

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 355/2018

Date of Institution ... 09.03.2018

Date of Decision ... 10.12.2019

Hashim Khan, Ex-DFO, House no. 17 Street, Sector, C-3, Phase-5, Hayatabad,  
Peshawar. ... (Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa  
Peshawar three others. ... (Respondents)

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MR. MUHAMMAD ASIF YOUSAFZAI,  
Advocate

--- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General

--- For respondents

MR. AHMAD HASSAN

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MEMBER(Executive)

MR. MUHAMMAD AMIN KHAN KUNDI

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MEMBER(Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the  
parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that he joined service in the respondent-department as Forest Ranger in 1984 and finally reached the rank of DFO. The task of construction of Office-cum-Residential building at the Dagar, Buner was assigned to the appellant. He acquired six Kanal and one Marla land through private negotiation. His predecessor Mir Wali Khan, DFO, who did not have cordial working relationship with the appellant submitted a baseless monitoring report on 01.02.2011, which laid foundation for initiation of disciplinary

proceedings against him. Numerous charges were leveled in the charge sheet and statement of allegations and after conducting enquiry major punishment of reduction to lower post and recovery of Rs. 3238644/- was imposed on him vide impugned order dated 31.12.2014. He filed service appeal no. 474/2015 in this Tribunal and was decided on 02.02.2016, in favour of the appellant. De-novo enquiry was conducted and upon culmination penalty of removal from service was awarded to him vide order dated 07.11.2017. He filed review petition on 17.11.2017 which remained unanswered, hence, the present service appeal.

03. Learned counsel for the appellant further argued that the enquiry committee failed to conclude whether the appellant was guilty of misconduct/negligence or procedural lapses? Enquiry was not conducted in the mode and manner prescribed in the rules. Neither statements of the witnesses were recorded in the <sup>presence</sup> ~~pressure~~ of the appellant, nor opportunity of cross examination was afforded to him. The comments submitted by the respondent-department on the review petition were also in his favour. Twice audit was conducted but no financial/procedural, irregularities and corruption/embezzlement was highlighted. Before transfer of the appellant to the Buner, land in the same locality was acquired by various organizations at much higher prices. The appellant not only got approval from the high ups but also brought to the facts into their notice. Therefore, he alone could not be held responsible for the lapses if any. The enquiry was conducted in questionnaire form, which had been discarded by the superior courts in numerous judgments. On reaching the age of superannuation, the appellant stood retired from government service on 01.01.2018 Reliance was placed on case law reported as 1997 SCMR

1543, 2010 PLC (C.S) 1299, 1997 SCMR 1073, 2012 PLC (C.S) 728, 2006 PLC (CS) 604 and 2002 SCMR 433.

04. Learned Assistant Advocate General argued that PC-1 titled "Construction of Offices and Residential Building for Khyber Pakhtunkhwa ADP no. 606" was approved by the DDWP vide letter dated 19.06.2008. The Administrative Approval was accorded by the respondent-department on 24.01.2009. Process of land acquisition was started through a letter dated 06.05.2010 addressed to the DOR Buner. The predecessor of the appellant, who was holding the charge of DFO working plan unit "VI" Swat, after conducting inspection of the subject land pointed out numerous illegalities. Thereafter, enquiry under E&D Rules 2011 was initiated against the appellant and penalty was awarded which was assailed before the service Tribunal by way of filing appeal decided on 02.02.2016. On the direction of this Tribunal de-novo was conducted and upon winding up major penalty of removal from service was awarded to the appellant vide impugned order dated 07.11.2017. All codal formalities were observed before awarding the major penalty.

**CONCLUSION:**

05. A PC-1 titled "Construction of Offices and Residential Building for Khyber Pakhtunkhwa ADP no. 606" was approved by the DDWP vide letter dated 19.06.2008. The Administrative Approval was granted by the respondent-department on 24.01.2009. The predecessor of the appellant (Mr. Mir Wali Khan, DFO) held the charge of DFO, Buner from 2007 to 19.04.2010 but could not finalize the process of land acquisition. On the other hand, the appellant was posted

as DFO, Buner on 19.04.2010 and purchased Six Kanal and one Marla land in District Headquarters Colony Dagar, Buner after executing proper agreement with the owners. Thereafter, it was sent to the District Collector, Buner for signatures and Chief Conservator Environment, Khyber Pakhtunkhwa was also taken into loop.

06. On a report submitted by his predecessor, disciplinary proceedings were conducted and upon culmination major penalty of reduction to lower post alongwith with recovery of Rs. 3238644/- was awarded to him vide notification dated 31.12.2014. He assailed the said order by filing service appeal no. 474/15 decided on 02.02.2016. The appeal was decided in favour of the appellant with directions to conduct de-novo enquiry. De-novo enquiry was conducted and thereafter major penalty of removal from service was imposed on him vide impugned order dated 07.11.2017. After exhausting departmental remedies, he filed the present service appeal.

07. As regards charge at serial no. a, of the charge sheet/statement of allegations, it is clarified that the project was approved by the DDWP on 19.06.2008, while the appellant was posted DFO, Buner on 19.04.2010, hence, he alone could not be held responsible for the delay in processing the case for purchase of land. As the project was going to close on 30.06.2010, therefore, the appellant was under tremendous pressure to expedite the process of purchase of land. To cut it short, this charge was not proved against him. The enquiry committee rightly held him guilty of charges mentioned at serial no.b,c and d etc. So far as allegation at serial no. D was concerned responsibility squarely fell on the shoulders of DOR.

Our view point is further supported by letter no. 283/2/HCR dated 14.02.2011 addressed to the appellant by the DOR.

08: Upon microscopic examination of the enquiry report, it appeared to be perfunctory and superficial. The enquiry committee for unknown reasons failed to record the statements of the then Chief Conservator of Forest, DOR, Buner and other concerned, as mentioned in the written reply of the appellant. Having not recorded their statements so the question of affording opportunity of cross examination to the appellant did not arise. Departure from mandatory requirements of rules made the report deficient and controversial. Moreover, the Chief Conservator of Forest while offering para-wise comments on the review petition filed by the appellant vide letter dated 02.01.2018 also endorsed the facts that Conservator Forest, Malakand was approached by the appellant vide letter dated 18.05.2010 to get additional approval, if required. He saved Rs. 1742400/- on which additional land of one Kanal and one Marla land on the directions of Chief Conservator of Forest, Khyber Pakhtunkhwa was purchased, during a spot visit on 27.04.2010 land purchased by the appellant was situated right in the heart of the city, while the one purchased by the Police was agriculture land and situated at a distance from the road.

09: Scrutiny of entire record established one thing beyond any shadow of doubt that though the appellant was guilty of procedural lapses and it fell in the ambit of misconduct. He was rightly held responsible for the lapses on his part by the enquiry committee. However, a dispassionate review of the case brought a critical/vital point on the surface that right from the monitoring report followed by

two enquires did not bring any charge of embezzlement, financial corruption and undue financial gains/ benefits got by the appellant during the said purchase. Even, we would go a step further to pin point that mal-intent, intentional/deliberate attempt on the part of the appellant in the process could be easily ruled out. He failed to observe the laid down procedure but entire responsibility cannot be fixed on him alone. Had he extracted undue financial gains out of the above deal then such a harsh penalty could be justified. Our contention is further supported by the fact that the enquiry committee in its recommendations opined that the issue regarding recovery of losses should be properly investigated and thereafter, further action could be taken. Perusal of impugned order showed that the competent authority was in agreement with the recommendations of the enquiry committee by awarding him only major penalty of removal from service.

10. It is pertinent to point that on reaching the age of superannuation the appellant stood retired from government service on 01.01.2018. Having retired from government service and taking into consideration his previous service record having no stains provides sufficient justification for showing compassion while deciding the present service appeal. Harsh application of law will have multifaceted adverse implications on the appellant and his family. This penalty has deprived the appellant and his family of hard earned pension, which is only source of livelihood for a retired government servant. Though, misconduct was committed by the appellant, but this punishment brought unending recurring financial miseries/hardships for the family, who had no inkling in the entire episode. This brings us to stand point to modify the penalty for the sake of substantive justice.

11. As a sequel to the above, the appeal is partially accepted, impugned order dated 07.11.2017 is modified by converting the penalty of removal from service into compulsorily retirement. The intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)

Member


*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
Member

ANNOUNCED

10.12.2019

15.11.2019

Appellant alongwith his counsel and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Arguments heard. Case to come up for order on 10.12.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

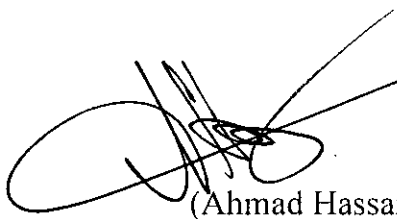
**ORDER**

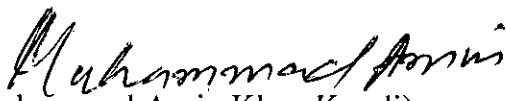
10.12.2019

Appellant with counsel present. Mr. M. Riaz Khan Paindakhel, Assistant Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is partially accepted, impugned order dated 07.11.2017 is modified by converting the penalty of removal from service into compulsorily retirement. The intervening period shall be treated as leave without pay. Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
10.12.2019

  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member



05.08.2019 Junior to counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 23.09.2019 before D.B.

  
Member

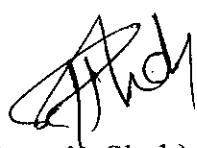
  
Member


23.09.2019 Appellant in person present. Mr. Zia Ullah Learned Deputy District Attorney alongwith Mr. Muhammad Farooq DFO for the respondents present. Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not in attendance. Adjourned. To come up for rejoinder and arguments on 21.10.2019 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

21.10.2019 Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not in attendance. Mr. Riaz Paindakhel learned Assistant Advocate General alongwith Mr. Muhammad Farooq DFO for the respondents present Adjourned. To come up for further proceedings on 15.11.2019 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

16.05.2019

Appellant in person and Mr. Ziaullah, DDA alongwith Muhammad Farooq, DFO for the respondents present.

Due to demise of his father, learned Member of the Bench (Mr. Hussain Shah) is on leave. Adjourned to 14.06.2019 for arguments before the D.B.

  
Chairman

14.06.2019

Appellant in person and Mr. Muhammad Jan, DDA alongwith Haseebullah, Stenographer for the respondents present.


Due to general strike on the call of the Khyber Pakhtunkhwa Bar Council, the matter is adjourned to 12.7.2019 for arguments before the D.B.

  
Member

  
Chairman

12.07.2019

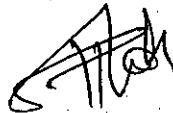
Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 05.08.2019 before D.B.

  
Member


  
Member

22.01.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Muhammad Farooq DFO for the respondents present. Representative of the respondents is directed to produce PC-I as well as all the record during the tenure of X-DF. Adjourned. To come up for record and arguments on 01.03.2019 before D.B

  
(Hussain Shah)

Member

  
(Muhammad Amin Khan Kundi)

Member

01.03.2019

Appellant in person and Addl. AG alongwith Muhammad Farooq, DFO for respondents present.

The representative of respondents has produced record as required through order dated 22.01.2019. The same is appended with the file. To come up for arguments on 26.04.2019 before the D.B.

  
Member

  
Chairman

26.04.2019

Due to general strike of the bar, the case is adjourned. To come up for arguments on 16.05.2019 before D.B.

  
Member

  
Member

28.06.2018

Appellant in person present. Mr. Muhammad Jan, DDA alongwith Muhammad Farooq, DFO Division for the respondents presents. Written reply submitted on behalf of respondents. To come up for rejoinder if any and arguments on 29.08.2018 before D.B.

  
Member

29.08.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder and seeks adjournment for arguments. Adjourned. To come up for arguments on 21.09.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

21-9-2018


*Since 21 September 2018 has been declared as public holiday, therefore the case is adjourned for the same on 5-10-18, for the same.*



05.10.2018


Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for appellant seeks adjournment. Adjourned. To come up for arguments on 19.10.2018 before D.B.


  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

19.10.2018

Counsel for the appellant present. Mr. M. Frooq, DFO alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 22.11.2018 before D.B.


  
(Hussain Shah)  
Member

  
(Ahmad Hassan)  
Member

22.11.2018

Junior counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy before the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 22.01.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

22.01.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Muhammad Farooq DFO for the respondents present. Representative of the respondents is directed to produce PC-I as well as all the record during the tenure of X-DFO. Adjourned. To come up for record and arguments on 01.03.2019 before D.B

(Hussain Shah)  
Member

(Muhammad Amin Khan Kundi)  
Member

29.03.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that this is the 2<sup>nd</sup> round of litigation. Previously on an appeal filed against the punishment awarded by the respondents, this Tribunal upon acceptance of appeal remanded the case back to the respondents for conducting the de-novo enquiry vide judgment dated 02.02.2016. Now after conducting de-novo enquiry major penalty of removal from service was imposed on him vide impugned order dated 07.11.2017. He filed review petition on 07.11.2017 which was not responded within stipulated period, hence, the instant service appeal. De-novo enquiry has not been conducted according to the prescribed procedure mentioned in the rules. The appellant was not treated according to law and rules.

Appellant Deposited  
Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 03.05.2018 before S.B.

03/05/18

03/05/18

  
(AHMAD HASSAN)  
MEMBER

03.05.2018

The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 28.06.2018 before S.B.

  
Reader

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_

Case No. 355/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09/03/2018	<p>The appeal of Mr. Hashim Khan presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to Learned Member for proper order please.</p> <p><i>[Signature]</i> REGISTRAR 9/3/18</p>
2-	12/03/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29/03/18.</u></p> <p><i>MA</i> MEMBER</p>

Ann-VI

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For appellant

OFFICE OF THE CONSERVATOR OF FORESTS, MALAKAND CIRCLE EAST, SAIDU SHARIF.

To  
The Chief Conservator of Forests,  
Malakand Forest Region-III  
Saidu Sharif Swat.

No. 8525 /E, dated Saidu Sharif, the: 09 /April, 2015.

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED NOTIFICATION NO.SO(ESTT)ENV/1-50(87)/2K12 DATED 31.12.2013 VIDE WHICH A MAJOR PENALTY OF "REDUCTION TO LOWER POST AND RECOVERY OF Rs.32,38,644/- HAS BEEN IMPOSED UPON ME.

Memorandum:

Reference your endst. No. 4489/E, dated 16.03.2015.

Para wise comments to the appeal preferred by Mr. Hasham Khan the then DFO Buner Forest Division against the punishment awarded to him mentioned in the subject, are furnished as under:-

1. Needs no comments.
2. It is correct.
3. Mr. Mir Wali Khan who was holding the charge as DFO Buner is in a better position to explain the factual position to show the cause of non purchase of land within stipulated period.
4. No doubt that the land had been purchased by the appellant but certain legal flaws during the course of monitoring etc were detected which resulted the instant situation of punishment awarded.
5. The comments given in para-4 above are sufficient to convince the purpose.
6. Formal enquiry, monitoring in purchase of land has been made and keeping in view the availability of substantial record in the enquiry file, certain irregularities have been found rather codal formalities laid down for the purpose were not completed.
7. Conducting monitoring of the activities in Malakand East Forest Circle is the responsibility of DFO Working Plan Unit-VI Swat. Unfortunately Mr. Mir Wali Khan was incharge DFO Working Plan Unit-VI Swat and accordingly he conducted monitoring of the land purchased and his report become cause of the subject enquiry.
8. Mr. Mir Wali Khan DFO BPS-18 (Member of the enquiry committee) was reporting officer in the instant case and all the enquiry proceedings based on his monitoring report. Moreover, he is also of the equal rank to the appellant which is against the E&D Rules 2011 (clause 10(a) and 10(3) and the natural justice.
9. Irrelevant hence no comments.
10. The enquiry was conducted in accordance with the E&D Rules 2011.

GROUND

A. The factual position has been shown in para-4 above. No directives have been issued to the appellant to purchase land irrespective of the completion of code formalities. The appellant had purchased the land through private negotiation and not followed all the steps mentioned in the amended land acquisition notification. He had submitted the agreement deed with draft notification under Section-4 of the land acquisition act 1894 to DOR Buner for further processing. The Revenue Deptt: processed the case till its logical end i.e. transfer of land to Environment Deptt: except constitution of price assessment committee which was the solemn



- responsibility of DOR vide clause 5(i) Revenue Circular No. 54 v/4/2006/LA/10973, dated 17.8.2006. It is pertinent to mention here that no approval/sanction of Administrative Department regarding private negotiation and rate fixation has been sought by the appellant.
- B. DOR Buner was consulted in the Instance case by the appellant as is evident from DOR Buner letter No.283/2/9/HCR, dated 14/02/2011, addressed to the appellant. The DOR was also held responsible in the De-Nov enquiry on account of non notifying of price assessment committee (Refer to para-B of the appeal)
- C. The subject activity was a part ADP scheme, approval by PDWP, for which Administrative approval was accorded by the competent authority and the appellant was bound to follow the PC-I provision, rules and regulation on the subject. *Approval (admitted)*
- D. Negotiated rate between the appellant and land owners was fixed Rs.11,12,000/- per kanal against the approved rate of Rs.1400000/- per kanal thus saved an amount of Rs.1742400/- to the Government and purchased an additional land of 1 kanal and 1 marla on the directives of Chief Conservator of Forests, Khyber Pakhtunkhwa Peshawar during his visit to the spot on 27/04/2010 within the approved cost for five kanals to avoid excess and surrender. *Saving made (admitted)*
- E. PC-I provides for the acquisition of land at Swari but the appellant purchased the land at Daggar where all District Head Offices are located, most proper place for Divisional Office to have an easy interaction with other officers and public. Swari being the commercial area where cost of land is very high and it would not have possible to purchase land within the given price. The appellant was required to seek approval of the competent forum.
- F. The appellant had made direct payment as per detail procedure for payment vide, Section 41 of LA. Act 1894 and Section 1 of the said procedure communicated to him by DOR Buner vide his No.283/2/9 HCR, dated 14.02.2010. The said procedure further stressed to say that "payment should be so made if possible to save the recipients from un-necessary attendance" (Section 41 LA Act 1894). *payment (validated)*
- G. Being audit matter, the Director Budget and Accounts Forestry, Environment and Wildlife Department is in a better position to offer his comments.
- H. Irrelevant hence no comments.
- I. The enquiry has been conducted through Enquiry Committee, details are available on file.

It is pertinent to mention here that the appellant has prayed for:-

- ❖ That the witnesses were not produced by the enquiry committee in his presence to be crossed examined by him which is against E&D Rules 2011 clause-11(i).
- ❖ Mr. Mir Wali Khan DFO BPS-18 (Member of the committee) is reporting officer in the instant case and all the enquiry proceedings based on his monitoring report. Moreover, he is also of equal rank to the appellant which is against under E&D Rules 2011 (Clause-10(a) and 10(3)).

Keeping in view the above facts, the appeal may kindly be decided on its true spirit, please.

*[Signature]*  
 CONSERVATOR OF FORESTS,  
 MALAKAND CIRCLE EAST,  
 SAIDU SHARIF SWAT.

Ann - VII

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OFFICE OF THE CHIEF CONSERVATOR OF FORESTS, MALAKAND FOREST REGION (REGION-III) SAIDU SHARIF, SWAT.

To  
The Chief Conservator of Forests,  
Central Southern Forest Region-I  
Khyber Pakhtunkhwa Peshawar.

No. S.201 /E. Dated Saidu Sharif, the: 23 /04/2015.

Subject:- DEPARTMENTAL APPEAL AGAINST THE IMPUGNED NOTIFICATION NO.SO(ESTT)ENV/1-50(87)2K12 DATED 31.12.2013 VIDE WHICH A MAJOR PENALTY OF "REDUCTION TO LOWER POST AND RECOVERY OF Rs.3,238,644/-"

Memo:  
Reference your endst.No.2596/E, dated 06.03.2015.  
BX-418

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Para wise comments to the appeal preferred by Mr. Hasham Khan the then DFO, Buner Forest Division against the punishment awarded to him mentioned in the subject, are furnished as under:-

1. Need no comments.
2. It is correct.
3. Mr. Mir Wali Khan who was holding the charge as DFO, Buner is in a better position to explain the factual position to show the cause of non purchase of land stipulated period.
4. No doubt that the land had been purchased by the appellant but certain legal flaws during the course of monitoring etc were detected which resulted the instant situation of punishment awarded.
5. The comments given in para-4 above are sufficient to convince the purpose.
6. Formal enquiry, monitoring in purchase of land has been made and keeping in view the availability of substantial record in the enquiry file, certain irregularities have been found rather codal formalities laid down for the purpose were not completed.
7. Conducting monitoring of the activities in Malakand East Forest Circle is the responsibility of DFO Working Plan Unit-VI Swat. Unfortunately Mr. Mir Wali Khan was incharge DFO Working Plan-VI and accordingly he conducted monitoring of the land purchased and his report become cause of the subject enquiry.
8. Mr. Mir Wali Khan DFO BPS-18 (Member of the enquiry committee) was reporting officer in the instant case and all the enquiry proceedings based on his monitoring report. Moreover, he is also of the equal rank to the appellant which is against the E&D Rules 2011 (clause 10(a) and 10(3) and the natural justice.
9. Irrelevant hence no comments.
10. The enquiry was conducted in accordance with the E&D Rules 2011.

REMARKS.

A. The factual position has been shown in para-4 above. No directives have been issued to the appellant to purchase land irrespective of the completion of codal formalities. The appellant had purchased the land through private negotiation and not followed all the steps mentioned in the amended land acquisition notification. He had submitted the agreement deed with draft notification under Section-4 of the land acquisition act 1894 to DOR Buner for further processing. The Revenue Department processed the case till its logical end i.e. transfer of land to Environment Department except constitution of price assessment committee which was the solemn responsibility of DOR vide clause 5(i) Revenue Circular No.54 v/4/2006/LA/10973, dated 17.08.2006. It is pertinent to mention here that no approval/sanction of Administrative Department regarding private negotiation and rate fixation has been sought by the appellant.

41

B. DOR Buner was consulted in the instance case by the appellant as is evident from DOR Buner letter No.283/29/HCR, dated 14.02.2011, addressed to the appellant. The DOR was also held responsible in the De-Nov enquiry on account of non notifying of price assessment committee (Refer to para-B of the appeal).

*Approval (admitted)*

C. The subject activity was a part ADP scheme, approval by PDWP, for which Administrative approval was accorded by the competent authority and the appellant was bound to follow the PC-I provision, rules and regulation on the subject.

*Saving admitted*

D. Negotiated rate between the appellant and land owners was fixed Rs.1,112,000/- per kanal against the approved rate of Rs.1,400,000/- per kanal thus saved amount of Rs.1,742,400/- to the Government and purchased an additional land of 1 kanal and 1 marla on the directives of Chief Conservator of Forests, Khyber Pakhtunkhwa Peshawar during his visit to the spot on 27.04.2010 within the approved cost for five kanals to avoid excess and surrender.

E. PC-I provides for the acquisition of land at Swari but the appellant purchased the land at Daggar where all District head Offices are located, most proper place for Divisional Office to have an easy interaction with other officers and public. Swari being the commercial area where cost of land is very high and it would not have possible to purchase land within the given price. The appellant was required to seek approval of the competent forum.

