

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	02.02.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT SWAT.</u></p> <p style="text-align: center;">APPEAL NO. 474/2015</p> <p style="text-align: center;">(Hashim Khan-vs- Govt: of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>ABDUL LATIF, MEMBER:</u></p> <p>Appellant with counsel and Mr. Jan Alam, SDFO alongwith Mr. Muhammad Zubair, Sr. G.P for respondents present.</p> <p>2. The instant appeal has been filed by the appellant under Section-4 of KPK Service Tribunal Act, 1974 against the notification dated 31.12.2014, whereby the major penalty of reduction to lower post and recovery of Rs. 32,38,644/- has been imposed upon the appellant, against which the departmental appeal dated 22.01.2015 has not been responded so far. He has prayed that on acceptance of this appeal the impugned notification dated 31.12.2014, may please be set aside and the appellant may be restored to his original position with all arrears and benefits.</p> <p>3. Brief facts giving rise to the instant appeal are that the appellant was appointed in the respondent-department as Forest Ranger, during the course of his service the appellant got promotions and was lastly promoted as DFO (BPS-18). That in the year 2007, a PC-I titled "construction of Offices and residential</p>

D.F.I.

building in NWFP envisages purchase of 5 Kanal Land to DFO Bunir Office was launched during July 2007-June 2010. At the relevant time one Mr. Mir Wali Khan was holding the Charge of DFO Bunir since 2007 to 19.04.2010, but he could not purchase the land during his tenure. That the appellant was posted as DFO Bunir on 19.04.2010, soon after the posting of the appellant, he gave rapid attention to years long hanging issue and purchased 6 Kanal and 1 Marla Land in District Head Quarter Colony, Daggar, Bunir. To this effect the agreement deed with the owners and Forest Department was executed and sent to DOR & E/Collector Bunir dated 06.05.2010 with a request for signing and further processing. The said letter was endorsed to conservation Malakand and Chief Conservator Khyber Pakhtunkhwa. That no objection from any side was raised during the entire period and the payment was made to the owner at the rate of Rs, 11,12,000/- leveled against the approved rate of Rs. 14,00,000/- per Kanal. The land was transferred in the name of Provincial Government (Forest Department). That the predecessor of the appellant Mr. Wali Khan DFO was highly prejudiced against the appellant, he was posted as Monitoring Officer at Malakand. He floated a malafide monitoring report dated 01.02.2011 in respect of the subject land. That initially an inquiry was conducted by an Inquiry Committee comprising the Deputy Commissioner Swat and Deputy Commissioner Bunir, However the appellant was never associated with the inquiry. The inquiry Committee while submitting its report recommended the appellant for disciplinary action. That the appellant was served with charge sheet and statement of allegations dated 09.07.2014, for certain baseless and unfounded allegations regarding irregularities in the purchase of land etc. The

Q.F.1.

appellant duly replied the charge sheet and refuted the allegations leveled against him. That the appellant was served with show cause notice dated 20.10.2014, which he duly replied and refuted the allegations leveled against him. That thereafter without considering the defense reply of the appellant quit illegally the appellant was awarded the major penalty of "Reduction to Lower Post and recovery of Rs. 32,38,644" vide notification dated 31.12.2014. That the appellant preferred departmental appeal which was not responded, hence the instant present appeal.

4. Learned counsel for the appellant at the very outset diverted attention of the Tribunal to the letter dated 01.02.2011 written by the predecessor of the appellant to the high-ups of the department wherein he pin pointed discrepancies and short comings in the purchase of land for construction of office and residential building at Daggar in District Buner. He further argued that the complainant Officer was subsequently appointed a Member of the enquiry committee who conducted a formal enquiry in the charges leveled against the appellant and submitted report to the competent authority which resulted in the impugned order against the appellant. He further contended that the appellant had expressed his reservations against the said official of Forest Department who besides being Junior to the appellant was also a complainant in the instant case and conducted the proceedings with a biased mind. He further argued that the E&D Rules 2011 provide for transparent conduct of disciplinary proceedings, providing for cross examination of witnesses and conducting the enquiry in the prescribed manner which provisions were not complied with by the respondents and hence impugned order was

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D.F.

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violative of the law, rules and norms of natural justice. He further contended that version of defense provided by the appellant during the course of enquiry was totally ignored, the appellant was not provided opportunity of fair trial as guaranteed under the Article 10-A of the constitution and opportunity of personal hearing was not provided to the appellant hence ends of natural justice were not met in the process of the entire proceedings against the appellant which stands nullity in the eyes of law. He prayed that the impugned order being defective in law may be set aside and appellant may be restored to his original position with all back benefits. He relied on 2003 SCMR 104.

5. The learned Sr. GP resisted the appeal and argued that all codal formalities were duly complied with before passing of impugned order by the competent authority. He further contended that the appellant was fully associated with the enquiry proceedings, final show cause notice was served on him and opportunity of personal hearing was also allowed. He further contended that formal enquiry was conducted against the appellant where charges framed in the charge sheet were duly proved against him and competent authority took a lenient view by opposing a major penalty of reduction as compared to the major penalty of dismissal recommended by the enquiry committee. He prayed that the appeal being devoid of any merits may be dismissed.

6. We have heard arguments of the learned counsel for the parties and perused the record with their assistance.

7. From perusal of the record, it reveals that enquiry

committee comprised of one of the member who in the first instance sent a monitoring and evaluation report containing allegations of illegalities in the purchase of land and sustaining of losses to Government by the appellant. Record further reveals that witnesses which were required to be examined in the presence of the appellant were not so examined. Similarly the appellant was not provided opportunity of cross examination of witnesses against him nor was he given ample opportunity to produce witnesses in his support. The appellant tried to register his reservations against the partial conduct of one of the member of the enquiry committee and voiced his concerns in this regard both before the competent authority and the Peshawar High Court as well but could not succeed to prevail upon the authority for substitution of the enquiry committee.

DF-1

8. In view of the foregoing the Tribunal is of the considered view that full opportunity of defense was not provided to the appellant nor were the proceedings completely transparent in terms of Article 10-A of the Constitution as one of the member of the enquiry committee was complainant against the appellant and the charge comprised of the discrepancies raised by the officer in his monitoring report. Moreover, the said member of enquiry remained as predecessor incumbent of the post hold by the appellant and reservations of the appellant against his being biased could not be overlooked.

9. In the circumstances the Tribunal is constrained to interfere in the case, by setting aside the impugned order and to remit the case to the respondent-department with direction to

conduct *de-novo* enquiry against the appellant strictly in accordance with law and rules providing him full opportunity of defense and opportunity of personal hearing before passing of an order ^{by} the competent authority. The proceedings shall be completed in a period of sixty days after the receipt of this judgment. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record.


(MUHAMMAD AZIM KHAN AFRIDI)
CHAIRMAN


(ABDUL LATIF)
MEMBER

ANNOUNCED
02.02.2016

3.8.2015

Appellant in person and Mr. Jawad Mumtaz, SDFO along with Mr. Muhammad Zubair, Sr. G.P for respondents present. Requested for adjournment. To come up for written reply/comments on 5.10.2015 before S.B at Camp Court Swat.


Chairman
Camp Court Swat

5.10.2015

Appellant in person and Mr. Muhibullah, SDFO along with Mr. Muhammad Zubair, Sr. GP for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 9.12.2015 at Camp Court Swat. The restraint order dated 28.5.2015 shall continue.


Chairman
Camp Court Swat

9.12.2015

Appellant with counsel and Mr. Muhibullah, SDFO Daggar along with Mr. Amir Qadir, G.P for respondents present. Wakalat Nama submitted on behalf of the appellant. Due to non-availability of D.B arguments could not be heard. To come up for rejoinder before D.B and final hearing/on 2.2.2016 at Camp Court Swat. The restraint order shall continue.


Chairman
Camp Court Swat

28.05.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as DFO when subjected to enquiry on the ground of mis-managing the acquisition of land, not complying with the codal formalities and incurring loss to the Government Exchequer and vide impugned order dated 31.12.2014 reduced to the rank of SDFO and an amount of Rs. 32,38,644/- was also ordered to be recovered from him. That the appellant preferred departmental appeal against the said major penalty on 22.01.2015 which was not responded and hence the present service appeal on 15.05.2014.

That the appellant was falsely implicated in the proceedings as the predecessor-in-office namely Mir Wali, DFO had initiated the project and has delayed the same and that he was illegally made member of the enquiry committee and, furthermore, the appellant was wrongly attributed the role of incurring loss to the Government Exchequer and violation of codal formalities in acquisition of land.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 03.08.2015 before S.B at camp court Swat as the matter pertains to the territorial limits of Malakand Division. Notice of stay application be also issued for the date fixed. Till the next date of hearing recovery shall not be made from the appellant.


Chairman

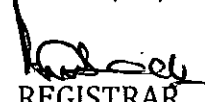


Appellant Deposited
Security & Process Fee



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 474 22015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	22.05.2015	<p>The appeal of Mr. Hashim Khan resubmitted today by Mr. Sajjid Amin Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-5-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

The appeal of Mr. Hashim Khan Divisional Forest Officer Malakand Forest Division Batkhela received to-day i.e. on 18.05.2015 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

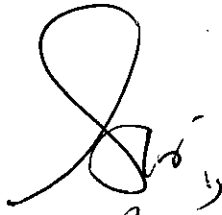
- 1- Copies of supported documents mentioned in para-11 of the memo of appeal (Annexure-K) are not attached with the appeal which may be placed on it.
- 2- Page Nos. 42 to 47, 51, 53, 55 to 59, 74 and 97 to 99 are miss presented which may be replaced by correct/legible one.


No. 746 /S.T,

Dt. 19/5 /2015

for

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ijaz Anwar Adv. Pesh.


Resubmitted

- ① That the documents have attached
- ② That the page have converted into
better copies. 

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 474 /2015

Hashim Khan Divisional Forest Officer, Malakand Forest
Division Batkhela.

(Appellant)

VERSUS



Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Civil Secretariat Peshawar and others.

(Respondents)

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Through


Appellant


IJAZ ANWAR
Advocate, Peshawar


SAJID AMIN

Advocate, Peshawar

1

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

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

Appeal No. 474 /2015

Hashim Khan Divisional Forest Officer, Malakand Forest
Division Batkhela.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to the Govt of Khyber Pakhtunkhwa Environment - Department Peshawar.
3. The Chief Conservator of Forests, Central Southern Forest Region I Khyber Pakhtunkhwa Peshawar.
4. The Chief Conservator of Forests, Malakand Forest Region-III, Shagai Saidu Sharif Swat.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Notification No. SO (Estt) Envnt/1-50 (87)/2k12: dated 31.12.2014, whereby the major penalty of Reduction to lower post and recovery of Rs. 32, 38, 644/- has been imposed upon the appellant, against which the departmental appeal dated 22.01.2015 has not been responded so far.

Filed to file
17/5/15
Registrar

PRAYER IN APPEAL:

On acceptance of this appeal the impugned Notification No. SO (Estt) Envnt/1-50 (87)/2k12: dated 31.12.2014, may please be set aside and the appellant may be restored to his original position with all arrears and benefits.

re-submitted to file
and filed:

17/5/15
Registrar

22/5/15 Respectfully Submitted:

1. That the appellant was initially appointed in the Respondent Department as Forest Ranger on 14.10.2014, during the course of his service the appellant got promotions and was lastly promoted as DFO BPS-18. It is pertinent ever since his appointment the

appellant has performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance.

2. That in the year 2007, a PC-I titled "**Construction of Offices and residential building in NWFP**" envisages purchase of 5 Kanal Land to DFO Buner Office was launched during July 2007- June 2010. At the relevant time one Mr. Mir Wali Khan was holding the Charge of DFO Buner since 2007 to 19.04.2010, but he could not purchased the land during his tenure.
3. That the appellant was posted as District Forest Officer Buner on 19.04.2010, soon after the posting of the appellant, he gave rapt attention to years long hanging issue and purchased 6 Kanal and 1 Marla Land in District Head Quarter Colony, Daggar, Buner. To this effect the agreement deed with the owners and Forest Department was executed and sent to DOR & E /Collector Buner vide Letter No. 3278/G dated 06.05.2010 with a request for signing and further processing. The said letter was endorsed to conservation Malakand and Chief Conservator Khyber Pakhtunkhwa.
4. That the then DOR & E/ Collectoer Buner Notified Section 4 under LA; Act 1984, clerly specified the area Khasrra N Muza Location and endorsed to all Revenue and Forest Department /High ups including Manager Govt. Printing Press Peshawar for publication.
5. That no objection from any side was raised during the entire period and the payment was made to the owner at the rate of Rs. 11,12,000/- leveled against the approved rate of Rs. 14,00,000/- P. Kanal. The land was transferred in the name of Provincial Government (Forest Department).
6. That the Predecessor of the appellant Mr. Wali Khan DFO was highly prejudiced against the appellant, he was posted as Monitoring Officer at Malakand. He floated a malafide monitoring report vide No. 225/VP dated 01.02.2011 in respect of the subject land. **(Copies of the Monitoring report and Reply to the Report is attached as Annexure A & B)**.
7. That initially an inquiry was conducted by an Inquiry Committee comprising the Deputy Commissioner Swat and Deputy Commissioner Buner, however the appellant was never associated with the inquiry. The inquiry Committee while submitting its report recommended the appellant for disciplinary action. **(Copy of the Inquiry Report is attached as Annexure C)**

8. That the appellant was served with charge Sheet and statement of allegations dated 09.07.2014, for certain baseless and unfounded allegations regarding irregularities in the Purchase of Land etc. The appellant duly replied the charge sheet and refuted the allegations leveled against him. *(Copies of the Charge Sheet, Statement of allegations and Reply to the Charge Sheet is attached as Annexure D & E)*
9. That an inquiry committee was constituted, it is pertinent to mention here that the inquiry committee so constituted also included the name of Mr. Wali Khan who was of equal grade to the appellant and on whose Complaint/ Monitoring Report the whole inquiry was established,. The appellant duly objected the inquiry committee and requested for its replacement vide Applications dated 04.08.2014 and 27.08.2014, but to no avail. *(Copies of the applications dated 04.08.2014 and 27.08.2014, are attached as Annexure F & G)*
10. That despite the objections of the appellant on the inquiry committee, the committee conducted the inquiry and submitted its report based on surmises and conjunctures wherein the appellant was recommended for major punishment. *(Copy of the Inquiry Report is attached as Annexure H)*
11. That the appellant was served with show cause notice dated 20.10.2014, which he duly replied and refuted the allegations leveled against him. *(Copies of the Show Cause Notice, Reply to the Show Cause Notice and Supportive documents are attached as Annexure I , J & K)*
12. That thereafter without considering the defence reply of the appellant quite illegally the appellant was awarded the appellant the major penalty of "**Reduction to Lower Post and recovery of Rs. 32,38,644**" vide Notification dated 31.12.2014. *(Copy of the Notification dated 31.12.2014, is attached as Annexure L)*
13. That aggrieved from the order dated 31.12.2014 the appellant submitted his departmental appeal on 22.01.2015 however the same has not been responded despite the lapse of 90 days statutory period. *(Copy of the departmental appeal is attached as Annexure M)*
14. That the impugned order is illegal, unlawful against the law and facts, hence liable to be set aside inter alia on the following grounds.

GROUND OF SERVICE APPEAL:

- A. That the appellant has not been treated in accordance with law his rights secured and guaranteed under law have been badly violated.
- B. That no proper procedure has been followed before awarding the penalty to the appellant. The appellant has not been properly associated with the inquiry proceedings. Moreover, statement of witnesses were never recorded in presence of the appellant nor he has been allowed the opportunity of cross examination hence, the whole proceedings are defective in the eyes of law and an order based on such defective proceedings is liable to be struck down on this score alone.
- C. That the appellant has not been given fair opportunity of personal hearing thus he has been condemned unheard.
- D. That the appellant has not been treated in accordance with law, he was not given proper, fair and meaningful opportunity to defend himself, thus he was greatly prejudiced in the enquiry proceedings. Moreover the detailed replies submitted by the appellant in his defence were also not considered before the imposition of major penalty upon him as such the entire proceedings conducted against the appellant as well as the order of penalty is violative of the well established and well settled Principles of Natural Justice.
- E. That the appellant was not provided with the copy of the inquiry report along with the show cause notice which is held mandatory by the superior courts in case of awarding major penalty.
- F. That the inquiry committee was not lawfully constituted as one of the members was of the equal grade to the appellant, moreover the said officer was also the Complainant/Reporter of the Monitoring Report on basis of which the whole proceedings were established against the appellant, the same is violative of the principle that no one should be judge in his own case.
- G. That the appellant took over the charge at Buner on 19.04.2010, replacing Mr. Mir Wali Khan (Member of the Inquiry Committee) which irked him and bitter blood was created, at the result of which he floated a biased monitoring report in respect of the subject plan. This biased monitoring report later on become base of the entire process ending at the imposition of illegally penalty of the appellant.

- H. That the procedural /financial irregularities are being determined /examined by the audit. The instant case has twice been passed through the audit process and the procedural/ financial procedure carried over by the appellant has been termed correct / satisfactory.
- I. That the inquiry conducted by DC Swat /Buner was initiated against one Tehsildar Hidayat Ullah and was unlawfully switched over to the appellant, kept aloof the appellant.
- J. That in one of the inquiries, the DOR Buner was held responsible for not following the procedure and a draft charge sheet was issued against him vide CCF-III Office No. 4297/E, dated 10.04.2014 but could not materialized as in the meantime he retired from service.
- K. That the entire chain of Forest Department i.e Forest Guard to Chief Conservator of Forests and Revenue Department i.e Patwari to DOR were on board in the process and each one has played his proportional role to his jurisdiction but only the appellant has been victimized and made escape goat
- L. That the enquiry Committee constituted comprise of Mr. Arshad Majeed DG/SDU bps-19 and Mr. Mir Wali Khan DFO BPS-18, the former was the reporting officer in the instant case and is of equal rank to the appellant who cannot conduct enquiry against the appellant under the E & D Rule 10 (a).
- M. That the appellant also made requests for the replacement of the inquiry Committee and showed his no confidence, however no heed was paid to the requests so made.
- N. That a Writ Petition dated No. 408/2014 against the inquiry Committee was filed by the appellant in the Honourable Peshawar High Court Bench at Swat, and the Honourable High Court vide order dated 01.09.2014, requisitioned the entire proceedings and verbally barred the member of the Committee (Mr. Mir Wali Khan) not to sign the report, however the chairman of the committee called the member to Peshawar and post hastily conducted the enquiry, disregarding the Court Orders. *(Copies of the Writ Petition, Order dated 29.08.2014 and letter dated 01.09.2014, are attached as Annexure N, O & P)*
- O. That the charges leveled against the appellant are false and baseless. Moreover, the same were never proved in the inquiry. The inquiry officer gave his findings on surmises and conjunctures.

- P. That in the inquiry report no recovery was recommended by the inquiry committee, however quite illegally while awarding the penalty of Reduction to Lower Post, vide the impugned order dated 31.12.2014, the appellant was also subjected to recovery of Rs. 32,38,644/-. While the Chief Conservator had in comments dated 23.04.2015, to the departmental appeal of the appellant, admitted that saving has been accrued to the Government by purchasing the Land @ Rs.11,12,000/- per Kanal against the approved rate of Rs. 14,00,000/-. *(Copies of the comments dated 23.04.2015, is attached as Annexure Q)*
- Q. That if at all the acquisition process was illegal or irregular the collector or the Provincial Govt. have conveniently disapproved the process and de notified the acquisition process but neither the higher authorities in the Environment Department nor the collector has even made any direction for the corrective measures if any, the mutations are still intact in each and every letter the higher authorities of the department of the appellant have been informed and all facts from time to time have been disclosed to them and everyone else but no objections what so ever have been raised which in fact amounts to admission of the process to be correct.
- R. That the entire proceedings against the appellant are based on malafide and to the detriment to the rights of the appellant hence cannot legally be justified.
- S. That during the inquiry statement of witnesses if any were never taken in the presence of appellant nor the appellant was provided opportunity to cross examine those who may have deposed against him. The charges leveled against the appellant were never proved against the appellant during the inquiry the inquiry committee gave its findings on surmises and conjunctures.
- T. That while awarding the penalty of reversion to the lower post no period has been specified for which the penalty could remained enforced as such the impugned order is passed in violation of FR-29.
- U. That the appellant has never committed any act or omission which could be termed as misconduct, he has performed his duties with zeal devotion and sincerity and have never violated any law / rules albeit he has been awarded the major punishment.

- V. That the appellant have a long and spotless service career at his credit. The penalty imposed upon him is too harsh and is a stigma on his bright and spotless service career.
- W. That the facts and grounds mentioned in the replies to the charge sheet, show cause notice and departmental appeal of the appellant may also be read as integral part of the instant appeal.
- X. That the appellant seeks the permission of this Honourable Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned Notification No. SO (Estt) Envt/1-50 (87)/2k12: dated 31.12.2014, may please be set aside and the appellant may be restored to his original position with all arrears and benefits.



Appellant

Through



IJAZ ANWAR
Advocate Peshawar
&



SAJID AMIN
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2015

Hashim Khan Divisional Forest Officer, Malakand Forest
Division Batkhela.

(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Civil Secretariat Peshawar and others.

(Respondents)

**Application for the suspension of the impugned
the Notification No. SO (Estt) Env/1-50
(87)/2k12: dated 31.12.2014, restraining the
respondents from affecting recovery from the
salary of the appellant till the decision of the
above noted Appeal**

Respectfully Submitted:

1. That the appellant has filed the titled appeal in this Honourable Tribunal in which no date of hearing is fixed so far.
2. That the facts and ground mentioned in the accompanied appeal may be read as integral part of this application.
3. That the applicant has got a good prima facie case and there is likelihood of it success.
4. That the applicant would be exposed to great hard ship and inconvenience in case the order is not suspended.

5. That it will also serve the interest of justice if the order impugned is suspended till the final decision of the appeal.

It is, therefore, prayed that on acceptance of this application the operation of the impugned the Notification No. SO (Estt) Evt/1-50 (87)/2k12: dated 31.12.2014, may please be suspended and the respondents may please be restrained from affecting recovery from the pay of the appellant till the final decision of the appeal.


