


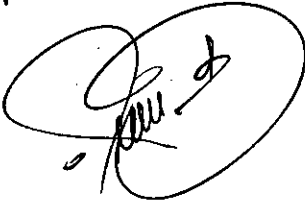
27.02.2017

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Clerk to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 04.05.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIR NAZIR)
MEMBER

*has become infructuous
hence wants to withdraw*

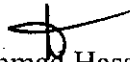


04.05.2017

Counsel for the appellant present and Mr. Muhammad Adeel Butt, Additional AG for respondents present. Counsel for the appellant stated at the bar that the appellant has ~~been~~ retired and the present appeal has become infructuous. He requested for withdrawal of appeal. Signature of learned counsel for the appellant also obtained in the margin of order sheet.

In view of the above the present is dismissed as withdrawn. File be consigned to the record room.


(Gul Zeb Khan)
Member

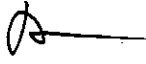

(Ahmad Hassan)
Member

ANNOUNCED
04.05.2017

29.10.2015

Appellant in person and Mr. Muhammad Jan, GP for respondents present. Appellant requested for adjournment due to non-availability of his counsel. To come up for arguments on

8-3-16



Member



Member

08.03.2016

Agent to counsel for the appellant and Addl: AG for respondents present. Due to general strike of the bar counsel for the appellant is not available. Therefore, the case is adjourned to 14.06.2016 for arguments.



Member

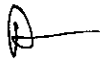


Member

14.06.2016

Appellant in person and Mr. Usman Ghani, Sr.GP for respondents present. Appellant stated that his learned counsel is stated busy before the Hon'ble Peshawar High Court and requested for adjournment. Adjourned for arguments to

24.10.16 before D.B.



MEMBER



MEMBER



24.10.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Requested for adjournment. To come up for arguments on 27.02.2017 before D.B.



Member



Chairman

18.4.2014

Appellant in person and Mr. Muhammad Jan, GP with Jawad Mumtaz, SDFO for the respondents present and reply filed. Copy handed over to the appellant. To come up for rejoinder on 7.7.2014.

MEMBER

MEMBER

7.7.2014

Junior to counsel for the appellant and Sr.GP with Jawad Mumtaz, SDFO for the respondents present. Rejoinder received. Copy handed over to the learned Sr.GP. To come up for arguments on 22.12.2014.

MEMBER

MEMBER

22.12.2014

Clerk to counsel for the appellant and Mr Muhammad Jan, GP for the official respondents present. The Tribunal is incomplete. To come up for the same on 07.05.2015.

MEMBER

07.05.2015

Appellant with counsel and Mr. Muhammad Jan, GP for the respondents present. The learned Member (Judicial) is on leave, therefore, case to come up for arguments 29.10.2015.

MEMBER

Appeal No. 1321/2013
Mr. Behnood Said

18.12.2013

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The impugned appellate order dated 26.02.2013, communicated to the appellant on 03.08.2013 has been issued in violation of Rule-5 of the Civil Servants (Appeal) Rules 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 13.03.2014. Appellant has also filed an application for condonation of delay. Notice of application should also be issued to the respondents for reply/arguments on the date fixed.

Appellant deposited
Process fee & Security
of Rs. 180/- Bank Receipt
attached with file.

Member

18.12.2013

This case be put before the Final Bench for further proceedings.

Chairman


13.3.2014

Appellant in person and Mr. Usman Ghani, Sr.GP with Jawad Mumtaz, SDFO for the respondents present and needs further time. To come up for written reply on 18.4.2014.

MEMBER

3
30.09.2013

Appellant with counsel present and requested for adjournment for filing of certain necessary documents. To come up for preliminary hearing on 30.10.2013.


Member

4
28.10.2013.



Appellant with counsel present. Application for condonation of delay moved on behalf of the appellant. To come up for arguments on maintainability of the appeal and limitation, in view of the fact that the appeal has been lodged against imposition of minor penalty, on 18.12.2013.


CHAIRMAN

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1321/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10/09/2013	<p>The appeal of Mr. Bahrul Said presented today by Mr. Khaled Rahman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	17-9-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>30-9-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1321 /2013

Bahrul Said

.....Appellant

Versus



**The Govt. of KPK and
others**

.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-6
2.	Stay Application with Affidavit			7-8
3.	Charge Sheet with Statement of allegations		A	9-10
4.	Letter thereby Enquiry Officer was nominated.	10.02.2012	B	0-11
5.	Reply to Charge Sheet		C	0-12
6.	Second Charge Sheet and Statement of allegations		D	13-16
7.	Reply to second Charge Sheet		E	0-17
8.	Enquiry Report		F	18-20
9.	Final Show Cause Notice		G	0-21
10.	Reply to Show Cause Notice		H	22-23
11.	Impugned order	22.11.2012	I	0-24
12.	Departmental appeal		J	25-27
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15.	Wakalat Nama			37.

Through


 Appellant

Khaled Rahman
 Advocate, Peshawar

9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 0345-9337312

Dated: _____ / 09/ 2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1321 /2013

1331
10-9-13

Bahrul Said, Forest Guard,
Buner Forest Division, Daggar, Buner..... Appellant

Versus

1. The Govt. of Khyber Pakhtunkhwa through Secretary Environment, Civil Secretariat, Peshawar.
2. The Conservator of Forests, Malakand Circle, Saidu Sharif, Swat.
3. The District Forests Officer, Buner Forest Division, Daggar, Buner..... Respondents

SERVICE APPEAL UNDER RULE-19 OF THE KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES, 2011 READ WITH SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 26.02.2013 COMMUNICATED ON 03.08.2013 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT AGAINST THE IMPUGNED ORDER DATED 22.11.2012 WAS PARTIALLY ALLOWED AND THE PENALTY OF RECOVERY OF RS.20,000/- WAS REDUCED TO THE RECOVERY OF RS.10,000/- ONLY.

PRAYER:

On acceptance of the instant appeal, the impugned appellate order dated 26.02.2013 communicated on

03.08.2013 and the impugned order dated 22.11.2012 may graciously be brushed aside w.e.f. 22.11.2012 with all consequential back benefits including the re-payment of money (if recovered).

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant is the employee of Buner Forest Division serving as Forest Guard since long. While posted as Forester temporarily in his own pay and scale at Chamla Block, appellant was served with a Charge Sheet and Statement of allegations (*Annex:-A*) alleging therein irregularities against the appellant including the non-reporting of Chir Poles and informing the Range Forest Officer. Syed Mukamil Shah, Range Forest Officer, Daggar at Pir Baba was nominated as an Enquiry Officer vide letter dated 10.02.2012 (*Annex:-B*).
2. That the allegations were ill-founded, therefore, appellant submitted his reply (*Annex:-C*) thereto thereby clarifying his position and denying the allegations. Meanwhile another Charge Sheet and Statement of allegations (*Annex:-D*) was served upon appellant adding more allegations. Appellant also submitted a reply (*Annex:-E*) in response to the same.
3. That Enquiry Officer conducted enquiry vide Enquiry Report (*Annex:-F*) wherein Para-6 he concluded that the locals are inclined to cut the trees for firewood and domestic purposes, Tobacco

Bhattis and multiple routes throughout the Forests are the causes of damage to the Forest and recommended minor penalty upon the appellant. It is pertinent to mention here that appellant has produced documentary record to Enquiry Officer in order to disprove the allegations against the appellant.

4. That a Final Show Cause Notice (*Annex:-G*) was served upon the appellant alleging inefficiency and corruption which was duly replied (*Annex:-H*) by the appellant and vide impugned order dated 22.11.2012 (*Annex:-I*), appellant was imposed upon the minor penalty of Rs.20000/- and stoppage of two annual increments for the year 2012-2013.
5. That being aggrieved of the impugned order *ibid*, appellant filed a departmental appeal (*Annex:-J*) thereagainst which was partially allowed vide impugned appellate order dated 26.02.2013 (*Annex:-K*) thereby the penalty of Rs.20000/- was reduced to Rs.10000/-. It will not be out of context to explain here that the appellate order was not communicated to the appellant and there is another Service appeal (*Annex:-L*) pending before this Hon'ble Tribunal against the seniority and promotion of one Badrul Jamil wherein Badrul Jamil Respondent submitted an application before the Tribunal for filing additional documents on 03.08.2013. The documents annexed with the application also included the impugned appellate order, therefore, appellant came to know about the

impugned, appellate order on 03.08.2013, hence this appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That appellant has been framed in the instant case through an engineered conspiracy with the sole object to deprive the appellant from the expectant promotion and seniority from which the appellant has been deprived unlawfully through political influence by Badrul Jamil a recommendee of political authority then in power. Since appeal of the appellant is pending on the subject, therefore, the instant case was coached in to pressurize and deprive the appellant from his legal rights.
- C. That the charges leveled against the appellant were wholesale incorrect, baseless and therefore appellant has denied the same. No evidence has been produced against the appellant. The so called Checking Party which went to the spot without taking the appellant reported the alleged damage without mentioning the details of the cut poles including measurements, age of the poles etc. and it is near to impossible to examine and check six

compartments within two hours inas much as each compartment is lying on an area of about 400 to 600 acres.

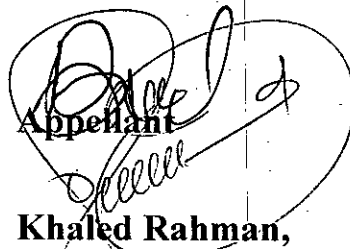
- D. That appellant was posted as Forester in his own pay and scale just for a few months and the so called damage was a matter mostly of previous period, however, whatever damage occurred during the period of the appellant the same was duly reported in time properly pursued and F.I.Rs have been lodged wherein many accused were convicted, fined and many cases are still pending, the record of which was examined by the Enquiry Officer.
- E. That the facts alleged and grounds taken in the replies to the Charge Sheets and Statements of Allegations and Show Cause Notice including the departmental appeal of the appellant may be taken as an integral part of this appeal wherein appellant has elucidated his position.
- F. That no regular enquiry was conducted into the allegations nor appellant was associated properly with the proceedings and everything was done at the back of the appellant which is against the law and Judgments of the superior fora.
- G. That no opportunity of personal hearing was provided to the appellant which is also the mandatory requirement of law.

- H. That appellant has longstanding service and during this period of time appellant has never been involved in any sort of illegal activities and moreover no corruption has been proved against the appellant. The damage to the timber is a menace prevalent throughout the province under the auspices of heavy-handed persons wielding powers.
- I. That appellant will submit other grounds at the time of arguments with the permission of this Hon'ble Tribunal.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through


Appellant
Khaled Rahman,
Advocate, Peshawar.

Dated: _____ / 09/ 2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. _____/2013**

Bahrul Said.....Applicant

Versus

The Govt. of KPK and others.....Respondents

Application for suspending the operation of the impugned orders dated 26.02.2013 and 22.11.2012 till the final disposal of the instant appeal.

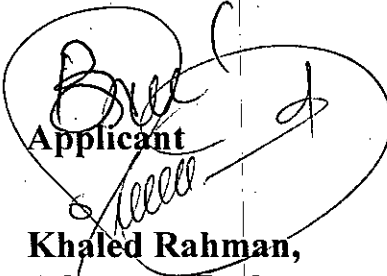
Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.
3. That the balance of convenience also lies in favour of appellant and in case the impugned orders are not suspended the appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned orders

dated 26.02.2013 and 22.11.2012 may graciously be suspended till the final disposal of the appeal.

Through


Applicant
Khaled Rahman,
Advocate, Peshawar.

Dated: _____ / 09/ 2013

Affidavit

I, Bahrul Said, Forest Guard, Buner Forest Division, Daggar, Buner, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Deponent

CHARGE SHEET

9

Annex A¹⁰ 2

1. Mr. Mir Wali Khan, Divisional Forest Officer, Buner Forest Division as competent authority, hereby charge you Mr. Bahrul Said Forest Guard of Chamlla Range as follows:-

That you while posted as Incharge of Chamlla Block, committed the following irregularities:-

- a) You did not take any action against the Forest offenders.
- b) 285 Nos chir poles were found un-reported in Makhranai compartment No.2. The average dia of these poles is 9".
- c) You did not inform the Range Forest Officer, Chamlla Range and Divisional Forest Officer, Buner well in time about the damage/smuggling and kept them in dark.
- d) You did not pay visit to site to stop the damage well in time


2. By reasons of the above, you appear to be guilty of Mis-Conduct, En-inefficiency and Corruption under rules 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011, and have rendered yourself liable to all of the penalties specified in rule 4 (b) of the rules ibid.

3. You are, therefore, required to submit your written defence within 07 days of the receipt of this Charge Sheet to the inquiry Officer..

4. Your written defence, if any, should reach the inquiry officer within specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

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

6. A statement of allegation is enclosed.


Divisional Forest Officer
Buner Forest Divn: Daggar.


