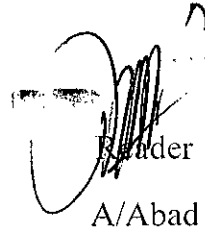


12.11.2018

. Due to retirement of the Hon'ble Chairman the Service Tribunal is incomplete. Tour to Camp Court Abbottabad has been cancelled. To come up for the same on 17.12.2018 at camp court Abbottabad.



Member
A/Abad


ORDER

17.12.2018

Counsel for the appellant alongwith Mr. Usman Ghani, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today in connected service appeal no. 1244/2016 titled "Abdul Manan vs Govt: of Khyber Pakhtunkhwa, Peshawar and two others", the impugned order dated 12.03.2015 is set aside and the appellant is 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. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.


Chairman


Member
Camp Court Abbottabad

ANNOUNCED
17.12.2018

19.09.2018

Appellant Muhammad Tariq alongwith Mr. Tajdar Faisal Minakheil Advocate counsel for appellant present. Mr. Saleem Khan Forest Guard alongwith Mr. Usman Ghani learned District Attorney for respondents present.

Today the case was fixed for arguments but could be not heard as he is not in position to answer the query as the above named representative has not brought the record today. He is directed to bring the entire record relevant for the disposal of the appeal in hand on next date without fail. Case adjourned for arguments. Need not to mentioned is that in case of none availability of record by the respondents. Appeal will be decided on the strength of available record on 12.11.2018. To come up for further proceedings on the date fixed before D.B at camp court A/Abad.



Member




Chairman
Camp Court A/Abad

18.10.2018

Appellant Muhammad Tariq in person alongwith his counsel Mr. Jehanzeb Mehsood, Advocate present. Mr. Usman Ghani, District Attorney for the respondents present. The case was fixed for 12.11.2018, however, on application of the appellant, the case was fixed for early hearing for today. However, the learned District Attorney stated that notice was not served upon him for today, therefore, he is not in possession of record and made a request for adjournment. Need not mention here that being an old case of 2015, last chance is given to the respondents for arguments. To come up for arguments on 12.11.2018 before the D.B at camp court, Abbottabad.



Member



Chairman
Camp Court, A/Abad

To

The Honorable Chairman,
Services Tribunal Court,
Khyber Paktunkhwa Peshawar.

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1116

Dated 28-9-18

Subject:- APPLICATION FOR EARLY HEARING IN SERVICE PETITION

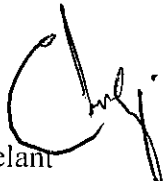
NO:759/15 MUHAMMAD TARIQ VS GOVT: OF KPK

Respected Sir,

The above subject petition was filed in the honorable service tribunal almost more than three and half years ago but the prosecution used different delaying tactises and always requested for adjournments, on last hearing also was adjourned on the request of prosecutor and was adjourned to 12th Nov: 18.

Therefore it is humbly prayed that an early date in the month of October may please be fixed in this case.

I should be much thankful for your kind action.



Appellant
Muhammad Tariq
EX-Deputy Conservator of Forest

put up to the court along with
relevant appeal.

Deed

28/9/18.

*M. Tariq
18-10-2018*

Q. 28-9-2018

Service Appeal No. 795/2015

M. Tariq vs Govt

12.07.2018

Appellant in person present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present.

Since the appeal pertains to the territorial limits of Hazara Division and other connected appeals have already been transferred to Abbottabad, as such the instant appeal is transferred to Camp Court, Abbottabad. To come up for arguments at Camp Court, Abbottabad on 29.08.2018 before D.B.

MA
Member

S.
Chairman

29-8-18.

*Name present for the parties
due to summer vacation case to come
for the same on 19-9-18, at camp
court Abbott.*

Read


[Faint, illegible text, possibly a stamp or official record]

This case is, therefore, adjourned for assistance on this point. To come up for arguments before the DB on 22.05.2018.


Member



Chairman

22.05.2018 Clerk of the counsel for appellant and Addl: AG for the respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 13.06.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member

13.06.2018

Appellant present. Learned counsel for the appellant is absent. Appellant seeks adjournment on the ground that his counsel is not available today. Mr. Usman Ghani, District Attorney alongwith Mr. Itazaz Mehfooz, SDFO for the respondents also present. Adjourned. To come up for arguments on 10.07.2018 before D.B.


(M. Amin Khan Kundi)
Member


(M. Hamid Mughal)
Member

10.07.2018

Appellant Muhammad Tariq in person alongwith his counsel Mr. Jehanzaib Mahsood, Advocate present. Mr. Usman Ghani, District Attorney for the respondents present. Learned District Attorney made a request for adjournment. Granted. To come up for arguments on 12.07.2018 before D.B.


Member


Chairman

795/15

Contd. 23-4-18.

Today, the learned counsel for the appellant argued that voluntary return was not part of disqualification mentioned in Section 15 of the Ordinance. Secondly that even if it was part of Section 15, this Tribunal had no jurisdiction to enter into this issue as the appellant was dismissed from service prior to the V.R. He further argued that the judgment of suo-moto case as mentioned above was still pending in the august Supreme Court of Pakistan and the august Supreme Court of Pakistan never declared the relevant section regarding V.R as ultra-vires nor any amendment introduced in the concerned Section. But this Tribunal without commenting on its jurisdiction as to V.R is of the view that proper assistance should be made regarding the latest position of NAB Ordinance, any amendment made and its applicability as to retrospective effect in this regard. The learned counsel for the appellant as pointed out is of the view that no amendment was made in the law, however, this Tribunal has come across with an Ordinance-II of 2017 published in the extraordinary part in January, 2017 whereby some amendments have been made including Section 25 of the NAB Ordinance. But that Ordinance is not before the Tribunal nor has been produced before the Tribunal by any party. It is also not clear whether this Ordinance was converted into Act or not. The reference of this Ordinance can be found in a judgment of the august Supreme Court of Pakistan in CP No. 3912/2016 entitled "*Khalid Hamayun Vs. NAB*" decided on 14.2.2017

Muhammad Tariq (Environment Department)

23.04.2018

Appellant alongwith Mr. Jehanzaib Mahsood, Advocate present and Wakalatnama submitted which is placed on file. Mr. Ziaullah, Deputy District Attorney for the respondents present.

On the last date, this Tribunal heard the case in detail but at the end, the learned Deputy District Attorney brought into the notice of this Tribunal that the appellant had entered into voluntary return in view of Section 25(a) of the NAB Ordinance, 1999 and now he could not hold public office under Section 15 of the said Ordinance. This Tribunal while going through the said Ordinance, though came to the conclusion that disqualification mentioned in Section 15 of the said Ordinance does not cover voluntary return made under Section 25(a), however, there was a judgment of the august Supreme Court of Pakistan in suo-moto case of 17 of 2015 decided on 24.10.2016 wherein directions were issued to the concerned Authority to initiate disciplinary proceedings against all those who had entered into voluntary return. The appellant requested for adjournment on the ground that his counsel would assist this Tribunal on the point that voluntary return was not part of disqualification as mentioned in Section 15 and secondly that the above mentioned judgment of the august Supreme Court of Pakistan was not concluded to its logical ends and was still pending.

29.03.2018

Appellant with counsel and Addl. AG for respondents present. Learned AAG requested for adjournment due to transfer of Mr. Ziaullah, Deputy District Attorney. Adjourned. To come up for arguments on 02.04.2018 before the D.B.



Member


Chairman

02.04.2018

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 13.04.2018 before D.B


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

13.04.2018

Appellant alongwith counsel, Mr. Ziaullah, Deputy District Attorney alongwith Aitizaz Mahfooz, SDFO for the respondents present. Arguments partly heard. Some points needed clarification for which case is adjourned to 23.4.2018 for further arguments before this D.B.


Member


Chairman

01.12.2017

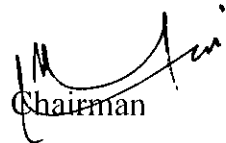
Since 1st December, 2017 has been declared as Public Holiday on account of Rabbi-ul-Awal. To come up for arguments on 19.01.2018 before the D.B.


Reader

23.1.2018

Appellant in person and Mr. Ziaullah, District Attorney for the respondents present. Due to general strike of the Bar, counsel for the appellant is not in attendance. To come up for arguments on 16.02.2018 before the D.B.


Member


Chairman

16.02.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Mr. Muhammad Asif Youysafzai, Advocate/counsel for the appellant in connected appeals seeks adjournment. To come up for arguments on 29.03.2018 before the D.B.


Member


Chairman

02.06.2017

Appellant in person present. Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Appellant requested for adjournment. Adjourned. To come up for arguments on 07.08.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member



(Gul Zeb Khan)
Member

07.08.2017

Appellant in person present. Mr. Atizaz Mehfooz, SDFO alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 06.10.2017 before D.B.



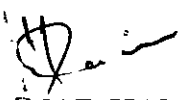
(Muhammad Amin Khan Kundi)
Member (J)



(Muhammad Hamid Mughal)
Member (J)

06.10.2017

Appellant in person and Mr. Muhammad Jan, DDA alongwith Mr. Itezaz Mehfooz, SDFO for respondents present. Representative of the respondents submitted an application for submission of additional documents and better para-wise reply copy of which is handed over the appellant. To come up for arguments on application as well as arguments on main appeal on 01.12.2017 before D.B.



(MUHAMMAD HAMID MUGHAL)
MEMBER



(AHMAD HASSAM)
MEMBER

17.11.2016

Appellant with counsel and Mr. Farhad Ali, SDFO alongwith Additional AG for respondents present. The other two appeals of Forest Guard namely Naseeb Khan and Jamair Khan have been transferred to ~~Provincial Court~~ ^{Provincial Court} for hearing alongwith instant Service Appeal as such the instant Service Appeal is to be heard at ~~Provincial Court~~ ^{Provincial Court} alongwith said Service Appeals No. 926/2015 and 927/2015 on 18.01.2016 before D.B.


Chairman

18.01.2017


Appellant in person and Syed Latif Hussain, SDFO alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Appellant counsel is not available and he requested for adjournment. The previous order sheet reflects that instant appeal is to be heard with service appeals No. 926/2015 & 927/2015, Today but the other two appeals have not been fixed today by the office. The office is directed to put up the other two service appeals ~~if dates are fixed~~ on the same date with the instant service appeal. To come up for arguments on 06.04.2017 before D.B alongwith connected service appeals.


(AHMAD/HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

06.04.2017

Counsel for the appellant and Mr. Syed Latif Hussain, SDFO, Mr. Altaf Qureshi, SDFO alongwith Addl: AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on ~~0.6~~ ⁰⁶.2017 before D.B.


Chairman

28.10.2016

Appellant in person and Addl:AG for respondents present. Record perused. Contention of learned AAG is that the instant appeal may be jointly decided with the service appeals of the co-accused official of Forest Gaurds, Naseeb Khan and Jamir Khan. Their appeals were stated to be pending before this Tribunal ^{at Swat.} Though this contention was resisted by appellant who submitted that the respondent-department only wants to prolong decision of this appeal with malafide intention. Perusal of the record would show that the appellant alongwith five others were proceeded on the charge of theft of 18,000-cft timber on the night between 24th and 25th of Aug, 2013. The record further reveals that departmental enquiry against them was conducted by Secretary Benevolent Fund Cell, Tariq Rashid and Managing Director FDC namely Shah Wazir Khan. It is thus evident that the occurrence is the same and the same enquiry report has dealt with the matter. In the stated situation the Tribunal is of the view that in order to avoid conflicting judgment in all the appeals before the Tribunal of this case, the instant appeal may be clubbed with the rest of appeals of the said Nasib Khan and Jamir Khan. Hence, the appeal be put up before the worthy Chairman for appropriate order.




(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

01.11.2016

3 Counsel for the appellant has some reservation on assigning the case to camp court, Abbottabad. To come up for further proceedings on 17.11.2016 for further proceedings.


Chairman

20.10.2016

Appellant with counsel and Mr. Iltaf Quraishi, SDFO alongwith Addl:AG for respondents present. Learned counsel for the appellant heard at length. Due to paucity of time learned AAG requested for further time to submit his entire arguments, hence to come up for his arguments on tomorrow on 21.10.2016.



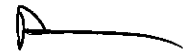
(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER.

21.10.2016

Appellant in person, M/S Iltaf Qurashi, SDFO and Latif Hussain, SDFO alongwith Additional AG for respondents present. The learned Member Judicial Mr. Pir Bakhsh Shah is on leave therefore Bench is incomplete. To come up for arguments of learned Additional AG on 28-10-16 before D.B.



(ABDUL LATIF)
MEMBER

15.06.2016

Appellant with counsel and Mr. Tehsinullah, RFO alongwith Mr. Muhammad Jan, GP for respondents present. Representative of the respondents submitted an application for placing on file statement of appellant, order of Accountability Court and application of appellant, copy of which is handed over to the appellant. To come up for reply on application and arguments on 26.07.2016.


Member


Member

26.07.2016

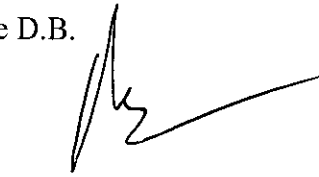
Appellant with counsel and Syed Latif Hussain, SDFO alongwith Mr. Usman Ghani, Sr.GP for respondents present. The case was partly heard on last date of hearing. Mr. Pir Bakhsh Shah, Member(Judicial) is not available who heard this case. The case is adjourned. To come up for further arguments on 08.09.2016.

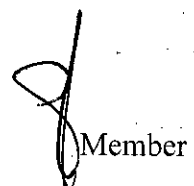

Member


Member

08.09.2016

Counsel for the appellant and Additional AG for respondents present. Learned counsel for the appellant submitted that he may be given opportunity to file reply to application of the respondents vide which the respondents want to place certain documents on record. To come for reply and arguments on application as well as arguments on main appeal on 20-10-16 before D.B.


Member


Member

24.11.2015

Appellant in person and Addl: A.G for respondents present. Para-wise comments on behalf of respondent No. 4 submitted. The learned Addl: AG relies on the same on behalf of respondents No. 1 to 3. The appeal is assigned to D.B for rejoinder and final hearing for 11.4.2016.


Chairman

14.01.2016

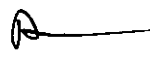
Counsel for the appellant has submitted an application for early fixation of the appeal. Application is accepted. To come up for rejoinder and arguments on 08.03.2016 instead of 11.4.2016. Parties be informed accordingly.



MEMBER


MEMBER

08.03.2016

Appellant in person and Asst: AG for respondents present. Due to general strike of the bar counsel for the appellant is not available. Therefore, the case is adjourned to 11.05.2016 for arguments.


Member


Member

11.5.2016

Appellant with counsel and Addl. AG for the respondents present. Learned counsel for the appellant seeks to submit certain documents. Learned Addl. AG also stated that cases of similar nature are pending before the Hon'ble D.B-II. Case is adjourned to 15.6.2016 before D.B for further proceedings/final hearing.


Member


Chairman

3

14.07.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as DFO when subjected to inquiry and dismissed from service vide impugned order dated 12.3.2015 regarding which he preferred departmental representation on 26.3.2015 which was not responded within the statutory period and hence the instant service appeal on 10.7.2015.

That the inquiry was not conducted in the prescribed manners and no opportunity of hearing was afforded to the appellant and, moreover, the punishment is in excess to the one mentioned in the show cause notice.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 10.8.2015 before S.B. Notice of stay application be also issued for the date fixed. Till further orders the recovery shall not be made from the appellant.


Chairman

4

10.08.2015

Appellant with counsel and Mr. Muhammad Yousaf, Junior Clerk alongwith Assistant A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 27.8.2015 before S.B. The restraint order shall continue.


Chairman

27.08.2015

Counsel for the appellant and Mr. Muhammad Yousaf, Junior Clerk for respondent No. 4 alongwith Addl. A.G for all respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 24.11.2015 before S.B.