Applicant

Through



IJAZ ANWAR
Advocate, Peshawar
&


SAJID AMIN
Advocate, Peshawar

AFFIDAVIT

I, Hashim Khan Divisional Forest Officer, Malakand Forest Division Batkhela, do hereby solemnly affirm and declare on oath that the contents of the titled appeal as well as application are true and correct to best of my knowledge and believe and that nothing has been kept back or concealed from this Honourable Tribunal.


DEPONENT

ATTESTED


15.05.2015
Mian Sibghat Ullah Shah
Advocate

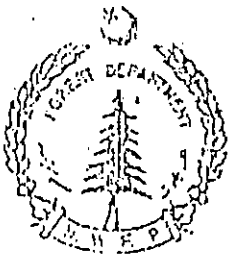
OATH COMMISSIONER
High Court Peshawar



10

ANNEX A²

GOVERNMENT OF NWFP
ENVIRONMENT DEPARTMENT



ADP No. 606

Scheme Code: 70609

PC-I

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

(REVISED)

Project Period July 2007-08 to 2009-10

(3 Years)

(Approved by DDWP = 6.11.2008)

NWFP FOREST DEPARTMENT

October, 2008

Handwritten signature and initials



PC-I (REVISED)

11

11/13
107

1. Name of the Project	Construction of office and residence buildings in NWFP (Upper Dir, Buner, Kabal and Booni of Malakand Circle. Scheme Code: 70609																																								
2. Location	<p>The building will be constructed on the following places as per detail below :</p> <table border="1"> <thead> <tr> <th>S.No.</th> <th>Name of Division</th> <th>Particulars of Building</th> <th>Location</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Lower Dir</td> <td>Boundary wall of the Forest Colony, Laram Rest House and DFO residence.</td> <td>Timergara Lower Dir</td> </tr> <tr> <td>2</td> <td>Upper Dir</td> <td>DFO office cum-Residences & Boundary Wall</td> <td>Dodbah Upper Dir</td> </tr> <tr> <td>3</td> <td>Buner</td> <td>-do-</td> <td>Swari Buner</td> </tr> <tr> <td>4</td> <td>Swat</td> <td>RFO office-cum-Residence.</td> <td>Kabal Swat</td> </tr> <tr> <td>5</td> <td>Chitral</td> <td>-do-</td> <td>Booni, Chitral.</td> </tr> </tbody> </table> <p>6. Construction of 8 Nos Ministerial Staff Quarters:</p> <table border="1"> <tbody> <tr> <td>i.</td> <td>DFO D/Upper</td> <td>Construction of 2 Nos Ministerial quarter</td> <td>Dodbah</td> </tr> <tr> <td>ii.</td> <td>DFO Buner</td> <td>--do-</td> <td>Buner</td> </tr> <tr> <td>iii.</td> <td>RFO Kabal (Swat)</td> <td>--do-</td> <td>Kabal</td> </tr> <tr> <td>iv.</td> <td>RFO Booni(DFO Chitral</td> <td>--do-</td> <td>Booni</td> </tr> </tbody> </table> <p>The location Map of the Project is available at Annex-I</p>	S.No.	Name of Division	Particulars of Building	Location	1	Lower Dir	Boundary wall of the Forest Colony, Laram Rest House and DFO residence.	Timergara Lower Dir	2	Upper Dir	DFO office cum-Residences & Boundary Wall	Dodbah Upper Dir	3	Buner	-do-	Swari Buner	4	Swat	RFO office-cum-Residence.	Kabal Swat	5	Chitral	-do-	Booni, Chitral.	i.	DFO D/Upper	Construction of 2 Nos Ministerial quarter	Dodbah	ii.	DFO Buner	--do-	Buner	iii.	RFO Kabal (Swat)	--do-	Kabal	iv.	RFO Booni(DFO Chitral	--do-	Booni
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iii.	RFO Kabal (Swat)	--do-	Kabal																																						
iv.	RFO Booni(DFO Chitral	--do-	Booni																																						
3. Authority responsible for : i. Sponsoring	Government of NWFP, through Provincial ADP																																								
ii. Execution	NWFP Forest Department, through CI Malakand and DFO Lower Dir, Upper Dir, Buner, Swat & Chitral Forest Divisions.																																								

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iii. Operation and Management

NWFP Forest Department, through DFO Lower Dir, Upper Dir, Huner, Swat & Chitral Forest Divisions & overall supervision of the Conservator of Forests Malakand Forest Circle.
Ministry of Environment, Government of Pakistan.

iv. Concerned Federal Ministry:

4. Plan provisions

a. Plan provision

i. If the project is included in the medium term/five year plan specify actual allocation.

Afforestation and Environmental rehabilitation are an integral part of the Five year's Development Plan priorities in the Environment Sector of Governments of Pakistan and NWFP. Hence the project forms part of the overall development priorities.
The project was included in the Annual Development Program (ADP) of NWFP Forest Department for the year, 2007-08 at the total cost of Rs.25.000 million, for a period of two years at S.No.758 with an allocation of Rs.10.000 million during the year, 2007-08.
Now the PC-I is being revised for a period of three (3) years with a total cost of Rs.39.635 million with an allocation of Rs.12.300 million for the year, 2008-09.

ii. If not included in current plan, what warrants its inclusion and how it is now proposed to be accommodated. Inter/intra-sectoral adjustments in allocation or other resources may be indicated.

The project has already been included in the development portfolio of Government of NWFP in the Forestry Sector with a total cost Rs.39.635 millions expanding over three year's period from 2007-08 to 2009-10. An allocation of Rs.12.300 millions has been made for the project during the financial year, 2008-09 in ADP vide S.No.606. The project is now being revised keeping in view the unprecedented rise in prevailing market rates. The PC-I stand approved (Item #5) by the DDWP in its meeting held on 6.11.2008 (Annex-XXIV).

iii. If the project is proposed to be financed out of block allocation for a program, indicate.

Necessary provisions for the project have been made in the Annual Development Program (ADP) of Forestry Sector. An amount of Rs.39.635 millions has been earmarked for this new project in the Forestry Sector with an allocation of Rs.12.300 million for the financial year, 2008-09.

iv. Provision in the current year PSDP/ADP

An allocation of Rs.12.300 million has been made for the project in the ADP of Forestry Sector during 2008-09 at S #606 with scheme code 70609.

5. Project Objectives and its relationship with other Sector objectives.

i. Sector Objectives

The overall objectives of the project are to contribute to the socio economic development of the local population, province and country and to improve the natural resource base and environmental conservation. To protect, conserve & develop the forestry and other allied natural resources in the Malakand Circle, in order to meet the demand of timber, firewood and wood based industries.

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Range stop

ii. Project objectives

- i. For safety/better protection of the Govt. servants residing at the Forestry colony at Lower Dir (Timergara).
- ii To provide office-cum Residential Buildings for the newly created Forest Division at Upper Dir, for better supervision, protection and conservation of the forest resources in the area.
- iii. To provide office-cum-Residential building for DFO, Buner Forest Division, who's office is presently working in a rented buildings. For better protection and conservation of the Forest resources in the area.
- iv To provide office-cum-residential building for the RFO's & their staff, of two newly created ranges at Kabal (Swat) and Booni (Chitral), for better protection and conservation of the Forest resources in the area.

iii. Long Term Objectives.

The long terms objectives of the project to provide better environment, safe accommodation and good atmosphere to the staff to work in the area, so that the available forest resources can be better secured & protected by close watch and ward and to provide the sustainable source of income to the national exchequer and have balanced bio diversity in the area.

6. Description, justification, technical parameters and technology transfer aspects.

a. DESCRIPTION.

- i). The Forest Colony of former Dir Forest Division is located far away from the urban area, but without any boundary wall, due to which the life of the Govt. servants residing in the colony is always at stake. Therefore, it was felt to construct a boundary wall around the Forest colony in the Lower Dir Forest Division.
- ii). In the past the area under the administrative control of the Former DFO Dir, stationed at Timergara, was very large and it was very difficult to control it effectively, therefore the Govt. of NWFP divided/bifurcated the jurisdiction of the district in two independent forest Divisions came into being and an independent office of the DFO, Upper Dir along with ministerial staff was established, with head quarter at Dodbah (Dir) vide Govt. of NWFP Environment Department notification No. SO(Est)Env/2k3/6309 dated 20.8.2003.
- iii). The Buner Forest Division has been created since long, but the DFO and his staff are still working in the rented building. Therefore, it has been considered feasible to construct an independent office for the DFO Buner and his staff at Swari (Buner). Land measuring five Kanals @ Rs. 1.4 million per Kanal will be purchased at Swari, for construction of office-cum residence for the DFO Buner and Two (?) Nos. Ministerial

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quarters for Forester and F/Guards;

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

h. JUSTIFICATION.

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

Rate as per Original PC-1

#No.	Particulars of activities	Unit	PC-1 target	Unit cost	Total cost
1	Const. of boundary walls	RN	2133	800	1,706
2	Const. of Residence (DFO) U/Dir	SN	2500	800	2,000
3	Const. of office cum-Residence (DFO) U/Dir at Dodbah	SN	5184	900	4,666
4	Const. of office cum-Residence (DFO) Buner at Swari	SN	5184	800	4,144
5	Const. of office cum-Residence for RFO Kabal Swat	SN	2234	800	1,784
6	Const. of office cum-Residence for RFO Booni Chitral.	SN	2234	1000	2,230
7	Const. of 8 ministerial staff quarters at:				
	Upper Dir	SN	2080	900	1,870
	Booni	SN	2080	1000	2,080
	Swat	SN	2080	800	1,660
	Buner	SN	2080	800	1,640
8	Miscellaneous/others	LS	LS	LS	0,200
	Total.				25,000

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

b-i Justification for Revision.

Therefore, keeping in view the unavoidable circumstances arised, due to sky rocketing market prices the NWFP Forest Department decided to get revised the PC-1, which will help to start the physical works immediately. The new proposed per unit rates are based on the schedule rates of works and services department adding 75% premium to chase and match the current market rates. The new proposed rates for above mentioned construction works are :-

8. Construction of office cum Residence Kabal (Swat) 2,904

# No.	Particulars of activities	Unit	PC-I target	Unit cost	Total cost
1.	Const: of boundary walls L/Dir	Rft	2395	1056	2,528
2.	Const: Boundary walls (DFO Upper Dir)	Rft	995	1267	1,260
3.	Const: of office cum Residence (DFO u?Dir) at Dodbah	Sft	4130	1400	5,782
4.	Const: of office Cum Residence (DFO Bunder at ASwari)	Sft	4130	1300	5,369
5.	Const: of office cum Residence for FRO Booni Chitral.	Sft	2234	1500	3,351
6.	Purchase of land for Bunder	Kanal	5	1.4	7,000
7.	Constr: of office cum Residence for FRO Kabal (Swat).	Sft	2234	300	2,904
8.	Const: of 8 ministerial staff Quarters	Sft	8320		11,44
	Total				39,635

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

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

C.PROJECT ACTIVITIES (Technical parameters).

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

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

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

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

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

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

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

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

vi. Boundry wall of DFO office- cum-residence Dir:Upper

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

vii) Purchase of Land.

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

Capital cost estimates.

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

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

S.No.	Particulars.	Unit (Revised)	PC-I Target (Revised)	Unit cost (Revised)	Total cost (Revised)
1	Construction of Boundary wall-Lower Dir.	Rft	2395	1056	2,5288
2	Construction of office-cum-Residence for DFO Dir Upper at Dodbal	Sft	4130	1400	5,782
3	Construction of office-cum-Residence for DFO Buner at Swari (Buner).	Sft	4130	1300	5,369
4	Construction of office-cum-Residence for RFO Kabal (Swat).	Sft	2234	1300	2,904
5	Construction of office-cum-Residence for RFO Booni (Chitral).	Sft	2234	1500	3,351
6	Construction of 8 ministerial staff quarters at:				
	i. Upper Dir.	Sft	2080	1400	2,912
	ii. Booni (Chitral).	Sft	2080	1500	3,120
	iii. Kabal (Swat)	Sft	2080	1300	2,704
	iv. Swari (Buner).	Sft	2080	1300	2,704
7	Purchased of land for DFO Buner	Kanal	5 Kanal	1.4	7,000
8	Boundary walls at Dodbal DFO office/cum-residence	Rft	995	267	1,260
	Grand total (Rs.in million).			G.Total	39.635

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

8. Annual Operating and Maintenance cost on the project.

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

b. Fixed and variable cost be provided separately.

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

9. Demand and supply

N.A.

10.(a) Financial plan & (b) Mode of funding.

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

11. Project benefits and analysis

a). Financial.

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

<p>b). Economic life of component of project.</p> <p>c). Social Benefits with indicators.</p> <p>d). Employment generation (direct & indirect)</p> <p>e). Environmental impact.</p> <p>f). Impact of delay on project cost and viability.</p>	<p>Building = 50 years. Equipments. = 15 years.</p> <p>The capacity of Govt. servants, in social, technical management and inter personal skills will be improved. This will enhance their self-confidence and their income earning abilities by providing job opportunities at their door step.</p> <p>This is a labor intensive project and will provide numerous employment generation opportunities in the area. It is however, hoped that a sizeable job opportunities will be provided to the local communities, in the project's construction sites.</p> <p>The construction of building would not lead to any negative environmental effect, but will increase the scenic beauty of the area.</p> <ul style="list-style-type: none"> - The cost of the project will go up due to inflation. - The likely impact of delay will be only increase the cost overlay, but will also result in loss of confidence over the implementers.
<p>12. Implementation Schedule (indicate starting and completion dates of the project.)</p>	<p>The project duration will be 36 months from the dates of its start. It was expected that the project will be approved on priority basis and will start from July, 2007, but the approved rates were far below the prevailing market rate and the PC-I was get revised. The year, 2007-08 will be carry over to 2008-09 and up-to 6/2010 it could be completed.</p> <ul style="list-style-type: none"> - July 2007 to June 2010 (36 months). In case of late start, the end dates will be accordingly changed. - Annual phasing of the achievement of project targets is given in the Annexure-I&II
<p>13. Mgt. structure and manpower requirements including Specialized Skills during construction and operational phases.</p>	<ul style="list-style-type: none"> - The project will be implemented by the DFO's of the concerned Forest Divisions, under the supervision of the Conservator of Forests Malakand Circle, who will also work as the PD of the project and look after/monitor the project activities on regularly basis. - The Assistant Forest Engineer of Head office, Peshawar will be assigned the monitoring role of the construction works of the project at different sites. - The P&M directorate will carry out external monitoring on quarter basis, years basis, as per their mandate.
<p>14. Additional Projects/Decisions required to maximize socio economic benefits from the proposed project.</p> <p>14.(b) Justification for Enhancement of Rates.</p>	<p>The people of the area in particular and staff of the government is general will be benefited from the project.</p> <p>Due to high priced market and current inflation as well as instruction for revision of the PC-I vide the Conservator of Forests Malakand Circle Mingora office letter No. 8439-</p>

10/P&D, dated 25/3/2008, the financial target/annual phasing are revised in accordance with the prevailing market rates. The schedule of Works Deptt: with addition of 75% premium allowed for various zones i.e. Buner and Swat (zone-3), Dir Lower/Upper Dir (Zone-4) and Chitral (zone-5) with regard to unit cost of Rs. 1300/- (zone-3), Rs. 1400/- (zone-4) and Rs. 1500/- (zone-5) respectively has been followed. As per Special DDWP meeting held on 1-1-6-2008, certain observation has been made endorsed vide DFO P&D Peshawar vide No. 2902/P&D dated 2-1/6/2008 which was endorsed by CF Malakand vide No. 63-67/G, dated 3/7/2008 and all the observation have been settled vide this office letter No. 508/G, dated 30.8.2008. Annexure-XV(1-8).

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

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

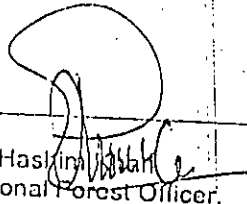
The PC-I was again put up in DDWP dated 6-11-2008 and got approved with the condition that land under possession of Buner Watershed will be acquired for of DFO Buner Office cum Residence and ministerial quarters. However in case of any problem, the DFO Buner will go for purchase of land as a second option.

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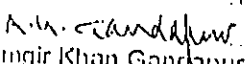


16. Certificate. Certified that, the project proposal has been prepared as per guidance provided by the Planning Commission, for the preparation of PC-I for Environment Sector.

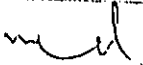
Prepared by:


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

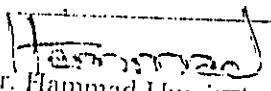
Checked by:


Mr. Alamgir Khan Gandapur
Conservator of Forest,
Malakand Circle, Mingora,
Phone # 0946-9240281

Countersigned by:


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

Approved by:


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

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Buner *2011*

ANNEX A

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

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

No. /WP-VI, dated Shagai the 01/02 2011.

Subject: MONITORING AND EVALUATION OF THE ACTIVITIES OF BUNER FOREST DIVISION

Memo:

The undersigned accompanied the monitoring team to Buner on 14.12.2010 and visited the land purchased by DFO Buner for the construction of Divisional office and residential buildings etc.

The team evaluated the following main aspects:

1. Location of the land in respect of the PC-1 prescriptions and its accessibility.
2. Price of the land in respect of the one year average cost record of the Revenue department of Buner district, regarding the same period and location.
3. PC-1 provision in respect of location of the land.
4. Comparison of the price of the land, paid by the DFO Buner with the one year average price of the Revenue department, called "Yaksaia".
5. Map of the building as applied in the construction of the office building.
6. Procedure adopted by the DFO Buner for the purchase of land.

During the detailed monitoring and evaluation, the team noted the following discrepancies/short comings.

1. Location

The land has been purchased at mauza Daggar in utter violation of the PC-1 provision. The PC-1 allows purchase of land at Swari only, which is the main market of District Buner. The purchased land has no approach road and is situated far away from the limits of the Bazaar.

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2. Price of the land

It is important to mention here that the price of the land of Swari due to its nearest to the main bazaar is at least ten times more costly as compared to the land situated at other areas in district Buner. The PC-1 provision of Rs. Seventy lacs in the PC-1 for the purchase of five kanal or Rs. fourteen lacs per kanal was estimated including the expected inflation, for two years for the land of Swari area only.

But the DFO Buner purchased land, in violation of the PC-1 prescription at mauza Daggar at the rate of Rs.1112000/- where the per kanal cost was fixed as Rs.255014/- vide case No.4 dated 05.10.2010 (regarding the acquisition of seventy kanal and two marla land at mauza Daggar, for the Police line Daggar) in the court of District Officer Revenue and estate/collector Buner, decided dated 05.10.2010 (photo copy attached)

It is pointed out that the Police department has acquired 70-kanal and two marla land at mauza Daggar during the year 2010 at the rate of Rs.255014/- per kanal and the

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Forest department has purchased 6-kanal and one marla land at the same location at mauza Daggar, during the same year 2010, at the rate of Rs.1112000/- per kanal.

The per kanal difference, in the cost of land purchased at the same location and during the same year, by the Forest department and the Police department Buner is Rs.856986/-. It means that the DFO Buner has paid more amount of Rs.856986/- per kanal as compared to the Police department, for the land situated at the same area and during the same year.

Here it is crystal clear that in the process of purchase of six kanal and one marla land by the DFO Buner, the Forest department has sustained the loss of Rs.5184765/-.

3. Map of the office building

The map is extremely substandard. The office building has only two rooms. The rest of the office building consists of Jirga hall like structure.

It smells that for the justification of cost of the building, only the target of the covered area has been tried to be achieved, irrespective of having any regard for the provision of accommodation and other related facilities to the staff.

4. Procedure adopted for the purchase of land

The DFO Buner violated all the procedures meant for the purchase/acquiring of Government land. Instead of acquisition of the land and making of payment through Revenue department, the DFO Buner conducted direct deal with the land owners and made direct payment to the owners. Due to this blunder, the Environment Department of Khyber Pakhtunkhwa sustained a huge loss of Rs.5184765/- in the purchase of only six kanal and one marla land.

The detail of the direct payment to the land owners is as under:

S.No.	Name of the owner	Amount	Cheque No. & date
1.	Sahib Gul S/O Sanab Gul of Daggar	Rs.5782400/-	246776 dt:24.05.2010
2.	Ihsanullah S/O Nasib Gul of Daggar	Rs.945200/-	246777 dt:24.05.2010

Photo copy of the DFO Buner letter No.1481/G dated 12.11.2010, addressed to the DFO Working Plan Unit-VI Swat, having the above detail is attached.

The purchase of the land does not seem to be fair and transparent. Therefore, it needs further investigations to fix the responsibility for the huge Government losses.

Divisional Forest Officer,
Working Plan Unit-VI Swat

No. 256 /WP-VI.

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

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

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ANNEX: B

OFFICE OF THE
DIVISIONAL FOREST OFFICER,
LOWER DIR FOREST DIVISION,
TIMERGARA

No. 1996 /Acctt: Dated Timergara the 18/3 /2011

To

The Divisional Forest Officer,
Buner Forest Division,
Sowaral.

Subject: MONITORING AND EVALUATION OF THE ACTIVITIES OF BUNER FOREST DIVISION.

Memo: Reference to DFO Working Plan Unit VI Swat laetter No.255/WP-VI dated 1/2/2011 addressed to CF/FP&M Peshawar.

A- General.

A PC-I title "Construction of DFO Office & Residential Buildings in NWFP" envisages purchase of 5 Kanals land for DFO Buner office was launched during 2007-08 to 2009-10. The then DFO Buner was holding the post continuously in the mentioned period, abysmally flopped to accomplish the task resultantly he was transferred from Buner on 19/4/2010 followed by the undersigned.

The undersigned gave rash attention and made splendid triumph by purchasing an ideal commercial plot in the heart of Buner Tehsil Colony below the marked rate.

B- Parawise comments.

1) Location:- the purchase of 5 Kanal land worth 7 million cost envisages in the PC-I was incorporated with refrence to the then DFO Buner office No. 423/G, dated 21/8/2008 and No. 460/G, dated 28/8/2008 (See Annex: I & II) without mentioning location of the land.

ii) All the Districts head offices including Bank, Post office etc are located in Daggar which is the most proper place for DFO Office to have an easy interaction with other officers and public convenience.

