

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No. 1728 of 2023

Muhammad Ali S/o Anwar Ajaz Ali (SDFO) Khyber
Pakhtunkhwa Forest School Thai, Abbottabad
..... Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil secretariat, Peshawar
2. The secretary, govt. of Khyber Pakhtunkhwa Forestry, environment and wildlife department Peshawar
3. Chief conservator of Forests, central southern forest region-I, Peshawar

..... Respondents

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Dated 20-07-2024

Appellant

Through


Zahid Iqbal Khan
Deputy Director HRD

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

①

SERVICE APPEAL NO.1728/2023

Diary No. 15507

Dated 06.09.2024

Muhammad Ali S/O Anwar Ajaz Ali (SDFO) Khyber Pakhtunkhwa
Forest School Thai Abbottabad APPELLANT

VERSUS

1. The Govt of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. The Secretary, Government of Khyber Pakhtunkhwa Forestry, Environment and Wildlife Department Peshawar
3. Chief Conservator of Forests Central Southern Forest Region-I Peshawar..... **RESPONDENTS**

Parawise comments on behalf of Respondent No.1,2 & 3

PRELIMINARY OBJECTIONS

- i. The Appellant has got no cause of action.
- ii. The appellant has no locus standi to file this Service Appeal.
- iii. The appellant is neither aggrieved by any order nor any discrimination done to him hence instant Service Appeal is not maintainable.
- iv. The appellant has not come to this Court with clean hands.
- v. There is no impugned order.

RESPECTFULLY SHEWETH:-

1. Incorrect. The appeal has been properly examined under Rules-6(5) of Khyber Pakhtunkhwa Civil Servant E&D Rules, 2011 and FR-17(1) of Chapter-III regarding General terms & Conditions of service and being not found covered under relevant Rules, hence rejected. **(Annex-A&B)**.
2. Incorrect. The appellant is misleading the Tribunal. His appeal has already been disposed of by the Competent Authority **(Annex-C)**.

3. Correct to the extent, that the issue of back benefits to the appellant on reinstatement has been processed as per provision available in Khyber Pakhtunkhwa Civil Servant E&D Rules, 2011. In compliance to the Judgment dated 19/03/2018, the respondent No.3 being competent authority has issued show cause notice to the appellant on 10/04/2018 and on receipt of appellant reply, personal hearing of the appellant was held on 12/05/2018. Keeping in view the defense reply of the appellant against recommendation of the inquiry committee, de-novo Inquiry was ordered vide o/o No. 172, dated 06/06/2018. However, the appellant has neither furnished his reply to the charge sheet nor attended de-novo Inquiry proceedings as evident from the report of Inquiry Committee (**Annex-D & E**) till reinstatement in service on 06/06/2018 in light of advice available in A.Deptt; letter No. SO(Estt)/FE&WD/1-43/2021, dated 15/11/2021 and 21/12/2021 read with CCF-I o/o No. 87, dated 22/12/202, which stipulates that:-

- i. The period from 25/08/2014 to 05/06/2018, where appellant has not served the deptt; was treated as leave without pay.
- ii. The period w.e.f 06/06/2018 to 21/12/2021 since reinstatement shall to be treated as per recommendation and outcome of the de-novo Inquiry proceedings, when finalized (**Annex-F**).

Consequent to the outcomes of de-novo Inquiry proceedings, although some error/omissions were proved against the appellant in the light of de-novo Inquiry, but keeping in view hardships being faced by the appellant during lengthy Inquiry proceedings, he was treated lenient and exonerated from charges leveled against him and period from 06/06/2018 to 21/12/2021 was treated as with pay and posted the Range Forest Officer in Khyber Pakhtunkhwa Forest School Thai Abbottabad vide o/o No. 123, dated 06/12/2022 with all back benefits for the period from 06/06/2018 to 21/12/2021(**Annex-G**).

- 4. As already explained in para-3 above.
- 5. As already explained in para-3 above.

6. As already explained in para-3 above.
7. Correct to the extent that on receipt of the appeal, the same was communicated to Administrative Department for advice vide letter No. 1565-70/E, dated 13/09/2022.
8. As already explained in para-7 above.
9. Correct to the extent that the Finance Deptt; has released back benefits amounting to Rs. 2527764/- as pay and allowances of the appellant for the period from 06/06/2018 to 21/12/2021 only. As appellant was out of service from the deptt; during the period from 25/08/2014 to 05/06/2018, hence back benefits did not accrued, in light of FR-17(I), which stipulates that "*Subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties*" (**Annex-B**) as well as Rule-6(5) of the E&D Rules, 2011, which also speak that *if a Government servant is absent from official duty during the disciplinary proceedings under these rules, such period may be treated as extra ordinary leave without pay with the approval of competent authority*(**Annex-A**).
10. Pertains to record, hence needs no comments.
11. Correct to the extent that although the Finance Deptt; returned the appellant case to Administrative Secretary with the remarks that the instant case may be examined at departmental level in light of FR-54, however FR-54 relates to honorable acquittal on Court Judgment, the Appellate Authority, therefore disposed of the appeal in light of Rules-6(5) of Khyber Pakhtunkhwa Civil Servant E&D Rules, 2011, FR-17 of Chapter-III of General Condition of service, Judgment of Peshawar High Court dated 19/06/2013 in Writ Petition No. 1180/2012 & Judgment of Supreme Court of Pakistan, 2003 SCMR-228 (**Annex-H&I**) by rejecting the appeal regarding pay and allowances for the period from 25/08/2014 to 05/06/2018, when the appellant has not

