

SA No. 15877/2020

06th Feb. 2023 Mr. Taimur Ali Khan, Advocate for appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement consisting of 09 pages in connected Service Appeal No. 15579/2020, titled "Asghar Khan Forester, Lower Kohistan Forest Division, Pattan Vs. the Secretary, Forestry, Environment & Wildlife Department, Khyber Pakhtunkhwa, Peshawar and others", the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 06th day of February, 2023.*


(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)

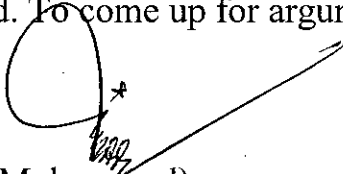
SCANNED
KPST
Peshawar


09.12.2022

Learned counsel for the appellant present. Mr. Muhammad Jan,
District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on
the ground that he has not made preparation for arguments.
Adjourned. To come up for arguments on 06.02.2023 before the D.B.

SCANNED
KPPT
Peshawar


(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)


Handwritten notes in Urdu script, including the date 09.12.2022 and other illegible text.

26th May, 2022

Counsel for the appellant present. Mr. Asif Masood, Deputy District Attorney alongwith Mr. Sajid, SDFO for respondents present.

Written reply/comments on behalf of respondent submitted which is placed on file. A copy of the same is also handed over to the learned counsel for the appellant. Counsel for the appellant seeks time to argue the case on the next date. Last opportunity granted. To come up for arguments on 11.08.2022 before D.B.


(Fareeha Paul)
Member(E)


(Kalim Arshad Khan)
Chairman

11-8-2022

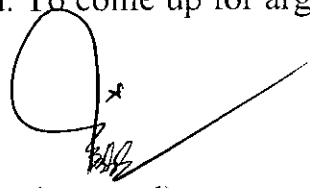
Proper DB not available the case is
adjourned to 3-11-2022



Reader

03.11.2022

Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 09.12.2022 before the D.B.


(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

02.12.2021

Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

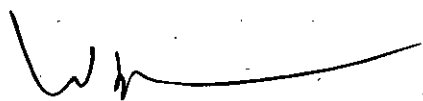
Written reply/comments not submitted. Leaned AAG seeks time to contact the respondents for submission of written reply/comments. Adjourned. To come up for written reply/comments on 20.01.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

20.01.2022

Clerk to counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for respondents present.

Reply/comments on behalf of respondents are still awaited. Learned Additional Advocate General sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 26.05.2022.


(Atiq-Ur-Rehman Wazir)
Member (E)

14.07.2021

Counsel for the appellant present. Preliminary arguments heard.

The impugned order dated 24.10.2019 passed in pursuance to a formal enquiry in the matter of disciplinary proceedings against the appellant reveals that major penalty of compulsory retirement and in addition recovery of Rs. 4, 64,400/- was imposed upon the appellant. The appellant challenged the said penalty through service appeal stated in the facts at Para-4 of the memorandum of appeal that service appeal No. 1246/2016 of the appellant was finally decided which was also upheld by the august Supreme Court of Pakistan. Through present service appeal the appellant seek relief for correction of his seniority and grant of accruable benefits which he could not get due to disciplinary action by the department. Let notice be given to the respondents for rebuttal of the claim of the appellant, the appeal is admitted for regular hearing subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 02.12.2021 before the D.B.

Appellant Deposited
Security & Process Fee


Chairman

17.03.2021

Due to tour of Camp Court Abbottabad and shortage of Members at Principal Bench Peshawar, the case is adjourned to 24.06.2021 before S.B.


Reader

08.04.2021

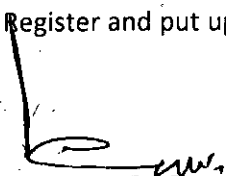

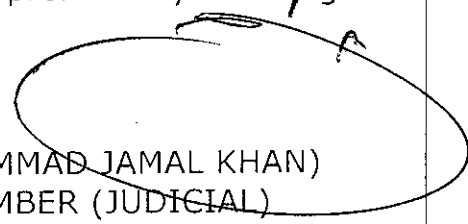
Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14.07.2021 for the same as before.


READER

FORM OF ORDER SHEET

Court of _____

Case No.- 15877 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/12/2020	<p>The appeal of Mr. Umar Khan resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	25.01.2021	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/01/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Mr. Taimur Ali Khan, Advocate, for appellant is present. He seeks time for preparation of the brief. Time is allowed. File to come up for preliminary hearing on 17.03.2021 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER (JUDICIAL)</p>

SCANNED
POST
Peshawar

The appeal of Mr. Umar Khan Forest Guard Upper Kohistan Forest Division Dassu received today by i.e. on 27.11.2020 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Memorandum of appeal is unsigned which may be got signed.
- 2- Copy of impugned order is not attached with the appeal which may be placed on it.
- 3- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 4- Annexures referred to in the memo of appeal are not attached with the appeal which may be placed on it.
- 5- Annexures of the appeal are illegible which may be replaced by legible/better one.
- 6- Annexures of the appeal may be flagged.
- 7- Annexures of the appeal may be attested.
- 8- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 3993 /S.T.

Dt. 04/12 /2019


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv. Pesh.

Respected Sir,

- 1- Removed
- 2- ~~copy~~ it is related to promotion and wants promotion from the date of his junior was promoted
- 3- copy of departmental appeal is attached at page 50
- 4- Removed
- 5- Annexures of ~~copy~~ Better ^{copy} of illegible annexures have made.
- 6- Removed
- 7- Removed
- 8- Removed

Resubmitted after compliance
Date: 11/12/2020

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2020

Umar Khan

VERSUS


Secretary Forestry, Environment & Wildlife Department, KPK.

INDEX

S.NO.	Documents	Annexure	Page No.
1.	Memo of appeal	-----	01-05
2.	Copies of seniority list & rules	A&B	06-15
3.	Copy of order dated 30.06.2016	C	16-16-A
4.	Copy of seniority list 2019 of Forester	D	17
5.	Copies of judgment dated 17.12.2018 and 25.07.2019	E&F	18-22
6.	Copy of notification dt: 24.10.2019	G	23
7.	Copies of inquiry report and order dated 24.07.2020	H&I	24-49
8.	Copy of departmental appeal	J	50
9.	Vakalat Nama	-----	51

APPELLANT

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,
&
(ASAD MAHMOOD)
ADVOCATE PESHAWAR

Room No. Fr-8, 4th Floor,
Bilour Plaza, Peshawar Cantt:
Contact No. 0333-9390916

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 15877 /2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15779

Dated 27/11/2020

Umar Khan, Forest Guard (BPS-08),
Upper Kohistan Forest Division, Dassu.

(APPELLANT)

VERSUS

1. The Secretary Forestry, Environment & Wildlife Department, Khyber Pakhtunkhwa Peshawar.
2. The Chief Conservator of Forests Central Southern Forest Region-I, Khyber Pakhtunkhwa Peshawar.
3. The Conservator of Forests Upper Hazara Forest Circle, Mansehra.
4. The Divisional Forest Officer, Upper Kohistan Forest Division, Dassu.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF FORESTER (BPS-10) WITH EFFECT FROM 14.02.2017, WHEN HIS JUNIOR NAMELY SYED SAJJAD HUSSAIN SHAH WAS PROMOTED TO THE POST OF FORESTER (BPS-10) AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE WITHIN THE STATUTORY PERIOD NINETY DAYS.

Filed to-day

Registrar

27/11/2020

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY KINDLY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF FORESTER (BPS-10) WITH EFFECT FROM 14.02.2017, WHEN HIS JUNIOR NAMELY SYED SAJJAD HUSSAIN SHAH WAS PROMOTED TO THE POST OF FORESTER (BPS-10) WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY

Re-submitted to-day
and filed.

Registrar

11/12/2020

WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is working on the post of Forest Guard (BPS-08) in the respondents department and is performing his duty up to the entire satisfaction of his superiors and no complaint has been filed against him. The respondent department issued the final seniority list of Forest Guard of 2013, wherein the appellant was at serial No.10, while Syed Sajjad Hussain was at serial No. 12 and Habib Ur Rehman was at Serial No.16 in that seniority list and as per rule, the post Forester (BPS-10) will be filled by 50% by promotion on the basis of seniority-cum-fitness from amongst the holder of the post of Forest Guard (BPS-08) having five years service as such. (Copies of seniority list & rules are attached as Annexure-A&B)
2. That the appellant while serving in the said capacity, charge sheet was issued to him on some baseless allegations and no proper and regular inquiry was conducted against the appellant to dig out the reality about those baseless allegations and on the basis of that irregular inquiry, the appellant was compulsory retired from service vide order dated 30.06.2016 which was challenged by the appellant in this august service Tribunal in Service appeal No.1246/2016. (Copy of order dated 30.06.2016 is attached as Annexure-C)
3. That during the pendency of service appeal of the appellant, respondent department passed an order dated 14.02.2017, whereby juniors to the appellant namely Syed Sajjad Hussain Shah was promoted to the post of Forester (BPS-10), but the respondent did not provide the copy of order dated 14.02.2017 to the appellant, however such promotion of Syed Sajjad Hussain Shah is evident from the seniority list of Foresters issued in 2019 and in the same seniority list another official namely Habib Ur Rehman, who was junior to the appellant was also promoted to the forester on 24.05.2019. (Copy of seniority list of Forester of 2019 is attached as Annexure-D)
4. That service appeal No.1246/2016 of the appellant was finally decided along with other connected appeals, on 17.12.2018. The Honourable was kind enough to set aside the impugned order of compulsory retirement of the appellant and reinstated him into service and directed

the respondents to conduct de-novo inquiry strictly in accordance with law and rules within the period of 90 days from the receipt of the judgment and CP No.169-P/2019 filed by the respondent department against the judgment dated 17.12.2018 was also dismissed by the Apex Court on 25.07.2019. (Copies of judgment dated 17.12.2018 and 25.07.2019 are attached as Annexure-E&F)

5. That the respondent department did not reinstate into service as per judgment dated 17.12.2018, therefore he filed execution petition No.172/2019 in this august Service Tribunal which still pending before this august Tribunal and during the pendency of execution petition, an order dated 24.10.2019 was passed, whereby the notification dated 30.06.2016 has withdrawn with immediate effect and the appellant was reinstated into service with immediate and the issue of back benefits will be decided after the outcome of de-novo inquiry. (Copy of notification dated 24.10.2019 is attached as Annexure-G)
6. That de-novo inquiry was conducted against the appellant along with other officials in which charge of corruption were not proved against the officials, but despite that minor punishment of stoppage of two annual for the period of two years has been imposed upon the appellant along other officials and his intervening period with effect from 01.07.2016 to 23.10.2019 was treated leave on half pay vide order dated 24.07.2020 (Copies of inquiry report and order dated 24.07.2020 are attached as Annexure-H&I)
7. That as no charge of corruption has been established against the appellant in denovo inquiry and the appellant was reinstated into service from the date of compulsory retirement i.e 30.06.2016 and juniors to him were promoted to the post of Forester (BPS-10), therefore he filed departmental appeal on 10.08.2020 for promotion to the post Forester (BPS-10) w.e.f 14.02.2017, which was not responded within the statutory of 90 days. (Copy of departmental appeal is attached as Annexure-J)
8. That the appellant has no other remedy for redressal of his grievance, but except to file the instant appeal on the following grounds amongst others.

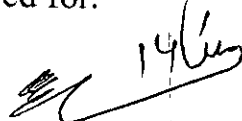
GROUND:

- A) That not taking action on the departmental appeal of the appellant within the statutory period of ninety days and not promoting the appellant to the post of Forester (BPS-10) w.e.f 14.02.2017 are against the law, promotion rules, material on record and principle of natural justice and fair play. ✓
- B) That the appellant was reinstated into service from the date of compulsory retirement i.e 30.06.2016 meaning by that the appellant was on the same position as before penalty order and it is his legal right to be promoted to the post of Forester (BPS-10) from the date, when his junior was promoted. ✓
- C) That the allegation of corruption on which the appellant was compulsory retired from service has not proved in the denovo inquiry which shows that the appellant was remained out of service for the fault of the others and as such the appellant could not be deprived from his legal right of promotions on the fault of others.
- D) That the appellant was at serial No.10 of the seniority list of 2014, while the officials who were promoted to Forester (BPS-10) were at serial No.12&16 respectively in that seniority list and which shows that the officials who were promoted were juniors to the appellant and if the appellant was not compulsory retired from service for the fault of the others he would be promoted along with his juniors.
- E) That as per Superior Courts judgments when a official person was dismissed/removed or compulsory retired from service and reinstated into service after not proving allegations against by the inquiry, then such official is entitle for all back benefits including promotion because absence of the official during dismissal/removal or compulsory retirement was not voluntary on his part but it was due to the order of his high ups which restrained him from attending his job/duty and as such the appellant is entitle for legal right of promotions from the date when his juniors were promoted.
- F) That the appellant was reinstated for the purpose of denovo inquiry on 24.10.2019 and after denovo inquiry the respondent department passed an order dated 24.07.2020 wherein intervening period of compulsory retirement from service i.e 30.06.2016 till his reinstatement i.e 24.10.2019 was treated on as leave on half pay which show that there is no break in the service of the appellant and the appellant is fully entitle for promotions from the date when his juniors were promoted. ✓
- G) That although allegations were not proved on the appellant during inquiry proceeding, but despite that minor punishment of stoppage on two annual increments were imposed upon the appellant, however

minor punishment cannot be made hurdle in the way of promotion as per superior court judgments and such as the appellant cannot be deprived from his promotions on this ground.

- H) That the appellant has not been treated according to law and rules and has been kept deprived from his genuine right of promotion in due time in an arbitrary manner.
- I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.



APPELLANT

Umar Khan

THROUGH:



(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,

&

(ASAD MAHMOOD)

ADVOCATE PESHAWAR

SENIORITY LIST OF FOREST GUARDS OF UPPER KOHISTAN FOREST DIVISION, DASSU AS-STOOD ON 30.10.2014

S. No.	Name of Forest Guards	Father Name	Home District	Qualification	Date of Birth	Date of Appointment	Year/Course of Training	Date of arrival/Report in Kohistan Forest Division
1	Skar-e-Din	Jamroz Khan	Kohistan	Middle	19.04.1959	07.04.1979	2001	
2	Mohammad Shah	Ghulam Hussain Shah	Abbottabad	Middle	19.03.1961	28.07.1981	1981	
3	Abul Haq	Galimyar Khan	Kohistan	FA	05.02.1957	28.03.1982	2000	1982
4	Abul Husain	Jamroz Khan	Kohistan	Metric	01.07.1963	01.01.1985	2000	
5	Fazal-Rahman-I	Muhammad Akbar	Kohistan	Metric	03.04.1964	01.01.1985	1990	
6	Shahid Khan	Amer	Kohistan	Metric	01.11.1962	01.01.1985	1988	
7	Fazal-Rahman-II	Chotam Qader	Kohistan	Metric	04.05.1957	01.01.1985		19.02.2004
8	Muhammad Zamir	Ezul Sher	Kohistan	Metric	03.02.1966	01.10.1986	1986	
9	Muhammad Khalid	Kishwar	Kohistan	Metric	01.07.1966	31.03.1987	1987	24.08.2004
10	Uma Khan	Muhammad Raqeeb	Manshera	Metric	10.04.1965	03.5.1987	2001	
11	Umair	Umair	Kohistan	Metric	21.04.1959	08.10.1987	1998	08.08.1989
12	S. Saad Hussain Shah	Abdul Wahed	Manshera	Metric	11.1989	23.2.2008	2014	
13	Muhammad Khan	Malik Saif Amer	Kohistan	Metric	12.1981	23.2.2008	2007	
14	Sahbaz	Umair Derez	Kohistan	FA	11.1989	23.2.2008	2008	
15	Naveen	Lejbar	Kohistan	FA	15.6.1976	23.2.2008	2008	
16	Haidir ur Rehman	Ghulam Sarwar	Kohistan	Metric	18.1985	23.2.2008	2005	
17	Shahid Ali	Gul Khan	Kohistan	FA	23.1985	23.2.2008	2010	
18	Muzaf Bhal	Afreen	Kohistan	FA	20.04.1981	25.07.2009		
19	Muhammad Aslam	Muhammad Khan	Kohistan	Metric	4.2.1989	4.3.2008	2008	
20	Jamroz Khan	Ahmed Shan	Kohistan	BA	21.8.1985	12.8.2008	2008	
21	Muhammad ur Rehman	Muhammad Qureshi	Kohistan	Metric	2.2.1988	18.8.2008	2009	
22	Sahib Khan	Gul Zaman	Kohistan	FA	1.1.1988	18.8.2008	2007	
23	Muhammad Saleem	Haji Gul Khan	Kohistan	FA	17.03.1985	17.06.2010	2014	
24	Muhammad Azzad Wali	Chakras Khan	Kohistan	FA				

Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

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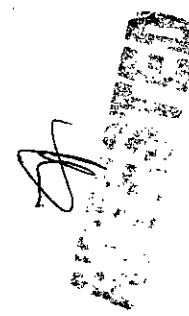
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SENIORITY LIST OF FOREST GUARDS OF UPPER KOHISTAN FOREST DIVISION, DASSU AS STOOD ON 30.10.2014

S. #	Name of Forest Guard	Father Name	Home District	Qualification	Date of Birth	Date of Appointment	Year/ Course of training	Date of Arrival/Report in Kohistan Forest Division
1	Diraj-ud-Din	Jamroz Khan	Kohistan	Middle	16.04.1959	07.08.1979	2001	
2	Muharram Shah	Ghulam Hussain Shah	Abbottabad	Middle	15.05.1956	08.09.1979	1980	
3	Abdul Haq	Qalandar Khan	Kohistan	Middle	10.03.1961	28.07.1981	1981	
4	Abdul Manan	Jamroz Khan	Kohistan	F.A	05.02.1962	28.03.1982	1982	
5	Fazl ur Rehman-I	Muhammad Akbar	Kohistan	Matric	01.07.1963	01.01.1985	2000	
6	Shaibur Khan	Anwar	Kohistan	Matric	03.04.1964	01.01.1985	1990	
7	fazl ur Rehman-II	Ghulam Qader	Kohistan	Matric	01.11.1962	01.01.1985	1988	
8	Muhamamad Zaman	Gul Sher	Kohistan	Matric	04.05.1957	01.01.1985	-	19.02.2004
9	Muhammad Khalid	Kishwar	Kohistan	B.A	03.02.1966	01.10.1986	1986	
10	Umar Khan	Muhammad Rafique	Mansehra	Matric	01.07.1966	31.03.1987	1987	24.08.2004
11	Darwais	Ishaque	Kohistan	Matric	10.04.1965	03.05.1987	2001	
12	S.Sajjad Hussain Shah	Abdul Waheed	Mansehra	Matric	21.04.1969	08.10.1987	1998	08.06.1999
13	Naeab Khan	Malik Said Ameer	Kohistan	Matric	1.1.1989	23.02.2008	2014	
14	Sarfaraz	Umar Daraz	Kohistan	F.A	1.2.1981	23.02.2008	2007	
15	Imran	Laibar	Kohistan	F.A	1.1.1989	23.02.2008	2008	
16	Habib ur Rehman	Ghulam Sarwar	Kohistan	F.A	15.06.1976	23.02.2008	2008	
17	Shaukat Ali	Gul Khan	Kohistan	Matric	1.08.1985	23.02.2008	2005	
18	Hazrat Ali	Afreen	Kohistan	F.A	2.3.1985	23.02.2008	2010	
19	Muhammad Aslam	Nahadar Khan	Kohistan	F.A	20.04.1981	25.02.2008		
20	Jabir Khan	Ahmad Shah	Kohistan	Matric	4.2.1989	4.3.2008	2008	
21	Mujeeb ur Rehman	Iltaf Qureshi	Kohistan	B.A	21.6.1985	12.8.2008	2008	
22	Salim Khan	Gul Zarin	Kohistan	Matric	2.2.1988	18.8.2008	2009	
23	Muhammad Saleem	Haji Gul Khan	Kohistan	F.A	1.1.1988	18.8.2008	2007	
24	Muhammad Azad Wali	Chalora Khan	Kohistan	F.A	17.03.1985	17.6.2010	2014	

A
Bill copy - 6



Annexure B
Better copy - (7)

Annexure - B
Better Copy - (7)

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NOTIFICATION:

No. SO(FT:II)/AD/1-465/88/Vol:IV, In presence of the provision contained in sub-rule (2) of rule 3 or the NWFP Civil Servants (Appointment promotion and transfer rules 1989, and in supersession of all previous rules aside in this behalf, the Forest, Fisheries and Wildlife Department in consultation on the service & General Admn: Department and the finance Department, hereby lays down the method of recruitment qualification and other conditions in the columns 3 to 5 of the appendices to this notification, which will be applicable to post in column-2 of the said appendix in the Forest Department.

