

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
(Camp Court, Abbottabad).

Appeal No. 985/2019

Date of Institution ... 15.07.2019

Date of Decision ... 15.11.2021

Muhammad Shakeel, Divisional Forest Officer, Kohistan Wildlife Division,
Pattan. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, Forestry, Environment and Wildlife
Department through Secretary Forests, Peshawar. ...(Respondents)

Present.

Mr. Muhammad Arshad Tanoli, ... For appellant.
Advocate

Mr. Muhammad Riaz Khan Paindakhel, ... For respondents.
Asstt. Advocate General

MR. AHMAD SULTAN TAREEN ... CHAIRMAN
MR. ROZINA REHMAN, ... MEMBER(J)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby the penalty of withholding of two increments for two years imposed upon him in pursuance to the disciplinary proceedings under Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, purporting the same being against the facts and law on the subject.

2. Brief facts of the case are that the appellant while serving as Deputy Conservator Wildlife was proceeded against under Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 on the charges enumerated in the charge sheet and statement of allegations served upon him. He submitted reply to the charge sheet and refuted the allegations leveled against him. Thereafter, a detailed enquiry was conducted by the enquiry committee comprising of M/S Farhad Khan, Additional Secretary, Irrigation Department Government of Khyber Pakhtunkhwa Peshawar and Sher Nawaz Khan, Managing Director Khyber Pakhtunkhwa Forest Development Corporation. After findings, show cause notice was issued to the appellant on 07.05.2018 to which the appellant submitted reply. Finally vide order dated 17.09.2018, minor penalty of withholding of two annual increments for two years was imposed upon the appellant. Feeling aggrieved, the appellant preferred Service Appeal on 22.10.2018 before this Tribunal. Since no departmental appeal was preferred, vide order dated 20.12.2018, the matter was remitted to the Appellate Authority for decision in accordance with law/rules within a period of ninety days. Vide letter No. SO(Estt)FE&WD/2-50(24)/2006/PF/331-34, dated 17.06.19 addressed by the Section Officer (Estt) Forestry, Environment & Wildlife Department, Government of Khyber Pakhtunkhwa Peshawar addressed to the appellant, he was informed that his appeal/representation has been considered and rejected by the Appellate Authority. Hence, the present appeal preferred on 15.07.2019.



3. The appeal was admitted for regular hearing on 20.09.2019. Notices were issued to the respondents for submission of written reply/comments. On 16.09.2020, the respondent No. 1 submitted written reply/comments refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost. On 19.11.2020, representative of respondent No. 2 submitted that he rely on the written reply already submitted by respondent No. 1, on behalf of respondent No. 2.

4. We have heard arguments and perused the record.

5. The record would reveal that an enquiry committee consisting of Mr. Sher Nawaz, Managing Director, Forest Development Corporation and Mr. Farhad Khan, Addl. Secretary, Irrigation Department Government of Khyber Pakhtunkhwa was appointed to conduct the enquiry with reference to the said allegations. The enquiry committee conducted the enquiry and in its findings they exonerated the appellant from certain charges and clarified that most of the charges pertain to the period of Mr. Muhammad Arif, Ex-DFO Battagram. The conclusion is drawn by the inquiry committee in nutshell of all allegations is copied below:-

"From the examination of the case, it is clear that most of the charges pertain to the period of Mr. Muhammad Arif, Ex-DFO Battagram. The accused officer Mr. Muhammad Shakeel, has taken over as DFO Battagram on 04.02.2014. He is also responsible for some of the charges as explained against each. Gross misconduct was noticed while examining the statement of Mr. Niaz Muhammad, the then Range Officer. He had signed agreements with the owner of the earlier proposed




land and its de-notification, agreement with the contractor etc. in his statement he has confessed that all he has done was on the verbal direction of Mr. Muhammad Arif, Ex-DFO. His statement carries weight as if it was not without his direction, he would have immediately addressed a letter to the Deputy Commissioner Battagram and the owner of the land for cancellation of any agreement/deed executed with the District Administration Battagram or the owner of the land or the contractor. Though he has now tried to place a copy on record of the explanation called from Mr. Niaz Muhammad the then range officer but it seems subsequent fabrication to save his position."

In pursuance to the inquiry report, show-cause notice was given to the appellant with indication of tentative penalty of withholding of two increments for 02 years. The reply of the show-cause notice as annexed with the appeal reveals that the appellant explained his position with sufficient reasons having regard to the inquiry report. However, the competent authority quite randomly held the appellant guilty in the impugned order. After considering the inquiry report and other related documents of the case, show-cause notice served upon the appellant to which he replied and providing him opportunity of personal hearing; and consequently imposed a minor penalty of withholding of two annual increments for two years. The respondent No. 1 in his reply of the appeal while defending the disciplinary proceedings, submitted that appellant committed gross irregularities by incurring expenditure on purchase of three (03) kanal of land and construction of office-cum-residence of Divisional Forest Officer Wildlife Battagram in excess to the provision of

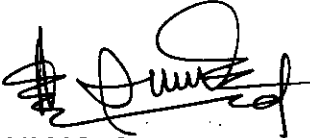


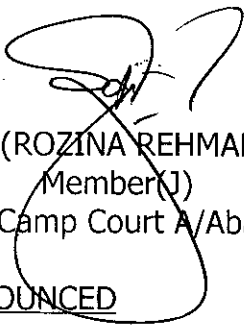
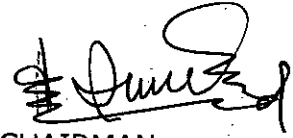
PC-1. If the said reply of the respondents is juxtaposed with finding of the Inquiry Committee relating to allegation No. VII, the same i.e. the reply of respondent is against the fact. It is there in the said findings that expenditure was based on the basis of actual work done and liability was accommodated in revised budget. By the said comparison of the findings with plea of the respondent department discussed before, there seems no force in plea of the respondent against the appellant particularly when the appellant was exonerated by the Inquiry Committee almost from the maximum charges and where there is any finding of the committee against the appellant, the same is not substantial in nature to provide a ground for disciplinary action under E&D Rules. So, we hold that the penalty imposed upon the appellant is not based on judicious exercise of mind by the competent authority and is liable to be set aside.

6. For what is gone above, instant appeal is accepted as prayed for. Parties are left to their own cost. File be Consigned to record room.


 (ROZINA REHMAN)
 Member(J)
 (Camp Court, A/Abad)

ANNOUNCED
 15.11.2021


 (AHMAD SULTAN TAREEN)
 Chairman
 (Camp Court, A/Abad)

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	15.11.2021	<p><u>Present.</u></p> <p>Mr. Muhammad Arshad Tanoli, ... For appellant. Advocate</p> <p>Mr. Muhammad Riaz Khan Paindakhel, ... For respondents. Asstt. A.G.</p> <p>Vide our detailed judgment; instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.</p> <p> (ROZINA REHMAN) Member(J) Camp Court A/Abad.</p> <p><u>ANNOUNCED</u> 15.11.2021</p> <p> CHAIRMAN Camp Court A/Abad</p>

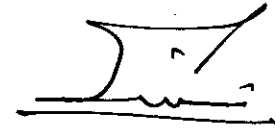
20.09.2021

Nemo for the appellant. Mr. Riaz Ahmed Paindakhel,
Assistant Advocate General for the respondents present.

Previous date was changed on Reader Note, therefore,
notice for prosecution of the appeal be issued to the appellant as
well as his counsel and to come up for arguments before the D.B
on 15.11.2021 at Camp Court Abbottabad.



(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

18.01.2021

Due to COVID-19, the case is adjourned for the same on 16.02.2021 before D.B.


READER

16.02.2021

Nemo for parties.

Riaz Khan Paindakheil learned Assistant Advocate General present.

Preceding date was adjourned on a Reader's note, therefore, notice be issued to both the parties for 19.04.2021 for arguments, before D.B at Camp Court, Abbottabad.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Abbottabad



(Rozina Rehman)
Member (J)
Camp Court, Abbottabad

19.4.2021

Due to covid-19, The case is adjourned to 20/9/21 as before.


Reader

20.09.2021

Name for the appellant: Mr. Rizq Ahmed Paindakhel,
ASST. Advocate General for the respondents present.
Name for the respondent: Reader Note (that is),
no name for the respondent is supplied as well as his counsel and to come up for arguments before the M.E.
on 15.11.2021 at Camp Court Abbottabad.

10.09.2021

Name for the appellant: Mr. Rizq Ahmed Paindakhel,
Assistant Advocate General for the respondents present.
(ATIQ-UR-REHMAN WAZIR) (SALAH-UD-DIN)
Previous date was changed on Reader Note (that is),
MEMBER (EXECUTIVE) MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD CAMP COURT ABBOTTABAD,
well as his counsel and to come up for arguments before the M.E.
on 15.11.2021 at Camp Court Abbottabad.

Name for the appellant: Mr. Rizq Ahmed Paindakhel,
Assistant Advocate General for the respondents present.
(ATIQ-UR-REHMAN WAZIR) (SALAH-UD-DIN)
MEMBER (EXECUTIVE) MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD CAMP COURT ABBOTTABAD,
well as his counsel and to come up for arguments before the M.E.
on 15.11.2021 at Camp Court Abbottabad.

Name for the appellant: Mr. Rizq Ahmed Paindakhel,
Assistant Advocate General for the respondents present.
(ATIQ-UR-REHMAN WAZIR) (SALAH-UD-DIN)
MEMBER (EXECUTIVE) MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD CAMP COURT ABBOTTABAD,
well as his counsel and to come up for arguments before the M.E.
on 15.11.2021 at Camp Court Abbottabad.

19.11.2020

Appellant is present in person. Mr. Usman Ghani, District Attorney and Mr. Faraz Gul, Assistant on behalf of respondent No. 2 are also present.

Representative of respondent No. 2 submitted that he rely on the written reply already submitted by respondent No. 1, on behalf of respondent No. 2. Therefore, the appeal is adjourned to 18.01.2021 on which date file to come up for rejoinder and arguments on 18.01.2021 before D.B at Camp Court, Abbottabad.

(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT ABBOTTABAD

Due to covid ,19 case to come up for the same on / /
at camp court abbottabad.

Reader

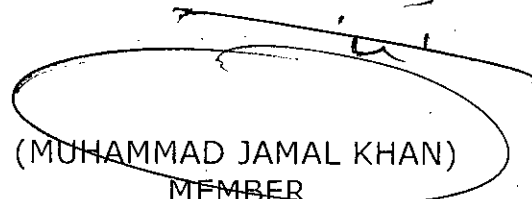
Due to summer vacation case to come up for the same on 11/8
9/1/20 at camp court abbottabad.


Reader

16.09.2020

Appellant is present in person. Mr. Usman Ghani, District Attorney alongwith representative of respondent No.1 Mr. Gul Faraz, Assistant are also present.

Representative of respondent No. 1 submitted para-wise comments on behalf of respondent No. 1 which is placed on file record. While no one is present on behalf of respondent No. 2 nor written reply on his behalf is submitted, therefore, notice be issued to him for submission of written reply/comments. File to come up for written reply/comments on behalf of respondent No. 2 on 19.11.2020 before S.B at Camp Court, Abbottabad.


(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT ABBOTTABAD

18.11.2019

Appellant in person present. Mr. Usman Ghani learned District Attorney alongwith representative Faraz Gul Assistant present. Written reply not submitted. Representative of respondent department seeks time to furnish reply. Granted. To come up for written reply/comments on 17.12.2019 before S.B at Camp Court, Abbottabad.



Member
Camp Court, A/Abad

17.12.2019

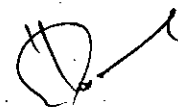
Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Faraz Gul, Assistant for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further time for submission of written reply/comments Adjourned to 21.01.2020 for written reply/comments before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

21.01.2020

Appellant in person present. Written reply not submitted. Faraz Gul Assistant representative of the respondents present and seeks time to furnish written reply. Granted. To come up for written reply/comments on 20.02.2020 before S.B at Camp Court Abbottabad.

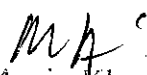


Member
Camp Court, Abbottabad

20.09.2019

Counsel for the appellant Muhammad Shakeel present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was imposed major penalty of withholding of two annual increments for two years vide order dated 17.09.2018 by the competent authority on the allegation of misconduct. Copy of impugned order was received to the appellant on 26.09.2018 and the appellant filed service appeal before this Tribunal on 22.10.2018 but the Tribunal treated the said service appeal as departmental appeal and remitted the same to departmental authority to decide the same in accordance with law vide order dated 20.12.2018. It was further contended that the departmental authority rejected the same on 20.06.2019 which was received to the appellant on 02.07.2019 hence, the present service appeal on 15.07.2019. Learned counsel for the appellant further contended that neither proper inquiry was conducted nor the appellant was associated in the inquiry proceeding. It was further contended that the inquiry committee has also given opinion in the inquiry report that at the relevant time one Muhammad Arif and Niaz Muhammad was posted at this post who were responsible for the said misconduct therefore, it was further contended that the impugned order is illegal and liable to be set-aside.