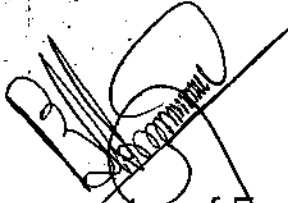
GROUNDS

- A. Incorrect. As already explained in Paras 1,2,3,9,10 & 11.
- B. Incorrect. On receiving the inquiry report from Inquiry Committee, the appellant was exonerated from the charges leveled against him vide o/o No. 268, dated 27/06/2022 (Annex-J). Keeping in view Rule-6(5) of Khyber Pakhtunkhwa Civil Servant E&D Rules, 2011, FR-17 of Chapter-III of General Condition of Service, Judgment of Peshawar High Court dated 19/06/2013 in Writ Petition No. 1180/2012 & Judgment of Supreme Court of Pakistan, 2003 SCMR-228, the period from 25/08/2014 to 05/06/2018 was treated as leave without pay as the appellant has not served the deptt; for the said period.
- C. Incorrect. As already explained in Paras 1,2,3,9,10 & 11 of the facts above.
- D. As explained in Para-C above.
- E. As explained in Para-C above.
- F. As explained in Para-C above.
- G. Keeping in view explanation available in the above paras, all the actions taken in the case of the appellant are under the rules and no malafide or bad intention is available on the part of respondents.
- H. As explained in Para-C above.
- I. Incorrect. the action taken in the case of the appellant is as per provision of the rules, however it is pertinent to mention that the appellant has intentionally delayed finalization of the proceedings by not joining Inquiry proceedings and reluctant to face the Inquiry Committee during the Inquiry proceedings resultantly sufficient time has elapsed.
- J. As explained in Para-C above.
- K. As explained in Para-C above.

L. The judgment of Hon'ble Court has been implemented and the issue of back benefits on reinstatement has been treated as per rules and directions of the Apex Courts in Writ Petition No. 1180/2022 as well 2003 SCMR-228.

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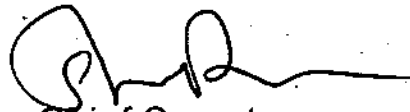
In view of the above explanation, it is humbly prayed that the instant appeal being devoid of merits may kindly be dismissed.



Chief Conservator of Forests
Central & Southern Forest
Region-I Peshawar
(Respondent No. 3)



Secretary, Government of Khyber
Pakhtunkhwa Forestry,
Environment and Wildlife
Department Peshawar
(Respondent No. 2)



Chief Secretary
Govt of Khyber Pakhtunkhwa
Civil Secretariat,
Peshawar
(Respondent No. 1)

¹²Provided that in cases where the Chief Minister or Chief Secretary is the competent authority, the Administrative Secretary may suspend the Government servant and submit charge sheet and statement of allegations, forthwith, to the competent authority for signature and initiation of disciplinary proceedings, in accordance with these rules.

(2) A Government servant, who has been charged for a criminal offence and is committed to prison shall be considered as under suspension from the date of his arrest without the formal approval of competent authority:

Provided that in case such Government servant is not arrested or is released on bail, the competent authority may suspend him by specific order to be notified in this behalf.

(3) During suspension period, the Government servant shall be entitled to his pay, allowance and other benefits in accordance with Fundamental Rule-53.

(4) If a Government servant is sent on leave, in pursuance of an order under sub-rule (1), such period shall be treated as on duty.

(5) If a Government servant is absent from official duty during the disciplinary proceedings under these rules, such period may be treated as extraordinary leave without pay with the approval of competent authority.

¹³⁷. **Procedure where inquiry is dispensed with.**--- If the competent authority decides that it is not necessary to hold an inquiry against the accused, it shall-

- (a) inform the accused, by an order in writing, of the grounds for proceedings against him, clearly specifying the charges therein, along with apportionment of responsibility and penalty or penalties proposed to be imposed upon him;
- (b) give him a reasonable opportunity of showing cause against the proposed action, which shall not be less than ten days and more than fourteen days, from the receipt of the order or within such extended period, as the competent authority may allow;
- (c) on receipt of reply of the accused, within the stipulated period or after the expiry thereof, if no reply is received, on the basis of available record or facts of the case, as the case may be, determine whether the charge or charges have been proved against the accused or not:

Provided that after receipt of reply to the show cause notice from the accused or in case where no reply is received, the competent authority shall, except in such cases where the Chief Minister is the competent authority, decide the case within a period of thirty days;

¹² Insertion of new proviso vide notification No. SO(Policies)E&AD/2-6/2021 dated 31.12.2021

¹³ Rules-7 substituted vide notification No. SO(Policies)E&AD/2-6/2021 dated 31.12.2021


DA HED

Amend. B-
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Government decision.—Permanent transfers from a higher to a lower scale in anticipation of the abolition of a post are not transfers within the meaning of F. R. 15.