Secretary to Govt. of NWFP
Forestry, Fisheries and Wildlife
Department

Endst: No. (FT:II)/AD/1-465/88/Vol:IV/720-27 Dated 26.1.1993.
copy forwarded to:

- 1 to 4. XXXXXXXXXXXXXXXXXXXXX.
5. Chief Conservator of Forests (North) Peshawar.
6 to 8. XXXXXXXXXXXXXXXXXXXXX.

.....
No. 1058-63/E, Dated Peshawar the 31/1/1993.

Copy for alongwith copy of its enclosures forwarded to all conservator of Forests/ Project Directors in North for information and necessary action.

Encl:

As above.

Chief Conservator of Forests
North at Peshawar

A
ATTESTED

AB 10/1/93

B 7
B 8

NOTIFICATION.

No. SO (FP: II) / AB / 1-465 / 88 / Vol-IV. In pursuance of the provisions contained in sub-rule (2) of rule 3 of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, and in supersession of all previous rules made in this behalf, the Forests, Fisheries and wildlife department in consultation with the Service & Admn: Department and the Finance Department, hereby lays down the method of recruitment, qualifications and other conditions to be in columns 3 to 5 of the appendix to this Notification, which shall be applicable to posts in column-2 of the said appendix in the Forest Department.

Secretary to Govt. of NWFP,
Forestry, Fisheries and Wildlife
Department.

Endst: No. SO (FP: II) / AB / 1-465 / 88 / Vol: IV / 720-27 dated 26.1.1993.

Copy forwarded to:-

- 1 to 4. x x x x x xxxxxxxxxxxx
- 5. Chief Conservator of Forests (North) Peshawar.
- 6 to 8. x x x x x xx x xx xx x xxx x

No. 1058-63/E, Dated Peshawar the 31 / 1 / 1993.

Copy for along with copy of its enclosures forwarded to all Conservator of Forests / Project Directors in North for information and necessary action.

Encl:
As above.

CHIEF CONSERVATOR OF FORESTS
NORTH PESHAWAR.

AB P.....

ATTACHED

APPENDIX

1319 (9)

8

1. Nomenclature of posts.	2. Minimum qualification, for appointment by initial recruitment.	3. Age limit for initial recruitment.	4. Method of recruitment.
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FOREST WING
PART - I PROFESSIONAL POSTS.

1. Chief Conservator of Forests.

By promotion, on the basis of selection on merit, from amongst four senior most Conservators of Forests with at least five years service as such. Seniority being considered only in the case of Officers of practically the same standard of merit.

2. Conservator of Forests.

- (i) M.Sc. Forestry or B.Sc. (Hons.) in Forestry from a recognised University; and
- (ii) twelve years job experience in BPS-17 and above in Forestry or related field.

35 to 45 years.

(a) By promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Divisional Forest Officers (BPS-18) and Deputy Conservator of Forests having at least twelve years service in BPS-17 and above, who have successfully completed such training or

Note.- Preference will be given to candidates who have contributed significantly to the profession/practice of Forestry and its allied fields by way of preparing management plans, research studies, survey and feasibility reports for assessing and husbanding renewable economic and social benefits, etc.

sed such departmental examination as be prescribed by Government for the purpose; or

(b) if no suitable person is available for promotion, by initial recruitment.

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Divisional Forest Officer/
Deputy Conservator of
Forests.

Assistant Conservator of
Forests/Divisional Forest
Officer (BPS-17).

Second Class Bachelor's Degree
in Science, Agriculture or
Forestry from a recognised
University.

21 to 28
years.

- (a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst holders of posts of Forest Rangers with at least ten years' service as such; and
- (b) fifty per cent by initial recruitment.

Note.- Appointments of candidates selected for the posts by the Public Service Commission shall be made subject to the following conditions:-

- (i) The candidate shall undergo and successfully complete the training at the Pakistan Forest Institute leading to M.Sc. Forestry Degree.
- (ii) The candidates shall produce certificate from the Standing Medical Board regarding their physical fitness for performing the duties required of them.
- (iii) The candidates shall execute bonds to the effect that on successful completion of the training they shall serve the Government for at least five years or in default shall refund all the expenses incurred in connection with their training and education.

(Contd. p.3.)

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(a) Intermediate (2nd Division) from a recognized Board with two or more of the following subjects:-

- (i) Mathematics;
- (ii) Physics;
- (iii) Chemistry;
- (iv) Biology;
- (v) Zoology;
- (vi) Botany.

(b) Holders of B.Sc. Degree (Second Class) who have studied any two of the above subjects are also eligible.

18 to 25 years.

(a) One-third by promotion, on the basis of seniority-cum-fitness, from amongst holders of posts of Deputy Forest Rangers, with seven years' experience as such and having received one year's training at the Forest School; and

(b) two-third by initial recruitment.

Note.- Appointments of candidates selected for the posts by the Public Service Commission shall be subject to the following conditions:-

- (i) the candidates shall undergo and successful the training at the Pakistan Forest Institute leading to B.Sc. Forestry Degree;
- (ii) the candidates shall produce certificate from Standing Medical Board at Peshawar regarding their physical and mental fitness for performing the duties required of them; and
- (iii) the candidates shall execute bonds to the effect that on successful completion of the training they shall serve the Government for at least five years or in default shall refund all the expenses incurred in connection with their training and education.

*Four fees made
 Govt. of NWFP Env. Deptt.
 notification no. S: (27) Env/1
 1-4637-2/14/5 dated
 20-2-2006*

(Contd. p.4)

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PART-II SUB PROFESSIONAL POSTS.

1
Forest Ranger.

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Forester.

- (i) Secondary School Certificate with 18 to 25 years. Science or equivalent qualification (Second Division) from a recognized Board;
- (ii) successful completion of Forester training course from school of Forestry; and
- (iii) possessing minimum physical standard prescribed by Government.

(a) Seventy-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Foresters in the Circle where the vacancies occur with five years service as such, who have successfully completed such training or passed such Departmental Examination as may be prescribed by the Government for the purpose; and

(b) twenty-five per cent by promotion, on the basis of selection on merit, from amongst Foresters who have secured first position in Foresters training course at the Forest School with five years service or have secured five consecutive excellent annual reports and are below 35 years of age.

(a) Fifty per cent by initial recruitment; and

(b) fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst holders of post of Forest Guards of the Forest Division where the vacancies occur, who have at least five years' service as such and have passed such departmental examination as may be prescribed by Government for the purpose.

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rest Guard.

Secondary School Certificate from a recognised Board or equivalent qualification from Pakistan Army.

18 to 25 years.

By initial recruitment.

PART - III MINISTERIAL POSTS.

perintendent.

By promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Regional Accountant or if no suitable Regional Accountant is available, from amongst Assistants/Stenographers (B-15) with at least five years' service as such.

gional Accountant.

By promotion, on the basis of seniority-cum-fitness, from amongst holders of posts of Assistants and Senior Scale Stenographers with at least ten years' experience in Accounts who have successfully completed such training or passed such Departmental Examination as may be prescribed by the Government for the purpose.

tant.

Degree from a recognised University.

18 to 25 years.

- (a) Twenty-five per cent by initial recruitment; and
- (b) Twenty-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst holders of posts of Senior Clerks, with at least five years' service as such.

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5/ Clerk.

or Clerk/
keeper.

- (i) Secondary School Certificate or equivalent qualification from a recognized Board; and
- (ii) a speed of 30 words per minute in typing.

18 to 25 years.

- (a) Eighty per cent by initial recruitment; and
- (b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Daftri and Naib Qasid, who possess Secondary School Certificate from a recognized Board, with at least two years' service as such.

Stenographer
(BPS-15).

- (i) Secondary School Certificate or equivalent qualification from a recognised Board; and
- (ii) a speed of 120 words per minute in shorthand in English and 40 words per minute in typing.

18 to 25 years.

- (a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst holders of posts of Stenographer (BPS-12) with at least five years' service as such, who have passed such test as may be prescribed by Government for the purpose; and
- (b) fifty per cent by initial recruitment.

Stenographer
(BPS-12).

- (i) Secondary School Certificate or equivalent qualification from a recognized Board; and
- (ii) a speed of 100 words per minute in shorthand in English and 40 words per minute in typing.

18 to 25 years.

By initial recruitment.

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT**

NOTIFICATION

Dated Peshawar the 14th March, 2013

No. SO(Estt)Envt/1-465/2k12. In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989, the Environment Department, Government of Khyber Pakhtunkhwa, in consultation with the Establishment and the Finance Department, hereby directs that in the Forestry, Fisheries and Wildlife Department's Notification No.SO(FT.II)1-465/88/Vol:IV dated 26.1.1993, the following further amendments shall be made, namely;

AMENDMENTS

In the Appendix, under the heading "Forest Wing" in "PART-II SUB PROFESSIONAL POSTS", for the existing entries against S.No. 1, 2 & 3, the following shall be substituted in respective columns namely:-

#	Nomen- clature of the post	Qualification for appointment by initial recruitment	Age limit	Method of recruitment
1	Deputy Forest Ranger (BPS-11)	a) B.Sc, Degree (atleast 2 nd Division) from a recognized University; and b)Physical Fitness: b(i) Height 5-6, ft (minimum); and (ii) Chest Size: 34-36, inches (minimum) Note:- Candidate Will qualify Marathon race of 2-Km within 20 minutes	21 to 32 years	a). Twenty-five percent by initial; recruitment; and b) Seventy-five percent by promotion, on the basis of seniority-cum-fitness, from amongst Foresters (BPS-9) having five years service, who have successfully completed such training or passed such departmental examination as may be prescribed by the Government from time to time. Note- The candidates who have been recruited will have to undergo the prescribed training for Forester at Khyber Pakhtunkhwa Forest School Thai Abbottabad; and
2	Forester (BPS-9)	a) Bachelor's Degree with FSc (atleast 2 nd Division) from a recognized University; and b)Physical Fitness: b(i) Height 5-6, ft (minimum); and (ii) Chest Size: 34-36, inches (minimum) Note:- Candidate Will qualify Marathon race of 2-Km within 20	21-32 years	a) Twenty-five percent by initial; recruitment; and b) Seventy-five percent by promotion, on the basis of seniority-cum-fitness, from amongst Forest Guards of the Forest Division with atleast five years service as such, have passed such departmental examination as may be prescribed by the Government from time to time. Note- The candidates who have been recruited will have to undergo two years certificate course in Forestry at Khyber Pakhtunkhwa Forest School Thai Abbottabad.

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3	Forest Guard (BPS-7)	<p>a) Intermediate with Matric Science (at least 2nd Division) from a recognized Board; and</p> <p>b) Physical Fitness:</p> <p>b(i) Height 5-6, ft (minimum); and</p> <p>(ii) Chest Size: 34-36, inches (minimum)</p> <p>Note:- Candidate Will qualify Marathon race of 2-Km within 20 minutes</p>	18-28 years	<p>By initial recruitment.</p> <p>Note:- The candidates who have been recruited will have to undergo one year training course of Forest Guards at Khyber Pakhtunkhwa Forest School Thal Abbottabad."</p>
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SECRETARY TO GOVT. OF
KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT.

Endst: NO.SO(Estt)/Envtl-465/2K:

Dated Peshawar the 14th March, 2013.

Copy is forwarded for information to:-

- 1) All Administrative Secretaries, Govt. of Khyber Pakhtunkhwa.
- 2) Accountant General, Khyber Pakhtunkhwa.
- 3) All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 4) Chief Conservator of Forests, Khyber Pakhtunkhwa.
- 5) Chief Conservator Wildlife Khyber Pakhtunkhwa.
- 6) All Conservators of Forests Khyber Pakhtunkhwa.
- 7) All Deputy Conservators/Divisional Forest Officer in Khyber Pakhtunkhwa. *CCF-II Abbottabad*
- 8) All District Coordination Officers in Khyber Pakhtunkhwa.
- 9) Registrar Peshawar High Court/Service Tribunal, Khyber Pakhtunkhwa.
- 10) Secretary, Khyber Pakhtunkhwa Public Service Commission.
- 11) All Executive District Officers Finance in Khyber Pakhtunkhwa.
- 12) Director Budget & Accounts Cell, Environment Department.
- 13) All District Accounts Officers in Khyber Pakhtunkhwa.
- 14) Librarian, Government of Khyber Pakhtunkhwa, Establishment Department.
- 15) Manager Government Printing Press, Khyber Pakhtunkhwa, Peshawar for publication in the Official Gazette with the request that twenty printed copies of the notification, when published may be furnished to this department.
- 16) PS to Secretary Environment Department Khyber Pakhtunkhwa.
- 17) PA to Additional Secretary Environment Department.
- 18) PA to Deputy Secretary-I & II, Environment Department.
- 19) Master file.
- 20) Concerned file.

Fida-ul-Karim
(FIDA-UL-KARIM)
SECTION OFFICER (ESTT:)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Pesh: 30th June, 2016

NOTIFICATION

No. SO (Est) FE & WD/1-8/Tarq DFO/2k14. WHEREAS, Mr. Umar Khan, Forest Guard (BPS-07) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations dated 25/12/2013, served upon the said officer;

AND WHEREAS, Enquiry Committee comprising Mr. Tariq Rashid, (SG BS-19), Referrals Coordinator, Finance Department and Mr. Shah Wazir Khan (BS-19), Managing Director, Forest Development Corporation, to conduct the inquiry against the said accused official.

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

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

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused official, and hearing him in person and exercising his powers under Rule-14(5)(II) read with Rule 4(1)(b)(I) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose a major penalty of "Compulsory retirement from service" upon and "Recovery of Rs. 04,64,400/-" from Mr. Umar Khan, Forest Guard (BPS-07) of Forest Department, with immediate effect.

CHIEF MINISTER,
KHYBER PAKHTUNKHWA

Enclst: No. SO (Est) FE & WD/1-8/Tarq DFO/2k14/2563-68 Dated Pesh: 30th June, 2016.

Copy is forwarded to:-

- 1) P.S.O to Chief Minister, Khyber Pakhtunkhwa.
- 2) P.S.O to Secretary Forestry, Environment & Wildlife Department.
- 3) Chief Conservator of Forests, Central and Southern Forest Region-I, Peshawar.
- 5) Director Budget and Accounts Environment Department.
- 6) Official concerned C/O Chief Conservator of Forests, Central & Southern Forest Region-I Peshawar.
- 7) Master file.
- 8) Office order file.

S.K
(SYED KAZIM HUSSAIN SHAFIQ)
SECTION OFFICER (EST)

Dated Peshawar the 25th / 07 / 2016

Copy forwarded to Chief Conservator of Forests Northern Forest Region-II Abbottabad for information and necessary action. A copy of the Notification meant for official concerned is also enclosed, which may be delivered to him under proper receipt.

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

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No. 569 /E. Dated Abbottabad the 01/08/2016

Copy alongwith copy of Notification meant for official concerned forwarded to the Conservator of Forests, Upper Hazara Forest Circle Mansehra for information and necessary action. A copy of the Notification meant for official concerned is also enclosed which may be delivered to him under proper receipt.

[Signature]
Chief Conservator of Forests
Northern Forest Region-II Abbottabad
Khyber Pakhtunkhwa

Encl: As above.

EC
process further

No. 804 /GE Dated Mairsehra the 03/08/2016

Copy alongwith its enclosures forwarded to Divisional Forest Officer Upper Kohistan Forest Division, Dassu for information and necessary action. He is directed to deliver the attached copy of Notification to Mr. Umer Khan Forest Guard under proper receipt.

Encl: As Above:

[Signature]
Conservator of Forests
Upper Hazara Forest Circle
Mansehra

No. 197 /GE, dated Dassu the 05/8/2016.