F. The appellant had made direct payment as per detail procedure for payment vide Section 41 of L.A. Act 1894 and Section 1 of the said procedure communicated to him by DOR Buner vide his No.283/29 HCR, dated 14.02.2010. The said procedure further stressed to say that "payment should be so made if possible to save the recipients from unnecessary attendance" (Section 41 L.A Act 1894).

*payment agreed*

G. Being audit matter, the Director Budget and Accounts Forestry, Environment and Wildlife Department is in a better position to offer his comments.

H. Irrelevant hence no comments.

I. The enquiry has been conducted through Enquiry Committee, details are available on file.

It is pertinent to mention here that the appellant has prayed for:-

- That the witnesses were not produced by the enquiry committee in his presence to be cross-examined by him which is against E&D Rules 2011 clause-11(i).
- Mr. Mir Wali Khan DFO BPS-18(Member of the committee) is reporting officer in the instant case and all the enquiry proceedings based on his monitoring report. Moreover, he is also of equal rank to the appellant which is against under E&D Rules 2011.(Clause-10(3)).

Keeping in view the above facts, the appeal may kindly be decided on its true spirit, please.

CHIEF CONSERVATOR OF FORESTS  
MALAKAND FOREST SECTION (REGION-III)  
SAIDU SHARIF, SWAT

No. \_\_\_\_\_ /E

Copy forwarded to the Conservator of Forests, Malakand Forest Circle East Saidu Sharif, Swat for information with reference to his letter No.8525/E, dated 09.04.2015.

CHIEF CONSERVATOR OF FORESTS  
MALAKAND FOREST REGION (REGION-III)  
SAIDU SHARIF, SWAT

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OPERATOR OFFICE SAIDU SHARIF PHONE NO. : 0945 9240239

JUL 11 2011 10:29AM P1

OFFICE OF THE CONSERVATOR OF FORESTS, MALAKAND CIRCLE EAST, SAIDU SHARIF.

To

The Chief Conservator of Forests,  
Khyber Pakhtunkhwa Peshawar

No.

293

/E,

dated Saidu Sharif, the: 11 July, 2011.

Subject:

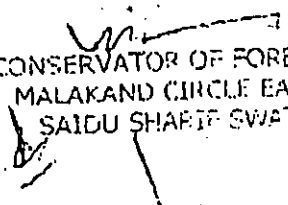
MONITORING AND EVALUATION OF THE ACTIVITIES OF  
BUNER FOREST DIVISION - Draft charge sheet thereof

Memorandum:

Reference your No. 5/E, dated 01.7.2011.

In the reply furnished by Mr. Hasham Khan the then DFO Buner it has been reported that the Chief Conservator of Forests Khyber Pakhtunkhwa as well as the then Conservator of Forests Malakand visited the land on 27.4.2010 and 11.5.2010 and appreciated the move. After consent/spot approval of both the Officers, the land under observation was accordingly purchased for the scheme titled "Construction of office and residential buildings in (NWFP)".

On the basis of above explanation and facts narrated in the reply, the comments of the undersigned seems not appropriate. The documents received with your letter and reference are returned herewith, please.

  
CONSERVATOR OF FORESTS,  
MALAKAND CIRCLE EAST,  
SAIDU SHARIF SWAT.

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OFFICE OF THE CHIEF CONSERVATOR OF FORESTS MALAKAND FOREST REGION  
(REGION-III) SAIDU SHARIF SWAT.

To

The Section Officer (Establishment),  
Govt: of Khyber Pakhtunkhwa,  
Environment Department, Peshawar.

No. /E, Dated Saidu Sharif the 31/10/2014.

SUBJECT:- SHOW CAUSE NOTICE.

Memo:

Reference your letter No.SO(Estt)Env/1-50(87)/2012/4262, dated  
14/10/2014.

Enclosed please find herewith reply to the show cause notice  
furnished by Mr.Hasham Khan DFO alongwith comparative statement with comments of  
the Department for further necessary action in your office.

Encl: As above.

CHIEF CONSERVATOR OF FORESTS  
MALAKAND FOREST REGION (REGION-III)  
SAIDU SHARIF SWAT.

No. 2037-38/E,

Copy forwarded to the:-

- 1) Conservator of Forests, Malakand East Forest circle Saidu Sharif Swat for information.
- 2) Mr.Hasham Khan, Divisional Forest Officer, Malakand Forest Division at Batkhela for information with reference to his letter No.2589/E, dated 24/10/2014.

CHIEF CONSERVATOR OF FORESTS  
MALAKAND FOREST REGION (REGION-III)  
SAIDU SHARIF SWAT.

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COMPARATIVE STATEMENT REGARDING DISCIPLINARY PROCEEDINGS AGAINST MR. HASHAM KHAN DIVISIONAL FOREST OFFICER

Findings of the Enquiry Committee	Reply of the Officer	Comments of the Department
<p><u>1. PROCEDURAL LAPSES</u> The amended notification of land acquisition provided for a detail step by step procedure for the purchase of land through private negotiation outlining the responsibilities of various departments of Government which has not followed by the accused DFO.</p> <p><u>2. PRICE OF LAND AND LOSS TO PROVINCIAL EXCHEQUER</u> Negotiated rate between the accused DFO and land owners was fixed Rs. 11,12,000 per kanal. Rate as per Ausat Yaksala (7/2009 to 4/2010) was Rs.4,53,988/- per kanal. Total amount thus payable for the acquisition of 6 kanal and 1 marla comes to Rs.27,46,627/- The accused DFO ignored the standing law, rules and instructions of the Provincial Govt. and made payment of Rs.67,27,600/- (Rs.11,12,000/- per kanal); thus the accused DFO caused loss of Rs.39,80,973/- as per average Yaksala sale rate.</p> <p>Due to precedent made by the accused DFO Buner resulted in enhancement of rate by the court of Senior Civil Judge Buner in respect of the acquisition</p>	<p><u>1. PROCEDURE</u> The land measuring 6 kanal and 1 marla was purchased for the construction of DFO Buner office/residence by private negotiation in coordination with Revenue Deptt: through Syed Mukamil Shah the then SDO Daggar. Agreement was executed accordingly which was transmitted to DOR/Collector Buner for signing and further processing as required under Section-4 of Land Acquisition Act 1894. The said notification was sent by the DOR Buner to SMBR, Commissioner Malakand Divn, Chief Conservator of Forests Khyber Pakhtunkhwa, Conservator of Forests Malakand, DCO Buner and Manager Govt. Printing Press for publication which shows that all the concerned authorities were duly informed and no body had raised any objection to the process of specified piece of land. In the interest of public service, the process was finalized by making payment to the land owners at the rate much less than that intimated by the field staff of Revenue Department. The land in question has been entered in the revenue record on the name of Provincial Government through Forest Department.</p> <p>Neither the higher authorities of Environment Deptt: nor the Collector have made which shows that the above process is correct.</p> <p>The amended procedure was required to be communicated by SMBR to Administrative Secretaries and its further endorsement to all District Officers but till todate the said notification has not yet endorsed. The undersigned is bound to follow the Forest Ordinance 2002 whereas the land acquisition Act 1894 is clearly mentioned under Section 118 F-O 2002 and no amendment has yet been made. On the request of the Department, the DOR supplied the same and followed as such.</p> <p>The entire record was twice passed through the process of audit during 2011, 2013 and the procedure followed was termed satisfactory.</p>	<p>The accused DFO had purchased the land through private negotiation has not followed all the steps mentioned in the amended land acquisition notification. The accused DFO has formally submitted the agreement deed alongwith draft notification under Section-4 of the land acquisition Act 1894 to DOR Buner vide No.3278/G, dated 06.5.2011 with the request to process it further. The Revenue Deptt: transferred/ mutated the land in the name of Forest Department ✓</p> <p>Purchase of forest land was a part of ADP scheme @ Rs.14,00,000/- per kanal which was approved in the DDWP meeting and administrative approval was accordingly accorded by the competent authority, however, approval of the Administrative Department for the negotiated rate of the purchased land was not obtained ✓</p> <p>As per charsala furnished by the Revenue Deptt: the rate of the land in the same area is Rs.14,00,000/- per kanal (Refer to Annexure-8, page 87 of the reply furnished by the accused DFO). ✓</p> <p>Needs no comments</p>

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of the land for another scheme, "Construction of Police line at Daggar"

\* Difference in shape of loss on the basis of Ausat Yaksala furnished by Revenue Authority to the Enquiry Committee Rs.3,980,900/-

\* Difference in shape of loss as determined by the enquiry committee (DC Swat & Buner) Rs.3,233,644/-

\* Difference in shape of loss to Police Department Rs.85,109,002/-

Thus the accused DFO caused huge loss to the Provincial exchequer.

3. UN-DUE HASTE

It is evident from the available record that the accused DFO was posted on 19.4.2010 and effected the agreement for the purchase of land on 04.5.2010. It is established that the purchase was made in short span of two weeks which crystal clear that the entire transaction was conducted in un-due haste in two months.

4. CHANGE OF SITE IN VIOLATION OF PC-I

PC-I provides for the acquisition of land at Moza Swari but the accused DFO purchased the land at Moza Daggar in utter violation of the approved PC-I.

2. ADMINISTRATIVE APPROVAL

The Administrative approval envisages purchase of 5 kanal land @ Rs. 1.400 million per kanal which was purchased @ Rs. 1.112 million per kanal situated in an ideal, unmatched location in heart of District Headquarter. The subject PC-I had the same activities in other Districts and none of them had gotten secondary approval from the administrative department.

The amended LRA 2006 has never been endorsed to the undersigned.

The DFO Dir Lower had sought technical sanction for the construction activity under the said PC-I. In response of which the CF Malakand had directed to follow PC-I provision.

3. PRICE COMMITTEE

There is no excuse for notifying price committee regarding acquiring land through private negotiation. The agreement deed signed with the owners clearly indicating rate of Rs.55,600/- per Marla was submitted to DOR Buner which was accordingly processed without questioning the negotiated rate because the rate was fixed in light of Section 13 L.A. Act 1894. The constitution of price committee is mandate of Revenue Department which they avoided perhaps for the reasons of very short left over time.

In de-nov enquiry, the DOR was held responsible for non constituting of the committee and accordingly draft charge sheet was issued against him which could not materialized and is question mark.

A land acquired by Health Deptt: in Matwari was also processed by Revenue Department without notifying price committee.

4. PRICE OF LAND & LOSS TO GOVT: EXCHEQUER

A) PRICE OF LAND

The land was purchased @ Rs. 1.112 million per kanal against the provision of;

- PC-I approved rate of Rs. 1.400 million per kanal
- Market rate as per charsala furnished by Revenue Deptt: is Rs. 1.400 million per kanal.
- Yaksala rate as per revenue record is Rs. 1.454 million per kanal.
- Judiciary fixed rate Rs. 1.311 million per kanal.

It is pertinent to mention here that no approval/sanction of Administrative Department regarding private negotiation and rate fixation has been sought by the accused DFO.

The PC-I titled "Construction of DFO offices and residential buildings in NWFP" was launched since 2007-08 to 2009-10, during the entire period his predecessor could not succeeded to purchase the land. The accused officer after taking over the charge of DFO Buner on 19.4.2010 was directed by his superiors to quickly purchase the land so that provision of funds for the purchase of land under the developmental scheme may not be lapsed.

*High-ups pressure*

Daggar and Swari are sister towns of Buner which are now as one town. Swari being the commercial area where cost of land is very high and it would not have been possible to purchase land within the given price. However, the accused DFO was required to obtain prior approval of the competent authority for shifting of the purchase of land from Swari to Daggar which he did not.

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5. CHANGE OF SCOPE IN VIOLATION OF PC-I

In the approved PC-I, the purchase of land was 5 kanal whereas the purchase was made of six kanal and one marla resilytantly put the Government to unnecessary loss of Rs.1,167,600/-

6. DIRECT PAYMENT IN VIOLATION OF RULES

Direct payment have been made through cheques bearing No.246776 and No.246777 dated 24.5.2010 amounting to Rs.5,782,400/- and Rs.939,200/- which was required to be made through the concerned DOR as established laid down procedures.

7. VIOLATION OF ARTICLE 53 OF LAND ACQUISITION ACT

Article 53 of LAC 1894 clearly states that no agricultural land be acquired by private negotiation by any Department of Govt: without the Revenue Commissioner sanction but in the instant case the provision of the said article has been violated.

8. BY PASSING THE REVENUE AUTHORITIES IN THE EXECUTION OF PURCHASE DEED

According to Mr. Mukamil Shah the then SDFO Daggar (Rtd) the rates were negotiated by DFO and payment directly made to the land owners and none of the Revenue official were involved in the purchase which showed that the purchase deed was executed by Mr. Hasham Khan and is therefore responsible for the commission/omissions in the land purchased.

B) LOSS TO GOVERNMENT

For acquiring land, the following two ways are well determined under LRA 1894;

- a. Compulsory acquisition.
- b. By negotiation acquisition.

The subject land was acquired through private negotiation while the Police Deptt: had purchased the land through compulsory way which has not been differentiated by the committee. Silent features of both ways in respect of Forest and Police acquired land are as under:-

The forest land was purchased through private negotiation while Police land was purchased through compulsory way.

In private negotiation the price is settle according to the prevailing market rate within the provision of approved rate. The Revenue Deptt: fixed the price by their own, irrespective of the prevailing market rate.

The forest land is a commercial land while the Police acquired land is agricultural land.

The forest land was acquired in May 2010 while the process of land purchased by Police Deptt: was started during August, 2008.

The forest land is adjacent to main Daggar Headquarter road while the Police land is far away from Daggar Bazar.

The Civil Court had declared the Ausat Yaksala Incorrect and had fixed the rate on the basis of average price of the following three transactions made in the vicinity:-

- Land purchased by U-Fone @ Rs. 1.100
- Land purchased by Forest Deptt: @ Rs. 1.112
- Land purchased by Noor Alam @ Rs. 1.619

6 Kanal and 1 Marla land was purchased @ Rs. 1.112 million per kanal against the PC-I approved rate of Rs. 1.400 million per kanal. Thus Rs.0.288 million per kanal was saved to Govt:

The Ex-Owner of the land had applied the Government to return the land and he will refund the paid amount.

The approved rate as per PC-I was Rs.1,400,000/- per kanal whereas the land has been purchased @ Rs.1,112,000/- per kanal and thus an additional land was purchased out of the amount saved from the provision of the PC-I.

The accused DFO has made direct payment as per procedure in vogue in the Department.

The land purchased by the accused DFO is situated in District Headquarter Daggar.

According to the accused DFO, the payment was made through a crossed cheque in name of owners which is a set procedure for making any payment to the public or any other person. However, Mr. Mukamil Shah SFO Rtd. Has denied his statement recorded on the mutation paper.

It is pertinent to mention here that the accused DFO has prayed for;

- i. that the witnesses were not produced by the enquiry committee in his presence to be crossed examined by him which is against E&D Rules, 2011 Clause-11(i)

Saving

payment



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#### 5. UNDUE HASTE

The PC-I was launched since 2007-08 to 2009-10. During the entire period, Mr. Mir Wali Khan holding post of DFO Buner but he did not succeed to purchase the land. The undersigned (Mr. Hasham Khan DFO) took over the charge on 19.4.2010. On the directions of high ups the undersigned directed SDFO Daggar to fully concentrate over this year's long hanging issue. The task was accomplished and the CF, CCF exulted and extolled the undersigned.

#### 6. CHANGE OF SITE

Generally all the District Officers residence/offices are located in District headquarter Daggar while Swari is a trade centre.

All the District Head offices including Bank, Post office, Judiciary, Executive are located in Daggar which is the most proper place for DFO office to have an easy interaction with other officers and public convenience. It is un-wise to establish District Head office far away from District Headquarters.

No where the word Muzza Swari has been specifically mentioned in the PC-I. Swari name is being used in general term for both Daggar and Swari. Daggar College being established in Swari Bazar is the ready example.

In denov enquiry, the committee has validated the purchase of land at Daggar.

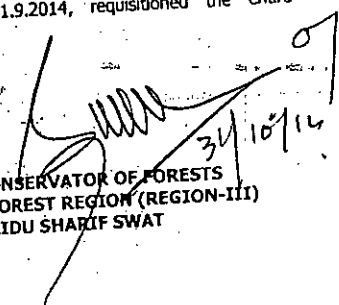
#### 7. CHANGE OF SCOPE

The rate envisaged in the PC-I was Rs. 1.400 million per kanal whereas the subject land has been purchased @ Rs.1.112 million per kanal accrued a hefty amount saving of Rs.1.742 million to Government.

The CCF NWFP during his visit on 27.4.2010 directed the undersigned (Mr. Hasham Khan DFO) to purchase additional land. The excess/surrender was all together stopped as per directives of CF and 100% fund utilization was stressed by high ups. So the lone option was to go far purchase of additional land with the consent of CCF and CF thus a precious/valued property was added in Govt: assets rather than unnecessary loss.

ii. Mr. Mir Wali Khan DFO BPS-18 (Member of the enquiry committee) was reporting officer in the instant case and all the enquiry proceedings based on his monitoring report. Moreover he is also of equal rank to the accused DFO which is against the E&D Rules 2011 (clause 10(a) and 10(3) and the natural justice.

iii The accused has filed a writ petition No. 408/14 against the enquiry committee in Swat Darul Qaza, the Court issued order on 01.9.2014, requisitioned the entire proceedings.

  
34/10/14  
CHIEF CONSERVATOR OF FORESTS  
MALAKAND FOREST REGION (REGION-III)  
SAIDU SHARIF SWAT

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#### 8. DIRECT PAYMENT

Just after taking over the charge on 19.4.2010 the task was accomplished in short time on repeated pressure of high ups. For land acquisition, the laid down procedure was followed.

The detail procedure for payment vide section 41 of LA Act 1894 is very much clear about mode of payment as under:

- i. By direct payment.
- ii. By order on a treasury
- iii. By money order.
- iv. By cheque
- v. By deposit in a treasury.

The procedure further stressed to say that:

"payment should always be so made if possible to save the recipients from unnecessary attendance". The said land acquisition further state that payment must be made before or immediately after taking possession.

DOR excused to accept a cheque issued by DFO Buner with the plea that due to months long time bar after notifying Section-4. During this period any claimant can record his claim. Due to shortage of time, the lone choice suggested by DOR was to go to direct payment as has been done by Health Department at Matwani for BHU and Education Department at Nawagai where direct payments to the owners have been made. Accordingly direct payment to the owner was made under intimation to Revenue Department. All the transactions have been made through Divisional Accountant, I/C SDFO Daggar.

#### 9. AUSAT YAKSALA

Ausat Yaksala was scrutinized by DC Swat and Buner and calculated Rs. 1.450 million per kanal.

The Civil Court has termed the Yaksala incorrect and has fixed Rs. 1.310 million per kanal.

#### 10. AUDIT

The procedure and financial irregularity determined by Audit. The observation in connection with the purchase of above land was settled without fixing any financial procedural irregularity.

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 355 /2018

Hashim Khan

Vs

Forest Deptt:

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APPELLANT


THROUGH:

  
(M.ASIF YOUSAFZAI)

Advocate Supreme Court

  
(TAIMUR ALI KHAN)

Advocate High Court

  
(ASAD MAHMOOD)

Advocate High Court

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

**APPEAL NO. 355 /2018**

Hashim Khan, Ex-DFO,  
House No.17 Street, Sector, C-3, Phase-5, Hayatabad, Peshawar.

**(Appellant)**

**Khyber Pakhtunkhwa  
Service Tribunal**

Diary No. 346

Dated 09/3/2018

**VERSUS**

1. Govt: of KPK through Chief Secretary KPK, Peshawar.
2. The Chief Secretary KPK, civil secretariat, Peshawar.
3. The Secretary, Environment Department, KPK, Peshawar.
4. The Chief Conservator of Forests, Central Southern Forest Region-I  
KPK, Peshawar.

