Form- A

FORM OF ORDER SHEET

Court of_____

Implementation Petition No. 982/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.09.2024	The implementation petition of Mr. Safdar Ali Shah submitted today by Mr. Adnan Aman Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on 24.09.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the petitioner. By order of the Chairman REGISTRAR

The C.M in appeal no. 05/2023 received today i.e. on 22-8-2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Three more copies sets along-with annexures be provided.

No. 677/ST

Dt. 9/9/2024

ASSISTANT
to REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR

Mr. Adnan Aman, Advocate Peshawar.

Respected Sir,

Objections raised by your worthy office has been redressed / Removed

Dated 10/09/2024

BEFORE THE COURT OF SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Execution Petition No. 982 /2024
IN
Service Appeal No. 05/2023

Safdar Ali Shah.....**Petitioner**

VERSUS

The Govt. of KPK and others.....**Respondents**

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Execution Petition along with affidavit	*	1-5
2.	Copy of memo of appeal	A	6-19
3.	Copy of Judgment dated 04/04/2024	B	20-26
4.	Wakalatnama	*	27

Dated: 22/08/2024

Petitioner
Safdar Ali Shah

22/08/024

Through

Adnan Aman
Advocate, High Court(s)
Peshawar
Cell# 0321-9853530

BEFORE THE COURT OF SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Execution Petition No. _____/2024
IN
Service Appeal No. 05/2023

Safdar Ali Shah, Chief Conservator Wildlife KP/ Additional District General (Education) Pakistan Forest Institute Peshawar.....**Petitioner**

VERSUS

1. The Govt. of Khyber Pakhtunkhwa, through Chief Secretary KP, Civil Secretariat, Peshawar.
2. The Chief Secretary to the Govt. of KP, Civil Secretariat, Peshawar.
3. The Secretary Forestry, Environment & Wildlife Department to the Govt. of KP, Civil Secretariat, Peshawar.
4. The Secretary Establishment Department to the Govt. of KP Civil Secretariat, Peshawar.
5. The Provincial Selection Board (PSB) through its Chairman/Convener, Civil Secretariat, Peshawar.

.....**Respondents**

PETITION FOR IMPLEMENTATION / EXECUTION OF THE ORDER/ JUDGMENT DATED 04/04/2024 PASSED BY A WORTHY DIVISION BENCH OF THIS HON'BLE TRIBUNAL IN SERVICE APPEAL NO. 05/2023

Respectfully Sheweth:

1. That the petitioner filed the above titled Service Appeal before this Hon'ble Tribunal in which he sought the relief that:

> ***"By accepting this appeal, the impugned decision made in the P.S.B meeting dated 26/12/2018 and the impugned notification dated 17/01/2019 and order of the departmental appellate authority (who did not pass any appropriate order over the same) may please be set aside and consequently the respondents may please be directed to consider the appellant for his regular promotion (BPS20) and thereafter to appoint the appellant as Chief Conservator (BPS-20) KP Wildlife w.e.f 19/05/2017 with all back benefits including seniority (when his predecessor was retired from service upon reaching the age of superannuation)"***

(Copy of memo of appeal is attached as Annexure-A)

2. That on 04/04/2024, this Hon'ble Tribunal was pleased to decide the appeal of the petitioner with the direction that:

> ***"Now, suo motu case No. 17 of 2016 is finally decided by Supreme Court of Pakistan vide order dated 08/03/2023. Therefore, PSB is directed to consider his promotion case, keeping in view the decision of Supreme Court of Pakistan. However if department has initiated any proceeding against the appellant, then consideration of promotion case will be subject to the outcome of that proceeding. If the department considers that appellant is entitled for promotion in accordance with rules, then they should consider him from the date of first deferment i.e. 25/12/2018. Respondents are directed to decide the matter within the 60***

days after receipt of this Tribunal."

(Copy of judgment .dated 04/04/2024 is attached as Annexure-B)

3. That the judgment of this Hon'ble Tribunal was served upon the respondents through proper channel and respondents are well aware about the judgment and are intentionally not implementing the judgment of this Hon'ble Tribunal, by not considering the promotion case of the petitioner.

4. That the stipulated period of time i.e. 60 days has already completed but till date no action has been taken by the respondents, hence the instant petition.