ATTESTED


10

OFFICE ORDER NO. 29 DATED 10/02/2012 ISSUED BY MR. MIR WALI KHAN
DIVISIONAL FOREST OFFICER, BUNER FOREST DIVN: DAGGAR. (AUTHORITY).

I, Mr. Mir Wali Khan, DFO, Buner as competent authority, am of the opinion that Mr. Bahrul Said Forest Guard I/C Chamlla Beat has rendered himself liable to be proceeded against, as he committed the following acts/omission, within the meaning of rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011.

STATEMENT OF ALLEGATIONS.

- i. During the visit of compartment No. 02 Makhranai by the Divisional Forest Officer Buner on 09.02.2012, 85 Nos chir poles were found un-reported.
 - ii. You did not take any action against the Incharge FG and offenders and kept silent.
 - iii. You did not inform the Range Forest Officer, Chamlla Range and Divisional Forest Officer, Buner about the damage and kept them in dark.
 - iv. You did not visit the site of damage to stop further damage which clearly show your involvement in the whole damage.
 - v. Besides the damage of compartment No.2, Makhranai, the undersigned has received complaint about the damage in compartment No. 1,3,4,10, 11 Makhranai and compartment No. 8 of Sura. The damage list of these compartment is under preparation. Soon after the preparation of damage list of the remaining compartment by the checking committee you will be served by another charge sheet accordingly.
2. For the purpose of inquiry against the said accused with reference to the above allegations, Mr. Mukamil Shah Range Forest Officer, Daggar Range is appointed as inquiry officer under the (F&D rules) 2011.
 3. The inquiry officer shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within 30 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 inquiry officer.


Divisional Forest Officer
Buner Forest Divn: Daggar


ATTESTED

11

Annex B³

OFFICE OF THE DIVISIONAL FOREST OFFICER BUNER FOREST DIVN: DAGGAR.

To

Syed Mukamil Shah
Range Forest Officer
Dagggar at Pir Baba.

No. _____ /G. Dated. Dagggar, the: 10 /02/2012.

Subject:- DISCIPLINARY PROCEEDINGS AGAINST THE STAFF OF
CHAMLLA RANGE.

Memo: Enclosed herewith please find all the documents, related to the inquiries against
the following staff of Chamlla Range.

1. Mr. Shah Rasool I/C Chamlla Range.
2. Mr. Bahrul Said F/Guard Incharge Chamlla Block.
3. Mr. Jehanzeb Forest Guard Incharge Makhranai Beat.

You are requested to finalize all the inquiries within the stipulated period as
mentioned in the E&D rules, 2011. Charge sheets and Memo of allegations of all the above staff is
enclosed.

Encl: As above

Divisional Forest Officer
Buner Forest Divn: Dagggar

No. 2523-526/G.

Copy forwarded to:-

1. The Conservator of Forests Malakand Forests Circle East at Shagai Saidu Sharif, Swat for
favour of information, please.
2. Mr. Shah Rasool, Forester I/C Chamllsa Range.
3. Mr. Bahrul Said Forest Guard I/C Chamla Block.
4. Mr. Jehanzeb Forest Guard I/C Makhranai Beat.

They are directed to appear before the Enquiry Officer on the date, time, place
fixed by the Inquiry Officer for the purpose.

[Signature]
Divisional Forest Officer
Buner Forest Divn: Dagggar

ATTACHED

بخدمت جناب سید مکمل شاہ راج آفیسر ڈگری بمقام پیر بابا

Amir C

12

مضمون۔ تادیبی کارروائی برخلاف سٹاف جملہ راج

عنوان: بحوالہ جناب ڈی۔ ایف۔ اوصاحب بونیفرسٹ ڈویژن کے مراسلہ نمبری G/2522/مجر یہ 10/02/2012

گزارش ہے کہ بندہ سے درج بالا مراسلہ کے رو سے مخبرخی فارسٹ کمپارٹمنٹ نمبر 02 میں تعدادی 285 عدد بول سائز درختان کے کٹائی پر جواب طلبی کی گئی ہے اس بارے میں درج ذیل وضاحت پیش خدمت ہے۔

(1) یہ بالکل غلط ہے کہ میں نے مذکورہ غیر قانونی کٹائی پر ملزمان کے خلاف کوئی کارروائی نہیں کی ہے جس طرح جناب کو معلوم ہے کہ علاقہ کے بیشتر لوگ بالسن کے حصول کیلئے مقامی جنگل میں غیر قانونی کٹائی کرتے ہیں ایسے مجرموں کو کوئی بارعدالت چالان کر کے جرمانہ بھی کیا گیا ہے مگر اپنی عادت سے باز نہیں آتے اور انتقام کے طور پر مزید غیر قانونی کٹائی کرتے رہتے ہیں۔

جہاں تک میرے طرف سے کارروائی کا تعلق ہے تو میں نے اپنا فرض بخوبی انجام دیا ہے اور بیٹ گاڑنے بروقت کارروائی کرتے ہوئے تمام ملزمان کے خلاف پرچے کاٹے ہیں جسکے میں نے بطور تفتیشی آفیسر تصدیق کر کے پرچے جات ہذا کو دفتر راج آفیسر چملا ارسال کئے ہیں کیونکہ پرچے کاٹنے کے علاوہ فارسٹ عملہ کیساتھ مزید کوئی اختیار نہیں۔ ہمارے ساتھ ہمارا اسلحہ گارڈ بک ہوتا ہے جسکا ہم ہر طریقے سے استعمال کر کے ملزموں کی خلاف پرچے کاٹتے ہیں اور انکو سزا دلانے کیلئے عدالت میں پیش کرتے ہیں مزید یہ کہ ملزمان ہر وقت جدید اسلحے سے لیس جنگل میں جاتے ہیں اور اگر کوئی مزاحمت کا سامنا ہو جائے تو گولی چلانے سے بھی دریغ نہیں کرتے۔ (کٹے ہوئے پرچے لف ہذا ہیں)

(2) میں نے اپنے افسران بالا کو تارکی میں نہیں رکھا ہے۔ بلکہ مجرمان کے خلاف بروقت قانونی کارروائی عمل میں لائی گئی ہے۔ اور مجرموں کو جلد از جلد عدالت میں پیش کئے جائینگے یہ سارا عمل جناب ڈی۔ ایف۔ اوصاحب کے دستخط پر کیا جائیگا۔ اور حالات و واقعات کا اُسے علم ہو جائے گا۔

(3) یہ الزام بھی غلط ہے کیونکہ اگر میں جنگل کا معائنہ نہ کرتا تو ملزمان کے خلاف پرچوں کے تصدیق کیسے کرتا۔ اس عمل سے ظاہر ہے کہ میں نے اپنے ڈیوٹی میں کوئی کوتاہی نہیں کی اور اپنا فرائض منصبی اچھے طریقے سے انجام دی ہے۔

(4) اسکے علاوہ عرض ہے کہ پرچے کاٹ کر اسکا نمبر باقاعدہ طور پر منڈی پر لگایا گیا تھا۔ مگر کچھ مقامی لوگ ٹارچ ووڈ کے استعمال کے خاطر منڈی کو دوبارہ کاٹ دیتے ہیں اور اس سے لگا ہونمبر ڈائل ہو جاتا ہے۔ جناب نے اگر ایسا کوئی منڈی بدوران معائنہ جنگل ہذا میں نوٹ کئے ہو۔ تو شاید یہ دوبارہ کاٹنے کا نتیجہ ہوگا۔

الغرض میں نے اپنی ڈیوٹی نہایت دیانتداری سے انجام دی ہے اور کبھی کسی مجرم کیساتھ ملی بھگت نہیں کی ہے اسلئے معروض ہوں کہ جناب مذکورہ بالا حقائق کے روشنی میں میرے خلاف لگائے گئے الزامات پر ہمدردانہ غور کریں اور مجھے اس سے بری الذمہ قرار دیں۔ مشکور ہوگا۔

بحر السید فارسٹ گاڑ

انچارج چملا بلاک

ATTESTED

CHARGE SHEET.

Amx D

13

I, Mr. Mir Wali Khan, Divisional Forest Officer Buner Forest Division as Competent Authority hereby charge you, Mr. Bahrul Said Forest Guard (BPS-7) Incharge Chamlla Block as follows:-

That you while posted as Incharge of Chamlla Block, committed the following gross irregularities as mentioned in the memo of allegations.

The checking committees constituted vide this office order No. 31 dated 10-02-2012, reported that the following chir poles have been damaged as per detail given below:-


(a) S.No.	Compartment No.	Species.	Un-reported.	Reported	Total.
1.	Makhranai No. 01.	Chir	88	100	188
2.	Makhranai No. 04	Chir	397	801	1198
3.	Makhranai No.10	Chir	51	246	297
4.	Makhranai No.12	Chir	564	346	910
5.	Sora No. 08	Chir	19	239	258
Total:-			1119	1732	2851


- b) You did not take any action against the incharge Forest Guard and the offenders. You remained silent for a long period and did not move to visit the site of damage.
- c) Neither you inform your immediate officer nor reported to Divisional Forest Officer, Buner about the damage and kept them in dark for a long time, for unknown reasons.
- d) You did not visit the site of damage during your tenure to take appropriate measures to safe guard the Government interest.
- e) You did not approach to the Police or any other agency for help, which speaks your clear cut connivance in the damage.
- f) You did not chalk reports against the offenders till the visit of Divisional Forest Officer, Buner to the compartment No. 2 of Makhranai on 9.2.2012. After the visit of Divisional Forest Officer, Buner to the Makhranai compartment No. 2, you accompany with incharge Forest Guard started issuing of damage reports and marking of the stumps and submitted the prosecution cases after the action of DFO, Buner.
- g) From the scrutiny of the damage reports, it was found that 162, 135, 140 and 150 nos of poles were entered in the damage reports. This proves that all the damage reports were issued in hap hazard manner in one stroke, just to cover the damage and save your skin irrespective of the actual time period of the damage.
- h) You and your subordinate Forest Guard did not bother to compound the cases, seize the case property, or hand over the offenders to the law.

ATTESTED

14

- 2, By reasons of the above, you appear to be guilty of In-efficiency, Mis-conduct and Corruption under Rules-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 (b) of the rules ibids.
- 3, You are, therefore, required to submit you written defence within seven days of the receipt of this charge sheet to the Inquiry Officer/Committee, as the case may be.
- 4, Your written defence, if any should reach the Inquiry Officer/Committee within the specified period, failing which it shall be presumed that you have no defence to put in that case ex-parte action shall be taken against you.
- 5, Intimate whether you desire to be heard in person.
- 6, The statement of allegation is enclosed.


Divisional Forest Officer
Buner Forest Divn: Daggar
(Competent Authority)


ATTESTED

OFFICE ORDER NO. 35 DATED 29/02/2012, ISSUED BY MR. MIR WALI KHAN,
DIVISIONAL FOREST OFFICER, BUNER FOREST DIVISION, DAGGAR (AUTHORITY)

15

DISCIPLINARY ACTION.

I, Mr. Mir Wali Kan, Divisional Forest Officer, Buner as Copetent Authority, am of the opinion that Mr. Bahrul Said Forest Guard Incharge of Chamla Block (BPS-7) has rendered himself liable to be proceeded against, as he committed the following acts/omission within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011:

STATEMENT OF ALLEGATIONS.

The checking committees constituted vide this office order No. 31 dated 10-02-2012 reported that the following chir poles have been damaged as per detail given below:-

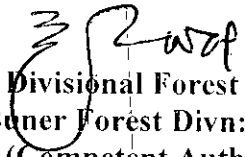
i)	S.No.	Compartment No.	Species.	Un-reported.	Reported	Total.
	1.	Makhranai No. 01.	Chir	88	100	188
	2.	Makhranai No. 04	Chir	397	801	1198
	3.	Makhranai No.10	Chir	51	246	297
	4.	Makhranai No.12	Chir	564	346	910
	5.	Sora No. 08	Chir	19	239	258
			Total:-	1119	1732	2851

- ii), You did not take any action against the incharge Forest Guard and the offenders and you remained silent for a long period and did not move to visit the site of damage.
- iii), Neither, you inform your immediate officer, nor reported to Divisional Forest Officer, Buner about the damage and kept them in dark for a long time, for unknown reasons.
- iv), You did not visit the site of damage during your tenure to take appropriate measures to safe guard the Government interest.
- v), You did not approach to the Police or any other agency for help, which speaks your clear cut connivance in the damage.
- vi), You did not chalk reports against the offenders till the visit of Divisional Forest Officer, Buner to the compartment No. 2 of Makhranai on 9.2.2012. After the visit of Divisional Forest Officer, Buner to the Makhranai compartment No.2, you accompany with incharge Forest Guard started issuing of damage reports and marking of the stumps, and submitted the prosecution cases after the action of DFO, Buner.
- vii), From the scrutiny of the damage reports, it was found that 162,135, 140 and 150 Nos of chir poles were entered in the damage reports. This proves that all the damage reports were issued in hap hazard manner in one stroke, just to cover the damage and save your skin irrespective of the actual time period of the damage.
- viii), You and your subordinate Forest Guard did not bother to compound the cases, seize the case property, or hand over the offenders to the law.

