

- ii) In DE-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 10.4.2014. (Annex XI Page 45-56).
- iii) 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.
- iv) However, It will be better to constitute price committee even now to ascertain the actual price of the land.

III:-PAYMENT

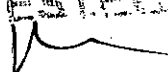
The undersigned took over charge of Buner on 19.4.2010. The CF Malakand and CCF directed the undersigned in strong words to accomplish the task in short time. They repeatedly mounted pressure and finally was warned by CF that if could not do so, he (undersigned) will be charge sheeted. So the undersigned and, the DFO 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. Sec: 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" (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

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5 (83)

in vogue like other departments. i.e health Department purchased land at Matwani for BHU and Education Department at Nawagai and made cheque payment to the owners. Hence payment was made to the owners with intimation to DOR vide No. 3455/G, dated 24.5.2010. (Ann XII page 51) The CF Malakand and CCF were also kept-abreast vide N. 3456-59/G. They exulted and extolled the undersigned. Worth notingly, no direct payment was made by the U/Signed but all the transactions have been made through Accountant and incharge SDFO Daggar.

IV:- 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.

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6 (84)

iii. 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 Rs.1112000/kanal much less than that intimated by the Field Revenue Staff i.e. Patwari, Girdawar Circle and Tehsildar Daggar 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),

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.

iv. 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.

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ATTESTED


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.

v. 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).

IV:-PRICE OF LAND AND LOSS TO GOVERNMENT EXCHEQUER

A) 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 TehsildarDaggar 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).

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4) The rate 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.

The forest land as per revenue record is commercial whereas the rate been applied in the former enquiry is of agricultural land. So it is unjust to apply rate of agricultural land as commercial land.

B) LOSS TO THE GOVERNMENT

i) The subject land was purchased @ Rs. 1112000/- per kanal against approved rate of Rs. 1400000/- per kanal.Hence accrued saving of Rs. 1742400/-. In favour of GOVT.

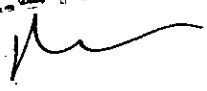
ii) A sum of Rs. 214000/- per year was saved to the Government in the form of rent of hired building and house rent being paid to DFO etc.

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- iii) The CF/MKD vide his No. 8525 dated 9.4.15 (Ann VI page 39 (D)) and CCF Malakand vide Nos.5201 dated 23.4.15 (Ann VII page 41 (D)) have stated that saving has been made to the government.
- iv) Moreover, the subject case has twicely been passed through audit process, noticing no lost to Government. (Annexure XVI page 73-83)
- v) For acquiring land, the following Two (2) 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 Department has purchased the land through compulsory way ,both are totally different The salient features of the both ways in respect of Forest Department and Police Department 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(i),13 & 19 (1) of land acquisition act 1894, as well clause 2(5) 11-B Land Act, 2006.	The Revenue Department fixed the price by their own, irrespective of the prevailing market rate
3	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>)
4	The Forest Land was acquired in May 2010,	The Police Land process was started during August 2008 & completed on 05.10.2010.
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 (Annexure <u>XX</u> Page <u>97</u>))

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of Muzza Daggan

The Civil Court has declared the Ausat Yak sala (Average) incorrect (Ann. YIX 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
 - (b) Mutation No.3999 Rs.1619017/- per kanal.
- Average: Rs.1509508/- per kanal.

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

Total difference of $\frac{K - M}{70 - 2}$ = Rs. 9308335/- 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.

Moreover, 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.

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V:- AUSAT YAK SALA (Average yearly rate)

- 1) The yak sala rate is a conventional mechanism being applied by revenue department for acquiring land etc through compulsory acquisition. The ausat yak sala has no lawful justification and hence fore has been deleared void by several court verdicts (page No. 90). In the subject case the uasat yak sala of Daggar has also been declared incorrect by Civil Court Buner (Ann YIX, page 94). Nowhere in any Land Acquisition Act/procedure it has been mentioned to apply ausat yaksala rate. Both for PVT and compulsory ways, under section 6(1), 13, 19(1) LA 1894 as well section 11(B) Clause 9&5 L.A 2006, prevailing market rate application has been stressed.
- 2) Nowhere 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.
- 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.
- 5) The Land Acquisition Act, 1894 under Section 6 (i), 13, 19 (i) stressed for purchasing at the prevailing market rate as well as sec 11(B), 5(1) & 9 of L.A 2006 press hard for 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.

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7) The purchased land is commercial as per Revenue record and no transaction of commercial land in müzza Daggar has been made since 2006 to 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.

VI:-AUDIT

The procedural and financial irregularities are being determined by the audit department. The subject case was undergone through 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 (Annex XVI page 79) 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.

VII:- Break-up of the Transaction

As the govt is unhappy with the said transaction while the land owner has also preferred an application (Ann XXI Page 136) for break-up of the transaction. So the transaction may be got de-notified. The owner of land is ready to refund the price of land as well cost of the buildings established on the land. The laid down mechanism of mark-up as well depreciation will be consider under the rules.

ATTESTED


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VIII:- INJUSTICE/DISCRIMINATION

- 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 DCs 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- 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.
- 4- The Subject PC-I was an umbrella project for Dir lower, Dir upper, Swat, Chitral and Buner and none of them got any additional approval, while the u/signed is being treated discriminately.
- 5- 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.
- 6- 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.
- 7- The ausat yaksala of Buner Police Department land has been declared void and in-correct by Civil Court Buner.

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8- 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 CCI's as well 2 different Directors budgets.

9- 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) which was replied by the accused vide DFO Dir lower office NO.2936 dt 15.06.2011(Ann XXIII page 110) 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.

10- In the subject case the u/s has already been punished for 2 years reversion from BS 18 to BS 17 and 14 months attachment vide govt notification dated 31.12.2014 (page 147) and reinstated vide govt notification dated 26.12.2016.

11- During the process of current DE-NOV inquiry, the parawise written reply against the allegation of the charge sheet was concisely responded with the supporting documents. The inquiry committee has endorsed the reply because no allegation mentioned in the charge sheet was neither questioned verbally nor mention in the questionnaire.

12- The authority has enhanced the major penalty by two steps which is against the natural justice.

EPITOME

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 mis-conduct.
3. The undersigned purchased a very high potential commercial land at very low rate against the approved rate, adding valued assets of the govt.

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93

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 22 /08/2017.



(HASHAM KHAN)
DIVISIONAL FOREST OFFICER
(BPS 18)

ATTESTED




GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Peshawar the, 07th November, 2017

NOTIFICATION

No.SO(Estt)FE&WD/1-50(87)/2k12: WHEREAS, Mr. Hashim Khan, Divisional Forest Officer (BPS-18) Forest Department 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 served upon the said officer;

AND WHEREAS, Enquiry Committee comprising Muhammad Khalid (PMS-BS-19), Director General, FDMA and Qazi Muhammad Younis (BS-19), Ex-Conservator of Forests, Upper Hazara Forest Circle, Mansehra was constituted to conduct inquiry against the said officer;

AND WHEREAS, the Enquiry Committee, after having examined the charges, evidence on record and explanation of the 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/recommendations of the Enquiry Committee, the explanation of the officer, personal hearing and exercising his powers under Rule-14(5)(ii) read with Rule 4(1)(b)(iii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose major penalty of "**Removal from Service**" upon Mr. Hashim Khan, Divisional Forest Officer (BPS-18) Forest Department, with immediate effect.

3742-48
CHIEF MINISTER,
KHYBER PAKHTUNKHWA

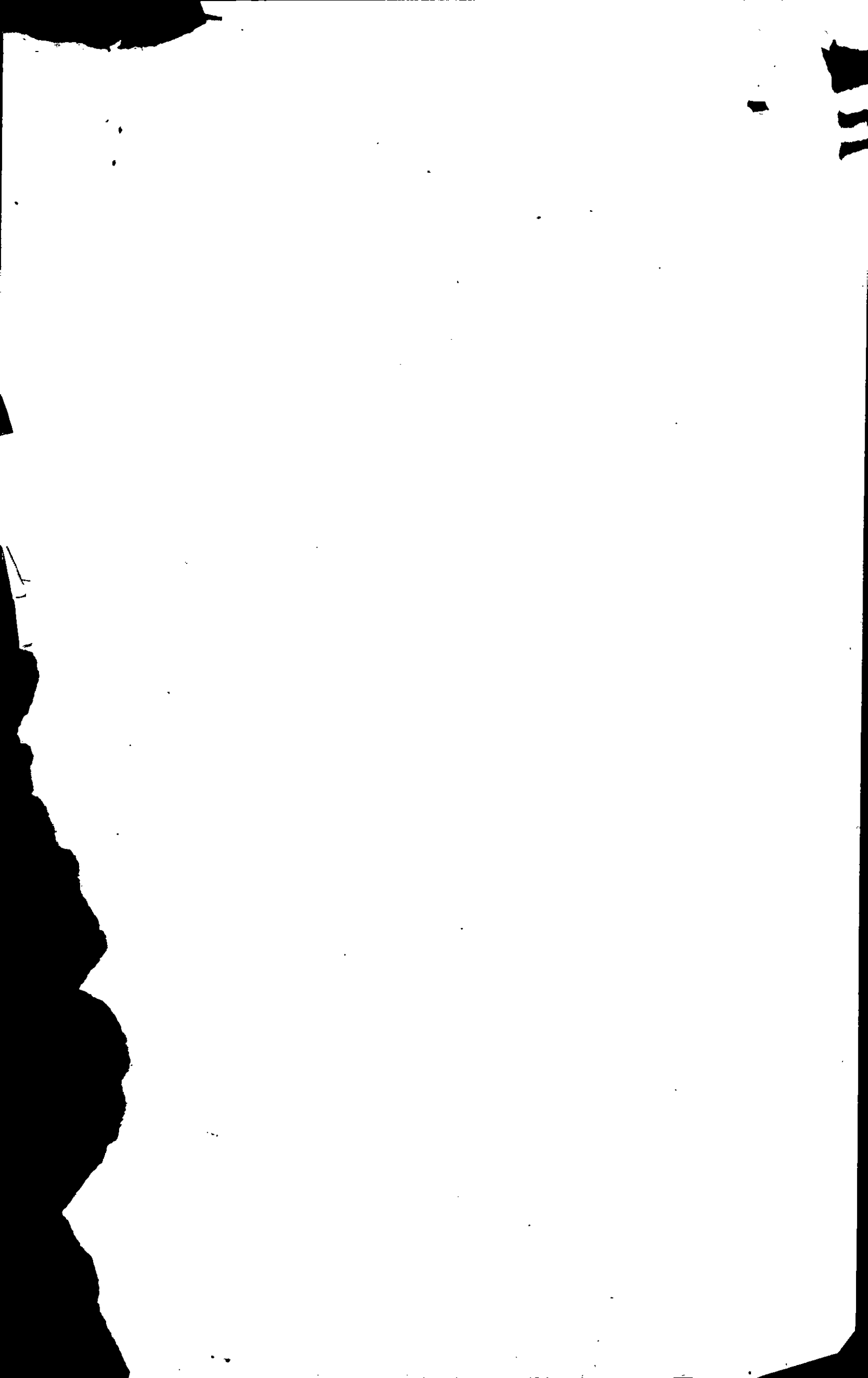
Endst:No.SO(Estt)FE&WD/1-50(87)/2k12 **Dated Pesh: 7th November, 2017**

Copy is forwarded to:-

- 1) Chief Conservator of Forests, Central and Southern Forest Region-I, Peshawar.
- 2) Chief Conservator of Forests, Northern Forest Region-II, Civil Line Forest Office, Abbottabad.
- 3) Chief Conservator of Forests, Malakand Forest Region-III, Saidu Sharif Swat.
- 4) Conservator of Forests, Lower Hazara Forest Circle, Abbottabad.
- 5) Director, Budget and Accounts, FE&W Department, Khyber Pakhtunkhwa.
- 6) Officer concerned C/O Chief Conservator of Forests, Northern Forest Region-II, Abbottabad.
- 7) Programmer, Budget and Accounts, FE&W Department, Khyber Pakhtunkhwa.
- 8) Personal file of the officer concerned.
- 9) Master file.
- 10) Office order file.