Copy is endorsed to SDFO Harban Forest Sub-Division for information to concerned employee. He is no more on the strength of this Department. Further more immediate arrangement of replacement with intimation to this office.

[Signature]
Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

SENIORITY LIST OF FOREST GUARDS OF UPPER KOHISTAN FOREST DIVISION, DASSU AS STOOD ON 10.11.2019

S. #	Name of Forester	Qualification	Home District	Parent Division	Any Test Passed	Date of Birth	Date of Appointment		Cadre
							Govt. Service	Parent Grade	
1	Mr. Muhammad Asghar	F.A	Kohistan	Kohistan	Trained	21.11.1962	27.09.1981	27.09.1981	Upper Kohistan
2	Mr. Siraj-ud-Din	B.A	Kohistan	Kohistan	Trained	25.09.1966	23.06.1986	23.06.1986	Upper Kohistan
3	Mr. Javed Iqbal	F.Sc.	Kohistan	Kohistan	Trained	20.04.1986	03.03.2009	03.03.2009	Lower Kohistan
4	Mr. Fazal ur Rehman	F.A	Kohistan	Kohistan	Un-Trained	01.07.1963	01.01.1985	14.02.2017	Upper Kohistan
5	Mr. Muhammad Khalid	B.A	Kohistan	Kohistan	Un-Trained	03.02.1966	01.10.1986	14.02.2017	Upper Kohistan
6	Mr. Sajjad Hussain Shah	F.A	Kohistan	Kohistan	Un-Trained	21.04.1969	08.10.1987	14.02.2017	Upper Kohistan
7	Mr. Shaibur Khan	Matric	Kohistan	Kohistan	Un-Trained	02.04.1964	28.03.1983	22.11.2017	Upper Kohistan
8	Mr. Zafarullah	BBA	Kohistan	Kohistan	Under Training	30.09.1993	09.03.2018	09.03.2018	Upper Kohistan
9	Mr. Habib ur Rehman	F.A	Kohistan	Kohistan	Un-Trained	16.06.1976	23.02.2008	24.05.2019	Upper Kohistan

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT ABBOTTABAD.

Service Appeal No. 1244/2016

Date of Institution ... 13.12.2016

Date of Decision ... 17.12.2018



Abdul Manan Forester, Upper Kohistan Forest Division, Dassu, District Kohistan.
... (Appellant)

VERSUS

Chief Minister, Khyber Pakhtunkhwa, Peshawar and two others.
... (Respondents)

MR. SHAD MUHAMAMD KHAN,
Advocate
MR. ABDUL SABOOR KHAN
Advocate

--- For appellant.

MR. USMAN GHANI,
District Attorney

--- For respondents

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER (Executive)
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 927/2015 titled Jamair Khan, appeal no. 926/2015 titled Naseeb Khan, appeal no. 1247/2016 titled Asghar Khan, appeal no. 1246/2016 titled Umar Khan and service appeal no. 795/2015 titled Mohammad Tariq Khan as similar question of law and facts are involved therein.

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Arguments of the learned counsel for the parties heard and record perused.

FACTS

The brief facts are that the appellant was serving as Forester in Forest Division Kohistan. On the allegations of involvement in corrupt practices an enquiry was conducted and upon culmination major penalty of compulsory retirement was imposed on

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him vide impugned order dated 30.06.2016. Feeling aggrieved he filed departmental appeal on 15.08.2016, which was not responded, hence, the instant service appeal on 13.12.2016.

ARGUMENTS

4. Learned counsel for the appellant argued that he was proceeded departmentally and upon winding up of proceedings major penalty of compulsory retirement was imposed on him. Enquiry was not conducted in accordance with the spirit of E&D Rules 2011. The appellant and others through an application submitted a list of witnesses to the Chairman Enquiry Committee for examination but no heed was paid to it. He further argued that the appellant submitted an application to the Chairman Enquiry Committee that Mr. Shah Wazir Khan, Member Enquiry Committee had personal grudge against him and was hell bent to punish the appellant. A request was made to depute some other member for conducting the enquiry. This fact was also highlighted in para-9 of the reply to the show cause notice but was not considered by the competent authority. By not considering his requests, the inquiry report appeared to be biased and against the norms of fairness/justice.

5. Learned District Attorney, at the very outset raised objection on the maintainability of the appeal in hand. He stated that the impugned order was passed on 30.06.2016 while departmental appeal was filed on 15.08.2016, as departmental appeal was not filed within the given deadline, so the same was barred by time. He further argued that even on merits all the codal formalities were observed before passing the impugned order.


CONCLUSION.

6. So far as the issue of maintainability of the present appeal is concerned, impugned order dated 30.06.2016 was received by the appellant on 05.08.2016, as is evident from a copy of the impugned order containing endorsements to the quarters concerned and

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Chief, Pakhtunkhwa Service Tribunal, Peshawar

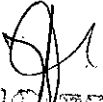
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provided by the learned counsel for the appellant. Before touching the merits of the case, we deem it appropriate to touch the important issue of objections raised by the appellant on Mr. Shah Wazir, Member Enquiry Committee, but were not considered by the competent authority. It was also reiterated in reply to the show cause notice. He had given solid proof showing bias/prejudice of the above member towards the appellant and had made up his mind to punish him. The principle of natural justice demanded that his request should have been considered for the purpose of fair/transparent inquiry and to meet the ends of justice. By ignoring his request the enquiry report had not only become disputed but smacked of malafide, malice and distrust on the part of the said Member. On this score alone, it is a valid worth consideration case for de-novo enquiry. In these circumstances we would not like other dilate on other deficiencies in the inquiry report.

7. As a sequel to above, the impugned order dated 30.06.2016 in respect of appellants Abdul Manan, Umer Khan and Asghar Khan, order dated 02.04.2015 in respect of appellant Naseeb Khan and order dated 12.03.2015 in respect of appellants Jamair Khan and Muhammad Tariq Khan are set aside and the appellants are reinstated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules within a period of 90 days from the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. The appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.


 (AHMAD HASSAN)
 Member
 Camp Court Abbottabad.


 (HAMID FAROQQ DURRANI)
 Chairman


 ATTESTED
 ANNOUNCED
 17.12.2018

Certified to be true copy

 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

F (21)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE UMAR ATA BANDIAL

CIVIL PETITION NO.168-P TO 173-P OF 2019

(On appeal from the judgment dated 17.12.2018 of the
Khyber Pakhtunkhwa Service Tribunal, Peshawar passed
in Service Appeals Nos.1244/2016, 927/2015, 926/2015,
1247/2016, 1246/2016 and 795/2015 respectively)

Chief Minister through its
Principal Secretary, Khyber
Pakhtunkhwa Peshawar & others

... Petitioner (s)

Versus

1. Abdul Manan
2. Umar Khan
3. Asghar Khan
4. Muhammad Tariq
5. Naseeb Khan
6. Jamair Khan

(In CP No.168-P/2019)
(In CP No.169-P/2019)
(In CP No.170-P/2019)
(In CP No.171-P/2019)
(In CP No.172-P/2019)
(In CP No.173-P/2019)

For the Petitioner (s) : Barrister Qasim Wadood, Addl. AG KPK
Respondent (s) : N.R.
Date of Hearing : 25.07.2019

ORDER

SH. AZMAT SAEED, J.-We have heard the learned Addl. Advocate General, KPK and perused the available record. It appears that the learned Service Tribunal has remanded the matter for *de novo* inquiry. In this view of the matter, no substantial question of law of public importance could be raised so as to warrant

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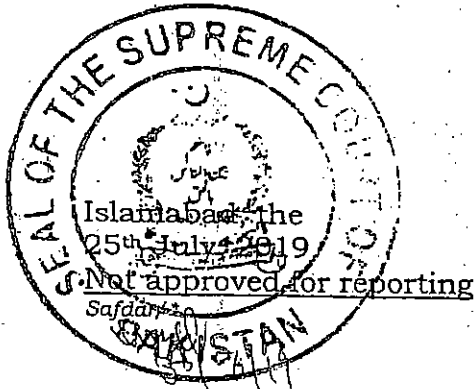
CP No.169-P-2019 etc.

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exercise of jurisdiction of this Court under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973. Hence, these Civil Petitions must fail.

2. The allegation in these cases pertains to the misappropriation of timber. We have asked the learned Addl. Advocate General as to whether any criminal proceedings have been initiated against the culprits. He states that he will seek instructions in this behalf and make sure that the law of the land would be implemented.

3. Be that as it may, these Civil Petitions being without substance are dismissed and leave declined.



Sd/-J

Sd/-J

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Court Associate
Supreme Court of Pakistan
Islamabad

GR No: 15660/19 Civil/Criminal

Date of Presentation: 26-7-19

No of Words: 500

No of Pages: 6

Required Fee: 5000

Copy Fee: 200

Cost: 5200

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Peshawar the, 24th October, 2019

NOTIFICATION

7417-21

No.SO(Estt)FE&WD/1-50(69)/2019/PF: In compliance with judgment dated 17.12.2018 of Khyber Pakhtunkhwa Service Tribunal in service appeal No.1246/2016 and decision dated 25th July, 2019 of Supreme Court of Pakistan in Civil Petition No.168-P to 173-P of 2019, the competent authority is pleased to withdraw this department earlier Notification No.SO(Estt)FE&WD/1-8/Tariq DFO/2014/2562-68 dated 30.06.2016 imposing thereby the major penalty of " Compulsory Retirement from Service and Recovery of Rs. 4,64,400/- from Mr. Umar Khan, Forest Guard (BS-07) Khyber Pakhtunkhwa, Forest Department with immediate effect.

Consequent upon above, the competent authority is further pleased to reinstate in service Mr. Umar Khan, Forest Guard (BS-07), Khyber Pakhtunkhwa Forest Department with immediate effect. The issue of back benefits will be decided/ settled after the outcome of the de novo inquiry.


**CHIEF MINISTER
KHYBER PAKHTUNKHWA**

Endst: No: SO (Estt)FE&WD/1-50(69)/2019/PF:

Dated Pesh 24th October, 2019

Copy is forwarded to:-

- 1) Chief Conservator of Forests, Central Southern Forest Circle, Peshawar.
- 2) Chief Conservator of Forests, Northern Forest Region-II, Abbottabad.
- 3) Director, Budget and Accounts Cell, FE&W department.
- 4) PS to Secretary, FE&W Department, Khyber Pakhtunkhwa.
- 5) Mr. Umar Khan, Forest Guard, Khyber Pakhtunkhwa Forest Department C/o CCF-I, Peshawar.
- 6) Master file.
- 7) Office order file.


(Zia-ur-Rahman)
SECTION OFFICER (ESTT)

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25/10



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**DISCIPLINARY PROCEEDINGS/ENQUIRY REPORT CONDUCTED AGAINST
M/S: 1-MUHAMMAD ASGHAR FORESTER 2- ABDUL MANAN FOREST
GUARD 3-UMER KHAN FOREST GUARD 4-NASEEB KHAN FOREST GUARD
AND 5-JAMIR KHAN FOREST GUARD OF HARBAN FOREST SUB DIVISION
- UPPER KOHISTAN FOREST DIVISION-**

Read With:

- 1- Office Order No.17 dated 4/11/2019 issued by DFO Upper Kohistan Forest Division Dassu along with its enclosures.
- 2- Memo of Allegation/Charge Sheet against Mr.Muhammad Asghar, Forester enclosed with above office order.
- 3- Memo of Allegation/Charge Sheet against Mr.Abdul Mannan, Forest Guard. enclosed with above office order.
- 4- Memo of Allegation/Charge Sheet against Mr.Umar Khan, Forest Guard enclosed with above office order.
- 5- Memo of Allegation/Charge Sheet against Mr.Naseeb Khan, Forest Guard. enclosed with above office order.
- 6- Memo of Allegation/Charge Sheet against Mr.Jamir Khan, Forest Guard.
- 7- Written Statements/Defense Replies along with enclosures of above 5 accused.(sr.No.2 to 6 as above).
- 8- Govt. of Khyber Pakhtunkhwa Environment Department Notification No.SO (Estt:)/Envt/1-8/Tariq DFO/2k14 dated 2/6/2015.
- 9- Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad Judgment dated 17/12/2018.
- 10- S.O (Establishment) Govt. of Khyber Pakhtunkhwa, Forestry, Environment & Wildlife Department letter No.SO (Estt:)FE & WD/1-50(69/2019 dated 24/10/2019 regarding restoration in Service & de novo enquiry of each accused official.
- 11- August Supreme Court of Pakistan Decision/Order dated 25/7/2019.
- 12- Enquiry Report conducted by M/S:..Shah Wazir Khan the then Managing Director Forest Development Corporation and Tariq Rashid, Secretary Benevolent Fund, Peshawar dated 8/9/2016.
- 13- Enquiry Report conducted by Mr.Farhad Ali, the then Divisional Forest Officer Agror Tanawal Forest Division Mansehra assigned to him vide DFO Upper Kohistan Forest Division letter No.1887/GL dated 10/10/2013.
- 14- S.O (Establishment) Govt. of Khyber Pakhtunkhwa, Forestry, Environment & Wildlife Department letter NO.SO (Estt:)FE & WD/1-50(69/Appeals/2016 dated Peshawar 27/2/2017 addressed to Mr.Azhar Ali Khan, Conservator of Forests, Lower Hazara Forest Circle, Abbottabad.
- 15- And comments by the Conservator of Forests, Lower Hazara Forest Circle thereon above Sr.No.11 dated even duly signed by the Conservator of Forests, Lower Hazara Forest Circle (Chairman) & Mr.Shaukat Fiaz, DFO Patrol Squad (Member).
- 16- Enquiry Report conducted by Anti-Corruption Establishment Mansehra Region duly certified vide letter No.328/ADC/Mans, dated Mansehra 26/11/2019 addressed to DFO Upper Kohistan in response to his letter No.915/GL dated 25/11/2019.
- 17- Letter No.8574/GE dated Mansehra 22/6/2018 addressed to CCF Region-II by CF Upper Hazara Forest Circle wherein Mr.Muhammad Shoaib, the then DFO Lower Kohistan was with drawn and Mr.Muhammad Aqeel DFO Lower Kohistan was

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- appointed as Technical Officer to assist the Open Enquiry Committee No.6/2012 and 10/2013.
- 18- Statement of Mr.Muhammad Anwar, SDFO, Pattan, Technical Officer with Anti-Corruption Establishment Mansehra Region deputed vide DFO Lower Kohistan Pattan as per statement of SDFO, before the Enquiry Officer/Committee.
 - 19- Letter No.60/SDFO(H) dated 15/12/2014 addressed to DFO Upper Kohistan.
 - 20- Statement of present SDFO Harban (Mr.Sajjad Shah) dated 26/11/2019 before the Enquiry Officer/Committee.
 - 21- Question & Answers & Statement of Prosecutor/Departmental Representative i.e. Mr.Noor Rehman, Office Assistant/Head Clerk dated 27/11/2019 before the Enquiry Committee.
 - 22- Transport Pass No.121 dated Dassu 23/2/2017 issued to Mr.Muhammad Aslam Khan S/O Ayun Khan of Basha Tehsil Dassu through Managing Director Took Forest Harvesting Cooperative Society Ltd.
 - 23- Application For FIR lodged by the accused in P.Station Sazin.
 - 24- Damage Reports No.32/50 dated 25/8/2013, 72/45 dated 25/8/2013, No.15/61 dated 25/8/2013 and No.73/Harban dated 27/8/2013.
 - 25- Affidavit of owners on Stamp Papers (3 Nos.)regarding recovery of Timber in question.
 - 26- O.O.No.4 dated 26/8/2013 issued by the DFO Upper Kohistan Forest Division Dassu for blocking the transportation of illegal timber to Northern areas.
 - 27- DFO Upper Kohistan letter No.101/GL dated 15/7/2013 addressed to District Police Officer Kohistan Dassu.
 - 28- Letter No.252/PSO dated 23/8/2013 issued by DPO Kohistan.
 - 29- Letter No.1707-10/GL dated 4/9/2013 issued by DFO Upper Kohistan to DPO Kohistan.
 - 30- Minutes of the Meeting held under the Chairmanship of DCO Kohistan in his office on 26/6/2012 regarding critical Law and Order situation.

Brief History of the Case

M/S: Muhammad Asghar, Forester, Abdul Mannan, Umer Khan, Naseeb Khan and Jamir Khan Forest Guards (hereinafter referred as accused) of Upper Kohistan Forest Division Dassu were alleged that being In Charge SDFO, B.O, Beat In Charge of their respective Forest Sub Division, Blocks and Beats and depots (detail as per memo of allegations of each individual) committed the following irregularities and resultantly 18000 Cft Illicit timber was pilfered/shifted and transported to Northern areas and all the aforementioned accuseds were accordingly charge-sheeted and served with memo of allegations against the charges of In-efficiency, Mis-conduct & Corruption under Rule-3 of Khyber Pakhtunkhwa Govt. Servants (E & D) Rules, 2011. Detail as under:-

- 1- Being In Charge SDFO, Block Officer, Beat Guard and Depot Forest Guard of Harban, Bhasha and Sazin KKH Roadside depots failed to protect timber lying in their respective jurisdiction and the same was admixed with the timber transported to Northern areas under the Northern Area Amnesty Policy, 2013.

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- 2- The accused failed in adopting preventive measures against admixture of timber of Kohistan origin in timber of Northern Area and hence they severally and jointly responsible for recovery of losses sustained to Govt./Public exchequer and all mishap occurred due to their involvement with timber mafia and thus 18000 cft timber was illegally transported to Northern area.

Divisional Forest Officer Upper Kohistan Forest Division constituted the instant Enquiry Committee vide his office, O.O.17 dated 4/11/2019 consisting of the undersigned in consequence of the Judgment of Worthy Service Tribunal Khyber Pakhtunkhwa Camp Court Abbottabad dated 17/12/2018 wherein all the accused have been re-instated in service after setting aside the earlier penalties imposed upon them as contained in S.O (Establishment) Govt. of Khyber Pakhtunkhwa, Forestry, Environment & Wildlife Department letter No.SO (Estt:)FE & WD/1-50(69)/2019/PF dated Peshawar 24/10/2019 and through the instant Judgment of the worthy Service Tribunal it was directed to conduct the de-novo enquiry to meet the norms of justice and to settle the issue of back benefits of the service of the accused or otherwise. August Supreme Court of Pakistan did not entertain the Civil Petition No.168-P to 173-P of 2019 of the Provincial Government of Khyber Pakhtunkhwa vide order dated 25/7/2019 as the Provincial Govt. proceeded against the verdict of Khyber Pakhtunkhwa Service Tribunal as referred above.