ATTESTED

16

- 2, For the purpose of inquiry against the said accused with reference to the above allegations, Syed Mukamil Shah, Range Forest Officer, Daggar Range is appointed as inquiry officer under the (E&D) rules of Government Servants, 2011.
- 3, The inquiry officer/inquiry committee shall, in accordance with the provision of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within 30 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.
- 4, Th accused and a well conversant representatrive of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/inquiry committee.


Divisional Forest Officer
Buner Forest Divn: Daggar
(Competent Authority)


ATTESTED

- 2, For the purpose of inquiry against the said accused with reference to the above allegations, Syed Mukamil Shah, Range Forest Officer, Daggar Range is appointed as inquiry officer under the (E&D) rules of Government Servants, 2011.
- 3, The inquiry officer/inquiry committee shall, in accordance with the provision of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within 30 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.
- 4, Th accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/inquiry committee.

Divisional Forest Officer
Buner Forest Divn: Daggar
(Competent Authority)

proceedings on the date, time and place fixed by the inquiry officer/inquiry committee.

2016/1/12/2

جناب سید مکمل شاہ صاحب (انکوائری آفیسر) ریجن آفیسر ڈگری فارسٹ ریجن بمقام پیر بابا

Amx E

17

مضمون: جواب بابت چارج شیٹ نمبر 34 مورخہ 29/02/2012

عنوان: بحوالہ درجہ بالا چارج شیٹ بندہ سے معزنی فارسٹ کپارٹمنٹ 10, 04, 01 اور 12 اور سوراہیٹ نمبر 08 جنگل کے نقصان پر وضاحت طلب کی گئی ہے۔ اس ضمن میں درج ذیل وضاحت پیش خدمت ہے۔

(1) یہ بالکل غلط ہے کہ میں نے انچارج فارسٹ گارڈ کے خلاف کوئی کارروائی نہیں کی ہے اور نہ میں نے ملازموں کے خلاف کارروائی کی ہے۔ اور نہ جنگل کا معائنہ کیا ہے۔ بلکہ متعلقہ بیٹ گارڈ نے بروقت پرچہ کاٹ کر مجھے مطلع کیا ہے اور پرچے کے تفتیش کرتے ہوئے میں موقع پر گیا ہوں اور تمام جنگل کا معائنہ کر چکا ہوں

(2) میں نے اپنے ریجن آفیسر صاحب حملہ کو پرچہ جات کی تفتیش کر کے اُسے حالات سے آگاہ کیا تھا جس نے اُن پرچہ جات کو داخل دفتر کئے ہیں جس سے ظاہر ہے کہ میں نے اُسے باخبر رکھا ہے۔

(3) جس طرح پہلے ذکر ہوا ہے میں بدوران تفتیش اور دیگر مواقع پر جنگل ہڈا کا باقاعدہ دورہ کیا ہے اور ملازموں کے خلاف نہ صرف پوری کارروائی کی ہے بلکہ مزید نقصان کے ازالہ کے لئے متعلقہ بیٹ گارڈ کو ہدایات جاری کئے ہیں۔

(4) کوئی رپورٹ جعلی یا بے وقت جاری نہیں کیا گیا ہے بلکہ تمام رپورٹس مقررہ تاریخ اور وقوعہ پر کئے گئے ہیں جو کہ جناب DFO صاحب کے دورہ جنگل سے پہلے کے ہیں۔

(5) یہ بھی درست نہیں کہ رپورٹ جلدی میں کائے گئے ہیں۔ پرچے کاٹنے میں کوئی جلد بازی نہیں کی گئی ہے اس لئے کہ ملازموں کو عدالت میں پیش کرنے ہو گئے۔

(6) یہ غلط ہے کہ ہم نے حملہ بلاک کے متعلقہ بیٹس میں ملازموں سے غرضانہ نہیں لیا ہے ہم نے موقع پر بہت سارے کیسوں میں غرضانہ وصول کیا ہے جس کا تفصیلی ذکر ریجن آفیسر حملہ نے اپنے جواب میں کیا ہے۔

(7) حملہ بلاک کے حملہ بلکہ متعلقہ کپارٹمنٹس میں نقصان کے بارے میں مکمل رپورٹ SDM اور ریجن آفیسر حملہ کو مورخہ 04/02/2012 کو دیا گیا ہے۔

(8) جن ملازموں کے خلاف متعلقہ جنگل میں پرچے کاٹنے کئے ہیں ان کا تفصیلی لسٹ مع مکمل کوائف ملازمان منسلک ہیں۔

مزید وضاحت عرض ہے کہ میں تھوڑے سے دورانے کے لئے مذکورہ بلاک پر بلاک آفیسر تعینات کیا گیا ہوں۔ جو نقصان جنگل میں سرزد ہوا ہے تو یہ صرف میرے دورانے کے عرصہ دو ماہ کا نہیں بلکہ یہ میرے دورانے سے پہلے بھی سرزد ہو چکا ہے جو کہ اس دورانے سے پہلے بھی مذکورہ جنگل میں نقصان جنگل کی رپورٹ ہائے درج ہے۔ جو کہ ریکارڈ پر ہے۔

درجہ بالا وضاحت سے صاف ظاہر ہے کہ بحیثیت بلاک آفیسر میں نے جنگل کا اپنے بس کے مطابق تحفظ کیا ہے اور کوئی بھی ملازم بغیر قانونی کارروائی نہیں چھوڑا ہے اور نہ کسی ملازم کے ساتھ میری کوئی غلطی بھگت رہی ہے بلکہ اپنی ذیوقی نہایت خوش اسلوبی سے انجام دی ہے اس لئے معروض ہوں کہ میرے خلاف لگائے گئے الزامات کو بے بنیاد قرار دے کر بری الذمہ کیا جائے۔ مشکور رہوں گا۔

بحر السید فارسٹر

انچارج آفیسر حملہ بلاک

ATTESTED

**ENQUIRY REPORT AGAINST MR. BAHRUI, SAID FOREST GUARD INCHARGE
CHAMLLA BLOCK.**

Readwith

Amx F² (18)

- 1- Visit of DFO Buner to Makhranai Comptt: 02 on 9-2-2012 found 285 Chir Poles cut as un reported damage.
- 2- Complaint received by the DFO Buner regarding cutting of Chir poles in Makhranai.
- 3- Two checking committees constituted vide DFO Buner office order No.31, dated 10.02.2012 regarding checking of Makhranai Comptt: 1,4,10 and 12.
- 4- Checking report regarding cutting of Chir Poles in Makhranai and sura.
- 5- Charge sheet served upon the accused official vide DFO Buner office order No.34 dated 29-02-2012.
- 6- Appointment the undersigned as Enquiry officer vide DFO Buner office order No.28, dated 10.02.2012.

Brief history of the case.

- 1- During the course of visit DFO Buner to Makhranai Comptt:02 of Chamlla block, Chamlla Range on 09-02-2012, 285 Chir poles were found cut. A complaint was also received by the DFO Buner showing huge damage in the above compartment. Accordingly, the accused incharge F/Guard was issued charge sheet. To probe into the matter, the undersigned was appointed as Enquiry officer vide DFO Buner office order No: 2784/G dated 29-02-2012.
- 2- To ascertain the factual position regarding damage Makhranai C-1,4,10,12 and Sura and Mangal thana of Chamlla block, two checking committee was constituted headed by M/S Zahid Hussain and Khan Zada foresters vide DFO Buner office order No. 31, dated 10.02.1012. The checking committees after detail checking have found the following damage.

Name of compartment	Nos of trees cut reported	No of the un reported trees.	Total (No)
Makahranai C-01	88	100	188
Makahranai C- 04	397	801	1198
Makahranai C- 10	51	246	297
Makahranai C- 12	564	346	910
Sura C- 08	19	239	258
Total :-	1119	1732	2851

As a result of cutting of the above damage, an other charge sheet was issued to the accuse by leveling the charges of In-efficiency, Mis-conduct and corruption.

Discussion

In response to the charge sheet for cutting of 285 chir poles, the accused Forest Guard submitted his reply. An other reply was submitted by the accused forester to the enhance damage of 2851 trees including the previous 285 trees. From the above facts, the following issues are to be framed:-

[Handwritten signature]

18

1- Whether besides damage reports any FIR has been lodged in local Police Station.

No doubt that the Forest Personnel, have a weapon namely damage report. But alternatively based on critical circumstances, the FIR is needed to lodge and the offender challan to court on emergent basis, where damage is clear and in one stroke special cases be prepared to court through RO/DFO and should be pursued till award of punishment. The merely damage report in routine does not serve the purpose. If the accused has issued a lot of damage reports that should required to be pursued vigorously.

2- Whether report lodged before the Deptt official has pursued till its logical conclusion.

Each and every action in the Form of black and white as well as verbal should be pursued regularly at all cost. Merely completion of requirement in paper is not the remedy. The forest offenders should have been discouraged. What over the ways may be. All the legal and personal resources should be adopted being responsible officials/officer. This should facilitated in discouraging of Forest offender by cutting of Forests.

3- Whether the Court decide the case keeping in view the verdict of damage report.

No doubt that the Forest personnel have a weapon namely damage report. But alternatively based on critical circumstances. The FIR is needed to lodge and the offender challan to court on emergent basis, where damage is clear and in one stroke special cases be prepared to court through RO/DFO and should be pursued till award of punishment. The merely damage report in routine does not serve the purpose. It's the accused has issued a lot of damage reports that should required to be pursued vigorously.

4- Whether the Forest Official/accused paid visit to his respective block/beat in order to bring on record.

Visiting of Forests by accused pay an import out role in protection of Forests of Forests and submit his detail report regarding damage /status of forests. Instead of Forests such untoward situation should have not resulted. No doubt exceptionally the Forests should have checked as stated in his reply. As from checking and regular visit by Forest will in deed lead the offenders to discourage in future.

5- Did the accused add same thing a fresh in his defence.

The accused called on 30/03/2012 for personal having to state some thing a fresh in addition to his reply. But he could not added except in his reply earlier submitted. Therefore the personal heaving has no base to all sibate/ consider in the enquiry.

6- whether the constraints narrated in the reply are based on facts or otherwise.

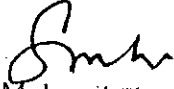
To acknowledge the bottleneck if any, the undersigned in the capacity of Enquiry Officer visit the spot and glanced over the surroundings. Therefore justly reached to the conclusion that:-

- The local are inclined to cut the forests just for the sake of firewood.
- The forest is being cut for the domestic purpose.
- That die to the tremendous pressure of population over the left over meager forest, the forest is being cut.
- Due to availability of hand some tobacco betties, the forest to some extent cut for consumption.
- The forests due to the tremendous routes is being cut and smuggle to the down adjoining districts.

ATTESTED

Findings.

In the light of availability of substantial record on file, discussion made and the constraints narrated above, the undersigned reached to the conclusion that the allegations leveled against the accused forest Mr. Bahrul Said has partially been proved. Therefore as per Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, read with the rules 4 (a), minor penalty is proposed to be awarded upon the accused. Enquiry file from page 01 to 141 is enclosed herewith.


(Syed Mukamil Shah)
Sub Divisional Forest Officer
Daggar Forest Sub Division
(Enquiry Officer).


ATTESTED

(21)

A m x G

SHOW CAUSE NOTICE

I, Mr. Mir Wali Khan, Divisional Forest Officer, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011, do hereby serve on you, Mr. Bahrul Said I/C Chamla Block as follows:

1. (i) That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide communication No. 2523-26/G, dated 10.02.2012 and No. 2785-89/G, dated 29.02.2012.
- (iii) on going through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defence before the inquiry officer.

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules.

- (a) In-efficiency.
- (b) Corruption.

6. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalties of In-efficiency and Corruption under rule 4 of the said rules.
7. You are, thereof, 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.
8. If no reply to this notice is received within seven 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.
9. A copy of the findings of the inquiry officer is enclosed.


DIVISIONAL FOREST OFFICER
BUNER FOREST DIVN: DAGGAR
COMPETENT AUTHORITY

ATTESTED



In respect of:

Honourable Mir Wali Khan Sahib,
Divisional Forest Officer,
Buner Forest Division, Daggar.
(Competent Authority).

Subject: REPLY TO SHOW CAUSE NOTICE

Amx H"
22

Dear and respected Sir,

I acknowledge the receipt of the show cause notice and in my defence submit most humbly the following facts:

1. The inquiry officer proposal for imposition of minor penalty is not based on facts. Because the enquiry officer has not consulted and perused the record, relevant documents and file deeply.
2. Sir, I am serving the department since long and rendered spotless service to the entire satisfaction of my superiors.
3. I performed my duty regularly and the concerned Beat Guard issued damage report against the accuseds on my directions. Later on fine were imposed on the accuseds. I always inspected the forests under my control.
4. Honourable sir during my tenure the damage occurred, I have taken proper action and damage reports were issued, even during my tenure of charge no stump was left without issuing the damage report.
5. The staff under my control took legal action well in time on my directives. The concerned Forest Guard issued Damage reports against the accuseds. Later on heavy compensation from the accused was recovered and the amount was deposited in the government treasury. The details of the compenstion amount

.... continued

ATTESTED

received by he,SDM Tehsil Mandan credited to the government treasury are Rs.3,30,000/-.

