

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

APPEAL NO.321 OF 2024

Sohail Ayub son of Nazar Ayub R/o Purana Bazar,

Adjacent Army Public School Drosh, District Chitral Lower.....APPELLANT

VERSUS

- 1) Conservator of Forests, Malakand Forest Circle West at Timergara Lower Dir
- 2) Divisional Forest Officer, Chitral Forest Division.

RESPONDENTS

PARAWISE COMMENTS BY RESPONDENTS

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHWAR

APPEAL NO.321 OF 2024

Sohail Ayub son of Nazar Ayub R/o Village Purana Bazar, Adjacent Army Public School,
Tehsil Drosh District Chitral Lower APPELLANT

VERSUS

- 1) Conservator of Forests, Malakand Forest Circle West at Timergara Lower Dir.
- 2) Divisional Forest Officer, Chitral Forest Division, Chitral. **RESPONDENTS**

PARAWISE COMMENTS BY RESPONDENTS

Respectfully Sheweth:

Preliminary objections:

- 1) That the applicant has no got no cause of action.
- 2) That the instant appeal is barred by law.
- 3) That the appellant has got no locus Standi.
- 4) That the appeal is not maintainable in the present form.
- 5) That the appellant has not approached this Honorable Tribunal with clean hands.

On Facts:

1. Pertains to record hence no comments.
2. Correct.
3. Pertains to record hence no comments.
4. Correct to the extent of set asiding of orders dated 14.06.2019 (Annexure-I) and 01.11.2019 (Annexure-II). As per judgment dated 22.01.2021 (Annexure-III), the respondents were at liberty to constitute enquiry committee strictly in terms and spirit of Section-3(2) of the Protection Against Harassment of Women at the Work Place Act, 2010 in order to probe the allegation(s) against the Applicant. In accordance with the aforementioned judgment, an investigation committee was constituted vide DFO Chitral office order No.08, dated 03.8.2021 (Annexure-IV). Consequent upon receipt of enquiry findings / recommendation o Enquiry Committee dated 20.10.2022 (Annexure-V), the DFO Chitral as competent authority, awarded penalty of "Stoppage of two annual increments with cumulative effect for two consecutive years" vide office order No.79, dated 26.01.2023 (Annexure-VI) as the charges were proved and applicant was found guilty.

Diary No. 16099
Dated 27-9-2024

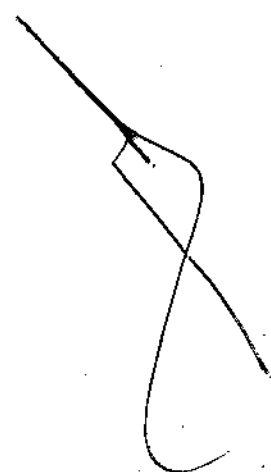
5. Correct.

(2)

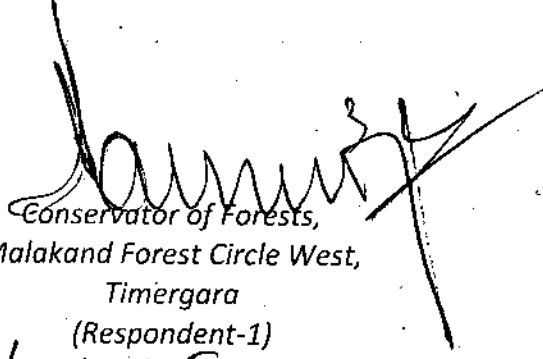
6. That upon receipt of his application dated 08.12.2023 (claim of salaries for the period with effect from 15.6.2019 to 31.1.2021) Annexure-VII, the same application was sent to the Conservator of Forests, Malakand Forest Circle West at Timergara vide DFO Chitral office letter No.2720/G, dated 19.12.2023 (Annexure-VIII) for seeking advise whether the claim of the appellant is to be honored or otherwise? As in Service Tribunal decision it has not been mentioned that the period with effect from 15.06.2019 to 31.01.2021, during the official remained terminated, may be consider leave without pay or otherwise. In response, the Conservator of Forests, Malakand Forest Circle West directed to treat the period as leave without pay vide his office letter No.31250/B&A, dated 05.01.2024 (Annexure-IX). In pursuance of the direction of the Conservator of Forests, the intervening period has been treated as leave without pay from 15.06.2019 to 31.01.2021 (i.e. 1 year, 7 months and 16 days) vide office order No.71, dated 19.01.2024 (Annexure-X), during which the appellant Junior Clerk did not perform official duties.
7. That the appellant has no right to claim salary for the period during which he has not performed duties as he was not re-instated unconditional.

GROUND:

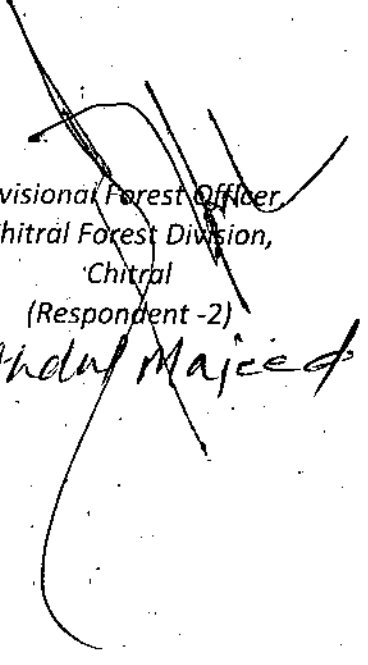
- a) Incorrect. The impugned order dated 19.01.2024 is correct as the appellant is not re-instated unconditionally and he is not found blameless. In the Denovo enquiry conducted in light of Tribunal decision dated 21.01.2021, the appellant is found at fault / guilty and penalty of withholding / stoppage of two annual increments with cumulative effect for two consecutive years are awarded. (Reference could be made to the decision of Honorable Supreme Court of Pakistan in CP Nos.517-L, 1062-L and 1232-L of 2016 and 1929-L/2017 (Annexure-XI).
- b) Incorrect. The impugned order dated 19.01.2024 was passed in accordance of procedure as laid down in Para-17 of Efficiency and Discipline Rules, 2011.
- c) Incorrect. As replied in above para.
- d) As explained in Para-a above.
- e) Denovo enquiry was conducted, wherein, the appellant was found guilty and penalty of stoppage of two annual increments with cumulative effect for two consecutive years was awarded as per Annexure-VI.
- f) As explained in para-e.
- g) As explained in para-a.
- h) Incorrect. Proceedings were held as per law.
- i) No comments.



- j) Appeal / application for release of outstanding amount of salaries has rejected by the appellant was not re-instated unconditionally and later on found guilty in Denovo enquiry.
- k) No comments.
- l) Not applicable.
- m) Pertains to record.
- n) The respondents seek leave for raise additional grounds at the time of arguments.


Conservator of Forests,
Malakand Forest Circle West,
Timergara
(Respondent-1)

Shaukat Fayaz


Divisional Forest Officer,
Chitral Forest Division,
Chitral
(Respondent -2)

Abdul Majid

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Annexure-I

OFFICE ORDER NO. 162 DATED CHITRAL THE 14 / 06 / 2019,
ISSUED BY MR. SHAUKAT FIAZ DIVISIONAL FOREST OFFICER,
CHITRAL FOREST DIVISION, CHITRAL

Whereas Mr. Sohail Ayub S/o Nazer Ayub R/o Drosh Tehsil Drosh District Chitral was appointed as Junior Clerk in BPS-11 in Chitral Forest Division vide office order No. 100, dated 18/03/2019 with the following terms and conditions that:-

1. He will be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973, all other laws applicable to the Civil Servants and Rules made there under.
2. He will, initially be on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Servants Act read with Rule-15(i) Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.
3. His services shall be liable to termination at any time without assigning any reason thereof before the expiry of the period of probation / extended period of probation. If his performance during the period of probation is not found satisfactory, in such an event, he will be given one month prior notice of termination from service or one month pay in lieu thereof.
4. In case he wish to resign at any time, a month prior notice will be necessary or in lieu thereof, one month's pay shall be forfeited.

