

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

To

The Chief Conservator of Forests,  
Central Southern Forest Region-I  
Khyber Pakhtunkhwa Peshawar.

No. S201 /E, Dated Saidu Sharif, the: 23 /04/2015.

Subject:- DEPARTMENTAL APPEAL AGAINST THE IMPUGNED  
NOTIFICATION NO.SO(ESTT)ENV/171-50(87)2K12 DATED  
31.12.2013 VIDE WHICH A MAJOR PENALTY OF "REDUCTION  
TO LOWER POST AND RECOVERY OF Rs.3,238,644/-

Memo:

Reference your endst.No.2596/E, dated 06.03.2015.  
BX-418

<<<<>>>>

Para wise comments to the appeal preferred by Mr. Hasham Khan the  
then DFO, Buner Forest Division against the punishment awarded to him mentioned in the  
subject, are furnished as under:-

1. Need no comments.
2. It is correct.
3. Mr. Mir Wali Khan who was holding the charge as DFO, Buner is in a better position to explain the factual position to show the cause of non purchase of land stipulated period.
4. No doubt that the land had been purchased by the appellant but certain legal flaws during the course of monitoring etc were detected which resulted the instant situation of punishment awarded.
5. The comments given in para-4 above are sufficient to convince the purpose.
6. Formal enquiry, monitoring in purchase of land has been made and keeping in view the availability of substantial record in the enquiry file, certain irregularities have been found rather codal formalities laid down for the purpose were not completed.
7. Conducting monitoring of the activities in Malakand East Forest Circle is the responsibility of DFO Working Plan Unit-VI Swat. Unfortunately Mr. Mir Wali Khan was incharge DFO Working Plan-VI and accordingly he conducted monitoring of the land purchased and his report become cause of the subject enquiry.
8. Mr. Mir Wali Khan DFO BPS-18 (Member of the enquiry committee) was reporting officer in the instant case and all the enquiry proceedings based on his monitoring report. Moreover, he is also of the equal rank to the appellant which is against the E&D Rules 2011 (clause 10(a) and 10(3) and the natural justice.
9. Irrelevant hence no comments.
10. The enquiry was conducted in accordance with the E&D Rules 2011.

GROUND.

- A. The factual position has been shown in para-4 above. No directives have been issued to the appellant to purchase land irrespective of the completion of codal formalities. The appellant had purchased the land through private negotiation and not followed all the steps mentioned in the amended land acquisition notification. He had submitted the agreement deed with draft notification under Section-4 of the land acquisition act 1894 to DOR Buner for further processing. The Revenue Department processed the case till its logical end i.e. transfer of land to Environment Department except constitution of price assessment committee which was the solemn responsibility of DOR vide clause 5(i) Revenue Circular No.54 v/12006/LA/10973, dated 17.08.2006. it is pertinent to mention here that no approval/sanction of Administrative Department regarding private negotiation and rate fixation has been sought by the appellant.

- B. DOR Buner was consulted in the instance case by the appellant as is evident from DOR Buner letter No.283/2/9/HCR, dated 14.02.2011, addressed to the appellant. The DOR was also held responsible in the De-Nov enquiry on account of non notifying of price assessment committee (Refer to para-B of the appeal).
- C. The subject activity was a part ADP scheme, approval by PDWP, for which Administrative approval was accorded by the competent authority and the appellant was bound to follow the PC-I provision, rules and regulation on the subject.
- D. Negotiated rate between the appellant and land owners was fixed Rs.1,112,000/- per kanal against the approved rate of Rs.1,400,000/- per kanal thus saved an amount of Rs.1,742,400/- to the Government and purchased an additional land of 1 kanal and 1 marla on the directives of Chief Conservator of Forests, Khyber Pakhtunkhwa Peshawar during his visit to the spot on 27.04.2010 within the approved cost for five kanals to avoid excess and surrender.
- E. PC-I provides for the acquisition of land at Swari but the appellant purchased the land at Daggar where all District head Offices are located, most proper place for Divisional Office to have an easy interaction with other officers and public. Swari being the commercial area where cost of land is very high and it would not have possible to purchase land within the given price. The appellant was required to seek approval of the competent forum.
- F. The appellant had made direct payment as per detail procedure for payment vide Section 41 of L.A. Act 1894 and Section 1 of the said procedure communicated to him by DOR Buner vide his No.283/2/9 HCR, dated 14.02.2010. The said procedure further stressed to say that "payment should be so made if possible to save the recipients from unnecessary attendance" (Section 41 L.A Act 1894).
- G. Being audit matter, the Director Budget and Accounts Forestry, Environment and Wildlife Department is in a better position to offer his comments.
- H. Irrelevant hence no comments.
- I. The enquiry has been conducted through Enquiry Committee, details are available on file.

It is pertinent to mention here that the appellant has prayed for:-

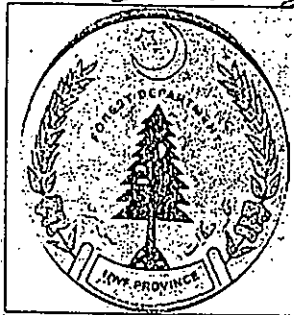
- That the witnesses were not produced by the enquiry committee in his presence to be crossed examined by him which is against E&D Rules 2011 clause-11(i).
- Mr. Mir Wali Khan DFO BPS-18(Member of the committee) is reporting officer in the instant case and all the enquiry proceedings based on his monitoring report. Moreover, he is also of equal rank to the appellant which against under E&D Rules 2011.(Clause-10(3)).

Keeping in view the above facts, the appeal may kindly be decided on its true spirit, please.

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

No. \_\_\_\_\_/E.  
 Copy forwarded to the Conservator of Forests, Malakand Forest Circle East Saidu Sharif, Swat for information with reference to his letter No.8525/E, dated 09.04.2015.

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



Office of the Divisional Forest Officer  
 Buner Forest Division Swat  
 Ph: 0939-555504 Fax: 0939-555504

No. 3278 /G, Dated Swat the 26/5/2010

To

The District officer Revenue,  
 Buner

Subject:- **PURCHASE OF LAND FOR THE CONSTRUCTION OF OFFICE CUM RESIDENCE.**

Memorandum:

This office intend to acquire/purchase land measuring six (6) kanals and one (1) Marla situated in Moza Dagger for the construction of Divisional forest Officer office cum residence and staff quarters. Necessary revenue record/documents pertaining to the aforesaid land are enclosed herewith along with section 4 of the Land Acquisition Act 1984 and agreement deed executed with the owner of the land. As this office has settled the price of the land with the land owner privately through negotiation. It is therefore, requested that the notification under section 4 of the land Acquisition Act 1984 may please be signed and further proceedings initiated for the acquisition of the land in question. pl.

*[Signature]*  
 Divisional Forest Officer  
 Buner Forest Division Swat

No. 3279-80 /G,  
 Copy forwarded to:-

- 1 The Chief Conservator of Forests, NWFP, Peshawar.
- 2 The Conservator of Forests Malakand circle at Saidu Sharif Swat.

*[Signature]* For favour of information please.

*[Signature]*  
 Divisional Forest Officer,  
 Buner Forest Division Swat

*[Signature]*  
 Divisional Forest Officer  
 Buner Forest Division Swat

*[Handwritten signature]*

Chief Conservator of Forests  
KPKP

Shami Road Peshawar  
Phone # 091-9212177 Fax # 091-9211478  
E-mail: ccfwfp@gmail.com

2989

RA/RK/Land

Dated 12/5/2010

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The Divisional Forest Officer  
Buner Forest Division  
At Swari.

Subject:- NOTIFICATION UNDER SECTION 4 OF THE LAND ACQUISITION ACT, 1984

Re:-

Enclosed please find herewith a photo copy of District Officer Revenue and Estate Buner letter No. 1045-51/G, dated 6.5.2010 which is self explanatory.

You are therefore directed to finalize the issue and take possession of the land all before the closing of current financial year, 2009-10 after fulfillment of all codal formalities.

Ref: As above.

*[Signature]*  
Chief Conservator of Forests  
KPK, Peshawar.

RA/RK/Land,

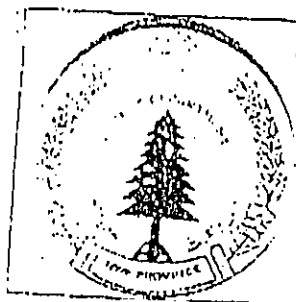
Copy forwarded to the Conservator of Forests Mainland Forest Circle at Jagai Saido Sharif, Swat for information with reference to District Officer Revenue and Estate Buner letter No. cited above.

Chief Conservator of Forests  
KPK, Peshawar.

*Immediate*  
*put up on relevant file*  
*[Signature]*  
*[Signature]*  
*295*

*[Signature]*





OFFICE OF THE DIVISIONAL FOREST OFFICER  
BUNER FOREST DIVISION SWARI

Ph: 0939-555504

Fax: 0939-555503

No. 367 /G. Dated Swari the 25 / 08 / 2008

To

The Divisional Forest Officer,  
Upper Dir Forest Division at Dir.

Subject:-

MINUTES OF THE SPECIAL DDWP MEETING.

Memo:

Reference your No. 376-79/G, dated 24-7-2008.

As desired, cost estimates of the following buildings according to the schedule rate per Sft are sent herewith:-

|      |                                                                               |   |                 |
|------|-------------------------------------------------------------------------------|---|-----------------|
| i-   | Cost estimate of DFO Office.                                                  | = | Rs.29,54,445/-  |
| ii-  | Cost estimate of DFO Residence.                                               | = | Rs.28,97,765/-  |
| iii- | Cost estimate of two staff quarters                                           | = | Rs.29,47,360/-  |
| iv-  | Cost estimate of Boundry wall<br>@ Rs.550/- per Rft.                          | = | Rs. 4,50,150/-  |
| v-   | Cost estimate of purchase of land<br>@ Rs.75,00,000/- per kanal for 6.kanals= | = | Rs. 90,00,000/- |

The case has been taken up with District Officer Revenue Buner for issue of necessary non-availability and cost reasonability certificates to justify the cost quoted above. However, the rate has been fixed in anticipation of approved rate by District Officer Revenue Buner. To avoid further delay in the case, information may kindly be included in the PC-I. The detail cost estimate of the above buildings will also be submitted to your office shortly.

*[Signature]*  
DIVISIONAL FOREST OFFICER  
BUNER FOREST DIVN: SWARI.

No. \_\_\_\_\_ /G.

Copy forwarded to the Conservator of Forests, Malakad Circle Saidu Sharif for favour of information and necessary action, please.

DIVISIONAL FORES OFFICER  
BUNER FOREST DIVN: SWARI.

*[Handwritten signature]*

IN THE COURT OF DISTRICT OFFICER, REVENUE AND ESTATE/Collector,  
DISTRICT BUNER.

Case No. 4  
Date of institution 16-08-2008  
Date of Decision 05-10-2010

(106)

AWARD UNDER SECTION 14 OF THE LAND ACQUISITION ACT,  
1894 FOR THE ACQUISITION OF ~~SOME~~ LAND AT MUZZAFAR  
DAGGAR FOR POLICE LINE DAGGAR (70 KANALS AND 2 MARLAS)

ORDER/AWARD.

The Acquiring Deptt: initiated the subject of this order. District Police Officer, Buner letter No: 5524/GB dated 16-09-2008. In continuation of the said letter the Acquiring Deptt: submitted the draft Notification U/S-4 of the Land Acquisition Act 1894 with his letter No: 5955/GB dated 30-09-2008. The said Notification U/S-4 was signed, issued and published vide this office order No: 2983-92/2/9/HVC, dated 02-10-2008 with the following specification:-

| District | Tehsil | Locality | Khasra No: | K  | Area | M  |
|----------|--------|----------|------------|----|------|----|
| Buner    | Daggar | Daggar   | 3551       | 30 |      | 10 |
|          |        |          | 3552       | 15 |      | 12 |
|          |        |          | 3553       | 03 |      | 01 |
|          |        |          | 3554       | 03 |      | 14 |
|          |        |          | 3555       | 03 |      | 14 |
|          |        |          | 3556       | 08 |      | 11 |
| Total:-  |        |          |            | 70 |      | 02 |

The Acquiring Deptt: was in need to acquire land measuring 70 kanals and 02 marlas, therefore the acquisition was confined to the actual required area.

Preliminary estimated cost was worked out on the basis of one year average price. According to the Revenue Department instructions, Committee for determination of price was constituted who convened its meeting on 24-12-2009 and majority of members of the committee including the Revenue Officer, Buner agreed upon one year average price. The Acquiring Department has released funds for the purpose. The Acquiring Deptt: has issued Cheque of Rs: 2,13,81,000/- (Rupees Two Crores Thirteen Lakhs Eighty One Thousand only) with his letter No: 1679/SISP/2010 dated 18-06-2010 which was deposited into the Government Treasury under head "Revenue Deposits" vide challan No: 45 dated 30-06-2010.

Draft Notifications Under section 5 and 6, 7 of the Land Acquisition Act, 1894 were submitted by the Acquiring Deptt: which were signed and issued by the District Officer, Buner, Malakand Division, vide his order No: 484-58/4/3-Buner/1 dated 14-07-2010 and 484-58/4/3-Buner/Rev dated 14-07-2010 respectively.

Notice under section 9 of the aforesaid Act was served to the interested persons of the locality for submitting objections.

*[Handwritten Signature]*

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any, regarding the measurement/cost of the land. In response to notice no. one objected.

With the concerned Revenue Staff inspected the spot, the proposal for acquisition is Agricultural in nature and is situated within the limits of Bazar. Therefore I feel that the one year rate i.e Rs:2,55,074/- per kanal is reasonable for the present situation. I therefore fix and allow the same rate alongwith 15% acquisition charges. The detail break-up of compensation is as under:-

|                                                                                            |                         |
|--------------------------------------------------------------------------------------------|-------------------------|
| off land measuring 70 kanals <sup>2 mals</sup> at the rate of Rs:2,55,074/- per kanal..... | Rs:1,78,76,902/-        |
| Compulsory Acquisition Charges :-                                                          | Rs:26,81,535/-          |
| <b>Total:-</b>                                                                             | <b>Rs:2,05,58,437/-</b> |
| Duty 2% :-                                                                                 | Rs:4,11,169/-           |
| Sec: 2% :-                                                                                 | Rs:4,11,169/-           |
| Non-Fee:-                                                                                  | Rs:500/-                |
| <b>Grand Total:-</b>                                                                       | <b>Rs:2,13,81,275/-</b> |

Therefore, pass an award for Rs:2,13,81,275/- (Rupees Two Crores Ten Lacs and Eighty One Thousand Two hundred and Seventy Five). The land revenue over the acquired land stands abated from the date of taking over possession by the acquiring Deptt. The mutation amount may be paid to the ownership column of Register (Mauka-Zamin/Amabandi). The mutation of the acquired land should be entered in the name of the Govt. of Khyber Pakhtunkhwa through the Deptt: Peshawar free from all encumbrances. The award is made under section 12(11) of the land acquisition act, 1894 in the name of the undersigned.

DISTRICT OFFICER,  
REVENUE AND ESTATE/COLLECTOR, BUNER.

2014-18/2/9/HO(R), dated Daggar the 05/10/2010.

Copy forwarded to:-

- Commissioner, Malakand Division Saidu Sharif Swat.
- Secretary Board of Revenue Khyber Pakhtunkhwa Peshawar.
- District Coordination Officer, Buner.
- District Police Officer, Buner.
- Tehsildar, Daggar for information and necessary action. He is directed to mutate land in the name of Acquiring Deptt: i.e Police Deptt: Khyber Pakhtunkhwa at an early date and to submit attested copy of mutation at an early date.

DISTRICT OFFICER,  
REVENUE AND ESTATE/COLLECTOR, BUNER.

Y/B

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FACT FINDING DE-NOVO INQUIRY REPORT

ACQUISITION/PURCHASE OF LAND MEASURING 06 KANALS & 01 MARLAS IN THE VICINITY OF DAGGAR FOR CONSTRUCTION OF DFO OFFICE-CUM-RESIDENCE/STAFF QUARTERS

Background

A development project was approved for "Construction of Offices and residential buildings in NWFP". 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 1<sup>st</sup> year of the project, but the purchase could not be effected during four years. The purchase was effected in the last two months when the project was going to expire on 30/6/2010.

Revenue & Estate Department, Government of Khyber Pakhtunkhwa conducted an Inquiry through Deputy Commissioner, Swat & Buner and Mr. Hashim Khan, Ex-Divisional Forest Officer, Buner was made responsible for committing irregularities in the acquisition of land for construction of office-cum-residence and staff quarters at Daggar (Annex-I).

The inquiry was forwarded to Secretary, Environment Department, Government of Khyber Pakhtunkhwa by Board of Revenue (Revenue & Estate Department, Government of Khyber Pakhtunkhwa) vide No: REV:V/4/Misc/MKD/2011/1560-62, dated 06/6/2013 for taking action against the DFO concerned as per recommendations of the Inquiry Officers (Annex-II).

The Administrative Department vide No: SO (Est)/Env/1-5 (87)/2k10, 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 Mr. Hashim Khan, DFO.

