

01.10.2015

Appellant with counsel (Mr. Bilal Ahmad Kakazai, Advocate) and Mr. Muhammad Amjad, SDFO alongwith Mr. Ziaullah, Government Pleader for respondents present.

Vide our detailed Judgment of to-day in connected service appeal No. 1022/2013 titled "Syed Muqtada Shah-vs-Govt: of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others", this appeal is also dismissed. Parties are left to bear their own costs. File be consigned to the record.

Announced  
01.10.2015



(PIR BAKHSH SHAH)  
MEMBER



(ABDUL LATIF)  
MEMBER

29.12.2014


No one is present on behalf of the appellant. Mr. Muhammad Amjad, SDFO on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. The Tribunal is incomplete. To come up for further proceedings alongwith connected appeals on 30.04.2015.



Reader.


30.4.2015

Appellant with counsel and Mr. Ziaullah, GP with Muhammad Amjad, SDFO for the respondents present. Arguments heard. To come up for order on 5.6.2015.

  
MEMBER  
MEMBER

05.6.2015

Appellant in person and Mr. Muhammad Amjad, SDFO for respondents present. The learned Executive Member is on leave, therefore, case is adjourned to 10.08.2015 for order.

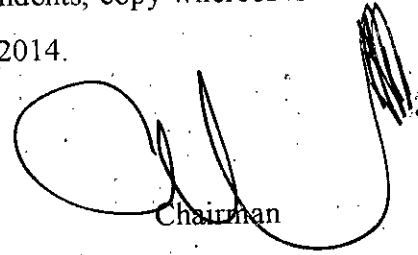
  
Member

10.08.2015

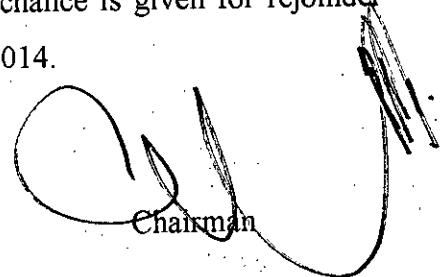
Appellant in person and Mr. Ziaullah, GP for the respondents present. Since the court time is over, therefore, case is adjourned to 01-10-2015 for order.

  
MEMBER  
MEMBER

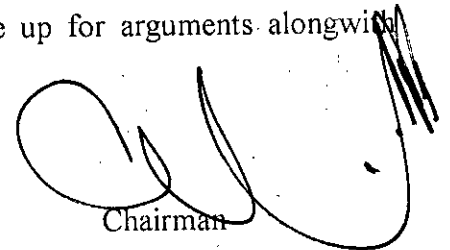
29.01.2014 Appellant in person and Mr. Muhammad Saddique, SDFO on behalf of respondents with AAG present. Written reply/para-wise comments received on behalf of the respondents, copy whereof is handed over to the appellant for rejoinder on 18.4.2014.

  
Chairman

18.4.2014 Appellant in person and Mr. Muhammad Amjad, SDFO on behalf of respondents with Mr. Usman Ghani, Sr. GP present. Rejoinder has not been received, and request for further time made on behalf of the appellant. Another chance is given for rejoinder alongwith connected appeals on 1.7.2014.

  
Chairman

01.7.2014 Appellant in person and Mr. Muhammad Amjad, SDFO, Allai Upper Hazara Forest, Mansehra with Mr. Usman Ghani, Sr. GP for the respondents present. Appellant stated that there was no need to file rejoinder. Therefore, to come up for arguments alongwith connected appeals on 29.12.2014.

  
Chairman

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 1004 / 2013

Umar Sharif

V/s


Government of KPK etc.

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Appellant

Through:

  
BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 1004 / 2013

~~U. W. F. Peshawar~~  
~~.....~~  
~~.....~~ 1060  
~~.....~~ 24-6-13

UMAR SHARIF,  
Forester,  
C/o DFO, Hazara Tribal Forest Division,  
Battagram.

..... Appellant

VERSUS

- 1. GOVERNMENT OF KHYBER PAKHTUNKHWA,  
Through Chief Secretary,  
Civil Secretariat, Peshawar.
- 2. CHIEF CONSERVATOR OF FORESTS,  
KPK, Peshawar.
- 3. CONSERVATOR OF FORESTS,  
Upper Hazara Forest Circle,  
Mansehra.

..... Respondents

~~.....~~  
~~.....~~  
4/6/13

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT 1974 READ WITH SECTION 10 OF THE KPK REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000 AGAINST ORDER NO. SO(ESTT)/ENVT/1-50(96)/2K9 DATED 04.04.2013 RECEIVED BY THE APPELLANT ON 15.04.2013 WHEREBY PENALTY OF STOPPAGE OF FIVE INCREMENTS FOR A PERIOD OF THREE YEARS HAS BEEN IMPOSED AND THE DEPARTMENTAL APPEAL / REPRESENTATION DATED 22.04.2013 HAS NOT BEEN RESPONDED DESPITE THE LAPSE OF REQUISTE 60 DAYS PERIOD.

*Prayer: That on acceptance of this Service Appeal, the impugned penalty Order dated 04.04.2013 be set-aside as being illegal, unlawful, void and ineffective moreover Appellant's Increments be restored with such other relief as may deem fit in the circumstances of the case may also be granted.*

*Respectfully Sheweth,*

Short facts, giving rise to present Service Appeal, are as under:-

1. That, during the course of employment as Forester, Appellant was Charge Sheeted / proceeded against departmentally & finally major penalty of Reduction to the initial stage of basic pay scale was imposed upon him. The said Order of penalty was challenged before this Honourable Tribunal & the same was decided on 28.06.2011 whereby the case of the Appellant was remanded back to the Department for De-novo proceedings with certain observations, copy of the Order dated 28.06.2011 is attached as Annexure A.
2. That, the Departmental Authority failed to initiate the Departmental Proceedings, within requisite time, as per directions contained in the Judgment dated 28.06.2011, however Appellant received 2<sup>nd</sup> Charge Sheet coupled with Statement of Allegations pertaining to the same Allegations which were mentioned in the earlier Charge Sheet for the period when he was posted as Forester, Allai, Forest Sub-Division of Hazara Tribal Forest Division, Battagram, copy of the Charge Sheet is attached as Annexure-B and Statement of Allegations is attached as Annexure-C.
3. That, as the allegations were totally false, incorrect, misleading and manufactured one, therefore, Appellant submitted his detailed Reply wherein he denied the charges and clarified his position, copy of the Reply is attached as

Annexure-D, which may please be read as integral part of this Appeal.

4. That, thereafter, an Enquiry was conducted by the Enquiry Officer namely Riaz Khan Mahsud wherein Appellant was exonerated from all the charges by quoting therein the following findings / conclusions:

“Charge of misconduct does not stand proved”.

“Charge of inefficiency stands proved at a lowest level”.

5. That, although the Enquiry Officer exonerated the Appellant from almost all the Charges even than Appellant was served with a Show Cause Notice, copy of the Show Cause Notice is attached as Annexure-E, Reply to the Show Cause Notice is attached as Annexure F and Enquiry Report is attached as Annexure-G.
6. That, the Competent Authority, on the basis Enquiry Report and Reply to the Show Cause Notice etc issued warning to the Appellant on 26.03.2012 vide order No. SO(Estt)/ENVT/1-50(96)/2K9 865, copy of the same is attached as Annexure H.
7. That after a lapse of about 5 months yet another Enquiry Officer, namely Muhammad Kabir Afridi, was appointed to probe into the same charges in which Appellant was warned / censured, copy of the Notification, whereby Mr. Muhammad Kabir Afridi was appointed as Enquiry Officer, is attached as Annexure J.
8. That, in consequence of Appointment of another Enquiry Officer, 3<sup>rd</sup> Charge Sheet coupled with Statement of Allegations on similar charges was issued to the Appellant, copy of the Charge Sheet coupled with Statement of Allegations is attached as Annexure K & L and its reply is attached as Annexure M.
9. That, the Enquiry Officer, illegally and unlawfully conducted the 3<sup>rd</sup> Enquiry in pursuance whereof Show Cause Notice was

issued to the Appellant, copy of the Show Cause Notice, 3<sup>rd</sup> Enquiry Report and reply to the Show Cause Notice is attached as Annexure N/1, N/2 & N/3.

10. That, on 04.04.2013 Impugned Order of Penalty was issued whereby Appellant was awarded penalty of Stoppage of Five Increments for a period of three years, copy of the Impugned Order is attached as Annexure O.
11. That, as per Law applicable Appellant submitted his Departmental Appeal / Representation before the Appellate Authority on 22.04.2013, copy of the same is attached as Annexure-P.
12. That, despite lapse of mandatory 60 days period, the Representation of the Appellant is still undecided, hence, this Service Appeal under Section 10 of the KPK Removal From Service (Special Power) Ordinance, 2000 on the following amongst other grounds: -

#### GROUNDS

- A. That, the impugned order is illegal, unlawful, void and ineffective, hence, not sustainable in the eyes of Law.
- B. That, the same is against the principles of Natural Justice, also.
- C. That, as per directions contained in the Judgment dated 28.06.2011, the Competent Authority was clearly directed to conclude the Enquiry Proceedings within 25 days as per law but in the instant case the Respondents melafidely took more than 20 months.
- D. That, in the 2nd Enquiry / De-novo Enquiry, the Enquiry Officer exonerated the Appellant from all the charges with clear quotes that "Charge of misconduct does not stand



proved" and "Charge of inefficiency stands proved at a lowest level which can be attributed to unintentional negligence".

- E. That, the 2<sup>nd</sup> Enquiry / De-novo Enquiry in consequence whereof Appellant was awarded the punishment of Warning / Censure still holds the field and the Competent Authority willfully ignored the presence of 2<sup>nd</sup> Enquiry / De-novo Enquiry Proceedings AND Penalty Order of Censure / Warning.
- F. That, no reason, whatsoever, has been mentioned by the Respondents for initiation of 3<sup>rd</sup> Enquiry or not relying on 2<sup>nd</sup> / De-novo Enquiry which otherwise has been finalized with the issuance of Warning / Censure.
- G. That, in the Notification dated 16.08.2012 wherein Mr. Muhammad Kabir Afridi was appointed as Enquiry Officer, the Competent Authority directed Mr. Muhammad Kabir Afridi to initiate the proceedings against the Appellant under Efficiency & Discipline Rules 2011 but rest of the proceedings were conducted under Repeal RSO, 2000 which otherwise is a patent illegality on part of the Respondents.
- H. That, apparently, after watching all the Departmental Enquiries, it can easily be said that the Department / Competent Authority / Respondents were biased and reluctant / bent upon to penalize the Appellant and with help of 3<sup>rd</sup> Enquiry, the Respondents succeeded in doing the same.
- I. That, as per Article 13 of the Constitution of Islamic Republic of Pakistan, 1973, no person should be vexed twice for the same offence in which he has been earlier punished or penalized.
- J. That, the Enquiry Committee did not adopt the proper procedure as required under the law nor Appellant was

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confronted with any documentary evidence to this effect neither any witness was produced before the Appellant against him.

- K. That, in the case of Appellant under the Removal from Service (Special Power) Ordinance, the Chief Secretary was not the Competent Authority because the Chief Conservator of Forest is the appointing authority and he is the authority to whom power of Competent Authority has been delegated in case of RSO 2000.
- L. That, there is nothing on record nor any thing was produced before the Enquiry Committee that Appellant was directly involved in the alleged allegations or any delay has occurred due to his willful intention or Mensrea.
- M. That, the Appellant has performed his duty honestly and efficiently in his entire service career and there is nothing adverse against him. In the instant case Appellant in time initiated the proceedings against the Defaulters / Accused.
- N. That; Appellant is innocent and falsely charged without having any solid prove that Appellant remained ignorant about the damages and failed to take legal action.

It is, therefore, requested that Appeal be accepted as prayed for.

  
Appellant

Through,



BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

**BEFORE NWFP SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No: \_\_\_\_\_ / 2013

Umar Sharif

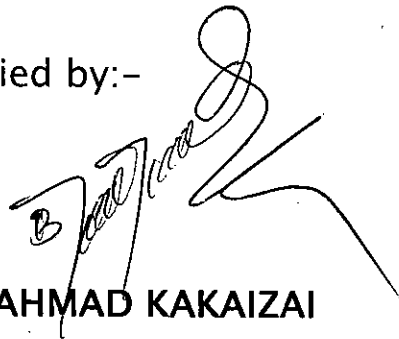
V/s

Government of KPK etc.

**AFFIDAVIT**


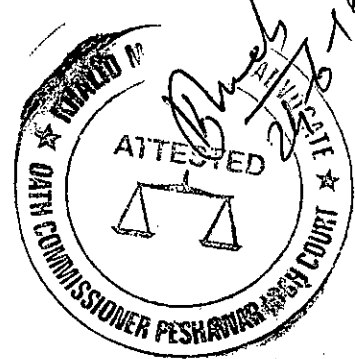
I, UMAR SHARIF, Forester, C/o DFO, Hazara Tribal Forest Division, Battagram, Appellant, do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Identified by:-



**BILAL AHMAD KAKAIZAI**  
(Advocate, Peshawar)

Deponent.

**BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No: \_\_\_\_\_ / 2010

Umar Sharif

V/s

Government of KPK etc.

**ADDRESSES OF PARTIES.**

**PETITIONER:**

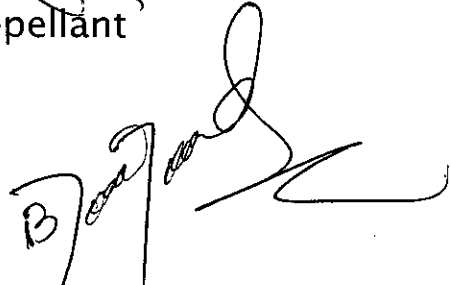
UMAR SHARIF, Forester, C/o DFO, Hazara Tribal Forest Division, Battagram.

**RESPONDENT**

1. GOVERNMENT OF KHYBER PAKHTUNKHWA, Through Chief Secretary, Civil Secretariat, Peshawar.
2. CHIEF CONSERVATOR OF FORESTS, KPK, Peshawar.
3. CONSERVATOR OF FORESTS, Upper Hazara Forest Circle, Mansehra

  
Appellant

Through,

  
BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

Annex-6

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6

BEFORE KPK SERVICE TRIBUNAL  
PESHAWAR.



A

Service Appeal No: 969/2010

1062  
13/5/10

UMAR SHARIF  
Forester  
C/o DFO, Hazara Tribal Forest Division,  
Batagram.

Appellant

VERSUS

1. Government of KPK  
Through Chief Secretary, Peshawar.
2. Chief Conservator of Forests,  
KPK, Peshawar.
3. Conservator of Forests,  
Upper Hazara Forest Circle, Mansehra.

Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT  
1974 READ WITH SECTION 10 OF THE KPK REMOVAL  
FROM SERVICE (SPECIAL POWER) ORDINANCE 2000  
AGAINST ORDER NO.SO(Est)/Envt/1-50 (96)/2K9 DATED  
29.01.2010 RECEIVED BY THE APPELLANT ON 24.02.2010  
WHEREBY MAJOR PENALTY OF REDUCTION TO THE  
INITIAL STAGE OF HIS BASIC PAY SCALE HAS BEEN  
IMPOSED AND THE DEPARTMENTAL APPEAL /  
REPRESENTATION DATED 24.02.2010 HAS NOT BEEN  
RESPONDED DESPITE LAPSE OF REQUISTE 60 DAYS.

Filed to the  
13/5/10

Prayer: That on acceptance of this Service Appeal, the impugned  
penalty Order dated 29.01.2010 be set-aside as being  
illegal, unlawful, void and ineffective. Appellant Pay Scale  
be restored to its original stage with such other relief as  
may deem fit in the circumstances of the case may also be  
granted.

ATTESTED

SEANAMNER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

ATTESTED

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13 28.6.2011

Appellant with counsel (Mr. Bilal Ahmad, Advocate) and Mr. Muhammad Siddique, SDFO with AAG for the respondents present. Arguments heard and record perused.

Vide detailed judgment of today, placed on connected appeal No. 968/2010, titled 'Syed Muqtada Shah-Vs-Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc', the appeal is accepted and while setting-aside the impugned order dated 29.1.2010, the case is remanded to the department/authority for denovo departmental proceedings in accordance with law and observations through a committee of which the complainant in the case is not a member and which conducts inquiry proceedings strictly in accordance with law/rules by providing opportunity of defence and cross-examination to the appellant, where-after, in the light of the report/findings of the inquiry committee, the authority shall pass proper order under the relevant law. The departmental proceedings shall be concluded as early as possible but in no case beyond the period of twenty five days from the receipt of this order, as prescribed in section-5 sub-section (3) of the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000. Thereafter, the appellant can have recourse to remedy available to him under the law if he is aggrieved of the final order against him. No order as to costs.

Certified to be true copy

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Date of receipt of application 28-6-2011  
 Number of cases 822  
 Pending cases 6-200  
 Total 6-200  
 Name of copyist  
 Date of receipt of copy 19-7-2011  
 Date of delivery of copy 19-7-2011

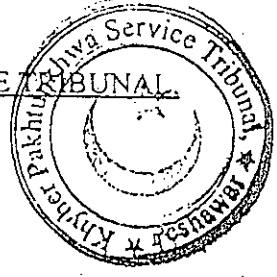
ANNOUNCED  
28.6.2011

MEMBER

CHAIRMAN

Acknowledged - 21-7-2011

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.



APPEAL NO. 968/2010

Date of institution ... 13.05.2010

Date of decision ... 28.06.2011

Syed Muqtada Shah, Sub-Divisional Forest Officer, C/o DFO, Hazara Tribal Forest Division, Batagram..... (Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Chief Conservator of Forests, Khyber Pakhtunkhwa, Peshawar.
3. Conservator of Forests, Upper Hazara Forest Circle, Manshra.

--- (Respondents)

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNALS ACT 1974 READ WITH SECTION 10 OF THE KPK REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000 AGAINST ORDER NO. SOS(ESTT)/ENVT/1-50 (96)/2K9 DATED 29.01.2010 RECEIVED BY THE APPELLANT ON 24.02.2010 WHEREBY MAJOR PENALTY OF REDUCTION TO THE INITIAL STAGE OF HIS BASIC PAY SCALE HAS BEEN IMPOSED AND THE DEPARTMENTAL APPEAL/REPRESENTATION DATED 24.02.2010 HAS NOT BEEN RESPONDED DESPITE LAPSE OF REQUISITE 60 DAYS.

Mr. Bilal Ahmad Kakaiza, Advocate.  
Mr. Sher Afgan Khattak, AAG.

For appellant  
For respondents

Mr. Qalandar Ali Khan  
Mr. Sultan Mehmood Khattak

Chairman  
Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:- Since both the appellants in this appeal, Syed Muqtada Shah, and Umar Sharif, appellant in the connected appeal No. 969/2010, were proceeded against on similar charges and awarded penalty of reduction to the initial stage of their basic pay scale vide separate orders of 29.01.2010, this single judgment is also directed to dispose of the said connected appeal.

2. The appellants were respectively serving the Forest Department as Sub-Divisional Forest Officer and Forester and posted at Allai Forest Sub-Division of Hazara Tribal Forest Division, Batagram, when they were charged for showing negligence in the performance of their duty by not taking legal action against the offenders/JFMC Laam Godipair for illegal cutting of 109 trees and other illegal acts causing damage to the forests in

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ATTESTED

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the area of their jurisdiction. They were served with charge sheets and statements of allegations by the authority i.e. Chief Secretary KPK (Respondent No.1), who also constituted Inquiry Committee under section 5 of the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000, comprising Mr.Haider Ali Khan, Conservator and Mr.Gul Muhammad, Conservator, which conducted inquiry and submitted its report to the authority thereby recommending the imposition of major penalty of reduction of the appellants to the initial stage of their basic pay scales. The authority, accordingly, served the appellants with show cause notices, and after receipt of replies of the appellants to the show cause notices, the impugned order dated 29.01.2010 was passed, against which, the appellants preferred departmental representations/appeals to the Chief Minister, NWFP (Khyber Pakhtunkhwa) on the receipt of the impugned order on 24.02.2010, and when no response was received from the departmental/apellate authority within the statutory period, these appeals were lodged, inter-alia, on the grounds that the impugned order was illegal, not sustainable in the eyes of law and was against the principles of natural justice, as not only the appellants had already reached the ceiling of their basic pay scale and the order was in violation of F.R-29, the record also show no negligence in the performance of official duty on the part of the appellants, rather the appellants had performed their duty and reported the matter to the concerned quarter immediately after getting knowledge of illegal damage. The appellants further alleged that the Inquiry Committee did not proceed with the departmental proceedings in accordance with law and did not provide opportunity of defence and hearing to the appellants.

3. The respondents resisted the appeals with several legal and factual objections in their written replies. They defended the impugned order on the ground that the appellants were proceeded against departmentally for showing in-efficiency and mis-conduct and also that there was ample proof proving charges against the appellants. They refuted the allegation that proper procedure was not adopted during inquiry proceedings. The respondents alleged that the competent authority took lenient view and also took into consideration the prolong service rendered by the appellants in the department. They maintained that proper opportunity of hearing and defence was provided to the appellants in accordance with the principle of

ATTESTED  
 CHIEF MINISTER  
 Khyber Pakhtunkhwa  
 Services Tribunal  
 Peshawar



law and justice, but they could not prove their innocence, while, on the other hand, charges were proved against them on the basis of evidence brought before the Inquiry Committee.

4. The appellants filed replications/rejoinders to the written replies/comments of the respondents and contested the various pleas raised by the respondents, where-after, arguments of the learned counsel for the appellants and learned AAG heard, and record perused.

5. The appellants were proceeded against under the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000 for inefficiency and negligence/mis-conduct in checking illegal cutting of trees and damage to the forest while serving in the Allai Forest Sub-Division of Hazara Tribal Forest Division, Batagram, as Sub-Divisional Forest Officer and Forester, respectively; but the departmental proceedings, from the very inception, were marred by illegalities/irregularities. To begin with, out of two members of the inquiry committee, one Gul Muhammad Conservator was not only complainant in the case against the appellants but also the person who prepared the charge sheet and statement of allegations against the appellants. Needless to say that a complainant could not be a member of the inquiry committee. Secondly, despite availability of witnesses, the inquiry committee neither recorded their statements nor, as such, provided opportunity of defence and cross-examination to the appellants. The inquiry report/findings is based on the personal observations of the members of the inquiry committee in the light of record made available to them or question/answers during personal hearing, which, legally, could not be a substitute for recording evidence on oath and providing opportunity of defence and cross-examination to the appellants. Thirdly, the charge sheet and statement of allegations contained two charges of inefficiency and misconduct while in the show cause notice a third allegation of irregularities was also added, thus traveling beyond the scope of charge sheet and statement of allegations as well as inquiry. Fourthly, the major penalty imposed is 'reduction to the initial stage of basic pay scale' which is nowhere provided as a penalty in the relevant law i.e. Ordinance, 2000. Fifthly, no period has been specified during which the penalty shall remain enforced, in violation of FR-29.

ATTESTED  
Khyber  
Service  
Personnel

5. As such, apart from allegations of timely action on the part of the appellants in accordance with law/rules and denial of any inefficiency and mis-conduct on their part, the illegalities/irregularities pointed out above have rendered the departmental proceedings against the appellants a nullity in the eyes of law. Consequently, both the appeals are accepted and while setting-aside the impugned orders dated 29.1.2010, the cases are remanded to the department/authority for denovo departmental proceedings in accordance with law and above observations through a committee of which the complainant in the case is not a member, and which conducts inquiry proceedings strictly in accordance with law/rules by providing opportunity of defence and cross-examination to the appellants, whereafter, in the light of the report/findings of the inquiry committee, the authority shall pass proper order under the relevant law. The departmental proceedings shall be concluded as early as possible but in no case beyond the period of twenty five days from the receipt of this order, as prescribed in section-5 sub-section (3) of the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000. Thereafter, the appellants can have recourse to remedy available to them under the law if they are aggrieved of the final order against them. No order as to costs.

ANNOUNCED

28.06.2011 (SULTAN MEHMOOD KHATTAK)  
MEMBER

*[Signature]*  
(QALANDAR ALI KHAN)  
CHAIRMAN

Certified to be true copy

*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of transcription 28-6-2011  
 Number of Words 1600  
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 Date of Completion of Copy 19-7-2011  
 Date of Delivery of Copy 19-7-2011

*[Signature]*  
**ATTESTED**

# CHARGE SHEET.

(15) A7 B  
~~SECRET~~

I Capt © Ghulam Dastgir Akhtar, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you Mr. Umar Sharif, Forester (BS-7) while posted as Forester, Allai Forest Sub Division of Hazara Tribal Forest Division Battagram, as follows; -

- i) That while you posted as Forester, Allai, Forest Sub Division, during checking of the Forests of Block on 15/11/2006 the following irregularities had been noticed:
- ii) That you remained ignorant about the damages and did not take legal action against the offenders in time.
- iii) That no Damage Report Book was available with you during checking on 15.11.2006, on spot.
- iv) That no carving of damage report number/Hammer Mark was found affixed with you on old stumps in Kagai Obe C-No.1.
- v) That no carving of damage report No./affixing of Hammer Mark was found with you in the felling coup of the JFMC Laam Godipair on old stumps and that only No. written by marks found on the stumps of fresh illegally cut trees.
- vi) That no field No. was found with you on stumps of marked/sawn trees of the JFMC.
- vii) That illegal cutting of 109 No. of Fir/Spruce trees+ 13954-cft (standing volume) shown below was reported in godi Pair guzara Compartment No.1 and Damage Report No.91 and 92/6 dated 29.10.2006 were issued but you did not nominate the Chairman JFMC as accused:

1- Damage Report No.91/6 dated 29.10.2006			
Species	Dia	No. of trees	Standing Volume (cft)
Fir/Spruce	27	06	948
	28	05	840
	29	04	756
	30	02	402
	34	01	262
	16	03	153
	19	04	296
	21	03	279
	22	06	612
	23	03	336
	24	05	620
	25	09	1215
	26	03	438
Total:		54	7157
2- Damage Report No.92/6/10/2006			
Fir/Spruce	26	03	438
	27	05	790
	28	04	672
	29	01	189
	30	01	201
	31	01	212
	33	01	249
	17	02	116
	19	02	92
	20	04	332
	21	04	372
	22	10	1020
	23	05	560
24	06	744	
25	06	810	
Total:		55	6797
G.Total:		109	13954

  
**ATTESTED**

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By reason of the above, you appear to be the guilty of In-efficiency and Mis-conduct under section 3 of the NWFP removal from Service (Special Power) Ordinance 2000 and have rendered your self liable to all or any of the penalties specified in section-3 of the said ordinance.

3. You are, therefore, directed to submit your written defensive statement within seven days of the receipt of this charge sheet to the enquiry committee.

4. Your written defensive statement, if any should reach the enquiry committee within the specified period, failing which it shall be presumed that you have nothing to say in your defense and ex-parte action shall follow against you.



(Capt © Ghulam Dastgir Akhtar).  
Chief Secretary, Khyber Pakhtunkhwa



## DISCIPLINARY ACTION.

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ANNEXURE

I Capt ® Ghulam Dastgir Akhtar, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Umar Sharif, Forester (BS-7) while posted as Forester, Allai, Forest Sub Division of Hazara Tribal Forest Division Battagram has rendered himself liable to be proceeded against him as he committed the following act/omission with in the meaning of section-3 of the NWFP removal from service (Special Power) Ordinance 2000.

### STATEMENT OF ALLEGATIONS.

That during checking of the Forests of his Block on 15/11/2006 the following irregularities had been noticed:

- i) That he remained ignorant about the damages and did not take legal action against the offenders in time.
- ii) That no Damage Report Book was available with him during checking on 15.11.2006, on spot.
- iii) That no carving of damage report number/Hammer Mark was found affixed on old stumps in Kagai Obe C-No.1.
- iv) That no carving of damage report No./affixing of Hammer Mark was found in the felling coup of the JFMC Laam Godipair on old stumps and that only No. written by marker found in the stumps of fresh illegally cut trees.
- v) That no field No. was found on stumps of marked/sawn trees of the JFMC.
- vi) That illegal cutting of 109 No. of Fir/Spruce trees+ 13954-cft (standing volume) shown below was reported in godi Pair guzara Compartment No.1 and Damage Report No.91 and 92/6 dated 29.10.2006 were issued but did not nominate the Chairman JFMC as accused:

1- Damage Report No.91/6 dated 29.10.2006			
Species	Dia	No. of trees	Standing Volume (cft)
Fir/Spruce	27	06	918
	28	05	840
	29	04	756
	30	02	402
	34	01	262
	16	03	153
	19	04	296
	21	03	279
	22	06	612
	23	03	336
	24	05	620
	25	09	1215
	26	03	438
Total:		54	7157
2- Damage Report No.92/6/10/2006			
Fir Spruce	26	03	438
	27	05	790
	28	04	672
	29	01	189
	30	01	201
	31	01	212
	33	01	249
	17	02	116
	19	02	92
	20	04	332
	21	04	372
	22	10	1020
	23	05	560
24	06	744	
25	06	810	
Total:		55	6797
G Total:		109	13954

2. For the purpose of scrutinizing the conduct of the said accused with reference to the allegations, an enquiry committee consisting of the following officer is hereby constituted under Section 2 of the above Ordinance:-

Mr. Rizwan Khan Mehrez AS FATA SCA

3. The enquiry committee shall in accordance with the provision of the Ordinance provide reasonable opportunity of hearing to the accused, record its findings and make, within 25 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join in the proceedings on the date, time and place fixed by the committee.