5. That there is no legal bar on acceptance of instant petition and implementation upon judgment/order dated 04/04/2024 passed by this Hon'ble Tribunal.

It is, therefore, most humbly prayed that on acceptance of this petition, the judgment dated 04/04/2024 passed in Service Appeal No. 05/2023 may please be implemented in its true letter and spirit and the petitioner may please be promoted to the post of Chief

Conservator (BPS-20) w.e.f 25/12/2018, as directed by this Hon'ble Tribunal.

Dated: 22/08/2024

Petitioner
Safdar Ali Shah
22/08/2024

Through

Adnan Aman
Advocate, High Court(s)
Peshawar

AFFIDAVIT

I, **Safdar Ali Shah, Chief Conservator Wildlife KP/ Additional District General (Education) Pakistan Forest Institute Peshawar**, do herby solemnly affirm and declare on oath that the contents of accompanying **Execution Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

DEPONENT

ATTESTED
MUHAMMAD SHAFIQ ADVOCATE
OATH COMMISSIONER
HIGH COURT PESHAWAR
22/8/24

(6)

Annexure "A"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 05 /2022

Khyber Pakhtunkhwa Service Tribunal
Diary No. 2378
Dated 19-12-2022

Safdar Ali Shah,
Chief Conservator Wildlife KP/
Additional Director General (Education)
Pakistan Forest Institute Peshawar.....**Appellant**

VERSUS

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, KP, Civil Secretariat, Peshawar
2. The Chief Secretary to the Govt. of KP, Civil Secretariat, Peshawar
3. The Secretary Forestry, Environment & Wildlife Department to the Govt. of KP, Civil Secretariat, Peshawar
4. The Secretary Establishment Department to the Govt. of KP, Civil Secretariat, Peshawar
5. The Provincial Selection Board (PSB) through its Chairman/ Convener, Civil Secretariat Peshawar
6. Dr. Mohsin Farooq
   Chief Conservator Wildlife Department
   Govt. of Khyber Pakhtunkhwa, Peshawar

.....**Respondents**

Registrar
19/12/2022

SERVICE APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED DECISION

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

DATED 26.12.2018, FOLLOWED BY THE IMPUGNED NOTIFICATION DATED 17.01.2019, WHEREBY THE RESPONDENT NO.6 WAS PROMOTED AND APPOINTED AGAINST THE SINGLE CADRE POST OF THE CHIEF CONSERVATOR WILDLIFE KP (BPS-20), DESPITE BEING JUNIOR TO THE APPELLANT AND THE ORDER OF THE DEPARTMENTAL APPELLANT AUTHORITY, WHEREBY HE DID NOT PASS ANY APPROPRIATE ORDER OVER THE DEPARTMENTAL APPEAL OF THE APPELLANT, WITHIN STATUTORY PERIOD OF NINETY (90) DAYS.

Prayer in Appeal

By accepting this appeal, the impugned decision made in the P.S.B meeting dated 26.12.2018 and the impugned notification dated 17.01.2019 and order of the departmental appellate authority (who did not pass any appropriate order over the same), may please be set aside and consequently the respondents may please be directed to consider the appellant for his regular promotion (BPS-20) and thereafter to

ATTESTED

appoint the appellant as Chief Conservator (BPS-20) KP wildlife w.e.f 19.05.2017 with all back benefits including seniority (when his predecessor was retired from service upon reaching the age of superannuation).

Respectfully Sheweth:

The brief facts giving rise to the instant service Appeal are submitted as under:

1. That the appellant is holding the qualification of M.Sc Zoology (Gold medalist) from University of Peshawar, M.Sc Forestry from Pakistan Forest Institute, Peshawar and M.S in Biodiversity & Conservation from University of Leeds, UK.