Proceedings

In order to proceed in the matter, the Committee held its first meeting on 02/12/2013 and decided to call both the present and Ex-DFOs alongwith relevant record. They were informed vide No: PA/DS-II/1-7/2013, dated 04/12/2013 to attend the proceedings. Mr. Hashim Khan, the then DFO and Mr. Mir Akbar Shah, DFO, Buner appeared before the Committee on 09/12/2013, 11/12/2013 & 13/12/2013. Mr. Hashim Khan, DFO was heard in person and also submitted written reply supported by the relevant documents. The sitting DFO, Buner also produced the relevant record to the Committee (Annex-III & IV) respectively.

Discussion

As per approved PC-I titled "Construction of Divisional Forest Officer offices and residential buildings in NWFP now Khyber Pakhtunkhwa (2007-08-2009-2010) for Lower Dir, Upper Dir, Chitral, Swat and Buner, there was provision for the purchase of 05 Kanals land for construction of offices and residential buildings for Buner Forest Division at Swari (Annex-V). The then DFO, Buner (Mr. Hashim Khan) vide letter No: 3278/G, dated 06/5/2010 shown his intention to District Officer, Revenue, Buner for purchase of Land measuring 06 Kanals & 01 Marla situated at Moza Daggar. Through this letter, DFO, Buner provided record of the land alongwith agreement deed executed with the owners of the land. It was further stated in the letter that through private negotiation the price of the land has been settled. The DFO, requested the District Officer, Revenue for issuance of Notification under the Land Acquisition Act, 1894 and further proceedings for acquisition of land (Annex-VI).

26/11 ✓

(105)

Under provision of para-4 of Revenue Circular No. 54 V/4/2006/Notification/LA/10973, dated 17/8/2006 approval of the Administrative Department was required to be obtained by the DFO. Buner for negotiated rate (Under Section-5 (i) of the said Notification, the District Collector was required to constitute a Committee for assessment and determination of price and verification of title where as the DFO, Buner through the above referred letter had provided the agreement deed clearly indicating Rs: 55, 600/- per Marla, of the land to be acquired. The DFO, Buner has also requested the District Officer, Revenue Buner for further proceedings for acquisition of land under the Land Acquisition Act, 1894.)

Though the circular provides for purchase of land on private negotiation, yet the rates are to be assessed by a Committee constituted by District Officer Revenue, Estate. As per Section-4 of the Revenue Circular No: 54, the DFO, Buner was required to get approval from the Administrative Department/Head of the Department, which he did not take and hence violated the rules (Annex-VII).

The District Officer, Revenue was required to constitute a rate assessment Committee under the rules which he did not bother inspite of the facts that the DFO, Buner through the above referred letter had asked him for further proceedings for acquisition of land under the Land Acquisition Act, 1894. Though the rates were negotiated by the DFO but the land was to be purchased for public/state purpose and the District Officer Revenue being Revenue & Estate Officer was required to safeguard the interest of the State and should have assessed the rates and if not found prevailing according to Yaksala should have objected to the negotiated rates because the same agreement was shared with him officially by the DFO.

The PC-I provides for construction land at Swari Buner but the land was purchased at Moza Daggar which is violation of the PC-I.

→ 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 offices/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, Daggar and Swari are sister towns and due to rapid population growth, both these towns are not treated as one town. However, the DFO was required to get permission from the competent authority (Administrative Secretary) for shifting of the site which he did not. Irrespective of other commissions/omissions by Mr. Hashim Khan, DFO, it is a credit that his predecessors DFO bitterly failed to acquire the land during his tenure more or less three years where as Mr. Hashim Khan, DFO was able to purchase the same within a period of two months otherwise the funds would have been lapsed.

The Revenue authorities have signed Notification under the Land Acquisition Act which simply authorize any person to enter into such land for survey etc but kept themselves aloof from further proceedings of acquisition. Neither they have officially communicated the actual Ausat Yaksala or Charsala to the DFO nor has furnished rate responsibility certificate to the DFO. However, the rates negotiated by the DFO were in their knowledge and they have made the mutations. Astonishingly, Mr. Mokamil Shah, the then Rang Officer, Daggar has recorded a statement on the mutation deed on 26/5/2010 "that the rates were negotiated by the DFO and payment directly made to the land owners and none of the Revenue Officials were involved in the purchase deal". There seem no grounds that what prompted the official of the Forest Department to record such statement on the mutation paper. This clearly transpired that the purchase deal was lonely done by Mr. Hashim Khan, DFO who is squarely responsible for commissions/omissions made in the land purchase (Annex-VIII).

Under Notification No: Rev: V/4/2006/la/10973, amendments made in Land Acquisition Act, 1894 vide No: Legis: 1 (2)71/11/4228 dated 22/8/2001, under the above Notification new Section-11 (A), and 11 (B) to Act, I of 1894 have been inserted. Under Sub-Section-11 (B) (4), the acquiring department in the application given under para-1 shall also inform the District Collector that permission for entering into private negotiation for acquisition of land has been obtained from the Head of the Administrative Department. Hence, the District Officer Revenue has not notified the Committee for assessment and determination of the price in the absence of this permission, neither the

12/1

(110)

DFO, Buner asked for average Ausat Yaksala or Charasala nor the Revenue Authorities provided the same officially to him.

However, Mr. Hashim Khan, DFO produced along written reply a photocopy issued on 12/12/2010 under the heading a "Bazari Qimat" (Annex-IX)

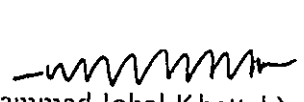
The Police Department Buner had acquired land measuring 70 Kanals & 02 Marlas @ Rs: 255, 014/- per Kanal according to Ausat Yaksala but the owners of the land filed a Civil Suit in the Court of Senior Civil Judge, Daggar quoting the written precedence of DFO, Buner. The Court decided the suit on the basis of the precedence and enhanced the rate per Kanal at PAR with that paid by the Forest Department. This decision of the Court based on the precedence of payment made by the DFO, Buner increased the cost of Police acquired land from Rs: 255, 014/- to Rs: 13, '10, '761/- per Kanal leading to overall increase in cost from 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 assessed price by the Revenue Department Buner.


Similarly, cost of land purchased by the Forest Department as per actual Ausat Yaksala comes to Rs: 34,88,956/- for 6 Kanals & 01 Marla, whereas the DFO, Buner paid Rs: 67,27,600/- for the same land on negotiated price. Hence, the DFO, Buner paid Rs: 32,38,644/- over and above than the cost come as per actual Ausat Yaksala. Procedure under Land Acquisition Act, 1894 and subsequent amendments made in Section-11 of the Act were violated.

Besides, this it also pertinent to mention here that the matter of violation, the procedures was taken as "para" by Internal Audit Team, but later on that para was dropped for unknown reasons. Similarly, explanation (Annex-X) was also called from Mr. Hashim Khan and Monitoring Report was also submitted to Conservator of Forests, Forestry, Planning & Monitoring Circle, Peshawar by DFO, Working Plan Unit-VI, Swat (Annex-XI). In this monitoring report, the violations were clearly highlighted but it is very much astonishing that inspite of processing this report and bringing it into the notice of Administrative Department, the same was kept in cold storage by the attached formation.

#### Findings

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 Mr. Hashim Khan, DFO violated the provision of Revenue Circular No: 54, Land Acquisition and subsequent amendments made in the Land Acquisition Act, 1894 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 payments for acquisition of land not on the basis of Ausat Yaksala but on the basis of purchase rates of the DFO, Buner. The then District Officer, Revenue & Estate Buner are equally responsible for not safeguarding the interest of the State. Inspite of the facts, that he was approached by DFO in writing for further proceedings. He was provided the agreement deed and the negotiated rates were crystal clear which were not inconsonance with the average Ausat Yaksala.

  
(Muhammad Iqbal Khattak)  
Deputy Secretary-II,  
Environment Department,  
Government of Khyber Pakhtunkhwa

  
(Sanullah Khan)  
Director, I & HRD, Peshawar

OFFICE OF THE DISTRICT OFFICER REVENUE AND ESTATE COLLECTOR  
BUNER

NOTIFICATION UNDER SECTION 4 OF THE LAND  
ACQUISITION ACT 1894

No. / Dated Dagger the 15/2010.

Whereas it appears to the District Officer Revenue and Estate/Collector, District Buner that the land is likely to be required to be taken by the government at the public expense for a public purpose namely for the construction of Divisional forest officer office cum residence and staff quarters at Dagger District Buner as earmarked by the committee in Moza Dagger Tehsil Dagger District Buner. It is hereby notified that the land in the locality described below is likely to be required for the above purpose.

- 1) The notification is made under the provision of section 04 of the land Acquisition Act, 1894 to all whom it may concern.
- 2) In exercise of the powers conferred by the aforesaid section, the District Officer Revenue and Estate/Collector, District Buner is pleased to authorize the officer for the time being engaged in the undertaking with their servants and workmen to enter upon and survey land in the locality and do all the other acts required or permitted by that section.
- 3) Any person who has any objection to the acquisition of any land in the locality may report within thirty (30) days of the publication of this notification in writing before the Collector, District Buner.

SPECIFICATION.

| District | Tehsil | Location | Khasra No.       | Kanal | Marla |
|----------|--------|----------|------------------|-------|-------|
| Buner    | Dagger | Dagger   | 2905, 2907, 2908 | 6     | 01    |

Divisional Forest Officer  
Buner Forest Divn. Swari.

District Officer  
Revenue and Estate Buner.

No. 104551/G Dated Dagger the 06/05/2010

Copy forwarded to:-

- 1) The Senior Member Board of Revenue NWFP, Peshawar.
- 2) The Commissioner Malakand Division at Saidu Sharif Swat.
- 3) Chief Conservator of Forests, NWFP Peshawar.
- 4) Conservator of Forests Malakand Circle at Saidu Sharif Swat.
- 5) District Coordination Officer Buner.
- 6) The Manager Govt. Printing Press NWFP, Peshawar for publication in the Govt. Gazette.
- 7) Tehsildar Dagger.

District Officer  
Revenue & Estate Buner.

Divisional Forest Officer  
Buner Forest Divn. Swari.

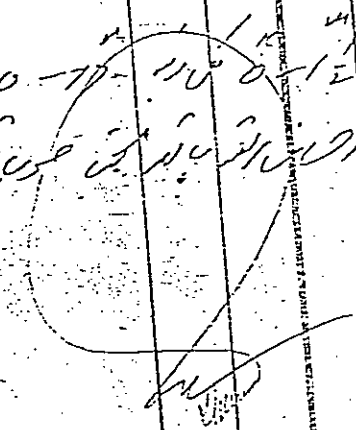
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| 15 | 14 | 13 | 12 | 11 | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
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MIL 5749735-1

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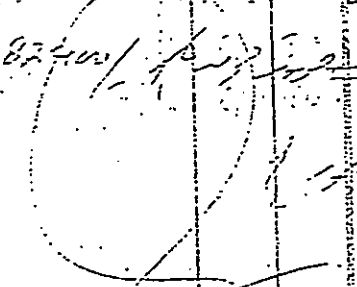
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| 2    | دستم کسوف سائید  | 250   |      |       | دستم کسوف سائید  |
| 3    | دیگر در سائید    | 883   |      | 1251  | دیگر در سائید    |
| 4    | صاف علی بن عثمان | 884   |      | 252   | صاف علی بن عثمان |
| 5    | دیگر در سائید    | 252   |      |       | دیگر در سائید    |
| 6    | صاف علی بن عثمان | 4117  |      | 2907  | صاف علی بن عثمان |
| 7    | دیگر در سائید    | 2907  |      | 1-4   | دیگر در سائید    |
| 8    | صاف علی بن عثمان | 4117  |      | 2907  | صاف علی بن عثمان |
| 9    | دیگر در سائید    | 2907  |      | 1-4   | دیگر در سائید    |
| 10   | صاف علی بن عثمان | 4117  |      | 2907  | صاف علی بن عثمان |
| 11   | دیگر در سائید    | 2907  |      | 1-4   | دیگر در سائید    |

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NIC No 151058

GOVERNMENT OF NWFP  
REVENUE DEPARTMENT

Dated Peshawar the 17/8/2006.

NOTIFICATION

NO.REV:VI/4/2006/NOTIFICATION/LA 10973. With the approval of the Competent Authority, the following Amendments made in the Land Acquisition Act 1984 as Published in Extra Ordinary Gazette Notification No.Legis:1((2)71/II/4258 dated 22<sup>nd</sup> August, 2001 are hereby notified alongwith instructions/directions for information and implementation by all concerned:-

"Insertion of new sections 11-A and 11-B to Act I of 1894,--- In the said Act, after section 11, the following new sections shall be inserted, namely :

"11-A. Acquisition through private negotiations,---(1) There should be no private negotiation for acquiring land under this Act, except as provided in sub-section (2).

(2) The head of the Department concerned of Government or the Ministry concerned of the Federal Government, as the case may be, may, where expedient, request the Collector of the District concerned in writing to acquire land through private negotiations which shall be subject to such instructions or directions as Government may, from time to time, issue in this behalf.

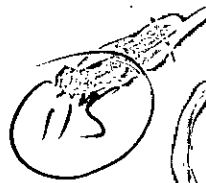
11-B Process of acquisition,--- The whole process of acquisition of land should be completed within a period of six months from the date of notification under section 4, or where it is not completed within the stipulated period, the reason for delay shall be explained by the Collector in his award, which, if not satisfactory, may hold him personally responsible for the delay and may result in disciplinary proceedings against him".

The following instructions/directions are therefore issued: -

The acquiring agency shall submit an application to the Collector of the District concerned for the acquisition of land under the Act giving full justification of the public purpose involved and the minimum area required by it with full details of all other area owned by it in the same locality.

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.

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



4. The acquiring Department in the application given under Para-3 shall also inform the District Collector that permission for entering into private negotiation for the acquisition of land has been obtained from the Head of the Administrative Department.

5. (1) The Collector will then notify the following Committee for assessment and determination of the price and verification of title of ownership: -

- 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.

(2) This committee while determining the price shall take into consideration the following data from which the market value can be assessed:

- i. The price paid for land recently acquired 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 dis-interested with regard to the value of the land.

6. 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 representative 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.

7. In case the Head of the Administrative Department agrees to the recommendations of the Committee, he shall intimate to the Collector his approval. The Collector shall then draft a summary of the entire proceedings and direct the parties for executing and registering a deed of sale on stamp paper in favour of the acquiring department.

8. In case of refusal of the approval the Head of Acquiring Department may inform the Collector, within one month, either to drop the acquisition of the said land and opt for alternate site or initiate compulsory acquisition process under the Land Acquisition Act.

9. When the land is acquired through compulsory acquisition under the Land Acquisition Act the price of land shall be determined by the Committee as mentioned in

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Endst:No. Rev: V/4/2606/Notification/J.N/10974-11053 Dated 17/08/2006.

Copy forwarded to the:-

1. All Administrative Secretaries in NWFP.
2. All Presiding Officers Revenue Appellate Courts in NWFP.
3. PSO to Chief Minister, NWFP, Peshawar.
4. P.S to Chief Secretary, NWFP, Peshawar.
5. P.S to Additional Chief Secretary, NWFP, Peshawar.
6. P.S to Additional Chief Secretary, FATA, Peshawar.
7. Director General, National Highway Authorities, Islamabad.
8. Director (IS & LM) National Highway Authorities, Peshawar.
9. Director, WAPDA, WAPDA House Lahore.
10. All Districts Nazmin in NWFP.
11. All District Coordination Officers, in NWFP.
12. All District Officers (Revenue & Estate)/Collectors in NWFP.
13. All Head of attached Departments, in NWFP.
14. Land Acquisition Collector, NTDC, WAPDA Peshawar.
15. Land Acquisition Collector, National Highway Authorities Bara Banda Nowshera.
16. Land Acquisition Collector, CRBC, D.I.Khan.
17. Land Acquisition Collector, Sui Northern Gas Pipeline NWFP, Peshawar.
18. Land Acquisition Collector, Kohat Tunnel Project National Highway Authorities Kohat.
19. Land Acquisition Collector, Lowari Tunnel Project, Dir Upper.
20. Manager, Government Printing Press Peshawar. He is requested to publish the notification in the Government Gazette and supply 200 copies to this office.

DEPUTY SECRETARY TO GOVERNMENT OF NWFP.  
REVENUE DEPARTMENT.

*[Handwritten signature]*

~~Approved~~ (117) (L)

**GOVERNMENT OF KHYBER PAKHTUNKHWA**

PUC at Page-94-139/C

**ENVIRONMENT DEPARTMENT**

This case relates to the purchase of land for the office of the DFO Buner Forest Division by Mr. Hashim Khan, DFO (presently working as DFO Batkhela) and an inquiry made by Revenue Department, previously processed at paras-47-66 of the note sheet. In response to this department letter at page-90, the officer concerned furnished his comments on the inquiry report made by Revenue Department vide page-95-97(F/XX).

From perusal of the above comments approved rate as per PC-I is Rs.1,40,000/- per Kanal while the purchase rate is Rs. 11,12,000/- against the target of 5 Kanal @ Rs. 70,00,000/- 6 Kanal and 1 Marla land was purchased accruing a hefty amount of saving worth @ Rs. 1742400/- to the Government. As per charsala furnished by the Revenue Department, the rate of land in the same area is 1, 40,000/- per Kanal. Further-more, the rate of the land settled with the owners in the presence of the CCF and CF Malakand Circle during their visit to the site date 7.4.2010 and 11.5.2010.