The contention raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days thereafter, notices be issued to the respondents for written reply/comments for 18.11.2019 before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

Appellant Deposited
Security & Process Fee

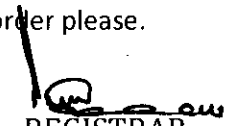

23/9/19

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 985/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/07/2019	<p>The appeal of Mr. Muhammad Shakeel resubmitted today by Mr. Nasir Khan Jadoon Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;">  REGISTRAR <u>29/7/19</u> </p> <p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>20-9-19</u></p> <p style="text-align: right;">  CHAIRMAN </p>
2-		

The appeal of Mr. Muhammad Shakeel, DFO Battagram, received today, i.e. on 15-07-2019 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Annexures of the appeal may be properly flagged.

No. 1211 /S.T,

Dt. 17-7- /2019


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Nasir Khan Jadoon, Adv.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. _____
Dated _____

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

Service Appeal No. 985 /2019

Muhammad Shakeel, Divisional Forest Officer, Battagram.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, Forestry, Environment and Wildlife
Department through Secretary Forests, Peshawar & others.

....RESPONDENTS

SERVICE APPEAL

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4.	Copy of inquiry report of the committee	19 to 29	"C"
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...APPELLANT

Through

Dated: 12/7 /2019

(NASIR KHAN JADOON)
Advocate High Court, Abbottabad

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 959

Dated 15/7/19

Service Appeal No. 985 /2019

Muhammad Shakeel, Divisional Forest Officer, Kohistan Wildlife Division,
Pattan.

...APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa, Forestry, Environment and
Wildlife Department through Secretary Forests, Peshawar.

② Chief Minister, Khyber Pakhtunkhwa, Peshawar.

....RESPONDENTS

Filed to-day
15/7/19
Registrar

Re-submitted to-day
and filed.

ew.
Registrar
29/7/19

APPEAL UNDER SECTION 4 OF SERVICE
TRIBUNAL ACT, 1974, AGAINST THE ORDER
OF RESPONDENTS THE ORDER NO.
NO.SO(ESTT)FE&WD/2-50(24)2006/ PF
DATED 17/06/2019, WHEREBY THROUGH
ORDER DATED 17/09/2018, IN SHOW CAUSE
NOTICE WAS SERVED TO THE APPELLANT
DATED 07/05/2018 WHEREIN THE
COMPETENT AUTHORITY TENTATIVELY

DECIDED TO IMPOSE ON THE APPELLANT THE PENALTY OF WITHHOLDING OF TWO INCREMENTS FOR TWO YEARS. REPLY OF THE APPELLANT IS IN THE LIGHT OF ENQUIRY REPORT AND APPELLANT IS EXONERATED FROM MOST OF THE CHARGES OF SERIOUS NATURE THE PENALTY OF WITHHOLDING OF TWO INCREMENTS FOR TWO YEARS WAS UPHELD.

PRAYER: ON ACCEPTANCE OF THE INSTANT APPEAL, IMPUGNED ORDER DATED 17/06/2019 THROUGH WHICH ORDER DATED 17/09/2018 WAS UPHELD ALONGWITH TENTATIVE ORDERS MAY KINDLY BE SET-ASIDE.

Respectfully Sheweth:-

Brief facts giving rise to instant petition are as arrayed as under;-

1. That appellatant is serving in Wildlife Department for his last twenty-two years.

2. That appellant served in department with complete devotion and dedication mostly regularly posted in hard/unattractive areas of KPK through services careers.
3. That an enquiry committee was constituted by the Govt. of KPK through Notification, dated 22/11/2017, No.SO(ESTT)FE&WD/2-50(24)2006/4455-58 alongwith charge sheet. Copy of Notification dated 22/11/2017 is annexed as Annexure "A".
4. That reply of charge sheet was given by the appellant which is annexed as Annexure "B".
5. That Inquiry report of the committee is annexed as Annexure "C".
6. That show cause notice was given to appellant which is annexed as Annexure "D".
7. That reply of show cause notice is annexed as Annexure "E".

8. That impugned order of competent authority is annexed as Annexure "F".
9. That appellant filed an appeal before service tribunal, in which objection raised, that it is premature, without availing the remedy before appellate authority, so the petition remitted to the appellate authority for decision. order of the service tribunal dated 20/12/2018 is annexed as Annexure "G".
10. That appellant also remitted the appeal to the appellate authority which is annexed as Annexure "H".
11. That appellate authority through order dated 17/06/2019 rejected the appeal of the appellant vide order dated 17/06/2019 is annexed as Annexure "I".
12. That feeling aggrieved, the appellant has now come to this Honourable Court assailing the impugned order on the following grounds;-

GROUNDS:-

- a) That the impugned order dated 17/06/2019 and 17/09/2018 by the respondent No.1 & 2 are illegal, against the law, facts and circumstances of the case, hence liable to be set aside.
- b) That illegality and material irregularity has been committed, hence order dated 17/06/2019 and 17/09/2018 are liable to be set aside.
- c) That neither breaking of law nor corruption has been proven in the inquiry report.
- d) Financial transaction, measurement/quantum of civil works executed are immaculate and commendable, because appellant maintained record of civil work single handedly for which normally separate provision of civil engineer is provided in the PC1 as provided in the revised PC1 for Mansehra component under the same umbrella project.

- e) Provision for inevitable extra civil works executed by the appellant has been provided in the revised PC1.
- f) That appellant achieved physical targets and that is why since September 2015 office cum residence DFO Wildlife Battagram is shifted from rental building to government owned building of Wildlife department.
- g) It is worth to mention that the actual covered area is 2483 square feet as compared to PC1 target of 2000 square feet.

The charges leveled against the appellant in the show cause and reply to the charge report is as follows;-

- i. That against the project provision you have incurred excess expenditure of 15,27,836/- on purchase of 03 Kanals land for the construction of office and residence of DFO Wildlife Battagram against the project provision.

The appellant is exonerated in the inquiry report from the charge as de-notification of already purchased land happened before taking over charge. It is worth to mention that all decisions relating to imposition of Section 4 its de-notification and notification of presently acquired piece of land happened before my taking over. The appellant was held responsible for over payment as greater part of the deed was already affected by predecessors (as endorsed by the inquiry report).

- ii. That contrary to the provision of agreement signed by the Department with the contractor you made over payment of Rs.17,15,882/- on the basis of MRS 2013.

The appellant is exonerated from the charge as all tender proceedings/bidding process was finalized before my taking over and no extra payment has been made to the contractor and for the civil works of office cum residence against 4.00 million rupees only 3.5 million rupees has been made so

far. The liability has been created as a result of gigantic inevitable retaining, because the provision under PC1 were for plain area and acquired piece of land is undulating and typical hilly area (as endorsed by the inquiry report).

- iii. That without project provision of fulfillment of codal formalities, you have constructed retaining wall at a total cost of Rs.17,44,600/-.

The acquired piece of land was sloppy/undulating and provision were not made as it was planned for plain area. The construction of retaining wall was inevitable before actual construction of office cum residence (as endorsed by the inquiry report) and provision has been made in the revised PC1.

- iv. That without any project provision and without adopting legal procedure an in utter disregard of the instructions issued by the Conservator Wildlife Southern Circle you

made additional payment of 352377/- for purchase of land for the approach road to the office building.

The appellant is exonerated from the charge as the dubious agreement was signed before my taking over the charge and my predecessor was held responsible for the charge (as endorsed by the inquiry report).

- v. That you have violated the technical sanction accorded by the competent authority vide No.2077/WL(B&A) dated 23/10/2013 at a total cost of 4.00 Million rupees for construction of office of DFO Wildlife and sanction for acceptance of tender for construction of office building at a total cost of 4.00 million sanctioned by the competent authority vide No.6899/WL(B7A) dated 27/05/2014.

Same as per II

- vi. That in utter mis-use of power, you have issued two cheques No.346124 dated 07/07/2015 and No.346125 dated

10/07/2015 amounting to Rs.50,000/- and 17,00,000/- respectively in absence of any reason and availability of funds which have not been cashed and available on record of battagram Wildlife Division.

The appellant is exonerated from the charge (as endorsed by the inquiry report). No financial loss has occurred as cheques were signed to safeguard the life of appellant and his staff at stake. The procedural formalities to uncash the cheques were fulfilled in time.

- vii. That despite of excess payment of the contractor, you recommended additional payment of Rs.18,35,556/- in the total additional claim of 2,20,49,741/- made by contractor in his complaint against you in this regard.

The inquiry committee endorsed the fact in the report that the expenditure has been based on actual civil works done and the liability has been accommodated in the revised PC1.

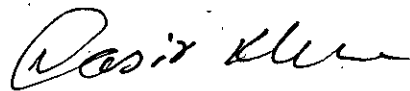
- h) That no warning or counseling had been given to the appellants, hence impugned order is liable to be set aside.
- i) That the other points shall be urged at the time of arguments.

By keeping in view above exposition of facts, figures and record it is humbly prayed that impugned order undersigned the penalty of withholding of two increments for two years may be graciously set aside.

Dated: 12/07 /2019

Through

...APPELLANT



(NASIR KHAN JADOON)
Advocate High Court, Abbottabad

VERIFICATION:-

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



...APPELLANT

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

Service Appeal No. _____/2019

Muhammad Shakeel, Divisional Forest Officer, Kohistan Wildlife Division,
Pattan.

...APPELLANT

VERSUS

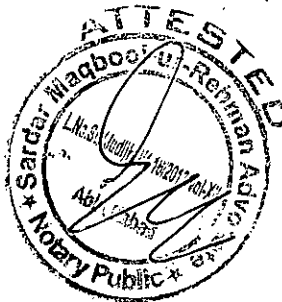
Govt. of Khyber Pakhtunkhwa, Forestry, Environment and Wildlife
Department through Secretary Forests, Peshawar & others.


....RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Muhammad Shakeel, Divisional Forest Officer, Kohistan Wildlife
Division, Pattan, do hereby solemnly affirm and declare that the contents of
foregoing service appeal are true and correct to the best of my knowledge
and belief and nothing has been concealed therein from this Honourable
Court.




DEPONENT

12/7/2019



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

Dated Peshawar the , 22nd November, 2017

NOTIFICATION

No: SO(Estt)FE&WD/2-50 (24)2006:- An Enquiry Committee comprising Mr. Farhad Khan (PMS BS-19), Additional Secretary, Irrigation Department, Government of Khyber Pakhtunkhwa (as Convener) and Mr. Sher Nawaz Khan, Chief Conservator of Forests (BS-20)/Managing Director, Forest Development Corporation, Khyber Pakhtunkhwa (as member) is constituted by the Competent Authority to conduct inquiry against Muhammad Shakeel, Deputy Conservator Wildlife (BS-18), Wildlife Department, Khyber Pakhtunkhwa under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the charges/allegations leveled against him in the Charge Sheet and Statement of Allegations.

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

Sd/-
**CHIEF MINISTER
KHYBER PAKHTUNKHWA**

Endst: No: SO(Estt)FE&WD/2-50 (24)2006:- Dated Peshawar the, 22nd Nov, 2017

Copies of the Charge Sheets/Statement of Allegations are forwarded to:-

- 1) Mr. Farhad Khan (PMS BS-19), Additional Secretary, Irrigation Department, Government of Khyber Pakhtunkhwa (Convener of the Enquiry Committee).
- 2) Mr. Sher Nawaz Khan, Chief Conservator of Forests (BS-20)/Managing Director, Forest Development Corporation, Khyber Pakhtunkhwa (Member of the Enquiry Committee).
- 3) Muhammad Shakeel, Deputy Conservator Wildlife, Battagram Wildlife Division with the direction to appear before the Enquiry Committee on the date, time and place to be fixed by the Enquiry Committee for the purpose of inquiry proceeding.


**(TARIQ JAMAL)
SECTION OFFICER (ESTT)**

Endst: No: SO(Estt)FE&WD/2-50 (24)2006:- Dated Peshawar the, 22nd Nov, 2017

Copy is forwarded to:-

- 1) PS to Secretary, Forestry, Environment & Wildlife Department for information.
- 2) Personal file of the officer.
- 3) Master file.
- 4) Office order file.