In contradiction of the above, he did not abide by the terms & conditions/rules and acted the following irregularities in the meaning of misconduct and inefficiency;

1. Absence from duty:

Besides instructing verbally and in writing he remained absent in the following dates:-

- i. On 5.4.2019 he remained willfully absent from duty without getting prior permission/sanction of leave. Upon his absentia he was called to explain his position vide this office letter No.5010/G, dated 5.4.2019 but his reply dated 16.4.2019 was found not satisfactory. He was instructed verbally as well as vide this office letter No.5326/G, dated 23.4.2019 to observe office timing and be punctual in attending office. However he was warned to be careful in future vide this office letter No.5332/G, dated 24.4.2019.
- ii. In spite of verbal and written instructions he again remained absent on 25.4.2019, upon which he was again called explanation vide this office letter No.5337/G, dated 25.4.2019. He submitted his reply to the explanation on 16.5.2019 but found not satisfactory.
- iii. On 10.5.2019 he again remained absent from duty and was called to explain the reason of absentia vide this office letter No.5758/G, dated 21.5.2019 but he did not replied so far.

Attested

Divisional Forest Officer
Chitral Forest Division
Chitral

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2. Submission of resigning application:

On 19.4.2019 he preferred application for resignation from Govt. service. Upon which he was called for personal hearing vide this office letter No.5383/G, dated 26.4.2019, No.5531/G, dated 7.5.2019 (dates of hearing were postponed due to office engagements) and No.5835/G, dated 24.5.2019 and date of hearing fixed for 29.5.2019.

3. Incidence of Harassment of women at Workplace:

On 23.4.2019, Mrs. Shakira Bibi FFE preferred a complaint before the undersigned that she has been harassed by sending obscenity & dirty messages from Mr. Sohail Ayub Junior Clerk. The said complaint was referred to SDFO Chitral/ Chairman of the Harassment Committee vide this office letter No.5487/G, dated 30.4.2019 for enquire/ investigation and report return.

The Chairman of the "Harassment Committee" submitted his enquiry findings/ report to the undersigned vide his office letter No.61/019-CI, dated 21.5.2019 wherein he found the accused official as guilty for harassment of women at workplace under Protection against harassment of women at workplace act, 2010.

Now, whereas the undersigned conducted personal hearing of the accused official on 29.5.2019 Divisional office, wherein the accused official in his defense could not satisfied the undersigned with his replies, thus the undersigned reached to the conclusion and found the accused official Mr. Sohail Ayub Junior Clerk, being in probation period, guilty of misconduct /inefficiency and in capacity of authority awarded the penalty of "Termination / Removal from Service with immediate effect".

sd-

(Shaukat Fiaz)

Divisional Forest Officer,
Chitral Forest Division,
Chitral

No. 6156-62/G, Dated Chitral the 14/6 /2019.

Copy forwarded to:

1. The Chief Conservator of Forests, Central Southern Forest Region-I Peshawar.
2. The Chief Conservator of Forests, Malakand Forest Region-III Saidu Sharif Swat.
3. The Conservator of Forests, Malakand Forest Circle West at Turmurgara Lower Dir.
4. The Section Officer (Establishment), Forestry, Environment & W/Life Deptt. Peshawar.

For favour of information, please.

5. Head Clerk/ Accountant Divisional Forest Office Chitral for information and necessary action.
6. Mr. Sohail Ayub S/o Nazer Ayub R/o Drosh Chitral (the then Junior Clerk) for information.
7. Office order/ personal files for record.

Attested.

Divisional Forest Officer,
Chitral Forest Division,
Chitral

Divisional Forest Officer
Chitral Forest Division
Chitral

(6)

Annexure-II

101

OFFICE ORDER NO. 13 DATED 01/11 /2019 ISSUED BY MR. MUHAMMAD YUSAF KHAN CONSERVATOR OF FORESTS MALAKAND WEST FOREST CIRCLE TIMERGARA.

1. Whereas Mr.Sohail Ayoub Junior Clerk (appellant) was proceeded under E&D Rules,2011 and Protection Against Harassment of Women at the work place Act 2010 issued by the (DFO Chitral) office order No.162 dated 14/06/2019 on the following charges:
 - a. Misconduct.
 - b. Inefficiency.
 - c. Corruption.
2. Whereas inquiry officer (Shakeel Ahmad SDFO Chitral) was directed vide DFO Chitral letter No. 5487/G dated 30/4/2019 to investigated and submit the detail report under Protection Against Harassment of Women at the work place Act 2010.
3. Whereas the inquiry officer called the accused for personal hearing vide his office letter No.51/019/CL dated 7/5/2019 after investigation of the subject case, he submitted the inquiry report to DFO Chitral vide his office letter No.61/019-CL dated 21/05/2019 for further course of action.
4. Whereas the competent authority (DFO Chitral) after the detail report , The DFO Chitral conducted personal hearing on 29.05.2019.
5. Whereas the accused Official was awarded major penalty termination / Removal from service.
6. Whereas the appellant being aggrieved with the penalty awarded by DFO Chitral, filed the departmental appeal to the undersigned (appellate Authority) requesting to set aside the penalty. Para wise comments were asked from DFO Chitral and on receipt of the comments the appellant was provided chance of personal hearing, conducted the same at Conservator of Forests Malakand West Office on 4/09/2019.
7. Whereas on perusal of record, comments of the D.F.O Chitral and personal hearing of the appellant the facts surfaced that the accused was found guilty the, evidence proved the allgating against the appellant.
8. Whereas on perusal of service record the appellant during his short service proved himself unfit for the post of Junior Clerk as evident from his absence from duties language of correspondence with DFO Chitral and even his non serious and short tempered attitude of tendering resignations at the very beginning of his service.

Attested

Divisional Forest Officer
Chitral Forest Division
Chitral

ORDER:-

I Mr. Muhammad Yousaf Khan Conservator of Forests Malakand West Forest Circle Timergara in the capacity of appellate authority hereby rejected the appeal of the appellant and agree with the DFO Chitral office order No.162 dated 14/06/2019. And non-suitability are sufficient grounds for his discharge/ removal from service.

Sd/-
(MUHAMMAD YOUSAF KHAN)
CONSERVATOR OF FORESTS
MALAKAND FOREST CIRCLE WEST
TIMERGARA

No 1450-SR/E dated the 01/11/2019.

Copy to:-

1. The Chief Conservator of Forests, Malakand Forest Region (Region-III) Saidu Sharif Swat for favour of information please.
2. The Divisional Forest Officer Chitral for information and necessary action.
3. The Official concerned.

M. Yousaf Khan
CONSERVATOR OF FORESTS
MALAKAND FOREST CIRCLE WEST
TIMERGARA

[Handwritten signature]
OFFICER OF THE DFO CHITRAL
Diary No. 676
Dated 12/11/19
Ph.No. 0943-413301

Attested.

[Handwritten signature]
Divisional Forest Officer
Chitral Forest Division
Chitral

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Annexure-III

11

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 243 /ST Dated: 01/02 /2021

The Divisional Forest Officer,
Government of Khyber Pakhtunkhwa,
Chitral.

Subject: - **JUDGMENT IN APPEAL NO. 1512/2019, MR. SOHAIL AYUB.**

I am directed to forward herewith a certified copy of Judgement dated 22.01.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

L.C. put up on relevant file for m/a.

M. A. Raees
As discussed on 16/2/21, MR

CERTIFIED COPY
908
16/2/2021

Attested

Divisional Forest Officer
Chitral Forest Division
Chitral

ATTACHED

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Amended Service Appeal No. 1512/2019

Date of Institution ... 11.11.2019

Date of Decision ... 22.01.2021

Sohail Ayub S/o Nazir Ayub R/o Darosh District Chitral.

(Appellant)

VERSUS

Chief Conservator forest, Central Southern, Region-I, Peshawar and four others.

(Respondents)

Present:

MR. MUHAMMAD SHOAIB KHAN,
Advocate

--- For Appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. MIAN MUHAMMAD
MR. HAMID FAROOQ DURRANI,

--- MEMBER (Executive)
--- CHAIRMAN

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- Original office order dated 14.06.2019 passed by Respondent No. 4 and appellate order dated 1.11.2019 of Respondent No.3 have been challenged and assailed under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, where-under the appellant has been terminated/removed from service.