Chairman

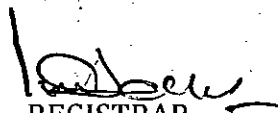

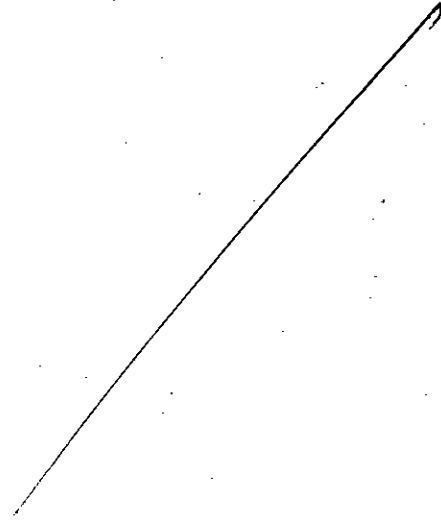
Appellant Deposited
Security & Process Fee



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 795/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10.07.2015	<p>The appeal of Mr. Muhammad Tariq Khan presented today by Mr. Khushdil Khan Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	13-7-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>14-7-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> 

12

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 795/2015

Muhammad Tariq,
Ex Divisional Forest Officer,
Environment Department,
Khyber PakhtunkhwaAppellant

Versus

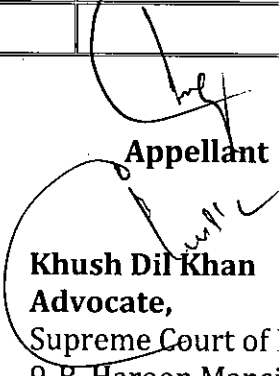
The Chief Minister,
Khyber Pakhtunkhwa,
Chief Minister's Secretariat,
Peshawar & others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal with application for suspension of impugned order dated: 12-03-2015			1-13
2.	Copy of Notification	01-10-2013	A	0-14
3.	Copy of Notification	16-01-2014	B	0-15
4.	Copy of Notification	02-01-2014	C	0-16
5.	Copy of Notification with charge sheet and statement of allegations	02-06-2014	D	17-21
6.	Copy of Notification	02-06-2014	E	0-22
7.	Reply to charge sheet		F	23-27
8.	Copy of enquiry report signed by the committee on 08-09-2014		G	28-52
9.	Copy of covering letter with show cause notice	21-10-2014	H	53-54
10.	Reply to the show cause notice		I	55-60
11.	Copy of the impugned Notification thereby appellant was dismissed from service and recover of Rs.15,48,200/-	12-03-2015	J	0-61
12.	Review petition before respondent No.1 with TCS Receipt	26-03-2015	K	62-69
13.	Wakalat Nama			

Appellant

Through


Khush Dil Khan
 Advocate,
 Supreme Court of Pakistan
 9-B, Haroon Mansion,
 Khyber Bazar, Peshawar.
 Cell # 091-2213445

Dated: 07 / 07 / 2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 795/2015

K.W.F. Province
Service Tribunal
Diary No. 825
Dated 10-7-2015

Muhammad Tariq,
Ex Divisional Forest Officer,
Environment Department Khyber Pakhtunkhwa.....Appellant

Versus

1. The Chief minister,
Khyber Pakhtunkhwa,
Chief Minister's Secretariat, Peshawar
2. The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Civil secretariat, Peshawar
3. The Secretary,
Government of Khyber Pakhtunkhwa,
Environment Department, Peshawar
4. The Chief Conservator of Forests,
Central and Southern Forest Region-I,
Peshawar.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 12-03-2015 (Annex H) THEREBY IMPOSED A MAJOR PANALTY OF "DISMISSAL FROM SERVICE" AND RECOVERY OF RS. 15,48,200/- UPON APPELLANT WITH IMMEDIATE EFFECT AGAINST WHICH HE FILED REVIEW PETITION (Annex I) BEFORE THE RESPONDENT NO.1 THROUGH TCS VIDE DATED 26-03-2015 BUT THE SAME WAS NOT DISPOSED OFF WITHIN STATUTORY PERIOD OF NINTY DAYS.

Filed to file
10/7/15

Respectfully Sheweth,

The facts giving rise to the present appeal are as under:-

1. That appellant initially joined the Services of Forest Department as Forest Ranger in (BPS-16) in the year 1980, then promoted as Sub

Divisional Forest Officer (BPS-17) in the year 2007, thereafter promoted to the post Of Dy. Conservator of Forests / Divisional Forest Officer (BPS 18) and as such he served the Department for more than 35 years with Excellent service record without any stigma.

2. That in pursuance of the report of **Provincial Inspection Team**, Respondent No.3 issued a notification vide No.SO(Estt)Env/1-8/2K10 dated 01-10-2013 (**Annex-A**) thereby appellant was transferred from Upper Kohistan Forest Division and attached with the office of the Chief Conservator of Forests Region-I Peshawar and also placed under suspension pending finalization of inquiry against him under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Later on, by notification dated 16-01-2014 (**Annex B**) the suspension was further extended Ninety Days w.e.f. 01-01-2014.
3. That by notification dated 02-01-2014 the respondent No.1 constituted an inquiry committee comprising Dr. Amber Ali Khan and Mr. Sana-ul-lah Khan but it could not conduct the inquiry for unknown reasons and after lapse of five months another inquiry committee was constituted by the respondent No.1 vide notification SO (Estt) Env/1-8/Tariq DFO/2K14 dated 02-06-2014 and copies of **Charge Sheet with Statement of Allegations** dully signed by the respondent No. 1 on 25-05-2014(**Annex C**) were also communicated to appellant which contained of the following charges...
 - i. **You always remained absent from your headquarter at Dassu without any prior permission / approval of the competent authority of sanction of any leave as stipulated in Civil Servants Act 1973, due to which the locals of area faced hardship to address their problems. Consequently the illicit trade of timber and illicit damage to the forest was at rampant. Moreover you failed to take appropriate measures necessary for guarding against pilferage of local timber when transportation of timber from Northern Area was under the "Amnesty Policy for illicit timber of Northern Areas 2013" was in progress.**

- ii. In a meeting held in the office of Commissioner Hazara Division at Abbottabad on 19-09-2013, the DC Kohistan expressed his entire dissatisfaction about your performance as DFO Upper Kohistan Forest Division. He categorically mentioned about your continued absence from your Headquarter at Dassu since you took over the charge of the Upper Kohistan Forest Division that caused mis-management of the forest resources, lack of effective supervision and control over the subordinate staff necessary to guard against illicit damage to the forests and pilferage / smuggling of timber. As per findings of Provincial Inspection Team confirmed your continued frequent willful absence from station of duty. Furthermore you caused heavy losses to the Government on account of theft of 18,000 cft of timber on the night between 24th and 25th August 2013. The provincial Inspection Team has recommended recovery of the cost of 18,000 cft timber from you. During the course of enquiry the concerned persons brought in the notice of PIT that you have been paid Rs22/ per cft over and above the forest duty @ Rs 30/ cft, the same has been reflected in the report by PIT, therefore, you indulged in corruption.
- iii. You willfully / deliberately / maliciously abstained and did not appear before the Provincial Inspection Team that was assigned the task of enquiry of 18,000 pilfered timbers which is sufficient evidence that you were involved and responsible for the theft of 18,000 cft timbers.
- iv. The Chief Conservator of Forests Northern Forest Region-II Abbottabad called your explanation for continued absence from headland you being a subordinate officer instead of adopting appropriate approach for furnishing reply, used the abusive/ obnoxious language for your superior officer not only insulting your superior but also exhibited disrespect / disregard to the service decorum that tantamount to misconduct, indiscipline and disobedience. The administrative Department took notice

of your letter No.1610-11/E dated 28-08-2013 addressed to the Chief Conservator of Forests Northern Forest Region-II Abbottabad and called for your explanation stating that your aforesaid letters are void of appropriate language essential while corresponding with superiors as stipulated in the "Rules of Business" which speaks volumes of your disregard and insubordination to the higher officers.

- v. You have occupied residential Bungalow at Abbottabad from July, 2008 to date while posted as DFO Peshawar Forest Division, DFO Demarcation Peshawar unlawfully and beyond your entitlement. After your posting as DFO Upper Kohistan Dassu you continued with illegal occupation of the said residence. Furthermore when Conservator of Forests Lower Hazara Circle asked you to vacate the residence, you not only refused but also replied in very disrespectful manner which tantamount to misconduct and insubordination.

It is pertinent to mention that on the same date 02-06-2014

(Annex D) another notification of the same number was issued by the respondent No. I thereby appellant was again placed under suspension with immediate effect till finalization / completion of the inquiry report.

4. That appellant submitted **Reply (Annex E)** to the Charge Sheet and Statement of Allegations within specified time therein he denied the alleged charges level against him as false and baseless.
5. That the enquiry committee has conducted enquiry against the appellant and other officers/ officials in slipshod manner. Neither it recorded statement of any witness nor statement of appellant and mostly its findings are based on the report of Provincial Inspection Team which having no binding effect and thus the enquiry committee reached to a wrong conclusion and furnished the following recommendations against the appellant.

- i. **Recovery of Rs.15,48,200/- being 1/4th of the price, forest duty and FDF of 18,000 cft timber (10,000cft Deoder scants plus 8,000 cft Kail @ 20% government share) from Mr. Muhammad Tariq Ex-DFO Upper Kohistan to make the losses sustained by the provincial exchequer**
- ii. **Reversion from the post of DFO (BPS-18) to the post of SDFO BPS-17) with immediate effect.**

Copy of enquiry report is attached as **(Annex F)**.

6. That on the basis of enquiry report, issued Show cause notice to appellant duly signed by respondent No. I on 03-10-2014 under covering letter dated 21-10-2014 **(Annex G)** proposing major penalty of :-
 - (i) **Reversion from the post of DFO (B-18) to the post of SDFO (B-17).**
 - (ii) **Recovery of Rs. 15,48,200/-.**
7. That the appellant filed reply to the above Show cause notice therein he also requested for personal hearing but the respondent No. I ignored the reply and request for personal hearing and in very harsh manner, he passed the **impugned order dated 12-03-2015 (Annex H)** thereby imposed a major penalty of **"Dismissal from Service"** and **"Recovery of Rs.15,48,200"** upon the appellant which is contrary to the proposed penalties communicated to him through show cause notice.
8. That the appellant filed **Review Petition** before the respondent No. I through TCS vide dated 26-03-2015 **(Annex I)** but the same was not disposed off within statutory period of ninety days.

Hence the present appeal is submitted on the following amongst other grounds:-

Grounds:

- A. That the allegations as leveled against the appellant are of general nature mostly false and baseless being not proved during the enquiry proceedings, the detail of each charge with the findings of the enquiry committee are as under :-
- i. The charge no.1 is pertaining to absence of appellant from headquarter at Dassu which remained unproved and the enquiry committee declared it as unproved.
 - ii. The charge no.2 contained of two parts, the first part of the charge is also of general nature having similarity with charge no.1 which is already declared unproved by the enquiry committee while the second part of the charge related to alleged theft of 18,000 cft of timbers and excess payment of Rs.22 % cft in addition to the Forest duty @ Rs. 30% cft but these two charges have not been proved in the enquiry and the enquiry committee candidly mentioned in the report that no bribe has been taken in the matter.
 - iii. The charge no.3 is also baseless and not proved against the appellant in the absence of substantial evidence. However the alleged involvement of the appellant as shown by the enquiry committee was based on the report of **provincial inspection team** which has no binding effect. The enquiry committee has totally failed to bring incriminating evidence against the appellant on the record rather the findings to this effect are based on presumption which has no legal value.
 - iv. The charge no.4 is also of general nature and the same was also not proved against the appellant.
 - v. The charge no.5 declared as unproved by the enquiry committee.
- B. That the proceedings against the appellant were conducted in violation of the principles and procedure laid down to regulate the enquiry proceedings under the provisions of Government Servants (Efficiency and Discipline) Rules 2011 for the reason that the enquiry

Committee neither recorded the statement of any witness in the presence of appellant nor provided an opportunity of cross examination. It is pertinent to mention that the statements if any of co accused officials have not recorded in his presence nor provided him a fair opportunity of cross examination. In such circumstances the findings of the enquiry committee has no legal effect and not sustainable under the law and Rules liable to be set aside.

- C. That the punishment inflicted upon the appellant has not been stated in the show cause notice and therefore he was condemned unheard thus the impugned order is illegal without lawful authority being violative of principle of natural justice.
- D. That enquiry committee recommended reversion from the post of DFO(BPS-18) to the post of SDFO(BPS-17) but respondent No.1 has disagreed with it without recording any reason imposed major penalty of dismissal from service which is unjust and unfair so not tenable under the law.
- E. That respondent No.1 was under legal obligation to issue a notice to appellant about the changed and enhanced punishment not mentioned in the show cause notice and reasons be communicated to him regarding such alteration but he acted in arbitrary manner and passed the impugned order at the back of appellant. Therefore impugned order is without lawful authority and of no legal effect being violative of the principles of natural justice.
- F. That the impugned punishment is harsh, excessive, unjustified and not commensurate with the alleged charges thus not tenable and liable to be set aside.
- G. That appellant was politically victimized by the respondent No.1 and all the proceedings initiated against appellant are tainted with malafide intention for the following reasons:-
 - i. that no other co-accused official has ever been suspended in this case though their suspension was also recommended by the provincial inspection team but on the other hand, appellant was continuously placed under suspension for more than eighteen months in violation of rules on subject.

ii. that in this case, the recommendations as furnished by the enquiry committee against the co accused officials have not been acted upon and no final order of penalty whatever has been issued by the competent authority against them in view of statues quo order granted by the honorable Divisional bench Abbotabad of Peshawar High Court but the respondent No.I passed the impugned order only in the case of appellant in violation of such statues quo order being the same case.

H. That appellant filed review petition against the impugned order before the respondent No.1 but the same was not considered and kept pending without any decision within statutory period of ninety days therefore respondent No.1 has not acted in accordance with law and malafidely passed no order on the review petition.

It is, therefore, humbly prayed that on acceptance of this service appeal, the impugned order dated 12-03-2015 thereby appellant was dismissed from service with immediate effect and recovery of Rs. 15, 48,200 may graciously be set aside and appellant may kindly be reinstated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for may also be granted to appellant.

Through


Appellant

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

Dated: 67 / 07 / 2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. _____/2015**

Muhammad Tariq,
Ex Divisional Forest Officer,
Environment Department Khyber PakhtunkhwaAppellant

Versus

The Chief minister,
Khyber Pakhtunkhwa,
Chief Minister's Secretariat,
Peshawar & othersRespondents

APPLICATION FOR SUSPENDING THE OPERATION OF IMPUGNED ORDER DATED 12-03-2015 THEREBY APPELLANT/APPLICANT WAS DISMISSED FROM SERVICE AND RECOVERY OF RS. 15,48,200/- TILL THE FINAL DISPOSAL OF THE INSTANT APPEAL.

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be taken as an integral part of this application, which make out an excellent prima facie case in favour of appellant/applicant.

3. That all the ingredients as necessary for temporary injunction under the law and rules lie in favour of appellant.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned order dated 12.03.2015 may graciously be suspended till the final disposal of the appeal.



Appellant

Through




Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

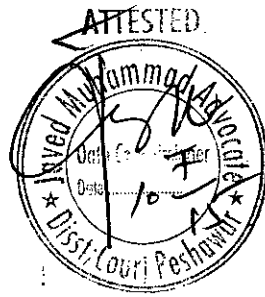
Dated: 07 / 07 / 2015

Affidavit

I, Muhammad Tariq Ex. Divisional Forest Officer, Environment Department Khyber Pakhtunkhwa do hereby solemnly affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Tribunal.


Identified by:

Deponent




Khush Dil Khan,

Advocate

Supreme Court of Pakistan

Annex: A



GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT

P-14

Dated Pesh: 1st Oct, 2013

NOTIFICATION

No.SO(Estt)Env/1-8/2k10: On the recommendation of the Provincial Inspection Team, Khyber Pakhtunkhwa, the Competent Authority is pleased to order transfer of Mr. Muhammad Tariq-I, Divisional Forest Officer (BS-18) from Upper Kohistan Forest Division, and attach him with the office of Chief Conservator of Forests, Region-I, Peshawar, with immediate effect, till further order.

2. Consequent upon the above transfer/attachment, the officer is placed under suspension pending finalization of inquiry against him under the Khyber Pakhtunkhwa, Government Servants, (Efficiency & Discipline) Rules, 2011.

3. Moreover, the charge of the post of Upper Kohistan Forest Division is hereby entrusted to Mr. Muhammad Shoaib, Divisional Forest Officer, Lower Kohistan Forest Division, in addition to his own duties, till further orders.

SECRETARY TO GOVT: OF
KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT.

Endst: No.SO(Estt)Env/1-8/2k10

Dated Pesh: 1st Oct., 2013

Copy is forwarded to:-

- 1) Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 2) PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 3) PS to the Chairman, Provincial Inspection Team, Khyber Pakhtunkhwa, with reference to his inquiry report dated 16.9.2013.
- 4) PS to Minister for Environment, Khyber Pakhtunkhwa.
- 5) PS to Secretary, Environment Department.
- 6) Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar.
- 7) Chief Conservator of Forests, Northern Forest Region-II, Civil Line Offices, Abbottabad.
- 8) Conservator of Forests, Upper Hazara Forest Circle, Mansehra.
- 9) Director Budget & Accounts Cell, Environment Department.
- 10) The Section Officer (Tech), Environment Department.
- 11) Officers concerned.
- 12) Master file.
- 13) Office order file.

ATTESTED

F. Gadh
SECRETARY (ESTT)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT

Dated Pesh: 16th January, 2014

Annex-B
P 15

NOTIFICATION

No.SO(Estt)Env/1-8/2k10: In exercise of the powers conferred under Rule-6, of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, read with sub rule(1) (a) of Rule-4 of the Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules 1989, the Competent Authority is pleased to extend suspension period of Mr. Muhammad Tariq-I, Divisional Forest Officer (BS-18), attached with the office of Chief Conservator of Forests, Central & Southern Forest Region-I, for a further period of Ninety (90) days i.e. w.e.f. 01.01.2014.

Sd/-
CHIEF MINISTER
KHYBER PAKHTUNKHWA

Endst: No.SO(Estt)Env/1-8/2k10: 220-228

Dated 16th January, 2014.