**(Respondents)**

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**APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNALS  
ACT, 1974 AGAINST THE ORDER DATED 07.11.2017  
WHEREBY PENALTY OF REMOVAL FROM SERVICE WAS  
IMPOSED UPON THE APPELLANT AND AGAINST NOT  
TAKING ACTION ON THE REVIEW OF THE APPELLANT  
WITH IN THE STATUTORY PERIOD OF NINETY DAYS.**

**PRAYER:**

**THAT THE ACCEPTANCE OF THIS APPEAL, THE  
IMPUGNED ORDER DATED 07.11.2017 MAY BE SET ASIDE  
AND THE APPELLANT MAY BE REINSTATED INTO  
SERVICE WITH ALL BACK AND CONSEQUENTIAL  
BENEFITS OR THE ORDER DATED 07.11.2017 MAY BE  
MODIFIED INTO COMPULSORILY RETIREMENT  
KEEPING IN VIEW OF HAVING ABOUT THIRTY THREE  
(33) YEARS OF SERVICE AT HIS CREDIT. ANY OTHER  
REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT  
AND APPROPRIATE THAT MAY ALSO BE AWARDED IN  
FAVOUR OF APPELLANT.**

Filed to-day  
Registrar.  
9/3/18



- c. That you executed agreement deed dated 04/2010 on stamp paper duly signed by you and the land owners with marginal witness without consultation of committee on the determination of Rate of the land as required under LAC 1984 for private negotiation.
- d. That you being representative of the Acquiring Department was bound to make payment to the land owners through DOR Buner. Though the procedure adopted by you for acquisition of land through private negotiation was illegal and not in consonance of the land laid down procedure per notification No.Rev:V/4/2008/ Notification/LA/ 10973, dated 17/8/2006 of the Provincial Government, yet you at your own mad direct payment to the owner concerned in violation of the said agreement deed as well. Again you made direct payment of land compensation to the owner keeping everyone in dark and by passing the Revenue Department.
- e. That you did not follow the procedure as per the notification No.Rev: V/4/2008 Notification/LA/10973, dated 17/8/2006 nor consulted the DOR Buner for processing the case through private negotiation. You did neither obtain any approval of the competent authority/secretary Environment Department in respect of acquisition of land through private negotiation nor for the so called negotiated rate. Thus you did not observe the codal formalities and committed irregularities coupled with losses to the Government exchequer.
- f. That the police department Buner had acquired land measuring 70 Kanala and 2 Malaras @ Rs.255,014/kanal according to Ausat Yaksala but the owners of the land filed a civil suit in the court of senior civil judge, Daggar quoting the written precedence of DFO, Buner (you). The court decided the suit against the police Department on the basis of that procedure and enhanced the rate per kanal at par with that paid by the forest department. This decision of the court based on procedure of payment made by you increased the rate of land acquired by the police Department from Rs.255,014/- to Rs.1310761/- per kanal leading to overall increase in cost from 20557953/- to Rs.91884346/-. Hence the Provincial Government had to pay Rs.85109043/- over and above the price assessed by the Revenue Department Buner and hence a

*financial losses were sustained by the Government as a result of inflated rates negotiated by you.*

- g. That similarly cost of land purchased by the Forest Department as per actual Aust Yaksala comes to Rs.3488956/- for 6 kanals and 01 marla, but you paid Rs.6727600/- for the same land on negotiated price. Hence you paid Rs.3238644/- over and above the actual cost.*
- h. That from the perusal of available record produced by you pertaining to purchase of land for construction of DFO Buner office and residential building, it is established that you violated the provision of Revenue Circular No.54. land acquisition and subsequent amendments made in the land acquisition Act, 1984 in 2006.as a result of violation not only the forest Department sustained financial losses but the police Department was also compelled to make over payment for acquisition of land. Thus you are responsible for not safeguarding the interest of the state.*
- i. That you did not perform your duty in the earnest and through manner and committed the above listed serious irregularities, deliberately, in the assigned task due to which the Government sustained huge loss.*
- j. That Revenue and estate Department, Government of Khyber Pakhtunkhwa conducted an inquiry through Deputy Commissioner, Swat and Buner whereby you were made responsible for committing irregularities in the acquisition of land for construction of office-cum-residence and staff quarters at Daggar and recommended action against you.*
- k. That the Administrative Department vide No. SO(Estt)/I-5(87)/2k10, dated 25/11/2013 constituted an inquiry committed comprising of Deputy Secretary-II environment department and Director I and HRD Directorate to conduct de-novo inquiry against you. The findings of the said committee were also the same during de-novo inquiry which further confirmed the fact beyond doubt that you are responsible for violation of procedure and causing huge losses to Govt: exchequer.*

The appellant submitted reply to charge sheet and denied the allegations with documentary proof. **(Copy of sheet along with statement of allegations and reply to charge sheet are attached as annexure -B&C)**

4. That despite the documentary evidence supported reply of the appellant, inquiry was conducted against the appellant and proceeding was culminated with imposition of major punishment of reduction to lower post and recovery of Rs.32,38,644/- vide order dated 31.12.2014. **(Copies of inquiry report and order dated 31.12.2014 are attached as Annexure -D&E)**
5. That the appellant filed service appeal No. 474/2015 in the august Service Tribunal which was finally heard on 02.02.2016 and the august Service Tribunal was kind enough to set aside the impugned order with the direction of denovo inquiry. **(Copy of judgment dated 2.2.2016 is attached as Annexure- F)**
6. That after the judgment of Honorable Tribunal , fresh charge sheet along with the statement of allegations of almost same allegations as were in previous charge sheet were issued to the appellant, however the appellant replied to charge sheet and denied all allegations with documentary proof. **(Copies of charge sheet along with statement of allegation and reply to charge sheet are attached as Annexure - G&H)**
7. That inquiry proceeding was conducted against the appellant through the inquiry committee consist of Mr. Muhammad Khalid and Qazi Muhammad Younis. The said inquiry committee recorded the evidence and statement of other persons in the absence of the appellant without giving him chance of cross-examination, however the inquiry committee held the appellant responsible on basis of surmises and conjectures. **(Copy of inquiry report is attached as Annexure-I)**
8. That show cause notice wherein tentatively penalty of removal from service was mentioned on the ground of inefficiency and misconduct. The appellant filed reply to the show cause notice and denied all the allegations with documentary proofs and thereafter penalty of removal from service was imposed upon the appellant vide order dated 07.11.2017. **(copy of show cause notice, reply to show cause notice and order dated 07.11.2017 are attached as Annexure -J,K&L)**



9. That the appellant filed review petition to competent authority under E&D Rules 2011 well in time but that was not responded within the statutory period of ninety days hence the present appeal on the following grounds amongst others. **(Copy of review petition are attached as Annexure-M)**

**GROUND:**

- A) That impugned order dated 7.11.2017 and not taking action on the review petition of the appellant are against the law, facts, norms of justice and material on record, therefore tenable and liable to be set aside.
- B) That in show cause notice, the allegations of inefficiency and misconduct were based for imposing penalty whereas the inquiry committee has not proven beyond any shadow of doubt as to which misconduct the appellant committed or what type of negligence he did, moreover any kind of discrepancies or irregularities on the part of Revenue Department cannot be based to penalize the appellant. Hence, the irregularity whatsoever committed by the Revenue staff for which Tehsildar and others were actually responsible but they have been left unpunished and their burden was shifted to the appellant which means the appellant was penalized for no fault on his part. Even inquiry was conducted against the appellant in questionnaire form which is not permissible by the superior courts judgment.
- C) That even Inquiry Committee has not conducted the inquiry proceedings as per spirit of E&D Rules 2011 and recorded the statement in the absence of appellant without giving him chance of cross examination which cause great miscarriage of justice to appellant.
- D) That the comments filed by the department on the Review Petition of appellant are totally in the favour of appellant which not only proved that appellant was innocent but also punished for no fault in an arbitrary and fanciful manner. **(Copy of comments are attached as Annexure-N)**
- E) That the Audit was conducted twice on the same matter wherein no financial /procedural irregularities were pointed out and no corruption or embezzlement were noted. This shows that the appellant was

totally innocent and had done nothing illegal or wrong. **(Copy of Audit Report attached as Annexure –O)**

- F) That before and after the transfer of appellant from Buner other land was acquired by other organizations in the same locality which were on much higher prices than the appellant negotiated for his department. It proves that there is no malice on the part of appellant.
- G) That the appellant not only got the approval of the high ups but also brought into their notice the whole scenario and thereafter with the consultation with superior he processed the project further. Therefore the appellant cannot be held alone responsible because the appellant had not done anything on his own but with the prior approval of high ups.
- H) That the inquiry was conducted in questionnaire form which is as per judgment of the Superior Courts is not a recognized way to conduct inquiry. Therefore the whole proceedings vitiated on this score alone and this also proves that no regular inquiry was conducted as per required procedure of E & D Rules 2011. **(Copy of inquiry in Questionnaire Form attached as Annexure-P)**
- I) That one of the charges against the appellant is that, that he gave above price assessed by the Revenue Department Buner, but the Inquiry Committee in his report mentioned in para "g" that some other mutation available on record where the rates of land in the same Mouza were quoted even higher than the price which the appellant officer paid to the land owners.
- J) That one of the charges in the charge sheet is that, that the purchase was effected by the appellant as the project duration was from 7/2007 to 6/2010 and during the last two months, when the project was going to expire on 30.6.2010, but the appellant took charge as DFO Buner on 19.4.2010 and the responsibility of delaying the case for the entire period of scheme does not fall on the appellant rather it falls on those who were responsible for implementation of the scheme since it was approved by the competent authority which is also endorsed by the inquiry committee in its inquiry report in para "a".
- K) That the appellant has been done all things in accordance with law and has been penalized for no fault on his part which is violation of Article 10-A of Constitution of Pakistan.

L) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

**APPELLANT**  
**Hashim Khan**

**THROUGH:**



**(M.ASIF YOUSAFZAI)**

**Advocate Supreme Court**



**(TAIMUR ALI KHAN)**

**Advocate High Court**



**(ASAD MAHMOOD)**

**Advocate High Court**

A 9

OFFICE OF THE DIVISIONAL FOREST OFFICER WORKING PLAN UNIT-VI SWAT

To The Conservator of Forests,  
Forestry Planning & Monitoring Circle,  
Khyber Pakhtunkhwa Peshawar.

No. /WP-VI.

dated Shagai the 01/02/2011

Subject: MONITORING AND EVALUATION OF THE ACTIVITIES OF BUNER FOREST DIVISION

Memo:

The undersigned accompanied the monitoring team to Buner on 14.12.2010 and visited the land purchased by DFO Buner for the construction of Divisional office and residential buildings etc.

The team evaluated the following main aspects:

1. Location of the land in respect of the PC-1 prescriptions and its accessibility.
2. Price of the land in respect of the one year average cost record of the Revenue department of Buner district, regarding the same period and location.
3. PC-1 provision in respect of location of the land.
4. Comparison of the price of the land, paid by the DFO Buner with the one year average price of the Revenue department, called "Yaksaia".
5. Map of the building as applied in the construction of the office building.
6. Procedure adopted by the DFO Buner for the purchase of land.

During the detailed monitoring and evaluation, the team noted the following discrepancies/short comings.

1. Location

*Chays  
in the  
field*

The land has been purchased at mauza Daggar in utter violation of PC-1 provision. The PC-1 allows purchase of land at Swari only, which is the main market of District Buner. The purchased land has no approach road and is situated far away from the limits of the Bazaar.

2. Price of the land

It is important to mention here that the price of the land of Swari due to its nearest to the main bazaar is at least ten times more costly as compared to the land situated at other areas in district Buner. The PC-1 provision of Rs. Seventy lacs in the PC-1 for the purchase of five kanal or Rs. fourteen lacs per kanal was estimated including the expected inflation, for two years for the land of Swari area only.

But the DFO Buner purchased land, in violation of the PC-1 prescription at mauza Daggar at the rate of Rs.1112000/- where the per kanal cost was fixed as Rs.255014/- vide case no.4 dated 05.10.2010 (regarding the acquisition of seventy kanal and two marla land at mauza Daggar, for the Police line Daggar) in the court of District Officer Revenue and estate/collector Buner, decided dated 05.10.2010 (photo copy attached)

It is pointed out that the Police department has acquired 70-kanal and two marla land at mauza Daggar during the year 2010 at the rate of Rs.255014/- per kanal and the

*68  
58  
7/2/11*

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Revenue  
DFO*

*8/2  
8/2*

*31/10  
03/2/11*

**ATTESTED**

10

Forest department has purchased 6-kanal and one marla land at the same location at mauza Daggar, during the same year 2010, at the rate of Rs.1112000/- per kanal.

The per kanal difference, in the cost of land purchased at the same location and during the same year, by the Forest department and the Police department Buner is Rs.856986/-. It means that the DFO Buner has paid more amount of Rs.856986/- per kanal as compared to the Police department, for the land situated at the same area and during the same year.

Here it is crystal clear that in the process of purchase of six kanal and one marla land by the DFO Buner, the Forest department has sustained the loss of Rs.5184765/-.

3. Map of the office building

The map is extremely substandard. The office building has only two rooms. The rest of the office building consists of Jirga hall like structure.

It smells that for the justification of cost of the building, only the target of the covered area has been tried to be achieved, irrespective of having any regard for the provision of accommodation and other related facilities to the staff.

4. Procedure adopted for the purchase of land

The DFO Buner violated all the procedures meant for the purchase/acquiring of Government land. Instead of acquisition of the land and making of payment through Revenue department, the DFO Buner conducted direct deal with the land owners and made direct payment to the owners. Due to this blunder, the Environment Department of Khyber Pakhtunkhwa sustained a huge loss of Rs.5184765/- in the purchase of only six kanal and one marla land.

The detail of the direct payment to the land owners is as under:

S.No.	Name of the owner	Amount	Cheque No. & date
1.	Sahib Gul S/O Sanab Gul of Daggar	Rs.5782400/-	246776 dt:24.05.2010
2.	Ihsanullah S/O Nasib Gul of Daggar	Rs.945200/-	246777 dt:24.05.2010

Photo copy of the DFO Buner letter No.1481/G dated 12.11.2010, addressed to the DFO Working Plan Unit-VI Swat, having the above detail is attached.

The purchase of the land does not seem to be fair and transparent. Therefore, it needs further investigations to fix the responsibility for the huge Government losses.

Divisional Forest Officer,  
Working Plan Unit-VI Swat

No. 256 /WP-VI.

Copy forwarded to the Chief Conservator of Forests Khyber Pakhtunkhwa Peshawar, for favour of information please.

Divisional Forest Officer,  
Working Plan Unit-VI Swat

*Handwritten signatures and initials:*  
42/11  
873

ATTESTED

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31

IN THE COURT OF DISTRICT OFFICER, REVENUE AND ESTATE COLLECTOR,  
DISTRICT BUNER.

Case No. 4

Date of institution 16-08-2008

Date of Decision 05-10-2010

AWARD UNDER SECTION 14 OF THE LAND ACQUISITION ACT,  
1894 FOR THE ACQUISITION OF ~~UNDEVELOPED~~ LAND AT MUAZA  
DAGGAR FOR POLICE LINE DAGGAR. 70 KANALS AND 2 MARLAS.

O R D E R / A W A R D.

The Acquiring Deptt: initiated the subject case vide District Police Officer, Buner letter No: 5324/GB dated 16-08-2008. In continuation of the said letter the Acquiring Deptt: submitted the draft Notification U/S-4 of the land Acquisition Act 1894 with his letter No: 5955/GB dated 30-09-2008. The draft Notification U/S-4 was signed, issued and published vide this office order No: 2988-92/2/9/HVC, dated 08-10-2008 with the following specification:-

District	Tehsil	Locality	Khassra No:	K	M
Buner	Daggar	Daggar	3521	30	10
			3522	15	12
			3523	03	01
			3524	03	14
			3525	08	14
			3526	08	11
Total:-			70		02

The Acquiring Deptt: was in need to acquire land measuring 70 kanals and 02 marlas, therefore the acquisition was confined to the actual required area.

Preliminary estimated cost was worked out on the basis of one year average price. According to the Revenue Deptt: KEK, instructions, Committee for determination of price was also constituted who convened its meeting on 24-12-2009 and majority of the members of the committee including the convenor agreed upon the one year average price. The Acquiring Deptt: was then asked to release funds for the purpose. The Acquiring Deptt: forwarded a Cheque of Rs: 2,13,81,000/- (Rupees Two Crore Thirteen Lacs and Eighty One Thousand only) with his letter No: 1579/SBSP/ACU dated 18-06-2010 which was deposited into the Govt. Treasury under the head "Revenue Deposites" vide challan No: 45 dated 30-06-2010.

Draft Notifications Under sections 5 and 6, 7 of the Land Acquisition Act, 1894 were submitted by the Acquiring Deptt: which were signed and issued by the ~~ENGINEERING OFFICER~~ (Commissioner Malakand Division, vide his order No: 4843-52/3/3-Buner/lev and 4854-58/4/3-Buner/Rev dated 14-07-2010 respectively.

Notice under section 9 of the aforesaid Act was sent to the interested persons of the locality for submitting their

ATTESTED

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claims if any, regarding the measurement/cost of the land. In response of the said notice no one objected.

I alongwith the concerned Revenue Staff inspected the spot, the proposed land under acquisition is Agricultural in nature and is situated far-away from the limits of Bazar. Therefore I feel that the one year average rate i-e Rs:2,55,014/-per kanal is reasonable for the present land Acquisition I therefore fix and allow the same rate alongwith 15% compulsory acquisition charges. The detail break-up of the compensation comes as under:-

a. Price of land measuring <sup>2.55</sup> 70 kanals at the rate of Rs:2,55,014/-per kanal.....	Rs:1,78,76,902/-
b. 15% compulsory Acquisition Charges :-	Rs: 26,81,535/-
<b>Total:-</b>	<b>Rs:2,05,58,437/-</b>
c. Stamp duty 2% :-	Rs: 4,11,169/-
d. TMA Fee 2% :-	Rs: 4,11,169/-
e. Mutation Fee:-	Rs: 500/-
<b>Grand Total:-</b>	<b>Rs:2,13,81,275/-</b>

I, Therefore, pass an award for Rs:2,13,81,275/- (Rupees Two Crore Thirteen Lacs and Eighty One Thousand Two hundred and Seventy Five only). The land revenue over the acquired land stands abated from the date of taking over possession by the acquiring Deptt. Compensation amount may be paid to the ownership column of Register Haqdaran-e-Zamin (Jamabandi). The mutation of the acquired land should be attested in the name of the Govt: of Khyber Pakhtunkhwa through Police Deptt: Peshawar free from all encumbrances. The award is filed under section 12(11) of the land Acquisition Act, 1894 in the office of the undersigned.

OFFICER OR RMR

DISTRICT OFFICER,  
REVENUE AND ESTATE/COLLECTOR, BUNER.

NO. 6556 2014-18 / 2/9/HC(R), dated Daggar the 05/10/2010.

Copy forwarded to:-


1. The Commissioner, Malakand Division Saidu Sharif Swat.
2. The Secretary Board of Revenue Khyber Pakhtunkhwa Peshawar.
3. The District Coordination Officer, Buner.
4. The District Police Officer, Buner.
5. The Tehsildar, Daggar for information and necessary action. He is directed to mutate land in the name of Acquiring Deptt: i-e Police Deptt: Khyber Pakhtunkhwa at an early date and to submit attested copy of mutation at an early date.

DISTRICT OFFICER,  
REVENUE AND ESTATE/COLLECTOR, BUNER.

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	OFFICE OF THE DIVISIONAL FOREST OFFICER, LOWER DIR FOREST DIVISION, TIMERGARA
No. 1986 /Acctt: Dated Timergara the 18/3 /2011	

To

The Conservator of Forests,  
Forestry, Planning and Monitoring Circle,  
Peshawar.

Subject: MONITORING AND EVALUATION OF THE ACTIVITIES OF BUNER FOREST DIVISION.

Memo:

Reference to DFO Working Plan Unit VI Swat laetter No.255/WP-VI dated 1/2/2011 addressed to CF/FP&M Peshawar.

**A- General.**

A PC-I title "Construction of DFO Office & Residential Buildings in NWFP" envisages purchase of 5 Kanals land for DFO Buner office was launched during 2007-08 to 2009-10. The then DFO Buner was holding the post continuously in the mentioned period, abysmally flopped to accomplish the task resultantly he was transferred from Buner on 19/4/2010 followed by the undersigned.

The undersigned gave rash attention and made splendid triumph by purchasing an ideal commercial plot in the heart of Buner Tehsil Colony below the marked rate.

**B- Parawise comments.**

1) **Location:-** the purchase of 5 Kanal land worth 7 million cost envisages in the PC-I was incorporated with refrence to the then DFO Buner office No. 423/G, dated 21/8/2008 and No. 460/G, dated 28/8/2008 (See Annex: I & II) without mentioning location of the land.

ii) All the Districts head offices including Bank, Post office etc are located in Daggar which is the most proper place for DFO Office to have an easy interaction with other officers and public convenience.

ATTESTED

28-08-08



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iii) After choosing the site, the CCF and CF Malakand visited the site on 27/4/2010 and 11/5/2010 respectively and welcomed the achievements. The CF Malakand also visited the three other marshy, damp and unaccessable sites which were already selected by the then DFO at rate higher than the market but the owners had backed out due to the reasons bests known to the then DFO Buner:

**2) Price of land.**

i) The then DFO Buner vide his letter No. 367/G, dated 5/8/2008 (See Annex:iii) had fixed Rs. 15,00,000/- Kanal for alleged defalcation which was dis-honoured in DDWP meeting.

ii) Later on the then DFO Buner reduced the rates i.e. Rs. 14,00,000/- Kanal vide his No.423/G, dated 21/8/2008, 460/G, 28/8/2008 without taking required certificate from DOR.

iii) The then DFO Buner had settled price of the following three unapt sites (See Annex: iv-v) :-

S.No.	Name	Location	Rate
1.	Ashtar Khan s/o Ghulam Habib r/o Swarai.	Toorgat	Rs.11,30,000/- Per Kanal
2.	Mukarram Khan c/o Farooq Khan s/o Nadir Khan r/o Rega.	Sunigram	Rs.11,60,000/- Per Kanal
3.	Tajay r/o Toor warsak.	Asham Sar Daggar	Rs. 12,00,000/- Per Kanal

But due to the reason best known to him, the owners backed out, while the subject unmatching and ideal land was purchased @ Rs. 11,12,000/-per kanal with the consent of CCF & CF Malakand who were apprised before transaction took place.

iv) As per charsala (See Annex:vi) the subject land is situated in commercial area of Daggar Tehsil Colony and land in the same Muzza during 2005 has been sold @ Rs. 14,00,000/- per kanal.

v) The Police department has purchased the land through compulsory land acquisition mechanism whereas the price is being fixed by the Government. But the subject land has been purchased through private negotiation far behind the market rate.

vi) The then DFO Buner has settled rates i.e. Rs. 11,30,000/- & 11,60,000/- per kanal for marshy, damp and unaccessable sites (See Annex: iv-v).

vii) The CCF and CF Malakand had acceded with the rate settled with owners during their visit to the site dated 7/4/2010 and 11/5/2010.

ATTESTED

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### 3) MAP

- i) The then DFO Buner unlike other DFOs had not reported/submitted any specified map to the author of the PC-I, which he should explain.
- ii) An exemplary and beautiful map was designed within the PC-I provision of 2085 Sft covered area with the help of private Architecture .
- iii) The four (4) rooms are more than sufficient for the available staff.
- iv) The big room can accommodate maximum visitors/jirgas members avoiding congestion/obstructions. Two or more clerks can also jointly use one room having easy personal communication and easy installation of equipments/furniture.

### 4) Procedure adopted for purchase of land.

The PC-I title "Construction of DFO Offices & Residential Buildings in NWFP" was launched since 2007-08 to 2009-10 during the entire period, one Mr. Mir Wali Khan was holding post of DFO Buner but he did not succeeded to purchase the land using bluff-fluff delaying tactics. The undersigned replaced him, took over charge of Buner on 19/4/2010. The CF Malakand and CCF directed the undersigned in strong words to accomplish the task in short time. They repeatedly mounted pressure and finally was warned by CF that if could not do so, he (undersigned) will be charge sheeted. So the undersigned directed the SDFO Daggar to fully concentrate over this years long hanging issue. For land acquisition, the following two procedure exist:-

- 1- Compulsory land acquisition.
- 2- Private negotiations.

The procedure vide S.No.2 was followed already furnished by DOR Buner vide No. 283/2/9/HCR dated 14/2/2010 (Copy Annex:vii page 1-16) as under :-

- i) Under taking on stamp paper.
- ii) Notifying sec: 4
- iii) Payment to owners
- iv) Transfer of land.

The detail procedure for payment is :-

- i) By Direct payment
- ii) By order on a treasury
- iii) By money order
- iv) By cheque
- v) By deposit in a treasury

"Payment should always be so made if possible to save the recipients from unnecessary attendance"

3

28-08-08

ATTESTED

1543, 2010 PLC (C.S) 1299, 1997 SCMR 1073, 2012 PLC (C.S) 728, 2006 PLC (CS) 604 and 2002 SCMR 433.

04. Learned Assistant Advocate General argued that PC-1 titled "Construction of Offices and Residential Building for Khyber Pakhtunkhwa ADP no. 606" was approved by the DDWP vide letter dated 19.06.2008. The Administrative Approval was accorded by the respondent-department on 24.01.2009. Process of land acquisition was started through a letter dated 06.05.2010 addressed to the DOR Buner. The predecessor of the appellant, who was holding the charge of DFO working plan unit "VI" Swat, after conducting inspection of the subject land *pointed out* numerous illegalities. Thereafter, enquiry under E&D Rules 2011 was initiated against the appellant and penalty was awarded which was assailed before the service Tribunal by way of filing appeal decided on 02.02.2016. On the direction of this Tribunal de-novo was conducted and upon winding up major penalty of removal from service was awarded to the appellant vide impugned order dated 07.11.2017 All codal formalities were observed before awarding the major penalty.