(Capt. Ghulam Dastgir Akhtar)  
Chief Secretary, Khyber Pakhtunkhwa



ATTESTED

محترم صاحب آئی آر صاحب رہائش خان محمود صاحب ایڈمنسٹریٹو سیکرٹری ٹی اے اے ڈی سی

ANNEXURE ANNEX-XII

سوں جواب بابت چارج شیڈول ہونے 12/10/2008

19

صاحب عالی

تذرات فی جواب چارج ہونے 12/10/2008 فرزند جو فرد جو م عائد کیا گیا ہے اسے اسے

اس بار میں ذیل تفریحات میں شرکت سے

1۔ جی ایم جی ٹی وی ایسٹیمینٹ اور ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
2۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
3۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
4۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
5۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
6۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
7۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
8۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
9۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
10۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس

فرزند نے بہر وقت ملزمان کے خلاف کارروائی کر کے ان کے خلاف عدالت دائر عدالت  
کر کے جیل سے رہائی کو سنا سونے -

اس میں فرزند کو حضور وار کٹھنرانا اضا ف آے نافی ہے۔

1۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس

2۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس  
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10۔ جی ایم جی ٹی وی ایسٹیمینٹ ڈیپارٹمنٹ (ایسٹیمینٹ لفٹ جواب 9) اس معاملے کی سٹیٹس

ATTESTED

(۱۷) نقصان درختان کہ نزدیکیوں پر نگرانی کرنے بنیادی طور پر متعلقہ فارمسٹ فارم کے ذمہ داری ہوگی۔  
یہ صیغہ بابت فارمسٹ فارم سے جواب طلبی بھی ہو چکی ہے۔ (جواب طلبی لف ۲۱-۲۲)

(۱۸) یہ کہ لائم ٹوڑی سپر لیمیا زمین میں مارنٹ سے تھری کا ماسج زمین کے نقصان سے بچنے کے لیے مکمل طور پر لگایا گیا۔  
لیمیا زمین ٹوڑی سپر لیمیا ورک آرڈر نمبر 724 جون 26<sup>10</sup>/1999 کو لگایا گیا (جسکی عملی نقل لف جواب ۲۱-۲۲)۔  
قیمت زمین کے بارے میں 2554 میں لیا گیا۔ زمینوں پر قبضہ نمرات 7 میں زمین کے  
انکوائری کے ذمہ داری تھی۔ نہ، زمین کی - اس میں فروی کو مقصور وار ٹھیکرانا بعد از الفاف ہے۔

(۱۹) یہ کہ لائم ٹوڑی سپر لیمیا زمین میں نقصان کے بہ وقت جیسرین JFMC نے فیہ DFo صاحب سیکرٹریم کو معاہدہ  
شقی 7 جی کے تحت مختصر کی طور پر آٹاہ کیا تھا۔ یہ فارمسٹ فارم اور اسی زمین نے JFMC کے سیکرٹری ملزبان  
کے خلاف بہ وقت کارروائی تھی۔ یہ نسبت انکوائری اس زمین کے بہ وقت شفاف انکوائری تاکہ کے  
ملزبان کو الفاف کے ٹھیکرے میں لگایا گیا۔ جہاں کہتے جیسرین JFMC کے قبضے ملزم نامزدگی کا  
تعلق ہے۔ وہ اس وجہ سے نہیں لگتا تھا۔ کہ معاہدہ کے اد سے JFMC نے خود ہی ملزبان کے نسبت زمین  
کا - اور ان کے خلاف عداوت میں لگائی تھی اور اسے ملزم معلوم نہ ہوتے اور JFMC برو کے معاہدہ  
بہ وقت اطلاع نہ دیتی۔ تو زمین صورت میں JFMC کے جیسرین کو بلور ملزم نامزد کرنا ضروری تھا  
لیکن اس صورت میں وہ گواہ استغاثہ ہے۔ نہ کہ ملزم

مذکورہ پر بعد میں تین سطحوں پر جدا جدا اس کے نقشوں کی آگے۔ یہ تیار اور جانن بہا کے  
عدالت صاحب دفع 96 فارمسٹ آرڈر نمبر 2002 نقشوں مکمل کر کے جانن نمبر 15، 16، 17 دائرہ عدالت شدہ ہے  
اسیے بعد DFo سیکرٹری نے نقشوں کے اور احضار کر کے زمینداروں کو آگے اپنی آگے دہا کرنے  
حقائق معلوم کرنے والی کمیٹی (Fact Finding Committee) کے ذریعے حقائق معلوم کرنے کیلئے  
تہنیتیوں کے نگر کسی بھی نقشوں میں یہ ثابت نہ ہو سکتا۔ کہ ملزبان قبضے کے خلاف شرح کردہ  
سری کارروائی غیر قانونی یا JFMC ایکٹو مینٹ کے خلاف ہے اور یہ کسی بھی  
انکوائری میں یہ ثابت نہ ہو سکتا۔ کہ اس نقصان قبضے میں JFMC ملوث ہے۔

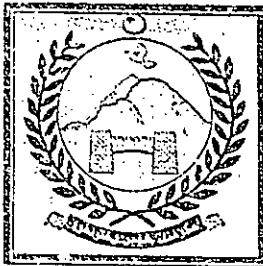
صاحب عالی  
مذکورہ بالا حقائق سے واضح ہے کہ زمین کے خلاف عادی کردہ انکوائری کے بنیاد میں۔ یہ ملزبان قبضے میں  
اس کے بنیاد سے تیار شرح کے زمینداروں کے بنیاد پر انکوائری کے بنیاد پر نام لکھو۔ ہم دردم سے سری ملزم ملزبان کے  
الفاظ

تاریخ 29-12-2011

ATTESTED

12  
29/12/2011





GOVERNMENT OF KHYBER PAKHTUNKHWA  
ENVIRONMENT DEPARTMENT

(21)

E

**SHOW CAUSE NOTICE**

I, Ghulam Dastgir Akhtar, Chief Secretary, Khyber Pakhtunkhwa as Competent Authority, under Removal from Service (Special Powers) Ordinance, 2000, do hereby serve you, Mr. Umer Sharif, Forester (BPS-09) Forest Department, as follows:

2. (i) that consequent upon the completion of enquiry conducted against you by the Enquiry Officer, for which you were given opportunity of hearing vide office communication No.SO(Estt)Env/1-50(96)/2k10/32-17-48 dated 25/10/2011; and
- (ii) on going through the findings and recommendations of the Enquiry Officer, the material on record and other connected papers, including your defence before the Enquiry Officer.

I am satisfied that you have committed the following act/omission specified in Section-3 of the said Ordinance.

b. Inefficiency.

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of Stoppage of four  
annual increments under Section-3 of said Ordinance.

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

4. If no reply to this notice is received within seven days or not more than 15-days of its delivery, it shall be presumed that you have no defence to put in and in that case, an ex-parte action shall be taken against you.

5. A copy of the findings of the Enquiry Officer/Inquiry Committee is enclosed.

*o/s*  
*[Signature]*  
*13/3/2012*

*[Signature]*  
8.3.12  
(GHULAM/DASTGIR AKHTAR)  
CHIEF SECRETARY,  
KHYBER PAKHTUNKHWA

*[Signature]*  
**ATTESTED**

عنوان: شوکا ز نوٹس رجواب (Through Proper Channel)

جناب عالی:

بجوالہ شوکا ز نوٹس نمبر So (Estt) Env/1-50 مجریہ 12/3/2012 وصول کردہ مورخہ 13/3/2012  
596/2012/705/222

مذکورہ غرض ہے کہ فاضل انکواری آفیسر صاحب نے اپنے رپورٹ کے خلاصہ (Conclusion) میں واضح طور پر ذکر کیا ہے کہ  
میں نے JFMC ایگریمنٹ سیکشن 7 (ب) کے تحت جو قانونی کارروائی عمل میں لائی تھی ابتدائی طور پر وہ درست اور مناسب تھی اور  
یہ نتائج اخذ کیے ہیں کہ:

1: (Misconduct) کا فرد جرم ثابت نہیں ہوتا.

2: (In-Efficiency) کا فرد جرم انتہائی کم ترین درجے کا ثابت ہوتا ہے

درج بالا نتیجہ نمبر 2: یعنی نا اہلی کے بابت انکواری آفیسر صاحب کے اپنے ہی تصور میں بھی اختلاف پایا جاتا ہے۔ کیونکہ وہ ایک طرف  
تو قائل ہو چکے ہیں کہ ملزمان سرکاری اہلکاروں نے جو بھی قانونی کارروائی عمل میں لائی تھی وہ ابتدائی طور پر بالکل درست اور مناسب  
تھی مگر ساتھ ساتھ یہ نتیجہ بھی اخذ کرتے ہیں کہ کم ترین درجے میں نا اہلی کا جرم ثابت ہوتا ہے جو کہ اپنے ہی بیان میں تضاد ہے۔  
جناب عالی:

چونکہ انکواری آفیسر صاحب یہ تسلیم کر چکے ہیں کہ میں نے بمطابق موقع ابتدائی طور پر جو بھی قانونی کارروائی عمل میں لائی تھی وہ  
درست اور مناسب تھی لہذا فاضل انکواری آفیسر صاحب کی سفارشات اس کی اپنی ہی اخذ کردہ نتائج کے برعکس ہیں۔  
لہذا عاجزانہ طور پر آپ سے استدعا کی جاتی ہے کہ چونکہ انکواری آفیسر صاحب یہ تسلیم کر چکے ہیں کہ میں نے جو کارروائی عمل میں لائی  
تھی وہ بروقت اور مناسب تھی لہذا مجھے تمام الزامات اور فرد جرم سے باعزت طور پر بری کیا جائے۔

جناب عالی مزید وضاحت کیلئے میں ذاتی شنوائی میں بھی پیش ہونا چاہتا ہوں

العارض

13/3/2012 عمر شریف فارم سٹر ہزارہ ٹرانکل فارم سٹ ڈویژن بلگرام

ATTESTED

To

23

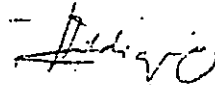
The DFO, NTFD  
at Battagram.

Subject: Reply of Mr. Ulman Sharif fr to the Show Cause notice

Meml:


Reference Captioned Subject,

Please enclosed find herewith the reply of  
Mr. Ulman Sharif fr to the Subject Show cause notice;  
for onward Submission to the office of Secretary Envtl.  
Govt, of KP Peshawar, Envtl, Deptt. please.

- 

SPTO Allai

dt, 13-3-2012.

  
**ATTESTED**

24 G  
ANNEXURE

ENQUIRY REPORT ON CHARGES LEVELLED AGAINST M/S MUQTADA SHAH SDFO, AND MR.UMAR SHARIF FORESTER

PREAMBLE:-

In Hazara Forest Tribal Division of Battagram District, the Laam Godipair Joint Forest Management Committee (JFMC) was authorized under an agreement to undertake the harvesting of marked trees measuring 287 trees=87562-cft (standing volume).

In the felling coupe of Laam Godipair C-I 109 trees having 13954 cft (standing volume) were illicitly felled as alleged by the local staff and management of the JFMC by four local persons and against them Damage Reports Book No.91/6 dated 29-10-2006 and 92/6 dated 29-10-2006 were issued. (Annex-I).

Against the illicitly felled trees, 597 scants measuring 2415-cft were also apprehended and given in the custody of JFMC. Accused persons apprehended on spot pleaded guilty, but refused to pay fine and compensation etc: as per Forest Department schedule of fine and compensation.

The SDFO Mr.Muqtada Shah, the then incharge Allai Forest Sub-Division vide his letter No.97/Allai dated 23-11-2006 recommended the case to the District Forest Officer Hazara Tribal Forest Division. – Battagram for prosecution against the accused persons under agreement clause-7(b) (Annex-II).

The DFO Hazara Tribal Forest Division vide his letter No.1052/G, dated 01-12-2006, allowed prosecution of the case as per recommendation of the Sub Divisional Forest Officer (Annex-III).

However, during transportation of timber the SDFO noticed the JFMC has affixed their property and hammer make on the seized timber in their custody. So immediately explanation of JFMC was called on 02-12-2006 by the SDFO with copy to DFO that the timber is bearing the property mark of the JFMC and that the JFMC has tried to erase the same from the timber (Annex-IV).

  
ATTESTED

85

On the basis of report of SDFO Allai against the Chairman JFMC, the DFO Hazara Tribal Forest Division Battagram issued a show cause notice to the chairman JFMC, as to why action may not be taken for violation of agreement (Annex-V). After founding his reply unsatisfactory, the DFO vide his letter No.2382/G dated 08-5-2007 recommended Conservator of Forests for action against JFMC under clause-7(a) of the agreement which is reproduced below:-

*7(a) "That in the event of the JFMC, their agent(s) or labour deliberately felling a tree over 6 inches diameter which they are not entitled to fell under the terms of this agreement, the Conservator of Forests may impose fine not exceeding five times the price of the trees according to the price on the basis of outturn on the prevailing rates in the nearby market. Such an action of Forest Department shall not confer on the JFMC any right of ownership. The illegal timber so obtained will be separately recorded, transported and sold by JFMC in its respective timber market and royalty paid to Forest Department thereof. For a tree under 6 inches diameter, the JFMC shall be liable to pay price at the sale rates plus penalty not exceeding Rs.1000.00 per tree*

*The amount of fine on this account shall be paid by the JFMC within 90-days of the receipt of the order, and in case of default, shall pay 1.2% of compound interest per month on unpaid amount, provided that the case is not sub judice with the designated arbitrator".*

On the recommendation of Divisional Forest Officer Hazara Tribal Battagram, the Conservator of Forest vide his office order No.119 dated 30-6-2007 imposed a fine of Rs.75,12,800/- against the JFMC under the provision of agreement clause-7(a). (Annex-VI).

The DFO also sent charge sheets against Syed Muqtada Shah, SDFO and Mr.Umar Sharif Forester for inter-alia not taking legal action as pre provision of JFMC agreement against JFMC/Forest offenders and also for not nominating the JFMC for the alleged damage in the forest i.e. Laam Godipair Compartment No.1:

The Competent Authority, Chief Secretary, in this case appointed the following Enquiry Committee under Section-5 of Special Power Ordinance 2000, to scrutinize the conduct of the concerned accused officer and official:

(A) STATEMENT OF ALLEGATIONS AGAINST SYED MUQTADA SHAH SDFO

That you while posted as SDFO Allai, Forest Sub-Division of Hazara Tribal Forest Division battagram committed the following irregularities

- i). that being SDFO Allai, you remained ignorant about the damages and did not take legal action against the offenders/JFMC Laam Godipair under the provision of agreement.
- ii). That 597 Scants=2415-cft timber of Fir species stated to have been apprehended and recovered from Laam Godipair forests under the control of Chairman JFMC Laam Godipair for Laam Compartment No.I and Godipair Compartment No.I but you did not make the JFMC responsible for the said damages.
- iii). That the timber so apprehended bearing carving property marks of JFMC Laam Godipair as well as its Hammer Marks clearly show that the timber was illegally obtained by the JFMC Laam Godipair with the intention of its admixture in its legal timber but later on shown as seized by you to provide protection to the JFMC for its illegal forest cutting.
- iv). That illegal cutting of 109 No. of Fir/Spruce trees=13954-cft (standing volume) shown below was reported in Godipair Guzara Compartment No.I and Damage Report No. 91 & 92/6 dated 29-10-2006 were issued but you did not nominate the Chairman JFMC as accused.