SECTION OFFICER (ESTT)

Received

[Signature]
27/11/2017

[Signature]

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CHARGE SHEET

I, Pervez Khattak, Chief Minister Khyber Pakhtunkhwa, as competent authority, hereby charge you Mr. Muhammad Shakeel, Deputy Conservator Wildlife (BS-18), Khyber Pakhtunkhwa Wildlife Department, as follows:

That, you while posted as Divisional Forest Officer Wildlife Battagram from 4-2-2014 to date, committed the following irregularities:

- i. That against the project provision you have incurred excess expenditure of Rs.1,527,836/- on purchase of 3 kanals land for the construction of office and residence of DFO Wildlife Battagram against the project provision.
 - ii. That contrary to the provision of agreement signed by the Department with the contractor you have made over payment of Rs.1,715,882/- on the basis of MRS 2013.
 - iii. That without project provision and fulfillment of codal formalities, you have constructed retaining wall at a total cost of Rs.1,744,600/-.
 - iv. That without any project provision and without adopting legal procedure in utter disregard of the instructions issued by the Conservator Wildlife Southern Circle you made additional payment of Rs. 352,377/- for purchase of land for approach road to the office building.
 - v. That you have violated to the technical sanction accorded by the competent authority vide No.2077/WL(B&A), dated 23-10-2013 at a total cost of Rs.4.000 million for construction of office of DFO Wildlife Battagram and sanction for acceptance of tender for construction of office building at a total cost of Rs.4.000 million sanctioned by the competent authority vide No.6899/WL(B&A), dated 27-5-2014.
 - vi. That in utter mis-use of power, you have issued two cheques No.346124 dated 7-7-2015 and No.346125 dated 10-7-2015 amounting to Rs.500,000/- and Rs.1,700,000/- respectively in absence of any reason and availability of funds which have not been cashed and available on the record of Battagram Wildlife Division.
 - vii. That despite of excess payment to the contractor, you have recommended additional payment of Rs.1,835,556/- in the total additional claim of Rs.2,204,9741/- made by contractor in his complaint against you in this regard.
2. By reason of the above, you appear to be guilty of misconduct, inefficiency and corruption under rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules 2011 and have rendered yourself liable to all or any of the penalties specified in rule-4 of the Rules ibid.
3. You are, therefore, required to submit your written defense within 7 days of the receipt of this Charge Sheet to the enquiry officer/ enquiry committee, as the case may be.
4. Your written defense, if any, should reach the enquiry officer/ enquiry committee within the specified period, failing which it shall be presumed that you have no defense to 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.

(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa
Competent Authority

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DISCIPLINARY ACTION

I, Pervez Khattak, Chief Minister Khyber Pakhtunkhwa, as competent authority, am of the opinion that he Mr. Muhammad Shakeel, Deputy Conservator Wildlife (BS-18), Khyber Pakhtunkhwa Wildlife Department, 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 Disciplinary Rules), 2011.

That, he while posted as Divisional Forest Officer Wildlife Battagram Wildlife Division from 4-2-2014 to date, committed the following acts of omissions/commissions in the management of Battagram Wildlife Divisions.

STATEMENT OF ALLEGATIONS

- i. That against the project provision he has incurred excess expenditure of Rs.1,527,836/- on purchase of 3 kanals land for the construction of office and residence of DFO Wildlife Battagram against the project provision.
- ii. That contrary to the provision of agreement signed by the Department with the contractor he has made over payment of Rs. 1,715,882/- on the basis of MRS 2013.
- iii. That without project provision and fulfillment of codal formalities, he has constructed retaining wall at a total cost of Rs.1,744,600/-
- iv. That without any project provision and without adopting legal procedure in utter disregard of the instructions issued by the Conservator Wildlife Southern Circle he made additional payment of Rs. 352,377/- for purchase of land for approach road to the office building.
- v. That he has violated to the technical sanction accorded by the competent authority vide No.2077/WL(B&A), dated 23-10-2013 at a total cost of Rs.4.000 million for construction of office of DFO Wildlife Battagram and sanction for acceptance of tender for construction of office building at a total cost of Rs.4.000 million sanctioned by the competent authority vide No.6899/WL(B&A), dated 27-5-2014.
- vi. That in utter mis-use of power, he has issued two cheques No.346124 dated 7-7-2015 and No.346125 dated 10-7-2015 amounting to Rs.500,000/- and Rs.1,700,000/- respectively in absence of any reason and availability of funds which have not been cashed and available on the record of Battagram Wildlife Division.
- vii. That despite of excess payment to the contractor, he has recommended additional payment of Rs.1,835,556/- in the total additional claim of Rs.2,204,974/- made by contractor in his complaint against him in this regard.

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. Farhad Khan (PMS Bc-19), Addl. Secy Irrigation
- ii. Mr. Sher Nawaz Khan, Chief Conservator of Forests (BS-18) MD, Forest Development Corporation, KP

3. The inquiry officer/ inquiry 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 actions against the accused.

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

Pervez Khattak
(Pervez Khattak)

Chief Minister
Khyber Pakhtunkhwa
Competent Authority

Anx B P-16 ~~Annexure I~~ (ER)

To

1. The Additional Secretary (Irrigation Department),
Government of Khyber Pakhtunkhwa (Convener)
2. The Chief Conservator of Forests/Managing Director
Forest Development Corporation
Khyber Pakhtunkhwa Peshawar (Member).

No 350-51/WL-BM dated Battagram the 30.11/2017

Subject CHARGE SHEET/REPLY THEREOF.

Reference Charge Sheet issued vide Section Officer (Estt) Govt. of Khyber Pakhtunkhwa Environment Department NO. SO (Estt) FE&WD/2-50(24)2k6/2006/4455-58 dated 22-11.2017 received through Chief Conservator Wildlife Khyber Pakhtunkhwa vide his endorsement No..... dated

It is submitted that land acquisition and bidding process were finalized before my taking over on 4-2-2014.

I deny the charges leveled against me and seriatim reply to the charges is furnished as under please:-

i. That against the project provision you have incurred excess expenditure of 15,27,836/- on purchase of 3 kanal land for the construction of office and residence of DFO Wildlife Battagram against the project provision.

The undersigned in compliance of (Annexure A) issued final cheque of Rs 18,80,214/- on 7-2-2014 in the name of Collector/Deputy Commissioner Battagram for timely acquisition and accordingly informed the Circle office (Annex B). It is worth to mention that extra amount of Rs 12,23,665/- has been incurred including taxes of various nature including compulsory acquisition charges 15%, Compound interest 6%, district council fee 2%, stamp duty 2%. The payment was made just three days after my taking over to ensure purchase of requisite piece of land without further loss of time as per directives of the Conservator Wildlife (Annex C).

ii. That contrary to the provision of agreement signed by the Department with the contractor you made over payment of Rs 17,15,882/- on the basis of MRS 2013.

It is submitted that this allegation has been framed on the basis of a post bid deed signed between M S Wali Khan Government contractor and Range Officer Wildlife (Annex D), who has neither any authority to negotiate nor has been authorized by the competent authority to negotiate and technical sanction were accorded. Post Bid deed being most important document was overlooked. The bid deed

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agreed upon was not picked by the sanctioning authority. Secondly, bid deed is also clear violation of Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules 2014, section 42 for which undersigned cannot be held responsible. This paper has neither any legal force nor an accepted document by the competent authority. The actual bid deed is for Rs6.336 million rupees (Annex E1, E2, E3) and undersigned have spent 5.125 million rupees. The payment of office building has been paid strictly according to rates offered and accepted by the department. The bidding i.e. tender etc. were floated and finalized by my predecessor before my taking over as is evident from the record.

The liability has not been caused by any of my action but is the outcome of Land acquisition costs for 3 kanal and 2 Marla and actual civil work done on spot according to rates offered and accepted by parties.

iii *That without project provision and fulfillment of codal formalities, you have constructed retaining wall at a total cost of Rs 17,44,600/-*

The construction of retaining wall was inevitable before actual lay out and construction of office building and was constructed under the express directives of the Conservator Wildlife (Annexure F). The Conservator being officer in category II have authority to accord sanction of civil works up to 2.00 million rupees. It is worth to mention that technical sanction for the construction of boundary wall was accorded before my taking over (Annexure G).

This retaining wall also serves the purpose of boundary wall. It is worth to mention that cost of retaining wall was paid on MRS, 2013 as per orders of the Government (Annexure H)

iv *That without any project provision and without adopting legal procedure in utter disregard of the instruction issued by the Conservator Wildlife Southern Circle you made additional payment of Rs 3,52,377/- for purchase of land for approach to the office building.*

No additional payment has been made, approach to the building in shape of 2 marla land was inevitable and was paid with in balance available with the Collector/Deputy Commissioner Battagram in the best interest of public service. The compulsory acquisition of approach road to the office building was inevitable because owner was blocking the road even during execution of civil works (Annexure I, J), though owner of approach road signed a dubious agreement (Annexure K) with the Range Officer Wildlife before my taken over.

v *That you have violated the technical sanction accorded by the competent authority vide No. 2077/WL(B&A), dated 23-10-2013 at a total cost of 4.000 million for construction of office of DFO Wildlife Battagram and sanction for acceptance of tender for construction of office building at a total cost of Rs.4.00 million vide No.6899/WL(B&A) dated 27-5-2014.*

No Violation of the technical sanction has been made and so far only Rs 3.5 million has been paid to the contractor for the construction of office of DFO Wildlife Battagram.

vi *That in utter misuse of power, you have issued two cheques No346124 dated 7-7-2015 and No. 346125 dated 10-7-2015 amounting to Rs.5,0,000/- and 17,00,000/- respectively in absence of any reason*

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and availability of funds which have not been cashed and available on record of Battagram Wildlife Division.


The incident happened and is on record. The letter marked to SP Battagram for FIR, report to Circle office, and Jirga (minutes) called by SP Battagram and MPA and letter to Manager National Bank are annexed (L to R).

vii That despite of excess payment to the contractor, you recommended additional payment of Rs18,35,556/- in the total additional claim of 2,20,49,741/- made by contractor in his complaint against you in this regard.

No excess payment has been made, the contractor liability is ~~16,25,894/-~~ ^{12,23,138/-} and PC1 has been revised to accommodate the liability and pending civil works under same project in Mansehra Wildlife division.

By keeping in view above exposition of facts, figures and record it is humbly prayed that undersigned may be exonerated from charges leveled.

It is further requested that the undersigned may kindly be given an opportunity of personal hearing, please.


(Muhammad Shakeel)
Deputy Conservator Wildlife
Cell # 0302-5956384

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Anx (C)

**ENQUIRY REPORT AGAINST MR. MUHAMMAD SHAKEEL, DEPUTY CONSERVATOR
WILDLIFE (BS-18), KHYBER PAKHTUNKHWA.**

BACK GROUND

Environment Department vide Notification NO. SO(Estt)FE&WD/2-50 (24)2006/4455-58, dated 22nd November 2017, constituted Enquiry Committee comprising of Mr. Farhad Khan (PMS BS-19), Additional Secretary Irrigation Department, Khyber Pakhtunkhwa and Mr. Sher Nawaz (BS-20), Chief Conservator of Forests/ Managing Director FDC (as member) to conduct disciplinary proceedings under Section-5(1) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 against Mr. Muhammad Shakeel, Deputy Conservator Wildlife, Khyber Pakhtunkhwa. public
↑ of
3

PROCEEDINGS

UNDER 2 → Umbrella project of "Integrated Conservation + Develop. in Hazara" → ADP

On receipt of Notification, the committee held preliminary meeting, where in Mr. Muhammad Shakeel, Deputy Conservator Wildlife was directed to submit reply and attend the enquiry committee. He submitted his para-wise reply to the charge sheet (see Annexure-I). He was also called for personal hearing on 26.12.2017 at Additional Secretary Irrigation office, where in he submitted in writing his reply to the queries put forward by the Enquiry Committee members (Annexure-II). Regarding his reply to the questionnaire he was further cross questioned, reference his reply to question # 23 of his personal hearing. His reply to the same cross question is annexed as (Annexure-III) which has enclosures Annexure-A,B,C,D. He was also given a chance to cross question the prosecution if he desired so. He availed the opportunity. To clarify the certain complications arising from the subject charge sheet of Mr. Muhammad Shakeel, DFO Battagram. The ex-DFO Battagram Mr. Muhammad Arif was called to appear before the enquiry committee members for some quarries regarding purchase of land of DFO Battagram office and residence. He appeared before member of the committee Mr. Sher Nawaz Managing Director FDC on 14.02.2018 at 2.00 PM in his office. He was asked to reply to the questionnaire put before him to which he submitted his reply attached as (Annex-IV). NA.

The SDFO Mr. Muhammad Niaz was also called to clear certain quarries in the subject enquiry to which he submitted his written reply attached as (Annexure-V). The replies to the charge sheet/ allegations are discussed and the findings of the inquiry committee have been submitted against each as under: -

ALLEGATION - I ✓

P (29)

That against the project provision you have incurred excess expenditure of Rs. 1,527,836/- on purchase of 3 kanals land for the construction of office and residence of DFO Wildlife Battagram.

REPLY OF THE ACCUSED OFFICER.

The undersigned in compliance of (Annexure-A) issued final cheque of Rs. 1,880,214/- on 07.02.2014 in the name of Collector/ Deputy Commissioner Battagram for timely acquisition and accordingly informed the Circle office (Annex B). It is worth to mention that extra amount of Rs. 1,223,665/- has been incurred including taxes of various nature including compulsory acquisition charges 15%, Compound interest 6% district council fee 2%, stamp duty 2%. The payment was made just three days after my taking over to ensure purchase of requisite piece of land without further loss of time as per directives of the Conservator Wildlife (Annex-C).

↳ at all cost.

DISCUSSION.

A sum of Rs.6,000,000/- was allocated in the approved PC-I during the financial year 2012-13 for the purchase of 03 Kanals land for onward construction of office and residence of DFO Wildlife Battagram (Annex-VI).