**CONCLUSION:**

05. A PC-1 titled "Construction of Offices and Residential Building for Khyber Pakhtunkhwa ADP no. 606" was approved by the DDWP vide letter dated 19.06.2008. The Administrative Approval was granted by the respondent-department on 24.01.2009. The predecessor of the appellant (Mr. Mir Wali Khan, DFO) held the charge of DFO, Buner from 2007 to 19.04.2010 but could not finalize the process of land acquisition. On the other hand, the appellant was posted as DFO, Buner on 19.04.2010 and purchased Six Kanal and one Marla land in

District Headquarters Colony Dagar, Buner after executing proper agreement with the owners. Thereafter, it was sent to the District Collector, Buner for signatures and Chief Conservator Environment, Khyber Pakhtunkhwa was also taken into loop.

06. On a report submitted by his predecessor, disciplinary proceedings were conducted and upon culmination major penalty of reduction to lower post alongwith with recovery of Rs. 3238644/- was awarded to him vide notification dated 31.12.2014. He assailed the said order by filing service appeal no. 474/15 decided on-02.02.2016. The appeal was decided in favour of the appellant with directions to conduct de-novo enquiry. De-novo enquiry was conducted and thereafter major penalty of removal from service was imposed on him vide impugned order dated 07.11.2017. After exhausting departmental remedies, he filed the present service appeal.

07. As regards charge at serial no. a, of the charge sheet/statement of allegations, it is clarified that the project was approved by the DDWP on 19.06.2008, while the appellant was posted DFO, Buner on 19.04.2010, hence, he alone could not be held responsible for the delay in processing the case for purchase of land. As the project was going to close on 30.06.2010, therefore, the appellant was under tremendous pressure to expedite the process of purchase of land. To cut it short, this charge was not proved against him. The enquiry committee rightly held him guilty of charges mentioned at serial no.b,c and d etc. So far as allegation at serial no. d was concerned responsibility squarely fell on the shoulders of DOR. Our view point is further supported by letter no. 283/2/HCR dated 14.02.2011 addressed to the appellant by the DOR.

08. Upon microscopic examination of the enquiry report, it appeared to be perfunctory and superficial. The enquiry committee for unknown reasons failed to record the statements of the then Chief Conservator of Forest, DOR, Buner and other concerned, as mentioned in the written reply of the appellant. Having not recorded their statements so the question of affording opportunity of cross examination to the appellant did not arise. Departure from mandatory requirements of rules made the report deficient and controversial. Moreover, the Chief Conservator of Forest, while offering para-wise comments on the review petition filed by the appellant vide letter dated 02.01.2018 also endorsed the facts that Conservator Forest, Malakand was approached by the appellant vide letter dated 18.05.2010 to get additional approval, if required. He saved Rs. 1742400/- on which additional land of one Kanal and one Marla land on the directions of Chief Conservator of Forest, Khyber Pakhtunkhwa was purchased, during a spot visit on 27.04.2010 land purchased by the appellant was situated right in the heart of the city, while the one purchased by the Police was agriculture land and situated at a distance from the road.

09. Scrutiny of entire record established one thing beyond any shadow of doubt that though the appellant was guilty of procedural lapses and it fell in the ambit of misconduct. He was rightly held responsible for the lapses on his part by the enquiry committee. However, a dispassionate review of the case brought a critical/vital point on the surface that right from the monitoring report followed by two enquires did not bring any charge of embezzlement, financial corruption and undue financial gains/ benefits got by the appellant during the said purchase. Even,

we would go a step further to pin point that mal-intent, intentional/deliberate attempt on the part of the appellant in the process could be easily ruled ~~out~~ <sup>to out.</sup> He failed to observe the laid down procedure but entire responsibility cannot be fixed on him alone. Had he extracted undue financial gains out of the above deal then such a harsh penalty could be justified. Our contention is further supported by the fact that the enquiry committee <sup>its</sup> recommendations opined that the issue regarding recovery of losses should be properly investigated and thereafter, further action could be taken. Perusal of impugned order showed that the competent authority was in agreement ~~with~~ with the recommendations of the enquiry committee by awarding him only major penalty of removal from service.

10. It is pertinent to point that on reaching the age of superannuation the appellant stood retired from government service on 01.01.2018. Having retired from government service and taking into consideration his previous service record having no stains provides sufficient justification for showing compassion while deciding the present service appeal. Harsh application of law will have multifaceted adverse implications <sup>on the appellant & his family</sup>. This penalty has deprived the appellant and his family of hard earned pension, which is <sup>the</sup> only source of livelihood for a retired government servant. Though, misconduct was committed by the appellant, but this punishment brought unending recurring financial miseries/hardships for the family, who had no inkling in the entire episode. This brings us to stand point to modify the penalty for the sake of substantive justice.

11. As a sequel to the above, the appeal is partially accepted, impugned order dated 07.11.2017 is modified by converting the penalty of removal from service

into compulsorily retirement. The intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)  
Member

(MUHAMMAD AMIN KHAN KUNDI)  
Member

ANNOUNCED  
10.12.2019

16

The CCF stressed hard to report payment with in 3 days positively but the DOR excused to finalize the process upto 30/6/2010 because of one month compulsory waiting period after notifying sec:4 during 5/2010. During this one month period any claimant can record his claim. Due to shortage of time, the lone hobsons choice suggested by DOR during a meeting dated 20/5/2010 was to go for direct payment under the laid down procedure in vogue like other department. Hence direct payment was made to the owners with intimation to DOR vide No.2455/G, dated 24/5/2010 (Annex: viii) The CF Malakand and CCF exulted and extolled the undersigned. Worth no tingly, all the transactions have been made through Accountant and incharge SDFO Dagggar, having no direct personnel contact by the undersigned with the owners.

**5) Causes/Facts.**

The sitting DFO Working Plan Unit VI was holding the post of DFO Buner since 2007 followed by the undersigned on 19/4/2010 which made him sulky. Then after the CF Malakand constituted checking committee vide office order No.79 dated 26/5/2010 in light of CCF endst: No.3649-53 dated 6/5/2010. The then DFO phonically threatened the undersigned that by facilitating the enquiry against him will leave no option for him but to damage him (undersigned). He further added that he is on the verge of promotion and know all about the CCF & CF And Can Go To The Last Extent Against Them.

After ward the undersigned took down a letter No.3507/G, dated 19/5/2010 (See Annex:ix) in the light of unprecedented prevailing situation which further flared-up him and after furnishing the monitoring report told the undersigned that he has taken his revenge as black lash of foresaid letter. The responsibility of monitoring team is to judge the extent of the area in light of PC-I earmarked cost while assessment of adopted procedure and mode of payment is audit matter.

**EPITOME**

The report is prejudice, bias, an attempt to blink the facts and to erode the land mark achievements of gigantic task with consummate dedication by the undersigned. The Reporting Officer has furnished a fabricated and fabulous statement and use monitoring as a "tool" for vandita to tarnish the unblemish outstanding performance of the undersigned. The report gives an expression of his personnel grudges/differences, liable to be precluded. Therefore an impartial, fair and square monitoring may kindly be conducted by any DFO except Unit VI please.



Divisional Forest Officer,  
Lower Dir Forest Division,  
Timergara.

**ATTESTED**



28-08-08



(17)

No/987-90/Acctt:

Copy forwarded to the:-

1. Chief Conservator of Forests Khyber Pakhtunkhwa Peshawar with reference to his letter No.898-99/P&D/ADP 2009-10 dated 20/12/2010 addressed to CF Malakand for favour of consideration please.

2. Conservator of Forests Malakand East Circle Mingora with reference office No. 6554/P&D, dated 7/1/2011. for favour of consideration please.

3. Divisional Forest Officer Buner Forest Division Sowerai for favour information please.

4-SDFO Daggar C/O DFO Buner for information and necessary action.



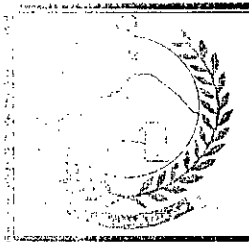
Divisional Forest Officer,  
Lower Dir Forest Division,  
Timergara

ATTESTED

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**B**  
**18**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ENVIRONMENT DEPARTMENT

Dated Pesh: the 16<sup>TH</sup> July, 2014

**NOTIFICATION**

SO(Estt)Env/1-50(87)/2k14: The Competent Authority has been pleased to constitute an Enquiry Committee, comprising Mr. Arshad Majeed Mohmand, (PAS BS-19), Director General, SDU, P&D Department (Chairman of the Enquiry Committee) and Mr. Mir Wali Khan (BS-18), Divisional Forest Officer Swat, (Member of the Enquiry Committee) to conduct an inquiry against Mr. Hashim Khan, Divisional Forest Officer (BS-18) of Khyber Pakhtunkhwa Forest Department, into the charges/allegations leveled against him in the enclosed Charge Sheet and Statement of Allegations, under section-5(1) of the Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011 :-

2. The Enquiry Committee shall submit its findings within 30 days positively.

Sd/-  
CHIEF MINISTER  
KHYBER PAKHTUNKHWA

Endst: No. SO(Estt)Env/1-50(87)2k14: 2992-2994 Dated Pesh: the 16<sup>th</sup> July, 2014

Copy alongwith copies of the Charge Sheet/Statement of Allegations, are forwarded to :-

- 1- Mr. Arshad Majeed Mohmand, (PAS BS-19), Director General, SDU, P&D Department,
- 2- Mr. Mir Wali Khan (BS-18), Divisional Forest Officer Swat,
- 3- Mr. Hashim Khan, Divisional Forest Officer (BS-18) C/O Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar with the direction to appear before the Enquiry Committee on the date, time and place to be fixed by the Enquiry Committee for the purpose of inquiry proceeding.

(MIR ZALI KHAN)  
SECTION OFFICER (ESTT)

*Charge Sheet  
Mr. Hashim Khan*

Endst: No. and date even. 2995-3000

Copy is forwarded for information and necessary action to:-

1. Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar; with the direction to nominate and depute a departmental representative well conversant with the facts of the case alongwith relevant record to assist the Enquiry Committee during the inquiry proceedings.
2. Chief Conservator of Forests, Malakand Forest Region-III, Swat with the direction to coordinate with CCF Region-I, Peshawar and provide all the relevant record/other information.
3. PS to Secretary, Environment Department.
4. Personal files of the officers.
5. Master file.
6. Office order file.

*ES 4*  
*[Signature]*  
SECTION OFFICER (ESTT)

No 22627 /E

Dated Peshawar the 22 /07/2014

Copy alongwith its enclosure forwarded for information and necessary action to the:-

1. Chief Conservator of Forests Malakand Forest Region-III Saidu Sharif Swat. He is requested to nominate the name of Departmental representative in the subject enquiry as early as possible.
2. Mr. Hasham Khan DFO Malakand Forest Division at Batkhela.

**Encl: as above.**

*[Signature]*  
Chief Conservation of Forests  
Central Southern Forest Region-I  
Khyber Pakhtunkhwa Peshawar

**ATTESTED**

CHARGE SHEET

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Mr. Hasham Khan the then Divisional Forest Officer, Buner, as follows:

That you, while posted as a Divisional Forest Officer, Buner Forest Division committed the following irregularities:

- a) That a development project was approved for "Construction of offices and residential building in Khyber Pakhtunkhwa". The project duration was from 07/2007 to 06/2010. The project had the provision for purchase of 5 Kanals land in Buner which was to be purchased in the 1<sup>st</sup> Year of the project. The purchase was effected by you the then DFO Buner, during the last two months when project was going to expire on 30/06/2010.
- b) That, for "Construction of DFO Office-cum-residence and staff quarters", you negotiated the price of the land with owners through private negotiation without the approval of the Administrative Department (Environment Department)
- c) That you executed agreement deed dated 04/2010 on stamp paper duly signed by you and the land owners with marginal witness without consultation of Committee on the Determination of Rate of the land as required under LAC 1984 for private negotiation.
- d) That you being representative of the Acquiring Department was bound to make payment to the land owners through DOR Buner. Though the procedure adopted by you for acquisition of land through private negotiation was illegal and not in consonance of the laid down procedure per Notification No.Rev:V/4/2008/Notification/LA/10973, dated 17/8/2006 of the Provincial Government, yet you at your own made direct payment to the owners concerned in violation of the said agreement deed as well. Again you made direct payment of land compensation to the owners keeping everyone in dark and by passing the Revenue Department.
- e) That you did not follow the procedure as per the Notification No.Rev:V/4/2008/Notification/LA/10973, dated 17/8/2006 nor consulted the DOR Buner for processing the case through private negotiation. You did neither obtain any approval of the competent authority/Secretary Environment Department in respect of acquisition of land through private negotiation nor for the so called negotiated rate. Thus you did not observe the codal formalities and committed irregularities coupled with losses to the Government exchequer.
- f) That the Police Department Buner had acquired land measuring 70 Kanals and 2 Marlas @ Rs.255,014/Kanal according to Ausat Yaksala but the owners of the land filed a Civil Suit in the Court of Senior Civil Judge, Daggar quoting the written precedence of DFO, Buner (You). The Court decided the suit against the Police Department on the basis of that procedure and enhanced the rate per Kanal at par with that paid by the Forest Department. This decision of the court based on procedure of payment made by you increased the rate of land acquired by the Police Department from Rs.255,014/- to Rs.1310761/- per Kanal leading to overall increase in cost from 20557953/- to Rs.91884346/-. Hence the Provincial Government had to pay Rs.85109043/- over and above the price assessed by the Revenue Department Buner and hence a financial losses were sustained by the Government as a result of inflated rates negotiated by you.
- g) That similarly cost of land purchased by the Forest Department as per actual Ausat Yaksala comes to Rs.3488956/- for 6 Kanals and 01 Marla, but you paid Rs.6727600/- for the same land on negotiated price. Hence you paid Rs.3238644/- over and above the actual cost.

ATTESTED

- 20
- h) That from the perusal of available record produced by you pertaining to purchase of land for construction of DFO Buner office and residential building, it is established that you violated the provision of Revenue Circular No.54, land acquisition and subsequent amendments made in the land acquisition act, 1984 in 2006. As a result of the violation not only the Forest Department sustained financial losses but the Police Department was also compelled to make over payments for acquisition of land. Thus you are responsible for not safeguarding the interest of the State.
- i) That you did not perform your duty in the earnest and through manner and committed the above listed serious irregularities, deliberately, in the assigned task due to which the Government sustained huge loss.
- j) That Revenue and Estate Department, Government of Khyber Pakhtunkhwa conducted an inquiry through Deputy Commissioner, Swat and Buner whereby you were made responsible for committing irregularities in the acquisition of land for construction of office-cum-residence and staff quarters at Daggar and recommended action against you.
- k) That the Administrative Department vide No.SO(Estt)/1-5(87)/2k10, dated 25/11/2013 constituted an inquiry committee comprising of Deputy Secretary-II Environment Department and Director I and HRD Directorate to conduct de-nevo inquiry against you. The findings of the said committee were also the same during de-nevo inquiry which further confirmed the fact beyond doubt that you are responsible for violation of procedure and causing huge losses to Govt: exchequer.

2. By reasons of the above, you appear to be guilty of misconduct, in-efficiency and corruption under rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule- 4 of the Rules, ibid.

3. You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Enquiry Committee, as the case may be.

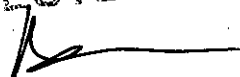
4. Your written defence, if any, should reach the Enquiry Officer/Enquiry Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-party action shall follow against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

Pervez Khattak  
(PERVEZ KHATTAK)  
CHIEF MINISTER,  
KHYBER PAKHTUNKHWA

09.07.2014

5  
ATTESTED  


(21)

**DISCIPLINARY ACTION**

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Hasham Khan, Divisional Forest Officer (BPS-18) the then Divisional Forest Officer, Buner Forest Division has rendered himself liable to be proceeded against, as he committed the following acts / omissions, within the meaning of rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

**STATEMENT OF ALLEGATION**

- a. That a development project was approved for "Construction of offices and residential building in Khyber Pakhtunkhwa". The project duration was from 07/2007 to 06/2010. The project had the provision for purchase of 5 Kanals land in Buner which was to be purchased in the 1<sup>st</sup> Year of the project. The purchase was effected by Mr. Hasham Khan the then DFO Buner, hereinafter called the accused, during the last two months when the project was going to expire on 30/6/2010.
- b. That for "Construction of DFO Office-cum-residence and staff quarters", the accused settled the price of the land with owners.
- c. That through private negotiation without the approval of the Administrative Department (Environment Department).
- d. That the accused executed agreement deed dated 04/5/2010 on stamp paper duly signed by him and the land owners with marginal witness without consultation of committee on the Determination of Rate of the land as required under LAC 1984 for private negotiation.
- e. That the accused being representative of the Acquiring Department was bound to make payment of the land owners through Ex-DOR Buner. Though the procedure adopted by the accused for acquisition of land through private negotiation was illegal and not in consonance of the laid down procedure per Notification No.Rev:/V/4/2008/Notification/LA/10973, dated 17/8/2006 of the Provincial Government, yet he at his own made direct payment to the owners concerned in violation of the said agreement deed as well. Again the accused made direct payment of land compensation to the owners keeping everyone in dark and by passing the Revenue Department.
- f. That the accused did not follow the procedure as per the Notification No.Rev:/V/4/2008/Notification/LA/10973, dated 17/8/2006 nor consulted the DOR Buner for processing the case through private negotiation. He did neither obtain any approval of the competent authority/Secretary Environment Department in respect of acquisition of land through private negotiation nor for the so called negotiated rate. Thus the accused did not observe the codal formalities which caused irregularities coupled with losses to the Government exchequer.
- g. That the Police Department Buner had acquired land measuring 70 Kanals and 2 Marlas @ Rs.255,014/Kanal according to Ausat Yaksala but the owners of the land filed a Civil Suit in the Court of Senior Civil Judge, Daggar quoting the written procedure of DFO, Buner. The Court decided the suit against the Police Department on the basis of that procedure and enhanced the rate per Kanal at par with that paid by the Forest Department. This decision of the court based on procedure of payment made by the DFO Buner increased the rate of land acquired by the Police Department from Rs.255,014/- to Rs.13,10,761/- per Kanal leading to overall increase in the cost from 2,05,57,953/- to Rs.9,18,84,346/-. Hence the Provincial Government had to pay Rs.8,51,09,043/- over and above the assessed price by the Revenue Department Buner.

**ATTESTED**

- h. That similarly cost of land purchased by the Forest Department as per actual Ausat Yaksala comes to Rs.34,88,956/- for 6 Kanals and 01 Marla, That the DFO Buner paid Rs.67,27,600/- for the same land on negotiated price. Hence, the DFO Buner paid Rs.32,88,644/- over the above the actual cost.
- i. That from the perusal of available record produced by the DFO Buner pertaining to purchase of land for construction of DFO Buner Office and Residential Building, it is established that the accused violated the provision of Revenue Circular No.54, Land Acquisition and subsequent amendments made in the Land Acquisition Act, 1984 in 2006. As a result of the violation not only the Forest Department sustained financial losses but the Police Department was also compelled to make over payments for acquisition of land. Thus the accused is responsible for not safeguarding the interest of the State.
- j. That the accused did not perform his duty in the earnest manner and committed the above listed serious irregularities, deliberately, in the assigned task due to which the Government sustained huge loss. The accused is liable to be proceeded against under the provision of Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011.
- k. That Revenue and Estate Department, Government of Khyber Pakhtunkhwa conducted an inquiry through Deputy Commissioner, Swat and Buner and accused was made responsible for committing irregularities in the acquisition of land for construction of office-cum-residence and staff quarters at Daggar and recommended action against the accused.
- l. That the Administrative Department vide No.SO(Estt)/1-5(87)/2k10, dated 25/11/2013 constituted an inquiry committee comprising of Deputy Secretary-II Environment Department and Director I and HRD Directorate to conduct de-nevo inquiry against the accused. The findings of the said committee were also the same during de-nevo inquiry which further confirmed the fact beyond doubt that the accused is responsible for violation of procedure and causing huge losses to Govt: exchequer.

2. For the purpose of Enquiry against the said accused with reference to the above allegations, an Enquiry Officer/Enquiry Committee, consisting of the following, is constituted under rule 10 (1) (a) of Rules ibid:-

- i. Mr. Arshad Majeed Mohmand. (PAS-BS-19) - 1 PO
- ii. Mr. Wali Khan DFO Swat.

3. The Enquiry Officer/Enquiry Committee shall, in accordance with the provisions of the Rules ibid, provide reasonable opportunity of hearing to the accused; record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Enquiry Officer/Enquiry Committee.

Pervez Khattak  
(PERVEZ KHATTAK)  
CHIEF MINISTER,  
KHYBER PAKHTUNKHWA  
09.07.14.

ATTESTED


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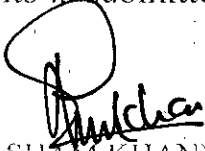
DIVISIONAL FOREST OFFICER MALAKAND FOREST DIVISION AT BATKHELA		PHONE NO.0932-410066 FAX NO.0932-410066
		No. <u>327</u> /Actt, Dated <u>08/8/2014</u>

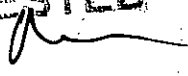
To

The Director General  
Special Development unit  
Peshawar

Subject: INQUIRY UNDER KHYBER PAKHTUNKWA E&D  
RULES 2011 DISCIPLINARY ACTION PROCEEDING  
AGAINST MR. HASHAM KHAN DFO (BPS-18)

Reference to the charge sheet endorsed vide your office  
No. 544-46w/E dated 7.5.2014, the para wise comments is submitted from page  
No. 1 to 17 please.

  
(HASHAM KHAN)  
DIVISIONAL FOREST OFFICER  
MALAKAND FOREST DIVISION  
BATKHELA.

ATTESTED  




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INQUIRY UNDER KHYBER PAKHTUNKWA E&D RULES-2011  
DISCIPLINARY ACTION PROCEEDING AGAINST MR. HASHAM KHAN  
DFO (BPS-18) PARA WISE COMMENTS

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Reference to the charge sheet endorsed vide your office No. 544-46w/E dated 7.5.2014, the para wise comments is submitted as under

a) **BACK GROUND**

A Pc-I title "construction of DFO Offices and residential building in NWFP" envisages purchase of 5 kanal land for DFO Buner office was launched during 2007-2010 but it could not effected till end of April/2010.

The undersigned was posted as DFO Buner on 19.4.2010 and rash attention was given to this years long hanging issue. An ideal commercial plot 6 kanal 1 marla was purchased in the heart of Buner District Head Quarter below the market rate.

b) **ADMINISTRATIVE APPROVAL**

The subject PC-I was approved in DDWP and subsequently administrative approval was accorded, envisages purchase of 5 Kanal land @ Rs.140000/- Kanal for DFO Buner which was purchased @ Rs. 111200/- Kanal situated in an ideal, unmathing location in the heart of District Head Quarter Daggar. The subject PC-I had the same activities in Dir Lower, Upper Chitral, Swat also and non of them has gotten secondary approval from the administrative Department. Moreover, the DFO conduct correspondence with administrative department through proper channel. **The instate case was endorsed in first step to Conservator of Forest Malakand and Chief Conservator of Forest Khyber Pakhtunkhwa Peshawar. vide No.3279-80/G, dated 06/05/2010 (Annex-1) which they should have to float to Administrative Department.**

c) **PRICE COMMITTEE**

The agreement deed signed with the owners clearly indicating the rate Rs. 55600/Marla was submitted to DOR Buner vide No. 3276/G, dated 6.5.2010 (Ann-1) for further processing, which they processed without questioning the negotiated rate, because the rate was fixed in light of Sec: 13 L.A. Act 1894. The constitution of price committee in the mandate of revenue Department which they avoided perhaps for the reasons of very short left over time

The acquired land was purchased at the rate of Rs. 1112000/- Kanal against the provision of:

**ATTESTED**

- 1. PC-I approved rate Rs. 1400000/- Kanal
- 2. The market rate per Charsala furnished by the revenue Department under the Seal/Signature of concerned Patwari, Girdawar and Tehsildar Daggar is Rs. 1400000/- Kanal.

