate etc.
5. In case they wish to resign at any time, 30 days notice will be necessary or in lieu thereof 30 days pay will be forfeited.
6. They will be governed by the rules and order relating to leave, travelling, medical attendance and to (E&D) Rules pay etc as may be issued by Government from time to time.

Sd/(Mr. Shabir Hussain)
Divisional Forest Officer
FATA-I, Forest Division,
Peshawar

No.3556-59/E,

Copy forwarded for information to the:-

1. Conservator of Forests FATA/Social Forestry Circle, Peshawar.
2. Range Officer, Bajaur at Khar
3. All concerned. They are directed to join their duty within a week time.
4. Personal file.
5. Divisional Accountant.

Divisional Forest Officer
FATA-I, Forest Division,
Peshawar

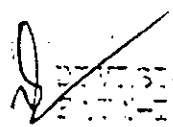


OFFICE ORDER NO: 90 DATED 30/06/1999, ISSUED BY MUHAMMAD SAADI
DIVISIONAL FOREST OFFICER, FAGA-I FOREST DIVISION PESHAWAR.

The period of Developmental Scheme Water Shed Mang; in
Bajaur Agency stand expired on 30.06.1999, therefore the services
of Mr. Kifayat ullah F/gd: is hereby terminated w.e.f 30.06.1999 (AM)
This is with reference to notice No. 2097/E dated 07-06-1999
already served upon him.

Sd/-
(MUHAMMAD SAADI)
DIVISIONAL FOREST OFFICER
FAGA-I FOREST DIVISION,
PESHAWAR.

No. 2781-⁸⁵ /E,

- Copy in continuation of this order No. 2098-2100/E
dated 7-6-99. forwarded for information and necessary action to:-
1. The Conservator of Forests PATA/Local Forestry Circle Peshawar.
 2. Range Forest Officer Bajaur at khar.
 3. Mr. kifayat ullah Forest Guard.
 4. Divisional Accountant.
 5. Personal File.


DIVISIONAL FOREST OFFICER
FAGA-I FOREST DIVISION,
PESHAWAR.  

66

6

OFFICE OF THE DIVISIONAL FOREST OFFICER, FATA-I FOREST DIVISION, PESHAWAR

TO

65

Mr. Kifayatullah Khan C/O
Range Forest Officer, Bajaur Range.

No. 1228 /E dated Peshawar the 23-11 /1999

Subject: ACQUISITION OF SERVICES FOR THE POST OF FOREST GUARD
ON CONTRACT BASIS.

Memo: Consequent upon the continuation of PC-I Scheme Afforestation
in Barang & Ghar Shamozai Area Bajaur AG: (Previously W/Shed Mgt: Bajaur AG):
your services are hereby acquired for the post of Forest Guard @ rate
of Rs. 1400/- per month, which is the minimum of Basic Pay scale No. 5
on contract basis w.e. from 1.12.1999 under the said scheme which is
likely to be continued upto 30-6-2000 under the following terms &
conditions:

- 1- The terms & conditions of your service shall be governed by the Policy formulated by the Government for the appointment of staff under Developmental Schemes as contained in the S&GAD Circular No. SOR-III(S&GAD)/8-38/85 dated 30-3-1989 read with letter of even No. dated 29/8/1997.
- 2- Your appointment will be purely temporary & your services can be terminated without any notice being assigned at any time, irrespective of the fact that you are holding the post other than the one to which you were originally recruited or on the payment of one month salary in lieu of the notice or on the winding up of the project.
- 3- In case you wish to resign at any time, one month's notice will be necessary or in lieu thereof a month's pay shall be forfeited.
- 4- You will be governed by such rules, orders & instructions relating to pay, leave, T.A & Medical Attendance etc: as may be issued by the Government for the status of Govt: Servants to which you belong.
- 5- Your appointment to the above post will not confer on you any right of regular appointment/absorption or any other post and nor your services will count towards seniority/promotion.
- 6- The contract is renewable on year to year basis subject to your satisfactory performance & further continuation of the Project.
- 7- The offer is subject to the condition that you shall execute an agreement with the D.F.O. FATA-I Forest Divn: Peshawar.

No. 1229 — 30

/E
Copy forwarded to:

- 1- The Range Forest Officer Bajaur Range for information and necessary action.
- 2- Divisional Accountant.