It is pointed out that the payment was made to the owners through DOR Buner while a sum of <sup>Rs. 2,076,41/-</sup> was paid to the Revenue Department. The land was transferred through DOR to the Forest Department. The officer also stated that the subject issue was conducted by Budget & Accounts of Environment Department through Audit Para-1 regarding price, procedure and <sup>made</sup> of payment. On his statement the observations were dropped and para was settled.

In view of the above statement/comments of the DFO concerned no financial loss occurred to the Estate, however, before submitting the case for the orders of the competent authority, we may seek comments of the Director Budget & Accounts in the matter.

Submitted please.

Section Officer (Estt)

30/10

Deputy Secretary-I

for comments

Dir: BSA

FC  
30/10

The Enclosure contains to be one sided

The Foreign Department or Administrative Dept (Envelope)

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Should have been consulted.

Comments of the DFO are plausible.

Revenue Dept in dist. Bazaar has not been by passed in the case which was in full picture (enquiry - II, IX of the DFO comments)

more over Audit at that time had also settled the case as no financial loss had occurred to govt

Para 271-274/N and comments of Div BSA is submitted for perusal / further order please.

10.11.013  
4/11

AS

Sp. Secy

5/11

DS-I/DA (BHA)

Spoken para 277/N is supported & l.

Sp. Secy

7/11

[Signature]





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

118

No. 2150 IG Dated Timergara the 17/3/2010

To

The Conservator of Forests,  
Malakand Circle Saidu Sharif,  
At Shagai.

Subject.

ACCORD OF TECHNICAL SANCTION FOR CONSTRUCTION OF  
BOUNDARY WALL OF DFO RESIDENCE AND FOREST COLONY.

Memo:

Enclosed please find herewith the detailed cost estimates of the following works duly technically checked by the Forest Engineer for favour of further necessary action in your office:-

| S.No. | Name of Works.                                  | Amount          |
|-------|-------------------------------------------------|-----------------|
| 1.    | Construction of Boundary Wall of DFO Residence. | Rs. 11,31,074/- |
| 2.    | Construction of Boundary Wall of Forest Colony. | Rs. 10,40,840/- |

According to the Delegation of Powers under the Financial Rules and the Powers of Re-appropriation Rules, 2001 vide item No.12.1 of third schedule (Special Powers to certain departments) the sanction falls under the competency of your good self, therefore, it is requested to kindly accord technical sanction to the above works.

Funds to meet the charges are available in the sanctioned budget for the year, 2009-10 under the ADP Scheme titled Construction of office and Residential Buildings please.

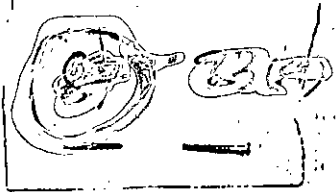
Encl:As Above.

Divisional Forest Officer,  
Lower Dir Forest Division,  
Timergara

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*[Handwritten initials]*

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OFFICE OF THE CONSERVATOR OF FORESTS MALAKAND FORESTS CIRCLE SAIDU SHARIF (SHAGAI) SWAT.

To

The Divisional Forest Officer,  
Lower Dir Forest Division, Timergara.

No. 9538 /P&D, DATED SAIDU SHARIF THE 20/4 /2010.

Subject: ACCORD OF TECHNICAL SANCTION FOR CONSTRUCTION OF BOUNDARY WALL OF DFO RESIDENCE AND FOREST COLONY.

Memorandum:

Reference your letter No. 2150/G, dated 17-03-2010.

\*\*\*

The works so reported for technical sanction are already available in the approved PC-I titled "Construction of office and Residential Buildings In NWFP" for which your office must have received technical sanction alongwith the administrative approval from the Administrative Department. Please follow the provision of PC-I accordingly.

*Handwritten signature and date 22/4*

*Handwritten signature*  
CONSERVATOR OF FORESTS  
MALAKAND FORESTS CIRCLE  
SAIDU SHARIF

LOWER DIR FOREST DIVISION  
Timergara

*Handwritten signature*

OFFICE OF THE DIVISIONAL FOREST OFFICER BUNER FOREST DIVISION AT SWARI

To

The Conservator of Forests  
Malakand Circle at Saidu Sharif Swat

NO. 34/2010, DATED 15/5/2010

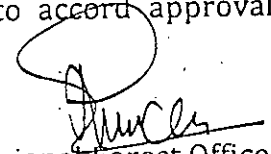
SUBJECT PURCHASE OF LAND FOR THE CONSTRUCTION OF DFO OFFICE  
RESIDENCE & STAFF QUARTERS

Memo: Reference in CCF KPK Peshawar office No. 2989/RA, dated 12.5.2010.

\*\*\*\*

As already discussed during your spot visit on 11.5.2010, a piece of land measuring 6 Kanal 1 has been purchased in Daggar Tehsil Colony Though private negotiated at the rate of Rs. 55600/- marla.

The high-ups may kindly be approach to accord approval if deems necessary please.

  
Divisional Forest Officer  
Buner Forest Division Swari



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*[Handwritten signature]*

Dated Daggat the 14/3/2011

28/10/11

To, District Officer,  
Revenue & Estate/Collector Buner.

To, The Divisional Forest Officer, Buner,  
Forest Division at Swat.

Subject: PURCHASE OF LAND FOR CONSTRUCTION OF DFO OFFICE,  
RESIDENCE AND STAFF QUARTERS.

Reference your memo No. 40/G Dated 03-09-2010, on the subject noted

Land acquisition through private negotiation can take place under the  
procedure notified vide Govt. of N.W.F.P Revenue Department's  
Circular No.54 Land Acquisition which is enclosed herewith

*[Handwritten signature]*  
DISTRICT OFFICER,  
REVENUE & ESTATE/COLLECTOR  
BUNER.

*[Handwritten signature]*  
Divisional Forest Officer,  
Upper Dir Forest Division,  
Dir Upper

*[Handwritten initials]*

123

OFFICE OF THE  
DIVISIONAL FOREST OFFICER  
UPPER DIR FOREST DIVISION  
UPPER DIR



Phone No. 0944-881715  
Fax No. 0944-881713

NO: 1137 /G Dated Dir Upper 17-10-2011

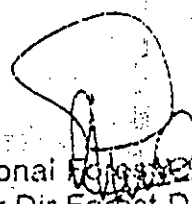
To  
The Conservator of Forests,  
Malakand Forest Circle East,  
Saidu Sharif Mingora.

Subject: INTERNAL AUDIT NOTE ON THE ACCOUNTS OF DFO BUNER FOR THE YEAR 2003-04 TO 2009-10

Memo:  
In-continuation of Chief Conservator of Forests Khyber Pakhtunkhawa office No. 32/RA/Audit dated 2.7.2011.

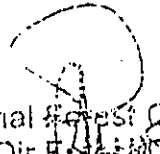
Enclosed please find herewith five (5) copies of the annexed reply to the Internal Audit Para No.1 for the year, 2009-10 in respect of Buner Forest Division for favour of information and further necessary action, please.

Encl: As Stated Above

  
Divisional Forest Officer,  
Upper Dir Forest Division,  
Upper Dir.

1137-40  
NO: /G,  
Copy forwarded :

1. The Chief Conservator of Forests Khyber Pakhtunkhawa Peshawar for favour of information with reference to his letter No. mentioned above please.
2. The Divisional Forest Officer Buner Forest Division for information and further necessary action.

  
Divisional Forest Officer,  
Upper Dir Forest Division,  
Upper Dir.



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Para-1

LOSS OF Rs.6.352 (M) TO GOVERNMENT ON PURCHASE OF LAND AT HIGHER RATES.

Funds to the tune of Rs.7.000 million were allocated during the year 2009-10 under the ADP Scheme namely "construction of office building cum residence and staff quarter".

The DFO Buner purchased land measuring 6 kanals and one marla from the following owners of the land as per detail given each:

| S.No. | Name of owner                      | Amount         | Cheque No. & date   |
|-------|------------------------------------|----------------|---------------------|
| 1.    | Sahib Gul S/O Sanab Gul of Daggar  | Rs. 5782400/-  | 246776 of 24.5.2010 |
| 2.    | Ihsanullah S/O Nasib Gul of Daggar | Rs. 945200/-   | 246777 of 24.5.2010 |
| 3.    | Stamp duty etc.                    | Rs.269604/-    | 246781 of 25.5.2010 |
|       | Total                              | Rs.69,97,204/- |                     |

Audit has the following observations:

1. According to the approved PC-I Provision, the land for the building would be purchased at Sawari, whereas the land for the building was shown purchased at Daggar. This is clear cut deviation from the PC-I.
2. In the approved PC-I, the purchase of land was five kanals, whereas the purchase was made 6 Kanals and one marla, thus the Government was put to un-necessary loss of Rs. 11,67,600/- (55600x21).
3. The amount of purchase of land was required to have been paid through DOR but contrarily the payment was shown made direct to the land owners as mentioned above.
4. The DFO Buner was required to have been approached the SMDR Peshawar for the land free of cost, but no efforts seems to have been made, which is pre-requisite in accordance with the instructions issued under the land Acquisition Act. The DFO purchased the land for the construction of building etc. on his choice and ignoring the instructions ibid. This point needs proper attention of the higher ups.
5. It is worth mentioning here that the DFO Wildlife Buner has also constructed office building at Daggar, all efforts have been made by the Wildlife Department with the BOR/DOR and land for the construction of building have been purchased free of cost.
6. The map is extremely substandard. The office building has only two rooms. The rest of the office building consists of jirga hall like structure. 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 make direct payment to the owners. Due to this blunder, the Environment Department Khyber Pakhtunkhwa sustained huge loss of Rs.51,84,765/- in the purchase of 6 kanals and one marla land.
7. The DFO Buner purchased land, in violation of PC-I prescription at Moza Daggar @ Rs.1112000/- whereas per kanals cost was fixed as Rs.255014/- vide case No. 4 dated 5.10.2010 (regarding acquisition of 70- kanals and two marlas land at Moza Daggar for the Police line at Daggar). Kindly elucidate.

The matter is brought into the kind notice for information and conducting detail enquiry.

ed to the interested persons of the locality for submit...

**UN NECESSARY LOSS OF RS./6,352(M)-TO GOVT.  
ON PURCHASE OF LAND AT HIGHER RATES.**

Funds to the tune of Rs.7.000 million were allocated during the year 2009-10 under the ADP Scheme namely "construction of office building cum residence and staff quarters."

The DFO Buner purchased land measuring 6 kanals and one marla from the following owners of the land as per detail given each:

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|-------|---------------------------------------|----------------|---------------------|
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| 2     | Ihsanullah son of Nasibgul of Dagger. | Rs.945200/-    | 246777 of 24.5.2010 |
| 3     | Stamp duty etc.                       | Rs.269604/-    | 246781 of 25.5.2010 |
|       | Total:-                               | Rs.69,97,204/- |                     |

Audit has the following observations:-

- 1) According to the approved PC-I Provision, the land for the building would be purchased at Sawari, whereas the land for the building was shown purchased at Dagger. This is clear cut deviation from the PC-I.
- 2) In the approved PC-I, the purchase of land was five kanals, whereas the purchase was made 6 kanals and one marla, thus the Government was in necessary loss of Rs.11,67,600/- (55600x21).
- 3) The amount of purchase of land was required to have been paid through DOR but contrarily the payment was shown made direct to the land owners as mentioned above.
- 4) The DFO Buner was required to have been approached the SMER Pesnawar for the land free of cost, but no efforts seems to have been made, which is pre-requisite in accordance with the instructions issued under the land Acquisition Act. The DFO purchased the land for the construction of building etc. on his choice and ignoring the instructions ibid. This point needs proper attention of the higher ups.

The audit para has been sent separately to Mr. Hasham Khan, the then DFO Buner by Internal Audit Officer vide his letter No.B&A/IAN 2009-10/DFO/Buner/5458-61, dated 30/6/2011. Who will submit his reply to the quarter concerned. Therefore no comments can be offered by this office.

Mr. Hasham Khan the then DFO Buner has submitted his reply which is enclosed for further course of action. The reply furnished by the then DFO Buner is self explanatory, justified hence the observation may be dropped.

The reply furnished by Mr. Hashim Khan the then DFO Buner is based on fact which may be entertained and the audit para may be dropped.

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INTERNAL AUDIT NOTE ON THE ACCOUNTS OF DFO BUNER FOR THE YEAR 2009-10

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| Content of audit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                    |              |                        | Reply of department |               |              |                    |   |                                   |         |                        |   |                                    |        |                        |   |                |        |                        |  |        |         |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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*[Handwritten signature]*



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Rs. 1742'00/-

129

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Total. Rs. 1956400

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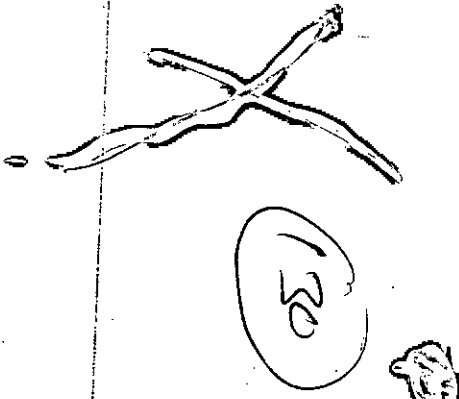
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( Mr. Hasham Khan  
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INTERNAL AUDIT NOTE ON THE ACCOUNTS OF DFO BUNER FOR THE YEAR, 2003-04 TO 2009-10

| Audit para | Content of audit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Reply of department | Comments by CF Malakand East Mingora. | Comments by CCF Khyber Pukhtunkhawa |                    |   |                                   |         |                        |   |                                    |        |                        |   |                |        |                        |  |        |         |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                                                                                       |
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Government of Khyber Pakhtunkhwa  
Environment Department

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No.B&A/Audit/Jan/Buner/2003-4 to 2009-10/  
Dated Peshawar the 01/2012

To  
The Chief Conservator of Forests  
Khyber Pakhtunkhwa Peshawar.

SUBJECT: INTERNAL AUDIT NOTE ON THE ACCOUNT OF DFO BUNER  
FOR THE YEAR 2003-04 & 2009-10.

Memo.

I am directed to refer to your letter No 1396/RA/Audit/dated 22/12/2011 on the subject noted above.

Further Audit comments are as under:

| S.No. | Audit para & Comments                                                                                                                                                                                                             |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.    | <u>Para-1</u><br><u>Loss of Rs. 6.352(M) to Government by purchase of land at higher rates.</u><br>Justification furnished by the then DFO Buner (Mr. Hashim Khan) which is based on fact. The para is recommended to be settled. |
| 2.    | <u>Para No. 2</u><br><u>Irregular purchase of Double Cabin Pick up costing Rs.1.900 million.</u><br>The CF/CCF are requested to record their valuable comments, so that audit para could be reviewed accordingly.                 |
| 3.    | <u>Para No. 3</u><br><u>Non surrender of saving amounting to Rs.296377/-</u><br>The CCF is requested to intimate factual position in light of reply furnished by the DFO Buner.                                                   |
| 4.    | <u>Para No. 4</u><br><u>Excess expenditure of Rs.175341/- over budget allotment.</u><br>Next audit to verify.                                                                                                                     |
| 5.    | <u>Para No.5</u><br><u>Irregular purchase of plants costing Rs.200000/-</u><br>Reply to the Audit observation at S.No. 1,2& 3 may be furnished..                                                                                  |
| 6.    | <u>Para No.6</u><br><u>Irregular construction of building costing Rs. 17,44,000/-</u><br>Para stand till verification of the observations at S.No. 1 to 5.                                                                        |
| 7.    | <u>Para No.7</u><br><u>Non-production of acknowledgement receipt of Rs.690419- 80% royalty.</u><br>Next audit to verify.                                                                                                          |

*[Handwritten signature]*



|     |                                                                                                                                                      |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8.  | <u>Para No.8</u><br><u>Irregular payment of Rs.80000/- to advocate/FSC.</u>                                                                          |
|     | As per remarks recorded by CF Malakand.                                                                                                              |
| 9.  | <u>Para No.9</u><br><u>Irregular purchase of motor cycle-CG 125 amounting to Rs.78624/-</u>                                                          |
|     | Reply of the DFO is not based on fact. Audit para may be read once again and cogent reply thereof may be furnished.                                  |
| 10  | <u>Para No.10</u><br><u>Irregular purchase of P.bags amounting to Rs.140000/-</u>                                                                    |
|     | As per comments of CF Malakand.                                                                                                                      |
| 11. | <u>Para No.11</u><br><u>Excess claim of Rs.20600/- on account of purchase of seed.</u>                                                               |
|     | As per comments of CF Malakand.                                                                                                                      |
| 12. | <u>Para-12</u><br><u>Non disposal of 8545.68 chir timber involving government revenue amounting to Rs.1059664/-</u>                                  |
|     | As per comments of CF Malakand.                                                                                                                      |
| 13. | <u>Para No.13</u><br><u>Irregular payment of reward amounting to Rs.2,66,300/-.</u>                                                                  |
|     | As per comments of CF Malakand.                                                                                                                      |
| 14  | <u>Para No.14</u><br><u>Un-authentic and irregular expenditure of Rs.58693/- and Rs.110756/- on account of purchase of polythene bags and seeds.</u> |
|     | As per comments of CF Malakand.                                                                                                                      |
| 15  | <u>Para No.15</u><br><u>Un-authentic payment of Rs. 194990/- on a/c of royalty.</u>                                                                  |
|     | As per comments of CF Malakand.                                                                                                                      |
| 16  | <u>Para No.16</u><br><u>Blockage of Govt. money Rs. 12,91,000/- due to Non disposal of timber</u>                                                    |
|     | Next audit to verify the auction of lot and its amounts and remittance into the Govt. A/Cs.                                                          |
| 17  | <u>Para No.17</u><br><u>Loss of Rs.17000/- due to recovery of compensation at the lesser rate.</u>                                                   |
|     | The CF/CCF is requested to review the reply of the DFO and cogent reply may furnished.                                                               |
| 18  | <u>Para No.18</u><br><u>Non-accountal of revenue/ receiptk Rs.281963/-</u>                                                                           |
|     | In future the Revenue targets may be achieved at any cost.                                                                                           |
| 19  | <u>Para No.19</u><br><u>Non-recovery of Rs.2.450 million on a/c of cutting of 577 timber trees.</u>                                                  |
|     | The DFO should persue the case with PD, FAP C&W Department and the balance amount of Rs. 980,000/- may be recovered and Audit office may be          |

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|    |                                                                                                                                                                             |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | informed of the position.                                                                                                                                                   |
| 20 | <u>Para No.20</u><br><u>Irregular auction of 2944.50 Cft timber.</u><br>The CF Malakand is requested to read the reply of the DFO and cogent views thereof may be recorded. |
| 21 | <u>Para No.21</u><br><u>Non-deposit of Rs. 22359/- on accounts of FDF/</u><br>Next audit to verify.                                                                         |
| 22 | <u>Para No.22</u><br><u>Non-recovery of Rs.15200/- due to non renewal licence.</u><br>Next audit to verify the remittance of Govt. dues into the treasury                   |
| 23 | <u>Para No.23</u><br><u>Non-forfeiture of 1/4<sup>th</sup> of sale value of Rs.200310/-</u><br>As per comments of CF Malakand.                                              |
| 24 | <u>Para No.24</u><br><u>Physical verification</u><br>The verification of store/stock may be shown to next audit.                                                            |

INTERNAL AUDIT OFFICER  
ENVIRONMENT

1092-94

Endst.No.B&A/Audit.IAN/ Buner /2003-04 to 09-10/ Dated Peshawar the 7/01/2012

Copy forwarded for information to the:

1. Conservator of Forests Malakand Circle Mingora.
2. Divisional Forest Officer Buner Forest Division Daggar.
3. Mr. Hashim Khan DFO Upper Dir.