23

6. During my tenure I went to the forests and always kept myself informed from the situation. I have always kept close watch on the forests under my jurisdiction, took in time action against the accuseds for the forest damages. The charges leveled against me are baseless. I am innocent and therefore request to acquit me honorably.
7. I have rendered excellent service in the department. Worked hard day and night for the interest of the department so keeping in view my meritorious services in the Department, exempt me from the so-called charges leveled against me.
8. Also I may be heard in person to convince your honour that I am innocent and deserve your sympathies.

Thanks.

Yours obediently,



Bahrul Said Forester
Buner Forest Division,
Daggar.

Dated 15.11.2012.

ATTESTED

OFFICE ORDER NO. 82 DATED DAGGAR, THE 22/11/2012 ISSUED BY MR. MIR WALI KHAN, DIVISIONAL FOREST OFFICER BUNER FOREST DIVISION DAGGAR.

Read with.

1. Checking committees Reports.
2. Charge sheets/Memo of Allegations.
3. Reply to the charge sheets served upon the accused official.
4. Finding/Recommendation of the Enquiry Officer dated 11.09.2012.
5. Record of personal hearing of the accused.

Brief History.

On 09/02/2012, the Divisional Forest Officer, Buner Forest Division visited compartment No. 02 Makhranai and found fresh damage of chir poles. The Divisional Forest Officer, Buner constituted two checking committees vide Divisional Forest Officer, Buner Forest Division office order No. 31 dated 10.02.2012 to physically check compartment No. 01,02,04,10,12 Makhranai, compartment No. 11,13 Mangalthana and compartment No. 08 Sora. The checking committees compiled their report and submitted to this office accordingly.

Proceedings.

Two charge sheet were served upon the accused official under section No. 5 (b) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Syed Mukamil Shah, Sub Divisional Forest Officer Dagggar was appointed as Enquiry Officer to conduct enquiry against the accused official. The Enquiry Officer conducted the Enquiry and submitted his report vide his letter No. 09/D, dated 11.09.2012.

In the light of the Findings of the Enquiry Officer, the accused was served with a show cause notice under Section No. 14 (4) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The accused submitted reply to the show cause notice. The date of personal hearing was fixed on 20.11.2012 under Section No. 15 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 vide office order No. 79 dated 15.11.2012.

Discussion.

The report of the checking committee, the findings of the Enquiry Officer and the reply of the accused to the show cause notice were thoroughly perused. The accused was heard in person, noted down and examined the points/objection raised by the accused during the course of personal hearing.

Order.

I, in the capacity of competent authority, agree with the findings of the Enquiry Officer and award the accused Forest Guard Mr. Bahrul Said minor penalty of recovery of Rs. 20,000/- (Rupees:- Twenty thousand) and stoppage of two annual increments for the year, 2012 and 2013 under Section No. 14 (5) (ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The amount will be recovered from the accused in seven installments.

(MIR WALI KHAN)
DIVISIONAL FOREST OFFICER
BUNER FOREST DIVN: DAGGAR

No. 2143-45/G.

Copy forwarded to:-

1. The Conservator of Forests Malakand Forest Circle East at Shagai Saidu Sharif, Swat for favour of information, please.
2. The Range Forest Officer, Chamla Range for information.
3. Mr. Bahrul Said Forest Guard C/O RFO, Chamla Range for information.

(MIR WALI KHAN)
DIVISIONAL FOREST OFFICER
BUNER FOREST DIVN: DAGGAR

ATTESTED

In respect of:

Honourable Conservator of Forests,
Malakand Circle, Saidu Sharif Swat.

Subject: APPEAL AGAINST OFFICE ORDER NO. 82, DATED
22.11.2012 ISSUED BY D.F.O. BUNER FOREST DIVISION
AT DAGGAR (COPT ATTACHED).

Prayer: On acceptance of this appeal the office order cited in the
subject whereas minor penalty of recovery fo Rs.20,000/- and
stoppage of two annual increments for the year 2012 and
2013 has been ordered, may be declared as null and void. The
impugned order may be setaside and I may be acquitted
honourably. Other relief if any may be granted please.

Most respected Sir,

I the appellatnt most humbly submit as under:

1. I am serving as Forest Guard in the Forest Department To date I have served to the entire satisfaction of my superiors and by God's grace my record is clean.
2. On checking of the forest under my jurisdiction, some the damage was deducted, for which the damage reports were already issued against the accuseds. No stump was left unreported. Which is very clear from the report duly signed by Enquiry Officer, Zahid Range Officer, Liaqat Forester, Nasrullah Forrester, Badrul Jamil Ferreter and others, whereas they have stated that the said forest was inspected on 23.05.2012 and no stump was found unreported. This report clearly reveals that I am wholly solely innocent.
3. The inquiry officer proposal for imposition of minor penalty was not based on facts. Because the enquiry officer has not consulted and perused the record, relevant documents and file deeply. I

25
Amx J
ATTESTED
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replied the final show cause notice in detail and also convinced the Divisional Forest Officer Buner Forest Division during the personal hearing that I am innocent in this case. But it is astonishing that despite of the same the punishment cited in the above prayer has been granted to me, which is highly miscarriage of justice.

26

4. At the time of checking of the concerned forests it was required to accompany me with the checking party, so that I convinced the party regarding the damage. The checking was done malafidely. The vast forests area was conducted in only one day. The checking lists were not discussed with me. Measurement Dia and expected cutting period was not shown, which clearly shows that those cut trees were listed which are before my taking over of charge.
5. Honourable sir during my tenure the damage occurred, I have taken proper action and damaged reports were issued, even no stump was left without issuing the damage report.
6. FIRs have been registered against the accuseds; later on heavy compensation from them and the amount was deposited in the government treasury.
7. During my tenure I went to the forests and always kept myself informed from the situation. I have always kept close watch on the forests under my jurisdiction, took in time action against the accuseds. The charges leveled against me are baseless. I am innocent and therefore request to acquit me honorably.

..... ATTESTED

27

8. I have rendered excellent service in the department. Worked hard day and night for the interest of the department and I am a low paid government servant. So have pity on my children and exempt me from recovery of Rs.20,000/- and also withdraw the punishment of stoppage of two annual increments for the years 2012 and 2013. For your this act of kindness, I shall pray for your long life and prosperity.
9. Also I may be heard in person to convince your honour that I am innocent and deserve your sympathies.

Thanks.

Yours obediently,

Baharul Said

Bahrul Said Forest Guard,
Buner Forest Division,
Daggar.

Dated 29.11.2012.

ATTESTED

28

READ WITH

1. DFO Buner office order No. 80 dated 22.11.2012, No. 81 and No. 82 of even date.
2. Appeal of Mr. Shah Rasool Ex-Forester dated 29.11.2012 against office order No. 80.
3. Appeal of Mr. Jehan Zeb Forest Guard dated 29.11.2012 against office order No. 81.
4. Appeal of Mr. Bahrul Said Forest Guard dated 29.11.2012 against office order No. 82.
5. This office letter No. 3471/E, dated 10.12.2012, No. 3472/E and No. 3473/E of even date.
6. DFO Buner letter No. 4554/G, dated 28.01.2013, No. 4625/G dated 29.1.2013 and No. 4626/G of even date.
7. This office letter No. 4815/E, dated 18.02.2013.
8. DFO Buner letter No. 5151/G, dated 25.02.2013.

Annex 'K'

BRIEF HISTORY OF THE CASE

During the course of visit of DFO Buner to Makhana C. No. 2 on 09.02.2012, 285 chir poles were found cut. To probe into the matter, enquiry was conducted through a committee headed by SDFO Daggar Sub Division. The enquiry committee submitted his report regarding damage in Makhana C. No. 1, 4, 10, 12 and Sura C- No. 8. On the basis of the said enquiry report, the DFO Buner vide office order No. 80, 81 and 82 dated 22.11.2012 imposed penalty of recovery of Rs. 25,000/- from Mr. Shah Rasool Forester I/C Chamla Range and Rs. 20,000/- each from M/S Jehanzeb and Bahrul Said Forest Guards.

DISCUSSION

Being aggrieved from the above mentioned orders of DFO Buner, M/S Shah Rasool Forester, Jehanzeb and Bahrul Said Forest Guards preferred appeals on 29.11.2012. The DFO Buner was asked vide this office No. 3471/E, dated 10.12.2012, No. 3472/E and No. 3473/E of even date, for comments and detail report. In response the DFO Buner vide his No. 4554/G, dated 28.01.2013 offered his comments. The DFO Buner was asked vide this office No. 4815/E, dated 18.02.2013 to supply relevant documents in the subject case which were supplied by him vide his No. 5151/G, dated 25.02.2013.

On the basis of DFO Buner visit to Makhana C. No. 2 the instant enquiry was initiated while report of the enquiry officer is silent about damage in the said compartment. In the enquiry report submitted by Syed Mukamil Shah SDFO (Enquiry Officer) un-reported damage of 100 chir trees in Makhana C. No. 1 and 801 chir trees in C. No. 4 has been mentioned while Makhana C. No. 1, 2 and 4 were again checked by another committee consisting upon M/S Zahid Hussain RO Chamla, Usqat Ali Forester and Masrullah Jan Forester headed by Syed Mukamil Shah SDFO Daggar on 23.5.2012 wherein they have reported that there is no un-reported damage in the said compartments.

ORDER

As all the above reports are contradictory and doubtful, therefore, I Shah Wazir Khan, Conservator of Forests Malakand Circle East in the capacity of Appellate authority, hereby disposed off the appeals as under:-

1. Taking lenient view due to past good service record and his retirement from service on attaining the age of superannuation, the appeal of Mr. Shah Rasool Ex-Forester is hereby accepted by set aside DFO Buner office order No. 80 dated 22.11.2012.
2. In view of contradictory and doubtful statements, the appeals of M/S Jehanzeb and Bahrul Said Forest Guards are partially accepted and reduce the recovery imposed vide DFO Buner office order No. 81 and 82 dated 22.11.2012 from Rs. 20,000/- each to Rs. 10,000/- each.

SD/-
(SHAH WAZIR KHAN)
CONSERVATOR OF FORESTS,
MALAKAND CIRCLE EAST,

No. 5064-65 IE.
Copy forwarded to the:

1. Divisional Forest Officer, Buner Forest Division Daggar for information and further necessary action with reference to the above correspondence.
2. M/ Shah Rasool Ex-Forester, Jehanzeb and Bahrul Said Forest Guards C/O Divisional Forest Officer, Buner Forest Division Daggar for information and further necessary action with reference to their appeals cited above.

Handwritten: B. Said / c/o DFO Buner

Handwritten: Receiver the amount of Rs. 10,000/-

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

No. 279-2/M, Dated Daggar, the 07/03/2013.
Copy forwarded to M/S Shah Rasool Ex-Forester, Bahrul Said and Mr. Jehanzeb Forest Guards C/O RFO Chamla Range for information and necessary action. He is directed to recover the amount of Rs. 10,000/- from Bahrul Said and Jehanzeb Forest Guards each in five equal installments under intimation to this office.

Handwritten: 3/8/13
DIVISIONAL FOREST OFFICER,
BUNER FOREST DIVN: DAGGAR

Handwritten: 3/8/13
3/8/13
3/8/13

ATTESTE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2011

28

Army L.

Mr. Bahrul Said,
Forest Guard,
Buner Forest Division.....Appellant.

Versus

1. The Govt. of Khyber Pakhtunkhwa
through Secretary Environment,
Civil Secretariat, Peshawar.
2. The Conservator of Forest,
Malakand Circle, Said Sharif, Swat.
3. The Divisional Forest Officer,
Buner Forest Division, Swat.
4. Mr. Badrul Jamil,
Forest Guard,
Buner Forest DivisionRespondents

SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNALS
ACT, 1974 AGAINST THE IMPUGNED ORDER
COMMUNICATED VIDE LETTER DATED 15.07.2011
BY RESPONDENT NO.2 TO RESPONDENT NO.3
WHEREBY THE DEPARTMENTAL APPEAL/
REPRESENTATION OF RESPONDENT NO.4 WAS
ALLOWED AND HE WAS GRANTED SENIORITY IN
THE BUNER FOREST DIVISION W.E.F. THE DATE
OF HIS INITIAL APPOINTMENT AND
ACCORDINGLY THE IMPUGNED SENIORITY LIST
WAS RENEWED TO THAT EFFECT.