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iii) After choosing the site, the CCF and CF Malakand visited the site on 27/4/2010 and 11/5/2010 respectively and welcomed the achievements. The CF Malakand also visited the two other marshy, damp and unaccessible sites which were already selected by the then DFO at rate higher than the market but the owners had backed out due to the reasons best known to the then DFO Buner.

2) Price of land.

i) The then DFO Buner vide his letter No. 367/G, dated 5/8/2008 (See Annex:iii) had fixed Rs. 15,00,000/- Kanal for alleged defalcation which was dis-honoured in DDWP meeting.

ii) Later on the then DFO Buner reduced the rates i.e. Rs. 14,00,000/- Kanal vide his No.423/G, dated 21/8/2008, 460/G, 28/8/2008 without taking required certificate from DOR.

iii) The then DFO Buner had settled price of the following three unapt sites (See Annex: iv-v) :-

S.No.	Name	Location	Rate
1.	Ashtar Khan s/o Ghulam Habib r/o Swarai.	Toorgat	Rs.11,30,000/- Per Kanal
2.	Mukarram Khan c/o Farooq Khan s/o Nadir Khan r/o Rega.	Sunigram	Rs.11,60,000/- Per Kanal
3.	Tajay r/o Toor warsak.	Asham Sar Daggar	Rs. 12,00,000/- Per Kanal

But due to the reason best known to him, the owners backed out, while the subject unmatching and ideal land was purchased @ Rs. 11,12,000/-per kanal with the consent of CCF & CF Malakand who were apprised before transaction took place.

iv) As per charsala (See Annex:vi) the subject land is situated in commercial area of Daggar Tehsil Colony and land in the same Muzza during 2005 has been sold @ Rs. 14,00,000/- per kanal.

v) The Police department has purchased the land through compulsory land acquisition mechanism whereas the price is being fixed by the Government. But the subject land has been purchased through private negotiation for behind the market rate.

vi) The then DFO Buner has settled rates i.e. Rs. 11,30,000/- & 11,60,000/- per kanal for marshy, damp and unaccessible sites (See Annex: iv-v).

vii) The CCF and CF Malakand had acceded with the rate settled with owners during their visit to the site dated 7/4/2010 and 11/5/2010.

(26) (31)

3) MAP

- i) The then DFO Buner unlike other DFOs had not reported/submitted any specified map to the author of the PC-I, which he should explain.
- ii) An exemplary and beautiful map was designed within the PC-I provision of 2085 Sft covered area with the help of private Architecture .
- iii) The four (4) rooms are more than sufficient for the available staff.
- iv) The big room can accommodate maximum visitors/jirgas members avoiding congestion/obstructions. Two or more clerks can also jointly use one room having easy personal communication and easy installation of equipments/furniture.

4) Procedure adopted for purchase of land.

The PC-I title "Construction of DFO Offices & Residential Buildings in NWFP" was launched since 2007-08 to 2009-10 during the entire period, one Mr. Mir Wali Khan was holding post of DFO Buner but he did not succeed to purchase the land using bluff-fluff delaying tactics. The undersigned replaced him, took over charge of Buner on 19/4/2010. The CF Malakand and CCF directed the undersigned in strong words to accomplish the task in short time. They repeatedly mounted pressure and finally was warned by CF that if could not do so, he (undersigned) will be charge sheeted. So the undersigned directed the SDFO Daggar to fully concentrate over this years long hanging issue. For land acquisition, the following two procedure exist:-

- 1- Compulsory land acquisition.
- 2- Private negotiations.

The procedure vide S.No.2 was followed already furnished by DOR Buner vide No. 283/2/9/HCR dated 14/2/2010 (Copy Annex:vii page 1-16) as under :-

- i) Under taking on stamp paper.
- ii) Notifying sec: 4
- iii) Payment to owners
- iv) Transfer of land.

The detail procedure for payment is :-

- i) By Direct payment
- ii) By order on a treasury
- iii) By money order
- iv) By cheque
- v) By deposit in a treasury

"Payment should always be so made if possible to save the recipients from unnecessary attendance"

The CCF stressed hard to report payment with in 3 days positively but the DOR excused to finalize the process upto 30/6/2010 because of one month compulsory waiting period after notifying sec:4 during 5/2010. During this one month period any claimant can record his claim. Due to shortage of time, the lone hobsons choice suggested by DOR during a meeting dated 20/5/2010 was to go for direct payment under the laid down procedure in vogue like other department. Hence direct payment was made to the owners with intimation to DOR vide No.2455/G, dated 24/5/2010. (Annex: viii) The CF Malakand and CCF exulted and extolled the undersigned. Worth no tingly, all the transactions have been made through Accountant and incharge SDFO Daggar, having no direct personnel contact by the undersigned with the owners.

5) Causes/Facts.

The sitting DFO Working Plan Unit VI was holding the post of DFO Buner since 2007 followed by the undersigned on 19/4/2010 which made him sulky. Then after the CF Malakand constituted checking committee vide office order No.79 dated 26/5/2010 in light of CCF endst: No.3649-53 dated 6/5/2010. The then DFO phonically threatened the undersigned by facilitating the enquiry against him will leave no option for him but to damage him (undersigned). He further added that he is on the verge of promotion and know all about the CCF & CF And Can Go To The Last Extent Against Them.

After ward the undersigned look down a letter No.3507/G, dated 19/5/2010 (See Annex:ix) in the light of unprecedented prevailing situation which further flared-up him and after furnishing the monitoring report told the undersigned that he has taken his revenge as black lash of foresaid letter. The responsibility of monitoring team is to judge the extent of the area in light of PC-I earmarked cost while assessment of adopted procedure and mode of payment is audit matter.

EPITOME

The report is prejudice, bias, an attempt to blink the facts and to erode the land mark achievements of gigantic task with consummate dedication by the undersigned. The Reporting Officer has furnished a fabricated and tabulons statement and use monitoring as a "tool" for vandita to tarnish the unblemish outstanding performance of the undersigned. The report gives an expression of his personnel grudges/differences, liable to be precluded. Therefore an impartial, fair and square monitoring may kindly be conducted by any DFO except Unit VI please.

Divisional Forest Officer,
Lower Dir Forest Division,
Timergara.

(27) APPROVED C
INQUIRY REPORT

BRIEF FACTS OF THE CASE:

From perusal and examination of materials on record, facts of the case are as under:-

1. That without the approval of the Administrative Secretary Forest Department, DFO Buner vide his letter No. 3278/G, dated 06/05/2010 addressed to the Ex-DOR Buner contended that he intends to acquire / purchase of land 06 Kanal 01 Marla in the vicinity of Daggar for the purpose, "Construction of DFO office-cum-Residence and Staff quarters". Further that he has settled the price of the land with owners through private negotiation. Accordingly he enclosed copies of draft Notification U/S 4 of L.A.A, 1894 alongwith copy of Fard Intekhab Jamabandi and original agreement deed dated 04/05/2010 executed on stamp paper duly signed by DFO Buner and the land owners with marginal witnesses without consultation of Committee on the determination of rate of the land as required under LAC 1894 for private negotiations. At the same time it was requested that the Notification U/S 4 be issued and proceedings initiated for acquisition of land. The Ex-DOR Buner issued Notification U/S 4 the same day vide his office Endst: No. 1045-51/G, dated 06/05/2010. A copy of the letter of request of DFO concerned, Agreement Deed, Fard Intekhab Jamabandi and Notification U/S 4 are attached as (Annex: "A"), (Annex: "A-1"), (Annex: "A-2") and (Annex: "A-3") respectively. Interestingly the DFO concerned had not kept the Revenue Department in picture in the acquisition process and initiated everything on his own.
2. The rate of the land as per the agreement deed (Annex: "A-1") arrived at between the DFO Buner and the land owners was Rs. 55,600/- per Marla (i.e Rs. 11,12,000/- per Kanal). Further that as per other conditions of the agreement, the DFO Buner being representative of the Acquiring Department was bound to make payment to the land owners through Ex-DOR Buner. Though the procedure adopted by the DFO concerned for acquisition of land through private was illegal and not in consonance of the laid down procedure per Notification No. Rev: V/4/2006/Notification/LA/10973, dated 17/08/2006 of the Provincial Government, yet the DFO concerned at his own risk and cause made direct payment to the owners concerned in violation of the said agreement deed as well. Again the DFO concerned made the direct payment of land compensation to the owners keeping everyone in dark and bypassing the Revenue Department.
3. That subsequent to the direct payment to the owners, the DFO concerned paid an amount of Rs. 2,69,604/- to the Tehsildar Daggar through cheque on account of 04 % TMA charges etc for transfer of the acquired land 06 Kanal 01 Marla to the Provincial Government vide his letter No. 3481/G, dated 25/05/2010 (Annex: "B"). The Tehsildar concerned being Revenue Officer was bound legally as per the provisions of Section 42 of Land Revenue Act to attest the Mutations on presentation of the documents and payment of mutation fee etc. Accordingly he mutated the land 06 Kanal 01 Marla through two mutation No. 3808 & 3809 dated 26/05/2010 for 05 Kanal 04 Marla and 17 Marla (Annex: "B-1") and (Annex: "B-2") correctly in favour of the Forest Department, i.e. Provincial Government.
4. The Ausat Yaksala for 7/2009 to 4/2010 available on record is dubious as it is not for the critical period and is not signed by the RO concerned (Annex: "C"). According to which rate of the land per Kanal (in general) has been shown as Rs. 14,54,000/- while the land under acquisition per report given on the face of it, has been stated as commercial with the rate as Rs. 11,50,000/- per Kanal. The Ausat Yaksala is fabricated and miscalculated one, as the total of mutations money is coming to Rs. 47,00,000/- and the same has been shown as Rs. 37,00,000/-. Similarly the rate per Kanal has been shown as Rs. 14,54,000/- instead of Rs. 5,76,687/- while the rate of the land per Kanal on the basis of miscalculated total is coming to Rs. 4,53,988/-. The Ausat Yaksala might have been tampered with a view of its being used as instrument for reasonability of the rate of the land. But the said Ausat Yaksala was of no use to the DFO concerned as he had ignored the standing Law, Rules and instructions of the Provincial Government in the matter of private purchase of the land through private negotiator. He had even made the payment of compensation direct to the owners on his own risk.

bypassing the District Collector, Buner. The Ausat Yaksala though suffered from drawbacks but it does not make any difference on the part of Revenue Department as the same has been obtained un-officially and without any signature of the Revenue Officer, rather it would have been corrected if the proceedings were conducted through the proper forum / purchase Committee in light of the standing Law, Rules and Instructions of the Provincial Government. Besides the Revenue Department was also not taken into confidence in the matter of acquisition through private negotiation by the DFO concerned.

FINDINGS:

1. That the DFO concerned did not follow the procedure as per the Notification No. Rev:V/4/2006/Notification/LA/10973, dated 17/08/2006 nor consulted the Ex-DOR Buner for processing the case through private negotiation. He has neither obtained any approval of the competent authority / Secretary Forest Department in respect of the acquisition of land through private negotiation nor for the so called negotiated rate. He did not observe the codal formalities which caused irregularity coupled with losses to the public exchequer.
2. The lapses on the part of DFO concerned denied re-measurement of the purchased land by the Revenue Department prior to the making of payment nor legally handing over possession of the land to the Forest Department. This flaw is demanding re-measurement of the purchased land through Revenue Department on the spot to ensure the existence of quantum of the actual purchased area.
3. The omission of negligence and irregularity as per findings No. 1 & 2 above caused huge losses to the public exchequer not only in the case of acquisition of land, "Construction of DFO office-cum-Residence and Staff quarters at Daggar" but these mutations on the insistence of the DFO concerned of the said acquired land among others, forced enhancement of rate by the court of Senior Civil Judge Buner in respect of the acquired land of another scheme, "Construction of Police Line at Daggar". Details of losses to the Government in both the cases are as under:-

A. Acquisition of land for Construction of DFO office-cum-Residence and Staff quarters at Daggar.

i.	Cost of land measuring 06 Kanal 01 Marla @ Rs. 5,76,687/- per Kanal on the basis of actual Ausat Yaksala	Rs. 34,88,956/-
ii.	Cost of land measuring 06 Kanal 01 Marla @ Rs. 55,600/- per Marla (negotiated rate)	Rs. 67,27,600/-
	Difference in shape of loss	Rs. 32,38,644/-

B. Acquisition of land for Construction of Police Line at Daggar.

1. Cost of land per Award dated 05/10/2010.

i.	Cost of land 70 Kanal 02 Marla @ Rs. 2,55,014/- per Kanal according to Ausat Yaksala	Rs. 1,78,76,481/-
ii.	15 % C.A.C	Rs. 26,81,472/-
	<u>Total</u>	<u>Rs. 2,05,57,953/-</u>

2. Cost of land on the basis of Court Judgment dated 14/12/2011.

i.	Cost of land 70 Kanal 02 Marla @ Rs. 13,10,761/- per Kanal	Rs. 9,18,84,346/-
ii.	15 % C.A.C	Rs. 1,37,82,652/-
	<u>Total</u>	<u>Rs. 10,56,66,955/-</u>
	Difference in shape of losses	Rs. 8,51,09,042/-

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With a view to the above discussion and from analysis of materials on record, it is inferred that:-

1. There is no overt or covert role on the part of Mr. Hidayatullah Tehsildar Daggar (Now Tehsildar Bahrain) or the other revenue officials in the preparation / attestation of the Mutation No. 3808 & 3809 dated 26/05/2010. The Tehsildar concerned was legally bound to attest the mutations on presentation of documents and payment of mutation fee by the DFO concerned to him which he did correctly.
2. The DFO concerned without taking the Secretary Forest Department (Administrative Secretary) into confidence has committed blunder which makes him responsible for the irregular mutations made in respect of the acquired land for, "Construction of DFO office-cum-Residence and Staff quarters at Daggar". Because he has not followed the proper procedure for acquisition of land through private negotiation in light of the Notification No. Rev: V/4/2006/Notification/LA/10973 dated 17/08/2006 nor has bothered to have taken up proper case of acquisition with Ex-DOR/Collector Buner. Besides he has made payment of land compensation direct to the owners illegally at his own risk and cost. This fact has been conceded by him in his letter No. 3829/G dated 16/06/2010 and No. 633/G dated 03/09/2010 (Annex: "D") and (Annex: "D-1") respectively.
3. The loss of Rs. 32,38,644/- has been caused to the public exchequer by the DFO concerned in the acquisition of land for, "Construction of DFO office-cum-Residence and Staff quarters at Daggar".
4. The shortcomings / negligence of DFO concerned has also caused enhancement of rate of the acquired land for another scheme, "Construction of Police Line at Daggar" from Rs. 2,55,014/- to Rs. 13,10,761/- per Kanal by the court of Senior Civil Judge Buner vide Judgment dated 14/12/2011 on reference against Award dated 05/10/2010 which is causing the expected loss of Rs. 8,51,09,042/- to the public exchequer as well. But the Acquiring Department / Police Department has challenged the said Judgment which is subjudice in the PHC Mingora Bench / Dar-ul-Qaza Swat.

RECOMMENDATIONS:

Under the prevailing circumstances, it is recommended unanimously that;

1. The DFO concerned is guilty for the omission and commission of irregularities in the acquisition of land for "Construction of DFO office-cum-Residence and Staff quarters at Daggar" and sustaining losses of Rs. 32,38,644/- to the public exchequer. Besides as a result of his omission, he subjected the Provincial Government more to heavy losses in another case of acquisition of land for, "Construction of Police Line at Daggar". He may be proceeded according to Khyber Pakhtunkhwa Government Servants E & D Rules, 2011 for his negligence as being a responsible officer and to make recovery of the above mentioned amount from him.
2. The Police Department have lodged appeal against the order / Judgment of Senior Civil Judge Buner in the matter of enhancement of rate of the land acquired for, "Construction of Police Line at Daggar". The case is pending adjudication before the PHC Mingora Bench / Dar-ul-Qaza Swat. Therefore, the Police Department should to pursue the case vehemently for proper defence on priority basis and to protect the interests of the Provincial Government for saving it from further losses.

(1). DEPUTY COMMISSIONER, SWAT.

(2). DEPUTY COMMISSIONER, BUNER

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Mr. Hasham Khan the then Divisional Forest Officer, Buner, as follows:

That you, while posted as a Divisional Forest Officer, Buner Forest Division committed the following irregularities:

- a) That a development project was approved for "Construction of offices and residential building in Khyber Pakhtunkhwa". The project duration was from 07/2007 to 06/2010. The project had the provision for purchase of 5 Kanals land in Buner which was to be purchased in the 1st Year of the project. The purchase was effected by you the then DFO Buner, during the last two months when project was going to expire on 30/06/2010.
- b) That, for "Construction of DFO Office-cum-residence and staff quarters", you negotiated the price of the land with owners through private negotiation without the approval of the Administrative Department (Environment Department)
- c) That you executed agreement deed dated 04/2010 on stamp paper duly signed by you and the land owners with marginal witness without consultation of Committee on the Determination of Rate of the land as required under LAC 1984 for private negotiation.
- d) That you being representative of the Acquiring Department was bound to make payment to the land owners through DOR Buner. Though the procedure adopted by you for acquisition of land through private negotiation was illegal and not in consonance of the laid down procedure per Notification No.Rev:V/4/2008/Notification/LA/10973, dated 17/8/2006 of the Provincial Government, yet you at your own made direct payment to the owners concerned in violation of the said agreement deed as well. Again you made direct payment of land compensation to the owners keeping everyone in dark and by passing the Revenue Department.
- e) That you did not follow the procedure as per the Notification No.Rev:V/4/2008/Notification/LA/10973, dated 17/8/2006 nor consulted the DOR Buner for processing the case through private negotiation. You did neither obtain any approval of the competent authority/Secretary Environment Department in respect of acquisition of land through private negotiation nor for the so called negotiated rate. Thus you did not observe the codal formalities and committed irregularities coupled with losses to the Government exchequer.
- f) That the Police Department Buner had acquired land measuring 70 Kanals and 2 Marlas @ Rs.255,014/Kanal according to Ausat Yaksala but the owners of the land filed a Civil Suit in the Court of Senior Civil Judge, Daggar quoting the written precedence of DFO, Buner (You). The Court decided the suit against the Police Department on the basis of that procedure and enhanced the rate per Kanal at par with that paid by the Forest Department. This decision of the court based on procedure of payment made by you increased the rate of land acquired by the Police Department from Rs.255,014/- to Rs.1310761/- per Kanal leading to overall increase in cost from 20557953/- to Rs.91884346/-. Hence the Provincial Government had to pay Rs.85109043/- over and above the price assessed by the Revenue Department Buner and hence a financial losses were sustained by the Government as a result of inflated rates negotiated by you.
- g) That similarly cost of land purchased by the Forest Department as per actual Ausat Yaksala comes to Rs.3488956/- for 6 Kanals and 01 Marla, but you paid Rs.6727600/- for the same land on negotiated price. Hence you paid Rs.3238644/- over and above the actual cost.

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- h) That from the perusal of available record produced by you pertaining to purchase of land for construction of DFO Buner office and residential building, it is established that you violated the provision of Revenue Circular No.54, land acquisition and subsequent amendments made in the land acquisition act, 1984 in 2006. As a result of the violation not only the Forest Department sustained financial losses but the Police Department was also compelled to make over payments for acquisition of land. Thus you are responsible for not safeguarding the interest of the State.
- i) That you did not perform your duty in the earnest and through manner and committed the above listed serious irregularities, deliberately, in the assigned task due to which the Government sustained huge loss.
- j) That Revenue and Estate Department, Government of Khyber Pakhtunkhwa conducted an inquiry through Deputy Commissioner, Swat and Buner whereby you were made responsible for committing irregularities in the acquisition of land for construction of office-cum-residence and staff quarters at Daggar and recommended action against you.
- k) That the Administrative Department vide No.SO(Estt)/1-5(87)/2k10, date 25/11/2013 constituted an Inquiry committee comprising of Deputy Secretary-Environment Department and Director I and HRD Directorate to conduct de-nevo inquiry against you. The findings of the said committee were also the same during de-nevo inquiry which further confirmed the fact beyond doubt that you are responsible for violation of procedure and causing huge losses to Govt: exchequer.

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

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

4. Your written defence, if any, should reach the Enquiry Officer/Enquiry Committee within the specified period, failing which it shall be presumed that you have no defence to offer 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 allegation is enclosed.

Pervez Khattak
 (PERVEZ KHATTAK)
 CHIEF MINISTER,
 KHYBER PAKHTUNKHWA
 09.07.2014

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DISCIPLINARY ACTION

Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Hasham Khan, Divisional Forest Officer (BPS-15) the then Divisional Forest Officer, Buner Forest Division 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 & Discipline) Rules, 2011.

STATEMENT OF ALLEGATION

- a. That a development project was approved for "Construction of offices and residential building in Khyber Pakhtunkhwa". The project duration was from 07/2007 to 06/2010. The project had the provision for purchase of 5 Kanals land in Buner which was to be purchased in the 1st Year of the project. The purchase was effected by Mr. Hasham Khan the then DFO Buner, hereinafter called the accused, during the last two months when the project was going to expire on 30/6/2010.
- b. That for "Construction of DFO Office-cum-residence and staff quarters", the accused settled the price of the land with owners t
- c. That through private negotiation without the approval of the Administrative Department (Environment Department).
- d. That the accused executed agreement deed dated 04/5/2010 on stamp paper duly signed by him and the land owners with marginal witness without consultation of committee on the Determination of Rate of the land as required under LAC 1984 for private negotiation.
- e. That the accused being representative of the Acquiring Department was bound to make payment of the land owners through Ex-DOR Buner. Though the procedure adopted by the accused for acquisition of land through private negotiation was illegal and not in consonance of the laid down procedure per Notification No.Rev:/V/4/2008/Notification/LA/10973, dated 17/8/2006 of the Provincial Government, yet he at his own made direct payment to the owners concerned in violation of the said agreement deed as well. Again the accused made direct payment of land compensation to the owners keeping everyone in dark and by passing the Revenue Department.
- f. That the accused did not follow the procedure as per the Notification No.Rev:/V/4/2008/Notification/LA/10973, dated 17/8/2006 nor consulted the DOR Buner for processing the case through private negotiation. He did neither obtain any approval of the competent authority/Secretary Environment Department in respect of acquisition of land through private negotiation nor for the so called negotiated rate. Thus the accused did not observe the codal formalities which caused irregularities coupled with losses to the Government exchequer.
- g. That the Police Department Buner had acquired land measuring 70 Kanals and 2 Marlas @ Rs.255,014/Kanal according to Ausat Yaksala but the owners of the land filed a Civil Suit in the Court of Senior Civil Judge, Daggar quoting the written procedure of DFO, Buner. The Court decided the suit against the Police Department on the basis of that procedure and enhanced the rate per Kanal at par with that paid by the Forest Department. This decision of the court based on procedure of payment made by the DFO Buner increased the rate of land acquired by the Police Department from Rs.255,014/- to Rs.13,10,761/- per Kanal leading to overall increase in the cost from 2,05,57,954/- to Rs.9,18,81,346/-. Hence the Provincial Government had to pay Rs.8,51,09,043/- over and above the assessed price by the Revenue Department Buner.