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1-Damage Report No.91/6 dated 29.10.2006				
Species	Dia	No. of trees	Standing (cft)	Volume
Fir/Spruce	27	06	948	
	28	05	840	
	29	04	756	
	30	02	402	
	34	01	262	
	16	03	153	
	19	04	296	
	21	03	279	
	22	06	612	
	23	03	336	
	24	05	620	
	25	09	1215	
26	03	438		
Total		54	7157	

2- Damage Report No.92/6 10/2006				
Species	Dia	No. of trees	Standing (cft)	Volume
	26	03	438	
	27	05	790	
	28	04	672	
	29	01	189	
	30	01	201	
	31	01	212	
	33	01	249	
	17	02	116	
	19	02	92	
	20	04	332	
	21	04	372	
	22	10	1020	
	23	05	560	
	24	06	744	
	25	06	810	
Total		109	13954	

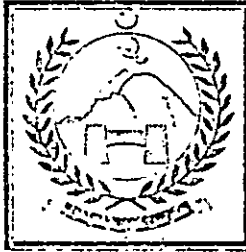
Annex = M  
Registered

(48)

H

~~ANNEXURE~~

38



GOVERNMENT OF KHYBER PAKHTUNKHWA

ENVIRONMENT DEPARTMENT

NO.50(Estt)Env/1-50(96)2K9 865

Dated Pesh: 26<sup>th</sup> March, 2012.


To

Mr. Umer Sharif,  
Forester (BPS-09).

C/O  
Divisional Forest Officer,  
Bactygramma, Forest Division.

SUBJECT: WARNING

In compliance to the orders passed by Chief Secretary Khyber Pakhtunkhwa, Competent Authority in disciplinary case, you are hereby warned to be careful in future.

  
(ASHFAQ KHAN)  
SECTION OFFICER (ESTT)


Encl: As Above.

Endst: No. and date even.

Copy is forwarded to PS to Secretary Environment Department.

SECTION OFFICER (ESTT)









GOVERNMENT OF KHYBER PAKHTUNKHWA  
ENVIRONMENT DEPARTMENT

Dated Pesh: 16<sup>th</sup> August, 2012

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J

ANNEXURE

NOTIFICATION

No.SO(Estt)Envt/1-50(36)/2k6: The Competent Authority is pleased to appoint an Enquiry Officer of Mr. Muhammad Kabir Afridi, PSC SG. BS-18, Deputy Secretary Higher Education Department to conduct inquiry against Mr. Muqtada Shah, Sub Divisional Forest Officer (BS-17), Forest Department and Mr. Umer Sharif, Forester (BS-09) into the charges/allegations levelled in the enclosed Charge Sheets and Statement of Allegations, under section-5(1) of the Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011.

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

Sd/-  
CHIEF MINISTER  
KHYBER PAKHTUNKHWA

Endst: No. SO(Estt)Envt/1-50(36)/2k6: 1067-61/eva. Dated 16<sup>th</sup> August, 2012.

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

1. Mr. Mr. Muhammad Kabir Afridi, PSC SG. BS-18, Deputy Secretary Higher Education Department
2. Mr. Muqtada Shah, Sub Divisional Forest Officer (BS-17 C/O CCF-I, Khyber Pakhtunkhwa with the direction to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer for the purpose of inquiry proceedings.
3. Mr. Umer Sharif, Forester (BS-09) C/O CCF-I, Khyber Pakhtunkhwa.

(ASHFAQ KHAN)  
SECTION OFFICER (ESTT)

Endst: No. and date even. 1067-65

Copy is forwarded for information and necessary action to:-

1. Chief Conservator of Forests-I, Khyber Pakhtunkhwa with the direction to detail a departmental representative well conversant with the facts of the case alongwith relevant record to assist the Enquiry Officer during the inquiry proceedings.
2. PS to Secretary Environment Department.
3. Master file.
4. Office order file.

SECTION OFFICER (ESTT)

D.No. 586

24/8/2012

ES

Hc

24/8

Office of the Chief Conservator of Forests  
Khyber Pakhtunkhwa, Peshawar

Diary No. 192

Dated 24/8

ATTESTED

1004/13 Umer Sharif

2008 S C M R 563

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J. Muhammad Moosa K. Leghari and Ch. Ejaz Yousaf, JJ

SUO MOTU CASE NO.21 OF 2007 In the matter of

C.M.A. No.3034 and Suo Motu Case No.21 of 2007, decided on 2nd January, 2008.

(Clash of Lawyers, media persons and members of the Civil Society with Police/Law enforcing agencies outside Supreme Court Building and in front of Election Commission of Pakistan on 29-9-2007).

**Removal from Service (Special Powers) Ordinance (XVII of 2000)---**

---S. 4---Government Servants (Efficiency and Discipline) Rules, 1973, R.5(1)---ESTACODE (2000 Edition), Sr. No.85(2)(b) and Sr. No.126---Constitution of Pakistan (1973), Art.184(3)---Suo motu proceedings---Suspension of civil servants---Expiry of three months---Effect---Supreme Court, in exercise of suo motu powers, directed the authorities to initiate disciplinary proceedings against civil servants who were put under suspension---Despite lapse of three months neither the proceedings were completed nor the matter was placed before competent authority for approval to continue suspension---Validity---Continuation of forced leave or suspension beyond a period of three months, according to Sr. No.85(2)(b) of ESTACODE, 2000 Edition, again required approval of the "authority" on expiry of period of three months---Government servant who was placed under suspension or forced to proceed on leave would be deemed to have been reinstated unless before expiry of period of three months approval of "authority" to the Government servant continuing to be under suspension or on leave was obtained---No such approval of competent authority having been obtained, such suspension order could not continue any further---Disciplinary proceedings, under Sr. No.126 of ESTACODE (2000 Edition), against Government servant placed under suspension, should have been finalized within two months of the date of suspension---If in any case it was not possible to finalize departmental proceedings against Government servant within two months, the matter should have been reported to Secretary Establishment giving reasons for not completing the proceedings---Similar provision was stated in R.5(1) of Government Servants (Efficiency and Discipline) Rules, 1973---Supreme Court directed the concerned authorities to examine case of civil servants in the light of relevant provisions of law and to take appropriate action---Miscellaneous application was disposed of accordingly.

Mian Munawar-ud-Din v. Federation of Pakistan PLD 1979 Lah. 699 and Nazir Ahmed v. Pakistan and 11 others PLD 1970 SC 453 ref.

Mujeeb-ur-Rehman, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Applicants (S. Morawet Ali Shah, I.-G. and Muhammad Naeem Khan, S.S.P.)

Raja M. Bashir, Advocate Supreme Court for (Muhammad Ali, D.C.)

Malik Muhammad Qayyum, Attorney-General for Pakistan, Ms. Nahida Mehboob Ellahi, D.A.-G. Qazi M. Amin, Additional Advocate-General Punjab, Raja Saeed Akram, A.A.-G. Punjab and Ms. Viqar-un-Zeb, J.S. M/o Interior on Court notice.

## ORDER

This C.M.A. has been filed for setting aside suspension order, dated 1-10-2007 passed by Cabinet Secretariat, Establishment Division and Ministry of Interior whereby Capt. (Retd.) S. Morawet Ali Shah, Inspector-General of Police, Islamabad, Mr. Muhammad Naeem Khan, Senior Superintendent of Police, Islamabad and Ch. Muhammad Ali, Deputy Commissioner were placed under suspension with immediate effect and until further orders in terms of section 4 of the Removal from Service (Special Powers) Ordinance, 2000.

2. Briefly stated facts leading to the filing of instant application are that on 30-9-2007 serious clash took place between lawyers, media persons and members of the civil society with police contingent/law enforcing agencies when they intended to lodge a protest before Election Commission of Pakistan where the nomination papers of General Pervez Musharraf and others for the election of the President of Islamic Republic of Pakistan were being scrutinized. During the above incident lawyers and the media persons were allegedly beaten up and injured as they wanted to move towards the office of Election Commission of Pakistan for registration of their protest. There were also reports that the Minister of State for Information Mr. Tariq Azeem was also manhandled in front of the office of Election Commission of Pakistan. Similarly Dr. Farooq Sattar, M.N.A. met with the same treatment in front of Federal Government Services Hospital, Islamabad. The matter was brought to the notice of the then Chief Justice of Pakistan who issued suo motu notice to the Secretary, Interior Government of Pakistan, Inspector-General of Police, Deputy Commissioner/Duty Magistrate and Senior Superintendent of Police, Islamabad. The matter came up for hearing on 1-10-2007 when the Secretary Interior was directed to place Morawet Ali Shah, Inspector-General of Police, Islamabad, Muhammad Naeem Khan, S.S.P. Islamabad and Ch. Muhammad Ali, Deputy Commissioner, Islamabad under suspension forthwith. Accordingly, all the above three officers were placed under suspension vide Notifications No.2/14/2007/D.1, dated 1st October, 2007 and No.2/47/87-ICT-I, dated 1st October, 2007 and the same were made part of the order of this Court.

3. We have heard Mr. Mujeeb-ur-Rehman, learned Advocate Supreme Court and Raja M. Bashir, learned Advocate Supreme Court for the applicants as well as Malik Muhammad Qayyum, learned Attorney-General for Pakistan at length and have gone through the record and proceedings of the case in minute particulars.

4. Messrs Mujeeb-ur-Rehman, learned Advocate Supreme Court and Raja M. Bashir, learned Advocate Supreme Court contended that no opportunity of hearing was provided to the applicants which being the basic principle of natural justice was violated. It is further contended that while taking impugned action neither any show-cause notice was issued nor statement of allegations was provided to the applicants. The learned counsel referred to S1. No.126 of the ESTACODE (2000 Edition page 622), which envisages that disciplinary proceedings against Government servants placed under the suspension should be finalized within two months of the date of suspension and if in any case it is not possible to finalize departmental proceedings against the Government servant within said time, the matter should be reported to the Secretary Establishment giving reasons for not completing the proceedings. Then it is for the Secretary Establishment to scrutinize the case and if he finds no

justification to continue the proceedings he may recommend the competent authority to cancel the order of suspension.

5. Malik Muhammad Qayyum, learned Attorney-General for Pakistan placed on record concise statement on behalf of Ministry of Interior and stated that in this case no proceedings of any sort have been commenced. According to him, in the instant case, the Ministry of Interior had constituted a fact finding committee for the incident of 30-9-2007. However, after suo motu notice was taken by this Court, the Inquiry Committee delayed its proceedings. He further stated that Ministry of Interior has no objection if the suspension orders are recalled.

6. Ms. Viqar-un-Zeb, Joint Secretary Ministry of Interior also confirmed that no departmental proceedings of any sort have been commenced against above mentioned officers.

7. According to Sl. No.85(2)(b) of the ESTACODE (2000 Edition, page 567), since continuation of forced leave or suspension beyond a period of three months again requires the approval of the "authority", on expiry of the said period of three months, the Government servant who has been placed under suspension or forced to proceed on leave would be deemed to have been reinstated unless before the expiry of the said period the approval of the "authority" to the Government servant continuing to be under suspension or on leave has been obtained. Since no such approval of the competent authority was obtained in the present case, the suspension order cannot continue any further. Moreover, Sl. No.126 of the ESTACODE (2000 Edition, page 622), provides that disciplinary proceedings against Government servants placed under suspension should be finalized within two months of the date of suspension and if in any case it is not possible to finalize departmental proceedings against the Government servant within such time, the matter should be reported to the Secretary Establishment giving reasons for not completing the proceedings. Rule 5(1) of the Government Servant (Efficiency and Discipline) Rules, 1973 also contains similar provision. It may be advantageous to reproduce the same as under:--

"5.(1) In case where a Government servant is accused of subversion, corruption or misconduct, the Authorized Officer may require him to proceed on leave or, with the approval of the authority, suspend him, provided that any continuation of such leave or suspension shall require approval of the authority after every three months."

The plea raised by the learned counsel for the applicants also finds support from the observations made by learned High Court in the case Mian Munawar-ud-Din v. Federation of Pakistan PLD 1979 Lah. 699, relevant portion whereof reads as under:--

"It may further be noted that according to rule 5(1) reproduced above, any continuation of suspension requires approval of the authority after every three months. This provision also makes it further clear that not only the contemplated suspension but the continuation must be preceded by approval. This view is further supported by the official interpretation of the Department, as given in Office Memo. No.7/2/75-DI, dated 22nd February, 1975, issued by the Establishment Division of the Cabinet Secretariat, Government of Pakistan. The relevant portion may be reproduced with advantage:--

(a) Since under rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973, the "Authorised Officer" can only suspend a Government servant after obtaining the approval of the "authority", on the basis of principle embodied in section 25 of the General Clauses Act,

1897, the "Authorised Officer would be competent to reinstate the Government servant only with the approval of the authority".

(b) Since continuation of forced leave or suspension beyond a period of three months again requires the approval of the "authority" it would appear that on expiry of the said period of three months, the Government servant who has been placed under suspension or forced to proceed on leave would be deemed to have been reinstated unless before the expiry of the said period the approval of the "authority" to the Government servant continuing to be under suspension or on leave has been obtained."

The above judgment follows the law laid down by this Court in the case of Nazir Ahmed v. Pakistan and 11 others PLD 1970.SC 453.

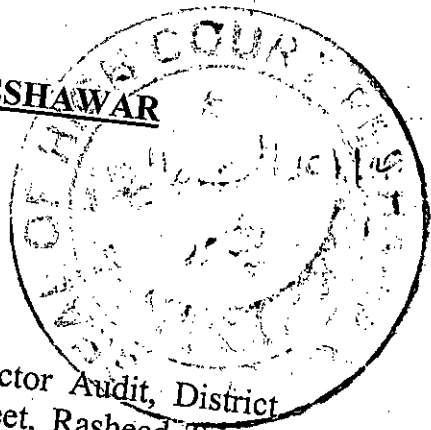
8. In view of above, we direct the concerned authorities to examine the case of the applicants in the light of the above provisions of law and take appropriate action without being influenced by the observations/orders passed by this Court in the present case. Accordingly, C.M.A. 3034 of 2007 stands disposed of.

M.H./S-1/SC

Order accordingly.