Brief facts of the case leading to institution of the instant service appeal, are that the appellant recruited in the respondent-department as Junior Clerk (BPS-11) on 18.03.2019, was proceeded against for mis-conduct, inefficiency and harassment of a lady colleague (Mrs. Shakira Bibi, FFE). The Appellant was awarded major

ATTESTED

Divisional Forest Officer
Chitral Forest Division
Chitral

Attested

Divisional Forest Officer
Chitral Forest Division
Chitral

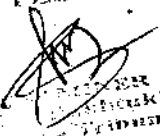
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penalty of "termination/removal from service" on 14.06.2019 by respondent No. against which he preferred departmental appeal on 24.06.2019. The appellate authority i.e Respondent No.3 did not consider his plea and while agreeing with the penalty awarded by the Competent Authority, upheld the same vide office order dated 01.11.2019, hence, the instant service appeal before the Services Tribunal instituted on 11.11.2019.

03. Learned counsel for the appellant argued that the charge of absence for one date (05.04.2019) does not become a serious irregularity or mis-conduct on part of the appellant and the punishment awarded is not commensurate to the charge. He further contended that the committee constituted for investigation of charge against the appellant for alleged harassment of a lady colleague was not properly constituted as per requirement of Section-3 of the Protection Against Harassment Of Women At The Work Place Act, 2010 because it did not include a female member. Moreover, the complainant was not made available during personal hearing for cross examination by the appellant and as such the ends of justice have not been met.

04. Learned Assistant Advocate General on the contrary, negated and contradicted the arguments of learned counsel for the appellant and vehemently addressed his arguments that the appellant was in the first three months of probation period and who remained absent from duty on various dates i.e 05.04.2019, 25.04.2019 and 10.05.2019. His conduct as official proved to have been recalcitrant as he had been time and again advised both verbally and in black and white to mend his way and improve his conduct as an official. Moreover, a complaint of lady colleague Mrs. Shakira Bibi, FFE dated 23.04.2019 was received alleging him to have harassed her by sending her indecent and uncivilized messages. In terms of

ATTESTED


K. S. Srinivasan
Secretary
Services Tribunal

10

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Respondent No. 1
The Appellate
with the

Section-3 of the Protection Against Harassment Of Women At The Work Place Act, 2010, the charge was investigated by a committee constituted on 30.04.2019 under SDFO. The committee submitted its report on 21.05.2019 and found the appellant guilty for harassment of women at work placed under the said Act. The learned Additional Advocate General, however, did not negate the fact that the inquiry committee on harassment was not properly constituted under Section-3 of the Protection Against Harassment Of Women At The Work Place Act, 2010.

05. After having heard the arguments of learned counsel for the parties and perusal of record it is observed that the appellant being a civil-servant under term No.1 of his appointment order dated 18.03.2019, was required to have been proceeded against for mis-conduct and inefficiency under the provisions of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011. The appellant was subjected to the inquiry proceedings on two scores simultaneously i.e misconduct and inefficiency as well as charge to have harassed a lady colleague. However, no charge sheet/ statement of allegations or show cause notice culminating in award of penalty, could be issued to the appellant as a civil servant. Similarly, on account of allegation of harassment of a lady colleague, the enquiry committee for the purpose was not properly constituted as is required under Section-3 (2) of the Act *ibid* which stipulates that:-

"The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them"

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Attested

Divisional Forest Officer
Chief Forest Division
Chitral

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06. As a sequel to the above it is crystal clear that the appellant was required to have been proceeded against on two scores i.e disciplinary proceedings of misconduct and inefficiency under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 as well as the charge of harassment of lady colleague under the ibid Act. Needless to say that due course of law did not take place and chance of fair trial including cross examination was not provided to the appellant. Above all the enquiry committee for investigation of harassment was not properly constituted as per dictates of law, hence, its proceedings and recommendations have no legal sanctity and validity. The appeal is therefore, allowed and the impugned orders dated 14.06.2019 and 01.11.2109 are set aside. The respondents shall, however, be at liberty to constitute enquiry committee strictly in terms and spirit of Section-3(2) of the Protection Against Harassment Of Women At The Work Place Act, 2010 in order to probe the allegations(s) against the appellant. Parties shall, however, bear their respective costs. File be consigned to the record room.

ANNOUNCED

22.01.2021


(MIAN MUHAMMAD)
MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN


Divisional Forest Officer
Chitral Forest Division
Chitral

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Annexure W-31 (81)

OFFICE ORDER NO. 444/53 IG, DATED CHITRAL THE 03/08/2021, ISSUED BY MR. FARHAD ALI, DIVISIONAL FOREST OFFICER CHITRAL FOREST DIVISION, CHITRAL

In pursuance of the decision dated 22/01/2021 in Appeal No. 1512/2019 Title "Mr. Sohail Ayub (Appellant) Versus Chief Conservator of Forests, Central Southern Forest Region-I Peshawar and four others (Respondents)" of Honorable Court of Service Tribunal Khyber Pakhtunkhwa Peshawar, an Inquiry Committee under Section 3(2) of "The Protection against Harassment of Women at the Workplace Act 2010" is hereby constituted comprising of the following officers is hereby constituted to probe into the allegation preferred by Mrs. Shakira Bibi Female Forest Extensionist:

- 1. Mr. Imad-Ud-Din,
Divisional Forest Officer,
Upper Dir Forest Division, at Dodba Upper Dir. Chairman
- 2. Mr. Ihsan-Ud-Din SDFO,
Drosh North Forest Sub Division, Drosh. Member
- 3. Miss Salima Afzal,
CDO, Community Development, Extension, GAD,
Amanabad Peshawar. Member

(Farhad Ali)
Divisional Forest Officer,
Chitral Forest Division,
Chitral

No. 444.53 IG, Dated Chitral the 03/8/2021.

Copy forwarded to the:


- 1. Chief Conservator of Forests, Central Southern Forest Region-I, Peshawar.
- 2. Chief Conservator of Forests, Malakand Forest Region-III, Saidu Sharif Swat.
- 3. Conservator of Forests, Malakand Forest Circle West at Timergara, Lower Dir.
- 4. Mr. Imad-ud-Din, Divisional Forest Officer, Upper Dir Forest Division, at Dodba Upper Dir.
- 5. Mr. Ihsan-ud-Din, SDFO Drosh North Forest Sub Division, Drosh.
- 6. Miss Salima Afzal CDO, CD, E, GAD Directorate Amanabad, Peshawar.
- For favour of information, please.
- 7. Mr. Sohail Ayub Junior Clerk, Divisional Forest Office Chitral for information.
- 8. Mrs. Shakira Bibi FFE, Chitral Forest Division for information.
- 9. Head Clerk/Accountant, Chitral Forest Division for information.
- 10. Office order/ Inquiry files for record.

Attested
Divisional Forest Officer,
Chitral Forest Division,
Chitral

Divisional Forest Officer,
Chitral Forest Division,
Chitral

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Annexure-V

<p>OFFICE OF THE DIVISIONAL FOREST OFFICER MALAKAND FOREST DIVISION AT BATKHELA.</p>		<p>Phone# 0932-410066 Email:dfomkd7@gmail.com Dispatch No: 1185 /Acctt, Dated 20/10/2022</p>
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To

The Divisional Forest Officer,
Chitral Forest Division
Chitral.

Subject:

DENOVO INQUIRY AGAISNT MR. SOHAIL AYUB JUNIOR CLERK DFO
OFFICE CHITRAL UNDER "THE PROTECTION AGAISNT HARRASMENT
OF WOMEN AT WORKPLACE ACT, 2010"

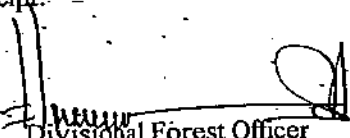
Memo:

Reference your office letter No. 1446/G, dated 28/9/2022.

The subject inquiry proceeding has been finalized by the committee constituted for the purpose. Enquiry report from page 01 to 14 and original file from page 01 to 171 are enclosed herewith for favour of information and further necessary action please.

Please acknowledge the receipt.

Encl: As Above.


Divisional Forest Officer
Malakand Forest Division,
At Batkhela.

NO:

/Acctt:

Copy forwarded to the :-

1. The Conservator of Malakand East Forest Circle Saidu Sharif Swat.
2. The Conservator of Forests West Forest Circle Timergara.