- h. That similarly cost of land purchased by the Forest Department as per actual Ausat Yaksala comes to Rs.34,88,956/- for 6 Kanals and 01 Marla, That the DFO Buner paid Rs.67,27,600/- for the same land on negotiated price. Hence, the DFO Buner paid Rs.32,88,644/- over the above the actual cost.
- i. That from the perusal of available record produced by the DFO Buner pertaining to purchase of land for construction of DFO Buner Office and Residential Building, it is established that the accused violated the provision of Revenue Circular No.54, Land Acquisition and subsequent amendments made in the Land Acquisition Act, 1984 in 2006. As a result of the violation not only the Forest Department sustained financial losses but the Police Department was also compelled to make over payments for acquisition of land. Thus the accused is responsible for not safeguarding the interest of the State.
- j. That the accused did not perform his duty in the earnest manner and committed the above listed serious irregularities, deliberately, in the assigned task due to which the Government sustained huge loss. The accused is liable to be proceeded against under the provision of Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011.
- k. That Revenue and Estate Department, Government of Khyber Pakhtunkhwa conducted an inquiry through Deputy Commissioner, Swat and Buner and accused was made responsible for committing irregularities in the acquisition of land for construction of office-cum-residence and staff quarters at Daggar and recommended action against the accused.
- l. That the Administrative Department vide No.SO(Estt)/1-5(87)/2k10, dated 25/11/2013 constituted an inquiry committee comprising of Deputy Secretary-II Environment Department and Director I and HRD Directorate to conduct de-nevo inquiry against the accused. The findings of the said committee were also the same during de-nevo inquiry which further confirmed the fact beyond doubt that the accused is responsible for violation of procedure and causing huge losses to Govt: exchequer.

2. For the purpose of Enquiry against the said accused with reference to the above allegations, an Enquiry Officer/Enquiry Committee, consisting of the following, is constituted under rule 10 (1) (a) of Rules ibid:-

- i. Mr. Arshad Majeed Mohmand. (PAS-BS-19)
- ii. Mr. Wali Khan. DFO Swat.

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

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Enquiry Officer/Enquiry Committee.

Pervez Khattak
 (PERVEZ KHATTAK)
 CHIEF MINISTER,
 KHYBER PAKHTUNKHWA
 09.07.11.

[Handwritten signature]

ANNEX 2 E (34)

DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
AT BATKHELA



PHONE NO.0932-410066
FAX NO.0932-410066

No. 327 /Actt.

Dated 08/8/2014

To

The Director General
Special Development unit
Peshawar

Subject: INQUIRY UNDER KHYBER PAKHTUNKWA E&D
RULES 2011 DISCIPLINARY ACTION PROCEEDING
AGAINST MR. HASHAM KHAN DFO (BPS-18)

Reference to the charge sheet endorsed vide your office
No. 544-46w/E dated 7.5.2014, the para wise comments is submitted from page
No. 1 to 17 please.

(HASHAM KHAN)
DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA.

INQUIRY UNDER KHYBER PAKHTUNKWA E&D RULES-2011
DISCIPLINARY ACTION PROCEEDING AGAINST MR. HASHAM KHAN
DFO (BPS-18) PARA WISE COMMENTS

Reference to the charge sheet endorsed vide your office No. 544-46w/E dated 7.5.2014, the para wise comments is submitted as under

a) BACK GROUND

A Pe-I title " construction of DFO Offices and residential building in NWFP" envisages purchase of 5 kanal land for DFO Buner office was launched during 2007-2010 but it could not effected till end of April/2010.

The undersigned was posted as DFO Buner on 19.4.2010 and rash attention was given to this years long hanging issue. An ideal commercial plot 6 kanal 1 marla was purchased in the heart of Buner District Head Quarter below the market rate.

b) ADMINISTRATIVE APPROVAL

The subject PC-I was approved in DDWP and subsequently administrate approval was accorded, envisages purchase of 5 Kanal land @ Rs.140000/- Kanal for DFO Buner which was purchased @ Rs. 111200/- Kanal situated in an ideal, unmathing location in the heart of District Head Quarter Daggar. The subject PC-I had the same activities in Dir Lower, Upper Chitral, Swat also and non of them has gotten secondary approval from the administrative Department. Moreover, the DFO conduct correspondence with administrate department through proper channel. The instate case was endorsed in first step to Conservator of Forest Malakand and Chief Conservator of Forest Khyber Pakhtunkhwa Peshawar. vide No.3279-80/G, dated 06/05/2010 (Annex-I) which they should have to float to Administrative Department.

c) PRICE COMMITTEE

The agreement deed signed with the owners clearly indicating the rate Rs. 55600/Marla was submitted to DOR Buner vide No. 3276/G, dated 6.5.2010 (Ann-I) for further processing, which they processed without questioning the negotiated rate, because the rate was fixed in light of Sec: 13 L.A. Act 1894. The constitution of price committee in the mandate of revenue Department which they avoided perhaps for the reasons of very short left over time

The acquired land was purchased at the rate of Rs. 1112000/- Kanal against the provision of:

3
36

1. PC-I approved rate Rs. 1400000/- Kanal
2. The market rate per Charsala furnished by the revenue Department under the Seal/Signature of concerned Patwari, Girdawar and Tehsildar Daggar is Rs. 1400000/- Kanal. **Annexure -II)**
3. Yak Sala rate as per revenue record is Rs. 1454000/- Kanal. **Annexure -III)**
4. The Judiciary fixed rate Rs. 1310671/- Kanal **Annexure IV)**
5. DOR Buner approved Rs. 1500000/- Kanal **Annexure -V)**
(DFO Buner letter No.367/G dated 05.08.2008)
6. The CCF and CF Malakand, had welcomed the rate during their spot visit dated 27.4.2010 to 11.5.2010 respectively.

d) **PAYMENT**

The undersigned took over charge of Buner on 19.4.2010. The Cf Malakand and CCF directed the undersigned in strong words to accomplish the task in short time. They repeatedly mounted pressure and finally was warned by Cf that if could not do so, he (undersigned) will be charge sheeted. So the undersigned and, the SDFO Daggar fully concentrated over this year's long hanging issue. For land acquisition, the laid down procedure in vogue in Buner was followed as per guidelines of revenue authorities. The procedure was also officially communicated by DOR Buner vide his No. 283/2/9/HCR dated 14.2.2010. under Sec: 1 of the said procedure, the following two ways exist for land acquisition:-

- 1- Compulsory land acquisition.
- 2- Private negotiation.

The procedure at S.No.2 already furnished by DOR Buner No. 283/2/9/HCR dated 14.2.2010 (**Copy Anne: VI) page 1-16**) was followed vide DFO Buner office No. 3278/G. dated 6.5.2010 (Annex: XI).

- i- Under taking on stamp paper
- ii- Notifying sec: 4
- iii-Payment to owners
- iv- Transfer of land.

The detail procedure for payment vide section 41 (page 9 (Annex: VII) is very much clear about mode of payment as under

- i- By Direct payment
- ii- By order on a treasury
- iii-By money order
- iv-By cheque
- v- By deposit in a treasury

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The procedure further stressed to say that

“payment should always be so made if possible to save the recipients from unnecessary attendance” (Sec: 41 par 4 page 9 Annex: VI).

The said land acquisition vide sec:55 para 3 page 12 further state that: “payment must be made before or immediately after taking possession”

The CCF stressed hard to report payment within 3 days positively but the DOR excused to accept the cheques due to months long time bar after notifying section 4. During this period any claimant can record his claim. It is also worth mentioning that the DOR has even refused to accept cheque No. 246778 dated 24.5.2010 Rs. 269604/- delivered by DFO Buner. due to shortage of time, the lone choice suggested by DOR during a meeting dated 20.5.2010 was to go for direct payment under the laid down procedure in vogue like other departments. i.e health Department purchased land at Matwani for BHU and Education Department at Nawagai and made direct payment to the owners. Hence direct payment was made to the owners with intimation to DOR vide No. 2455/G, dated 24.5.2010 (Annex: VII). The Cf Malakand and CCF were also kept-abreast vide N. 3456-59/G. They exulted and extolled the undersigned. Worth notingly, all the transactions have been made through Accountant and incharge SDFO Daggar, and Forest Guard having no direct personnel contact by the undersigned with the owners.

e) PROCEDURE ADOPTED

- i) The amended procedure vide notification No. Revn/4/2008/Notification /La/10973 dated 17.8.2006 was required to be communicated by SMBR to Administration secretaries and its further endorsement to all District officers. But till to date, this notification has not been endorsed to the undersigned. The undersigned is bound to follow the forest ordinance 2002 whereas the land acquisition Act 1894 has been clearly mentioned under Sec: 118 F-O 2002, and no amendment has yet so far been made. The DOR was properly consulted and per advice of the DOR as well officially endorsed to DFO Buner vide DOR office No. 283/2/9/HCR dated 14.2.2011, the land acquisition Act 1894 was followed as such.

- ii) The rate mentioned in the PC-I was actually based on the market value which was approved in DDWP and subsequently administrative approval was accorded. The case was submitted to Cf & CCF vide No.3279-80/G dated 6.5.2010 (Annex-I). It was their responsibility to get any other approval if deemed necessary. The DFO does not make any direct correspondence with Administrative Department.

f) LOSS TO GOVERNMENT

For acquiring land, the following Two (2) ways are well determined:

- A. Compulsory acquisition.
- B. By negotiation acquisition.

The subject land was acquired through private negotiation while the Police Department has purchased the land through compulsory way, which has not been differentiated by the committee. The salient features of the both ways in respect of Forest and Police acquired land are as under:

S.No	Forest Department	Police Department
1	The Forest Land was purchased through private negotiation	The Police Land was Purchased through Compulsory way
2	In private negotiation, the Price is settle according to the prevailing market rate vide Clause-6 & 19 (I) of land acquisition act within the provision of approved rate (Annexure -VII)	The Revenue Department fixed the price by the their own
3	The Forest Land is a commercial Land	The Police acquired land is agricultural Land (Annexure -IX)
4	The Forest Land was acquired in May 2010,	The Police Land process was started during August 2008
5	The Forest Land is adjacent to main Daggar Head Quarter Road	The Police Land is far away from the Daggar Bazar. (DOR No. 2014-18 dated 5.10.2010 (Annexure -IX)

The court has fixed the rate on the basis of average price of the following three transactions made in the vicinity as.

Land purchased by U-fone @ Rs. 1100000/-

Land purchased by Forest Department @ 1112000/-

Land purchased by Noor Alam @Rs. 1619017/- (Annexure IX)

It is numerically clear that by induction of Forest Department transaction, the average rate has been reduced, not increased. The stated rate as per LA, act 1894 Sec: 13 is being fixed on market on yak sala etc.

g) AUSAT YAK SALA

- i) The Subject land purchase was a part of ADP Scheme. The rate was already approved in DDWP and administrative approval was accorded.
- ii) All the procedure was followed in accordance to the guidelines of revenue Department. Constitution of the price Committee is the responsibility of revenue Department which they could not Seems feasible due to very short left over Time of the PC-I i.e 5,6/2010 (Two month).
- iii) The Pc-1 approved rate is Rs.140000/- per Kanal while the purchased rate is Rs. 1112000/-. Against the target of 5 Kanal @ Rs. 7000000/-, 6 Kanals and one Marla land was purchased accruing a hefty amount of saving to the Government and increased its assets.
- iv) As per charsala furnished by the Revenue Department, the rate of land in the same area is Rs. 1400000/- Per Kanal. (Annex-III)
- v) The judiciary has further validated the rate in respect of the land acquired by Police Department through compulsory acquisition in the same locality. The judiciary has fixed the rate @ RS. 1310671/- Per Kanal with reference to the Judgment is Civil. Count No. 2/4 dated 11.12.2011. (Annex-X)
- vi) The Enquiry conducted by DCs vide Serial No. 4 of their brief facts have admitted that the yak sala rate is Rs. 1454000/- Per Kanal as per their record. (Annex-XI)
- vii) The Chief Conservator of Forest and Conservator of Forest Malakand Circle had acceded with the rate settled with the owners during their visit to the site dated 27/4/2010 and 11/5/2010.
- viii) The others transaction made in the vicinity are also of higher rate than the questioned rate as.

<u>S.NO</u>	<u>Date</u>	<u>Rate</u>
3007	16.11.05	Rs. 1400000/- Kanal (Annex-XII)
3710	24.10.09	Rs. 1400000/- Kanal (Annex-XIII)

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(115)

1. The Director B&A has audited the subject matter and found satisfactory procedural financial irregularities.
2. The case of police Department in under trial in Svat Darul Qaza and it is prejudice to fix the responsibility before its logical decision.
3. The entire process was accomplished with coordination of entire chain of Forest Department i.e. Forest Guard to CCF and Revenue Department i.e. Patwar to DOR. It is unjust to pick-up the undersigned amongst all and make scape-goat.
4. The price committee still can be constituted to re-examine the price in the light of prevailing market rate and available record.
5. If the Environment Department is unhappy with the price paid the fix-owners of the land is ready to take back the land alongwith the constructed building at the original cost.
6. All the acts has been done in the best interest and in good faith so it is requested to record indemnity under Section-III Forest Ordinance 2002 and be kindly exempted from all the charges please.

(Constraints against the enquiry committee member has already been endorsed vide No. 247/E, dated 4.8.2014.)

RATKHELA
 MALAKAND FOREST DIVISION
 DIVISIONAL FOREST OFFICER

The procedural and financial irregularities are being determined by the audit. The subject case was undergone through the process of audit by establishing para-I No. 5459-61, dated 30.6.2011 (Annex-XIV) which was equally responded vide No 1138/G, dated 17.10.2011 (Annex-XV). The para was settled vide No. 1092-94, dated 7.1.2012 (Annex-XVI) without fixing any financial procedural irregularity. The enquiry conducted by DCs was again forwarded to director B&A which was commented by him that's no financial loss has been happened to Government.

h)

- i- The revenue circular No. 54 was followed perfectly as already discussed vide para-E
- ii- The amendment made in the act dated 17.8.2006 has never been communicated to the undersigned, nor been revised in Sec: 118 Forest Ordinance: 2002 respectively.
- iii- The transaction made by the Forest Department Buner, has reduced the rate fixed by the court as per para- F. Moreover, no financial loss has been accrued to forest department but has increased the forest assets, by purchasing 6 Kanal 1 Marla land against the giving Target of 5 Kanal within the PC-I provision. Similarly the audit sector has also validated that no procedural/financial irregularities has been happened.

i) The undersigned performed duty with consummate dedication as admitted vide para (a) of the charge sheet.

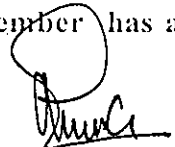
j) The enquiry conducted by DC Swat and Buner is bias as it was based against the Thesildar Daggar but was switched toward DFO Buner without intimating the undersigned during the entire process of enquiry. The committee vide S.No. 4 of their brief fact have admitted that the ausat yak sala is RS. 1454000/Kanal.

k) Against the DE-Nov enquiry, the reservations of the undersigned was already endorsed vide this office No. 1429/E, dated 20.2.2014. The enquiry committee did not pay visit to the site to examine nature and location of both the forest and police Department purchased land and only relied on the mala fide record

13
(41)

1. The Director B&A has audited the subject matter and found satisfactory procedural financial irregularities.
2. The case of police Department is under trial in Swat Darul Qaza and it is prejudice to fix any responsibility before its logical decision.
3. The entire process was accomplished with coordination of entire chain of Forest Department i.e Forest Guard to CCF and r. Revenue Department i.e Patwari to DOR. It is unjust to pick-up the undersigned amongst all and make scap-goat.
4. The price committee still can be constituted to re-examine the price in the light of prevailing market rate and available record.
5. If the Environment Department is unhappy with the price paid the Ex-owners of the land is ready to take back the land alongwith the constructed building at the original cost.
6. All the acts has been done in the best interest and in good faith So it is requested to accord indemnity under Section-III Forest Ordinance 2002 and be kindly exempted from all the charge please.

(Constraints against the enquiry committee member has already been endorsed vide No. 247/E, dated 4.8.2014.)



DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA



BEFORE THE HONOURABLE CHIEF MINISTER KHYBER PAKHTUNKHWA,
PESHAWAR (THROUGH PROPER CHANNEL)

ANNEX - F

(42)

Subject ACQUISITION /PURCHASE OF LAND MEASURING 6-KANAL'S AND
1-MARLAS IN THE VICINITY OF DAGGAR FOR CONSTRUCTION
OF DFO OFFICE CUM RESIDENCE/STAFF QUARTERS

Your Excellency,

I have the honour to submit that the undersigned has been served upon a charge sheet endorsed vide No. SO(Estt)Env/ 1-50(87)2k14/2992-2994 dated 16.7.2014 (copy attached) under the subject matter and an enquiry Committee comprising of the following officers has been constituted to probe the finding.

- 1- Mr. Arshad Majeed Mohmand DG/SDU (BPS-19) Chairman
- 2- Mr. Mir Wali Khan (BPs-18) Divisional Forest Officer Swat Member

The undersigned has certain reservations against appointment of Mr. Mir Wali Khan DFO as member of the Committee on the following grounds,

- 1- The undersigned Mr. Hashim Khan was posted as DFO Buner on 19.4.2010 replacing Mr. Mir Wali Khan DFO, who was transferred to FMC unit-VI (monitoring officer) Swat. Due to my take over as DFO Buner, Mr. Mir Wali Khan was irked and bitter blood was created amongst us. In the back lash of which he (Mir Wali Khan) reported a mala fide monitoring report vide No. 255/w.p dated 1.2.2011 (Annex-I), which was squarely responded, vide No.1986/Acctt, dated 18.3.2011 (Ann-II), Last page No. 4 of which is of worth consideration. The said monitoring report became a base of the subject charge sheet. In each and every step, Mir Wali Khan DFO played his negative revenge full role against the undersigned.
- 2- Mr. Mir Wali Khan is presently sitting DFO (BPS-18) Swat while the undersigned holding the post of DFO (BPS-18) Malakand. Several Timber/Forest Produce Smuggling cases originated from Swat were apprehended at Malakand which further aggravated the Environment between the two officers. Some of the reference letters are,

THE HONOURABLE CHIEF MINISTER KHYBER PAKHTUNKHWA,
(THROUGH PROPER CHANNEL)

ACQUISITION /PURCHASE OF LAND MEASURING 6-KANAL'S AND
1-MARLAS IN THE VICINITY OF DAGGAR FOR CONSTRUCTION
OF DFO OFFICE CUM RESIDENCE/STAFF QUARTERS

Agency;

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in a charge sheet endorsed vide No. SO(Estt)Env/ 1-50(87)2k14/2992-
16.7.2014 (copy attached) under the subject matter and an enquiry
comprising of the following officers has been constituted to probe

Arshad Majeed Mohmand DG/SDU (BPS-19)	Chairman
Mir Wali Khan (BPs-18) Divisional Forest Officer Swat	Member

The undersigned has certain reservations against appointment
Wali Khan DFO as member of the Committee on the following

The undersigned Mr. Hashim Khan was posted as DFO Buner
19.4.2010 replacing Mr. Mir Wali Khan DFO, who was transferred to
MC unit-VI (monitoring officer) Swat.

Due to my take over as DFO Buner, Mr. Mir Wali Khan was irked and
after blood was created amongst us. In the back lash of which he
(Mir Wali Khan) reported a mala fide monitoring report vide No.
15/w.p dated 1.2.2011 (Annex-I), which was squarely responded,
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played his negative revenge full role against the undersigned.

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Timber/Forest Produce Smuggling cases originated from Swat were
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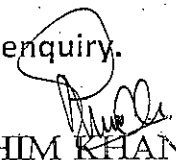
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- i) The CCF-III office letter No. 5049/E, dated 22.5.2014 (Ann-III).
- ii) DFO Malakand office letter No. 2708/Actt, dated 26.6.2014 (Ann-IV).
- iii) Charge sheet No.10163-66/E, dated 20.6.2014 issued by Mir Wali Khan DFO Swat through CF Malakand East to SDFO Batkhela (Ann-V).
- iv) DFO Batkhela office letter No. 67/Actt, dated 7.7.2014 (Ann-Vi).

3- To further meet his hostile designs, he has entered himself in the enquiry Committee through back door with the nexus of his abettors. In the wake of prevailing ambivalent relation, picking up my arch rival as member of the enquiry committee is very strange and explicitly in-justice.

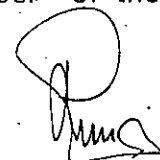
So it is humbly requested to replace Mr. Mir Wali Khan with a neutral professional senior forest officer for fair enquiry.

Dated 4.08.2014


 (HASHIM KHAN)
 DIVISIONAL FOREST OFFICER
 MALAKAND FOREST DIVISION
 BATKHELA

No. 249 / E dated 04/08/2014.

Copy in advance forwarded to Secretary Environment Department Khyber Pakhtunkhwa Peshawar with the request to kindly nominate a senior professional forest officer as member of the enquiry committee in place of Mr. Mir Wali Khan DFO Swat.


 (HASHIM KHAN)
 DIVISIONAL FOREST OFFICER
 MALAKAND FOREST DIVISION
 BATKHELA

the CCF-III office letter No. 5049/E, dated 22.5.2014 (Ann-III).

DFO Malakand office letter No. 2708/Actt, dated 26.6.2014 (Ann-IV).

