



KHYBER PAKHTUNKHWA

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GOVERNMENT OF KHYBER PAKHTUNKHWA MINERALS DEVELOPMENT DEPARTMENT

NOTIFICATION

Dated Peshawar, the 25th August, 2022.

No.SO(Appeal)/MDD/6-1/M&M Act/2022/5032-39.-In pursuance of sub-section (2) of section 103 of the Khyber Pakhtunkhwa Mines and Minerals Act, 2017 (Khyber Pakhtunkhwa Act No. XXXVI of 2017), and in exercise of powers conferred by sub-section (1) of section 103 of the Act ibid read with section 102A thereof, the Government of Khyber Pakhtunkhwa hereby publishes the following rules, namely:

THE KHYBER PAKHTUNKHWA MINES AND MINERALS APPELLATE TRIBUNAL RULES, 2022.

CHAPTER-I PRELIMINARY

1. **Short title and commencement.** —(1) These rules may be called the Khyber Pakhtunkhwa Mines and Minerals Appellate Tribunal Rules, 2022.

(2) These rules shall come into force at once.

2. **Definitions.**—(1) In these rules, unless there is anything repugnant in the subject or context,—

(a) “Act” means the Khyber Pakhtunkhwa Mines and Minerals Act, 2017 (Khyber Pakhtunkhwa Act No. XXXVI of 2017);

(b) “Chairman” means the Chairman of the Appellate Tribunal;
and

(c) “Registrar” means the Registrar of the Appellate Tribunal designated under rule 8 of these rules.

(2) Words and expressions used in these rules but not defined shall have the same meaning as are assigned to them in the Act.

CHAPTER-II
COMPOSITION, SITTING, JURISDICTION AND POWERS OF THE
APPELLATE TRIBUNAL

3. Composition of the Appellate Tribunal.--- The Appellate Tribunal shall consist of-

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|-----|--|----------|
| (a) | Secretary to Government, Minerals Development Department; | Chairman |
| (b) | a representative of Law Department not below the rank of BPS-19; and | Member |
| (c) | a technical person having expertise in mines and minerals to be nominated by the Chairman from time to time. | Member |

4. Sittings of the Appellate Tribunal.---(1) The Appellate Tribunal shall hold its sittings in Peshawar.

(2) The Department shall provide Secretariat support to the Appellate Tribunal.

(3) For every sitting of the Appellate Tribunal, the presence of the Chairman and at least one member shall be necessary.

5. Decision by majority.---(1) The decision of the Appellate Tribunal shall be expressed in terms of opinion of the majority of its members, including the Chairman or if the case has been decided by the Chairman and one of the members only and there is difference of opinion between them, the decision of the Appellate Tribunal shall be expressed in terms of opinion of the Chairman.

(2) The Appellate Tribunal shall not, merely by reason of a change in its composition, or the absence of any member from any sitting, be bound to recall or rehear any witness who has given evidence and may act on the evidence already recorded by or produced before it.

6. Jurisdiction of the Appellate Tribunal.---The Appellate Tribunal shall exercise jurisdiction under sub-section (5) of section 102A of the Act.

7. Powers of the Appellate Tribunal.---(1) In exercise of jurisdiction under section 102A of the Act, the Appellate Tribunal shall have the same powers and shall follow the same procedure as an appellate court as defined in the Code of Civil Procedure, 1908 (Act No. V of 1908).

(2) All proceedings pending before the Appellate Authority immediately prior to the establishment of Appellate Tribunal shall stand transferred to the Appellate Tribunal on coming into force of these rules. On transfer of proceedings under this sub-rule, the parties shall appear before the Appellate Tribunal on the date previously fixed.

(3) In respect of proceedings transferred under sub-rule (2), the Appellate Tribunal shall proceed from the stage to which the proceedings had reached immediately prior to the transfer and shall not be bound to recall or rehear any witness and may act on the evidence already recorded or produced before the Appellate Authority.