An agreement was made on 10.10.2013 by DFO Battagram with Mr. Liaqat Ali Khan S/o Ahmad Jan of Ajmira District Battagram for de-notification of his already acquired land of 03 Kanals. The said Land was de-notified without any proper justification/reason. The DFO Battagram acquired another piece of land through Deputy Commissioner under Section-4 of the Land Acquisition Act, 1894 on 03.12.2013 pertaining to Mr. Khyal Muhammad S/o Kachkol District Battagram with a total price of Rs.7,527,836/- (Annex-VII and Annex-VIII).

The Conservator Wildlife Southern Circle Peshawar vide letter No.3044 dated 29.11.2013 directed DFO Battagram to ensure purchase of Land without loss of further time (copy annex-IX).

The DC Battagram vide No.65 dated 06.01.2014 worked out the price of 03 Kanal Land for Rs.7,880,213.59 on tentative basis and informed DFO Battagram that Rs.6,000,000/- has been received, whereas the balance amount of Rs.1,880,213.60 may also be paid on top priority basis (annex-X).



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In compliance to the DC Battagram instructions issued through above cited letter, the DFO Battagram also released the balance amount of Rs.1,880,214/- vide cheque No.0303 dated 07.02.2014 to DC Battagram and requested Conservator Wildlife Southern Circle Peshawar vide letter No.547/WL-BM dated 28.05.2014 to transfer the amount to the head purchase of land so that the paid amount could be adjusted in proper head. (Annex-XI & XII). The Deputy Commissioner, Battagram announced the award under Section-11 of the land Acquisition Act and the compensation of land along with other acquisition charges was worked out for Rs.7,527,836/- (annex-XIII).

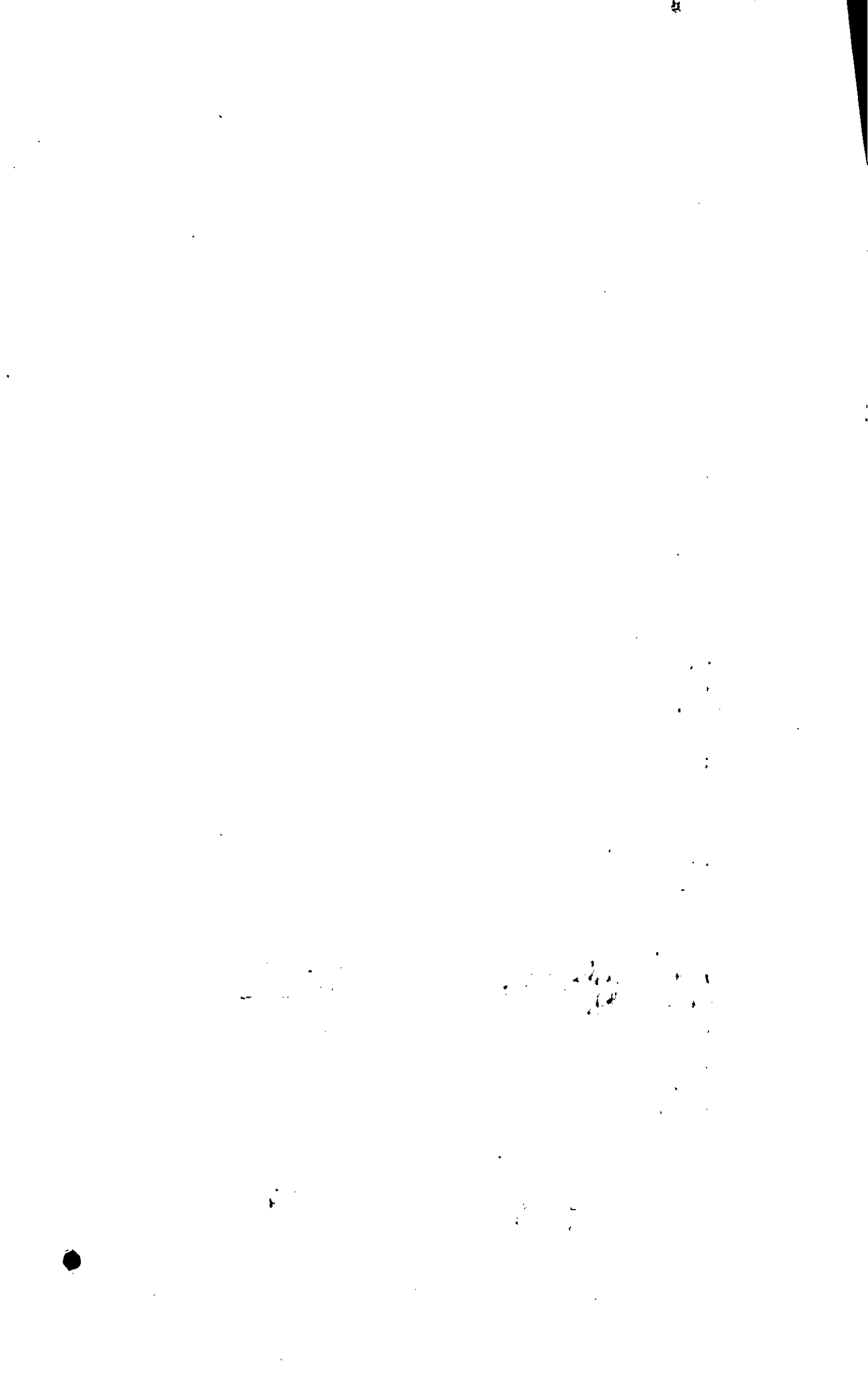
Mr. Muhammad Shakeel the DFO Battagram has taken over the charge of the office on 04.02.2014 vide No.277-280/WL-BM dated 04.02.2014. Therefore the land was purchase prior to his charge assumption (annex-XIV).

Sum of Rs.1,527,836/- has been paid in excess from the approved PC-I Provision. The amount has been provided in the revised PC-I but the same has not yet been approved.

Besides the above allegations, during personal hearing of the accused when enquired about the extent of area acquired by him, whether the land purchased was actually 3 kanals. His written reply to the question was yes it is correct. However, on actual measurement of the area by DFO, Demarcation, Swat staff, the area came out to be 17 marlas less i.e. 2 kanals and 3 marlas (Annexure-XV). However the DFO Wildlife Battagram vide his letter No.1081/WL/BM, date d 11.01.2017 (Annexure-XVI) has already reported the case to Deputy Commissioner, Battagram.

Going through the various statements of DFO's Mr. Muhammad Shakeel and Mr. Arif, SDFO Mr. Niaz Mohammad and various official correspondences on record the following facts have surfaced.

- (i) The land purchased for DFO Battagram Wildlife office was 11 marlas less than 3 kanals for which the deed was signed by Wildlife Department and private person/ land owner. Although the later correspondences with Deputy Commissioner Office have revealed that the area was complete in all respects. However the latest report on the subject by DFO Demarcation Swat has shown the area to be 17 marlas less of actual area purchased, which has put a big question mark on the extent of area.



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- (ii) The original site purchased by Wildlife Department was denotified by SDFO Mr. Niaz Muhammad who was not authorized to do so. When enquired from him on the authority he used to do so he pointed out his DFO Mr. Arif stating that the said DFO had told him on cellphone to do so and also text message the contents of letter through an e-mail to him. However Mr. Arif DFO totally denied this statement of Niaz Mohammad and quoted his letter No. 103/WL-BM, dated 27.01.2013 addressed to SDFO Naiz Muhammad showing his displeasure on this denotification of land.

FINDINGS:

The Ex-DFO Mr. Arif and SDFO Mr. Niaz Muhammad Battagram are responsible for:-

- i. De-notification of the already purchased land was effected without any justification and execution of illegal/in complete agreement with the owner of the new land to be purchased was undertaken.
Before my
- ii. For the purchase of another land on higher rates than the PC-I provision. The accused DFO Mr. Muhammad Shakeel is responsible for over and above payment from PC-I provision only. He was compelled to do so because greater part of the deed had already been affected by his predecessor DFO & SDFO. *No extra payment has been made then overall provisions of civil works & paid as per actual*
- iii. A separate enquiry into this purchase of land and actual extent of area transferred to Wildlife department needs to be conducted through Revenue Authorities. *example of neighboring Mambera W/L Dini*
- iv. The case of denotification of area acquired previously too needs to be probed through some intelligence gathering agency.
before my taking over

ALLEGATION-II.

That contrary to the provision of agreement signed by the Department with the contractor you made over payment of Rs. 1,715,882/- on the basis of MRS 2013.

REPLY OF THE ACCUSED OFFICER.

This allegation has been framed on the basis of a post bid deed signed between M S Wali Khan Government contractor and Range Officer Wildlife (Annex D), who has neither any authority to negotiate nor has been authorized by the competent authority to negotiate and technical sanction were accorded. Post Bid deed being most important

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document was over looked. The bid deed agreed upon was not picked by the sanctioning authority. Secondly, bid deed is also clear violation of Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules 2014, section 42 for which undersigned cannot be held responsible. This paper has neither any legal force nor an accepted document by the competent authority. The actual bid deed is for Rs. 6.336 million rupees (Annex E1,E2,E3) and undersigned have spent 5.125 million rupees. The payment of office building has been paid strictly according to rates offered and accepted by the department. The bidding i.e. tender etc. were floated and finalized by the predecessor before my taking over as is evident from the record.

The liability has not been caused by any of my action but is the outcome of Land acquisition costs for 3 kanal and 2 marla and actual civil work done on spot according to rates offered and accepted by parties.

DISCUSSION.

Tenders were called for construction of office building of DFO Battagram on 7.10.2013. The lowest rates of 9% above CSR-2012 were offered by M/s Wali Muhammad Khan & Company Battagram with a estimated cost of Rs.4,414,324/- against the approved PC-I provision of Rs.4,000,000/- (annex-XVII). The value of the constructions work was negotiated on 12.12.2013 by Mr. Niaz Muhammad Khan Range Officer wildlife Battagram with Mr. Wali Muhammad Khan contractor from Rs.4,833,613/- to Rs.4,000,000/- (annex-XVIII).

The contractor submitted his bills for Rs.5,637,659/- from 8/2014 to 3/2015, out of which the DFO Battagram deducted Rs.369,418/- from the bills on account of different faults in the office building and paid Rs.3,500,000/- against the payable amount of Rs.5,268,241/- (Rs.5,637,659-369,418) whereas, for the balance amount of Rs.5,268,241-3,500,000 = 1,768,241/- provision for payment of liability for construction of infrastructure of Battagram Division has been made for Rs.1,223,138/- and for Rs.603,838/- (annex-XIX & XX) but the revised PC-I has not yet been approved.

FINDINGS: II

From the above position is clear that:-

- i. Ex DFO Battagram, Mr. Arif is responsible for not cancellation of the bid offered over and above received in the tender proceedings held on 7.10.2013 from the PC-I provision of Rs.4,000,000/-.

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- ii. According to KPPRA-2014 Section 42, "Negotiations shall not seek changes in the rates quoted by the bidder". Therefore, the negotiation made by Mr. Niaz Muhammad Khan Range Officer is violation of the above rules. Further he has no authority & competency to negotiate rates or sign the agreement with the contractor.
- iii. In case the agreement signed by RFO on behalf of DFO and contractor was followed in true spirit. It was binding on DFO to incur an expenditure of Rs.4,000,000/- on the building construction. Any excess expenditure is violation of the agreement signed.
- iv. The accused DFO i.e. Mr. Muhammad Shakeel is responsible for creating liabilities for incurring expenditure over and above from the PC-I provision.

Good Will -

- The work has been completed & W/L Dept. have taken over charge of the said building with office of DFO, SFO, RECORD, GUEST ROOM, ~~suppose~~ CLASS IV + driver's room. & Residence room for DFO hence approxi- 400 sq-fted extra covered area (Annex-?)

ALLEGATION-III.

That without project provision and fulfillment of codal formalities, you have constructed retaining wall at a total cost of Rs. 1,744,600/-.

REPLY OF THE ACCUSED OFFICER:

The construction of retaining wall was inevitable before actual layout of construction of office building and was constructed under the express directives of the Conservator Wildlife (Annexure F). The Conservator being officer in category II have authority to accord sanction of civil works upto 2.00 million rupees. It is worth to mention that technical sanction for the construction of boundary wall was accorded before my taking over (Annexure G).

This retaining wall also serves the purpose of boundary wall. It is worth to mention that cost of retaining wall was paid on MRS, 2013 as per orders of the Government (Annexure H).

DISCUSSION:

The DFO Battagram Mr. Muhammad Shakeel has constructed retaining wall with a total cost of Rs.1,744,600/- without PC-I provision under the relevant head. The Conservator wildlife Southern Circle Peshawar vide his letter No.8047/WL/(SC) dated 17.04.2014 issued instructions to DFO Battagram that the site must be secured through construction of a retaining wall (annex-XXI). The site was visited by the enquiry committee member and found the construction of retaining wall well justified because

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in his absence
in its absence the land would have been eroded and without it the boundary wall construction was not possible.

FINDINGS: III

The work has been carried out without PC-I provision and fulfillment of other codal formalities for which the accused DFO is responsible.