Annexure -II)

- 3. Yak Sala rate as per revenue record is Rs. 1454000/- Kanal.

Annexure -III)

- 4. The Judiciary fixed rate Rs. 1310671/- Kanal

Annexure IV)

- 5. DOR Buner approved Rs. 1500000/- Kanal (DFO Buner letter No.367/G dated 05.08.2008 )

Annexure -V)

- 6. The CCF and CF Malakand, had welcomed the rate during their spot visit dated 27.4.2010 to 11.5.2010 respectively.

**d) PAYMENT**

The undersigned took over charge of Buner on 19.4.2010. The Cf Malakand and CCF directed the undersigned in strong words to accomplish the task in short time. They repeatedly mounted pressure and finally was warned by Cf that if could not do so, he (undersigned) will be charge sheeted. So the undersigned and, the SDFO Daggar fully concentrated over this year's long hanging issue. For land acquisition, the laid down procedure in vogue in Buner was followed as per guidelines of revenue authorities. The procedure was also officially communicated by DOR Buner vide his No. 283/2/9/HCR dated 14.2.2010. under Sec: 1 of the said procedure, the following two ways exist for land acquisition:-

- 1- Compulsory land acquisition.
- 2- Private negotiation.

The procedure at S.No.2 already furnished by DOR Buner No. 283/2/9/HCR dated 14.2.2010 (Copy Anne: VI) page 1-16) was followed vide DFO Buner office No. 3278/G, dated 6.5.2010 (Annex: XI).

- i- Under taking on stamp paper
- ii- Notifying sec: 4
- iii-Payment to owners
- iv- Transfer of land.

The detail procedure for payment vide section 41 ( page 9 (Annex: VII) is very much clear about mode of payment as under

- i- By Direct payment
- ii- By order on a treasury
- iii-By money order
- iv-By cheque
- v- By deposit in a treasury

**ATTESTED**

The procedure further stressed to say that

“payment should always be so made if possible to save the recipients from unnecessary attendance” (Sec: 41 par 4 page 9 Annex: VI).

The said land acquisition vide sec:55 para 3 page 12 further state that: “payment must be made before or immediately after taking possession”

The CCF stressed hard to report payment within 3 days positively but the DOR excused to accept the cheques due to months long time bar after notifying section 4. During this period any claimant can record his claim. It is also worth mentioning that the DOR has even refused to accept cheque No. 246778 dated 24.5.2010 Rs. 269604/- delivered by DFO Buner. due to shortage of time, the lone choice suggested by DOR during a meeting dated 20.5.2010 was to go for direct payment under the laid down procedure in vogue like other departments. i.e health Department purchased land at Matwani for BHU and Education Department at Nawagai and made direct payment to the owners. Hence direct payment was made to the owners with intimation to DOR vide No. 2455/G, dated 24.5.2010 (Annex: VII). The Cf Malakand and CCF were also kept-abreast vide N. 3456-59/G. They exulted and extolled the undersigned. Worth notingly, all the transactions have been made through Accountant and incharge SDFO Daggar, and Forest Guard having no direct personnel contact by the undersigned with the owners.

c) PROCEDURE ADOPTED

- i) The amended procedure vide notification No. Revn/4/2008/Notification /La/10973 dated 17.8.2006 was required to be communicated by SMBR to Administration secretaries and its further endorsement to all District officers. But till to date, this notification has not been endorsed to the undersigned. The undersigned is bound to follow the forest ordinance 2002 whereas the land acquisition Act 1894 has been clearly mentioned under Sec: 118 F-O 2002, and no amendment has yet so far been made. The DOR was properly consulted and per advice of the DOR as well officially endorsed to DFO Buner vide DOR office No. 283/2/9/HCR dated 14.2.2011. the land acquisition Act 1894 was followed as such.
- ii) The rate mentioned in the PC-I was actually based on the market value which was approved in DDWP and subsequently administrative approval was accorded. The case was submitted to CF & CCF vide No.3279-80/G dated 6.5.2010 (Annex-I). It was their responsibility to get any other approval if deemed necessary. The DFO does not make any direct correspondence with Administrative Department.

ATTESTED

*[Handwritten signature]*

7 (27)

f) LOSS TO GOVERNMENT

For acquiring land, the following Two (2) ways are well determined:

- A. Compulsory acquisition.
- B. By negotiation acquisition.

The subject land was acquired through private negotiation while the Police Department has purchased the land through compulsory way, which has not been differentiated by the committee. The salient features of the both ways in respect of Forest and Police acquired land are as under:

S.No	Forest Department	Police Department
1	The Forest Land was purchased through private negotiation	The Police Land was Purchased through Compulsory way
2	In private negotiation, the Price is settle according to the prevailing market rate vide Clause-6 & 19 (I) of land acquisition act within the provision of approved rate <b>(Annexure -VII)</b>	The Revenue Department fixed the price by the their own
3	The Forest Land is a commercial Land	The Police acquired land is agricultural Land <b>(Annexure -IX)</b>
4	The Forest Land was acquired in May 2010,	The Police Land process was started during August 2008
5	The Forest Land is adjacent to main Daggar Head Quarter Road	The Police Land is far away from the Daggar Bazar. (DOR No. 2014-18 dated 5.10.2010 <b>(Annexure -IX)</b> )

The court has fixed the rate on the basis of average price of the following three transactions made in the vicinity as.

- i- Land purchased by U-fone @ Rs. 1100000/-
- ii- Land purchased by Forest Department @ 1112000/-
- iii- Land purchased by Noor Alam @Rs. 1619017/- **(Annexure IX)**

So it is numerically clear that by induction of Forest Department transaction, the average rate has been reduced, not increased. The negotiated rate as per LA, act 1894 Sec: 13 is being fixed on market rate, not on yak sala etc.

ATTESTED

g) AUSAT YAK SALA

- i) The Subject land purchase was a part of ADP Scheme. The rate was already approved in DDWP and administrative approval was accorded.
- ii) All the procedure was followed in accordance to the guidelines of revenue Department. Constitution of the price Committee is the responsibility of revenue Department which they could not Seems feasible due to very short left over Time of the PC-I i.e 5,6/2010 (Two month).
- iii) The **Pc-1** approved rate is Rs.140000/- per Kanal while the purchased rate is Rs. 1112000/-. Against the target of 5 Kanal @ Rs. 7000000/-, 6 Kanals and one Marla land was purchased accruing a hefty amount of saving to the Government and increased its assets.
- iv) As per charsala furnished by the Revenue Department, the rate of land in the same area is Rs. 1400000/- Per Kanal. **(Annex-III)**
- v) The judiciary has further validated the rate in respect of the land acquired by Police Department through compulsory acquisition in the same locality. The judiciary has fixed the rate @ RS. 1310671/- Per Kanal with reference to the Judgment is Civil. Count No. 2/4 dated 11.12.2011. **(Annex-X)**
- vi) The Enquiry conducted by DCs vide Serial No. 4 of their brief facts have admitted that the yak sala rate is Rs. 1454000/- Per Kanal as per their record. **(Annex-XI)**
- vii) The Chief Conservator of Forest and Conservator of Forest Malakand Circle had acceded with the rate settled with the owners during their visit to the site dated 27/4/2010 and 11/5/2010.
- viii) The others transaction made in the vicinity are also of higher rate than the questioned rate as.

<u>S.NO</u>	<u>Date</u>	<u>Rate</u>
3007	16.11.05	Rs. 1400000/- Kanal (Annex-XII)
3710	24.10.09	Rs. 1400000/- Kanal (Annex-XIII)

**ATTESTED**

The procedural and financial irregularities are being determined by the audit. The subject case was undergone through the process of audit by establishing para-I No. 5459-61, dated 30.6.2011 (Annex-XIV) which was equally responded vide No 1138/G, dated 17.10.2011 (Annex-XV). The para was settled vide No. 1092-94, dated 7.1.2012 (Annex-XVI) without fixing any financial procedural irregularity. The enquiry conducted by DCs was again forwarded to director B&A which was commented by him that's no financial loss has been happened to Government.

h)

- i- The revenue circular No. 54 was followed perfectly as already discussed vide para-E
- ii- The amendment made in the act dated 17.8.2006 has never been communicated to the undersigned, nor been revised in Sec: 118 Forest Ordinance: 2002 respectively.
- iii- The transaction made by the Forest Department Buner, has reduced the rate fixed by the court as per para- F. Moreover, no financial loss has been accrued to forest department but has increased the forest assets, by purchasing 6 Kanal 1 Marla land against the giving Target of 5 Kanal within the PC-I provision. Similarly the audit sector has also validated that no procedural/financial irregularities has been happened.

i) The undersigned performed duty with consummate dedication as admitted vide para (a) of the charge sheet.

j) The enquiry conducted by DC Swat and Buner is bias as it was based against the Thesildar Daggar but was switched toward DFO Buner without intimating the undersigned during the entire process of enquiry. The committee vide S.No. 4 of their brief fact have admitted that the ausat yak sala is RS. 1454000/Kanal.

k) Against the DE-Nov enquiry, the reservations of the undersigned was already endorsed vide this office No. 1429/E, dated 20.2.2014. The enquiry committee did not pay visit to the site to examine nature and location of both the forest and police Department purchased land and only relied on the mala fide record

ATTESTED

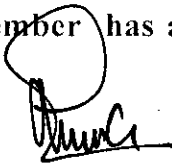
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## SUMMARY

1. The Director B&A has audited the subject matter and found satisfactory procedural financial irregularities.
2. The case of police Department is under trial in Swat Darul Qaza and it is prejudice to fix any responsibility before its logical decision.
3. The entire process was accomplished with coordination of entire chain of Forest Department i.e. Forest Guard to CCF and r. Revenue Department i.e. Patwari to DOR. It is unjust to pick-up the undersigned amongst all and make scap-goat.
4. The price committee still can be constituted to re-examine the price in the light of prevailing market rate and available record.
5. If the Environment Department is unhappy with the price paid the Ex-owners of the land is ready to take back the land alongwith the constructed building at the original cost.
6. All the acts has been done in the best interest and in good faith So it is requested to accord indemnity under Section-III Forest Ordinance 2002 and be kindly exempted from all the charge please.

(Constraints against the enquiry committee member has already been endorsed vide No. 247/E, dated 4.8.2014.)

  
DIVISIONAL FOREST OFFICER  
MALAKAND FOREST DIVISION  
BATKHELA

ATTESTED  


INQUIRY REPORT:

D (31)

Subject INQUIRY UNDER KHYBER PAKHTUNKHWA E&D RULES 2011-  
DISCIPLINARY PROCEEDINGS AGAINST MR. HASHIM KHAN DFO  
(BS-18)

I. ORDER OF INQUIRY/ BACKGROUND

The background of the case is that an inquiry was initiated by Revenue and Estate Department, Government of Khyber Pakhtunkhwa in respect of the ADP scheme no. 606 with nomenclature "Construction of Official and Residential Buildings in NWFP" approved for the duration of 3 years i.e. from 07/ 2007 to 06/2010" through Deputy Commissioner Swat and Buner, against the then DFO Buner, Mr. Hashim Khan on the grounds that the accused D.F.O has purchased the land for the subject scheme through private negotiation, in violation of the amended notification No. Rev/4/2006 notification/LA 10973 dated 17/8/2006. (Annex-I).

The inquiry held the accused DFO responsible for gross irregularities in the purchase of 6 Kanals and one Marla land by not following the laws and established procedure and subsequently causing huge loss to the provincial exchequers.

The above mentioned inquiry was forwarded to Secretary Environment Department KPK by Board of Revenue (Revenue and Estate Department KPK), vide REV:V/4/Misc/MKD/2011/11560-62 dated 06/06/2013, for taking necessary action against DFO concerned as per recommendations of the Inquiry officers (Annex-II).

The Administrative department vide letter no. SO(Estt)/Envvt/1-5(87)/2010 dated 25/11/2013, constituted an inquiry committee comprising of Deputy Secretary -II, Environment department and Director I & HRD, Directorate to conduct de-novo inquiry against the accused (Annex-III).

The departmental inquiry committee also held the accused DFO guilty of gross misconduct and violation of provisions of land revenue circular no: 54, land Acquisition Act 1894 and subsequent amendment made in the land Acquisition Act in 2006 resulting in huge loss to Forest Department and subsequent loss to provincial govt in the acquisition case of police department.

ATTESTED



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authority for initiation of disciplinary procedure against the accused DFO. The competent authority constituted an inquiry committee comprising of Mr. Arshid Majeed DG, SDU and Mr. Mir Wali Khan, DFO, Swat. (Annex-IV).

2. Facts of the case

- a) A developmental scheme was approved in the ADP for "Construction of offices and residential building in newly created Forest Division at Buner" at total cost of Rs 39.635 million for the duration of 3 years i.e. from 07/ 2007 to 7/2101 with the estimated cost of 1.4 million per kanal making total of Rs 7.0 million for 5 kanals of land. As per approved Pc-1 the land for building was supposed to be purchased in Sawari, but instead of the approved location violation of Pc-1 was committed and land was purchased in Daggar at the rate of Rs 11,12,000/-, whereas the average Yaksala provided by Revenue Authority Buner as (Annexed) fixes the rate per kanal at ( Rs4,54,000/-per kanal.
- b) The then DFO. Buner ( MrHahim Khan ), showed his intention to District officer Revenue ,Buner vide letter no 3278/G dated 06/5/2010 Annex-V , for purchase of land measuring 06 kanal and 01 marla situated at mauza Daggar and also provided agreement deed executed with the owners of the land(Annex-VI), through private negotiation with the request to the District Revenue officer for issuance of notification without approval of the Administrative department under Para-4 of revenue circular No:54 V/4/2006/Notification /LA/10973 dated 17/8/2006. Also under section 5 (i) of the said notification the determination of price and verification of title were required to be fixed by the committee to be constituted by District Collector which was also neglected.
- c) Not only that he by-passed the D.O.R Buner in the purchase of land through private negotiation, as was required under the law, he also made direct payment to the owners of the land in complete violation of the established procedure.
- d) The police department acquired the land on basis of Ausat yaksala @ Rs 2,55,014 /kanal but the owner of the land filed a civil suit in the court of the senior civil judge quoting the precedence of DFO ( Buner ) and subsequently the court decided to enhance the rate of the land from 2,55,014/- to 13,10,761/- per kanal, leading to financial loss of Rs 8,51,09,042/- to provincial government.

ATTESTED

Allegations:

Statement of allegation as served upon the accused officer (Annex-VII), wherein he was charged as under:-

That you, while posted as DFO Buner commented the following irregularity:

- a) That a Development project was approved for construction of offices and residential buildings in Khyber Pakhtunkhwa. The Project duration was from 07/20007 to 06/2010. The project has a provision for purchase of 5 kanals land in Buner which was to be purchased in the 1st year of the project. The purchase was effected by you the then DFO Buner , during the last two months when project was going to expire on 30/06/2010.
- b) That for Construction of DFO office - cum- residence, staff quarters, you negotiate the price of the land with owner through private negotiations without the approval of the administrative department (Environment Department).
- c) That you executed agreement deed dated 04/2010 on stamp paper duly signed by you and the land owners with marginal witness without consultation of Committee on the determination of rate as required under LAC 1984 for private negotiation.
- d) That you being representative of the acquiring department was bound to make payment to the land owners through DOR Buner. Though the procedure adopted by you for acquisition of land through private negotiation was illegal and not in consonance of the laid down procedure per Notification no. Rev: V/4/2008/Notification/LA/10973, dated 17/08/2006, of the Provincial Government, yet you at your own made direct payment to the owner concerned in violation of the said agreement deed as well. Again you made direct payment of land compensation to the owners keeping everyone in dark and by passing the Revenue department.
- e) That you did not follow the procedure as per the Notification no. Rev: V/4/2008/Notification/LA/10973, dated 17/08/2006 nor consulted the DOR Buner for processing the case through private negotiation. You did neither obtain any approval of the competent authority / Secretary Environment Department in respect of acquisition of land through private negotiation nor for the so called negotiated rate. Thus you did not observe the codal formalities and committed irregularities coupled with loss to government exchequers.
- f) The police Department Buner had acquired land measuring 70 kanal and 2 marlas @Rs 255,014 /kanal according to Ausat Yaksaka but the owner of the land filed a civil suit in the court of senior civil judge, Daggar quoting the written precedence of DFO, Buner (you) . The court decided the suit against the police department on the basis of that procedure and enhanced the rate per kanal at par with that paid by the forest department. The decision of the court (Annex-VIII) based on procedure of payment made by

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you increased the rate of land acquired by the police department from 2,55,014 -to Rs 13,10,761/- per kanal leading to overall increase in cost from Rs. 2,05,57,953/- to Rs. 9,18,84,346/- . Hence the provincial government has to pay Rs 8, 51,09,042/ over and above the price assessed by the Revenue Department Buner and hence a financial loss were sustained by the government as a result of inflated rate negotiated by you.

g) That similarly cost of land purchased by the forest department as per actual Ausat Yaksala comes to Rs 34,88,956/- for 6 kanal and 01 marla , but you paid Rs 67,27,600/- for the same land on negotiated price . Hence you paid Rs 32,38,644/- over and above the actual price.

h) That for the perusal of available record produced by you pertaining to purchase of land for construction of DFO office Buner and residential building , it is established that you violated the provision of revenue circular no 54, land acquisition and subsequent amendments made in the land acquisition act 1984 in 2006. As a result of the violation not only the Forest Department sustained financial losses but the police department was also compelled to make over payments for acquisition of land. Thus you are responsible for not safeguarding the interest of the state.

i) That you did not perform your duty in the earnest and through manner and committed the above listed serious irregularities deliberately, in the assigned task due to which the Government sustained huge loss.

Methodology

In order to proceed further with the inquiry, the administrative department and chief conservator of Forest Region (III) was requested vide letter No: P&D(SDU) 2527-28 dated 24/7/2014 to provide all the relevant documents, including the previous inquiry reports and any other document related to the inquiry. Deputy commissioner Buner was also requested to provide the relevant documents and information and also to depute revenue authorities, the accused DFO was also asked to appear before the inquiry committee for cross examination and was asked to submit his statement along with other supporting documents.

The following witnesses were examined;-

- 1. Ex - DOR Buner
- 2. Accused Ex DFO Buner Hashim Khan.
- 3. Revenue officer Buner (concerned).
- 4. Present DFO Buner.
- 5. Mr. Hashim Khan Ex Range officer Buner.

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the following documents were also examined;

Act, 1894.

relating to transaction

Divisional Monitoring officer.

relating acquisition of land through private negotiation No.Rev:

Notification /LA 10973 dated 17/8/2006.

reply was obtained from accused officer the then DFO

Annex-D).

Inquiry report conducted by DC Swat and DC Buner(Annex-X).

Inquiry conducted by Deputy Secretary and Director

Annex-XI).

yaksala of the concerned financial year as provided by the

authority Buner. (Annex-XII).

(General Financial Rules)

Act.

of relevant section of PC-1 (Annex-XIII).

Defence of the Accused :

The accused DFO in his statement submitted to the inquiry committee, denied all the allegation levelled against him. According to him the entire process has been carried out in good faith and in best interest of the department. According to him acquisition of land was pending since 2007 due to lake of interest initiative by his predecessors. As soon as he took over as DFO Buner on 19- 4 -2010 ' RASH ATTENTION' was given to this year's long issue so as to avoid lapse of fund. That he was under pressure from his hierarchy i.e. Chief Conservator of forest to acquire land without delay, That he purchased the land at the rate of Rs 1112000 per kanal against the yaksala rate as per revenue record 1456000 per kanal. He further states in his defense that the amended Notification no REV:V/4/2006/LA 10973 2006 was required to be communicated by SMBR to the Administrative Secretary. He further states that no such notification was endorsed by the administrative department to him and denies the existence of notification in question. The difference in the price of the land acquired by police department and the land purchased by forest department is due to the fact that the police department acquired land through compulsory acquisition and forest department purchased through private negotiation. As far as direct payment to the owner is concerned section 41 para 4 of the procedure officially communicated by DOR Buner vide its letter no 283 /2 /9/HCR dated 14 02 2010 "Payment should always be so made if possible to save the recipient from unnecessary attendance".

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Analysis

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Procedural Lapses:

The amended notification provided for a detailed step by step procedure for purchase of land through private negotiation, outlining the responsibilities of various departments of government.

This chart will explain in detail the procedure required to be followed and the procedure actually followed by the accused DFO.

PROCEDURE LAID DOWN BY AMENDED NOTIFICATION	PROCEDURE ADOPTED BY ACCUSED D.F.O MR. HASHIM KHAN
<p>1. The acquiring agency shall submit an application to the Collector of the District concern for the acquisition of land under the Act giving full justification of the public purpose involved and the minimum area required by it with full details of all other area owned by it in the same locality.</p>	<p>DFO Buner vide his letter no. 3278/G, dated 6/5/2010 addressed to Ex-DOR Buner contended that he intends to acquire / purchase of land 06 kanal 01 marla in the vicinity of Daggar for the purpose, "Construction of DFO office-cum-Residence and staff quarters". Further that he settled the price of the land with owners through private negotiation. Accordingly he enclosed copies of draft negotiation U/S 4 of L.A.A, 1894 along with a copy of FardIntekhalJamabandi and original agreement deed dated 04/05/2010 executed on stamp paper duly signed by DFO Buner and the land owners with marginal witnesses without consultation of Committee on the determination of rate of the land as required under LAC 1894 for private negotiations. At the same time it was requested that the notification U/S 4 be issued and proceedings initiated</p>
<p>2. On receipt of the application under Para-1, the Collector of the District shall examine its feasibility taking into consideration the genuineness of the public purpose involved, the minimum requirements of the acquiring agency and suitability of the area proposed for acquisition keeping in view its alternate uses if any.</p>	
<p>3. After the examination of feasibility under Para-2, if the Collector of the District is of the view that the land be acquired for the acquiring agency he shall issue a notification, under Section: 4, of the Land Acquisition Act 1894, stating clearly the name.</p>	

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for acquisition of land.. Interestingly the DFO concerned thereafter did not kept the Revenue department in picture in the acquisition process and initiated everything on his own.

Department in the given under Para-1 inform the District that permission for into private negotiation the acquisition of land has obtained from the Head of Administrative Department.

No permission was obtained from Administrative department by the accused DFO, as was required under provision of para-4 of Revenue Deptt circular No. 54, V/4/2006/Notification/LA/10973, dated 17-08-2006.

The Collector will then notify the following Committee for assessment, and determination of the price and verification of title of ownership:-

Since the accused DFO entered into private negotiations with the owners of the land, therefore, the Committee required under the amended law could not be constituted to assess & determine the price of the land.