*[Signature]*  
INTERNAL AUDIT OFFICER  
ENVIRONMENT

*[Handwritten initials]*  
D  
M  
A  
D  
D  
E

G.H./D/P/Internal Audit note/Feb.

*[Handwritten initials]*

OFFICE OF THE  
DIVISIONAL FOREST OFFICER  
UPPER DIR FOREST DIVISION  
UPPER DIR



Phone / Fax #. 0944-881715

Dispatch No: 1028 /G,

Dated Upper Dir 25/9/2013

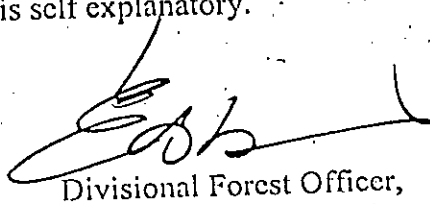
To

The Divisional Forest Officer,  
Malakand Forest Division,  
At Batkhela.

Subject: ENQUIRY.  
Memo:

Enclosed please find herewith DFO Dir Lower at Timergara letter No. 511/E. dated 12/09/2013 alongwith its enclosure which is self explanatory.

Encl: As Stated Above.

  
Divisional Forest Officer,  
Upper Dir Forest Division,  
Dir Upper.

NO: /G,  
Copy forwarded to :

1. The Divisional Forest Officer Lower Dir Forest Division at Timergara for favour of information with reference to his No. mention above please.
2. The Section Officer (Estt) Envt: Department Khyber Pakhtunkhawa Peshawar for favour of information with reference to the letter quoted above please.

Divisional Forest Officer,  
Upper Dir Forest Division,  
Dir Upper.



OFFICE OF THE  
DIVISIONAL FOREST  
OFFICER LOWER DIR  
FOREST DIVISION  
TIMERGARA

DALAMBAT  
COLONY LOWER DIR  
TIMERGARA  
Ph. 0945-9250105  
Fax. 0945-9250119

No 511

/E

Dated

Timergara

the

12/09/2013

Mr. Hasham Khan,  
DFO Upper Dir.

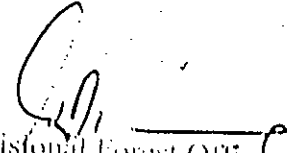
Subject:

ENQUIRY.

Memo:

Enclosed please find herewith S.O Letter No. SO(Estt) Envt/1-50(87) Has Khan:2006. 4347 dated 04.09.2013 along-with its enclosure for information and further necessary action as desired please.

Enclose as above:

  
Divisional Forest Officer,  
Lower Dir Forest Division,  
Timergara

No /

/E

Copy forwarded to SO(Estt) Envt Department Khyber Pakhtunkhwa for favour of information with reference to his letter No. quoted above please.

Divisional Forest Officer,  
Lower Dir Forest Division,  
Timergara

Office

The letter is w.s  
enclosure to DP Melmet.  
DP D  
S

... been imposed 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 negotiation. He had even made the payment of compensation direct to the owners on his own risk.



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دادری:

مسلحہ نمبر (0)

بکنندہ کے ذریعے  
اہمیت بھی نہیں ہے۔  
کنال 10  
15-08-08 فردخت کی ہے  
میں کی ہے۔ وکیل سا  
11-08-08 پیش کیا۔ جس کی  
نے کا اختیار دیا ہے۔  
بمقابلہ دنیہہ بنام  
بڑے سے بڑھا کر 11/

پہل بھٹ اور جامنات کی روشنی میں سائیاں درخواست برعذر دادی ثابت کرنے میں  
کامیاب رہے ہیں۔ اپنا اپنا مصدرہ 05-10-2010 کو تاحد تعین قیمت منسوخ قرار دے کر ارضی حاصل شدہ  
کی قیمت مبلغ 310761/- روپے کی کنال پتھر کی جاتی ہے۔ جس کی نقل مالیت 913101346/- روپے بنتی ہے جو کہ  
علاقہ 15% اضافہ ہے۔ جس کی وصولی کی سائیاں حقدار ہیں۔ سائیاں کو بعد از اختتام وقت اپیل باقی ماندہ ادائیگی

کی جانے۔ خرچہ مقدمہ بند فرمایا جائے گا۔ مسل بعد از ترتیب و تکمیل کے داخل دفتر ہو۔  
حکم سنایا گیا۔  
14.12.2011

(دلی محمد خان)

سینئر سول جج راعی علاقہ قاضی بوئیر۔  
SENIOR CIVIL JUDGE  
BOYER.  
تصدیق کی جاتی ہے کہ فیصلہ بند (09) صفحات پر مشتمل ہے جو کہ میرا املاء کردہ، ملاحظہ کردہ، تصحیح کردہ  
اور دستخط کردہ ہے۔

(دلی محمد خان)

SENIOR CIVIL JUDGE  
BOYER.  
D. 05. 12. 2011

حکم نے حاصل شدہ ارا  
کی قیمت 15 لاکھ کی کنال  
وکیل سائیاں بھی حاصل  
الہ نمبر 1 کے دفتر سے  
15-11-08 اور عکس نمبر  
15-11-08 کی روشنی میں اوسط  
کنال 2 مرلے کی نقل قیمت  
میں تابع بھٹ بالا حسب

TESTED  
Advocate

(دلی محمد خان)

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

To

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

No. 4297 /E, Dated Saidu Sharif the 10 / 4 /2014.

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

Memo:

Reference your letter No.SO(Estt)/Env/1-50(87)/2K8/1717, dated  
04/4/2014.

As desired, Draft Charge Sheet/Statement of allegation against the  
following officers are enclosed herewith for favour of further necessary action in your  
office please:-

- 1) Mr.Hasham Khan the then DFO Buner.
- 2) The then District Officer Revenue and Estate Buner.

Encl: As above.

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

*Yup  
TO*



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ENVIRONMENT DEPARTMENT  
NO.SC(ESTT)/Env/1-50(87)/2K8  
Dated Pesh: 13<sup>th</sup> January, 2014

Handwritten marks and a circular stamp with the number 141.

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Establishment Department.

**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.

Dear Sir,

I am directed to refer to the subject cited above and to say that in the subject case a de novo inquiry was ordered /conducted, through two members committee, against Mr. Hashim Khan, the then Divisional Forest Officer, Buner; and the then District Officer Revenue & Estate Buner. The Enquiry Committee, in its report, held responsible both the above mentioned officer responsible equally (copy of the de novo inquiry report is attached).

2. I am, therefore, directed to request that disciplinary proceeding against the then District Officer Revenue & Estate Buner, under E&D Rules, 2011, may be initiated; while to proceed against Mr. Hashim Khan, DFO, an employee of Forest Department, the concerned CCF Malakand Forest Region-III, is being directed for sending the charge sheet/statement of allegations to be served upon the officer.


Yours faithfully,

(MIR ZAIT KHAN)  
SECTION OFFICER (ESTT)

Encl: No. and date even. 2/10-11/14

Copy is forwarded to:-

1. PS to Secretary Environment Department.
2. Chief Conservator of Forests, Malakand Forest Region-III, Swat, alongwith a copy of de novo inquiry report in the matter; with the direction that charge sheet/statement of allegations against the officer may immediately be prepared; in light of inquiry report, and be furnished to this department to proceed further in the matter.

  
SECTION OFFICER (ESTT)

No. 3119 /B&A, Dated Saidu Sharif the 28/01/2014.

Copy alongwith copy of de novo enquiry report of the subject case forwarded to the Conservator of Forests, Malakand East Forest Circle Saidu Sharif Swat for information, guidance and necessary action. He is requested to prepare the desired charge sheet/statement of allegations against the officer and submit to this office for onward transmission to Administrative Department.

Encl: As above.

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

Handwritten signature at the bottom left.

بازاری قیمت وند تحصیل مالوفی صرف دگر تحصیل دگر مال اشتر

بروید سال قیمت صرف دگر فی سال چو لادو مانغ بازار روید بنی ہے  
605000/-

قیمت تحصیل مالوفی سے منتقال 3007 فی سال لیزن علی 3007  
22.11.05  
1112000/-  
1400000/-  
دیکر لیزر منتقال 3808-3809 فی بازار لادو بازار روید بنی قیمت شدہ  
26.5.010

چونکہ یہ قیمت لومہ تحصیل مالوفی اور کمیشن اور باہر بنی وجہ سے رسید فریڈ  
فریڈ فریڈ فی بازار  
قیمت بازار 14  
چونکہ لادو روید ہے

دو اور 1112000/-  
12/10/10  
22/12/2010

مناسب بازار روید  
رضا علی  
روید روید روید  
22/12/2010

779



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMN: DEPARTMENT  
(REGULATION WING)

No. SOR-V(E&AD)/Instruction/2014  
Dated 28<sup>h</sup> March, 2014

143

1. The Additional Chief Secretary,  
P&D Department Govt. of Khyber Pakhtunkhwa.
2. The Additional Chief Secretary (FATA),  
FATA Secretariat, Peshawar.
3. The Senior Member,  
Board of Revenue, Khyber Pakhtunkhwa.
4. All the Administrative Secretaries  
to Government of Khyber Pakhtunkhwa.
5. All the Divisional Commissioners in Khyber Pakhtunkhwa
6. All Heads of the Attached Departments in Khyber Pakhtunkhwa
7. All the Deputy Commissioners in Khyber Pakhtunkhwa

PROCEDURE UNDER THE KHYBER PAKHTUNKHWA GOVERNMENT  
SERVANTS EFFICIENCY AND DISCIPLINE RULES 2011

It has been observed that the inquiry officers/inquiry committees under Rule-10 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, not follow strictly the procedure as laid down in rule-11 of the rules ibid but in the limit of their duties.

It is to clarify that the inquiry officer or the inquiry committee is supposed to determine whether the charges against the accused officers/officials have been proved or not. The inquiry officer or the inquiry committee shall as the case may be clearly fix responsibility and apportionment of the losses caused to the provincial exchequer, work out apportionment of the losses amongst accused officers/officials and recommend recovery thereof from the officials held responsible.

Contrary to the above provisions of the rules, the inquiry officer/inquiry committee may recommend against the accused officers/officials either exoneration from the penalty levied against them or recommend major penalty and in most cases recommend minor penalty. It is to be noted that it is the prerogative/privilege of the competent authority to decide on the basis of the findings of the enquiry whether to recommend a minor penalty or major penalty or exoneration. The inquiry officer/inquiry committee is not required to recommend exoneration or any other recommendation of the accused unless otherwise specifically asked for.

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I am directed to request you that it should be brought to the notice of  
concerned to conduct the inquiries in a very objective manner strictly in  
conformance with the Khyber Pakhtunkhwa Government Servant E&D Rules, 2011 and  
to prevent breach of their domain/limits as laid down in these rules.

Yours faithfully,

*Shabbir Ahmad*  
*28/8/14*  
(SHABBIR AHMAD)  
SECTION OFFICER (REG-V)

date even.

copy forwarded to:

- Registrar Peshawar High Court, Peshawar.
- Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- Secretary, Khyber Pakhtunkhwa Public Service Commission.
- Additional Secretaries, Deputy Secretaries and Section Officers in  
Establishment & Administration Department.
- Principal Secretary to Governor, Khyber Pakhtunkhwa
- Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
- Deputy Secretaries to all Provincial Ministers in Khyber Pakhtunkhwa
- Deputy Secretary to Chief Secretary, Khyber Pakhtunkhwa.
- Deputy Secretary to Secretary Establishment Department
- Deputy Secretary to Secretary Administration Department.
- Director General, Provincial Disaster Management Authority Provincial  
Construction, Rehabilitation and Settlement Authority.

508-IV

*Shabbir Ahmad*  
*28/8/14*  
(SHABBIR AHMAD)  
SECTION OFFICER (REG-V)

*26*

(148)

*Hasham Khan*

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

To

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

No. \_\_\_\_\_/E, Dated Saidu Sharif the 31/10/2014.

SUBJECT:- SHOW CAUSE NOTICE.

Memo:

Reference your letter No.SO(Estt)Envt/1-50(87)/2012/4262, dated  
14/10/2014.

Enclosed please find herewith reply to the show cause notice  
furnished by Mr.Hasham Khan DFO alongwith comparative statement with comments of  
the Department for further necessary action in your office.

Encl: As above.

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

No. 2037/38/E,

Copy forwarded to the:-

Conservator of Forests, Malakand East Forest circle Saidu Sharif Swat for  
information.

Mr.Hasham Khan, Divisional Forest Officer, Malakand Forest Division at  
Batkhela for information with reference to his letter No.2589/E, dated  
24/10/2014.

*[Signature]*

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

*[Signature]*

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COMPARATIVE STATEMENT REGARDING DISCIPLINARY PROCEEDINGS AGAINST MR. HASHAM KHAN DIVISIONAL FOREST OFFICER

| Findings of the Enquiry Committee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Reply of the Officer                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Comments of the Department                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><u>1. PROCEDURAL LAPSES</u><br/>The amended notification of land acquisition provided for a detail step by step procedure for the purchase of land through private negotiation outlining the responsibilities of various departments of Government which has not followed by the accused DFO.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p><u>1. PROCEDURE</u><br/>The land measuring 6 kanal and 1 marla was purchased for the construction of DFO Buner office/residence by private negotiation in coordination with Revenue Deptt: through Syed Mukanil Shah the then SDFO Daggan. Agreement was executed accordingly which was transmitted to DOR/Collector Buner for signing and further processing as required under Section-4 of Land Acquisition Act 1894. The said notification was sent by the DOR Buner to SMBR, Commissioner Malakand Divn, Chief Conservator of Forests Khyber Pakhtunkhwa, Conservator of Forests Malakand, DCO Buner and Manager Govt: Printing Press for publication which shows that all the concerned authorities were duly informed and no body had raised any objection to the process of specified piece of land. In the interest of public service, the process was finalized by making payment to the land owners at the rate much less than that intimated by the field staff of Revenue Department. The land in question has been entered in the revenue record on the name of Provincial Government through Forest Department.</p> | <p>The accused DFO had purchased the land through private negotiation has not followed all the steps mentioned in the amended land acquisition notification. The accused DFO has formally submitted the agreement deed alongwith draft notification under Section-4 of the land acquisition Act 1894 to DOR Buner vide No.3278/G, dated 06.5.2011 with the request to process it further. The Revenue Deptt: transferred/ mutated the land in the name of Forest Department</p>                                                                          |
| <p><u>2. PRICE OF LAND AND LOSS TO PROVINCIAL EXCHEQUER</u><br/><br/>Negotiated rate between the accused DFO and land owners was fixed Rs. 11,12,000 per kanal. Rate as per Ausat Yaksala (7/2009 to 4/2010) was Rs.4,53,988/- per kanal. Total amount thus payable for the acquisition of 6 kanal and 1 marla comes to Rs.27,46,627/- The accused DFO ignored the standing law, rules and instructions of the Provincial Govt: and made payment of Rs.67,27,600/- (Rs.11,12,000/- per kanal), thus the accused DFO caused loss of Rs.39,80,973/- as per average Yaksala sale rate.<br/><br/>Due to precedent made by the accused DFO Buner resulted in enhancement of rate by the court of Sessions Judge Buner in respect of the acquisition</p> | <p>Neither the higher authorities of Environment Deptt: nor the Collector have made which shows that the above process is correct.</p> <p>The amended procedure was required to be communicated by SMBR to Administrative Secretaries and its further endorsement to all District Officers but till todote the said notification has not yet endorsed. The undersigned is bound to follow the Forest Ordinance 2002 whereas the land acquisition Act 1894 is clearly mentioned under Section 118 F-O 2002 and no amendment has yet been made. On the request of the Department, the DOR supplied the same and followed as such.</p> <p>The entire record was twice passed through the process of audit during 2011, 2013 and the procedure followed was termed satisfactory.</p>                                                                                                                                                                                                                                                                                                                                                     | <p>Purchase of forest land was a part of AEP scheme @ Rs.14,00,000/- per kanal which was approved in the DDWP meeting and administrative approval was accordingly accorded by the competent authority, however, approval of the Administrative Department for the negotiated rate of the purchased land was not obtained.</p> <p>As per chasala furnished by the Revenue Deptt: the rate of the land in the same area is Rs.14,00,000/- per kanal (Refer to Annexure-8, page 87 of the reply furnished by the accused DFO).</p> <p>Needs no comments</p> |

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(141)

of the land for another scheme, "Construction of Police line at Daggar"

- \* Difference in shape of loss on the basis of Ausat Yaksala furnished by Revenue Authority to the Enquiry Committee Rs.3,980,900/-
- \* Difference in shape of loss as determined by the enquiry committee (DC Swat & Buner) Rs.3,233,644/-
- \* Difference in shape of loss to Police Department Rs.85,109,002/-

Thus the accused DFO caused huge loss to the Provincial exchequer.