2. That the appellant was initially appointed as Assistant Conservator Wildlife (BPS-17) w.e.f 16.10.1993 in the KP Wildlife Department, whereas respondent No.6 was inducted as Assistant Conservator Wildlife (BPS-17) on 10.03.1996 (three years later the appointment of the appellant). **(Copy of the appointment order is attached as annexure "A").**

ATTESTED

3. That thereafter the appellant after successful completion of the required length of service was promoted to BPS-18 and BPS-19 respectively. **(Copies of the promotion orders are attached as annexure "B & B/1").**

4. That on 30.06.2016, the Govt. of Khyber Pakhtunkhwa was pleased to notify the final seniority list, of the Conservator's Wildlife Department (BS-19), wherein the appellant was placed at serial No.1 of the final seniority list, followed by respondent No.6 who (being junior to appellant) was placed at serial No.2 of the final seniority list. It is worth to mention here that the aforesaid final seniority list has never been challenged before any forum and has thus attained finality. **(Copy of the final seniority list is attached "C").**

5. That upon transfer/appointment of Syed Mubarak Ali Shah (the then Chief Conservator Wildlife KP) as Managing Director, Forest Development Corporation, dated 03-04-2015, the appellant being the senior most conservator (BS-19) wildlife was posted as Chief Conservator

ATTESTED

Khyber Pakhtunkhwa
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Peshawar

Wildlife KP (own pay scale) and continued to perform his job till 02.02.2016, when Syed Mubarak Ali Shah was repatriated again to his parent department; (KP Wildlife). **(Copy of the Notification is attached as annexure "D").**

6. That later upon retirement of Syed Mubarak Ali Shah, the appellant was again posted as Chief Conservator Wildlife KP, vide office order dated 21.09.2017 (in his own pay scale) and continued till 13-06-2019 whereafter the appellant was transferred and posted outside the department as Additional Director General (ex-cadre post) at Pakistan Forest Institute, Peshawar till date. **(Copy of the office orders are attached as annexure "E-&E/1").**

7. That it is worth to mention here that during the tenure of the appellant as Chief Conservator Wildlife KP, the respondent department, submitted case of the appellant for promotion to the rank of Chief Conservator Wildlife (BPS-20) vide letter dated 31-07-2018. However, Establishment department vide letter dated 10-08-2018 opined that ***"the case has been examined in***

ATTESTED

Regulation Wing and it is observed that an enquiry against the officer as S.No.1 of the panel is pending. According to promotion policy, his promotion will be deferred and a post will be reserved for him. Hence there will be no post against which the officer at S.No. 2 can be considered". **(Copies of the letter dated 31.07.2018 and 10.08.2018 are attached as annexure "F" & F/1).**

8. That in the meanwhile, the inquiry committee constituted for the purpose, absolved/ exonerated the appellant from all the charges vide letter dated 30-05-2018 and respondent No. 3 subsequently submitted the case for approval of the competent authority (Chief Minister) and notifying exoneration of the appellant, however, instead of notifying his exoneration, a show cause notice was issued to the appellant. (Copy of the letter dated 30.05.2018 is attached as annexure "G").

9. That consequent to the issuance of the show cause notice, an opportunity of personal hearing was offered to the appellant on 24-10-2018. **(Copy of the letter dated 19.10.2018 is attached as annexure "H").**

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
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Peshawar

10. That exoneration of the appellant was purposefully delayed till march 2019 but lastly the same was notified on 21.03.2019. **(Copy of the notification dated 21-03-2019 is attached as annexure "I").**

11. That in the meanwhile, respondent No.6 approached the worthy Peshawar High Court, Peshawar, through W.P No.4765/2018 by filling a Writ of Quo-Warranto against the appellant. **(Copy of the writ petition is attached as annexure "J").**

12. That as an interim relief granted by the court on 29-11-2018, promotion case of respondent No.6 was placed before the PSB on 25-12-2018, wherein promotion of the appellant (being senior most Conservator Wildlife BS-19) was deferred for frivolous reasons and in contravention of the establishment department opinion dated 10-08-2018, respondent No. 6 was promoted against the single cadre post of the Chief Conservator Wildlife KP (BS 20) on regular basis. **(Copies of the PSB minutes dated 26.12.2018 and notification dated 17-01-2019 are attached as annexure "K & L").**

ATTESTED

13. That consequently, the appellant also assailed his deferment of promotion and promotion followed by posting of respondent No.6 as Chief Conservator wildlife before the worthy Peshawar High Court Peshawar through W.P No.317-P/2019 **(Copy of writ petition No.317-P/2017 is attached as annexure "M").**