(G.L. F.D., letter No.F-452-R.I/27, dated the 1st February, 1928.)

F. R. 16. A Government servant may be required to subscribe to a provident fund, family pension fund or other similar fund in accordance with such rules as the President may by order prescribe.

F. R. 17. (1) Subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties.²²[:]

²¹[Provided that the ²⁴[appointing authority] may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the ante-dated fixation of his seniority.]

(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed.

[For Administrative Instructions issued by the ²⁵President regarding "CHARGE OF OFFICE" and "LEAVING JURISDICTION", See Part II of Appendix No. 3 in Volume II of this Compilation.]

Orders issued by the ²⁶President under Fundamental Rule 17(2).—With reference to clause (2) of this rule, the ²⁷President has decided that the pay of officers recruited overseas who are entitled to a first class passage to Pakistan, shall commence from the date of disembarkation, subject to their proceeding to take up their duties without avoidable

²¹Substituted by Ministry of Law Notification No.F.13(1)/59-D&L, dated 24-1-1961, Gaz. Of Pak., Extra., Pp.102-103, as issued vide their Notification No.F.2(18)/60-Legis., dated 24-1-1961, Gaz. Of Pak., Pp.71-72.

²²In sub-rule (1) at the end full stop subs, by colon & thereafter proviso added by S.R.O. 1092 (I)/95 [No.F.3(1)R.II/94], dated 6th November, 1995, Gaz. of Pak., Extr., Pt. II, Page No.2521, dated Nov. 13, 1995.

²³In sub-rule (1) at the end full stop subs, by colon & thereafter proviso added by S.R.O. 1092 (I)/95 [No.F.3(1)R.II/94], dated 6th November, 1995, Gaz. of Pak., Extr., Pt. II, Page No.2521, dated Nov. 13, 1995.

²⁴In the proviso substituted for "President" by the S.R.O.106 (I) /2001 [No.F.3(1)R.2/94], dated 13-02-2001, Gaz. of Pak., Extr., Pt. II, Page No.375, dated 17th Feb. 2001.

²⁵Substituted by Ministry of Law Notification No.F.13(1)/59-D&L, dated 24-1-1961, Gaz. Of Pak., Extra., Pp.102-103, as issued vide their Notification No.F.2(18)/60-Legis., dated 24-1-1961, Gaz. Of Pak., Pp.71-72.

²⁶Substituted by Ministry of Law Notification No.F.13(1)/59-D&L, dated 24-1-1961, Gaz. Of Pak., Extra., Pp.102-103, as issued vide their Notification No.F.2(18)/60-Legis., dated 24-1-1961, Gaz. Of Pak., Pp.71-72.

²⁷Substituted by Ministry of Law Notification No.F.13(1)/59-D&L, dated 24-1-1961, Gaz. Of Pak., Extra., Pp.102-103, as issued vide their Notification No.F.2(18)/60-Legis., dated 24-1-1961, Gaz. Of Pak., Pp.71-72.

[Signature]

OFFICE ORDER NO. 172 DATED PESHAWAR THE 06 Amjad-e 10/06/2018 ISSUED BY 8
MUHAMMAD SIDDIQUE KHAN KHATTAK CHIEF CONSERVATOR OF FORESTS
CENTRAL SOUTHERN FOREST REGION-I KHYBER PAKHTUNKHWA PESHAWAR

An enquiry committee comprising Sheikh Amjad Ali CF/Director CDE & GAD Peshawar (BPS-19) (as convener) and Syed Muqtada Shah, Divisional Forest Officer Patrol Squad Lower Hazara Forest Circle Abbottabad (as member) is constituted by the competent authority to conduct de-novo enquiry under rules-14 (6) of the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Disciplinary) Rules, 2011 against Muhammad Ali Ex-Forest Ranger (BPS-16) for the charges/allegations leveled against him in the respective charge sheets and statement of allegations.

The enquiry committee shall submit its findings within 30 days positively.

Sd/-

(Muhammad Siddique Khan Khattak)
Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar

No. 4847-51 /E,
P.P.

Copy alongwith copies of the charge sheet/statement of allegations are forwarded for further necessary action to the:-

1. Sheikh Amjad Ali, CF/Director CDE & GAD Peshawar (as convener).
2. Syed Muqtada Shah, Divisional Forest Officer Patrol Squad Lower Hazara Forest Circle Abbottabad (as member).
3. Divisional Forest Officer Siran Forest Division Mansehra.
4. Divisional Forest Officer Lower Kohistan Forest Division Pattan.

The DFO Siran and Lower Kohistan are requested to depute departmental representatives to assist the enquiry committee during the enquiry proceedings.