ATTESTED

(MAQBOOL HUSSAIN)
SECTION OFFICER (ESTT)





**CHIEF MINISTER'S SECRETARIAT
KHYBER PAKHTUNKHWA**

NO. SOV/CMS/KPK/Env/2017 / 17486-87
Dated Peshawar the 29.11.2017

W.E

M (95)

To

✓ The Secretary to Govt. of Khyber Pakhtunkhwa,
Forestry, Environment & Wildlife Department.

Subject:-

REVIEW PETITION / APPEAL AGAINST THE IMPUGNED
NOTIFICATION NO.SO(ESTT:)/ENV/1-50(87)/2K12 DATED 07/11/2017.

6474
30/11/17

Dear Sir,

I am directed to enclose herewith a copy of Review Petition / Appeal dated 17-11-2017 received from Mr. Hasham Khan Ex-DFO (BPS-18) Forestry, Environment & Wildlife Department, addressed to Honorable Chief Minister Khyber Pakhtunkhwa on the subject noted above for necessary action as per rules / policy as desired by the Competent Authority please.

Encl: As above.

Yours faithfully,

(Ghani-Ur-Rehman)
SECTION OFFICER-V

Endst No and Date Even:

- Copy forwarded for information to the:-
1. Mr. Hasham Khan Ex-DFO (BPS-18) Forestry, Environment & Wildlife Department.
 2. PS to Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.

SECTION OFFICER-V

ATTESTED

Sol Admn Cms KPK

Dang No: 5807

20/11/2017

96

HON'BLE CHIEF MINISTER KHYBER
PAKHTUNKHWA PESHAWAR

BEFORE

REVIEW PETITION /APPEAL AGAINST
THE IMPUGNED NOTIFICATION
NO.SO(ESTT:)/ENVT/1-50(87)/2K12 DATED
07/11/2017

herewith:

Enclosed please find herewith the subject review
petition from Page No.1 to 72 for favourable
sympathetic consideration under clause 17 E&D Rule
2011 please.

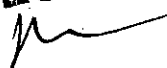
Dated 17/11/2017.



Hasham Khan

Appellant
The Ex-DFO, Forest
Environment Deptt:
Cell # 0300-5745908

ATTESTED



(97)

BEFORE THE HON'BLE CHIEF MINISTER KHYBER
PAKHTUNKHWA PESHAWAR

Subject: REVIEW PETITION /APPEAL AGAINST
THE IMPUGNED NOTIFICATION
NO.SO(ESTT:)/ENVT/1-50(87)/2K12 DATED
07/11/2017

Respectfully Sheweth:

I have the honour to submit the following for favour of your kind and sympathetic consideration please: -

- 1) That I joined the Forest Department as Forest Ranger on 14/10/1984 and has reached to the Rank of DFO (BPS-18) I have rendered a meritorious and spotless 33 years service.
- 2) That a PC-1 titled " Construction of Offices and residential Building in NWFP" envisages purchase of 5 Kanal Land for DFO Bunir Office was launched during July 2007- June - 2010.
- 3) That one Mr. Mir Wali Khan was holding the charge of DFO Bunir since 2007 to 19/04/2010 but he couldn't purchased the land during his tenure.
- 4) That I was posted as DFO Bunir on 19/04/2010 and gave rapt attention to years long hanging issue and purchased 6 Kanals and 1 Marla commercial land in the District Head Quarter Colony, Dagger. To this

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Forest Deptt: was executed and submitted in original to DOR Bunir vide Letter No.3278/G Dated 06/05/2010 with a request for signing and further processing. The said letter was endorsed to conservator Malakand and Chief Conservator Khyber Pakhtunkhwa.

- 5) That the DOR & E / Collector Bunir notified Section 4 Under LA: Act 1984, clearly specifies the area, Khasra No.Mouza Location and endorsed to all revenue and Forest Deptt: /High ups including Manager Govt Printing Press Peshawar for publication. (Ann-xv page 71)
- 6) 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/- against the approved rate of Rs.14,00,000/- Per Kanal. The Revenue Deptt: entered the land in their record and the land was transferred in the name of Provincial Govt (Forest Deptt:).
- 7) That my predecessor Mr. Mir Wali Khan DFO was highly prejudiced against me and he was posted as Monitoring Officer at Malakand. He floated a malefide monitory report vide No.255/VP dated 01/02/2011 in respect of the subject land, upon which a departmental inquiry was established.

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8) That a departmental inquiry was conducted and the appellant was held guilty of :

- i- In-Efficiency
- ii- Mis-conduct

The appellant was awarded the following punishment vide Govt Notification No.SO/ESTT)ENVVT/1-50(87)2K2 dated 31/12/2014

- I- Reduction to lower scale BS: 18 to BS:17
- II- Recovery of Rs.32,38,644/-

9) That against the impugned order dated 31/12/2014, an appeal No.474/2015 was filed in the Hon'ble KPK Service Tribunal which was decided on 02/02/2016 with the directions of conducting DE-NOV-Inquiry strictly in accordance to E&D Rules 2011 and to provide full opportunity of defence to the appellant.

10) That an Inquiry Committee was constituted vide Govt Notification No.SO(ESTT)ENVVT/1-50(87)2k2 dated 20/03/2017. The Committee conducted the inquiry and no explanation of any allegation leveled in the charge sheet was asked for. To mere fulfill formality of personal hearing, an irrelevant questionnaire was served upon the appellant vide DG/FDMA Office No.4979-82 Dated 04/05/2017 which was consciously responded along with supporting documents. The entire inquiry was

ATTESTED

based on the questionnaire without providing opportunity of defence regarding the leveled allegations, thus violated the Tribunal order dated 02/02/2016.

11) That the committee violated the E&D Rules 2011 by not providing the witnesses before the appellant nor provided opportunity of their cross examining.

12) That the inquiry committee further violated the E&D Rules 2011 and establishment deptt: instructions vide No.2014 dated 28/03/2014 by recommending major penalty and hence the review petition submitted on the following grounds:

GROUND:

A) That the developmental project "Construction of Offices and Residential Building in NWFP" was approved for the period of "July 2007 to June 2010" envisage purchase of 5 Kanals Land for DFO Bunir Office and residence. Mr. Mir Wali Khan DFO was holding charge of Bunir since 2007 to 19/04/2010 but he could not purchased the land. I took over charge as DFO Bunir on 19/04/2010. The High ups mounted tremendous pressure upon appellant to accomplish the task before

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101

lapses of funds. The Chief Conservator vides his Letter No.2989 dated 12/05/2010 (Annexure I Page 14 CCF No.2376-79 dated 20/03/2010 (Annexure II Page 15 Deputy Chief No.102 dated 02/04/2010 (Annexure III Page 16) stressed to take possession of the land by end of 2009-10 i.e. 30/06/2010. So that hectic efforts was made and an ideal site situated in District Head Quarter Colony, Dagger was selected and processed the purchased of land through private negotiation with guidance / coordination of Revenue Deptt: To this effect the agreement deed and other land related documents was sent to DOR & E/G dated 06/05/2010 (Annexure IV Page 17) for further processing. The parent Deptt: is responsible to follow their procedure and to guide the acquiring Deptt: Agency. The Revenue Deptt: processed it to its logical end i.e. the mutations were signed by the Revenue Deptt: and transferred the land in the name of Forest Deptt:.

The Chain of Forest Deptt: as well as the Revenue Deptt: were on board during the entire process and nobody raised any

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If at all, the Collector or the Provincial Govt could have disapproved /de-notified the process.

B) That the DOR Bunir was properly consulted time to time and per advice of DOR as well as officially endorsed to DFO Bunir vide DOR Off. Letter No.283/2/9/HRC dated 14/02/2011 (Annexure V Page 18-34 the Land Acquisition Act 1894 was followed which is also particularly been mentioned Under Section 118 of Forest Ordinance 2002.

The amended procedure of 2006 was required to be communicated to all District Officers but has neither been endorsed to the appellant nor incorporated in Section 118 Forest Ordinance 2002.

C) The constitution of price Assessment Committee is the solemn responsibility of concerned DOR Under Clause 5 of Amended Land Acquisition Act 2006, to which the DOR has been held responsible vide Para "d" of the findings of DE-NOV-Inquiry. Furthermore, the constitution of

ATTESTED

and Health Deptt: purchased land at Dewana Baba (Matwani) for BHU without going for price committee.

The price committee can be constituted even now to ascertain the price of the subject land.

- D) That the subject activity was a part of ADP Scheme approved in DDWP vide DDP No.5859 - 62 dated 19/06/2008 (Annexure VI Page 35-37) The PC -1 was signed /approved by Secretary Envt, CCF and others consequently an administrative approval was accorded by Secretary Environment Vide DDP No.1337 dated 24/01/2009 (Annexure VII Page 38 . The Conservator of Forest Malakand vide his letter No.9538/P&D dated 20/04/2010 (Annexure VIII Page 39 had directed to follow the PC-1 Provision without going for seeking any additional approval.

The DFO does not make direct correspondence with the administrative deptt: but approach it through proper channel. The case was submitted to Conservator, chief Conservator in the first

ATTESTED

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104

step vide No.3279-80/G dated 06/05/2010 and No.3470 /G dated 18/05/2010 which was further their responsibility to move the case to the Administrative Deptt: for approval.

E) That the Mouza Dagger covering an area of 45272 Kanals, comprises of waste land, fallow land, marginal land, agricultural land, commercial land, river beds and hillocks etc and it is unjust to fix one rate for all categories and that's why the Civil Court Bunir has set aside the Yaksala.

Under Clause 6, 13(a), 19 (I) of LA Act 1894, Sec: 23 and Rule 2(i) Sect:11-B LA: 2006 it has been stressed, to fix the rate according to the prevailing market rate, taking special care to avoid Under Estimated Value.

The subject land was purchased at the rate of Rs.11,12,000/- Per Kanal against the:

- i- PC-1 approved rate Rs.14,00,000/- Per Kanal.
- ii- Administrative approved Rate Rs.14,00,000/- per Kanal (Annexure VII Page 38)
- iii- Rate reasonability Certificate Rs.14,00,000/- per Kanal (Annexure IX Page 40)
- iv- Yaksala evaluated by DCs Swat Bunir Rs.14,54, Per Kanal (Annexure X Page 41)

ATTESTED

- 105
- v- Market rate of less potential land purchased during 11/2005 vide mutation No.3007 @ Rs.14,00,000/- Per Kanal and Mutation No.3999 for Rs.1619017 Per Kanal (Annexure XI Page 50)
 - vi- DFO Bunir proposed Rate Rs.14,00,000/- Per Kanal Vide No.423 / G dated 21/08/2008 (Annexure XII Page 53).
 - vii- The Civil Court assessed rate for less potential Agricultural Land Rs.13,10,671/- Per Kanal (Annexure XI Page 52.)

The enquiry committed Under Para (g) of their finding has conceded that other transaction at higher rate has been made in the same Mouza before Forest Deptt: Transaction.

The Chief Conservator of Forest and Conservator of Forest Malakand made spot visit on 27/04/2010 and 11/05/2010 and appreciated the site and rate negotiated.

