

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT, SWAT.

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

Service Appeal No. 321/2024

Date of presentation of Appeal.....15.02.2024
Date of Hearing.....05.11.2024
Date of Decision.....05.11.2024

Sohail Ayub S/o Nazar Ayub, R/o Purana Bazar, Adjacent Army Public School, Darosh District Chitral. Junior Clerk O/o the DFO Chitral.*Appellant*

Versus

1. Conservator of Forests, Malakand Forest Circle West at Timergara, Lower Dir.
2. Divisional Forest Officers, Chitral Forest Division Chitral.
.....(*Respondents*)

Present:

Mr. Muhammad Shoaib Khan, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, are that the appellant was appointed as a Junior Clerk (BPS-11) in the office of the District Forest Officer, Chitral, on March 13, 2019. Following an inquiry on the charges of misconduct, inefficiency and harassment of a lady co-worker (Mrs. Shakira Bibi FFE) he was terminated from service through Office Order No. 162 on June 14, 2019. The appellant filed a departmental appeal against the termination order dated June 14, 2019, addressed to the Conservator of Forests, which was rejected vide order dated

05/11/2024

November 1, 2019. Subsequently, the appellant approached this Tribunal by filing of Service Appeal No. 1512/2019, which was decided vide judgment dated January 22, 2021, allowing the appeal, setting aside the termination orders and granting the respondents liberty to form an inquiry committee strictly in accordance with the terms and spirit of Section 3(2) of the Protection Against Harassment of Women at the Workplace Act, 2010, to investigate the allegations against the appellant. Following the Tribunal's judgment, an inquiry committee was formed under the Protection Against Harassment of Women at the Workplace Act, 2010. The committee conducted proper enquiry and resultantly found the appellant guilty of the offence. On the basis of the said inquiry report, punishment of stoppage of two annual increments was imposed upon him on 26.01.2023. On December 8, 2023, the appellant filed an application requesting payment of outstanding salaries for the period from June 15, 2019 to January 31, 2021, which was subsequently denied by Office Order No. 71 on January 19, 2024, treating this period as leave without pay. The appellant has now approached this Tribunal again, seeking redress for payment of his outstanding salaries for the period from June 15, 2019, to January 31, 2021.

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 order dated January 19, 2024 was illegal, arbitrary and violated


05/11/2024

natural justice. He next contended that the impugned order fails to comply with the Government Service (Efficiency & Disciplinary) Rules, 2011. He further contended that the actions of the respondents infringe upon the appellant's fundamental rights under the Constitution of Pakistan. He contended that during previous round of litigation, the appellant had prayed for all back benefits and since the previous appeal was allowed and the case was remanded to the respondents for de-novo inquiry, therefore, he is entitled for the salaries in question. He next argued that the recommendations made by the inquiry committee did not address salary issues during the period of termination. He further argued that the rejection of the salary application lacked a sound legal basis and was not sustainable.

4. On the other hand, the learned District Attorney for the respondents opposed the contentions of learned counsel for the appellant and contended that the inquiry committee was constituted as per the directions of this Tribunal and applicable law. He next contended that the inquiry established the appellant's guilt, leading to the penalty of stopping two annual increments. He further contended that the delay and non-regularization of the salary request were in line with the Tribunal's decision, which did not mandate payment for the contested period. He next argued that the decision to treat the interim period as leave without pay was directed by the Conservator of Forests and aligned with procedural requirements.

05/11/2024

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

6. The available record shows that the appellant was recruited as a Junior Clerk (BPS-11) on 18.03.2019. Shortly after, disciplinary proceedings were initiated against him on allegations of misconduct, inefficiency and harassment of a female colleague, Mrs. Shakira Bibi (FFE). This led to the imposition of a major penalty, resulting in his termination on 14.06.2019. The appellant contested his termination by filing a departmental appeal, which was rejected on 01.11.2019. He subsequently appealed to this Service Tribunal (Service Appeal No. 1512/2019), which on 22.01.2021 set aside both the termination order dated 14.06.2019 and the departmental appeal rejection dated 01.11.2019. The Tribunal, however, did not grant reinstatement or back pay and instead held the department at liberty to constitute an inquiry committee in accordance with Section 3(2) of the *Protection Against Harassment of Women at the Workplace Act, 2010*, for a fair probe into the allegations. Following the Tribunal's directions, an inquiry committee was constituted on 03.08.2021. Both the appellant and the complainant, Mrs. Shakira Bibi, attended the inquiry proceedings and the appellant was given full opportunity to defend himself, including the right to cross-examine. During the proceedings, the appellant admitted to the allegations. Consequently, the inquiry committee recommended penalties of a two-year cumulative stoppage of annual increments and a transfer


