

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

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

**Service Appeal No. 1706/2022**

Date of presentation of Appeal.....29.11.2022  
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 the 11<sup>th</sup> of September, 2007. On the 11<sup>th</sup> of August, 2022, he received Office Order No. 151 dated the 22<sup>nd</sup> of June, 2022, during which he was also made aware of another contentious order, No. 85 dated the 29<sup>th</sup> of January, 2021. Subsequent to this, he received correspondence demanding the recovery of Rs. 100,530/- related to purported inefficiencies. The appellant contends that the aforementioned order was never formally

*Ms. Fareeha Paul*  
*24/10/2024*

communicated to him, thereby impeding his ability to respond appropriately. The dispute purportedly escalated after he reported on labor payments and expenses for the Tsunami Plantation project, which led to discord with senior officials. On the 15<sup>th</sup> of August, 2022, he filed a departmental appeal, to which he received no response. Consequently, he has brought forth the present appeal before this Tribunal seeking redress for 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 no regular inquiry as required by the Efficiency and Discipline Rules, 2011, was conducted, violating procedural justice and service rules. He next contended that the appellant was not issued the impugned Order No. 85 dated the 29<sup>th</sup> of January, 2021, limiting his defense. He further contended that the earlier reply to charges were satisfactory, suggesting wrongful imposition of current penalties. He also contended that the impugned orders stems from administrative disagreements, marking the appellant as a scapegoat for alleged inefficiencies beyond his control. He next argued that the conduct of authorities infringes upon legal principles and natural justice, rendering the impugned orders unsustainable. He further argued that the impugned orders were never formally delivered to the appellant, undermining the ability of the appellant to respond appropriately. In the last, he argued that the appeal in hand may be accepted as prayed for.

*App. 24/10/2024.*

4. On the other hand, the learned Deputy District Attorney for the respondents contended that the impugned orders were legally issued following thorough inquiries, adhering to Rule 4 of the E&D Rules, 2011. He next contended that the appellant was involved in disciplinary proceedings and submitted written defenses, indicating awareness and opportunity to respond. He further contended that proper inquiries were conducted in the matter, which confirmed inefficiency and embezzlement charges, justifying imposed penalties. He also contended that all the legal formalities were fulfilled, empowering authorities to impose penalties based on proven allegations. He next argued that the legal foundations of the orders remain intact, with the appellant's appeals lacking adherence to proper procedures, disputing claims of unawareness. 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 appellant was charge sheeted for inefficiency, misconduct and corruption by Respondent No. 03 to the effect that on 21.05.2017 the Conservator of Forest Southern Circle Peshawar along with the Respondent No. 3 while inspecting following plantation area have noticed that following failures as noted against each

S #	Name of Plantation area	Area (Ha)	% of Failure
1.	Qureshi Sheikh Gara Block Plantation	10	20% Failure; 80% works on ground not initiated

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2	Qureshi Sheikh Gara Water Logged	6	80% Failed
3	Khalid Kot Sultan Block Plantation	16	40% Failed
4	Anwar Babara	14	40% failed
5.	Kot Khan Muhammad	6	50 failed
	<b>Total</b>	<b>52</b>	

He was also charged to have committed the following irregularities while holding the charge of the above plantation area raised under "BTAP".

1. Improper maintenance.
2. Less watering.
3. Lack of interest being incharge of the plantation area.
4. Failures in plantation.

According to the inquiry report it was held that **Qureshi Sheikh Gara Block Plantation**, originally 16 Ha plantation raised at Qureshi Sheikh Gara with 10 Ha block plantation and 6 Ha water logged but due to bad site selection and severe salinity the plantation result in huge failure. At present 10 Ha block plantation is relocated at May Khani while the original area Qureshi Sheikh Gara 16 Ha plantation maintained as 6 Ha water logged plantation.

**Khalid Kot Sultan Block plantation and Anwar Dabara water logged**

The plantations were recouped and at present found satisfactory little bit failure needs replacement with sizeable plants and frequent watering under the supervision of In-charge SOFO

**Kot Khan Muhammad Block plantation**

*24/10/2024*

At present the condition of the overall plantation found satisfactory the survival %age is about 75%; however the remaining failure needs to be replaced with sizeable plants.