Thus high potential /precious commercial and was purchased @ Rs.11,12,000/- per Kanal against the approved rate of Rs.14,00,000/- per Kanal and Rs.1742400/- saving was accrued to the Govt as well as the Deptt: get rid of paying rent for hired building used by the DFO Bunir as well as house rent payment wroth Rs.214000/- Per

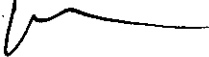
ATTESTED

106

F) That the Forest Deptt: land was purchased through private negotiation during 05/2010 which is highly commercial and potential, situated on main Road in District Head Quarter Colony Dagger, while the Police Deptt: land was purchased through compulsory way during 08/2008 which is agricultural land situated far away from Road as per AWARD as (Annexure XIII Page 55).

G) That Civil Court has declared the Ausat Yaksala (Average) incorrect (Annexure XI Page 51) and has fixed the rate on the basis of average price of the following three transaction made in the vicinity as:

- 1- The Civil Court has given reference of:
- i- Land purchased by U-Fone Vide Mutation No.3007 dated 22/11/2005.= Rs.14,00,000/- Per Kanal
 - ii- Land purchased by Forest Deptt: vide Mutation No.3808, 3809 dated 26/05/2010 Rs.11,12,000/- per Kanal
 - iii- Land purchased by Shah Alam vide Mutation No.3999 dated 28/03/2011 Rs.1619017 per Kanal average Rs.1377005/- Per Kanal

ATTESTED


2- By excluding the Forests Deptt: transaction:

i- Mutation No. 3007 Rs.14,00,000/- Per Kanal

ii- Mutation No. 3999 Rs.1619017/- Per Kanal

Average Rs.15095508/- Per Kanal

Difference: 1509508 - 1377005

= Rs.132503 Per Kanal

Total Difference of 70 Kanals 3 Marlas

= Rs.9308335/-

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 to Govt.

Moreover, the owner of the land has preferred an application to de-notify the agreement, and return the land. The owner of land will refund the paid price as per laid down procedure (Annexure IV Page 56)

That as per advice of DOR Bunir, payment was made to the owners Under Clause 41 LA Act 1894.

The direct payment was also in vogue in Bunir as:

i- Health Deptt: purchased land at Dewana Baba and payment was made directly.

ii- Education Deptt: purchased land at Koga and made direct payment.

H) That the procedural and financial irregularities are being determined by the

ATTESTED

*The Mac Lines attached to the...
Section one...
Section two...
Section three...
Section four...
Section five...
Section six...
Section seven...
Section eight...
Section nine...
Section ten...*

12
108
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audit. The subject case was passed through the process of audit and established Para No.1 vide Letter No.5459-61 dated 30/06/2011 (Annexure XV Page 58) which was commented by me vide No.1138/G dated 17/10/2011 (Annexure XVI Page 59-62) and termed justified by the then Conservator and Chief Conservator. The Para was settled vide No.1092 dated 07/01/2012 (Annexure XVII Page 64). Similarly the inquiry conducted by the Deputy Commissioner Swat and Bunir was referred to Director Budget and Account Environment Deptt: which was commented by him with the remarks that no financial loss has been happened to the Government (Annexure XVIII Page 68)

The Chief Conservator of Forest of Malakand vide 5201/E dated 23/04/2015 has stated that saving has been accrued to the Government worth Rs.1742400/- (Ann XVIV page (69-70))

- I) That the ausat Yaksala rate is a conventional mechanism being applied by Revenue Deptt: for acquiring land through compulsory way, which has no legal justification. All the land acquisition Acts and Rules vide Sec: 6(i), 13 19(i) of LA: 1894 as well as Sec: 23 and Sec: 11(B) of LA 2006 stress for applying the market rate. Furthermore, the Yaksala rate is different for both Agricultural and

ATTESTED

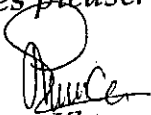
109
Commercial land. In the instant case, the Yaksala rate of agricultural land has been applied on the commercial land purchased by the Forest Deptt:- which is against the natural justice.

J) That the appellant has rendered 33 years unblemished service and the replies in respect of draft charge sheet, audit report, show cause notice and departmental appeal have also been acknowledged /conceded by the then 3 CCFs, 3 CFs, and 2 Director B&A. Besides this, in the instant case the appellant has already availed the punishment of 2 years revision and 14 months attachment vide Government Notification dated 31/12/2014.


K) That the appellant was on the verge of promotion to BS:19 and was also going to get retire on 31/12/2017 while the proposed penalty has been enhanced by two stages which is against the natural justice.


As the undersigned has done all the act in the best interest of public and good faith, so it is prayed that requested to accord indemnity Under Section 111 Forest Ordinance 2002, set aside the impugned order dated 07/11/2017 may kindly be exempted from all the charges please.

Dated 17/11/2017


Hasham Khan

Appellant
The Ex-DFO, Forest
Environment Deptt:
Cell # 0300-5745908

ATTESTED


<p>Chief Conservator of Forests Central Southern Forest Region-I Khyber Pakhtunkhwa Peshawar</p>		<p style="text-align: right;">Shami Road Peshawar Phone # 091-9212177 Fax # 9211478 E-mail: chief forest@gmail.com</p>
<p>No. <u>2185</u> /E,</p>	<p>Dated</p>	<p>Peshawar <u>02/12/2017</u> <u>01/20/18</u></p>

The Section Officer (Estt)
Govt: of Khyber Pakhtunkhwa
Forestry, Environment and Wildlife
Department Peshawar

Subject: REVIEW PETITION/ APPEAL AGAINST THE IMPUGNED NOTIFICATION NO. SO (ESTT) ENVT/1-50 (87) 2K12/3742-48 DATED 7/11/2017.

Reference your letter No. SO (Estt)/FE&WD/1-50 (87)/2K08/5054-55 dated 7/12/2017.

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

1. Pertains to record hence no comments.
2. Correct.
3. No comments
4. No comments
5. Correct.
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 regularities have been found rather codal formalities laid down for the purpose were not completed.
7. No comments
8. Correct
9. Correct
10. No comments.
11. As per rules.
12. As per rules.

GROUNDS

- A. The appellant 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 and transferred the land to Environment Department. The price assessment committee was not constituted which was the solemn responsibility of DOR under Section 11-B clause 5 (i) Land Revenue Act 2006. As per attachment /explanation made by the appellant, the task was accomplished gallopingly to avoid the lapsing of budget and to comply with the regular persuasion of the high ups.
- B. DOR Buner was consulted in the instant case by the appellant as is evident from DOR Buner letter No. 283/2//HCR, dated 14/2/2011, addressed to the appellant.

ATTESTED

- C. Under Section-11-B clause 5 (I), L. AA 2006, the constitution of Price Committee as well as deciding the price of land is the mandate of the DOR and is not responsibility of the appellant
- D. The subject activity was a part of the ADP scheme, approved by DDWP, for which Administrative approval was accorded by the competent authority (Annx: VII) and the appellant was bound to follow the PC-1 provision. Further more, the record reveals that besides the PC-I provision and Administrative Approval the appellant has also approached the CF Malakand vide DFO Bunner No. 3470/G dated 18/5/2010 to approach the high ups to accord any additional approval if deems necessary.
- E. Negotiated rate between the appellant and land owners was fixed Rs. 11,12,000/- per Kanal against the approved rate of Rs. 14,00,000/- per Kanal. thus saved an amount of Rs. 17,42,400/- to the Govt.: 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 27/4/2010 within the approved cost for five kanal to avoid excess and surrender.
- F. As per Revenue Department Buner documents vide Ann: IX and X, it has been mentioned that the land pertaining to Forest Department is situated in Tehsil Collony Daggar which is obviously lying on the road and is precious one while referring to another document of Revenue Department Buner vide Annex: No XIII reveals that the land pertaining to the Police Department is Agricultural Land as well as is lying distant from the road. Resultantly there would be greater difference between the prices of these lands.
- G. As per Annex: XI, it is revealed that various land transactions took place in Muzza Daggar which are as under.

S. No	Year	Land	Purchaser	Rate	Muzza	Mutation No
1	11/2005	1 Kanal	U-Fone	14,00,000/- per Kanal	Daggar	3007
2	5/2010	6 Kanal and 1 Marla	Forest Department	11,12,000/- per Kanal	Daggar	3808,3809
3	3/2011	2 Kanal and 2 Marla	Noor Alam Shah	16,19,017/- per Kanal	Daggar	3999

From the above Table, it is evident that at that time the price of land in Muzza Daggar was quite high and the price of Forest Department land is comparatively cheaper than that of U-fone and that of Noor Alam Shah.

ATTESTED

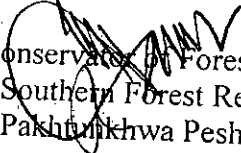


Being Forest Department land of lowest rate, it has reduced the average rate of the Police Department land worth Rs. 93,08,335/-. Moreover direct payment was made by the appellant to the owner under Section 41-A land acquisition Act 1894, communicated to him by the DOR Buner vide his No. 283/2/9 HCR dated 14/2/2010.

Further more the case of Police Department land is subjudice in Darul Qaza Swat vide RFA 11/2012.

- H. Kindly refer Audit report of Director Budget and Accounts Environment Department vide No. 1092 dated 7/1/2012. No financial loss to the Govt: exchequer was deduced. (Annex: XVII)
- I. As per provision of Land Acquisition Act 1894 vide Section 6 (i), 13, 19 (i) and under Section 23 and 11-B, 5 (2) (i) and (iii) LA: 2006, it has been stressed to apply the prevailing market rate for purchase of land.
- J. No comments
- K. As per rules /Law

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


 Chief Conservator of Forests
 Central Southern Forest Region-I
 Khyber Pakhtunkhwa Peshawar

ATTESTED


135

131 8

Annex-IV (30) 21

OFFICE OF THE DISTRICT OFFICER REVENUE AND ESTATE COLLECTOR BUNER

NOTIFICATION UNDER SECTION 4 OF THE LAND ACQUISITION ACT 1894

No. / Dated Dagger the /5/2010.

Whereas it appears to the District Officer Revenue and Estate/Collector, District Buner that the land is likely to be required to be taken by the government at the public expenses for a public purpose namely for the construction of Divisional forest officer office cum residence and staff quarters, at Dagger District Buner as earmarked by the committee in Moza Dagger Tehsil Dagger District Buner. It is hereby notified that the land in the locality described below is likely to be required for the above purpose.

- 1) The notification is made under the provision of section 04 of the land Acquisition Act, 1894 to all whom it may concern.
- 2) In exercise of the powers conferred by the aforesaid section, the District Officer Revenue and Estate/Collector, District Buner is pleased to authorize the officer for the time being engaged in the undertaking with their servants and workmen to enter upon and survey land in the locality and do all the other acts required or permitted by that section.
- 3) Any person who has any objection to the acquisition of any land in the locality may report within thirty (30) days of the publication of this notification in writing before the Collector, District Buner.

SPECIFICATION

District	Tehsil	Location	Khasra No.	Kanal	Marla
Buner	Dagger	Dagger	2905, 2907, 2908	6	01

Divisional Forest Officer Buner Forest Divn. Swat

District Officer Revenue and Estate Buner.

No. 1045-51 IG Dated Dagger the 06/05/2010

Copy forwarded to:-

- 1) The Senior Member Board of Revenue NWFP, Peshawar.
- 2) The Commissioner Malakand Division at Saidu Sharif Swat.
- 3) Chief Conseravator of Forests, NWFP Peshawar.
- 4) Conservator of Forests Malakand Circle at Saidu Sharif Swat.
- 5) District Coordination Officer Buner.
- 6) The Manager Govt. Printing Prerss NWFP, Peshawar for publication in the Govt. Gazette.
- 7) Tehsildar Dagger.