14. That during the pendency of the writ petitions, an interim relief was granted to the appellant and in light of the same, promotion case of the appellant was also placed before the PSB, wherein he was recommended for promotion to the rank of the Chief Conservator Wildlife (BS-20) on "Acting Charge Basis" as the single cadre post was already occupied by respondent No.6 on regular basis. **(Copies of the PSB minutes dated 07/05/2019 and notification dated 16-05-2019 are attached as annexure "N & N/1").**

15. That the respondent No.6 did not stop here and filed two other writ petitions, bearing No.5692-P/2019 and W.P No.1816-P/2020 against the appellant. **(Copies of writ petitions are attached as annexure "O & P").**

ATTESTED

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Service Tribunal
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16. That all the aforesaid writ petition were consolidated and decided through common judgment dated 26.11.2020. **(Copy of judgment dated 26.11.2022 is attached as annexure "Q").**

It is worth to mention here that the writ petition filed by the appellant (W.P No.317-P/2019) was dismissed on the ground of jurisdiction and the appellant was advised to seek his remedy before the competent court of law.

17. That the aforesaid judgment was assailed before the Apex Court through CP No.3656/2020 and CP No.171-P/2021 which was again disposed-off by the worthy Apex Court vide judgment dated 12.04.2022. **(Copy of judgment dated 12.04.2022 is attached as annexure "R").**

18. That the appellant being aggrieved of the judgment dated 12.04.2022 preferred Review petitions bearing No.188 and 189 of 2022 which were again disposed off vide order dated 28.07.2022, in the following terms

ATTESTED

"Having gone through the order under review, we find that the order sought to be reviewed does not determine the right or eligibility of any of the candidates appointed or to be appointed to the post in question". (Copy of Order 28.07.2022 is attached as annexure "S").

19. That soon after the judgment/order of the Apex Court, the appellant preferred departmental representation/appeal to the competent authority (respondent No.2) however till date, the same has not been responded so far, after the lapse of statutory period of ninety days. **(Copy of the departmental appeal is attached as annexure "T"),**

20. That the appellant being aggrieved now prefers this service appeal before this Hon'ble Tribunal for the following amongst other grounds:

GROUNDS:

A. That the impugned promotion order of respondent No.6 as Chief Conservator Wildlife KP, (BPS-20) is against the Law/Rules governing the subject as the same is a single cadre post and as such the appellant being the senior

ATTESTED

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Service Tribunal
Peshawar

most Conservator Wildlife is eligible to be promoted and thereafter appointed as Chief Conservator Wildlife, (BPS-20) instead of respondent No.6.

B. That by now it is a settled proposition of law that promotion to a post cannot be made on the basis of cherry picking rather the same shall be subject to strict criteria of merit and principle of seniority but in the case in hand, the respondents have acted otherwise and thus this Hon'ble Tribunal needs to interfere to meet the ends of justice.

C. That even otherwise the pendency of departmental enquiry or NAB reference could not be made a ground for depriving an incumbent from his due right of promotion as the same amounts to penalize an official before the final conclusion of charge leveled.

D. That more so the so-called inquiry proceedings have ultimately been concluded in favour of the appellant as he has been honourably

ATTESTED

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Service Tribunal
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absolved/exonerated from all the proceedings but notifying exoneration of the appellant was purposefully delayed. But prima facie, it seems that all these inquiry proceedings were staged only for the reason to deprive the appellant of his due right of promotion and to pave way for impugned promotion of respondent No.6.

E. That the appellant has run all the time from pillar to post for his due right in the shape of promotion but so far it has been delayed for almost more than 3/4 years but lastly the worthy apex court in its order dated 28.07.2022 clarified the same with an explicit order that the order/judgment of the apex court has never determined the right or eligibility of the respondent No,6 as Chief Conservator Wildlife KP & thus it is this Hon'ble Tribunal to decide who is eligible to occupy the post of Chief Conservator Wildlife KP (BS-20) on merit.

F. That even otherwise the respondents did not bother to honour the opinion of Establishment department, to reserve the post in question for

ATTESTED

the appellant, till the conclusion of pending inquiry but even the post was filled through promotion on regular basis, in contravention of the Law/Rules which speaks volume that the competent authority was all out to adjust/accommodate his blue eyed over the post of Chief Conservator Wildlife KP at the cost of the appellant.