ATTESTED

PRAYER:

On acceptance of the instant appeal, the impugned order communicated vide letter dated 15.07.2011 and the consequent impugned modified Seniority List of Forest Guards as stood on 20.07.2011 wherein Respondent No.4 has been placed at Serial No.3 above the name of appellant, may graciously be brushed aside by restoring the previous seniority position of the appellant and that of Respondent No.4.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant was appointed as Forest Guard in the then Swat Forest Division now Buner Forest Division on 05.10.1987 and since then has been performing his duties in the same Division to the entire satisfaction of his superiors.
2. That Respondent No.3 issued a Seniority List (*Annex:-A*) as stood on 31.12.2010 wherein appellant has been placed at Serial No.3 while Respondent No.4 has been placed at Serial No.28.
3. That it is pertinent to mention here that Respondent No.4 was initially appointed as Forest Guard in Buner Watershed Division, Swari vide order dated 17.08.1985 (*Annex:-B*) and after serving there for sufficient time, he through political intervention got himself transferred to the Buner Forest Division vide order dated 14.03.2009 (*Annex:-C*).

ATTESTED

(SI)

4. That since Respondent No.4 submitted his arrival in the Buner Forest Division on 22.03.2009, therefore, he was placed at Serial No.28 of the Seniority List of Forest Guards of the same Division inas much as under the rules he was entitled to seniority in the newly joined Division with effect from that date.

5. That Respondent No.4 being aggrieved of his seniority preferred a departmental appeal (*Annex:-D*) on 05.03.2011 to Respondent No.2 which was forwarded to him by Respondent No.3 vide letter dated 09.03.2011 (*Annex:-E*) and Respondent No.2 summarily allowed the same vide impugned order communicated vide letter dated 15.07.2011 (*Annex:-F*) thereby directing Respondent No.2 to fix the seniority of Respondent No.4 in the Buner Forest Division from the date of his initial appointment.

6. That Respondent No.3 while acting on the direction of Respondent No.2 issued the modified Seniority List (*Annex:-G*) of Forest Guards of Buner Forest Division as stood on 20.07.2011 wherein Respondent No.4 has been placed at Serial No.3 above the name of the appellant and communicated the same to Respondent No.2 vide letter dated 30.09.2011 (*Annex:-H*).

7. That as soon as appellant came to know about the impugned order then he approached Respondent No.3 and submitted application (*Annex:-I*) for obtaining copies of the impugned order, appeal of

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Respondent No.4 on the same day and accordingly the copies of the impugned order and Seniority List etc. were handed over to appellant on 6/01/2012.

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8. That the question of absorption of an employee from one Forest Division into another came for discussion before this Hon'ble Tribunal quite recently in Service appeal No.1815/2010 decided on 15.07.2011 (*Annex:-J*) wherein it has been held that under the law seniority can be claimed by an employee in his original Division but he cannot claim his original seniority in a new cadre/Division in which he is subsequently adjusted.

9. That appellant being aggrieved of the impugned order and the impugned modified Seniority List prefers this appeal inter-alia on the following grounds:-

Grounds:

A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned order/Seniority List, which are unjust, unfair and hence not sustainable in the eye of law and liable to be set aside.

B. That the impugned order has deprived the appellant from his vested right of seniority

ATTESTED

established ever since his appointment by allowing a member of another Division to be unlawfully absorbed and granted seniority with effect from his initial appointment, which cannot be justified under any law, rule or precedent.

- C. That the impugned order reflects a partial attitude, the same apparently reflects non-exercise or for that matter misapplication of a judicial mind to the facts and circumstances of the case. The same is not only deficient in content but is also bad in law and thus is against Section-24A of the General Clauses Act, 1897 and hence is liable to be set aside on that singular score.
- D. That under Rule-17(2) of the Khyber Pakhtunkhwa (appointment, Promotion and Transfer) Rules, 1989, it is more than crystal clear that seniority in various cadres of civil servants appointed by initial recruitment viz-a-viz those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre. In spite of the same Respondent No.4 was granted seniority in the new Cadre/Division with effect from his initial appointment which was legally incorrect and hence the impugned order is void, arbitrary and hence not sustainable under the law.
- E. That by allowing the employee of one Division to be absorbed in another Division along with seniority will open up a flood gate for manipulation, arbitrary exercise of power because in the event of occurrence of a vacancy in one

33

ATTESIEL

Division the same can be usurped by another employee serving in another Division and that is only possible when all the employees of all the Divisions are bounded in one seniority, which is not the case here.

34

F. That appellant was condemned unheard, neither he was arrayed as Respondent by Respondent No.4 in his departmental appeal nor the appellate authority provided him an opportunity of being heard passing the impugned order which is violative of the principle of natural justice and hence impugned order is void ab initio and as such nullity in the eye of law and liable to be set aside.

It is therefore humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

Byed
Appellant

Khaled Rahman
Khaled Rahman,
Advocate, Peshawar.

Dated: 7 / 01/2012

ATTESTED

Service Appeal No. _____/2011

95

Bahrul SaidApplicant.

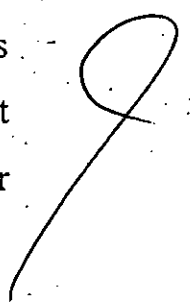
Versus

The Govt. of KPK and others.....Respondents

Application for suspending the operation of the impugned order communicated vide letter dated 15.07.2011 and the impugned Seniority List as stood on 20.07.2011 and restraining the Respondents from promoting Respondent No.4 to the post of Forester till the final disposal of the instant appeal.

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.
3. That the balance of convenience also lies in favour of appellant and in case the impugned order and Seniority List are not suspended and Respondents are not restrained from promoting Respondent No.4 to the post of Forester, appellant will suffer



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irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, impugned order communicated vide letter dated 15.07.2011 and the impugned Seniority List as stood on 20.07.2011 may graciously be suspended and Respondents be restrained from promoting Respondent No.4 to the post of Forester till the final disposal of the instant appeal.

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Applicant

Through

Khaled Rahman
Advocate Peshawar.

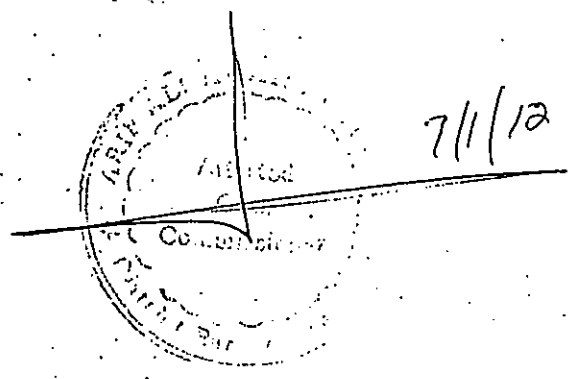
Dated: 7 / 01 / 2012

Affidavit

I, Mr. Bahrul Said, Forest Guard, Boner Forest Division, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

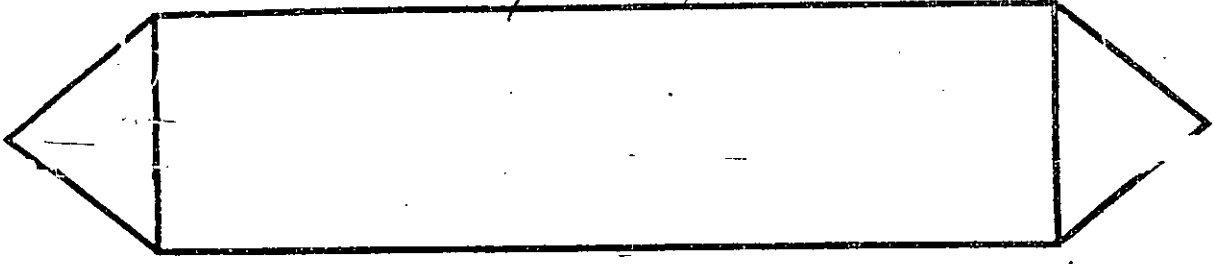
Byeel

Deponent



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بعدالت



2ء منجانب
بنام
الحکومت

مورخہ 10/9/13
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کے لئے حالیہ طور پر کیلئے حالیہ طور پر
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

20/13

ماہ ستمبر

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المرقوم

واہ

بمقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1321 /2013

Bahrul Said.....Applicant/Appellant

Versus

The Govt. of KPK and others.....Respondents

Application for Condonation of delay (if any) in filing the instant Appeal.

Respectfully Sheweth,

1. That the above titled Appeal is pending before this august tribunal fixed for today.
2. That while filing the instant appeal, a little delay of couple of days has occurred mainly for reason the appellant was suffering form chest infection and favour which is condonable and the interest of justice is the settle legal proposition that technicalities including limitation should be ignored in the administration of justice.

It is, therefore, humbly prayed that on acceptance of this application, the delay (if any) in filling the instant appeal may graciously be condoned.

Through

Byed
Applicant
Khaled Rahman
Khaled Rahman,
Advocate, Peshawar.

Dated: 30 / 10 / 2013

Affidavit

I, Bahrul Said, Forest Guard, Boner Forest Division, Daggar Buner, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Byed
Deponent

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1321 /2013

Bahrul Said.....Applicant/Appellant

Versus

The Govt. of KPK and others.....Respondents

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Applicant

Through

**Khaled Rahman,
Advocate, Peshawar.**

Dated: 30 / 10/ 2013

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Deponent

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1321 /2013

Bahrul Said.....Applicant/Appellant

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The Govt. of KPK and others.....Respondents

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Applicant

Through

~~Khaled Rahman,~~
Advocate, Peshawar.

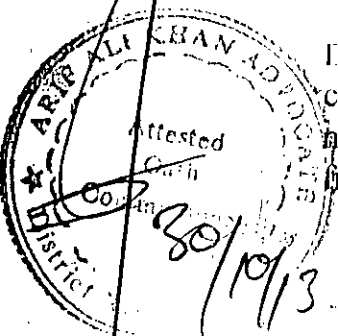
Dated: _____ / 10/ 2013

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Deponent

ATTESTED



2005 P L C (C. S.) 737

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Mian Shakirullah Jan, JJ

GOVERNMENT OF N.-W.F.P. and others

Versus

FARMAN ALI and others

Civil Petitions Nos.366-P and 369-P of 2003, decided on 4th March, 2005.

(On appeal from a common judgment, dated 21-4-2003 passed by the learned Service Tribunal, N.-W.F.P., Peshawar in Appeals Nos.150 and 151 of 2002).

(a) North-West Frontier Province Service Tribunals Act (I of 1974)---

---S. 4---Balochistan Service Tribunals Act (V of 1974), S.4---Appeal before Service Tribunal---Maintainability---Civil servant challenging order of departmental authority on merits---Validity---Appeal against quantum of punishment in the Provinces of North-West Frontier Province and Balochistan, lies only where the penalty imposed was dismissal from service, removal from service or compulsory retirement---In case of no other punishment a civil servant could file appeal challenging quantum of sentence alone---Appeal exclusively challenging quantum of punishment was barred and not the appeal on merits of the case challenging the very conviction---If holding guilty of a civil servant by departmental authority was accepted and appeal was preferred before Service Tribunal against the quantum of punishment alone, it was clearly barred under the laws applicable to North-West Frontier Province and Balochistan--No bar existed against challenging the conviction on merits regardless of what punishment had been imposed--Where civil servants had challenged before Service Tribunal the orders of departmental authority both on merits as well as me quantum of sentence, appeal was competent.

(b) North-West Frontier Province Service Tribunals Act (I of 1974)---

---S. 4---Appeal before Service Tribunal--Limitation--Filing of miscellaneous application--Departmental representation was decided pan 27-7-2001, whereas appeal before Service Tribunal was filed on 11-3-2002---Civil servants filed application seeking explanation about what had already been given in the order dated 27-2-2001--Effect--Such explanation could have been asked for even after filing of appeal before Service Tribunal and moreover, it could be asked even through the Tribunal seeking comments of department in writing--Appeal before Service Tribunal was time-bared.

Muhammad Hashim's case 1990 SCMR 1440; Malik Muhammad's case 1992 SCMR 1136 and Khalid Wahid's case 1998 SCMR 1153 ref.

(c) Words and phrases---

*Minor penalty
yes if on merit*

---`a' and `the'---Applicability--Article `a' is generally used for generalizing the number in plural sense and not particularizing the same as is done by the article `the'.

Words and Phrases Permanents Edition Vol. 1; U.S. v. Hudson : 65 F.68, 71; First Trust Joint Stock Land Bank of Chicago v. Armstrov. 269 NW, 502, 506, 222 Iowa 425, 107 ALR 873; State v. Martin 30 S.W. 421, 422, 423, 60 Ark. 343, 28 L.R.A. 153; People v. One 1940 Buick Sedan, 162, p.2d, 318, 320, 71, C.A.2d, 160, Sanders, 54 Law J.Q.B. 331, 333; National Union Bank v. Copeland 4 N.E. 794, 795, 141, Mass. 257, 267; Crown Coach Co. v. Public Service Commission 179 S.W.2d, 123, 127, 238, Mo.App.387, Bourland v. First Nat. Bank Bldg. Co. 237 S.W. 681, 683, 152 Ark. 139, Lindley v. Murphy 56 N.E.2d, 832, 838, 387, 111, 506 and Dobbs v. Board of Country Com'rs of Oklahoma Country 257 P.2d 802, 809, 208 Okl. 514 ref.