Signature of District Officer

District Officer Revenue & Estate Buner.

Divisional Forest Officer Buner Forest Divn. Swat

35

Annexure II - (V)

329
Ann-V

152

GOVERNMENT OF NWFP
ENVIRONMENT DEPARTMENT
(PLANNING CELL)
NO. DDP (ENVT) ~~x6527/5859-62~~
DATED PESHAWAR THE 19/6/2008.

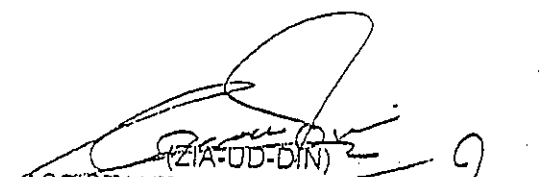
To

1. The Chief (Agri & Evt),
P&D Deptt: Govt. of NWFP, Peshawar.
2. The Section Officer (Dev-III),
Finance Deptt: Govt. of NWFP, Peshawar.
3. The Chief Conservator of Forests,
NWFP, Peshawar.
4. The Director General,
EPA, NWFP, Peshawar.

Subject: MINUTES OF THE SPECIAL DDWP MEETING HELD ON 14/6/2008 UNDER THE CHAIRMANSHIP OF SECRETARY ENVIRONMENT NWFP

I am directed to enclose herewith a copy of the subject minutes duly approved by the Secretary Environment for further necessary action & record please.

Encl: As above


(ZIA-UD-DIN)
ASSISTANT DIRECTOR PLANNING
ENVIRONMENT DEPARTMENT

333

Annex - III

(23)

154

GOVERNMENT OF NWFP
ENVIRONMENT DEPARTMENT



ADP No. 606

Scheme Code: 70609

PC-I

CONSTRUCTION
OF
OFFICE - *Academy* - RESIDENTIAL BUILDINGS
IN
NWFP

(REVISED)

Project Period July 2007-08 to 2009-10

(3 Years)

(Approved by DDWP = 6.11.2008)

NWFP FOREST DEPARTMENT

October, 2008



PC-1 (REVISED)

~~1035/23~~

337

24

156

1. Name of the Project	Construction of office and residence buildings in NWFP (Upper Dir, Buner, Kabal and Booni of Malakand Circle. Scheme Code: 70609)																																								
2. Location	<p>The building will be constructed on the following places as per detail below:</p> <table border="1"> <thead> <tr> <th>S.No.</th> <th>Name of Division</th> <th>Particulars of Building</th> <th>Location</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Lower Dir</td> <td>Boundary wall of the Forest Colony, Laram Rest House and DFO residence.</td> <td>Timergara Lower Dir.</td> </tr> <tr> <td>2</td> <td>Upper Dir</td> <td>DFO office cum-Residences & Boundary Wall</td> <td>Dodbah, Upper Dir</td> </tr> <tr> <td>3</td> <td>Buner</td> <td>-do-</td> <td>Swari Buner</td> </tr> <tr> <td>4</td> <td>Swat</td> <td>RFO office-cum-Residence.</td> <td>Kabal Swat</td> </tr> <tr> <td></td> <td>Chitral</td> <td>-do-</td> <td>Booni, Chitral.</td> </tr> </tbody> </table> <p>6. Construction of 8 Nos Ministerial Staff Quarters.</p> <table border="1"> <tbody> <tr> <td>i.</td> <td>DFO D/Upper</td> <td>Construction of 2 Nos Ministerial quarter</td> <td>Dodbah</td> </tr> <tr> <td>ii.</td> <td>DFO Buner</td> <td>--do--</td> <td>Buner</td> </tr> <tr> <td>iii.</td> <td>RFO Kabal (Swat)</td> <td>--do--</td> <td>Kabal</td> </tr> <tr> <td>iv.</td> <td>RFO Booni(DFO Chitral)</td> <td>--do--</td> <td>Booni</td> </tr> </tbody> </table> <p>The location Map of the Project is available at Annex-I</p>	S.No.	Name of Division	Particulars of Building	Location	1	Lower Dir	Boundary wall of the Forest Colony, Laram Rest House and DFO residence.	Timergara Lower Dir.	2	Upper Dir	DFO office cum-Residences & Boundary Wall	Dodbah, Upper Dir	3	Buner	-do-	Swari Buner	4	Swat	RFO office-cum-Residence.	Kabal Swat		Chitral	-do-	Booni, Chitral.	i.	DFO D/Upper	Construction of 2 Nos Ministerial quarter	Dodbah	ii.	DFO Buner	--do--	Buner	iii.	RFO Kabal (Swat)	--do--	Kabal	iv.	RFO Booni(DFO Chitral)	--do--	Booni
S.No.	Name of Division	Particulars of Building	Location																																						
1	Lower Dir	Boundary wall of the Forest Colony, Laram Rest House and DFO residence.	Timergara Lower Dir.																																						
2	Upper Dir	DFO office cum-Residences & Boundary Wall	Dodbah, Upper Dir																																						
3	Buner	-do-	Swari Buner																																						
4	Swat	RFO office-cum-Residence.	Kabal Swat																																						
	Chitral	-do-	Booni, Chitral.																																						
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iii.	RFO Kabal (Swat)	--do--	Kabal																																						
iv.	RFO Booni(DFO Chitral)	--do--	Booni																																						
3. Authority responsible for Sponsoring	Government of NWFP, through Provincial ADP																																								
4. Execution	NWFP Forest Department, through CP Malakand and DFO Lower Dir, Upper Dir, Buner, Swat & Chitral Forest Divisions.																																								

339

2

<p>iii. Operation and Management</p>	<p>NWFP Forest Department, through DFO Lower Dir, Upper Dir, Swat & Chitral Forest Divisions, & overall supervision of the Conservator of Forests Malakand Forest Circle.</p>
<p>iv. Concerned Federal Ministry:</p>	<p>Ministry of Environment, Government of Pakistan.</p>
<p>v. Plan provisions</p>	<p>Afforestation and Environmental rehabilitation are an integral part of the Five year's Development Plan priorities in Environment Sector of Governments of Pakistan and NWFP. Hence the project forms part of the overall development priorities.</p>
<p>a. Plan provision</p>	<p>The project was included in the Annual Development Program (ADP) of NWFP Forest Department for the year, 2007-08; the total cost of Rs.25,000 million, for a period of two years; S.No.758 with an allocation of Rs.10,000 million during the year, 2007-08.</p>
<p>If the project is included in the medium term/five year plan specify actual allocation.</p>	<p>Now the PC-I is being revised for a period of three(3) years with a total cost of Rs.39,635 million with an allocation of Rs.12,300 million for the year, 2008-09.</p>
<p>If not included in current plan, what warrants its inclusion and how it is now proposed to be accommodated. Inter/Intra-sectoral adjustments in allocation or other resources may be indicated.</p>	<p>The project has already been included in the development portfolio of Government of NWFP in the Forestry Sector with total cost Rs.39,635 millions expanding over three year's period from 2007-08 to 2009-10. An allocation of Rs.12,300 millions has been made for the project during the financial year: 2008-09 in ADP vide S.No.606. The project is now being revised keeping in view the unprecedented rise in prevailing market rates. The PC-I stand approved (Item #5) by the DDWP in its meeting held on 6.11.2008 (Annex-XXIV).</p>
<p>If the project is proposed to be financed out of block allocation for a program, indicate.</p>	<p>Necessary provisions for the project have been made in the Annual Development Program (ADP) of Forestry Sector. An amount of Rs.39,635 millions has been earmarked for this new project in the Forestry Sector with an allocation of Rs.12,300 million for the financial year, 2008-09.</p>
<p>Provision in the current year PSDP/ADP</p>	<p>An allocation of Rs.12,300 million has been made for the project in the ADP of Forestry Sector during 2008-09 at S #606 with scheme code 70609.</p>
<p>Project Objectives and its relationship with other Sector Objectives.</p>	<p>The overall objectives of the project are to contribute to the socio economic development of the local population, province and country and to improve the natural resource base and environmental conservation. To protect, conserve & develop the forestry and other allied natural resources in the Malakand Circle, in order to meet the demand of timber, firewood and wood based industries.</p>

341

27

16

ii. JUSTIFICATION.

quarters for Forester and 176 acres.
iv). Two (2) new ranges have been created at Kabal (Swat) and Booni(Chitral). Now for the better supervision, protection, conservation of the available forest resources in the area one building each at Kabal and Booni is needed for the RFO office-cum-residence and residential quarters for his staff i.e. Forester and Forest Guard etc.

The project is aimed to Construct the much required following buildings in the Malakand Circle of the NWFP Forest Department, for which the DFWP in its meeting held on 18.8.2007 approved the scheme at a total cost of Rs. 25.000 million, with the rates as under:-

Rate as per Original PC-I

Sl. No.	Particulars of activities	Unit	PC-I target	Unit cost	Total cost
1	Const. of boundary walls	Rft	2131	800	1,706
2	Const. of Residence(DFO L/O) Dir	SN	2500	800	2,000
3	Const. of office cum-Residence(DFO L/O Dir) at Dodbah	SN	5184	900	4,666
4	Const. of office cum-Residence(DFO Home) at Swat	SN	5184	800	4,144
5	Const. of office cum-Residence for RFO Kabal Swat	SN	2234	800	1,784
6	Const. of office cum-Residence for RFO Booni Chitral.	SN	2234	1000	2,230
7	Const. of 8 ministerial staff quarters at: Upper Dir Booni Swat Buner	SN SN SN SN	2080 2080 2080 2080	900 1000 800 800	1,870 2,080 1,660 1,660
8	Miscellaneous/other	LS	LS	LS	0.200
	Total.				25,000

Accordingly on releases of the funds allocated for the year, 2007-08, the tenders Annexe-XXIX floated in the Newspapers, but no Govt. or Private Contractor was ready to under take the constructions works on the above mentioned low rates, as the same were far below the prevailing market rates.

ii. Justification for Revision.

Therefore, keeping in view the unavoidable circumstances arisen, due to sky rocketing market prices the NWFP Forest Department decided to get revised, the PC-I, which will help to start the physical works immediately. The new proposed per unit rates are based on the schedule rates of works and services department adding 75% premium to chase and match the current market rates. The new proposed rates for above mentioned construction works are :-

343

28

160

Construction of office cum Residence Kabal (Swat) 2/9/04

# No.	Particulars of activities	Unit	PC-I target	Unit cost	Total cost
1.	Const: of boundary walls 1/Dir	Rft	2395	1056	2,528
2.	Const: Boundary walls (DFO Upper Dir)	Rft	995	1267	1,260
3.	Const: of office cum Residence (DFO u?Dir) at Dodbah	Sft	4133	1400	5,782
4.	Const: of office Cum Residence (DFO Bunder at ASwari)	Sft	4130	1300	5,369
5.	Const: of office cum Residence for FRO Booni Chitral.	Sft	2234	1500	3,351
6.	Purchase of land for Bunder	Kanal	5	1.4	7,000
7.	Const: of office cum Residence for FRO Kabal (Swat).	Sft	2234	300	2,904
8.	Const: of 8 ministerial staff Quarters.	Sft	8320		11,84
	Total				39,635

8. Construction of Eight (8) Ministerial quarters at Booni, Swari, Dodbah & Kabal @ of Rs. 1500/- Rs. 1300 1400/- respectively).