Copy is forwarded to :-


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

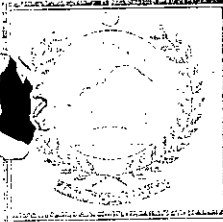

(MR ZALI KHAN)
SECTION OFFICER (ESTT)

NO. 2240/E,

Dated Peshawar the 23/1/20

Copy forwarded to Mr. Mohammad Tariq D
for information and necessary action.


CHIEF CONSERVATOR OF F
CENTRAL SOUTHERN
KHYBER PAKHTUNKHWA



GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT

Dated Pesh: the 2nd January, 2014

Annex = C
P. 16

NOTIFICATION

No. SO(Estt)Env/1-8/Tariq DFO/2k14: The Competent Authority has been pleased to constitute an Enquiry Committee, comprising Dr. Amber Ali Khan, (PAS BS-19), Additional Secretary, Home and Tribal Affairs Department (Chairman of the Enquiry Committee) and Mr. Sanaullah Khan (BS-19), CF/Director I&HRD Forest Department (Member of the Enquiry Committee) to conduct an inquiry against the following officer/officials of Khyber Pakhtunkhwa Forest Department, into the charges/allegations leveled against them in the enclosed Charge Sheets and Statements of Allegations, under section-5(1) of the Khyber Pakhtunkhwa, Efficiency and Disciplinary Rules, 2011 :-

1. Mr. Muhammad Tariq, Divisional Forest Officer (BS-18) the then DFO Upper Kohistan Forest Division.
 2. Mr. Muhammad Asghar, Forester (BS-09), I/C SDFO Harben Forest Sub Division.
 3. Mr. Abdul Manan, Block Officer (BS-07) Harben and Basha Blocks of Upper Kohistan, Forest Division.
 4. Mr. Jamir, Forest Guard (BS-07), I/C Harben KKH Depot.
 5. Mr. Nasib Khan, Forest Guard (BS-07), I/C Sazin KKH Depot.
 6. Mr. Umar Khan, Forest Guard (BS-07), I/C Basha KKH Depot.
2. The Enquiry Committee shall submit its findings within 30 days positively.

Sd/-
CHIEF MINISTER
KHYBER PAKHTUNKHWA

Encl: No. SO(Estt)Env/1-8/Tariq DFO/2k14:

Dated Pesh: the 2nd January, 2014

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

- 1- Dr. Amber Ali Khan, (PAS BS-19), Additional Secretary, Home and Tribal Affairs Department.
- 2- Mr. Sanaullah Khan (BS-19), CF/Director I&HRD Forest Department.
- 3- All the above (06) Officer/Officials C/O Chief Conservator of Forests; Central & Southern Forest Region-I, Peshawar with the direction to appear before the Enquiry Committee on the date, time and place to be fixed by the Enquiry Committee for the purpose of inquiry proceedings.

(MIR ZALI KHAN)
SECTION OFFICER (ESTT)

Encl: No. and date even. 82-86

Copy is forwarded for information and necessary action to:-

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

ESH

M. M. Khan
SECTION OFFICER (ESTT)

No. 2341/92
/E,

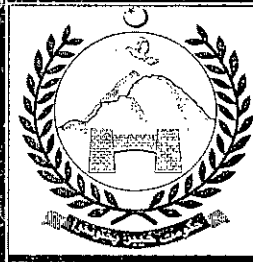
Dated Peshawar the 29/1/2014.

Copy alongwith its enclosures forwarded for information and necessary action to the:-

1. Chief Conservator of Forests Northern Forest Region-II Abbottabad.
2. Mr. Mohammad Tariq DFO.

3
CHIEF CONSERVATOR OF FORESTS
CENTRAL SOUTHERN FOREST REGION
KHYBER PAKHTUNKHWA PESHAWAR.

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT

Dated Pesh: the 2nd June, 2014

Annex-D

P-17

NOTIFICATION

No.SO(Estt)Env/1-8/Tariq DFO/2k14: In supersession of this department Notification No.SO(Estt)Env/1-8/Tariq DFO/2k14/82-86 dated 2/1/2014, the Competent Authority has been pleased to constitute an Enquiry Committee afresh, comprising Mr. Tariq Rashid, (SG BS-19), Reforms Coordinator, Finance Department (Chairman of the Enquiry Committee) and Mr. Shah Wazir Khan (BS-19), Managing Director, Forest Development Corporation (Member of the Enquiry Committee) to conduct an inquiry against the following officer/officials of Khyber Pakhtunkhwa Forest Department, into the charges/allegations leveled against them in the enclosed Charge Sheets and Statements of Allegations, under section-5(1) of the Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011 :-

1. Mr. Muhammad Tariq, Divisional Forest Officer (BS-18) the then DFO Upper Kohistan Forest Division.
 2. Mr. Muhammad Asghar, Forester (BS-09), I/C SDFO Harben Forest Sub Division.
 3. Mr. Abdul Manan, Block Officer (BS-07) Harben and Basha Blocks of Upper Kohistan, Forest Division.
 4. Mr. Jamir, Forest Guard (BS-07), I/C Harben KKH Depot.
 5. Mr. Nasib Khan, Forest Guard (BS-07), I/C Sazin KKH Depot.
 6. Mr. Umar Khan, Forest Guard (BS-07), I/C Basha KKH Depot.
2. The Enquiry Committee shall submit its findings within 30 days positively.

Sd/-
CHIEF MINISTER
KHYBER PAKHTUNKHWA

Endst: No. SO(Estt)Env/1-8/Tariq DFO/2k14:

Dated Pesh: the 2nd June, 2014

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

- 1- Mr. Tariq Rashid, (SG BS-19), Reforms Coordinator, Finance Department,
- 2- Mr. Shah Wazir Khan (BS-19), Managing Director, Forest Development Corporation, Peshawar.
- 3- All the above (06) Officer/Officials C/O Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar with the direction to appear before the Enquiry Committee on the date, time and place to be fixed by the Enquiry Committee for the purpose of inquiry proceedings.


(MIR ZALI KHAN)
SECTION OFFICER (ESTT)

Endst: No. and date even.

Copy is forwarded for information and necessary action to:-

- 1- Dr. Amber Ali Khan, (PAS BS-19), Additional Secretary, P&D Department.
- 2- Mr. Sanaulah Khan (BS-19), Chief Conservator of Forests, Malakand Forest Region-III, Swat.
- 3- Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar; with the direction to detail a departmental representative well conversant with the facts of the case alongwith relevant record to assist the Enquiry Committee during the inquiry proceedings.
- 4- PS to Secretary, Environment Department.
- 5- Personal file of the officer.
- 6- Master file.
- 7- Office order file.

SECTION OFFICER (ESTT)

ATTACHED

P-18

DISCIPLINARY ACTION

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Muhammad Tariq, Divisional Forest Officer (BPS-18) at Upper Kohistan Forest Division has rendered himself liable to be proceeded against, as he committed the following acts of omissions and commission, within the meaning of rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATION

- i. He always remained absent from his headquarter at Dassu without any prior permission / approval of the competent authority or sanction of any leave as stipulated in Civil Servants Act 1973, due to which the locals of area faced hardship to address their problems. Consequently the illicit trade of timber and illicit damage to the forest was at rampant. Moreover, he failed to take appropriate measures necessary for guarding against pilferage of local timber when transportation of timber from Northern Area was under the "Amnesty Policy for illicit timber of Northern Areas 2013" was in progress.
- ii. In a meeting held in the office of Commissioner Hazara Division at Abbottabad on 19.9.2013, the DC Kohistan expressed his entire dissatisfaction about his performance as DFO Upper Kohistan Forest Division. He categorically mentioned about his continued absence from his headquarter at Dassu since he took over the charge of the Upper Kohistan Forest Division that caused mis-management of the forest resources, lack of effective supervision and control over the subordinate staff necessary to guard against illicit damage to the forests and pilferage / smuggling of timber. As per findings of Provincial Inspection Team confirmed his continued frequent willful absence from station of duty. Furthermore his caused heavy losses to the Government on account of theft of 18,000 cft of timber on the night between 24th and 25th August 2013. The Provincial Inspection Team has recommended recovery of the cost of 18,000 cft timber from him. During the course of enquiry the concerned persons brought in the notice of PIT that he have been paid Rs 22/ per cft over and above the forest duty @ Rs 30/ cft, the same has been reflected in the report by PIT, therefore, he indulged in corruption.
- iii. He willfully / deliberately / maliciously abstained and did not appear before the Provincial Inspection Team that was assigned the task of enquiry of 18,000 pilfered timbers which is sufficient evidence that he involved and responsible for the theft of 18,000 Cft timbers.
- iv. The Chief Conservator of Forests Northern Forest Region-II Abbottabad called his explanation for continued absence from headland he being a subordinate officer, instead of adopting appropriate approach for furnishing reply, used the abusive/ obnoxious language for his superior officer not only insulting his superior but also exhibited disrespect / disregard to the service decorum that tantamount to misconduct, indiscipline and disobedience. The Administrative Department took notice of his letter No.1610-11/E dated 28.8.2013 addressed to the Chief Conservator of Forests Northern Forest Region-II Abbottabad and called for his explanation stating that his aforesaid letters are void of appropriate language essential while corresponding with superiors as stipulated in the "Rules of Business" Which speaks volumes of his disregard and insubordination to the higher officers.

ATTESTED

P-19

- v. He has occupied residential Bungalow at Abbottabad from July, 2008 to date while posted as DFO Peshawar Forest Division, DFO Demarcation Peshawar unlawfully and beyond his entitlement. After his posting as DFO Upper Kohistan DASSU he continued with illegal occupation of the said residence. Furthermore when Conservator of Forests Lower Hazara Circle asked him to vacate the residence, he not only refused but also replied in very disrespectful manner which tantamount to misconduct and insubordination.

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

- i. Mr. Tariq Rashid (SG-BS-19)
- ii. Shah Waqar Khan MD.FDC.
- iii. _____

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

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

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER, KHYBER
PAKHTUNKHWA
25.05.2014.

ATTESTED

P-20

CHARGE SHEET

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, hereby charge you, Mr. Muhammad Tariq, Divisional Forest Officer(BPS-18) as follows:-

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

- i. You always remained absent from your headquarter at Dassu without any prior permission / approval of the competent authority or sanction of any leave as stipulated in Civil Servants Act 1973, due to which the locals of area faced hardship to address their problems. Consequently the illicit trade of timber and illicit damage to the forest was at rampant. Moreover, you failed to take appropriate measures necessary for guarding against pilferage of local timber when transportation of timber from Northern Area was under the "Amnesty Policy for illicit timber of Northern Areas 2013" was in progress.
- ii. In a meeting held in the office of Commissioner Hazara Division at Abbottabad on 19.9.2013, the DC Kohistan expressed his entire dissatisfaction about your performance as DFO Upper Kohistan Forest Division. He categorically mentioned about your continued absence from your Headquarter at Dassu since you took over the charge of the Upper Kohistan Forest Division that caused mis-management of the forest resources, lack of effective supervision and control over the subordinate staff necessary to guard against illicit damage to the forests and pilferage / smuggling of timber. As per findings of Provincial Inspection Team confirmed your continued frequent willful absence from station of duty. Furthermore you caused heavy losses to the Government on account of theft of 18,000 cft of timber on the night between 24th and 25th August 2013. The Provincial Inspection Team has recommended recovery of the cost of 18,000 cft timber from you. During the course of enquiry the concerned persons brought in the notice of PIT that you have been paid Rs 22/ per cft over and above the forest duty @ Rs 30/ cft, the same has been reflected in the report by PIT, therefore, you indulged in corruption.
- iii. You willfully / deliberately / maliciously abstained and did not appear before the Provincial Inspection Team that was assigned the task of enquiry of 18,000 pilfered timbers which is sufficient evidence that you were involved and responsible for the theft of 18,000 Cft timbers.
- iv. The Chief Conservator of Forests Northern Forest Region-II Abbottabad called your explanation for continued absence from headland you being a subordinate officer instead of adopting appropriate approach for furnishing reply, used the abusive/ obnoxious language for your superior officer not only insulting your superior but also exhibited disrespect / disregard to the service decorum that tantamount to misconduct, indiscipline and disobedience. The Administrative Department took notice of your letter No.1610-11/E dated 28.8.2013 addressed to the Chief Conservator of Forests Northern Forest Region-II Abbottabad and called for your explanation stating that your aforesaid letters are void of appropriate language essential while corresponding with superiors as stipulated in the "Rules of Business" Which speaks volumes of your disregard and insubordination to the higher officers.

P21

- v. You have occupied residential Bungalow at Abbottabad from July, 2008 to date while posted as DFO Peshawar Forest Division, DFO Demarcation Peshawar unlawfully and beyond your entitlement. After your posting as DFO Upper Kohisatn Dassu you continued with illegal occupation of the said residence. Furthermore when Conservator of Forests Lower Hazara Circle asked you to vacate the residence, you not only refused but also replied in very disrespectful manner which tantamount to misconduct and insubordination.

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

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

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

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

6. A statement of allegation is enclosed.

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER, KHYBER
PAKHTUNKHWA
25.05.2014

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT
Dated Pesh: 2nd June, 2014

Annex: E-87
P-22

NOTIFICATION

No.SO(Estt)Env/1-8/Tariq DFO/2k14: ^{P-3.} On supersession of this department Notification No.SO(Estt)Env/1-8/Tariq DFO/2k14/82-86 dated 2.1.2014; the Competent Authority in exercise of the powers conferred under Rule-6, of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, read with sub rule(1) (a) of Rule-4 of the Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules 1989, is pleased to place Mr. Muhammad Tariq, Divisional Forest Officer (BS-18), Khyber Pakhtunkhwa Forest Department, under suspension, with immediate effect, till finalization/completion of the inquiry report.

Sd/-
CHIEF MINISTER
KHYBER PAKHTUNKHWA

240224/2

Endst: No. SO(Estt)Env/1-8/Tariq DFO/2k14

Dated Pesh: 2TH June, 2014.

Copy is forwarded to :-

1. PSO to Chief Minister, Khyber Pakhtunkhwa.
2. PS to Chief Secretary, Khyber Pakhtunkhwa.
3. PS to Secretary Environment Department.
4. Chief Conservator of Forests, Central & Southern Forest Region-I, Peshawar.
5. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad.
6. Director Budget & Accounts Cell, Environment Department.
7. Conservator of Forests, Lower Hazar Circle Abbottabad.
8. Officer concerned.
9. Personal file of the officer.
10. Master file.
11. Office order file.

ATTESTED

(MIR ZALI KHAN)
SECTION OFFICER (ESTT)

Inquiry of
Mr. Tariq DFO.

1827
18/6
1866/2014

To,

Mr. Tariq Rashid

Reforms Coordinator,

Finance Department,

Khyber Pakhtunkhwa Peshawar

(Chairman Enquiry Committee)

Annex-F
P. 23

Subject:- DISCIPLINARY PROCEEDINGS REPLY TO THE CHARGE SHEET THEREOF

Reference Notification No. SO(Estt)Env/1-8/Tariq/2K14/2416-22 dated 2nd Jun, 2014 received by the undersigned on 19th June, 2014. The reply to the allegations leveled against me is furnished as detailed:

1. It is incorrect, a baseless and unsubstantiated allegation that I remained absent from my head quarter. DFO Upper Kohistan has multifarious nature of duties i.e. to attend of meetings at different offices, to conduct timber auctions twice in a month at Goharabad and Dargai depots, attendance of civil courts and honorable high court in different litigation cases, inspection of sites/forests, inspection and distribution of timber at Dargai and Goharabad depots etc. therefore if DFO is not available in the office then it should not be presumed that he is absent from his duty. I performed my duties as mentioned in Forest manual II (Annex-I).

There is no complaint from the locals and contractors of the Northern area that their work suffered or was delayed even for a single day if there was any complaint the my superiors were required to endorsed the same for comments / explanation. All the transportation passes issued by the DFOs of the Northern area were endorsed well in time whenever put up to the undersigned by the office Assistant/SDFO. It is also baseless that any illicit trade of timber or illicit damage took place during my two and half month tenure, if such like incidents took place then the Chief Conservator/Conservator was supposed to pin point and referred that particular case and were also required to initiate as per rule (8A Efficiency and Disciplinary rules 1973) . The matter of my presence on duty is well evident from the official correspondence and endorsement of all transportation passes issued by the DFOs of Northern area well in time. As far as the allegation of pilferage theft of timber is concerned so for that purpose, a high level committee was constituted by the Chief Conservator of Forests Northern

ATTACHED

For Adviser / Log

Region to check the admixture and excess timber, but neither admixture of local timber nor excess timber was found. Therefore this allegation is also baseless and unjustified.

2. I don't know anything about the comments of Deputy Commissioner in the meeting held on 19.9.2013 if there was something like this then it was supposed to convey the minutes of that meeting for explanation. It is submitted that I personally attended the office of Deputy Commissioner three times during the month of July and August, 2013 and discussed different matters regarding forest related issues including support and help by administration, police and Frontier Constabulary but practically nothing was done by these authorities. On submission of PIT report recommending disciplinary action against the Deputy Commissioner. He was annoyed on me and developed personal grudges against me.