For favour of information please.

Divisional Forest Officer
Malakand Forest Division,
At Batkhela.

*Put up show cause
to Mr Sohail Ayub
as per enquiry
report
24/10/22*

*Received
copy enquiry reports
22/10/22*

Attested

Divisional Forest Officer
Chitral Forest Division
Chitral

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(1)

ENQUIRY UNDER THE PROTECTION AGAINST HARASSMENT OF WOMEN MRS SHAKIRA BIBI F.F.E. OF CHITRAL FOREST DIVISION AGAINST SOHAIL AYUB JUNIOR CLERK OF CHITRAL FOREST DIVISION UNDER THE PROTECTION AGAINST HARRASEMENT OF WOMEN AT WORK PLACE ACT 2010; NOMINATION OF COMMITTEE THEREOF.

Read with:

1. DFO Chitral office order No.08 dated 3.8.2021
2. Enquiry committee Chairman letter No.1327/G, dated 27.9.2021
3. Enquiry committee chairman letter No.1/camp dated 13.12.2021
4. DFO Chitral office order No.39 dated 21.10.2021rt1
- ✓5. Director CD&GAD Directorate letter No.588-89/F-2/10/E dated 10/12/2021
6. DFO Chitral letter No.5250/G, dated 12/4/2022
- ✓7. DEO Female Lower Chitral office letter No.10375/E.6/Enquiry/FB(F) dated 19/4/2022.
- ✓8. Enquiry committee chairman letter No.2173/Acctt: dated 11/5/2022
- ✓9. Reply to the charge sheet dated 28.4.2022 by Sohail Ayub Junior Clerk
- ✓10. DFO Chitral office order No. 109 dated 11/5/2022
11. Enquiry committee chairman No. 2331/Acctt: dated 23/5/2022
- ✓12. DFO Chitral letter No. 1446/G, dated 28/9/2022
- ✓13. Enquiry Committee chairman letter No. 901-903/Acctt: dated 5/10/2022.
- ✓14. Enquiry committee chairman letter No.977-79/Acctt: dated 10/10/2022.

Back Ground:

In the light of the decision of the KPK service tribunal, Peshawar dated 22/01/2021 DFO Chitral served the charge sheet to Mr. Sohail Ayub, entrusted the inquiry to DFO upper Dir vide his office letter No.5297-303/G dated 08/03/2021, in response to the charge sheet the accused official in his reply dated 13/03/2021 objected over the constitution of the committee and was of the opinion that the said committee is not constituted under section 3(2) of the **Protection against harassment of women at the work place act,2010**". The DFO Chitral vide his office order No.08. Dated 03/08/2021 constituted the committee to probe into the allegation preferred by Mrs. Shakira Bibi female forest Extensionist under the ibid Act.

The accused official vide his reply dated 28/04/2022 once again objected over the constitution of the committee and was of the opinion that the said committee is not constituted under section 3(2) of the ibid Act.

In light of the above Mrs. Shakira Bibi FFE and Sohail Ayub Junior Clerk regarding harassment in working place under "**Protection against harassment of women at the work place act,2010**" were directed to appear before the enquiry committee constituted for the purpose on 26/5/2022 in office of Chairman of the Enquiry Committee (DFO Malakand) for personal hearing.

Proceedings:

On 26/5/2022, Shakira Bibi FFE and Sohail Ayub Junior Clerk of Chitral Forest Division appeared before the Enquiry Committee in the office of Chairman of the Enquiry Committee (DFO Malakand) for a fair trial including cross examination both were heard as well recorded their written statement as per (Annexure-I, II).

Attested

Divisional Forest Officer
Chitral Forest Division
Chitral

Discussion:

The accused official (Sohail Ayub J/Clerk) admitted that he has texted a mobile message to Shakira Bibi FFE considering her as a motherly figure and a senior official in the office. And, I have by no means any intention to hurt the feelings of the complainant and also apologized in front of the committee and assured to be very careful in future; whereas, on the other hand Shakira Bibi FFE responded, he had tried to harass her by extended messages and verbal threats for not responding in positive way which made her uncomfortable working with him in the same environment that is evident from her statement.

In addition to her written statement, she recorded to pardon the accused but, wanted that accused may be posted outside from Chitral forest division for the betterment of his professional, mental and behavioral growth.

Conclusion:

In light of the discussion and statements recorded as Annexure I & II, it is concluded that the undesired instance actually occurred and the charges are hence proved.

Recommendations.

The Enquiry Committee recommends the following penalties in accordance with Harassment Act, 2010: -

- i. Stoppage of two annual increments with cumulative effect for two consecutive years.
- ii. The official may be posted outside Chitral Forest Division to any other station.

[Signature]
Ms. Shakila Anjum
SDEO(F) (Member)

[Signature]
Mr. Ihsan Ud Din
SDFO (Member)

[Signature]
Muhammad Faraz
Assistant (Member)

[Signature]
(Ihsan Ud Din)
Divisional Forest Officer
(Chairman)

[Signature]
Divisional Forest Officer
Chitral Forest Division
Chitral

(17)

Annexure-VI

OFFICE ORDER NO. 79 DATED CHITRAL THE 26 /01/2023, ISSUED BY
MR. ASIF ALI SHAH, DIVISIONAL FOREST OFFICER, CHITRAL FOREST DIVISION, CHITRAL

WHEREAS, in pursuance of the decision dated 22/01/2021 of Honorable Court of Service Tribunal Khyber Pakhtunkhwa Peshawar in Appeal No.1512/2019, DFO Chitral served the Charge Sheet/ Memo of Allegations dated 08/03/2021 to the accused official Mr. Sohail Ayub Junior Clerk (BPS-11) of Chitral Forest Division and the inquiry entrusted to DFO Upper Dir Forest Division. In response to the charge sheet, the accused official in his reply dated 13/3/2021 objected over the constitution of the committee and was of the opinion that the said committee is not constituted under the rules. So that the Inquiry Committee under Section-3(2) of "The Protection against Harassment of Women at the Workplace Act 2010" was constituted vide office order No.08, 03/8/2021 under the chairmanship of Mr. Imad-ud-Din, the then DFO Upper Dir (Now DFO Malakand Forest Division) to probe into the allegation preferred by Mrs. Shakira Bibi Female Forest Extensionist.

AND WHEREAS, the Enquiry Committee headed by DFO Malakand Forest Division at Batkhela as Chairman of the Inquiry Committee, after having examined the charges, evidence on record, reply to the charge sheet as well as personal hearings on 26/5/2022 of both the officials (Mrs. Shakira Bibi FFE as complainant and Sohail Ayub Junior Clerk accused) submitted inquiry findings vide his office letter No.1125/Acctt, dated 20/10/2022 with the following recommendations:-

- i. Stoppage of two annual increments with cumulative effect for two consecutive years.
- ii. The official may be posted outside Chitral Forest Division to any other station.

AND WHEREAS, I, Mr. Asif Ali Shah Divisional Forest Officer, Chitral Forest Division in the capacity of competent authority issued Show Cause Notice to the accused official vide No.3071-75/G, dated 13/12/2022.

AND WHEREAS, on receipt of reply to Show Cause Notice dated 29/12/2022 from the accused letter No.3822-23/G, dated 23/1/2023 issued to the accused official for personal hearing on 25/1/2023.

AND WHEREAS, the accused official heard in person on 25/1/2023.

NOW, THEREFORE, the undersigned as competent authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused official, hearing him in person and exercising the power under Rule-14(5)(ii) read with Rule 4(1)(a) (ii) of the ibid rules as well as in accordance to Rule-5 under "The Protection against Harassment of Women at the Workplace Act, 2010" to impose the following minor penalty:-

~~"Stoppage of two annual increments with cumulative effect for two consecutive years due on 01/12/2023 and 01/12/2024"~~

sd/ (Asif Ali Shah)
Divisional Forest Officer,
Chitral Forest Division,
Chitral.

No. 3914-19 /G, Dated Chitral the 26/01 /2023.