- i). To construct the B/Wall around the DFO's residence, Forest Colony and farm Rest House, situated at Timergara lower Dir.
- ii). The newly created Forest Division (Without any infrastructure facilities and physically functioning since 2003, with head quarter at Dodbah in Upper Dir. Like wise construction of DFO Buner office cum residence (Established since long and presently working in a rented building) is also direly required.
- iii) Two (2) newly created Ranges i.e Kabal (Swat) and Booni (Chitral) to construct FRO office cum residences.
- iv) Construction of 8 Nos ministerial staff quarters. Land for Booni Range office cum residence and 2 ministerial staff quarters has already been provided by Revenue board vide Notification NO. 15103-07 dated 16.6.2008 (Annex-III) which five (5) Kanal land for DFO Buner office cum residence and ministerial quarters will be purchased by vide DFO Buner office letter No.473/G dated 21.8.2008 (Annex-X) provided that the available land alunder Bunder Watershed Division was not acquired.

PROJECT ACTIVITIES (Technical parameters).

- i) Construction of Boundary Wall around B/Colony. The Boundary wall will be constructed around the Forest Colony, Laram Rest House and DFO Residence at cost estimates available at Annex-V (1-6)
- ii) Construction of office cum residence for DFO Upper Dir at Dodbah.

346 29

161

The building will be constructed at Dodban, Upper Dir at the rates of Rs.1400/- per unit, for the Upper Dir Area. Detailed cost estimates of construction is available at Annexure-VI(1-6)& VII(1-6).

iii) Construction of office-cum-Residence for DFO Buner at Sawari (Distt: Buner).

The building will be constructed at Swari Buner, at the rates of Rs. 1300/- per unit, Detailed cost estimate of construction is available at Annex-VII(1-6) and VIII(1-5). The land - 5 Kanals, @ Rs. 1.4 million per Kanal will be purchased by DOR vide DFO Buner office letter No. 423/G dated 21-8-2008 at Annex-VIII, if Buner Watershed Division land was not transferred to Buner Forest Division..

iv) Construction of office-cum-Residence for RFO Kabal (Distt: Swat) & Booni (Distt: Chitral).

The once building each for RFO office cum-residence at Booni (Chitral) @ Rs.1500/- per unit and Kabal Swat @ Rs.1300/- per unit. Detailed cost estimates are available at Annex: XVI(1-14)

v) Construction of Ministerial staff quarter at Booni and Kabal Buner and Upper Dir.

Two quarters each at Buner, Upper Dir, Booni(Chitral & Kabal Swat will be constructed. 8 Nos. quarter will be constructed. Cost estimates are available at Annex:X (1-9) XI (1-6), XII(1-8) and XIII(1-11).

vi) Boundary wall of DFO office-cum-residence Dir Upper

The Boundary Wall around the building will be constructed @ Rs.1267/- per Rft (Annex-XIV).

vii) Purchase of Land.

5 Kanal land for the office-cum-residence of the DFO Buner has been proposed to be purchased from the local market. The DDWP has decided to construct the said building on the land available with the Buner Watershed, but the said land is not feasible for the construction, as already by the CCF NWFP to Secretary Env't. Therefore, an amount of Rs.7.000 million has been proposed for the said activity.

Final cost estimates.

On Revision of the PC-I, the total cost of the project is

347

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estimated to be Rs.39.635 million. Summary/Annual phasing is available at Annex- I&II Details of item wise cost are given as under:

S.No.	Particulars	Unit (Revised)	PC-I Target (Revised)	Unit cost (Revised)	Total cost (Revised)
	Construction of Boundary wall-Lower Dir.	Rft	2395	1056	2.5288
	Construction of office-cum-Residence for DFO Dir Upper at Dodbal	Sft	4130	1400	5.782
	Construction of office-cum-Residence for DFO Buner at Swari (Buner)	Sft	4130	1300	5.369
	Construction of office-cum-Residence for RFO Kabal (Swat)	Sft	2234	1300	2.904
	Construction of office-cum-Residence for RFO Booni (Chitral)	Sft	2234	1500	3.351
	Construction of 8 miniature staff quarters at:				
	i. Upper Dir.	Sft	2080	1400	2.912
	ii. Booni (Chitral)	Sft	2080	1500	3.120
	iii. Kabal (Swat)	Sft	2080	1300	2.704
	iv. Swari (Buner)	Sft	2080	1300	2.704
	Purchased of land for DFO Buner	Kanal	5 Kanal	1.4	7.000
	Boundary walls at Dodbal DFO office/cum-residence	Rft	995	1.267	1.260
	Grand total (Rs. in million)				39.635
			G.Total		39.635

The unit cost of each item has been approved by the DDWP in its meeting dated 6.11.2008.

Annual Operating and Maintenance cost on the project.

The expected annual recurring expenditure on average basis on operation and maintenance i.e. annual and special repair will be Rs.0.250 million. The expenses will be met out of annual allocation for repair and maintenance under normal fund/IDE.

Fixed and variable cost be fixed separately.

Almost all the costs are fixed costs and therefore, will not vary with the scope of work to be under-taken under the project.

Demand and supply

N.A.

Financial plan & Mode of funding.

Year wise Financial plan is available at Annex- I&II. The project will be funded by the Provincial Government through its Provincial Annual Development Program (ADP) 2008-09.

Project benefits and analysis financial.

The people of the area in particular and staff of the NWFP Forest Department in general will be benefited from the project. The problems of the local communities will be solved at their door steps, due to this project.

	<p style="text-align: center;">9</p> <p style="text-align: right;">31</p>
<p>economic life of component of project.</p> <p>benefits with indicators.</p> <p>employment generation (direct & indirect).</p> <p>environmental impact.</p> <p>effect of delay on project cost & viability.</p>	<p>Building: 50 years. Equipments: 15 years.</p> <p>The capacity of Govt. servants, in social, technical management and inter personal skills will be improved. This will enhance their self-confidence and their income earning abilities by providing job opportunities at their door step.</p> <p>This is a labor intensive project and will provide numerous employment generation opportunities in the area. It is however hoped that a sizeable job opportunities will be provided to the local communities, in the project's construction sites.</p> <p>The construction of building would not lead to any negative environmental effect, but will increase the scenic beauty of the area.</p> <ul style="list-style-type: none"> - The cost of the project will go up due to inflation. - The likely impact of delay will be only increase the cost overlay, but will also result in loss of confidence over the implementers.
<p>Implementation Schedule (date starting and completion of the project.)</p>	<p>The project duration will be 36 months from the dates of its start. It was expected that the project will be approved on priority basis and will start from July, 2007, but the approved rates were far below the prevailing market rate and the PC-I was get revised. The year, 2007-08 will be carry over to 2008-09 and up-to 6/2010 it could be completed.</p> <ul style="list-style-type: none"> - July 2007 to June 2010 (36 months). In case of late start, the end dates will be accordingly changed. - Annual phasing of the achievement of project targets is given in the Annexure-I&II
<p>Structure and manpower requirements including Specialized during construction and operational phases.</p>	<ul style="list-style-type: none"> - The project will be implemented by the DFO's of the concerned Forest Divisions, under the supervision of the Conservator of Forests Malakand Circle, who will also work as the PD of the project and look after/monitor the project activities on regularly basis. - The Assistant Forest Engineer of Head office, Peshawar will be assigned the monitoring role of the construction works of the project at different sites. - The P&M directorate will carry-out external monitoring on quarter basis, years basis, as per their mandate.
<p>Additional Projects/Decisions are to maximize socio economic benefits from the proposed project.</p> <p>Justification for Enhancement of Rates.</p>	<p>The people of the area in particular and staff of the government in general will be benefited from the project.</p> <p>Due to high priced market and current inflation as well as instruction for revision of the PC-I vide the Conservator of Forests Malakand Circle Mingora office letter No. 8439-</p>

32

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40/P&D, dated 25/3/2008, the financial target/annual phasing are revised in accordance with the prevailing market rates the schedule of Works Deptt. with addition of 75% premium allowed for various zones i.e. Buner and Swat (zone-3), Dir Lower/Upper Dir (Zone-4) and Chitral (zone-5) with regard to unit cost of Rs. 1300/- (zone-3), Rs.1400/- (zone-4) and Rs.1500/- (zone-5) respectively has been followed. As per Special DDWP meeting held on 1-16.2008, certain observation has been made endorsed vide DFO P&D Peshawar vide No. 2902/P&D dated 2-16/2008 which was endorsed by CF Malakand vide No. 63-67/G, dated 3/7/2008 and all the observation have been settled vide this office letter No. 508/G, dated 30.8.2008. Annexure-XV(1-8).

In view of the above revision , revised financial allocation as under :

2007-08 =	Nil
2008-09 =	12.300 million
2009-10 =	<u>27.335 "</u>
Total ..	<u>39.635 "</u>

The PC-I was again put up in DDWP dated 6-11-2008 and not approved with the condition that land under possession of Buner Watershed will be acquired for of DFO Buner Office cum Residence and ministerial quarters. However in case of any problem, the DFO Buner will go for purchase of land as a second option.

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165

16. Certificate. Certified that, the project proposal has been prepared as per guidance provided by the Planning Commission, for the preparation of PC-I for Environment Sector.

Prepared by:

[Signature]

Mr. Hashim
Divisional Forest Officer,
Upper Dir Forest Division,
Dir Upper,
Phone-0944-801715

Checked by:

A. M. Sandhu
Mr. Alamgir Khan Gandapur
Conservator of Forest,
Malakand Circle, Mingora
Phone # 0946-9240231

Countersigned by:

[Signature]
Mr. Nazir Muhammad
Chief Conservator of Forests
NWFP, Peshawar
PH: # 091-9212177

Approved by:

Approved by

Hammad
(Dr. Hammad Uwais Agha)
Secretary to Govt. of NWFP
Environment Department,
Phone # 091-9210333

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 355/2018

Hashim Khan

VS

Forest Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Admitted correct by the respondents as the service record of the appellant is present with the department.
2. Correct. Hence no comments
3. Incorrect. Mr Mir Wali Khan (predecessor of the appellant) who was not in good term with the appellant had floated a bias monitoring report which became the cause of subject inquiry. Moreover Mir Wali Khan was unlawfully inducted in the inquiry committee which was noticed by the august Service Tribunal in his judgment dated 02.02.2016.
4. First portion of para 4 is admitted correct hence no comments while the rest of the para is incorrect as the competent authority imposed the penalty of reduction to lower post along with recovery without considering the documents provided by the appellant during the inquiry proceeding as well as annexed record with his reply to charge sheet.
5. No comments.
6. Not replied according to para 6 of the appeal. Moreover para 6 of the appeal is correct.
7. Incorrect. The de-novo inquiry was not conducted according to law and rules as no opportunity of defence was provided to the appellant

as neither statement were recorded in the presence of the appellant nor gave him opportunity of cross examination.

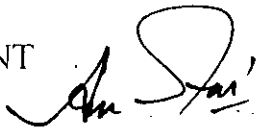

8. Incorrect. The competent authority proposed the major penalty of removal from service in show cause notice with conducting regular inquiry. Moreover the competent authority did not elaborated that what type of inefficiency/mis-conducted was committed by the appellant.
9. It is correct that the comments was filed by the respondent department on the review petition and such comments was in the favour of the appellant which is already attached at page -110 with the appeal and despite the favorable comments the review petition of the appellant was rejected which is against the norms of justice and fair play.