(d) North-West Frontier Province Service Tribunals Act (I of 1974)---

----S. 4 (1)(b)(i)---Reduction to lower stage---Use of word `a'---Effect---Civil servants were proceeded against departmentally and penalty of reduction to minimum of time scale was imposed---Departmental representation was decided on 27.2.2001, whereas appeal before Service Tribunal was filed on 11.3.2002---Appeal before Service Tribunal was partly allowed and penalty was converted into stoppage of three increments without cumulative effect---Plea raised by the authorities was that penalty to any lower stage and not to only one stage below. could be imposed under S.4 (1)(b)(i) of North-West Frontier Province Service Tribunals Act, 1974---Validity---Word `a' used in S.4 (1)(b)(i) of North-West Frontier Province Service Tribunals Act, 1974, denoted the word 'any' and not 'one'---If Legislature intended reduction to one low7rstage in time scale, it was not at all difficult for law-maker to have used the word `one' instead of `a' or to have used the article `the' instead of `a'---Using word 'a' for a lower stage in time scale, the intention of Legislature Was never restricted to one lower stage, rather, it was generalized to any lower stage in such time scale availed by civil servant---Reduction to minimum of time scale was not unlawful---Departmental authority had lawfully reduced the civil servants to the lowest stage in time scale and their appeals before Service Tribunal were time-barred---Supreme Court converted petition for leave to appeal into appeal and set aside the judgment passed by Service Tribunal and that of departmental authority was restored--Appeal was allowed.

The Commandant, 502, E.M.E. Central Workshop, Rawalpindi 1997 SCMR 1471; Zain Yar Khan's case 1998 PLC (C.S.) 1484 and Aslam Javed, Deputy Superintendent, Dry Port, Lahore's case 2000 PLC (C. S.) 1180 ref.

Hafiz Aman, Advocate Supreme Court for Petitioners (in both C.Ps.).

Respondent No. 1 in person (in C.Ps. Nos.366-P and 369-P of 2003).

Dates of hearing: 17th and 18th January, 2005.

JUDGMENT

SARDAR MUAHMMAD RAZA KHAN, J---Government of N.-W.F.P Chairman and Secretary N.-W.F.P. Public Service Commission, Peshawar, through these petitions, seeks leave to appeal against the judgment dated 21-4-2003 of N.-W.F.P. Service Tribunal whereby, while partially accepting Appeals Nos.150 and 151 of 2002 filed by the respondents, had modified the punishment

2005 S C M R 774

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Mian Shakirullah Jan, JJ

GOVERNMENT OF N.-W.F.P. and others---Petitioners

versus

FARMAN ALI and others---Respondents

*Min penalty
yes - for merit*

Civil Petitions Nos.366-P and 369-P of 2003, decided on 4th March, 2005.

(On appeal from a common judgment, dated 21-4-2003 passed by the learned Service Tribunal, N.-W.F.P., Peshawar in Appeals Nos.150 and 151 of 2002).

(a) North-West Frontier Province Service Tribunals Act (I of 1974)---

----S. 4---Balochistan Service Tribunals Act (V of 1974), S.4---Appeal before Service Tribunal---Maintainability---Civil servant challenging order of departmental authority on merits---Validity---Appeal against quantum of punishment in the Provinces of North-West Frontier Province and Balochistan, lies only where the penalty imposed was dismissal from service, removal from service or compulsory retirement---In case of no other punishment a civil servant could file appeal challenging quantum of sentence alone---Appeal exclusively challenging quantum of punishment was barred and not the appeal on merits of the case challenging the very conviction---If holding guilty of a civil servant by departmental authority was accepted and appeal was preferred before Service Tribunal against the quantum of punishment alone, it was clearly barred under the laws applicable to North-West Frontier Province and Balochistan---No bar existed against challenging the conviction on merits regardless of what punishment had been imposed---Where civil servants had challenged before Service Tribunal the orders of departmental authority both on merits as well as the quantum of sentence, appeal was competent.

(b) North-West Frontier Province Service Tribunals Act (I of 1974)---

----S. 4---Appeal before Service Tribunal---Limitation---Filing of miscellaneous application---Departmental representation was decided on 27-2-2001, whereas appeal before Service Tribunal was filed on 11-3-2002---Civil servants filed application seeking explanation about what had already been given in the order dated 27-2-2001---Effect---Such explanation could have been asked for even after filing of appeal before Service Tribunal and moreover, it could be asked even through the Tribunal seeking comments of department in writing---Appeal before Service Tribunal was time-barred.

Muhammad Hashim's case 1990 SCMR 1440; Malik Muhammad's case 1992 SCMR 1136 and Khalid Wahid's case 1998 SCMR 1153 ref.

(c) Words and phrases---

*---'a' and 'the'---Applicability---Article 'a' is generally used for generalizing the number in plural sense and not particularizing the same as is done by the article 'the'.

Words and Phrases Permanent Edition Vol. 1; U.S. v. Hudson 65 F.58; 71; First Trust Joint Stock Land Bank of Chicago v. Armstrong 269 NW, 502, 506, 222 Iowa 425, 107 ALR 873; State v. Martin 30 S.W. 421, 422, 423, 60 Ark. 343, 28 L.R.A. 153; People v. One 1940 Buick Sedan, 162, p.2d, 318, 320, 71, C.A.2d, 160, Sanders, 54 Law J.Q.B. 331, 333; National Union Bank v. Copeland 4 N.E. 794, 795, 141, Mass. 257, 267; Crown Coach Co. v. Public Service Commission 179 S.W.2d, 123, 127, 238, Mo.App.387, Bourland v. First Nat. Bank Bldg. Co. 237 S.W. 681, 683, 152 Ark. 139; Lindley v. Murphy 56 N.E.2d, 832, 838, 387, 111, 506 and Dobbs v. Board of County Com'rs of Oklahoma Country 257 P.2d 802, 809, 208 Okl. 514 **ref.**

(d) North-West Frontier Province Service Tribunals Act (I of 1974)---

----S. 4 (1)(b)(i)---Reduction to lower stage---Use of word 'a'---Effect---Civil servants were proceeded against departmentally and penalty of reduction to minimum of time scale was imposed---Departmental representation was decided on 27.2.2001, whereas appeal before Service Tribunal was filed on 11.3.2002---Appeal before Service Tribunal was partly allowed and penalty was converted into stoppage of three increments without cumulative effect---Plea raised by the authorities was that penalty to any lower stage and not to only one stage below, could be imposed under S.4 (1)(b)(i) of North-West Frontier Province Service Tribunals Act, 1974---Validity---Word 'a' used in S.4 (1)(b)(i) of North-West Frontier Province Service Tribunals Act, 1974, denoted the word 'any' and not 'one'---If Legislature intended reduction to one lower stage in time scale, it was not at all difficult for law-maker to have used the word 'one' instead of 'a' or to have used the article 'the' instead of 'a'---Using word 'a' for a lower stage in time scale, the intention of Legislature was never restricted to one lower stage, rather, it was generalized to any lower stage in such time scale availed by civil servant---Reduction to minimum of time scale was not unlawful---Departmental authority had lawfully reduced the civil servants to the lowest stage in time scale and their appeals before Service Tribunal were time-barred---Supreme Court converted petition for leave to appeal into appeal and set aside the judgment passed by Service Tribunal and that of departmental authority was restored---Appeal was allowed.

The Commandant, 502, E.M.E. Central Workshop, Rawalpindi 1997 SCMR 1471; Zain Yar Khan's case 1998 PLC (C.S.) 1484 and Aslam Javed, Deputy Superintendent, Dry Port, Lahore's case 2000 PLC (C.S.) 1180 **ref.**

Hafiz Aman, Advocate Supreme Court for Petitioners (in both C.Ps.).

Respondent No.1 in person (in C.Ps. Nos.366-P and 369-P of 2003).

Dates of hearing: 17th and 18th January, 2005.

JUDGMENT

SARDAR MUAHMMAD RAZA KHAN, J--- Government of N.-W.F.P Chairman and Secretary N.-W.F.P. Public Service Commission, Peshawar, through these petitions, seek leave to appeal against the judgment dated 21-4-2003 of N.-W.F.P. Service Tribunal whereby, while partially accepting Appeals No.150 and 151 of 2002 filed by the respondents, had modified the punishment from reduction to the minimum of time scale imposed by the departmental authority to stoppage of three increments without cumulative effect.

9. A perusal of the above section would indicate that in the Provinces of N.-W.F.P. and Balochistan, the appeal qua the quantum of punishment shall lie only where the penalty imposed is dismissal from service, removal from service or compulsory retirement. In case of no other punishment a civil servant can file an appeal challenging the quantum of sentence alone. The wording of the section is further indicative of the fact that an appeal exclusively challenging the quantum of punishment is barred and not an appeal on the merits of the case challenging the very conviction. We are of the view that if holding guilty of a civil servant by the departmental authority is accepted and the appeal is preferred before the Tribunal against the quantum of punishment alone, it is clearly barred under the laws applicable to N.-W.F.P. and Balochistan. There is no bar against challenging the very conviction on merits regardless of what punishment has been imposed. In the instant case, both the respondents had challenged before the Tribunal the orders of the departmental authority both on merits as well as the quantum of sentence and hence it is held that the appeals were competent.

10. The second objection of the learned counsel for the Government was that the appeals filed by the respondents were hopelessly time-barred and there was no justification at all for the Tribunal to have had ignored this serious aspect of the case. He added that the impugned order of the departmental authority was passed on 27-2-2001 whereas the appeal before the Tribunal was filed on 11-3-2002. That even if, the time spent in representation is excluded the appeals were barred by eight months and ten days. That the Tribunal did not even discuss aspect of the case. It was further added that in order to give a fresh start to limitation, the respondent on 7-2-2002 filed an application before the departmental authority seeking a vague clarification about the minimum of pay scale. That this application having been rejected on 15-2-2002 they filed appeal on 11-3-2002. That the respondents have cleverly attempted to create a fresh cause of action through filing uncalled for application, which amounted to playing fraud on statutes.

11. So far as, the factual position is concerned, it is established that the appeals before the Tribunal were hopelessly time-bared and that on 7-2-2002 they filed some applications seeking explanation about what had already been given in the impugned order dated 27-2-2001. Such explanation could have been asked for even after the filing of appeals before the Tribunals and moreover, it could be asked even through the Tribunal seeking comments of the department in writing, which are usually obtained in all such appeals.

12. Coming to the law concerning limitation Mr. Hafiz Aman, placed reliance upon three judgments of this Court. In Muhammad Hashim's case 1990 SCMR 1440, the civil servant was not given the benefit of second departmental appeal filed before the Investigating Officer I.-G. The condonation of delay having been refused by the Tribunal, was upheld by this Court. In the instant case, a mere filing of second application is an act weaker than the one preferred by the civil servant in the above case.

13. A similar view was taken in Malik Muhammad's case (1992 SCMR 1136) where limitation was never condoned on the ground that the civil servant after filing a required representation, having been rejected, filed further appeal not warranted by law. A Full Bench of this Court in Khalid Wahid's case 1998 SCMR 1153, had deprecated such practice of filing repeated appeals, representations or applications before the departmental authority, holding that mere repetition of representation or appeal hoping to receive some reply from the department cannot help to extend the bar of limitation. In view of the factual position in the case as well as the law on the subject, we hold that the appeals of the respondents before the Tribunal were hopelessly time-barred and required to be dismissed on this score alone, which aspect, was not even attended by the Tribunal!

✓ 14. Now, we come to the most important aspect of the case that pertains to the imposition of penalty. Through the orders dated 27/28-2-2001, the authority had imposed major penalty of reduction to the minimum of time scale i.e. Rs.1725-116-3465 against Muhammad Fayyaz, Assistant and reduction to the minimum of time scale i.e. Rs.1275-44-1935 against Farman Ali, Daftri. The Tribunal was of the view that under rule 4(1)(b)(i) of N.-W.F.P. Government Servants (Efficiency and Discipline) Rules, 1973, the penalty of reduction to the minimum of time scale is not prescribed. What really is prescribed under the aforesaid rules is not dilated upon by the "Tribunal because instated of remaining confined to the time scale or to the stages thereof, it took altogether a different course by converting such penalty into stoppage of three increments without cumulative effect. This aspect needs a thorough scrutiny of the law involved.

15. The relevant penalties are available in five different laws from Federal to Provincial, as follows:--

Federal Government:

(G.S (E&D) Rules 1973)

Rule 4 (1)(b)(i)--Reduction to a lower post or time scale, or to a lower stage in time scale.

Punjab:

(Punjab Civil Servants (E&D) Rules 1973)

Rule 4 (1)(b)(i)--Reduction to a lower post or pay scale or to a lower stage in pay scale.