Copy forwarded to the:-

1. Chief Conservator of Forests, Central Southern Forest Region-I (HAD), Peshawar.
2. Chief Conservator of Forests, Malakand Forest Region-III Saidu Sharif Swat.
3. Conservator of Forests, Malakand Forest Circle West at Timergara Lower Dir for favour of information to consider of penalty recommended at Sl. No. II above by the Enquiry Committee.
4. Divisional Forest Officer, Malakand Forest Division at Batkhela with ref. to his letter cited above.
For favour of information, please.
5. Head Clerk/ Accountant Divisional Office Chitral for information & necessary action.
6. Mr. Sohail Ayub Junior Clerk, Chitral Forest Division for information.
7. Office order/ Inquiry/ Personal Files for record.

Divisional Forest Officer
Chitral Forest Division
Chitral

Divisional Forest Officer,
Chitral Forest Division,
Chitral

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Annexure-VII

~~12~~

The DFO Forest Officer
Chitral.

Subject: Arrival Report

Dear Sir,

It is stated that with due respect that since the appeal of the appellant has duly been allowed by worthy Service Tribunal vide order and judicial dated 22/01/2021 passed in appeal # 1512/2019, Restorer (Order Attached) hence in compliance to set order the appellant graciously be allowed to join the service accordingly.

I shall be grateful for the act of kindness.

Dated 21/02/2021

Respectability Yours

[Signature]

Sohail Ayub s/o Namayus
Quar Clerk, Forest
Department Chitral.

Attested.

Divisional Forest Officer
Chitral Forest Division
Chitral

(18)

Annexure VIII

To,

The Divisional Forest Officer
Chitral Forest Division
Chitral

FCO
Put up with Court
Order of Service Book
8/12/22

Sir,

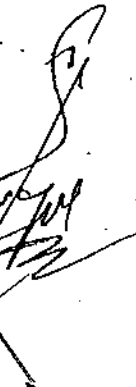
With most respect I beg to say that I have been working as a junior clerk with the Forest department since march 2019, due to worst period of my life during my duty I was terminated from the service, and rejoined the duty after the decision was set aside by the Service Tribunal.

Respected Sir, now I am performing my duty honestly and its been two and half years regularly with the department.

It is requested to allow my orials/outstanding dues for the duration I was out of station, please.

I will be very thankful to you for this act of kindness

Thanks.

Attested


For checked by
Sohail Agha Forest
Department Chitral

Date: 08/12/22

Divisional Forest Officer
Chitral Forest Division
Chitral

OFFICE OF THE
DIVISIONAL FOREST OFFICER
CHITRAL FOREST DIVISION
CHITRAL



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Annexure-IX
PEAR CHEW BRIDGE DAMIN

Phone No. (0943) 413381
Fax No. (0943) 413389
Email: dfochitral2017@gmail.com

No. 2720 IG, Dated Chitral, 19/12/2023.

To,

The Conservator of Forests,
Malakand Forest Circle West,
At Timergara Lower Dir.

Subject: -

APPLICATION OF MR. SOHAIL AYUB JUNIOR CLERK FOR PAYMENT OF HIS ARREAR SALARIES

Memo:

Reference his application dated 08/12/2023 (Annexure-I).

Brief about the subject matter is furnished below for information and necessary action:-

1. Mr. Sohail Ayub was appointed as Junior Clerk (BPS-11) vide this office order No.100, dated 18.03.2019 (Annexure-II).
2. As result of enquiry proceeding, major penalty was awarded as "Termination/ Removal from Service" vide this office order No.162, dated 14.06.2019 (Annexure-III).
3. Aggrieved with the decision of DFO Chitral, he preferred appeal before the Conservator of Forests, Malakand Forest Circle West, which was rejected by the Conservator of Forests vide his office order No.13, dated 01.11.2019 (Annexure-IV).
4. Mr. Sohail Ayub, lodged an appeal before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar. The Service Tribunal decided the case on 22.01.2021 (Annexure-V) by allowing the appeal and set aside the orders of DFO Chitral dated 14.06.2019 and Conservator of Forests dated 01.11.2019.
5. In pursuance of the aforesaid decision, he joined duty with effect from 1st February, 2021 and has now requested for his outstanding salaries with effect from 15.06.2019 to 31.01.2021 (i.e. 1 year, 7 months and 16 days).

In the Tribunal decision it has not been mentioned that the period from 15.06.2019 to 31.01.2021, during which the official did not perform duties, will be treated as leave without pay or otherwise.

In view of foregoing, it is therefore requested to approach concerned office, whether the period during which the official remained terminated, may be consider as leave without pay or otherwise?

Encl: as above

Divisional Forest Officer,
Chitral Forest Division,
Chitral

Attested No. 2721 IG,

Copy forwarded to Mr. Sohail Ayub Junior Clerk for information with reference to his application dated 08/12/2023.

Divisional Forest Officer,
Chitral Forest Division,
Chitral

Divisional Forest Officer,
Chitral Forest Division,
Chitral

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Annexure-X



OFFICE OF THE CONSERVATOR OF FORESTS
MALAKAND WEST FOREST CIRCLE TIMERGARA



BALAMBAT COLONY LOWER DIR

Ph: 0945-9250120 Fax: 0945-9250118

No. 3120 /B&A, Dated Timergara the 25/01/2024

To,

The Divisional Forest Officer,
Chitral Forest Division,
At Chitral.

Subject: APPLICATION OF MR.SOHAIL AYUB JUNIOR CLERK FOR PAYMENT OF HIS ARREAR SALARIES.

Memo: Reference your letter No.2720/G dated 19/12/2023.

From perusal of your letter under reference it has been ascertained that the referred official has neither performed duty nor the honorable service tribunal decided the intervening period. Therefore you are directed to treat the period as leave without pay.

CONSERVATOR OF FORESTS
MALAKAND WEST FOREST CIRCLE
TIMERGARA

[Handwritten signature]

*BSF
Refer to
letter
8/1/24*

R/S, Ref. is attached on per stop 9,

*BSF
Endorse to the
Concerned official
Under Proper Receipt*

203
10/01/2024


[Handwritten signature]
8/01/2024

Attested

DIVISIONAL FOREST OFFICER
Chitral Forest Division
Chitral

(21)

Annexure - XI

OFFICE ORDER NO. 7/ DATED 19/01/2024		ABDUL MAJEED DIVISIONAL FOREST OFFICER CHITRAL
Email: dfochitral2017@gmail.com		Phone #.(0943) 413381, Fax #.(0943) 413389

In pursuance of the direction of the Conservator of Forests, Malakand Forest Circle West vide No.3120/B&A, dated 05.01.2024, asked vide this office letter No.2720/G, dated 19.12.2023; the intervening period with effect from 15.06.2019 to 31.01.2021 (i.e. 01 year, 07 months & 16 days) during which Mr. Sohail Ayub, Junior Clerk, did not perform official duties is hereby treated as leave without pay.

Sd/-
(Abdul Majeed)
Divisional Forest Officer,
Chitral Forest Division,
Chitral

No. 32454B IG, Dated Chitral the 19/01/2024.

Copy forwarded to the:

1. Conservator of Forests, Malakand Forest Circle West at Timergara, Lower Dir for favour of information with reference to his office letter cited above, please.
2. ✓Assistant/ Accountant Divisional Forest Office Chitral for information & necessary action.
3. Mr. Sohail Ayub Junior Clerk Divisional Forest Office Chitral for information with reference to his application dated 08.12.2023
4. Office orders file for record.