GROUND:

- A) Not replied according to para A of the appeal. Moreover para A of the appeal is correct.
- B) Incorrect. While para B of the appeal is correct.
- C) Not replied according to para C of the appeal. Moreover para C of the appeal is correct.
- D) Not replied according to para D of the appeal. Moreover para D of the appeal is correct.
- E) Incorrect. No irregularities were pointed by the Audit which was conducted twice on the same matter, which shows that appellant was innocent and had done nothing illegal or wrong.
- F) The proof can be observed form the decision of the Civil Court Bunner which is available at page 189 of the appeal.
- G) No comments.
- H) Incorrect. The inquiry was conducted in the utter violation of KPK E&D Rules 2011
- I) Admitted correct by the respondents as the service record of the appellant is present with the department. Moreover the appellant was not guilty of the charges.
- J) Admitted correct by the respondents as the service record of the appellant is present with the department.

- K) Not replied according to para D of the appeal. Moreover para D of the appeal is correct.
- L) No comments:

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

Through: APPELLANT 
(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT)
& 
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

DEPONENT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 355/2018

Hashim Khan

VS

Forest Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
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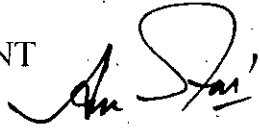

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Through: APPELLANT 
(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT)
& 
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

DEPONENT

9 So, (LIT) Federal

33

16

16. Certificate. Certified that, the project proposal has been prepared as per guidance provided by the Planning Commission, for the preparation of PC-I for Environment Sector.

Prepared by:

Mr. Hasim
Mr. Hasim
Divisional Forest Officer,
Upper Dir Forest Division,
Dir Upper,
Phone-0944-881715

Checked by:

Mr. Alangir Khan
Mr. Alangir Khan Gandapur
Conservator of Forest,
Malakand Circle, Mingora
Phone # 0946-9240231

Countersigned by:

Mr. Nazir Muhammad
Mr. Nazir Muhammad
Chief Conservator of Forests
NWFP, Peshawar
PH:// 091-9212177

Approved by:

Approved by

Hammad
(Dr. Hammad Uwais Agha)
Secretary to Govt. of NWFP
Environment Department,
Phone // 091-9210333

32

10/P&D, dated 23/3/2008, the financial target/annual phasing are revised in accordance with the prevailing market rates the schedule of Works Deptt. with addition of 75% premium allowed for various zones i.e. Buner and Swat (zone-3), Dir Lower/Upper Dir (Zone-4) and Chitral (zone-5) with regard to unit cost of Rs. 1300/- (zone-3), Rs.1400/- (zone-4) and Rs.1500/- (zone-5) respectively has been followed. As per Special DDWP meeting held on 14.6.2008, certain observation has been made endorsed vide DFO P&D Peshawar vide No. 2902/P&D dated 24/6/2008 which was endorsed by CF Malakand vide No. 63-67/G, dated 3/7/2008 and all the observation have been settled vide this office letter No. 508/G, dated 30.8.2008. Annexure-XV(1-8).

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ہر دو تفتیحات باہم مربوط ہیں اسلئے بحث و حاصلات کیلئے ایک ساتھ لیئے جاتے ہیں۔

سائیلان نے درخواست عذر داری میں یہ موقف اٹھایا ہے کہ آرائشی متعدد عویہ کو مسول الیہم نے بروئے

Notification زیر دفعہ 4 مجریہ DOR ضلع بونیر بطور Ex.DW-1/3 مورخہ 16-08-08 کو حاصل کی ہے۔ جس کی

توثیق کمشنر ملاکنڈ ڈویژن نے بروئے Notification زیر دفعہ 5 بطور Ex.DW-1/8 مورخہ 29-07-2010 کو کی

ہے۔ مسول الیہم نمبر 1 نے گوشوارہ اوسط یکسالہ سال 2007-08 بطور Ex.DW-1/4 کو بنیاد بنا کر اراضی کی قیمت کی

تعیین کیلئے مقرر کردہ کمیٹی کی اجلاس کا خلاصہ بطور Ex.DW-1/5 کی روشنی میں مبینہ ایوارڈ بطور Ex.DW-1/10

مورخہ 05-10-2010 کو جاری کیا ہے۔ جس میں حاصل شدہ اراضی کی قیمت مبلغ 255014/- روپے فی کنال

مقرر کی گئی ہے۔ وکیل سائیلان نے بجا طور پر نظیر مروجہ 22 Peshawar P 1996 اور CLC Peshawar

(b) 2009 P 79 کا حوالہ دیکر اوسط یکسالہ کے بنیاد پر اراضی کی تعیین کی نفی کی ہے۔ لینڈ ایکویزیشن ایکٹ اور پیش

کردہ نظائر از جانب وکیل سائیلان کی رو سے اراضی کی قیمت کے تعیین کیلئے اس کے محل وقوع کیساتھ ساتھ

افادیت کو مد نظر رکھ کر کیا جانا ضروری ہے۔ مسول الیہم نمبر 1 نے ایسے کوئی وجہ بیان نہیں کی ہے۔ سائیلان کے جانب

سے اشرف الدین OK نے انتقال نمبر 3007 مورخہ 22-11-05 بطور Ex.PW-1/1 پیش کی ہے جس کی رو سے

ارضی حاصل شدہ کے پڑوس میں اراضی 1 کنال بعوض 14 لاکھ روپے بیچی گئی ہے۔ اس طرح دیگر ماتحتہ اراضی

بروئے انتقال نمبر 3808، 3809 مورخہ 26-05-2010 بطور Ex.PW-1/2 اور Ex.PW-1/3 محکمہ جنگلات نے

فی کنال بعوض 1112000/- روپے حاصل کی ہے۔ اسی طرح بروئے انتقال نمبر 3999 مورخہ 28-03-2011

بطور Ex.PW-1/4 مسمی نور عالم شاہ وغیرہ نے 2 کنال 2 مرلے اراضی بشرح 1619047/- روپے فی کنال خریدی

ہے۔ حلقہ پٹواری نے بطور PW-2 حاصل شدہ اراضی کی نقشہ تصویری بطور Ex.PW-2/1 کے علاوہ گوشوارہ

انتقالات مظہر شدہ بطور PW-1/1 تا PW-1/4 پیش کی ہے جو کہ بطور Ex.PW-2/2 ہے۔ مسول الیہم کی جانب

سے پیش کردہ گوشوارہ اوسط یکسالہ میں کل 23 انتقالات کا حوالہ دیا گیا ہے۔ لیکن گوشوارہ مذکور مناسب ذمہ دار فرد

14/12/2011

RECEIVED
P.O. 13010 of 1734

ATTESTED

(66)

(مرتب کنندہ) کے ذریعے پیش نہیں کیا گیا ہے۔ علاوہ ازیں نظائر بالا کی روشنی میں قیمت شرح کیلئے اس کی چنداں اہمیت بھی نہیں ہے۔ علاوہ ازیں وکیل سائیلان کے موقف کہ سائیلان نمبر 22.21 نے خود ہی اراضی حاصل شدہ میں 1 کنال 10 مرلے بوجھ -/140000 روپے دلاور خان نامی شخص پر بروئے بیع نامہ مجوزہ

15-08-2008 فروخت کی ہے۔ جس کے بابت دلاور خان نے مورخہ 20-11-2008 کو عدالت ہذا سے بھی ڈگری حاصل کی ہے۔ وکیل سائیلان نے مصدقہ نقل فیصلہ عدالت جناب جسٹس راج صاحب ضلع بونیر محرمہ

11-11-2011 پیش کیا۔ جس کی رو سے ڈگری مذکور منسوخ کی گئی ہے۔ اور مدعی دلاور خان فریق کو حسب منشاء عدالت سے دعویٰ دائر کرنے کا اختیار دیا ہے۔ ناضل ایڈیشنل سیشن جج نے مورخہ 22-06-2007 کو بروئے تفصیلی فیصلہ ریفرنس

پہ عنوان "نسیب گل وغیرہ بنام کلکتہ وغیرہ" نمبر 1/1 سال 2005 منظور کیا ہے جس میں ایوارڈ کی رقم فی کنال 107000/- روپے سے بڑھا کر -/100000 روپے مقرر کی ہے۔ جس سے واضح ہے کہ مسول الہیم حاصل شدہ اراضیات کی تعیین میں کوتاہی کا ارتقاب کر کے من مانی سے کام لیتے ہیں۔ اس طرح تحقیقات بالاثبت میں فیصلہ کی جاتی ہے۔

مسول الہیم نے حاصل شدہ اراضی کی قیمت -/255011 روپے فی کنال مقرر کی ہے۔ جبکہ سائیلان نے حاصل شدہ اراضی کی قیمت 5 لاکھ فی کنال طلب کی ہے۔ بحت زیر تحقیقات نمبر 6.5 مسول الہیم کا مقرر کردہ قیمت صحیح نہیں پایا گیا جبکہ وکیل سائیلان بھی حاصل شدہ اراضی کی قیمت 15 لاکھ روپے فی کنال کی قیمت کا جواز پیش نہیں کر سکے۔ مسول الہیم نمبر 1 کے دفتر سے پیش کردہ ریکارڈ بذریعہ PW-1 PW-3 میں سے انتقالات بالا بطور Ex.PW-1/1 اور Ex.PW-1/4 اور عکس نقشہ تصویری اراضی حاصل شدہ بطور Ex.PW-2/1 کے علاوہ گوشوارہ انتقالات بطور Ex.PW-2/2 کی روشنی میں اوسط نکال کر جو کہ مبلغ -/1310761 روپے پائی گئی۔ جو کہ کل حاصل شدہ اراضی تعدادی رقبہ 70 کنال 2 مرلے کی کل قیمت -/91881316 روپے علاوہ 15% لازمی اضافہ بنتی ہے۔ اس طرح سائیلان ڈگری مستعدیہ تابع بحت بالا حسب داد رسی حقداران پائے گئے۔ تنقیح بدیں فیصلہ شد۔

COURT

SEAL

190

صفحہ نمبر (9)

داری:

تقیحات بالا پر مفصل بحث اور حاصلات کی روشنی میں سائیلان درخواست رجزرداری ثابت کرنے میں

کامیاب رہے ہیں۔ لہذا ایوارڈ مصدرہ 05-10-2010 کو تاحد تعیین قیمت منسوخ قرار دے کر ارضی حاصل شدہ

کی قیمت مبلغ 1310761/- روپے فی کنال مقرر کی جاتی ہے۔ جس کی کل مالیت 91881346/- روپے بنتی ہے جو کہ

علاوہ 15% اضافہ ہے۔ جس کی وصولی کی سائیلان حقدار ہیں۔ سائیلان کو بعد از اختتام وقت اپیل باقی ماندہ ادائیگی

کی جائے۔ خرچہ مقدمہ بذمہ فریقین رہے گا۔ مسل بعد از ترتیب و تکمیل کے داخل دفتر ہو۔

(ولی محمد خان)

حکم سنایا گیا۔

14.12.2011

سینئر سول جج راعی علاقہ قاضی بونیر۔

SENIOR CIVIL JUDGE

GENERAL

سرٹیفکیٹ: تصدیق کی جاتی ہے کہ فیصلہ ہذا (09) صفحات پر مشتمل ہے جو کہ میرا املاء کردہ، ملاحظہ کردہ، تصحیح کردہ

اور دستخط کردہ ہے۔

(ولی محمد خان)

سینئر سول جج راعی علاقہ قاضی بونیر۔

SENIOR CIVIL JUDGE

GENERAL

ATTESTED

ATTESTED

ATTESTED

ATTESTED

191

No: 471 /DK. Dated 28/23/2013.



To,

The Secretary,
Board of Revenue Khyber Pakhtunkhwa
Peshawar.