- A sum of Rs.1,744,600/- has been provided in the revised PC-I 2017-18 but the same has not yet been approved by the competent forum (annex-XXII).
- This was an extra work other than that advertised. It should also have been advertised to meet the codal formalities.

ALLEGATION-IV.

Natural extension of ongoing work. WRRRA Rule. 2

Designs were for plain area. While actual position is evident from photos. It can be verified at any time.

That without any project provision and without adopting legal procedure in utter disregard of the instruction issued by the Conservator Wildlife Southern Circle. You made additional payment of Rs. 352,377/- for purchase of land for approach to the office building.

REPLY OF THE ACCUSED OFFICER:

No additional payment has been made, approach to the building in shape of 2 marla land was inevitable and was paid within balance available with the Collector/ Deputy Commissioner Battagram in the best interest of public service. The compulsory acquisition of approach road to the office building was inevitable because owner was blocking the road even during execution of civil works (Annexure I, J), though owner of approach road signed a dubious agreement (Annexure K) with the Range Officer Wildlife before my taken over.

DISCUSSION:

An agreement was executed between Mr. Liaqat Ali Khan S/o Ahmad Jan of District Battagram and DFO Wildlife Battagram Mr. Muhammad Arif on 10.10.2013 with the following terms and conditions:-

- DFO Battagram will de-notify the 03 Kanals land purchased from him.
- Mr. Liaqat Ali Khan will provide 12 feet approach road for the newly acquired land.

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The contents of the agreement were not clear whether the approach road would be provided on payment or against the de-notification of their already acquired land, for which the Ex- Range Officer, Wildlife, Battagram Mr. Muhammad Niaz Khan is responsible.

However, no extra payment has been made by DFO Battagram but the payment has been made by DC Battagram out of the balance amount of Rs.1,880,214/- paid to him by the DFO Battagram for the purchase of 03 kanal land on his 1st assessment.

FINDINGS:

The ex-DFO Battagram Mr. Muhammad Arif was responsible for the dubious agreement made with the owner Mr. Liaqat Ali owner of de-notified land as well as purchase of approach road causing an additional liability on government over and above the PC-I.

ALLEGATION NO. V:

That you have violated the technical sanction accorded by the competent authority vide No. 2077/WL(B&A), dated 23.10.2013 at a total cost of 4.000 million for construction of office of DFO Wildlife Battagram and sanction for acceptance of tender for construction of office building at a total cost of Rs. 4.00 million vide No. 6899/WL(B&A) dated 27.5.2014.

REPLY OF THE ACCUSED OFFICER:

No violation of the technical sanction has been made and so far only Rs. 3.5 million has been paid to the contractor for the construction of office of DFO Wildlife Battagram.

DISCUSSION

Detail position regarding PC-I provision for the construction of office building, expenditures incurred and provision made in the revised PC-I for the expenses incurred over and above the PC-I provision has already been clarified in allegation No.II.

FINDINGS:

Same as per allegation No. II.

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ALLEGATION NO. VI.

That in utter misuse of power, you have issued two cheques No. 346124, dated 7.7.2015 and No. 346125, dated 10.7.2015 amounting to Rs. 5,00,000/- and 17,00,000/- respectively in absence of any reason and availability of funds which have not been cashed and available on record of Battagram Wildlife Division.

REPLY OF THE ACCUSED OFFICER:

The incident happened and is on record. The letter marked to SP Battagram for FIR, report to Circle office, and Jirga (minutes) called by SP Battagram and MPA and letter to Manager National Bank are annexed (L to R).

DISCUSSION:

The cheques were issued on the threat by the contractors to DFO who visited his office on 06.07.2015. The DFO Battagram lodged report against the accused. The matter was reported to the Superintendent of Police, District Battagram vide No.05-07/WL-BM dated 07.07.2015 and also to the Conservator Wildlife southern Circle Peshawar vide letter No.10-13/WL/BM dated 07.07.2015 (Annex-XXIII, XXIV & XXV). The DFO also inform the Manager NBP Battagram Branch not to entertain the said cheques vide letter No.01/WL-BM dated 07.07.2015 (Annex-XXVI). However, the matter was resolved through a Jirga and its minutes have already been sent to the Conservator Wildlife Peshawar vide No. 16/WL-BM dated 13.07.2015 (Annex-XXVII).

FINDINGS:

No financial loss has occurred to government exchequer. Though the DFO had issued cheques while seeing his and his staff lives at stake but, the procedure formalities for registration of FIR and non-payments of the cheques were completed. The cheques and other relevant record was return without any pre conditions by the contractor. Further stress of the matter would not be advisable.



ALLEGATION NO. VII.

P-28

That despite of excess payment to the contractor, you recommended additional payment of Rs. 1,835,556/- in the total additional claim of 22,049,741/- made by contractor in his complaint against you in this regard.

REPLY OF THE ACCUSED OFFICER:

No excess payment has been made, the contractor liability is 1,625,894/- and PC1 has been revised to accommodate the liability and pending civil works under same project in Mansehra Wildlife division.

DISCUSSION:

The contractor has been paid Rs.3,500,000/- against his payable amount of Rs.5,268,241/- for the construction of office building of DFO Battagram. No excess payment has been made however, for payment of the balance amount, provision has been made in the revised PC-I which has not yet been approved.

FINDINGS:

The expenditure has been based on the basis of actual work done and liability has been accommodated in the revised PC-I.

GENERAL ANALYSIS:

From the examination of the case, it is clear that most of the charges pertain to the period of Mr. Muhammad Arif Ex-DFO Battagram. The accused officer Mr. Muhammad Shakeel, has taken over as DFO Battagram on 04.02.2014. he is also responsible for some of the charges as explained against each. Gross misconduct was noticed while examining the statement of Mr. Niaz Muhammad, the then Range officer. He had signed agreements with the owner of the earlier proposed land and its de-notification, agreement with the contractor etc. in his statement he has confessed that all he has done was on the verbal direction of Mr. Muhammad Arif, ex-DFO. His statement carries weight as if it was not without his direction, he would have immediately addressed a letter to the Deputy Commissioner Battagram and the owner of the land for cancellation

P-29=29

of any agreement/ deed executed with the District Administration Battagram or the owner of the land or the contractor. Though he has now tried to place a copy on record of the explanation called from Mr. Niaz Muhammad the then range officer but its seems subsequent fabrication to save his position.

(Sher Nawaz)
Managing Director
Khyber Pakhtunkhwa
Forest Development Corporation
(Member)

(Fahad Khan)
Additional Secretary,
Irrigation Department
Govt. of Khyber Pakhtunkhwa
(Convener)

30
Aux'D

P-(39)



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

SHOW CAUSE NOTICE

I, Pervez Khattak, , Chief Minister, Khyber Pakhtunkhwa as Competent Authority, under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Muhammad Shakeel, Divisional Wildlife Officer (BS-18), Wildlife Department, Khyber Pakhtunkhwa as follows:

- (i) that consequent upon the completion of enquiry conducted against you by the Enquiry Committee, for which you were given opportunity of hearing vide office communication No: SO(Estt)FE&WD/2-50 (24)/2006/4455-58, dated 22nd November, 2017 and;
- (ii) on going through the findings and recommendations of the Enquiry Committee, the material on record and other connected papers including your defence before the Enquiry Committee:

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

- ① 3 (i) Inefficiency
- (ii) Misconduct

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

_____ under rule-14(4)(b) of the Rules ibid. ②

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

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

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

Pervez Khattak
(Pervez Khattak)
Chief Minister,
Khyber Pakhtunkhwa/
Competent Authority
27/11/2018

P-(31) - 31



GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT
NO.SO(Estt)/FE&WD/2-50 (24)/2006
Dated Peshawar the, 07th May, 2018

19/5/18

**Most Immediate
Through Fax**

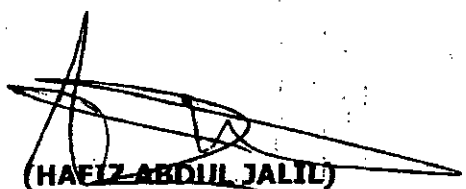
To / Muhammad Shakeel,
Divisional Wildlife Officer (BS-18),
Kohistan Wildlife Division.
C/o Chief Conservator Wildlife,
Khyber Pakhtunkhwa,
Peshawar.

Subject: - SHOW CAUSE NOTICE

I am directed to refer to the subject captioned above and to enclose herewith Show Cause Notice (in duplicate) alongwith findings of the inquiry report with the request that reply to the show cause notice may be furnished to this department through Chief Conservator Wildlife, Khyber Pakhtunkhwa **within seven (07) days** positively for further necessary action.

2) Please acknowledge the receipt.

Encl: As above


(HAQIZ ABDUL JALIL)
SECTION OFFICER (ESTT)

Endsi: No: & date even

Copy is forwarded to:-

1. Chief Conservator Wildlife, Khyber Pakhtunkhwa. He is requested that on receipt of reply to the show cause notice from the accused, comparative statements with comments of the department (in annotated form) may be furnished to this department within stipulated period for further course of action.
2. PS to Secretary, FE&W department, Khyber Pakhtunkhwa for information.

SECTION OFFICER (ESTT)

*Received via email
from Chief Conservator's Office.*


11/5/18

Anx E P-32

BEFORE THE CHIEF MINISTER KHYBER PAKHTUNKHWA
(AUTHORITY)

Through: PROPER CHANNEL

Subject: SHOW CAUSE NOTICE

Reference: Government of Khyber Pakhtunkhwa Environment Department letter No. SO(Estt.)/FE&WD/2-50(24)2006 dated Peshawar the 07th May, 2018.

BACKGROUND:

17 Sept-2018

UNDER Rule 14(4)(b) of E&D Rules, 2011 the undersigned was provided reasonable opportunity and to submit as to why one or more penalties may not be imposed. The undersigned availed the chance to submit written reply (which is part of enquiry report).

Under the general analysis (See page 10 of enquiry report) most of charges pertain to Mr. Muhammad Arif Ex-DFO Battagram and gross misconduct was noticed against Mr. Niaz Muhammad the then Range Officer Wildlife Battagram, whereas the undersigned was held

responsible for some of the charges. *The Honorable Services Tribunal recommended for instant service appeal/Departmental appellate authority for considering and deciding the same as departmental appeal. (Copy of order sheet attached)*

The seriatim comments on the findings of the enquiry report are as follows:-

ALLEGATION I

- i- The undersigned is exonerated from the charge as de-notification of the already purchased land happened before my taking over of charge of Battagram Wildlife Division.
- ii- For the purchase of another land on higher rates than the PC-1 provision the undersigned is held responsible for above payment from the PC I and undersigned was compelled to do so (See page 4 under findings ii of the enquiry report) in good faith. *written on record (attached)*
- iii- The undersigned is exonerated from the charge as the land was purchased before my taking over of charge of Battagram Wildlife Division and a separate enquiry has been proposed against dealing hands during specified period of time. It is worth to mention that all decision relating to purchase of land including imposition of Section 4 of Land Acquisition Act 1894, its denotification and notification of presently acquired piece of land happened before my taking over charge. *Before my taken over.*



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- iv- The undersigned is exonerated from the charge as denotification of section 4 of Land Acquisition 1894 happened before my taking over of charge of Battagram Wildlife Division.

ALLEGATION II

- i- The undersigned is exonerated from the charge as all tender proceedings/bidding process was completed before my taking over of charge of Battagram Wildlife Division and my predecessor was held responsible for the charge framed in the finding of enquiry report.
- ii- The undersigned is exonerated from the charge as violation KPPRA Rule 2014 Section 42 was made by the then Range Officer Wildlife Battagram, before my taking over of charge of Battagram Wildlife Division and is held responsible by the enquiry committee in the report.
- iii- No excess payment has been made to the contractor and for the civil works pertaining to civil works of office cum residence construction only 3.5 million have been paid against agreement deed of 4.00 million to follow the agreement in true spirit.
- iv- The liability has been created as result of inevitable retaining wall as denotified plot is plain (for which layout designs and estimates were made in the PC-1) and acquired land is undulating as endorsed by the enquiry report (See page 6 of enquiry report under discussion).

ALLEGATION III

- i- A sum of Rs 1744600/- has been provided in the revised PC-1 2017-18 (See page 7 of enquiry report)
- ii- Enquiry committee commented that extra work other than advertized, it should have advertized to meet the codal formalities (See page 7 of enquiry report). As per provision in KPPRA Rules 2014, under Rule 18(c)(i) for the construction of retaining wall the alternate method of direct contracting was followed, wherein *civil works are contracted and are natural extension of an earlier or ongoing works.*

ALLEGATION IV

The undersigned is exonerated from the charge as the dubious agreement was signed before my taking over of charge of Battagram Wildlife Division and my predecessor was held responsible for the charge framed in the enquiry report.



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ALLEGATION V

Same as per allegation II

ALLEGATION VI

The undersigned is exonerated from the charge as the finding made by enquiry report (See page 9 of enquiry report under finding), no financial loss has occurred and the cheques were issued while seeking the lives of undersigned and staff at stake. The procedural formalities were fulfilled. Further stress of the matter would not be advisable.

