

S.No.	Date of Order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	17.10.2016	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT ABBOTTABAD</u></p> <p>1. Appeal No. 1154/2014 Muhammad Rafique and 2. Appeal No. 1204/2014, Versus Secretary Environment Department, Government of Khyber Pakhtunkhwa Peshawar etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Counsel for the appellants and Mr. Muhammad Siddique, Senior Government Pleader alongwith M/S Riasat Khan, SDFO, Muhammad Aqeel, SDFO and Nasir Gul, Accountant for respondents present.</p> <p>2. This judgment will dispose of the instant service appeal No. 1154/2014, titled "Muhammad Rafique Versus Secretary Environment Department, Government of Khyber Pakhtunkhwa, Peshawar etc." and service appeal No. 1204/2014, titled "Saifur Rahman Versus Government of Khyber Pakhtunkhwa through Secretary Forests, Peshawar etc." as identical questions of facts and law are involved in both the appeals.</p> <p>3. Brief facts of the case of the appellants are that the appellants were serving as Forest Guards when subjected to enquiry and vide impugned order dated 12.5.2014 appellants were</p>

~~17.10.16~~

compulsory retired from service and recovery of Rs. 950241/- was ordered to be recovered from ~~both~~ appellants respectively where-against departmental appeals of the appellants were not responded and hence the instant service appeals preferred by appellants Muhammad Rafiq on 10.09.2014 and Saifur Rahman on 09.09.2014 respectively.

4. Learned counsel for the appellants has argued that appellant Muhammad Rafique was once exonerated in the enquiry while appellant Saifur Rahman exonerated twice. That the subsequent enquiry was not conducted in the mode and manners prescribed by rules as no evidence whatsoever was collected nor appellants were associated with the enquiry. That the copy of the enquiry report was not supplied to the appellants in violation of Rule-14 of Government Servants (E&D) Rules, 2011.

5. Learned Senior Government Pleader has argued that the earlier enquiry reports were not accepted by the competent authority as such no benefits of such reports could be extended to the appellants. That the enquiry was conducted in the prescribed manners and there-after the impugned orders were passed. That according to the findings of the enquiry committee the appellants were found guilty and as such the impugned orders warrant no interference.

6. We have heard arguments of learned counsel for the parties and perused.

AS
17.10.16

7. According to the material placed on record the enquiry committee has submitted enquiry report according to which the appellants were found guilty and as such recommended for compulsory retirement from service alongwith recovery of loss incurred to the government ex-chequer. A perusal of the said enquiry report would suggest that the appellants were not associated with the enquiry. No witness whatsoever was examined by the enquiry committee in support of the allegations nor any opportunity was extended to the appellants for pleading their defence. In the absence of evidence which should have been collected in the mode and manners prescribed by the rules by examining the relevant witnesses and affording opportunity of cross-examination to the appellants the enquiry report is not found worth reliance. As such we are left with no option but to accept the instant appeals and set aside the impugned orders dated 12.05.2014 and reinstate the appellants in service with the direction the respondents to conduct denovo enquiry within a period of 2 months from the date of receipt of this judgment and where-after order deemed appropriate be passed by the competent authority. Parties are left to bear their own costs. File be consigned to the record room.


(Muhammad Azim Khan Afridi)


(Muhammad Aamir Nazir)

Member

17.10.16
Chairman
Camp Court, A/Abad.

ANNOUNCED

17.10.2016

16.05.2016

Appellant with counsel and Sardar Muhammad Haroon, DFO Galies Forest Division alongwith Mr. Muhjammad Siddique Sr GP for the respondents present. Partial arguments heard. Learned counsel for the appellant requested for adjournment. Adjourned for final hearing before D.B on 17.08.2016 alongwith connected appeal No. 1155/2014 at camp court, Abbottabad.



Member



Chairman
Camp court, A/Abad

17.08.2016

~~1155/2014~~

Appellant with counsel and Sardar Muhammad Saleem, DFO alongwith Mr. Muhammad Siddique Sr GP for the respondents present. During the course of arguments it was transpired that the record of the enquiry proceedings has not been submitted by the respondents with the written statement. In the absence of record this Tribunal is not in a position to reach at just and fair conclusion. The respondents are directed to submit attested copies of the entire record with a copy of the same to learned counsel for the appellant on or before the next date of hearing and in case they fail to produce the same then adverse interference will be taken against them. To come up for such record and arguments before the D.B on 17.10.2016 at camp court, Abbottabad.

Member



Chairman
Camp court, A/Abad

18.08.2015

Appellant in person and Mr. Atezaz Mehfooz, SDFO alongwith Mr. Muhammad Tahir Aurangzeb, GP for respondents present. Requested for adjournment. To come up for written reply/comments on 19.10.2015 before S.B at camp court A/Abad.


Chairman

Camp Court Abbottabad

19.10.2015

Appellant in person and Sardar Muhammad Salim, SDFO alongwith Mr. Muhammad Tahir Aurangzeb, G.P for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.2.2016 at Camp Court A/Abad.


Chairman

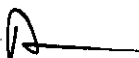
Camp Court A/Abad.

16.02.2016

Counsel for the appellant and Mr. Ibrar Ahmad, SDFO alongwith Mr. Muhammad Saddique, Sr.G.P for respondents present. Learned Sr. GP requested for adjournment. To come up for rejoinder and final hearing before D.B on 16.05.2016 at Camp Court A/Abad.


Chairman

Camp Court A/Abad



Member

22.4.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Forest Guard when vide impugned order dated 12.5.2014 he was compulsorily retired from service regarding which he preferred departmental appeal on 28.5.2014 where-after the instant service appeal was filed on 10.9.2014.

That an inquiry was conducted in the year 2008 in which the appellant was exonerated but in another inquiry in the year 2013 the appellant was awarded the penalty of compulsory retirement on the same allegations and grounds.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 17.6.2015 before S.B at camp court A/Abad.


Chairman
Camp Court A/Abad

17.6.2015

Appellant in person and Sardar Muhammad Salim, SDFO alongwith Mr.Muhammad Tahir Aurangzeb, G.P for respondents present. Requested for adjournment. To come up for written reply on 18.8.2015 before S.B at camp court A/Abad.


Chairman
Camp Court A/Abad

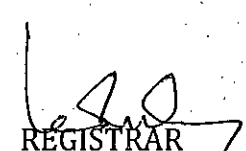
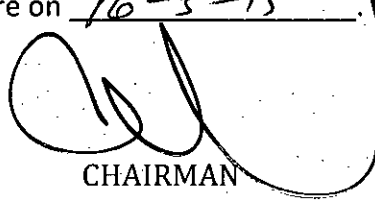

Appellant Deposited
Security & Process Fee



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1154 / 2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18/09/2014	<p>The appeal of Mr. Muhammad Rafique resubmitted today by Syed Mehboob Ahmad Shah 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	3-10-14	<p>This case is entrusted to Touring Bench A.Abad for preliminary hearing to be put up there on <u>16-3-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	16.3.15	<p>None for appellant. Notice to counsel for the appellant be issued for preliminary hearing before S.B for 22.4.2015 at camp court A/Abad.</p> <p style="text-align: right;"> Chairman Camp Court A/Abad</p>

The appeal of Mr. Muhammad Rafique Ex-Forest Guard Galis Forest Division Abbottabad received today i.e. on 10.09.2014 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- The law under which appeal is filed is not mentioned. ✓
- 2- Copies of charge sheet, statement allegations and show cause notice in respect of appellatant mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 4- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

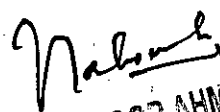
No. 1349 /S.T,

Dt. 10/9 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Sayed Mehboob Ahmad Shah Adv.
High Court Abbottabad.

1. In reply to objection No.1, it is submitted and cleared that the appellatant has been compulsory retired from Service vide order No. SO(ESTT.) ENVT/1-50(43)2K12 dated 12/05/2014, which order is illegal as well as unlawful, hence is challenged in this appeal please, copy of which is attached on page No. 15 of this appeal as Annexure "A".
2. In reply to objection No. 2, it is submitted that the required orders are corrected and attached alongwith appeal please.
3. That the annexures are corrected/ serial wised as it is directed please.
4. Five more/ extra copies are provided, as it is desired.


SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 1154 /2014

Muhammad Rafique, Ex. Forest Guard, Galis Forest Division, Abbottabad.

....APPELLANT

VERSUS

Governor Khyber Pakhtunkhwa Province, Peshawar and others.

...RESPONDENTS

SERVICE APPEAL

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5.	Copy of reply to charge sheet	19 to 23	"C"
6.	Copy of show cause notice	24 to 25	"D"
7.	Copy of reply to show cause notice	26 to 27	"E"
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Muhammad Rafique
Muhammad Rafique
....APPELLANT

Through

Dated: 10/9/2014

(Syed Mehboob Hussain Shah)
Advocate High Court, Abbottabad

Syed Mehboob Ahmad Shah
SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 1154 /2014

Muhammad Rafique, Ex. Forest Guard, Galis Forest Division, Abbottabad.

....APPELLANT

VERSUS

1. Governor Khyber Pakhtunkhwa Province, Peshawar.
2. Chief Minister Khyber Pakhtunkhwa, Peshawar.
3. Secretary Environment Department Govt. of Khyber Pakhtunkhwa, Peshawar.
4. Chief Conservator of Forests Northern Region-II Abbottabad.
5. Conservator of Forests Lower Hazara Circle, Abbottabad.
6. D.F.O Galis, Forest Division Abbottabad.

...RESPONDENTS

**APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974
AGAINST THE ORDER NO. SO(ESTT.) ENVT/1-
50(43)/2K12 DATED 12/05/2014 ISSUED BY CHIEF
MINISTER KHYBER PAKHTUNKHWA (COMPETENT
AUTHORITY) RESPONDENT NO. 2 AND APPEAL
AGAINST THE SAID IMPUGNED ORDER HAD BEEN
PREFERRED TO RESPONDENT NO. 2 BUT NO REPLY
HAS BEEN RECEIVED SO FAR, HENCE THE PRESENT
APPEAL IS FILED. THE APPEAL IS LODGED FOR A
DECLARATION TO THE EFFECT THAT SHOW CAUSE
NOTICE DATED 08/05/2013 ISSUED BY THE**

As submitted to
and filed.

10/9/14
18/9/14

1155
10/9/2014

RESPONDENT NO. 2 ON THE REPORT OF THE INQUIRY COMMITTEE/ RESPONDENT NO. 5 & 6 AND THE NOTIFICATION NO. SO(ESTT)ENV/1-50(43)2K10 DATED 12/05/2014 VIDE WHICH THE MAJOR PENALTY OF COMPULSORY RETIREMENT FROM SERVICE AND RECOVERY OF THE LOSS AMOUNTING TO RS. 950,241/- WAS IMPOSED ON THE APPELLANT ARE WRONG, ILLEGAL, AGAINST THE LAW AND FACTS, BASED ON MALAFIDE, DISCRIMINATORY, ARBITRARY, FANCIFUL, PERVERSE, WITHOUT LAWFUL AUTHORITY, UNCONSTITUTIONAL, POLITICAL VICTIMIZATION, AGAINST THE FUNDAMENTAL RIGHTS OF THE APPELLANT GUARANTEED BY THE CONSTITUTION AND IS DOUBLE JEOPARDY AS THE APPELLANT HAS ALREADY BEEN EXONERATED BY SUB-DIVISIONAL OFFICER/ INQUIRY COMMITTEE VIDE HIS ORDER DATED 30/12/2011 ON THE BASIS OF SAME ALLEGATIONS AGAINST THE APPELLANT.

Respectfully Sheweth: -

That the facts of appeal are submitted as under:-

1. That the impugned order passed by Competent Authority is biased, unlawful and political victimization.

(Copy of the office order passed by Competent Authority is annexed as Annexure "A").

2. That later on respondent No.2 issued fresh charge sheet and appointed Inquiry Committee although an inquiry had already been conducted by one Mr. Sardar Muhammad Saleem. The Inquiry Committee in its report recommended major penalty retirement from service and recovery of losses. As a result respondent No. 2 issued, show cause notice. The reply to the show cause notice was furnished by the appellant within stipulated period.

(Copy of the charge sheet, reply to charge sheet, show cause notice, reply to show cause notice and appeal are annexed as Annexures "B", "C", "D" "E" & "F").

3. That, the appellant remained posted at Gohar Abad Timber Depot Abbottabad upto 09/05/2007. On 09/05/2007, the appellant was transferred from Gohar Abad Timber Depot Abbottabad Sub-Division, Jabrian Nursery Abbottabad vide Divisional Forest Officer office order No. 199 dated 09/05/2007.

(Copy of order No. 199 dated 09/05/2007 is annexed as Annexure "G").

4. That, in the year 2008 the allegation for misappropriation of the timber measuring 4984.97 Cft. of T.P No. 24 dated 23/12/2004 was leveled against the appellant and others. Later on an inquiry committee was constituted for making inquiry in respect of the said allegation through a charge sheet and memo of allegations Mr. Sardar Muhammad Saleem was appointed as Inquiry Committee. He vide his report dated 30/12/2011 after making inquiry submitted his report vide which the appellant was exonerated from the charge.

(Copy of report of Sardar Muhammad Saleem the then Sub-Divisional Forest Officer, Abbottabad is annexed as Annexure "H").

5. That, ultimately respondent No.2 vide impugned notification dated 12/05/2014 by imposing major penalty of compulsory retirement from service and recovery of loss of Rs. 950,241/- and terminated the services of the petitioner.

Copy of the notification is already annexed as Annexure "A".

6. That, during pervious inquiry of the year 2008 Divisional Forest Officer, Lower Kohistan Division, Pattan issued the Show Cause No. 2825/GE dated

24/06/2008 to the Managing Director of Dubair Forest Harvesting Co-operative Society Limited wherein it was stated that entire timber of T.P No. 24 dated 23/12/2004, stands reached the Havelian market and distributed into the appropriate share amongst the concessionists/ Government leaving no balance at the roadside Depot at Pattan.

(Copy of the show cause notice is annexed as Annexure "I").

7. That, on 06/08/2005 Managing Director Society Dubair Harvesting Limited received the entire timber at Gohar Abad Sale Depot from the concerned officials of Lower Kohistan Forest Division Pattan being custodian and executed a receipt on 06/08/2005.

(Copy of the receipt is annexed as Annexure "J").