Divisional Forest Officer
FATA-I Forest Division
Peshawar.

Divisional Forest Officer
FATA-I Forest Division
Peshawar.

OFFICE ORDER NO. 173 DATED PESHAWAR THE 30/6/2000 ISSUED
BY SHER NAWAZ KHAN DIVISIONAL FOREST OFFICER, FATA-I FOREST DIVN:
PESHAWAR.

The services of Mr. Kifayatullah Forest Guard
is hereby terminated with effect from 30-6-2000 (Afternoon).

Sd/-
(Sher Nawaz Khan)
Divisional Forest Officer
FATA-I Forest Division
Peshawar.

No. 3512-15 /E

Copy in continuation of this office No. 3069-73 /E
dated 15 /6/2000 forwarded for information and necessary action
to the:

- 1- Range Forest Officer, Bajaur Range at Khar,
- 2- Divisional Accountant.
- 3- Mr. Kifayatullah F/Guard C/O Range Officer, Bajaur.
- 4- Personal file.

DIVISIONAL FOREST OFFICER
FATA-I FOREST DIVISION
PESHAWAR.

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To

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(8)

Mr. Kifayatullah Forest Guard C/O

Range Forest Officer, Bajaur Range.

No.

434

/E., dated Peshawar the 8/9/2000.

Subject:

ACQUISITION OF SERVICES FOR THE POST OF FOREST GUARD ON CONTRACT BASIS.

Memo:

Consequent upon the continuation of PC-I Scheme "AFFORESTATION IN BARANG AND GHAR SHAMOZAI AREA OF BAJAUR AGENCY) your services are hereby acquired for the post of Forest Guard @ rate of Rs. 1400/-PM which is the minimum of basic pay scale No. 5 on contract basis w.e. from 2.7.2000 under the said scheme which is likely to be continued upto 30-6-2001 under the following terms and conditions:

- 1- The terms & condition of your service shall be governed by the policy formulated by the Government for the appointment of staff under Developmental Schemes as contained in the S&GAD Circular NO.SOR.III(S&GAD)/8-38/86 dated 30.3.1989 ~~xxxx~~ read with letter of even No. dated 29-8-1997.
- 2- Your appointment will be purely temporary & your services can be terminated without any notice being assigned at any time irrespective of the fact that you are holding the post other than the one to which you were originally recruited or on the payment of one month salary in lieu of the notice or on the winding up of the project.
- 3- In case you wish to resign at any time, one month's notice will be necessary or in lieu thereof a month's pay shall be forfeited.
- 4- You will be governed by such rules, orders & instructions relating to pay, leave, T.A & medical attendance etc: as may be issued by the Government for the status of Government servants to which you belong.
- 5- Your appointment to the above post will not confer on you any right of regular appointment/absorption or any other post and nor your services will count towards seniority/promotion.
- 6- The contract is renewable on year to year basis subject to your satisfactory performance & further continuation of the Project.
- 7- The offer is subject to the condition that you shall execute an agreement with the D.F.O. FATA-I Forest Division, Peshawar.

DIVISIONAL FOREST OFFICER
FATA-I FOREST DIVISION
PESHAWAR.

No. 435-36

/E.,

Copy forwarded to:

- 1- The Range Officer, Bajaur Range for information and n/action.
- 2- Divisional Accountant.

DIVISIONAL FOREST OFFICER
FATA-I FOREST DIVISION
PESHAWAR.

69

(9)

83

OFFICE OF THE DIVISIONAL FOREST OFFICER FATA.I FOREST DIVISION, PESHAWAR.

Mr. Kifayatullah Forest Guard C/O
Range Forest Officer, Bajaur Range.

No. 1772 /E, dated Peshawar the 14/6/2001.

SUBJECT: SERVICE TERMINATION NOTICE.

Memo:

In light of this office letter No. 434 /E dated 08 /09/2000.
and agreement made with you. Your services will be stand terminated on 30-6-2001,
(Afternoon).

Please note once again.

DIVISIONAL FOREST OFFICER
FATA.I FOREST DIVISION
PESHAWAR.