The report of PIT is baseless, predisposed and unfounded. The whole PIT report is based on the verbal story of Mr. Ali Asghar the then Chief Conservator of Forests Northern Region-II who was having personal enmity with me. The theft of 18000 Cft timber from three different places, was the remaining's of illicit damage caused by the locals during 1995-96 in retaliations of the ban imposed by the Federal government on commercial harvesting of forests during 1993, for which so many times amnesty policies were given. It is also to clarify that the theft timber was owned purely by the locals and was not the property of government and later it was recovered by the Forest staff so it is wrong that any loss has been caused to the government exchequer which should be recovered from any officer/official, the theft was occurred on the midnight of 24th and 25th August (midnight of Saturday and Sunday) which being holidays can't be counted towards absence. It is also added that as per section 60 Of Khyber Pakhtunkhwa Forest Ordinance 2002 "Government should not be responsible for any loss or damage which may occur in respect of any timber or other Forest produce at a depot established under a rule made under 58, or detained elsewhere, for the purpose of this ordinance, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss maliciously or fraudulently.

In this connection an inquiry was conducted by Mr. Muhammad siddiq Khattak Conservator of Forests and Muhammad Shohaib Divisional Forest officer vide CCF Northern Region -II office order No.28 dated 26.8.2013 (Annex-II).

The inquiry committee inspected the depots of the occurrence, recorded statements of the staff, locals and also met with the Forest officers of Gilgit Baltistan area, they inspected the loading points of the Northern area in my presence. It is worthwhile to mention here that more than 4000 Cft of theft timber was recovered from Darel and Thangir depots in their presence. The detail inquiry report (Annex-III) was then submitted to the Chief Conservator Of Forests Northern region-II and there was nothing against me. The District administration and Police department totally failed to perform their duty and extend requisite cooperation and help to the forest department, despite of

ATTACHED

verbal and written requests already mentioned in the PIT inquiry committee report. The timber smugglers crossed the police checkpoints/barriers in the presence of police personals who failed to perform their duty rather they facilitated the smugglers.

The Chief Conservator of Forests Northern Region-II after receipt of the inquiry report from Mr. Muhammad Siddiq Khattak Conservator Upper Hazara Circle lifted the ban on the transportation of timber vide his office order No. 31 dated 29.8.2013 (Annex-IV).

Instead of my directives to allow only those trucks which were loaded on 25th and 26th August, 2013 (Annex-V) to avoid any admixture of the theft timber but the then Sub-Divisional Forest Officer allowed all the trucks loaded after 26th August, 2013 on the telephonic directives of high up. On the recommendation of the undersigned to the Conservator of Forests Upper Hazara Circle, the Chief Conservator Northern Region issued directive to immediately remove Mr. Asghar Fr from Harban Sub-Division which was implemented accordingly.

Before I took over the charge, Mr. Muhammad Asghar Forester (BS-9) was already posted against the post of Sub-Divisional Forest Officer (BS-17) which was not logical and the matter was discussed with high-up.

Due to the inefficiency and negligence the incident of theft of 18000 Cft timber occurred instead of repeated instructions to the SDFO and lower field staff and it was my duty to initiate disciplinary proceedings against the field staff who were directly responsible and incharge of the depots. Therefore proper disciplinary proceedings were started against the field staff which is on record and can be produced whenever required.

The allegation of payment of over and above the duty is baseless and without any footings. Sir it is very easy to level such like allegation. It was duty of the office of Divisional Forest Office to realize duty @ Rs.30/= per Cft through ministerial staff in the National Bank of Pakistan Dassu.

I solemnly declare on oath that no owner of the timber ever met me. The transportation passes were endorsed by the undersigned after recording a certificate by the SDFO that there is no admixture of the Kohistan timber in the consignment and the timber is genuine to be transported.

In the Jirga which met the worthy Chief Minister Khyber Pakhtunkhwa in the presence of Minister Environment on 18.9.2013, wherein they declared on oath that neither they paid any neither commission to anybody nor will pay which is on record. Therefore, it is proved that the owners did not pay any commission/additional payment to the forest staff and it is also impossible for the staff of Kohistan Forest Division to give any undue favor to the owners because there are more than eight checkpoint of other Division where each and every consignment is checked thoroughly. Therefore it is unjustified to level

ATTESTED

such like allegation and that too directly on the Divisional Forest Officer of Upper Kohistan Forest Division only. In this contest a record note was submitted to the honorable Chief Minister Khyber Pakhtunkhwa by the Secretary Environment (Annex-VI)

3. The Provincial Inspection Team came to Manshera on 13.9.2013 after night stay at Daddar, on 14.9.2013 proceeded to Besham where they met the Forest officials of Upper Kohistan Forest divisions but neither I was summoned nor contacted to give them the required explanations on spot. I was contacted on phone by the office superintendent OF Conservator of Forests Upper Hazara Circle Manshera to direct the staff of Harban subdivision to appear before the PIT enquiry committee on 14.9.2013 at 10 am at PTDC motel Besham and accordingly informed the lower formation, however, I was not told to be present there essentially. Sir, I was not given any opportunity of explanation/ defense statement or personal hearing even after the visit of PIT inquiry committee after their visit to Besham on 14.9.2013 in their office which was very much possible. The PIT inquiry committee was totally misguided/ misled by Mr. Ali Asghar Chief Conservator to achieve and satisfy his personal ulterior motives. I performed my duties in accordance with the job description as mentioned in Forest manual volume 2 of Khyber Pakhtunkhwa Forest department. The DFO is not responsible for the protection and watch/ ward directly, for this purpose the field staff Forest and Forest guards are directly responsible but astonishingly they are exempted by the PIT inquiry committee, while I was put under suspension.
4. The Chief Conservator of Forests was not in good terms and was having personal grudges and ill intensions towards me which very is clearly manifested from his D.O letter No. 31/PA written to Secretary Environment dated 22 .7.13, he was intentionally torturing me without any solid grounds just to satisfy his ulterior motives. The copy of the reply to the explanation is enclosed (Annex-VII) which may please be examined that I have not used any kind of abusive/obnoxious language but only explained the factual position only, therefore it is incorrect to count this towards misconduct, indiscipline and disobedience. It is also added that I have not received letter No. 1610-11/E dated 28.8.13 from the administrative department.
5. The residential bungalow at Abbottabad was allotted to me by the competent authority vide his office order No.99 dated 10.06.2008 as such I have not occupied the same forcefully (Annex-VIII). The house rent as per procedure was deducted from my salary, however when I was posted as DFO Peshawar and Demarcation then some of my family members were residing there but I didn't receive any notice or letter to vacate the same. When I was posted as DFO upper Kohistan then my family again occupied the same bungalow and my children are getting education over there. Conservator of Forests

ATTACHED 4

P-27

Lower Hazara Circle being not competent authority as the bungalow is under the administrative control of Conservator of Forests watershed circle wrote to me for the vacation of bungalow that this required by the forest department and as such not considering me the employee of forest department. The reply submitted to Conservator of Forests lower circle is also attached (Annex-IX) for information please.

Sir, many officers of the Forest department are still occupying residences at Abbottabad and Peshawar while they are posted in other regions while some of officers are occupying even two bungalows at different places. Some officers who are even serving outside the department are also occupying the Forest department bungalows even since last 10 years.

Law and Order Situation of District Kohistan

Sir, it is worthwhile to mention here that the forest department is working in Kohistan since 1979 under an eight point agreement executed between the elders of Kohistan and forest department on the directives of the then Governor Lt: General Mr. Fazal-e-Haq due to peculiar tradition and poor law and order situation. The forests of Kohistan are puely privately owned and the amount of sale proceeds is distributed into the ratio of 80% (owners share) and 20% (Forest department).

There is almost no writ of law and order. The criminals /proclaimed offenders are roaming in the bazars but no one can arrest them. Recently on main KKH 22 persons were killed near Police post but no one was arrested also no action was taken against any officer, one colonel and DPO was killed by unknown persons at main Chillas, nearby to the place of theft occurrence, Foreign tourists were killed in the nearby vicinity but no action could be taken against anyone over there. It is also added that sometime ago in the supervision of Assistant Commissioner Pattan a raid was conducted to seize and transport illicit timber but the locals killed some police personals and took away all the arms and ammunitions then the Deputy Commissioner and District Police officer did negotiations with the local Jirga but could not succeed to arrest the offender and even to recover the arms.

Therefore it is not justified that in such like poor law and order situation, I should be made directly responsible for the theft of timber and that too privately owned.

It is also requested that I may also be given to provide additional evidences during personal hearing.

Sir, keeping in view the above expositions it is humbly prayed the allegation levelled against me are not correct and based on facts. Therefore it is humbly prayed that I may please be absolved of the charges levelled against me and reinstated in service honorably. I will also like to be heard in person and cross-examine the prosecution witnesses if any.

ATTACHED

5
Muhammad Jaffer
DFO

Annex- G

P- 28

ENQUIRY REPORT AGAINST
MR. MUHAMMAD TARIQ DFO
& OTHER OFFICIALS OF KHYBER
PAKHTUNKHWA
FOREST DEPARTMENT.

ATC

ENQUIRY REPORT AGAINST MR. MUHAMMAD TARIQ DFO
& OTHER OFFICIALS OF KHYBER PAKHTUNKHWA
FOREST DEPARTMENT

P-29

INDEX

Description	Annex	Page No.
- Background		1
- Proceedings		1
1 st Meeting dated 19.06.2014		1
2 nd Meeting dated 02.07.2014		2
3 rd Meeting dated 15.07.2014		2
4 th Meeting dated 24.07.2014		2
5 th Meeting dated 11.08.2014		3
6 th Meeting dated 21.08.2014		4
7 th Meeting dated 01.09.2014		4
8 th Meeting dated 02.09.2014		5
- General Discussion		5
- Individual Charge-wise Discussion & Conclusion		8
Muhammad Tariq, DFO		8
Muhamad Asghar, Forester		13
Abdul Manan, Block Officer		15
Jamir, Forest Guard		17
Nasib Khan, Forest Guard		19
Umar Khan, Forest Guard		21
- General Recommendations		23
Notification of Enquiry Committee		24
Charge Sheet - Muhammad Tariq, DFO	1	25-26
Statement of Allegation - Muhammad Tariq, DFO	2	27-28
Charge Sheet - Muhamad Asghar, Forester	3	29
Statement of Allegation - Muhamad Asghar, Forester	4	30
Charge Sheet - Abdul Manan, Block Officer	5	31
Statement of Allegation - Abdul Manan, Block Officer	6	32
Charge Sheet - Jamir, Forest Guard	7	33
Statement of Allegation - Jamir, Forest Guard	8	34
Charge Sheet - Nasib Khan, Forest Guard	9	35
Statement of Allegation - Nasib Khan, Forest Guard	10	36
Charge Sheet - Umar Khan, Forest Guard	11	37
Statement of Allegation - Umar Khan, Forest Guard	12	38
Reply of Muhammad Tariq, DFO	13	39-65
Reply of Muhamad Asghar, Forester	14	66-85
Reply of Abdul Manan, Block Officer	15	86-90
Reply of Jamir, Forest Guard	16	91-94
Reply of Nasib Khan, Forest Guard	17	95-98
Reply of Umar Khan, Forest Guard	18	99-102
Constitution of Sub-Committee	19	103
Medical Report of Muhammad Tariq, DFO	20	104-113
Report of Sub-Committee	21	114
Re-Measurement Report of Northern Area Timber	22	115-121
Tour Diaries of Muhammad Tariq, DFO	23	122-132
Minutes of the meeting of Commissioner Hazara Division	24	133-135
Resultant Loss to Provincial Ex-Chequer	25	136

ATTACHED

**ENQUIRY REPORT AGAINST MR.MUHAMMAD TARIQ DFO
& OTHER OFFICIALS OF KHYBER PAKHTUNKHWA
FOREST DEPARTMENT.**

R30

BACKGROUND

Government of Khyber Pakhtunkhwa, Environment Department vide Notification No.SO(Estt)Env/1-8/Tariq DFO/2k14 dated 02.06.2014 constituted Enquiry Committee of Mr.Tariq Rashid, Secretary, Benevolent Fund (the then Reforms Coordinator) & Mr.Shah Wazir Khan, Managing Director, Forest Development Corporation to conduct an enquiry against the following officer / officials of Khyber Pakhtunkhwa, Forest Department into the charges / allegations leveled against them in their respective charge sheets and statement of allegations (**Annexure 1 – 12**) under the provision of Khyber Pakhtunkhwa, Efficiency & Discipline Rules, 2011:-

- i. Mr.Muhammad Tariq, Divisional Forest Officer (BPS-18) the then DFO Upper Kohistan Forest Division.
- ii. Mr.Muhamad Asghar, Forester (BPS-09), I/C SDFO Harben Forest Sub Division.
- iii. Mr.Abdul Manan, Block Officer (BPS-07), Harben and Basha Blocks of Upper Kohistan, Forest Division.
- iv. Mr.Jamir, Forest Guard (BPS-07), I/C Harben Road Side Depot.
- v. Mr.Nasib Khan, Forest Guard (BPS-07), I/C Sazin Road Side Depot.
- vi. Mr.Umar Khan, Forest Guard (BPS-07), I/C Basha Road Side Depot.

II. PROCEEDINGS

After the receipt of the Notification No.SO(Estt)Env/1-8/Tariq DFO/2k14 dated 02.06.2014 (received on 17.06.2014), the Enquiry Committee initiated proceedings as under:-

A. 1ST MEETING ON 19.06.2014

Preliminary meeting of the Committee held in the office of Reforms Coordinator. Present status along with postal address of the

ATTESTED

P31

major accused officer / officials were requested from the Section Officer (Estb) of Environment Department. Provincial Inspection Team (PIT) enquiry report & preliminary enquiry report conducted by Hashim Ali Khan & others were reviewed. All accused officer / officials were communicated to submit their reply by 30.06.2014.

B. 2ND MEETING ON 02.07.2014

Held second meeting of the Enquiry Committee in the office of Reforms Coordinator. Reply of Muhammad Tariq Divisional Forest Officer (D.F.O) accused officer at S.No.1 received on 23.06.2014 was examined (**Annexure-13**). Rest of the accused (5 in number) had not yet submitted their reply. The Environment Department had not yet nominated officer as prosecutor of the department.

To start with regular proceedings the remaining accused officials were reminded to submit their reply by 10.07.2014. Section Officer Environment Department was again reminded both on telephone & vide letter to nominate an officer of the department as prosecutor. Perusal of reply of Mr.Tariq D.F.O & P.I.T enquiry report reveals that other relevant officers mentioned would also be summoned on appropriate dates of hearing.

C. 3RD MEETING ON 15.07.2014

Replies to charge sheets received from the remaining 5 officials uptill 14.07.2014 (**Annexure 14-18**), the same were examined in the light of charge sheets served on the Officers / Officials. After preliminary examination of the replies it was agreed to initiate regular proceedings / hearings of the accused officer / officials on 24.07.2014 in the office of Reforms Coordinator in the presence of Departmental representative (Prosecutor). They were communicated to appear before the Enquiry Committee on 24.07.2014

D. 4TH MEETING ON 24.07.2014

Regular proceedings fixed for 24.07.2014 were held wherein all the accused officials except Mr.M Tariq DFO & Mr. Umar Kan Forest Guard attended.

A T T E S T E D

Mr. M Ashghar Forester, the then incharge SDFO Harben (the accused official) was cross questioned by the Committee & the Prosecutor. During the course of proceedings it was brought to the notice of the Committee that the stolen timber measuring 18000 cft from Basha, Sazin and Harben depot have been retrieved. In order to ascertain the facts a sub-committee comprising of Raja M. Imtiaz DFO and Mr. M. Shoaib DFO was constituted to report in the matter on the next date of hearing i.e. 11.08.2014 (Annexure-19). CCF I was accordingly requested to take further necessary action in this regard.

E. 5TH MEETING ON 11.08.2014

Regular proceedings fixed for 11.08.2014 were held in the Committee Room of Forest Development Corporation wherein all the accused officials except Mr. Muhammad Tariq, DFO and Mr. Umar Khan, Forest Guard attended. Departmental representative (Prosecutor) Mr. Muhammad Shoaib, DFO Lower Kohistan represented the Department

Mr. Muhammad Tariq DFO informed Managing Director FDC telephonically that he was hospitalized from 27.07.2014 to 07.08.2014 but still on bed rest and not in a position to attend the proceedings due to bad health. He also sent medical report (Annexure-20) in this regard which was accepted by the Committee and directed him to appear on the next date. The present accused officials were cross examined by the Enquiry Committee and Prosecutor.

Muhammad Shoaib DFO informed the Committee that Mr. Raja Imtiaz DFO had been posted as Conservator of Forests, Lower Hazara and the sub-committee constituted on 24.07.2014 could not finalize its report for which another week is required. The committee expressed concern and conveyed its displeasure on non-submission of the required report in time. The sub-Committee was further directed to finalize its report and submit by 18.08.2014 without further delay.