8. That, the alleged excess timber allowed through extension of T.P was confiscated by the Conservator of Forest, Hazara Forest Circle, Abbottabad vide his office order No. 121 dated 12/06/2008.

(Copy of the office order no. 121 dated 12/06/2008 is annexed as Annexure "K").

9. That, forest officials issued notice to the appellant and the reply of the same was given to the Conservator of

Forest, he forwarded the explanation of the appellant to the Chief Conservator of Forest, NWFP (KPK) Peshawar vide his office letter No. 2316/GE dated 13/05/2009 wherein it was stated by the Conservator Forest, Hazara Circle Abbottabad that the appellant has no concern with the excess timber of T.P No. 24 as being employee of the Gallis Forest Division having no role with the receipt and distribution of the timber of the other Forest Divisions and the petitioner was also exonerated of the charges by the said Conservator Hazara Circle.

(Copy of the office order No. 2316/GE dated 13/05/2009 is annexed as Annexure "L").

10. That timber was extracted and transported from lower Kohistan forest division and ultimately DFO Lower Kohistan was the custodian of society timber 80% and Govt. share 20%.

(Copy of the Transport Pass (T.P) No. 24 dated 23/12/2004 is annexed as Annexure "M").

11. That apportionment of the timber was done by a committee of three Divisional Forest Officers and DFO Lower Kohistan was the Chairman of Distribution Committee.

(Copy of the distribution lists signed by committee is annexed as Annexure "N").

12. That office Order No. 29 dated 12/02/2005 and No. 04 dated 13/08/2005 was issued by DFO Lower Kohistan for appointment of the Timber transported under transport pass No. 24 dated 23/12/2004 and 29 dated 12/02/2005 respectively by D.F.O Lower Kohistan. **(Copy of the office order No.4 issued by DFO Lower Kohistan is annexed as Annexure "O")**.

13. That Govt. shared was auctioned by DFO Lower Kohistan and society share was shifted to Private Depot no. 569 vide Challan No. 85/2 dated 20/08/2005 issued by staff of Lower Kohistan Forest Division and full society share was released and acknowledged by the Managing Director of Dobair FHCS which means that no balance timber was left in Kohistan.

(Copy of acknowledgement by Managing Director and Challan No. 85/2 dated 20/08/2005 is annexed as Annexure "P").

14. That all of a sudden DFO Lower Kohistan extended the period of transport pass and allowed the so-called and book balance of transport pass No. 24 dated 23/12/2004 in favour of Society but conservator of Forest Hazara Circle did not agree.

(Office order No. 121 dated 12/06/2008, which already annexed as Annexure "K").

15. That a committee of three officers reported that timber is fresh except a few scants (82 Scants = 1055 cft) vide report No. 906 dated 31/08/2009 which means that timber procured was from other illegal sources in Kohistan and it fetched a price of Rs. 305/- Cft. whereas recovery has been imposed @ Rs. 800 Cft. By the competent authority.

(Copy of the letter signed by the committee is annexed as Annexure "Q").

16. That every Divisional Forest officer has posted his own staff at Gohar Abad Depot on its independent jurisdiction having separate record and, own authority.

17. That all the consignments were allowed by concerned DFO Lower Kohistan through transport passes (TP) and challans duly signed by him and transportation to down provinces was allowed through challans signed by DFO Galis to private Depot No. 569 on the recommendations of SDFO Abbottabad but incharge of Check Post have been held responsible for doing nothing but for implementation of directives of superiors. The judgment passed by the competent authority is discriminatory and biased.

18. That chance of personal hearing was not provided at any stage by any inquiry committee or appointing authority which was mandatory under the rules.

19. That GFR Paras 20 to 24 deal with losses to government and only a DDO is responsible for all losses to government. He has to report the matter to higher authority and has to conduct inquiry. In this case neither DFO Lower Kohistan nor Galis reported or conducted any inquiry about losses. Even a single explanation has not been called from their offices about the so-called losses.

20. That Dobair FHCS has signed agreement with DFO Lower Kohistan and in case of any irregularity managing director would have been taken to task. He (Managing Director) transported all the timber and sold in Market but only a single letter cited above is on record. No action was initiated against the society which was the basic duty of DFO Lower Kohistan. Depot incharge of Galis Division had no powers to take any action. Moreover, the Government has received full 20% share hence, no loss at all has been caused to the Government.

21. That there would have been a joint inquiry as two Forest Divisions were involved for the same timber but intentionally Administrator Department issued separate charge sheets of staff of Kohistan and Galis Forest Divisions and created confusions to conceal facts.
22. That the appellant lodged appeal to the appellate Authority against orders passed by respondent No. 1 the Competent Authority on 28/05/2014 but neither it has been accepted nor rejected hence, the present appeal is preferred before this Honourable Tribunal, inter-alia, on the following grounds; -

GROUNDS; -

- a. That the impugned order is against the law and actual facts, hence, legally is not tenable and is requested to be set-aside.
- b. That the inquiry conducted is not according to the rules and regulations, as laid down under the E&D Rules 2011. All the inquiry has been conducted in the absence of the appellant. While it was mandatory that the appellant be

present at the time of inquiry at all the stages of proceedings of inquiry.

c. That no inquiry report has been provided to the appellants while it was the legal requirements that appellant be given a report of inquiry which was conducted against the appellant.

d. That appellant had been exonerated by the Inquiry Officer, Sardar Muhammad Saleem and even the Conservator of Forests Hazara Circle Abbottabad.

e. That during the long tenure of services of more than 30 years the appellant served the department, most honestly, diligently faithfully. That is why the department itself admitted the good service record of the appellant, while awarding the punishment in the impugned order No. SO(Estt.) Evt./1-50(43)/2K12 dated 12/05/2014. The service record was not given any weight.

f. That the appellant had served his prime/golden period of service in the department and now

when he is at the last stages of services, his previous services have been ignored. It can be considered that punishment was harsh and not justified at all.

In view of the above facts and reasons, it is humbly prayed that the Honourable Tribunal may graciously be set-aside the punishment with all the benefits from which the appellant has been deprived due to this impugned order till now and till decision and the appeal be accepted as prayed for.

M Rafique
Muhammad Rafique
....APPELLANT

Through

Dated: 10/9/2014

Mahboob
(Syed Mehboob Hussain Shah) SYED MAHBOOB AHMAD S
Advocate High Court, Abbottabad Professor, M.A LL.B
Advocate High Court
Abbottabad

VERIFICATION: -

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

....APPELLANT

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PK PESHAWAR**

Service Appeal No. _____/2014

Muhammad Rafique, Ex. Forest Guard, Galis Forest Division, Abbottabad.

....APPELLANT

VERSUS

Governor Khyber Pakhtunkhwa Province, Peshawar and others.

...RESPONDENTS

SERVICE APPEAL

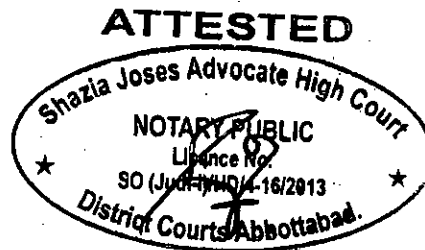
AFFIDAVIT

I, Muhammad Rafique, Ex. Forest Guard, Galis Forest Division, Abbottabad, do hereby solemnly affirm and declare on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Court.

M. Rafique
DEPONENT

Identified By:-

Mehboob Hussain Shah
(Syed Mehboob Hussain Shah)
Advocate High Court, Abbottabad



9/9/2014

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. _____/2014

Muhammad Rafique, Ex. Forest Guard, Galis Forest Division, Abbottabad.

....APPELLANT

VERSUS

Governor Khyber Pakhtunkhwa Province, Peshawar and others.

...RESPONDENTS

SERVICE APPEAL

ADDRESSES OF THE PARTIES

Respectfully Sheweth:-

Addresses of the parties are as under:-

Muhammad Rafique, Ex. Forest Guard, Galis Forest Division, Abbottabad.

....APPELLANT

VERSUS

1. Governor Khyber Pakhtunkhwa Province, Peshawar.
2. Chief Minister Khyber Pakhtunkhwa, Peshawar.
3. Secretary Environment Department Govt. of Khyber Pakhtunkhwa, Peshawar.
4. Chief Conservator of Forests Northern Region-II Abbottabad.
5. Conservator of Forests Lower Hazara Circle, Abbottabad.
6. D.F.O Galis, Forest Division Abbottabad.

...RESPONDENTS

Muhammad Rafique

Muhammad Rafique

....APPELLANT

Through

Dated: _____/2014

0346-9566722

Muhammad Rafique
 (Syed Mehboob Hussain Shah)
 Advocate High Court, Abbottabad

SYED MAHBOOB AHMAD SHAH
 Professor, M.A LL.B.
 Advocate High Court
 Abbottabad



Dated Pesh: 12th May, 2014

Amendment - A

NOTIFICATION

No.SO(Estt)Env/1-50(43)/2k12: WHEREAS, Mr. Muhammad Rafique, Forest Guard (BPS-07) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations dated 04/01/2013, served upon the said official;

AND WHEREAS, Enquiry Committee comprising Mr. Abdul Jamil (BS-19), the then Conservator of Forests, Lower Hazara, Abbottabad and Mr. Janat Gul (PCS SG BS-19) Additional Secretary, Irrigation Department was constituted to conduct the inquiry against the said accused official and others;

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

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

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused official, and hearing him in person and exercising his powers under Rule-14(5)(ii) read with Rule 4(1)(b)(i) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose a major penalty of "Compulsory retirement from service; and recovery of loss amounting to Rs.09,50,241/-" upon Mr. Muhammad Rafique, Forest Guard (BPS-07) of Forest Department, with immediate effect.

CHIEF MINISTER,
KHYBER PAKHTUNKHWA

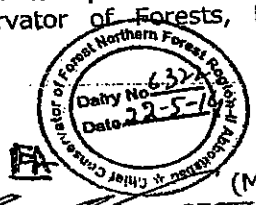
Dated Pesh: 12th May, 2014.

Endst: No. SO(Estt)Env/1-50(43)/2k10

214-2138

Copy is forwarded to:-

- 1) PSO to Chief Minister, Khyber Pakhtunkhwa.
- 2) PS to Secretary Environment Department.
- 3) Chief Conservator of Forests, Central and Southern Forest Region-I, Peshawar.
- 4) Chief Conservator of Forests, Northern Forest Region-II, Abbottabad.
- 5) Director Budget and Accounts Environment Department.
- 6) Official concerned C/O Chief Conservator of Forests, Northern Forest Region-II, Abbottabad
- 7) Master file.
- 8) Office order file.



(MIR ZALI KHAN)
SECTION OFFICER (ESTI)

(P.T.O)

10
SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

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Accessed
SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

No. 9601 /GE dated Abbottabad the 22/05/2014.

Copy alongwith Administrative Department Notification No. SO (Estt) / Emt / 1-50 (43) / 2133-2140, dated 12-05-2014 (in-original) meant for Muhammad Rafique Forest Guard forwarded to the Conservator of Forests, Lower Hazara Forest Circle Abbottabad for information and necessary action. Please deliver the aforesaid notification to the Forest Guard concerned under proper receipt, which may be sent to this office for record and further necessary action.

Encl. As above

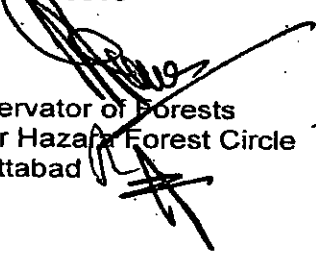
Sd/- Chief Conservator of Forests
Northern Forest Region-II Abbottabad

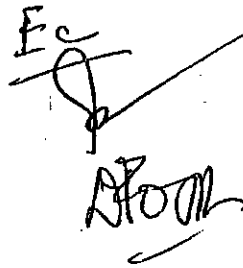
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No. 8282 /GE dated Abbottabad the 26 /05/2014.

Copy alongwith Administrative Department Notification No. SO (Estt) / Emt / 1-50 (43) / 2133-2140, dated 12-05-2014 (in-original) meant for **Muhammad Rafique Forest Guard** forwarded to the Divisional Forest Officer, Galis Forest Division, Abbottabad for information and necessary action. Please deliver the aforesaid notification to the Forest Guard concerned under proper receipt, which may be sent to this office for record and further necessary action.

Encl. As above

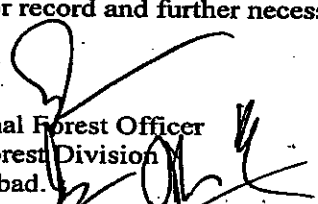

Conservator of Forests
Lower Hazara Forest Circle
Abbottabad

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27/5/2014

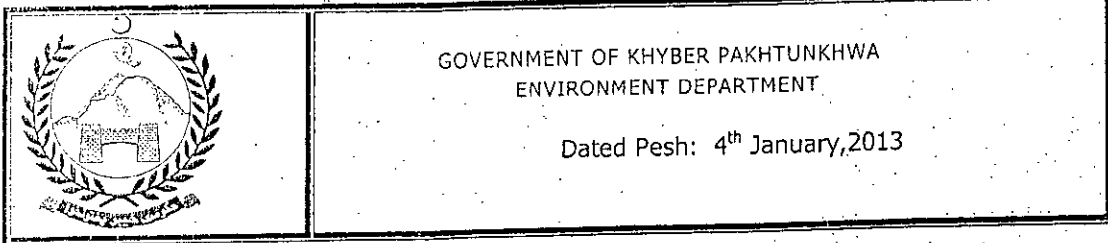
No. 7871 /E, dated Abbottabad 27 /5/2014.

Copy alongwith copy of notification forwarded to the Sub Divisional Forest Officer Bagnotar for information. He is directed to immediately deliver the said notification to Mr. Muhammad Rafique Forest Guard under proper receipt and submit the same to this office for record and further necessary action.


Divisional Forest Officer
Galis Forest Division
Abbottabad.

اب محمد رفیق
مستقبل
28/5/2014

Most Immediate



NOTIFICATION

No. SO(Estt)Env/1-50(43)/2k6: The Chief Minister, Khyber Pakhtunkhwa/Competent Authority is pleased to constitute an Enquiry Committee, comprising Mr. Abdul Jamil, (BS-19), Conservator of Forests, Lower Hazara (Chairman of the Enquiry Committee) and Mr. Janat Gul, PCS SG (BS-19), Additional Secretary, Irrigation Department (Member of the Enquiry Committee) to conduct an inquiry against the following officers/officials of Khyber Pakhtunkhwa Forest Department, into the charges/allegations levelled in the enclosed Charge Sheets and Statements of Allegations, under section-5(1) of the Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011.