The instant enquiry is the outcome of prolong litigation on the subject matter both departmental enquiries/disciplinary proceedings and Civil Litigation in the proper Court of Law as depicted in Read With above. Hence, needs thorough investigation/examination and on the spot verification, which may lead to the rational and logical end.

Proceedings/Discussions:

Consequently, the Enquiry Committed/Officer called upon the accused officials to submit their Defense Replies/Written Statements alongwith all relevant records/supporting material in view of the Memo of Allegations and Charge Sheets served upon them and delivered to them vide Divisional Forest Officer Upper Kohistan Forest Division Office Order No.17 dated 4/11/2019 vide Enquiry Officer/Committee letter No.18/WP dated 6/11/19 and No.01-6/Camp dated 14/11/2019. The accused officials submitted their defense replies/written statements alongwith supporting documents wherein they rebutted the charges on the following Grounds:-

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I- **Accused Mr. Muhammad Asghar, Forester, the then In Charge SDFO Harban Forest Sub Division stated that:-**

- a) Harban Forest Sub Division is situated at a far flung area of Upper Kohistan Forest Division where Law and Order situation is highly critical and Writ of the Government is just nominal there.
- b) That he on 13/7/2013, informed the Divisional Forest Officer, Upper Kohistan Forest Division in letter and spirit about the illegal movements of the timber in question upon which the DFO wrote a letter to District Police Officer Kohistan for immediate action but right after one month and eight days the DPO directed the DSP Shatial Circle for assistance and help of the Department vide his letter No.252/PSO dated 23/8/2013 whereas the mis-hap happened on 24/8/2013.
- c) The accused stated that in between the night of 24 th and 25 th of August, 2013 some of the outlaws/miscreants have forcibly taken the said timber across the river and ins pite of hectic efforts he could not stop the culprits and intensively tried to contact the DFO but failed due to lack of the communication means and got suspended the illegal transportation of timber henceforth. However, the forest field staff of Northern areas across the river apprehended the timber and took into their custody under proper Supardnama and the Conservator of Forests, Gilgit Circle informed the Conservator of Forests Upper Hazara Forest Circle vide his letter No.CF-3(45)2013 dated August, 2013 that fourteen (14) Tractors/Jeeps loaded with sleepers have illegally transported the timber from Kohistan to Darel which have been taken into custody by the staff and lying in their jurisdiction under superdnama and the DFO concerned may be directed to shift the said timber to their own jurisdiction. Which was accordingly endorsed to the DFO Upper Kohistan vide CF Upper Hazara Forest Circle No.1242/GL dated 2/9/2013. He further submitted that he had given an application to the local Police Station for lodging of FIR against the culprits but the police did not lodge FIR against the real culprits but contrarily lodged the said FIR against the staff of Harban Forest Sub Division to shift the responsibility from their shoulders and the said FIR was later on referred to the Anti-Corruption Establishment for enquiry. In response the Anti-Corruption Establishment conducted detailed enquiry and filed it accordingly. Hence the allegations leveled against him are baseless, the accused further stated.

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- d) On humble submission of the accused, the locals of the area helped him and the timber was shifted to safe-side from the road side as a safety measures. To this effect, the accused stated, that until his full satisfaction the transportation was suspended and all the check posts were directed to be vigilant upon the illegal transportation of timber under Amnesty Policy from Kohistan to Northern area.
- e) The accused further stated that after his transfer, the SDFO Harban informed the DFO in writing that the timber stolen from Harban, Sazin and Bhasha has been recovered/retrieved which is supported by the Superdnama of the owners. Detail break up of the timber recovered/retrieved depicted as per his defense reply attached.
- f) He further added that on transfer of the forest guards, the timber recovered from Sazin i.e. 7000 cft was handed over to Mr.Muhammad Aslam Forest Guard by Nasib Khan, Forest Guard on 14/4/2015 and similarly on 16/4/2015, Mr.Jamir Khan, Forest Guard handed over the 3000 cft timber to Imran Forest Guard and afterwards from the timber of Bhasha Depot 5000 cft timber was transported vide TP No.121 dated 23/2/2017 and the rest of the timber is lying in Harban Depot. Besides this, Muhammad Anwar, SDFO and Farhad Sajid, the then SDFO have also certified in their reports that all the timber has been recovered/retrieved, and also favouring the recovery, the owners have given affidavits. Hence, in the light of above facts and figures, the allegations leveled against him are baseless, he prayed.

II Accused Mr.Abdul Manan, Forest Guard stated that during the occurrence of instant mis-hap, he proceeded on 15 days leave by the prior permission of SDFO Harban. However, during leaves he also requested/suggested the SDFO Harban to acquire the help of local police, which the SDFO agree and wrote letter to DFO Upper Kohistan for seeking the help of local police. He stated that some of the miscreants forcibly transported the timber to northern areas which was later on recovered/retrieved back to Upper Kohistan Forest Division. He further stated that the Anti-Corruption Establishment also conducted the enquiry and concluded that the theft timber has been recovered. Furthermore, the owners of the timber have also testified the said recovery by giving affidavits which are available on record.

III Accused Mr.Umar Khan, Forest Guard defended his allegations stating that the timber in question was neither actually on the charge of Upper Kohistan Forest

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Division nor under his charge. No proper record has been maintained i.e. Form-5,6 and Monthly Progress Report etc are not available. Factually the illicit timber was the outcome of local retaliation against the prolonged ban on commercial fellings by the Provincial Govt and the locals had illicitly cut the timber and accumulated under their personal custody and forcibly managed to transport it to northern areas, in spite of hectic efforts adopted by him to protect the interest of Government.

He further stated that all that happened forcibly and due to critical condition of law and order and single Forest Guard could not overcome an aggravated mob of locals who in an irritant manner transported the same but the Forest Staff of Northern area apprehended the illegal timber and taken it to their safe custody and finally transported back to Kohistan Forest Division all the 18000 cft timber out of which 5000 cft transported under TP No.121 dated 23/2/2017. He stated that in such a critical state of affairs he adopted each and every protective/preventive measure in saving the cause of Government. SDFO Muhammad Anwar and Mr.Farhad Sajid, SDFO have also confirmed in their reports that the transported timber had been recovered and the Conservator of Forests, Mr.Azhar Ali, has also reported that 8000 cft timber has been transported out of 18000 cft timber under enquiry. Hence, in the light of above facts, he may be exempted from the allegations as leveled against him.

IV **Accused Mr.Jamir Khan, Forest Guard** mentioned the same causes in his defense as adopted above by Mr.Umar Khan in rebutting the charges and in the beginning of his reply he straight away denied that no timber was transported from his charge but in complimentary portion of his reply he admitted that 3000 cft timber stolen from his depot had been recovered/retrieved and handed over to Mr. Imran, Forest Guard as per charge report attached with his reply.

V **Accused Mr.Nasib Khan, Forest Guard** replied in greater resemblance with Umar Khan and Jamir Khan, Forest Guard having the plea that no timber was transported from his charge but in the last portion of his reply he admitted that upon his transfer 7000 cft timber was handed over to Mr.Muhammad Aslam, Forest Guard as per charge report attached with his reply.

From the perusal of foregoing replies of the accused in the light of relevant preliminary enquiries and proceedings conducted on the illegal transportation of 18000 cft timber


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from Upper Kohistan Forest Division to Northern area, following facts/issues can not be denied:-

- 1- At the very threshold a detailed enquiry was conducted by a Senior Officer (Mr. Shah Wazir Khan, the then Managing Director FDC) in joint venture of other member, Mr. Tariq Rashid, Secretary Benevolent Fund Khyber Pakhtunkhwa (Chairman of the enquiry committee) during the year 2014, who after a thorough probe/investigation compiled a report and submitted to quarter concerned. The enquiry committee imposed major penalties upon the above accuseds besides cash recovery of loss sustained to the Govt. exchequer. Accordingly, the punishments recommended by the enquiry committee were implemented upon the accused officials against which they knocked the door of worthy Service Tribunal Khyber Pakhtunkhwa, Camp Court Abbottabad and succeeded in setting aside the penalties imposed upon them.
- 2- Whereas, the impugned orders dated 30/6/16, 2/4/2015 and 12/3/2015 issued for enforcement of penalties of the above committee was challenged in the Khyber Pakhtunkhwa Service Tribunal by all the accused officials and after trial, the impugned orders were set aside on the grounds as mentioned in the detailed judgment of worthy Service Tribunal, Khyber Pakhtunkhwa dated 17/12/2018 and all the accused were reinstated in service with the direction to respondent department to conduct de novo enquiry strictly in accordance with the law and rules within a period of 90 days from the date of receipt of Judgment. The issue of back benefits shall be subject to the outcome of the de novo enquiry.
- 3- During February, 2017 The Appellate Authority/Chief Minister, Khyber Pakhtunkhwa prior to passing any orders on the Review Petitions of officials concerned ordered *"please assign the task to a senior officer preferably Conservator of Forests Lower Hazara to furnish his report and clarify that either the timber logs were in possession of Government or community and had the Forest Department officials reported missing of logs to Police or otherwise. It should also be clarified that either this timber woods falling in illicit policy or not"*.
Complying with the orders of the Chief Minister, Khyber Pakhtunkhwa/Appellate Authority, the Conservator of Forests, submitted his comments as under:-

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A- **WHETHER THE TIMBER WAS IN POSSESSION OF DEPARTMENT**

Perusal of record i.e. initial damage reports, minutes of the meeting with District Administration and correspondence made by DFO Upper Kohistan with different quarters reveal that:

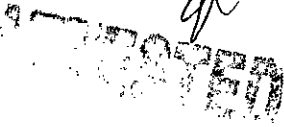
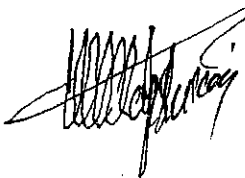
- i- The timber in question was part of the outcome of anarchic illicit forest cutting in a terrain, which is impervious to the writ of state and people have an interface convenience with Government as evident from a number of amnesty policies from 1998 to 2009 (Annex:A) promulgated for disposal of illicitly cut timber. In this area the instruments of enforcing governance are more of notional than operational significance. Thus writ of the Forest Department there, as well as, its possession of the illicit wood need to be profiled in such an extremely circumscribing context.
- ii- In such a situation taking cognizance by forest staff of such illicit cutting as per stipulated procedures restricted to chalking damage reports only. Neither anyone agreed to provide superdnama nor could the Department take the contraband timber to safe custody.
- iii- Although, the documentation and enlistment of illicit timber and applications to register FIR against theft give an impression as if the impugned timber was in the possession of Forest Department, but in the given circumstances, possession of timber stock did not qualify the same as impounded. Hence their possession was of de jure at best as they could not wield instruments of endorsement to qualify it as de facto.

B- **WHETHER FIR HAVE BEEN LODGED WITH THE LOCAL POLICE**

The record reveal that the petitioners preferred application on 25/8/2013 in local Police Station Sazin Harban Forest Sub Division for lodging of FIR (Annexure-4) against the unknown offenders for forceful theft of timber from Kohistan for admixing in GB's amnesty policy 2013. But instead the police registered formal FIR:07 dated 28/2013 against the officials of forest department for their alleged involvement in said theft (Annex-6). Nevertheless, it is clear that the staff endeavored to lodge FIR against unknown offenders for the said larceny.

C- **WHETHER THE TIMBER WAS INCLUDED IN ILLICIT POLICY**

As mentioned in the Damage Report No.73/45, 15/H, 72/45 and 32/50 chalked out against incidence of reported forceful theft timber occurred on 25/8/2013 (Annex-6) the



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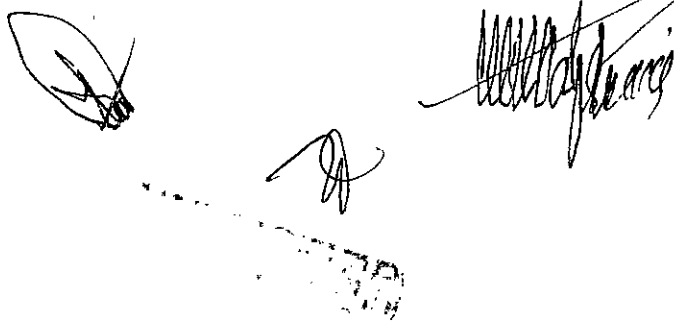
impugned timber belongs to Damage Reports Nos.94/42, 13/55, 98/42, 60/45 and 31/50 as per Annex-1, chalked out during 2007. A portion of this timber was already disposed off under Amnesty Policy 2009. The accounts of initially reported timber, disposal in Amnesty Policy, 2009 and that stolen on 24,25/8/2013 vis-à-vis subsequent re-measurements, supplied by representatives of DFO Upper Kohistan (Annexure-7), show that out of the 18000 cft impugned timber, timber measuring 8000 cft is included in the Policy 2016-17.

4- **OPEN ENQUIRY NO.10/2013-FOREST AGAINST THE CONCERNED STAFF OF FOREST DEPARTMENT DISTRICT KOHISTAN AND CONTRACTORS**

On the express request of Divisional Forest Officer Upper Kohistan vide his letter No.915/GL dated 25/11/2019, the Assistant Director Anti-Corruption Establishment Mansehra Region submitted above titled enquiry report vide his letter No.328/ADC/Mans. Dated 26/11/2019 containing the verdict of the Anti-Corruption Establishment about their thorough investigation about the theft timber in question that 18000 cft timber has been recovered in response to the FIR lodged against the officials of forest department of Harban Forest Sub Division, showing the detail of timber that the timber recovered has been stacked at five places and affixed damage report number on the each Chakka/dump, which has been accordingly filed by the Anti-Corruption Establishment Mansehra Region. It was also mentioned in the said enquiry that in the presence of Technical Officer from forest department, the owners have given their statements on affidavit on judicial stamp papers that the timber in question was their sole ownership and has been recovered.

During enquiry proceedings, the SDFO Pattan, appointed as Technical Officer, by the DFO Upper Kohistan detail as per statement of the SDFO, with Anti-Corruption Department stated that on 9/8/2018, he along with Inspector Anti-Corruption Establishment went to Shatial Harban and verified the spot. It was verified on the spot that 5000 cft timber was transported vide TP No.121 dated 23/2/2017 to Havalian Central Timber Depot and the remaining Timber was lying in the jurisdiction of Sazin Police Station. Technical Inspection was to be carried out for measurement of timber but it could not be carried out because of lack of resources/means. According to physical verification the timber was dumped at five (5) different places in Shatial Harban depots and each of the chakka contained affixation of damage reports numbers with black, blue and red colors and timber verified approximately 12000 to 13000 cft.

The SDFO Harban Forest Sub Division i.e. (Mr.Sajjad Shah) was called on by the Enquiry Committee on 26/11/2019 during the course of enquiry proceedings who stated that he took



over the charge of Harban Forest Sub Division on 14/2/2018 from Mr. Farhad Sajid, SDFO and enquired about the theft timber in question who told me the relevant record i.e. stamp papers of the owners and confirmed that 12000 – 13000 cft timber is lying on different places on Karra Kurrum Highway (KKH) and under the possessions of different tribes (Komes) lying in timber depot Harban and no official record thereof has been maintained except the affidavits given by the owners which are available on official record. The said timber is the sole ownership of the owners and however the department is strictly vigilant over the movement to save the illegal trafficking of the said timber. Letter No.60/SDFO (H) dated 15/12/2014 addressed to DFO Upper Kohistan proved that the said timber is present on spot and in the custody of concerned owners.

The Prosecutor stated that felling of trees is carried out according to the prescription of regular Working Plans of the areas in collaboration of the Harvesting Cooperative Society but for the transportation of illicitly cut timber, the Government has given Amnesty Policy under which the illicit timber was being transported.

The Prosecution further stated that the record of legalized felling is maintained in Divisional Office as well as in sub Divisional Office and similarly the record of damage reports pertaining to illicit cutting is also maintained in both Sub Divisional and Divisional Offices. After exhibiting the above stated damage reports to the prosecutor, he confirmed that neither record of further action on the said damage reports is available regarding prosecution case or compound cases, in Divisional Office nor in any Court of Law, which have been preferred by the accused officials. The prosecution exposed that as per past practice the chalked out damage reports against the forest offenders regarding illicit cutting are submitted in the court of law but due to un-availability of offenders the cases are lingered on and lying pending in courts for long time.

Upon the query of enquiry committee on TP No.121 dated 23/2/2017, the prosecutor stated that the certified copy of the said TP is attached and furthermore authentication of timber transported under it can be asked from the SDFO concerned that as to whether the timber transported by this TP was the part of theft timber or otherwise which was got verified by the SDFO that the said timber was the part of recovered/retrieved timber.

Whereas, on the perusal of enquiry file it appeared that another enquiry initiated vide DFO Upper Kohistan No.1863-1880/GL, No.1887/GL dated 10/10/2013 for the same mis-hap has



also been got conducted by the then Divisional Forest Officer Agror Tanawal Forest Division and finalized accordingly and the accused officials were imposed with appropriate punishments i.e. major & minor penalties after due process of law. The instant Enquiry Committee has very pre-cautiously gone through the contents of that enquiry report along with other one already conducted by Mr. Shah Wazir Kha, M.D, FDC and Mr. Tariq Rashid, Secretary Benevolent Fund. From perusal of both the enquiry reports it is crystal clear that the grasp of prosecution over the situation was enfeebled which came forward in shape of bifurcation of enquiries in two parts. The point has also been referred in the enquiry finalized by the then DFO, Agror Tanawal Forest Division.