1022/13

**IN THE PESHAWAR HIGH COURT PESHAWAR**



W. P No. 1685/2013

Dr. Akbar Ali Khan S/O Fazl-e-Rehmani, Director Audit, District  
Govt Peshawar R/O House No 21, Siddiqui Street, Rasheed Town,  
Gulbahar No 3, Peshawar City.

VERSUS

(Petitioner)

- U No  
3692/13
1. The Federation of Pakistan through its Secretary Establishment Division, Pak Secretariat, Islamabad.
  2. Chairman Central Selection Board / Chairman Public Service Commission, Federal Public Service Commission Agha Khan Road, F-5/1, Islamabad.
  3. The Auditor General of Pakistan (AGP), Constitutional Avenue, Islamabad.
  4. The Deputy Auditor General, (Administration & Coordination), Office of Auditor General of Pakistan, Constitutional Avenue, Islamabad.
  5. Director General, Federal Audit Benevolent Fund Building Zero Point, Islamabad.
  6. Director (Administration), Office of Auditor General of Pakistan Constitutional Avenue, Islamabad.
  7. Director General (AP & SS) Office of the Auditor General of Pakistan, Constitutional Avenue, Islamabad.

(Respondents)

**WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC  
OF PAKISTAN, 1973**

Prayer in Writ Petition:

On acceptance of this Writ Petition, an appropriate writ may please be issued:-

- (i) Declaring that the petitioner being an Officer of the Pakistan Audit and Accounts Service (BPS-19) is fit and eligible for promotion to the post of BPS-20, the decision of the Central Selection Board (CSB) whereby the Petitioner has been denied promotion for the reasons of non availability of the Performance Evaluation Reports (PERs) and pendency of Departmental Inquiry against him, is illegal, unlawful without lawful authority, and of no legal effect, Respondents are, therefore, bound to submit the PERs

**FILED TODAY**

Deputy Registrar

14 JUN 2013

**ATTESTED**

EXAMINER  
Peshawar High Court

11 FEB 2015

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**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR.**  
**JUDICIAL DEPARTMENT**

**W.P. 1685-P of 2013.**

**JUDGMENT**

Date of hearing. 11.12.2013

Petitioner (Dr. Akbar Ali Shah) by Mr. Ijaz Anwar,  
advocate.

Respondents (Federation of Pakistan through Secretary  
Establishment Division, Pak Secretariat,  
Islamabad etc) by *Mr. Musarrat Hilali O.A.G.*

**MUSARRAT HILALI, J.** Through instant petition,  
the petitioner seeks issuance of an appropriate writ  
directing the respondents to:-

- anwar*
- (i) Declare that the petitioner being an  
Officer of the Pakistan Audit and Accounts  
Service (BPS-19) is fit and eligible for  
promotion to the post of BPS-20, the  
decision of the Central Selection Board  
whereby the petitioner has been denied  
promotion due to non-availability of the  
Performance Evaluation Reports (PERs)  
and pendency of Departmental Inquiry  
against him, is illegal, unlawful, without  
lawful authority and of no legal effect,  
respondents are, therefore, bound to  
submit the PERs of the petitioner before  
the Central Selection Board to allow him  
promotion to BPS-20 in order of seniority

**ATTESTED**

**EXAMINER**  
Peshawar High Court

11 FEB 2015

with effect from the date when his colleagues/junior in BPS-19 were promoted with all arrears and benefits.

- (ii) Declare that the petitioner having once been cleared by the Inquiry Officer of all the charges in the departmental proceedings/inquiry, the letter No.233-Dir(A)/11-263/Discip. Dated 28.5.2013 whereby departmental proceedings have been initiated against the petitioner, is malafide in law, a concerted effort on the part of respondents to vitiate the petitioner's rights and deprive him of his promotion to BPS-20 on the pretext of pendency of departmental proceedings, the same has thus no legal effect and the departmental inquiry so initiated is uncalled for, malafide and, therefore, to be struck down.
- (iii) The respondents may please be directed to immediately convene the meeting of CSB and to consider the petitioner's case for promotion to BPS-20 alongwith all consequential benefits.

2. Background of the case is that the petitioner being an Officer of Pakistan Audit & Accounts Service joined the Civil Services of the Government of Pakistan in the year, 1992 after qualifying the Central Superior Services Examination. However, on 6.8.2012, he was

**ATTESTED**

**EXAMINER**  
Peshawar High Court.

11 FEB 2015



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charge sheeted and respondent No.5 appointed an Inquiry Officer to conduct inquiry against him. On conclusion of inquiry, the petitioner was absolved of all the charges leveled against him. Meanwhile, the case of petitioner for promotion to BPS-20 alongwith other Officers was under process when he received a letter from respondent No.6 asking for the submission of Performance Evaluation Reports (PERs) for the period from 1.1.2004 to 31.12.2004, 1.1.2005 to 31.12.2005, 1.1.2006 to 31.12.2006, 1.1.2011 to 4.9.2011 with the remarks that the same were urgently required to process the petitioner's case to the next higher scale. In response to the aforementioned letter, the Director General (Audit) and Deputy Director (Audit) addressed two letters dated 6.2.2013 and 8.2.2013, respectively to respondent No.6 whereby the Performance Evaluation Reports of the petitioner in respect of the above noted period were enclosed. Thereafter, the petitioner preferred a Representation to respondent No.4 for his promotion to BPS-20, however, the petitioner was shocked when he received a letter from respondent No.6 whereby it was stated that his case for promotion has been deferred on the recommendation of the Central Selection Board due to

*main***ATTESTED****EXAMINER**

Eastward High Court

11 FEB 2015

incomplete PERs as well as pendency of departmental inquiry against him. The petitioner was of the view that the PERs of the requisite period and inquiry report had reached the office of respondent No.3 prior to the meeting of CSB, however, in order to seek clarification, he addressed a letter to the Inquiry Officer seeking the date of submission of inquiry report to respondent No.4, which was replied with the remark that the inquiry report was sent to respondent No.4 vide letter dated 3.12.2012. In reply, the petitioner submitted a letter dated 30.4.2013 to respondent No.6 whereby the two objections regarding non-receipt of PERs and the conclusion and submission of the inquiry report to respondent No.4 by the Inquiry Officer were clarified. In response to the same, respondent No.6 sent a letter dated 28.5.2013 to petitioner, wherein, it was stated that his PERs were received on 10.2.2013 being Sunday and the meeting of Central Selection Board was held on 11<sup>th</sup> to 14<sup>th</sup> and 27<sup>th</sup> February, 2013. Resultantly, through Notification dated 28.5.2013 issued by respondent No.6, the petitioner has been denied promotion while beside others, an Officer allegedly junior to him in terms of seniority, has been promoted to BPS-20. Feeling aggrieved, the petitioner preferred a

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**ATTESTED**EXAMINER  
Sashawar High Court.

11 FEB 2015

Representation to respondent No.3, which is still pending. It is, however, to be mentioned here that respondent No.4 has again initiated inquiry against the petitioner while rejecting the earlier report of Inquiry Officer, wherein, he has been charge sheeted and respondent No.7 has been appointed as Inquiry Officer, hence necessitated the filing of instant writ petition.

3. Learned counsel for petitioner contended that the respondents have not treated the petitioner as per law and rules governing promotion, hence the rights guaranteed by the Constitution have been infringed; that withholding promotion of the petitioner due to pendency of departmental proceedings is not in accordance with law and rules as the allegations leveled against him, have not been proved through formal inquiry ordered by respondent No.4; that the excellent career of the petitioner was ignored and his synopses of PERs were rendered useless for no reason much less plausible; that colleagues of the petitioner and his junior have been promoted to BPS-20 but the petitioner has been denied the same benefit, which is in clear violation of tentative seniority list of Pakistan Audit and Accounts Service Officers in BPS-19; that case of the

*anwar*

**ATTESTED**

**EXAMINER**  
Peshawar High Court

11 FEB 2015

benefit to others, therefore, the impugned notifications are in accordance with law to which no exception could be taken.

We have heard learned counsel for the parties and gone through the record available before us.

5. Before proceeding further and to appreciate the contentions raised by learned counsel for the parties, it would be worthwhile to discuss here that the case of the petitioner was considered by the Central Selection Board in its meeting held on 11-14<sup>th</sup> & 27<sup>th</sup> February, 2013 and was deferred due to incomplete PERs and pending inquiry against him. Under Section 4 (b) of Service Tribunals Act, 1973 (Federal) the decision of Departmental Authority cannot be challenged in appeal before the Service Tribunal, if such decision relates to fitness or otherwise of a person's promotion to a higher grade, hence the bar contained in Article 212 of the Constitution is not attracted.

*man*

6. Now coming to the merits of the case, the plea of the petitioner is that he is an Officer in BPS-19, however, his colleagues and junior to him have been allowed promotion in BPS-20 while he has been refused the same benefit due to his incomplete

**ATTESTED**  
EXAMINER  
Peshawar High Court.  
17 FEB 2015

Performance Evaluation Reports and pendency of departmental proceedings against him. 117

7. Regarding the first objection raised by respondents, as per record the PERs of petitioner pertaining to the requisite period were received in the office of respondent No.6 on 10.2.2013 while meeting of the Central Selection Board was to be held on 11<sup>th</sup> to 14<sup>th</sup> and 27<sup>th</sup> February, 2013, therefore, the same were not considered on the ground that disciplinary case was still under process against him. It is settled law that an accused person is always innocent until and unless the inquiry or proceeding is concluded and he is proved guilty.

8. The record is suggestive of the fact that the petitioner has been denied promotion on the ground of departmental proceedings being pending against him. The inquiry report dated 3.12.2012 shows that the petitioner was exonerated of all the charges against him and the same was intimated to respondent No.4 through letter dated 17.4.2013, however, the inquiry was initiated against the petitioner once again. No doubt, the department can re-initiate an inquiry in case of grave lacuna and procedural defect but the record is silent about such fact, which create doubts as to why another

**ATTESTED**

EXAMINER  
Peshawar High Court.

11 FEB 2015

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inquiry has been initiated against the petitioner. Moreover, it is not clear as in how much time the respondents would complete the proceedings and what, if the respondents are not satisfied with the second inquiry, whether they would initiate a third inquiry on the same grounds and would keep the same as a hanging sword on the head of petitioner. It is settled law that once an inquiry is initiated, the same must be concluded within specific period. It is also established principle of law that a civil servant cannot claim promotion as of right but it is an inalienable right to every civil servant that he be considered for promotion alongwith his back benefits, if he fulfills eligibility criteria.

9. The record further reveals that in the initial inquiry report, the Inquiry Officer has exonerated the petitioner from the charges leveled against him while the subsequent inquiry is under process, hence he cannot be punished departmentally for a crime which ultimately, he may not be found guilty of. Thus, keeping the petitioner for a long period in facing certain inquiries and without concluding the proceedings for an indefinite period smacks arbitrariness and smells malafide on the parts of respondents. In any case,

**ATTESTED**

**EXAMINER**  
Peshawar High Court

11 FEB 2015

pendency of inquiry against civil servant cannot be a hurdle in way of his promotion, hence the action taken is nullity in the eyes of law.

Keeping in view the above facts and circumstances, particularly the ratio laid down, we admit and allow this writ petition with direction to respondents to convene the meeting of Central Selection Board and consider the petitioner's case for promotion alongwith all consequential reliefs.

Sd, Mian Fasih-ul-Mulk - J

Sd, Musarrat Hilali - J

Announced:  
11.12.2013.

CERTIFIED TO BE TRUE COPY  
11 FEB 2015

\*Sadiq Shah\*

officer  
13/11/2014

17623

No. ....  
Date of Presentation of Application 21/1/15  
No of Pages 11P  
Copying fee /  
Urgent Fee /  
Total 22:00  
Date of Preparation of Copy 17-02-15  
Date Given For Delivery 11/2/15  
Date of Delivery of Copy 16/3/15  
Received By Sadiq Shah







From the perusal of the documents only placed by the appellant it appears that quantum of punishment is of the highest degree of removing the appellant from service. The respondents failed to substantiate their contention by placing any document but on the other side the appellant has been able to make out a case that the inquiry was not held in accordance with law as submitted by him above. Keeping in view the above discussion we hold that imposition of penalty on the basis of defective inquiry was not justified. The appeal is hereby accepted, the impugned order dated 23-1-82 is hereby set aside and the appellant is reinstated in service. This order will be without prejudice to the discretion of the respondent to initiate inquiry proceedings de novo within a period of three months and the question of back-benefits shall depend upon the result of de novo inquiry”.

5. A careful perusal of the operative portion of the judgment impugned as reproduced hereinabove would indicate that the question of limitation has been dilated upon and decided. It is well established by now that sufficiency of cause of condonation of delay being question of fact is within the exclusive jurisdiction of Tribunal. *Ali Hasan Rizvi v. Islamic Republic of Pakistan* 1986 SCMR 1086, *Hussain Bibi v. Mubarak Hussain* 1976 SCMR 262, *Yousaf Hussain Siddiqui v. Additional Settlement and Rehabilitation Commissioner, Peshawar and 5 others* 1976 SCMR 268. Even otherwise once the discretion is exercised qua the question of limitation by the learned Service Tribunal it is not usually interfered with by this Court. In this regard reference can be made to cases titled *WAPDA v. Abdur Rashid Dar* 1990 SCMR 1513, *Sher Bahadur v. Government of N.-W.F.P.* 1990 SCMR 1519, *Zahida v. Deputy Director* 1990 SCMR 1504.

6. It may not be out of place to mention here that leave to appeal to this Court is only competent where a case involves a substantial question of law and public importance. *Muhammad Iqbal v. Secretary to Government of Punjab* 1986 SCMR 1, *Karamat Hussain v. Province of the Punjab* 1982 SCMR 897, *Razia Sultana v. Government of Punjab* 1981 SCMR 715, *M. Yamin Qureshi v. Islamic Republic of Pakistan* PLD 1980 SC 22, *Irtiqah Rasool Hashmi v. Water and Power Development Authority and another* 1980 SCMR 722, *Dilbar Hussain v. Province of Punjab* 1980 SCMR 148, *Yousaf Hussain Siddiqui v. Additional Settlement and Rehabilitation Commissioner* 1976 SCMR 268, *Muhammad Azhar v. Service Tribunal, Islamabad* 1976 SCMR 262, *M.A. Majid v. Government of Pakistan* 1976 SCMR 311. where no question of law of public importance is involved leave to appeal may not be granted. *Director Food v. Rashid Ahmad* 1990 SCMR 1446, *Muhammad Manzoor Ahmad v. Commissioner Multan Division* 1990 SCMR 560, *Government of Punjab v. Khalid Hussain Gill* 1989 SCMR

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Muhammad Sharif v. Executive District Officer  
(Education) (Muhammad Jahangir Arshad, Chairman)

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748, *Abdul Razaq v. Province of Punjab* 1980 SCMR 876, *Muhammad Yaqub Sheikh v. Government of the Punjab* 1987 SCMR 1354. The learned Advocate Supreme Court was asked pointedly that what is the question of law of public importance, but no satisfactory answer could be given. Let we mention here at this juncture that inquiry was not got conducted in accordance with relevant provisions of law and moreso it was found in flagrant violation of the principles enunciated in cases titled *Shakeel Ahmad v. Commandant* 502 Central Workshop E.M.E. 1998 SCMR 1970, *Basharat Ali v. Director, Excise and Taxation* 1997 SCMR 1543, *Land Reforms Commission, Punjab, Lahore and another v. Mst. Azra Parveen and 2 others* 1995 SCMR 890, *Jan Muhammad v. General Manager, Karachi* 1993 SCMR 1440. The Service Tribunal has given a fair opportunity to the petitioner to initiate inquiry proceedings de novo within a period of three months but nothing could be done for the reasons best known to it.