CHAPTER-III **REGISTRAR OF THE APPELLATE TRIBUNAL**

8. Registrar of the Appellate Tribunal.---An officer of the Department, not below the rank of a Deputy Secretary nominated by the Chairman, shall act as Registrar of the Appellate Tribunal.

9. Functions of the Registrar.---(1) The Registrar shall discharge his functions under these rules and shall perform such other functions as are assigned to him by order, in writing, of the Chairman. The Registrar shall have custody of the record and the appeals being heard or decided by the Appellate Tribunal.

(2) The official seal of the Appellate Tribunal shall be kept in the custody of Registrar.

(3) In addition to the functions and duties mentioned in sub-rules (1) and (2), the Registrar shall also perform the following functions and duties, namely:

- (a) receive all appeals, replies and other documents;
- (b) require any appeal or reply to be presented to the Appellate Tribunal to be amended in accordance with these rules or the Act;
- (c) subject to the directions of Appellate Tribunal, fix date of hearing of the appeals or other proceedings and issue notices thereof;
- (d) grant copies of the documents or proceedings to the parties;
- (e) grant leave to inspect the record of the Appellate Tribunal in a particular appeal;

- (f) dispose of all matters relating to the service of the notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisement in the news papers;
- (g) requisition record from the custody of any adjudicating officer or authority; and
- (h) maintain record of appeals received and decided by the Appellate Tribunal.

(4) In case the post of Registrar is vacant due to any reason, the powers and functions of the Registrar shall be performed by any other official of the Department authorized by the Chairman till the time the Registrar resumes his duties.

CHAPTER-IV **PROCEDURE IN APPEALS**

10. Procedure of filing appeals:---(1) An appeal under section 102A of the Act shall be submitted to the office of the Registrar during office hours by the appellant personally or through his agent or counsel.

(2) The appellant shall submit five extra copies of the appeal to the office of Registrar.

(3) The appeal shall be accompanied by,-

- (a) a copy of the impugned order;
- (b) copies of all documents on which the appellant relies; and
- (c) court fees stamps, as prescribed in the Court Fees Act, 1870 (Act No. VII of 1870).

(4) The Registrar shall examine the appeal submitted under this rule to make sure that the appeal is complete in all respects.

(5) If there is any deficiency in the appeal, the Registrar shall return the appeal for fulfillment of the deficiency.

(6) If the appeal is complete and there is no deficiency, the Registrar shall register it in the register of appeals and assign a number to it.

11. Admission of the time barred appeals.---An appeal may be admitted after expiry of the period of limitation prescribed therefore, when the appellant satisfies the Appellate Tribunal that he had sufficient cause for not preferring the appeal within such period and the decision of the Appellate Tribunal as to the sufficiency of cause shall be final.

12. Fixation of date of hearing.---(1)The Appellate Tribunal may, on submission of appeal after fixing a date for hearing the appellant or where he is represented by a counsel, after hearing the counsel, dismiss the appeal in *limine*.

(2) If the appeal is not dismissed in *limine*, notices of admission of appeal and of the date fixed for its hearing shall be served on the appellant and the respondents and on such other persons as the Appellate Tribunal may deem proper.

13. Service of notices.---(1) A notice under sub-rule (2) of rule 12 of these rules may be served by registered post or in any other manner as the Appellate Tribunal may direct.

(2) The notices to the respondents shall be accompanied by a copy of the memorandum of appeal and all the documents appended therewith.

(3) The Appellate Tribunal may, where the number of respondents is large or where otherwise the Appellate Tribunal considers it appropriate or desirable to do so, direct that in addition to sending a copy of the notice to the respondents by registered post or through any other manner, the notice shall be published in one or more daily newspapers having circulation in the areas where the respondents ordinarily reside or work for gain.

(4) Service of notice in accordance with the provisions of this rule shall be as effectual as it had been made on the respondents personally, and it shall not be necessary to prove that a party has actually received the notice.