G. That in light of the aforesaid submissions it is clear than crystal that the competent authority has gone beyond its domain, in order to favour the respondent No.6 (by hook or by crook) therefore the whole proceedings resulting into promotion of respondent No.6 are liable to be declared as illegal, unlawful and void ab-initio.

H. That the appellant has been treated against the Law/Rules governing the subject and has also been deprived of equal protection of law

I. That any other ground will be raised at the time of arguments with the prior permission of this Hon'ble Court.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

It is therefore most humbly prayed that by accepting this appeal, the impugned decision made in the P.S.B meeting dated 26.12.2018 and the impugned order dated 17.01.2019 and order of the departmental appellate authority (who did not pass any appropriate order over the same), may please be set aside and consequently the respondents may please be directed to consider the appellant for his regular promotion in BPS-20 and thereafter to appoint the appellant as against the post of Chief Conservator (BPS-20) KP wildlife w.e.f from the date of retirement of his predecessor Syed Mubarak Ali Shah i.e. 19.05.2017, with all back benefits including seniority.

AND

Any other relief deems fit and appropriate in the circumstances of the instant appeal may also be passed.

Appellant

09/12/2022

Through

Adnan Aman
Advocate High Court(s)

Dated __/__/2022

Date of Presentation: 20/8/22
Number of Words: 14-Pages
Copying Fee: 70/-
Urgent: 5/-
Total: 75/-
Name of Copyist:
Date of Completion: 20/8/22
Date of Delivery: 20/8/22

(20)

Annexure "B"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Safdar Ali Shah, Chief Conservator Wildlife, Khyber Pakhtunkhwa/ Additional Director General (Education), PFI, Peshawar.

.....*(Appellant)*

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary Forestry, Environment & Wildlife Department to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Establishment Department, Civil Secretariat, Peshawar.
4. The Provincial Selection Board (PSB) through its Chairman/Convener, Civil Secretariat, Peshawar.
5. Dr. Mohsin Farooq, Chief Conservator Wildlife Department, government of Khyber Pakhtunkhwa, Peshawar.

... *(Respondents)*

Mr. Adnan Aman
Advocate ... For appellant

Mr. Aman Ullah Khan Marwat
Advocate ... For private respondent

Mr. Asif Masood Ali Shah .... For official respondents
Deputy District Attorney

Date of Institution.....19.12.2022
Date of Hearing.....04.04.2024
Date of Decision.....04.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

ATTESTED

"By accepting this appeal, the impugned decision made in the PSB meeting dated 26.12.2018 and the impugned notification dated 17.01.2019 and order of the departmental appellate authority may please be set aside and consequently the respondents may please be directed to consider the appellant for his regular promotion BPS-20 and thereafter to appoint the appellant as Chief Conservator BPS-20 Khyber Pakhtunkhwa Wildlife with all back benefits including seniority (when his predecessor was retired from service upon reaching the age of superannuation)."

2. Brief facts of the case, as given in the memorandum of appeal are that, the appellant was initially appointed as Assistant Conservator Wildlife BPS-17 w.e.f. 16.10.1993 in the Khyber Pakhtunkhwa Wildlife Department and private respondent No.6 was also appointed as Assistant Conservator Wildlife BPS-17 on 10.03.1996. Appellant was then promoted to the post of BPS-18 and BPS-19. On 30.06.2016 seniority list of Conservators Wildlife Department BPS-19 was initiated, wherein the appellant was placed at serial No.1 and private respondent No. 6 was at Sr. No.2. Later on the appellant was again posted as Chief Conservator wildlife Khyber Pakhtunkhwa, vide order dated 21.09.2017 till 13.06.2019 in his own pay scale upon the retirement of Syed Mubarak Ali Shah. The appellant was transferred and posted as Additional Director General (ex-cadre post) at Pakistan Forest Institute, Peshawar. During tenure as Chief Conservator Wildlife Khyber Pakhtunkhwa, the respondent department submitted his case for promotion to the rank of Chief Conservator Wildlife (BPS-20) vide letter dated 31.07.2018. However, Establishment Department vide letter dated 10.08.2018 opined that;

(22)

"the case has been examined in Regulation Wing and it is observed that an enquiry against the officer as S.No.1 of the panel is pending. According to promotion policy, his promotion will be deferred and a post will be reserved for him. Hence there will be no post against which the officer at S.No.2 can be considered."