*Reading TIC
Sohail Ayub*

[Handwritten signature]
21/01/23

Divisional Forest Officer,
Chitral Forest Division,
Chitral

Attested
Divisional Forest Officer
Chitral Forest Division
Chitral

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Manzoor Ahmad Malik

Mr. Justice Syed Mansoor Ali Shah

C.P. Nos.517-L, 1019-L, 1062-L & 1232-L of 2016 and 1929-L/2017*(Against the judgment(s)/order(s) of Punjab Service Tribunal, Lahore dated 21.12.2015 passed in Appeal No.494/2015, and 09.02.2016 passed in Appeal No.3223/2015, and 01.03.2016 passed in Appeal No.1025/2015)*

Muhammad Sharif (in CP 517-L/2016)

Chief Traffic Officer, Lahore & 2 others (in CP 1019-L/2016)

Inspector General of Police Punjab, etc. (in CP 1062-L/2016)

Capital City Police Officer, Lahore, etc. (in CP 1232-L/2016)

Secretary, Government of the Punjab, Health Department, Lahore

(In CP 1929-L/2017)

.....Petitioner(s)**Versus**

Inspector General of Police, Punjab, Lahore, etc. (in CP 517-L/16)

Roqyya Khushnood (in CP 1019-L/2016)

Muhammad Sharif (in CP 1062-L/2016)

Riasat Ali (in CP 1232-L/2016)

Dr. Muzaffar Nasrullah Chattha (in CP 1929-L/2017)

.....Respondent(s)For the petitioner(s):
(in CP 517-L/2016)Mr. Khan Muhammad Vehniwal,
ASC.(in CP 1019-L, 1062-L, 1232-L
of 2016 & CP 1929-L/2017)Rana Shamshad Khan, Addl. A.G.
Ch. Zafar Hussain Ahmad, Addl. A.G.
a/w Shaukat Ali, DSP.
Munir Hussain, DSP.
Mr. Naeem Cheema, Law Officer.
Mr. Imran Ashraf, S.P.
Muhammad Ijaz Khan, Lit. Officer.
Muhammad Anwar Yasir, Lit. Officer.For the respondent(s):
(in CP 1929-L/2017)

Mr. Mahmood Ahmad Qazi, ASC.

Research Assistance:

Mr. Hasan Riaz, Research Officer-
Civil Judge, SCRC, Islamabad.

Date of hearing:

11.02.2021

JUDGMENT**Syed Mansoor Ali Shah, J.-** We consider in these petitions

has been set-aside or on his being restored to his post after the penalty imposed on him has been set-aside. We also consider the treatment of the period spent by a civil servant away from duty (due to dismissal from service or absence from duty, etc.) and the purpose and meaning of the terms *leave without pay* or *leave of the kind due* granted to a civil servant.

Brief facts of the petitions

2. In **CP 517-L of 2016**, the petitioner, Muhammad Sharif, Sub Inspector in Punjab Police, was compulsorily retired from service by the departmental authority. He preferred a departmental appeal and on expiry of the period stipulated for its decision, moved an appeal before the Punjab Service Tribunal ("Tribunal"). The Tribunal reinstated him in service though the period since the onset of compulsory retirement till reinstatement in service was directed to be treated as leave without pay. He now prays that this intervening period be treated with pay. The department has also called in question the order of reinstatement of Muhammad Sharif in **CP 1062-L of 2016**.

3. In **CP 1019-L of 2016**, the respondent, Roqyya Khushnood, Lady Traffic Warden, was dismissed from service by the Chief Traffic Officer, Lahore. The appellate authority taking a lenient view reinstated her in service but the period spent away from duty was treated as leave without pay. The Tribunal accepted her appeal and the period during which she remained out of service was adjudged to be considered as leave of the kind due. The department now prays that the Tribunal's interference with the departmental proceedings be overturned.

4. In **CP 1232-L of 2016**, the respondent, Riasat Ali, Constable, was dismissed from service by the departmental authority. The appellate authority taking a lenient view reinstated him in service. Nevertheless, minor penalty of censure was imposed and the period between dismissal and reinstatement was directed to be treated as leave without pay. The Tribunal accepted the civil servant's appeal and held that the period during which he

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penalty of censure was, however, maintained. The department now prays that the order of the Tribunal be reversed.

5. In **CP 1929-L of 2017**, the respondent, Dr. Muzaffar Nasrullah Chattha, Consultant Orthopedic Surgeon, was awarded major penalty of forfeiture of two years of service for absence which was reduced to forfeiture of one year in departmental appeal. The period of absence was to be treated as extraordinary leave without pay. The Tribunal accepted his appeal and decided that the period of absence be treated as earned leave.

6. The petitioners have sought leave of this Court under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") to appeal against the decisions of the Tribunal.

Back Benefits

7. At the very outset, it is important to underline that the term *back benefits* has not been mentioned in the service laws of Punjab or Pakistan, however, the term has a wide usage in the sub-continental jurisprudence, including ours, for a longtime. According to Black's Law Dictionary¹, *Back Pay* is the salary that an employee should have received but did not because of an employer's unlawful action. *Back Pay Award*² is a judicial decision that an employee or ex-employee is entitled to an accrued but uncollected salary or benefits. The purpose of a back pay award is to make the employee whole i.e., restore the economic status quo that would have obtained but for the wrongdoing on the part of the employer.³ Back pay is a compensation for the tangible economic loss resulting from an unlawful employment practice.⁴ Back pay largely translates into back benefits under our jurisprudence. "Back benefits" are, therefore, retroactive payments.⁵ Even though the term back benefits is wider than back pay as it includes other

¹ 10th Edition, Thomson Reuters, 2014, 166.

² *ibid.*

³ *Aguinaga v United Food & Commercial Workers Int'l Union* 993 F.2d 1463, 1473.

⁴ *Robinson v Lorillard Corp.* 444 F.2d 791, 804.

⁵ *Smith v West* 1999 U.S. App. Vet. Claims LEXIS 475, 6.

benefits but for the purposes of this case we restrict the meaning of back benefits to arrears of pay or back pay.⁶

8. Reinstatement in service means to place again in a former state or position⁷ from which the person had been removed.⁸ Reinstatement is effected from the date of dismissal with back pay from that date.⁹ A reinstated employee is to be treated as if he had not been dismissed and is therefore entitled to recover any benefits (such as arrears of pay) that he has lost during his period of unemployment. However, pay in lieu of notice, ex gratia payments by the employer, or supplementary benefits, and other sums he has received because of his dismissal or any subsequent unemployment will be taken into account.¹⁰

9. An employee, i.e. civil servant in this case, whose wrongful dismissal or removal has been set-aside goes back to his service as if he were never dismissed or removed from service. The restitution of employee, in this context, means that there has been no discontinuance in his service and for all purposes he had never left his post. He is therefore entitled to arrears of pay for the period he was kept out of service for no fault of his own. No different is the position where an employee has been served with a penalty like reduction in rank or withholding of increment(s) or forfeiture of service, etc. and the penalty has been set-aside. The employee stands restored to his post with all his perks and benefits intact and will be entitled to arrears of pay as would have accrued to him had the penalty not been imposed on him. This general principle of restitution fully meets the constitutional requirements of fair trial and due process (Article 4 & 10A¹¹) besides the right to life (Article 9¹²) which includes the right to livelihood ensuring all lawful economic benefits that come with the post. Reinstating an employee but not allowing him to enjoy the same terms and conditions of service as his colleagues is also discriminatory

⁶ Back benefits may include other than the pecuniary benefits, like the right to seniority or the right to promotion, etc.

⁷ *Black's Law Dictionary* (10th Edition, Thomson Reuters, 2014) 1477.

⁸ *Black's Law Dictionary*, (6th Edition, St. Paul, MINN., West Publishing Co., 1990) 1287.

⁹ *Aiyar's Judicial Dictionary* (10th Edition, 1988) 871.

¹⁰ *Oxford Dictionary of Law* (Fifth Edition, Reissued with new covers, 2003) 419-420.

¹¹ Of the Constitution of the Islamic Republic of Pakistan, 1973.

¹² *ibid.*

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(Article 25¹³). All this snowballs into offending the right to dignity (Article 14¹⁴) of an employee for being treated as a lesser employee in spite of being reinstated or restored into service.

10. The “concept of reinstatement into service with original seniority and back benefits” is based on the established principle of jurisprudence that “if an illegal action/wrong is struck down by the Court, as a consequence, it is also to be ensured that no undue harm is caused to any individual due to such illegality/wrong or as a result of delay in the redress of his grievance.”¹⁵ If by virtue of a declaration given by the Court a civil servant is to be treated as being still in service, he should also be given the consequential relief of the back benefits (including salary) for the period he was kept out of service as if he were actually performing duties.¹⁶ A civil servant once exonerated from the charges would stand restored in service as if he were never out of it and would be entitled to back benefits.¹⁷ A five Member Bench of this Court in *Inspector-General of Police, Punjab v. Tariq Mahmood*¹⁸ authoritatively reiterated:

“[T]he grant of back benefits to an employee who was reinstated by a Court/Tribunal or the department is a rule and denial of such benefit is an exception on the proof of that such a person had remained gainfully employed during such period.”