No. 1773 - 76
/E,

Copy incontinuation of this office No. 435-36 /E,
dated 08 / 9 /2000 forwarded to the:-

- 1- Conservator of Forests, FATA/Social Forestry Circle, Peshawar
for favour of information please.
- 2- Range Forest Officer, Bajaur Range .A spare copy of the
notice is enclosed herewith for delivery to the official
concerned under proper receipt.
- 3- Divisional Accountant for information.
- 4- Personal File.

DIVISIONAL FOREST OFFICER
FATA.I FOREST DIVISION
PESHAWAR.

70

85 (10)

Mr. Kifayatullah Forest Guard 2/C

Range Forest Officer, Bajaur Range.

484

/R., dated Peshawar the 23 /10/2001.

Subject: REQUISITION OF SERVICES FOR THE POST OF FOREST GUARD
ON CONTRACT BASIS.

Whereas
Consequent upon the continuation of PG-I Scheme
"Ass. in Ravara & Ghar Shamsaj Area of Bajaur Agency (Prev: Watershed Mgt:
in Bajaur Agency) your services are hereby required for the post of
Forest Guard @ rate of Rs. 1400/-PM which is the minimum of basic
pay scale No. 5 on contract basis w.e. from 01-7-2001 under the said
scheme which is likely to be continued upto 30-6-2002 under the followin
terms and conditions:

- 1- The terms & condition of your service shall be governed by the policy formulated by the Government for the appointment of staff under Developmental Schemes as contained in the SR&AD Circular NO. SCR.III (SR&AD)S-36/86 dated 30.3.1989 read with letter of even No. dated 29-8-1997.
- 2- Your appointment will be purely temporary & your services can be terminated without any notice being assigned at any time irrespective of the fact that you are holding the post other than the one to which you were originally recruited or on the payment of one month salary in lieu of the notice or on the winding up of the Project.
- 3- In case you wish to resign at any time, one month's notice will be necessary or in lieu thereof a month's pay shall be forfeited.
- 4- You will be governed by such rules, orders & instructions relating to pay, leave, T.A. & medical attendance etc: as may be issued by the Government for the status of Government servants to which you belong.
- 5- Your appointment to the above post will not confer on you any right of regular appointment/absorption or any other post and nor your services will count towards seniority/promotion.
- 6- The contract is renewable on year to year basis subject to your satisfactory performance & further continuation of the Project.
- 7- The offer is subject to the condition that you shall execute an agreement with the DFO FATA-I Forest Division Peshawar.

Divisional Forest Officer
FATA-I Forest Division
Peshawar.

No. 485 — 84

/R.,
Copy forwarded for information and n/action.

1- The Range Forest Officer Bajaur AGENCY.

71

87 (11)

OFFICE OF THE DIVISIONAL FOREST OFFICER, PAPA-I FOREST DIVISION,
PESHAWAR.

To

Mr. Kifayatullah Forest Guard C/O
Range Forest Officer, Bajaur Range.

No. 1878

/E., dated Peshawar the 07/6/2002.

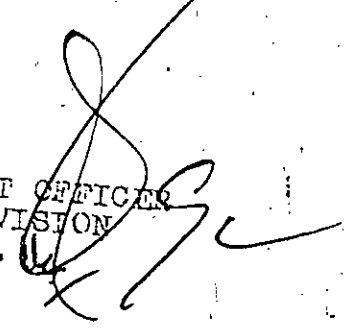
Subject:

SERVICE TERMINATION NOTICE.

Memo:

In light of this office letter No. 484 /E dated 23/10/2001, your services will be stand terminated on 30-6-2002 (Afternoon).

Please note once again.

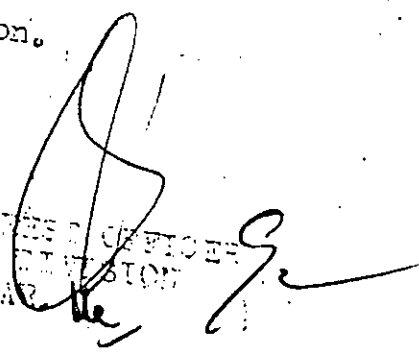
DIVISIONAL FOREST OFFICER
PAPA-I FOREST DIVISION
PESHAWAR. 

No. 1879 — 81 /E

Copy incontinuation of this office No. 485-86 /E dated 23/10/2001 forwarded to the:

Range Forest Officer, Bajaur Range, for information and n/action. A spare copy of the notice is enclosed herewith for delivery to the official concerned under proper receipt.

Divisional Account for information.
Personal file.

DIVISIONAL FOREST OFFICER
PAPA-I FOREST DIVISION
PESHAWAR. 

The entries in this page should be renewed or re-attested at least every five years and the Signature to items 9 and 10 should be dated.

Name *Mr. Kifayatullah*

Race *Muslim*

Residence *Village Salorzi Bazaar Agency*

4. Father's name and residence *Abdul Haleem*



5. Date of birth by Christian era as nearly as can be ascertained .. *1-1-1962*


6. Exact height by measurement .. *5' 4"*

7. Personal marks for identification *Two scars on Rt hand palm*

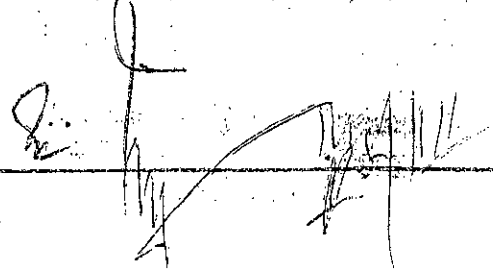
8. Left hand thumb and Finger impression of (non-gazetted) officer

Little Finger.  Ring Finger 

Middle Finger.  Fore Finger 

Thumb. 

9. Signature of Government servant 

10. Signature and designation of the Head of the Office, or other Attesting Officer. 

<p>10</p> <p>Date of termination (such as promotion, transfer, dismissal, etc).</p>	<p>11</p> <p>Reason of termination (such as promotion, transfer, dismissal, etc).</p>	<p>12</p> <p>Signature of the head of the office or other attesting officer.</p>	<p>13</p> <p>Allocation of period of leave on average pay upto four months for which Government debt is payable to another Government.</p>	<p>14</p> <p>Signature of the head of the office or other attesting officer.</p>	<p>15</p> <p>Reference to any recorded punishment or censure, or reward or praise of the Government of the Servant.</p>
<p>25/11/58</p> <p><i>[Handwritten notes and signatures in grid]</i></p>					
<p>30-6-1952 (M) 3337-2-26</p> <p>30-6-1952 (M) 3337-2-26</p> <p>1-12-1999</p> <p>1-12-1999</p> <p><i>[Handwritten notes and signatures in grid]</i></p>					

1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 37 C. S. R.	4 Pay in substantive post	5 Additional Pay for officiating	6 Other emolument falling under the term 'Pay'	7 Date of appointment	8 1
P/900-6 in 893-5 (P-1400)	Contract			P-1400/-		30-6-2000	

Name of post	Whether substantive or officiating and whether permanent or temporary	if officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C. S. R.	Pay in subst. post	Salary in subst. post	Letter of appointment for the "pay"	Date appointed
P/Quard in BPS-5 (Rs 1400)	Contract					01-12-2002
P/Quard in BPS-5 (Rs 2100)	Contract					12-12-2002
Contract			Rs. 2100/-			30-6-2002
P/Quard in BPS-5 (200-100-5700)	Temp.					7-10-2002

11	12	13		14	15
		Leave			
		Name and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitible to another Government		
Period	Government to which debitible	Signature of the head of the office or other attesting officer	Reference to a recorded punish or censure, or re or praise of the Government Ser		
Services regular in Central					
1-7-2001 till 1-8-2001					
1-8-2001 till 23-4-2001					
Fixed in Residual					
Services vide Govt. of N.W.F.P					
1-7-2001 till 27-4-2001					
Services stand terminated					
30-6-2002 till 7-6-2002					
1-7-2002 till 31-7-2002					
Let/adjusted to normal					
(SAB) w.e.f 1-7-2002					
Go no. 15 till 31-7-2002					

Divisional Forest Officer, FATA Forest Division

Divisional Forest Officer, FATA Forest Division

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OFFICE ORDER NO. 15 DATED PESHAWAR THE 31/7/2002 ISSUED BY
SHER HAWAZ KHAN DIVISIONAL FOREST OFFICER, FATA-I FOREST DIVISION
PESHAWAR.

