

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

BEFORE:   **AURANGZEB KHATTAK**     ... **MEMBER (Judicial)**  
              **FAREEHA PAUL**             ... **MEMBER (Executive)**

**Service Appeal No. 2011/2022**

Date of presentation of Appeal.....28.12.2022  
Date of Hearing.....24.10.2024  
Date of Decision.....24.10.2024

**Habib ur Rehman** Son of Allah Dad, R/o Kot Khadak Tehsil & District Tank. Presently serving as Forest Guard in the incumbency of Sub Division Tank. ....**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar.
2. Conservative Forest Department, Khyber Pakhtunkhwa Shami Road, Peshawar.
3. Divisional Forest Officer, Forest Department Dera Ismail Khan.
4. Sub-Divisional Forest Officer, Forest Department Tank.  
.....**(Respondents)**

Present:

Mr. Sheikh Iftikhar-ul-Haq, Advocate .....For appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents  
.....

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The facts of the case as narrated by the appellant in his memorandum of appeal are that he was appointed as a Forest Guard on September 11, 2007. Disciplinary proceedings were initiated against the appellant on the allegations of his involvement in misconduct including but not limited to operating a private clinic, absence from duty, misbehavior with staff superiors and allowing encroachment upon precious government land of Dabra Resumed land guiding the grabbers against the Forest & Revenue staff during demarcation. On conclusion of the disciplinary proceedings, the appellant was awarded punishment of stoppage of two years annual

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increments for a period of two years as well as warned to remain more careful in future, vide impugned order dated June 22, 2022. Feeling aggrieved, the appellant filed departmental appeal, which was not responded within the statutory period of 90 days, hence he filed the instant appeal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the inquiry against the appellant was initiated without merit and that the allegations arose from personal grievances within family disputes. He next contended that the inquiry process did not comply with the essential criteria outlined in the Efficiency and Discipline Rules, 2011. He further contended that the appellant was denied adequate opportunities for representation, cross-examination and presenting witnesses which are fundamental principles of natural justice. He also contended that the inquiry report is criticized for lacking credibility and procedural integrity. He next argued that the mandatory requirements as prescribed under the ESTA Code were not complied with, leading to a flawed basis for the penalties imposed. He further argued that despite the admissions of the appellant's credibility and integrity by some officials, the impugned order contradicts these assessments, thereby making it unsustainable. In the last, he argued that the impugned order dated June 22, 2022 may be set-aside and the appeal in hand may be accepted as prayed for.

4. On the other hand, the learned Deputy District Attorney for the respondents contended that the disciplinary proceedings were initiated

*24/10/2024*

against the appellant based on an endorsed report by the Sub Divisional Forest Officer (SDFO) and were conducted in accordance with Rule 3 of the E&D Rules, 2011, which were adhered to strictly throughout the inquiry process. He next contended that the appellant was afforded multiple opportunities for a personal hearing and to defend his case against the show-cause notice, but he failed to adequately challenge the evidence against him. He further contended that the inquiry officer's recommendations for penalties align with the findings of inefficiency and misconduct as substantiated through various testimonies and evidence presented during the inquiry. He also emphasized the legality and appropriateness of the impugned order, asserting that all codal formalities were completed and due process was followed. In the last, he argued that the appeal in hand may be dismissed with cost being meritless.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the record shows that the he appellant has been working as a Forest Guard in the Forest Department, Tank, since November 9, 2007. The appellant contests the validity of impugned order No. 151 dated June 22, 2022, alleging that the accusations against him stem from personal disputes rather than any substantiated misconduct. The appellant faces allegations of misconduct and inefficiency, with the primary source of these claims originating from a complaint by Miram Shah, his brother-in-law. Such familial ties raise questions about the potential bias inherent in the allegations, casting doubt on their validity. The inquiry conducted by Mr. Amin Ul Islam,