14. Submission of objections by respondents.---(1)A respondent on whom a notice of appeal has been served under the provisions of rule 13 of these rules, shall send his written reply by registered post acknowledgement due, to the Registrar; or deliver the same to the Registrar personally or through his agent or a counsel, not later than seven days before the date specified in the notice for the hearing of the appeal.

(2) The reply shall be correct and concise, type written or printed and shall be signed by the respondent or a person duly authorized by him in writing in this behalf and shall also be accompanied by such other documents or orders on which the respondent wishes to rely in support of his case.

(3) The Registrar shall satisfy himself that the reply is complete and there is no deficiency therein.

(4) The written reply shall be accompanied by five spare copies thereof, complete in all respects and containing copies of the order or documents referred to in sub-rule(2), for use of the Appellate Tribunal.

15. Summoning of witness.---(1) A list of witnesses shall be presented to the Appellate Tribunal and application for summoning witnesses before the Appellate Tribunal shall be made within ten days after the service of notice of appeal under rule 13 of these rules, which shall state whether they are required to give evidence or to produce any documents. Where a witness is required to produce a document, the appellant shall give a brief description of the document to be produced by such witness so as to identify the same to the Appellate Tribunal.

(2) If the Appellate Tribunal is of the opinion that the evidence of any witness specified in the list of witnesses given under sub-rule(1), shall be of material assistance in the disposal of an appeal before it, it shall direct him to be summoned on a date to be fixed by the Appellate Tribunal and also direct that the daily allowance and traveling charges of such witness, at the rates admissible to witnesses appearing in the High Court, shall be deposited by the person calling him, within the period, as may be specified by the Appellate Tribunal.

(3) If a party applying for the summoning of a witness fails to deposit the requisite costs of the witness within the period specified by the Appellate Tribunal under sub-rule (2), or within any extended period that may be granted by the Appellate Tribunal, the application for summoning of witnesses, so far as it relates to such witness, shall be deemed to have been rejected.

(4) If the Appellate Tribunal is of the opinion that the evidence of any other witness is necessary for the disposal of an appeal before it, it may direct him to be summoned.

Where the Appellate Tribunal summons a witness under the provisions of sub-rule(4)-

- (a) if such witness is a Government servant, his traveling and daily allowance, if any, shall be borne by Government; and
- (b) if such person is a private person, his traveling and daily allowance shall be borne by the appellant.

(6) Process for service on witnesses of high rank shall be sent in the form of a letter.

(7) Except in urgent cases or as otherwise ordered by the Appellate Tribunal, a summon requiring a public officer to give evidence or to produce a document shall be served through the Head of his office.

16. Recording of statements.---(1)The statement of persons examined by the Appellate Tribunal shall be recorded under the superintendence of the Appellate Tribunal ordinarily in the form of a narrative and shall form part of the record.

(2) The Appellate Tribunal may record such remarks as it thinks material respecting the demeanor of any person produced as witness while under examination.

17. Hearing of appeal.---(1)On the day fixed, or on any other day to which the hearing may be adjourned, the appellant or his counsel shall be heard in support of the appeal.

(2) The Appellate Tribunal shall then, if it does not dismiss the appeal, at once hear the respondent or his counsel against the appeal and in such case, the appellant shall be entitled to reply.

18. Dismissal of appeal on failure to appear by the parties.---(1) Where on the day fixed for the hearing of an appeal or any other day to which the hearing may be adjourned the appellant or his counsel, if any, does not appear when the appeal is called for hearing, the Appellate Tribunal may make an order that the appeal is dismissed.

(2) Where the appellant or his counsel, if any, appears and the respondent or his counsel, if any, does not appear the appeal shall be heard ex-parte.