Am: XXXIX

Subject :- APPEAL IN SUIT HAZRAT WALI V/S PROVINCIAL GOVT:

Memo:

Kindly refer to the subject noted above and to enclosed herewith copy of Judgment pronounced on 14/12/2011 by the Court of Senior Civil Judge Daggar District Buner on the bases of Mutation No:3808 and 3809 at Muz Daggar which were illegally entered and attested on 26/10/2010 by M Hidayatullah the then Tehsildar Daggar now posted as Tehsildar Bahra District Swat in the name of Provincial Govt: in Khana Malkiat and Forest Department in Khana Kasht for the construction of D.F.O Office at Daggar without approval of the competent authority.

According to rule purchase of land for public facilities should be required under the acquisition ACT strictly. But the Revenue staff ignore all the codal formalities/rules and sustained losses of Rs.45,90,256/- to Govt: exchequer. The payment of Rs.11,21,266/- per Kanal was made illegally to the land owners instead of Rs.3,53,278/- per Kanal according to wrongly Yaksala.

The Court of Senior Civil Judge Daggar enhanced the rate of land measuring 70 Kanals and 02 Marlas @ Rs.13,10,761/- per Kanal instead of Rs.2,55,014/- purchased for Police Line at Daggar on the bases of above noted Mutations and resultantly total losses of Rs.7,40,07,865/- were also made the Govt: exchequer in the case, construction of Police Line at Daggar.

The detail of losses to Govt: exchequer are as under:-

- 1. Illegal payment made to the land owners.....Rs.45,90,256/-
 - 2. Decreed amount against the Govt: on
the bases of illegal mutations No.3808, 3809...Rs.7,40,07,865/-
- Total losses to Govt: Rs.7,85,98,121

The above noted huge losses to Govt: exchequer is considered high level enquiry, therefore you are requested to constitute enquiry committee to conduct enquiry in the matter please.

ATTESTED

Deputy Commissioner
Buner.

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Ann - XXXI 192

بیان حلفی درجہ 09.08.2014



مکہ میں حبیب من ولد صاحب من ساکن تحصیل مانوئی
ڈگنڈ تحصیل ڈگنڈ ضلع پونہ K. P. K. کا بیوں
من حقہ مکہ صاحب کا لہجہ اور بائع حبیب من کا بھتیجی بیوں
والد آتش نہایت کمزور اور ضعیف بیمار اور چچا آتش زفات
شدہ ہے۔

من حقہ ضلعاً و قدر کردہ بیوں۔ کہ من حقہ جگہن طور با
رضیاریوں۔ اور خانوئی تقاضے پورا الٹی کہہ سکتا بیوں
جو آراضی والد آتش اور چچا آتش نے فارسٹ ڈیپارٹمنٹ
پر فروخت کردے ہماری حکمہ فارسٹ موجود ہیں

اگر حکمہ نہ ایماست یہ باقی کردے وہی فروخت شدہ آراضی
اور زمین پر بنایا ہوا بلڈنگ اور عینل قیمت پر من
باگھان اور زمینان متوفی حبیب من کو والین کہہ دیں
تو باگھان پوری طور جملہ قیمت بہ وقت ادا کہہ سکتے
ہیں بیان حلفی سنداً تحریر ہے۔

حبیب من ولد صاحب من

NIC 15101-8134732-5

Mushlag Alimada
Advocate Notary Public
Distt: Courts Dargaz
Hauzer 9-8-014

ATTESTED

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Hashim Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

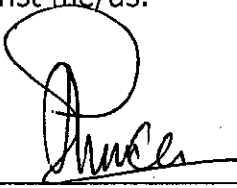
Forest Deptt. (Respondent)
(Defendant)

I/We, Hashim Khan.

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.


I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.


Dated _____/20

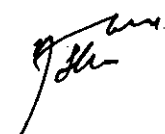


(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate Supreme Court
Peshawar.


Taimur Ali Khan
Advocate High Court


Syed Nauman Ali Bukhari
Advocate

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

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ENQUIRY REPORT

Subject: DE-NOVO ENQUIRY AGAINST Mr. HASHIM KHAN EX-DFO FORESTS DISTRICT BUNER

Enquiry Order

1. Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department vide its Notification bearing No.SO(Estt)ENV/1-50(87)/2012 dated 20th March 2017 (*Annex-I*) has tasked the following officers to conduct a de-novo enquiry under Rule-14(6) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 against Mr. Hashim Khan Ex-DFO Buner for the charges/allegations levelled against him in the Charge Sheet (*Annex-II*) and Statement of Allegations (*Annex-III*) which was provided along with the notification:-

- Mr. Muhammad Khalid PMS BS-19, DG FDMA Convener
- Qazi Muhammad Younis BS-19, Conservator Forests Member.

2. Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department vide its Notification bearing No.SO(Estt)/FE&WD/1-50(87)/2012 dated 13th April 2017 (*Annex-IV*) has nominated Mr. Ahmad Jalil, DFO, Buner Forest Division Daggar as departmental representative for provision of record and necessary facilitation of the enquiry team.

Proceedings of the Enquiry

3. The enquiry team summoned the accused officer on 24th April 2017 and received his written reply to the allegations levelled against him (*Annex-V*). The accused officer was also asked to express his satisfaction to the composition of the enquiry team, to which he responded in affirmative. The enquiry team went through the entire script of the written reply along with its annexures and on 2nd May 2017 met and discussed and accordingly prepared a questionnaire (*Annex-VI*) which was served upon the accused officer in advance of his next hearing subsequently made on 10th May 2017. Moreover, the predecessor of the accused officer naming Mr. Mir Wali Khan Ex-DFO Buner was also called for recording his statement (*Annex-VII*) as he was responsible for implementation of the part of the ADP Scheme No.606 titled "Construction of Offices & Residential Buildings in NWFP" relating to District Buner i.e. Procurement of land for construction of DFO Offices & Residential Building in District Buner ever since the issuance of Administrative Approval of the scheme on 24th January 2009. Moreover, the Enquiry Team also requested Deputy Commissioner Buner to provide the documentary evidence and outcome of any disciplinary proceedings against the then District Officer (Revenue) for his negligence in the case, to which he accordingly responded and provided report of an enquiry conducted jointly by Deputy Commissioner Swat

ATTESTED

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 355/2018.

Hashim Khan

VS

Forest Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Admitted correct by the respondents as the service record of the appellant is present with the department.
2. Correct. Hence no comments
3. Incorrect. Mr Mir Wali Khan (predecessor of the appellant) who was not in good term with the appellant had floated a bias monitoring report which became the cause of subject inquiry. Moreover Mir Wali Khan was unlawfully inducted in the inquiry committee which was noticed by the august Service Tribunal in his judgment dated 02.02.2016.
4. First portion of para 4 is admitted correct hence no comments while the rest of the para is incorrect as the competent authority imposed the penalty of reduction to lower post along with recovery without considering the documents provided by the appellant during the inquiry proceeding as well as annexed record with his reply to charge sheet.
5. No comments.
6. Not replied according to para 6 of the appeal. Moreover para 6 of the appeal is correct.
7. Incorrect. The de-novo inquiry was not conducted according to law and rules as no opportunity of defence was provided to the appellant

as neither statement were recorded in the presence of the appellant nor gave him opportunity of cross examination.

8. Incorrect. The competent authority proposed the major penalty of removal from service in show cause notice with conducting regular inquiry. Moreover the competent authority did not elaborated that what type of inefficiency/mis-conducted was committed by the appellant.
9. It is correct that the comments was filed by the respondent department on the review petition and such comments was in the favour of the appellant which is already attached at page -110 with the appeal and despite the favorable comments the review petition of the appellant was rejected which is against the norms of justice and fair play.

GROUND:

- A) Not replied according to para A of the appeal. Moreover para A of the appeal is correct.
- B) Incorrect. While para B of the appeal is correct.
- C) Not replied according to para C of the appeal. Moreover para C of the appeal is correct.
- D) Not replied according to para D of the appeal. Moreover para D of the appeal is correct.
- E) Incorrect. No irregularities were pointed by the Audit which was conducted twice on the same matter, which shows that appellant was innocent and ~~had~~ had done nothing illegal or wrong.
- F) The proof can be observed form the decision of the Civil Court Bunner which is available at page 189 of the appeal.
- G) No comments.
- H) Incorrect. The inquiry was conducted in the utter violation of KPK E&D Rules 2011
- I) Admitted correct by the respondents as the service record of the appellant is present with the department. Moreover the appellant was not guilty of the charges.
- J) Admitted correct by the respondents as the service record of the appellant is present with the department.

- K) Not replied according to para D of the appeal. Moreover para D of the appeal is correct.
- L) No comments.

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

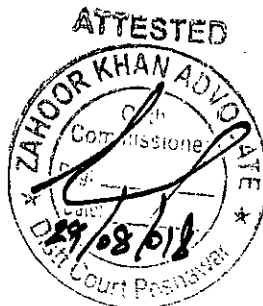
Through:

APPELLANT
Am Saif
(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT)
& *Taimur*
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

DEPONENT



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 41 /ST Dated 8-1- 2020


To

The Secretary Forest, Environment & Wild Life Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - JUDGMENT IN APPEAL NO. 355/2018, MR. HASHIM KHAN.

I am directed to forward herewith a certified copy of Judgement dated
10.12.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

SERVICE APPEAL NO. 355/2018

Mr. Hasham Khan,
Ex-Divisional Forest Officer,
House No. 17, Street Sector C-3,
Phase-5, Hayatabad, Peshawar (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through
Chief Secretary, Civil Secretariat, Peshawar.
2. The Chief Secretary Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
3. The Secretary, Government of Khyber Pakhtunkhwa,
Environment Department Peshawar.
4. The Chief Conservator of Forests,
Central Southern Forest Region-I,
Khyber Pakhtunkhwa Peshawar..... (Respondents)

**PARAWISE COMMENTS ON BEHALF OF
RESPONDENT NO. 1, 2, 3 & 4.**

PRELIMINARY OBJECTIONS.

1. The appeal is not maintainable in the present form.
2. The appellant has no locus standi to bring the present appeal.
3. The appellant is legally estopped by his own conduct to bring the present appeal.
4. The appeal is time barred.
5. That the appellant has no cause of action.
6. That the appellant has not come to Tribunal with clean hands.

RESPECTFULLY SHEWETH.

Parawise comments are as under: -

1. Pertain to record hence needs no comments.
2. The PC-I titled "Construction of Offices and Residential Buildings in NWFP ADP No.606" was approved by DDWP vide No.DDP(Envt)X6/Forest/5859-62, dated 19/06/2008. Consequently Administrative Approval was issued by Forestry Environment and Wildlife Department vide No. DDP(Envt)/E-203/1337, dated 24/01/2009 (**Annex-A**). Relevant formalities for acquisitions of land under the LAA 1894 were initiated vide DFO Buner

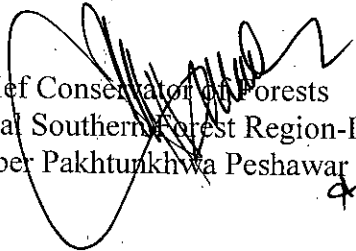
- letter No.3278/G, dated 06/05/2010 addressed to DOR Buner (**Annex-B**) with the request for further processing of the case.
3. Incorrect. Mr. Mir Wali Khan (predecessor of the appellant) was holding charge of DFO working plan unit VI, Swat. He conducted monitoring of the subject land purchased by the appellant and his report became cause of the subject inquiry. Copy of the monitoring report is attached as (**Annex-C**).
 4. Correct, to the extent of charge sheet which appellant replied.
While imposing penalty of "Reduction to lower post and recovery of Rs. 32,38,844/- vide order dated 31.12.2014, the competent authority considered the available record.
 5. Against the order dated 31.12.2014, the appellant had filed service appeal No. 414/2015 in the August Service Tribunal. The Honorable Court passed order on 02.02.2016 (**Annex-D**) set aside the impugned order, giving direction for DE-NOVO inquiry.
 6. Correct to the extent that a de-novo inquiry was conduct^{ed} in accordance with law and rules in which the charges were proved.
 7. In-correct. The inquiry was conducted by the committee in accordance with E&D Rules, 2011.
 8. The Show Cause Notice on the ground of inefficiency/ misconduct with the tentative penalty of "Removal from Service" was served upon the appellant under Khyber Pakhtunkhwa E&D Rules, 2011 which was confirmed by the authority vide order dated 07.11.2017.
 9. The appellant had filed review petition under E&D Rules, 2011 which was commented by the department on the basis of relevant record and ground facts. However, the competent authority rejected the appeal on 22.03.2018 (**Annex-E**).