Charge sheet No.10163-66/E, dated 20.6.2014 issued by Mir Wali Khan

DFO Swat through CF Malakand East to SDFO Batkhela (Ann-V).

DFO Batkhela office letter No. 67/Actt, dated 7.7.2014 (Ann-Vi).

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Dated 04.08.2014

(HASHIM KHAN)
DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA

249 IE

dated 04/08/2014.

Copy in advance forwarded to Secretary Environment Department Khyber Pakhtunkhwa Peshawar with the request to kindly nominate a senior professional forest officer as member of the enquiry committee in place of Mr. Mir Wali Khan DFO Swat.

(HASHIM KHAN)
DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA

249
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BEFORE THE HONOURABLE CHIEF MINISTER KHYBER PAKHTUNKHWA PESHAWAR

Annex-9

(44)

THROUGH: PROPER CHANNEL

Subject: ENQUIRY UNDER KHYBER PAKHTUNKHWA RULES 2011
(DISCIPLINARY ACTION PROCEEDING AGAINST MR. HASHAM KHAN
DFO BPS-18) APPLICATION THEREOF.

Respectfully Sheweth,

I have the honour to respectfully submit that against the subject enquiry a Writ Petition No. 408/2014 (Annex-I) has been filed in the August Court of Swat Darul Qaza.

The learned Court issued notice to the Respondents on 22.8.2014 (Annex-II). The undersigned called upon the Chairman of enquiry Committee Mr. Arshad Majeed DG/SDU Peshawar on 25.8.2014 for personal hearing with the compliance of his office No. 585-87 dated 20.8.2014; (Annex-III). The undersigned handed over notice of Swat Darul Qaza to the DG/SDU and after going through the notice, he flared-up; scolded harshly, without giving an opportunity of personal hearing to the undersigned.

In such circumstance, the Chairman has become bias/personal and is humbly requested to reconstitute the enquiry committee for natural justice please.

Dated: 27-08-2014



Your's
Hasham Khan
DFO (BPS- 18)

OPER CHANNEL

QUIRY UNDER KHYBER PAKHTUNKHWA RULES 2011
DISCIPLINARY ACTION PROCEEDING AGAINST MR. HASHAM KHAN
(DFO BPS-18) APPLICATION THEREOF.

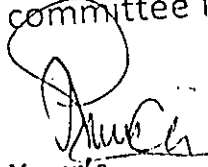
Sheweth,

I have the honour to respectfully submit that against the
Honourable Writ Petition No. 408/2014 (Annex-I) has been filed in
Court of Swat Darul Qaza.

The learned Court issued notice to the Respondents on
(Annex-II). The undersigned called upon the Chairman of
Enquiry Committee Mr. Arshad Majeed DG/SDU Peshawar on 25.8.2014
for hearing with the compliance of his office, No. 585-87 dated
(Annex-III). The undersigned handed over notice of Swat Darul
Qaza to the DG/SDU and after going through the notice, he flared-up,
immediately, without giving an opportunity of personal hearing to the


In such circumstance, the Chairman has become bias/personal
and I have humbly requested to reconstitute the enquiry committee for natural
justice.

Date: 27-08-2014


Your's
Hasham Khan
DFO (BPS- 18)



95

DIVISIONAL FOREST OFFICER MALAKAND FOREST DIVISION AT BATKHELA	 Government of Khyber Pakhtunkhwa	PHONE NO.0932-410066 FAX NO.0932-410066 NO. <u>247</u> /E, Dated <u>04</u> / 08 /2014
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To

The Chief Conservator of Forests,
Malakand Forests Region (Region-III),
at Shagai Saidu Sharif Swat.

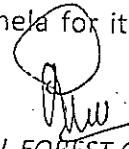
Subject:- ACQUISITION /PURCHASE OF LAND MEASURING 6-KANAL'S
AND 1-MARLAS IN THE VICITINITY OF DAGGAR FOR
CONSTRUCTION OF DFO OFFICE CUM RESIDENCE/STAFF
QUARTERS

Memo:

Reference Govt: of KPK Emt: Department Peshawar
No.SO(Estt)Emvt/1-50(87)2k14/2992-2994 dated 16.7.2014.
addressed to your good self office

Enclosed please find herewith an application of Mr. Hashim
Khan Divisional Forest Office Malakand Forest Division Batkhela for its onward
submission to the competent authority please.

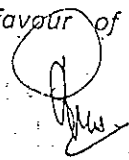
Encl as above


 DIVISIONAL FOREST OFFICER
 MALAKAND FOREST DIVISION
 BATKHELA

No. 248 E,

Copy alongwith its enclosure forwarded to the Conservator of Forests
Malakand Forest Circle East at Shagai Saidu Sharif Swat for favour of information
please.

Encl as above


 DIVISIONAL FOREST OFFICER
 MALAKAND FOREST DIVISION
 BATKHELA

AL FOREST OFFICER
D FOREST DIVISION



PHONE NO. 0932-410066

FAX NO. 0932-410066

NO. 247 / E.

Dated 04 / 08 / 2014

45


The Chief Conservator of Forests,
Malakand Forests Region (Region-III),
at Shagai Saidu Sharif Swat.

ACQUISITION /PURCHASE OF LAND MEASURING 6-KANAL'S
AND 1-MARLAS IN THE VICITINITY OF DAGGAR FOR
CONSTRUCTION OF DFO OFFICE CUM RESIDENCE/STAFF
QUARTERS

Reference Govt: of KPK. Evt: Department Peshawar
No.SO(Estt)Evt/1-50(87)2k14/2992-2994 dated 16.7.2014.
addressed to your good self office

Enclosed please find herewith an application of Mr. Hashim
Divisional Forest Office Malakand Forest Division Batkhela for its onward
to the competent authority please.

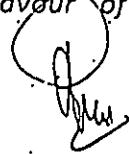
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DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA

✓ E,


Copy alongwith its enclosure forwarded to the Conservator of Forests
Forest Circle East at Shagai Saidu Sharif Swat for favour of information

above


DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA



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DIVISIONAL FOREST OFFICER MALAKAND FOREST DIVISION AT BATKHELA	 GOVERNMENT OF KHYBER PAKHTUNKHWA	PHONE NO.0932-410066 FAX NO.0932-410066 No. <u>840</u> /E, Dated <u>27/8/2014</u>
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To


The Chief Conservator of Forests,
Malakand Forests Region (Region-III),
at Shagai Saidu Sharif Swat.

Subject:- ENQUIRY UNDER KHYBER PAKHTUNKHWA RULES 2011
(DISCIPLINARY ACTION PROCEEDING AGAINST MR. HASHAM
KHAN DFO BPS-18) APPLICATION THEREOF.

Memo:

Enclosed please find herewith an application of Mr. Hashim Khan Divisional Forest Officer Malakand Forest Division Batkhela for its onward submission to the competent authority please.


Encl as above


 DIVISIONAL FOREST OFFICER
 MALAKAND FOREST DIVISION
 BATKHELA

No. 841 /E,

Copy alongwith its enclosure forwarded to the Conservator of Forests Malakand Forest Circle East at Shagai Saidu Sharif Swat for favour of information please.

Encl as above


 DIVISIONAL FOREST OFFICER
 MALAKAND FOREST DIVISION
 BATKHELA

137
DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA



PHONE NO. 0932-410066

FAX NO. 0932-410066

No. 840 /E,

Dated 27/8/2014

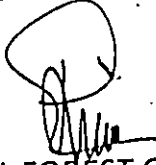
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The Chief Conservator of Forests,
Malakand Forests-Region (Region-III),
at Shagai Saidu Sharif Swat.

ENQUIRY UNDER KHYBER PAKHTUNKHWA RULES 2011
(DISCIPLINARY ACTION PROCEEDING AGAINST MR. HASHAM
KHAN DFO BPS-18) APPLICATION THEREOF.


Enclosed please find herewith an application of Mr. Hashim
Divisional Forest Officer Malakand Forest Division Batkhela for its onward
transmission to the competent authority please.

above


DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA

840 /E,
Copy alongwith its enclosure forwarded to the Conservator of Forests
Malakand Forest Circle East at Shagai Saidu Sharif Swat for favour of information

above


DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA



INQUIRY REPORT:

ANNEX: H

(47)

Subject INQUIRY UNDER KHYBER PAKHTUNKHWA E&D RULES 2011-
DISCIPLINARY PROCEEDINGS AGAINST MR. HASHIM KHAN DFO
(BS-18)

I. ORDER OF INQUIRY/ BACKGROUND

The background of the case is that an inquiry was initiated by Revenue and Estate Department, Government of Khyber Pakhtunkhwa in respect of the ADP scheme no. 606 with nomenclature "Construction of Official and Residential Buildings in NWFP" approved for the duration of 3 years i.e. from 07/ 2007 to 06/2010" through Deputy Commissioner Swat and Buner, against the then DFO Buner, Mr. Hashim Khan on the grounds that the accused D.F.O has purchased the land for the subject scheme through private negotiation, in violation of the amended notification No. Rev/4/2006 notification/LA 10973 dated 17/8/2006. (Annex-I).

The inquiry held the accused DFO responsible for gross irregularities in the purchase of 6 Kanals and one Marla land by not following the laws and established procedure and subsequently causing huge loss to the provincial exchequers.

The above mentioned inquiry was forwarded to Secretary Environment Department KPK by Board of Revenue (Revenue and Estate Department KPK), vide REV:V/4/Misc/MKD/2011/11560-62 dated 06/06/2013, for taking necessary action against DFO concerned as per recommendations of the Inquiry officers (Annex-II).

The Administrative department vide letter no. SO(Estt)/Envvt/1-5(87)/2010 dated 25/11/2013, constituted an inquiry committee comprising of Deputy Secretary -II, Environment department and Director I & HRD, Directorate to conduct de-novo inquiry against the accused (Annex-III).

The departmental inquiry committee also held the accused DFO guilty of gross misconduct and violation of provisions of land revenue circular no: 54, land Acquisition Act 1894 and subsequent amendment made in the land Acquisition Act in 2006 resulting in huge loss to Forest Department and subsequent loss to provincial govt in the acquisition case of police department.

authority for initiation of disciplinary procedure against the accused DFO. The competent authority constituted an inquiry committee comprising of Mr. Arshid Majeed DG, SDU and Mr. Mir Wali Khan, DFO, Swat. (Annex-IV).

Facts of the case

- a) A developmental scheme was approved in the ADP for "Construction of offices and residential building in newly created Forest Division at Buner" at total cost of Rs 39.635 million for the duration of 3 years i.e. from 07/ 2007 to 7/2101 with the estimated cost of 1.4 million per kanal making total of Rs 7.0 million for 5 kanals of land. As per approved Pc-1 the land for building was supposed to be purchased in Sawari, but instead of the approved location violation of Pc-1 was committed and land was purchased in Daggar at the rate of Rs 11,12,000/-, whereas the average Yaksala provided by Revenue Authority Buner as (Annexed) fixes the rate per kanal at (Rs4,54,000/-per kanal.
- b) The then DFO. Buner (MrHahim Khan) , showed his intention to District officer Revenue ,Buner vide letter no 3278/G dated 06/5/2010 Annex-V) , for purchase of land measuring 06 kanal and 01 marla situated at mauza Daggar and also provided agreement deed executed with the owners of the land(Annex-VI), through private negotiation with the request to the District Revenue officer for issuance of notification without approval of the Administrative department under Para-4 of revenue circular No:54 V/4/2006/Notification /LA/10973 dated 17/8/2006. Also under section 5 (i) of the said notification the determination of price and verification of title were required to be fixed by the committee to be constituted by District Collector which was also neglected.
- c) Not only that he by-passed the D.O.R Buner in the purchase of land through private negotiation, as was required under the law, he also made direct payment to the owners of the land in complete violation of the established procedure.
- d) The police department acquired the land on basis of Ausat yaksala @ Rs 2,55,014 /kanal but the owner of the land filed a civil suit in the court of the senior civil judge- quoting the precedence of DFO (Buner) and subsequently the court decided to enhance the rate of the land from 2,55,014/- to 13,10,761/- per kanal, leading to financial loss of Rs 8,51,09,042/- to provincial government.

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Allegations:

Statement of allegation as served upon the accused officer (Annex-VII), wherein he was charged as under:-

That you, while posted as DFO Buner commented the following irregularity:

- a) That a Development project was approved for construction of offices and residential buildings in Khyber Pakhtunkhwa. The Project duration was from 07/20007 to 06/2010. The project has a provision for purchase of 5 kanals land in Buner which was to be purchased in the 1st year of the project. The purchase was effected by you the then DFO Buner, during the last two months when project was going to expire on 30/06/2010.
- b) That for Construction of DFO office - cum- residence, staff quarters, you negotiate the price of the land with owner through private negotiations without the approval of the administrative department (Environment Department).
- c) That you executed agreement deed dated 04/2010 on stamp paper duly signed by you and the land owners with marginal witness without consultation of Committee on the determination of rate as required under LAC 1984 for private negotiation.
- d) That you being representative of the acquiring department was bound to make payment to the land owners through DOR Buner. Though the procedure adopted by you for acquisition of land through private negotiation was illegal and not in consonance of the laid down procedure per Notification no. Rev: V/4/2008/Notification/LA/10973, dated 17/08/2006, of the Provincial Government, yet you at your own made direct payment to the owner concerned in violation of the said agreement deed as well. Again you made direct payment of land compensation to the owners keeping everyone in dark and by passing the Revenue department.
- e) That you did not follow the procedure as per the Notification no. Rev: V/4/2008/Notification/LA/10973, dated 17/08/2006 nor consulted the DOR Buner for processing the case through private negotiation. You did neither obtain any approval of the competent authority / Secretary Environment Department in respect of acquisition of land through private negotiation nor for the so called negotiated rate. Thus you did not observe the codal formalities and committed irregularities coupled with loss to government exchequers.
- f) The police Department Buner had acquired land measuring 70 kanal and 2 marlas @Rs 255,014 /kanal according to Ausat Yaksaka but the owner of the land filed a civil suit in the court of senior civil judge, Daggar quoting the written precedence of DFO, Buner (you) . The court decided the suit against the police department on the basis of that procedure and enhanced the rate per kanal at par with that paid by the forest department. The decision of the court (Annex-VIII) based on procedure of payment made by

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you increased the rate of land acquired by the police department from 2,55,014 -to Rs 13,10,761/- per kanal leading to overall increase in cost from Rs. 2,05,57,953/- to Rs. 9,18,84,346/- . Hence the provincial government has to pay Rs 8, 51,09,042/ over and above the price assessed by the Revenue Department Buner and hence a financial loss were sustained by the government as a result of inflated rate negotiated by you.

- g) That similarly cost of land purchased by the forest department as per actual Ausat Yaksala comes to Rs 34,88,956/- for 6 kanal and 01 marla , but you paid Rs 67,27,600/- for the same land on negotiated price . Hence you paid Rs 32,38,644/- over and above the actual price.
- h) That for the perusal of available record produced by you pertaining to purchase of land for construction of DFO office Buner and residential building , it is established that you violated the provision of revenue circular no 54, land acquisition and subsequent amendments made in the land acquisition act 1984 in 2006. As a result of the violation not only the Forest Department sustained financial losses but the police department was also compelled to make over payments for acquisition of land. Thus you are responsible for not safeguarding the interest of the state.
- i) That you did not perform your duty in the earnest and through manner and committed the above listed serious irregularities deliberately, in the assigned task due to which the Government sustained huge loss.

Methodology

In order to proceed further with the inquiry, the administrative department and chief conservator of Forest Region (III) was requested vide letter No: P&D(SDU) 2527-28 dated 24/7/2014 to provide all the relevant documents, including the previous inquiry reports and any other document related to the inquiry. Deputy commissioner Buner was also requested to provide the relevant documents and information and also to depute relevant Revenue authorities, the accused DFO was also asked to appear before the inquiry committee for cross examination and was asked to submit his statement along with other supporting documents.

The following witnesses were examined;-

- 1. Ex - DFO Buner
- 2. Ex DFO Buner Hashim Khan.
- 3. Revenue officer Buner (concerned).
- 4. DFO Buner.
- 5. Shan Ex Range officer Buner.

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the following documents were also examined;-

Act, 1894.

relating to transaction

Divisional Monitoring officer.

acquisition of land through private negotiation No.Rev:

Notification /LA 10973 dated 17/8/2006.

reply was obtained from accused officer the then DFO

(Annex-DX).

Inquiry report conducted by DC Swat and DC Buner (Annex-X).

Inquiry conducted by Deputy Secretary and Director

(Annex-XI).

yaksala of the concerned financial year as provided by the

authority Buner (Annex-XII).

(General Financial Rules)

Act.

of relevant section of PC-1 (Annex-XIII).

Statement of the Accused :

The accused DFO in his statement submitted to the inquiry committee, denied all the allegation levelled against him. According to him the entire process has been carried out in good faith and in best interest of the department. According to him acquisition of land was pending since 2007 due to lack of interest initiative by his predecessors. As soon as he took over as DFO Buner on 19-4-2010 'RASH ATTENTION' was given to this year's long issue so as to avoid lapse of fund. That he was under pressure from his hierarchy i.e. Chief Conservator of forest to acquire land without delay. That he purchased the land at the rate of Rs 1112000 per kanal against the yaksala rate as per revenue record 1456000 per kanal. He further states in his defense that the amended Notification no REV:V/4/2006/LA 10973 2006 was required to be communicated by SMBR to the Administrative Secretary. He further states that no such notification was endorsed by the administrative department to him and denies the existence of notification in question. The difference in the price of the land acquired by police department and the land purchased by forest department is due to the fact that the police department acquired land through compulsory acquisition and forest department purchased through private negotiation. As far as direct payment to the owner is concerned section 41 para 4 of the procedure officially communicated by DOR Buner vide its letter no 283 /2 /9/HCR dated 14 02 2010 "Payment should always be so made if possible to save the recipient from unnecessary attendance".

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Procedure / Analysis

Procedural Lapses:

The amended notification provided for a detailed step by step procedure for purchase of land through private negotiation, outlining the responsibilities of various departments of government.

This chart will explain in detail the procedure required to be followed and the procedure actually followed by the accused DFO.

PROCEDURE LAID DOWN BY AMENDED NOTIFICATION	PROCEDURE ADOPTED BY ACCUSED D.F.O.MR. HASHIM KHAN
<p>1. The acquiring agency shall submit an application to the Collector of the District concern for the acquisition of land under the Act showing full justification of the public purpose involved and the minimum area required by it with all details of all other area owned by it in the same locality.</p>	<p>DFO Buner vide his letter no. 3278/G, dated 6/5/2010 addressed to Ex-DOR Buner contended that he intends to acquire / purchase of land 06 kanal 01 marla in the vicinity of Daggar for the purpose, "Construction of DFO office-cum-Residence and staff quarters". Further that he settled the price of the land with owners through private negotiation. Accordingly he enclosed copies of draft negotiation U/S 4 of L.A.A, 1894 along with a copy of FardIntekhalJamabandi and original agreement deed dated 04/05/2010 executed on stamp paper duly signed by DFO Buner and the land owners with marginal witnesses without consultation of Committee on the determination of rate of the land as required under LAC 1894 for private negotiations. At the same time it was requested that the notification U/S 4 be issued and proceedings initiated</p>
<p>2. On receipt of the application under Para-1, the Collector of the District shall examine its feasibility taking into consideration the genuineness of the public purpose involved, the minimum requirements of the acquiring agency and suitability of the area proposed for acquisition keeping in view its alternate uses if any.</p>	<p><i>The DOR is desirable was consulted</i></p>
<p>3. After the examination of feasibility under Para-2, if the Collector of the District is of the view that the land be acquired for the acquiring agency he shall issue a notification, under Section: 4, of the Land Acquisition Act 1894, stating clearly the name.</p>	<p><i>MM</i></p>

	<p>for acquisition of land.. Interestingly the DFO concerned thereafter did not kept the Revenue department in picture in the acquisition process and initiated everything on his own.</p>
<p>Department in the given under Para-1 inform the District that permission for into private negotiation the acquisition of land has obtained from the Head of Administrative Department.</p>	<p>No permission was obtained from Administrative department by the accused DFO, as was required under provision of para-4 of Revenue Deptt circular No. 54, V/4/2006/Notification/LA/10973, dated 17-08-2006.</p>
<p>The Collector will then notify the following Committee for assessment, and determination of the price and verification of title of ownership:-</p> <ul style="list-style-type: none"> a) District collector.....Convener b) EDO(Finance & Planning).....Member c) EDO of the acquiring department.....Member d) Revenue officer/ Tehsildar Circle.....Member e) Nazim of the Union Council.....Member. <p>II. The committee while determining the prices shall take into consideration the following data from which the market value can be assessed.</p> <ul style="list-style-type: none"> i. The price paid for the land recently 	<p>Since the accused DFO entered into private negotiations with the owners of the land, therefore, the Committee required under the amended law could not be constituted to assess & determine the price of the land.</p>

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required in that
estate or its
neighborhood.

- ii. The price paid in private transaction as discoverable from the register of mutations and the record of registration department.
- iii. All other information available especially with regard to the points referred to in section 23 of the land Acquisition Act.
- iv. It will always be open to the committee to consult respectable people who are disinterested with regard to the value of the land.

The committee will complete the process of valuation of land within a period of Sixty (60) days from the start of process of negotiation and if the Committee is of the opinion that the land owner and the respective of acquiring department have agreed to the price of land then it shall submit its report and recommendation to the Head of the Acquiring Department for getting his approval.

Approval of the Head of the Administrative Department as to the negotiated price could not be obtained due to unilateral action of accused DFO.

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This clearly indicates that the accused DFO acted in complete
amended Notification

POS/notification/LA/10973/17.8.2006, in the purchase of land. The
DFO completely denies the receipt of the existence of above mentioned
He states that the amended notification was required to be
by S.M.B.R to the administrative secretaries and its further
to all district officers. He states that till date, this notification has
endorsed to him.

Fact is that all government notifications are duly conveyed to all
departments and same is the case with the notification in question
has been duly conveyed to all the administrative secretaries. In any case
of law is no excuse.

Loss of Land and loss to the Provincial Exchequer.