11. It follows that where the order of dismissal, removal or reduction in rank is set aside unconditionally, back benefits are to be paid necessarily.¹⁹ The grant of back benefits to an employee who has been illegally kept away from his employment is a rule and denial of service benefits to such reinstated employee is an exception.²⁰ When a civil servant is reinstated in service and his dismissal from service is held to be illegal and for no fault of his,

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *Federation of Pakistan v Sindh High Court Bar Association* PLD 2012 SC 1067.

¹⁶ *Pakistan v Mrs. A. V. Issacs* PLD 1970 SC 415; *Muhammad Bashir v Government of the Punjab* 1994 SCMR 1801; *Inspector-General of Police, Punjab v Tariq Mahmood* 2015 SCMR 77, 2015 PLC (CS) 366.

¹⁷ *Chairman State Life v Siddiq Akbar* 2013 SCMR 752; *Umer Said v District Education Officer (Female)* 2007 SCMR 296.

¹⁸ 2015 SCMR 77, 2015 PLC (CS) 366.

¹⁹ *Qadeer Ahmad v Punjab Labour Appellate Tribunal* PLD 1990 SC 787.

²⁰ *General Manager v Mehmood Ahmed Butt* 2002 SCMR 1064; *Muhammad Hussain v E.D.O. (Education)* 2007 SCMR 855; *Umer Said v District Education Officer (Female)* 2007 SCMR 296; *Inspector General of Police, Punjab v Tariq Mahmood* 2015 SCMR 77, 2015 PLC (C.S.) 366; *Sohail Ahmed Usmani v DG CAA* 2014 SCMR 1843; *Chairman State Life v Siddiq Akbar* 2013 SCMR 752.

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then his reinstatement in service would mean that he has always been in service and as a consequence be paid salary from the day he was illegally removed or dismissed from service. One of the exceptions of not granting full back benefits is that if the reinstated employee had accepted another employment or engaged in any profitable business during the intervening period; in such a case, the said amount would be set off against the salary.²¹ This is now available as an instruction under Sl. No. 155, Vol-II, Esta Code, 2007 edition.

12. This principle of restitution and payment of back benefits also finds its presence under the second proviso to section 16 of the Punjab Civil Servants Act, 1974 ("Act") which deals with back benefits in the shape of arrears of pay in the event that the order of dismissal or removal or reduction in rank is set-aside in the following manner:-

Provided further that where a civil servant has been dismissed or removed from service or reduced in rank, he shall, in the event of the order of dismissal, removal from service or reduction in rank being set aside, be entitled to such *arrears of pay* as the authority²² setting aside the order may determine.

13. In the past, the concept of arrears of pay was dealt with by Fundamental Rule 54 ("FR") and Civil Service Rule (Punjab) 7.3 ("CSR") issued by the Federal Government and the Punjab Government, respectively. The said Rules provide as follows;

F.R. 54.—Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:—

- (a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal; or
- (b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

²¹ *Pakistan v Mrs. A.V. Issacs* PLD 1970 SC 415; *Muhammad Bashir v Government of the Punjab* 1994 SCMR 1801; *Inspector General of Police, Punjab v Tariq Mahmood* 2015 SCMR 77, 2015 PLC (C.S.) 366.

²² Authority includes a court of law (See *Maqbool Ahmad Qureshi v Government of Pakistan* PLD 2019 SC 37).

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In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so directs.

Explanation:—In this rule, "revising authority" means the "authority" or "authorised Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal.

CSR 7.3. When a Government Servant who was dismissed or removed from service, is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:

- a) If he is honourably acquitted, the full pay to which he would have been entitled if he had not be dismissed or removed and by an order to be separately recorded any allowances of which he was in receipt prior to his dismissal or removal; or
- b) If otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribed"

In a case falling under clause (a) the period of absence from duty will be treated as a period spent on duty. In a case falling under clause (b) it will not be treated as period spent on duty unless the revising or appellate authority so directs.

Note 1.--This rule is absolute and unconditional and so the question of lien does not arise in the case of Government Servant who is dismissed from service and reinstated on appeal when the period of unemployment between the date of dismissal and reinstatement is declared by the appellate authority as duty.

Administrative Instruction.--Post vacated by a dismissed Government Servant may be filled substantively subject to the condition that the arrangements thus made will be reverse if the dismissed Government Servant is reinstated on appeal.

Note 2.—The term 'revising authority' as used in this rule includes an authority revising its own orders.

14. FR and CSR predate the Constitution and the Act. After the promulgation of the Constitution in 1973, FR and CSR were given protection under Article 241 of the Constitution, albeit subject to their consistency with the Constitution and till such time that a law was made under Article 240 by the appropriate legislature. Further, section 23(2) of the Act²³ provided that any rules, orders or instructions already in force before the commencement of the Act shall in so far as they were not inconsistent with the provisions of the Act, be deemed to be the

²³ Such laws containing similar saving provisions were also enacted at Federal level and in other Provinces.

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Rules made under the Act. Thus, the position emerging post 1973 is that Fundamental Rules, Civil Service Rules (Punjab) and other orders or instructions in respect of terms and conditions of service shall remain subject to the Act and in case of any inconsistency, the provisions of the Act shall prevail. Therefore, for the purposes of back benefits, we give primacy to the proviso to section 16 of the Act and examine and interpret it keeping the spirit and wisdom of FR 54 and CSR 7.3 in view.

15. Coming back to the second proviso to section 16 of the Act, it is important to structure the discretion to be exercised by the authority or court in granting arrears of pay after the order of dismissal, removal or reduction in rank has been set-aside. This discretion is to be structured keeping in mind the constitutional provisions discussed above, the wisdom handed down by the jurisprudence evolved till date and the administrative and financial oversight envisaged under FR, CSR and the Esta Code. The reinstatement or restoration of an employee to the post may be due to the following different reasons: (a) purely on merits; (b) on technical grounds without touching the actual merits of the case and (c) on the ground of leniency where the actual order is either converted into a lesser penalty or totally set-aside.

16. An employee on reinstatement on merits cannot be deprived of back benefits. Any such deprivation would be against the constitutional rights (discussed above) guaranteed to an employee. Besides, CSR 7.3 (a) also points in this direction. In case of reinstatement or restoration to a post on merits, the employee is entitled to full back benefits and there is no discontinuity of service, thus the question of intervening period does not arise in such a case. The discretion under the second proviso to section 16 of the Act is to be exercised in favour of the employee by granting him all the back benefits.

17. However, the above principle of grant of back benefits is qualified by a situation where the order of reinstatement is conditional; either civil servant's dismissal from service is declared illegal for a defect in disciplinary proceedings or the penalty is modified to be on the lower side with the result that the civil servant is reinstated. In the former situation, the merits of the case

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and the determination of the fault of the employee go untouched, even though he stands reinstated. Here, an inquiry could still be made into the employee's conduct or his conduct may be considered such as to call for a departmental inquiry. The de novo proceedings could be initiated from the stage where the defect had crept in.²⁴ In such a situation, the entitlement with regard to back benefits is put off till the final determination with regard to the civil servant's conduct. If he is found at fault, the competent authority could justifiably deny him part of the back benefits.²⁵ And, in the latter situation, the civil servant is not declared blameless; rather, his penalty is reduced and, therefore, part of back benefits, as necessitated by the implications of reduced penalty, may justifiably be denied to him.

18. We also feel inclined to underscore that a civil servant cannot be burdened with the loss of service benefits without attributing any charge to him. Appellate authorities, without saying a word about the charge, often, as in two of these petitions, reinstate a civil servant taking a lenient view or on compassionate ground or on the ground of proportionality. This view usually becomes the ground to deny back benefits to the reinstated civil servant. It is underlined for the sake of clarity that the matter of 'leniency' or 'compassion' or 'proportionality' does not erode the charge rather it does not consider the award of penalty to be appropriate in the case. It may so happen that the charge stands established yet the authority or the court, applying leniency or compassion or proportionality as standard, feels inclined to extend concession of reinstatement to the civil servant. Notably the civil servant in such a case is not reinstated unconditionally and, therefore, he may be denied a portion of pay - while maintaining a proportion between the gravity of the fault of the civil servant and special/extenuating circumstances of the case - he would otherwise get on reinstatement. It would be in step with the second proviso to section 16 of the Act and would also be consistent with the spirit of FR 54(b) and CSR 7.3(b). If an employee is reinstated in such an eventuality, the authority or the court needs to clearly

²⁴ *Muhammad Arif Khan v Dy. Enc. E-in-C's Branch, GHQ* 1991 SCMR 1904.