3. UN-DUE HASTE

It is evident from the available record that the accused DFO was posted on 19.4.2010 and effected the agreement for the purchase of land on 04.5.2010. It is established that the purchase was made in short span of two weeks which crystal clear that the entire transaction was conducted in un-due haste in two months.

4. CHANGE OF SITE IN VIOLATION OF PC-I

PC-I provides for the acquisition of land at Moza Swari but the accused DFO purchased the land at Moza Daggar in utter violation of the approved PC-I.

2. ADMINISTRATIVE APPROVAL

The Administrative approval envisages purchase of 5 kanal land @ Rs. 1.400 million per kanal which was purchased @ Rs. 1.112 million per kanal situated in an ideal, unmatching location in heart of District Headquarter. The subject PC-I had the same activities in other Districts and none of them had gotten secondary approval from the administrative department.

The amended LRA 2006 has never been endorsed to the undersigned.

The DFO Bir Lower had sought technical sanction for the construction activity under the said PC-I. In response of which the CF Malakand had directed to follow PC-I provision.

3. PRICE COMMITTEE

There is no excuse for notifying price committee regarding acquiring land through private negotiation. The agreement deed signed with the owners clearly indicating rate of Rs.55,600/- per Marla was submitted to DCR Buner which was accordingly processed without questioning the negotiated rate because the rate was fixed in light of Section 13 L.A. Act 1954. The constitution of price committee is mandate of Revenue Department which they avoided perhaps for the reasons of very short left over time.

In de-novo enquiry, the DCR was held responsible for non constituting of the committee and accordingly draft charge sheet was issued against him which could not materialized and is question mark.

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

4. PRICE OF LAND & LOSS TO GOVT. EXCHEQUER

A) PRICE OF LAND

The land was purchased @ Rs. 1.112 million per kanal against the provision of;

- FC-I approved rate of Rs. 1.400 million per kanal
- Market rate as per charsala furnished by Revenue Deptt is Rs. 1.400 million per kanal.
- Yaksala rate as per revenue record is Rs. 1.454 million per kanal.

It is pertinent to mention here that no approval/sanction of Administrative Department regarding private negotiation and rate fixation has been sought by the accused DFO.

The PC-I titled "Construction of DFO offices and residential buildings in NWFP" was launched since 2007-08 to 2009-10, during the entire period his predecessor could not succeeded to purchase the land. The accused officer after taking over the charge of DFO Buner on 19.4.2010, was directed by his superiors to quickly purchase the land so that provision of funds for the purchase of land under the developmental scheme may not be lapsed.

Daggar and Swari are sister towns of Buner which are now as one town. Swari being the commercial area where cost of land is very high and it would not have been possible to purchase land within the given price. However, the accused DFO was required to obtain prior approval of the competent authority for shifting of the purchase of land from Swari to Daggar which he did not.

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5. CHANGE OF SCOPE IN VIOLATION OF PC-I

In the approved PC-I, the purchase of land was 5<sup>th</sup> kanal whereas the purchase was made of six kanal and one marla. Resultantly put the Government to unnecessary loss of Rs.1,167,600/-

6. DIRECT PAYMENT IN VIOLATION OF RULES

Direct payment have been made through cheques bearing No.246776 and No.246777 dated 24.5.2010 amounting to Rs.5,782,400/- and Rs.939,200/- which was required to be made through the concerned DFO as established laid down procedures.

7. VIOLATION OF ARTICLE 53 OF LAND ACQUISITION ACT

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

8. BY PASSING THE REVENUE AUTHORITIES IN THE EXECUTION OF PURCHASE DEED.

According to Mr. Mukamil Shah the then SDO Daggar (F) the rates were negotiated by DFO and payments directly made to the land owners and none of the Revenue official were involved in the purchase which showed that the purchase deed was executed by Mr. Hasham Khan and is therefore responsible for the commission/omissions in the land purchased.

B) LOSS TO GOVERNMENT

For acquiring land, the following two 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 Deptt. had purchased the land through compulsory way which has not been differentiated by the committee. Silent features of both ways in respect of Forest and Police acquired land are as under:-

The forest land was purchased through private negotiation while Police land was purchased through compulsory way.

In private negotiation the price is settle according to the prevailing market rate within the provision of approved rate. The Revenue Deptt. fixed the price by their own, irrespective of the prevailing market rate.

The forest land is a commercial land while the Police acquired land is agricultural land.

The forest land was acquired in May 2010 while the process of land purchased by Police Deptt. was started during August, 2008.

The forest land is adjacent to main Daggar Headquarter road while the Police land is far away from Daggar Bazar.

The Civil Court had declared the Ausat Yaksala incorrect and had fixed the rate on the basis of average price of the following three transactions made in the vicinity:-

- Land purchased by U-Fone @ Rs. 1.100
- Land purchased by Forest Deptt: @ Rs. 1.112
- Land purchased by Noor Alam @ Rs. 1.619

6 Kanal and 1 Marla land was purchased @ Rs. 1.112 million per kanal against the PC-I approved rate of Rs. 1.400 million per kanal. Thus Rs.0.288 million per kanal was saved to Govt.

The Ex-Owner of the land had applied the Government to return the land and he will refund the paid amount.

The approved rate as per PC-I was Rs.1,400,000/- per kanal whereas the land has been purchased @ Rs.1,112,000/- per kanal and thus an additional land was purchased out of the amount saved from the provision of the PC-I.

The accused DFO has made direct payment as per procedure in vogue in the Department.

The land purchased by the accused DFO is situated in District Headquarter Daggar.

According to the accused DFO, the payment was made through a crossed cheque in name of owners which is a set procedure for making any payment to the public or any other person. However, Mr. Mukamil Shah SFO Fd. has denied his statement recorded on the mutation paper.

It is pertinent to mention here that the accused DFO has prayed for;

- i. that the witnesses were not produced by the enquiry committee in his presence to be crossed examined by him which is against E&D Rules, 2011 Clause-11(i)

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5. UNDUE HASTE

The PC-I was launched since 2007-08 to 2009-10. During the entire period, Mr. Mir Wali Khan holding post of DFO Buner but he did not succeed to purchase the land. The undersigned (Mr. Hasham Khan DFO) took over the charge on 19.4.2010. On the directions of high ups the undersigned directed SDFD 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 located in District headquarter Daggar 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 unwise to establish District Head office far away from District Headquarters.

No where the word ~~Muzra~~ Swari has been specifically mentioned in the PC-I. Swari name is being used in general term for both Daggar and Swari. Daggar College being established in Swari Bazar is the ready example.

In demer enquiry, the committee has validated the purchase of land at Daggar.

7. CHANGE OF SCOPE

The rate envisaged in the PC-I was Rs. 1.400 million per kanal whereas the subject land has been purchased @ Rs.1.112 million per kanal accrued a hefty amount saving of Rs.1.742 million to Government.

The CCF NAFFP during his visit on 27.4.2010 directed the undersigned (Mr. Hasham Khan DFO) to purchase additional land. The excess/surrender was all together stopped as per directives of CF and 100% fund utilization was stressed by high ups. So the lone option was to go for purchase of additional land with the consent of CCF and CF thus a precious/valued property was added in Govt. assets rather than unnecessary loss.

ii. Mr. Mir Wali Khan DFO BPS-18 (Member of the enquiry committee) was reporting officer in the instant case and all the enquiry proceedings based on his monitoring report. Moreover he is also of equal rank to the accused DFO which is against the E&D Rules 2011 (clause 10(a) and 10(3) and the natural justice.

iii. The accused has filed a writ petition No. 408/14 against the enquiry committee in Swat Darul Qaza, the Court issued order on 01.9.2014, requisitioned the entire proceedings.

31/10/14  
CHIEF CONSERVATOR OF FORESTS  
MALAKAND FOREST REGION (REGION-III)  
SAIDU SHARIF SWAT

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11. VIOLATION OF ARTICLE 53 OF LA 1894

The land purchased situated in the heart of District Headquarters. Rate reasonability certificate issued by Revenue Deptt: it has clearly been mentioned that the purchased land is commercial and the rate of the land is very high.

12. BY-PASSING REVENUE DEPARTMENT.

The Revenue as well as Forest Department were on board. All the process from selection till transfer of land was made through Revenue Department. Mr. Mukamil-Shah the then SDFO Daggur was intact with Revenue Department. The payment was made through I/C SDFO and Divisional Accountant which was addressed to DOR.

As provided in E&D Rules 2011 the witness to be produced in presence of accused to cross examine which was deliberately avoided by the committee.

13. INJUSTICE/DISCRIMINATION

The un-

... irregularity determined by  
the observation in connection with the purchase of  
above land was settled without fixing any financial



11. VIOLATION OF ARTICLE 53 OF LA 1894

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As provided in E&D Rules 2011 the witness to be produced in presence of accused to cross examine which was deliberately avoided by the committee.

13. INJUSTICE/DISCRIMINATION

The undersigned Mr. Mir Wali Khan DFO which irked him and bitter blood was created resolutely he floated a biased monitoring report on the purchase of the said land the process ended at the subject show cause notice.

The procedural/financial Irregularities being examined by the Audit which has twice been passed through the Audit process and termed as correct/satisfactory.

The enquiry conducted by DC Swat/Buner was initiated against Mr. Hidayatullah Tehsildar and was unlawfully switched over to the undersigned kept aloof the undersigned.

In Denial enquiry the DOR Buner was also held responsible for not following the procedures and draft charge sheet was also issued against him but could not materialized, while the charge sheet served the undersigned was implemented.

The entire chain of Forest Department and Revenue Deptt: were on-board in the process and each one had played his role, but only the undersigned has been victimized and made scape goat.

The committee member Mr. Mir Wali Khan is reporting officer in the case who is equal rank to the undersigned hence cannot conduct enquiry against the undersigned as

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per E&D Rules clause-10(a).

An appeal for replacement of enquiry committee was submitted but cold responded.

Writ petition against the enquiry committee was filed in Peshawar High Court Darul Qaza Swat, the court issued order on 01.9.2014 requisitioned the entire proceedings and barring Mr. Mir Wali Khan not to sign the report but the court order was disregard.

The undersigned called by the chairman of the committee for personal hearing on 25.8.2014 but become hard reactionary after knowing my approaching to the court and conducted no hearing.

The Police Deptt: land acquisition case in Darul Qaza Swat is under trial and it is prejudice to presume that the decision of lower court will be upheld.

The Yaksala of Buiner Police Deptt: has been declared void and in correct by lower court.

The chairman of the enquiry committee called Mr. Mir Wali Khan to Peshawar and hastily conducted the enquiry disregarding the court order dated 01.9.2014.

The contents of the enquiry report explicitly un-veil the bias attitude of the committee and all out efforts have been made to shift mandatory responsibility of 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 argumented submissions have been given any weight. The enquiry conducted is absolutely unilateral and partial.

The honorable Peshawar High Court Darul Qaza Mingora Bench was unlawfully intercepted to give the proceedings 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, setaside the enquiry and exempted from all the charges.

The undersigned desired to heard in person.

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(153)

GOVERNMENT OF NWFP  
ENVIRONMENT DEPARTMENT  
(PLANNING CELL)  
NO. DDP (ENVT) (E-203) / 1337  
DATED PESHAWAR THE 24/1/2009.

To  
The Chief Conservator of Forests,  
NWFP, Peshawar.

Subject: ADMINISTRATIVE APPROVAL OF THE SCHEME TITLED "CONSTRUCTION OF OFFICE & RESIDENTIAL BUILDINGS IN NWFP" ADP NO.606 (REVISED)

In exercise of the powers delegated vide para-1 second schedule's S.No.6 of the NWFP Delegation of Powers under Financial Rules and the powers of Re-appropriation Rules 2001, the Government of NWFP is pleased to accord Administrative Approval of the ADP scheme titled "Construction of Office & Residential Buildings in NWFP" ADP No.606 at a total cost of Rs.39.635 million (Rupees Thirty nine million six lacs & thirty five thousand only) for a period of 3 years (2007-08 TO 2009-10) as per details given below:

|                      |                                                                                                                         |             | (Rs. In million) |  |
|----------------------|-------------------------------------------------------------------------------------------------------------------------|-------------|------------------|--|
| S#                   | Item of work                                                                                                            | Unit Cost   | Amount           |  |
| <b>(i) 2007-08</b>   |                                                                                                                         |             |                  |  |
|                      | Sub Total 2007-08                                                                                                       |             | Nil              |  |
| <b>(ii) 2008-09</b>  |                                                                                                                         |             |                  |  |
| 1                    | Construction of office cum residence and ministerial staff quarter building DFO Dir Upper Dir Forest Division (Partial) | 1400        | 6.710            |  |
| 2                    | Construction of office cum residence and ministerial staff quarter building DFO Buner Forest Division                   | 1300        | --               |  |
| 3                    | Construction of office cum residence and ministerial staff quarter building RFO Booni Chitral Forest Division (Partial) | 1500        | 0.971            |  |
| 4                    | Construction of office cum residence and ministerial staff quarter building RFO Kabal Swat Forest Division (Partial)    | 1300        | 0.337            |  |
| 5                    | Construction of Boundary wall by DFO Lower Dir at Timergara (Partial)                                                   | 1056        | 0.282            |  |
| 6                    | Purchase of land for DFO Buner                                                                                          |             | 4.000            |  |
|                      | Sub-Total 2008-09                                                                                                       |             | 12.300           |  |
| <b>(iii) 2009-10</b> |                                                                                                                         |             |                  |  |
| 1                    | Construction of office cum residence and ministerial staff quarter building DFO Dir Upper Dir Forest Division           | 1400        | 3.245            |  |
| 2                    | Construction of office cum residence and ministerial staff quarter building DFO Buner Forest Division                   | 1300        | 11.073           |  |
| 3                    | Construction of office cum residence and ministerial staff quarter building RFO Booni Chitral Forest Division           | 1500        | 5.5              |  |
| 4                    | Construction of office cum residence and ministerial staff quarter building RFO Kabal Swat Forest Division              | 1300        | 5.271            |  |
| 5                    | Construction of Boundary wall DFO Timergara                                                                             | 1056        | 2.246            |  |
|                      | Sub-Total 2008-09                                                                                                       |             | 27.335           |  |
|                      |                                                                                                                         | Grand Total | 39.635           |  |

The scheme was revised in the 3<sup>rd</sup> DDWP meeting held on 06/11/2008 under the chairmanship of Secretary Environment NWFP.

The expenditure involved will be met out from the sanctioned budget grant under the function cum-object classification under demand No.45 NC 12058 (Capital) & NC 22058 (Revenue) during the respective years.

*[Handwritten signature]*

POWER OF ATTORNEY

In the Court of KPK Service Tribunal Peshawar  
Mashim Khan

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

Govt of KPK Etc

} Defendant  
} Respondent  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/We, the undersigned, do hereby nominate and appoint

**IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN**

AND SAJID AMIN Advocate

my true and lawful attorney, for me in my same and on my behalf to appear at Pesh. to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at Peshawar  
the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_  
Executant/Executants [Signature]  
Accepted subject to the terms regarding fee \_\_\_\_\_

*Accepted  
Ijaz Anwar*

**Ijaz Anwar**

Advocate High Courts & Supreme Court of Pakistan



مورخہ 9-12-2015ء منجانب Appellant  
مقدمہ Hesham Khan بنام Cont. K.P and Others  
دعویٰ Service Appel No. 474/2015

## باعث تحریر آنک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کیمپ کورٹ سوشل لاء سروسز ایٹن و امراء الدہ ایجوکیشن مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل احتیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زر اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کر پتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم 6 ماہ 12 2015ء

العبد گواہ شہادہ العبد

Attested  
and  
Accepted  
by

کے لئے منظور ہے

بمقام کیمپ کورٹ سوشل

OFFICE OF THE DIVISIONAL FOREST OFFICER BUNER FOREST DIVISION  
AT DAGGAR.