The other accused officials except Umar Khan, Forest Guard, were asked to present further points if any but they did not.

[Handwritten signature]

ATTACHED

P-33

The proceedings were therefore adjourned to 21.08.2014 in the Committee Room of Forest Development Corporation.

F. 6th MEETING ON 21.08.2014

Regular proceedings fixed for 21.08.2014 were held in the Committee Room of Forest Development Corporation from 1100 Hrs till 2000 Hrs. Wherein all the accused officer / officials were present along with Departmental Representative Mr. Muhammad Shoaib, DFO Lower Kohistan (Prosecutor).

Mr. Muhammad Shoaib, DFO Lower Kohistan submitted written report of the Sub-Committee appointed for ascertaining the retrieved timber (Annexure-21).

All accused officials were questioned by the Enquiry Committee and Prosecutor to examine their charges / allegations.

After detailed enquiry proceedings, Mr. Muhammad Shoaib, DFO Lower Kohistan was directed to submit the relevant record before the enquiry committee in next week.

G. 7TH MEETING ON 01.09.2014

On perusal of record submitted by DFO (Lower Kohistan) Prosecutor of the Department on 26-08-2014 it came to surface that the re-measured timber of Northern Area in 54 trucks at Tarnol Depot was reduced by 4843 cft (Annexure-22) which created further doubts in the matter.

In order to clarify the factual position the committee headed by Muhammad Tehmasip, DFO Kaghan along with Conservator of Forest, Abbottabad and Prosecutor were summoned for appearance on 02-09-2014. CCF-1 was accordingly asked to direct the officers / officials for attending the proceedings on due date.

ATTESTED

P-34

H. 8TH MEETING ON 02.09.2014

Re-measurement Committee headed by Muhammad Tehmasip, DFO, Qazi Mushtaq, Ex-DFO Siran, Raja Imtiaz Ahmad, Conservator of Forest Abbottabad and Muhammad Shuaib, DFO, Lower Kohistan (Prosecutor) were heard and the Re-measurement Committee members were cross-examined to dig out the facts about the re-measured timber at Tarnol Depot.

Record regarding participation of District administration, representative and further details about re-measurement (truck wise record) was demanded from the Prosecutor who promised to produce it within 02 days.

iii. GENERAL DISCUSSION

On receipt of the replies of the accused officer / officials, they were all summoned for examination / cross examination to analyze their charges and statement of allegation one by one in detail. The analysis was made mainly on available record, defense / prosecution evidences and cross examination by departmental representative / prosecutor. No defense witness or prosecution witness was either produced or requested.

All the accused were given fair and ample chance to put before the Enquiry Committee any additional information, record and evidence in their defense. Similar opportunity was also extended to the departmental representative / prosecutor (Mr. Muhammad Shoab DFO) who provided some additional information / record relating to the subject from the record of Forest Department.

A. During the course of enquiry, detailed analysis of the following three enquiry reports were made: -

- i. Provincial Inspection Team, Khyber Pakhtunkhwa - Enquiry Report "Apprehension of 68 trucks of timber being transported under the coverage of Amnesty Policy 2013". (13-14/09/2013).

[Handwritten signature]
ATTACHED
[Handwritten signature]

- ii. Fact Finding report on lifting of timber from road side depots of Upper Kohistan for admixture in timber of Northern Area Amnesty Policy 2013 conducted by Muhamamd Siddique Khattak Conservator of Forest & Muhammad Shoaib DFO, Lower Kohistan (26-27/08/2013).
- iii. Enquiry Report on apprehending of sixty trucks of timber being transported under the coverage of Amnesty Policy 2013 conducted by Hashim Ali Khan, Chief Conservator of Forest – III, Malakand, Malik Javed Khan, Director CDE & GAD, Peshawar and Tauheed-ul-Haq, DFO. Working Plan Mansehra (October / November 2013).

Detailed perusal and analysis of the above three reports brought to light the following facts: -

- i. That the charge sheet / statement of allegation against the accused were largely based on the findings of these reports.
- ii. Simultaneously these reports also highlighted certain flaws in the process adopted in handling the issue besides cross cutting issues involved in the Amnesty Policies of Northern Areas.
- iii. Sensitivity of the matter especially KKH was also exploited by the vested interest to transport the stolen timber.



ATTESTED

- B. While conducting enquiry proceedings, report of the Committee headed by Muhammad Tehmasip, DFO on re-measurement of Northern Area Timber (54 trucks) halted in the jurisdiction of Siran Forest Division which detected that the timber in these 54 trucks was reduced by 264 scants = 4843 cft.

Detailed analysis of the report and subsequent cross examination of the Re-measurement Committee facilitated by Qazi Mushtaq Ahmad, Ex-DFO, Siran and Raja Imtiaz Ahmad, Conservator of Forest, Abbottabad brought to surface the following: -

- i. Participation of Additional Deputy Commissioner (ADC) Mansehra in the Re-measurement Committee was not supported by any authentication in the report.
- ii. It is hard to understand and believe that 54 trucks carried less timber than the recorded number and volume for which price of timber and duty / taxes etc. had been paid.
- iii. The two members of the Re-measurement Committee headed by Mr. Tehmasip (who are Muhamad Muzzaffar and Muhammad Pervaiz) had themselves stopped these 54 trucks in their respective jurisdiction in Siran Forest Division for excess timber and stolen timber of Kohistan Forest Division. But in the Re-measurement Committee they put their signatures on the Committee report showing thereby reduced number of scants and volume than the consignment of these 54 trucks. Such like dubious enquiry report and breach of trust always create embarrassment for the department / government and is against the interest of the state which should not be left unnoticed.

ATTESTED

P-37

INDIVIDUAL CHARGE-WISE DISCUSSION AND CONCLUSION

A. Mr. Muhammad Tariq, Divisional Forest Officer (BPS-18) the then DFO Upper Kohistan Forest Division.

Charge No. (i)

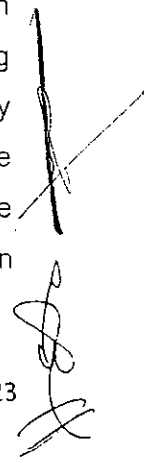
"You always remained absent from your headquarter at Dassu without any prior permission / approval of the competent authority or sanction of any leave as stipulated in Civil Servants Act 1973, due to which the locals of area faced hardship to address their problems. Consequently the illicit trade of timber and illicit damage to the forest was rampant. Moreover, you failed to take appropriate measures necessary for guarding against pilferage of local timber when transportation of timber from Northern Area was under the "Amnesty Policy for illicit timber of Northern Areas 2013" was in progress."

To ascertain the presence / absence of the officer at headquarter, the accused officer produced copies of his tour diaries from 18-07-2013 to 30-09-2013 depicting routine duties without any major absence except on gazetted holidays / weekends (Annexure-23). The tour diary for the month of August had even shown office attendance on 14.08.2013 (Independence Day) which is not comprehensible.

Copies of these tour diaries provided by the accused officer were, however, not authenticated by Muhammad Shoaib, DFO (Prosecutor) despite the fact that he is holding the charge of DFO Upper Kohistan Dassu. On a query, the Prosecutor (DFO Lower & Upper Kohistan) clarified that these tour diaries are not available on record of DFO Upper Kohistan, therefore, cannot be authenticated.

The casual presence of the accused officer in Upper Kohistan was further substantiated by almost all the accused officials during their cross examination who stated that Muhammad Tariq, DFO rarely attended office at Dassu which resulted in a lot of complications in the working of the department in general & matters relating to the Amnesty Policy of Northern Area Timber (in vogue at that time) in specific.

ATTESTED Page 8 of 23



P 38

From the above analysis it is apparent that the accused official casually attended his office and for most of the time remained stationed at Abbottabad disposing off his official correspondence from there.

Charge No. (ii)

"In a meeting held in the office of Commissioner Hazara Division at Abbottabad on 19.09.2013, DC Kohistan expressed his entire dissatisfaction about your performance as DFO Upper Kohistan Forest Division. He categorically mentioned about your continued absence from your headquarter at Dassu since you took over the charge of the Upper Kohistan Forest Division that caused mis-management of the forest resources, lack of effective supervision and control over the subordinate staff necessary to guard against illicit damage to the forests and pilferage / smuggling of timber. As per findings of Provincial Inspection Team confirmed your continued frequent willful absence from station of duty. Furthermore you caused heavy losses to the Government on account of theft of 18,000 cft of timber on the night between 24th and 25th August 2013. The Provincial Inspection Team has recommended recovery of the cost of 18,000 cft timber from you. During the course of enquiry the concerned persons brought in the notice of PIT that you have been paid Rs. 22 / per cft over and above the forest duty @ Rs. 30 / cft, the same has been reflected in the report by PIT, therefore, you indulged in corruption."

Minutes of the meeting under chairmanship of Commissioner Hazara on 19-09-2013 endorsed vide Assistant Commissioner (R&GA) vide endorsement No.GB/ACR/CHD/8483/8513 dated 19-09-2013 contains no specific reference to the issue pertaining to Muhammad Tariq, DFO, Upper Kohistan (Annexure-24).

Provincial Inspection Team during their enquiry visit to Hazara Division in connection with 68 trucks parked on KKH transporting timber of Northern Areas under Amnesty Policy 2013 directed

ATC
[Handwritten signatures and stamps]

Muhammad Tariq, DFO to appear before them on 14-09-2013 but he did not attend. The accused officer in response stated that he was asked by Superintendent Circle office to direct SDFO and other Field Staff to appear before Provincial Inspection Team on 14-09-2013 and showed ignorance of any direction for his personal appearance. The prosecutor kept silent.

merely

As regards taking of bribe @ 22 per cft over and above the duty @ 30 per cft, the prosecution could not substantiate the charge and ~~was~~ referred to the Provincial Inspection Team report wherein this charge has been clearly mentioned under Para ix (Page 12).

Regarding his presence / absence at headquarter the charge has been discussed in detail under Charge No. (i) above. The officer had full knowledge of Provincial Inspection Team visit but remained away from its proceedings. The charge regarding taking of bribe could not be established as no evidence except reference in Provincial Inspection Team report was ever produced.

Charge No. (iii)

"You willfully / deliberately / maliciously abstained and did not appear before the Provincial Inspection Team that was assigned the task of enquiry of 18,000 cft pilfered timbers which is sufficient evidence that you were involved and responsible for the theft of 18,000 cft timbers."

Stealing of 18,000 cft from the following road side depots in Upper Kohistan Forest Division occurred between the night of 24th - 25th August 2013.

Name of Depot	Timber Lifted (cft)		Total cft
	Deodar	Kail	
Basha	-	6,000	6,000
Harben	3,000	2,000	5,000
Sazeen	7,000	-	7,000
Total	10,000	8,000	18,000

ATTESTED

During cross examination the accused officer admitted that the timber was stolen and taken to Northern Areas (Diamer District) for

P40

structure into the timber transported under the Amnesty Policy. The accused officer was away from his headquarter on the night of occurrence and was informed by the SDFO on 25-08-2013 at about 11:00 hrs. The incharge SDFO Mr. Muhamad Asghar had already left the headquarter on 24-08-2013 in the afternoon on the pretext that the timber would be stolen during the night to come and was proceeding to Abbottabad to inform the DFO and Conservator. It is sufficient proof that the whole saga was pre-planned and engineered. The entire staff right from the Forest guard upto the SDFO did not take a single step at the time of occurrence to stop the lifting / stealing of timber – meaning, thereby, clear cut involvement of the accused. Lifting of 18,000 cft timber and its transportation in one night is not possible without active connivance and support of the incharge staff along with the consent of their DFO.

Charge No. (iv)

-The Chief Conservator of Forests Northern Forest Region-II Abbottabad called your explanation for continued absence from headland you being a subordinate officer instead of adopting appropriate approach for furnishing reply, used the abusive / obnoxious language for your superior officer not only insulting your superior but also exhibited disrespect / disregard to the service decorum that tantamount to misconduct, indiscipline and disobedience. The Administrative Department took notice of your letter No.1610-11/E dated 28-08-2013 addressed to Chief Conservator of Forests Northern Forest Region – II Abbottabad and called for your explanation stating that your aforesaid letters are void of appropriate language essential while corresponding with superiors as stipulated in the "Rules of Business" which speaks volumes of your disregard and insubordination to the higher officers."

Detailed scrutiny of the correspondence reveals that the language used in the letters was inappropriate and a bit in disregard to the service decorum.

Retired

ATTESTED

[Handwritten signature]

P-41

Charge No. (v)

"You have occupied residential Bungalow at Abbottabad from July, 2008 to date while posted as DFO Peshawar Forest Division, DFO Demarcation Peshawar unlawfully and beyond entitlement. After your posting as DFO Upper Kohistan Daßu you continued with illegal occupation of the said residence. Furthermore, when Conservator of Forests Lower Hazara Circle asked you to vacate the residence, you not only refused but also replied in very disrespectful manner which tantamount to misconduct and insubordination."

During cross examination the accused officer showed copy of the office Order No.77 dated 10-06-2008 issued by Chief Conservator of Forest NWFP (Now Khyber Pakhtunkhwa) regarding allotment of bungalow of Conservator of Forest Watershed Abbottabad to Muhammad Tariq, DFO Gallis Forest Division Abbottabad. On a query, the Prosecutor could not substantiate the charge and did not produce any letter written by Conservator of Forest, Abbottabad and reply by the accused officer as stated in the charge.

It transpired that the bungalow at Abbottabad had been allotted by the then Chief Conservator of Forest NWFP and the Prosecutor could not prove the charge.

Keeping in view the above, charges of corruption and misconduct partly established. The charge of inefficiency, however was not established.

Recommendation

On the basis of aforesaid discussion and conclusions, the following recommendations are made: -

Recovery of Rs.15,48,200/- being 1/4th of the price, forest duty and FDF of 18,000 cft timber (10,000 cft Deodar scants plus 8,000 cft Kail @ 20% government share) from Mr. Muhammad Tariq Ex-DFO Upper Kohistan to make the losses sustained by the provincial exchequer

Reversion from the post of DFO (BPS-18) to the post of SDFO (BPS-17) with immediate effect.

ATTESTED

P-42

ii. Mr. Muhammad Asghar, Forester (BPS-09), Incharge Sub-Divisional Forest Officer, Harben.

Charge No. (i)

"You being incharge Sub-Divisional Forest Officer of Harben Sub-Division, failed to protect the timber lying in Basha, Harben and Sazin KKH roadside Depots against admixture in timber being transported under the Northern Area Amnesty Policy, 2013. You are supposed to be vigilant during currency of the instant policy but you intentionally escaped from the scene, particularly at the time of occurrence, for free exercise of lifting of timber under your control."

From the detailed analysis of the charge it transpires that the accused official instead of exercising control over his field staff, escaped from the scene and thus the stealing / lifting of 18,000 cft timber occurred – meaning thereby that the charge proved.

Charge No. (ii)

"You failed in adopting preventive measures against admixture of timber of Kohistan origin in timber of Northern Area and hence you severally and jointly along with other accuseds in the case responsible for recovery of losses sustained by the public exchequer, in addition to the interest as per law."

Analyzing the charge it came to surface, that the accused official neither adopted any preventive measures nor remained at headquarter to stop the occurrence of stealing of timber but tried to escape from the scene of occurrence. He further failed to recover the stolen timber which is clear from the sub-committee report for ascertaining the genuineness of claimed recovered stolen timber. The charge thus stands proved.

ATTESTED

P-43

Charge No. (iii)

"You failed to protect the timber and sufficient evidence in this regard are available that with your involvement with the timber mafia 18,000 cft pilfered timbers were theft for which you are solely responsible."

Detailed analysis of the charges revealed that stealing / lifting of 18,000 cft timber in one night is not possible without the active connivance of the incharge Sub-Divisional Forest Officer and his subordinate field staff. The accused official proceeded to Abbottabad on 24.08.2013 on the pretext that the timber would be stolen in the night to come. The charge thus stands proved.

In view of the above, the charges of misconduct, inefficiency and corruption under Rule 3 of Khyber Pakhtunkhwa E&D Rules, 2011 proved against the accused official.

Recommendation

On the basis of aforesaid discussion and conclusions, the following recommendations are made: -

Recovery of Rs.21,98,500/- being 1/4th of the price, forest duty and FDF of 18,000 cft timber (10,000 cft Deodar scants plus 8,000 cft Kail @ 20% government share) and 1/4th of additional loss pertaining to Sazin Depot as Incharge Forester from Mr. Muhammad Asghar, Forester (BPS-09) Incharge SDFO, Harben to make the losses sustained by the provincial exchequer

Compulsory retirement from service with immediate effect.

ATTESTED

P-44

Mr. Abdul Manan, Block Officer (BPS-07), Harben and Basha Block.

Charge No. (i)

"You being incharge Block Officer, failed to protect the timber from illegal lifting for admixture in Northern Area Amnesty Policy, 2013, whereas you were supposed to be extra vigilant for protecting the timber lying in Basha and Harben KKH timber depots."

Detailed analysis of the charge shows that the accused official Mr. Abdul Manan, Block Officer mainly engineered the whole saga as mastermind and created camouflage for being on leave without any legal authority. Thus the charge stands proved.

