

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 269/2024

Date of presentation of Appeal.....23.01.2023
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

1. Conservative Forest Department, Southern Forest Circle Bannu.
2. Divisional Forest Officer, D.I.Khan Forest Division Dera Ismail Khan.
.....(**Respondents**)

Present:

Mr. Sheikh Iftikhar-ul-Haq, AdvocateFor 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 and was performing his duties in Tank Forest Sub-Division and he was suspended from service on March 10, 2023 and was attached with the Conservator of Forest Southern Forest Circle Bannu. He was issued a letter directing him to explain his absence to the Conservator of Forest Circle Bannu by March 16, 2023. However, due to personal issues related to his children's health, he could not comply and sought redress through a civil suit, resulting in a temporary injunction on March 27,

Handwritten signature and date: 24/10/2024.

2023 in his favor. Despite fulfilling his duties, he continued to face suspension proceedings and submitted a departmental appeal on April 19, 2023. On July 6, 2023, the plaint was returned to him for presenting it before proper forum. He was dismissed from service the following day. He filed a service appeal before this Tribunal. During the pendency of his service appeal, his departmental appeal was partially accepted On December 28, 2023, reinstating him but imposing penalties, including a three-year promotion hold and a pay scale reduction etc. Dissatisfied with these outcomes, he withdrew his initial service appeal and filed a new appeal, alleging violations of service rules and principles of natural justice.

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 no formal charge sheet or proper inquiry was conducted as mandated, constituting a grave violation of the principles outlined in the ESTA Code. He next contended that the appellant was denied due process, including the right to defend himself against allegations. He further contended that the disciplinary actions were fueled by personal animosity and not based on evidence or professional grounds, particularly given his clean service record up to that point. He also contended that the appellant's family health issues, which were not adequately considered by the department, impacting his ability to comply fully with orders. He next argued that the penalties imposed upon the appellant were excessive and detrimental to his career,

*Amir
24/10/2024*

lacking the substantiation required to enforce such severe consequences. He further contended the breach of natural justice principles, with proceedings conducted against the appellant without the knowledge or opportunity to present his case.

4. On the other hand, the learned Deputy District Attorney for the respondents contended that the suspension was based on serious allegations, including blackmail and corruption, grounded in reports credible enough to necessitate immediate action. He next contended that the appellant was accused of willfully remaining absent from duty and failing to report to the designated office. He further contended that there was no information from the appellant regarding his circumstances or an application for leave. He also contended that the proceedings were conducted against the appellant in light of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and that an independent inquiry was not required under Rule-9 for the actions taken. He next argued that multiple attempts to communicate suspension orders and notices were made, demonstrating the department's transparency and adherence to process. He further argued that actions taken against the appellant were in the public interest, required to maintain departmental integrity and discipline and were carried out without personal motives. In the last, he argued that the appeal in hand may be dismissed with cost being merit less.

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

Handwritten signature and date: 24/10/2024.

6. The perusal of the record shows that the he appellant was appointed as a Forest Guard in the Forest Department on November 9, 2007. He was suspended from service on March 10, 2023, via office order No. 155, and was required to report to the Bannu office on March 16, 2023. However, the appellant's children were suffering from Thalassemia and allegedly there were no other male family members available to provide care. The appellant filed a civil suit on March 27, 2023, which resulted in a temporary injunction favoring the appellant, allowing him to continue working. The appellant filed a departmental appeal against the suspension order on April 19, 2023. On June 4, 2023, the appellant was issued a notice of absence from 11.03.2023. There-after, he was removed from service on July 7, 2023. The appellant submitted appeal before this Tribunal against the impugned removal order, which was admitted for a hearing on December 18, 2023. On December 28, 2023, the Conservator of Forest partially accepted the departmental appeal, reinstating the appellant but imposing several penalties, including withholding promotions and reducing his grade. The appellant withdrew the earlier appeal on January 17, 2024 and has now filed the instant appeal before this Tribunal against the penalties imposed in the December 28, 2023 order, citing violations of service rules and principles of natural justice. The cornerstone of any disciplinary action is adherence to due process and procedural protocols. The records indicate a breach of standard operating procedures as no formal charge sheet/statement of allegations or show cause notice was provided to the appellant before

*Amir
24/10/2024.*


passing the impugned orders, undermining the principles of natural justice. Procedural flaws are further evident as no comprehensive inquiry was conducted, as mandated by Government Servants (Efficiency & Discipline) Rules, 2011. The reliance solely on reports without formal inquiry processes cannot substantiate serious allegations such as those made against the appellant. The respondents alleged blackmail, inefficiency and corruption on the part of the appellant based on reports submitted by the SDFO. However, there exists no substantial evidence or documented inquiry validating these claims. Furthermore, the appellant's inability to attend the work place due to personal circumstances, namely the health issues within his family, was not appropriately considered, suggesting a neglectful handling of his case. Evidence shows that the appellant was apprised of his suspension and that communications were attempted through registered posts. However, the issue lies in the timing and handling of these communications, which seemed to coincide with the appellant's initiation of legal proceedings, adding complexity to the timeline and reflecting disjointed administrative processes. The penalties imposed on the appellant, including a delay in promotion and demotion in pay scale, are significant and have lasting impacts on his career. These penalties appear disproportionately harsh given the lack of conclusive evidence and the procedural anomalies surrounding the instant appeal. Such penalties require a more robust evidentiary foundation than what has been provided. However, the respondents asserted adherence to the Efficiency & Discipline Rules, 2011, the application of these rules


24/10/2024

was superficial and lacked the necessary rigor to uphold the penalties enforced. The absence of a transparent inquiry and defense opportunity for the appellant infringes on the principles of natural justice, warranting intervention by this court.

7. Consequently, the impugned orders are set-aside and the appeal in hand is accepted as prayed for. 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 24th day of October, 2024.*




AURANGZEB KHATTAK
Member (Judicial)


FAREEHA PAUL
Member (Executive)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 269 of 2024

Habib ur Rehman versus Conservative Forest Department, Southern Forest Circle Bannu and
01 another.

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<u>Order-05</u> 24 th October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Sheikh Iftikhar-ul-Haq, Advocate on behalf of appellant.2. Mr. Asif Masood Ali Shah, Deputy District Attorney on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the impugned orders are set-aside and the appeal in hand is accepted as prayed for. 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 24th day of October, 2024.</i></p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"><div data-bbox="548 1781 860 1956" style="text-align: center;"> (Fareeha Paul) Member (Executive)</div><div data-bbox="1088 1806 1485 1956" style="text-align: center;"> (Aurangzeb Khattak) 24/10/2024 Member (Judicial)</div></div> <p>*Naeem Amin*</p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.269/2024

Date of presentation of Appeal 23.01.2023
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

1. Conservative Forest Department, Southern Forest Circle Bannu.
2. Divisional Forest Officer, D.I.Khan Forest Division Dera Ismail Khan.
.....(*Respondents*)

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


PRESENT

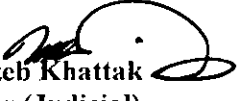
1. Mr. Sheikh Iftikhar-ul-Haq, AdvocateFor appellant
2. Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

Appellants	Amount	Respondent	Amount
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
Total	Rs. 100/-	Total	Rs. Nil

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 24th day of October 2024.


Farzeha Paul
Member (Executive)


Aurangzeb Khattak
Member (Judicial)
24/10
2024.