To

The Government Pleader  
Khyber Pakhtunkhwa Service Tribunal  
At Swat.

No. 1581 /G, Dated Dagggar, the 02/10/2015.

Subject:- APPEAL NO. 474/2015 HASHAM KHAN VERSUS GOVERNMENT OF  
KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND  
OTHERS.

Memo:

Enclosed please find herewith five copies (05) of the reply/comments on  
the subject appeal duly vetted by the Law Department and signed by Respondents for  
information and onward submission to the court on 05.10.2015, please.

Encl: as above.

  
DIVISIONAL FOREST OFFICER  
BNUNER FOREST DIVN: DAGGAR

No.     /G,

Copy alongwith copy of the above forwarded to :

1. The Chief Conservator of Forests Malakand Forest Region (Region-III) at Shagai Saidu Sharif, Swat for favour of information, please.
2. The Conservator of Forests Malakand East Forest Circle at Shagai Saidu Sharif, Swat for favour of information, please.
3. The SDFO Dagggar for information and necessary action. He is directed to attend the court on 05.10.2015 well prepare, hand over the reply/comments to the Additional Advocate General/Government Pleader Khyber Pakhtunkhwa Service Tribunal at Swat, pursue regularly the case in future and report progress of each hearing. Original file enclosed (return requested).

  
DIVISIONAL FOREST OFFICER  
BNUNER FOREST DIVN: DAGGAR

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR

Appeal No. 474/2015

Hashim khan Divisional Forest Officer,

(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)

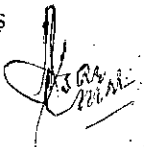
PRELIMINARY OBJECTIONS

- i. That the appellant has no cause of action.
- ii. That the appellant has no locus standi to file the appeal.
- iii. That the appeal is bad for non joinder of necessary parties and mis-joinder of un-necessary parties.
- iv. That the appellant has been estopped by his own conduct to file the appeal.
- v. That the appeal is badly time barred.
- vi. That the appeal is not maintainable in its permanent form.
- vii. That the Honorable Tribunal has no Jurisdiction to entertain the appeal.

Respectfully sheweth.

Parawise comments on the appeal of Mr. Hashim khan DFO are furnished as under:

1. Pertains to record, hence needs no comments except the correction that the appellant was appointed during 1984 and not 2014.
2. Pertains to record, needs no comments.
3. No doubt that the land had been purchased by the appellant but certain legal flaws during the course of monitoring and subsequent enquires were detected which resulted the instant situation of punishment awarded. (Annex- I, II, III, IV, VII)

4. As explained in para "3" above.
5. Monitoring, fact finding enquiries and formal enquiry, have been conducted and keeping in view the available substantial record in the enquiry file, certain irregularities have been found rather codal formalities laid down for the purpose were not adopted.
6. Conducting monitoring of the activities in Malakand East Forest Circle is the responsibility of DFO Working Plan Unit-VI Swat. At that time, Mr. Mir Wali Khan was incharge DFO Working Plan Unit-VI and accordingly he conducted monitoring of the land purchased and his report became cause of the subject enquiry.
7. The whole fact is that actually two fact finding enquiries had been conducted against the appellant, as is evident from the record and is mentioned vide para-I (K) of charge sheet, para-I(L) of the statement of allegations and para (K) of the reply by the accused / appellant to the charge sheet. The 1<sup>st</sup> enquiry was mostly about the documentary evidences, official record and rules/ regulations on the subject and the enquiry committee did not consider necessary to hear in person the appellant. However during the de novo enquiry the appellant was called, heard in person and supporting written statement / reply obtained from him. In this de novo enquiry too, the appellant was found guilty which confirmed the findings the initial enquiry.
8. Reply of the appellant to the charge sheet was not found satisfactory and the enquiry committee recommended major penalty of dismissal from service under the Khyber Pakhtunkhwa Govt. Servants (E & D) Rules, 2011 against the appellant.
9. The chairman of the enquiry committee was of senior rank to that of the appellant. Mr. Mir Wali Khan (member of the committee) though, of the same grade as that of the appellant but, was senior to the appellant as per seniority list of the DFOs. He never lodged any complaint as claimed by the appellant. Though he prepared the monitoring report but the enquiry was established on the basis of two fact finding enquiries submitted by two different enquiry committees of which Mr. Mir Wali Khan never remained a member. 
10. The enquiry was conducted in accordance with (E& D) Rules, 2011.
11. Reply of the appellant to the show case notice was not deemed satisfactory by the competent authority and as such penalty was imposed upon the appellant.
12. While imposing penalty of Reduction to lower post, the competent authority considered all the relevant documents including the reply of the appellant to the show cause notice as is evident from the last para of the notification date 31/12/2014. (Annex - V)
13. The departmental appeal claimed to have been moved by the appellant on 22/01/2015 was received in the office of Respondent No.3 on 03/03/2015. The same was transmitted to office of Respondent No. 4 which was the initiating and concerned quarter. Due to Inter Regional Correspondence between the two offices and also due to queries by these offices from other subordinate offices, the response from the Respondents got a bit delayed till receipt of the instant appeal.
14. The order passed by the competent authority is legal , lawful according to law and facts and deserves on merit to be upheld.



## GROUND OF SERVICE APPEAL

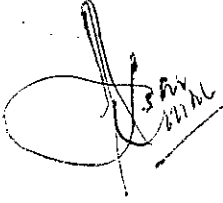
### Comments.

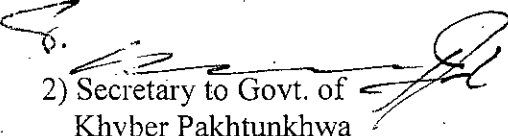
- A. Action has been taken against the appellant in accordance with law under the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011.
- B. During fact finding enquiries and also during disciplinary proceedings, properly laid down procedure has been adopted. The appellant has been heard in person three times, (i) during fact finding de novo enquiry, (ii) during disciplinary proceedings and (iii) after show cause notice by competent authority. (Page 11, 61, 25)
- C. Not correct. Comments given in para-B above.
- D. The penalty has been imposed upon the appellant after fulfillment of all codal formalities. The monitoring report, two consecutive fact finding enquiries and disciplinary enquiry all went against him after which there remains nothing to believe otherwise about the Appellant.
- E. Contents of the show cause notice dated 09/10/2014 clearly show that copy of the enquiry report was provided to the Appellant. The reply of the appellant to the show cause notice also reveals that the Appellant's response is based on perusal of the enquiry report. Furthermore the appellant in his reply has not shown any concern about non provision of such copy to him. Thus the plea adopted has no relevance at this stage. (Annex - D; Page 27, 49, 51)
- F. The chairman of the enquiry committee was senior to the Appellant. The other member, though of same grade (BPS-18) was also senior to the Appellant as per seniority list issued by the Department from time to time. The said officer, though monitoring Officer in the instant case, has never remained member of the two fact finding enquiries which were conducted by four senior officers and which were made basis for disciplinary proceedings against the Appellant.
- G. Irrelevant. No comments.
- H. Pertains to record. However it is worth mentioning that the fact finding enquiry had fixed responsibility on the appellant and the charges were proved against him by the enquiry committee in the disciplinary proceedings held under the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Disciplinary) Rules, 2011.
- I. The DC Swat and DC Buner, in the enquiry conducted by them have, explicitly held the Appellant guilty of omission and Commission of Irregularities. Thus no switch over has been made as claimed. (Page 9)
- J. Irrelevant hence no comments.
- K. The enquiry has been conducted through enquiry committee as required under the law, details are available on file.
- L. Comments furnished vide para-ix and para-f.
- M. Not relevant hence no comments.
- N. Needs no comments.

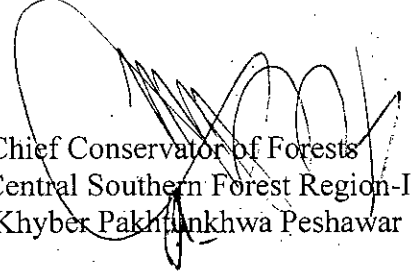
- O. The charges leveled against the Appellant were on the basis of two fact finding enquiries. The enquiry officer gave his findings, keeping in view, all the details of the case available in the enquiry report.
- P. In the enquiry report, major penalty of Dismissal from service was recommended but the competent authority imposed a comparatively moderate penalty of Reduction to lower Post plus recovery of Rs. 3,238,644/- because as per findings of the enquiry committee losses of Govt. had occurred due to irregularity committed by the Appellant. (Page 79)
- Q. Irrelevant hence no comments.
- R. The proceedings against the Appellant were conducted as per Rules on the subject.
- S. The enquiry was validly conducted under the (E&D) Rules, 2011.
- T. The proceedings conducted against the appellant are under the E & D Rule, 2011 wherein there is no provision of "specific period for Reduction to Lower Post".
- U. Findings of the enquiry report are comprehensive and details are available in the enquiry file whereby the charge of misconduct has been established against the Appellant.
- V. The penalty imposed on the Appellant is on the basis of enquiry against him and the irregularity committed by him irrespective of his previous career.
- W. Relates to the Honorable Service Tribunal.
- X. Relates to the Honorable Service Tribunal.

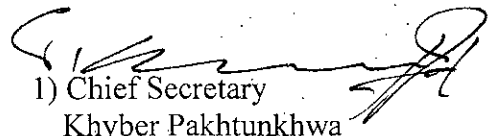
It is, therefore, most humbly prayed that the appeal in hand may please be dismissed with cost throughout

Respondents.

  
4) Chief Conservator of Forests  
Malakand Forest Region-III  
Saidu Sharif, Swat.

  
2) Secretary to Govt. of  
Khyber Pakhtunkhwa  
Peshawar.

  
3) Chief Conservator of Forests  
Central Southern Forest Region-I  
Khyber Pakhtunkhwa Peshawar

  
1) Chief Secretary  
Khyber Pakhtunkhwa  
Peshawar.

P. 1

Ann: I (11)

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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 01/07 /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 "Yaksala".
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/shortcomings.

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.

*Chaya -  
in map  
of B. D. R. :*

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 laes in the PC-1 for the purchase of five kanal or Rs. fourteen laes 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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7/2  
36/8  
03/2/11*

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Annex-I

P. (3)

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.112000/- 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 hull 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.

Divisional Forest Officer,  
Working Plan Unit-VI Swat

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. 3273/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 L.A.C 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 66 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 66 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.**

|                                                                         |                                                                                            |                           |
|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|---------------------------|
| <b>1. Cost of land per Award dated 05/10/2010.</b>                      |                                                                                            |                           |
| 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/-           |
|                                                                         | <b>Total .....</b>                                                                         | <b>Rs. 2,05,57,953/-</b>  |
| <b>2. Cost of land on the basis of Court Judgment dated 14/12/2011.</b> |                                                                                            |                           |
| i.                                                                      | Cost of land 70 Kanal 02 Marla @ Rs. 13,10,761/- per Kanal .....                           | Rs. 9,18,81,316/-         |
| ii.                                                                     | 15 % C.A.C .....                                                                           | Rs. 1,37,82,652/-         |
|                                                                         | <b>Total .....</b>                                                                         | <b>Rs. 10,56,66,955/-</b> |
|                                                                         | Difference in shape of losses .....                                                        | Rs. 8,51,09,042/-         |

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BUNER

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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-2" 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

# Annex-III

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## FACT FINDING DE-NOVO INQUIRY REPORT

### ACQUISITION/PURCHASE OF LAND MEASURING 06 KANALS & 01 MARLAS IN THE VICINITY OF DAGGAR FOR CONSTRUCTION OF DFO OFFICE-CUM-RESIDENCE/STAFF QUARTERS

#### Background

A development project was approved for "Construction of Offices and residential buildings in NWFP". 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 1<sup>st</sup> year of the project, but the purchase could not be effected during four years. The purchase was effected in the last two months when the project was going to expire on 30/6/2010.

Revenue & Estate Department, Government of Khyber Pakhtunkhwa conducted an Inquiry through Deputy Commissioner, Swat & Buner and Mr. Hashim Khan, Ex-Divisional Forest Officer, Buner was made responsible for committing irregularities in the acquisition of land for construction of office-cum-residence and staff quarters at Daggar (Annex-I).

The inquiry was forwarded to Secretary, Environment Department, Government of Khyber Pakhtunkhwa by Board of Revenue (Revenue & Estate Department, Government of Khyber Pakhtunkhwa) vide No: REV:V/4/Misc/MKD/2011/11560-62, dated 06/6/2013 for taking action against the DFO concerned as per recommendations of the Inquiry Officers (Annex-II).

The Administrative Department vide No: SO (Est)/Env/1-5: (87)/2k10, 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 Mr. Hashim Khan, DFO.

#### Proceedings

In order to proceed in the matter, the Committee held its first meeting on 02/12/2013 and decided to call both the present and Ex-DFOs alongwith relevant record. They were informed vide No: PA/DS-II/1-7/2013, dated 04/12/2013 to attend the proceedings. Mr. Hashim Khan, the then DFO and Mr. Mir Akbar Shah, DFO, Buner appeared before the Committee on 09/12/2013, 11/12/2013 & 13/12/2013. Mr. Hashim Khan, DFO was heard in person and also submitted written reply supported by the relevant documents. The sitting DFO, Buner also produced the relevant record to the Committee (Annex-III & IV) respectively.

#### Discussion

As per approved PC-I titled "Construction of Divisional Forest Officer offices and residential buildings in NWFP now Khyber Pakhtunkhwa (2007-08-2009-2010) for Lower Dir, Upper Dir, Chitral, Swat and Buner, there was provision for the purchase of 05 Kanals land for construction of offices and residential buildings for Buner Forest Division at Swari (Annex-V). The then DFO, Buner (Mr. Hashim Khan) vide letter No: 3278/G, dated 06/5/2010 shown his intention to District Officer, Revenue, Buner for purchase of Land measuring 06 Kanals & 01 Marla situated at Moza Daggar. Through this letter, DFO, Buner provided record of the land alongwith agreement deed executed with the owners of the land. It was further stated in the letter that through private negotiation the price of the land has been settled. The DFO, requested the District Officer, Revenue for issuance of Notification under the Land Acquisition Act, 1894 and further proceedings for acquisition of land (Annex-VI).

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Under provision of para-4 of Revenue Circular No: 54/2006/Notification/LA/10973, dated 17/8/2006 approval of the Administrative Department was required to be obtained by the DFO, Buner for negotiated rate (Under Section-5 (i) of the said Notification, the District Collector was required to constitute a Committee for assessment and determination of price and verification of title where as the DFO, Buner through the above referred letter had provided the agreement deed clearly indicating Rs: 55, 600/- per Marla, of the land to be acquired. The DFO, Buner has also requested the District Officer, Revenue Buner for further proceedings for acquisition of land under the Land Acquisition Act, 1894.)

Though the circular provides for purchase of land on private negotiation, yet the rates are to be assessed by a Committee constituted by District Officer Revenue, Estate. As per Section-4 of the Revenue Circular No: 54, the DFO, Buner was required to get approval from the Administrative Department/Head of the Department, which he did not take and hence violated the rules (Annex-VII).

The District Officer, Revenue was required to constitute a rate assessment Committee under the rules which he did not bother inspite of the facts that the DFO, Buner through the above referred letter had asked him for further proceedings for acquisition of land under the Land Acquisition Act, 1894. Though the rates were negotiated by the DFO but the land was to be purchased for public/state purpose and the District Officer Revenue being Revenue & Estate Officer was required to safeguard the interest of the State and should have assessed the rates and if not found prevailing according to Yaksala should have objected to the negotiated rates because the same agreement was shared with him officially by the DFO.

The PC-I provides for construction land at Swari Buner but the land was purchased at Moza Daggar which is violation of the PC-I.

→ 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 offices/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 Daggar and Swari are sister towns and due to rapid population growth, both these towns are not treated as one town. However, the DFO was required to get permission from the competent authority (Administrative Secretary) for shifting of the site which he did not irrespective of other commissions/omissions by Mr. Hashim Khan, DFO. It is a credit that his predecessors DFO bitterly failed to acquire the land during his tenure more or less three years where as Mr. Hashim Khan, DFO was able to purchase the same within a period of two months otherwise the funds would have been lapsed. <

The Revenue authorities have signed Notification under the Land Acquisition Act which simply authorize any person to enter into such land for survey etc. but kept themselves aloof from further proceedings of acquisition. Neither they have officially communicated the actual Ausat Yaksala or Charsala to the DFO nor has furnished rate responsibility certificate to the DFO. However, the rates negotiated by the DFO were in their knowledge and they have made the mutations. Astonishingly Mr. Mokamil Shah, the then Rang Officer, Daggar has recorded a statement on the mutation deed on 26/5/2010 "that the rates were negotiated by the DFO and payment directly made to the land owners and none of the Revenue Officials were involved in the purchase deal". There seem no grounds that what prompted the official of the Forest Department to record such statement on the mutation paper. This clearly transpired that the purchase deal was lonely done by Mr. Hashim Khan, DFO who is squarely responsible for commissions/omissions made in the land purchase (Annex-VIII).