Charge No. (ii)

"You have no preventive control over your subordinate staff, incharge roadside depots, which is a cardinal supervisory failure."

Detailed examination / cross examination of the accused official Mr. Abdul Manan, Block Officer brought to surface that he not only failed to supervise his subordinate staff, incharge road side depots but joined hands clandestinely with the timber mafia and remained away from the scene of occurrence intentionally through self claimed leave. His understating with timber mafia encouraged them to lift the timber from the depots thus proving the charge against him.

Charge No. (iii)

"That you are severally and jointly along with other accused in the case responsible for illegal lifting of timber which caused colossal loss to the Government exchequer."

As discussed under the above two charges, the accused official in collaboration with his subordinate forest guards (incharge of the road side depots) managed the illegal lifting of 11,000 cft timber

P-45

causing heavy losses to the Provincial exchequer, thereby proving the charge against him.

In view of the above facts, the charges of misconduct, inefficiency and corruption under Rule 3 of Khyber Pakhtunkhwa E&D Rules, 2011 stand proved against the accused official.

Recommendation

On the basis of aforesaid discussion and conclusions, the following recommendations are made: -

Recovery of Rs.8,97,900/- being 1/4th of the price, forest duty and FDF of 11,000 cft timber (3000 cft Deodar scants plus 8000 cft Kail @ 20% government share) from Mr.Abdul Manan, Block Officer (BPS-07), Harben Basha Block to make the losses sustained by the provincial exchequer

Compulsory retirement from service with immediate effect.



ATTESTED

1

P. 46

Mr. Jamir, Forest Guard (BPS-07), Incharge Harben Road side Depot.

Charge No. (i)

"You being incharge of the depot, failed to protect the timber from illegal lifting for admixture in Northern Area Amnesty Policy, 2013, whereas, being incharge of the depot you were supposed to watch the depot day and night against any un-authorized pilferage."

During detailed examination of the charge through examination & cross examination of the accused official, he did not take any practical step to stop the lifting of timber despite the fact that the Amnesty Policy for Northern Area - 2013 was in progress and the accused official had full knowledge of chances of admixture of Afghani origin timber in the said policy. Being incharge of the depot he failed to protect the unauthorised pilferage of 5000 cft timber from Harben Depot thereby proving the charge against him.

Charge No. (ii)

"You were supposed to be extra vigilant during the execution of N.A. Amnesty Policy, 2013, as it was every likelihood of lifting of timber for illegal admixture in the above said policy timber."

Analysis of the charge revealed that instead of being extra vigilant during the execution of Northern Areas Policy 2013, the accused official remained silent which clearly indicates that he remained a silent spectator confirming his involvement in the illegal lifting of timber thus proving the charge against him.

Charge No. (iii)

"In case of any visible threat to the timber in depot under your control you should have mustered the support of available staff from your seniors besides lodging an F.I.R in the respective Police Station prior to the incidence of timber lifting. You failed to watch the depot during the

ATTESTED

P-47

times of incidence and fabricated a story of forceful lifting without identification of the offenders."

Cross examination of the accused official made it crystal clear that he did not take any practical step to stop lifting of timber from his depot and afterwards reporting the matter for lodging FIR with the police without charging identified offenders in a fabricated way thus proving the charge against him.

Charge No. (iv)

"That you are severally and jointly along with other accuseds in the case responsible for illegal lifting of timber which caused colossal loss to the Government exchequer."

As discussed under the above three charges, the accused official joined hands with his superiors and facilitated stealing of timber from his depot resulting in heavy losses to the provincial exchequer.

In view of the above facts, the charges of misconduct, inefficiency and corruption under Rule 3 of Khyber Pakhtunkhwa E&D Rules, 2011 stand proved.

Recommendation

On the basis of aforesaid discussion and conclusions, the following recommendations are made:

- i. Recovery of Rs.4,33,500/- being 1/4th of the price, forest duty and FDF of 5000 cft timber (3000 cft Deodar scants plus 2000 cft Kail @ 20% government share) from Mr. Jamir, Forest Guard (BPS-07) Incharge Harben Road side Depot to makeup the losses sustained by the provincial exchequer.
- ii. Reversion of the accused official to initial scale BPS-07 keeping in view his short span of service and young age.

ATTESTED

P-48

E Mr. Nasib Khan, Forest Guard (BPS-07), Incharge Sazin Road side Depot.

Charge No. (i)

"You being incharge of the depot, failed to protect the timber from illegal lifting for admixture in Northern Area Amnesty Policy, 2013, whereas, being incharge of the depot you were supposed to watch the depot day and night against any un-authorized pilferage."

During detailed analysis of the charge through examination / ~~cross~~ examination of the accused official, it reveals that he did not ~~take~~ any practical step to stop the lifting of timber despite the fact that ~~the~~ Amnesty Policy for Northern Area 2013 was in progress and the ~~accused~~ official had full knowledge of chances of admixture of ~~Konistan~~ origin timber in the said policy. Being incharge of the depot ~~he~~ failed to protect the unauthorized pilferage of 7000 cft timber from Sazin Depot thereby proving the charge against him.

Charge No. (ii)

"You were supposed to be extra vigilant during the execution of N.A. Amnesty Policy, 2013, as it was every likelihood of lifting of timber for illegal admixture in the above said policy timber."

Analysis of the charge revealed that instead of being extra vigilant during the execution of Northern Areas Policy 2013, the accused official remained silent which clearly indicates that he remained a silent spectator confirming his involvement in the illegal lifting of timber thus proving the charge against him.

Charge No. (iii)

"In case of any visible threat to the timber in depot under your control you should have mustered the support of available staff from your seniors besides lodging an F.I.R in the respective Police Station prior to the incidence of timber lifting. You failed to watch the depot during the

1249

times of incidence and fabricated a story of forceful lifting without identification of the offenders."

Cross examination of the accused official made it crystal clear that he did not take any practical step to stop lifting of timber from his depot and afterwards reporting the matter for lodging FIR with the police without charging identified offenders in a fabricated way thus proving the charge against him.

Charge No. (iv)

"That you are severally and jointly along with other accuseds in the case responsible for illegal lifting of timber which caused colossal loss to the Government exchequer."

As discussed under the above three charges, the accused official joined hands with his superiors and facilitated stealing of 7000 cft timber from his depot resulting in heavy losses to the provincial exchequer.

In view of the above facts, the charges of misconduct, inefficiency and corruption under Rule 3 of Khyber Pakhtunkhwa E&D Rules, 2011 stand proved.

Recommendation

On the basis of aforesaid discussion and conclusions, the following recommendations are made:

- i. Recovery of Rs.6,50,300/- being 1/4th of the price, forest duty and FDF of 7000 cft timber (7000 cft Deodar @ 20% government share) from Mr.Nasib Khan, Forest Guard (BPS-07) Incharge Sazin Road side Depot to make the losses sustained by the provincial exchequer.
- ii. Reversion of the accused official to initial scale in BPS-07 keeping in view his short span of service and young age.

P 50

F. Mr. Umar Khan, Forest Guard (BPS-07), Incharge Basha Road Side Depot.

Charge No. (i)

"You being incharge of the depot, failed to protect the timber from illegal lifting for admixture in Northern Area Amnesty Policy, 2013, whereas, being incharge of the depot you were supposed to watch the depot day and night against any un-authorized pilferage."

During detailed analysis of the charge through examination / cross examination of the accused official it revealed that he did not take any practical step to stop the lifting of timber despite the fact that the Amnesty Policy for Northern Area was in progress and the accused official had full knowledge of chances of admixture of Kohistan origin timber in the said policy. Being incharge of the depot he failed to protect the unauthorized pilferage of 6000 cft timber from Basha Depot thereby proving the charge against him.

Charge No. (ii)

"You were supposed to be extra vigilant during the execution of N.A. Amnesty Policy, 2013, as it was every likelihood of lifting of timber for illegal admixture in the above said policy timber."

Analysis of the charge revealed that instead of being extra vigilant during the execution of Northern Areas Policy 2013, the accused official remained silent which clearly indicates that he remained a silent spectator confirming his involvement in the illegal lifting of timber thus proving the charge against him.

Charge No. (iii)

"In case of any visible threat to the timber in depot under your control you should have mustered the support of available staff from your seniors besides lodging an F.I.R in the respective Police Station prior to the incidence of timber lifting. You failed to watch the depot during the

ATTACHED
[Signature]

times of incidence and fabricated a story of forceful lifting without identification of the offenders."

Cross examination of the accused official made it crystal clear that he did not take any practical step to stop lifting of timber from his depot and afterwards reporting the matter for lodging FIR with the police without charging identified offenders in a fabricated way thus crowing the charge against him.

Charge No. (iv)

"That you are severally and jointly along with other accuseds in the case responsible for illegal lifting of timber which caused colossal loss to the Government exchequer."

As discussed under the above three charges, the accused official joined hands with his superiors and facilitated stealing of timber from his depot resulting in heavy losses to the provincial exchequer.

In view of the above facts; the charges of misconduct, inefficiency and corruption under Rule 3 of Khyber Pakhtunkhwa E&D Rules, 2011 stand proved.

Recommendation

On the basis of aforesaid discussion and conclusions, the following recommendations are made:

- i. Recovery of Rs.4,64,400/- being 1/4th of the price, forest duty and FDF of 6000 cft timber (6000 cft Kail scants @ 20% government share) from Mr.Umar Khan, Forest Guard (BPS-07) Incharge Basha Road side Depot to make the losses sustained by the provincial exchequer.
- ii. Compulsory retirement from service with immediate effect.

[Handwritten signature]


ATTESTED

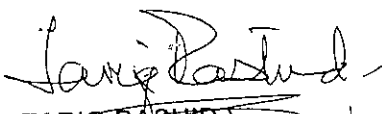
PSI

GENERAL RECOMMENDATIONS

1252

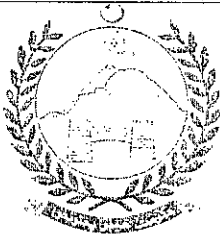
- An independent inquiry shall be conducted against the Re-measurement Committee comprising of Muhammad Tehmasip, DFO, Muahmmad Muzzaffar, RFO, Pervaiz, Forester and ADC Mansehra for their dubious report putting the state interest at stake.
2. A detailed stock taking shall be undertaken of the timber lying in all the roadside depots of Upper and Lower Kohistan, Forest Division prior to allowing transportation under Northern Area Timber Amnesty Policy. Record of such stock taking should be kept in District Forest Office, Conservator of Forest and Chief Conservator of Forest offices for record and reference in such like cases.
 3. Ill-reputed officers shall not be posted in important forest district like Kohistan especially when such Northern Area Timber Amnesty Policy is in pipeline / operation.
 4. Basic role of departmental representative / Prosecutor (Mr. Muhammad Shoaib, DFO) was against the interest of the department for which he shall be warned.


(SHAH WAZIR KHAN)
MANAGING DIRECTOR
FOREST DEVELOPMENT
CORPORATION


(TARIQ RASHID)
SECRETARY
BENEVOLENT-FUND CELL

ATTENDED

Annex = H
12-53

	<p style="text-align: center;">GOVERNMENT OF KHYBER PAKHTUNKHWA FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT</p> <p style="text-align: right;">No.SO(Estt)Env/1-50(69)/2012/ <u>4340/mr</u> Dated Pesh: 21st October, 2014</p>
---	--

To

Mr. Muhammad Tariq,
Divisional Forest Officer (BPS-18),
C/O Chief Conservator of Forests,
Central & Southern Forest Region-I, Peshawar.

Subject: SHOW CAUSE NOTICE.

I am directed to enclose herewith Show Cause Notice (in duplicate) duly signed by the Chief Minister, Khyber Pakhtunkhwa for necessary action.

2. Please acknowledge the receipt.


 (MIR ZALI KHAN)
 SECTION OFFICER (ESTT)

Endst:No.& date even

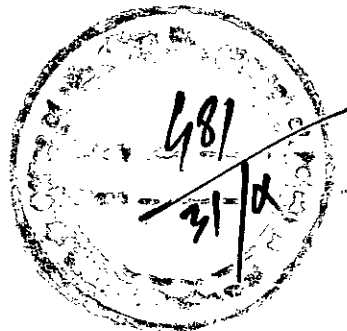
Copy is forwarded to :

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

SECTION OFFICER (ESTT)

*Enquiry file
Dfo. S/O*

*Psk
31/10*



*NO-735
31/10/2014*

ATTESTED

Handwritten signature



GOVERNMENT OF KHYBER PAKHTUNKHWA

SHOW CAUSE NOTICE

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

- (i) that consequent upon the completion of enquiry conducted against you by the Enquiry Committee, for which you were given opportunity of hearing vide office communication No.SO(Estt)Env/1-8/Tariq DFO/2k14/2413-2415 dated 02/06/2014; and
- (ii) on going through the findings and recommendations of the Enquiry Officer, the material on record and other connected papers including your defence before the Enquiry Officer:

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

1. Inefficiency.
2. Misconduct.

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalties of (i) Reversion from the post of DFO (BPS-18) to the Post of SDFO with immediate effect.
(ii) Recovery of Rs. 1548200/- under rule-14(4) (b) of the Rules
ibid.

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

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

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

ATTESTED

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER,
KHYBER PAKHTUNKHWA,
COMPETENT AUTHORITY
13. 10. 2014

To,

The Honorable Chief Minister
Khyber Pakhtunkhwa Peshawar
(Competent Authority)

Annex-I-P-55

Through: - PROPER CHANNEL

Subject: - REPLY TO THE SHOW-CAUSE NOTICE

Reference administrative deptt: No.SO (Estt) Envtt/1-50(69)/2012/4340 dated 21.11.2014 and CCF-I southern Region Endorsement No.1135/E dated 14.11.2014, received on 17.11.2014.

It is most humbly prayed that I have been served with show-cause notice wherein it has been said that I have been found guilty of

- (i) Mis-conduct and
- (ii) In-efficiency

Consequent upon which the following punishment has been tentatively recommended to be visited upon:

- (i) Reversion to the rank of SDFO (BPS-17)
- (ii) Recovery of Rs. 15,48000/-

And I have been asked to show cause as to why the above punishment be not awarded.

R/Sir,

With due regard to the learned members of the inquiry committee it is brought on record that:

1. Despite of my repeated requests neither awarded me the opportunity to cross-examine the prosecution witnesses nor to produce the opportunity to produce defense witnesses, thus deprived me of the valuable right of defense.
2. The learned inquiry committee was appointed to separate the facts and fictions but unfortunately the learned inquiry committee badly failed to fulfill the requirement of natural justice and to act as judge ratheracted as a prosecutor which is very much clear from the inquiry report itself. Cross examination was the job of prosecution which the learned inquiry committee did. This clearly shows the malafide intensions of the learned inquiry committee.
3. The learned committee did not consider my submissions at all, submitted in defense reply to the charge sheet and formed their opinion on whims and surmises without substantiating the allegation/charges with irrecoverable proofs.
4. The learned inquiry committee submitted its report after a period of approximately six months which is time barred as per (Efficiency and Disciplinary rules, 2011). Astonishingly during this length of period I was only given two hours' time to defend myself.

1

ATTESTED
[Signature]

- 12-56
56
5. The petitioner also showed his concerns on the appointment of Mr. Shah Wazir Managing Director FDC as technical member of the learned inquiry committee.

The technical member's brothers who are Forest contactors (in violation of Civil Service Conduct rules) are having grievances against me because they were not given any undue favor despite the directives of Mr. Shah Wazir member of the inquiry committee) while I was posted as DFO Upper Kohistan.(Annex-I)

6. The learned inquiry committee deliberately avoided to produce the facts which your petitioner placed on record before the inquiry committee.
7. The learned inquiry committee failed to conclude any charge while discussing particular allegation. The inquiry report clearly shows that the committee was pre-occupied, therefore the report is malafide and baseless.
8. The learned inquiry did not at all discuss and considered the job description of the DFO and other staff as per Forest Manual-II (Annex-II).
9. The learned inquiry committee did not discuss the poor situation of writ of law in District Kohistan which is not like other settled Districts of Khyber Pakhtunkhwa.

R/Sir,

Besides these voids and flaws of the inquiry committee and inquiry report, in response to the show cause, I reiterate that I have not done anything in violation to the rules and regulations and explain the factual position as under:

➤ **Charge No.1 page 8 of the inquiry report**

The committee in his report admitted that tour diaries of the petitioner proved no major absence and even my presence in the office on a Gaztted holiday was confirmed but the committee failed to comprehend my presence on 14th August (Independence Day). On the day officers are supposed to be present to celebrate the day with prayers and hoisting of National flag. This is irrecoverable malafide of the committee.

The inquiry committee also added that my tour diaries were not authenticated by the prosecutor. The copies submitted to the inquiry committee were obtained from the DFO Upper Kohistan office and to substantiate the same it was required to compare with Log book of the govt: vehicle mentioned in the tour diaries and also the dispatch register of Kohistan Forest Division, as these are bearing proper office Numbers. But the committee with malafide intensions deliberately avoided the same, even to ask me to authenticate the same.