5. Muhammad Ali, Ex-Forest Ranger C/O Raja Abdul Ghani near Aaj news paper Kehal Abbottabad. (Cell No.0315-3199931)

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

Annex - D (9)
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**ENQUIRY REPORT OF PROCEEDINGS AGAINST MR. MUHAMMAD ALI, EX-FOREST
RANGER OF KP FORSET DEPARTMENT**

READWITH

- Office order No 17 dated 25-8-2014.
- Office order No 15 dated 22-08-2016 by Chief Conservator of Forests, Central Southern Forest Region - I, KP, Peshawar,
- Services Tribunal Peshawar Judgment/order dated 19-3-2018,
- Office Order 172 dated 06-06-2018 by Chief Conservator of Forests, Central Southern Forest Region - I, KP, Peshawar
- Charge sheet and statement of allegations against Mr. Muhammad Ali Ex- Forest Ranger,
- Enquiry Committee member Letters No 1213/PS dated 20-6-2018, No 92/PS dated 30-7-2018, No 159/PS dated 20-8-2018, No 192/PS dated 04-9-2018, No 261/PS dated 28-9-2018, No 277/PS dated 02-10-2018,
- Reply/request of the accused dated 11-10-2018,
- C C F Region - I, KP, Peshawar Letter No 2529/E dated 11-01-2019
- Services Tribunal Peshawar Judgment/order dated 08-02-2019 in execution Petition. Enquiry Committee Letter No 277/PS dated 02-10-18.
- Reply/communication of accused dated 11-7-2019

BRIEF HISTORY

As per enquiry file/record, the accused Mr. Muhammad Ali (Ex Forest Ranger) was awarded major penalty of compulsorily retirement from service in a disciplinary proceeding under E & D Rules. vide competent authority office order No 15 dated 22-08-2016, and the appellate authority. on departmental appeal, also maintained the said penalty order.

Aggrieved with the punishment order, the accused filed service appeal No. 30/2017 before Services Tribunal Peshawar. The same appeal was decided vide Judgment dated 19/03/2018, wherein it was concluded by the Tribunal that the proceedings culminating in order dated 22-08-2016 by CCF - I cannot be sustained in the eyes of law nor the departmental appellate authority could maintain the said order. CCF-I was directed to resume the proceedings from the stage mentioned above and to decide the same within 60 days from the receipt of judgment.

In compliance with the decision of Services Tribunal, Peshawar, the competent authority, Chief Conservator of Forests, Central Southern Forest Region - I, KP, Peshawar. vide Office Order No 172 Dated 06-06-2018, vide provision of rule 14(6) of the KP Govt. Servants (E&D) Rules 2011, initiated a Denovo enquiry against Mr. Muhammad Ali (Ex Forest Ranger) for the earlier same charges of In-efficiency, Miss-conduct and Corruption. Charge sheet along with statement of allegations was served upon accused and an Enquiry Committee comprising of Sheikh Amjad Ali CF (as convener) and Syed Muqtada Shah DFO (as member) constituted to conduct enquiry and submit findings.

PROCEEDINGS

- A- The accused was intimated through registered post from DFO Patrol Squad office Abbottabad at his home address to submit reply. The accused, after repeated reminders, although responded on 11-10-2018 but instead of offering his defense through submission of proper reply to the memo of allegations/charge sheet, intimated that he has filed an execution petition in the Services Tribunal Peshawar Judgment/order dated 19-3-2018

Jm

Dated... 11/1/2019

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pertaining to the instant enquiry proceeding and requested for status quo till outcome in the said petition.

Therefore progress and findings of the enquiry proceedings were submitted to CCF Region - I Peshawar and the competent authority advised vide Letter No 2529/E dated 11-01-2019 to wait till decision of the Services Tribunal in the execution petition.

- B- The execution petition of the accused was decided on 08-2-2019 by the Services Tribunal Peshawar with the remarks that the prayer of the petitioner for reinstatement with back benefits at present appears to be premature. The execution proceedings in hand, therefore, are consigned to record room on the said account. The Petitioner shall, however, be at liberty to have resort to appropriate proceedings upon conclusion of Denovo departmental proceedings and passing of any order to his detriment.


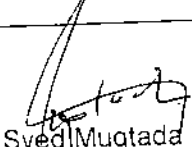
Since then the accused was time and again intimated by the Enquiry Committee to join disciplinary proceedings, submit his defense reply to the charge sheet and appear for personal hearing before the committee. However, in the meanwhile, the accused filed a CPLA before the Honorable Supreme Court of Pakistan, Islamabad against the Judgment of Services Tribunal in his execution petition and communicated his reply to the Chairman Departmental Enquiry Committee on 11-7-2019 with copies to Registrar/Chief Justice Supreme Court of Pakistan, Islamabad, Secretary Forestry, Environment and Wild life Department, CCF - I Peshawar for information.

Reply of the accused was again not relevant to the allegations of the charge sheet and instead of offering defense the accused has again focused on his earlier stance with following prayer:

"On acceptance of this detail reply/appeal, it is therefore humbly prayed that the CCF- 1 (Competent Authority) may be directed to reinstate the appellent with all back benefits and the Denovo enquiry sough to be initiated may kindly be suspended and quashed the Denovo enquiry, till the decision of CPLA filed before the Honorable Supreme Court of Pakistan, Islamabad.

FINDINGS & CONCLUSIONS

The accused is not willing to facilitate the furtherance and conclusion of the departmental enquiry proceedings. Instead he is waiting for the outcome of the CPLA pending before the Honorable Supreme Court of Pakistan. Therefore proceedings could not be finalized by the Enquiry Committee. The enquiry proceedings are therefore paused and case file return to the competent authority for soliciting legal advice from the competent forum.