7. The upshot of the above discussion is that the judgment impugned being free from any illegality or infirmity does not call for interference. The petition being meritless is dismissed and leave refused.

M.H./N-7/SC

Petition dismissed.

2010 P L C (C.S.) 613

[Punjab Service Tribunal]

Before Justice (R.) Muhammad Jahangir Arshad, Chairman

MUHAMMAD SHARIF

versus

EXECUTIVE DISTRICT OFFICER (EDUCATION) and another

Appeals Nos.1275, 1276, 1326, 1352 of 2008 and 138 of 2009, decided on 16th February, 2010.

*Punjab Service Tribunals Act (IX of 1974)---*

---S. 4---Constitution of Pakistan (1973), Art.189---Judgment of Supreme Court---Effect---Judgment in rem---Scope---Grievance of appellants was that after they were reinstated in service, authorities decline to give them their back-benefits, whereas their other colleagues were given such benefits---Validity---In other cases those civil servants were reinstated with all back-benefits---Dictum laid down by Service Tribunal in earlier appeals was maintained by Supreme

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# CHARGE SHEET

(40) K

I, Ghulam Dastgir, Chief Secretary, Khyber Pakhtunkhwa as Competent Authority, hereby charge you, Mr. Umar Sharif, Forester (BS-07), Allai Forest Sub Division of Hazara Tribal Forest Division Batagram, Forest Department, as follows:

That you, while posted as Forester, Allai Forest Sub Division, committed the following irregularities:

- i. That you remained ignorant about the damages in Laam Compartment No.1 and Godipir Compartment No.1 during working of JFMC in the said compartments and did not take legal action against the offenders in time.
- ii. That no Damage Report Book was available with you during checking on 15.11.2006, on spot.
- iii. That no carving of damage report Number/Hammer Mark were found affixed by you in Kagai Obe C-No.1.
- iv. That no carving of damage report No./ affixing of Hammer Mark were found affixed by you in the felling coup of the JFMC Laam Godipair on old stumps and that only No. written by marker were found on the stumps of fresh illegally cut trees.
- v. That no field No. were found on stumps of marked/sawn trees of the JFMC under your supervision.
- vi. That illegal cutting of 109 No. of Fir/Spruce trees+ 13954 cft (standing volume) shown below was reported in Godipair Guzara Compartment No.1 and Damage Reports No.91 and 92/6 dated 29.10.2006 were issued by you but you did not nominate the Chairman, JFMC as accused:

1-Damage Report No.91/6 dated 29.10.2006			
Species	Dia	No. of trees	Standing Volume (cft)
Fir/Spruce	27	06	948
	28	05	840
	29	04	756
	30	02	402
	34	01	262
	16	03	153
	19	04	296
	21	03	279
	22	06	612
	23	03	336
	24	05	620
	25	09	1215
	26	03	438
Sub Total		54	7157
2-Damage Report No.92/6 dated 29/10/2006			
Fir/Spruce	26	03	438
	27	05	790
	28	04	672
	29	01	189
	30	01	201
	31	01	212
	33	01	249
	17	02	116
	19	02	092
	20	04	332
	21	04	372
	22	10	1020
	23	05	560
24	06	744	
25	06	810	
Sub Total		55	6797
Total		109	13954

## DISCIPLINARY ACTION

(41) ANNEXURE

I, Ghulam Dastgir, Chief Secretary, Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Umar Sharif, Forester (BS-7) while posted as Forester, Allai Forest Sub Division of Hazara Tribal Forest Division Batagram, Forest Department, has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of section-3 of the Khyber Pakhtunkhwa, Removal from Service (Special Powers) Ordinance, 2000.

### STATEMENT OF ALLEGATIONS

- i. That he remained ignorant about the damages in Laam Compartment No.1 and Godipir Compartment No.1 during working of JFMC in the said compartments and he did not take legal action against the offenders in time.
- ii. That no Damage Report Book was available with him during checking on 15.11.2006, on spot.
- iii. That no carving of damage report Number/Hammer Mark were found affixed by him in Kagai Obe C-No.1.
- iv. That no carving of damage report No./ affixing of Hammer Mark were found affixed by him in the felling coup of the JFMC Laam Godipair on old stumps and that only No. written by marker were found on the stumps of fresh illegally cut trees.
- v. That no field No. were found on stumps of marked/sawn trees of the JFMC under his supervision.
- vi. That illegal cutting of 109 No. of Fir/Spruce trees+ 13954 cft (standing volume) shown below was reported in Godipair Guzara Compartment No.1 and Damage Reports No.91 and 92/6 dated 29.10.2006 were issued by him but he did not nominate the Chairman, JFMC as accused:

1-Damage Report No.91/6 dated 29.10.2006			
Species	Dia	No. of trees	Standing Volume (cft)
Fir/Spruce	27	06	948
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	19	04	296
	21	03	297
	22	06	612
	23	03	336
	24	05	620
	25	09	1215
	26	03	438
	Total		54
2-Damage Report No.92/6 dated 29/10/2006			
Fir/Spruce	26	03	438
	27	05	790
	28	04	672
	29	01	189
	30	01	201
	31	01	212
	33	01	249
	17	02	116
	19	02	092
	20	04	332
	21	04	372
	22	10	1020
	23	05	560
	24	06	744
25	06	810	
		FF	6707

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2. For the purpose of enquiry against the said accused with reference to the above allegations, an enquiry officer/enquiry committee, consisting of the following, is constituted under Section-5 of the above Ordinance

i) Mr. Kabir Afidi DS HE DEPT.


ii) \_\_\_\_\_

3. The enquiry officer/enquiry committee shall, in accordance with the provisions of the Ordinance *ibid*, provide reasonable opportunity of hearing to the accused; record its findings and make, within 25-days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the enquiry officer/enquiry committee.



(GHULAM DASTGIR)  
CHIEF SECRETARY/COMPETENT AUTHORITY

  
ATTESTED

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## BRIEF BACK GROUND OF THE CASE

In Hazara Tribal Forest Division of Battagram District, the Laam Gudipair JFMC was authorized under an agreement to undertake the Harvesting of Marked 287Nos trees of Fir/ Spruce, measuring 87652Cubic feet ( standing Volume).

During Oct 2006, 109 trees having 1394cft (standing volume) were illicitly cut by four local persons in the forests of Laam Gudipair Compartment No 1. The chairman JFMC reported/complained the same damages to DFO Battagram(Pg 60) and the then SDFO Allai, Syed Muqtada Shah, initiated action against these offenders. Damage report No 91/6 & 92/6 dated 29-10-2006 were issued by the forest staff(Pg 21-22). Against the illicitly felled trees, 597 scants of timber measuring 2415 cft volume was also apprehended, seized from the offenders and given in the custody of JFMC as per JFMC agreement for further transportation by the JFMC to the sale depot.(Pg 61-62)

The four accused persons apprehended on spot, although pleaded guilty but refused to pay value of damages as assessed by the Forest Officers as per Forest Department schedule of compensation.

The SDFO Syed MuqtadaShah, incharge of the Allai Forest Sub Division, after spot inspection and preliminary enquiry, submitted the situation report to his immediate higher controlling and supervising Officer i.e DFO Hazara Tribal Battagram vide letter No. 97/ Allai dated 23-11-2006 , explaining therein all the ground situation, basis of the proposed action as per spot situation, and proposed action to be initiated under 7(b) of the JFMC agreement.(Pg 23-24)

The DFO Hazara Tribal Battagram, agreeing with the situation report of SDFO Allai and its proposal for action under clause 7(b) of the JFMC agreement, endorsed the proposed action and authorized the SDFO Allai to proceed further

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in the matter in light of directives as contained in his letter No. 1052/ G dated 01-12-2006.(Pg 25)

In the meanwhile, the DFO patrol Squad of Hazara Circle visited/ inspected the Spot for inquiry into the matter and submitted his report to Conservator of Forest Abbotabad (CFA). (Crux of the finding was that the illicit damages have been inflicted with the connivance of JFMC)(Pg 63-65)

Receiving the above report of DFO Circle Patrol squad, the CFA communicated the same to DFO Hazara Tribal Battagram for his necessary action(Pg 66).The DFO Hazara Tribal Forest Division, after personal enquiry into the matter, offered his para wise comments on the report of DFO patrol squad vide his confidential letter bearing No. 1463/ GB dated 01-02-2007 to CFA.(Pg 67-69)

In his comments, the DFO Battagram was of the opinion that the JFMC involvement in these damages is unrealistic at the moment. And the allegation of DFO patrol squad needs to be investigated through a Fact Finding Committee.

On receiving DFO Battagram comments, the CFA constituted a high level Fact Finding Committee vide Office order No. 92 dated 12-02-2007(Pg 26). The Committee, after spot verification and investigations into the damages, compiled their report and submitted to CFA dated 13-03-2007.(Pg 27-31)

In the meanwhile, during transportation of the illicit cut seized timber, as given to the management of JFMC for transportation to the sale depot, the SDFO Allai noticed that the timber lying in the custody of JFMC, has been affixed with JFMC hammer mark and carved with JFMC property marks. Taking cognizance for violation of JFMC agreement by the Chairman JFMC, the SDFO Allai called his explanation under intimation to DFO Battagram(Pg 70). The DFO Battagram, after receiving reply of Chairman JFMC, and founding it unsatisfactory, issued a

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show cause notice to chairman JFMC to explain his position regarding violation of JFMC agreement (Pg 32). Consequently after dissatisfaction from the Chairman's reply, the DFO Battagram recommended a case to CFA for imposing penalty on chairman JFMC under clause 7(a) of the JFMC agreement. The CFA vide Office order No. 119 dated 30-06-2007, imposed a fine of Rs. 7512800/- on JFMC in the said Damages for violation of JFMC agreement, for affixing Hammer mark and property Marks of JFMC on the seized timber of the department. (Pg 38-39)

During these proceedings, the CFA submitted his parawise comments on the report of the Fact Finding Committee vide letter dated 09-04-2007 to the Chief Conservator of Forest wherein he directed DFO Battagram to initiate disciplinary proceedings against the SDFO Allai and Forester/ Block Officer. (Pg 71)

The DFO Battagram, then submitted a draft charge sheet against Syed Muqtada Shah, the then SDFO Allai to CFA for onward submission to the competent authority. And the Competent authority, Chief Secretary Khyber Pakhtunkhwa, issued Charge sheet to the accused. The competent authority then appointed enquiry committee comprising Mr. Haider Ali Khan and Mr. Gul Muhammad Khan, Conservators of Forests and the committee submitted its report/recommendations to the competent authority. (Pg 40-45)

On the basis of recommendations in the enquiry report, the accuseds (SDFO Allai and Forester Allai) were penalized for reduction to the initial stage of their basic pay scale. The accuseds filed an appeal to the Services Tribunal Peshawar, against the penalty order, and the Tribunal after hearing, set aside the penalty order and directed the respondents for conducting Denovo enquiry.

Pursuant to above, another enquiry was ordered and Mr. Riaz Mehsud, (PCS EG, BS 19), Additional Secretary, FATA Secretariat was declared as Enquiry Officer after approval by the Competent Authority.



The Denovo enquiry report was also submitted to the competent authority(Pg 46-59), but now the Competent authority disagreed with the findings/ recommendation and ordered another Denovo enquiry declaring the undersigned as Enquiry Officer vide order dated 16-08-2012(Pg 72). Charge sheets were issued to the accuseds by the Environment Department.

### PROCEEDINGS

1. Section Officer (Estt), Environment Department, vide letter dated 30-08-2012, was informed to depute a well conversant officer along with the relevant record for assistance.(Pg 73)
2. Present SDFO Allai, Mr. Mr. Muhammad Siddique was declared as Prosecutor by the DFO Battagram vide letter dated 05-09-2012.(Pg 74)
3. The charge sheets along with memo of allegation were served upon the accuseds and their written replies received.
4. The prosecution and the accuseds were called for personal hearings/defense on 07-09-2011 and case enquired properly.

### DISCUSSION

During personal hearings, the prosecution representative Mr Muhammad Siddique, SDFO Allai along with official record from DFO Battagram's office attended the proceedings. The accuseds attended in person. The prosecution presented the charge sheet against the accuseds with the following supportive evidences/record;-

1. Damage report No. 91/6 and 92/6 dated 29-10-2006, issued for illicit damages of 109 Fir/ Spruce trees and apprehension of 597 scants 2415 cft volume timber.(Pg 21-22)
2. JFMC Agreement between Forest Department and Chairman JFMC for Joint Forest. (Pg 34-37)
3. Management of Laam and Gudipair compartment No-1

4. The Fact finding report by Mr Naseem Javaid and Pir Qaim Shah DFOs(Pg 27-31)
5. CFA office order No 119 dated 30-06-2007, regarding imposition of penalty on JFMC amounting to Rs. 7512800/.(Pg 38-39)
6. The Enquiry Report conducted by Mr. Haider Ali Khan and Mr. Gul Muhammad Khan(Pg 40-45)
7. The Enquiry report conducted by Mr. Riaz Khan Mehsud(Pg 46-59)

During proceedings, the accused Syed Muqtada Shah SDFO, rebutted the charges and defended his action in the Forest Damages of Laam Gudipair Compartment No-1 under agreement clause 7(b) of the JFMC agreement for illicit cutting of 109 trees and apprehension of 597 scants of Fir/Spruce measuring 2415 cubic feet volume as legal, appropriate and relevant as per JFMC Laws/agreement by providing the following evidences/official record:

1. Action against the forest offenders for illegal cutting was initiated on the written report/complaint of Chairman JFMC, as provided under JFMC agreement clause 7(b) reproduced as under:

*"in case of accidental or negligent felling of unmarked trees the JFMC will be liable to pay only the sale-value of these trees so felled. For the felling and local damage/ loss due to natural hazard, JFMC and its employees, will be bound to report the matter in writing to the DFO concerned immediately for further necessary action under the NWFP Forest Ordinance, 2002. On failure to report such incidents by JFMC clause-7(a) will become applicable."*

2. The accused, when posted as SDFO Allai, presented a copy of letter of his period dated 23-11-2006(Pg 23-24) wherein he had submitted the situation report regarding these damages to his immediate controlling officer, and elaborated all the ground realities and the basis for initiating

the proceedings against the damages under 7( b) of the JFMC agreement. He asked the prosecution that if he was at wrong at the time of initiating the action under 7(b) of the JFMC agreement, than the immediate controlling officer must have not agreed with his situation report and issued directives otherwise. But in fact, the action proposed and initiated by him at that situation was appropriate as per law/rules and JFMC agreement, hence the DFO Battagram agreed with my report and issued further directives as per JFMC rules/law for further course of action. The accused officer further argued that he implemented the directives of his immediate controlling and supervising officer in letter and spirit, prepared the challan of the case, and produced the accuseds/ offenders before the competent court of law in accordance with provision of Forest Ordinance, 2000 (Sec 96), with the prior approval of immediate controlling and supervising officer.