GROUND:


- A. Action has been taken against the appellant under Khyber Pakhtunkhwa Government Servants E&D Rules, 2011.
- B. The charges of misconduct and in efficiency were established in accordance with E&D rules, 2011. Draft Charge Sheet was issued against the then DOR Buner as communicated vide CCF-III office No. 4297/E, dated 10.04.2014 (**Annex-F**) which could not be materialized (finding of the inquiry as **Annex-G**). The same has been highlighted by the Enquiry Committee in their proceedings "Para-d".
- C. Finding of Para-d is reproduced as per finding of the enquiry committee to the effect is "the violation could equally attributed to the then DOR Buner who did not play his regulatory function by putting the process on right track".
- D. Incorrect. The inquiry committee fulfilled all the legal requirements.
- E. Incorrect. The charges were established against the appellant.
- F. Subject to proof, however, detail reply has been given above.

- G. The relevant record including tour diary of Conservator of Forests for the month of 05/2010 vide No.265/PA, dated 25/6/2010, Malakand; and tour note of Chief Conservator of Forests Peshawar vide No.3649-53/GB, dated 6/5/2010 and DOR Buner No. 1045-51 dated 6/5/2010 for imposition of Section 4 of LAA 1894, approval of the PC-I by the competent forum are attached as (Annex-H) (i, ii, iii, iv) which are self-explanatory.
- H. The inquiry was conducted in accordance with Khyber Pakhtunkhwa E&D rules, 2011.
- I. Pertains to record, hence needs no comments.
- J. Pertains to record, hence, however, the appellant was held guilty of the charges.
- K. As per paras above.
- L. No comments.

It is therefore, requested that the appeal may kindly be dismissed.


Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar


Secretary
Forestry, Environment and Wildlife Department
Khyber Pakhtunkhwa, Peshawar


Chief Secretary
Government of Khyber Pakhtunkhwa
Civil Secretariat Peshawar

~~Annexure - A~~
PARA WISE COMMENTS AGAINST THE

Ann. XXIV 289

GOVERNMENT OF NWFP
 ENVIRONMENT DEPARTMENT
 (PLANNING CELL)
 NO. DDP (ENVT) (E-203) / 1337
 DATE: PESHAWAR THE 24/1/2009.

166

To
 The Chief Conservator of Forests,
 NWFP, Peshawar.

Subject: ADMINISTRATIVE APPROVAL OF THE SCHEME TITLED "CONSTRUCTION OF OFFICE & RESIDENTIAL BUILDINGS IN NWFP" ADP NO.606 (REVISED)

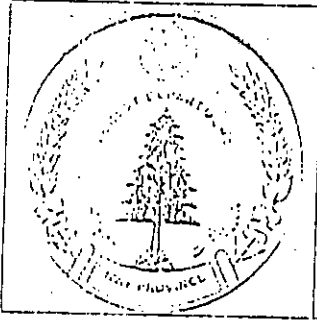
In exercise of the powers delegated vide para-1 second schedule's S.No.6 of the NWFP Delegation of Powers under Financial Rules and the powers of Re-appropriation Rules 2001, the Government of NWFP is pleased to accord Administrative Approval of the ADP scheme titled "Construction of Office & Residential Buildings in NWFP" ADP No.606 at a total cost of Rs.39.635 million (Rupees Thirty nine million six lacs & thirty five thousand only) for a period of 3 years (2007-08 TO 2009-10) as per details given below:

		(Rs. In million)	
S#	Item of work	Unit Cost	Amount
(i) 2007-08			
	Sub Total 2007-08		Nil
(ii) 2008-09			
1	Construction of office cum residence and ministerial staff quarter building DFO Dir Upper Dir Forest Division (Partial)	1400	6.710
2	Construction of office cum residence and ministerial staff quarter building DFO Buner Forest Division	1300	--
3	Construction of office cum residence and ministerial staff quarter building RFO Booni Chitral Forest Division (Partial)	1500	0.971
4	Construction of office cum residence and ministerial staff quarter building RFO Kbal Swat Forest Division (Partial)	1300	0.337
5	Construction of Boundary wall by DFO Lower Dir at Timergara (Partial)	1056	0.282
6	Purchase of land for DFO Buner		4.000
	Sub-Total 2008-09		12.300
(iii) 2009-10			
1	Construction of office cum residence and ministerial staff quarter building DFO Dir Upper Dir Forest Division	1400	3.245
2	Construction of office cum residence and ministerial staff quarter building DFO Buner Forest Division	1300	11.073
3	Construction of office cum residence and ministerial staff quarter building RFO Booni Chitral Forest Division	1500	5.5
4	Construction of office cum residence and ministerial staff quarter building RFO Kbal Swat Forest Division	1300	5.271
5	Construction of Boundary wall DFO Timorgara	1056	2.246
	Sub-Total 2008-09		27.335
Grand Total			39.635

The scheme was revised in the 3rd DDWP meeting held on 06/11/2008 under the chairmanship of Secretary Environment NWFP.

The expenditure involved will be met out from the sanctioned budget grant under the function cum-object classification under demand No.45, NC 12058 (Capital) & NC 22058 (Revenue) during the respective years.

Annexure-B



OFFICE OF THE DIVISIONAL FOREST OFFICER
BUNER FOREST DIVISION SWARI

Ph: 0939-555504

Fax: 0939-555504

No. 3278 /G, Dated Swari the 26/8/2010

To

The District officer Revenue,
Buner

Subject:- PURCHASE OF LAND FOR THE CONSTRUCTION OF OFFICE
CUM RESIDENCE.

Memorandum:

This office intend to acquire/purchase land measuring six (6) kanals and one (1) Marla situated in Moza Dagger for the construction of Divisional forest Officer office cum residence and staff quarters. Necessary revenue record/documents pertaining to the aforesaid land are enclosed herewith along with section 4 of the Land Acquisition Act 1984 and agreement deed executed with the owner of the land. As this office has settled the price of the land with the land owner privately through negotiation. It is therefore, requested that the notification under section 4 of the land Acquisition Act 1984 may please be signed and further proceedings initiated for the acquisition of the land in question.

Divisional Forest Officer
Buner Forest Division Swari

No. 3278 /G.

Copy forwarded to:-

- 1 The Chief Conservator of Forests, NWFP, Peshawar.
- 2 The Conservator of Forests Malakand circle at Saidu Sharif Swat.

For favour of information please.

Divisional Forest Officer
Buner Forest Division Swari

Annexure - 'c'

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

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

No. AWP-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 "Yaksala".
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/shortcomings.

1. Location

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

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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. 112000/- 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

*608
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7/2/11*

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D.P.P.*

*8/2
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*36/12/11
03/2/11*

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.112000/- 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.

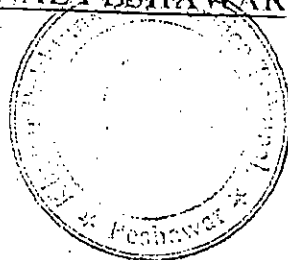
Copy forwarded to the Chief Conservator of Forests Khyber Pakhtunkhwa Peshawar, for favour of information please.

[Signature]
Divisional Forest Officer,
Working Plan Unit-VI Swat

[Handwritten signatures and initials]

Annexure 'D' 45 F 93

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR



K.W.P. Province
Service Tribunal
Diary No. 508
Dated 15-5-2015

Appeal No. 474/2015

Flashim 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) Env/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.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attest to the

Registrar

15/5/15

PRAYER IN APPEAL:

On acceptance of this appeal the impugned Notification No. SO (Estt) Env/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.

re-submitted to-day
and filed.

Registrar

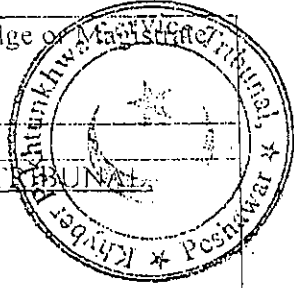
Respectfully Submitted:

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

46

95

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or
1	2	3
	02.02.2016	<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 style="text-align: center;">(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-1 titled "construction of Offices and residential</p>



ATTESTED

(Signature)

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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97

building in NWP" 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

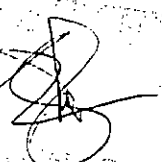
ACCEPTED

Signature
 Deputy Commissioner
 Swat, Peshawar

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 short comings 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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Signature of the appellant
Appellant

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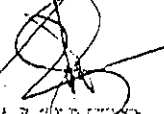
violative of the law, rules and norms of natural justice. He further contended that version of defense provided by the appellant during the course of enquiry was totally ignored, the appellant was not provided opportunity of fair trial as guaranteed under the Article 10-A of the constitution and opportunity 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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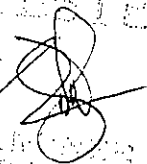

 EXAMINER
 Cyber Pakhankhwa
 Service Tribunal,
 Peshawar

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

ATTESTED


 J. K. Khan
 Member Tribunal,
 Peshawar

51

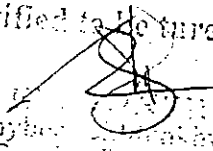
conduct *de-novo* enquiry against the appellant strictly in accordance with law and rules providing him full opportunity of defense and opportunity of personal hearing before passing of an order ^{by} the competent authority. The proceedings shall be completed in a period of sixty days after the receipt 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 8-2-2016
Number of Pages 2800
Copying Fee 111
Total 111
Name of Case
Date of Completion 9-2-2016
Date of Delivery of 9-2-2016

Annexure - E
Amr D

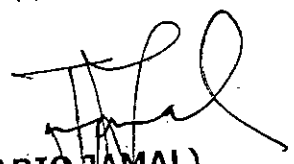
	GOVERNMENT OF KHYBER PAKHTUNKHWA FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT NO.SO(Estt)/FE&WD/1-50 (87)/2012 Dated Peshawar the, 22 nd March, 2018
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To Mr. Hasham Khan,
Ex-Divisional Forest Officer,
Khyber Pakhtunkhwa Forest Deptt:

C/o Chief Conservator of Forests,
Central Southern Forest Region-I,
Peshawar.

Subject: - REVIEW PETITION/APEAL AGAINST THE IMPUGNED NOTIFICATION NO: SO (ESTT)/ENVT/1-50 (87)/2012, DATED 07/11/2017

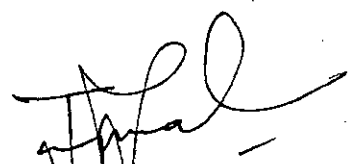
I am directed to refer to your Review Petition/appeal dated 07th November, 2017 on the subject captioned above and to say that the Appellate Authority has been pleased to reject your referred Review Petition/appeal.


(TARIQ JAMAL)
SECTION OFFICER (ESTT)

Endst: No: & date even

Copy is forwarded for information to:-

1. Chief Conservator of Forests, Central Southern Forest Region-I, Peshawar.
2. PS to Secretary, FE&W Department, Khyber Pakhtunkhwa.


SECTION OFFICER (ESTT)

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