The rate of land negotiated between DFO Buner and the land owners was
at Rs 11, 12,000/- per kanal. Ausatyaksala for 7/2009 to 4/2010
provided by the Revenue authorities, fixed the price of land as 4, 53,988 per
kanal. The total amount thus payable for the acquisition of the 6 kanal and 1
marla comes to 27, 46,627.4. However, the DFO entered into private negotiation
ignoring the standing law, rules and instruction of the provincial govt for
private purchase of land and thus made total payment of Rs 67,27,600/- at
55,600 per marla. Thus according to the average yaksala sale provided by the
revenue office Buner, the accused D.F.O caused loss of Rs. 39,80,973/- to the
provincial exchequer (Rs 3238644 as determined by the inquiry committee of
DC Swat and Buner).

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In addition to this loss, in the acquisition of land for construction of DFO
office cum Residential and staff quarters at Daggar the precedent set by the DFO
Buner resulted in the enhancement of rate by the court of senior civil judge
Buner in respect of the acquisition of land for another scheme Construction of
police line at Daggar.

Detail of losses caused to the provincial exchequer is provided in the

Land purchased by the DFO through private acquisition. AusatYakshala for the critical year by concerned Revenue Department. Rate analyzed by the DC, Swat and Buner as Inquiry officers as disagreement to Yakshala.

Price per Kanal	Total	Price per Marla	Price per Kanal	Total	Price per Marla	Price per Kanal	Total
11,12,000		22,700	4,54,000		28,834.35	5,76,687	
				27,46,699.4			34,88,956.35

6 kanal and one marla land purchased through private acquisition by DFO (Buner). Rs= 27,27,600
 AusatYakshala rate for 6 kanal and one marla land. Rs=27,46,699.4/-
 Rate determined by DCO Swat and Buner during inquiry for 6 kanal & one marla. Rs= 34,88,956.35

Difference in Shape of loss on the basis of AusatYaksala furnished by Revenue Authority to the inquiry Committee= Rs 39,80,900
 Difference in shape of loss as determined by the inquiry committee Dc Swat and Buner Rs 32,38,644

Comparison of Acquisition of Land for construction of Police line with AusatYaksala and Court decided rate

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Land acquired by police through Land Revenue collector as per Awarded rate.			Cost of land per Court /Judgement as precedence to DFO (Buner) negotiated rate.		
Price Per Marla	Price per Kanal	Price for 70 kanal and 2 marla	Price Per Marla	Price per Kanal	Price for 70 Kanal and 2 marla.
12,750.7	2,55,014	1,78,76,481.4 + 15% C.A.C =26,81,472	65538.05	13,10,761	91884346 + 15% CAC = 13782652
Total: 2,05,57,953.4			Total: 10,56,66,955		
Difference in Shape of loss= 8,51,090.02					

It is a basic principal of General Financial Rules that every public servant shall exercise the same vigilance in respect of public money as a person of ordinary prudence should exercise in respect of expenditure of his own money. The financial proprietary also requires that the expenditure should not be prima facie more than the occasion demands but the accused DFO caused huge loses to the provincial exchequer.

III. Undue haste

It is alleged in the statement of allegation that the DFO concerned effected the purchase during the last 2 months when the project was going to expire on 30th June 2010. For the available record, it is evident that the accused DFO was posted on 19th April 2010, and effected the agreement for the purchase of land on 4th May 2010. It is established that the purchase was made in the short span of 2 weeks. It is therefore crystal clear that the entire transaction was conducted in undue haste in 2 months.

The defense of the accused that he was under tremendous pressure from the Chief Conservator is not supported by any official document. Even if there was a pressure he should have followed the laid down procedure.

It is established, as alleged that the land which was to be purchased in the 1st year of the project was purchased by the accused DFO during the last two months of the total project life.

GFR (Rule 96) states as below.

"It is contrary to the interest of the state that the money should be spend hastily or in ill-considered manner.

The same rules further states that:-

"A rush of expenditure particularly in the closing months of financial year will ordinary be regarded a breach of financial regularity."

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IV. Change of Site in violation of PC-1

PC1 provides for the acquisition of land at mozaswari but the accused D.F.O purchased the land at mozaDagggar in utter violation of the approved PC1. If any deviation was to be made from the PC1, the accused D.F.O was required to obtain the approval of PC1 approving forum.

V. Change of Scope in violation of PC-1

In the approved PC-1, the purchase of land was 5 kanal whereas the purchase was made of 6 kanals + 1 marla no approval was obtained from the administrative department or PC-1 approving forum for this change of scope of the project. This deviation from the approved PC-1 put the Government to unnecessary loss of 11, 67600/.

VI. Direct Payment in violation of rules

Direct payment have been made to the owners through cheque bearing no.246776 + 246777, dated. 24/5/2010, amounting to Rs. 5782400/- - - 945200/-. In this case the required procedure was that the payment should have been made through the revenue authority i.e. District officer

Revenue but in violation of the established laid down procedure, direct payment was made to the owners.

Violation of Article 53 of Land Acquisition Act.

Article 53 of LAC 1894 clearly states that no agricultural land can be acquired by private negotiation for any department of govt without the Revenue Commissioner sanction but in the instant case the provision of the said article has been violated.

By Passing the Revenue Authorities in the Execution of Purchase Deed.

Mr. Mukamil shah, the then Range officer confirmed to have recorded a statement on the mutation deed on 26-5-2010 " that the rates were negotiated by the DFO and payment directly made the land owners and none of the revenue officials were involved in the purchase". This clearly shows that the purchase was executed by Mr. Hashim khan and is therefore responsible for the commission / omissions in the land purchase.

Conclusion:

Integrity, Honesty and impartially has remained the foundation of sound Public Administration ever since its inception. It is the sacred trust which on the one hand leads to collective good of the public and on the other, provides the moral justification of reposing authority with public officials. Gaining and keeping the public trust must be approach holistically as treads of integrity, transparency and accountability knit together to uphold the Public Administration and form the core of all Governance:Reforms.

Among other things, Citizens expect the public servants to manage public resources honestly and efficiently. And while fair and reliable Public Management inspire public trust, the absence of it renders the whole Public Administration paradigm futile.

With greater power comes greater responsibility. It is for this reason that accountability must always a fundamental pillar of Public Management. All successful Public Administration models world over have laid down strong emphasis on soft, transparent and strict accountability of the exercise of power. The absence of accountability has far reaching implications which includes, discouragement of honest officials, contamination of the whole system by setting bad precedence, increasing corruption, erosion of moral authority of civil servants.

In the current inquiry it is evident from the given facts and from the supporting evidence that the accused has clearly and blatantly violated. all standards of efficiency, transparency in management of Public resources. His method of acquisition of land was flagrant violation of prevalent rules prescribed for the purpose. He completely by-passed the Administrative department and Revenue authorities of the Districts. Made direct payment to the owners and in complete disregard of PC-1, change the site & scope of the scheme without obtaining any approval from the competent forum.

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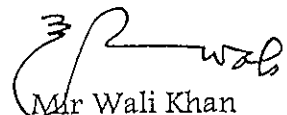
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Recommendations:

In view of the gross irregularities, misconduct, procedural lapses and loss to the provincial exchequer, major penalty of dismissal from services under "Khyber Pakhtunkhwa Government Servant Efficiency and Disciplinary rules 2011" is recommended against accused DFO Mr. Hashim Khan.



Arshad Majeed Mohmand
Director General, Special Development Unit
P&D Department.



Mr Wali Khan
District Forest officer/Inquiry officer,
Swat



GOVERNMENT OF KHYBER PAKHTUNKHWA

SHOW CAUSE NOTICE

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, hereby serve you, Mr. Hashim Khan, Divisional Forest Officer (BPS-18), Forest Department,

- (i) that consequent upon the completion of enquiry conducted against you by the Enquiry Committee, for which you were given opportunity of hearing vide office communication No.SO(Estt)Env/1-50(87)/2k14/2992-2994 dated 16/07/2013; and
- (ii) on going through the findings and recommendations of the Enquiry Committee, the material on record and other connected papers including your defence before the Enquiry Committee:

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

1. Inefficiency.
2. Misconduct.

As a result thereof, I, as Competent Authority, have tentatively decided to impose the penalties of: "Dismissal from Service".

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

You are, therefore, required to Show Cause as to why the aforesaid penalty be imposed upon you and also intimate whether you desire to be heard in person.

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

A copy of the findings of the Enquiry Officer is enclosed.

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER,
KHYBER PAKHTUNKHWA/
COMPETENT AUTHORITY
09. 10. 2014.


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Approved: I

ANNEX - J

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DIVISIONAL FOREST OFFICER MALAKAND FOREST DIVISION AT BATKHELA	 GOVERNMENT OF PAKISTAN	PHONE NO.0932-410066 FAX NO.0932-410066
		No. <u>2589</u> /E, Dated <u>24</u> /10/2014

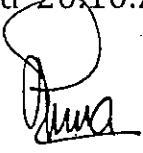
To

The Chief Conservator of Forests
Malakand Forest Region-III
Shagai Saidu Sharif Swat.

Subject: **SHOW CAUSE NOTICE**


Reference to the show cause notice served upon the undersigned, endorsed vide your office No. 1397-98/E, dated 20.10.2014, the reply is submitted from page No. 1 to 212 please.

Encl as above


(HASHAM KHAN)
DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA

No. 2590 /E,

Copy forwarded to the Conservator of Forests Malakand Forest East Circle at Shagai Saidu Sharif Swat for favour of information please.


(HASHAM KHAN)
DIVISIONAL FOREST OFFICER
MALAKAND FOREST DIVISION
BATKHELA



(62)

BEFORE THE HONOURABLE CHIEF MINISTER KHYBER
PAKHTUNKHWA, PESHAWAR (THROUGH PROPER CHANNEL)

Subject ACQUISITION /PURCHASE OF LAND MEASURING 6-KANAL'S
AND 1-MARLAS IN THE VICINITY OF DAGGAR FOR
CONSTRUCTION OF DFO OFFICE CUM RESIDENCE/STAFF
QUARTERS (PARA WISE REPLY OF SHOW CAUSE NOTICE)

Your Excellency,

I have the honour to submit that the undersigned has been served upon a show cause notice endorsed vide CCF-III No. 1397-98/E, dated 20.10.2014 under the subject matter and received on 21.10.2014 and was held guilty of

- 1- In-efficiency
- 2- mis-conduct.

I. BACKGROUND

A PC-I title "construction of DFO Offices and residential building in NWFP" envisages purchase of 5 kanal land for DFO Buner office was launched during 2007-2010 but it could not effected till end of April/2010.

The undersigned was posted as DFO Buner on 19.4.2010 and rash attention was given to this years long hanging issue. An ideal commercial plot 6 kanal 1 marla was purchased in the heart of Buner District Head Quarter. Due to my take over as DFO Buner, Mr. Mir Wali Khan was irked and bitter blood was created amongst us. In the back lash of which he (Mir Wali Khan) reported a mala fide monitoring report vide No. 255/w.p dated 1.2.2011 (Annex-I, Page 23-26) which was squarely responded, vide No.1986/Acctt, dated 18.3.2011 (Ann-II, Page 27-35) Last page No. 33 of which is of worth consideration. The said monitoring report became a base of the subject charge sheet.

II. PARAWISE REPLY

1) PROCEDURE

i) The undersigned processed the purchase of land through private negotiation in coordination with the revenue department through Mr. Mukamil shah (the then SDFO Dagggar) who was in day to day contact with Revenue Department. To this effect the agreement deed with the land owners and the Forest Department through the undersigned was executed. The draft notification under Section 4 of the land Acquisition Act 1894 and agreement deed, afore said, were sent to the DOR &/Collector Buner vide letter No. 3278/G dated 06.5.2010 (Ann-III, Page 37) with a request for signing and further processing as required. The same time the Chief Conservator of forests Khyber Pakhtunkhwa Peshawar and the Conservator of Forests Malakand Circle at Saidi Sharif were also sent the same letter alongwith the

enclosures vide Endst: No. 3279-80/G dated 06.5.2010, (Ann-III, Page 37) and that the agreement deed and the notification under Section 4 of the Land Acquisition Act, 1894 clearly specifies the area, khasra Nos, location, tehsil and District of the land to be acquired. This further reflects that this notification was also sent by DOR Buner vide Endst: No. 1045-51/G dated 06.05.2010 (Ann- IV, Page 39) to the Senior Member Board of Revenue KPK Peshawar, the Commissioner Malakand Division at Saidu Sharif, the Chief Conservator of Forests Khyber Pakhtunkhwa Peshawar, the Conservator of Forests Malakand Circle at Saidu Sharif, the DCO Buner, the Manager Government Printing Press KPK Peshawar (for publication) and Tehsildar Daggar.

That all the concerned authorities in the Revenue Department and Environment Department were duly informed. That after publication of the notification under Section 4 of the Act **ibid nobody has raised any objection to the process of the specified piece of land** as yet. Therefore, in the intrust of public service the process was finalized by making the payment to the land owners at the rate much less than that intimated by the Field Revenue Staff i.e. Patwari, Girdawar Circle and Tehsildar Daggar as 1.4 million rupees per kanal, that is much less than the prevailing market rate. it is further, very respectfully, submitted that the land so purchased was interred in the revenue record in the name of the Provincial government through Forest Department in column Nos. 3808 and 3809 dated 26.5.2010. (Ann-V, Page 41-44),

If at all the acquisition process were irregular or illegal the Collector or the Provincial Government could have conveniently disapproved the process narrated above and de-notified the acquisition process, but neither the higher authorities in Environment Department nor the Collector have even made any directions for the corrective measures, if any. The mutations are still intact in each and every letter the higher authorities of the department of the petitioner have been informed and all facts from time to time have been disclosed to them and everyone else, but no objections whatsoever, have been raised, which fact amounts to admission of the process to be correct.

- ii) The amended procedure vide notification No. Revn/4/2008/ Notification /La/10973 dated 17.8.2006 (Ann-VI, Page 45-48) was required to be communicated by SMBR to Administration secretaries and its further endorsement to all District officers. But till to date, this notification has not been endorsed to the undersigned which can be checked from the Service record of undersigned. The undersigned is bound to follow the forest ordinance 2002 whereas the land acquisition Act 1894 has been clearly mentioned under Sec: 118 F-O 2002, and no amendment

(64) 5

The DOR was properly consulted and per advice of the DOR as well officially endorsed to DFO Buner vide DOR office No. 283/2/9/HCR dated 14.2.2011, (Ann-VII, Page 71-72) the land acquisition Act 1894 was followed as such.

- iii) The entire record was twicely passed through the process of audit during 2011, 2013 and the procedure followed was termed satisfactory. (Annex VIII, Page 81, 88)

2) ADMINISTRATIVE APPROVAL

- i) The subject activity was a part of ADP Scheme which was approved in DDWP and subsequently administrative approval was accorded, envisages purchase of 5 Kanal land @Rs.1400000/- Kanal for DFO Buner which was purchased @Rs. 1112000/- Kanal situated in an ideal, unmathing location in the heart of District Head Quarter Daggar. The subject PC-I had the same activities in Dir Lower, Dir Upper, Chitral, Swat also and none of them has gotten secondary approval from the administrative Department. Moreover, the DFO conduct correspondence with administrative department through proper channel. The instate case was endorsed in first step to Conservator of Forest Malakand and Chief Conservator of Forest Khyber Pakhtunkhwa Peshawar. vide No.3279-80/G, dated 06/05/2010 (Annex-III page 37) which they should have to float to Administrative Department.

- ii) The amended LRA 2006 has never been endorsed to the undersigned which can be checked through my service record.
- iii) The DFO Dir Lower had sought Technical Sanction for the construction activity under the same PC-I, in response of which CF Malakand vide No. 2150/G, dated 17.3.2010 had directed to follow PC-I provision (Annex IX, Page 91-93).

3) PRICE COMMITTEE

- i) There is no excuse for notifying price committee regarding acquiring land through private negotiation.

The agreement deed signed with the owners clearly indicating the rate Rs. 55600/Marla was submitted to DOR Buner vide No. 3276/G, dated 6.5.2010 for further processing, which they processed without questioning the negotiated rate, because the rate was fixed in light of Sec: 13 L.A. Act 1894. The constitution of price committee is the mandate of revenue Department which they avoided perhaps for the reasons of very short left over time

- i) In DE-NOV Enquiry, The DOR was held responsible for not constituting of the committee. Consequently a draft charge sheet was issued against him vide CCF-III No. 4297/E, dated 10.4.2014.

(Annex-X, Page 95-105) which could not materialized and is question mark.

ii) A land acquired by Health Department in Matwari was also processed by Revenue Department without notifying price committee.

4) PRICE OF LAND AND LOSS TO GOVERNMENT EXCHEQUER

A) Price of Land

Already explained vide S.No. 2 (i) seeking administrative approval is responsibility of CF & CCF as DFO does not make direct correspondence with Administrative Department. Furthermore, it was directed by high-ups to follow PC-I and no additional approval is required vide CF No. 2150/G, dated 17.3.2010. (Ann-IX page 91-93) under Section: 13 LRA: 1894, the price be fixed on the prevailing market rate.

The acquired land was purchased at the rate of Rs.1112000/- Kanal against the provision of:

- 1) PC-I approved rate Rs. 1400000/- Kanal (Annexure-XI page 107-127)
- 2) The market rate per Charsala furnished by the revenue Department under the Seal/Signature of concerned Patwari, Girdawar and Tehsildar Daggar is Rs. 1400000/- Kanal. (Annexure -XII) page 129)
- 3) Yak Sala rate as per revenue record is Rs. 1454000/- Kanal. (Annexure -XIII page 135)
- 4) The Judiciary fixed rate Rs. 1310671/-Kanal (Annexure-XIV page 149)
- 5) DFO Buner proposed Rs. 1500000/- Kanal (Annexure -XV page 151) (DFO Buner letter No.367/G dated 05.08.2008)
- 6) The CCF and CF Malakand, had welcomed the rate during their spot visit dated 27.4.2010 to 11.5.2010 respectively.

B) LOSS TO GOVERNMENT

- i) For acquiring land, the following Two (2) ways are well determined: under LRA:1894
 - A. Compulsory acquisition.
 - B. By negotiation acquisition.

The subject land was acquired through private negotiation while the Police Department has purchased the land through compulsory way, which has not been differentiated by the committee. The salient features of the both ways in respect of Forest and Police acquired land are as under:

S.No	Forest Department	Police Department
1	The Forest Land was purchased through private negotiation	The Police Land was Purchased through Compulsory way
2	In private negotiation, the Price is settle according to the prevailing market rate vide Clause-6 & 19 (I) of land acquisition act within the provision of approved rate	The Revenue Department fixed the price by their own, irrespective of the prevailing market rate
3	The Forest Land is a commercial Land	The Police acquired land is agricultural Land (Annexure -XVI, Page 155)
4	The Forest Land was acquired in May 2010,	The Police Land process was started during August 2008
5	The Forest Land is adjacent to main Daggar Head Quarter Road	The Police Land is far away from the Daggar Bazar. (DOR No. 2014-18 dated 5.10.2010 (Annexure-XVI, Page 155))

The Civil Court has declared the Ausat Yaksala in correct (Page 148) and has fixed the rate on the basis of average price of the following three transactions made in the vicinity as.

- i- Land purchased by U-fone @ Rs. 1100000/-
- ii- Land purchased by Forest Department @ 1112000/-
- iii- Land purchased by Noor Alam @Rs. 1619017/-

So it is mathematically clear that by induction of Forest Department transaction, the average rate has been reduced, not increased. The negotiated rate as per LA, act 1894 Sec: 13 is being fixed on market rate, not on yak sala etc.

- II) 6 Kanal & 1 Marla land was purchased @Rs. 1112000/- Kanal against the Pc-I approved rate of Rs. 1400000/- Kanal. Thus Rs. 288000/-Kanal was saved for the government. Over and above a sum of Rs. 214000/- spent every year for paying rent of hired building for DFO Buner office and house rent allowance was also saved.
- III) The Ex-owner of the land has applied the Government to return the land and he will refund the paid amount.

(67) 11

5) UNDUE HASTE

The PC-I tile "Construction of DFO Officers & Residential Buildings in NWFP " was launched since 2007-08 to 2009-10 during the entire period, one Mr. Mir Wali Khan holding post of DFO Buner but he did not succeeded to purchase the land. The undersigned replaced him, took over charge of Buner on 19.4.2010. The CF Malakand and CCF directed the undersigned in strong words to accomplish the task in short time. They repeatedly mounted pressure and finally was warned by CF that if could not do so, he (undersigned) will be charge sheeted. So the undersigned directed the SDFO Daggar to fully concentrate over this year's long hanging issue, The task was accomplished and the CF, CCF exulted and extolled the undersigned

6) CHANGE OF SITE

Generally all the District officers residence/offices are being located in the District headquarter, where as Daggar is the District headquarter of Buner. While Swari is a trade centre.

All the District head offices including Bank, Post office, Judiciary, Executive are located in Daggar which is the most proper place for DFO office to have an easy interaction with other officers and public convenience. **It is un-wise to established District Head Office for away from District headquarters.**

No Where the word "Muzza Swari" has been specifically mentioned in any document or PC-I. Swari name is being used in general term for both (Daggar & Swari) the sister towns of Buner, which are now as one Town. Daggar college being Established in Sawari Bazar is the ready example.

In DE-NOV Enquiry (page 159), the committee has validated the purchase of land at Daggar, Which is reproduced as under.

"The contention of the DFO is correct that Swari is a commercial area where the cost of the land is very high and it would have not been possible to purchase land within the given price. Moreover it is also not advisable to construct Government officers/residences in commercial areas. Compared to Swari, Daggar is the District Headquarter of Buner District and almost all the offices are located in Daggar, however, the Daggar and Swari are sister towns and due to rapid population growth, both these towns are now treated as one town."

YH

7) CHANGE OF SCOPE

- i- The rate envisaged in the PC-I was Rs. 1400000/- per kanal whereas the subject land has been purchased at the rate of Rs. 11,12,000. Per kanal, accrued a hefty amount saving of Rs. 17,42,400/- to the Government.
- ii- The CCF NWFP during his visit to the site on 27.4.2010 has directed the undersigned to purchase additional land. The excess/surrender was all together stopped as per directives of CF and 100 % funds utilization was stressed by high up. So the lone option was to go far purchase of additional land with the consent of CCF & CF. thus a precious/ valued property was added in the Government assets rather than un necessary loss.