1. Pir Qaim Shah, Divisional Forest Officer (BS-18).
 2. Mr. Abdullah Khan, Sub Divisional Forest Officer (BS-17, later -on promoted to BS-18).
 3. Mr. Muhammad Iqbal, Forester (BS-09)
 4. Mr. Muhammad Rafique, Forest Guard (BS-07)
 5. Mr. Saif-Ur Rehman, Forest Guard (BS-07)
2. The Enquiry Committee shall submit its findings within 30 days positively.

Sd/-
CHIEF MINISTER
KHYBER PAKHTUNKHWA

Enst: No. SO(Estt)Env/1-50(43)/2k6:

Dated 4th January, 2013.

Copy alongwith copies of the Charge Sheets/Statements of Allegations, are forwarded to :-

1. Mr. Abdul Jamil, BS-19 (Chairman of the Enquiry Committee), Conservator of Forests, Lower Hazara Forest Circle, Abbottabad.
2. Mr. Janat Gul, PCS SG BS-19 (Member of the Enquiry Committee), Additional Secretary, Irrigation Department.
- 3-7. All the above (5) Officers/Officials C/O Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar with the direction to appear before the Enquiry Committee on the date, time and place to be fixed by the Enquiry Committee for the purpose of inquiry proceedings.

SECTION OFFICER (ESTT)

Enst: No. and date even.

Copy is forwarded for information and necessary action to:-

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

Attested

SECTION OFFICER (ESTT)

SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

CHARGE SHEET

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you Muhammad Rafique, Forest Guard of Galies Forest Division as follows:

That you, while posted as Forest Guard Goharabad Depot committed the following act of omission and commission:

- a) That you failed to check/facilitated transportation of 513 scants of timber (Fir/Spruce) = 4984.97 Cft through fake and fraudulent documents/Transport pass from Lower Kohistan to Goharabad Sale Depot No. 569.
- b) That you and your staff gave free hand to the illegal transportation of timber to the tune of 4984.97 Cft through a fake T.P No. 24 dated 23-12-2004 extended on 23-7-2005 and another extension granted on 30-6-2008 (after three years).
- c) That you failed to supervise / exercise effective check over your subordinate staff, besides failure to perform your job as stipulated in the job description for Forest Guard, thereby sustaining loss to the public exchequer to the tune of Rs.797,600/-
- d) That you are severally as well as jointly with other accused in the case responsible for recovery of the loss sustained by the public exchequer plus interest as per law.

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

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

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

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

6. A Statement of Allegations is enclosed.

Attested

Mahboob
SYED MAHBOOB AHMAD SHAH
 Professor, M.A LL.B.
 Advocate High Court
 Abbottabad

A. Haider
 (AMIR HAIDER KHAN HOTI)
 CHIEF MINISTER/COMPETENT AUTHORITY

DISCIPLINARY ACTION

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Muhammad Rafique, Forest Guard, the then Forest Guard Goharabad Depot, has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011.

STATEMENT OF ALLEGATION

- a) That he failed to check/facilitated transportation of 513 scants of timber (Fir/Spruce) = 4984.97 Cft through fake and fraudulent documents / Transport pass from Lower Kohistan to Goharabad Sale Depot No. 569.
- b) That he and his staff gave free hand to the illegal transportation of timber to the tune of 4984.97 Cft through a fake T.P No. 24 dated 23-12-2004 extended on 23-7-2005 and another extension granted on 30-6-2008 (after three years).
- c) That he failed to supervise/exercise effective check over his subordinate staff, besides failure to perform his job as stipulated in the job description for Forest Guard, thereby sustaining loss to the public exchequer to the tune of Rs.7,97,600/-
- d) That he is severally as well as jointly with other accused in the case responsible for recovery of the loss sustained by the public exchequer plus interest as per law.

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

- i) Mr. Abdul Jamil (BS-19) Conservator Forest
- ii) Mr. Jamat Gul PCS SG (BS-19)
- iii) _____

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

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

Attested

A. Hoti

(AMIR, HAIDER KHAN HOTI)
CHIEF MINISTER/COMPETENT AUTHORITY

Nasir

SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

Annexure - C

3-19

To

Mr. Abdul Jamil
Conservator of Forests
Lower Hazara Forest Circle Abbottabad
(Chairman of the Enquiry Committee)

Subject: CHARGE SHEET

Reference Section Officer Establishment Government of Khyber Pakhtunkhwa Environment Department Endstt: No. SO(Estt:) Envvt:/1-50(43)2k6/20-27, dated 4/1/2013 received vide DFO Galis letter No. 3055/GE, dated 24/1/2013

Kindly refer to the above charge sheet wherein I have been directed to explain my position on the following allegations:

- a. That you failed to check / facilitated transportation of 513 scants of timber (Fir / Spruce) = 4984.97 cft through fake and fraudulent documents / Transport pass from Lower Kohistan to Goherabad Sale Depot No. 569.
- b. That you and your staff gave free hand to the illegal transportation of timber to the tune of 4984.97 cft through a fake T.P No. 24 dated 23-12-2004 extended on 23-7-2005 and another extension granted on 30-6-2008 (after three years).
- c. That you failed to supervise / exercise effective check over your subordinate staff, besides failure to perform your job as stipulated in the job description for Forest Guard, thereby sustaining loss to the public exchequer to the tune of Rs. 797,600/-
- d. That you are severally as well as jointly with other accused in the case responsible for recovery of the loss sustained by the public exchequer plus interest as per law.

The parawise reply to the allegations is given as under:

- a). That the timber in question i.e. 513 scants (Fir/Spruce) = 4,984.97 cft timber was not transported to Goherabad during my tenure.
- b). (i). The Illegal transportation of timber 513 scants = 4,984.97 cft (Fir/Spruce) had been done during 9/6/2008 to 10/6/2008 vide Challan No. 66 to 72 of Challan Book No. 73/LK to Goherabad Market through 3rd extension in T.P. No.24, dated 23.12.2004 allowed by Mr. Hafiz-UI-Islam the then DFO Lower Kohistan Forest Division vide No. 2712/GL, dated 3.6.2008 in favor of Mr. Muhammad Anwar Khan Managing Director Dubair Forest Harvesting Cooperative society on the recommendation of Qazi Shabir Ahmed the then SDFO Paltan (Lower Kohistan Forest Division) through fresh sizewaras (Annexure-I) wherein the sizes, age and No. of scants i.e. 513 scants = 4,984.97 cft (Fir/Spruce) were contrary to the original TP No. 24, dated 23/12/2004 of Lower Kohistan and it is astonishing to note that how this consignment was allowed to its destination through various Forest Checkposts.

Attested

Mahboob
SYED MAHBOOB AHMAD SHAH
Professor, MA LL.B.
Advocate High Court
Abbottabad

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to (including market plus taxes) amount open auction Rs. 3,63,370/- as the value

(d). The money worth Rs. 16,42,040/- as sale proceed of 213 = 4984.77 off confiscated timber has gone to the pocket of Managing Director after its open auction vide DFO Lower Kohistan cross cheque No. 281309, dated 22/2/2012 and not to the pocket of any outsider. This is the actual loss sustained to the Government. This is not theft, deceit or mis-appropriation rather it happened due to malafide intention of Managing Director who is state holder with DFO Lower Kohistan being involved in this case the Managing Director Durrani Forest Investing Cooperative society was required to be paralized and banned his society.

Keeping in view the above ex-position it is humbly prayed that I may please be exonerated from all the charges leveled in the charge sheet/Memo of allegation against me and I may also be heard in person. It is further requested to direct the prosecution to bring all the relevant record at the time of personal hearing as per detail given below:

- 1.) Correspondence file of Chany (ii) of DFO Lower Kohistan.
- 2.) Court file maintained by DFO Lower Kohistan.
- 3.) Correspondence file of Depot No. 269 of DFO Galis
- 4.) Counterfoil of Challan books No. 203, 204, 205 and 206 used by private depot holder 269
- 5.) Form 2 & 6 of Sale depot at Goherbud of Lower Kohistan.
- 6.) Form 2 & 6 of Depot No. 269
- 7.) Challan book 22K of Challan No. 82 of Lower Kohistan Forest Division.

W. J. Khan
(MUHAMMAD RAFIQUE)
FOREST GUARD
GALIS FOREST DIVISION
ABBOTTABAD

W. J. Khan
SYED NAHID AHMAD SHAH
Advocate High Court
Abbottabad
P.O. Galis

Annexure - C

19

To

Mr. Abdul Jamil
Conservator of Forests
Lower Hazara Forest Circle Abbottabad
(Chairman of the Enquiry Committee)

Subject: CHARGE SHEET

Reference Section Officer Establishment Government of Khyber Pakhtunkhwa Environment Department Endstt: No. SO(Estt:) Envvt:/1-50(43)2k6/20-27, dated 4/1/2013 received vide DFO Galis letter No. 3055/GE, dated 24/1/2013

Kindly refer to the above charge sheet wherein I have been directed to explain my position on the following allegations:

- a. That you failed to check / facilitated transportation of 513 scants of timber (Fir / Spruce) = 4984.97 cft through fake and fraudulent documents / Transport pass from Lower Kohistan to Goherabad Sale Depot No. 569.
- b. That you and your staff gave free hand to the illegal transportation of timber to the tune of 4984.97 cft through a fake T.P No. 24 dated 23-12-2004 extended on 23-7-2005 and another extension granted on 30-6-2008 (after three years).
- c. That you failed to supervise / exercise effective check over your subordinate staff, besides failure to perform your job as stipulated in the job description for Forest Guard, thereby sustaining loss to the public exchequer to the tune of Rs. 797,600/-
- d. That you are severally as well as jointly with other accused in the case responsible for recovery of the loss sustained by the public exchequer plus interest as per law.

The parawise reply to the allegations is given as under:

- a). That the timber in question i.e. 513 scants (Fir/Spruce)= 4,984.97 cft timber was not transported to Goherabad during my tenure.
- b).(i). The Illegal transportation of timber 513 scants = 4,984.97 cft (Fir/Spruce) had been done during 9/6/2008 to 10/6/2008 vide Challan No. 66 to 72 of Challan Book No. 73/LK to Goherabad Market through 3rd extension in T.P. No.24, dated 23.12.2004 allowed by Mr. Hafiz-UI-Islam the then DFO Lower Kohistan Forest Division vide No. 2712/GL, dated 3.6.2008 in favor of Mr. Muhammad Anwar Khan Managing Director Dubair Forest Harvesting Cooperative society on the recommendation of Qazi Shabir Ahmed the then SDFO Pattan (Lower Kohistan Forest Division) through fresh sizewaras (Annexure-I) wherein the sizes, age and No. of scants i.e. 513 scants = 4,984.97 cft (Fir/Spruce) were contrary to the original TP No. 24, dated 23/12/2004 of Lower Kohistan and it is astonishing to note that how this consignment was allowed to its destination through various Forest Checkposts.


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Nahin
SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

A complaint regarding transportation of this illegal timber loaded in seven trucks was received by Syed Khurshid Anwar the then Conservator of Forests Abbottabad which was accordingly intercepted at Mirpur Forest Check post Abbottabad and carried to Goherabad Market under the supervision of Mr. Rustan Khan the then DFO Patrol Squad Abbottabad. The same was unloaded at Goherabad and after proper measurement and examination of record i.e. Form 5 & 6 of Lower Kohistan Sale depot at Goherabad; Office Order No.29 dated 11/2/2005 (Annexure-II). Office Order No. 04, dated 13/8/2005 (Annexure-III) of DFO Lower Kohistan. Challan No. 85/2LK dated 20/8/2005 (Annexure-IV) issued / prepared by Saif-ur-Rehman F/Guard the then incharge Lower Kohistan Sale depot to private sale depot 569 and acknowledgement receipt of Managing Director for 1338 scants = 9,396.99 (Annexure-V) cft showing that the whole consignment of T.P. No. 24, dated 23/12/2004 = 3495 scants= 26,071.92 (Annexure-VI) cft was reached to the market and stand disposed off and nothing was balance in roadside depot and report thereof was submitted to Conservator of Forests, Abbottabad Circle who accordingly issued office order No. 121, dated 12/6/2008 (Annexure-VII) for the confiscation of this illegal timber 513 scants = 4,984.97 cft in favour of Government with a copy to Chief Conservator of Forests and a copy to DFO Lower Kohistan for putting the timber for sale and proceeding against the delinquent staff under intimation to his office.

ii).Aggrieved of this, Mr. Muhammad Anwar Managing Director Dubair Forest Harvesting Cooperative Society preferred an appeal in the court of Civil Judge-I Abbottabad against the Conservator of Forests Abbottabad office order No. 121, dated 12/6/2008. The Forest Standing counsel Abbottabad offered comprehensive comments (Annexure-VIII) on the civil suit No. 105/01 in the court of Civil Judge-I Abbottabad, stated that the whole timber is disposed off and nothing is left at depots which was dismissed on 10/7/2010 but later on remanded in the court on the basis of additional evidence which was not properly defended in the court and the case was decided in favour of Managing Director on 8/10/2011. The letter No. 3696/GL, dated 3/12/2011 (Annexure-IX) of the office of Conservator of Forests, Upper Hazara Forest Circle Mansehra addressed to the Chief Conservator of Forests-II Khyber Pakhtunkhwa Peshawar is worth perusal with all its enclosures showing that who failed in the court and why the case became unfit for further proceedings which resulted in initiation of another enquiry against the staff of Galis Forest Division.

c).i). I and Mr. Muhammad Iqbal Forester had maintained a neat and clean record about the inflow and out flow of timber in daily Roznamcha and Khata register. Though the so called book balance i.e. 779 scants = 4948.77 cft was available in the Khata register (Annexure-X) of Goherabad Check post but after un-loading and proper measurement nothing remained balance as all the timber of T.P No. 24, dated 23/12/2004 had reached the timber market. In this regard the version of Forest Manual Volume-II Page-223, clause 15.7 can be quoted as under: *"All logs and scantlings will be measured and marked as soon as possible after arrival at a "sale depot" in the manner prescribed in the "Depot and Sale Rules". All other forest produce will be counted, measured or weighed as the circumstances may require immediately on arrival at a "sale depot".* (Annexure-XI)