- a) District collector.....Convener
- b) EDO(Finance & Planning)....Member
- c) EDO of the acquiring department.....Member
- d) Revenue officer/ Tehsildar Circle.....Member
- e) Nazim of the Union Council.....Member.

II. The committee while determining the prices shall take into consideration the following data from which market value can be assessed.

- i. The price paid for the land recently

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acquired in that estate or its neighborhood.

The price paid in private transaction as discoverable from the register of mutations and the record of registration department.

iii. All other information available especially with regard to the points referred to in section 23 of the land Acquisition Act.

iv. It will always be open to the committee to consult respectable people who are disinterested with regard to the value of the land.

The committee will complete the process of valuation of land within a period of Sixty (60) days from the start of process of negotiation and if the Committee is of the opinion that the land owner and the respective of acquiring department have agreed to the price of land then it shall submit its report and recommendation to the Head of the Acquiring Department for getting his approval.

Approval of the Head of the Administrative Department as to the negotiated price could not be obtained due to unilateral action of accused DFO.

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This clearly indicates that the accused DFO acted in complete

Amended Notification

7/2008/notification/LA/10973/17.8.2006, in the purchase of land. The

DFO completely denies the receipt of the existence of above mentioned

He states that the amended notification was required to be

presented by S.M.B.R to the administrative secretaries and its further

transmission to all district officers. He states that till date, this notification has

not been endorsed to him.

Fact is that all government notifications are duly conveyed to all

government departments and same is the case with the notification in question

which has been duly conveyed to all the administrative secretaries. In any case

ignorance of law is no excuse.

Rate of Land and loss to the Provincial Exchequer.

The rate of land negotiated between DFO Buner and the land owners was

fixed at Rs 11, 12,000/- per kanal. Ausatyaksala for 7/2009 to 4/2010

provided by the Revenue authorities, fixed the price of land as 4, 53,988 per

kanal. The total amount thus payable for the acquisition of the 6 kanal and 1

marla comes to 27, 46,627.4. However, the DFO entered into private negotiation

ignoring the standing law, rules and instruction of the provincial govt for

private purchase of land and thus made total payment of Rs 67,27,600/- at

55,600 per marla. Thus according to the average yaksala sale provided by the

revenue office Buner, the accused D.F.O caused loss of Rs. 39,80,973/- to the

provincial exchequer (Rs 3238644 as determined by the inquiry committee of

DC Swat and Buner).

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In addition to this loss, in the acquisition of land for construction of DFO office cum Residential and staff quarters at Daggar the precedent set by the DFO Buner resulted in the enhancement of rate by the court of senior civil judge Buner in respect of the acquisition of land for another scheme Construction of police line at Daggar.

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Detail of losses caused to the provincial exchequer is provided in the

chart-

Land purchased by DFO through private			AusatYakshala for the critical year by concerned Revenue Department.			Rate analyzed by the DC, Swat and Buner as Inquiry officers as disagreement to Yakshala.		
Price per Kanal	Total		Price per Marla	Price per Kanal	Total	Price per Marla	Price per Kanal	Total
11,12,000			22,700	4,54,000	27,46,699.4	28,834.35	5,76,687	34,88,956.35
6 kanal and one marla. land purchased through private negotiation by DFO (Buner). Rs= 6,27,600			AusatYakshala rate for 6 kanal and one marla land. Rs=27,46,699.4/-			Rate determined by DCO Swat and Buner during inquiry for 6 kanal & one marla. Rs= 34,88,956.35		
Difference in Shape of loss on the basis of AusatYaksala furnished by Revenue Authority to the inquiry Committee= Rs 39,80,900						Difference in shape of loss as determined by the inquiry committee Dc Swat and BunerRs 32,38,644		

Comparison of Acquisition of Land for construction of Police line with AusatYaksala and Court decided rate

Land acquired by police through Land Revenue collector as per Awarded rate.			Cost of land per Court /Judgement as precedence to DFO (Buner) negotiated rate.		
Price Per Marla	Price per Kanal	Price for 70 kanal and 2 marla	Price Per Marla	Price per Kanal	Price for 70 Kanal and 2 marla.
12,750.7	2,55,014	1,78,76,481.4 + 15% C.A.C =26,81,472	65538.05	13,10,761	91884346 + 15% CAC = 13782652
Total : 2,05,57,953.4			Total: 10,56,66,955		
Difference in Shape of loss= 8,51,090.02					

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It is a basic principal of General Financial Rules that every public servant shall exercise the same vigilance in respect of public money as a person of ordinary prudence should exercise in respect of expenditure of his own money. The financial proprietary also requires that the expenditure should not be prima facie more than the occasion demands but the accused DFO caused huge loses to the provincial exchequer.

III. Undue haste

It is alleged in the statement of allegation that the DFO concerned effected the purchase during the last 2 months when the project was going to expire on 30<sup>th</sup> June 2010. For the available record, it is evident that the accused DFO was posted on 19<sup>th</sup> April 2010, and effected the agreement for the purchase of land on 4<sup>th</sup> May 2010. It is established that the purchase was made in the short span of 2 weeks. It is therefore crystal clear that the entire transaction was conducted in undue haste in 2 months.

The defense of the accused that he was under tremendous pressure from the Chief Conservator is not supported by any official document. Even if there was a pressure he should have followed the laid down procedure.

It is established, as alleged that the land which was to be purchased in the 1st year of the project, was purchased by the accused DFO during the last two months of the total project life.

GFR (Rule 96) states as below.

"It is contrary to the interest of the state that the money should be spend hastily or in ill-considered manner.

The same rules further states that:-

"A rush of expenditure particularly in the closing months of financial year will ordinary be regarded a breach of financial regularity."

IV. Change of Site in violation of PC-1

PC1 provides for the acquisition of land at mozaswari but the accused D.F.O purchased the land at mozaDaggur in utter violation of the approved PC1. If any deviation was to be made from the PC1, the accused D.F.O was required to obtain the approval of PC1 approving forum.

V. Change of Scope in violation of PC-1

In the approved PC-1, the purchase of land was 5 kanal whereas the purchase was made of 6 kanals + 1 marla no approval was obtained from the administrative department or PC-1 approving forum for this change of scope of the project. This deviation from the approved PC-1 put the Government to unnecessary loss of 11, 67600/.

VI. Direct Payment in violation of rules

Direct payment have been made to the owners through cheque bearing no.246776 +.246777, dated. 24/5/2010, amounting to Rs. 5782400/- - - 945200/-.. In this case the required procedure was that the payment should have been made through the revenue authority i.e. District officer

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Revenue but in violation of the established laid down procedure, direct payment was made to the owners.

Violation of Article 53 of Land Acquisition Act.

Article 53 of LAC 1894 clearly states that no agricultural land can be acquired by private negotiation for any department of govt without the Revenue Commissioner sanction but in the instant case the provision of the said article has been violated.

By Passing the Revenue Authorities in the Execution of Purchase Deed.

Mr. Mukamil shah, the then Range officer confirmed to have recorded a statement on the mutation deed on 26-5-2010 " that the rates were negotiated by the DFO and payment directly made the land owners and none of the revenue officials were involved in the purchase". This clearly shows that the purchase deed was executed by Mr. Hashim khan and is therefore responsible for the commission / omissions in the land purchase.

Conclusion:

Integrity, Honesty and impartially has remained the foundation of sound Public Administration ever since its inception. It is the sacred trust which on the one hand leads to collective good of the public and on the other, provides the moral justification of reposing authority with public officials. Gaining and keeping the public trust must be approach holistically as treads of integrity, transparency and accountability knit together to uphold the Public Administration and form the core of all Governance Reforms.

Among other things, Citizens expect the public servants to manage public resources honestly and efficiently. And while fair and reliable Public Management inspire public trust, the absence of it renders the whole Public Administration paradigm futile.

With greater power comes greater responsibility. It is for this reason that accountability must always a fundamental pillar of Public Management. All successful Public Administration models world over have laid down strong emphasis on soft, transparent and strict accountability of the exercise of power. The absence of accountability has far reaching implications which includes, discouragement of honest officials, contamination of the whole system by setting bad precedence, increasing corruption, erosion of moral authority of civil servants.

In the current inquiry it is evident from the given facts and from the supporting evidence that the accused has clearly and blatantly violated all standards of efficiency, transparency in management of Public resources. His method of acquisition of land was flagrant violation of prevalent rules prescribed for the purpose. He completely by-passed the Administrative department and Revenue authorities of the Districts. Made direct payment to the owners and in complete disregard of PC-1, change the site & scope of the scheme without obtaining any approval from the competent forum.

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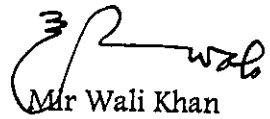
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Recommendations:

In view of the gross irregularities, misconduct, procedural lapses and loss to the provincial exchequer, major penalty of dismissal from services under "Khyber Pakhtunkhwa Government Servant Efficiency and Disciplinary rules 2011" is recommended against accused DFO Mr. Hashim Khan.

  
Arshad Majeed Mohmand  
Director General, Special Development Unit  
P&D Department.

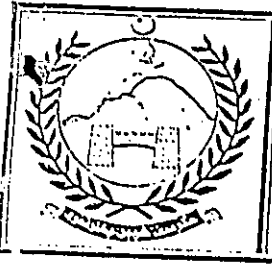
  
Mr Wali Khan  
District Forest officer/Inquiry officer,  
Swat

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Pesh: 31<sup>st</sup> December, 2014

NOTIFICATION

No.SO(Estt)Envt/1-50(87)/2k12: WHEREAS, Mr. Hashim Khan, Divisional Forest Officer (BPS-18) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations dated 16/07/2014, served upon the said officer;

AND WHEREAS, Enquiry Committee comprising Mr. Arshad Majeed Mohmand (PAS BS-19), Director General, SDU P&D Department and Mr. Mir Wali Khan, Divisional Forest Officer (BS-18) was constituted to conduct the inquiry against the said accused officer;

AND WHEREAS, the Enquiry Committee, after having examined the charges, evidence on record and explanation of the accused officer, submitted its report, wherein the charges against the officer being of serious nature have been established beyond reasonable doubt;

AND WHEREAS, the Competent Authority, after considering the Inquiry Report and other related documents, of the case, served a Show Cause Notice upon the said officer to which he replied, and provided him opportunity of personal hearing;

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused officer, and hearing him in person and exercising his powers under Rule-14(5)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, read with Rule 4(1)(a) of (APT) Rules, 1989, has been pleased to impose a major penalty of "Reduction to lower post"; and recovery of Rs.32,38,644/- upon Hashim Khan, Divisional Forest Officer (BPS-18) of Forest Department, with immediate effect.

Sd/-  
CHIEF MINISTER,  
KHYBER PAKHTUNKHWA

Dated Pesh: 31<sup>st</sup> December, 2014.

139-146  
Endst: No. SO(Estt)Envt/1-50(87)/2k12

Copy is forwarded to:-

- 1) PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 2) PS to Secretary Forestry, Environment & Wildlife Department.
- 3) Chief Conservator of Forests, Central and Southern Forest Region-1, Peshawar.
- 4) Director Budget and Accounts Cell, Forestry, Environment & Wildlife Department.
- 5) Officer concerned C/O Chief Conservator of Forests, Central & Southern Forest Region-1 Peshawar.
- 7) Personal file of the officer.
- 8) Master file.
- 9) Office order file.

(MIR ZALI KHAN)  
SECTION OFFICER (ESTT)

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BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR



H.W.P. Province  
Service Tribunal

Diary No. 508

Dated 15-5-2015

Appeal No. 474/2015

Hashim Khan Divisional Forest Officer, Malakand Forest  
Division Batkhela.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Govt of Khyber Pakhtunkhwa Environment Department Peshawar.
3. The Chief Conservator of Forests, Central Southern Forest Region I Khyber Pakhtunkhwa Peshawar.
4. The Chief Conservator of Forests, Malakand Forest Region-III, Shagai Saidu Sharif Swat.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Notification No. SO (Estt) Envt/1-50 (87)/2k12: dated 31.12.2014, whereby the major penalty of Reduction to lower post and recovery of Rs. 32, 38, 644/- has been imposed upon the appellant, against which the departmental appeal dated 22.01.2015 has not been responded so far.

PRAYER IN APPEAL:

On acceptance of this appeal the impugned Notification No. SO (Estt) Envt/1-50 (87)/2k12: dated 31.12.2014, may please be set aside and the appellant may be restored to his original position with all arrears and benefits.

Respectfully Submitted:

1. That the appellant was initially appointed in the Respondent Department as Forest Ranger on 14.10.2014, during the course of his service the appellant got promotions and was lastly promoted as DFO BPS-18. It is pertinent ever since his appointment the

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar.

Filed to file

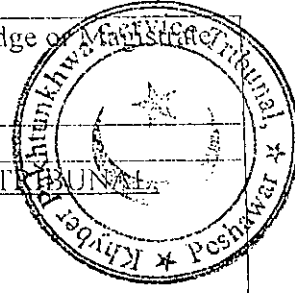
Registrar

re-submitted to file  
and filed.

Registrar

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S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	02.02.2016	<p style="text-align: center;">3</p> <p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> <u>CAMP COURT SWAT.</u></p> <p style="text-align: center;">APPEAL NO. 474/2015</p> <p>(Hashim Khan-vs- Govt: of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>ABDUL LATIF, MEMBER:</u></p> <p>Appellant with counsel and Mr. Jan Alam, SDFO alongwith Mr. Muhammad Zubair, Sr. G.P for respondents present.</p> <p>2. The instant appeal has been filed by the appellant under Section-4 of KPK Service Tribunal Act, 1974 against the notification dated 31.12.2014, whereby the major penalty of reduction to lower post and recovery of Rs. 32,38,644/- has been imposed upon the appellant, against which the departmental appeal dated 22.01.2015 has not been responded so far. He has prayed that on acceptance of this appeal the impugned notification dated 31.12.2014, may please be set aside and the appellant may be restored to his original position with all arrears and benefits.</p> <p>3. Brief facts giving rise to the instant appeal are that the appellant was appointed in the respondent-department as Forest Ranger, during the course of his service the appellant got promotions and was lastly promoted as DFO (BPS-18). That in the year 2007, a PC-I titled "construction of Offices and residential</p>

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*(Signature)*  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

ATTESTED

building in NWFP" envisages purchase of 5 Kanal Land to DFO Buner Office was launched during July 2007-June 2010. At the relevant time one Mr. Mir Wali Khan was holding the Charge of DFO Buner since 2007 to 19.04.2010, but he could not purchase the land during his tenure. That the appellant was posted as DFO Buner on 19.04.2010, soon after the posting of the appellant, he gave rapid attention to years long hanging issue and purchased 6 Kanal and 1 Marla Land in District Head Quarter Colony, Daggar, Buner. To this effect the agreement deed with the owners and Forest Department was executed and sent to DOR & E/Collector Buner dated 06.05.2010 with a request for signing and further processing. The said letter was endorsed to conservation Malakand and Chief Conservator Khyber Pakhtunkhwa. That no objection from any side was raised during the entire period and the payment was made to the owner at the rate of Rs. 11,12,000/- leveled against the approved rate of Rs. 14,00,000/- per Kanal. The land was transferred in the name of Provincial Government (Forest Department). That the predecessor of the appellant Mr. Wali Khan DFO was highly prejudiced against the appellant, he was posted as Monitoring Officer at Malakand. He floated a malafide monitoring report dated 01.02.2011 in respect of the subject land. That initially an inquiry was conducted by an Inquiry Committee comprising the Deputy Commissioner Swat and Deputy Commissioner Buner, However the appellant was never associated with the inquiry. The inquiry Committee while submitting its report recommended the appellant for disciplinary action. That the appellant was served with charge sheet and statement of allegations dated 09.07.2014. for certain baseless and unfounded allegations regarding irregularities in the purchase of land etc. The

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ATTESTED



appellant duly replied the charge sheet and refuted the allegations leveled against him. That the appellant was served with show cause notice dated 20.10.2014, which he duly replied and refuted the allegations leveled against him. That thereafter without considering the defense reply of the appellant quit illegally the appellant was awarded the major penalty of "Reduction to Lower Post and recovery of Rs. 32,38,644" vide notification dated 31.12.2014. That the appellant preferred departmental appeal which was not responded, hence the instant present appeal.

4. Learned counsel for the appellant at the very outset diverted attention of the Tribunal to the letter dated 01.02.2011 written by the predecessor of the appellant to the high-ups of the department wherein he pin pointed discrepancies and shortcomings in the purchase of land for construction of office and residential building at Daggar in District Buner. He further argued that the complainant Officer was subsequently appointed a Member of the enquiry committee who conducted a formal enquiry in the charges leveled against the appellant and submitted report to the competent authority which resulted in the impugned order against the appellant. He further contended that the appellant had expressed his reservations against the said official of Forest Department who besides being Junior to the appellant was also a complainant in the instant case and conducted the proceedings with a biased mind. He further argued that the E&D Rules 2011 provide for transparent conduct of disciplinary proceedings, providing for cross examination of witnesses and conducting the enquiry in the prescribed manner which provisions were not complied with by the respondents and hence impugned order was

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ATTESTED

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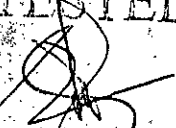
violative of the law, rules and norms of natural justice. He further contended that version of defense provided by the appellant during the course of enquiry was totally ignored, the appellant was not provided opportunity of fair trial as guaranteed under the Article 10-A of the constitution and opportunity of personal hearing was not provided to the appellant hence ends of natural justice were not met in the process of the entire proceedings against the appellant which stands nullity in the eyes of law. He prayed that the impugned order being defective in law may be set aside and appellant may be restored to his original position with all back benefits. He relied on 2003 SCMR 104.

5. The learned Sr. GP resisted the appeal and argued that all codal formalities were duly complied with before passing of impugned order by the competent authority. He further contended that the appellant was fully associated with the enquiry proceedings, final show cause notice was served on him and opportunity of personal hearing was also allowed. He further contended that formal enquiry was conducted against the appellant where charges framed in the charge sheet were duly proved against him and competent authority took a lenient view by opposing a major penalty of reduction as compared to the major penalty of dismissal recommended by the enquiry committee. He prayed that the appeal being devoid of any merits may be dismissed.

6. We have heard arguments of the learned counsel for the parties and perused the record with their assistance.

7. From perusal of the record, it reveals that enquiry

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

**ATTESTED**

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committee comprised of one of the member who in the first instance sent a monitoring and evaluation report containing allegations of illegalities in the purchase of land and sustaining of losses to Government by the appellant. Record further reveals that witnesses which were required to be examined in the presence of the appellant were not so examined. Similarly the appellant was not provided opportunity of cross examination of witnesses against him nor was he given ample opportunity to produce witnesses in his support. The appellant tried to register his reservations against the partial conduct of one of the member of the enquiry committee and voiced his concerns in this regard both before the competent authority and the Peshawar High Court as well but could not succeed to prevail upon the authority for substitution of the enquiry committee.

8. In view of the foregoing the Tribunal is of the considered view that full opportunity of defense was not provided to the appellant nor were the proceedings completely transparent in terms of Article 10-A of the Constitution as one of the member of the enquiry committee was complainant against the appellant and the charge comprised of the discrepancies raised by the officer in his monitoring report. Moreover, the said member of enquiry remained as predecessor incumbent of the post hold by the appellant and reservations of the appellant against his being biased could not be overlooked.

9. In the circumstances the Tribunal is constrained to interfere in the case, by setting aside the impugned order and to remit the case to the respondent department with direction to

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Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ATTESTED

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conduct *de-novo* enquiry against the appellant strictly in accordance with law and rules providing him full opportunity of defense and opportunity of personal hearing before passing of an order <sup>by</sup> the competent authority. The proceedings shall be completed in a period of sixty days after the receipt of this judgment. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record.

Announced  
02-02-2016

Sd/- Abdul Latif,  
Member

Sd/- Muhammad Azim Khan Afridi,  
Chairman

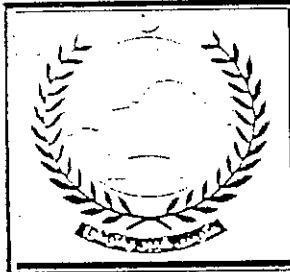
Certified to be true copy

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Appeal: 8-2-2016  
Number of Pages: 2800  
Copying Fee: 14  
Urgent: \_\_\_\_\_  
Total: 14  
Name of Copy: \_\_\_\_\_  
Date of Completion: 9-2-2016  
Date of Delivery of Copy: 9-2-2016

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*[Signature]*



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Pesh: the 20<sup>th</sup> March, 2017

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**NOTIFICATION**

**No.SO(Estt)Envt/1-50(87)/2k12:** The Competent Authority has been pleased to constitute an Enquiry Committee, comprising Mr. Muhammad Khalid (PMS BS-19) Director General, Federal Disaster Management Authority, (as Convener) and Qazi Muhammad Younis (BS-19), Conservator of Forests, Forest Department Khyber Pakhtunkhwa (as Member) to conduct de novo inquiry under Rule-14(6) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 against Mr. Hashim Khan Divisional Forest Officer (BS-18) of Forest Department, for the charges/allegations leveled against him in the Charge Sheet and Statement of Allegations.

2. The Enquiry Committee shall submit its findings within 30 days positively.

Sd/-  
CHIEF MINISTER  
KHYBER PAKHTUNKHWA

Endst: **No. SO(Estt)Envt/1-31/2k15: 3 7/2-75**

**Dated Pesh: the 20<sup>th</sup> March, 2017**

Copy alongwith copies of the Charge Sheet/Statement of Allegations and inquiry report, are forwarded for further necessary action to:-

- 1) Mr. Muhammad Khalid, Director General, Federal Disaster Management Authority.
- 2) Qazi Muhammad Younis, Conservator of Forests, Forest Department Khyber Pakhtunkhwa.
- 3) Mr. Hashim Khan Divisional Forest Officer C/O Chief Conservator of Forests, Malakand Forest Region-III, Swat; with the direction to appear before the Enquiry Committee on the date, time and place to be fixed by the Enquiry Committee for the purpose of inquiry proceeding.

o/c SECTION OFFICER (ESTT)

Endst: No. and date even.