103

The services of Mr. Kifayatullah Forest Guard
S/O Abdul Haleem appointed under Developmental Scheme vide this
Office Order No. 117 dated 15-4-1993 are hereby converted /
adjusted in BPS No. 5 (Rs. 2100-100-5100) from Developmental side
into Normal Budget (S.N.E) w.e.f. from 01-7-2002 duly approved vide Government
of Pakistan, Kashmir Affairs & Northern Areas and States & Frontier Region
Division, Islamabad No. F. 3(2L)-FATA/2000 dated 04-4-2002 received vide
Conservator of Forests, South-FATA Circle, Peshawar office endst: no. 4982/B&D
dated 07-5-2002.

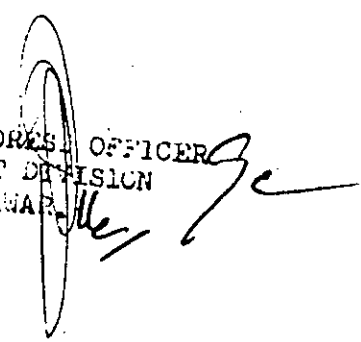
His services will be governed by all terms and conditions
under NWFP Services Rules.

Sd/-
(SHER HAWAZ KHAN)
DIVISIONAL FOREST OFFICER
FATA-I FOREST DIVISION
PESHAWAR.

No. 183 - 87 /E

- Copy for information and necessary action forwarded to:
- 1- The Conservator of Forests, South-FATA Circle, Peshawar.
 - 2- The Range Forest Officer Bajaur Range
 - 3- Divisional Accountant.
 - 4- Mr. Mr. Kifayatullah Forest Guard of Bajaur Range.
 - 5- Personal file.

DIVISIONAL FOREST OFFICER
FATA-I FOREST DIVISION
PESHAWAR.



No.SOSR-III(FD)4-141/98

GOVERNMENT OF N.W.F.P.
FINANCE DEPARTMENT.

Dated Peshawar, the 11.7.1998.

The Director Budget & Accounts
(Forests), Government of NWFP.
Forestry, Fisheries & Wildlife
Department, Peshawar.

Subject:- APPOINTMENT OF STAFF UNDER DEVELOPMENT
SCHEMES.

Reference your memo. No.B&A/96-97/Pension/
6646-47 dated 27.4.1998 on the subject noted above.

Finance Department advises that paragraph 3 of
Services & General Administration Department's letter
No.SOSR-III(FD)8/38/86 dated 30.3.1989 gives an impression
that the projects employees appointed after 30.3.1989 would
be on contract basis and their service would not count for
pension. The aforesaid date may, therefore, be treated as
the date. The entire service of the employees who were
employed/appointed before 30.3.1989 shall count for the
purpose of pensionary benefits provided other conditions on
the subject stand fulfilled. The Administrative Department
may also keep the provisions of Finance Department's letter
No.SOSR-III(FD)4-112/80-Vol:III dated 26.7.1997 in view while
sanctioning the benefit.

Handwritten notes:
Check all correspondances.
Dist. 7/98
B. H. 7/98
Mr. Zu R. bring up
the files.
14/7/98
(MUHAMMAD KHAN)
Section Officer(SR-III)

No.SOSR-III(FD)4-141/98 Dated Peshawar, the 11.7.1998.

A copy for information is forwarded to
The Section Officer (Regulation-III), Govt. Secy.
NWFP, S&CAD with reference to his letter No.SOSR-III
(S&CAD)8-38/86/77 dated 16.6.1998.
The Budget Officer-X, Finance Department.

Handwritten signature:
MUHAMMAD KHAN

GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
(Recruitment Class)

100, 1001, 1002 (G) / 1000
Dated: Patna, the 31st March, 1959

To,

All Administrative Secretaries to Government of Bihar.

Subject: APPOINTMENT OF STAFF UNDER DEVELOPMENTAL SCHEMES.

Sir,

1. I am directed to say that developmental schemes/projects are normally appointed for some specific period whereas usually appointments against the project posts are made irrespective of the period for which the project has been sanctioned. On the expiry of the developmental phase of the project, the staff so appointed stands terminated provided the project period is not extended or converted into normal budget.

2. It has been observed that on completion of the developmental phase of the project, pressure is exerted both from sponsors of the scheme(s) and political quarters either to extend the project life or convert the same into non-developmental budget and accordingly departments are confronted with an embarrassing situation.

3. In order to avoid such a situation it has been decided that in future appointments against the project(s) posts shall be made for a specific period on contract basis with clear cut provision that the services of the appointees would be liable to termination on the expiry of the contract or the project period whichever is earlier.