Amir  
24/10/2024


Sub-Divisional Forest Officer, emphasized the absence of documentary evidence connecting the appellant with the alleged misconduct. Allegations of supporting encroachers on government land and involvement in unauthorized political activities or private business operations remained unproven, relying heavily on conjecture rather than solid, factual basis. The disciplinary proceedings were found to substantially breach the principles of natural justice. The appellant was not afforded the opportunity to adequately defend himself, with no cross-examination of witnesses and no independent witnesses present during the inquiry. The inquiry did not meet necessary standards of thoroughness and impartiality, failing to substantiate allegations with credible evidence. These failures indicate significant procedural inconsistencies that undermine the legitimacy of the disciplinary actions taken against the appellant. The inquiry officer characterized the accusations against the appellant as lacking substantive bases. Descriptions of the claims as "surface-level" with "no ground holdings" signify that they lacked credible and tangible evidence. The inquiry officer concluded that the allegations against the appellant did not satisfy the required standard of proof for substantiating misconduct. So far as the lost Book of damage report is concerned, the inquiry officer has held the appellant responsible for the same. But there is no evidence on the record to show that the said book was intentionally misplaced or misused by him, rather he has made efforts to search out the same and has also issued press notices in newspapers. Considering the principles of natural justice, we underscore that an individual should not face accountability based solely on unverified allegations or hearsay. The inquiry's findings

Amir  
24/10/2024

brought substantial doubt regarding the integrity of the claims made against the appellant, leaning towards their unjust nature. Several officials, based on their interactions with the appellant, described his conduct as diligent and exemplary. This characterization of the appellant's service further reinforces the notion that the allegations were unfounded. Given the procedural irregularities and the lack of credible evidence against the appellant, the actions taken by the authorities appear disproportionate and unjustified. The inquiry's flaws render the resultant disciplinary order unsustainable, thus liable to be set aside.

7. Consequently, the appeal in hand is accepted by setting-aside the impugned order dated June 22, 2022. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24<sup>th</sup> day of October, 2024.*


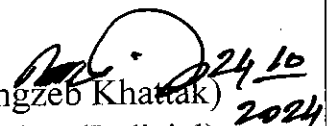
  
AURANGZEB KHATTAK  
Member (Judicial)

  
FAREEHA PAUL  
Member (Executive)

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No. 2011 of 2022

Habib ur Rehman versus Government of Khyber Pakhtunkhwa through Secretary Forest,  
Peshawar and 03 others.

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
<u>Order-13</u> 24 <sup>th</sup> October, 2024.	<p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Sheikh Iftikhar-ul-Haq, Advocate on behalf of appellant.</li><li>2. Mr. Asif Masood Ali Shah, Deputy District Attorney on behalf of respondents.</li></ol> <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the appeal in hand is accepted by setting-aside the impugned order dated June 22, 2022. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24<sup>th</sup> day of October, 2024.</i></p> <p> (Nareeha Paul) Member (Executive)</p> <p> (Aurangzeb Khattak) Member (Judicial) 24/10/2024.</p> <p>*Naeem Amin*</p>

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 2011/2022**

Date of presentation of Appeal 28.12.2022  
Date of hearing 24.10.2024  
Date of Decision 24.10.2024

**Habib ur Rehman** Son of Allah Dad, R/o Kot Khadak Tehsil & District Tank.  
Presently serving as Forest Guard in the incumbency of Forest Sub Division Tank.  
.....*Appellant*

Versus

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4. Sub-Divisional Forest Officer, Forest Department Tank.  
.....(*Respondents*)

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974.

**PRESENT**

1. Mr. Sheikh Iftikhar-ul-Haq, Advocate .....For appellant
2. Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

<b>Appellants</b>	<b>Amount</b>	<b>Respondent</b>	<b>Amount</b>
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 24<sup>th</sup> day of October 2024.

  
**Farzeha Patil**  
Member (Executive)

  
**Aurangzeb Khattak** 24/10  
Member (Judicial) 2024.