ALLEGATION VII

The enquiry committee endorses the fact (See page 10 of enquiry report under finding) that the *expenditure has been based on the basis of actual work done and liability has been accommodated in the revised PC-1.*

By keeping in view above exposition and the key facts as below:-

- 1- Neither breaking of law nor corruption has been committed by the undersigned.
- 2- Normally for execution of civil works consultants are hired as it has been provided under the same Umbrella Project *Biodiversity Conservation and Management in Hazara* in its revised version for 2017-18, a separate position for execution and fulfilling codal formalities for the civil works to be carried in Mansehra Wildlife Division. Contrary the undersigned single handedly performed difficult job of estimates, maintenance of measurement books, layout plans, actual lay out on ground and verification of bills for quantum of civil works, so as to complete the building in the best interest of public service.
- 3- Financial transactions, measurement / quantum pertaining to civil works executed are immaculate and commendable.
- 4- Provisions for the extra work carried out in shape of liability have been provided in the revised PC-1 for 2017-18.
- 5- No extra payment has been made than overall PC-1 provisions.



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6- Wildlife department have taken over the building since September 2015 with full fledged offices of the DFO Wildlife, record room, SDWO office, one room for the residence of DFO Wildlife Battagram, store, residential room for class IV and one room for ministerial staff and driver.

7- It is worth to mention that actual covered area constructed is 2483 sq feet as compared to PC-1 target of 2000 sq feet.

It is humbly prayed that undersigned may be graciously exonerated from the penalty of *(withholding of two increments for two years)*.

If my written request is not accepted I will like to be heard in person.

Dated ~~14-05-2018~~

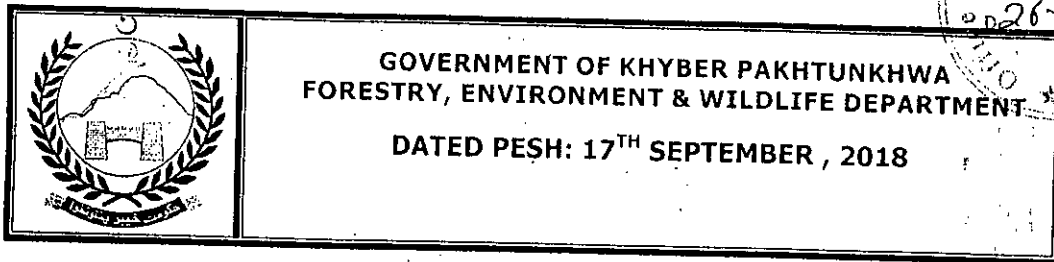
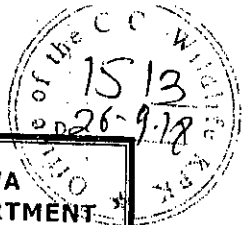
2-01-2018

(MOHAMMAD SHAKEEL)

Deputy Conservator Wildlife

DFO Wildlife Kohistan at Pattan

Anx F- P-35



NOTIFICATION

No.SO(Estt)FE&WD/2-50(24)2006: WHEREAS, Muhammad Shakeel, Divisional Wildlife Officer (BPS-18), Wildlife Department Khyber Pakhtunkhwa was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations, served upon the said officer;

AND WHEREAS, the Enquiry Committee comprising Mr. Farhad Khan (PMS BS-19), Additional Secretary, Irrigation Department; and Mr. Sher Nawaz, Chief Conservator of Forests/Managing Director (BS-20), Forest Development Corporation was constituted to conduct inquiry against the said accused officer;

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

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

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused officer, and hearing him in person and exercising his powers under Rule-14(5)(ii) read with Rule 4(1)(a)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose a minor penalty of **"withholding of two annual increments for two years"**; upon Muhammad Shakeel, Divisional Wildlife Officer (BPS-18), Wildlife Department Khyber Pakhtunkhwa, with immediate effect.

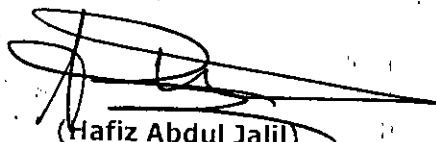
CHIEF MINISTER,
KHYBER PAKHTUNKHWA

Dated Pesh: 17TH Sept, 2018.

Endst: No.SO(Estt)FE&WD/2-50(24)/2006 / 9665-68

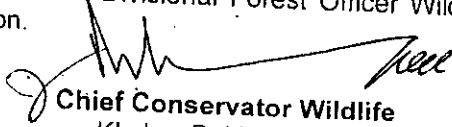
Copy is forwarded to:-

- 1) Chief Conservator Wildlife, Khyber Pakhtunkhwa, Peshawar.
- 2) Conservator Wildlife, Southern Circle, Peshawar.
- 3) Director Budget & Accounts Cell, Forestry, Environment & Wildlife Department.
- 4) Officer concerned C/O Chief Conservator Wildlife, Khyber Pakhtunkhwa, Peshawar.
- 5) Personal File of the Officer.
- 6) Master file.
- 7) Office order file.

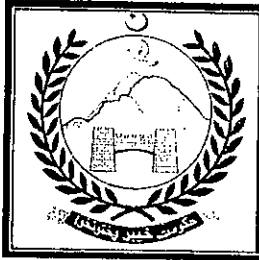

(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT)

No. 242023 WL (E) Dated Peshawar the 26-9-2018.

Copy forwarded to Conservators Wildlife Southern Circle Peshawar, Northern Circle Swat and Mr. Muhammad Shakeel Divisional Forest Officer Wildlife Kohistan for information and necessary action.


Chief Conservator Wildlife
Khyber Pakhtunkhwa
Peshawar.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

DATED PESH: 17TH SEPTEMBER, 2018

NOTIFICATION

No.SO(Estt)FE&WD/2-50(24)2006: WHEREAS, Muhammad Shakeel, Divisional Wildlife Officer (BPS-18), Wildlife Department Khyber Pakhtunkhwa was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations, served upon the said officer;

AND WHEREAS, the Enquiry Committee comprising Mr. Farhad Khan (PMS BS-19), Additional Secretary, Irrigation Department; and Mr. Sher Nawaz, Chief Conservator of Forests/Managing Director (BS-20), Forest Development Corporation was constituted to conduct inquiry against the said accused officer;

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

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

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused officer, and hearing him in person and exercising his powers under Rule-14(5)(ii) read with Rule 4(1)(a)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose a minor penalty of **"withholding of two annual increments for two years"**; upon Muhammad Shakeel, Divisional Wildlife Officer (BPS-18), Wildlife Department Khyber Pakhtunkhwa, with immediate effect.

CHIEF MINISTER,
KHYBER PAKHTUNKHWA

Endst: No.SO(Estt)FE&WD/2-50(24)/2006 / 9665-68 Dated Pesh: 17TH Sept, 2018.

Copy is forwarded to:-

- 1) Chief Conservator Wildlife, Khyber Pakhtunkhwa, Peshawar.
- 2) Conservator Wildlife, Southern Circle, Peshawar.
- 3) Director Budget & Accounts Cell, Forestry, Environment & Wildlife Department.
- 4) Officer concerned C/O Chief Conservator Wildlife, Khyber Pakhtunkhwa, Peshawar.
- 5) Personal File of the Officer.
- 6) Master file.
- 7) Office order file.


(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT)

Anx ' G 238

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



Service Appeal No. _____/2018

Muhammad Shakeel, Divisional Forest Officer, Kohistan Wildlife Division,
Pattan.

...APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Case No. 1459

Date 22/10/2018


VERSUS

1. Govt. of Khyber Pakhtunkhwa, Forestry, Environment and Wildlife Department through Secretary Forests, Peshawar.
2. Chief Minister, Khyber Pakhtunkhwa, Peshawar.

....RESPONDENTS

REVIEW APPEAL UNDER SECTION 4 OF
SERVICE TRIBUNAL ACT, 1974, AGAINST
THE ORDER OF RESPONDENT THE ORDER
OF NO.SO(ESTT)FE&WD/2-50(24)2006
DATED 17/09/2018, WHEREBY REPLY TO
THE CHARGE SHEET WAS SUBMITTED BY
THE APPELLANT 30/11/2017 THE SHOW
CAUSE NOTICE WAS SERVED TO THE
APPELLANT DATED 07/05/2018 WHEREIN

ATTESTED


MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

THE COMPETENT AUTHORITY TENTATIVELY DECIDED TO IMPOSE ON THE APPELLANT THE PENALTY OF WITHHOLDING OF TWO INCREMENTS FOR TWO YEARS. REPLY OF THE APPELLANT IS IN THE LIGHT OF ENQUIRY REPORT AND APPELLANT IS EXONERATED FROM MOST OF THE CHARGES OF SERIOUS NATURE THE PENALTY OF WITHHOLDING OF TWO INCREMENTS FOR TWO YEARS WAS UPHOLD IN THE ORDER OF NO.SO(ESTT)FE&WD/2-50(24)2006 DATED 17/09/2018.

PRAYER: ON ACCEPTANCE OF THE INSTANT APPEAL, IMPUGNED ORDER DATED 17/09/2018 AND TENTATIVE ORDERS MAY KINDLY BE SET ASIDE.

Respectfully Sheweth:-

Brief facts giving rise to instant petition are as arrayed as under:-

1. That appellant is serving in Wildlife Department for his last twenty-two years.

ATTESTED
 E. A. KHAN
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

2. That appellant served in department with complete devotion and dedication mostly regularly posted in hard/unattractive areas of KPK through services careers.
3. That an enquiry committee was constituted by the Govt. of KPK through Notification dated 22/11/2017, No.SO(ESTT)FE&WD/2-50(24)2006/4455-58 alongwith charge sheet. Copy of Notification dated 22/11/2017 is annexed as Annexure "A".
4. That reply of charge sheet was given by the appellant which is annexed as Annexure "B".
5. That Inquiry report of the committee is annexed as Annexure "C".
6. That show cause notice was given to appellant which is annexed as Annexure "D".
7. That reply of show cause notice is annexed as Annexure "E".

8. That impugned order of competent authority is annexed as Annexure "F".
9. That feeling aggrieved, the appellant has now come to this Honourable Court assailing the impugned order on the following grounds:-

GROUND:-

- a) That the impugned order dated 17/09/2018 by the respondent No.1 & 2 is illegal, against the law, facts and circumstances of the case, hence liable to be set aside.
- b) That illegality and material irregularity has been committed, hence order dated 17/09/2018 is liable to be set aside.
- c) That neither breaking of law nor corruption has been proven in the inquiry report.
- d) Financial transaction, measurement/quantum of civil works executed are immaculate and commendable, because appellant maintained record of civil work single handedly for

which normally separate provision of civil engineer is provided in the PC1 as provided in the revised PC1 for Mansehra component under the same umbrella project.

- e) Provision for inevitable extra civil works executed by the appellant has been provided in the revised PC1.
- f) That appellant achieved physical targets and that is why since September 2015 office cum residence DFO Wildlife Battagram is shifted from rental building to government owned building of Wildlife department.
- g) It is worth to mention that the actual covered area is 2483 square feet as compared to PC1 target of 2000 square feet.

The charges leveled against the appellant in the show cause and reply to the charge report is as follows:-

- i. That against the project provision you have incurred excess expenditure of 15,27,836/-

on purchase of 03 Kanals land for the construction of office and residence of DFO Wildlife Battagram against the project provision.

The appellant is exonerated in the inquiry report from the charge as de-notification of already purchased land happened before taking over charge. It is worth to mention that all decisions relating to imposition of Section 4 its de-notification and notification of presently acquired piece of land happened before my taking over. The appellant was held responsible for over payment as greater part of the deed was already affected by predecessors (as endorsed by the inquiry report).

- ii. That contrary to the provision of agreement signed by the Department with the contractor you made over payment of Rs.17,15,882/- on the basis of MRS 2013.

The appellant is exonerated from the charge as all tender proceedings/bidding process

was finalized before my taking over and no extra payment has been made to the contractor and for the civil works of office cum residence against 4.00 million rupees only 3.5 million rupees has been made so far. The liability has been created as a result of gigantic inevitable retaining, because the provision under PC1 were for plain area and acquired piece of land is undulating and typical hilly area (as endorsed by the inquiry report).

- iii. That without project provision of fulfillment of codal formalities, you have constructed retaining wall at a total cost of Rs.17,44,600/-.

The acquired piece of land was sloppy/undulating and provision were not made as it was planned for plain area. The construction of retaining wall was inevitable before actual construction of office cum residence (as endorsed by the inquiry report) and provision has been made in the revised PC1.

- iv. That without any project provision and without adopting legal procedure an in utter disregard of the instructions issued by the Conservator Wildlife Southern Circle you made additional payment of 352377/- for purchase of land for the approach road to the office building.

The appellant is exonerated from the charge as the dubious agreement was signed before my taking over the charge and my predecessor was held responsible for the charge (as endorsed by the inquiry report).

- v. That you have violated the technical sanction accorded by the competent authority vide No.2077/WL(B&A) dated 23/10/2013 at a total cost of 4.00 Million rupees for construction of office of DFO Wildlife and sanction for acceptance of tender for construction of office building at a total cost of 4.00 million sanctioned by the competent authority vide No.6899/WL(B7A) dated 27/05/2014.