An inquiry committee was constituted which exonerated the appellant from all charges vide letter dated 30.05.2018 and respondent No.3 submitted case for approval of the competent authority (Chief Minister) and notifying exoneration of the appellant. Show cause notice was issued to the appellant and opportunity of personal hearing was afforded to the appellant on 24.10.2018. The exoneration of the appellant was notified on 21.03.2019. In the meanwhile respondent No.6 approached the worthy Peshawar High Court, Peshawar through W.P No.4765/2018 by filing a writ of Quo-Warranto against the appellant. The Peshawar High Court, granted interim relief to respondent No.6 on 29.11.2018; promotion case of respondent No.6 was placed before PSB on 25.12.2018; wherein promotion of the appellant was deferred; respondent No.6 was promoted against the single cadre post of the Chief Conservator Wildlife Khyber Pakhtunkhwa (BS-20) on regular basis vide notification dated 17.01.2019. The appellant also assailed his deferment of promotion and promotion followed by posting of respondent No.6 as Chief Conservator Wildlife before worthy Peshawar High Court, Peshawar through W.P No.317-P/2019. The promotion case of the appellant was also placed before the PSB, wherein he was recommended for promotion to the rank of Chief Conservator Wildlife (BS-20) on "Acting Charge Basis" as the single cadre post was already occupied by respondent No.6 on regular basis.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

although a

The respondent No.6 did not stop here and filed two other writ petitions bearing No.5692-P/2019 and W.P No.1816-P/2020 against the appellant. The writ petition filed by the appellant i.e. W.P No.317-P/2019 was dismissed on the ground of jurisdiction and the appellant was advised to seek his remedy before the competent court of law. After the judgment of the apex court, the appellant preferred departmental representation/appeal to the competent authority (respondent No.2) which was not responded. Hence, the instant appeal,

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant, learned counsel for private respondent as well as learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has been treated against the law and rules. He further argued that the promotion order of respondent No.6 as Chief Conservator Wildlife was issued in violation of law hence liable to be set aside. He further argued that appellant has been exonerated from all the departmental proceedings but notifying exoneration of the appellant was purposely delayed and he was deprived from his due right of promotion.

5. Conversely, learned Deputy District Attorney assisted by learned counsel for private respondents contended that promotion of private respondent was made on the recommendation of PSB being competent forum and after the approval of competent authority. He further contended that appellant held the post of Chief Conservator Wildlife till 13.06.2019 on OPS. He submitted that

ATTESTED

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Service Tribunal

although appellant was senior to private respondent but he was deferred by the PSB for promotion due to his involvement in VR case with NAB of an amount of Rs.3829842/- and non-availability of PERs for the year 2017, hence private respondent No.6 was promoted against the single cadre post of Chief Conservator Wildlife, Khyber Pakhtunkhwa on regular basis.

6. Perusal of record reveals that the appellant was appointed as Assistant Conservator Wildlife, BPS-17 in the Khyber Pakhtunkhwa, Wildlife Department who was later on promoted to BPS-18 and BPS-19. He was posted as Chief Conservator Wildlife, Khyber Pakhtunkhwa and later as Additional Director General at Pakistan Forest Institute, Peshawar. Respondent/department submitted his case for promotion to the post of Chief Conservator BS-20. However, an inquiry committee was constituted which exonerated the appellant from all charges. The exoneration was notified on 21.03.2019. The respondent No.6 filed a writ of Quo-Warranto against the appellant, wherein interim relief was granted to the respondent No.6. The appellant then assailed his deferment of promotion, and was recommended for promotion to the rank of Chief Conservator Wildlife (BS-20) on an "Acting Charge Basis". The writ petition of the appellant was dismissed on jurisdiction grounds. After the judgment of apex court, appellant preferred departmental appeal to the competent authority, which was not responded till date.