Under Notification No: Rev: V/4/2006/la/10973, amendments made in Land Acquisition Act, 1894 vide No: Legis: I (2)71/11/4228 dated 22/8/2001, under the above Notification new Section-11 (A), and 11 (B) to Act, I of 1894 have been inserted. Under Sub-Section-11 (B) (4), the acquiring department in the application given under para-1 shall also inform the District Collector that permission for entering into private negotiation for acquisition of land has been obtained from the Head of the Administrative Department. Hence, the District Officer Revenue has not notified the Committee for assessment and determination of the price in the absence of this permission, neither the

DFO, Buner asked for average Ausat Yaksala or Charsala nor the Revenue Authorities provided the same officially to him.

However, Mr. Hashim Khan, DFO produced along written reply a photocopy issued on 12/12/2010 under the heading a "Bazari Qimat" (Annex-IX)

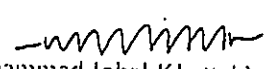
The Police Department Buner had acquired land measuring 70 Kanals & 02 Marlas @ Rs: 255, 014/- per Kanal according to Ausat Yaksala but the owners of the land filed a Civil Suit in the Court of Senior Civil Judge, Daggar quoting the written precedence of DFO, Buner. The Court decided the suit on the basis of the precedence and enhanced the rate per Kanal at PAR with that paid by the Forest Department. This decision of the Court based on the precedence of payment made by the DFO, Buner increased the cost of Police acquired land from Rs: 255, 014/- to Rs: 13, 10, 761/- per Kanal leading to overall increase in cost from 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 assessed price by the Revenue Department Buner.

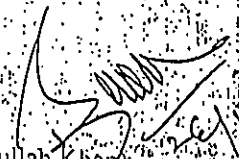
Similarly, cost of land purchased by the Forest Department as per actual Ausat Yaksala comes to Rs: 34,88,956/- for 6 Kanals & 01 Marla, whereas the DFO, Buner paid Rs: 67,27,600/- for the same land on negotiated price. Hence, the DFO, Buner paid Rs: 32,38,644/- over and above than the cost come as per actual Ausat Yaksala. Procedure under Land Acquisition Act, 1894 and subsequent amendments made in Section-11 of the Act were violated.

Besides, this it also pertinent to mention here that the matter of violation the procedures was taken as "para" by Internal Audit Team, but later on that para was dropped for unknown reasons. Similarly, explanation (Annex-X) was also called from Mr. Hashim Khan and Monitoring Report was also submitted to Conservator of Forests, Forestry, Planning & Monitoring Circle, Peshawar by DFO, Working Plan Unit-VI, Swat (Annex-XI). In this monitoring report, the violations were clearly highlighted but it is very much astonishing that inspite of processing this report and bringing it into the notice of Administrative Department, the same was kept in cold storage by the attached formation.

#### Findings

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 Mr. Hashim Khan, DFO violated the provision of Revenue Circular No: 54, Land Acquisition and subsequent amendments made in the Land Acquisition Act, 1894 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 payments for acquisition of land not on the basis of Ausat Yaksala but on the basis of purchase rates of the DFO, Buner. The then District Officer, Revenue & Estate Buner are equally responsible for not safeguarding the interest of the State. Inspite of the facts that he was approached by DFO in writing for further proceedings. He was provided the agreement deed and the negotiated rates were crystal clear which were not inconsonance with the average Ausat Yaksala.

  
(Muhammad Iqbal Khattak)  
Deputy Secretary-II,  
Environment Department,  
Government of Khyber Pakhtunkhwa

  
(Sanullah Khan)  
Director, I & HRD, Peshawar

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 1<sup>st</sup> 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 procedure of 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 Manas @ 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.

- 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-I Environment Department and Director-I and HRD Directorate to conduct de-novo inquiry against you. The findings of the said committee were also the same durir de-novo 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 penalty 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

(2) P. 21

DISCIPLINARY ACTION

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Hasham Khan, Divisional Forest Officer (BPS-16) 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 1<sup>st</sup> 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.
- 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 2,05,57,953/- to Rs.9,13,84,346/-. Hence the Provincial Government had to pay Rs.8,51,09,043/- over and above the assessed price by the Revenue Department Buner.

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- 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.

Annex - V P. 25



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Date: Pesh: 31<sup>st</sup> December, 2014

NOTIFICATION

(Estt)Envt/1-50(S7)/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 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 giving 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) of Forest Department, with immediate effect.

Sd/-  
CHIEF MINISTER,  
KHYBER PAKHTUNKHWA

No. SO(Estt)Envt/1-50(S7)/2k12

139-146  
Dated Pesh: 31<sup>st</sup> December, 2014.

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)

# Annex - VI



~~Annex - I~~

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)Envl/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)  
 CHIEF MINISTER,  
 KHYBER PAKHTUNKHWA/  
 COMPETENT AUTHORITY  
 09.10.2014



~~ANNEX - J~~ (6)

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

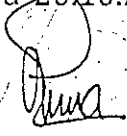
To

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) P. 31

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

Subject ACQUISITION /PURCHASE OF LAND MEASURING 6-KANAL'S  
AND 2-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. BACK GROUND

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 27-32) 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 Saidu Sharif were also sent the same letter alongwith the

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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

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P. 35

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 51-72) the land acquisition Act 1894 was followed as such.

- iii) The entire record was twice 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, unmating 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 Ek-owner of the land has applied the Government to return the land and he will refund the paid amount.

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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."

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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 for 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 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 (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



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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 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 sctutinized 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 though 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 73-79). 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.

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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 termed upon the undersigned was implemented.

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- 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.

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P. S.

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.

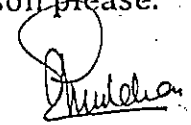
The allegation leveled are vague, Evasive, illogical, malice and is subjective. None of the documented and argued submissions, have been given any weight. The enquiry conducted is absolutely unilateral and partial.

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



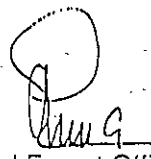
( HASHAM KHAN )  
DIVISIONAL FOREST OFFICER  
(BPS 18)

③ P. 53

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

INQUIRY REPORT:~~SECRET~~

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)/Env/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).

7. 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. (Mr.Hahim 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 a civil suit in the court of the senior civil judge- quoting the price 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.

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 with the laid down procedure per Notification no. Rev: V/4/2008/Notification/LA/10973, dated 17/08/2006, of the Provincial Government. 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 and 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.

3) That similarly cost of land purchased by the forest department as per actual Ausaf Yaksela comes to Rs 94,88,953/- 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.

4) 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.

5) 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. DOR Buner
- 2. Ex DFO Buner Hashim Khan.
- 3. Officer Buner ( concerned).
- 4. DFO Buner.
- 5. General Shan Ex Range officer Buner.

Inquiry the following documents were also examined:-

- 1. ~~...~~ Act, 1894.
- 2. ~~...~~ relating to transaction
- 3. ~~...~~ Divisional Monitoring officer.
- 4. ~~...~~ relating acquisition of land through private negotiation No. Rev. ~~...~~ Notification / LA 10973 dated 17/8/2006.
- 5. ~~...~~ reply was obtained from accused officer the then DFO
- 6. ~~...~~ (Annex-IX).
- 7. ~~...~~ Inquiry report conducted by DC Swat and DC Buner (Annex-X).
- 8. ~~...~~ Inquiry conducted by Deputy Secretary and Director
- 9. ~~...~~ XI.
- 10. ~~...~~ yaksala of the concerned financial year as provided by the
- 11. ~~...~~ authority Buner (Annex-XII).
- 12. ~~...~~ (General Financial Rules).
- 13. ~~...~~ Act.
- 14. ~~...~~ copy of relevant section of PC-1. (Annex-XIII).

Defense 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 lake 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".

Procedure / Analysis

2-7

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 concerned for the acquisition of land under the Act giving full justification of the public purpose involved and the minimum area required by it with full 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>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>Department in the<br/>given under Para-I<br/>also inform the District<br/>that permission for<br/>into private negotiation<br/>the acquisition of land has<br/>obtained from the Head of<br/>Administrative Department.</p>                                                                                                                                                                                                                                                              | <p>for acquisition of land..<br/>Interestingly the DFO concerned<br/>thereafter did not kept the<br/>Revenue department in picture<br/>in the acquisition process and<br/>initiated everything on his own.</p>                                    |
| <p>The Collector will then<br/>notify the following<br/>Committee for assessment,<br/>and determination of the<br/>price and verification of<br/>title of ownership:-</p>                                                                                                                                                                                                                                                                                                                   | <p>No permission was obtained from<br/>Administrative department by the<br/>accused DFO, as was required, under<br/>provision of para-4 of Revenue Deptt<br/>circular No. 54,<br/>V/4/2006/Notification/LA/10973,<br/>dated 17-08-2006.</p>       |
| <p>a) District<br/>collector.....Convener &amp;<br/>b) EDO (Finance<br/>Planning).....Member<br/>c) EDO of the acquiring<br/>department.....Member<br/>d) Revenue officer/ Tehsildar<br/>Circle.....Member<br/>e) Nazim of the Union<br/>Council.....Member.</p> <p>II. The committee while<br/>determining the prices shall<br/>take into consideration the<br/>following data from which<br/>the market value can be<br/>assessed.</p> <p>i. The price paid for the<br/>land recently</p> | <p>Since the accused DFO entered into<br/>private negotiations with the owners of<br/>the land, therefore, the Committee<br/>required under the amended law could<br/>not be constituted to assess &amp; determine<br/>the price of the land.</p> |

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>acquired in that estate or its neighborhood.</p> <p>The price paid in private transaction as discoverable from the register of mutations and the record of registration department.</p> <p>iii. All other information available especially with regard to the points referred to in section 23 of the land Acquisition Act.</p> <p>iv. It will always be open to the committee to consult respectable people who are disinterested with regard to the value of the land.</p> |                                                                                                                                                        |
| <p>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.</p>                                                                     | <p>Approval of the Head of the Administrative Department as to the negotiated price could not be obtained due to unilateral action of accused DFO.</p> |

SP  
MM

This clearly indicates that the accused DFO acted in complete ~~un~~ recommended notification

2006/ notification/ LA/ 10973/ 17.8.2006; in the purchase of land. The DFO completely denies the receipt of the existence of above mentioned ~~from~~. He writes that the amended notification was required to be ~~issued~~ by S.M.B.R to the administrative secretaries and its further ~~sent~~ to all district officers. He states that till date, this notification has ~~not~~ been accorded to him.

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

Land and loss to the Provincial Exchequer.

The rate of land negotiated between DFO Buner and the land owners was Rs 11, 12,000/- per kanal. Aisatyaksala for 7/2009 to 4/2010 ~~by~~ the Revenue authorities, fixed the price of land as 4, 53,988 per ~~the~~ total amount thus payable for the acquisition of the 6 kanal and 1 ~~comes~~ to 27, 46,627.4. However, the DFO entered into private negotiation ~~ing~~ the standing law, rules and instruction of the provincial govt for purchase of land and thus made total payment of Rs 67,27,600/- at ~~per~~ per marla. Thus according to the average yaksala sale provided by the ~~office~~ office Buner, the accused D.F.O caused loss of Rs. 59,80,973/- to the ~~al~~ al exchequer (Rs 3238644 as determined by the inquiry committee of ~~land~~ land Buner).

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

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

| Land purchased by DFO through private                                                                                   |       | 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        |             | 28,034.35                                                                                         | 5,76,687        |              |
|                                                                                                                         |       |                                                                      |                 | 27,46,699.4 |                                                                                                   |                 | 34,88,956.35 |
| Land and one marla land purchased through private auction by DFO (Buner). Rs=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 AusatYakshala furnished by 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 Yakshala and Court decided rate

| Price per Kanal                          | Price for 70 Kanal and 2 marla             | 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.     |
| 2,55,014                                 | 1,78,76,481.4<br>+ 15% C.A.C<br>=26,81,472 | 65538.05                                                                        | 13,10,761       | 91884346<br>+ 15% CAC<br>= 13782652 |
| 2,05,57,958.4                            |                                            | Total: 10,56,66,955                                                             |                 |                                     |
| Difference in Shape of loss= 8,51,090.02 |                                            |                                                                                 |                 |                                     |

5

P-75

221

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 propriety also requires that the expenditure should not be primarily more than the occasion demands but the accused DFO caused huge losses to provincial exchequer.

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 30<sup>th</sup> June 2010. For the available record, it is evident that the accused DFO was posted on 19<sup>th</sup> April 2010, and effected the agreement for the purchase of land on 4<sup>th</sup> 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."

Handwritten signature and initials, possibly "MWA" and "MM".

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 mozaDaggar 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.

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/.

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 omission / omissions in the land purchase.

Conclusion:

Integrity, Honesty and impartiality has remained the foundation of sound 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 regaining the public trust must be approached 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.

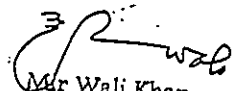
With greater power comes greater responsibility. It is for this reason that accountability must always a fundamental pillar of Public Management. All successful Public Administration models world over have laid down strong emphasis on soft, transparent and strict accountability of the exercise of power. 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.

Recommendations:

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

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

  
Mr. Wali Khan  
District Forest officer/Inquiry officer,  
Swat

Dx 12227  
AFC

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR

Appeal No.474/2015

Hashim khan Divisional Forest Officer,

(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)

PRELIMINARY OBJECTIONS

- i. That the appellant has no cause of action. ✓
- ii. That the appellant has no locus standi to file the appeal. ✓
- iii. That the appeal is bad for non joinder of necessary parties and mis-joinder of un-necessary parties. ✓
- iv. That the appellant has been <sup>estopped</sup> stopped by his own conduct to file the appeal.
- v. That the appeal is badly time barred. ✓
- vi. That the appeal is not maintainable <sup>in</sup> in its permanent forum. ✓
- vii. That the Honorable Tribunal has no Jurisdiction to entertain the appeal. ✓

*[Handwritten signature]*

Respectfully sheweth,

Parwise comments on the appeal of Mr. Hashim khan DFO are furnished as under:

*Pertains to record, hence*

1. Needs no comments except the correction that the appellant was appointed during 1984 and not 2014.
2. *Pertains to record*  
Needs no comments.
3. No doubt that the land had been purchased by the appellant but certain legal flaws during the course of monitoring and subsequent enquires were detected which resulted the instant situation of punishment awarded.

As explained in Para "3" above.

4. ~~The comments given in para-3 above are sufficient to convince the purpose.~~
5. Monitoring, fact finding enquiries and formal enquiry, have been conducted and keeping in view the available substantial record in the enquiry file, certain irregularities have been found rather codal formalities laid down for the purpose were not completed. ✓ adopted.
6. Conducting monitoring of the activities in Malakand East Forest Circle is the responsibility of DFO Working Plan Unit-VI Swat. At that time, Mr. Mir Wali Khan was incharge DFO Working Plan Unit-VI and accordingly he conducted monitoring of the land purchased and his report became cause of the subject enquiry. ✓
7. The whole fact is that actually two fact finding enquiries had been conducted against the appellant, as is evident from the record and is mentioned vide para-I (K) of charge sheet, para-I(L) of the statement of allegations and para (K) of the reply by the accused / appellant to the charge sheet. The 1<sup>st</sup> enquiry was mostly about the documentary evidences, official record and rules/ regulations on the subject and the enquiry committee did not consider necessary to hear in person the appellant. However during the de novo enquiry the appellant was called, heard in person and supporting written statement / reply obtained from him. In this de novo enquiry too, the appellant was found guilty which confirmed the findings the initial enquiry. ✓
8. Reply of the appellant to the charge sheet was not found satisfactory and the enquiry committee recommended major penalty of dismissal from service under the Khyber Pakhtunkhwa Govt. Servants (E & D) Rules, 2011 against the appellant. ✓
9. The chairman of the enquiry committee was of senior rank to that of the appellant. Mr. Mir Wali Khan (member of the committee) though, of the same grade as that of the appellant but, was senior to the appellant as per seniority list of the DFOs. He never lodged any complaint as claimed by the appellant. Though he prepared the monitoring report but the enquiry was established on the basis of two fact finding enquiries submitted by two different enquiry committees of which Mr. Mir Wali Khan never remained a member ✓
10. The enquiry was conducted in accordance with (E& D) Rules, 2011 ✓
11. Reply of the appellant to the show case notice was not deemed satisfactory by the competent authority and as such penalty was imposed upon the appellant. ✓
12. While imposing penalty of Reduction to lower post, the competent authority considered all the relevant documents including the reply of the appellant to the show cause notice as is evident from the last para of the notification date 31/12/2014. ✓
13. The departmental appeal claimed to have been moved by the appellant on 22/01/2015 was received in the office of Respondent No.3 on 03/03/2015. The same was transmitted to office of Respondent No. 4 which was the initiating and concerned quarter. Due to Inter Regional Correspondence between the two offices and also due to queries by these offices from other subordinate offices, the response from the Respondents got a bit delayed till receipt of the instant appeal. ✓
14. The order passed by the competent authority is legal , lawful according to law and facts and deserves on merit to be upheld. ✓

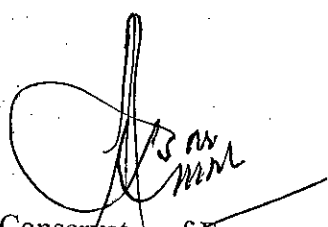
GROUNDS OF SERVICE APPEAL

Comments.