²⁵ *Qadeer Ahmad v Punjab Labour Appellate Tribunal* PLD 1990 SC 787.



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state that though the charge ascribed to the employee stood proved, concession is being shown to him to avoid the rigors of major penalty, which would otherwise be unwarranted in view of peculiar circumstances of the case.

Leave without pay or leave of the kind due

19. In case back benefits as of right are not awarded to the civil servant and he is served with any other penalty after reinstatement in service, the intervening period has to be counted for, otherwise the interruption in the service of a civil servant may entail forfeiture of his service²⁶, therefore, the intervening period has to be regularized by treating it as an extra ordinary leave without pay or leave of the kind due or leave without pay, as the case may be. It is pointed out that the regularization of the intervening period is a totally separate matter and has no bearing on the penalty imposed upon the civil servant. The competent authority may condone interruptions in service provided that the gaps are not due to any fault or willful act of the employee.²⁷ The service gaps are usually regularized as extraordinary leave without pay or leave of the kind due. Terming absence period as extraordinary leave without pay is not a punishment, rather, a treatment given to regularize the period spent away from duty.²⁸ Nor could a concession given to a civil servant that his absence from duty be treated as extraordinary leave without pay mean that major penalty imposed in the same order is wiped off.²⁹ Nevertheless the powers given to treat the period of absence as extraordinary leave without pay or leave of the kind due are to be exercised after due application of mind and considering the facts and circumstances of a case.

20. We, therefore, hold that a civil servant on unconditional reinstatement in service is to be given all back benefits and the only exception justifying part withholding of back benefits could be that he accepted gainful employment/engaged in

²⁶ Punjab Civil Services Pension Rules, rule 2.11.

²⁷ *ibid*, rule 2.12.

²⁸ *National Bank of Pakistan v Zahoor Ahmed Mengal* 2021 SCMR 144; *NAB v Muhammad Shafique* 2020 SCMR 425; *Federation of Pakistan v Mamoon Ahmed Malik* 2020 SCMR 1154.

²⁹ *DIG, NH & MP, Karachi v Ghulam Mustafa Mahar* 2019 SCMR 95.

profitable business during the intervening period. In case, the dismissal/removal of a civil servant is declared illegal for a defect in disciplinary proceedings without attending to the merits of the case, the entitlement to back benefits may be put off till the inquiry is conducted in the matter finally determining the fault of the civil servant. In case, where there is some fault of the civil servant, including a situation where concession of reinstatement is extended to the civil servant while applying leniency or compassion or proportionality as standard and where penalty is modified but not wiped off in a way that the civil servant is restored to his position, the back benefits will be paid as determined by the authority/court in the manner discussed above in this judgment. We, however, reiterate that "gainful employment/profitable business" creates an overarching exception that would cover all cases involving the question of back benefits.

21. Turning to the petitions in hand, it is seen that the petitioner in **CP 517-L of 2016**, who was compulsorily retired from service by the departmental authority, was reinstated by the Tribunal observing that no evidence had been produced against him during the departmental proceedings and that the departmental action was devoid of merit and justification. Even so, the Tribunal chose to strip the civil servant of service benefits for the period he was kept at bay by relying on "the dictum set by the Apex Court in PLJ 2011 Tr.C. (Services) 82". It has been noticed by us that the judgment reported as PLJ 2011 Tr.C. (Services) 82 was not rendered by this Court but refers to a decision of the Balochistan Service Tribunal delivered in the case of *Dr. Abdul Naseer v Government of Balochistan* where the civil servant who remained suspended from 31.10.2002 to 14.04.2007 was eventually dismissed. The Balochistan Service Tribunal observed that the civil servant was entitled to benefits for the period of suspension though he was not given benefits for the period he was out of service on the principle of no work, no pay. Strangely, the Balochistan Service Tribunal directed the civil servant "to be reinstated in service with all back benefits from the date of his suspension till date" i.e. the date of decision. The period spent away from duty also fell within that period. In any case, the reliance of the Tribunal on the judgment of the Balochistan Service

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Tribunal in view of law laid down by this Court is misplaced and not sustainable. When the Tribunal did not ascribe any guilt to the petitioner, he should have been reinstated with all back benefits subject to the exception of not having remained gainfully employed during the intervening period. Therefore, **CP 517-L of 2016** is converted into appeal and allowed and the intervening period between compulsory retirement and reinstatement be considered as if the petitioner were on duty. Consequently, **CP 1062-L of 2016**, preferred by the department against the same judgement of the Tribunal, is disposed of accordingly.

22. In **CP 1019-L of 2016**, the respondent was reinstated on compassionate grounds by the appellate departmental authority yet no responsibility was fixed on her and the Tribunal ordered that the period of her absence be treated as leave of the kind due. As the appellate authority accepted her explanation and did not impose any penalty on her, she could not be refused back benefits unless she remained gainfully employed during the period spent away from duty, which is not the case here. Therefore, **CP 1019-L of 2016** is disposed of in the terms that the intervening period between dismissal and reinstatement be considered as if the respondent were on duty.

23. In **CP 1232-L of 2016**, the respondent was reinstated by the appellate departmental authority though minor penalty of censure was awarded to him which was maintained by the Tribunal. The absence which was treated as leave without pay was converted by the Tribunal into leave of the kind due. It is true that the respondent was not exonerated of his guilt. Only the penalty was reduced. The Tribunal while affirming the penalty of censure failed to discuss the question of arrears of pay that would have become due to the respondent under the second proviso to section 16 of the Act. In the peculiar facts and circumstances of this case, we do not find it appropriate to remand the matter to the Tribunal at this late stage and, therefore, considering the nature of the penalty of censure, we dispose of **CP 1232-L of 2016** in the terms that the intervening period between dismissal and reinstatement be considered as if the respondent were on duty.

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24. In **CP 1929-L of 2017**, the respondent was awarded major penalty of forfeiture of two years of service for absence which was reduced to forfeiture of one year in departmental appeal. The period of absence was to be treated as extraordinary leave without pay. The Tribunal accepted his appeal and decided that the period of absence be treated as earned leave. The absence of the respondent refers to the period for which he had sought leave on medical grounds, though his request remained undecided. On the other hand, disciplinary proceedings were initiated against him. The Tribunal accepted the respondent's appeal on merits with the end result that the absence be considered as earned leave. Here again, we find the decision of the Tribunal just and proper in the circumstances of the case and, therefore, the petition is dismissed and leave refused.

Judge

Announced.
Islamabad,
28th April, 2021.

Judge

Judge

Approved for reporting.
Iqbal

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No.321/2024.

Sohail Ayub

Versus

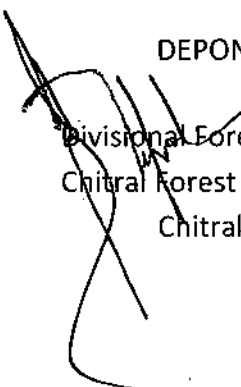
Conservator of Forests, Malakand West Forest Circle, and D.F.O Chitral.

AFFIDAVIT

I, Abdul Majeed, Divisional Forest Officer Chitral Forest Division do hereby affirm and declare on oath that the contents of the comments in Service Appeal No.321/2024 titled "Sohail Ayub" Versus "Conservator of Forests Malakand West Forest Circle and D.F.O Chitral" are true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Service Tribunal Peshawar.

It is further stated on oath that in this appeal the answering respondents neither been placed ex-parte nor their defense has been struck off/cost.

DEPONENT.


Divisional Forest Officer
Chitral Forest Division
Chitral.

ATTESTED



10-09-2024

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AUTHORITY LETTER

Mr. Sohail Ayub Junior Clerk of Chitral Forest Division is hereby authorized to attend Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in the case titled "Service Appeal No.321/2024 of Sohail Ayub V/s Govt." on behalf of DFO Chitral Forest Division.


**Divisional Forest Officer,
Chitral Forest Division,
Chitral**