Further as already elaborated in my defense statement in reply to the charge sheet, that DFO Upper Kohistan has multifarious nature of duties i.e. to attend of meetings convened by the high ups whose offices are located at Peshawar, Abbottabad and Manshera, to conduct timber auctions twice in a month at Goharabad and Dargai depots, attendance of civil courts and honorable high court in different litigation cases, inspection of sites/forests, inspection of timber depots and distribution of timber at Dargai and Goharabad depots etc. therefore if DFO is not available in the office then it should not be presumed that he is absent from his duty. Due to these responsibilities the presence of DFO Upper Kohistan on headquarter is rare and cannot be present on headquarter all the month. I performed my duties as

ATTACHED

mentioned in Forest manual II. These aspects of duties for which I was responsible and therefore to stay outside headquarter. This has been deliberately omitted with malafide intentions.

1257

This allegation is not proved. The committee while ignoring the aforesaid irrecoverable facts has concluded that casual presence of the petitioner was substantiated by almost all the accused officials during cross examination. This statement of the committee is in itself based on malevolence. The accused staff is of one sub-division and that too located far away from Dassu (headquarter) and they are not supposed to authenticate my presence on headquarter. Reliance on such like verbal statement is just based on malice. The inquiry committee did not mention the complications in the working of the department in general and matters relating to the Amnesty policy of Northern Area timber in vogue, if occurred with any irrecoverable proof in specific because there is not even a single written or verbal complaint. The inquiry committee is admitting itself that apparently looks that I casually attended my office which is not sufficient to hold me guilty of the charge of absence from duty.

➤ **Charge No.2 page 9 of the inquiry report:**

The learned inquiry committee conceded that this allegation (Dissatisfaction of DC Kohistan on my performance) is not proved and unfounded so needs no explanation.

As regards the appearance before the PIT team on 14.9.2013 is concerned. I was never asked by the PIT team, neither verbally nor in writing to appear before them and the prosecution failed to prove that I was informed to appear before PIT. I was informed on my cell phone on the evening of 13th August, 2013 by the office superintendent CF Upper Hazara, to direct the field staff to appear before the PIT team on 14.09.2013 at Besham. Had I been directed/informed I would have appear before the PIT team. However it is the prior requirement of the inquiry committee to inform the person required in writing well before the date fixed which the PIT team did not fulfill. Therefore it is prayed that I should not be held responsible for others errors. The matter is discussed in detail in my defense reply to the charge sheet.

The allegation of bribe is not proved as conceded by the learned inquiry committee therefore needs no comments.

There is no specific conclusion made by the learned inquiry committee in the end of para.

➤ **Charge No.3 page 10 of the inquiry report:**

Legal Status of the alleged theft timber:

It was required and top priority to determine the factual and legal status of the alleged theft timber according to Forest Ordinance 2002 but unfortunately none of the inquiry did the needful intentionally, even giving them the written and verbal explanations as detailed under:

1. The alleged theft was the remains of timber that was illegally cut by the owners during 1994- 2003 from the private (Guzara Forests) in retaliations of the ban imposed by the Federal government on commercial harvesting of forests during 1993. The Forest deptt: and local administration even government failed to stop that illegal cutting. Thenafter five amnesty policies were given for the disposal of the illicit timber to the owners during 1998-2009 by different governments keeping in view the peculiar status of the District Kohistan and poor position of writ of law.

ATTESTED

- 1258
2. The alleged theft timber was not on Forest deptt: record i.e. neither timber form 7 nor on form 17 so it cannot be claimed as government property.
 3. The alleged theft timber was the remaining of the illicit cut timber lying carried to KKH roadside for transportation to depot under Amnesty policy but couldn't due to one reason or the other. In addition to the alleged theft timber even now more than 6-7 lacs Cft of illicit cut timber is lying in Kohistan. Is there any gain or loss to the government exchequer from that timber?
 4. The Forest deptt: has 20% share in kind when the timber is legally transported to the government depots and after distribution by the committee. 20% govt: share is then put for open auction, transportation charges are also met by the government. It is also to clarify that the theft timber was owned purely by the locals and was not the property of government and later it was recovered by the Forest staff so it is wrong that any loss has been caused to the government exchequer which should be recovered from any officer/official.
 5. The theft occurred on the midnight of 24th and 25th August (midnight of Saturday and Sunday) which being holidays can't be counted towards absence. It is also added that as per section 60 of Khyber Pakhtunkhwa Forest Ordinance 2002 **“Government should not be responsible for any loss or damage which may occur in respect of any timber or other Forest produce at a depot established under a rule made under 58, or detained elsewhere, for the purpose of this ordinance, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss maliciously or fraudulently. The allegation is discussed in detail in defense statement in reply to the charge sheet.”**
 6. For the retrieval of the alleged theft timber I suspended all the transportation with immediate effect on 12 p.m. on 25th August, 2013 (Annex-III) and the transportation was later on restored by the Chief Conservator of Forests Northern Region II (Annex-IV) on the recommendation of Conservator of Forests Upper Hazara Circle after confirmation that the theft timber was not admixed in the Northern Region “Amnesty policy 2013” timber.

The learned inquiry committee concealed the following realities maliciously which leave no doubt of the ill and malafide intentions of the learned inquiry committee.

- i. On 27th August, 2013 the second day of the occurrence Substantial quantity 94500 Cft) of alleged theft timber was seized in Darel and Tangir depots of Northern Area in the presence and active support of DFO Darel alongwith Conservator Upper Hazara Forest Circle (Annex-V).
- ii. The timber was brought back to Kohistan by staff. Rest of the theft timber (when could not be admixed due to suspension of transportation of Amnesty Policy timber and strict checking) was brought back by the locals. The SDFO Harban posted later on has also confirmed in written that the theft timber is retrieved in total which is available on record as mentioned in fact finding inquiry report.
- iii. It is also confirmed by the report of checking committee constituted by the CCF Northern Region II that no excess or admixture of Kohistan timber was found in the halted 68 trucks (available on record) so it is very much clear that when the theft timber is not transported to down districts then it remain intact in the jurisdiction of

ATTESTED

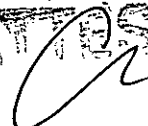
Kohistan therefore no loss to the owners occurred while the loss to the govt: exchequer is out of question. But unfortunately these facts are bottled-up by the learned inquiry committee and took it in negative sense.

- iv. The sub-committee comprising of Mr. Muhammad Sohaib DFO (Prosecutor) and Raja Imtiaz (DFO Kohistan) was appointed to verify the retrieval of the theft timber. They submitted the report that timber is lying in the same depots/spots but it cannot be ascertain that it is the same theft timber or not. Sir that theft timber was not having any proper identification mark and the timber of Kohistan is same like therefore they reported the doubt. The benefit doubt always goes to the accused but it is not given intentionally.
- v. The learned inquiry committee wrongly reflected in their report at page No. 7 para (III) that 54 trucks were halted in the jurisdiction of Siran Forest Division due to excess or theft timber. These trucks were halted due to expiry of time period Amnesty Policy of Northern Area timber.
- vi. The learned inquiry committee did not even discuss a single word of the action taken by your petitioner that was the requirement of my chair, which are summarized as follow:

- A. Correspondence and meetings with local administration and Police to extend full cooperation to forest staff in the protection of not only illicit timber but also the lease timber lying on road side but they totally failed to do so while they were having checkpoints on the same roads from where the theft timber was transported across the river (Annexes-VI to XII).
- B. Mr. Abdul Manan was put under suspension for the charges of absence from duty and involvement in the incident (Annex-XIII) who was reinstated by the Chief Conservator directly without consultation of the petitioner (Annex-IVX).
- C. Proper disciplinary action was initiated against the all the staff of Harban sub-division including the SDFO that can be validated from the office record also.
- D. The SDFO was transferred immediately by the petitioner.

➤ **Charge No.4 page 11 of the inquiry report:**

The learned inquiry team in its findings reported about the language "a bit in disregard to the service decorum just to satisfy their whims without quoting as to what was exactly against the office decorum and did not explain and substantiated the same. This allegation is discussed in detail in para 4 of my defense statement to the charge sheet. The learned inquiry committee deliberately did not discuss the ill intensions and partial treatment of the then Chief Conservator of Forests Northern Region II. This allegation is also not proved.

5
ATTESTED


R 60

Charge No.5 page 12 of the inquiry report:

The committee conceded that the allegation is not proved therefore needs no comments.

Sir,

With due respect the learned members of the inquiry committee. They made contradictory statements on page 10 of their report, it is clearly mentioned that charge of bribe could not be substantiated while on page 12 before making recommendation the committee wrote " keeping in view the above, charge of corruption and misconduct partly established. The charge of inefficiency however was not proved.

It is really flabbergasting that none of the allegation has been proved and without any proof the committee in contradiction to their own statement gives its findings that **misconduct and corruption are partly proved.**

While the show cause notice has been issued for in-efficiency and misconduct in utter disregard to the findings of the inquiry committee which too are in contradiction to their own statement which proves beyond any doubt their malafide

In the light of the foregoing submissions it is most humbly prayed that the findings of the inquiry committee are without proofs and based on whims and surmises do not call for any legal action.

I may graciously be absolved from the unfounded charges leveled against me and exonerated.

It is further prayed that I may be allowed to explain further in person also.

Muhammad Tariq (BPS-18)
Ex-DFO Upper Kohistan Forest Division

Copy forwarded to in advance to for information and further necessary action please:

1. Private Secretary to the Chief Secretary government of Khyber Pakhtunkhwa.
2. Private Secretary to Secretary Environment government of Khyber Pakhtunkhwa.
3. Chief Conservator of Forests-I southern Region Peshawar.

Muhammad Tariq (BPS-18)
Ex-DFO Upper Kohistan Forest Division

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT

Dated Pesh: 12th March, 2015

Annex-J-12 61

NOTIFICATION

No. SO(Estt)FE&WD/1-8/Tariq DFO/2k14: WHEREAS, Mr. Muhammad Tariq, Divisional Forest Officer (BPS-18) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations dated 25/12/2013, served upon the said officer;

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

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

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

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Committee, the explanation of the accused officer, and hearing him in person and exercising his powers under Rule-14(5)(ii) 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 "**Dismissal from service**"; and "**Recovery of Rs. 15,48,200/-**" upon Mr. Muhammad Tariq, Divisional Forest Officer (BPS-18) of Forest Department, with immediate effect.

CHIEF MINISTER,
KHYBER PAKHTUNKHWA

2826-30
Endst: No. SO(Estt)FE&WD/1-8/Tariq DFO/2k14

Dated Pesh: 12th March, 2015.

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) Officer concerned C/O Chief Conservator of Forests, Central & Southern Forest Region-I Peshawar.
- 7) Master file.
- 8) Office order file.

ATTESTED


(MIZALI KHAN)
SECTION OFFICER (ESTT)

12-
60

To,

The Honorable Chief Minister
Khyber Pakhtunkhwa Peshawar
(Competent Authority)

Annex-K
P. 62

Subject: - **REVIEW PETITION**

Reference: Secretary Environment office Notification No SO (Estt)FE&WD/1-8/Tariq DFO/2K14-2826-30 dated: 12.03.2015.

I was issued with a show-cause notice for the following charges:

- I. Mis-conduct and
- II. In-efficiency

Consequent upon which the following punishment has awarded by yours good self:

- (i) Dismissal from service
- (ii) Recovery of Rs. 15,48000/-

As per Efficiency and Disciplinary rules, 2011 I have the opportunity to submit the review petition on the following grounds:

R/Sir,

- ✓ The above referred Notification issued is illegal and unjustified as per rules and regulations.
- ✓ The competent authority cannot enhance the penalty recommended by the enquiry committee until and unless another show cause notice proper reason is given in writing but the same is not done which shows ill intension of the authority towards me and preoccupied mend set.
- ✓ The orders are issued while status quo is already granted by the Peshawar High Court Abbottabad in the instant enquiry therefore carries no justification and should be withdrawn. This was brought in the notice of Secretary Establishment both in written and verbal while summoned for personal hearing but he did not consider the same and also I was not given enough opportunity for defense but only 5 minutes.

With due regard the following facts and realities it is brought to your kind notice that:

Lacunas in the Enquiry Report

1. Despite of my repeated requests neither awarded me the opportunity to cross-examine the prosecution witnesses nor to produce the opportunity to produce defense witnesses, thus deprived me of the valuable right of defense.



2. The learned inquiry committee was appointed to separate the facts and fictions but unfortunately the learned inquiry committee badly failed to fulfill the requirement of natural justice and to act as judge rather acted as a prosecutor which is very much clear from the inquiry report itself. Cross examination was the job of prosecution which the learned inquiry committee did. This clearly shows the malafide intensions of the learned inquiry committee.
3. The learned committee did not consider my submissions at all, submitted in defense reply to the charge sheet and formed their opinion on whims and surmises without substantiating the allegation/charges with irrecoverable proofs.
4. The learned inquiry committee submitted its report after a period of approximately six months which is time barred as per (Efficiency and Disciplinary rules, 2011). Astonishingly during this length of period I was only given two hours' time to defend myself.
5. The petitioner also showed his concerns on the appointment of Mr. Shah Wazir Managing Director FDC as technical member of the learned inquiry committee.
The technical member's brothers who are Forest contactors (in violation of Civil Service Conduct rules) are having grievances against me because they were not given any undue favor despite the directives of Mr. Shah Wazir member of the inquiry committee) while I was posted as DFO Upper Kohistan.(Annex-I)
6. The learned inquiry committee deliberately avoided to produce the facts which your petitioner placed on record before the inquiry committee.
7. The learned inquiry committee failed to conclude any charge while discussing particular allegation. The inquiry report clearly shows that the committee was pre-occupied, therefore the report is malafide and baseless.
8. The learned inquiry did not at all discuss and considered the job description of the DFO and other staff as per Forest Manual-II (Annex-II).
9. The learned inquiry committee did not discuss the poor situation of writ of law in District Kohistan which is not like other settled Districts of Khyber Pakhtunkhwa.

R/Sir,

Besides these voids and flaws of the inquiry committee and inquiry report. in response to the show cause. I reiterate that I have not done anything in violation to the rules and regulations and explain the factual position as under:

> Charge No.1 page 8 of the inquiry report



The committee in his report admitted that tour diaries of the petitioner proved no major absence and even my presence in the office on a Gaztted holiday was confirmed but the committee failed to comprehend my presence on 14th August (Independence Day). On the day officers are supposed to be present to celebrate the day with prayers and hoisting of National flag. This is irrecoverable malafide of the committee.

The inquiry committee also added that my tour diaries were not authenticated by the prosecutor. The copies submitted to the inquiry committee were obtained from the DFO Upper Kohistan office and to substantiate the same it was required to compare with Log book of the govt. vehicle mentioned in the tour diaries and also the dispatch register of Kohistan Forest Division, as these are bearing proper office Numbers. But the committee with malafide intensions deliberately avoided the same, even to ask me to authenticate the same.

Further as already elaborated in my defense statement in reply to the charge sheet, that DFO Upper Kohistan has multifarious nature of duties i.e. to attend of meetings convened by the high ups whose offices are located at Peshawar, Abbottabad and Manshera, to conduct timber auctions twice in a month at Goharabad and Dargai depots, attendance of civil courts and honorable high court in different litigation cases, inspection of sites/forests, inspection of timber depots and distribution of timber at Dargai and Goharabad depots etc. therefore if DFO is not available in the office then it should not be presumed that he is absent from his duty. Due to these responsibilities the presence of DFO Upper Kohistan on headquarter is rare and cannot be present on headquarter all the month. I performed my duties as mentioned in Forest manual II. These aspects of duties for which I was responsible and therefore to stay outside headquarter. This has been deliberately omitted with malafide intensions.

This allegation is not proved. The committee while ignoring the aforesaid irrecoverable facts has concluded that casual presence of the petitioner was substantiated by almost all the accused officials during cross examination. This statement of the committee is in itself based on malevolence. The accused staff is of one sub-division and that too located far away from Dassu (headquarter) and they are not supposed to authenticate my presence on headquarter. Reliance on such like verbal statement is just based on malice. The inquiry committee did not mention the complications in the working of the department in general and matters relating to the Amnesty policy of Northern Area timber in vogue, if occurred with any irrecoverable proof in specific because there is not even a single written or verbal complaint. The inquiry committee is admitting itself that apparently looks that I casually attended my office which is not sufficient to hold me guilty of the charge of absence from duty.

> Charge No.2 page 9 of the inquiry report:

The learned inquiry committee conceded that this allegation (Dissatisfaction of DC Kohistan on my performance) is not proved and unfounded so needs no explanation.

As regards the appearance before the PIT team on 14.9.2013 is concerned. I was never asked by the PIT team, neither verbally nor in writing to appear before them and the prosecution failed to prove that I was informed to appear before PIT. I was informed on my cell phone on the evening

of 13th August, 2013 by the office superintend CF Upper Hazara, to direct the field staff to appear before the PIT team on 14.09.2013, at Besham. Had I been directed/informed I would have appear before the PIT team. However it is the prior requirement of the inquiry committee to inform the person required in writing well before the date fixed which the PIT team did not fulfill. Therefore it is prayed that I should not be held responsible for others errors. The matter is discussed in detail in my defense reply to the charge sheet.