And whereas further scrutiny of the relevant record and the outcome of proceedings/discussions revealed that the Divisional Forest Officer Upper Kohistan Forest Division requested the District Police Officer Kohistan vide his letter No.101/GL dated 15/07/2013 before the occurrence of the mis-hap that a timber Policy is in operation from Northern Areas (Darel/Tangir and Chilas Forest Divisions of Gilgit Baltistan) through which timber is transported to down districts of the country. As there are stakes of timber in roadside depots at KKH Basha and Harban District Kohistan, therefore there is likelihood of admixture of this timber during transportation for which forest staff is already deployed to keep vigilance on illegal movement of timber but yet an active assistance is required from the police personals already deployed in the area of Harban & Sazin Police Stations, particularly on Darel and Tangir Bridges. The DFO Upper Kohistan further requested that the DPO may direct his subordinate formation to fully assist and cooperate with the forest staff so as to save the mal practices/pilferage of timber during the currency of policy i.e. 31/8/2013. It is estrange to note here that the police authorities right one day before the incidence addressed to DFO Upper Kohistan vide his No.252/PSO dated 23/8/2013 that special directions were issued to SDPO Shatial for assistance and help but no praiseworthy course of action is available on record.

During enquiry proceedings it was also proved by the correspondence of DFO Upper Kohistan vide his No.1707-10/GL dated 4/9/2013 that police did not play their due role in curbing the mis-hap of illegal transportation of timber as is evident that there were two check posts of police right at the both bridge-gates where almost 4-5 police personals remained deployed for duty as compared to one or two forest guards on their check post, but it was regretted by the DFO Upper Kohistan that no efforts by the police were seen in the matter.

CONCLUSION/OUTCOME

The Enquiry Officer/Committee, after due process of law/disciplinary proceedings in the light of Enquiry File/relevant record, Defense Reply of the accused officials, statements of the accused

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officials along with statement of prosecution, personal hearings & X-examinations in view of ground reality, has very cautiously reached to the conclusion that :-

- 1- The Timber in question was not actually under the custody of the department/ Kohistan Forest Division as is evident from the fore going proceedings and discussions and as contained in the comments furnished by the then Conservator of Forests Lower Hazara Forest Circle Abbottabad to the Chief Minister, Khyber Pakhtunkhwa wherein he stated that :-
 - i- "In such a situation taking cognizance by forest staff of such illicit cutting as per stipulated procedures restricted to chalking damage reports only. Neither anyone agreed to provide superdnama nor could the Department take the contraband timber to safe custody."
 - ii- "Although, the documentation and enlistment of illicit timber and applications to register FIR against theft give an impression as if the impugned timber was in the possession of Forest Department, but in the given circumstances, possession of timber stock did not qualify the same as impounded. Hence their possession was of de jure at best as they could not wield instruments of endorsement to qualify it as de facto."

Above exposition proved that the timber was there but lying in the custody of owners.

- 2- Law and Order situation in District Kohistan is also reported critical throughout above proceedings besides envisaged in the Minutes of meeting held under the Chairmanship of DCO Kohistan in his office on 26/6/2012. Local tribes are said to be forceful before the writ of Govt. as they often displayed willfully and as demonstrated during instant mis-hap while transportation of timber up-wards to northern area and down-wards to Kohistan. Upon which the different tribe's clans/individual owners had forceful possession.
- 3- It is also proved beyond any doubt that 5000 cft timber was transported to Havelian Central Depot out of the same 18000 cft timber in question and remaining 12000 - 13000 cft cft is lying in Harban Forest Sub Division under the traditional custody of owners and yet the forest department is keeping vigilance over it to protect the illegal movement of the said timber.
- 4- According to TP No.121 dated 23/2/2017, 4994.25 cft timber has been transported to Havelian Depot out of the timber under enquiry, and FDF thereof remitted to Govt.Treasury besides 20% share of the Govt. will be deducted on auction accordingly. And the remaining timber i.e 12000 to 13000 cft needs exact measurement for which the enquiry committee has no means and resources. The

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Divisional Forest Officer concerned may manage the exact measurement of the said timber and maintain record thereof accordingly.

5- So far the allegations against the accused officials are concerned is a matter of Law on one side, in view of prevailing Law and Order situation in Kohistan District and on the other hand question of fact proves that the mis-hap had occurred and the timber in question was transported to Northern area and recovered/retrieved back to Harban Forest Sub Division. It is proved that the accused officials have tried their best to block the illegal transportation but the angry mobbishes not only paralyzed the forest staff but the police staff also failed in blocking the way of miscreants/culprits.

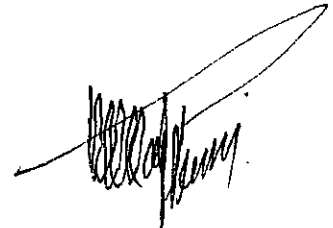
Charges of In-efficiency & Mis-conduct are partially proved against a few of above accused officials. However, the charge of Corruption does not stand established against none of the accused officials.

6- From the foregoing proceedings/discussions it is proved that one Mr. Abdul Manan left his place of duty by forwarding an application for 15 days leave before the happening of incident, through his SDFO but could not be found sanctioned leave by the Competent Authority which makes him liable to be proceeded against his irresponsible approach towards performance of official duty.

7- Above all episodes show, beyond any doubt, that Govt. Loass as alleged in the charge sheets/memo of allegations has been procured and all the forcibly stolen timber i.e. 18000 cft has been recovered/retrieved and transported back to its respective jurisdiction which is under vigilance of the department to the extent of illegal movement. however, the said timber is under custody of the owners.

RECOMMENDATIONS OF THE ENQUIRY COMMITTEE

We, 1- Alamgir Khan , SDFO, Working Plan in the capacity of Chairman Enquiry Committee & 2- Altaf Qureshi, SDFO Komila (Member EC) as vested in us under Rule- 11(7) of Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules, 2011 read with other clauses duly amended, hereby recommend that the following accused officials may be treated as under:-



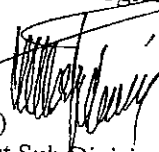
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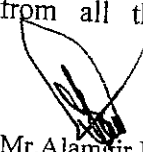
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- 1- From the foregoing facts/proceedings, the charges of In-efficiency and Mis-conduct are established against all the accused officials and taking an appropriate disciplinary action Two Annual Increments falling on 1/12/2019 and 1/12/2020 may be stopped of the following accused officials as mentioned against each:-
 - a) Muhammad Asghar, Forester the then SDFO Harban Forest Sub Division and Block Officer Shatial Block. (without accumulative effect).
 - b) Umar Khan, Forest Guard, the then Incharge Shatial checkpost and Gachurighah Beat (Without accumulative effect).
 - c) Abdul Manan, Forest Guard the then Incharge Block Officer of Harban and Bhasha Blocks (with accumulative effect).
 - d) Jamir Khan, Forest Guard, the then Incharge of Harban KKH depot (with accumulative effect).
 - e) Nasib Khan, the then Incharge Forest Guard of Sazin KKH depot (with accumulative effect).

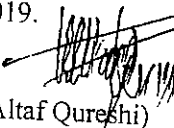
2- The intervening period of all the accused for which they remained out of service. May be treated as earned leave debit to their Leave account in view of length of total service and the rest may be treated as Ex-tra ordinary leave without pay.


3- The remaining timber i.e 12000 to 13000 cft needs exact measurement The Divisional Forest Officer concerned either may manage the exact measurement of the said timber or have an authentication/certification from SDFO concerned and maintain record thereof accordingly. In case of any deficiency sorted out in the aforesaid timber may be calculated in logical order and recovered from all the above officials proportionately.



 (Altaf Qureshi)
 SDFO Komila Forest Sub Division
 Upper Kohistan Forest Division
 Dassu
 (Member Enquiry Committee)


 (Mr. Alamgir Khan)
 Sub Divisional Forest Officer
 Working Plan
 (Chairman Enquiry Committee)

No. 10 / WP dated the 09 / 12 / 2019
 Copy along with Enquiry file from page No.1 to 361 (each page signed by the Enquiry Committee) forwarded to the Divisional Forest Officer Upper Kohistan Forest Division for favour of information and further necessary action with reference to his office, O.O.No.17 dated 4/11/2019.


 (Altaf Qureshi)
 SDFO Komila Forest Sub Division
 Upper Kohistan Forest Division
 Dassu
 (Member Enquiry Committee)


 (Mr. Alamgir Khan)
 Sub Divisional Forest Officer
 Working Plan
 (Chairman Enquiry Committee)

Received Enquiry file from p-1 to 361
 along with Enquiry report in slope of
 confidential Envelop  10/12

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M. Asghar

OFFICE ORDER NO. 03 /DATED DASSU THE 24 /17/2020, ISSUED BY
FAIZ-UR-REHMAN DIVISIONAL FOREST OFFICER UPPER KOHISTAN FOREST
DIVISION DASSU

Read With:

- 1- Office Order No.17 dated 4/11/2019 issued by DFO Upper Kohistan Forest Division Dassu along with its enclosures.
- 2- Memo of Allegation/Charge Sheet against Mr. Muhammad Asghar, Forester
- 3- Memo of Allegation/Charge Sheet against Mr. Abdul Mannan, Forest Guard.
- 4- Memo of Allegation/Charge Sheet against Mr. Umar Khan,
- 5- Memo of Allegation/Charge Sheet against Mr. Naseeb Khan, Forest Guard
- 6- Memo of Allegation/Charge Sheet against Mr. Jamir Khan, Forest Guard.
- 7- Written Statements/defense replies along with enclosures of above 5 accused.
- 8- Govt. of Khyber Pakhtunkhwa Environment Department Notification No.SO (Estt:)/Env/1-8/Tariq DFO/2k14 dated 2/6/2015.
- 9- Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad Judgment dated 17/12/2018.
- 10- S.O (Establishment) Govt. of Khyber Pakhtunkhwa, Forestry, Environment & Wildlife Department letter No. SO (Estt:)FE & WD/1-50(69/2019 dated 24/10/2019 regarding restoration in Service & de novo enquiry of each accused official.
- 11-August Supreme Court of Pakistan Decision/Order dated 25/7/2019.
- 12-Enquiry Report conducted by M/S Shah Wazir Khan the then Managing Director Forest Development Corporation and Tariq Rashid, Secretary Benevolent Fund, Peshawar dated 8/9/2016.
- 13-Enquiry Report conducted by Mr. Farhad Ali, the then Divisional Forest Officer Agror Tanawal Forest Division Mansehra assigned to him vide DFO Upper Kohistan Forest Division letter No. 1887/GL dated 10/10/2013.
- 14-S.O (Establishment) Govt. of Khyber Pakhtunkhwa, Forestry, Environment & Wildlife Department letter NO.SO (Estt:)FE & WD/1-50(69/Appeals/2016 dated Peshawar 27/2/2017 addressed to Mr. Azhar Ali Khan, Conservator of Forests, Lower Hazara Forest Circle, Abbottabad.
- 15-And comments by the Conservator of Forests, Lower Hazara Forest Circle thereon above Sr.No.11 dated even duly signed by the Conservator of Forests, Lower Hazara Forest Circle (Chairman) & Mr. Shaukat Fiaz, DFO. Patrol Squad (Member).
- 16-Enquiry Report conducted by Anti-Corruption Establishment Mansehra Region duly certified vide letter No.328/ADC/Mans, dated Mansehra 26/11/2019 addressed to DFO Upper Kohistan in response to his letter No.915/GL dated 25/11/2019.
- 17-Letter No.8574/GE dated Mansehra 22/6/2018 addressed to Chief Conservator of Forests, Northern Forest Region-II by Conservator of Forests, Upper Hazara Forest Circle wherein Mr. Muhammad Shoab, the then DFO Lower Kohistan was withdrawn and Mr. Muhammad Aqeel DFO Lower Kohistan was appointed as Technical Officer to assist the Open Enquiry Committee No.6/2012 and 10/2013.
- 18-Statement of Mr. Muhammad Anwar, SDFO, Pattan, Technical Officer with Anti-Corruption Establishment Mansehra Region deputed vide DFO Lower Kohistan Pattan as per statement of SDFO, before the Enquiry Officer/Committee.
- 19-Letter No.60/SDFO(H) dated 15/12/2014 addressed to DFO Upper Kohistan.
- 20-Statement of present SDFO Harban (Mr. Sajjad Shah) dated 26/11/2019 before the Enquiry Officer/Committee.
- 21-Question & Answers & Statement of Prosecutor/Departmental Representative i.e. Mr. Noor Rehman, Office Assistant/Head Clerk dated 27/11/2019 before the Enquiry Committee.
- 22-Transport Pass No.121 dated Dassu 23/2/2017 issued to Mr. Muhammad Aslam Khan S/O Ayun Khan of Basha Tehsil Dassu through Managing Director Took Forest Harvesting Cooperative Society Ltd.
- 23- Application For FIR lodged by the accused in Police Station Sazin.
- 24-Damage Reports No.32/50 dated 25/8/2013, 72/45 dated 25/8/2013, No.15/61 dated 25/8/2013 and No.73/Harban dated 27/8/2013.
- 25-Affidavit of owners on Stamp Papers (3 Nos.) regarding recovery of Timber in question.

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- 26-Office order No.4 dated 26/8/2013 issued by the DFO Upper Kohistan Forest Division Dassu for blocking the transportation of illegal timber to Northern areas.
- 27-DFO Upper Kohistan letter No.101/GL dated 15/7/2013 addressed to District Police Officer Kohistan-Dassu.
- 28-Letter No.252/PSO dated 23/8/2013 issued by DPO Kohistan.
- 29-Letter No.1707-10/GL dated 4/9/2013 issued by DFO Upper Kohistan to DPO Kohistan.
- 30-Minutes of the meeting held under the Chairmanship of District Coordination Officer Kohistan in his office on 26/6/2012 regarding critical Law and Order situation.

BRIEF HISTORY

M/S Muhammad Asghar Forester, Abdul Manan, Umer Khan, Naseeb Khan and Jamir Khan Forest Guards (hereinafter referred as accused) of Upper Kohistan Forest Division Dassu were alleged that being In Charge SDFO, Block Officer, Beat Incharge of their respective Forest Sub Division, Blocks and Beats and depots (detail as per memo of allegations of each individual) committed the following irregularities and resultantly, 18000 Cft illicit timber was pilfered/shifted and transported to Northern areas and all the aforementioned accuseds were accordingly charge sheeted and served with memo of allegations against the charges of In-efficiency, Mis-conduct & Corruption under Rule-3 of Khyber Pakhtunkhwa Govt. Servants (E & D) Rules, 2011. Detail as under:-

- 1- Being Incharge SDFO, Block Officer, Beat Guard and Depot Incharge of Harban, Bhasha and Sazin KKH Roadside depots failed to protect timber lying in their respective jurisdiction and the timber was transported to Northern areas under the Northern Area Amnesty Policy, 2013.
- 2- The accused failed in adopting preventive measures against admixture of timber of Kohistan origin in timber of Northern Area and hence they severally and jointly responsible for recovery of losses sustained to Govt./Public exchequer and all mis-hap occurred due to their involvement with timber mafia and thus 18000 cft timber was illegally transported to Northern area.

Consequent upon the judgment of Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad dated 17/12/2018 wherein all the accused have been re-instated in service after setting aside the earlier penalties imposed upon them. August Supreme Court of Pakistan did not entertain the CPLA No.168-P to 173-P of 2019 of the Provincial Government of Khyber Pakhtunkhwa vide order dated 25/7/2019 as the Provincial Govt. proceeded against the verdict of Khyber Pakhtunkhwa Service Tribunal as referred above. Accordingly, the Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department Notification No. S.O (Estt.)FE&WD/1-50(69)/2019/PF/7407-11 dated 24/10/2019, No. S.O (Estt.)FE&WD/1-50(69)/2019/PF/7412-16, No. S.O (Estt.)FE&WD/1-50(69)/2019/PF/7417-21, No. S.O (Estt.)FE&WD/1-50(69)/2019/PF/7459-63 & No. S.O (Estt.)FE&WD/1-50(69)/2019/PF/744-48 of even date, M/S Mohammad Asghar Forester, Abdul Manan, Umer Khan, Naseeb Khan and


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Jamir Khan, Forest Guards were re-instated in service with immediate effect and ordered to conduct de-novo inquiry to meet the norms of justice and to settle the issue of back benefits of the service of the accused or otherwise. Therefore, the Divisional Forest Officer, Upper Kohistan Forest Division, Dasso being competent authority, constituted Inquiry Committee comprising of M/S Alamgir Khan SDFO Working Plan Unit-V Mansehra & Mr. Altaf Qureshi, SDFO Jalkot Forest Sub Division vide office order No.17 dated 04/11/2019 & No.18 dated 05/11/2019 to conduct de-novo enquiry against all the above accused officials.

The instant enquiry is the outcome of prolong litigation on the subject matter both departmental enquiries/disciplinary proceedings and Civil Litigation in the proper Court of Law as depicted in Read With above. Hence, needs thorough investigation/examination and on the spot verification, which may lead to the rational and logical end.

PROCEEDINGS/DISCUSSIONS:

Consequently, the Enquiry Committee/Officer called upon the accused officials to submit their defense replies/Written Statements alongwith all relevant records/supporting material in view of the Memo of Allegations and Charge Sheets served upon them and delivered to them vide Divisional Forest Officer Upper Kohistan Forest Division Office Order No.17 dated 4/11/2019 vide Enquiry Officer/Committee letter No.18/WP dated 6/11/19 and No.01-6/Camp dated 14/11/2019. The accused officials submitted their defense replies/written statements alongwith supporting documents wherein they rebutted the charges on the following Grounds:-


- 1- **Accused Mr. Muhammad Asghar, Forester, the then In Charge SDFO Harban Forest Sub Division stated that:-**
 - a) Harban Forest Sub Division is situated at a far flung area of Upper Kohistan Forest Division where Law and Order situation is highly critical and Writ of the Government is just nominal there.
 - b) That he on 13/7/2013, informed the Divisional Forest Officer, Upper Kohistan Forest Division in letter and spirit about the illegal movements of the timber in question upon which the DFO wrote a letter to District Police Officer Kohistan for immediate action but right after one month and eight days the DPO directed the DSP Shatial Circle for assistance and help of the Department vide his letter No.252/PSO dated 23/8/2013 whereas the mis-hap happened on 24/8/2013.
 - c) The accused stated that in between the night of 24th and 25th of August, 2013 some of the outlaws/miscreants have forcibly taken the said timber across the river and inspite of hectic efforts he could not stop the culprits and intensively tried to contact the DFO but failed due to lack of the communication means and got suspended the illegal transportation of timber henceforth. However, the forest field staff of Northern areas across the river apprehended the timber and took into their custody under proper Supardhama and the Conservator of Forests, Gilgit Circle informed the Conservator of Forests Upper Hazara Forest Circle vide

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his letter No.CF-3(45)2013, dated August, 2013 that fourteen (14) Tractors/Jeeps loaded with sleepers have illegally transported the timber from Kohistan to Darel which have been taken into custody by the staff and lying in their jurisdiction under Supardnama and the DFO concerned may be directed to shift the said timber to their own jurisdiction which was accordingly endorsed to the DFO Upper Kohistan vide CF Upper Hazara Forest Circle No.1242/GL dated 2/9/2013. He further submitted that he had given an application to the local Police Station for lodging of FIR against the culprits but the police did not lodge FIR against the real culprits but contrarily lodged the said FIR against the staff of Harban Forest Sub Division to shift the responsibility from their shoulders and the said FIR was later on referred to the Anti-Corruption Establishment for enquiry. In response the Anti-Corruption Establishment conducted detailed enquiry and filed it accordingly. Hence the allegations leveled against him are baseless, the accused further stated.