3. The accused officer also added that after the disputed enquiry report of DFO patrol squad, the action initiated by him under clause 7(b) of the JFMC agreement was investigated by DFO Hazara Tribal Battagram (his controlling officer), and he, in his confidential report No. 1463/ GB dated 01-02-2007(Pg 67-69), was also of the opinion that the charge of involvement of JFMC in these damages are unrealistic.
4. The same plea of the DFO Battagram was further investigated by the second Controlling and supervising officer of the department i.e CFA by constituting a Fact Finding Committee vide Office order No. 92 dated 12-02-2007, and the Fact Finding committee in their report also admitted the following realities;

*("Cases of Damage report No 91/6 & 92/6 dated 29-10-2006 were properly challaned in the court of Judicial Magistrate-I Battagram vide PC NO 15 and 16/ 2006-07 respectively.*

*The field staff had physically seized the said timber and initiated appropriate action against the offenders under the rules.*

*The above discussion transpires that the fresh damages do not happened to be a deliberate impairment to satisfy the ulterior motives of admixture in the genuinely extracted timber. Rather a law full action had already been taken and the offenders brought to book,*

*Moreover, the appeal preferred by the DFO in the court. of District and session Judge Battagram may be pursued vigorously")*

All the above observations and findings of the fact finding report support the situation report of the accused officer dated 23-11-2006 and never transpires that the JFMC was ever involved in these damages at the initial stage of proceedings till Fact Finding Report dated 13-03-2007.

Similarly the accused further clarified that he never hesitated to take action against JFMC, whenever and wherever found it involved in any forest damages or irregularity or violation of agreement with the department.

The accused officer referred to the CFA office order No. 119 dated 30-06-2007, whereby the CFA has confiscated 9391 cft illicit timber from JFMC and imposed a fine of Rs.7512800/- on Chairman JFMC for violation of JFMC agreement(Pg 38-39). The same proceedings of CFA are on the basis of report of the accused officer initiated against the same JFMC at an occasion when the JFMC was found involved in affixing of JFMC hammer mark and carving JFMC property Marks on the seized timber. The accused officer, during transportation of seized timber by the JFMC, when noticed the carving of JFMC hammer mark and carving of property mark on the departmental timber took in time cognizance of the irregularities, called explanation of the JFMC and submitted the report as per clause 20(2) of Community Participatory Rules,2004, to the DFO Battagram, being the competent authority in the instant issue, for further course of action.

The accused officer further clarified and submitted a copy of the disciplinary action dated 21-11-2006 against the delinquent Forest guard as was initiated by him for his ignorance and lack of interest in the official duties posted on laam Gudipair Forests at the time of occurrence of these damages.(Pg 75-78)

**FINDINGS**

The above discussion and defense provided by the accuseds leads to the following findings:

**SYED MUQTADA SHAH, SDFO**

1. Charge No i , ii and iii against the accused officer are correlated and of similar nature. All these charges are unjustified on the following grounds.
  - a. The Action taken against the JFMC under clause 7-b of the JFMC agreement was legal, lawful and as per JFMC agreement .All the preliminary investigations by the controlling and supervising higher officers of the department could not prove the involvement of JFMC in these damages at the time of initiation of action by the accused officer, even till compilation of fact finding report dated 13-03-2007. Hence initiation of action under clause 7-a of the JFMC agreement and nomination the JFMC into the said damages at that time was out of question rather unlawful and abuse of official power and authority.
  - b. The accused presented the official record which was not challenged by the prosecution. The evidences produced by the prosecution in support of the charges sheet i.e Damages reports No. 91/6 and 92/6 dated 29-10-2006, the Fact finding report and CFA office order No. 119 dated 30-06-2007, also could not substantiate the charges that the action of the accused officer under clause 7-b of the JFMC agreement was against the law/ rules JFMC agreement because all these evidences supports the plea of the accused officer that he has initiated all these action for the said damages and the same action was proved to be lawful during all the preliminary

investigations .Hence charges against the accused are unsupported and could not be supported by the prosecution with cogent evidences.

2. Charge No iii, also could not be substantiated by the prosecution with any solid reasons or evidence. The prosecution produced the Office order No. 119 dated 30-06-2007, regarding imposition of Rs. 7512800/- fine on JFMC under clause 7(a) of the agreement for violation of JFMC agreement. But perusal of the order reveals that the same action has been finalized by CFA on the report initiated by the accused officer against JFMC. Had the action initiated by the accused officer against the JFMC at that occasion was not as per JFMC agreement/ Rules, than the CFA would never had endorsed the same and penalized the JFMC. Thus charging the accused for his own legal action is neither judicial nor lawful.

**MR. UMAR SHARIF, FORESTER**

The allegations against the accused are almost same as both the accuseds were posted in the same area. Detailed discussion has been made in the foregoing.

- a) Allegations No. i and v are similar in nature which has been discussed in detail earlier.
- b) In contrary to the allegation No iii, in his written reply, he claimed otherwise that he was having Damage Report Book on the spot.
- c) For allegation No. iv, the job pertains to the Forest Guard against whom the disciplinary proceedings have been initiated and disposed off (Pg 75-78).
- d) As per charge report of the accused, he was posted in 2004 whereas marking of trees was done in 1999. Hence the charge relates to the period when he was not posted there.

However, Block Officer/ Forester is the member JFMC as rep. of Forest Deptt(Pg 33) and the accused, being member, remained unaware of the damages made in the compartments. Besides, cutting of 109 trees, conversion into logs/ scants and then transportation involves about a month period during which the accused

remained unaware. It is difficult to believe that offenders were operating illegal activities for one month and the official remained unaware. Though the timely action by the accused against the offence and offenders lightens the magnitude of irregularity, yet the damage caused to the forest can't be ignored and held him liable to be penalized.

## CONCLUSION

The above findings lead to the following conclusions:

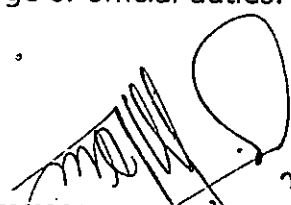
- a. After thorough examination of the related documents provided by the prosecutor of the department and the accused officer, the undersigned is of the opinion that the action taken against the JFMC under agreement clause 7(b) by the accused officer was legal appropriate and lawful at the time of initiation.
- b. Furthermore the accuseds never hesitated to take action against JFMC under relevant clauses of agreement, as and when they found the JFMC involved in any violation and irregularities.
- c. The accused officer has also initiated disciplinary action against the delinquent Forest Guard for the ignorance and lack of interest in the official duties.
- d. Despite that the serving of charge sheet on accused officials regarding non initiating of action against JFMC at the time of issuing damage reports No. 91/6 and 92/6 dated 29-10-2006 are itself against the realities.
- e. The only shortcoming seems to be the fact that offenders were committing crime/ offence for about one month in the forest and Syed Muqtada Shah, being SDFO, remained ignorant which indicates his lack of control over the staff and area under jurisdiction.
- f. Mr. Umair Sharif, Forester, was also member of JFMC as rep. of the Forest Deptt and was immediate controlling official over the compartments. He remained unaware of the damages made to the compartments despite of all these which transpires his lack of interest in official duties.


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## RECOMMENDATIONS

Keeping in view the above discussion, findings and conclusions, the undersigned recommends the following penalties.

1. Two annual increments of Syed Muqtada Shah, SDFO, may be stopped for a period of three years w.e.f 01-01-2013. He may be censured.
2. Five annual increments of Mr. Umar Sharif, Forester may be stopped for a period of three years w.e.f 01-01-2013. He may be censured and be warned to be careful in future in discharge of official duties.

  
28/11/12  
**MUHAMMAD KABIR AFRIDI**  
Deputy Secretary (Admn)  
Higher Education, Archives &  
Libraries Department, Peshawar

  
**ATTESTED**



Annex

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
ENVIRONMENT DEPARTMENT

ANNEXURE

Dated Pesh: 4<sup>th</sup> April, 2013

**NOTIFICATION**

No.SO(Estt)Envt/1-50(96)/2k9: WHEREAS, Mr. Umar Sharif, Forester (BPS-09), Allai Forest Sub Division of Hazara Tribal Forest Division Batgram, was proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Powers) ordinance, 2000 (as amended from time to time) for the charges as mentioned in the Charge Sheet and Statement of Allegations dated 16/08/2012, served upon the said official;

2. AND WHEREAS, Enquiry Officer, Mr. Muhammad Kabir Afridi, PCS SG (BS-18), Deputy Secretary, Higher Education Department, was appointed an Enquiry Officer to conduct the inquiry against the said accused official;

3. AND WHEREAS, the Enquiry Officer, after having examined the charges, evidence on record and explanation of the accused official, submitted its report, wherein the charges against the official 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 official to which he replied, and provided him opportunity of personal hearing;

5. NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Officer, the explanation of the accused official, and hearing him in person and exercising his powers under Section-3 read with Section-8 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 (as amended from time to time) was pleased to impose a minor penalty of **"Stoppage of Five increments for a period of three years"** upon Mr. Umar Sharif, Forester (BPS-09), the then Forester, Allai Forest SUB Division of Hazara Tribal Forest Division Batgram, in supercession of this department Order No.SO(Estt)Envt/1-50(96)/2k9/567-74 dated 29/1/2010, with immediate effect.

CHIEF SECRETARY,  
KHYBER PAKHTUNKHWA

Endst: No. SO(Estt)Envt/1-50(96))/2k9 2281-2300 Dated Pesh: 4<sup>th</sup> April, 2013.

Copy is forwarded to:-

- 1) PS to Chief Secretary, Khyber Pakhtunkhwa.
- 2) PS to Secretary Environment Department.
- 3) Chief Conservator of Forests, Central and Southern Forest Region-I, Peshawar.
- 4) Chief Conservator of Forests, Northern Forest Region-II, Civil Line Offices, Abbottabad.
- 5) All Conservators of Forests, Khyber Pakhtunkhwa.
- 6) Director Budget and Accounts Ceil, Environment Department.
- 7) Divisional Forest Officer, Hazara Tribal Forest Division, Batgram.
- 8) Mr. Umar Sharif, Forester C/O Chief Conservator of Forests, Northern Forest Region-II, Civil Line Offices, Abbottabad.
- 9) Master file.
- 10) Office order file.

*(Signature)*  
(FIDA-UL-KARIM)  
SECTION OFFICER (ESTT)

ATTESTED

13

4

Before,

The Honourable Chief Minister,  
Khyber Pakhtunkhwa (Appellant Authority),  
at Peshawar.

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Through: PROPER CHANNEL

**SUBJECT:** DEPARTMENTAL REPRESENTATION / APPEAL UNDER SEC 9 OF THE REMOVAL FROM SERVICE (SPECIAL POWER) ORDINANCE, 2000, FOR SETTING ASIDE THE PENALTY IMPOSED BY CHIEF SECRETARY (AUTHORITY), KHYBER PAKHTUNKHWA, UPON THE APPELLANT, VIDE NOTIFICATION NOSO (Estt.)Env/ 1-50(96) / 2k9/ 2281-2300, dated 04/4/2013.

Prayer: That on acceptance of this appeal, the impugned penalty order dated 4-4-2013 be set aside as being illegal, unlawful, void and ineffective. Appellant pay scale be restored to its original stage with such other relief as may deem fit in the circumstances of the case may also be granted.

Respectfully sheweth,

That the short facts giving rise to this departmental appeal, are as under:-

1. The petitioner was punished with the penalty of "Reduction to the initial stage of basic pay scale" vide administrative department Notification No So (Estt.) Env/1-50(96) 2k9/ 567-74 dated 29-1-2010 (Copy of the order attached as Annexed-A, Page 1).
2. The petitioner challenged the same penalty order in Service Tribunal Peshawar vide Appeal No.969/2010. The said appeal was heard, accepted and set aside on 28-6-2011, with further directions to the department for conducting denovo inquiry proceedings to be concluded as early as possible, but in no case beyond the period of twenty five days from the receipt of the order, as prescribed in section-5, sub section (3) of Khyber Pakhtunkhwa (Former NWFP) Removal from service (special power) Ordinance 2000. (Copy of Judgment attached as Annexed-B, Page 3-13)
3. The respondent department failed to implement within the stipulated period, the judgment of Honourable Service Tribunal. Now after a lapse of about one years & Nine months, has finalized the denovo inquiry proceedings and final order issued by the competent authority on 04/4/2013, communicated to the appellant on 22/4/2013. (copy of order attached as Annexed-C, Page-15).

**ATTESTED**

Grounds:-

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- A. That, the impugned order is illegal, unlawful, void and ineffective, hence, not maintainable in the eyes of law.
- B. That, the same is against the principals of natural justice, also.
- C. That the impugned order is in violation of Service Tribunal Judgment dated 28/6/2011, hence illegal.
- D. That the impugned order is also against the judgments of the august Supreme court of Pakistan, reported in 2009-P L C (C.S.) 477, (copy of order attached as Annexed-D, Page-17-21) and PLJ. 2004 Tr.C. (Services) 183 (copy of order attached as Annexed-E, Page-23-37). Refer extract is reproduced as under.
- i) "On examination of the judgment of high court, it clearly transpires that the high court has not debarred the petitioner/bank from conducting the inquiry but has passed directions for completing the inquiry expeditiously preferably within the period of three months with a further direction to the respondents/employee to cooperate in holding the inquiry. However, since the petitioner/bank could not initiate the inquiry proceedings within the period of four months stipulated by the Federal Service Tribunal in its judgment, as a consequence thereof, they have been directed to make payments of back benefits to the respondents". (refer extract Annexed-D, page-21).
  - ii) "Once a judgment is issued in favour of a civil servant, his term and conditions as infringed by an order of the authority in question stands addressed to the extent as ordained in the judgment concerned. There is, therefore no denying the facts that if the judgment is not implemented and leave to appeal is either not filed or declined, there is no escape route for the department but to implement the judgment in letter and spirit. In the event of the department not complying with the directions contained in a particular judgment after having exhausted the legal remedies available, the department have no other alternative except to implement the judgment in the interest of supremacy of the rule of law". (refer extract Annexed-E, page-33).
- E. On the strength of above two judgments of august Supreme court of Pakistan, the Service Tribunal Khyber Pakhtunkhwa Peshawar has already announced a judgment by accepting appeal No 3080/2010. (copy of order attached as Annexed-F, Page-39-45). Hence the subject impugned order is void and unlawful.