7. Promotion of the appellant was deferred in the meeting of PSB held on 26/12/2018 with the remarks that;

> ***"His date of birth is 24.06.1965. He joined government service on 16.10.1993 in BS-17. He was promoted as Conservator Wildlife BS-19 on 13.02.2010. He has passed the prescribed departmental examination. However, he is involved in Voluntary Return (VR) case with NAB. His PER for the year 2017 (P) is also not available."***

ATTESTED

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Service Tribunal
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Reason for deferment of his promotion to BPS-20 post was involvement of the appellant's Voluntary Return (VR) case with NAB and non-availability of his PER for the year 2017. Appellant approached worthy Peshawar High Court, Peshawar by filing writ petition, wherein on 8/4/2/019 worthy Peshawar High Court directed respondent to place the promotion case before PSB for consideration within the rules at their own end. The occupant of the post Mr. Mohsin Farooq respondent no. 6 has been posted against the post of Director General in Pakistan Forest Institute, which post is not likely to be filled in near future. Therefore, at the time of meeting of PSB i-e. 19/4/2019 post of Chief Conservator Wildlife BPS-20 was vacant, wherein PSB held that;

> ***"His date of birth is 24.06.1965. He joined government service on 16.10.1993 in BS-17. He was promoted as Conservator Wildlife BS-19 on 13.02.2010. He has passed the prescribed departmental examination. The Secretary informed the Board that he has been exonerated in the VR case. It was brought into the notice of the Board that the Peshawar High Court, Mingora Bench in VR cases in Writ Petitions No.1145-M of 2018 & 1247-M of 2018 dated 26.03.2019 directed that the respondents shall first finalize the enquiries, if any against the petitioners and thereafter reconstitute Departmental Promotion Committees by placing the names of the petitioners in-accordance with their seniority list in the working paper of the officials who are to be promoted or have been promoted out of turn against the seniority order. However, the promotion orders of the petitioners, so passed shall be subject to final decision of the august Supreme Court of Pakistan in Suo Motu case No.17 of 2016. No enquiry is pending against him. He has been exonerated from the disciplinary proceedings in VR case. His PER for the year 2018 (P) has not yet been countersigned. His service record up to 2018 is generally good. He has secured 60 marks against the required threshold of 70.***
>
> ***The Board recommended the officer for appointment to the post of Chief Conservator Wildlife BS-20 on acting charge basis subject to final decision of the Supreme Court of Pakistan in Suo Motu case No.17 of 2016."***

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

8. Now, Suo Motu case No.17 of 2016 is finally decided by Supreme Court of Pakistan vide order dated 08/03/2023. Therefore, PSB is directed to consider his promotion case, keeping in view the decision of Supreme Court. However if department has initiated any proceeding against the appellant, then consideration of promotion case will be subject to the outcome of that proceeding. If the department considers that appellant is entitled for promotion in accordance with rules, then they should consider him from the date of first deferment i.e. 25.12.2018. Respondent are directed to decide the matter within 60 days after receipt of order of this Tribunal. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 4th day of April, 2024.*

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

ATTESTED
M.Khan
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
20/8/24

Date of Presentation of Application 20/8/24
Number of Words 7 Pages
Copying Fee 35/-
Urgent 5/-
Total 40/-
Name of Party
Date of Complete 20/8/24
Date of Delivery 20/8/24

(27)

POWER OF ATTORNEY/WAKALAT NAMA

Safdar Ali Shah

{Plaintiffs
{Appellants
{Complaints
{Decree Holders
{Petitioners

Versus

The Govt: of KP etc

{Defendants
{Respondents
{Complaint
{Decree Holder

I/We the undersigned Petitioner above named hereby appoint ***Adnan Aman Advocate High Court,*** the above-mentioned case, to do all or any of the following acts, deed and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other Court/Tribunal in which the same may be tried or heard. And any other proceedings arising out of or connected therewith.

2. To sign, verify and file or withdraw all proceedings, petitioners, appeals, affidavits and applications for compromise or withdrawn or for submission to arbitration of the said case or prosecution or defense of the said case at all its stages.

3. To receive payments of and issue receipts for all money that may be or become due and payable to us during the course or on the conclusion of the proceedings.

AND HEREBY AGREE:

a. To ratify whatever the said Advocate may do in the proceedings
b. Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequences of their absence from the Court/Tribunal when it is called hearing.
c. That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fees remains unpaid.

In witness whereof I/WE have signed this Power of Attorney/Vakalatnama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this___ day of the ____ at _____.

Signature of executants

22.08.021

Attested/accepted subject to the term regarding payment of fee

Safdar Ali Shah
(Petitioner)

ADNAN AMAN ADVOCATE
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