- d) On humble submission of the accused, the locals of the area helped him and the timber was shifted to safe-side from the road side as a safety measures. To this effect, the accused stated that until his full satisfaction the transportation was suspended and all the check posts were directed to be vigilant upon the illegal transportation of timber under Amnesty Policy from Kohistan to Northern area.
- e) The accused further stated that after his transfer, the SDFO Harban informed the DFO in writing that the timber stolen from Harban, Sazin and Bhasha has been recovered/retrieved which is supported by the Supardnama of the owners. Detail breakup of the timber recovered/retrieved depicted as per his defense reply.
- f) He further added that on transfer of the Forest Guards, the timber recovered from Sazin i.e. 7000 cft was handed over to Mr. Muhammad Aslam Forest Guard by Nasib Khan, Forest Guard on 14/4/2015 and similarly on 16/4/2015, Mr. Jamir Khan, Forest Guard handed over the 3000 cft timber to Imran Forest Guard and afterwards from the timber of Bhasha Depot 5000 cft timber was transported vide TP No.121 dated 23/2/2017 and the rest of the timber is lying in Harban Depot. Besides this, Muhammad Anwar, SDFO and Farhad Sajid, the then SDFO have also certified in their reports that all the timber has been recovered/retrieved, and also favouring the recovery, the owners have given affidavits. Hence, in the light of above facts and figures, the allegations leveled against him are baseless.


II Accused Mr. Abdul Manan, Forest Guard stated that during the occurrence of instant mis-hap, he proceeded on 15 days leave by the prior permission of SDFO Harban. However, during leave he also requested/suggested the SDFO Harban to acquire the help of local police, which the SDFO agree and wrote letter to DFO Upper Kohistan for seeking the help of local police. He stated that some of the miscreants forcibly transported the timber to Northern Areas which was later on

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recovered/retrieved back to Upper Kohistan Forest Division. He further stated that the Anti-Corruption Establishment also conducted the enquiry and concluded that the theft timber has been recovered. Furthermore, the owners of the timber have also testified said recovery by giving affidavits which are available on record.

III **Accused Mr. Umar Khan, Forest Guard** defended his allegations stating that the timber in question was neither on the charge of Upper Kohistan Forest Division nor under his charge. No proper record has been maintained i.e. Form-5,6 and Monthly Progress Report etc. Actually, the illicit timber was the outcome of local retaliation against the prolonged ban on commercial felling by the Provincial Govt and the locals had illicitly cut the timber and accumulated under their personal custody and forcibly managed to transport it to Northern Areas, inspite of hectic efforts adopted by him to protect the interest of Government.

He further stated that all that happened forcibly and due to critical condition of law and order and single Forest Guard could not overcome an aggravated mob of locals who in an irritant manner transported the same but the Forest Staff of Northern area apprehended the illegal timber and taken it to their safe custody and finally transported back to Kohistan Forest Division all the 18000 cft timber out of which 5000 cft transported under TP No. 121 dated 23/2/2017. He stated that in such a critical state of affairs he adopted each and every protective/preventive measure in saving the cause of Government. SDFO Muhammad Anwar and Mr. Farhad Sajid, SDFO have also confirmed in their reports that the transported timber had been recovered and the Conservator of Forests, Mr. Azhar Ali, has also reported that 5000 cft timber has been transported out of 18000 cft timber under enquiry. Hence, in the light of above facts, he may be exempted from the allegations as leveled against him.

IV **Accused Mr. Jamir Khan, Forest Guard** mentioned the same causes in his defense as adopted above by Mr. Umar Khan in rebutting the charges and in the beginning of his reply he straight away denied that no timber was transported from his charge but in complimentary portion of his reply he admitted that 3000 cft timber stolen from his depot had been recovered/retrieved and handed over to Mr. Imran, Forest Guard as per charge report attached with his reply.

V **Accused Mr. Nasib Khan, Forest Guard** replied in greater resemblance with Umar Khan and Jamir Khan, Forest Guard having the plea that no timber was transported from his charge but in the last portion of his reply he admitted that upon his transfer 7000 cft timber was handed over to Mr. Muhammad Aslam, Forest Guard as per charge report attached with his reply.

From the perusal of foregoing replies of the accused in the light of relevant preliminary enquiries and proceedings conducted on the illegal transportation of 18000 cft timber from Upper Kohistan Forest Division to Northern area, following facts/issues cannot be denied:-

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1- At the very threshold a detailed enquiry was conducted by a Senior Officer (Mr. Shah Wazir Khan, the then Managing Director FDC) in joint venture of other member, Mr. Tariq Rashid, Secretary Benevolent Fund Khyber Pakhtunkhwa (Chairman of the enquiry committee) during the year 2014, who after a thorough probe/investigation compiled a report and submitted to quarter concerned. The enquiry committee imposed major penalties upon the above accuseds besides cash recovery of loss sustained to the Govt. exchequer. Accordingly, the punishments recommended by the enquiry committee were implemented upon the accused officials against which they knocked the door of Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad and succeeded in setting aside the penalties imposed upon them.

2- Whereas, the impugned orders dated 30/6/16, 2/4/2015 and 12/3/2015 issued for enforcement of penalties of the above committee was challenged in the Khyber Pakhtunkhwa Service Tribunal by all the accused officials and after trial, the impugned orders were set aside on the grounds as mentioned in the detailed judgment of worthy Service Tribunal, Khyber Pakhtunkhwa dated 17/12/2018 and all the accused were re-instated in service with the direction to respondent department to conduct de novo enquiry strictly in accordance with the law and rules within a period of 90 days from the date of receipt of Judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry.

3- During February, 2017 The Appellate Authority/Chief Minister, Khyber Pakhtunkhwa prior to passing any orders on the Review Petitions of officials concerned ordered *"please assign the task to a senior officer preferably Conservator of Forests Lower Hazara to furnish his report and clarify that either the timber logs were in possession of Government or community and had the Forest Department officials reported missing of logs to Police or otherwise. It should also be clarified that either this timber woods falling in illicit policy or not"*.

Complying with the orders of the Chief Minister, Khyber Pakhtunkhwa/Appellate Authority, the Conservator of Forests, submitted his comments as under:-

A- WHETHER THE TIMBER WAS IN POSSESSION OF DEPARTMENT

Perusal of record i.e. initial damage reports, minutes of the meeting with District Administration and correspondence made by DFO Upper Kohistan with different quarters reveal that:

- i- The timber in question was part of the outcome of anarchic illicit forest cutting in a terrain, which is impervious to the writ of state and people have an interface convenience with Government as evident from a number of amnesty policies from 1998 to 2009 (Annex:A) promulgated for disposal of illicitly cut timber. In this area the instruments of enforcing governance are more of notional than

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operational significance. Thus writ of the Forest Department there, as well as, its possession of the illicit wood need to be profiled in such an extremely circumscribing context.

- ii- In such a situation taking cognizance by forest staff of such illicit cutting as per stipulated procedures restricted to chalking damage reports only. Neither anyone agreed to provide Supádnama nor could the Department take the contraband timber to safe custody.
- iii- Although, the documentation and enlistment of illicit timber and applications to register FIR against theft give an impression as if the impugned timber was in the possession of Forest Department, but in the given circumstances, possession of timber stock did not qualify the same as impounded. Hence their possession was of de jure at best as they could not wield instruments of endorsement to qualify it as de facto.

B- WHETHER FIR HAVE BEEN LODGED WITH THE LOCAL POLICE.

The record reveal that the petitioners preferred application on 25/8/2013 in local Police Station Sazin Harban Forest Sub Division for lodging of FIR (Annexure-4) against the unknown offenders for forceful theft of timber from Kohistan for admixing in GB's amnesty policy 2013. But instead the police registered formal FIR:07 dated 28/2013 against the officials of forest department for their alleged involvement in said theft (Annex-6). Nevertheless, it is clear that the staff endeavored to lodge FIR against unknown offenders for the said larceny.

C- WHETHER THE TIMBER WAS INCLUDED IN ILLICIT POLICY.

As mentioned in the Damage Report No.73/45, 15/H, 72/45 and 32/50 chalked out against incidence of reported forceful theft timber occurred on 25/8/2013 (Annex-6) the impugned timber belongs to Damage Reports Nos.94/42, 13/55, 98/42, 60/45 and 31/50 as per Annex-1, chalked out during 2007. A portion of this timber was already disposed off under Amnesty Policy 2009. The accounts of initially reported timber, disposal in Amnesty Policy, 2009 and that stolen on 24,25/8/2013 vis-à-vis subsequent re-measurements, supplied by representatives of DFO Upper Kohistan (Annexure-7), show that out of the 18000 cft impugned timber, timber measuring 8000 cft is included in the Policy 2016-17.

4. OPEN ENQUIRY NO.10/2013-FOREST (CONDUCTED BY ANTI-CORRUPTION ESTABLISHMENT) AGAINST THE CONCERNED STAFF OF FOREST DEPARTMENT DISTRICT KOHISTAN AND CONTRACTORS.

On the express request of Divisional Forest Officer Upper Kohistan vide his letter No.915/GL dated 25/11/2019, the Assistant Director Anti-Corruption Establishment Mansehra Region submitted above titled enquiry report vide his letter No.328/ADC/Mans. Dated 26/11/2019 containing the verdict of the Anti-Corruption Establishment about their thorough investigation about the theft of timber in question that 18000 cft timber has been recovered in response to the FIR lodged against the

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officials of Forest Department of Harban Forest Sub Division, showing the detail of timber that the timber recovered has been stacked at five places and affixed damage report number on each Chakka/dump, which has been accordingly filed by the Anti-Corruption Establishment Mansehra Region. It was also mentioned in the said enquiry that in the presence of Technical Officer from Forest Department, the owners have given their statements on affidavit on judicial stamp papers that the timber in question was their sole ownership and has been recovered.

During enquiry proceedings, the SDFO Pattan, appointed as Technical Officer, by the DFO Upper Kohistan detail as per statement of the SDFO, with Anti-Corruption Department stated that on 9/8/2018, he along with Inspector Anti-Corruption Establishment went to Shatial Harban and verified the spot. It was verified on the spot that 5000 cft timber was transported vide TP No.121 dated 23/2/2017 to Havalian Sale Depot and the remaining Timber was lying in the jurisdiction of Sazin Police Station. Technical Inspection was to be carried out for measurement of timber but it could not be carried out because of lack of resources/means. According to physical verification, the timber was dumped at five (5) different places in Shatial Harban depots and each of the chakka contained affixation of damage reports numbers with black, blue and red colors and timber verified approximately 12000 to 13000 cft.

The SDFO Harban Forest Sub Division i.e. (Mr. Sajjad Shah) was called on by the Enquiry Committee on 26/11/2019 during the course of enquiry proceedings who stated that he took over the charge of Harban Forest Sub Division on 14/2/2018 from Mr. Farhad Sajid, SDFO and enquired about the theft timber in question who told me the relevant record i.e. stamp papers of the owners and confirmed that 12000 - 13000 cft timber is lying on different places on Karra Kurrum Highway (KKH) and under the possessions of different tribes (Komes) lying in timber depot Harban and no official record thereof has been maintained except the affidavits given by the owners which are available on official record. The said timber is the sole ownership of the owners and however the department is strictly vigilant over the movement to save the illegal trafficking of the said timber. Letter No.60/SDFO (H) dated 15/12/2014 addressed to DFO Upper Kohistan proved that the said timber is present on spot and in the custody of concerned owners.

The Prosecutor stated that felling of trees is carried out according to the prescription of regular Working Plans of the areas in collaboration of the Harvesting Cooperative Society but for the transportation of illicitly cut timber, the Government has given Amnesty Policy under which the illicit timber was being transported.

The Prosecution further stated that the record of legalized felling is maintained in Divisional Office as well as in Sub Divisional Offices and similarly the record of damage reports pertaining to illicit cutting is also maintained in both Sub Divisional and Divisional Offices. After exhibiting the above stated damage reports to the prosecutor, he confirmed that neither record of further action on the said damage reports is available regarding prosecution case or compound cases, in Divisional Office nor in any Court of Law, which have been preferred

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by the accused officials. The prosecution exposed that as per past practice the chalked out damage reports against the forest offenders regarding illicit cutting are submitted in the court of law but due to un-availability of offenders the cases are lingered on and lying pending in courts for long time.

Upon the query of enquiry committee on TP No.121 dated 23/2/2017, the prosecutor stated that the certified copy of the said TP is attached and furthermore authentication of timber transported under it can be asked from the SDFO concerned that as to whether the timber transported by this TP was the part of theft timber or otherwise which was got verified by the SDFO that the said timber was the part of recovered/retrieved timber.

Whereas, on the perusal of enquiry file it appeared that another enquiry initiated vide DFO Upper Kohistan No.1863-1880/GL, No.1887/GL dated 10/10/2013 for the same mis-hap has also been got conducted by the then Divisional Forest Officer Agror Tanawal Forest Division and finalized accordingly and the accused officials were imposed with appropriate punishments i.e. major & minor penalties after due process of law. The de-novo Enquiry Committee has very pre-cautiously gone through the contents of that enquiry report along with other one already conducted by Mr. Shah Wazir Khan, M.D, FDC and Mr. Tariq Rashid, Secretary Benevolent Fund. From perusal of both the enquiry reports it is crystal clear that the grasp of prosecution over the situation was enfeebled which came forward in shape of bifurcation of enquiries in two parts. The point has also been referred in the enquiry finalized by the then DFO, Agror Tanawal Forest Division.

And whereas further scrutiny of the relevant record and the outcome of proceedings/discussions revealed that the Divisional Forest Officer Upper Kohistan Forest Division requested the District Police Officer Kohistan vide his letter No.101/GL dated 15/07/2013 before the occurrence of the mis-hap that a timber Policy is in operation from Northern Areas (Darel/Tangir and Chilas Forest Divisions of Gilgit Baltistan) through which timber is transported to down districts of the country. As there are stacks of timber in roadside depots at KKH Basha and Harban District Kohistan, therefore there is likelihood of admixture of this timber during transportation for which forest staff is already deployed to keep vigilance on illegal movement of timber but yet an active assistance is required from the police personals already deployed in the area of Harban & Sazin Police Stations, particularly on Darel and Tangir Bridges. The DFO Upper Kohistan further requested that the DPO may direct his subordinate formation to fully assist and cooperate with the forest staff so as to save the mal practices/pilferage of timber during the currency of policy i.e. 31/8/2013. It is strange to note here that the police authorities right one day before the incidence addressed to DFO Upper Kohistan vide his No.252/PSO dated 23/8/2013 that special directions were issued to SDPO Shatial for assistance and help but no praiseworthy course of action is available on record.

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During enquiry proceedings it was also proved by the correspondence of DFO Upper Kohistan vide his No.1707-10/GL dated 4/9/2013 that police did not play their due role in curbing the mis-hap of illegal transportation of timber as is evident that there were two check

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posts of police right at the both bridge-gates where almost 4-5 police personals remained deployed for duty as compared to one or two Forest Guards on their check post, but it was regretted by the DFO Upper Kohistan that no efforts by the police were seen in the matter.

FINDINGS/RECOMMENDATION

The Enquiry Officer/Committee, after due process of law/disciplinary proceedings in the light of Enquiry File/relevant record, defense replies of the accused officials, statements of the accused officials along with statement of prosecution, personal hearings & X-examinations in view of ground reality, has very cautiously reached to the conclusion that :-

- 1- The Timber in question was not actually under the custody of the department/ Kohistan Forest Division as is evident from the fore going proceedings and discussions and as contained in the comments furnished by the then Conservator of Forests Lower Hazara Forest Circle Abbottabad to the Chief Minister, Khyber Pakhtunkhwa wherein he stated that :-
 - i. "In such a situation taking cognizance by forest staff of such illicit cutting as per stipulated procedures restricted to chalking damage reports only. Neither anyone agreed to provide Suparnama nor could the Department take the contraband timber to safe custody."
 - ii. "Although, the documentation and enlistment of illicit timber and applications to register FIR against theft give an impression as if the impugned timber was in the possession of Forest Department, but in the given circumstances, possession of timber stock did not qualify the same as impounded. Hence their possession was of de jure at best as they could not wield instruments of endorsement to qualify it as de facto."Above exposition proved that the timber was there but lying in the custody of owners.
- 2- Law and Order situation in District Kohistan is also reported critical throughout above proceedings besides envisaged in the Minutes of meeting held under the Chairmanship of DCO Kohistan in his office on 26/6/2012. Local tribes are said to be forceful before the writ of Govt. as they often displayed willfully and as demonstrated during instant mis-hap while transportation of timber up-wards to northern area and down-wards to Kohistan. Upon which the different tribe's clans/individual owners had forceful possession.
- 3- It is also proved beyond any doubt that 5000 cft timber was transported to Havellian Central Depot out of the same 18000 cft timber in question and remaining 12000 - 13000 cft. is lying in Harban Forest Sub Division under the traditional custody of owners and yet the forest department is keeping vigilance over it to protect the illegal movement of the said timber.
- 4- According to TP.No.121 dated 23/2/2017, 4994.25 cft timber has been transported to Havellian Depot out of the timber under enquiry, and FDF thereof remitted to Govt. Treasury besides 20% share of the Govt. will be deducted on auction

ATTESTED

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A/D

accordingly. And the remaining timber i.e. 12000 to 13000 cft needs exact measurement for which the enquiry committee has no means and resources. The Divisional Forest Officer concerned may manage the exact measurement of the said timber and maintain record thereof accordingly.