05/11/2024.


to another location outside the Chitral Forest Division. On 26.01.2023, the Divisional Forest Officer of Chitral Forest Division implemented the inquiry committee's recommendation, issuing a penalty of stopping the appellant's annual increments due on 01.12.2023 and 01.12.2024. The appellant accepted this order without challenge, signifying his acquiescence to the penalty. On 08.12.2023 after about eleven months, the appellant submitted an application requesting payment of outstanding salaries for the period of 15.06.2019 to 31.01.2021. This application was forwarded to the Conservator of Forests, Malakand Forest Circle West, on 19.12.2023. However, on 19.01.2024, the appellant's period of absence from 15.06.2019 to 31.01.2021 was treated as leave without pay. The contention of the appellant that since his termination order of 14.06.2019 was set aside by the Tribunal as such, he should be entitled to back benefits. We found that the Tribunal's previous judgment had only set aside the termination order to allow a fair inquiry, without granting reinstatement benefits or back pay. Moreover, the appellant had neither been exonerated nor cleared in the inquiry; in fact, he had admitted his misconduct. Since he accepted the penalty of incremental stoppages without challenge, the court applied the principle of "no work, no pay" to conclude he was not entitled to salaries for the period he was out of service.


7. In light of the above findings, we uphold the department's decision to treat the appellant's absence from 15.06.2019 to

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05/11/2024*

31.01.2021 as leave without pay, concluding that the appellant is not entitled to receive outstanding salaries for that period. The appellant's claim lacks merit due to his admission of guilt and acceptance of the penalty. So his appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Camp Court, Swat and given under our hands and the seal of the Tribunal on this 05th day of November, 2024.*


AURANGZEB KHATTAK
Member (Judicial)
Camp Court, Swat


FAREHA PAUL
Member (Executive)
Camp Court, Swat

Naeem Amin

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT, SWAT.

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Darosh District Chitral. Junior Clerk O/o the DFO Chitral
.....*Appellant*,

Versus

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

PRESENT


1. Mr. Muhammad Shoaib Khan, Advocate.....For appellant.
2. Mr. Muhammad Jan, 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. Nil	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. Nil/-	Total	Rs. Nil

Note: Appellant has not deposited security fee despite being directed by this Tribunal on 07.10.2024.

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

Given under our hands and the seal of this Court, this 05th day of November 2024.




Farzana Paul
Member (Executive)
Camp Court, Swat


Aurangzeb Khattak
Member (Judicial)
Camp Court, Swat
05/11/2024

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 321 of 2024

Sohail Ayub versus Conservator of Forests, Malakand Forest Circle West at Timergara,
Lower Dir and others.

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
<p><u>Order-07</u> 05th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Muhammad Shoaib Khan, Advocate on behalf of the appellant.2. Mr. Muhammad Jan, District Attorney on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, we uphold the department's decision to treat the appellant's absence from 15.06.2019 to 31.01.2021 as leave without pay, concluding that the appellant is not entitled to receive outstanding salaries for that period. The appellant's claim lacks merit due to his admission of guilt and acceptance of the penalty. So his appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><i>Pronounced in open Court at Camp Court, Swat and given under our hands and the seal of the Tribunal on this 05th day of November, 2024.</i></p> <p style="text-align: center;"> (Fareeha Paul) Member (Executive) Camp Court, Swat</p> <p style="text-align: right;"> (Aurangzeb Khattak) Member (Judicial) Camp Court, Swat</p> <p><i>*Naeem Amin*</i></p>