After examining the record of Kohistan Sale depot and private sale depot 569, it has become crystal clear that the whole consignment of Lower Kohistan T.P. No. 24 dated 23/12/2004 had been distributed by DFO Lower Kohistan in proportionate share of 20% Government and 80% Owner share and released the 80% owner share to the owners/Managing Director vide

Attested

SYED MAHBOOB AHMAD SHAH
 Professor, M.A LL.B.
 Advocate High Court
 Abbottabad

his office order No. 29, dated 11/2/2005 and 04, dated 13/8/2005 respectively and nothing was balance as per detail given below:

DFO Kohistan order & date	Lower Office T.P.	Quantity as per	Timber reached in Goherabad Sale Depot	20% Govt. Share	80% Owner Share
O/O No 29, dated 11.2.2005,		3495= 26071.92	1942= 14324.00	239= 2865.19	1703= 11459.80
O/O No 04, dated 13-8-2005			1553= 11746.93	215=2349.94	1338= 9396.99
Total			3495 = 26071.92	454 = 5215.13	3041 = 20856.79

Hence the carriage of 513 scants = 4,984.97 cft in lieu of so called 779 scants = 4,948.77 cft book balances to the Goherabad by Managing Director was not justified and un-warranted.

ii).No omission had been occurred during my tenure at private depot 569 dealing with private timber because neither the Depot Holder nor the President of Timber Merchant Association, MDs of Societies, Chairmen of the JFMCs, the staff posted at Goherabad themselves or through their Range Officers preferred any complaints or brought any irregularity in my notice.

iii). Mr. Abdullah Khan the then Range Officer Abbottabad and Mr. Muhammad Iqbal Forester had checked the released private share i.e. 1338 scants = 9396.99 cft shifted under the challan No. 85/2LK dated 20/8/2005 of Lower Kohistan Forest Division issued/ prepared by Mr. Saif-Ur-Rehman Forest Guard the Incharge of Lower Kohistan sale depot to private sale depot 569. We have also verified the entry in form No. 5 (Annexure-XII) and its further disposal in Form No. 6 (Annexure-XIII) of the said depot.

iv).I have performed my duty earnestly and honestly with zeal and zest. The loss sustained to Government is not on my part but on the part of the Prosecutor who could not bring the facts in the notice of the Enquiry Committee comprising of M/S. Hussain Shah Additional Secretary Govt. of Khyber Pakhtunkhwa Health Department and Muhammad Ayaz Deputy Secretary Govt. of Khyber Pakhtunkhwa Finance Department. It also lies on the part of the officers who failed to defend the suit case No. 105/01 in the court of Civil Judge Abbottabad filed by MD of Dubair Cooperative Society against Conservator of Forests, Abbottabad office order No. 121, dated 12.6.2008(see the last paragraph of "Discussion of the fact finding enquiry of Mr. Shah Wazir Khan and Malik Javed) (Annexure-XIV)

"Due to non inclusion of Forest officer in the enquiry committee to ascertain technical aspect of the issue against M/S Hafiz-Ul-Islam and Qazi Shabir Ahmad SDFOs besides poor prosecution of the department, the charges against the accused officers/officials were not proved although they are not so innocent because TP No. 24 dated 23/12/2004 (already extended on 13/7/2005) was granted another extension on 3/6/2008 (after 3 years) which is not understood. Conservator of Forests, Abbottabad while confiscating the timber vide his office order No. 121, dated 12/6/2008 clearly states that the so called timber is not available on balance and was confiscated. Later on due to poor prosecution of the Department could not prove the charges against the officers/officials during the enquiry proceedings. In case of civil suit the department (DFO Lower Kohistan and his staff) failed to safeguard the Govt: interest and rather gave chance to the private party

Attested
Nahid
SYED MAHEOOD AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

(MD of the society) to prove his case against the Department, which clearly shows their In-efficiency and Misconduct."

vi).In compliance to the directives contained in the Section Officer, Establishment Government of Khyber Pakhtunkhwa Environment Department letter No. SO (Estt)Envnt:/1-50(40)2k9/611/We, dated 26/2/2011(Annexure-XV) about the endorsement of decision of worthy Chief Secretary upon the Enquiry Report of Mr. Hussain Shah Additional Secretary Govt. of Khyber Pakhtunkhwa Health Department on the subject "DISCIPLINARY PROCEEDINGS AGAINST TWO SUB DIVISIONAL FOREST OFFICERS, ONE JUNIOR CLERK AND FOUR FOREST GUARDS" addressed to Chief Conservator of Forests, Khyber Pakhtunkhwa, the DFO Galis has initiated enquiry as given in the 2nd paragraph of the letter.

"Besides, it has also been approved that an inquiry/disciplinary case against the staff of Galis Forest Division posted at Goharabad Deport may also be conducted /initiated; therefore, necessary steps may be taken accordingly under intimation to this department. In this connection a copy of Inquiry Report is attached."

After enquiry I have been exonerated from the charges leveled against me by the Enquiry Committee Sardar Muhammad Salim Sub Divisional Forest Officer, Abbottabad(Annexure-XVI)

v).Mr. Muhammad Anwar MD of the Dubair Forest Harvesting cooperative society is responsible for the loss sustained to the Government by brining illegal timber 513 Fir/Spruce scants= 4994.97 cft. He is not an innocent and this is not his first instance but he has violated the Transport Pass Rules in T.P. No. 06, dated 25/9/2006, T.P. No. 07, dated 27/9/2006 and T.P. No.08, dated 27/9/2006 issued by the DFO Lower Kohistan for the carriage of timber from Dobair Roadside depot to Goharabad Market which was detected during checking in March 2007 by the NAB (F) team where huge quantity was admixed and through open auction of this illegal timber, more than Rs.70,00,000/- was remitted into Government Treasury. (Annexure-XVII, XVIII & XIX). Had this not been detected by the NAB (F) team then the Government exchequer would have sustained a huge loss. The detail is given below:

T.P. No. and Date	Timber Confiscated in Market / disposed of.
T.P. No. 6 dated 25.9.2006 issued from Dobair R/Side depot to Goharabad Market	968.92 Cft Excess timber was detected in Goharabad Timber Market and confiscated vide DFO Lower Kohistan Office Order No. 54 dated 28.3.2007 and Security Rs. 26083/- was forfeited to Govt. and confiscated timber was disposed of through open auction receiving Rs. 8,64,389/- as sale value plus taxes.
T.P. No. 7 dated 27-9-2006 issued from Dobair R/Side depot to Goharabad Market	3914.67 Cft. Excess timber was detected in Goharabad Timber Market and confiscated vide DFO Lower Kohistan Office Order No. 53 dated 28.3.2007 and Security Rs.26,083/- was forfeited to Govt and confiscated timber was disposed off through open auction receiving Rs. 29,65,001/- as sale value plus taxes.
TP No. 08 dated 27.9.2006 issued from Dobair R/Side depot	3743.71 cft excess timber was detected in Goharabad Timber Market and confiscated vide DFO Lower Kohistan Officer Order No. 52 dated 28.3.2007 and security of Rs.27020/- was forfeited to Govt. and confiscated timber was disposed off

Attested
Nahar
SYED MAHBOOB AHMAD SHAH
 Professor, M.A LL.B.
 Advocate High Court
 Abbottabad


to Goherabad market	through open auction receiving Rs. 32,63,370/- as sale value plus taxes.
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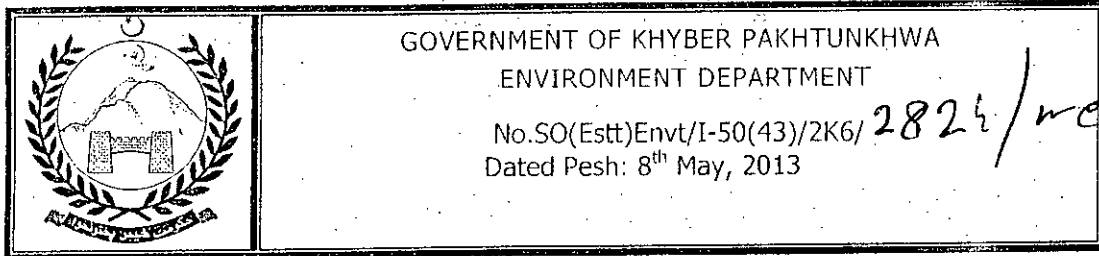
d). The money worth Rs.16,45,040/- as sale proceed of 513 = 4984.77 cft confiscated timber has gone to the pocket of Managing Director after its open auction vide DFO Lower Kohistan cross cheque No. 281309, dated 2/2/2012 and not to the pocket of any outsider. This is the actual loss sustained to the Government. This is not theft, dacoit or misappropriation rather it happened due to malified intention of Managing Director who is stake holder with DFO Lower Kohistan being involved in this case the Managing Director Dubair Forest Harvesting Cooperative society was required to be panelized and banned his society.

Keeping in view the above ex-position it is humbly prayed that I may please be exonerated from all the charges leveled in the charge sheet/Memo of allegation against me and I may also be heard in person. It is further requested to direct the prosecution to bring all the relevant record at the time of personal hearing as per detail given below:

- 1). Correspondence file of Charry 4(ii) of DFO Lower Kohistan.
- 2). Court file maintained by DFO Lower Kohistan.
- 3). Correspondence file of Depot No. 569 of DFO Galis
- 4). Counterfoil of Challan books No. 503, 504, 505 and 506 used by private depot holder 569
- 5). Form 5 & 6 of Sale depot at Goherabad of Lower Kohistan.
- 6). Form 5 & 6 of Depot No. 569
- 7). Challan book 2/LK of Challan No. 85 of Lower Kohistan Forest Division.

Motiqueer
 (MUHAMMAD RAFIQUE)
 FOREST GUARD
 GALIS FOREST DIVISION
 ABBOTTABAD

Attested

SYED MAHBOOB AHMAD SHAH
 Professor, M.A LL.B.
 Advocate High Court
 Abbottabad



To

Mr. Muhammad Raffique,
Forest Guard (BPS-7),
C/O Chief Conservator of Forests,
Central & Southern Forest Region-I, Peshawar.

Subject: SHOW CAUSE NOTICE.

I am directed to enclose herewith Show Cause Notice (in duplicate) duly signed by the Chief Minister, Khyber Pakhtunkhwa ^{along with E/report} for necessary action.

2. Please acknowledge the receipt.

Fidaullah
(FIDA-UL-KARIM)
SECTION OFFICER (ESTT)

Endst:No.& date even

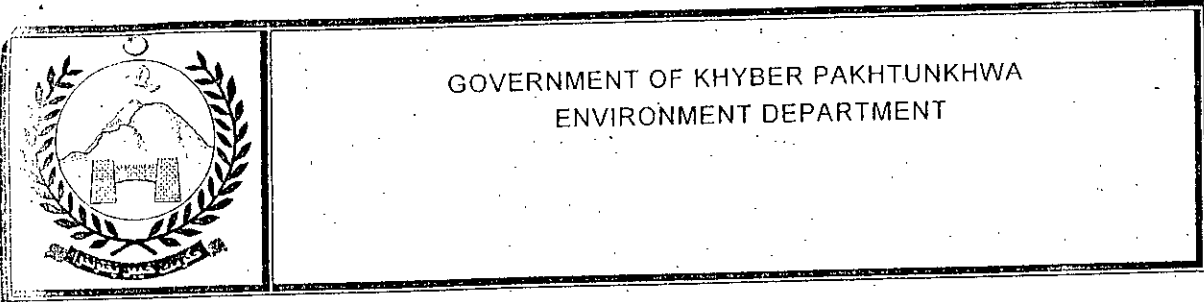
Copy is forwarded to :

1. PS to Secretary Environment Department.
2. Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar, along with a copy of the Show Cause Notice as well as inquiry report; with the direction that on receiving of the reply on the Show Cause Notice by the accused official, comparative statement with comments of the department may be furnished to this department within stipulated time period.

SECTION OFFICER (ESTT)

Attested

Nahs
SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad



SHOW CAUSE NOTICE

I, Justice (R) Tariq Parvez Khan, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Muhammad Rafique, Forest Guard (BPS-07) Forest Department, as follows:

- 1. (i) that consequent upon the completion of enquiry conducted against you by the Enquiry Committee, for which you were given opportunity of hearing vide office communication No.SO(Estt)Env/1-50(43)/2k6/28-31 dated 4/1/2013; and
- (ii) on going through the findings and recommendations of the Enquiry Committee, the material on record and other connected papers including your defence before the Enquiry Committee.

I am satisfied that you have committed misconduct, inefficiency and corruption, as per details reflected in Enquiry Report in the case, in terms of rule-3 of the Rules ibid.

2. As a result, thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalties of ① Compulsory Retirement From Service
② Recovery of Loss Amounting to Rs. 9,50,241/- under rule-14(4)(b) of the Rules ibid.

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

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

5. A copy of the Enquiry Report is enclosed.

Attested

M. A. L. B.

SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

[Signature]

(JUSTICE (R) TARIQ PARVEZ KHAN)
CHIEF MINISTER, KHYBER PAKHTUNKHWA

2011-2012

To,

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

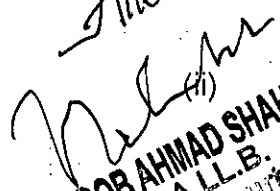
Through:- PROPER CHANNEL

Subject: SHOW CAUSE NOTICE.

Kindly refer to your letter No.SO(estt) Env/1-50(43)2kG,dated 8/5/2013, received vide DFO Galis letter No.5114/E, dated5/6/2013 wherein I have been directed to reply to the attached show cause notice issued from Honourable (Justice (R) Tariq Pervez Khan) Chief Minister KPK regarding the Penalties to be imposed upon me i) compulsory Retirement form service (ii) Recovery of loss amounting to Rs 950241/- in the light of the Enquiry completed by Mr Abdul Jamil CCF, KPK & Mr Janat Gul Additional Secretary Irrigation Department KPK. In this connection it is humbly submitted that a detailed reply was submitted to the Enquiry Committee and also during the personal hearing a detailed answer was given to the questionnaire but the Enquiry Committee did not give weight to my reply/ view points

- (i) Again it is submitted that I am not involved in this event. The version of the Enquiry Committee in Para (f) of their Enquiry report that I am responsible for the exit of excess timber to the tune of 4985 cft from Goharabad market is not corrects, because 21087 cft timber was brought to Goharabad market vide TP No. 24 dated 23/12/2004 issued by DFO Lower Kohistan which was allowed at entry /exit check post of the market to its destination i.e sale depot of Lower Kohistan in side the Goharabad market for its proper measurement and disposal through the staff of Lower Kohistan. After necessary process by them the, DFO Kohistan prepared another documents for its disposal and issued office order No.29,dated11/2/2003 and O/O No.04, dated13/8/2005 for disposal of 26072 cft from Goharabad market sale depot of Lower Kohistan at entry/exit point 1 allowed this to its destination in the basis of their documents.

There is no difference in the record of sale depot 569 i.e form No.5 receipt and Form No.6 disposal, what so ever is released by the DFO Lower Kohistan & his staff to the depot 569, that amount is dispatched and allowed to its detonation.

Attested

SYED MANSOOR AHMAD SHAH
 Mansoor, M.A LL.B.
 Advocate
 21-800110000

(III) The amount of the excess timber has gone to the pocket of MD of the Dubir Society of Lower Kohistan Division. The department had failed to pursue the case in the courts against him where the excess timber was detected by CF, Abbottabad and confiscated vide office No.121 dated 12/6/2008 and still his society is in working condition.

(IV) My duty was (DATA) recording and I have done this correctly and I have realized on the record of DFO Lower Kohistan and his documents.

(V) Due to non inclusion of Forest Officer in the enquiry committee to ascertain technical aspect of the issue against M/S Hafiz-ul-Islam and Qazi Shabir Ahmad SDFOs besides poor prosecution of the department, the charges against the accused officers/official were not proved although they are not so innocent because TP No.24 dated 23/12/2004 (already extended on 13/7/2005) was granted another extension on 3/6/2008 (after 3 years) which is not understood. Conservator of Forest Abbottabad while confiscating the timber vide his office order No.121, dated 12/6/2008 clearly states that the so called timber is not available on balance and was confiscated. Later on due to poor prosecution of the Department could not prove the charges against the officers/officials during the enquiry proceedings. In case of civil suit the department (DFO Lower Kohistan and his staff) failed to safeguard the Govt: interest and rather gave change to the private party (MD of the society) to prove his case against the Department, which clearly shows their In-efficiently and Misconduct.

It is further requested that:-

- 1- The enquiry committee has not fulfilled the basic norms of justice.
- 2- They have not considered the evidence provided by me in my defence.
- 3- They have established charges upon me which I have not committed.
- 4- The officers who were charged alongwith me have been exonerated proving that the responsibility cannot be fixed on staff of Galis Forest Division Abbottabad and if Galis Forest Division staff is responsible then the officers exonerated should have been penalized and discrimination is not warranted under constitution.

keeping in view the above exposition it is humbly requested that I may be exonerated from the charges and may be heard in person please.

Muhammad Rafique R
Muhammad Rafique
Forest Guard

Attested
SYED MAHBOOB AHMAD SHAH
Professor,
Advocate,
Abbottabad

Review/Mercy Petition/Representation before honourable Governor Khyber Pakhtun Khwa Province Peshawar against Order/Notification No. So (Estt)/1-50 (43)/2 k12 dated 12.5.2014 passed by competent Authority Chief Minister Khyber Pakhtun Khwa Province at Peshawar.

THROUGH PROPER CHANNEL

Sir,

I want to bring following facts of the case in brief for your kind and sympathetic considerations which have been totally ignored by.

- i. Enquiry Committee for fact finding Report.
 - ii. Enquiry committee against the DFO lowers Kohistan and his staff.
 - iii. Enquiry committee against the DFO Galis and his staff.
 - iv. Competent Authority while passing final harsh judgment.
-
1. Timber was extracted and transported from lower Kohistan Forest Division and ultimately DFO Lower Kohistan was the custodian of society timber 80% and Govt: share 20%.
 2. Apportionment of the timber was done by three Divisional Forest Officers and DFO Lower Kohistan was the Chairman of Distribution Committee.
 3. Office Order No. 04 dated 13-8-2005 was issued by DFO Lower Kohistan for apportionment of the Timber transported under transport pass No. 24 dated 23.12.2004 and 29 dated 12-2-2005 respectively by him.
 4. Govt: Shared was auctioned by DFO Lower Kohistan and society share was shifted to Private Depot No. 569 vide challan No. 85 dated 20-8-2005 and full society share was released and acknowledged by the Managing Director of Dobair FHCH. Which means that no balance timber was left in Kohistan.
 5. Letter No. 2825/GE dated 24-6-2008 issued by DFO Lower Kohistan further confirmed that there was no timber as balance on roadside depot in Kohistan.
 6. All of a sudden DFO Lower Kohistan extended the period of transport pass and allowed the so called balance of transport pass No. 24 dated 23-12-2004 in favour of society.

Attested
Nehar
SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

7. Conservator of Forests Hazara circle declared his action illegal and supported the staff of DFO Galis posted at Depot vide his No. 2317/GE dated 13-5-2009.
8. A committee of three officers reported that timber is fresh except a few scants (82 scants = 1055 cft) vide report No. 906 dated 31-8-2009 which means that timber procured was from other illegal sources in Kohistan.
9. Timber was auctioned by a committee of three Divisional forest Officers and it fetched, the maximum price as Rs. 305/cft where as the Competent Authority imposed recovery from the accuseds at Market Rate.
10. Every Divisional Forest Officer has posted his own staff at Gohar Abad Depot on its independent Jurisdiction having separate record and, own Authority.
11. All the consignments were allowed by concerned DFO Lower Kohistan through transport passes (TP) and challans duly signed by him and transportation to down provinces was allowed through challans signed by DFO Galis on the recommendations of SDFO Abbottabad and only incharge of Depots have been held responsible for doing nothing but for implementation of directives of superiors.
12. Chance of personal hearing was not provided at any stage by any Enquiry committee or Appointing Authority which was mandatory under the rules.
13. GFR Paras 20 to 24 deal with losses to government and only a DDO is responsible for all losses to government. He has to report the matter to higher Authority and has to conduct Enquiry. In this case neither DFO Lower Kohistan nor Galis reported or conducted any enquiry about losses. Even a single explanation has not been called from their offices about the so-called losses.
14. Dobair FHCS has signed agreement with DFO Lower Kohistan and in case of any irregularity managing director would have been taken to task. He transported all the timber and sold in Market but only a single letter cited above is on Secord. No action was initiated against the society which was the basic duty of DFO Lower Kohistan. Depot incharge of Galis Division had no powers to take any action.
15. There would have been a joint enquiry as two Forest Divisions were involved for the same timber but intentionally Administrator Department issued separate charge sheets

Attested

Nahid

SYED MAHBOOB AHMAD SHAH
Professor, MA LL.B.
Advocate High Court
Abbottabad

and created confusions to conceal facts. Keeping in view the above narrations it is humbly prayed that.

- i. I may be exonerated from the charges like other Co-accuseds i.e.; DFO Galis and SDFO Abbottabad by setting aside the impugned order issued by the Competent Authority cited above and I further request not to implement any part of the order till final Judgement from Appellate Authority and courts of Law please.

I may also be provided a chance of personal hearing so that further facts relating to appeal and case could be brought on surface please.

Yours obedient servant

Moufiquet-S

Muhammad Rafique (Appellant)
 Contact No. cell = 03469566722
 C/O Divisional Forest Officer
 Galis forest Division Abbottabad
 Ph: No. 0992-9310306.

Dated 28-05-2014

Attested

Nehal
SYED MAHMOOD AHMAD SHAH
 Professor, MA LL.B.
 Advocate High Court
 Abbottabad

OFFICE ORDER NO. 144 DATED ABBOTTABAD THE 09/5/2007, ISSUED BY RUSTAM KHAN DIVISIONAL FOREST OFFICER GALIS FOREST DIVISION ABBOTTABAD.

The following posting/adjustment amongst the Forest Guards is hereby ordered in the interest of public service with immediate effect.

S.No.	Name of and rank.	From	To.
1.	Mr. Mohammad Asif Fg	Mirpur Forest Check Post Abbottabad Sub Division	Goharabad Timber Depot Abbottabad Sub Division.
2.	Mr. Mohammad Rafique Fg	Goharabad Timber Depot Abbottabad Sub Division.	Jabrian nursery, Abbottabad Sub Division
3	Mr. Abdur Rashid Fg	Jabrian nursery Abbottabad Sub Division	Mirpur Forest Check Post Abbottabad Sub Division.
4	Mr. Zulfiqar Ahmed Fg	Mirpur Forest Check Post Abbottabad Sub Division	Shimla Hill Barrier Abbottabad Sub Division
4.	Syed Mujtaba Shah Fg;	Abbottabad Block Abbottabad Sub Division	Mirpur Forest Check Post Abbottabad Sub Division
5.	Mr. Mohammad Zaheer Fg;	Newly appointed	Bagh Beat Bagnotar Sub- Division..
5.	Mr. Javed Iqbal Fg;	Bagh Beat Bagnotar Sub- Division	At the Disposal of Sub Divisional Forest Officer Abbottabad.
7.	Mr. Akhter Zaman Fg;	Birangali beat Birangali Range	Salhad Forest Check Post Abbottabad Sub Division.
8.	Mr. Mohammad Iqbal Fg;	Salhad Forest Check Post Abbottabad Sub Division.	Birangali beat Birangali Range

Note:-
own duty

Mr. Riasat Forester with hold the charge of Abbottabad Block in addition to his

Sd/- (RUSTAM KHAN)
DIVISIONAL FOREST OFFICER
GALIS FOREST DIVISION
ABBOTTABAD.

Memorandum:-

- Copy forwarded to:-
1. Conservator of Forests Abbottabad Circle Abbottabad for favour of information with reference to his office letter No. 15091/GE, dated 8-05-2007 and verbal directives of his good self dated 8-5-2007 please.
 2. Sub Divisional Forest Officer Abbottabad.
 3. Sub Divisional Forest Officer Bagnotar
 4. Range Forest Officer Birangali
- For information and necessary action. They are directed to submit the arrival/departure and charge reports of the officials to this office for record and further necessary action.
5. Divisional Accountant for information.

DIVISIONAL FOREST OFFICER
GALIS FOREST DIVISION
ABBOTTABAD

Attested

Nellu
SYED MAHBUB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

ENQUIRY REPORT OF DISCIPLINARY CASE AGAINST M/S MOHAMMAD IQBAL DEPUTY RANGER AND MOHAMMAD RAFIQUE FOREST GUARD.

READ WITH.

1. Conservator of Forests Lower Hazara Forest Circle Abbottabad letter No. 3721-22/GE, dated 25,3,2011.
2. Section officer letter No. SO(Estt)Env/1-50(40)2K9 611/WE dated Peshawar the 26th February 2011.
3. Enquiry report of M/S Qazi Shabir Ahmed Ex-DFO Lower Kohistan, Hafiz-ul-Islam Ex- DFO Lower Kohistan, Juma Khan Block Officer, Naseer Gul Junior Clerk., Umer Khan Forest Guard, Muhammad Zarin Forest Guard and Saif-ur-Rehman Forest Guard.
4. Memo of allegation/disciplinary action in which Sardar Muhammad Saleem Sub Divisional Forest Officer Abbottabad appointed as enquiry committee vide DFO Galis letter No. 3966-67/E, dated 22.4.2011.
5. Charge sheet issued to M/S Mohammad Iqbal Deputy Ranger and Mohammad Rafique Forest Guard.
6. Acknowledgement receipt of Mr. Muhammad Iqbal Deputy Ranger vide DFO Patrol Squad division letter No. 58-/PS, dated 2/5/2011.
7. Acknowledgement receipt of Mr. Muhammad Rafique Forest Guard.
8. Reply of the charge sheet submitted by the accused officials dated nil.

BRIEF HISTORY OF THE CASE.

That a letter No. 2312/GL, dated 3.6.2008 of 779 scants 4984.97Cft (Annexure-I) was issued by Divisional Forest Officer Lower Kohistan Forest Division for transportation of balance timber of Transport pass No. 24 dated 23.12.2004. It was alleged that the subject timber has already been transported to down district and the balance timber of transport pass no. 24 dated 23.12.2004 was confiscated by Conservator of Forests Abbottabad Circle vide office order No. 121 dated 12.8.2008 (Annexure-II). Resultantly a memo of allegation and charge sheets issued to the concerned staff. Explanation of accused M.S. Muhammad Iqbal Deputy Ranger and Muhammad Rafique Forest Guard also called who's in their written replies rebutted the allegation. The Worthy Conservator of Forests agreed with the replies and the accused M/s. Muhammad Iqbal Deputy Ranger and Muhammad Rafique Forest Guard were exonerated from the allegation vide Conservator of Forests Lower Hazara Circle Abbottabad office letter No. 2317/GE, dated 13.5.2009 (Annexure-III).

After detailed disciplinary proceeding against the staff of lower Kohistan Forest Division they were exonerated and with astonishment staff of Galis Forest Division was made responsible and Divisional Forest Officer Galis Forest Division was asked to initiate disciplinary proceedings against the staff at Goharabad depot. As a result the Divisional Forest Officer Galis Forest Division vide his letter No. 3964-69/E, dated 12.4.2011 issued charge sheet with memo of allegation to the accused M/S. Mohammad Iqbal Deputy Ranger and Muhammad Rafique Forest Guard and Mr. Muhammad Saleem Sub Divisional Forest Officer Abbottabad was appointed the enquiry committee. The accused official M/s. Muhammad Iqbal Deputy Ranger and Muhammad Rafique Forest Guard submitted their written replies and annexed the documents to prove him innocent.

After written reply the accused officials were called for personal hearing and cross-examination.

Assessed
SYED MAHBOOB AHMAD SHARIK
Professor, M.A LL.B.
Governor's High Court
Abbottabad

DISCUSSION.

After going through the written reply, attached annexure, personal hearing and cross examination it is derived that the accused official has dispatched the consignment of T.P. No. 24 dated 23.12.2004, keeping in mind the distribution report, challan of timber handed over to Managing Director Dubair harvesting society, receipt of MD etc. All those documents prove that all the timber has been handed over to the Managing Director and he has dispatched it therefore, it is not proved any where that the accused official is responsible for the short fall. Therefore, keeping in view the documentary and circumstantial evidence provided by the accused in his defense, the charges leveled against Mr. Mohammad Iqbal Deputy Ranger cannot be established.

RECOMMENDATION.

The accused official Mr. Muhammad Iqbal Deputy Ranger is hereby exonerated from the charges leveled against him.

Enquiry Committee
Sardar Muhammad Saleem
Sub Divisional Forest Officer
Abbottabad.

30/12/2011

Musled
Nehal

SYED MAHBOOB AHMAD SHAH
Professor, MA LL.B.
Advocate High Court
Abbottabad



N.W.F.P
FOREST DEPARTMENT
LOWER KOHISTAN FOREST DIVISION. PATTAN

Phone No.0998-405203

Fax No.0998-405203

LKFD

34

Annexment I

No. 2825 /GE, dated Pattan the 24 June, 2008
 To,

The Managing Director,
 Dubair Forest Harvesting,
 Cooperative Society Limited.

SUBJECT **CARRIAGE OF TIMBER FROM DUBAIR ROADSIDE DEPOT TO**
TIMBER MARKET GOHARABAD - SHOW CAUSE NOTICE

Memorandum

Whereas, you Mr Muhammad Anwar S/O Hibz-ur-Rehman, Managing Director, Dubair Forest Harvesting Cooperative Society Limited signed an agreement with NWFP Forest Department for the transportation of timber from Dubair Roadside Depot to Timber Market Goharabad (timber obtained from Charry Compartment No. 4 (ii)) Pattan Sub division of Lower Kohistan Forest Division on 06/07/2004.

Whereas, you were granted T.P No. 24 dated 23/12/2004 for the transportation of Fir/Spruce = 3,495 scants = 26,071.92 cft from Dubair Roadside Depot to Timber Market Goharabad. The entire timber transported to Market and subsequently distributed/released amongst the concessionists/Government as under:-

Office Order No. & Date	Total Timber received in market	20% Govt. Share	80% Owner Share
29 dated 11/02/2005	1942 = 14324.99	239 = 2865.19	1703 = 11459.80
04 dated 13/08/2005	1553 = 11746.93	215 = 2349.94	1338 = 9396.99
TOTAL	3495 = 26071.92	454 = 5206.13	3041 = 20856.79

Whereas, from the perusal of above office order reveals that entire 3,495 scants = 26,071.92 cft timber of T.P No.24 dated 23/12/2004 stand reached the market and distributed into the appropriate share amongst the concessionists/Government leaving no balance at Roadside Depot.

Whereas, you have applied for grant of extension in the period of T.P.No.24 dated 23/12/2004 alongwith sizewara for the transportation of Fir/Spruce 513 scants = 4,984.97 cft and you deliberately violated clause 2(d) of the agreement.

Now therefore, under clause 2(d) of the agreement the illegal/illicit timber is liable to be confiscated to state in addition to fine imposed upon you.

You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desired to be heard in person.

You are therefore, directed to submit your written reply on the above show cause notice, which must reach this office within seven (07) days of the receipt of this notice. If no reply is received within stipulated period it will be presumed that you have nothing to say your defence and exparte action will be taken against you.

DIVISIONAL FOREST OFFICER
 LOWER KOHISTAN FOREST DIVISION
 PATTAN

Mesied
 No. 2826-27 /GE,
 1. *M. A. L. B.*
SYED MAHBOOB AHMAD SHAH
 Professor, M.A.L.L.B.
 Advocate High Court
 Abbottabad

Copy forwarded to:-

Conservator of Forests, Hazara Forest Circle, Abbottabad for favour of information with reference to his No.2014/GL, dated 19/06/2008, please.
 SDFO, Pattan for information and necessary action. He should handover the attached letter to the MD, Dubair under proper receipt, which should be sent to this office for record.

DIVISIONAL FOREST OFFICER
 LOWER KOHISTAN FOREST DIVISION
 PATTAN

TPNO=24

دو تقریریں جس میں ازالہ سٹان لائبریری و سٹان گورنمنٹ آباد

میں اور اس سے متعلقہ سٹیٹس اور دیگر فریڈوم آف انفارمیشن ایکٹ

1338 نمبر 9396-99 ملرز ڈی ویلن بیکر ریسیڈنٹ ملوڈی

کا نام سندھی اور نوٹس فرورڈ کیا گیا ہے -

العقد -

ایم ڈی سٹیٹس اور نوٹس فرورڈ کیا گیا ہے -

Attested



06/08/05

Nelmu
MUSCOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

Annexure - 1

OFFICE ORDER NO. 121 DATED ABBOTTABAD THE 12/6/2003, ISSUED BY SYED KHURSHID ANWAR, CONSERVATOR OF FORESTS, HAZARA FOREST, CIRCLE ABBOTTABAD.

312 trees= 102988 Cft were marked in Chary C-4(ii) of Lower Kohistan Forest Division and harvesting allowed vide Chief Conservator of Forests, NWFP, No: 1664/GR, dated 14/01/2003 through Dubair Forest Harvesting Cooperative Society. Marked volume was harvested into 7327 scants=56220.98 Cft and out of which 3832 scants=30149.06 Cft was transported to market vide T.P No:01 dated 06/7/2004 and distributed amongst the owners/Govt: appropriately vide DFO office order No.01 dated 26/7/2004 leaving balance of 3495 scants=26071.92 Cft.

T.P. No.24 dated 2/12/2004 was issued for transportation of balance 3495 scants=26071.92 Cft from Dubair roadside to Goharabad Market. Timber reached the market has been distributed/ released amongst the concessionests/ Govt: as under:

DFO office order & date	Quantity as per T.P	Timber record in Market	20% Govt Share	80% Owner Share
29, dated 11/2/05, 04 dated 13.8.2005	3495=26071.92	1942=14324.99 1553=11746.93	239=2065.19 215=2349.94	1703=11459.80 1338= 9396.99
Total:		3495=26071.92	454=5215.13	3041=20856.79

Perusal of above order reveals that entire 3495 scants =26071.92 cft timber of TP No.24 stand reached the market and distributed into the appropriate share amongst the concessionests/Govt leaving no balance at roadside depot.

DFO, Lower Kohistan vide letter No.2712/GL dated 03.06.2008 again extended the period of TP No.24 dated 23.12.2004 in favour of Managing Director, Dubair Forest Harvesting Cooperative Society for the transportation of so called illegal balance of: 513 Fir/Spruce= 4904.97 cft timber from Dubair to Goharabad Market, which does not exist on record of Goharabad Timber Depot. DFO: Lower Kohistan issued challan No.66 to 72 (7 Nes.) for the said timber.

On receipt of a complaint regarding transportation of illegal timber, seven (7) trucks loaded with the above consignment were intercepted on Mirpur Forest check post Abbottabad and carried to Goharabad Market under the supervision of DFO, Patrol Squad. DFO: Patrol Squad checked the market record and found that no balance is exist.

Since the above timber is totally illegal/illicit, therefore, 513 Fir/Spruce scants= 4904.97 cft timber lying in Goharabad Market is hereby confiscated in favour of Govt.

Delinquent staff involved in the transportation of above timber will be proceeded against separately.

Attested

Nahid
SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

Sd/- (SYED KHURSHID ANWAR)
CONSERVATOR OF FORESTS
HAZARA FOREST CIRCLE

forwarded to:

- 1. The Chief Conservator of Forests, NWFP, Peshawar for favour of informallon.
- 2. ✓ The Divisional Forest Officer, Lower Kohistan Forest Division, Paltan for information and necessary action. He is directed to put the timber to open auction for its sale and proceed against the delinquent staff under intimation to this office.
- 3. DFO: Patrol Squad Abbottabad for Information.
- 4. The Managing Director, Dubair Forest Harvesting Cooperative Society.

[Handwritten Signature]
 CONSERVATOR OF FORESTS
 HAZARA FOREST CIRCLE
 ABBOTTABAD

Attested

Nabih
 SYED MAHMOOD AHMAD SHAH
 Professor, M.A LL.B.
 Advocate High Court
 Abbottabad

OFFICE OF THE CONSERVATOR OF FORESTS, HAZARA CIRCLE, ABBOTTABAD.	No. 2316/GE, Dated 13/05/2009.
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To

The Chief Conservator of Forests,
NWFP, Peshawar.

Subject

TRANSPORTATION OF ILLEGAL TIMBER FROM LOWER
KOHISTAN FOREST DIVISION TO GOHARABAD -
EXPLANATION OF MR. MUHAMMAD RAFIQUE FOREST
GUARD (THE THEN INCHARGE GOHARABAD TIMBER
DEPOT OF GALIS FOREST DIVISION)

Memo.

Reference your office endorsement No. 3068/E, dated 15-01-2009 and No. 3130/E, dated 15-01-2009

The reply furnished by Mr. Muhammad Rafique, Forest Guard of Galis Forest Division is satisfactory. Being an employee of Galis Forest Division he has no role with the receipt and distribution of timber of other Forest Divisions. He may be exonerated from the charges.

His reply along with copy of explanation are enclosed herewith for further necessary action please.

Encl. As above.

Sd/-Conservator of Forests,
Hazara Circle,
Abbottabad.

Attested

M. Shah
SYED MAHBOOB AHMAD SHAH
Professor, MA LL.B.
Advocate High Court
Abbottabad

Attested

[Signature]
Conservator of Forests
Lower Hazara Circle
Abbottabad

Challan No. 24 to 34 of Wharhan Book No. 06/12.

This permit is valid from 30/11/2004 to 30/11/2005.

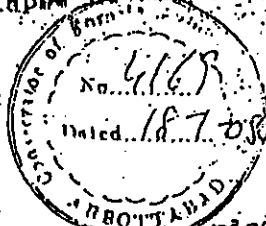
In pursuance of Right Point Agreement of April, 1987, Abbottabad Forest Harvesting Cooperative Society Limited is hereby permitted to transport the following sawn timber (obtained from Sherry Forest Compartment 4 (ii) from Subair roadside Depot to Goharabad (Arvalina) Sale Depot during the hours of sunrise and sunset, for further distribution amongst the Society/concessionists and Govt. according to the proportionate share.

Fir/Spruce			Fir/Spruce		
Size	Quantity	Qty	Size	Quantity	Qty
14x14x14	90	1714.56	12x8x8	242	1289.95
14x14x12	132	2155.58	12x8x6	362	1448.00
14x12x12	131	1834.00	12x6x6	70	210.00
14x12x10	64	745.24	10x16x16	75	1332.75
14x12x8	110	1026.30	10x14x12	72	839.52
14x10x10	120	1166.40	10x12x12	33	330.00
14x10x8	84	652.68	10x12x10	70	585.10
12x12x12	49	588.00	10x10x10	192	1332.48
12x12x10	96	960.00	10x10x8	246	1365.30
12x12x8	132	1035.00	10x8x8	207	919.08
12x12x6	244	1464.00	8x8x8	170	605.50
12x10x10	49	408.17	6x8x8	246	654.36
12x10x8	209	1391.94			
1510		15163.87	C. Total:-	3495	26,071.92

Fir/Spruce	3495	Quantity	26,071.92
Total	3495	Quantity	26,071.92

The production duty, P.F. price/challan Book, Depot and other Miscellaneous charges and office operational charges amounting to Rs. 5,57,797.00 have been recovered vide T.O. No. 3, dated 21.12.2004.

The transportation challan will be issued by the Range Officer Pattan Range and he will be held personally responsible for the discrepancy for any irregularity in this consignment. The Range Officer Pattan Range will also be over all responsible for the correct issuance of transport challan and transportation of timber. He should exercise effective vigilance throughout the period and any misuse/lapse he will be held personally responsible.



(Sd/-) (Signature)
 DIVISIONAL FOREST OFFICER
 PATTAN, FOREST DIVISION, ABBOTTABAD.

Memorandum

Copy forwarded to the:-

- Conservator of Forests, Abbottabad Circle, Abbottabad
- for favour of information please.
- DIOs, Appuri, Hazara Tribal, Siran, Galis and Patrol
- Forest Division Abbottabad for information and necessary action.
- Range Forest Officer, Pattan Range for information and

Handwritten signatures and initials:
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 Sd/-
 Sd/-
 Sd/-

Attested

Handwritten signature:
 SYED MAHBOOB AHMAD SHAH
 Professor, M.A LL.B.
 Advocate High Court
 Abbotiabad

225-11

..... 2

necessary action. He is directed that the loading should be done under his personal supervision.

I/O Goharabad (Havelian) Depot for information and necessary action. He is directed to un-load the timber within the premises of Govt. timber depot at Goharabad.

5. Depot Officer Goharabad (Havelian) for information and similar necessary action.

6. All concerned barrier staff for information and necessary action.

7. Managing Director Subair Forest Harvesting Cooperative Society Limited for information and necessary action.

~~DIVISIONAL SUPERVISOR
GOVT. FOREST DEPT. DIVISION
PAWAN.~~ 28/12/2004

Attested

Nabeel
SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

225-11

T.P No. 24

DATED 23-12-2004

Subject: DISTRIBUTION OF TIMBER OBTAINED FROM Charry Camp THROUGH Dubair Forest Harvesting Camp Society

The timber was distributed at Havelian Sale Depot (Goharabad) on 06-08-2005 by the distribution committee in proportionate share of 20:80 (Govt. and owner shares respectively).

- 1. DFO /Kohistan L/K Chairman
- 2. DFO Galies Member
- 3. DFO Haripur Member
- 4. Range F. Office Palas Member
- 5. Managing Director Dubair Forest Harvesting Society
- 6. Depot Officer (Incharge Goharabad Depot)

[Handwritten signature]
 DIVISIONAL FOREST OFFICER
 HAZARAT FOREST DIVISION
 HAZARAT

The distribution of timber was carried out according to species and sizes. Mr. Saif-ur-Rehman F.I.G. Depot Officer Sale Depot Havelian helped the committee in sorting the sizes and species of the timber.

- DFO /Kohistan L/K Chairman
- Range F. Officer Palas Range Member
- Depot Officer (Incharge Goharabad Depot)
- Managing Director

[Handwritten Urdu text]
 Distribution (Distribution) کے لئے
 اور اپنی جگہ پر
 والی دہشت گنہگار
 میں سے اور
 جسے
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Attested
[Handwritten signature]
 SYED MAHBOOB AHMAD SHAH
 Professor, M.A LL.B.
 Advocate High Court
 Abbottabad

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TP/NO-24

شیخ سعید عسکری مشہور بڑی اڑتھ F/59 جو میر آباد سبیل دیوبند حرمین نور و فضلین ماریٹ ٹاؤن

سلسلہ نمبر	آسٹریلوی ڈرگ تو			20 دنہر صحتہ کاد			80 دنہر صحتہ بہرہ نالی		
	نت	سکرنٹ	ٹگ	نت	سکرنٹ	ٹگ	نت	سکرنٹ	ٹگ
141414	46	876	36	17	323	85	29	552	51
141412	42	685	88	13	212	29	29	473	59
141212	79	1106	00	19	266	00	60	840	00
141210	22	256	52	8	93	28	14	163	24
14128	55	513	15	15	139	95	40	373	20
141010	29	281	88	12	116	66	17	165	22
14108	29	225	33	6	46	62	23	178	71
121212	10	120	00	6	72	00	4	48	00
121210	16	160	00	8	80	00	8	80	00
12128	23	184	00	-	-	-	23	184	00
12126	63	378	00	-	-	-	63	378	00
121010	22	183	26	4	33	32	18	149	94
12108	109	725	94	21	139	86	85	536	08
1288	154	620	92	17	90	61	137	530	31
1286	212	848	00	18	72	00	194	776	00
1266	3	9	00	-	-	-	3	9	00
101616	71	1261	61	20	355	04	51	906	57
101412	52	606	32	17	198	22	35	408	10
101212	10	100	00	5	50	00	5	50	00
101210	43	358	19	4	33	32	39	324	87
101010	46	319	24	1	6	94	45	312	30
10108	120	665	88	2	11	10	118	654	78
1088	93	412	92	2	8	88	91	404	04
888	119	422	43	-	-	-	119	422	48
688	85	426	10	-	-	-	85	426	10
	1553	11746.93	215		2349.94	1338		9396.99	

11-1-11 12-1-11 13-1-11 14-1-11 15-1-11 16-1-11 17-1-11 18-1-11 19-1-11 20-1-11 21-1-11 22-1-11 23-1-11 24-1-11 25-1-11 26-1-11 27-1-11 28-1-11 29-1-11 30-1-11 31-1-11

Attested

Nahid
SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

IP No. 24

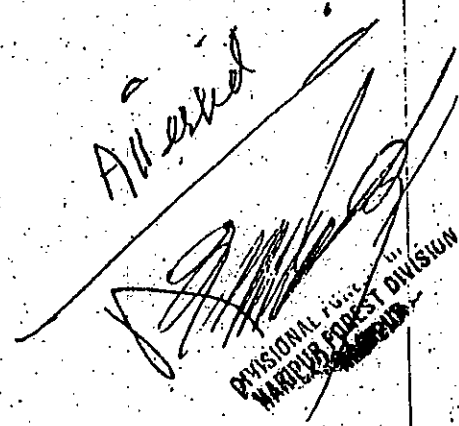
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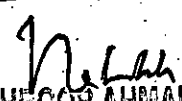
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- 1 - DFO Lower Kohistan Patton
- 2 - DFO Gales
- 3 - DFO Haripur
- 4 - Range Officer Palas
- 5 - Managing Director
- 6 - Depot Officer J/c Gohar Abad

~~Chairman~~
 Member ~~6~~
 Member ~~Ad~~
 Member ~~Wahid~~
~~Ad~~
 1/1/80

Attested

 PROVISIONAL FOREST OFFICER
 HARIPUR FOREST DIVISION

Attested

 SYED MAHSOOB AHMAD SHAH
 Professor, M.A LL.B.
 Advocate High Court
 Abbottabad

LETTER ORDER NO. 04 DATED 13/08/2005 ISSUED BY HAJA MAHBOOB AHMAD, DIVISIONAL FOREST OFFICER LOWER KUCHI DISTRICT, PATTAN.

As per eight point Agreement of April, 1981 concluded between the elders of Kuchistan and Provincial Government the timber extracted from Charry Forest Compartment No. A(1) through Dubair for Harvesting Cooperative Society Limited was distributed at Goharabad (Havelian) Timber Sale Depot on 01.08.2005 into (80 : 20) as Concessionary society and Govt. share respectively by the distribution committee constituted by the Chief Conservator of Forests, Peshawar vide his letter order No. 11 dated 28.01.2004. The detail of timber distribution is given in Annexure-1 and abstract is given below:-

Letter Order dated 23.12.2004



Quantity of	20% Government share	80% Concessionists share
scants cft	no. of scants	cft
Co. 1551 12746.99	215	2307.74
		1338
		9396.99

production duty, FPF and sale charge fee etc on the 50% share of timber has already been recovered in full at the time of clearance of T.P. to Goharabad (Havelian) Timber Sale Depot and nothing is now outstanding against the Society. Therefore Concessionists/80% share of timber as detailed above (1338 scants 9396.99 cft FPF/50% share) is hereby released from Goharabad (Havelian) Timber Sale Depot to No. 2569 Goharabad (Havelian) under the cover of Challan No. 85 of book No. 2/LK for further disposal as per procedure under the supervisor control of Divisional Forest Officer, Gais Forest Division, Abbottabad as usual.

Amir
[Signature]
DIVISIONAL FOREST OFFICER
HARIPUR FOREST DIVISION

(HAJA MAHBOOB AHMAD)
DIVISIONAL FOREST OFFICER
LOWER KUCHI DISTRICT, PATTAN.

Copy forwarded to the:-

1. The Conservator of Forests, Abbottabad Circle, Abbottabad for favour of information please.
2. The Divisional Forest Officer, Gais Forest Division, Abbottabad for information and necessary action.
3. The Divisional Forest Officer Haripur Forest Division, Haripur for information and necessary action.
4. The Range Forest Officer Patta for information. The timber of concessionists share should be handed over to the Managing Director of the Society under proper receipt which should be sent to this office for record.
5. ✓ Managing Director Dubair Forest Harvesting Cooperative Society Limited. He is directed to collect the timber of concessionists share from the sale depot with- in of the issue of this letter under proper receipt.

P/17
Attested
Name

SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

[Signature]
DIVISIONAL FOREST OFFICER
LOWER KUCHI DISTRICT, PATTAN.

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جوان نمبر 85



مقامی حکومتی ادارے کے ذریعے روپوش زمین ایریک آباد

1998/70 مورخہ 2 اگست 1992ء

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Attested

Naim
SYED MAHBOOB AHMAD SHAH
Professor, I.A LL.B.
Advocate High Court
Abbottabad

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OFFICE OF THE DIVISIONAL FOREST OFFICER GALIS FOREST DIVISION ABBOTTABAD

The Conservator of Forests,
Hazara Forest Circle
Abbottabad

No. 906 /B&A, dated Abbottabad the 31 /8/2009


Subject: TRANSPORT PASS NO.24 DATED 31-7-2009-
23-12-2004.


Ref: Your office 1528-30/GL, dated 20.8.2009

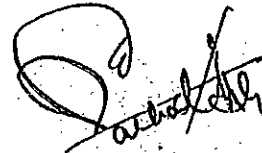
It is submitted that the committee constituted for threshing out of timber in question brought under TP No.24 dated 23-12-2004 31st July, 2009 from Lower Kohistan Forest Division has categorically been combed out and came to the conclusion, elaborated in the following lines:


- i. The timber remained stacked in Goherabad Market since more than one year and now apparently changed in colour etc being Fir/Spruce in the open air due to Natural Hazard and therefore the timber to the tune of 82 scants = 1055.00 cft seems too old and relatively is of low quality as compared to the timber to the tune of 431 scants= 4332.00 cft of Fir/Spruce.

The report is submitted for favour of further course of action please.


Divisional Forest Officer
Galis Forest Division
Abbottabad


Divisional Forest Officer
Lower Kohistan Forest Division
Pattan


Sub Divisional Forest Officer
Abbottabad Sub Division
Abbottabad

Attested

SYED MANSOOR AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad

32

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Muhammad Rafique son of Mir Ahmed resident of Lodhi Abad, Qalandarabad, Tehsil and District Abbottabad.

APPELLANT.

VERSUS

1. **Governor Khyber Pakhtunkhwa Province, Peshawar.**
2. **Chief Minister, Khyber Pakhtunkhwa, Peshawar.**
3. **Secretary Forestry, Environment Wildlife Department Govt; of Khyber Pakhtunkhwa Peshawar.**
4. **Chief Conservator of Forests Northern Forest Region-II Abbottabad.**
5. **Conservator of Forests Lower Hazara Forest Circle Abbottabad.**
6. **D.F.O.Galis Forest Division Abbottabad.**

.RESPONDENTS

Parawise comments on behalf of Respondent No. 1 to 6.

Respectfully Sheweth;

PRELIMINARY OBJECTIONS;

- I. The appeal is not maintainable in its present form.
- II. The appellant has no locus standi to bring the present appeal.
- III. The appellant is estopped by his own conduct to bring the present appeal.
- IV. The appeal is bad due to non-joinder of necessary and mis-joinder of unnecessary parties.
- V. The appeal is time barred.
- VI. The honorable Tribunal has got no jurisdiction to entertain the appeal.
- VII. The petitioner on the one hand filed the instant petition before this Service Tribunal and on the other hand filed writ petition before the honourable high court circuit bench Abbottabad for the same cause of action, therefore the instant petitioner is liable to be dismissed on this score alone.

ON FACTS.

1. It is in correct. The order issued by the competent authority is according to law, no unlawful and political victimization is involved.
2. Based on recommendation of an enquiry committee comprising Hussain Shah Additional Secretary Govt; of Khyber Pakhtunkhwa Health Department and Muhammad Ayaz Deputy Secretary Govt; of Khyber

Pakhtunkhwa Finance Department for Misappropriation of timber measuring 4984.97cft, the petitioner amongst others was proceeded against under Khyber Pakhtunkhwa Civil Servant Efficiency and Disciplinary Rules 2011.

Prior to above enquiry, the enquiry committee comprising Sardar Muhammad Saleem SDFO exonerated the accused, but exercising power under rules 14(b) of ibid rules, the enquiry was initially remanded back to the enquiry officer vide letter No. 3649/E, dated 11.2.2012 (**Copy attached as annexure-I**), but due to his engagement, later, a denovo enquiry committee comprising Mr. Abid Mumtaz SDFO was constituted vide Divisional Forest Officer Galis Forest Division Abbottabad office order No. 445 dated 15.6.2012 (**Copy attached as annexure- II**). Initiation of denovo enquiry implies as if no enquiry was done. Therefore, recommendation of such nullified enquiry cannot be made base of any petition.

However, in the mean time, the Govt; decided to initiate formal enquiry against officers and officials vide So (Estt;)Envt/1-50(43)/2k6; dated 04.1.2013 (**Copy attached as annexure-III**) therefore, according to rules, the case of plaintiff was clubbed with other co-accused officers and pending denovo enquiry stood withdrawn.

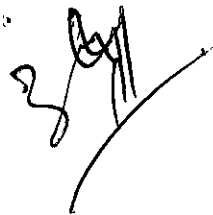
3. Needs no comments.
4. As explained in para-2 above.
5. The enquiry committee comprising Mr. Abdul Jamil Conservator of Forests Lower Hazara Circle Abbottabad and Janat Gul Additional Secretary Irrigation Department after thorough enquiry recommended;-
 - I. Exoneration of M/S. Pri Qaim Shah DFO and Abdullah Khan DFO.
 - II. Compulsorily retirement of petitioner along with imposition of recovery worth Rs. 9,50,241/-Penalty was imposed after adopting proper procedure.
6. It is incorrect. It was not a show cause notice, rather it was a document wherein total timber of original transport pass was written in order to get all the Govt; share (20%) against all the timber including that was not actually transported at that time. This practice is adopted to safeguard the Govt; interest. As due to local disputes balance timber is not transferred in time and deteriorates.

Thorough enquiry was conducted by the committee as explained in para-5 above, and it was proved that the petitioner misappropriated the timber measuring 4984.97cft

7. The appellant fraudently released timber which was brought illegally to depot under the grab of legal timber.

It was proved by the committee mentioned in para-5 above, that the petitioner was responsible for loss of timber, hence the managing director was justified to receive the timber remained balance and was transported to market.

8. from the findings of committee mentioned in item 5 above, the order of conservator of forest lower hazara circle vide no. 121 dated 12.6.2008, stood cancelled.
9. In correct. The petitioner was responsible for maintaining record and no illicit exit of timber was possible without his connivance.
10. As explained in para-09 above.
11. Pertains to record
12. Pertains to record
13. All the entire timber shifted to private depot no. 569 including Govt; Share.
14. The Conservator of Forests Abbottabad checked the record i.e. Form No. 5 and 6 maintained by the appellant Forest Guard and found that all the timber was released to Managing Director Dubair Forest Cooperative Society including Govt; Share. Due to such reason the Conservator of Forest issued Office Order No. 121 dated 12.6.2008 **(Copy attached as annexure-IV)** for confiscating 513 scants= 4984.97cft in favour of the Govt;
15. According to the prevailing market rate the amount of recovery has been imposed upon the appellant Forest Guard
16. The primary duty of appellant Forest Guard is to maintain the record of all the timber received and dispatched in Goharabad timber Depot. Due to his involvement, 4984.97cft timber misappropriate from the timber Depot.
17. During inquiry proceeding the involvement of appellant Forest Guard has been proved and after fulfilling all codef formalities the impounded order was issued according to law.
18. All the opportunity has been provided to the appellant forest guard i.e. Personal hearing and show cause notice etc.
19. Since higher grade officers were involved, therefore committee comprising



senior officer conducted enquiry. The DFOs provided record and facilitated smooth running of enquiry proceeding. The DFOs have accepted the decision of enquiry committee.

20. It is in-correct. During enquiry proceeding it has been proved that appellat is responsible for loss sustained by Govt; and appellat proved to be responsible for the same.

21. Charge sheet served all the officers/official involved in the instant case but during the enquiry proceeding the case has been proved against the appellat Forest Guard therefore major penalty as well as recovery of loss sustained to Govt; imposed upon the appellat Forest Guard.

22. No. comments.

GROUND

a). Incorrect. After fulfillment all the codal formalities the impugned order was issued which is according to law rules.

b). It is in-correct. All the opportunities have been provided to the appellat Forest Guard but he failed to prove him innocent. The impartial enquiry was conducted according to law.

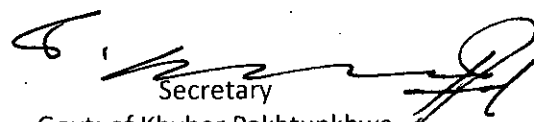
c). It is not correct. The enquiry report has been provided to him with the show cause notice as he replied it to the competent authority.

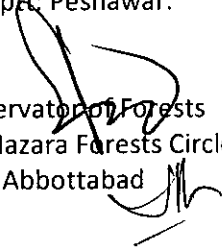
d), As explained in Para-02. In comments on facts, the petitioner is referring an enquiry, which initially not accepted and later stood withdrawn.