 Sheikh Amjad Ali DG PFI Peshawar (Convener committee)	 Syed Muqtada Shah Conservator of Forests/DCCF (Member-committee)
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Enclosure: Enquiry File (Page 1 - 205)

Dated 11/1/2019

OFFICE ORDER NO. 123 DATED PESHAWAR THE 06 12/2022
ISSUED BY MR. EJAZ QADIR, CHIEF CONSERVATOR OF FORESTS CENTRAL
SOUTHERN FOREST REGION-I, KHYBER PAKHTUNKHWA PESHAWAR

Annex
E
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In consequence of his reinstatement into service w.e.f 06/06/2018 vide this office order No. 87, dated 22/12/2021, Muhammad Ali Forest Ranger is hereby adjusted against the vacant post of RFO in Khyber Pakhtunkhwa Forest School Thai Abbottabad for the purpose of pay w.e.f 06/06/2018 to 21/12/2021.

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Vol. - III

Sd/-
(Ejaz Qadir)
Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar

No. 3423-27/E,

Copy forwarded for information and necessary action to the:-

P-13

1. Chief Conservator of Forests Northern Region-II, Abbottabad
2. Director, I&HRD&M Peshawar with reference to his letter No. 718/HRD, dated /11/2022.
3. Principal Khyber Pakhtunkhwa Forest School Thai Abbottabad.
4. Budget and Accounts Officer, Govt. of Khyber Pakhtunkhwa Forestry, Environment and Wildlife Department Peshawar.
5. Regional Accountant Head Office Peshawar.

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

etc

Received
Office of the
Principal
Forest School
Thai Abbottabad

Office Order 4

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11/1/2024

Dated 11/1/2024

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OFFICE ORDER NO. 87 DATED PESHAWAR THE 22 /12/2021
ISSUED BY MR. AZHAR ALI KHAN, CHIEF CONSERVATOR OF FORESTS
CENTRAL SOUTHERN FOREST REGION-I, KHYBER PAKHTUNKHWA
PESHAWAR.

In pursuance of the directions available in the Administrative Department letter bearing No. SO(Estt)FE&WD/1-43/2021, dated 15/11/2021 and dated 21/12/2021, Muhammad Ali Ex-Forest Ranger who was earlier compulsorily retired from service vide Chief Conservator of Forests Northern Forest Region-II, Office Order No. 17, dated 25/08/2014 is hereby reinstated into service w.e.f 06/06/2018 for the purpose of conducting and concluding de-novo Inquiry. The period from 25/08/2014 to 05/06/2018 under which the Ex-Forest Ranger has not served the department is hereby treated as leave without pay, so far the period from 06/06/2018 to date of issue of this order is concerned decision will be taken in light of the report of Inquiry Officer as per rules.

Consequent upon his reinstatement into service, he is hereby posted in Khyber Pakhtunkhwa Thai School Abbottabad against the vacant post of SDFO in the interest of public service with immediate effect till further order.

Sd/-

(Azhar Ali Khan)
Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar

No. 2204-10 /E

Copy forwarded for information and necessary action to the:-

1. Chief Conservator of Forests Northern Region-II, Abbottabad
2. Conservator of Forests Lower Hazara Forest Circle Abbottabad with the direction to complete the inquiry proceedings against Muhammad Ali Forest Ranger as early as possible.
3. Section Officer (Establishment) Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department Peshawar with reference to his letter cited above.
4. Director, I&HRD&M Peshawar
5. Principal Khyber Pakhtunkhwa Forest School Thai Abbottabad.
6. Budget & Accounts Officer, Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department Peshawar.
7. Muhammad Ali, Forest Ranger near City House Kunj Ground Tehsil and District Abbottabad with the direction to appear before the Inquiry Officer.

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

O.Order-3 (MAH)

Page 1/1

Attes
[Signature]
[Signature]

OFFICE ORDER NO. 143 DATED PESHAWAR THE 11/12/2022
ISSUED BY MR. EJAZ QADIR, CHIEF CONSERVATOR OF FORESTS CENTRAL
SOUTHERN FOREST REGION-I, KHYBER PAKHTUNKHWA PESHAWAR

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In consequence of his reinstatement into service w.e.f 06/06/2018 vide this office order No. 87, dated 22/12/2021, Muhammad Ali Forest Ranger is hereby adjusted against the vacant post of RFO in Khyber Pakhtunkhwa Forest School Thai Abbottabad for the purpose of pay w.e.f 06/06/2018 to 21/12/2021.

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Vol. - III

Sd/-
(Ejaz Qadir)
Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar

No. 342 - 27/E,

Copy forwarded for information and necessary action to the:-

1. Chief Conservator of Forests Northern Region-II, Abbottabad
2. Director, I&HRD&M Peshawar with reference to his letter No. 718/HRD, dated 1/11/2022.
3. Principal Khyber Pakhtunkhwa Forest School Thai Abbottabad.
4. Budget and Accounts Officer, Govt. of Khyber Pakhtunkhwa Forestry, Environment and Wildlife Department Peshawar.
5. Regional Accountant Head Office Peshawar.

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

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Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

WP No. 1180/2012.

JUDGMENT

Date of hearing..... 19.06.2013.....