Sindh:

Sindh CS (E&D) Rules 1973)

Rule 4(1)(b)(i)--Reduction for a specified period to a lower post or time scale or to a lower stage in time scale.

N.-W.F.P.

(N.-W.F.P. Government Servants (E&D) Rules 1973) Rule 4(1)(b)(i)--Reduction to a lower post grade or time scale, or to a lower stage in a time scale.

Balochistan:

(BCS (E&D) Rules 1983)

Rule 4 (1)(e)--Reduction to a lower grade or post or time scale, or to a lower stage in a time scale.

16. An overview of the provisions reproduced above would indicate that the Federal rule as well as that of Punjab is almost identical with the slight different that in Federal Law, the word time scale is used which in the Punjab, is described as pay scale. In the Province of Sindh, the words are identical with the Federal Law with the difference that any reduction in time scale or to a lower stage of time scale or to a lower post was required to be done for a specified period. It was nothing but the incorporation of Fundamental rule 29 which even otherwise is to be followed by the departmental authorities and which reads as under:--

"F.R. 29. If a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade or post, or to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent."

17. In N.-W.F.P. and Balochistan the provisions are identical. As we are presently concerned with N.-W.F.P. Government Servants (Efficiency and Discipline) Rules, 1973 with specific reference to rule 4(1)(b)(i), we would confine ourselves to such provisions alone while making a detailed discussion. Under the rule aforesaid, a departmental authority can impose the following different and independent penalties categorized as major penalties:--

- (i) Reduction to a lower post.
- (ii) Reduction to a lower grade or time scale.
- (iii) Reduction to lower stage in a time scale.

The question arises as to whether, with reference to the penalty imposed in the instant case, the departmental authority could penalize the civil servant by reducing him to the minimum of a time scale or it can reduce him to any of the stages in the time scale or to only one step lower in the time scale. It may be recalled that the words used are "to a lower stage in a time scale". What is meant by "a lower stage in a time scale" requires further elaboration.

18. First in preference is the word time scale. We are to comprehend its real meanings. Fundamental rule 9(31)(a) defines a time scale as follows:--

"(31)(a) Time-scale pay means pay which, subject to any conditions prescribed in these rules, rises by periodical increments from a minimum to a maximum. It includes the class of pay hitherto known as progressive."

It means that when a pay periodically increases by specified increments reaching from a specified minimum to a specified maximum is a time scale; like, for example, in case of Muhammad Fayyaz respondent, he at the given time was in pay/time scale of Rs.1725-116-3465, Regardless of how many increments he had received, he was reduced to the minimum of time scale so as to take a fresh start. Each of the increments adding up periodically constituted different stages in the time scale through which the maximum of the scale is attained. However comprehended the time scale and the highest thereof, the question that remains to be answered is as to whether the words used by the Legislature as "a lower stage" are indicative of only one lower stage or any stage chosen by the departmental authority.

19. Words and Phrases Permanent Edition Volume-1 describes the use of "a". This description is with reference to the legal decisions rendered on the subject. It lays down that "the" is the word used before nouns, with a specifying or particularizing effect, opposed to the indefinite or generalizing force of "a" or "an" U.S. v. Hudson, 65 F.68, 71. From this description one can observe that "a" or "an" are used for indicating the indefinite number or for generalizing force and can be used in plural sense contrary to the word "the", which has a specifying or particularizing effect of a singular.

20. In First Trust Joint Stock Land Bank of Chicago v. Armstrong, 269 NW, 502, 506, 222 Jowa 425, 107 ALR 873, it was laid down that the word "a" has varying meanings and uses. "A" means "one" or "any", but less, "emphatically than either". It may mean one where only one is intended and it may mean anyone of a great number. It is placed before the nouns of the singular number, denoting an individual object or quality individualized.

21. In State v. Martin, 30 S.W. 421, 422, 423, 60 Ark. 343, 28 L.R.A. 153, it was defined that the adjective "a" is commonly called the indefinite article and so called because it does not define any particular person or thing. Meaning thereby that "a" is commonly indefinite without particularizing a person or thing and can be used in the plural sense as well. People v. One 1940 Buick Sedan, 162 P.2d 318, 320, 71 C.A. 2d 160, held article "a" as synonymous with "any"

thereby giving a sense of plurality. Similar connotation was given in Sanders, 54 Law J.Q.B. 331, 333 and National Union Bank v. Copeland 4 N.E. 794, 795, 141 Mass. 257, 267 and Crown Coach Co. v. Public Service Commission, 179 S.W. 2d 123; 127, 238 Mo. App. 387.

22. Bourland v. First Nat. Bank Bldg. Co. 237 S.W. 681, 683, 152 Ark. 139 also considered article "a" in a plural sense holding that article "a" is a word of vague meaning and too indefinite to limit the number. The article "a" is generally not used in a statute in a singular sense unless such an intention is clear from the language of statute, is a determination of the word "a" given in Lindley v. Murphy, 56 N.E.2d 832, 838, 387 111, 506 and Dobbs v. Board of County Com'rs of Oklahoma Country, 257 P.2d 802, 809, 208 Okl. 514.

23. From such discussion in detail, we have arrived at the conclusion that "a" is generally used for generalizing the number in the plural sense and not particularizing the same as is done by the article "the". It might have the impression of a singular but for that purpose each statute has to be seen in its own perspective and in the background of the legislative intention. With this conclusion in mind, we revert to the rule 4(1)(b)(i) in question.

24. It may be realized that the penalties imposed in the rule above are major penalties. If it is presumed that reduction to only one lower stage in the time scale was the intention of legislature, it would appear highly implausible because it amounts to snatching only one increment which can be snatched even by stoppage of increment or increments for future, which in turn is a minor penalty, it appears that with strict reference to major penalties the Legislature never intend the reduction to one lower stage in the time scale but to any lower stage in the time scale as deemed fit, to be selected by the departmental authority keeping in view the gravity of misconduct involved. The word "a" used in the instant case denotes the word "any" and not "one".

25. Had the Legislature intended the reduction to one lower stage in a time scale, it was not at all difficult for the law-maker to have used the word "one" instead of "a" or to have used the article "the" instead of "a". The very rule 4 (1)(b)(i) provides for a reduction to lower grade or time scale meaning thereby that the very time scale as such can also be reduced. If the entire time scale can be reduced to the lower time scale, then reduction to any stage in a time scale is not as serious as the former. We are clear in our mind that by using the word "a" for a lower stage in a time scale the intention of the Legislature was never restricted to one lower stage, rather, it was generalized to any lower stage in such time scale availed by the civil servant. The reduction to the minimum of the time scale in the instant case, was, therefore, not at all unlawful.

26. The reduction to more than one stages in a time scale is not a new phenomena and this Court has taken notice of it on numerous occasions without holding that such punishment could not be imposed. A Full Bench of this Court in the case of The Commandant, 502, EME Central Workshop, Rawalpindi (1997 SCMR 1471) was confronted with a similar situation where the Service Tribunal had converted penalty of removal from service into "reduction to three lower stages in the time-scale for a period of three years without cumulative effect", this Court upheld reduction of three lower stages in a time-scale. A case of Zain Yar Khan 1998 PLC (C.S.) 1484 came before a Full Bench of this Court where major penalty of reduction to lower stage by four steps in the time scale had been imposed, no exception was taken to such penalty by this Court. Similarly, the case of Aslam Javed, Deputy Superintendent, Dry Port, Lahore 2000 PLC (C.S.) 1180 came before this Court where the civil servant after departmental proceedings was awarded penalty of reduction to five stages in the time scale. This too was never taken an-exception to.

27. It may be appreciated that the Tribunal had also held the respondents guilty but they had not filed any appeal against the said judgment and hence the guilt of the respondents is proved as

well as admitted. The charge against Muhammad Fayyaz is so serious that even the removal from service would have been justified. The department has taken rather lenient view of the matter.

28: Consequently, as a result of detailed discussion above, we are of the view that the departmental authority had lawfully reduced the respondents to the lowest stage in the time scale and further that their appeals before the Tribunal were hopelessly time-barred. The present petitions are converted into appeal and accepted, the impugned common judgment dated 21-4-2003 is set aside and the penalty imposed by the departmental authority is restored.

M.H./G-49/S

Appeal allowed.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 1321/2013.

MR. BAHRUL SAID FOREST GUARD OF BUNER FOREST DIVISION.

VERSUS.

1. The Government of Khyber Pakhtunkhwa
Through Secretary Environment Department
Peshawar.
2. The Conservator of Forests
Malakand Forest East Circle
Swat.
3. The Divisional Forest Officer
Buner Forest Division Daggar.

WRITTEN STATEMENT ON BEHALF OF RESPONDENT NO. 01 TO 03.

Respectfully Sheeweth.

Preliminary objections.

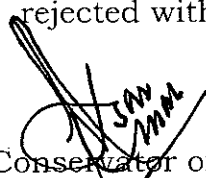
1. That the appellant has no cause of action.
2. That the appeal is badly time barred.
3. That the appeal is not maintainable in its present form.
4. That the appeal is bad due to misjoinder and non joinder of the necessary parties.
5. That the appeal is hit by Section-4 of the Khyber Pakhtunkhwa Service Tribunal.
6. That the appellant has been stopped by his own conduct.

FACTS.

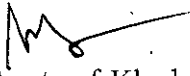
1. Pertains to record.
2. Pertains to record.
3. On conducting proper enquiry under Efficiency and Disciplinary Rules, 2011 against the appellant, the Enquiry Officer recommended penalty to the authority which was accordingly awarded to the appellant as per prescribed rules.
4. Pertains to record.
5. It is in-correct that the appellate order was not communicated to the appellant. The said order was properly endorsed to the appellant through Range Officer Chamla where the appellant serving vide this office endorsement No. 279-81/R; dated 03.03.2013 **copy enclosed as annexure-"A"**.

GROUNDS.

- (A) In-correct. The appellant has, ^{been} properly treated as per law, rules and recommendation of the Enquiry Officer/committee.
- (B) It is in-correct.
- (C) It is in-correct. The Enquiry Officer after conducting proper enquiry has found guilty the appellant of the charge of in-efficiency and accordingly the punishment was awarded which was later on reduced by the appellate authority.
- (D) It is in-correct. The appellant failed to perform his prime duty of protection which resulted huge damage of 2582 chair poles in his block. Therefore, the appellant was accordingly charge sheeted and enquiry conducted against him. The appellant could not produce any solid proof to the Enquiry Officer in his defense during the enquiry proceedings.
- (E) It is in-correct and own view of the appellant.
- (F) It is in-correct. Proper enquiry was conducted as per law and rules against the appellant.
- (G) It is in-correct. Proper chance of personal hearing was afforded to the appellant. Copies of the personal hearing dated 20.11.2012 are enclosed **as annexure-"B"**.
- (H) It is in-correct. The service record of the appellant is not clear. The appellant has been involved in timber smuggling and adverse entry to this effect has been recorded in his ACR for the year, 1994,1995,1999 and 2000. Copies enclosed **as annexure-"C"**.
- (I) Keeping in view the above, the appeal of the appellant may kindly be rejected with cost.


Conservator of Forests
Malakand Forest Circle East
at Shagai Saidu Sharif Swat


Divisional Forest Officer
Buner Forest Divn: Daggar


Secretary to Govt. of Khyber Pakhtunkhwa
Environment Department Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL No. 1321/2013.

MR. BAHRUL SAID FOREST GUARD OF BUNER FOREST DIVISION.

(Appellant)

VERSUS.

1. The Government of Khyber Pakhtunkhwa through Secretary Environment Department Peshawar.
2. The Conservator of Forests Malakand Forest East Circle At Swat.
3. The Divisional Forest Officer Buner Forest Division Daggar.

Respondents.

Counter Affidavit.

I the undersigned do hereby solemnly affirm and declare on oath that the contents of my written reply in this appeal is correct to the best of my knowledge and record and nothing has been concealed from the Tribunal.


DIVISIONAL FOREST OFFICER
BUNER FOREST DIVN: DAGGAR

Attendance "A"

Attendance "A"

PEON BOOK OF

No.	Date	Name	Description	By whom delivered	Known to whom
	05-03-2013	Mr. Bahadur Singh	Rec. No 279-81/R		
		Mr. Jehan Zaidi	No 277-81/R		
		A-C Mander	No 5410/G		
			No 5411/G		
	20-3-2013	Ro Chandra	No 5942/G		
	20-3-2013	Ro Chandra	No 5856-58/G		
	20-3-2013	Ro Chandra	No 290/R		
	22-3-2013	Ro Chandra	No 300/R		
	22-3-2013	Ro Chandra	No 294-95/R		

Attested
 Divisional Forest Officer
 Buncer Forest Divn: Coimbatore

2) About the ...