8) DIRECT PAYMENT

The undersigned took over charge of Buner on 19.4.2010. The CF Malakand and CCF directed the undersigned in strong words to accomplish the task in short time. They repeatedly mounted pressure and finally was warned by CF that if could not do so, he (undersigned) will be charge sheeted. So the undersigned and, the SDFO Daggarr fully concentrated over this year's long hanging issue. For land acquisition, the laid down procedure in vogue in Buner was followed as per guidelines of revenue authorities. The procedure was also officially communicated by DOR Buner vide his No. 283/2/9/HCR dated 14.2.2010. under Sec: 1 of the said procedure, the following two ways exist for land acquisition:-

- 1- Compulsory land acquisition.
- 2- Private negotiation.

The procedure at S.No.2 already furnished by DOR Buner No. 283/2/9/HCR dated 14.2.2010 (was followed vide DFO Buner office No. 3278/G, dated 6.5.2010.

- i- Under taking on stamp paper
- ii- Notifying sec: 4
- iii- Payment to owners
- iv- Transfer of land.

The detail procedure for payment vide section 41 of LA. Act 1894 is very much clear about mode of payment as under

- i- By Direct payment,
- ii- By order on a treasury
- iii- By money order
- iv- By cheque
- v- By deposit in a treasury

(69) 15

The procedure further stressed to say that

"payment should always be so made if possible to save the recipients from unnecessary attendance" (Sec: 41 par 4 L.A Act 1894.

The said land acquisition vide sec:55 para 3 L.A Act 1894 further state that: "payment must be made before or immediately after taking possession"

The CCF stressed hard to report payment within 3 days positively but the DOR excused to accept the cheques due to months long time bar after notifying section 4. During this period any claimant can record his claim. It is also worth mentioning that the DOR has even refused to accept cheque No. 246778 dated 24.5.2010 Rs. 269604/- as Government duty delivered by DFO Buner in this respect. Due to shortage of time, the lone choice suggested by DOR during a meeting dated 20.5.2010 was to go for direct payment under the laid down practice in vogue like other departments. i.e health Department purchased land at Matwani for BHU and Education Department at Nawagai and made direct payment to the owners. Hence direct payment was made to the owners with intimation to DOR vide No. 3455/G, dated 24.5.2010. (Ann-XIX page 165) The CF Malakand and CCF were also kept-abreast vide No 3456-59/G. They exulted and extolled the undersigned. Worth notingly, all the transactions have been made through Accountant, incharge SDFO Daggar.

9) AUSAT YAK SALA

- i- The ausat Yak Sala was scrutinized by DC's Swat & Buner and calculated 1450000/- Kanal (Ann-XIII, Page 135).
- ii- The civil Court vide their Judgment (Ann-XIV, page 148) has termed the yaksala incorrect and has fixed Rs. 1310671/Kanal.

10) AUDIT

The procedural and financial irregularities are being determined by the audit. The subject case was undergone through the process of audit by establishing para-I No. 5459-61, dated 30.6.2011, which was equally responded vide No 1138/G, dated 17.10.2011 (Annex-VIII, page 73-74). The para was settled vide No. 1092-94, dated 7.1.2012 (Annex-VIII, page 81, 89) without fixing any financial procedural irregularity. The enquiry conducted by DCs was again forwarded to director B&A which was commented by him that's no financial loss has been happened to Government.

Yg

(70) 47

11) VIOLATION OF ARTICLES 53 OF L.A 1894

The land purchased by the Forest Department situated in the heart of District Headquarter Daggar Colony adjacent to session Judge official residence.

In the rate reasonability certificate issued by the revenue Department it has been clearly mentioned that the purchased land is commercial and the rate of the land is very high.

12) BY-PASSING REVENUE DEPARTMENT

As already Explained vide S. No. I (i) that the revenue Department as well Forest Department were fully on board. All the process right from selection of site till its transfer to Forest Department was made through Revenue Department Mr. Mukamil Shah the then SDFO Daggar was strongly directed by the undersigned to persue the given task till its logical end. He was daily in contact with the revenue officers/officials. Mr. Mukamil Shah has denied the written statement recorded on the mutations (Ann-XVII page 163). The payment was made through in-charge SDFO & Accountant and was addressed to DOR.

Under class II of E&D service rules 2011, the witnesses to be produce in presence of accused to cross examine which was deliberately avoided by Enquiry Committee

13) INJUSTICE/DISCRIMINATION

- 1- The undersigned took ever charge of Buner on 19.4.2010 replacing Mr. Mir Wali Khan which irked him and bitter blood was created, at the result of which he floated a biased monitoring report in respect of the subject land. This bias monitoring report become a base for entire process ending at the subject show cause notice (Ann-I, page 23-25).
- 2- The procedural/financial irregularities is being determined/ examined by the audit. The instant case has twicely been passed through the Audit process and the procedural/ finical process carried over by the undersigned has been termed correct/satisfactory. (Ann-VIII, page 81, 88).
- 3- The enquiry conducted by DC, Swat/Buner was initiated against Hidayatullah Tehsildar and was unlawfully switched over to the undersigned, kept aloof the undersigned.
- 4- In DE-NOV Enquiry, the DOR Buner was held responsible for not following the procedure and a draft Charge Sheet was issued against him vide CCF-III office No. 4297/E, dated 10.4.2014 (Ann-X, page 99), but could not materialized while the Charge sheet ~~was~~ ~~not~~ ~~implemented~~ ~~on~~ ~~the~~ ~~undersigned~~ ~~was~~ ~~implemented~~.

(71) 19

5- The entire chain of Forest Department i.e Forest gaud to CCF and Revenue Department i.e Patwari to DOR were on-board in the process and each one has played his proportional role to his jurisdiction but only the undersigned has been victimized and made scap goat.

6- The Enquiry Committee constituted comprise of the following 2 officers

1- Mr. Arshad Majeed DG/SDU BPS: 19

2- Mr. Mir Wali Khan DFO BPS : 18

The member at S.No. 2, is reporting officer in the instant case and is of equal rank to the undersigned who cannot conduct enquiry against the undersigned vide E&D role clause 10 (a).

7- An appeal for replacement of E.C was submitted vide No. 247/E, dated 4.8.2014 (Ann-XX page 167-171) and No. 840/E, dated 27.8.2014. (Ann-XXI page 173-175) But cold responded.

8- A writ petition No. 408/14 against the E.C was filed in Swat Darul Qaza, the Court issued order on 1.9.2014, requisitioned the entire proceeding and barring the member de at S.NO. 2 not to sign the report but the court order was disregarded. (Ann-XXIII Page 195-199)

The chairman of the committee was called upon for personal hearing on 25.8.2014 but he became hard reactionary after knowing my approach to the court and conducted no hearing (page No. 175)

9- The police department land acquisition case is under trial is Swat Darul Qaza under RFA 11/2012 and it is prejudice to presume that the decision of Lower Court will be upheld.

10- The Yaksala of Buner Police Department has been declared void and in-correct by Lower Court.

11- The PHC Swat Darul Qaza issued order on 1.9.2014 barring member of the committee to not sign the report and requisitioned the entire proceeding as such. After knowing about the court order, the chairman called the member (Mr. Mir Wali Khan DFO) to Peshawar and post hastily conducted the enquiry, disregarding the court order, dated 1.4.2014, (Ann-XXIII, page 195-199) DFO Swat (member) No. 494/R, dated 1.9.2014 and CCF-III No. 756/E, dated 2.9.2014., (Ann-XXIV page 201-205).

12- To Run abate their anger and display of extreme discrimination, the enquiry committee recommended major of major penalty in utter violation of E&D rules 2011 and directives of Establishment vide No. SOR-instruction/2014 dated 28.3.2014, barring the E.C to propose the penalty.

13-The contents of the Enquiry reports explicitly un-veil the bias attitude of the committee and all out effort has been made to shift mandatory responsibility of the revenue department on the undersigned and has absolutely taken a unilateral action.

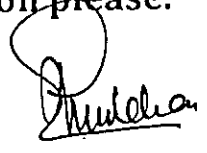
The allegation leveled are vague, Evasive, illogical, malice and is subjective. None of the documented and argued submissions, have been given any weight. The enquiry conducted is absolutely unilateral and partial.

The honorable Peshawar High Court Swat Darul Qaza Mingora Branch was unlawfully intercepted to give the proceeding its right course.

As the undersigned has done all the acts in the best interest of public and good faith, so it is requested to accord indemnity under section-III Forest ordinance 2002, set-aside the enquiry and may kindly be exempted from all the charges please.

The undersigned desired to be heard in person please.

Dated 27 / 10 / 2014



(HASHAM KHAN)
DIVISIONAL FOREST OFFICER
(BPS 18)



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No 1987-90/Acctt:

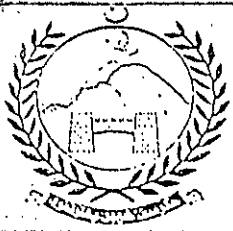
Copy forwarded to the:-

- 1- Chief Conservator of Forests Khyber Pakhtunkhwa Peshawar for favour of consideration please.
- 2- Conservator of Forests Malakand East Circle Mingora for favour of consideration please.
- 3- SDFO Daggar C/O DFO Buner for information and necessary action.



Divisional Forest Officer,
Lower Dir Forest Division,
Timergara





GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Pesh: 31st December, 2014

NOTIFICATION

No.SO(Estt)Envt/1-50(87)/2k12: WHEREAS, Mr. Hashim Khan, Divisional Forest Officer (BPS-18) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations dated 16/07/2014, served upon the said officer;

AND WHEREAS, Enquiry Committee comprising Mr. Arshad Majeed Mohmand (PAS BS-19), Director General, SDU P&D Department and Mr. Mir Wali Khan, Divisional Forest Officer (BS-18) was constituted to conduct the 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 the charges against the officer being of serious nature have been established beyond reasonable doubt;

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

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused officer, and hearing him in person and exercising his powers under Rule-14(5)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, read with Rule 4(1)(a) of (APT) Rules, 1989, has been pleased to impose a major penalty of "Reduction to lower post"; and recovery of Rs.32,38,644/- upon Hashim Khan, Divisional Forest Officer (BPS-18) of Forest Department, with immediate effect.

Sd/-

CHIEF MINISTER,
KHYBER PAKHTUNKHWA

139-146

Endst: No. SO(Estt)Envt/1-50(87)/2k12

Dated Pesh: 31st December, 2014.

Copy is forwarded to:-

- 1) PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 2) PS to Secretary Forestry, Environment & Wildlife Department.
- 3) Chief Conservator of Forests, Central and Southern Forest Region-I, Peshawar.
- 5) Director Budget and Accounts Cell, Forestry, Environment & Wildlife Department.
- 6) Officer concerned C/O Chief Conservator of Forests, Central & Southern Forest Region-I Peshawar.
- 7) Personal file of the officer.
- 8) Master file.
- 9) Office order file.


(MIR WALI KHAN)

SECTION OFFICER (ESTT)

(74)

Approved: K



GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Pesh: 31st December, 2014

NOTIFICATION

SO(Estt)Env/1-50(87)/2k12: WHEREAS, Mr. Hashim Khan, Divisional Forest Officer (BPS-18) proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Particulars dated 16/07/2014, served upon the said officer;

AND WHEREAS, Enquiry Committee comprising Mr. Arshad Majeed Mohmand (BS-19), Director General, SDU P&D Department and Mr. Mir Wali Khan, Divisional Forest Officer (BS-18) was constituted to conduct the 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 the charges against the said officer being of serious nature have been established beyond reasonable doubt;

AND WHEREAS, the Competent Authority, after considering the Inquiry Report and related documents, of the case, served a Show Cause Notice upon the said officer to which he responded, 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 after hearing him in person and exercising his powers under Rule-14(5)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, read with Rule 4(1)(a) of the Government Servants (Efficiency & Discipline) Rules, 1989, has been pleased to impose a major penalty of "Reduction to lower grade"; and recovery of Rs.32,38,644/- upon Hashim Khan, Divisional Forest Officer (BPS-18) Forest Department, with immediate effect.

Sd/-
CHIEF MINISTER,
KHYBER PAKHTUNKHWA
Dated Pesh: 31st December, 2014.

137-146

No. SO(Estt)Env/1-50(87)/2k12

Copy is forwarded to:-

- PSO to Chief Secretary, Khyber Pakhtunkhwa.
- PS to Secretary Forestry, Environment & Wildlife Department.
- Chief Conservator of Forests, Central and Southern Forest Region-I, Peshawar.
- Director Budget and Accounts Cell, Forestry, Environment & Wildlife Department.
- Officer concerned C/O Chief Conservator of Forests, Central & Southern Forest Region-I Peshawar.
- Personal file of the officer.
- Master file.
- Office order file.

(MIR WALI KHAN)
SECTION OFFICER (ESTT)

BEFORE THE HON'BLE CHIEF MINISTER KHYBER
PAKHTUNKHWA PESHAWAR.

ANNEX-2

Subject: DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED NOTIFICATION NO.SO(ESTT:)
ENVT/1-50(87)/2K12 DATED 31/12/2014 VIDE
WHICH A MAJOR PENALTY OF "REDUCTION)
TO LOWER POST AND RECOVERY OF
RS.32,38,644/- HAS BEEN IMPOSED UPON ME.

Respectfully Sheweth:

Enclosed please find herewith the subject
departmental appeal for favourable consideration under
Clause 17 E&D Rules 2011 please.

Dated 22/01/2015

Hasham Khan



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



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BEFORE THE HON'BLE CHIEF MINISTER KHYBER
PAKHTUNKHWA PESHAWAR.

Subject: DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED NOTIFICATION NO.SO(ESTT:)
ENVT/1-50(87)/2K12 DATED 31/12/2014 VIDE
WHICH A MAJOR PENALTY OF "REDUCTION
TO LOWER POST AND RECOVERY OF
RS.32,38,644/- HAS BEEN IMPOSED UPON ME.

Respectfully Sheweth:

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

- 1- That I was inducted in Forest Deptt: as Forest Ranger on 14/10/1984 has reached to the Rank of DFO (BPS-18) and has rendered a meritorious and spotless service.
- 2- That a PC-I title "Construction of Offices and residential building in NWFP" envisages purchase of 5 Kanal Land to DFO Bunir Office was launched during July 2007 – June 2010.
- 3- That one Mr. Mir Wali Khan was holding the charge of DFO Bunir Since 2007 to 19/04/2010 but he couldn't purchased the land during his tenure.
- 4- That I was posted as DFO Buner on 19/04/2010 and gave rapt attention to years long hanging issue and purchased 6 Kanal and 1 Marla land in the District Head Quarter Colony, Daggar. To this effect, the agreement deed with the owners and Forest Deptt: was executed and sent to DOR & E / Collector Buner vide

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Letter No.3278/G dated 06/05/2010 with a request for signing and further processing. The said letter was endorsed to conservation Malakand and Chief Conservator Khyber Pakhtunkhwa.

- 5- That the DOR & E / Collector Buner notified Section 4 Under LA: Act 1984, clearly specifies the area, Khasra No. Muza Location and endorsed to all Revenue and Forest Deptt:/ High ups including Manager Govt Printing Press Peshawar, for publication.
- 6- That no objection from any side was raised during the entire period and the payment was made to the owner at the rate of Rs.11,12,000/- leveled against the approved rate of Rs.14,00,000/- P. Kanal. The Revenue Deptt: entered the land in their record and the land was transferred in the name of Provincial Govt (Forest Deptt).
- 7- That my predecessor Mr. Mir Wali Khan DFO was highly prejudiced against me and he was posted as Monitoring Officer at Malakand. He floated a malefide monitory report vide No.255/VP dated 01/02/2011 in respect of the subject land, upon which the entire inquiry was established.
- 8- That Mr. Mir Wali Khan DFO maneuvered the entire inquiry and in spite of being complaint/reporting Officer and of equal grade to me, he was nominated as member of the inquiry committee in utter violation of the E&D Rules 2011 Clause 10 (a).

Handwritten signature or initials.

9- That the Chairman of the Committee has also become personal and bias and request for replacement of the committee was preferred to the competent authority vide No.247 dated 04/08/2014 and No.840 dated 27/08/2014.

10- That the prejudiced inquiry committee further violated the E&D Rule 2011 and establishment deptt: instructions vide No.2014 dated 28/03/2014 by recommending major penalty and hence this departmental appeal on the following grounds:

GROUND:

A) That the developmental project "Constructions of Offices and Residential Building in NWFP" was approved for the period of "July 2007 to June 2010" envisages purchase of 5 Kanals Land for DFO Buner Office and residence. Mr. Mir Wali Khan DFO was holding charge of Buner since 2007 to 19/04/2010 but he could not purchased the land. I took over charge as DFO Bunir on 19/04/2010. The High ups mounted tremendous pressure upon me to accomplish the task before closing of the project i.e. June 2010 to avoid lapses of funds. The Chief Conservator vides his letter No.2989 dated 12/05/2010 (Annexure I Page II), stressed to take possession of the land by end of 2009-10 i.e. 30/06/2010. So that hectic efforts was made and an ideal site situated in District Head Quarter Colony. Dagger was selected and processed the purchased of land through private

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negotiation and coordination with Revenue Deptt: To this effect the agreement deed and draft, notification Under Section 4 of LA Act 1894 was sent to DOR & E / Collector Buner vide No.3278/G dated 06/05/2010 (Annexure II Page 12/13) for signing and further processing.

The Revenue Deptt: processed the case and the Forest Deptt: pursued it to its logical end i.e. the mutations were signed by the Revenue Deptt: and transferred the land in the name of Forest Deptt:.

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

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

B) That the DOR Buner was properly consulted time to time and per advice of DOR as well officially endorsed to DFO Buner vide DOR Off: Letter No.283/2/9/HCR dated 14/02/2011, the Land Acquisition Act 1894 was followed which is also particularly been mentioned Under Section 118 of Forest Ordinance 2002.

The amended procedure of 2006 was required to be communicated to all District Officers but has never been endorsed to the appellant till yet.

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The constitution of price Assessment Committee is the solemn responsibility of concerned DOR Under Clause 5 of Amended Land Acquisition Act 2006, which was not followed by the DOR Buner, against which he was held responsible in DE-NO Enquiry and a draft charge sheet was framed against him.

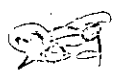
Furthermore, the constitution of price committee was not in practice in Buner and Health Deptt: purchased land at Dewana Baba (Matwani) for BHU without going for price committee.

- C) That the subject activity was a part of ADP Scheme approved DDWP, for which administrative approval was accorded by Secretary Environment. The Conservator of Forest Malakand vide his letter No.2150/G dated 15/03/2010 (Annexure III Page 14) had directed to follow the PC -I provision.

That the Dir Lower, Upper, Chitral, Swat were also part of the subject PC-I and none of them got technical approval.

The DFO does not make direct correspondence with the Administrative Deptt: but approach it through proper channel. The case was submitted to Conservator, Chief Conservator in the first step vide No.3279 - 80/G dated 06/05/2010 and No.3470 / G dated 18/05/2010 which was further (Ann: IV page 15)

(81)



their responsibility to move to the Administrative Deptt: for additional approval. It is worth noting that technical sanction is usually required for technical activity i.e. construction of building, road, bridges, Hydel Power etc.

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

Under Clause 6, 13(a), 19 (1) of LA Act 1894 it has been stressed, to fix the rate according to the prevailing market rate, taking special care to avoid Under Estimated value.

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

- i- PC-I approved rate Rs.14,00,000/ Per Kanal
- ii- Administrative approved Rate Rs.14,00,000/ Per Kanal
- iii- Rate Reasonability Certificate Rs.14,00,000/ Per Kanal (Annexure V Page 16)
- iv- Yaksala evaluated by DCs Swat Buner Rs.14,54,000/ Per Kanal

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- v- DFO Buner Proposed Rate Rs.15,00,000/ Per Kanal (Ann VI page 17)
- vi- The Civil Court assessed rate for less potential Agricultural Land Rs.13,10,671/- Per Kanal (Ann VII page 25)

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

Thus high potential / precious land was purchased @ Rs.11,12,000/- Per Kanal against the approved rate of Rs.14,00,000/- Per Kanal and Rs.2,88,000/- Per Kanal saving was accrued to the Govt as well the Deptt: get rid of paying rent for hired building used by the DFO Buner as well house rent payment.

E) That the forest land was purchased through private negotiation during 05/2010 which is highly commercial and potential, situated on main Road in District Head Quarter Colony Dagger, while the police land was purchased during 08/2008 which is agricultural land situated far away from Road as per award Annexure VIII Page 28).

F) That the DOR Buner refused to accept payment and even returned cheque No.246778 dated 24/05/2010 Rs.269,624/- paid for Govt Taxes. As per advice of DOR Buner, direct payment was

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made to the owners Under Clause 41 LA Act 1894.

The direct payment was also in vogue in Buner as.

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

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

G) That the procedural and financial irregularities are being determined by the audit. The subject case was passed through the process of audit and established Para No.1 vide letter No.5459-61 dated 30/06/2011 (Annexure IX Page 30) which was commented by me vide No.1138 /G dated 17/10/2011 (Annexure X Page 31-34) and termed justified by the then Conservator and Chief Conservator. The Para was settled vide No.1092-94 dated 07/01/2012 Annexure XI Page 35-37). Similarly the inquiry conducted by the Deputy Commissioner Swat and Buner was referred to Director Budget and Account Environment Deptt: which was commented by him with the remarks that no financial loss has been happened to the Govt.

(Ann XII page 38-39)

The Chief Conservator of Forest of Malakand vide No.2037-38 / E dated 31/10/2014 (Annexure

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XIII Page 46-47) has offered his comments against the reply of the Show Cause Notice and has stated that by purchasing land @ of Rs.11,12,000/- Per Kanal, saving has been accrued to the Govt.

H) That Mr. Mir Wali Khan DFO was my predecessor and short after second step successor on the same post i.e. DFO Buner. He was my arch professional rival who maneuvered a male-fide monitoring report vide No.255 / W.P dated 01/02/2011 (Annexure XIV Page 48-49) which became a base of the subject inquiry. He further manipulated the inquiry at each and every step and also inducted himself as member of the Inquiry Committee, in spite of the fact that he is complainant / reporting officer in the instant case and is also of equal grade (BS-18) to the appellant. So his nomination as inquiry officer is against the E&D Rules 2011 and natural justice. He also provoked the Chairman of the committee against the appellant and thereafter the competent authority was approached vide Letter No.247 dated 04/08/2014 (Annexure XV Page 50-52) and No.840 dated 27/08/2014 (Annexure XVI Page 53-54) for replacement of the committee but no response was given to it.