Copy is forwarded for information and necessary action to:-

1. Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar; with the direction to nominate and depute a departmental representative well conversant with the facts of the case alongwith relevant record to assist the Enquiry Committee during the disciplinary inquiry proceedings.
2. PS to Secretary, Forestry, Environment & Wildlife Department.
3. Personal files of the officers.
4. Master file.
5. Office order file.

o/c SECTION OFFICER (ESTT)

**ATTESTED**

*[Signature]*

CHARGE SHEET

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I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Mr. Hasham Khan, the then Divisional Forest Officer, Buner, as follows:

That you, while posted as a Divisional Forest Officer Buner Forest Division committed the following irregularities:

- a) That a development project was approved for "Construction of offices and residential building in Khyber Pakhtunkhwa". The project duration was from 07/2007 to 06/2010. The project had the provision for purchase of 5 kanals land in Buner which was to be purchased in the 1<sup>st</sup> year of the project. The purchase was effected by you the then DFO Buner, during the last two months when project was going to expire on 30/06/2010.
- b) That, for "Construction of DFO Office-cum-residence and staff quarters", you negotiated the price of the land with owners.
- c) That through private negotiation without the approval of the Administrative Department (Forestry, Environment & Wildlife Department).
- d) That you executed agreement deed dated 04/2010 on stamp paper duly signed by you and land owners with marginal witness without consultation of Committee on the determination of rate of the land as required under LAC 1984 for private negotiation.
- e) That you being representative of the Acquiring Department were bound to make payment to the land owners through DOR Buner. Though the procedure adopted by you for acquisition of land through private negotiation was illegal and not in consonance with the laid down procedure per Notification No.Rev:V/4/2008/Notification /LA/10973, dated 17/08/2006 of the provincial Government, yet you at your own made direct payment to the owners concerned in violation of the said agreement deed as well. Again you made direct payment of land compensation to the owners keeping everyone in dark and by passing the Revenue Department.
- f) That you did not follow the procedure as per the Notification No,Rev:V/4/2008/Notification/LA/10973, dated 17/08/2006 nor consulted the DOR, Buner for processing the case through private negotiation. You did neither obtain any approval of the competent authority/Secretary FE&W Department in respect of acquisition of land through private negotiation nor for the so called negotiated rate. Thus you did not observe the codal formalities and committed irregularities coupled with losses to the Government exchequer.
- g) That the Police Department Buner had acquired land measuring 70 kanals and 2 Marlas @ Rs.255,014/- per Kanal according to Ausat Yaksala, but the owners of the land filed a civil suit in the court of senior Civil Judge, Daggar quoted the written precedence of DFO Buner (you). The court decided the suit against the Police Department on the basis of that procedure and enhanced the rate per Kanal at par with that paid by the Forest Department. This decision of the Court based on procedure of payment made by you increased the rate of land acquired by the Police Department from Rs.255,014/- to Rs.1310761/-per Kanal leading to overall increase in cost from 20557953/-to Rs.91884346/-. Hence the Provincial Government had to pay Rs.85109043/-over and above the price assessed by the Revenue Department Buner and thus financial losses were sustained by the Government as a result of inflated rates negotiated by you.

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- h) That similarly cost of the land purchased by the Forest Department as per actual Ausat Yaksala come to Rs. 34, 88,956/- for 6 Kanal sand 01 Marla, but you paid Rs. 6727600/- for the same land on negotiated price. Hence, you paid Rs. 32,38,644/- over and above the actual cost.
  - i) That from the perusal of available record produced by you pertaining to purchase of land for construction of DFO Buner Office and Residential Building, it is established that you violated the provision of Revenue Circular No:54, Land Acquisition and subsequent amendments made in the Land Acquisition Act, 1984 in 2006. As a result of the violation not only Forest Department sustained financial losses but the Police Department was also compelled to make over payment for acquisition of land. Thus you are responsible for not safeguarding the interest of the State.
  - j) That you did not perform your duty in the earnest and through manner and committed the above listed serious irregularities, deliberately, in the assigned task due to which the Government sustained huge loss.
  - k) That Revenue and Estate Department, Government of Khyber Pakhtunkhwa conducted an inquiry through Deputy Commissioner, Swat and Buner whereby you were made responsible for committing irregularities in the acquisition of land for construction of office-cum-residence and staff quarters at Daggar and recommended action against you.
  - l) That the Administrative Department vide No.SO(Estt)/1-5(87)/2K10, dated 25/11/2013 constituted an inquiry committee comprising of Deputy Secretary-II FE&W Department and Director I&HRD&M Directorate to conduct de-novo inquiry against you. The findings of the said committee were also the same during de-novo inquiry which further confirmed the fact beyond doubt that you are responsible for violation of procedure and causing huge losses to Govt: exchequer.
- 2) By reasons of the above, you appear to be guilty of misconduct, in-efficiency and corruption under rule-3 of the Khyber Pakhtunkhwa Government servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule- 4 of the Rules ibid.
  - 3) You are therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committee, as the case may be.
  - 4) Your written defense, if any, should reach the Enquiry Officer/Enquiry Committee within the specified period, failing which it shall be presumed that you have no defense to submit and in that case ex-party action shall follow against you.
  - 5) Intimate whether you desire to be heard in person.
  - 6) A statement of allegations is enclosed.

*Pervez Khattak*  
 PERVEZ KHATTAK  
 CHIEF MINISTER,  
 KHYBER PAKHTUNKHWA  
 COMPETENT AUTHORITY.

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**DISCIPLINARY ACTION**

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Hasham Khan, Divisional Forest Officer (BPS-18) the then Divisional Forest Officer, Buner Forest Division has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

**STATEMENT OF ALLEGATIONS**

- a) That a development project was approved for "Construction of offices and residential building in Khyber Pakhtunkhwa". The project duration was from 07/2007 to 06/2010. The project had the provision for purchase of 5 kanals land in Buner which was to be purchased in the 1<sup>st</sup> year of the project. The purchase was effected by him the then DFO Buner, during the last two months when project was going to expire on 30/06/2010.
- b) That, for "Construction of DFO Office-cum-residence and staff quarters", he negotiated the price of the land with owners.
- c) That through private negotiation without the approval of the Administrative Department (Forestry, Environment & Wildlife Department).
- d) That he executed agreement deed dated 04/2010 on stamp paper duly signed by him and land owners with marginal witness without consultation of Committee on the determination of rate of the land as required under LAC 1984 for private negotiation.
- e) That he being representative of the Acquiring Department were bound to make payment to the land owners through DOR Buner. Though the procedure adopted by him for acquisition of land through private negotiation was illegal and not in consonance with the laid down procedure per Notification No.Rev:V/4/2008/Notification /LA/10973, dated 17/08/2006 of the provincial Government, yet he at his own made direct payment to the owners concerned in violation of the said agreement deed as well. Again he made direct payment of land compensation to the owners keeping everyone in dark and by passing the Revenue Department.
- f) That he did not follow the procedure as per the Notification No,Rev:V/4/2008/Notification/LA/10973, dated 17/08/2006 nor consulted the DOR Buner for processing the case through private negotiation. He did neither obtain any approval of the competent authority/Secretary FE&W Department in respect of acquisition of land through private negotiation nor for the so called negotiated rate. Thus he did not observe the codal formalities and committed irregularities coupled with losses to the Government exchequer.
- g) That the Police Department Buner had acquired land measuring 70 kanals and 2 Marlas @ Rs.255,014/- per Kanal according to Ausat Yaksala, but the owners of the land filed a civil suit in the court of senior Civil Judge, Daggar quoted the written precedence of DFO Buner (you). The court decided the suit against the Police Department on the basis of that procedure and enhanced the rate per Kanal at par with that paid by the Forest Department. This decision of the Court based on procedure of payment made by DFO Buner increased the rate of land acquired by the Police Department from Rs.255,014/- to Rs.1310761/- per Kanal leading to overall increase in cost from 20557953/-to Rs.91884346/-. Hence the Provincial Government had to pay Rs.85109043/-over and above the price assessed by the Revenue Department Buner and thus financial losses were sustained by the Government as a result of inflated rates negotiated by him

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*[Signature]*



- h) That similarly cost of the land purchased by the Forest Department as per actual Ausat Yaksala come to Rs. 34, 88,956/- for 6 Kanal sand 01 Marla, but he paid Rs. 6727600/- for the same land on negotiated price. Hence, he paid Rs. 32,38,644/- over and above the actual cost.
- i) That from the perusal of available record produced by him pertaining to purchase of land for construction of DFO Buner Office and Residential Building, it is established that he violated the provision of Revenue Circular No.54, Land Acquisition and subsequent amendments made in the Land Acquisition Act, 1984 in 2006. As a result of the violation not only Forest Department sustained financial losses but the Police Department was also compelled to make over payment for acquisition of land. Thus he is responsible for not safeguarding the interest of the State.
- j) That he did not perform his duty in the earnest and through manner and committed the above listed serious irregularities, deliberately, in the assigned task due to which the Government sustained huge loss.
- k) That Revenue and Estate Department, Government of Khyber Pakhtunkhwa conducted an inquiry through Deputy Commissioner, Swat and Buner whereby he was made responsible for committing irregularities in the acquisition of land for construction of office-cum-residence and staff quarters at Daggar and recommended action against him.
- l) That the Administrative Department vide No.SO(Estt)/1-5(87)/2K10, dated 25/11/2013 constituted an inquiry committee comprising of Deputy Secretary-II FE&W Department and Director I&HRD&M Directorate to conduct de-novo inquiry against him. The findings of the said committee were also the same during de-novo inquiry which further confirmed the fact beyond doubt that he is responsible for violation of procedure and causing huge losses to Govt: exchequer.

2. For the purpose of Enquiry against the said accused with reference to the above allegations, an Enquiry Officer/Enquiry Committee, consisting of the following, is constituted under rule 10(1) (a) of Rules ibid:

- i. Mr. Muhammad Khalid (Pms Bs-19) DG, FDMA.
- ii. Gazi Muhammad Younas (Bs-19) Conservator of Forest Hazara

3. The Enquiry Officer/Committee shall, in accordance with the provision of the Rules ibid, provide reasonable opportunity of hearing to the accused; record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment to other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Enquiry Officer /Committee.

*Pervez Khattak*  
**PERVEZ KHATTAK**  
 CHIEF MINISTER  
 KHYBER PAKHTUNKHWA  
 COMPETENT AUTHORITY

**ATTESTED**  
*[Signature]*

**ATTESTED**

H (57)

OFFICE OF THE DIVISIONAL FOREST OFFICER, WORKING PLAN UNIT  
NO. I, ABBOTTABAD

To

The Director General  
FATA Disaster Management Authority  
Peshawar.

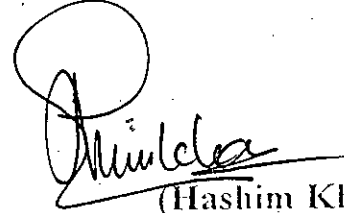
Subject: PARA WISE REPLY OF CHARGE SHEET.

No. 683/WP-1, Dated Abbottabad 13/04/2017

Memo:

Reference your office No. 3857-59, dated 15-04-2017.

The para wise reply against the subject charge sheet is submitted from  
page No. 01 to 143 please.



(Hashim Khan)

DIVISIONAL FOREST OFFICE  
WORKING PLAN UNIT NO. I  
ABBOTTABAD

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# INQUIRY UNDER KHYBER PKHTUNKHWA E&D RULES 2011 DISCIPLINARY PROCEEDING AGAINST MR. HASHIM KHAN DFO (BSP-18)

Subject ACQUISITION /PURCHASE OF LAND MEASURING  
6-KANAL'S AND 1-MARLAS IN CIVIL COLONY  
DAGGAR FOR CONSTRUCTION OF DFO OFFICE  
CUM RESIDENCE/STAFF QUARTERS(PARA WISE  
REPLY OF CHARGE SHEET).

Respected Sir,

I have the honor to submit that the undersigned has been served upon a CHARGE SHEET issued vide Administrative Department No.SO (Esti)/Env/1-31/2k15:371-75 dated 20 March 2017 and was held guilty of

- 1- In-efficiency
- 2- Mis-conduct.
- 3- Corruption

### BACK GROUND

A PC-I title " construction of DFO Offices and residential building in NWF" envisages purchase of 5 kanal land for DFO Buner office was launched during 2007-2010 but it could not effected till end of April/2010.

The undersigned was posted as DFO Buner on 19.4.2010 and rash attention was given to this years long hanging issue. An ideal commercial plot 6 kanal 1 marla was purchased in the heart of Buner District Head Quarter. Due to my take over as DFO Buner, Mr. Mir Wali Khan (my predecessor) was irked and bitter blood was created amongst us. In the back lash of which he (Mir Wali Khan) reported a mala fide monitoring report vide No. 255/w.p dated 1.2.2011 (Annex-I, Page 16-17 ) which was squarely responded, vide No.1986/Acett, dated 18.3.2011 (Ann-II, Page 18-22 ) Last page No. . The said monitoring report became a base of the subject enquiry.

The parawise reply of the allegation are submitted as under;

- a): Correct with no comments
- b): Correct with no comments

ATTESTED  


Handwritten notes and signatures at the bottom of the page, including "DFO P" and "01/12/17".

In-correct

APPROVAL

Generally approval is needed whenever any deviation from the PC-I provision is required while in the subject case no deviation from the PC-I has been happened.

There are two ways for land acquisition, i.e:

1- Compulsory L.A:- The acquiring Department asked the Revenue Department and the Revenue Department directly and forcibly purchased the land on ausat yak sala. In this mechanism, no PC-I is being launched.

No where in any document it has been mentioned to purchase the land through compulsory way.

2- Private negotiation:- For this mechanism, proper PC-I is being prepared and get approved, highlighting the market rate.

In the PC-I (page NO. 29), it has been clearly mentioned to go for purchase of land on market rate and hence no deviation has been made from PC-I.

In the instant case, the PC-I rate was based on private negotiation with reference to DFO/Buner letter No. 367/9 dated 5.8.08 Ann. IV page 34 and was got approved in DDWP arranged by Administrative Department. The meeting was chaired by Secretary Environment and represented by Finance, A.G office, P&D, Director B&A, CCF, CF, DFO, DDP etc

As per minutes of DDWP minutes of the meeting No.DDP/5859-62 dt 19.6.2008, it was directed to get certificate from DOR in respect of purchase of land and nothing else was felt short of. (Ann. V page 37)

The administrative approval was accorded on 24.01.2009 which is the final pre-requisite document and cover all the subsequent formalities. The administrative approval is a green signal to kick start the activities earmarked in PC-I.

The CF as well CCF Malakand have stated in their letters Nos - 8525/E dt 9.04.2015 (Ann. VI page 39 (c)) and No 5201/E dt 23.04.2015 (Ann- VII page-

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41 (c) ) respectively in the subject matter that after according administrative approval ,the DFO is responsible to follow PC-I.

3- The subject PC-I was an umbrella project for DIR (L),DIR(U) .SWAT ,CHITRAL and BUNER and none of them got any additional approval from administrative Deptt.The u/signed deserve for the same equal treatment.

It is pertinent to mention that the DFO does not make direct correspondence with Administrative Department but float the case through proper channel. In the instant case CCF & CF Malakand were approached vide No.3279-80/G dated 06-05-2010(Ann viii page 42 ), vide No.3470/G dated 18-05-2010(Ann ix page 43 ) but they quoted their letter No.9538/P&D dated 20-04-2010(Ann x page 44 ) to follow the PC-I. So all the fore mentioned circumstances indicate that the PC-I was got approved on the base of private negotiation and needed no additional approval

The amended LRA 2006 has never been endorsed to the undersigned which can be checked through my service record nor forest ordinance 2002 section 118 has been amended which explicitly speak for LA .1894.

d):- In-correct  
PRICE COMMITTEE

i) The location and price of the land was consulted with the officials of Revenue Department and after their consent, the agreement deed signed with the owners clearly indicating the rate Rs. 55600/Marla was submitted to DOR Buner vide No. 3276/G, dated 6.5.2010 for further processing, which they processed without questioning the negotiated rate, because the rate was fixed in light of Sec: 6(i),13,19(i) L.A. Act 1894 in consultation with officers of Revenue Deptt. The constitution of price committee is the mandate of revenue Department which they avoided perhaps for the reasons of very short left over time.

as well  
Sec: 11(B)  
LA: 2006  
instru  
No. 5(c)

ii) In DIE-NOV Enquiry. The DOR was held responsible for not constituting of the committee. Consequently a draft charge sheet was issued against him vide CCF-III No. 4297/E, dated 10.1.2014.(Annex x1 Page 45-50 )which could not materialized and is question mark.

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DRP 01 17/4/2014 09/11

ii) By passing price committee was in vogue in Buner. A land acquired by Health Department in Matwani was also processed by Revenue Department without notifying price committee.

iii) How ever, It will be better to constitute price committee even now to ascertain the actual price of the land.

c. In-correct:-

### PAYMENT

The undersigned took over charge of Buner on 19.4.2010. The CF Malakand and CCF directed the undersigned in strong words to accomplish the task in short time. They repeatedly mounted pressure and finally was warned by CF that if could not do so, he (undersigned) will be charge sheeted. So the undersigned and the SDFODaggar fully concentrated over this year's long hanging issue. For land acquisition, the laid down procedure in vogue in Buner was followed as per guidelines of revenue authorities. The procedure was also officially communicated by DOR Buner vide his No. 283/2/9/HCR dated 14.2.2010. Sec: 41 of L.A. Act 1894 is very much clear about mode of payment as under:

- i- By Direct payment
- ii- By order on a treasury
- iii- By money order
- iv- By cheque
- v- By deposit in a treasury

The procedure further stressed to say that "payment should always be so made if possible to save the recipients from unnecessary attendance" (Sec: 41 par 4 L.A Act 1894.

The said land acquisition vide sec:55 para 3 L.A Act 1894 further state that: "payment must be made before or immediately after taking possession"

The CCF stressed hard to report payment within 3 days positively. Due to shortage of time, the lone choice suggested by DOR during a meeting dated 20.5.2010 was to go for direct payment under the laid down practice in vogue like other departments. i.e health Department purchased land at Matwani for BHU and Education Department at Nawagai and made direct payment to the owners. Hence direct payment was made to the owners with

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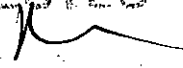
Notification to DOR vide No. 3455/G, dated 24.5.2010. (Ann XII page 51) The CF Malakand and CCF were also kept abreast vide No. 3456-59/G. They exulted and extolled the undersigned. Worth noting, no direct payment was made by the U/Signed but all the transactions have been made through Accountant and incharge SDFO Daggar.

**D) PROCEDURE**

- i. The undersigned processed the purchase of land through private negotiation in coordination with the revenue department through Mr. Mukamil shah (the then SDFO Daggar) who was in day to day contact with Revenue Department. To this effect the agreement deed with the land owners and the Forest Department through the undersigned was executed. The draft notification under Section 4 of the land Acquisition Act 1894 and agreement deed, afore said, were sent to the DOR &/Collector Buner vide letter No. 3278/G dated 06.5.2010 (Ann VIII, Page 42) with a request for signing and further processing as required.
- ii. The parent department is responsible to follow their procedure and to guide the acquiring Department. The same time the Chief Conservator of forests Khyber Pakhtunkhwa Peshawar and the Conservator of Forests Malakand Circle at Saidu Sharif were also sent the same letter alongwith the enclosures vide Endst: No. 3279-80/G dated 06.5.2010. (Ann VIII, Page 42) and that the agreement deed and the notification under Section 4 of the Land Acquisition Act, 1894 clearly specifies the price, area, khasra Nos, location, tehsil and District of the land to be acquired. This further reflects that this notification was also sent by DOR Buner vide Endst: No. 1045-51/G dated 06.05.2010 (Ann XIII, Page 52) to the Senior Member Board of Revenue KPK Peshawar, the Commissioner Malakand Division at Saidu Sharif, the Chief Conservator of Forests Khyber Pakhtunkhwa Peshawar, the Conservator of Forests Malakand Circle at Saidu Sharif, the DCO Buner, the Manager Government Printing Press KPK Peshawar (for publication) and Tehsildar Daggar.

That all the concerned authorities in the Revenue Department and Environment Department were duly informed. That after publication of the notification under Section 4 of the Act **ibid nobody has raised any objection to the process of the specified piece of land as yet.** Therefore, in the interest of public service the process was finalized by making the payment to the land owners at the rate

**ATTESTED**



Revenue Staff i.e. Patwari, Girdawar Circle and Tenshadi Daggal as Rs.1400000/ per kanal. It is further, very respectfully, submitted that the land so purchased was interred in the revenue record in the name of the Provincial government through Forest Department in column Nos. 3808 and 3809 dated 26.5.2010.(Ann XIV Page 53-56),

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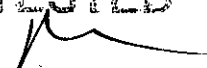
If at all the acquisition process was irregular or illegal the Collector or the Provincial Government could have conveniently disapproved the process narrated above and de-notified the acquisition process, but neither the higher authorities in Environment Department nor the Collector have even made any directions for the corrective measures, if any. The mutations are still intact in each and every letter. The higher authorities of the department have been informed and kept abreast of day to day progress but no objections whatsoever, have been raised, which fact amounts to admission of the process to be correct.

- iii. The amended procedure vide notification No. Revn/4/2008/Notification/La/10973 dated 17.8.2006 (Ann XV Page 57-72) was required to be communicated by SMBR to Administration secretaries and its further endorsement to all District officers. But till to date, this notification has not been endorsed to the undersigned which can be checked from the Service record of undersigned. The undersigned is bound to follow the PC-I and the forest ordinance 2002 whereas the land acquisition Act 1894 has been clearly mentioned under Sec: 118 F-O 2002, and no amendment has yet so far been made.

The DOR was properly consulted and as per advice of the DOR as well as officially endorsed to DFO Buner vide DOR office No. 283/2/9/HCR dated 14.2.2011,(Ann XV Page 57-72.)the land acquisition Act 1894 was followed as such.

- iv. Furthermore, the procedural as well as financial irregularities are being determined by the Audit. The entire record was twice sailed through the process of audit during 2011, 2013 and was termed satisfactory with no procedural or financial irregularities. (Annex XVI Page 73-83).

ATTESTED





10) - In-correct

PRICE OF LAND AND LOSS TO GOVERNMENT EXCHEQUER

Price of land

The acquired land was purchased at the rate of Rs.1112000/- Kanal against the provision of:

- 1) PC-I approved rate Rs. 1400000/-Kanal (Annexure III page 28 )
- 2) The market rate as per rate certificate furnished by the revenue Department under the Seal/Signature of concerned Patwari, Girdawar and Tehsildar Daggar is Rs. 1400000/- Kanal. (Annexure XVII )page 84 )
- 3) The general rate of commercial land in muzza Daggar in Revenue record is Rs. 1454000/- Kanal. (Annexure XVIII page 85 ).
- 4) The arte of the subject land stated as commercial as per revenue record is Rs. 1150000/- Kanal. (Annexure XVIII page 85 )
- 5) The Judiciary fixed rate Rs. 1310671/-Kanal for low potential agriculture land. (Ann XIX page 95 )
- 6) DFO Buner proposed Rs. 1500000/-Kanal (Annexure IV page 34 ) (DFO Buner letter No.367/G dated 05.08.2008)
- 7) (i).Market rate of less potential land purchased during 11/2005  
Vide mutation NO.3007 Rs.1400000/ kanal  
(Annexure XIX page 93 )
- (ii)Market rate of less potential land purchased during 3/2011  
Vide mutation NO.3999 Rs.1619017/ kanal  
(Annexure XIX page 93 )
- 8) The CCF and CF Malakand, had welcomed the rate during their spot visit dated 27.4.2010 and 11.5.2010 respectively.