Reddy
Babu

Annexure B

Annexure B

~~Personal receipt of Mr. Subramanian~~
~~Balance of Mr. Ch. Ch. Balaji on 20-11-12~~

1) I accompanied with the E. Officer to the field. I showed the record and the spot at change about which I was charge sheeted. The Enquiry Officer could not find any steps without change report. The Enquiry Officer was satisfied as spot in respect to the change. I have taken action against the accused & covered all the change and presented to the Court.

2) About the so called change, I have checked spirit reports also against the habitual offenders, which were demanded by the Court and realized Rs 364000/- from the offenders. The other prosecution cases are in progress in the Court and will be demanded in due course of time. I specially cooperate with the Court and try to present the offenders before the Court.

Attest
Divisional Forest Officer
Bihar Forest Division

Attest
Divisional Forest Officer
Bihar Forest Divn: 5795

3) The Chuliy Centre, did not consider the
 undivided due to which they could
 not exactly enlisted/control the dunge
 for example Mr. Khan Zaid Centre visited
 Comptant No. 02 Malekha and
 Comptant No. 04 and enlisted the dunge
 of Comptant No. 02 in Comptant No. 04
 such in this way control the dunge
 as double. In such a way
 Mr. Zahid Hameed Centre did not
 exactly visited the spot of the dunge
 and prepared dunge but on his own basis
 which is unjustified and correct.

4) Mr. Zahid Hameed P. was ~~prejudice~~ prejudiced
 with Mr. Shah Rasool Centre due to personal
 grudges among them, therefore Mr. Zahid
 Hameed P. exaggerated the dunge manifold;
 So the Chuliy ~~at~~ by the Chuliy Centre
 headed by Mr. Zaid Hameed P. and Mr.
 Zaid Centre & Mr. Khan Zaid Centre did
 not comply to the situation.

[Signature]
 Divisional Forest Officer,
 Inner Forest Divn: *[Signature]*

Annexure - B

5) The change was mostly of very little and with size plates, but the members of the Charley Committee did not bother to either measure the Stumps or estimate its age. Due to this fact most of the water seized and old Stumps were counted at the size 6 to 8 dia. on a sum basis. This also makes the list prepared by the Charley Committee doubtful and unrealistic.

6) I also seized at Charley Stump with small plates and captured the case by realizing that he was for the offenders.

I solemnly declare that the above is true and correct to the best of my knowledge.

Attested
 Divisional Forest Officer
 Guner Forest Divn.

20/11/2012

20/11/2012

Ch. Bhatnagar, Joint F.O.

(13)

SECRET.
GOVERNMENT OF N.W.F.P. PESHAWAR
FOREST DEPARTMENT.
CONFIDENTIAL REPORT
FOR THE YEAR ENDING 31ST DECEMBER, 1994

- Note:-
1. This form should be filled according to the instructions contained in the Service & General Administration Deptt: letter No. SR-112-50/487 dated 20th March, 1956.
 2. This report is to be written up by the Reporting Officer for each calendar year & is to be initiated in the first week of January, unless it is written at any other time on the transfer of Reporting Officer.

1. Name in full. Baharul Said
2. Grade. Forest Officer
3. Qualification. Naivee Traind
4. Total service up to 31-12-1994. Year 4. D
7-2-26
5. Scale of pay & present pay.
6. Period of report.

7. Observation on:-
 - i) Supervision control & General check over the work of:-
 - a) Subordinates. not listed
 - b) Contractors and labours. no given
 - ii) Distribution of work among his subordinate. not listed
 - iii) Check over the compliance to the instruction received from Directorate Region/Sub-Region or Distt: Head Quarter by his staff. not listed
 - iv) Promptness in submission of:-
 - a) Replies to the communication from higher authorities. not listed
 - b) Reports and returns. not listed
 - v) Amenability to maintenance of order and discipline.
 - vi) Capacity to train, help and advise staff. not listed
 - vii) Technical knowledge & qualification:-
 - a) Silviculture. not listed
 - b) Range Management. not listed
 - c) Soil Conservation. not listed
 - d) Engineering. not listed
 - e) Protection. poor
 - viii) Initiative. poor
 - ix) Knowledge of subordinates regulations. poor
 - x) Relation with the public. poor
 - xi) Particulars of reprimand or a warning, if any administered.
 - xii) General Remarks. just a foreigner

Dated. _____ Signature (Name in block letters) Designation of Reporting Officer.

General Remarks by higher Officer. No change

Remarks by Commr. 1.1.95

Signature (Name in block letters) Designation of Countersigning Officer.

Divisional Forest Officer,
Rauer Forest Divn: 2

15

FORM NO. P.D. 37
(E)

SECRET.
GOVERNMENT OF H.W.P.P. PESHAWAR
FOREST DEPARTMENT.
CONFIDENTIAL REPORT
FOR THE YEAR ENDING 31ST DECEMBER, 1995

Note:- 1. This form should be filled according to the instructions contained in the Service & General Administration Deptt: letter No. SR-112-50/487 dated 20th March, 1956.
2. This report is to be written up by the Reporting Officer for each calendar year & is to be initiated in the first week of January, unless it is written at any other time on the transfer of Reporting Officer.

- 1. Name in full. *Sahibul Qauid*
- 2. Grade. *Forest Officer*
- 3. Qualification.
- 4. Total service up to 31-12-1995
- 5. Scale of pay & present pay. *5th Rs 17961*
- 6. Period of report. *1.1.95 to 31.12.95*

- 7. Observation on:-
 - i) Supervision control & General check over the work of:-
 - a) Subordinates. *Not tested*
 - b) Contractors and labourers. *not tested*
 - ii) Distribution of work among his subordinate. *not tested*
 - iii) Check over the compliance to the instruction received from Directorate Region/Sub-Region or Distt: Head Quarter by his staff. *not tested*
 - iv) Promptness in submission on of:-
 - a) Replies to the communications from higher authorities. *part*
 - b) Reports and returns. *part*
 - v) Amenability to maintenance of order and discipline. *part*
 - vi) Capacity to train, help and advise staff. *not tested*
 - vii) Technical knowledge & qualifications:-
 - a) Silviculture. *not tested*
 - b) Range Management. *not tested*
 - c) Soil Conservation. *not tested*
 - d) Engineering. *not tested*
 - e) Protection. *part*
 - viii) Initiative. *part*
 - ix) Knowledge of procedure & regulations. *part*
 - x) Relation with the public. *part*
 - xi) Particulars of reprimand or a warning, if any administered. *part*
 - xii) General Remarks. *He is only a Forest Officer*

General Remarks by higher Officer.

Signature (Name in block letters)

Signature (Name in block letters)
Designation of Countersigning
SATULLAH

25/01/96

Advise Remarks Concerned

Alles
Range Forest Officer
Peshawar

Form (B)
Reactive

GOVT. OF NWFP FOREST DEPARTMENT
CONFIDENTIAL REPORT FOR THE YEAR
ENDING ___/12/1998.

- (1) This form should be filled according to the instructions contained in the services and General Admin. Deptt. letter No. SR-II/2-50/487 dated 20th March, 1956.
- (2) This report is to be written up by the Reporting Officer for the calendar year and is to be initiated in the 1st week of January unless it is written at any other time on the transfer of Reporting Officer.

1. Name in full: Bahruil Said P.S.I.
 2. Grade: _____
 3. Qualification: _____
 4. Total service on 31st December, 1998: _____
 5. Scale of pay and present pay: _____
 6. Period of report: ~~23-1-99 to 31-12-99~~

OBSERVATION:-

- i. Supervision control and general check over the work of:-
 - a) Subordinate: _____ *No Envy*
 - b) Contractors and labours: _____ *No Envy*
- ii. Distribution of work among his subordinates: _____ *No Envy*
- iii. Check over the compliance of the instruction received from the Directorate, Region/Sub-Region or Distt. Head Quarters by his staff: _____ *No Envy*
- iv. Promptness in submission of:-
 - a) Replies to the Communications from higher authorities: _____ *No Envy*
 - b) Reports and Returns: _____ *No Envy*
- v) Amenability to maintenance of order and discipline: _____ *Envy*
- vi) Capacity to train, help and advise staff: _____ *Envy*
- vii) Technical knowledge application:-
 - a) Silviculture: _____
 - b) Range Management: _____
 - c) Soil Conservation: _____
 - d) Engineering: _____
 - e) Protection: _____
- viii) Initiative: _____ *Envy*
- ix) Knowledge of procedure and regulations: _____ *Envy*
- Relation with the public: _____ *Envy*
- Particulars of reprimand or a warning, if any administered: _____ *Envy*
- x) General Remarks: Envy type of Forest Guard

Date: 31 / 12 / 1999

General Remarks by Higher Officer: He should improve
 Signature: _____
 Name in black letter: _____
 Designation: _____
 Divisional Forest Officer,
 Forest Division.

Divisional Forest Officer,
Forest Division

GOVERNMENT OF PUNJAB
FOREST DEPARTMENT

COMPLIMENTARY REPORT

- NOTE:
- 1) This form should be filled according to the instructions contained in the services and General Adm. Order No. 12-II/7-30/437, Dated 30th March, 1956.
 - 2) This report is to be written up by the Reporting Officer for the calendar year and is to be initiated in the last week of January unless it is written at any other time on the the transfer of Reporting Officer.

M. Baharull Saad PSA

5/11/02

- 1) Name in Full.
- 2) Grade.
- 3) Qualification.
- 4) Total service on 31st December, 199
- 5) Scale of pay and present pay.
- 6) Period of report.
- 7) Observations on:
 - a) Supervision control and general check over the work of:
 - i) Subordinates.
 - ii) Contractors and Labours.
 - iii) Distribution of work among his subordinates.
 - iv) Check over the compliance of the instruction received from the Directorate, Region/Sub-Region or District Head Quarters by his staff.
 - b) Promptness in submission of:
 - i) Replies to the communications from higher authorities.
 - ii) Reports and Returns.
 - c) Amenability to maintenance of order and discipline.
- 8) Capacity to train, help and advise staff.
- 9) Technical knowledge application:
 - a) Silviculture.
 - b) Range Management.
 - c) Soil Conservation.
 - d) Engineering.
 - e) Protection.
- 10) Initiative.
- 11) Knowledge of procedure and regulations.
- 12) Relation with the public.
- 13) Particulars of reprimand or a warning, if any administered.
- 14) General Remarks.

average
average
average
average
average
average
average
average
Not tested
- " -
- " -
- " -
- " -
average
average
NIL

Average Type of PS

Dated. 26-11-2002

General remarks by Higher Officer

He should improve his performance.

Signature (Name in block letters) _____
 Designation of Reporting Officer _____

Signature (Name in block letters) _____
 Designation of counter-sig-
 officer _____

29/4/2002

Allsted

(SHAH WAZIR 29/4/02)
 D/O Smt. / District Forest Officer
 Working Plan Office
 District _____

Signature

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No.1321/2014**

Bahrul Said.....Appellant.

Versus

The Govt. and others.....Respondents.

**REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO REPLY FILED BY
RESPONDENTS NO. 1-3.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

- I. That valuable rights of the appellant have been infringed through the impugned orders which have been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.
- II. That law favours disposal of lis on merits and technicalities including limitation are to avoided in the interest of justice.
- III. That all codal formalities as per the Khyber Pakhtunkhwa Service Tribunal Act, 1974 have been complied with and therefore the appeal is in its correct form and shape.

- IV. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.
- V. That consideration for promotion is one of the terms and conditions of service and hence service tribunal has got jurisdiction in the matter.
- VI. That appellant has challenged the impugned order within the meaning of Rule 19 of the Khyber Pakhtunkhwa (Efficiency and discipline) Rules, 2011 read with Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle of law that estoppel does not operate against the law.

Facts:

- 1&2. Being not replied hence admitted.
3. Incorrect. Once the enquiry officer held the opinion that other factors are involved in the cutting of the trees then recommending penalty whether minor or major is unreasonable.
4. Being not replied hence admitted.
5. Incorrect. Never had the order been communicated to the appellant earlier.

Grounds:

- A. Incorrect hence denied. Appellant has never been treated in accordance with law and rules.
- B. Being not replied hence admitted.

C. Incorrect hence denied. As earlier submitted no proper enquiry as per the mandate of law has been conducted.

D. Incorrect. Appellant has fully performed his duties and the damage so caused was properly notified and the accused were booked for the damage, the record of which is available on the record which may be requisitioned.

E&F. Incorrect hence denied.

G. Incorrect. No meaningful opportunity of personal hearing has been given to the appellant.

H. Incorrect. The ACRs do not reflect the involvement of the appellant in timber smuggling.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

[Signature]
Appellant

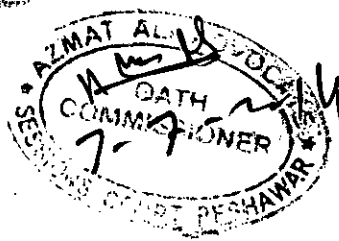
Through

[Signature]
Khaled Rahman
Advocate, Peshawar.

Affidavit

I, Bahrul Said, Forest Guard, Buner Forest Division Daggar, at Buner, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED



[Signature]

Deponents