F. That the minor punishment of stoppage of ~~five~~ increments, is technically defective because, if at all stoppage of increment is ordered, it is to be done by one step only. (copy from E & D rules attached as Annexed-G, Page-47)

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G. That the impugned order is unlawful in the light of august Supreme Court of Pakistan judgment in Civil Petition No. 1252-L of 2002, dated 12-5-2003. (Copy of order attached as Annexed-H, Page 49-53)

H. That the inquiry committee did not adopt the proper procedures as required under the law/rules on the subjects (copy of inquiry Report attached as Annexed-I, Page 55-77), thus inquiry report is biased, baseless and unrealistic due to following short comings, hence illegal.

- i. The learnt inquiry officer was required to confront the appellant with solid documentary/situational evidences/witnesses and recommended on the basis of such findings of inquiry proceedings, but the inquiry officer has concluded otherwise on the basis of his personal opinion and interpretation of the situation, irrespective of solid evidences. Hence he has over sighted the service Tribunal specific observations of the judgment dated 28/6/2011(refer annexed-B, page 11) and procedure on the subject (refer annexed-J, page 79) by interpreting on his personal opinion & observations, which is illegal.
- ii. Although from the findings of the inquiry report, non of the charges leveled against the appellant could be prove, despite that the learnt inquiry officer has recommended the penalty of stoppage of five increments which is non judicious.
- iii. The recommendations of the inquiry report are itself contsadiictory to the findings. The learned inquiry officer, in the inferences drawn by him under heading "FINDINGS", has conceded that:-  
(refer extract from findings of inquiry report, annexed-I, Page 71-73)
  1. "All these charges are unjustified on the following grounds.
    - a. The action taken against the JFMC under clause 7-b of JFMC agreement was legal, lawful and as per JFMC agreement. All the preliminary investigations by the controlling and supervising higher officers of the department could not prove the involvement of JFMC in these damages at the time of initiation of action by the accused officer, even till compilation of Fact Finding Report dated 13-3-2007. Hence initiation of action under clause 7-a of the JFMC agreement and nomination the JFMC into the said damages at that time was out of question rather unlawful and abuse of official power and authority.

b. The accused presented the official record which was not challenged by the prosecution. The evidences produced by the prosecution in support of the charges sheet i.e Damages reports No 91/6 and 92/6 dated 29-10-2006, the Fact finding report and CFA office order No 119 dated 30-6-2007, also could not substantiate the charges that the action of the accused officer under clause 7-b of the JFMC agreement was against the law/ rules/JFMC agreement because all these evidences supports the plea of the accused officer that he has initiated all these action for the said damages and the same action was proved to be lawful during all the preliminary investigations. Hence charges against the accused are unsupported and could not be supported by the prosecution with cogent evidences.

(65)

2. Charge No iv, also could not be substantiated by the prosecution with any solid reasons or evidence. The prosecution produced the Office order No 119 dated 30-6-2007, regarding imposition of Rs 75,12,800/- fine on JFMC under clause 7(a) of the agreement for violation of JFMC agreement. But perusal of the order reveals that the same action has been finalized by CFA on the report initiated by the accused officer against JFMC. Had the action initiated by the accused officer against the JFMC at that occasion was not as per JFMC agreement/ Rules, than the CFA would never had endorsed the same and penalized the JFMC. Thus charging the accused for his own legal action in neither judicial nor lawful".

Keeping in view the above findings of the inquiry report, as the learned inquiry officer has conceded the action taken by appellant to be legal, appropriate and timely and has opined /concluded that charging the accused for his own legal action is neither judicial nor lawful.

Therefore the recommendations for stoppage of five increments are contradictory to the findings of the inquiry report, hence officer/committee, hence biased, baseless & unrealistic.

1. That there is nothing on record nor any thing was produced before the inquiry Committee that Appellant was directly involved in the alleged allegations or any delay has occurred due to his willful intention or Mens-rea. Hence the conclusion No "e" of inquiry committee is biased, baseless and beyond the scope of the charge sheet as under:-

The Justification for conclusion (refer annexed-I, Page 75, at S.No, "e") put forth by the learned inquiry officer i.e "the offenders were committing crime/offence for about one month and, I remained ignorant" is against the realities as under:-

Sir,

(66)

- i. The allegation is the personal interpretation of the inquiry officer, hence baseless.
- ii. The period of one month inferred by the learned inquiry officer is at variance to his own conclusions (refer annexed-I, Page 75, S.No "b"), where the learned inquiry officer concedes that action was taken as and when JFMC was found involved. Furthermore:-
  - The supervision of kotkey beat JFMC forests was not the only responsibility of the appellant, rather he has to supervise forests under his jurisdiction in the other four beats and one forest check post. Beside he was also responsible to prepare court cases, produce challans/forest offenders in the court of law and attend the trials.
  - The present day felling of trees and sawing is not manual but is mechanical. It takes only a few hours to fell 109 trees and convert it into scants/ logs through power saws. Even manually it does not take so long (one month).

Therefore, the allegation that we remain ignorant for one month is baseless, bias and unrealistic.

- J. The learnt inquiry officer under conclusion para " f " (refer annex- I,page 75) has concluded that the appellant/accused being member of JFMC as rep. of forest department, was immediate controlling officer over the compartment and remained unaware of the damages made to the compartment.

Sir, this conclusion of the inquiry officer is against the realities because:-

- i. Although It is correct that, the appellant under Community Participation Rules( CPR) 2004, clause 13, was a member of JFMC as representative of forest department, but simultaneously he was also responsible for duties other than the subject JFMC forests compartment(Kotkey). Therefore on the basis of his nomination as JFMC member, he was not supposed to perform duty only in one compartment or section of compartment where JFMC harvesting was going on, rather he was responsible/answerable for his other assigned duties also.
- ii. As per CPR 2004 rules, the appellant was required to attend the scheduled and emergency meetings of JFMC and provide technical assistance to the committee. The committee has to perform its duty as per clause 15, while the department responsibility are elaborated under clause 20 of CPR 2004.(copy of CPR 2004 attached as annex-K,page81-93 )
- iii. The forest protection is the basic responsibility of Forest Guard, and for his ignorance in duty, he has already been charge sheeted. The inquiry

Officer has acknowledged the fact and accepted the action initiated against the forest guard be legal and timely.

K. That the Appellant has performed his duty honestly and efficiently in the entire service carrier and there is nothing adverse against him. In the instant case, appellant in time initiated the proceedings against the Forest offenders.

L. That the appellant is innocent and falsely charged with out having any solid proves that appellant remained ignorant for about one month regarding forest damages.

M. *Last but not the least, the competent authority has already decided the case and issued warning to the appellant vide Notification No.S(Estts)Env/1-50(96) /2k 9.865 dated 26/03/2012 (Annex-14) which is not only contrary to the instant Notification No.SO(Estt:)Env/1-50(96)/2k9 2281 -2300 dated 04/04/2013 but is also against the natural principle of Justice and equality because one case cannot be decided twice.*

Therefore, in the light of foregoing submissions, it is amply clear that the conclusions drawn by the learned inquiry officer that the forest offenders were committing crime for about one month and I remained ignorant are incorrect and unfounded, not supported by any cogent reasons hence baised, baseless and unjustified.

It is, therefore, requested that Appeal be accepted as prayed for please.

(APPELLANT)

*[Signature]* 22/4/013

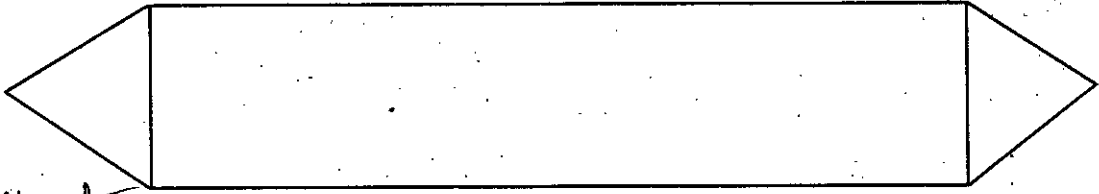
Umar Sharif Forester  
C/O  
Divisional Forest Officer,  
Hazara Tribal Forest Division  
Battagram

*[Signature]*

ATTESTED

22-4-13  
22-4-13  
22-4-13

# بعدالت Service Tribunal, Peshawar



Appellant  
Gout etc

نام Umar Sharif

مورخہ

مقدمہ

دعویٰ

مجموعہ

## باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی وکل

کارروائی متعلقہ آن مقام Pesh (Bilal Akbar) کے لئے

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ بر حلف دینے جواب دی اور قبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق و رساں پر دستخط کرانے کے اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکفرقہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی اور نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر ادخلة منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

ہا

المقوم

بد الع بد الع بد الع

کے لئے منظور ہے۔

بمقام



APPEAL NO. 1004/2013

Umer Shariff, C/O DFO, Hazara Tribal Forest Division

Appellant

Versus

- No 5367  
AFC - 57
- 1- Chief Secretary  
Govt. of Khyber Pakhtunkhwa  
Province, Peshawar.
  - 2- Chief Conservator of Forests,  
Khyber Pakhtunkhwa  
Province, Peshawar,
  - 3- Conservator of Forests,  
Upper Hazara Forest Circle,  
Mansehra

Respondents

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth

Preliminary Objection:

- 1) The appeal is not maintainable in the present form.
- 2) The applicant has got no locus standi to bring the present appeal.
- 3) The appellant estopped by his own conduct to bring the present appeal.
- 4) The appeal is bad on account of non-joinder of necessary parties.
- 5) The instant appeal is time barred

### FACTS


- 1- Pertains to record, hence needs no comments.
- 2- Incorrect. The Departmental Authority initiated the De novo enquiry in compliance to the order dated 28/06/2011 in accordance with the rules. When charges were established / proved by the enquiry Committee, the competent authority agreed and as per procedure finalized the proceedings.
- 3- Reply was not found satisfactory and the charges were proved against him.
- 4- Correct
- 5- Denied as drafted. The charge of in-efficiency was proved and resultantly the imposition of penalty of stoppage of two increments was imposed upon him.
- 6- Denied. The Enquiry Officer Mr. Riaz Khan Mahsud PCS, EG(BPS-18) Additional Secretary (Admn Coord)FATA Secretariat finalized the de-novo enquiry proceedings, but the competent authority (Chief Secretary K.P) not agreed with his findings, warned the petitioner and further de-novo the enquiry by appointing another Enquiry Officer Mr. Muhammad Kabir Afridi PSC SC (BPS-18) Deputy Secretary Higher Education Department. As the warning is not a penalty and the Competent Authority(Chief Secretary K.P) awarded the penalty of stoppage of two annual increments for three years of the petitioners vide Notification No.SO(Estt)Env/1-50(96)/2K9 2263-80 dated 4/4/2013 on the basis of Enquiry proceedings conducted by Mr. Muhammad Kabir Afridi (Enquiry Officer).
- 7- Correct to the extent that the competent authority not agreed with the findings of previous Committee (Riaz Khan Mahsood) re-de-novo the enquiry and entrusted to another Enquiry Officer (Mohammad Kabir Khan Afridi)
- 8- Correct.
- 9- In-correct. The enquiry officer conducted the enquiry in pursuance to Rules/ procedure and the competent authority finalized the proceedings accordingly.
- 10-Correct
- 11-Correct to the extent of filling the Departmental appeal.
- 12- In correct. Departmental appeal was properly rejected by the appellant authority and intimated to the petitioner through Government of Khyber Pakhtunkhwa Environment Department No. SO(Estt) Env/1-50(96)/2k12/3415 dated 26/06/2013.

### GROUNDS

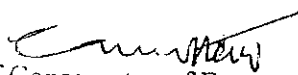
- A) In- correct. The requirements of F.R -29 have been fulfilled. The appellant / petitioner was incharge of Biari Block of Allai Forest Sub- Division and large scale irregularities were detected there- in for which he was responsible. Hence he has to suffer for that and therefore the order of competent authority is in accordance to the Law on the subject.
- B) In- correct. The order of the competent authority is in accordance with the Principles of natural Justice and is a result of fair enquiry conducted by the impartial enquiry Committee under the prevalent rules.
- C) The enquiry proceedings conducted in accordance to procedure on the subject and the delay was accrued due to completion of all Legal steps/ formalities and not melafidety, hence the Para is in- correct.
- D) In correct. De-novo enquiry was not finalized by the competent authority and the same was re-de-novo for further proceedings.


- E) In correct. As stated in Para "D" above.
- F) In correct. The 2<sup>nd</sup> enquiry was not finalized by the competent authority as stated in Para-D above.
- G) In correct. The competent authority not agreed with the finding of enquiry officer of 2<sup>nd</sup> de-novo enquiry and initiated 3<sup>rd</sup> de-novo enquiry.
- H) In correct. The competent authority rightly penalized the appellant in accordance to the rules procedure on the subject.
- I) In correct as stated in Para-"H" above.
- J) In correct. All coddle formalities were fulfilled and there is no illegality.
- K) In correct.
- L) In correct..
- M) In correct. According to the available record which was exhibited in the enquiry report the charges were established/ proved by the enquiry Committee against the appellant.
- N) In correct. The illicit damage has been took place with the connivance of appellant and the charges were proved/ established by the Enquiry Committee against the petitioner.
- O) The appellant could not provide sufficient material / ground to prove his innocence.

The appellant has not come to the Honorable Service Tribunal with clean hands, therefore it is humbly prayed that the appeal may be dismissed with cost.

  
Secretary

Govt of Khyber Pakhtunkhwa  
Environment Department Peshawar

  
Chief Conservator of Forests,  
Northern Forest Region-II  
Abbottabad

  
Conservator of Forests,  
Upper Hazara Forest circle  
Mansehra

*Attk*  
*Please find*  
*see the enclosed*  
*version in light with*  
*the forensic done Vetting*  
*JH Sub*  
*7-1-2014*  
*G.P.*

Advt: Advocate General  
(Service Tribunal) K.P.K  
Peshawar.

BEFORE KPK SERVICE TRIBUNAL  
PESHAWAR.

Service Appeal No. 1004/2013.

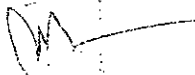
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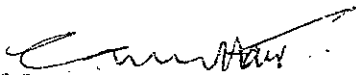
Government of KPK etc

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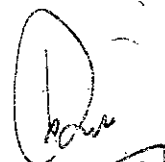
We Respondents solemnly affirm and declares on oath that contents of the reply is correct to the best of our knowledge and belief and nothing conceded from the Honorable Service Tribunal.



Secretary  
Govt of Khyber Pakhtunkhwa  
Environment Department Peshawar



Chief Conservator of Forests,  
Northern Forest Region-II  
Abbottabad



Conservator of Forests,  
Upper Hazara Forest circle  
Mansehra