- 5- So far the allegations against the accused officials are concerned is a matter of Law on one side, in view of prevailing Law and Order situation in Kohistan District and on the other hand question of fact proves that the mis-hap had occurred and the timber in question was transported to Northern area and recovered/retrieved back to Harban Forest Sub Division. It is proved that the accused officials have tried their best to block the illegal transportation but the angry mobbishes not only paralyzed the forest staff but the police staff also failed in blocking the way of miscreants/culprits.

Charges of In-efficiency & Mis-conduct are partially proved against a few of above accused officials. However, the charge of Corruption does not stand established against none of the accused officials.

- 6- From the foregoing proceedings/discussions it is proved that one Mr. Abdul Manan left his place of duty by forwarding an application for 15 days leave before the happening of incident, through his SDFO but could not be found sanctioned leave by the Competent Authority which makes him liable to be proceeded against his irresponsible approach towards performance of official duty.

- 7- Above all episodes show, beyond any doubt, that Govt. Loass as alleged in the charge sheets/memo of allegations has been procured and all the forcibly stolen timber i.e. 18000 cft has been recovered/retrieved and transported back to its respective jurisdiction which is under vigilance of the department to the extent of illegal movement, however, the said timber is under custody of the owners.

CONCLUSION

On receipt of Enquiry Report and keeping in view the recommendation contained therein, show cause notices were served upon the accused officials, in response to which they furnished their replies and accordingly heard in persons. The concerned officials failed to prove themselves innocent, therefore the charge of In-efficiency found established.

ORDER

As per conclusion, the charges of In-efficiency stand established against all the accused officials. Therefore, I, Faiz-ur-Rehman, Divisional Forest Officer Upper Kohistan Forest Division Dassu in the capacity of Authority after considering de-novo inquiry report & other related documents of the case and in exercise of the powers vested in me under Rules-14(2)(4) read with Rules 4(1)(a)(ii) of the Khyber Pakhtunkhwa, Government

[Signature]
ATTESTED

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 88

Servant (Efficiency & Discipline) Rules, 2011 do hereby ordered to impose penalties upon the accused officials as noted against each:

S.#	Name and Rank	Extent of penalty
1	Mr. Mohammad Asghar Forester	Stoppage of two Annual Increments of each falling due on 01/12/2020 and 01/12/2021 for a period of two years.
2	Mr. Abdul Manan Forest Guard	
3	Mr. Umer Khan Forest Guard	
4	Mr. Naseeb Khan Forest Guard	
5	Mr. Jamer Khan Forest Guard	

However, the intervening period of all the accused for which they remained out of service as per recommendation of Enquiry Committee and in accordance with Civil Servant Revised Leave Rules, 1981 is hereby treated as under:-

S.#	Name of Officials	Leave on half pay	Extra ordinary Leave without pay.
1.	Mr. Mohammad Asghar Forester.	01/7/2016 to 23/10/2019 = 1240 days.	---
2	Mr. Abdul Manan Forest Guard.	01/7/2016 to 23/10/2019 = 1240 days.	---
3.	Mr. Umer Khan Forest Guard.	01/7/2016 to 23/10/2019 = 1240 days.	---
4.	Mr. Naseeb Khan Forest Guard.	12/3/2015 to 30/11/2016 = 629 days	01/12/2016 to 23/10/2019 = 1087 days.
5.	Mr. Jamer Khan Forest Guard.	12/3/2015 to 30/11/2016 = 629 days	01/12/2016 to 23/10/2019 = 1087 days.

Sd/-(Faiz-ur-Rehman)
 Divisional Forest Officer
 Upper Kohistan Forest Division
 Dassu

Copy forwarded to:

1. The Conservator of Forests, Upper Hazara Forest Circle Mansehra for favour of information.
2. Mr. Alamgir Khan Sub-Divisional Forest Working Plan Mansehra for information.
3. Divisional Accountant for further necessary action.
- ✓ 4. Mr. Mohammad Asghar Forester C/O DFO Lower Kohistan Forest Division Pattan for information and necessary action.
5. Mr. Abdul Manan Forest Guard for information and necessary action.
6. Mr. Umer Khan Forest Guard for information and necessary action.
7. Mr. Naseeb Khan Forest Guard for information and necessary action.
8. Mr. Jameer Khan Forest Guard for information and necessary action.

Divisional Forest Officer
 Upper Kohistan Forest Division
 Dassu

ATTESTED

بخدمت جناب کنزویٹر صاحب اپر ہزارہ فارسٹ سرکل مانسہرہ

عنوان: اپیل برائے درستی سیناریٹی لسٹ ریکارڈ فارسٹ گارڈ سرکل مانسہرہ اور پروموشن از فارسٹ گارڈ تافارسٹ

ذات عالیٰ

گزارش ہے کہ اپیل کنندہ اپر کوہستان فارسٹ ڈویژن میں نخسیت فارسٹ گارڈ ڈیوٹی سرانجام دے رہا تھا کہ ایک مقدمہ میں ملوث کر کے اسے ملازمت سے سال 2016ء میں سبکدوش کر دیا گیا۔

اپیل کنندہ سروس ٹریبونل سے باعزت بری ہو کر مورخہ 24-10-2019 کو سروس پر بحال ہو گیا۔ نیز یہ کہ دوبارہ محکمانہ انکوائری بھی ہو کر انکوائری کا فیصلہ مورخہ 24-07-2020 کو بحوالہ آفس آرڈر نمبر 3 مجریہ مورخہ 24-07-2020 ہو گیا۔ سیناریٹی اور پروموشن کے حق کیلئے سال 2014ء کی صرف ایک سیناریٹی لسٹ ملاحظہ فرمائیں۔

1- یہ کہ جس میں اپیل کنندہ کو اس کے حق سے دانستہ طور پر محروم رکھا گیا۔ اس سیناریٹی لسٹ میں فدوی سیریل نمبر 10 پروا ق ہے۔
2- جبکہ فدوی سے جونیئر فارسٹ گارڈ سیریل نمبر 12 سجاد حسین شاہ اور بہت ہی جونیئر فارسٹ گارڈ جو کہ سیریل نمبر 16 پرمسٹر حبیب الرحمن کو ترقی دی گئی۔

3- فدوی محکمہ میں سال 31-03-1987 کو بھرتی ہوا جبکہ مجھ سے جونیئر فارسٹ گارڈ سیریل نمبر 12 پروا ق سجاد حسین شاہ 08-10-1987 کو بھرتی ہوا۔ اور سیریل نمبر 16 پروا ق جونیئر فارسٹ گارڈ مسمی حبیب الرحمن 23-02-2008 کو بھرتی ہوا جو کہ مجھ سے تقریباً 12 سال اور 7 ماہ جونیئر فارسٹ گارڈ تھا۔ نہ جانے کس طرح سب کے حقوق کو پامال کرتے ہوئے اسے Promote کیا گیا۔

4- نیز یہ کہ فدوی کے ملازمت سے باہر رہنے کے دوران عدالت کے فیصلہ تک انتظار کئے بغیر ہی جونیئر فارسٹ گارڈ کو ترقی دے کر مجھے میرے حقوق سے محروم رکھا گیا جو کہ میرے ساتھ انتہائی ظلم، زیادتی اور نا انصافی ہوئی ہے۔
حالانکہ اس سے قبل سالہا سال گزر جاتے ہیں پروموشن کیلئے سیٹ بھی خالی ہوتی ہے کوئی پرسن حال نہیں ہوتا۔ لیکن یہاں عدالتی فیصلہ کا بھی انتظار کئے بغیر مجھے دانستہ طور پر محروم رکھا گیا۔
لہذا مہربانی فرما کر میرے ساتھ انصاف فرمایا جائے اور مجھے میرا حق دیا جائے۔

المرقوم: 10-08-2020

ATTESTED

محمد عمر خان فارسٹ گارڈ

VAKALAT NAMA

NO. _____/2020

IN THE COURT OF KP Service Tribunal Peshawar

Umair Khan

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Fouad Dept

(Respondent)
(Defendant)

I/We, _____

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2020

Y Khan
AK

(CLIENT)

ACCEPTED

Taimur Ali Khan

TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

APPEAL NO. 15877/2020

Umar Khan Forest Guard (BPS-08)
Upper Kohistan Forest Division, Dassu

(APPELLANT)

VERSUS

The Government of Khyber Pakhtunkhwa through
Secretary Forests, Environment & Wildlife Department
Peshawar

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

Conservator of Forests,
Upper Hazara Forest Circle Mansehra

Divisional Forest Officer,
Upper Kohistan Forest Division Dassu

(RESPONDENTS)

Subject: **SERVICE APPEAL NO. 15877/2020 "UMAR KHAN FOREST GUARD (BPS-08) VS GOVT. OF KHYBER PAKHTUNKHWA THROUGH SECRETARY FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT AND OTHERS"**

Para wise Comments on behalf of Respondents No. 01 to 04

PRELIMINARY OBJECTIONS.

1. The appellant has no cause of action.
2. That the appellant has no locus standi to file the appeal.
3. That the appeal is bad for non joinder of necessary parties and mis-joinder or un-necessary parties.
4. That the appellant has been stopped by his own conduct to file the appeal.
5. That the appeal is against the Law/Procedure.
6. That the appeal is not maintainable in its present forum.
7. That the appellant has suppressed the original fact from this Honorable Tribunal hence not entitled for any relief and appeal is liable to be dismissed without any further proceeding.
8. That the appellant has not come to this honorable Court with clean hands.
9. That the appeal has been filed to pressurize the respondents.
10. That the appellant is stopped to sue through his own conduct.
11. That the appellant has already preferred a departmental appeal before appellate authority in this context which is yet to be decided after completion of legal formalities.

REPLY BY THE RESPONDENTS 1 to 4

FACTS

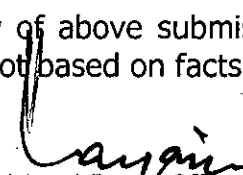
1. It is correct to the extent that the appellant was working as Forest Guard in Khyber Pakhtunkhwa Forest Department, Upper Kohistan Forest Division Dasso during the year 2013 and was at S.No.10 of Seniority List which was published during 2013 when he was in service.
2. It is incorrect. The appellant while posted on Basha Beat as well as additional charge of Shatial Forest Check Post during August, 2013, an incident regarding theft of 18000-Cft precious species of Deodar within his administrative jurisdiction was taken place with his connivance on the basis of which he alongwith other officer/officials were charge sheeted. As a result of departmental inquiry initiated under the provisions contained in Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, the appellant was compulsory retired from service vide Notification No. SO (Estt) FE&WD/1-8/Tariq DFO/2k14/2563-68 dated 30/6/2016 (**Annex-A**) which was subsequently challenged before this honorable Court through Service Appeal No.1246/2016.
3. It is correct. Since the appellant was not in Service, therefore the senior most Forest Guards having satisfactory record were promoted to the rank of Foresters during the year 2017 and 2019 respectively which is quite correct and justified under the provisions contained in Promotion Policy 2009 promulgated by the Government of Khyber Pakhtunkhwa.
4. It is correct that the honorable Court vide judgment dated 17/12/2018 set-a-side the impugned order and reinstated the appellant in service subject to de-novo inquiry. The Department filed a CP before the August Supreme Court of Pakistan against the decision of Service Tribunal in terms of approval accorded by the Scrutiny Committee Khyber Pakhtunkhwa Law Department but the same was dismissed vide judgment dated 25/7/2019 (**Annex-B**).
5. It is incorrect. The appellant was reinstated in service Notification No. SO(Estt)FE&WD/1-50/(69)/2019/7417-21 dated 24/10/2019 (**Annex-C**) with immediate effect after receipt of the decision of Apex Court dated 25/7/2019 after completion of other codal formalities.
6. It is correct, hence needs no comments.
7. It is incorrect. Though the charge of corruption was not found established but the charge of in-efficiency was proved by the De-novo Enquiry Committee on the basis of which minor punishment was awarded vide DFO Upper Kohistan Dasso office order No.03 dated 24/7/2019. In this connection it is pertinent to mention that the staff of Harban Forest Sub-Division has given a statement categorically mentioning that the theft timer for which and FIR bearing No.73 was registered in Police Station Sazin has been retrieved which obviously proved that the timber in question which was lying under the administrative jurisdiction of appellant was actually theft. ✓
8. The appellant was required to prefer a departmental appeal before the appellate authority for redressal of his grievance under the provisions contained in Rule-3 of Khyber Pakhtunkhwa Civil Servant Appeal Rules, 1986 but instead he has knocked the door of this honorable Court which is unjustified. However, he has now been promoted to the rank of Forester vide office order No.25 dated 15/10/2021 (**Annex-D**) upon existence of vacancy and then he preferred a departmental appeal dated 26/10/2021 in this context which is

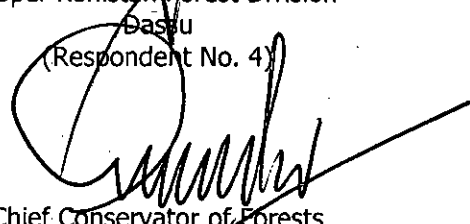
under consideration and decision under the rules. The dubious role of the appellant is unlawful; hence the Service Appeal in hand needs to be turned down. } (1)

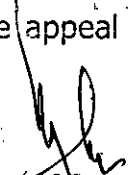
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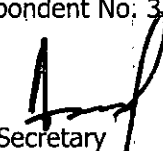
- a. The appellant was not in service during 2017. As per Para-VI of the Khyber Pakhtunkhwa Promotion Policy 2009, promotions are notified with immediate effect and not with retrospective effect. Hence the claim of appellant is unjustified.
- b. It is incorrect. The appellant has been reinstated in service with immediate effect vide Notification No.SO(Estt)FE&WD/1-50/(69)/2019/7417-21 dated 24/10/2019, however, on the recommendation of departmental inquiry committee, the intervening period from the date of compulsory retirement to the date of reinstatement has been treated as leave on half pay.
- c. It is incorrect as explained in Para-7 above.
- d. It is incorrect. The appellant was not in service therefore the senior most Forest Guard as per seniority list notified during the year 2017 and 2019 were promoted according to the rules which is quite correct and justified.
- e. As explained above in para-a above, the promotions are effective with immediate effect. However, the appellant has the rights for restoration of his inter-se-seniority under Para-V(d) of Promotion Policy, 2009 read with sub-section (4) of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act 1973.
- f. As explained in Para-a above.
- g. As explained in para-e above.
- h. As explained in para-a, b & e above.
- i. Needs no comments.

In view of above submission, it is requested that the appeal of appellant being not based on facts may be dismissed with cost.


Divisional Forest Officer
Upper Kohistan Forest Division
Dastu
(Respondent No. 4)


Chief Conservator of Forests
Central Southern Forest Region-I
Peshawar
(Respondent No. 2)


Conservator of Forests
Upper Hazara Forest Circle
Mansehra
(Respondent No. 3)


Secretary
Government of Khyber Pakhtunkhwa
Forestry, Environment & Wildlife
Department Peshawar
(Respondent No. 1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 158777/2020

Mr Umar Khan Forest Guard

Uppar Kohistan Forest Division Dassu..... Appellant


VERSUS

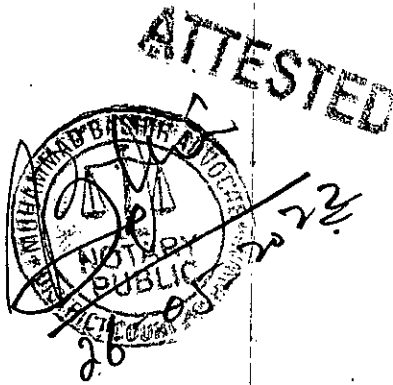
1. The Secretary to Govt: of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department Peshawar
2. The Conservator of Forests Central Southern Region-I Khyber Pakhtunkhwa Peshawar
3. The Conservator of Forests Upper Hazara Forest Circle Mansehra
4. The Divisional Forest Officer Upper Kohistan Forest Division Dassu

..... Respondents

COUNTER AFFIDAVIT

I, the undersigned hereby solemnly affirm that the contents of para-wise comments are correct to the best of my knowledge and nothing has been concealed from the Honorable Tribunal/Court.


Divisional Forest Officer
Upper forest Division
Dassu



Annex - A

197



GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Pesh: 30th June, 2016

NOTIFICATION

No. SO(Est)FE&WD/1-8/Tariq DFO/2k14: WHEREAS, Mr. Umar Khan, Forest Guard (BPS-07) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations, dated 12/12/2013, served upon the said officer;

AND WHEREAS, Enquiry Committee comprising Mr. Tariq Rashid, (SG BS-19), Planning Coordinator, Finance Department and Mr. Shah Wazir Khan (BS-19), Managing Director, Forest Development Corporation, to conduct the inquiry against the said accused official.

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

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

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused official, and hearing him in person and exercising his powers under Rule-14(5)(ii), read with Rule 4(1)(b)(i) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose a major penalty of "Compulsory retirement from service" upon and "Recovery of Rs. 04,64,400/-" from Mr. Umar Khan, Forest Guard (BPS-07) of Forest Department, with immediate effect.

CHIEF MINISTER,
KHYBER PAKHTUNKHWA

Encl: No. SO(Est)FE&WD/1-8/Tariq DFO/2k14/63-68, Dated Pesh: 30th June, 2016.

Copy is forwarded to:-

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

(SYED KAZIM MUSSAIN SHARIF)
SECTION OFFICER (EST)

Dated Peshawar the 25 / 07 / 2016

No. 146 / E

Copy forwarded to Chief Conservator of Forests Northern Forest Region-II Abbottabad for information and necessary action. A copy of the Notification meant for official concerned is also enclosed, which may be delivered to him under proper receipt.