Petitioners. (Syed Tahir Abbas) *By Mr. M. Zafer Tahir Khedi, Advocate*

Respondents. (Government of Khyber Pakhtunkhwa etc) *By Malika Mujtaba Khan, Advocate, & Mr. Mansoor Tariq, Advocate, for respondents.*

WAQAR AHMED SETH J. Petitioner Tahir Abbas,

Ex-Assistant Director, seeks the constitutional jurisdiction of this court praying for that:-

"A. for a declaration to the effect that the petitioner being an ex-retrenched Assistant Director (B-17) of PUDB is entitled to be reinstated readjusted/absorbed against the available vacancy as other similarly retrenched Assistant Directors (B-17, who have been reinstated/absorbed in compliance with the

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dated 30.9.1999, as well as the decision in his WP No. 322/2009 dated 06.10.2011 and those of the august Supreme Court of Pakistan on the subject, without discrimination; and

- b. For an order, directing respondents to do the needful.*
- c. Any other relief deems appropriate may also be granted."*

2. In essence, the grievance of the petitioner is that he was selected as Assistant Director (Civil) and appointed in the Provincial Urban Development Board by the Managing Director vide appointment order dated 18.10.1993 on contract basis for a period of one year. Having served for a period of seven years, without any break his services were terminated along-with 17 others Assistant Directors on 30.5.1998 without prior notice or reason. Petitioner filed a writ petition No. 978/1998 and petitioner was allowed to continue in service pending adjudication of the main writ petition. Several other employees, whose services were terminated also filed writ petitions and subsequently vide consolidated judgment dated 30.9.1999, all the writ petitions were disposed of directing the respondents to refrain from fresh recruitment without considering the petitioner for appointment on available vacancies on merits and in PMU to deal

277 (16)
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their cases on the basis of last come first go. Thereafter, petitioner moved the Supreme Court of Pakistan through civil petition No. 1241 of 2002, which was heard by the full bench and disposed of as under:-

"Date of hearing: 16.3.2005: ORDER

At the conclusion of the arguments, it was observed that the petitioner being a junior most, his service was rightly terminated due to retrenchment.

Any how it is stated at the bar that even after his retrenchment the Government has appointed other persons like Ghulam, Sadiq. In the circumstances the petitioner is advised to resort to the Government which, in turn, should consider the case of the petitioner being a previous employee of the Board in accordance with law.

With these remarks the petition is disposed accordingly."

3. Accordingly, petitioner approached the respondent department through application dated 22.12.2005 but the department failed to make any positive response and, as such, petitioner once again filed writ petition No. 322/2009. The said petition came up for hearing before the Division Bench on 6.10.2011 and the Bench was pleased to direct the Secretary Local Government to consider the case of the petitioner fairly, honestly, justly and in accordance with law and the rules on the subject and also to keep in mind the miseries, which the petitioner has faced during the long chain of litigation, moreso, when he has not yet get the fruit of the same and even if his

277 (17)
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shown to him on humanitarian grounds while considering the case of petitioner from all angles. Finally, the departmental authority passed order dated 5.23.2012 refusing to adjust the petitioner, hence, this writ petition.

4. The case of respondent/department is that petitioner being a project employee and upon winding up of the said project his services was terminated and that all the writ petitions of project employees have been dismissed up-to the apex court including the petitioner hence, he has got no fresh cause of action.

5. Arguments heard and record perused.

6. Petitioner was appointed as Assistant Director (Civil) in BPS-17 by the competent authority i.e. Managing Director PUDB but in a project called Management Unit vide letter of appointment dated 18.10.1993. In earlier round of litigation, it was held that the petitioner was employed purely on contract basis till the life of project but again in the year 2009 petitioner filed writ petition No. 322/2009 in which it was held as under, vide order dated 06.1.2011-

"DOST MUHAMMAD KHAN J. *After arguing this case at some length, learned counsel for the parties agreed that the petitioner namely Syed Tahir Abbas, is entitled and deserved to be fairly & properly reconsidered according to the prayer he has made in this petition but the Departmental Authority also keep in kind the judgment of this court dated 30.5.2002 and that of the Hon'ble apex court dated 16.3.2005. The learned Additional Advocate General gave assurance that the case of*

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the petitioner would be strictly considered on merits according to the law, rules on the subject and guidance given in the two judgments of this court and the Hon'ble Apex Court and he will not be discriminated in any manner.

Accordingly, this petition is sent in original to the Secretary Local Government (respondent No. 1) with the direction to consider the case of the petitioner fairly, honestly, justly and in accordance with law and rules on the subject and also be kept in kind the miseries, the petitioner has confronted during the long chain of litigation, moreso, when he has not yet got the fruit of the same and even if his case is not coming within the scheme of the rules then, some mercy be shown to him on humanitarian grounds while considering the case from all angles. The Secretary Local Government shall decide the same positively within one month from the date of receiving the case file. In case, respondent No. 1 passed any adverse order against the petitioner then he shall have to give elaborate judgment, giving strong reasons therefor.

Petition disposed of accordingly while a set of photocopies of the instant petition be retained by the office for record."