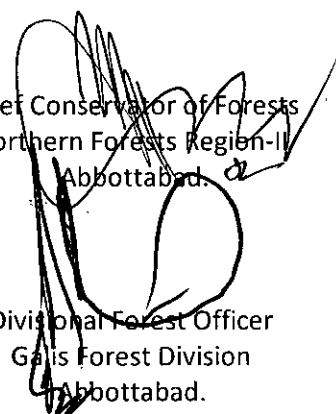
e) Needs no comments.

f). Need no comments.

It is therefore, humbly prayed that on acceptance of above reply the instant appeal may graciously be dismissed with costs.


Secretary
Govt: of Khyber Pakhtunkhwa
Forestry, Environment and Wildlife
Deptt: Peshawar.


Conservator of Forests
Lower Hazara Forests Circle
Abbottabad


Chief Conservator of Forests
Northern Forests Region-II
Abbottabad.


Divisional Forest Officer
Galis Forest Division
Abbottabad.

2/10

Mr. Muhammad Rafique son of Mir Ahmed resident of Lodhi Abad, Qalandarabad, Tehsil and District Abbottabad.

APPELLANT.

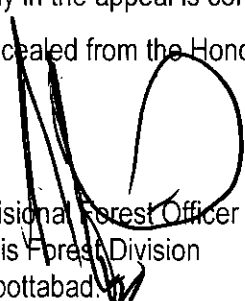
VERSUS

1. Governor Khyber Pakhtunkhwa Province, Peshawar.
2. Chief Minister, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Forestry, Environment Wildlife Department Govt; of Khyber Pakhtunkhwa Peshawar.
4. Chief Conservator of Forests Northern Forest Region-II Abbottabad.
5. Conservator of Forests Lower Hazara Forest Circle Abbottabad.
6. D.F.O.Galis Forest Division Abbottabad.


.RESPONDENTS

COUNTER AFFIDAVIT.

The undersigned do hereby solemnly affirm and declare on oath that the contents of our written reply in the appeal is correct to the best of my knowledge and record, nothing has been concealed from the Honourable tribunal.


Divisional Forest Officer
Galis Forest Division
Abbottabad.

Annexure - I

	DIVISIONAL FOREST OFFICER GALIES FOREST DIVISION ABBOTTABAD	Tel: 0992-9310306
	No. 3649	/E, dated Abbottabad the 11/12/2012

The Sub Divisional Forest Officer
Abbottabad.


Subject:- ENQUIRY AGAINST MS/ MUHAMMAD IQBAL DEPUTY RANGE
AND MUHAMMAD RAFIQUE FOREST GUARD.

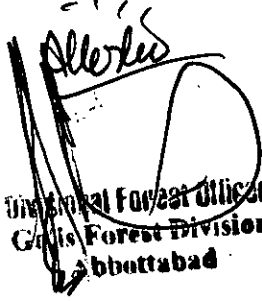
Memo;

Enquiry reports of M/S Muhammad Iqbal Deputy Ranger and Mohammad Rafique Forest Guard received from your office has been perused and found the following short coming which may be rectified under the rules:-

1. Statement of Prosecution witness has not been recorded which is necessary according to the rules.
2. Cross-examination of both the accused in the presence of prosecution witness has not been recorded.
3. In the enquiry report you have not mentioned clear report about the Form-5 and 6, which may be recorded in the enquiry report.

In the light of above ex position the enquiry reports (alongwith original files) received vide your letter dated 30.12.2011 are returned herewith for conducting the enquiry thoroughly in the light of Removal from Service (Special Power) ordinance 2000 and submit the finding to this office for proper order.


Divisional Forest Officer
Galies Forest Division
Abbottabad.


Divisional Forest Officer
Galies Forest Division
Abbottabad

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Amman - II

(131)

OFFICE ORDER NO. 445 DATED ABBOTTABAD THE 15/6/2012 ISSUED BY MR. EJAZ QADIR DIVISIONAL FOREST OFFICER GALIS FOREST DIVISION ABBOTTABAD.

EJ

The Conservator of Forests Lower Hazara Circle Abbottabad vide his letter No. 3721-22/GE, dated 25.3.2011 endorsed Govt; of Khyber Pakhtun Khwa Environment Department letter No. SO(Estt) Env/1-50(40)2KG 611/WE dated Peshawar the 26.2.2011 alongwith an enquiry report against the staff of Lower Kohistan Forest Division conducted by Hussain Shah Additional Secretary Govt; of Khyber Pakhtunkhwa Health Department and Muhammad Ayaz Deputy Secretary Govt; of Khyber Pakhtunkhwa "Finance Department. The committee recommended that an enquiry may be conducted against the staff posted in Galis Forest Division at Goharabad Sale Depot.

For the purpose of scrutinizing the conduct of the said accused officials M/S Muhammad Iqbal Forester (Now Deputy Ranger) and Mohmmad Rafique Forest Guard an enquiry committee consisting upon Sardar Mohammad Saleem Sub Divisional Forest Officer Abbottabad was appointed vide letter No. 53964-69/E, and No. 3970-74/E, dated 22.4.2011.

The officer was required to conduct the enquiry judiciously and expedite his report within specific recommendation within stipulated period but he failed to finalize the case within a period of more than 14 months despite of repeated reminders.

And whereas after passage of 14 months the enquiry committee returned backs the enquiry case vide his letter No. 31/11-12/E, dated 24.5.2012 with the plea that due to heavy official workload he is unable to conduct the enquiry against the officials

Now the undersigned in the capacity of authority vide Govt; of KPK Notification No. SOS(S&GAD)-180/73 dated 28.1.1975 **Mr. Abid Mumtaz Sub Divisional Forest Officer Patrol Squad Forest Sub Division Abbottabad is hereby appointed as enquiry committee** to scrutinize the conduct of accused officials M/S Muhammad Iqbal Forester (Now Deputy Ranger), and Mohammad Rafique Forest Guard and submit the finding within 25 (twenty five) days with specific recommendation.

Sd/-(Ejaz Qadir)
Divisional Forest Officer
Galis Forest Division
Abbottabad.

Memorandum

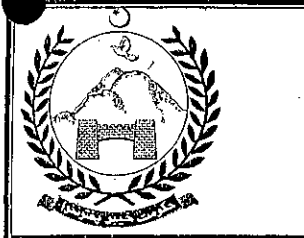
1. Mr. Abid Mumtaz Sub Divisional Forest Officer Patrol Squad Forest Sub Division Abbottabad (Enquiry committee) for initiating proceedings against the accused officials under the provision of the KPK removal from Service (Special Power) Ordinance 2000, and finalize within 25 days at the latest. The enquiry file from page No. 01 to 142 is enclosed herewith for further course of action.
2. Sub Divisional Forest Officer Abbottabad for information with reference to his office letter No. 31/11-12/E, dated 24.5.2012.
3. Mr. Abdur Rashid Forest Guard incharge Goharabad Timber Depot is hereby nominated as prosecutor in the above case. He is directed to attend the enquiry proceeding as and when call by the enquiry committee.
4. Mr. Muhammad Iqbal Deputy Ranger C/O Divisional Forest Officer Patrol Squad Forest Division Abbottabad for information.
5. Mr. Muhammad Rafique Forest Guard C/O Range Forest Officer Birangali for information.

Divisional Forest Officer
Galis Forest Division
Abbottabad.

Abid Mumtaz
Divisional Forest Officer
Galis Forest Division
Abbottabad

Annexure-II

39 ✓



GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT.

Dated Pesh: 4th January, 2013

NOTIFICATION

No. SO(Estt)Env/1-50(43)/2k6: The Chief Minister, Khyber Pakhtunkhwa/Competent Authority is pleased to constitute an Enquiry Committee, comprising Mr. Abdul Jamil, (BS-19), Conservator of Forests, Lower Hazara (Chairman of the Enquiry Committee) and Mr. Janat Gul, PCS SG (BS-19), Additional Secretary, Irrigation Department (Member of the Enquiry Committee) to conduct an enquiry against the following officers/officials of Khyber Pakhtunkhwa Forest Department, into the charges/allegations levelled in the enclosed Charge Sheets and Statements of Allegations, under section-5(1) of the Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011.

1. Pir Qaim Shah, Divisional Forest Officer (BS-18).
2. Mr. Abdullah Khan, Sub Divisional Forest Officer (BS-17, later -on promoted to BS-18).
3. Mr. Muhammad Iqbal, Forester (BS-09)
4. Mr. Muhammad Rafique, Forest Guard (BS-07)
5. Mr. Saif-Ur Rehman, Forest Guard (BS-07)



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

Sd/-
CHIEF MINISTER
KHYBER PAKHTUNKHWA

20-27/1/13

Endst: No. SO(Estt)Env/1-50(43)/2k6: Dated 4th January, 2013.

Copy alongwith copies of the Charge Sheets/Statements of Allegations, are forwarded to :-

1. Mr. Abdul Jamil, BS-19 (Chairman of the Enquiry Committee), Conservator of Forests, Lower Hazara Forest Circle, Abbottabad.
2. Mr. Janat Gul, PCS SG BS-19 (Member of the Enquiry Committee), Additional Secretary, Irrigation Department.
- 3-7. All the above (5) Officers/Officials C/O Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar with the direction to appear before the Enquiry Committee on the date, time and place to be fixed by the Enquiry Committee for the purpose of inquiry proceedings.

F. J. edla
SECTION OFFICER (ESTT)

Endst: No. and date even.

Copy is forwarded for information and necessary action to:-

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

M. J. edla

SECTION OFFICER (ESTT)

A - 12

Abbottabad

OFFICE ORDER NO. 121 DATED ABBOTTABAD THE 12/6/2008, ISSUED BY
SYED KHURSHID ANWAR, CONSERVATOR OF FORESTS, HAZARA FOREST
CIRCLE ABBOTTABAD.

312 trees= 102988 Cft were marked in Charry C-4(ii) of Lower Kohistan Forest Division and harvesting allowed vide Chief Conservator of Forests, NWFP, No: 1664/GR, dated 14/01/2003 through Dubair Forest Harvesting Cooperative Society. Marked volume was harvested into 7327 scants=56220.98 Cft and out of which 3832 scants=30149.06 Cft was transported to market vide T.P No:01 dated 06/7/2004 and distributed amongst the owners/Govt: appropriately vide DFO office order No.01 dated 26/7/2004 leaving balance of 3495 scants=26071.92 Cft.

T.P No.24 dated 23/12/2004 was issued for transportation of balance 3495 scants=26071.92 Cft from Dubair roadside to Goharabad Market. Timber reached the market has been distributed/ released amongst the concessionests/ Govt: as under:

DFO office order & date	Quantity as per T.P	Timber record in Market	20% Govt: Share	80% Owner Share
29, dated 11/2/05, 04 dated 13.8.2005	3495=26071.92	1942=14324.99 1553=11746.93	239=2865.19 215=2349.94	1703=11459.80 1338= 9396.99
Total:		3495=26071.92	454=5215.13	3041=20856.79

Perusal of above order reveals that entire 3495 scants =26071.92 cft timber of TP No.24 stand reached the market and distributed into the appropriate share amongst the concessionests/Govt leaving no balance at roadside depot.

DFO, Lower Kohistan vide letter No.2712/GL dated 03.06.2008 again extended the period of TP No.24 dated 23.12.2004 in favour of Managing Director, Dubair Forest Harvesting Cooperative Society for the transportation of so called illegal balance of 513 Fir/Spruce= 4984.97 cft timber from Dubair to Goharabad Market, which does not exist on record of Goharabad Timber Depot. DFO: Lower Kohistan issued challan No.66 to 72 (seven number) for the said timber.

On receipt of a complaint regarding transportation of illegal timber, seven(7) trucks loaded with the above consignment were intercepted on Mirpur Forest check post Abbottabad and carried to Goharabad Market under the supervision of DFO, Patrol Squad. DFO: Patrol Squad checked the market record and found that no balance is exist.

Since the above timber is totally illegal/illicit, therefore, 513 Fir/Spruce scants= 4984.97 cft timber lying in Goharabad Market is hereby confiscated in favour of Govt.

Delinquent staff involved in the transportation of above timber will be proceeded against separately.


Divisional Forest Officer
Ganga Forest Division
Abbottabad

Sd/-(SYED KHURSHID ANWAR)
CONSERVATOR OF FORESTS
HAZARA FOREST CIRCLE
ABBOTTABAD

وکالت نامہ

کورٹ فیس معاف سے قیمتی

بعدالت جناب **چیمبر میں سروس ٹریبونل سونہ تختونخوہ کیمپ ایبٹ آباد**

منجانب **ایبٹ آباد**
بنام **حکومت پنجتنخواہ وغیرہ**

دعویٰ یا جرم **سروں اپیل** باعث تحریر آئیکہ

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام **ایبٹ آباد سید محبوب احمد شاہ**

ایڈووکیٹ ایبٹ آباد جس شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ نمائندہ غامس روبرو عدالت حاضر ہوتا رہوں گا اور بوقت پارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر منظر حاضر نہ ہوا اور غیر ماضی کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر تمام کچہری کے علاوہ کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ تمام کچہری کے کسی اور جگہ سماعت ہونے پر یا بروز کچہری کے اوقات کے آگے یا پیچھے ہونے پر منظر کو کوئی نقصان پہنچے تو ذمہ دار اس کے واسطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پر دائرہ صاحب مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کا رویہ وصول کرنے اور رسید دینے اور داخل کرانے کا ہر قسم کا بیان دینے اور سپردِ رٹاشی و رضی نامہ و فیصلہ بر خلاف کرنے و اقبال دعویٰ کا اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری ایک طرف درخواست ہم امتناعی یا ڈگری قبل از فیصلہ اجراء ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ پیروی مختار نامہ کرنے کا مجاز ہوگا اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا بیسٹر کو چلے اپنے ہمارے مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو۔ پوری فیس تاریخ پیشیا سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا محنت از نامہ لکھ دیا ہے کہ سدر ہے۔ مضمون محنت از نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

موضہ ۱۰ مئی ۲۰۱۶ء

مدرسہ اسلامیہ دارالعلوم
M.A. LL.B.

Accepted.
Mahboob

SYED MAHBOOB AHMAD SHAH
Professor, M.A LL.B.
Advocate High Court
Abbottabad