(3) Where an appeal is dismissed under sub-rule(1), or an ex-parte order is made under sub-rule (2), the Appellate Tribunal may for sufficient cause on an application made within fifteen days of such dismissal or order, restore the appeal or, as the case may be, set aside the ex-parte order on such terms as to costs or otherwise as it thinks fit:

Provided that no order of restoration of an appeal dismissed in default or setting aside the ex-parte order shall be made unless notice of the application has been served on the opposite party.

19. Adding respondent.---When it appears to the Appellate Tribunal at the hearing that any person, who is interested in the result of the appeal, has not been made a party in the appeal, the Appellate Tribunal may adjourn the hearing to a further date to be fixed by it and direct that such person be made respondent.

20. Pronouncement of order.---The Appellate Tribunal may pronounce the order either at once on the conclusion of arguments or on some future date of which notice shall be given to the parties or their counsels.

21. Order regarding costs, etc.---The Appellate Tribunal may make such order as to the costs of proceedings before it as it deems fit.

22. Appellant precluded from bringing another appeal in certain cases.---Where an appeal has been withdrawn by the appellant and is in consequence dismissed by the Appellate Tribunal as withdrawn, the appellant shall, unless otherwise directed by the Appellate Tribunal, be precluded from bringing another appeal in respect of the same cause of action.

23. Adjournments.---Subject to rule 27 of these rules, the Appellate Tribunal may adjourn the proceedings to a next date on the request of any of the parties to appeal:

Provided that the Appellate Tribunal shall not adjourn the proceedings more than twice at the instance of a party.

Explanation: "Parties" for the purpose of this rule means the appellant and the respondents.

CHAPTER-V **GENERAL PROVISIONS**

24. Seal of the Appellate Tribunal.---(1) There shall be a seal of the Appellate Tribunal, which shall indicate the name of Appellate Tribunal and its insignia.

(2) The seal shall remain in the custody of the Registrar or in his absence, such other officer as the Chairman may direct.

(3) The seal of the Appellate Tribunal shall be affixed to every order, summons or other processes of the Appellate Tribunal.

25. Cause list.---(1) A daily cause list shall be prepared under the orders of the Registrar which shall be affixed on the notice board of the court room of the Appellate Tribunal.

(2) Except as otherwise directed by the Appellate Tribunal in writing, cases shall be set down in the cause list in the order of the date of admission.

26. Copies of order and record.---(1) The Appellate Tribunal shall, after passing and signing any final order in any case, cause certified copies thereof to be sent under registered post acknowledgement due, to the parties concerned and the Director General.

(2) Any party, on submission of application, may obtain additional copies of the order on payment of such fees as the Appellate Tribunal may fix from time to time.

27. Expeditious disposal.---The Appellate Tribunal shall dispose of an appeal or other proceedings within ninety days of its filing. In case of delay, the Appellate Tribunal shall record its reason in writing accordingly:

Provided that a decision of the Appellate Tribunal shall not be rendered invalid by reason of any delay in the disposal of appeal.

28. Proceedings open to the public.---All proceedings before the Appellate Tribunal shall be open to the public and shall be decided as per procedure laid down in the Civil Procedure Code, 1908 (Act No. V of 1908).

CHAPTER-VI **RECORD OF THE TRIBUNAL**

29. Preservation of record.---(1)The entire record of each appeal including documents forming part of the appeal shall be preserved in original by the Registrar for a period of five years from the date of the final decision of the Appellate Tribunal.

(2) Any original documents produced in evidence by either party shall be returned to such party within fourteen days of issuance of the final decision while retaining copies thereof which shall be attested by the Chairman of the Appellate Tribunal as true copies of the originals.

30. Public record.---The decision of the Appellate Tribunal and the pleadings of the parties shall be public record and certified copies thereof may be obtained by any member of the public, upon submitting an application to the Registrar.

31. Registers.---The following registers of the Appellate Tribunal shall be maintained by the Registrar, namely:

- (a) register of appeals for showing institution and disposal of appeals; and
- (b) register for keeping accounts of court fees.

**SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT
DEPARTMENT**