7- Likewise in earlier round of litigation the Hon'ble Apex Court in CP No. 1241 of 2002 titled "Syed Tahir Abbas versus Government of NWFP etc" dated 16.3.2005 ordered:-

ORDER

"At the conclusion of the arguments it was observed that the petitioner being a junior most, his service was rightly terminated due to retrenchment.

Anyhow, it is stated at the bar that even after this retrenchment the government has appointed other persons like Ghulam Sadiq. In the circumstances, the petitioner is advised to resort to the government which, in turn, should considered the case of the petitioner being a previous employee of the board in accordance with law.

With these remarks the petition is disposed of accordingly."

8. The record of the department reveals that out of 27 terminated Assistant Directors, 15 were reinstated in various developmental authorities, two (02) were adjusted in provincial Inspection Team and Workers Welfare Board. Three Assistant Directors were adjusted in Community Infrastructure Project, Peshawar. However, 07 Assistant Directors including petitioner were kept waiting for their posting in spite of the fact that number of posts were lying vacant right from 2003.

9. According to document dated 02.10.203 (Annexure 'D-1) page-49 of the writ petition, there were 20 vacant posts of Assistant Directors PBS-17 in CD & MD and due to the absence of these Assistant Directors, the efficiencies of the CD& MD

283 (19)
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Jm

285
138
20

Directors were urgently required to supervise the ongoing project in Rally Model Town, Hayat Abad township and other projects of the city. In spite of all this, petitioner was engaged in litigation during this period.

10. Instead of adjusting the petitioner a number of fresh appointments were made and colleagues of the petitioner were adjusted but petitioner was ignored under malafide intention. Few such appointments are "*Miss Vagma Gul & Tabinda Nosheen*" were appointed vide order No. SO (LG-1) 4-3/Das/09 dated 19.9.2009. In addition to these fresh appointments, one Abdul Ghafoor who has also been readjusted in the light of judgment of the Supreme Court of Pakistan vide Notification No. SO (LG-1) 3-507/PHC/2009 dated 24.3.2010. In addition to this, vide office order 17.3.2003 one Javed Iqbal has been adjusted on the directive of the Hon'ble Chief Minister KPK and Ghulam Sadiq has been reinstated / regularized vide order dated 22.7.2003. Moreover, one Muhammad Tariq Kundi of Project Management Unit has been reappointed vide order dated 10.1.2011, Annexure 'K' page 77 of the writ petition is referred.

11. The record is suggestive of the fact that after the decision of Supreme Court, a joint seniority list was prepared and the said Abdul Ghafoor, whose case has been found at par with the petitioner

has been adjusted on Juxta-position with other 10 Assistant Directors but the petitioner has been discriminated.

12. Today, at the time of arguments the office produced two writ petitions i.e. "*No 1547/2011 Maqbool Ahmed versus Secretary etc and WP No. 1552/2011 Tariq Mahmood versus Government etc*" which were dismissed on 27.2.2013, on perusal whereof, these are found quite different in characteristics and not relevant. Nothing is on the record that both these petitioners approached the court of law or were considered by the department against the vacant posts whereas petitioners attached documents showing that he remained in picture, throughout, hence this writ petition has its own merits.

13. According to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 which reads as under:-

"Equality of Citizens: 1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex (xxx).

(3) Nothing in this Article shall prevent the state from making any special provision for the protection of women and children."

Whereas Article 38 (b) says that-

(b) "Provide for all citizens, within the available resources of the country, facilities for work

289 (22)
1407

and adequate livelihood with reasonable rest and leisure."

14. Whereas, the record is suggestive of the fact that the petitioner has been discriminated time and again and in view of the above, while allowing the instant writ petition, the respondents are directed to adjust the petitioner, immediately with all consequential benefits except wages. The reasons for not allowing the wages for the intervening period is that petitioner has not worked during this period and as principle no work no pay. Order accordingly.

Announced
Dated: 19.6.2013

[Signature]
JUDGE

[Signature]
JUDGE

[Signature]

*officer
6/7/13*

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN (PROCESS)---Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through Chairman,
OGDC Head Office, Islamabad---Respondent

Civil Petition For. Leave to Appeal No-51 of 2002, decided on 11th September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal service Tribunal, Islamabad, in Appeal No. 1076(R)CE of 2000).

(a) Civil service-

---Pay, entitlement to---When there is no work, there is in no pay.

(b) Civil service-

--- Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at. original place, where he was paid salary for about three years. ---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant-- Validity---Civil servant had not performed his duties either at original place or at transferred place, thus, was not entitled to salary---Period for which refund of salary was effected from civil servant was the period for which, he had not worked---When there was no work, there was no pay---Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made out---Supreme Court dismissed petition for leave to appeal in circumstances---Constitution of Pakistan (1973), Art. 212(3).

Sadiq Muhammad Warraich, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record (absent) for Petitioner.

Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocate ai-Record for Respondent.

Date of hearing: 11th September, 2002.

JUDGMENT

Jm

SYED DEEDAR HUSSAIN SHAH, J.---Petitioner seeks leave to appeal against that judgment of the Federal Service Tribunal,, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No. 1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations; 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay ordered by the Court as E.O.L is injustice with me."

On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-1999 (PR244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa-Kiswal Oil Field, after getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty."