I am accordingly directed to say that in case of appointment of staff under developmental schemes it should be provided in the offer of appointment that on expiry/completion of the contract/project, services of the newly recruited employees in the project shall be terminated and shall not confer on the individual any right of acceptance or continuation of their service.

The above instructions are hereby issued to all concerned.

Handwritten notes in left margin: "Handwritten notes in left margin, possibly including a signature or initials."

100, 1001, 1002 (G) / 1000
Dated: Patna, the 31st March, 1959

Enclosure
Copy to be sent to...

- 1. ...
- 2. ...
- 3. ...
- 4. ...
- 5. ...

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

REF: IN SERVICE APPEAL NO.1254/2022

Kifayat Ullah S/O Abdul Haleem (Ex-Forest Guard)

Resident of Shah Narai P.O Khar, Tehsil Khar _____ (APPELLANT)

VERSUS

1. Secretary
to Government of Khyber Pakhtunkhwa
Climate Change, Forestry, Environment & Wildlife department Peshawar.
2. Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar
3. Conservator of Forests
Central Forest Circle Peshawar
4. Budget & Account Officer
to Government of Khyber Pakhtunkhwa
Climate Change, Forestry, Environment & Wildlife department
Peshawar _____ (RESPONDENTS)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1,2,3&4

PRELIMINARY OBJECTION

- i. That the appellant has got no cause of action.
- ii. That the appellant has no locus standi to file this Service Appeal.
- iii. That the appellant has not come to this court clean hand.

ON FACTS:-

- 1- That it is admitted by the appellant he had been appointed on purely temporary basis as Forest Guard in developmental PC-I Scheme titled as **Watershed Management in Bajaur Agency**. The services of a PC-I Project Staff are constrained to the Project period. Besides, as per terms and condition of the then DFO FATA-I Peshawar office order No. 117 dated 15/4/1993, he was liable to the condition not to claim any right for regularization in to service (**Annex-I**). Furthermore, the services of the appellant had been terminated time and again by the competent authority (**Annex-II**) having several service breaks, making him not eligible for pensionary benefits as is evident from his service book (**Annex-III**).
- 2- That it pertains to his service record.
- 3- That it is incorrect rather services of the appellant were converted / adjusted in to regular post through office order No. 15 dated 31/07-2002, w.e.f 01/07/2002, is simply meant to have join the civil service since his date of regularization (**Annex-IV**), making him entitled for all the benefits of a civil servants
- 4- Correct to the extent that the appellant has got retired on 31/12/2021 vide, DFO Bajaur officer order No.37 dated 23/12/2021 on attaining the age of 60 years as per Government Policy. But as per instruction of Govt: Khyber Pakhtunkhwa Finance Department circulated vide letter No. SOSR-III(FD)4-141/98 dated 11.07.1998, the services of the employees appointed after 30.03.1998, would not be counted for pension and the petitioner had been employed initially on 15-04-1993 which is in contradiction of the instruction of Finance Department (**Annex-V**)

5- Needs no comments. Respondents to record.

6- Needs no comments. The appellants have got no cause of action to file instant appeal.

GROUND OF SERVICE APPEAL

Incorrect.

- A. That the appellant has been treated in accordance with law and nothing has been violated.
- B. That the appellant's services shall not be counted for the purpose of pension, as explained under Para 1 & 4.
- C. As explained and referred under Para (B).
- D. As explained and referred under Para (B).
- E. As explained and referred under Para (B).
- F. As explained and referred under Para (B).
- G. Needs no comments.

incorrect
incorrect

The respondents seek leave to raise additional grounds at the time of arguments.

Secretary
to Govt; of Khyber Pakhtunkhwa
Climate Change Forestry, Environment & Wildlife
Department Peshawar
(Respondent No.1)

Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar
(Respondent No.2)

Conservator of Forests,
Central Forest Circle Peshawar.
(Respondent No.3)

Director Budget and Accounts
to Govt; of Khyber Pakhtunkhwa
CFE&WD Peshawar
(Respondent No.4)

Submitted for vetting

AAE
General
Peshawar
23/2/23

*Vetted subject to correct
attachment of all annexures,
affidavit and approval of index*
AAE

23/02/2023

[Signature]