The inquiry committee further violated the E&D Rules 2011 and instructions of the Establishment

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Deptt: (Annexure XVII Page 55-56) by recommending major penalty.

- 1) The contents of the inquiry reports explicitly unveil the bias attitude of the committee and all out effort has been made to shift mandatory responsibility of the Revenue Deptt: on the shoulder of the appellant. The allegations leveled are vague, evasive, illogical, malice and is subjective. None of the documented and argued submissions have given any weight. The inquiry conducted is absolutely discriminatory and partial.

As the undersigned has done all the act in the best interest of public and good faith, so it is requested to accord indemnity Under Section 111 Forest Ordinance 2002, set aside the impugned order dated 31/12/2014 and may kindly be exempted from all the charges please.

Dated 22/01/2015

Hasham Khan



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



BEFORE THE PESHAWAR HIGH COURT,
MINGORA BENCH, DAR-UL-QAZA SWAT

Writ Petition No. 468-M of 2014

Mashani Khan Divisional Forest Officer (BS-18)
Malakand Forest Division Batkhila.

...Petitioner

VERSUS

1. The Chief Minister (Competent Authority) Khyber Pakhtunkhwa through the Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Environment Department, Peshawar.
3. The Chief Conservator of Forests, Southern Forest Region I, Peshawar.
4. The Chief Conservator of Forests, Malakand Forest Region-III Swat at Saidu Sharif, District Swat.
5. The Conservator of Forests Malakand Circle at Saidu Sharif, District Swat.
6. Meer Wali Khan BS-18 Divisional Forest Officer Swat.
7. The District Officer Revenue & Estate Buner at Dagger District Swat.

...Respondents

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

Respectfully Sheweth:

ds:
That a developmental project was approved for "Construction of offices and residential buildings in Khyber Pakhtunkhwa". The project duration was from July 2007 to June 2010. The project had the provision for purchase of 5 kanalas of land in District Buner, which was to be purchased in the first year of the project. However, during the first year of the project respondent No. 6 was posted as DFO Buner, who did not purchase the land for the purpose during his tenure from 2007 to 29-04-2010. Nevertheless the respondent No. 6 sent a memo to the DFO Dir Upper Forest Division, under intimation to the respondent No. 5 bearing No. 367/G dated 05-08-2008 providing therein certain information. Copy is enclosed as Annexure "A".

- ii. That on one side the respondent No. 6 did not finalize the purchase process during his long tenure, spreading over three years, and on the other side the pressure was mounting on the petitioner, who had taken over the charge during the last two months of the project i.e. 29-04-2010.
- iii. That the petitioner processed, in coordination with the DOR&E Buner, the purchase of the land through private negotiation. To this effect the agreement deed with the land owners and the Forest Department through the petitioner was executed. The draft notification under Section 4 of the Land Acquisition Act 1894 and

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agreement deed, afore said, were sent to the DOR&E/Collector Buner vide letter No. 3278/G dated 06-05-2010 with a request for signing and initiation of further proceedings as required. The same time the Chief Conservator of Forests Khyber Pakhtunkhwa Peshawar and the Conservator of Forests Malakand Circle at Saidu Sharif were also sent the same letter along with the enclosures vide Endst: No. 3279-80/G dated 06-05-2010. Copy of the letter is enclosed as Annexure "B" and that of the agreement deed as Annexure "C". The notification under Section 4 of the Land Acquisition Act, 1894 clearly specifies the area, khasra Nos., location, tehsil and District of the land to be acquired. This further reflects that this notification was also sent vide Endst: No. 1045-51/G dated 06-05-2010 to the Senior Member Board of Revenue Khyber Pakhtunkhwa, Peshawar, the Commissioner Malakand Division at Saidu Sharif, the Chief Conservator Forests Khyber Pakhtunkhwa Peshawar, the Conservator of Forests Malakand Circle at Saidu Sharif, the DCO Buner, the Manager Government Printing Press Khyber Pakhtunkhwa Peshawar (for publication) and Tehsildar Daggar. Copy is enclosed as Annexure "D".

- iv. That all the concerned authorities in the Revenue Department and Environment Department were duly informed.

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objection to the process of the specified piece of land as yet. Therefore, in the interest of public service the process was finalized by making the payment to the land owners at the rate much less than that intimated by the Field Revenue Staff i.e. Patwari, Girdawar Circle and Tehsildar Daggar. The rate was intimated as 1.4 million rupees per kanal, whereas, the payment was made at the rate of about 1.1 i.e. 1112000/- million rupees per kanal, that is much less than the prevailing market rate. Copy of the report is enclosed as Annexure "E". It is further, very respectfully, submitted that the land so purchased was entered in the revenue record in the name of the Provincial Government through Forest Department in column of ownership and possession vide mutation Nos. 3808 and 3809 dated 26-05-2010.

- vi. That the Police Department also purchased a piece of land measuring 70 kanals and 2 marlas, potentially highly less valued than that acquired by the Forest Department for the reasons that the land acquired by the Forest Department is situated within the District Headquarters / Colony area of the Daggar Tehsil, whereas the land acquired by the Police Department is agricultural in nature. The Police acquired the land through the process of compulsory acquisition at the rate of Rs. 255011/- per kanal. The land owners of the land acquired by the Police Department were aggrieved of the less compensation, therefore, they filed a reference under Section 18 of the Act ibid, wherein, in

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support of their reference they made reference to the lands transactions including the land acquired by the Forest Department. This was decided on 14-12-2011 by the Learned Referee Judge increasing the rate to Rs. 1310761/- per kanal. Copy is enclosed as Annexure "F".

- vii. That respondent No. 6 was the predecessor of the petitioner and was highly prejudiced and irked triggered the hostilities against the petitioner and he called for the monitoring team, accompanied it on 14-12-2010 and submitted a letter vide a memo No. 250/WP-VI dated 01-02-2011, leveling therein certain baseless allegations against the petitioner, copy is enclosed as Annexure "G". The case was properly explained to the Conservators of Forests, Forestry, Planning and Monitoring Circle, vide memo No. 1986/Acctt: dated 18-03-2011, copy is enclosed as Annexure "H".
- viii. That all the nefarious desires of the respondent No. 6 also resulted in a fact finding inquiry by the DCs of Swat and Buner, wherein, they without hearing or providing any opportunity of clarification, made their recommendations for disciplinary proceedings against the petitioner. Copy of the inquiry report is enclosed as Annexure "I".
- ix. That the respondent No. 1 / the Competent Authority initiated the disciplinary proceedings vide notification No. SO(Estt)Envt/1-50(87)/2K14 dated 16th July, 2014, copy is enclosed as Annexure "J".
- AC

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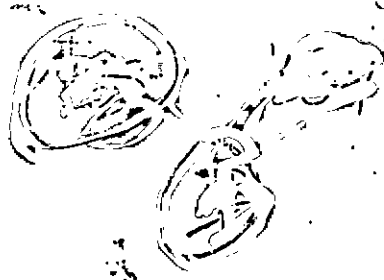
and issued him charge sheet and statement of allegations, copy is enclosed as Annexure "K" and "L". Reply of the petitioner is enclosed as Annexure "M". Messrs. Arshad Majeed Molimand and Meer Wali Khan DFO Swat were appointed as inquiry officers.

x. That owing to the above biased attitude of respondent No. 6 the authority was approached for replacement of Mr. Meer Wali Khan DFO Swat, as in the given circumstances, he would absolutely not proceed with the inquiry objectively. His opinion and findings are pre-decided and pre-concluded, which fact is against the law and natural justice. As in the instant case he is the alleged witness and himself responsible for not finalizing the acquisition case during his long tenure as DFO Buner, therefore, his appointment as inquiry officer is not justified. Copy of the application of the petitioner is enclosed as Annexure "N".

xi. That the petitioner has acquired the land in association with the Acquisition Collector under intimation to the higher authorities and no body, interested has filed any reference under Section 18 of the Act *ibid*, which is the only course provided by the law, which fact confirms the correctness of the purchase of the land and leaves no chance of initiation of the disciplinary proceedings against the petitioner, but the authority is not pleased to adhere to the due course of law. Hence this petition on the following grounds.

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Grounds:

- a. That the case is of the Land Acquisition, 1894. The land has been purchased at an appropriate rate and at an appropriate place, which stands duly mutated in the name of the Provincial Government through proper mutations mentioned above. Any party aggrieved of the rate/apportionment has the only course of filing a reference under Section 18 of the Act *ibid*, which has not been resorted to by any person intrusted as yet. Instead the petitioner is being victimized for no fault of his.
- b. That if at all the acquisition process were irregular or illegal the Collector or the Provincial Government could have conveniently disapproved the process narrated above and de-notified the acquisition process, but neither the higher authorities in Environment Department nor the Collector have even made any directions for the corrective measures, if any. The mutations are still intact in each and every letter the higher authorities of the department of the petitioner have been informed and all facts from time to time have been disclosed to them and everyone else, but no objections whatsoever, have been raised, which fact amounts to admission of the process to be correct.
- c. That the land so purchased is on the rate lesser than the prevailing market rate and even the owners are still ready to refund the amount and get back their land in their name.
- d. That at present the acquisition case of the Police Department is still subjudice in Peshawar High

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Court, Mingora Bench, Dar-Ul-Qaza Swat. Yet the rate fixed by the Referee Court is holding the field as good. When the case, which has triggered the instant case, is pending disposal, the disciplinary proceedings are not justified.

- e. That the entire proceedings against the petitioner are based on mala fide and to the detriment to the rights of the petitioner, hence cannot legally be justified.
- f. That on one side the petitioner has not committed any act of commission or omission and on another side he is not provided a fair chance of defence, which clearly shows the going of the authorities beyond the scope of law. The authorities are not adhering to the due course of law.
- g. That the present inquiry is totally against the law and facts and a result of misuse of authority by the authorities, therefore, requires to be ordered to be filed.

It is, therefore, very respectfully prayed that on acceptance of this writ petition the respondent No. 1 and 2 may kindly be directed to file the present inquiry and resort to due course of law provided under the Land Acquisition Act, 1894.

Any other relief deemed appropriate may also very kindly be granted.

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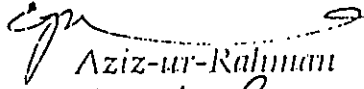
Interim Relief:

It is further prayed that till the disposal of this writ petition further proceedings in the inquiry may very kindly ordered to be stopped.

Petitioner

Hasham Khan

Through Counsels,



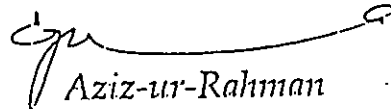
Aziz-ur-Rahman


Mirdad Ullah

Advocates Swat

Certificate:

It is certified that no other such like petition among the same parties on the same subject is either pending or decided by this August Court.

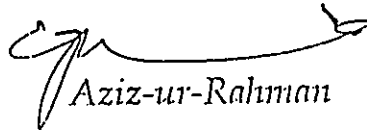


Aziz-ur-Rahman

Advocate Swat

List of Books:

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Case law according to need.



Aziz-ur-Rahman

Advocate Swat



BEFORE THE PESHAWAR HIGH COURT,
MINGORA BENCH, DAR-UL-QAZA SWAT

Writ Petition No. 408-M of 2014

Sham Khan Divisional Forest Officer (BS-18)
Malakand Forest Division Batkhila.

...Petitioner

VERSUS

1. The Chief Minister (Competent Authority) Khyber Pakhtunkhwa through the Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Environment Department, Peshawar.
3. The Chief Conservator of Forests, Southern Forest Region I, Peshawar.
4. The Chief Conservator of Forests, Malakand Forest Region-III Swat at Saidu Sharif, District Swat.
5. The Conservator of Forests Malakand Circle at Saidu Sharif, District Swat.
6. Meer Wali Khan BS-18 Divisional Forest Officer Swat.
7. The District Officer Revenue & Estate Buner at Dagger District Swat.

...Respondents

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

ODAY
18/07/14
Registrar

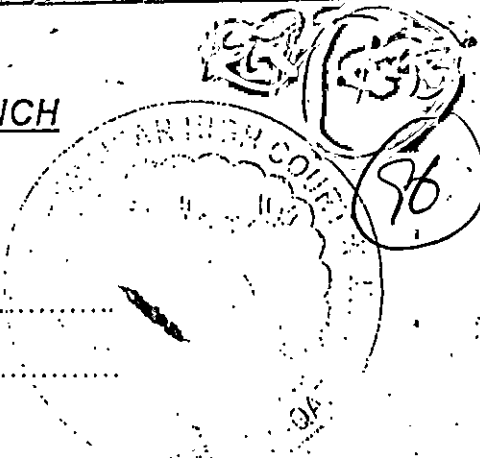
11/6 2014

Respectfully Sheweth:

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PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET



Court of
Case No. of

Date of Order or Proceedings Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.

29.8.2014

Interim Relief (N)
In W.P No. 408/2014 with Office Obj: No. 9

Present: Mr. Aziz-ur-Rehman, Advocate for the petitioner.

Mr. Sabir Shah, A.A.G. for the official respondents.

Respondent No. 6 in person.

Let record of the enquiry proceedings be requisitioned for 04.9.2014. Respondents should also file reply to the interim relief well before the date fixed.

Sd: Lal Jan Khattak

Certified to be a true copy

RECORDED
PESHAWAR HIGH COURT, MINGORA BENCH, DAR-UL-QAZA, SWAT

01/09/14

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Office
29/08/14

ANNEX: 0 (97)



Tel/Fax: 0946-9240260

OFFICE OF THE
DIVISIONAL FOREST OFFICER
SWAT FOREST DIVISION MINGORA

No. 496 /R, Dated the 01/12 /2014

To

The Conservator of Forests,
Malakand Circle East at
Saidu Sharif, Swat.

Subject:- W.P. NO.408/2014, HASHAM KHAN V/S GOVT. OF KHYBER PAKHTUNKHWA FOREST DEPARTMENT.

Memo: Reference your office endorsement No. 1283/G&L, dated 26/08/2014.

P-3

The undersigned attended the court of Peshawar High Court Darul Qaza Bench Swat on 29/08/2014. Photo copy of the order sheet is attached. The undersigned briefed the Government Pleader about the proceedings of the enquiry (Hasham Khan DFO V/S Govt: of Khyber Pakhtunkhwa). He was told that all the proceedings has been completed and the enquiry has been signed by the inquiry officer i.e. MR. Arshad Majeed Director General Special Unit P&D Department on 28/08/2014 and will be signed by me to day i.e. 29/09/2014. The Govt: Pleader explained the progress of the inquiry to the court as such. The court adjourned the case for 04/08/2014 and directed the undersigned verbally to not sign the inquiry till 4/9/2014. After attending the court, the undersigned left for Peshawar to discuss the progress with Mr. Arshad Majeed Director General Special Unit P&D Department. Meanwhile Mr. Arshad Majeed contacted me on Phone and the undersigned told him the progress of the court on Phone. He told me to reach his office soon. The undersigned reached the office of Mr. Arshad Majeed on 4.15 PM, and by that Mr. Arshad Majeed has left his office.

The PA of Mr. Arshad Majeed phoned to him and told about my arrival. Mr. Arshad Majeed did not talk to me and told his PA to direct me to write progress of the hearing. The undersigned asked the PA of Director General Special Unit P&D Department to show me the singed draft of the enquiry , but he said that the draft lies with Director General Special Unit P&D Department.

As such the undersigned left written statement with the PA of Director General Special Unit P&D Department. The Court also directed to provide all proceedings of the enquiry and submit comments on the appeal for interim relief



0946-9240260

OFFICE OF THE
DIVISIONAL FOREST OFFICER
SWAT FOREST DIVISION MINGORA

No. 494/R, Dated the 01/12/2014

The Conservator of Forests,
Malakand Circle East at
Saidu Sharif, Swat.

W.P. NO.408/2014, HASHAM KHAN V/S GOVT. OF KHYBER
PAKHTUNKHWA FOREST DEPARTMENT.

Reference your office endorsement No. 1283/G&L, dated
26/08/2014.

The undersigned attended the court of Peshawar High Court Darul
Bench Swat on 29/08/2014. Photo copy of the order sheet is attached. The
undersigned briefed the Government Pleader about the proceedings of the
enquiry (Hasham Khan DFO V/S Govt. of Khyber Pakhtunkhwa). He was told that
the proceedings has been completed and the enquiry has been signed by the
Divisional Forest Officer i.e. MR. Arshad Majeed Director General Special Unit P&D
Department on 28/08/2014 and will be signed by me to day i.e. 29/09/2014. The
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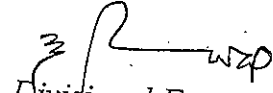
ANNEXED: ①

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It is, therefore, requested to convey the order of the Court to Director General Special Unit P&D Department to provide the relevant document to the Court before 04/09/2014.


The above documents are needed on emergency basis to the Court, please.

E. S. S. S.


Divisional Forest Officer,
Swat Forest Divn: Mingora.

No. /G,

Copy forwarded to Chief Conservator of Forests Malakand Region-I II Saidu Sharif Swat for information and further necessary action, please.


Divisional Forest Officer,
Swat Forest Divn: Mingora.

It is, therefore, requested to convey the order of the Court to Director General Special Unit P&D Department to provide the relevant document to the Court before 04/09/2014.

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The above documents are needed on emergency basis to the Court,

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Divisional Forest Officer,
Swat Forest Divn: Mingora.

IG,

Copy forwarded to Chief Conservator of Forests Malakand Region-1
Idu Sharif Swat for information and further necessary action, please.

[Handwritten signature]
Divisional Forest Officer,
Swat Forest Divn: Mingora.

[Handwritten signature]



The PESHAWAR HIGH COURT
Mingora Bench/Dar-ul-Qaza
Swat

All the Communications should be addressed to the Additional Registrar of this Bench.

Office: +92-946-811939-885005
Fax: +92-946-811940-885004
E-Mail: darulqazaswat2011@gmail.com

No. 4647 W.P/ Civil Appeal Branch;

Dated: 20/11/2014

To
The Divisional Forest Officer
Malakand.

“REMINDER”

Subject: WRIT PETITION NO. 408-M/2014

Hasham Khan ...Petitioner(s)

VERSUS

Government of KPK ...Respondent(s)

Memo:
Enclosed, find herewith a certified copy of order dated 29.08.2014 passed by the Hon'ble Single Bench of this court in the above titled case for information and immediate compliance with the directions that record of the enquiry proceedings be sent to this court & your reply to the interim relief should be also filed before the date fixed i.e 26.11.2014.

[Signature]
19/11/2014
Babar Ali Khan
Additional Registrar
Peshawar High Court,
Mingora Bench/
Dar-Ul-Qaza, Swat
[Signature]
19/11/14

Encl:
a. Order sheet dt: 29.08.2014

The
PESHAWAR HIGH COURT
Mingora Bench/Dar-ul-Qaza
Swat

All the Communications should be addressed to the Additional Registrar of this Bench.

Office: +92-946-811939 885005
Fax: +92-946-811940 885004
E-Mail: darulqazaswat2011@gmail.com

W.P/ Civil Appeal Branch;

Dated: 01/9/14

The Divisional Forest Officer
Malakand.

WRIT PETITION NO. 400-M/2014

Hasham Khan

...Petitioner(s)

VERSUS

Government of KPK

...Respondent(s)

Enclosed, find herewith a certified copy of order 29.08.2014 passed by the Hon'ble Single Bench of court in the above titled case for information and immediate compliance with the directions that record of inquiry proceedings be sent to this court & your reply interm relief should be also filed before the date 04.09.2014.

11/9/2014
Babar Ali Khan
Additional Registrar
Peshawar High Court,
Mingora Bench/
Dar-Ui-Qaza, Swat

Order sheet dt: 29.08.2014

OFFICE OF THE CHIEF CONSERVATOR OF FORESTS, MALAKAND FOREST REGION
(REGION-III) SHAGAI, SAIDU SHARIF, SWAT.

Mr. Arshad Majced Mohmand,
Director General,
Special Unit P&D Department
Peshawar.

100

756 /E, Dated Saidu Sharif, the: 09 /09 /2014.

W.P NO.408/2014, HASHAM KHAN V/S GOVT. OF KHYBER
PAKHTUNKHWA FOREST DEPARTMENT.

Reference Notification No.SO(Est)Env/1-50(87)/2k14 dated 16.07.2014.

<<<<<>>>>

It has been reported by the Conservator of Forests Malakand Forest Circle East, Saidu Sharif, Swat vide his letter No.1491/G&L, dated 02.09.2014 that the Divisional Forest Officer, Forest/ has attended Peshawar High Court Mingora Bench/Darul Qaza Swat in the subject case on 02.09.2014. Copies of CF, Malakand Forest Circle East letter cited above alongwith DFO, Swat letter 1491/G, dated 01.09.2014 and court order sheet dated 29.08.2014 are enclosed herewith which are self explanatory. The Court desired for submission of a copy of the Enquiry Report on 04.09.2014 duly signed by you (as Chairman of the Enquiry Committee) while DFO, Swat (Member of the Enquiry Committee) has been directed not to sign the Enquiry Report.

It is therefore, requested that a copy of Enquiry Report may kindly be sent to this office for production in the Court on the above dated please.

As above.

CHIEF CONSERVATOR OF FORESTS
MALAKAND FOREST REGION (REGION-III)
SAIDU SHARIF, SWAT.

757-59 /E,

Copy forwarded to the:-

- Section Officer (Establishment) Environment Department Khyber Pakhtunkhwa Peshawar for information with reference to his endst. No.2995-3000 dated 16.07.2014.
- Conservator of Forests Malakand Forest Circle East Saidu Sharif, Swat for information and necessary action with reference to his letter cited above. He is advised to direct DFO, Swat to obtain a copy of the Enquiry Report for production in the court on due date.

@ DFO Swat

CHIEF CONSERVATOR OF FORESTS
MALAKAND FOREST REGION (REGION-III)
SAIDU SHARIF SWAT

4/9