Same as per II

- vi. That in utter mis-use of power, you have issued two cheques No.346124 dated 07/07/2015 and No.346125 dated 10/07/2015 amounting to Rs.50,000/- and 17,00,000/- respectively in absence of any reason and availability of funds which have not been cashed and available on record of battagram Wildlife Division.

The appellant is exonerated from the charge (as endorsed by the inquiry report). No financial loss has occurred as cheques were signed to safeguard the life of appellant and his staff at stake. The procedural formalities to uncash the cheques were fulfilled in time.

- vii. That despite of excess payment of the contractor, you recommended additional payment of Rs.18,35,556/- in the total additional claim of 2,20,49,741/- made by contractor in his complaint against you in this regard.

The inquiry committee endorsed the fact in the report that the expenditure has been based on actual civil works done and the liability has been accommodated in the revised PC1.

- h) That no warning or counseling had been given to the appellants, hence impugned order is liable to be set aside.
- i) That the other points shall be urged at the time of arguments.

By keeping in view above exposition of facts, figures and record it is humbly prayed that impugned order undersigned the penalty of withholding of two increments for two years may be graciously set aside.

Dated: 17/10 /2018

Through

Nasir Khan

...APPELLANT

(NASIR KHAN JADOON)
Advocate High Court, Abbottabad

VERIFICATION:-

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

[Signature]
...APPELLANT

Inx⁴ P-48



Muhammad Shakeel

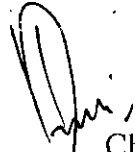
20.12.2018

Mr. Nasir Khan, Advocate for appellant present

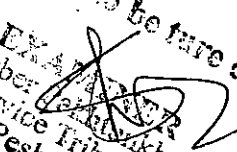
In the instant matter the impugned order of withholding of two annual increments for two years was awarded to the appellant on 17.09.2018, however, no departmental appeal was preferred there-against.

When confronted with the situation learned counsel for the appellant requested for remission of instant Service Appeal to the respondents/departmental appellate authority for considering and deciding the same as departmental appeal.

In view of the above the instant matter is remitted to the Appellate Authority for decision in accordance with law/rules within a period of 90 days. Needless to note that the Appellate Authority shall be at liberty to decide the question of delay, if any, involving in the matter. A copy of the appeal shall be retained by the office.


Chairman
Camp Court A/Abad

Announced:
20.12.2018

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 31-12-18
Number of Words 1200
Copying Fee 8
Urgent 2
Total 10
Name of Copyist [Signature]
Date of Completion of Copy 31-12-18
Date of Delivery of Copy 31-12-18

P-49
OFFICE OF THE DIVISIONAL FOREST OFFICER MALAKAND WILDLIFE DIVISION
BATKHELA.

To

Anx (i)

The Conservator Wildlife
Northern Circle Swat.


No. 849 /WLM

dated Batkhela the 2/01 /2019

Subject: DEPARTMENTAL APPEAL AGAINST ORDER NO.SO(Estt.) FE&WD/2-50(24)2006 DATED 17-09-2018.

Reference: The Order Sheet of honorable Service Tribunal announced dated: 20-12-2018

With reference to above cited order sheet of honorable Service Tribunal Khyber Pakhtunkhwa, kindly find here attached Departmental appeal of the undersigned for kind consideration and onward submission to quarter concerned.


Divisional Forest Officer
Malakand Wildlife Division
Batkhela

P-50

**BEFORE THE CHIEF MINISTER KHYBER PAKHTUNKHWA
(AUTHORITY)**

Through: PROPER CHANNEL

Subject: DEPARTMENTAL APPEAL

Reference: Government of Khyber Pakhtunkhwa environment Department No. SO(Estt;)/FE&WD/2-50(24)2006 dated Peshawar the 17th September, 2018.

BACKGROUND:

UNDER Rule 14(4)(b) of E&D Rules, 2011 the undersigned was provided reasonable opportunity and to submit as to why one or more penalties may not be imposed. The undersigned availed the chance to submit written reply (which is part of enquiry report).

Under the general analysis (See page 10 of enquiry report) most of the charges pertain to Mr. Muhammad Arif Ex-DFO Battagram and gross misconduct was noticed against Mr. Niaz Muhammad the then Range Officer Wildlife Battagram, whereas the undersigned was held responsible for some of the charges. The honorable Service Tribunal recommended for instant Service appeal/Departmental appellate authority for considering and deciding the same as departmental appeal (copy of order sheet attached).

The seriatim comments on the findings of the enquiry report are as follows:-

ALLEGATION I

- i. The undersigned is exonerated from the charge as de-notification of the already purchases land happened before my taking over of charge of Battagram Wildlife Division.
- ii. For the purchase of another land on higher rates than the PC-I provision the undersigned is held responsible of above payment from the PC-I and undersigned was compelled to do so (See page 4 under findings ii of the enquiry report) in good faith.
- iii. The undersigned is exonerated from the charge as the land was purchased before my taking over of charge of Battagram Wildlife Division and a separate enquiry has been proposed against dealing hands during specified period of time. It is worth to mention that all decision relating to purchase of land including imposition of Section 4 of Land Acquisition Act 1894, its denotification and notification of presently acquired piece of land happened before my taking over charge.

- iv. The undersigned is exonerated from the charge as denotification of Section 4 of Land Acquisition 1894 happened before my taking over of charge of Battagram Wildlife Division.

ALLEGATION II

- i. The undersigned is exonerated from the charge as all tender proceedings/bidding process was completed before my taking over of charge of Battagram Wildlife Division and my predecessor was held responsible for the charge framed in the finding of enquiry report.
- ii. The undersigned is exonerated from the charge as violation KPPRA Rules 2014 Section 42 was made by the then Range Officer Wildlife Battagram, before my taking over of charge of Battagram Wildlife Division and is held responsible by the enquiry committee in the report.
- iii. No excess payment has been made to the contractor and for the civil works pertaining to civil works of office cum residence construction on 3.5 million have paid against agreement deed of 4.00 million to follow the agreement in true spirit.
- iv. The liability has been created as result if inevitable retaining wall as denotified plot in plain (for which layout designs and estimates were made in the PC-I) and acquired land is undulating as endorsed by the enquiry report (See page 6 of enquiry report under discussion).

ALLEGATION III

- i. A sum of Rs 1744600/- has been provided in the revised PC-I 2017-18 (See page 7 of enquiry report).
- ii. Enquiry committee commented that extra work other than advertised, it should have advertised to meet the codal formalities (See page 7 of enquiry report). As per provision of KPPRA Rules 2014, under Rule 18(c)(i) for the construction of retaining wall the alternate method of direct contracting was followed, wherein civil works are contracted and are natural extension of an earlier or ongoing works.

ALLEGATION IV

The undersigned is exonerated from the charge as the dubious agreement was signed before my taking over of charge of Battagram Wildlife Division and my predecessor was held responsible for the charge framed in the enquiry report.

ALLEGATION V

Same as per allegation II

ALLEGATION VI

The undersigned is exonerated from the charge as the finding made by enquiry report (See page 9 of enquiry report under finding), no financial loss has occurred and the cheques were issued while seeking the lives of undersigned and staff at stake. The procedural formalities were fulfilled. Further stress of the matter would not be advisable.

ALLEGATION VII

The enquiry committee endorsed the fact (See page 10 of enquiry report under finding) that the expenditure has been based on the basis of actual work done and liability has been accommodated in the revised PC-I.

By keeping in view above exposition and the key facts as below:-

1. Neither breaking of law nor corruption has been committed by the undersigned.
2. Normally for execution of civil works consultants are hired as it has been provided under the same Umbrella Project **Biodiversity Conservation and Management in Hazara** in its revised version for 2017-18, a separate position for execution and fulfilling codal formalities for the civil works to be carried in Mansehra Wildlife Division. Contrary the undersigned single handedly performed difficult job estimates, maintenance of measurement books, layout plans, actual lay out on ground and verification of bill for quantum of civil works, so as to complete the building in the best interest of public service.
3. Financial transactions, measurement / quantum pertaining to civil works executed are immaculate and commendable.
4. Provisions for the extra work carried out in shape of liability have been provided in the revised PC-I for 2017-18.
5. No extra payment has been made than overall PC-I provisions.


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6. Wildlife Department have taken over the building since September 2015 with full fledge offices of the DFO Wildlife; record room, SDWO office, one room for the residence of DFO Wildlife Battagram, store, residential room for class IV and one room for ministerial staff and driver.
7. It is worth to mention that actual covered area constructed is 2486 sq feet as compared to PC-I target of 2000 sq feet.

It is humbly prayed that undersigned may be graciously exonerated from the penalty of **(Withholding of two increments for two years)**.

If my written request is not accepted I will like to be heard in person.

Dated: 02-01-2019


(MOHAMMAD SHAKEEL)
Deputy Conservator Wildlife
DFO Wildlife Malakand at Batkhela


P-54

7nx'J'

Receipt No. 02

Date 2/7/18

Wildlife Battagram

	<p>GOVERNMENT OF KHYBER PAKHTUNKHWA FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT</p> <p>NO.SO(Estt)/FE&WD/2-50 (24)/2006/PF / 331-34 Dated Peshawar the, 17th June, 2019</p>
---	--

To

Muhammad Shakeel,
Divisional Wildlife Officer,
Battagram Wildlife Division,
Battagram.

C/o

Chief Conservator Wildlife,
Khyber Pakhtunkhwa,
Peshawar.



Subject: - DEPARTMENTAL APPEAL AGAINST ORDER NO: SO (ESTT)/FE&WD/2-50 (24)/2006, DATED 17TH SEPTEMBER, 2018


I am directed to refer to your appeal dated 17th October, 2018 received through Registrar Khyber Pakhtunkhwa Service Tribunal alongwith judgment of the Tribunal dated 20th December, 2018 and to say that in compliance with the aforesaid judgment/directions of the Tribunal, your appeal/representation has been considered and rejected by the Appellate Authority.

(HAFIZ ABDUL JALIL)
SECTION OFFICER (ESTT)

Endst: No: & date even

Copy is forwarded for information to:-


1. Registrar Khyber Pakhtunkhwa Service Tribunal w/r to his letter No: quoted above.
2. Chief Conservator Wildlife, Khyber Pakhtunkhwa.
3. PS to Secretary, FE&W department, Khyber Pakhtunkhwa.


SECTION OFFICER (ESTT)

No. 94/10-11 M/L (E)

Dated Peshawar the 20/6/2019.


Copy forwarded to Conservator Wildlife Southern Circle, Peshawar and Divisional Forest Officer Wildlife Battagram for information and necessary action.


Chief Conservator Wildlife
Khyber Pakhtunkhwa
Peshawar

Receipt No. 18
Date 08/07/18
DFO Wildlife Battagram

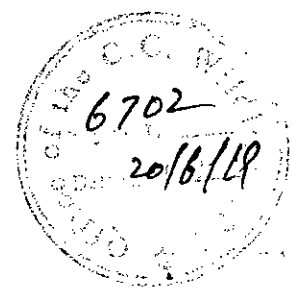
P-55

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	<p align="center">GOVERNMENT OF KHYBER PAKHTUNKHWA FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT</p> <p align="center">NO.SO(Estt)/FE&WD/2-50 (24)/2006/PF /331-34 Dated Peshawar the, 17th June, 2019</p>
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To
Muhammad Shakeel,
Divisional Wildlife Officer,
Battagram Wildlife Division,
Battagram.

C/o
Chief Conservator Wildlife,
Khyber Pakhtunkhwa,
Peshawar.



Subject: - DEPARTMENTAL APPEAL AGAINST ORDER NO: SO (ESTT)/FE&WD/2-50 (24)/2006, DATED 17TH SEPTEMBER, 2018

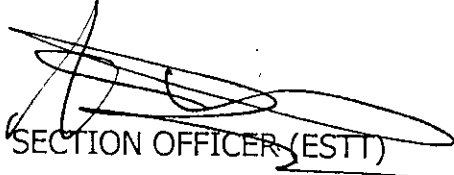
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(HAFIZ ABDUL JALIL)
SECTION OFFICER (ESTT)

Endst: No: & date even

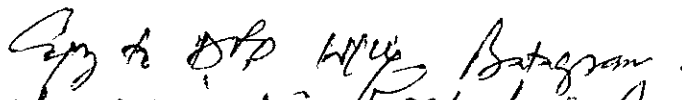
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1. Registrar Khyber Pakhtunkhwa Service Tribunal w/r to his letter No: quoted above.
2. Chief Conservator Wildlife, Khyber Pakhtunkhwa.
3. PS to Secretary, FE&W department, Khyber Pakhtunkhwa.


SECTION OFFICER (ESTT)

No. 94/10-11 WL (E) Dated Peshawar the 20/6/19 2019.

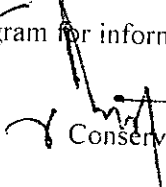
Copy forwarded to Conservator Wildlife Southern Circle, Peshawar and Divisional Forest Officer Wildlife Battagram for information and necessary action.