(25)
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"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para. 141-A, please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

6. Sardar Muhammad Aslam, learned Dy.A.G. further pointed out that recovery was already been effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted, to his Managerial post.

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S.A.K./N-100/S

Petition dismissed.

Dr

OFFICE ORDER NO. 268 DATED PESHAWAR THE 27 /06/2022
ISSUED BY MR. EJAZ QADIR, CHIEF CONSERVATOR OF FORESTS CENTRAL
SOUTHERN FOREST REGION-I, KHYBER PAKHTUNKHWA PESHAWAR.

WHEREAS, Muhammad Ali Forest Ranger was proceeded against under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, for the charges as mentioned in the charge sheets and statement of allegations served upon him:-

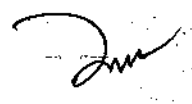
AND WHEREAS, Enquiry Officer, (Syed Muqtada Shah) the then Conservator of Forests Lower Hazara Forest Circle Abbottabad and now Chief Conservator of Forests Malakand Forest Region-III, Saidu Sharif Swat constituted as enquiry Officer.

AND WHEREAS, Keeping in view, report of the Inquiry Officer under which the following recommendations were made:-

"The accused remained penalized and removed from service for a long period of more than seven years w.e.f 25/08/2014 till 21/12/2021, facing disciplinary proceedings, litigating in various course of law upto apex court of the country, social deformation and mental torture, thus has been circumstantially penalized within the given system of justice. Therefore, no additional penalty under E & D Rules 2011 is recommended. He may be exonerated from the charges"

NOW THEREFORE, in the capacity of Competent Authority (Chief Conservator of Forest Central Southern Forest Region- I Peshawar), after having considered the charges, evidence on record, findings of the enquiry Officer in the subject case, exercising his powers under Rule-14(3) of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, Muhammad Ali Forest Ranger is hereby exonerated from the charges leveled against him as per charge sheets / statement of allegations already served upon him.

Sd/-
(Ejaz Qadir)
Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar

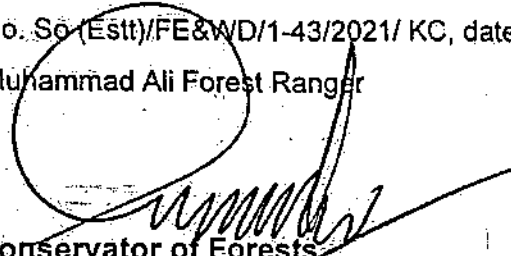


No. 7421-26 /E.

E.F = Muhammad Ali F/R

Copy forwarded for information and necessary action to the:-

1. Chief Conservator of Forests Northern Forest Region-II, Abbottabad. Photocopy of the inquiry reports are sent herewith with the request to investigate the missing consignments of 2638.50 cft Deodar Timber if any transported vide Divisional Forest Officer Lower Kohistan TP No. 127, dated 02/04/2010 as well as dig out facts and furnish your comments on the recommendation of Inquiry report charge sheet related to Siran Forest Division, so that to proceed against the delinquents and to recover loss sustained to Govt. if any.
2. Conservator of Forests Lower Hazara Forest Circle Abbottabad
3. Conservator of Forests Upper Hazara Forest Circle Mansehra
4. Budget & Accounts Officer, Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department Peshawar.
5. Section Officer (Establishment) Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department Peshawar with reference to his letter No. So (Estt)/FE&WD/1-43/2021/ KC, dated 21/12/2021.
6. Muhammad Ali Forest Ranger


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 1728 of 2023

Muhammad Ali S/O Anwar Ajaz Ali (SDFO) Khyber Pakhtunkhwa Forest
school Thai, Abbotabad.

(Appellant)

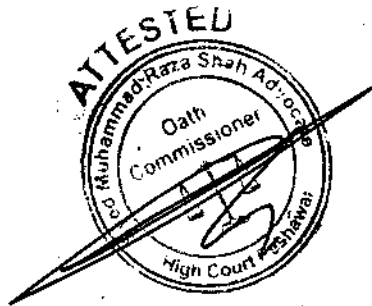
VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Govt of Khyber Pakhtunkhwa Forestry, Environment and Wildlife Department Peshawar.
3. Chief conservator of forests, central southern forest region-I, Peshawar.

(Respondents)

AFFIDAVIT

I, Fazal Illahi Chief Conservator of Forests, Central Southern Forest Region-I Peshawar (Respondent No. 3), do hereby solemnly affirm and declare on oath that the contents of the appeal are true to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Respondent No. 3

CNIC: 11101-1522102-5

Cell: 0300-9034468

06 SEP 2024

CHIEF CONSERVATOR OF FORESTS
CENTRAL SOUTHERN FOREST REGION-I
KHYBER PAKHTUNKHWA
(HAD)




SHAMI ROAD PESHAWAR
Ph: +92 91 9212177, Fax: +92 91 9211478
E-mail: ccfforests.pesh@gmail.com

Dated 27 /05/2024

No. 62-69 /E.

AUTHORITY LETTER

Mr. Zahid Iqbal Deputy Director I&HRD&M Peshawar is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad on 29/05/2024 in Service Appeal No.1728/2023, Muhammad Ali Versus Government of Khyber Pakhtunkhwa and others on behalf of the department.


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

Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar.