Admittedly, the appellant is simply a Forest Guard and the duty of selection of proper land for plantation cannot be imposed upon him. It is the job of Forest Officer. As is evident from the inquiry report, the alleged loss/failure of the plantation is much less than the figures mentioned in the charge sheet. Keeping in view the allegation leveled in the charge sheet coupled with relevant rules regarding duties of the Forest Guard and the other hierarchy of the Forest department, the appellant seems to have been made scapegoat by the respondents.

7. The appellant contests several administrative actions against him. The critical point of contention lies with the issuance of Order No. 85 on January 29, 2021, regarding which the appellant asserts he was not informed until he received Office Order No. 151 on June 22, 2022. This led to a demand for recovery of Rs. 100,530/- dated June 16, 2022. The central issues revolve around the lack of conveying the appellant regarding the order dated 29.01.2021 and subsequent demands for recovery, which the appellant contends are fundamentally flawed due to procedural improprieties. It is a fundamental principle of natural justice that individuals must be informed of decisions affecting them, which allows for adequate response or contestation. Administrative actions must comply with established service rules to ensure that individuals have knowledge of and can respond to accusations or charges. The conduct of public bodies must adhere to principles of accountability and transparency,

*24/10/2024.*

ensuring that administrative actions are well-documented and justified. The substantial merit in the appellant's argument regarding the failure to receive timely notification of Order No. 85 dated the 29<sup>th</sup> of January, 2021. This lack of communication constitutes a significant breach of procedural fairness. The failure to notify denied the appellant the opportunity to appropriately contest the claims made against him. Such refusal undermines the validity of subsequent administrative actions, including the recovery demand. This non-compliance raises pertinent questions regarding the legitimacy of the administrative actions undertaken. The evidence provided to support the recovery demand was markedly insufficient. There was no comprehensive inquiry or well-documented rationale that justified the charges against the appellant. The absence of a thorough investigation casts doubt on the motivations and accuracy of the alleged missteps attributed to the appellant. The violations identified in the process, including the lack of proper notice and insufficient investigative procedures, represent a clear breach of the principles of natural justice. This situation significantly prejudiced the appellant's ability to defend against the claims made. After examination of the facts presented and the procedural discrepancies identified, we conclude that the appeal is well-founded. The lack of adequate documentation, transparency and failure to comply with procedural norms necessitate the conclusion that the administrative actions against the appellant are unjustifiable.


8. Consequently, the appeal in hand is accepted by setting-aside the impugned orders dated 29<sup>th</sup> of January, 2021, 22<sup>nd</sup> of June, 2022 and


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Service Appeal No.1706/2022 titled "Habib ur Rehman Versus Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar others", decided on 24.10.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

June 16, 2022. Parties are left to bear their own costs. File be consigned to the record room.

9. *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 24/10/2024  
Member (Judicial)



  
FARIEHA PAUL  
Member (Executive)

\*Naeem Amin\*

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No. 1706 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-12</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 the 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 orders dated 29<sup>th</sup> of January, 2021, 22<sup>nd</sup> of June, 2022 and June 16, 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> (Fareeha Paul) Member (Executive)</p> <p> (Aurangzeb Khattak) 24/10/2024 Member (Judicial)</p> <p>*Naeem Amin*</p>



Note

4<sup>th</sup> October, 2024 The case could not be fixed before D.B at Camp Court, D.I. Khan due to cancellation of tour. Therefore, instant case be fixed on 24/10/2024 for arguments before D.B at the Principal Seat, Peshawar. Counsel be informed telephonically.

*Counsel informed*

  
(Habib Ur Rehman Orakzai)  
Registrar

*[A long, thin, curved handwritten mark or signature]*

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

**Service Appeal No. 1706/2022**

Date of presentation of Appeal 29.11.2022  
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**Habib ur Rehman** Son of Allah Dad, R/o Kot Khadak Tehsil & District Tank.  
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.....**(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.

  
**Faheeha Paul**  
Member (Executive)

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