- A. Action has been taken against the appellant in accordance with law under the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011. ✓
- B. During fact finding enquiries and also during disciplinary proceedings, properly laid down procedure has been adopted. The appellant has been heard in person three times, (i) during fact finding denov enquiry, (ii) during disciplinary proceedings and (iii) after show cause notice by competent authority.
- C. Not correct. Comments given in para-B above.
- D. The penalty has been imposed upon the appellant after fulfillment of all codal formalities. The monitoring report, two consecutive fact finding enquiries and disciplinary enquiry all went against him after which there remains ~~little~~ *nothing to* believe otherwise about the Appellant. ✓
- E. Contents of the show cause notice dated 09/10/2014 clearly show that copy of the enquiry report was provided to the Appellant. The reply of the appellant to the show cause notice also reveals that the Appellant's response is based on perusal of the enquiry report. Furthermore the appellant in his reply has not shown any concern about non provision of such copy to him. Thus the plea adopted has ~~little~~ *no* relevance at this stage. ✓
- F. The chairman of the enquiry committee was senior to the Appellant. The other member, though of same grade (BPS-18) was also senior to the Appellant as per seniority list issued by the Department from time to time. The said officer, though monitoring Officer in the instant case, has never remained member of the two fact finding enquiries which were conducted by four senior officers and which were made basis for disciplinary proceedings against the Appellant. ✓
- G. Irrelevant. No comments. ✓
- H. *Pertains to Board. However it is worth mentioning that the fact finding enquiry*  
Being Audit matter, the Director Budget and Accounts Forestry, Environment and Wildlife Department is in a better position to offer his comments. *Had filed resp. on the appellant and the charges were proved against him by the E.C. in the disc. proceedings held under the K.P. (E & D) Rules 2011.*
- I. The DC Swat and DC Buner, in the enquiry conducted by them have, explicitly held the Appellant guilty of omission and Commission of Irregularities. Thus no switch over has been made as claimed. ✓
- J. Irrelevant hence no comments. ✓ *under as required under the law ✓*
- K. The enquiry has been conducted through enquiry committee, details are available on file.
- L. Comments furnished vide para-ix and para-f. ✓
- M. Not relevant hence no comments. ✓
- N. Needs no comments. ✓

- O. The charges leveled against the Appellant were on the basis of two fact finding enquiries. The enquiry officer gave his findings, keeping in view all the details of the case available in the enquiry report. ✓
- P. In the enquiry report, major penalty of Dismissal from service was recommended but the competent authority imposed a comparatively moderate penalty of Reduction to lower Post plus recovery of Rs. 3,238,644/- because as per findings of the enquiry committee losses of Govt. had occurred due to irregularity committed by the Appellant. ✓
- Q. Irrelevant hence no comments. ✓
- R. The proceedings against the Appellant were conducted as per Rules on the subject. ✓
- S. The enquiry was <sup>validly</sup> conducted under the (E&D) Rules, 2011. ✓
- T. The proceedings conducted against the appellant are under the E & D Rule, 2011 wherein there is no provision of "specific period for Reduction to Lower Post". ✓
- U. Findings of the enquiry report are comprehensive and details are available in the enquiry file whereby the charge of misconduct has been established against the Appellant. ✓
- V. The penalty imposed on the Appellant is on the basis of enquiry against him and the irregularity committed by him irrespective of his previous career. ✓
- W. Relates to the Honorable Service Tribunal. ✓
- X. Relates to the Honorable Service Tribunal. ✓

Respondents.



4) Chief Conservator of Forests  
Malakand Forest Region-III  
Saidu Sharif, Swat.

3) Chief Conservator of Forests  
Central Southern Forest Region-I  
Khyber Pakhtunkhwa Peshawar

2) Secretary to Govt. of  
Khyber Pakhtunkhwa  
Peshawar.

1) Chief Secretary  
Khyber Pakhtunkhwa  
Peshawar.

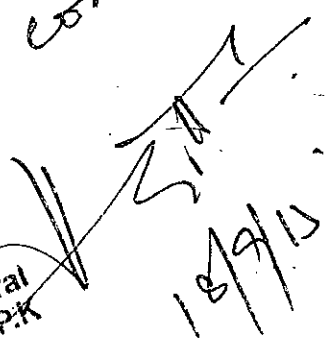
It is, therefore, most humbly prayed that the appeal in hand may please be dismissed with cost, through out.

Vetted subject to corrections. Also attached please see fact finding reports - Enquiry report along with selfy

H  
S  
H

To attach the  
relevant answers  
and counter affidavits  
alongwith the  
written comments

A. As Advocate General  
(Service Tribunal)  
Peshawar. K.P.K

  
18/9/13

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

*Service Appeal No. 474 of 2015*

*Hasham Khan DFO.*

*...Petitioner*

**VERSUS**

*The Government Khyber Pakhtunkhwa through Chief  
Secretary and Others.*

*...Respondents*

**REJOINDER BY THE APPELLANT.**

*Respectfully Sheweth:*

*Preliminary Objections:*

*That all the preliminary objections are incorrect, baseless, against the law and facts hence are specifically denied. Moreover the appellant has got a very strong case in his favour and has approached this Honourable Tribunal well within time with clean hands and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.*

*On Facts:*

- i. Para i of the reply as drafted needs no comments.*
- ii. Para ii of the reply as drafted as well needs no comments.*
- iii. Para iii of the comments as drafted is incorrect and against the facts and record. As per the procedure the then District Officer Revenue and*



*Estate / Collector was asked by the department for the acquisition of land by the DFO vide letter No. 3278/G dated 06-05-2010, who for reasons best known to him delayed the process beyond the stipulated time and he was held responsible as well, therefore, the para is denied.*

- iv. Para iv of the reply as drafted is vague in without any merits, hence denied.*
- v. Para v of the reply is incorrect and based on misstatements. In whole of the process the codal formalities were never adopted rather the whole process is enshrined with ambiguity and based on personal biases, hence the para is denied. Moreover the appellant was never afforded fair chance of defence neither his defence version was considered.*
- vi. Para vi of the reply as drafted is incorrect and based on concealment of material facts and deviation from the codal formalities. The monitoring was conducted by an officer who was replaced by the appellant, so the element of biasness could never be ruled out, needless to mention that the officer who conducted the monitoring was one in who's tenure the process of the acquisition was initiated. Hence the para is denied specifically.*
- vii. Para vii of the reply as drafted is incorrect, against the law and rules and is self-contradictory. Conducting two inquiries on the same charges is not allowed under the law as the same is amounting to double jeopardy.*

Furthermore, the appellant was admittedly not called for personal hearing so the consideration of his defence version is out of question. Moreover the officer who conducted the monitoring also was member to the inquiry committee, so impartially of the inquiry is out of question at all. Hence the para is denied specifically as the mala fide and partial attitude of the inquiry committee is evident from the very rely.

viii. Para viii of the reply as drafted is incorrect and without any merits. The inquiry committee was biased and had pre-decided the inquiry and it was due to this fact that the appellant requested for replacement of the inquiry committee by an impartial committee vide letter of request No. 247 dated 04-08-2014 and again vide No. 840 dated 28-08-2014, but both the letters of requests were never responded to against the rules. Moreover the appellant challenged the same in a writ petition the order sheet dated 29-08-2014 is clear whereby the August High Court, Mingora bench granted the interim relief which was also not honoured and the committee gave its final report. Copies are enclosed as Annexure "A".

ix. Para ix of the reply as drafted is incorrect and self-contradictory. The member of the committee who also headed the monitoring team was of the same rank as that of the appellant and not higher in rank, thus the mandatory provisions of law have been admittedly violated. The same member was biased and could not contradict his finding given while heading the monitoring team, this

also admittedly shows the demeanor of the committee and its members and because of which the appellant rightly apprehended the partiality of the inquiry committee and not giving the appellant a fair chance of hearing neither his defence version was considered at all, as is mandatory under the law on the subject. Hence the para is denied.

x. Para x of the reply as drafted is vague and without any merits as the foregoing paras clearly reflects the manner in which the all the codal formalities have been done away with, thus the para is denied.

xi. Para xi of the reply as drafted is incorrect and vague. The inquiry committee being biased never considered the defence version of the appellant neither was he afforded a fair chance nor properly associated with the inquiry proceedings, hence the para is denied.

xii. Para xii of the reply as drafted is incorrect and based on misstatements as the appellant was neither properly associated with the inquiry proceedings nor was his defence version considered at all rather it is a classical case of misuse and abuse of powers with a pre-decided result, even before the completion of the inquiry proceedings. Thus the para is denied.

xiii. Para xiii of the reply as drafted is incorrect and based on misstatements and clearly shows the mala fide on the part of the department as they made every effort to make the appellant suffer.

Hence the para is denied. Moreover the respondent department failed to show the fate of the departmental appeal of the appellant, filed well within time even today. Hence the para is denied specifically.

xiv. Para xiv of the reply as drafted is incorrect and devoid of merits as mentioned in detail in the foregoing paras, thus the para is denied.

On Grounds:

- A. Ground A of the reply as drafted is incorrect, vague and devoid of merits, the codal formalities have not been fulfilled, hence the para is denied.
- B. Ground B of the reply as drafted is incorrect, based on misstatements and in contradictions to the above para of the reply, which clearly shows that the due course has not been adopted, thus the para is denied.
- C. Ground C of the reply as drafted is vague and evasive thus denied.
- D. Ground D of the reply as drafted is incorrect and devoid of merits. The whole of the inquiry was farce and no codal formalities were adopted at all, hence the para is specifically denied.
- E. Ground E of the reply as drafted is incorrect and based on misstatements, hence the same is denied.
- F. Ground F of the reply as drafted is incorrect and based on misconception and illusions. The committee was never impartial and the person on

*whose report the whole of the inquiry was initiated remained part and parcel of the inquiry till the end in utter disregard for the law and rules on the subject. Moreover the appellant has conveyed his no confidence on the inquiry committee to the authorities, but the same were never considered for reasons best known to them. Thus the para is denied.*

*G. Ground G of the reply as drafted is evasive and amounts to admission thus needs no reply.*

*H. Ground H of the reply as drafted is irrelevant and devoid of merits, hence denied.*

*I. Ground J of the reply as drafted is irrelevant and devoid of merits as the enquiry referred to was conducted by irrelevant persons thus the appellant could not be charged on the basis of the same. Hence the para is denied specifically.*

*J. Ground G of the reply as drafted is evasive and amounts to admissions thus needs no comments.*

*K. Ground K of the reply as drafted is incorrect and based on misstatements. A farce inquiry was conducted with mala fide with the sole target to make the appellant suffer, thus the para is denied.*

*L. Para L of the reply as drafted is incorrect and devoid of merits, however, the committee was not constituted as required under the law and rules on the subject, hence the para is denied.*

*M. Ground M of the reply as drafted is admission thus needs no comments.*

- N. Ground N of the reply as drafted is admission thus needs no comments as well.
- O. Ground O of the reply as drafted is incorrect and baseless. The inquiry conducted was not in accordance with the law and rules, moreover the appellant was never associated with the same, hence the para is denied.
- P. Ground P of the reply as drafted is incorrect, based on misstatements and devoid of merits. The alleged losses referred are incorrect as is clear from the report of the Audit, which rather mentioned that no loss has been faced by the Government, rather less price has been paid as per the average market price in the area at that time. Thus the para is denied. Copy is enclosed as Annexure "B".
- Q. Ground Q of the reply as drafted is admission thus needs no comments, however, till date the acquired land is in the name of the department and no action has been taken for the annulment of the same.
- R. Ground R of the reply as drafted is incorrect, baseless and devoid of merits thus is denied.
- S. Ground S of the reply as drafted is vague evasive and devoid of merits as detailed above, thus the para is denied.
- T. Ground T of the reply as drafted is incorrect and devoid of merits thus the para is denied.
- U. Ground U of the reply as drafted is incorrect and in need of evidence as the appellant was never

*associated with the farce inquiry, thus the para is denied.*

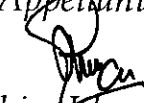
*V. Ground V of the reply as drafted is devoid of merits as the appellant has never committed any act of commission or omission as admitted by the respondents, yet the imposition of such a harsh punishment for an irregularity is against the natural justice, hence the para is denied.*

*W. Ground W needs no comments.*

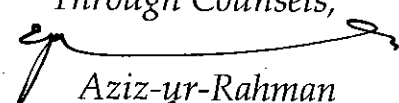
*X. Ground X also needs no comments.*


*It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal may very kindly be decided as prayed for originally.*

*Appellant*

  
*Hashim Khan*

*Through Counsels,*

  
*Aziz-ur-Rahman*

  
*Imdad Ullah*

*Advocates Swat*

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 474 of 2015

Hasham Khan DFO.

...Petitioner

VERSUS


The Government Khyber Pakhtunkhwa through Chief  
Secretary and Others.

...Respondents

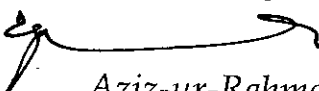
AFFIDAVIT

It is solemnly stated on Oath that all the contents of  
this rejoinder are true and correct to the best of my  
knowledge and belief and nothing has either been  
misstated or concealed thereto.

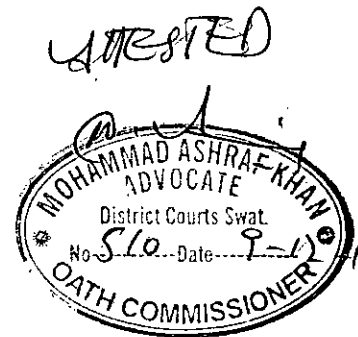
Deponent

  
Hashim Khan

Identified By:

  
Aziz-ur-Rahman

Advocate Swat





Ann: XVI

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

Writ Petition No. 408-M of 2014

Hasham 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.

FILED TODAY  
18/8/2014  
Additional Registrar

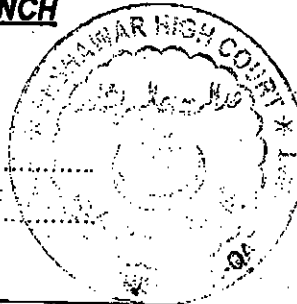
18 AUG 2014

Respectfully Sheweth:

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

**FORM OF ORDER SHEET**

Court of .....  
Case No. .... of .....



| Serial No. of order or proceeding<br>1 | Date of Order or Proceedings<br>2 | Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.<br>3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                        | 29.8.2014                         | <p><b><u>Interim Relief (N)</u></b><br/><b><u>In W.P No. 408/2014 with Office Obj: No. 9</u></b></p> <p><b>Present:</b> Mr. Aziz-ur-Rehman, Advocate for the petitioner.</p> <p>Mr. Sabir Shah, A.A.G. for the official respondents.</p> <p>Respondent No. 6 in person.</p> <p style="text-align: center;">***</p> <p>Let record of the enquiry proceedings be <u>requisitioned for 04.9.2014</u>. Respondents should also file reply to the interim relief well before the date fixed.</p> <p style="text-align: right;"><b>Sd: Lal Jan Khattak</b></p> <p style="text-align: center;"><b>Certified to be true copy</b></p> <p style="text-align: center;"><i>[Signature]</i></p> <p style="text-align: center;">01/09/14</p> |

Office  
29/08/14

JBS

5-9-14



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

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

Office: +92-946-811999 885005  
Fax: +92-946-811940 885004  
E-Mail: darulqazaswat2011@gmail.com

No. 3444 / W.P/ Civil Appeal Branch;

Dated: 01/9/14

To

The Divisional Forest Officer  
Malakand.

Subject:

**WRIT PETITION NO. 498-M/2014**

Hasham Khan

...Petitioner(s)

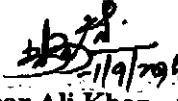
VERSUS

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 interm relief should be also filed before the date fixed i.e 04.09.2014.

  
Babar Ali Khan  
Additional Registrar  
Peshawar High Court,  
Mingora Bench/  
Dar-ul-Qaza, Swat

Encl:

a. Order sheet dt: 29.08.2014

Ann: XVII

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OFFICE OF THE  
DIVISIONAL FOREST OFFICER  
SWAT FOREST DIVISION MINGORA

Tel/Fax: 0946-9240260

No. 496 /R, Dated the 01/10 /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.

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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.

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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.*

*[Signature]*

*[Signature]*  
*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.*

*[Signature]*  
*Divisional Forest Officer,  
Swat Forest Divn: Mingora.*

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

To

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

No. 756 /E, Dated Saidu Sharif, the: 02 /09 /2014.

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

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

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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 Swat Forest has attended Peshawar High Court Mingora Bench/Darul Qaza Swat in the subject case on 29.08.2014. Copies of CF, Malakand Forest Circle East letter<sup>no</sup> cited above alongwith DFO, Swat letter No.495/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.

Encl. As above.

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

No. 757-59 /E,

Copy forwarded to the:-

- 1) Section Officer (Establishment) Environment Department Khyber Pakhtunkhwa Peshawar for information with reference to his endst. No.2995-3000 dated 16.07.2014.
- 2) 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.

3. @ DFO Swat

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

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 238 ST

Dated 15 / 2 / 2016


To

The Secretary,  
Environment Peshawar.

Subject: - Judgement.

I am directed to forward herewith certified copy of Judgement dated 2.2.2016 passed by this Tribunal on subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.