ATTESTED  


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through private negotiation	Compulsory way
In private negotiation, the Price to settle according to the prevailing market rate vide Clause-6(i).13 & 19 (I) of land acquisition act 1894.	The Revenue Department fixed the price by their own, irrespective of the prevailing market rate
The Forest Land is a commercial Land as per Revenue record.	The Police acquired land is agricultural Land (Annexure - <u>XX</u> , Page <u>97</u> )
The Forest Land was acquired in May 2010.	The Police Land process was started during August 2008 & completed on 05.10.2010.
The Forest Land is adjacent to main Daggar Head Quarter Road	The Police Land is far away from the Daggar Bazar. (DOR No. 2014-18 dated 5.10.2010 (Annexure <u>XX</u> Page <u>97</u> ))

The Civil Court has declared the Ausat Yak sala (Average) incorrect (Ann. XX Page 95) and has fixed the rate on the basis of average price of the following three transactions made in the vicinity as:


- a) Land purchased by U-fone @ Rs. 1400000/- kanal
- b) Land purchased by Forest Department @ 1112000/kanal
- c) Land purchased by Noor Alam @Rs. 1619017/kanal

So it is mathematically clear that by induction of Forest Department transaction, the average rate has been reduced, not increased as:

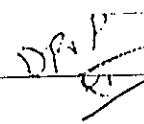
- 1:-The Civil Court has given reference of:
- a) U-Fone Tower Mutation No.3007 dated 22-11-2005. = Rs. 1400000/- per kanal.
  - b) Forest land mutation No.3808, 3809 dated 26-05-2010 Rs. = 1112000/- per kanal.
  - c) Shah Alam mutation No.3999 dated 28-03-2011 Rs. 1619017/- per kanal.
- Average: Rs. 1377005/-per kanal.

- 2:-By excluding the forests transaction:
- (a) Mutation No.3007 Rs.1400000/- per kanal

ATTESTED



DP/1/17/17



(b) Average:

Rs.1509508/- per kanal.  
Rs.1509508/- per kanal.

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Difference: 1509508 - 1377005 = Rs. 132503/- per kanal.

$\frac{K - M}{70 - 2} = \text{Rs. } 9308335/- \text{ per kanal.}$

So the forest land reference in the court has reduced the cost of police land with a total amount of Rs. 93,08,335/-, thus accruing a huge saving in Govt.

More over, the owner of the land has preferred to returned the land and he will refund the price. (Ann ~~XXXI~~ page 136) and to de-notify the agreement.

*a conventional way being*

h) AUSAT YAK SALA (Average yearly rate)

1) The yak sala rate is being applied where the land is being purchase through compulsory way and the rate is being fixed by Revenue Department while in case of private negotiation, the rate is fixed in light of prevailing market rate.

*or any land acquisition procedure*

2) No where in the PC-I it has been mentioned to purchase the land on yak sala rate. The yak sala rate is for compulsory acquisition where no PC-I is needed because the Revenue Department is being asked by Secretary of acquiring department for purchase of land through compulsory mechanism.

*being*

3) The PC-I was based on the rate of Rs. 1500000/- per kanal proposed by DFO Buner vide No.367/G, dated 05-08-2008(Ann IV page 34) in respect of which rate certificate of Rs.1400000/ kanal was consequently issued by Revenue Department. (Ann XVII page 84)

4) In PC-I it has been clearly mentioned to purchase the land from the local market as per decision of DDWP.(page No. 29) which is a clear direction to go for PVT negotiation.

ATTESTED  
*[Signature]*

5) The Land Acquisition Act 1894 under Section 6 (i), 13, 19 (i) stressed for purchasing at the prevailing market rate.

6) The yak sala rate is different for both agricultural and commercial land. The yak sala rate quoted in the charge sheet is for agricultural land and it is against the natural justice to apply rate of agricultural land on commercial land.

7) The purchased land is commercial as per Revenue record and no transaction of commercial land in muzza Daggar has been made since 2006 to 2010. *and no yak sala for commercial land exist for the period of 2006-2010.*

8) However, The ausat Yak Sala for commercial land extracted by DC's Swat & Buner from revenue record is Rs. 1454000/-Kanal (Ann XVIII page 85)

9) As per Revenue record the land in question is commercial and the rate mentioned is Rs.1150000/- per kanal (Annexure XVIII page 85)

10) The civil Court vide their Judgment (Ann XIX page 94) has termed the yak sala incorrect and has fixed Rs. 1310671/Kanal of a low potential agricultural land.

*The yak sala rate has been declared incorrect by a member of court vide page No: 88*

in-correct

Already explained as per para (f)

):- In-correct

The accused honestly performed his duty with consummate dedication and the 3 years hanging gigantic task was accomplished in just 2 months before closing of the project.

High potential commercial and un-matching land in an ideal location was purchased at the rate far less than the approved rate as well as prevailing market accrued saving worth Rs. 1742400/- in favour of GOVT.

ATTESTED  
*[Signature]*

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The enquiry conducted by DC, Swat/Buner was initiated against Hayatullah Tehsildar and was unlawfully switched over to the undersigned, kept aloof the undersigned.

In the finding of the enquiry, it has been admitted that as per revenue record the land in question has been graded commercial with proposed rate of rs. 1150000/- kanal against the given general rate of Rs. 1454000/- Kanal.

The findings of the said enquiry was forwarded to the Director Budget and account ENVT Department and he offered his remarks that no financial loss has been occurred to GOVT.

1:- In-correct

In DE-NOV Enquiry, the DOR Buner was held responsible and for not following the procedure and a draft Charge Sheet was issued against him vide CCF-III office No. 4297/E, dated 10.4.2014 (Ann XI page 45-50). But could not materialized while the charge sheet served upon the undersigned was implemented.

The honorable service tribunal on 2.2.2016 set aside the GOVT notification No.SO (Estt)/Envvt/1-50 987)/2012/139-46, dated 31.12.2014, all the conducted enquires in the subject case have been nullified and has lost its credibility.

1- The entire chain of Forest Department i.e Forest guard to CCF and Revenue Department i.e Patwari to DOR were on-board in the process and each one has played his proportional role to his jurisdiction but only the undersigned has been victimized and made scap goat.

AUDIT

The procedural and financial irregularities are being determined by the audit department. The subject case was undergone though the process of audit by establishing para-I vide No. 5459-61, dated 30.6.2011, which was equally responded vide No 1138/G, dated 17.10.2011 (Annex XVI page 75, 79, 83). The then cf and ccf endorsed reply and recommended for settlement. The para was settled vide No. 1092-94, dated 7.1.2012

ATTESTED  
*[Signature]*

## Demerit of Transaction

As the Govt is unhappy with the said Transaction while the Land owner has also preferred an application for break-up of the Transaction.

As the Transaction may be got demerited and the owner is ready to pay refund the price of land as well cost of the building been established on the land.

The laid down mechanism of make-up as well depreciation will be considered.

6- If at all the Govt

136 The Landowner has preferred an application and proposed for break-up of the Transaction & it

is requested to consider the same

recommended by demeriting the

transaction

\* The price Committee required under II B(S) 1-2006 be constituted even now by including a member

of the ...

procedural irregularity. The enquiry conducted by DCs was again forwarded to director B&A which was commented by him that's no financial loss has been happened to Government.

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### INJUSTICE/DISCRIMINATION

An enquiry in the subject matter based on the same allegations was earlier conducted which was set aside both by the honorable courts of service tribunal vide appeal No.474/2015 as well as by supreme court of Pakistan vide CPLA No.159-P/2016 and hence having no justification to re-open it.

(Ann. XXV II, XXV III page 118 - 126 )

1- The procedural/financial irregularities are being determined/examined by the Audit Department. The instant case has twice been passed through the Audit process and the procedural/ financial process carried over by the undersigned has been termed correct/satisfactory. (Ann. XVI page 75, 79, 83).

2- The enquiry conducted by DC, Swat/Buner was initiated against Hidayatullah Tehsildar who was exonerated and the enquiry was unlawfully switched over to the undersigned, kept aloof the undersigned in the entire proceeding.

3- In DE-NOV Enquiry, the DOR Buner was held responsible for not following the procedure and a draft Charge Sheet was issued against him vide CCF-III office No. 4297/E, dated 10.4.2014 (Ann. XI page 45-50). but could not materialized while the Charge sheet served upon the undersigned was implemented.

4- The entire chain of Forest Department i.e Forest guard to CCF and Revenue Department i.e Patwari to DOR were on-board in the process and each one has played his proportional role to his jurisdiction but only the undersigned has been victimized and made scap goat and leaving all other unasked.

ATTESTED



Swat, Chitral and Buner and none of them got any additional approval, while the u/signed is being treated discriminately.

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- 6- The police department land acquisition case is under trial is Swat Darul Qaza under RFA 11/2012 and it is prejudice to presume that the decision of Civil Court will be upheld.
- 7- The Yaksala rate for agricultural land has been applied on commercial land acquired by the Forest Department and its rate per revenue record of Rs.1150000/- has been totally ignored.
- 8- The ausat yaksala of Buner Police Department land has been declared void and in-correct by Civil Court Buner.
- 9- The reply in response to the monitoring report, audit report, show cause notice as well departmental appeal were endorsed and acknowledged by the then 3 different CFs and 3 different CCFs as well 2 different Directors budgets.
- 10- In the subject matter ,the accused was already served a draft charge sheet vide ccf / KPK NO.4955/E dt 31.5.2011(Ann. XXII page 105-109) which was replied by the accused vide DFO Dir lower office NO.2936 dt 15.06.2011(Ann. XXIII page 110-114) and was settled with reference to CF MKD office NO. 293/E dt 11.7.2011.(Ann. XXIV page 115)  
It is unjust to reopen a settled case again and again.

#### EPIITOME

1. The undersigned accomplished the 3 years hanging gigantic task just in the last remaining 2 months of the PC-I efficiently which negate the allegation of in-efficiency.
2. The undersigned acted upon to the orders/directives of the high-ups to immediately complete the assigned task and did not commit any misconduct.
3. The undersigned purchased a very high potential commercial land at very low rate against the approved rate and no

ATTESTED





enquiry.

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The Anticorruption Department also ruled out any sort of corruption  
vide their No. 1700-1/ACE dated 27.10.2017.  
(Ann XXV pag 116).

As the undersigned has done all the acts in the best interest of public and  
good faith, so it is requested to accord indemnity under section-III Forest  
ordinance 2002, set-aside the enquiry and may kindly be exempted from  
all the charges please.

The undersigned desired to be heard in person please.



Dated 13 / 04 / 2017

(HASHAM KHAN)  
DIVISIONAL FOREST OFFICER  
(BPS 18)  
ENVIRONNEMENT DEPARTEMENT

ATTESTED



and Deputy Commissioner Buner (*Annex-VIII*). The departmental representative Mr. Ahmad Jalil DFO Buner diligently provided record relating to the case and also provided a copy of CPLA 159-P/2016 which comprised of some crucial documents of the case (*Annex-IX*).

Findings

4. After giving appropriate opportunity of personal hearing to the accused officer and proper scrutiny of the available documents relating to the enquiry, the enquiry team found the following against allegations contained in the charge sheet/statement of allegations: -

Sr. No. (as in the statement of allegation.	Findings of the enquiry team.
a	Although the allegation levelled against the accused officer for procuring the requisite land in haste i.e. in the last two months of the project period was proved; however, it was noted that the accused officer took charge of his duties as DFO Buner on 19 <sup>th</sup> April 2010. The <u>responsibility of delaying the case for the entire period of scheme does not fall on him rather it falls on those who were responsible for implementation of the scheme ever since its approval by the competent forum and could not do much to that effect.</u> The accused officer during his personal hearing and written reply took stand that he was continuously forced by his senior officers to act in haste and implement the part of scheme so as to prevent the allocated money from being lapsed on the expiry of the FY 2009-10; however, he could not produce any credible evidence of any such instructions by his senior officers.
b	The allegation of entering into negotiations with land owners in contravention of Government of Khyber Pakhtunkhwa Board of Revenue Notification No.Rev:V/4/2006 dated 17 <sup>th</sup> August 2006 was sufficiently proved as the procedure of procuring land through private negotiations contained in the notification was grossly violated. The officer during his personal hearing took stand of his total unawareness to the procedure of land procurement through private negotiations as contained in the above notification of the Revenue Department; however, it could not be condoned as every officer has to work in accordance to the law/rules/instructions of the government while dealing with the official business.

*[Handwritten mark]*

*[Handwritten signature]*

**ATTESTED**  
*[Handwritten signature]*

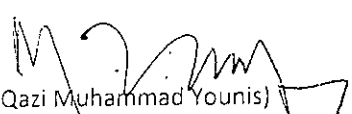
c	The allegation of not obtaining approval of the competent forum i.e. Secretary Environment for initiating the land procurement process through private negotiations was proved. The accused officer during his scheduled interaction with the enquiry team took stand that approval of the PC-I for the scheme contained an intrinsic approval for procuring land through either mean i.e. compulsory acquisition under Land Acquisition Act or private negotiations. However, his contention was in contradiction to the procedure reflected in Board of Revenue's Notification dated 17 <sup>th</sup> August 2006.
d  X	After careful scrutiny of the available record and written reply of the accused officer, it was proved that no price committee was constituted in the subject case for rate determination of the procured land. Although the accused officer is responsible for not initiating a case for constituting such a committee; however, this violation could be equally attributed to the then District Officer (Revenue) Buner who did not play his regulatory function by putting the process on right track and accepted the process without taking any notice of fulfillment of codal formalities or otherwise.
e  ✓	The allegation of making direct payment to the land owner was proved. The standard procedure of making payment for the procured land through District Officer (Revenue) was violated. As the accused officer did the entire procurement process himself and did not involve the District Officer (Revenue) office; therefore, his making payment to the land owners directly was a kind of compounding other violations he made in the procurement process. In his written reply, he banked upon the direct mode of payment as mentioned in the Land Acquisition Act 1894 to justify the way he made payment to the owner. However, all these modes were to be considered by the office which is authorized for land acquisition i.e. District Officer (Revenue) and not DFO (Buner)
f	As mentioned against allegation at Sr.No. c
g  [Signature]	Though the allegation levelled against the accused officer for procuring land through an irregular procedure of private negotiations at a higher rate than the <i>Ausat Yaksala</i> was proved. Moreover, his act of procuring land at a higher rate has also been proved as becoming a strong base for rate enhancement by the court in the land acquisition process for Police Department. However, his culpability on this

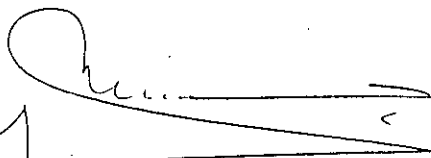
ATTESTED  
[Signature]

	count seems partial than exclusive as there are some other mutations available on record where the rates of land in the same <i>Mouza</i> were quoted even higher than the price which the accused officer paid to the land owners.
h	The allegation stands proved as narrated in the statement.
j	The charge stands proved as the officer violated the procedures in vogue for land procurement as notified by the Board of Revenue on the pretext of urgency, expediency and unawareness.
k	Charge stands proved
l	Charge stands proved


Recommendations

5. In view of the above, the enquiry committee recommends the following :-
- a. As the officer has been proved of committing very serious irregularities in the procurement of land for construction of DFO offices and Residences in District Buner, therefore, the punishment already ordered vide notification bearing No. SO(Estt)Env/1-50(87)/2012 dated 31<sup>st</sup> December 2014 (*Annex-X*) may be sustained.
  - b. As the total loss incurred to the government is higher than the amount being recovered from the accused officer and as there are likely chances of other reasons as mentioned in para 4(a,d,g) which have contributed towards the huge loss incurred to the government in this case; therefore, the same should also be investigated/considered so as to prevent such instances in future.

  
(Qazi Muhammad Younis)  
Conservator Forests, Upper Hazara Forests Circle

  
(Muhammad Khalid)  
Director General FDMA

**ATTESTED**  


  
**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**FORESTRY, ENVIORNMENT & WILDLIFE DEPARTMENT**

77

**SHOW CAUSE NOTICE**

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Hashim Khan, Divisional Forest Officer, as follows:

- (i) that consequent upon the completion of enquiry conducted against you by the Enquiry Committee, for which you were given opportunity of hearing vide office communication No. SO(Estt)Env/1-50 (87)/2012 dated 20<sup>th</sup> March, 2017 and;
- (ii) on going through the findings and recommendations of the Enquiry Committee, the material on record and other connected papers including your defence before the Enquiry Committee:

I am satisfied that you have committed the following acts/omissions specified in the Rule-3 of the said Rules:

- (i) Inefficiency.
- (ii) Misconduct.

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalties of Removal from Service

\_\_\_\_\_ under rule-14(4)(b) of the Rules ibid.

3. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days of its receipt by you, it shall be presumed that you have no defence to put in and in that case, an ex-parte action shall be taken against you.

5. A copy of the findings of the Enquiry Officer is enclosed.

  
**(Pervez Khattak)**


Chief Minister, Khyber Pakhtunkhwa/  
Competent Authority

*Environment Deptt has sent  
cause  
The show reply to chief secretary*

**ATTESTED**

XXXIV


K (78)

Divisional Forest Officer		Working Plan Unit No.I ABBOTTABAD Phone & Fax No.# 0992-9310301 No. 79 /WP-I, Dated 22 / 08 /2017.
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To  
The Chief Conservator of Forests,  
Northern Forest Region-II,  
Civil Line Forest Officer,  
Abbottabad.

Subject: SHOW CAUSE NOTICE.

Memo;  
Reference to the show Cause Notice Served upon the undersigned vide Administrative Department No.SO(Estt.) FE&WD/1-50(87) /2012/ 477/WC dated 18-08-2017 received on 22-08-2017, the reply is submitted from page No.01 to 148 for onward submission to the Administrative Department lease.

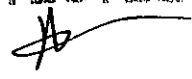
  
(Hashim Khan)  
DIVISIONAL FOREST OFFICER  
WORKING PLAN UNIT NO.I  
ABBOTTABAD.

No. 80 /WP-I,  
Copy forwarded in advance to SO(Estt.) Govt. of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department Peshawar with reference to his No.477/WC dated 18-08-2017 for further necessary action please.

  
DIVISIONAL FOREST OFFICER  
WORKING PLAN UNIT NO.I  
ABBOTTABAD.

File: Estab.

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ATTESTED  


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BEFORE THE HONORABLE CHIEF MINISTER KHYBER  
PAKHTUNKHWA, PESHAWAR (THROUGH PROPER  
CHANNEL)

Subject

INQUIRY AGAINST MR.HASHIM KHAN DFO (BS 18)  
REGARDING ACQUISITION /PURCHASE OF LAND  
MEASURING 6-KANAL'S AND 1-MARLAS IN CIVIL  
COLONY DAGGAR FOR CONSTRUCTION OF DFO  
OFFICE CUM RESIDENCE/STAFF QUARTERS  
(REPLY OF SHOWCAUSE NOTICE).

Your Excellency,

I have the honor to submit that undersigned has been served upon a show  
cause vide Administrative department No. SO(Estt.) FE&WD/1-  
50(87)/2012/477/WC dated 18-08-2017, received on 22-08-2017 and was  
held guilty of

- 1- In-efficiency
- 2- mis-conduct

BACK GROUND

A PC-I title " construction of DFO Offices and residential building in  
NWFP" envisages purchase of 5 kanal land for DFO Buner office was  
launched during 2007-2010 but it could not effected till end of  
April/2010.

The undersigned was posted as DFO Buner on 19.4.2010 and rash attention  
was given to this years long hanging issues. An ideal **commercial** plot 6  
kanal 1 marla was purchased in the heart of Buner District Head Quarter. Due  
to my take over as DFO Buner, my predecessor Mr. Mirwali khan was irked  
bitter blood was created amongst us. In the backlash of which he (Mir Wali  
Khan) floated a malafide monitoring report vide NO.255/W.P dated  
01.02.2011(Ann.I page 16-17) which was squarely responded vide  
NO.1986/Acctt dated 18.03,2011(Ann II page 18-22) with the request  
to conduct audit in the matter. The audit was conducted and the monitoring

ATTESTED

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2 (80)

report was nullified but un-heeded and the following alleged procedural lapses were repeated again and again which are explained as under,

**I:- APPROVAL**

Generally approval is needed whenever any deviation from PC-I provision is required while in the subject case no deviation from the PC-I has been happened.

There are two ways for land acquisition, i.e:

**A:- Compulsory L.A:-** This is the 2nd option for acquisition of land etc under clause 8(11-B)LA.2006 in which the acquiring department asked the Revenue department for acquisition and the revenue department directly and forcibly purchased the land traditionally on ausat yak sala. In this mechanism, no PC-I is being launched.

In the subject case nowhere in any document it has been mentioned to purchase the land through compulsory way.

**B:- Private negotiation:-** This is the first option for land acquisition under the Revenue procedure. For this mechanism, proper PC-I is being prepared and get approved, highlighting the market rate.

1:- In the PC-I (page NO. 29), it has been clearly mentioned to go for purchase of land on market rate and hence no deviation has been made from PC-I.

2:- In the instant case, the PC-I rate was based on private negotiation with reference to DFO/Buner letter No.367 date 05.08.2008 and was got approved in DDWP arranged by Administrative Department. The meeting was chaired by Secretary Environment and represented by Finance, A.G office, P&D, Director B&A, CCF, CF, DFO, DDP etc

As per minutes of DDWP minutes of the meeting No.DDP/5859-62 dt 19.6.2008, it was directed to get certificate from DOR in respect of purchase of land and nothing else was felt short of. (Ann. V page 37)

3:- The administrative approval was accorded on 24.01.2009 which is the final pre-requisite document and cover all the subsequent formalities. The

ATTESTED



administrative approval is a green signal to kick start the activities earmarked in PC-I.

4:- The CF as well CCF Malakand have stated in their letters Nos -8525 dt 9.4.15(Ann vii page 39(cc)) and CCF/ MKD Office No. 5201 dt 23.4.1. (Ann vii page 41(cc)) respectively in the subject matter that after according administrative approval, the DFO is responsible to follow PC-I.

5:- The subject PC-I was an umbrella project for DIR (L), DIR(U), SWAT, CHITRAL and BUNER and none of them got any additional approval from administrative Deptt. The u/signed deserve for the same equal treatment.

6:- It is pertinent to mention that the DFO does not make direct correspondence with Administrative Department but float the case through proper channel. In the instant case CCF & CF Malakand were approached vide No.3279-80/G dated 06-05-2010(Ann viii page 42), vide No.3470/G dated 18-05-2010(Ann ix page 43) but they quoted their letter No.9538/P&D dated 20-04-2010(Ann x page 44) to follow the PC-I. So all the fore mentioned circumstances indicate that the PC-I was got approved on the base of private negotiation and needed no additional approval

7:- The amended LRA 2006 has never been endorsed to the undersigned which can be checked through my service record nor forest ordinance 2002 section 118 has been amended which explicitly speak for LA .1894.

## II:-PRICE COMMITTEE

- i) The location and price of the land was consulted with the officials of Revenue Department and after their consent, the agreement deed signed with the owners clearly indicating the rate Rs. 55600/Marla was submitted to DOR Buner vide No. 3276/G, dated 6.5.2010 for further processing, which they processed without questioning the negotiated rate, because the rate was fixed in light of Sec: 6(i),13,19(i) L.A. Act 1894 in consultation with officers of Revenue Deptt. The constitution of price committee is the mandate of revenue Department which they avoided perhaps for the reasons of very short left over time.

ATTESTED