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

338
1-8-2016

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Annex-B
1173

PRESENT:

MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE UMAR ATA BANDIAL

CIVIL PETITION NO.168-P TO 173-P OF 2019

(On appeal from the judgment dated 17.12.2018 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar passed in Service Appeals Nos.1244/2016, 927/2015, 926/2015, 1247/2016, 1246/2016 and 795/2015 respectively)

Chief Minister through its
Principal Secretary, Khyber
Pakhtunkhwa Peshawar & others

... Petitioner (s)

Versus

1. Abdul Manan (In CP No.168-P/2019)
2. Umar Khan (In CP No.169-P/2019)
3. Asghar Khan (In CP No.170-P/2019)
4. Muhammad Tariq (In CP No.171-P/2019)
5. Naseeb Khan (In CP No.172-P/2019)
6. Jamair Khan (In CP No.173-P/2019)

For the Petitioner (s) : Barrister Qasim Wadood, Addl. AG KPK

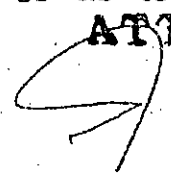
Respondent (s) : N.R.

Date of Hearing : 25.07.2019

ORDER

SH. AZMAT SAEED, J.-We have heard the learned Addl. Advocate General, KPK and perused the available record. It appears that the learned Service Tribunal has remanded the matter for *de novo* inquiry. In this view of the matter, no substantial question of law of public importance could be raised so as to warrant

ATTESTED



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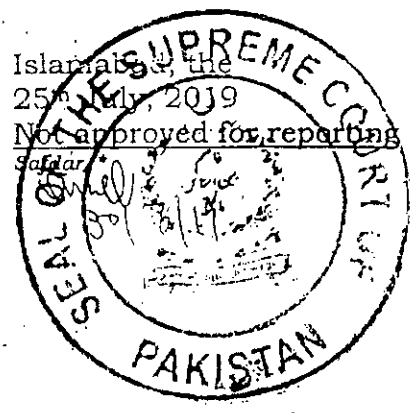
Denote

exercise of jurisdiction of this Court under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973. Hence, these Civil Petitions must fail.

2. The allegation in these cases pertains to the misappropriation of timber. We have asked the learned Addl. Advocate General as to whether any criminal proceedings have been initiated against the culprits. He states that he will seek instructions in this behalf and make sure that the law of the land would be implemented.

3. Be that as it may, these Civil Petitions being without substance are dismissed and leave declined.

Sd/-J
Sd/-J



Certified to be True Copy

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

GR No: 15636/19 Civil/Criminal

Date of Presentation: 25-7-19

No of Words: 62

No of Folios: 6

Requisition Fee Rs. 0.00

Copy Fee 3.00

Stamp Fee 8.00

20774

01-8-19

Received by: Haroon



GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Peshawar the, 24th October, 2019

Annex - C

10

NOTIFICATION

747-27

No.SO(Estt)FE&WD/1-50(69)/2019/PF: In compliance with judgment dated 17.12.2018 of Khyber Pakhtunkhwa Service Tribunal in service appeal No.1246/2016 and decision dated 25th July, 2019 of Supreme Court of Pakistan in Civil Petition No.168-P to 173-P of 2019, the competent authority is pleased to withdraw this department earlier Notification No.SO(Estt)FE&WD/1-8/Tariq DFO/2014/2562-68 dated 30.06.2016 imposing thereby the major penalty of " Compulsory Retirement from Service and Recovery of Rs. 4,64,400/- from Mr. Umar Khan, Forest Guard (BS-07) Khyber Pakhtunkhwa, Forest Department with immediate effect.

Consequent upon above, the competent authority is further pleased to reinstate in service Mr. Umar Khan, Forest Guard (BS-07), Khyber Pakhtunkhwa Forest Department with immediate effect. The issue of back benefits will be decided/ settled after the outcome of the de novo inquiry.

**CHIEF MINISTER
KHYBER PAKHTUNKHWA**

Endst: No: SO (Estt)FE&WD/1-50(69)/2019/PF:

Dated Pesh 24th October, 2019

Copy is forwarded to:-

- 1) Chief Conservator of Forests, Central Southern Forest Circle, Peshawar.
- 2) Chief Conservator of Forests, Northern Forest Region-II, Abbottabad.
- 3) Director, Budget and Accounts Cell, FE&W department.
- 4) PS to Secretary, FE&W Department, Khyber Pakhtunkhwa.
- 5) Mr. Umar Khan, Forest Guard, Khyber Pakhtunkhwa Forest Department C/O CCF-I, Peshawar.
- 6) Master file.
- 7) Office order file.


(Zia-ur-Rahman)
SECTION OFFICER (ESTT)

ESTT
25/10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

APPEAL NO. 15877/2020

Umar Khan Forest Guard (BPS-08)

Upper Kohistan Forest Division, Dassu

(APPELLANT)

VERSUS

1. The Government of Khyber Pakhtunkhwa
through Secretary Forests, Environment &
Wildlife Department Peshawar
2. The Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar
3. Conservator of Forests,
Upper Hazara Forest Circle Mansehra
4. Divisional Forest Officer,
Upper Kohistan Forest Division Dassu

(RESPONDENTS)

Subject: **SERVICE APPEAL NO. 15877/2020 "UMAR KHAN FOREST
GUARD (BPS-08) VS GOVT. OF KHYBER PAKHTUNKHWA
THROUGH SECRETARY FORESTRY, ENVIRONMENT &
WILDLIFE DEPARTMENT AND OTHERS"**

Para wise Comments on behalf of Respondents No. 01 to 04

PRELIMINARY OBJECTIONS.

1. The appellant has no cause of action.
2. That the appellant has no locus standi to file the appeal.
3. That the appellant has been stopped by his own conduct to file the appeal.
4. That the appeal is against the Law/Procedure.
5. That the appeal is not maintainable in its present forum.
6. That the appellant has suppressed the original fact from this Honorable Tribunal hence not entitled for any relief and appeal is liable to be dismissed without any further proceeding.
7. That the appellant has not come to this honorable Court with clean hands.
8. That the appeal has been filed to pressurize the respondents.

District Attorney
Khyber Pakhtunkhwa
Peshawar Tribunal Peshawar

9. That the appellant is stopped to sue through his own conduct,
10. That the appellant has already preferred a departmental appeal before appellate authority in this context which is yet to be decided after completion of legal formalities.


REPLY BY THE RESPONDENTS

1. It is correct to the extent that the appellant was working as Forest Guard in Khyber Pakhtunkhwa Forest Department, Upper Kohistan Forest Division Dasso during the year 2013 and was at S.No. 10 of Seniority List which was published during 2013 when he was in service.
2. It is incorrect. The appellant while posted on Basha Beat as well as additional charge of Shatial Forest Check Post during August, 2013, an incident regarding theft of 18000-Cft precious species of Deodar within his administrative jurisdiction was taken place with his connivance on the basis of which he alongwith other officer/officials were charge sheeted. As a result of departmental inquiry initiated under the provisions contained in Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, the appellant was compulsorily retired from service vide Notification No. SO(Estt)FE&WD/1-8/Tariq DFO/2k14/2563-68 dated 30.06.2016 (**Annex-A**) which was subsequently challenged before this honorable Court through Service Appeal No. 1246/2016.
3. It is correct. Since the appellant was not in service, therefore the senior most Forest Guards having satisfactory record were promoted to the rank of Foresters during the year 2017 and 2019 respectively which is quite correct and justified under the provisions contained in Promotion Policy 2009 promulgated by the Government of Khyber Pakhtunkhwa.
4. It is correct that the honorable Court vide judgment dated 17/12/2018 set-a-side the impugned order and reinstated the appellant in service subject to donovo inquiry. The Department filed a CP before the August Supreme Court of Pakistan against the decision of Service Tribunal in terms of approval accorded by the Scrutiny Committee Khyber Pakhtunkhwa Law Department but the same was dismissed vide judgment dated 25.07.2019(**annex-B**).

5. It is incorrect. The appellant was reinstated in service vide Notification No.SO(Estt)FE&WD/1-50/(69)/2019/7417-21 dated 24/10/2019(Annex-C) with immediate effect after receipt of the decision of Apex Court dated 25.07.2019 after completion of other codal formalities.
6. It is correct, hence needs no comments.
7. It is incorrect. Though the charge of corruption was not found established but the charge of inefficiency was proved by the Denovo Inquiry Committee on the basis of which minor punishment was awarded vide DFO Upper Kohistan Dassu office order No. 03 dated 24/7/2019. In this connection it is pertinent to mention that the staff of Harban Forest Sub-Division has given a statement categorically mentioning that the theft timber for which an FIR bearing No. 73 was registered in Police Station Sazin has been retrieved which obviously proved that the timber in question which was lying under the administrative jurisdiction of appellant was actually theft.
8. The appellant was required to prefer a departmental appeal before the appellate authority for redressal of his grievance under the provisions contained in Rule-3 of Khyber Pakhtunkhwa Appeal 1986 but instead he has knock the door of this honorable Court which is unjustified. However, he has now been promoted to the rank of Forester vide office order No.25 dated 15.10.2021 (Annex-D) upon existence of vacancy and then he preferred a departmental appeal dated 26/10/2021 in this context which is under consideration and decision under the rules. The dubious role of the appellant is unlawful, hence the Service Appeal in hand needs to be turned down.

GROUNDS

- a. The appellant was not in service during 2017. As per Para-VI of the Khyber Pakhtunkhwa Promotion Policy 2009 promotions are notified with immediate effect and not with retrospective effect. Hence the claim of appellant is unjustified.
- b. It is incorrect. The appellant has been reinstated in service with immediate effect vide Notification No.SO(Estt)FE&WD/1-50/(69)/2019/7417-21 dated 24/10/2019, however, on the recommendation of departmental inquiry committee, the intervening period from the date of compulsory retirement to the date of reinstatement has been treated as leave on half pay.


 District Attorney
 Khyber Pakhtunkhwa
 Service Tribunal Peshawar

- c. It is incorrect as explained in Para-7 above.
- d. It is incorrect. The appellant was not in service therefore the senior most Forest Guard as per seniority list notified during the year 2017 and 2019 were promoted according to the rules which is quite correct and justified.
- e. As explained above in para-a above, the promotions are effective with immediate effect. However, the appellant has the rights for restoration of his inter-se-seniority under Para-V(d) of Promotion Policy, 2009 read with sub-section (4) of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act 1973.
- f. As explained in Para-a above.
- g. As explained in para-e above.
- h. As explained in para-a, b & e above.
- i. Needs no comments.

In view of above submission, it is requested that the appeal of appellant being not based on facts may be dismissed with cost.

Divisional Forest Officer
Upper Kohistan Forest Division
Dassu
(Respondent No. 4)

Conservator of Forests
Upper Hazara Forest Circle
Mansehra
(Respondent No. 3)

Chief Conservator of Forests
Central Southern Forest Region-I
Peshawar
(Respondent No. 2)

Secretary
Government of Khyber Pakhtunkhwa
Forestry, Environment & Wildlife
Department Peshawar
(Respondent No. 1)

Meer net
DAT
CPA
2/1/22

Khalid Ahmad
2/1/2022

27/1/22
27/1/22
27/1/22

④ So, (Litigation) REWARD

1200

@ So Litigation.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 15877/2020



*Put up to the court with
reluctant appeal.*

Umar Khan

V/S

Forest deptt:

.....
**APPLICATION FOR FIXING THE INSTANT APPEAL ON ANY
EARLY DATE INSTEAD OF 24.06.2021.**
.....

RESPECTFULLY SHEWETH:

1. That the appellant has filed the instant appeal in this Honorable Tribunal to consider him for promotion to the post of Forester (BPS-10), when his juniors were promoted to the post of Forester (BPS-10).
2. That the instant appeal was fixed on 25.01.2020 for preliminary hearing, however the appeal was not admitted to regular hearing due to the reason the counsel for the appellant was busy in the DB of this Honourable Tribunal and the case was adjourned to 17.03.2021.
3. That on 17.03.2021, the case was again adjourned to 24.06.2021 due to non availability of SB in the Honorable Tribunal.
4. That the two dates have been fixed in preliminary hearing in the instant appeal, but despite that the appeal was not admitted for regular hearing due to the above mentioned reason and the next date fixed for preliminary hearing is also too long.
5. That it will be in interest of justice to fix the instant appeal on any early date instead on 24.06.2021.

It is, therefore, most humbly prayed that on the basis of above submissions the instant application may kindly be accepted and the instant appeal may be fixed on an early date instead of 24.06.2021.

APPELLANT

THROUGH:-

(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

*At preliminary
stage. Be
accelerated to a
date in 2nd week
of April, 2021.*

19/3/21

OSBY

AFFIDAVIT

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.



DEPONENT

ATTESTED



18-3-2021

R-1

OFFICE ORDER NO. 35 DATED UPPER KOHISTAN THE 15/10/21
BY DIVISIONAL FOREST OFFICER (UPPER KOHISTAN FOREST
DIVISION DASSU)

As recommended by the Departmental Promotion Committee constituted vide office order No.20 dated 12.10.2021 in its meeting held on 13.10.2021 and in pursuance of the Service Rules for recruitment/promotion to the post of Foresters promulgated vide Environment Department Notification (No.SO(Est)Env/1-465/2k1221/13) dated 14/3/2013 and further amendment vide Notification (No.SO(Est)FE&WD/1-465/2021) dated 04/06/2021, the following Forest Guards having qualified and satisfactory service record are hereby promoted to the rank of Forester in BPS-10(Rs.12160-800-36160) against the existing vacancies with immediate effect:

1. Muhammad Umer Khan
2. Mr. Sarfraz
3. Mr. Shaukat Ali

The Foresters will remain under probation for a period of one year in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servant Act, 1973, read with Rules 15(1) of the Khyber Pakhtunkhwa Civil Servant (Appointment Promotion and Transfer Rules, 1989). In case of any lapse in service matters and negligence in discharge of official duty, he will be reverted to the rank of Forest Guard.

His promotion is purely temporary and will be liable to reversion at any time without assigning any reasons what-so-ever. Moreover it will be binding upon him to join his new place of posting within specified time period. In case of non compliance, the promotion order will be withdrawn.

Note: The promotion of official at S.No.3 is subject to the decision of WP filed by Malik Aman FG of Lower Kohistan Forest Division.

Sd/-
(Hayat Ali)
Divisional Forest Officer
Upper Kohistan Forest Division
Dassu.

Copy forwarded for information to the:-

1. The Chief Conservator of Forests, Northern Forest Region-II Abbottabad
2. The Conservator of Forests Upper Hazara Forest Circle Manshera
3. Divisional Accountant Upper Kohistan Forest Division Dassu.
4. Official concerned

Divisional Forest Officer
Upper Kohistan Forest Division
Dassu.

3-366 1 (B)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

APPEAL NO. 15877/2020

Umar Khan Forest Guard (BPS-08)
Upper Kohistan Forest Division, Dassu

(APPELLANT)

VERSUS

The Government of Khyber Pakhtunkhwa through
Secretary Forests, Environment & Wildlife Department
Peshawar

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

Conservator of Forests,
Upper Hazara Forest Circle Mansehra

Divisional Forest Officer,
Upper Kohistan Forest Division Dassu

(RESPONDENTS)

Subject: **SERVICE APPEAL NO. 15877/2020 "UMAR KHAN FOREST GUARD (BPS-08) VS GOVT. OF KHYBER PAKHTUNKHWA THROUGH SECRETARY FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT AND OTHERS"**

Para wise Comments on behalf of Respondents No. 01 to 04

PRELIMINARY OBJECTIONS.

1. The appellant has no cause of action.
2. That the appellant has no locus standi to file the appeal.
3. That the appeal is bad for non joinder of necessary parties and mis-joinder or un-necessary parties.
4. That the appellant has been stopped by his own conduct to file the appeal.
5. That the appeal is against the Law/Procedure.
6. That the appeal is not maintainable in its present forum.
7. That the appellant has suppressed the original fact from this Honorable Tribunal hence not entitled for any relief and appeal is liable to be dismissed without any further proceeding.
8. That the appellant has not come to this honorable Court with clean hands.
9. That the appeal has been filed to pressurize the respondents.
10. That the appellant is stopped to sue through his own conduct.
11. That the appellant has already preferred a departmental appeal before appellate authority in this context which is yet to be decided after completion of legal formalities.

REPLY BY THE RESPONDENTS

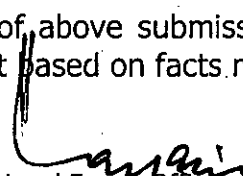
1. It is correct to the extent that the appellant was working as Forest Guard in Khyber Pakhtunkhwa Forest Department, Upper Kohistan Forest Division Dasso during the year 2013 and was at S.No.10 of Seniority List which was published during 2013 when he was in service.
2. It is incorrect. The appellant while posted on Basha Beat as well as additional charge of Shatial Forest Check Post during August, 2013, an incident regarding theft of 18000-Cft precious species of Deodar within his administrative jurisdiction was taken place with his connivance on the basis of which he alongwith other officer/officials were charge sheeted. As a result of departmental inquiry initiated under the provisions contained in Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, the appellant was compulsory retired from service vide Notification No. SO (Estt) FE&WD/1-8/Tariq DFO/2k14/2563-68 dated 30/6/2016 (**Annex- A**) which was subsequently challenged before this honorable Court through Service Appeal No.1246/2016.
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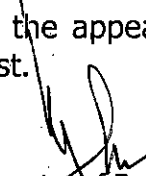
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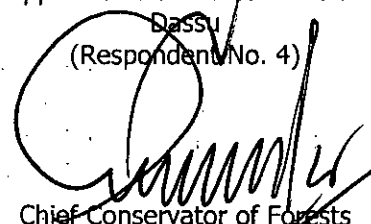
GROUNDS

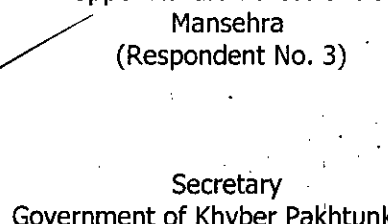
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- f. As explained in Para-a above.
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- h. As explained in para-a, b & e above.
- i. Needs no comments.

In view of above submission, it is requested that the appeal of appellant being not based on facts may be dismissed with cost.


 Divisional Forest Officer
 Upper Kohistan Forest Division
 Dasu
 (Respondent No. 4)


 Conservator of Forests
 Upper Hazara Forest Circle
 Mansehra
 (Respondent No. 3)


 Chief Conservator of Forests
 Central Southern Forest Region-I
 Peshawar
 (Respondent No. 2)


 Secretary
 Government of Khyber Pakhtunkhwa
 Forestry, Environment & Wildlife
 Department Peshawar
 (Respondent No. 1)