Chief Conservator Wildlife

No 15750 /WL(SC) dated Peshawar the 21/6 2019.

Copy forwarded to DFO Wildlife Battagram for information and necessary action.

Sum & File


Conservator Wildlife Southern Circle
Peshawar

9/7/19

DBA number 171
 BC No.

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 Name of Advocate محمد خان صدیقی

S.No 98108



SECRETARY
 District Bar Association
 Abbottabad

وکالت نامہ

بعدالت محمد شہباز
 عنوان: محمد شکیل بنام گورنمنٹ ان پبلک سروس
 منجانب: اسلام آباد نوعیت مقدمہ سروس ایبل
 باعث تحریر آنکہ صوبہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے بیروہ کی مدد جی ایس برائے پیشی یا تصفیہ مقدمہ بمقام اسٹریٹس ڈیپارٹمنٹ

محمد خان صدیقی

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بروقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیروہ کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ پکھری کے علاوہ کسی اور جگہ ساعت ہونے پر یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا بخاندہ کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ثالثی درامی نامہ و فیصلہ برحلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے بیرونجات از پکھری صدر اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از گرفتاری و اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا جنگی علیحدہ محتانہ بیروہ کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکور یا اس کے کسی جزو کی کارروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جانہ التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیروہ نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے کہ سند ہے۔
 مورخہ: / /
 دن ماہ سال
 مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Accepted

Desir

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

SERVICE APPEAL NO. 985/2019

1. Muhammad Shakeel, Divisional Forest Officer Wildlife, Kohistan Wildlife
Division Pattan Kohistan

..... APPELLANT

VERSUS

1. Govt Khyber Pakhtunkhwa, through Secretary Forest, Environment and
Wildlife Department at Civil Secretariat Peshawar

Chief Minister, Khyber Pakhtunkhwa Peshawar

..... RESPONDENTS

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action therefore, the instant service appeal is liable to be dismissed.
2. That the service appeal in hand is barred by law, hence not maintainable.
3. That the appellant is stopped by his own conduct to file the instant petition.
4. That the service appeal in hand is incompetent in its present form hence not maintainable.
5. That the appellant has committed non-joinder and mis-joinder of necessary parties, hence the appeal is liable to be dismissed.
6. That the appeal does not fulfill the criteria for service appeal as laid down in article 199 of the Constitution of Pakistan.

FACTS

1. Pertains to record hence no comments.
2. Pertains to record hence no comments.

3. Correct. Disciplinary action was taken against him under Khyber Pakhtunkhwa Civil Servants (E&D) Rules, 2011 on the allegations of purchase of land with huge cost instead of provision in PC-I
4. The reply was examined and found unsatisfactory by the enquiry committee and the petitioner was also provided the opportunity of personal hearing, however he could not defend and produce satisfactory evidence to the Inquiry Committee to counter the allegations leveled against him.
5. According to the findings of the Inquiry Committee, the charges were partially proved against him.
6. Keeping in view the findings of Inquiry Committee, the competent authority imposed the penalty of stoppage of two increments for a period of two years tentatively via show cause notice.
7. The reply of the Show Cause notice was considered and found unsatisfactory by the competent authority, besides, he was also given personal hearing in terms of Rules-15 of Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, however, he could not produce sufficient evidence to counter the allegations leveled against him.
8. After completion of all codal formalities as required under the rules, i.e. findings of the enquiry committee, hearing him in person by the competent authority, the minor penalty of stoppage of two increments for a period of 2 years was imposed by the Competent Authority, in terms of Rule 14(5) (ii) read with Rule-4(1) (a) (ii) of Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011 upon the petitioner. **[Annex-I(A) and Annex-I(B)]**
9. Instead of submitting departmental appeal to the Appellant Authority against the above penalty order as required under Rule-17 of Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, the appellant filed Service Appeal in the Khyber Pakhtunkhwa Service Tribunal. However, the Tribunal in its judgment dated 17.10.2018 directed the department to consider his Service Appeal as departmental appeal and decided the case accordingly. In compliance, his case was placed before the Appellant Authority, who considered and rejected his appeal being void of merit. **(Annex-II)**
10. **Correct.** As explained at para-9 above
11. As explained at Par-9 above.
12. As explained above.

GROUND

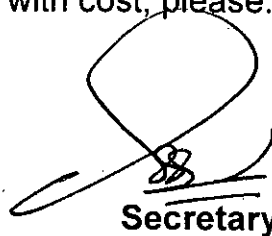
- a. **Incorrect:** As explained above.
- b. **Incorrect:** As explained above
- c. **Incorrect:** The appellant committed gross irregularities by incurring expenditure on purchase of 3 Kanal of land and construction of office cum residence of Divisional Forest Officer Wildlife Battagram in excess to the provision of the PC-I.

- d. **Incorrect:** The petitioner is not only DDO but also execution officer of a technical department in Battagram Wildlife Division and he himself violated the financial as well as administrative rules.
- e. Spending extra ordinary amount by the government does not absolve the appellant from his responsibility for financial control associated with his portfolio.
- f. **Incorrect:** The appellant squeezed the residence of Divisional Forest Officer Wildlife to inappropriate rooms on top of the office and that too with burden of high cost for the government. Moreover the boundary wall planned in the PC-I was totally compromised
- g. Avoiding the standards and creating liabilities for govt: cannot be covered for merely adding unauthorized 483 Square Feet covered area which itself is liable to impose major penalty upon the officer responsible for such acts (the appellant).

As explained above, the charges (i,ii, iii, iv, v, vi & vii) against the appellant were partially proved according to the findings of the inquiry committee and the appellant was provided opportunities of personal hearing by the Inquiry Committee and Appellate Authority as well before imposition of penalty, however, he could not counter the allegations leveled against him in the charge sheet, therefore, the Competent Authority in exercise of the powers conferred under Rule-4(1) (a) (ii) of Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011 imposed the penalty of stoppage of two increments for a period of 2 years. **(Annex-III)**

- h. The issue relates to execution and is not subject to warning and counseling as per laid down procedure.
- i. No Comments

In view of the above, it is humbly requested that the appeal of the appellant may kindly be dismissed with cost, please.



Secretary

Govt. of Khyber Pakhtunkhwa
Forestry, Environment & Wildlife Department Peshawar
(Respondent No.01)

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. **Duties of the departmental representative.**---The departmental representative shall perform the following duties, namely:

- (a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;
- (b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and
- (c) rebut the grounds of defence offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

14. ~~Order to be passed on receipt of report from the inquiry officer or inquiry committee.~~

(1) On receipt of report from the inquiry officer or inquiry committee, as the case may be, the competent authority, shall examine the report and the relevant case material and determine whether the inquiry has been conducted in accordance with the provisions of these rules.

(2) If the competent authority is satisfied that the inquiry has been conducted in accordance with the provisions of these rules, it shall further determine whether the charge or charges have been proved against the accused or not.

(3) Where the charge or charges have not been proved, the competent authority shall exonerate the accused by an order in writing, or it shall follow the procedure as given in sub-rule (6) of this rule.

(4) Where the charge or charges have been proved against the accused, the competent authority shall issue a show cause notice to the accused by which it shall-

- (a) inform him of the charges proved against him and the penalty or penalties proposed to be imposed upon him;
- (b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to

submit additional defence in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him; provided that the accused shall, in his reply to show cause notice, indicate as to whether he wants to be heard in person or not;

- (c) provide a copy of the inquiry report to the accused; and
- (d) direct the departmental representative to appear, with all the relevant record, on the date of hearing.

~~(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defence offered by the accused during personal hearing, by an order in writing-~~

- (i) exonerate the accused if charges have not been proved; or
- ~~(ii) impose any one or more of the penalties specified in rule 4 if charges have been proved.~~

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry through different inquiry officer or inquiry committee [7subject to sub-rule (7) of rule 11].

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing, the competent authority shall decide the case within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

15. Personal hearing.---The competent authority may, by an order in writing, call the accused and the departmental representative, alongwith relevant record of the case, to appear before him, for personal hearing on the fixed date and time.

⁷ Words inserted vide notification No.SO(Reg-VI)E&AD/2-6/2010 dated 18.7.2012

- (viii) ³Avoiding submission of Annual Confidential Report/ Performance Evaluation Report by a Government servant, or withholding such report by the Reporting Officer or the Countersigning Officer, as the case may be, within the required period as provided in the instructions issued by Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973, from time to time.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Province Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. **Grounds for proceedings**--- A Government servant shall be liable to be proceeded against under these rules if he is-

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his (retention) in service is prejudicial to national security; or
- (f) entered into ⁴voluntary return or plea bargaining under any law for the time being in force and has returned assets or gains acquired through corruption or corrupt practices voluntarily.

4. **Penalties**--- (1) The following are the minor and the major penalties, namely:-

(a) **Minor penalties**:-

(i) Censure;

(ii) withholding, for a specific period, promotion or increment, subject to a maximum of three years, otherwise than for

³ clause (viii) added notification No. SOR-VI/E&AD/2-6/2010 dated 26.05.2014

⁴ The words "voluntary return or" inserted vide notification No. SO(Policies)E&AD/2-6/2017 dated 07.12.2017

unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post.

Provided that the penalty of withholding of increments shall not be imposed on a Government servant who has reached the maximum of his pay scale.

- (iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order.

(b) Major penalties:-

- (i) ⁵Reduction to a lower post or pay scale or to a lower stage in a time scale for a maximum period of five years:

Provided that on restoration to original pay scale or post, the penalized Government servant will be placed below his erstwhile juniors promoted to higher post during subsistence of the period of penalty;

- (ii) compulsory retirement;
- (iii) removal from service; and
- (iv) dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.


(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. **Initiation of proceedings.**--- (1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

- (a) Proceed itself against the accused by issuing a show cause notice under rules-7 and, for reasons to be recorded in writing, dispense with inquiry;

5 Sub-Clause (i) substituted and inserted vide notification No.SO(Reg-VI)E&AD/2-6/2010 dated 18.7.2012

Annex - II 713

	<p>GOVERNMENT OF KHYBER PAKHTUNKHWA FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT</p> <p>NO.SO(Estt)/FE&WD/2-50 (24)/2006/PF / 331-34 Dated Peshawar the, 17th June, 2019</p>
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To
Muhammad Shakeel,
Divisional Wildlife Officer,
Battagram Wildlife Division,
Battagram.



C/o
Chief Conservator Wildlife,
Khyber Pakhtunkhwa,
Peshawar.

Subject: - DEPARTMENTAL APPEAL AGAINST ORDER NO: SO (ESTT)/FE&WD/2-50 (24)/2006, DATED 17TH SEPTEMBER, 2018


I am directed to refer to your appeal dated 17th October, 2018 received through Registrar Khyber Pakhtunkhwa Service Tribunal alongwith judgment of the Tribunal dated 20th December, 2018 and to say that in compliance with the aforesaid judgment/directions f the Tribunal, your appeal/representation has been considered and rejected by the Appellate Authority.

(HAFIZ ABDUL JALIL)
SECTION OFFICER (ESTT)

Endst: No: & date even

Copy is forwarded for information to:-

1. Registrar Khyber Pakhtunkhwa Service Tribunal w/r to his letter No: quoted above.
2. Chief Conservator Wildlife, Khyber Pakhtunkhwa.
3. PS to Secretary, FE&W department, Khyber Pakhtunkhwa.


SECTION OFFICER (ESTT)

Annex - III 20.9.18



GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

DATED PESH: 17TH SEPTEMBER, 2018

NOTIFICATION

No.SO(Estt)FE&WD/2-50(24)2006: WHEREAS, Muhammad Shakeel, Divisional Wildlife Officer (BPS-18), Wildlife Department Khyber Pakhtunkhwa was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations, served upon the said officer;

AND WHEREAS, the Enquiry Committee comprising Mr. Farhad Khan (PMS BS-19), Additional Secretary, Irrigation Department; and Mr. Sher Nawaz, Chief Conservator of Forests/Managing Director (BS-20), Forest Development Corporation was constituted to conduct inquiry against the said accused officer;

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

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

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused officer, and hearing him in person and exercising his powers under Rule-14(5)(ii) read with Rule 4(1)(a)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose a minor penalty of **"withholding of two annual increments for two years"**; upon Muhammad Shakeel, Divisional Wildlife Officer (BPS-18), Wildlife Department Khyber Pakhtunkhwa; with immediate effect.

CHIEF MINISTER,
KHYBER PAKHTUNKHWA

Endst: No.SO(Estt)FE&WD/2-50(24)/2006

Dated Pesh: 17TH Sept, 2018.

Copy is forwarded to:-

- 1) Chief Conservator Wildlife, Khyber Pakhtunkhwa, Peshawar.
- 2) Conservator Wildlife, Southern Circle, Peshawar.
- 3) Director Budget & Accounts Cell, Forestry, Environment & Wildlife Department.
- 4) Officer concerned C/O Chief Conservator Wildlife, Khyber Pakhtunkhwa, Peshawar.
- 5) Personal File of the Officer.
- 6) Master file.
- 7) Office order file.

(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT)