BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO. 310/2024 IN SERVICE APPEAL NO.946/2019

Mr. Akhtar Hussain

VERSUS

- 1. Government of Khyber Pakhtunkhwa through Secretary, Environment Peshawar
- 2. Secretary to Government of Khyber Pakhtunkhwa Establishment Department Civil Secretariat Peshawar
- 3. Director General, Pakistan Forest Institute, Peshawar

.....RESPONDENTS

.....APPELANT

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR byber Pakhtukhwa Service Tribunal

EXECUTION PETITION NO. 310/2024 IN SERVICE APPEAL NO.946/2019

Ary No. 13045 29-05-2024

APPELANT

Mr. Akhtar Hussain

VERSUS

- 1. Government of Khyber Pakhtunkhwa through Secretary, Environment Peshawar
- 2. Secretary to Government of Khyber Pakhtunkhwa Establishment Department Civil Secretariat Peshawar
- 3. Director General, Pakistan Forest Institute, Peshawar

REPLY ON BEHALF OF RESPONDENTS

Respectfully Sheweth:

That Government of Khyber Pakhtunkhwa has filed CPLA No. 238-P/2024 in August Supreme Court of Pakistan against the judgment of Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 02-02-2024 in Service Appeal No.946/2019 (Annex-A). Furthermore, CMA No.346/2024 in the said CPLA regarding suspension of operation of the said impugned judgment of the learned Khyber Pakhtunkhwa Service Tribunal, Peshawar and maintaining status-quo till the final decision in the said CPLA has also been filed in August Supreme Court of Pakistan (Annex-B).

In view of the above explanation / reply, it is humbly prayed that the instant Execution Petition may kindly be dismissed / adjourned sine die till decision in the above mentioned CPLA.

Secretary, Govt. of Khyber Pakhtunkhwa CCFE & W Department **Respondent No.1**

SECRETARY Climate Change Forestry, Environment & Wildlife Department, KP Mr. Schalud Zaunay

Secretary, Govt. of Khyber Pakhtunkhwa Establishment Department **Respondent No.2** Mr. Kaleem Ullah Wan.

Director General Pakistan Forest Institute, Peshawar Respondent No. 3

Director General Pakistan Forest Institute Peshawar Mr. Kchaeled Ilyas

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO. 310/2024 IN SERVICE APPEAL NO.946/2019

Mr. Akhtar Hussain

APPELANT

<u>VERSUS</u>

- 1. Government of Khyber Pakhtunkhwa through Secretary, Environment Peshawar
- 2. Secretary to Government of Khyber Pakhtunkhwa Establishment Department Civil Secretariat Peshawar
- 3. Director General, Pakistan Forest Institute, Peshawar

RESPONDENTS

<u>AFFIDAVIT</u>

I, Khalid Ilyas, Director General, Pakistan Forest Institute (PFI), Peshawar, (Respondent No.3) do hereby solemnly affirm and declare on oath that the contents of reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court. It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense has been struck off.

DEPONENT Mr. KHALID ILYAS CNIC: 17301-5173935-7 Cell No. 0345-3336070 Director General Pakistan Forest Institute Peshawar

CPLA No. _238- P_/2024

VERSUS

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Government of Khyber Pakhtunkhwa through Secretary Climate Change, Forestry Environment & Wild Life Department Peshawar & others -----<u>PETITIONERS</u>

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Akhtar Hussain

Appeal from

Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar

RESPONDENT

Counsel for Petitioner

Advocate General, Khyber Pakhtunkhwa, Peshawar

Instituted by

Muhammad Ajmal Khan, AOR

Administrative Officer (G) Pakistan Forest Institute Peshawar

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CPLA No.____/2024

Government of Khyber Pakhtunkhwa through Secretary Climate Change, Forestry Environment & Wild Life Department Peshawar & others

	[.]	<u>PETITIONERS</u>
	V	/ERSUS
Akhtar Hussain	·	<u>Respondent</u>
Appeal from	:	Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar
Counsel for Petitioner	:	Advocate General, Khyber Pakhtunkhwa, Peshawar
Instituted by	:	Muhammad Ajmal Khan, AOR

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dministrative Officer (G) Pakistan Forest Institute Peshawar

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<u>CERTIFIED</u> that the paper book has been prepared in accordance with the rules of the Court and all the documents necessary for due appreciation of the court have been included in it. Index is complete in all respect.

(Muhammad Ajmal Khan) Advocate-on-Record Supreme Court of Pakistan For Government

Administrative Officer (G) Pakistan Forest Institute

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Peshawar

CPLA No.____/2024

Government of Khyber Pakhtunkhwa through Secretary Climate Change, Forestry Environment & Wild Life Department Peshawar & others _____<u>PETITIONERS</u>

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-<u>RESPONDENT</u>

VERSUS

Akhtar Hussain

CONCISE STATEMENT

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		CONCIDEDTRIE			
1	Subject matter and the law	2015 along-with all back benefits till 19/01/2019			
2	Controversy between the parties				
3.	Which side has filed this petition	Government / petitioners			
4.	Court /Forum	Date of a)Institution b) Decision	Who filed it and with what result		
5.	1	hyber a) 16/07/2019 ervice b)02/02/2024	Respondent filed Service Appeal which was accepted.		
6	Points/Questions not Judgment	ed in the impugned	Treatment of points in the impugned judgment		
Learned counsel for the respondent argued that respondent has not been treated in accordance with law and rules. He further argued that the respondent has a vested right to be promoted to the post of Superintendent BPS-17 from the year 2015 as the respondent is the senior most in the seniority list. That the respondent had already performed duty as Superintendent and also held entitled for the promotion of the said post. lastly, he submitted that respondent was retired from service on 17/01/2019 as such he is entitled for with all back benefits.			It is admitted position that petitioner department devolved upon the province of Khyber Pakhtunkhwa, in the year 2011, but on account of none framing of service rules by the province, the respondent case for promotion was not considered. However, it is admitted fact that before framing of Provincial rules, the services of the respondent was governed by the previous rules framed by the Federal Government. Under such circumstance, when the right of promotion has accrued to the respondent, when he was in service and that time, the rules framed by the		
Cor	Conversely, learned District Attorney contended and that this, the fulles framed by the				

Administrative Officer (2) Pakistah Forest Institute

	$\left(\begin{array}{c} \\ \\ \end{array} \right)$				
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	that respondent had been treated in accordance with law and rules. He further contended that PFI was declared as attached department of Environment and on 09/01/2018 all the employees including the respondent were provincialized U/s 11-B of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2015. He further contended that due to devolution of PFI, all the appointments and promotion were become defunct to the extent of PFI, therefore, promotion case of the respondent could not be made. Respondent filed writ petition which was decided on 11/12/2018 wherein petitioners were directed to place the promotion case of the respondent before DPC, if he otherwise deserved to be promoted. His case was placed before the DPC, wherein the committee considered his case and observed that all the employees of PFI including the respondent were on deputation to Khyber Pakhtunkhwa province U/s 10 of Civil Servants Act, 1973 as the respondent was retired from service as Federal Government employee on 17/01/2019, whereas service rules of PFI were notified on 16/04/2019, therefore, the DPC did not find him fit for promotion as Superintendent BPS-17.	hat applied for his promotion in terms of the of rules applicable to him at that time, but with no response, despite directions of the High Court and stood retired from service on 17/01/2019. The record reveals that respondent had already attained the status of a permanent employee, absorbed employee, on account of implication of law before order of worthy Peshawar High Court. Peshawar dated 11/12/2018 and the rules in vogue at the occasion of judgment of worthy Peshawar High Court, Peshawar, but the Departmental Promotion Committee did not consider the respondent's case in view of the same rules, which were the proper rules on the subject. Therefore, the appeal in hand is accepted by setting aside the impugned decision of the Departmental promotion Committee (DFC) dated 07/05/2019 and remand the case to the DPC with direction to consider the case of notional promotion of the respondent did under rules in vogue at the occasion before		of the he, but of the service ht had nanent ccount der of hawar vogue worthy but the ee did n view proper appeal de the mental dated to the case of ondent	
te ree is whet	7 Question requiring consideration & decision b	y the Supreme C	Court		
Soundary	 Whether the service rules of Pakistan Forest Institute (PFI) notified on 16/04/2019, were applicable to those employees who was retired from service before notification of service rules of Pakistan Forest Institute (PFI)? Whether the employees of Pakistan Forest Institute (PFI) including the respondent were not on deputation to Khyber Pakhtunkhwa province U/s 10 of Civil Servants Act, 1973 as the respondent was retired from service from Federal Government employee on 17/01/2019 whereas service rules of PFI were notified on 16/04/2019, therefore, the DPC did not find him fit for promotion as Superintendent BPS-17. Whether the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar has not legally erred by directing the petitioners to consider the case of notional promotion of the respondent under rules in vogue at the occasion before his retirement accordingly? LAW/RULING ON THE SUBJECT 				
	FOR		AGAINST		
at water	1. CONSTITUTION OF ISLAMIC REPUBLIC OF PAR	CISTAN 1973	1		
in the second	<u>CERTIFICATE</u> Certified that, we, the undersigned prepared the a	bove concise sta	itement which is correc	rt.	
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hand traine Officer (G	(Muhammad Ajmal Khan) Advocate-on-Record Supreme Court of Pakistan For Government		Advocate General) Pakhtunkhwa	·	
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CPLA No.____/2024

- 1. Government of Khyber Pakhtunkhwa through Secretary Climate Change, Forestry Environment & Wildlife Department, Peshawar
- 2. Secretary to Government of Khyber Pakhtunkhwa Establishment Department, Civil Secretariat, Peshawar
- 3. Director General, Pakistan Forest Institute, Peshawar

.....PETITIONERS

Akhtar Hussain S/o Abdul Khaliq Khan R/o Regi Aftizai, Peshawar Ex-Look-after Superintendent at Pakistan Forest Institute, Peshawar

VERSUS

.....RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT AND ORDER OF THE LEARNED KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR DATED 02/02/2024 PASSED IN SERVICE APPEAL No.946/2019

RESPECTFULLY SHEWETH

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the order dated 02/02/2024 passed in Service Appeal No.946/2019 of the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar is not against law and facts of the case and has properly followed, applied and interpreted the law in the subject case?

Whether the service rules of Pakistan Forest Institute (PFI) notified on 16/04/2019, were applicable to those employees who was retired from service before notification of service rules of Pakistan Forest Institute (PFI)?

2. Administrative Officer (G) Pakislan Forest Institute Peshawar

- Whether the directions issued by the Hon'ble Peshawar High Court, Peshawar in W.P No.3987/2018, the case of the respondent had not been placed and observed unfit by the Departmental Promotion Committee (DPC) as Superintendent BPS-17?
- 4. Whether upon devolution of Pakistan Forest Institute, Peshawar, the previous recruitment rules had not become dysfunctional to the extent of Pakistan Forest Institute?
- 5. Whether upon devolution of Pakistan Forest Institute, all the appointments and promotion were not become defunct to the extent of Pakistan Forest Institute?
- 6. Whether the employees of Pakistan Forest Institute (PFI) including the respondent were not on deputation to Khyber Pakhtunkhwa province U/s. 10 of Civil Servants Act, 1973 as the respondent was retired from service from Provincial Government on 17/01/2019 whereas service rules of PFI were notified on 16/04/2019, therefore, the DPC did not find him fit for promotion as Superintendent BPS-17.
- Whether the learned Khyber Pakhtunkhwa Service Tribunal has not 7. entertained the Service Appeal of respondent in disregard of law, rules and policy?
- Whether the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar has 8. not legally erred by directing the petitioners to consider the case of notional promotion of the respondent under rules in vogue at the occasion before his retirement accordingly?
- 9. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective?

FACTS

Peshawar

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istrative Officer (1) Facts relevant to the above points of law, inter alia, are as under:-Pakistan Forest Institute

That the respondent was serving as Assistant in BPS-16 in Pakistan Forest Institute (PFI) which was the attached department of the Ministry of Environment, Islamabad till 30/06/2011. Consequent upon the 18the Constitutional Amendment, Ministry of Environment, Islamabad ceased to exist w.e.f. 01/07/2011 therefore, Pakistan Forest Institute (PFI) was devolved to the Government of Khyber Pakhtunkhwa and all its employees including the respondent were transferred to Government of Khyber Pakhtunkhwa on deputation basis in their own basic pay of scales under the civil Servant Act, 1973. Subsequently, in light of the Guidelines issued by the Government of Pakistan Establishment Division Management Services Wing, Islamabad vide Office memorandum dated 2nd November, 2012 all the promotion cases may be withheld till the promulgation of the enabling law.

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Pakistan Forest mstitute Peshawar

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- 2. That the Provincial Government of Khyber Pakhtunkhwa declared Pakistan Forest Institute (PFI) as an attached department of Environment (now Forestry, Environment & Wildlife) Department and on 09/01/2018 all employees of Pakistan Forest Institute (PFI) including the respondent, were provincialized under section 11(b) of Khyber Pakhtunkhwa civil Servants (Amendment) Act, 2015. It is further added that due to devolution of Pakistan Forest Institute (PFI), and in light of Government of Pakistan all the Appointment, Promotion & Transfer Rules became dysfunctional to the extent of Pakistan Forest Institute (PFI) and the promotion cases of the Pakistan Forest Institute (PFI) employees (including the respondent) could not be made.
- That the respondent was assigned the look-after-charge of the post of 3. Superintendent BPS-17 and got retired from government service on attaining the age of superannuation w.e.f. 17/01/2019, and the fresh service rules of Pakistan Forest Institute (PFI) were notified on 16/04/2019 i.e. after retirement of respondent. Moreover, the respondent while in service had filed Writ Petition No.3987/2018 before the Hon'ble Peshawar High Court for promotion to the post of Superintendent BPS-17.

That the Hon'ble Peshawar High Court, Peshawar in its judgment dated 11/12/2018 had directed the petitioners to place his case for promotion finistrative Officer (G)

before the Departmental Promotion Committee(DPC), if he otherwise deserved to be promoted and in compliance of the Hon'ble High Court directions, the case of respondent was placed before the Departmental Promotion Committee on 27/05/2019, wherein the committee considered his case and observed that all the employees of Pakistan Forest Institute(PFI) including the respondent were on deputation to Khyber Pakhtunkhwa under Section-10 of Civil Servant Act, 1973. The official retired from service as Provincial Government employee w.e.f. 17/01/2019 on superannuation, whereas the service rules of Pakistan Forest Institute (PFI) were notified on 16/04/2019. Therefore, the service rules were not applicable to those employees who retired from service before notification of service rules of Pakistan Forest Institute, therefore, the Departmental Promotion Committee did not consider him fit for promotion as Superintendent BPS-17.

- 5. That the respondent then approached to the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar and filed Service Appeal No.946/2019 and claimed promotion to the post of Superintendent BPS-17 from January, 2015 wherein Para-wise reply was asked from the petitioners which was filed and denied the stance of respondent on legal and factual grounds.
- 6. That the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted the Service Appeal No.946/2019 of respondent and set aside the impugned decision of the Departmental Promotion Committee (DPC) dated 27/05/2019 and remanded the case to the Departmental Promotion Committee with direction to consider the case of notional promotion of the respondent under rules in vogue at the occasion before his retirement accordingly vide order dated 02/02/2024.

7. That the petitioners being aggrieved from the impugned judgment and order of the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 02/02/2024 passed in Service Appeal No.946/2019, prefer this CPLA before this august Court.

That the petitioners seek leave to appeal against the impugned judgment and order of the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 02/02/2024 passed in Service Appeal No.946/2019.

Intifiistrative Officer (G) Pakistan Forest Institute Peshawar

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It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 02/02/2024 passed in Service Appeal No.946/2019 may graciously be granted.

(Muhammad Ajmal Khan) Advocate-on-Record Supreme Court of Pakistan For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG shall appear at the time of hearing of this petition. ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

<u>CERTIFICATE</u> Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

<u>CERTIFICATE</u>: Certified that all the legible copies of the illegible documents attached with this petition have been compared word to word with original and found correct in all respect.

Advocate-On-Record

Administrative Office: (G) Pakistan Forest Institute Peshawar

CMA No. 346 /2024

IN

CPLA No. 2-33 -P /2024

Government of Khyber Pakhtunkhwa through Secretary Climate Change, Forestry Environment & Wild Life Department Peshawar & others -----<u>PETITIONERS</u>

VERSUS

Akhtar Hussain

APPLICATION FOR SUSPENSION OF OPERATION OF THE IMPUGNED JUDGMENT AND ORDER OF THE LEARNED SERVICE TRIBUNAL, PESHAWAR DATED 02/02/2024 PASSED IN SERVICE APPEAL NO.946/2019 AND MAINTAIN THE STATUS-QUO TILL THE FINAL DECISION OF THE CASE.

RESPONDENT

RESPECTFULLY SHEWETH:-

1. That the respondent was serving as Assistant in BPS-16 in Pakistan Forest Institute (PFI) which was the attached department of the Ministry of Environment, Islamabad till 30/06/2011. Consequent upon the 18the Constitutional Amendment, Ministry of Environment, Islamabad ceased to exist w.e.f. 01/07/2011 therefore, Pakistan Forest Institute (PFI) was devolved to the Government of Khyber Pakhtunkhwa and all its employees including the respondent were transferred to Government of Khyber Pakhtunkhwa on deputation basis in their own basic pay of scales under the civil Servant Act, 1973.

 That the Provincial Government of Khyber Pakhtunkhwa declared Pakistan Forest Institute (PFI) as an attached department of Environment (now Forestry, Environment & Wildlife) Department and on 09/01/2018 all employees of Pakistan Forest Institute (PFI) including the respondent, were provincialized under section 11(b) of Khyber Pakhtunkhwa civil Servants (Amendment) Act, 2015. It is further added that due to devolution of Pakistan Forest Institute (PFI), and in light of Government of Pakistan all the Appointment, Fromotion &

Administrative Officer (6 Pakistan Forest Institute Peshawar Transfer Rules became dysfunctional to the extent of Pakistan Forest Institute (PFI) and the promotion cases of the Pakistan Forest Institute (PFI) employees (including the respondent) could not be made.

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3. That the respondent was assigned the look-after-charge of the post of Superintendent BPS-17 and got retired from government service on attaining the age of superannuation w.e.f. 17/01/2019, and the fresh service rules of Pakistan Forest Institute (PFI) were notified on 16/04/2019 i.e. after retirement of respondent. Moreover, the respondent while in service had filed Writ Petition No.3987/2018 before the Hon'ble Peshawar High Court for promotion to the post of Superintendent BPS-17.

4. That the Hon'ble Peshawar High Court, Peshawar in its judgment dated 11/12/2018 had directed the petitioners to place his case for promotion before the Departmental Promotion Committee(DPC), if he otherwise deserved to be promoted and in compliance of the Hon'ble High Court directions, the case of respondent was placed before the Departmental Promotion Committee on 27/05/2019, wherein the committee considered his case and observed that all the employees of Pakistan Forest Institute(PFI) including the respondent were on deputation to Khyber Pakhtunkhwa under Section-10 of Civil Servant Act, 1973. The official retired from service as Federal Government employees w.e.f. 17/01/2019 on superannuation, whereas the service rules of Pakistan Forest Institute (PFI) were notified on 16/04/2019. Therefore, the service rules were not applicable to those employees who retired from service before notification of service rules of Pakistan Forest Institute, therefore, the Departmental Promotion Committee did not consider him fit for promotion as Superintendent BPS-17.

That the respondent then approached to the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar and filed Service Appeal No.946/2019 and claimed promotion to the post of Superintendent BPS-17 from January, 2015 wherein Para-wise reply was asked from the petitioners which was filed and denied the stance of respondent on legal and factual grounds.

That the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted the Service Appeal No.946/2019 of respondent and set aside the

Administrative Officer (G isian Forest Institute eshawar

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impugned decision of the Departmental Promotion Committee (DPC) dated 27/05/2019 and remanded the case to the Departmental Promotion Committee with direction to consider the case of notional promotion of the respondent under rules in vogue at the occasion before his retirement accordingly vide order dated 02/02/2024.

That the petitioner has a good prima facie case and balance of convenience also lies in maintaining status-quo.

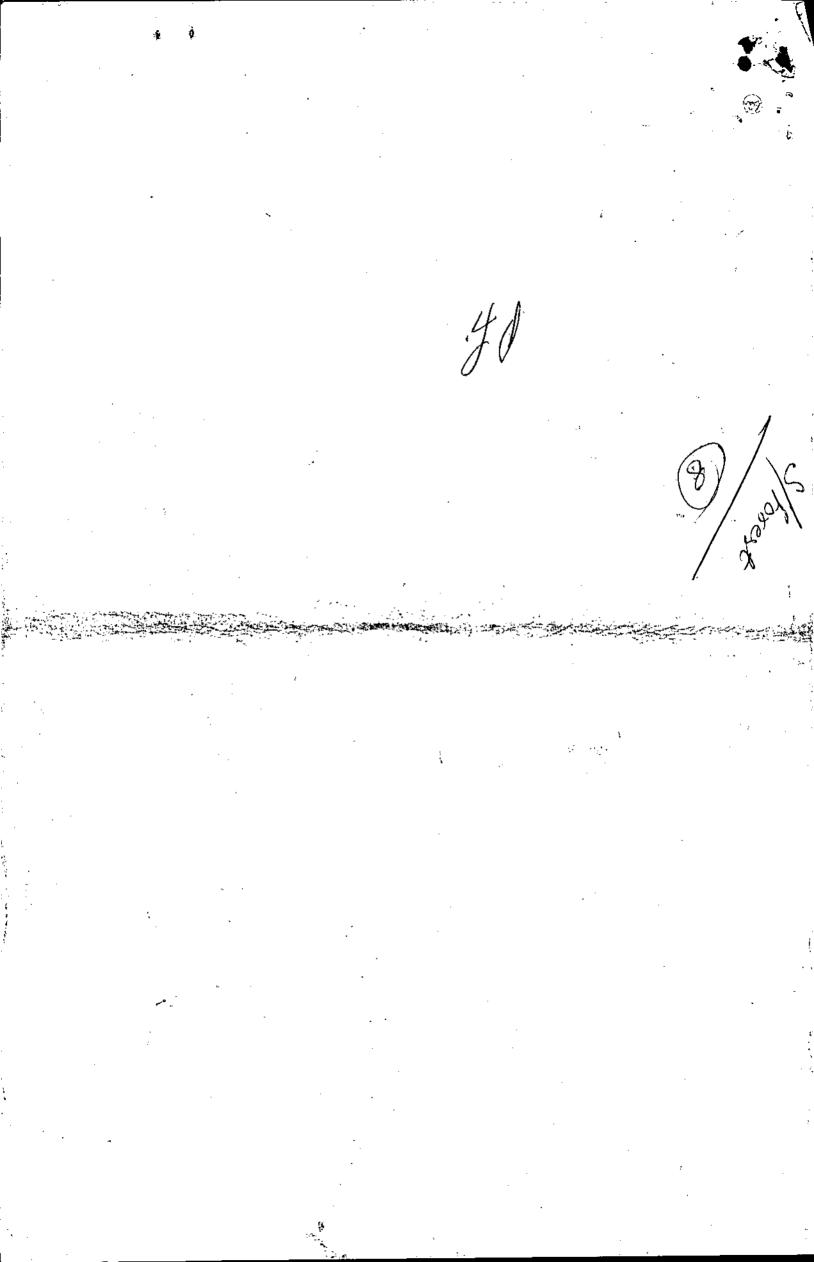
That if the impugned judgment and order is not suspended and status-quo is not granted the very purpose of this petition would be lost.

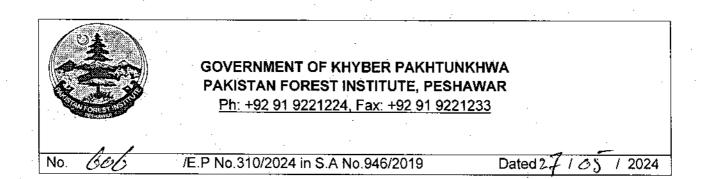
It is, therefore, humbly prayed that the operation of the impugned judgment and order of the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar passed in Service Appeal No.946/2019 dated 02/02/2024 may graciously be suspended and to maintain status quo till the final decision of the case.

7.

8.

Administrative Office: (G) Pakistan Forest Institute Peshawar (Muhammad Ajmal Khan) Advocate-on-Record Supreme Court of Pakistan For Government





AUTHORITY

Mr. Farhan Ahmad, Administrative Officer (G), Pakistan Forest Institute (PFI), Peshawar, is hereby authorized to submit reply in Execution Petition No.310/2024 in Service Appeal No.946/2019, filed by Mr. Akhtar Hussain, ex-Assistant, PFI, Peshawar in Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar, on behalf of Respondents.

(MR. KHALID ILYAS) DIRECTOR GENERAL RESPONDENT NO.3 Director General Akistan Forest Institute Peshawar