The allegation of bribe is not proved as conceded by the learned inquiry committee therefore needs no comments.

There is no specific conclusion made by the learned inquiry committee in the end of para.

> **Charge No.3 page 10 of the inquiry report:**

Legal Status of the alleged theft timber:

It was required and top priority to determine the factual and legal status of the alleged theft timber according to Forest Ordinance 2002 but unfortunately none of the inquiry did the needful intentionally, even giving them the written and verbal explanations as detailed under:

1. The alleged theft was the remains of timber that was illegally cut by the owners during 1994- 2003 from the private (Guzara Forests) in retaliations of the ban imposed by the Federal government on commercial harvesting of forests during 1993. The Forest deptt. and local administration even government failed to stop that illegal cutting. Then after five amnesty policies were given for the disposal of the illicit timber to the owners during 1998-2009 by different governments keeping in view the peculiar status of the District Kohistan and poor position of writ of law.
2. The alleged theft timber was not on Forest deptt. record i.e. neither timber form 7 nor on form 17 so it cannot be claimed as government property.
3. The alleged theft timber was the remaining of the illicit cut timber lying carried to KKH roadside for transportation to depot under Amnesty policy but couldn't due to one reason or the other. In addition to the alleged theft timber even now more than 6-7 lacs Cft of illicit cut timber is lying in Kohistan. Is there any gain or loss to the government exchequer from that timber?
4. The Forest deptt. has 20% share in kind when the timber is legally transported to the government depots and after distribution by the committee. 20% govt. share is then put for open auction, transportation charges are also met by the government. It is also to clarify that the theft timber was owned purely by the locals and was not the property of government and later it was recovered by the Forest staff so it is wrong that any loss has been caused to the government exchequer which should be recovered from any officer/official.
5. The theft occurred on the midnight of 24th and 25th August (midnight of Saturday and Sunday) which being holidays can't be counted towards absence. It is also added that as per section 60 Of Khyber Pakhtunkhwa Forest Ordinance 2002 **"Government should not be responsible for any loss or damage which may occur in**

ATTESTED

respect of any timber or other Forest produce at a depot established under a rule made under 58, or detained elsewhere, for the purpose of this ordinance, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss maliciously or fraudulently. The allegation is discussed in detail in defense statement in reply to the charge sheet.

- 6. For the retrieval of the alleged theft timber I suspended all the transportation with immediate effect on 12 p.m. on 25th August, 2013 (Annex-III) and the transportation was later on restored by the Chief Conservator of Forests Northern Region II (Annex-IV) on the recommendation of Conservator of Forests Upper Hazara Circle after confirmation that the theft timber was not admixed in the Northern Region "Amnesty policy 2013" timber.

The learned inquiry committee concealed the following realities maliciously which leave no doubt of the ill and malafide intensions of the learned inquiry committee.

- i. On 27th August, 2013 the second day of the occurrence Substantial quantity (4500 Cft) of alleged theft timber was seized in Darel and Tangir depots of Northern Area in the presence and active support of DFO Darel alongwith Conservator Upper Hazara Forest Circle (Annex-V).
- ii. The timber was brought back to Kohistan by staff. Rest of the theft timber (when could not be admixed due to suspension of transportation of Amnesty Policy timber and strict checking) was brought back by the locals. The SDFO Harban posted later on has also confirmed in written that the theft timber is retrieved in total which is available on record as mentioned in fact finding inquiry report.

The learned
court of law

It is also confirmed by the report of checking committee constituted by the CCF Northern Region II that no excess or admixture of Kohistan timber was found in the halted 68 trucks (available on record) so it is very much clear that when the theft timber is not transported to down districts then it remain intact in the jurisdiction of Kohistan therefore no loss to the owners occurred while the loss to the govt. exchequer is out of question. But unfortunately these facts are bottled-up by the learned inquiry committee and took it in negative sense.

- iv. The sub-committee comprising of Mr. Muhammad Sohaib DFO (Prosecutor) and Raja Imtiaz (DFO Kohistan) was appointed to verify the retrieval of the theft timber. They submitted the report that timber is lying in the same depots/spots but it cannot be ascertain that it is the same theft timber or not. Sir that theft timber was not having any proper identification mark and the timber of Kohistan is same like therefore they reported the doubt. The benefit doubt always goes to the accused but it is not given intentionally.

5
A. I. Q. I. E. D.

- v. The learned inquiry committee wrongly reflected in their report at page No. 7 para (III) that 54 trucks were halted in the jurisdiction of Siran Forest Division due to excess or theft timber. These trucks were halted due to expiry of time period Amnesty Policy of Northern Area timber.
- vi. The learned inquiry committee did not even discuss a single word of the action taken by your petitioner that was the requirement of my chair, which are summarized as follow:
 - A. Correspondence and meetings with local administration and Police to extend full cooperation to forest staff in the protection of not only illicit timber but also the lease timber lying on road side but they totally failed to do so while they were having checkpoints on the same roads from where the theft timber was transported across the river (Annexes-VI to XII).
 - B. Mr. Abdul Manan was put under suspension for the charges of absence from duty and involvement in the incident (Annex-XIII) who was reinstated by the Chief Conservator directly without consultation of the petitioner (Annex-IVX).
 - C. Proper disciplinary action was initiated against the all the staff of Harban sub-division including the SDFO. As per requirement of the E & D Rules first they were called upon to explain their position and after submission of the replies when found the same unsatisfactory, An enquiry committee was constituted and were issued proper charge sheets/memo of allegations with in stipulated time period that was confirmed and validated by the Secretary Establishment during the course of personal hearing available on office record.
 - D. The SDFO was transferred immediately by the petitioner.


➤ Charge No.4 page-11 of the inquiry report:

The learned inquiry team in its findings reported about the language "a bit in disregard to the service decorum just to satisfy their whims without quoting as to what was exactly against the office decorum and did not explain and substantiated the same. This allegation is discussed in detail in para 4 of my defense statement to the charge sheet. The learned inquiry committee deliberately did not discuss the ill intensions and partial treatment of the then Chief Conservator of Forests Northern Region II. This allegation is also not proved.

➤ Charge No.5 page 12 of the inquiry report:

The committee conceded that the allegation is not proved therefore needs no comments.

Sir,

 6

P-68

With due respect the learned members of the inquiry committee. They made contradictory statements on page 10 of their report, it is clearly mentioned that charge of bribe could not be substantiated while on page 12 before making recommendation the committee wrote " keeping in view the above charge of corruption and misconduct partly established. The charge of inefficiency however was not proved.

It is really flabbergasting that none of the allegation has been proved and without any proof the committee in contradiction to their own statement gives its findings that misconduct and corruption are partly proved.

While the show cause notice has been issued for in-efficiency and misconduct in utter disregard to the findings of the inquiry committee which too are in contradiction to their own statement which proves beyond any doubt their malafide

In the light of the foregoing submissions it is most humbly prayed that the findings of the inquiry committee are without proofs and based on whims and surmises do not call for any legal action.

I may graciously be absolved from the unfounded charges leveled against me and exonerated from the penalties awarded to me.

It is further prayed that I may be allowed to explain further in person also.

Muhammad Tariq (BPS-18)
Ex-DFO Upper Kohistan Forest Division

Copy forwarded to in advance to for information and further necessary action please:

1. Private Secretary to the Chief Secretary government of Khyber Pakhtunkhwa.
2. Private Secretary to Secretary Environment government of Khyber Pakhtunkhwa.
3. Chief Conservator of Forests-I southern Region Peshawar.

Muhammad Tariq (BPS-18)
Ex-DFO Upper Kohistan Forest Division

ATTACHED


CN# 4761073557 is delivered on 27/3/15
received by AYAZ

CN# 4761073558 is delivered on 27/3/15
received by Haleem.

CN# 4761073559 is delivered on 27/3/15
received by Hassan.



Shipper's Acc.No.
Reference / Job

History ID 1211PEWXM5144426911

4761073557

GST No. 12-00-9808-002-73

P-69
COURIER

Origin	Destination
PEW	PEW

MOHAMMAD TARIQ (Shipper)
THE DCF OFFICE OF THE CHIEF CONSERVATOR OF FORESTS SOUTHREN REGION I SHAMI ROAD P Phone# SMS 03008111711 Email
HONARABLE To (Consignee)
CHEIF MINISTER KPK./..... Phone# PESHAWAR
Sender's Authorization
<small>I warrant that I have read the terms and conditions on the reverse of this consignment note and that all details given herein are true and correct. I further declare that the contents of this consignment do not contain any letter. The execution of this consignment note is prima facie evidence of the conclusions of contract between shipper and TCS (PVT) LTD.</small>
Shipper's Signature

Shipment Detail	Coupons	Discount
Declared Value 0.00		
ON SHIPPER RISK		
nic no-1310162515101		
Receiver's Signature		
Date <u>26/03/2015</u> Time 15:11:48		
Booking Details		
Staff 102789	FAZAL-E-REHMAN	
Route XM	Date <u>26/03/2015</u>	Time 15:11:48
MALL ROAD EX PRESS CENTRE		
Receiver's Signature	Receiving Time	

Pieces	Weight
1	0.50
Dimension of Shipment 0 0 0	
Service Type OVER NIGHT	
Mode of Payment CASH	
Charges	Pak. Rupees
Service	87.00
Out of Serv	0.00
Handling	0.00
Others	0.00
GST	13.00
Ins. Prem.	0.00
DD Alerts	0
Total	100
Shipper Copy	

TERMS & CONDITIONS

VISA SERVICE DISCLAIMER
1. AFTER ACCEPTANCE OF YOUR APPLICATIONS FOR MEMBERSHIP TO THE CONFIRMED MEMBER (CONGRATE, ITS PRIVATE LIMITED)...

INTERNATIONAL

BY THE GENERAL CONDITIONS OF SETTING THE CONDITIONS OF CONTRACT WHICH ARE APPLICABLE TO THIS CARRIAGE THE LIABILITY OF ITS PRIVATE LIMITED IS GOVERNED BY THE EXEMPTIONS OF CLAIMS AND LIMITS AND OF THE GENERAL CONDITIONS OF CONTRACT WHICH ARE THEREAFTER SET FORTH IN ITS OWN PARTICULARS WHICH IN ANY AREA IN WHICH LIABILITY IS LIMITED ARE NOT ACCEPTED BY ITS PRIVATE LIMITED.

IMPORTANT NOTE
BY THE CONTRACTS FOR CARRIAGE BY AIR AND OVERLAND AN ULTIMATE DESTINATION OF STEPS AND/OR OTHER THEN THE CONTRACTOR OR DEPARTURE THE PASSENGER OR CARRIER MAY BE APPLICABLE AND THE CONVOYOR SYSTEMS AND IN MOST CASES LIMITS THE LIABILITY OF CARRIER IN THE RESPECT OF LOSS OF DAMAGE TO CARGO.

IN THESE CONDITIONS
CARRIER SHALL BE THE OWNER OF THE OPERATIONS AND BEHAVES THEREIN AS ITS PRIVATE LIMITED IN RESPECT OF THE ENVIRONMENT AND INFLUENCE OF FACTORS...

1. THE PRIVATE LIMITED IS NOT RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF CARGO OR PERSONS OR PROPERTY ON BOARD OR IN CONNECTION WITH THE CARRIAGE BY AIR OR OVERLAND...

2. THE PRIVATE LIMITED IS NOT RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF CARGO OR PERSONS OR PROPERTY ON BOARD OR IN CONNECTION WITH THE CARRIAGE BY AIR OR OVERLAND...

3. THE PRIVATE LIMITED IS NOT RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF CARGO OR PERSONS OR PROPERTY ON BOARD OR IN CONNECTION WITH THE CARRIAGE BY AIR OR OVERLAND...

4. THE PRIVATE LIMITED IS NOT RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF CARGO OR PERSONS OR PROPERTY ON BOARD OR IN CONNECTION WITH THE CARRIAGE BY AIR OR OVERLAND...

5. THE PRIVATE LIMITED IS NOT RESPONSIBLE FOR ANY DAMAGE TO OR LOSS OF CARGO OR PERSONS OR PROPERTY ON BOARD OR IN CONNECTION WITH THE CARRIAGE BY AIR OR OVERLAND...

6. THE PARTNER ARE RELATED TO THE CONVOYOR AS SHOWN ON THE AIR BILL (INCLUDING THE RELATED CALLS OR CUSTOMS) ARE THE CONVOYOR AND THAT THE CONVOYOR IS AN INDEPENDENT LABELLED AND ASSIGNED TO VARIOUS TYPES OF DELIVERY BY AIR MAIL WITHOUT DELAY...

DOMESTIC

BY THESE TERMS AND CONDITIONS THE PASSENGER'S LIABILITY IS LIMITED TO THE TERMS AND CONDITIONS STATED HEREIN AND TO ITS PRIVATE LIMITED'S STANDARD TERMS OF CARRIAGE WHICH ARE INCORPORATED INTO THIS CONTRACT FOR REFERENCE AND WHICH ARE AVAILABLE FOR INSPECTION AT ANY TIME...

1. THE CONVOYOR AND THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

2. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

3. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

4. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

5. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

6. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

7. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

8. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

9. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

10. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

11. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

12. THE CONVOYOR'S AGENT SHALL BE RESPONSIBLE FOR THE CARRIAGE OF PASSENGERS AND CARGO BY AIR OR OVERLAND...

WAKALAT NAMA

IN THE COURT OF Below the K.P.K. Service

Tribunal Peshawar.

Muhammad Tariq. Appellant(s)/Petitioner(s)

VERSUS

The Chief Minister K.P.K.

Others

Respondent(s)

I/We Muhammad Tariq. do hereby appoint **Mr. Khush Dil Khan, Advocate** Supreme Court of Pakistan in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

[Signature]
Signature of Executants

[Signature]
Khush Dil Khan,
Advocate, Supreme Court of Pakistan

351

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO.795/2015

Muhammad Tariq
Ex-Divisional Forest Officer
Environment Department Khyber Pakhtunkhwa.

APPELLANT

VERSUS

1. The Chief Minister
Khyber Pakhtunkhwa
Chief Minister's Secretariat, Peshawar
2. The Chief Secretary
Government of Khyber Pakhtunkhwa
Civil Secretariat Peshawar
3. The Secretary
Government of Khyber Pakhtunkhwa
Environment Department, Peshawar.
4. The Chief Conservator of Forests,
Central and Southern Forest Region-I,
Peshawar.....

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth;

PRELIMINARY OBJECTION

1. The appeal is not maintainable in the present form
2. The appelland has no locus standi to bring the present appeal.
3. The appelland is legally estopped by his own conduct to bring the present appeal
4. The appeal is time barred

353

FACTS

Parawise comments are as under:

1. Pertains to record hence no comments.
2. Pertains to record hence no comments.
3. It is correct. That the earlier enquiry committee was substituted by another Enquiry Committee by respondent No.01 and the charge sheet and statement of allegation was served upon the appellant. Rest of the para pertains to record, hence needs no comments.
4. It is correct, but the appellant could not justify the charges leveled against him.
5. Incorrect, the enquiry has been conducted properly, as per law, rules on the subject.
6. It is correct.
7. The penalty imposed upon the appellant was in accordance with the rules and regulations.
8. It relates to the record.

GROUNDS

- A. In-correct. All the charges leveled against the appellant have been proved before the Enquiry Committee during enquiry proceeding
 - i. It is correct. The charge of absence of appellant from official duty was proved, therefore, the committee concluded that the appellant causally attended his office and for most of the time remained stationed at Abbottabad and disposing off his official correspondence from there.
 - ii. The enquiry committee mentioned the issue of taking bribe in the report.
 - iii. In-correct. The enquiry committee categorically mentioned that appellant is clear-cut involved in the lifting/stealing of 18000 Cft timber and its transportation in one night.

iv. It is in-correct. After detailed scrutiny of the correspondence, the committee recorded that the language used against the superior in the letters was inappropriate and in disregard to the service decorum.

v. It is correct.

B. In-correct. He was given equitable opportunity to defend himself as per norms of justice.

C. In-correct. Under Section-14 (5) (ii) read with rules 4(1) (b)(i) of the Khyber Pakhtunkhwa E & D Rules 2011, the competent authority is empowered to reduce or enhance the punishment

D. In correct as explained above.

E. The competent authority, dis-agreed with the recommendation of Enquiry committee and enhanced the punishment in accordance with the rules as explained in para No. "C".

F. In-correct. As explain above.

G. In-correct. The appellant was dealt in accordance with law.

i. In-correct. Two officials as co-accused were awarded major penalty of dismissal from service, whereas three 03 Nos of co-accused/officials have got status quo from Honorable High Court Circuit Bench Abbottabad.

ii. In-correct as explained above.

H. The appellant failed to prove himself innocent from the charges leveled against him in the reply to the Charge Sheet and during personal hearing.

I. That the respondents also sought permission to advance additional grounds at the time of arguments so provided every opportunity within rules on the subject.

357

PRAYERS

In view of the above facts available on record it is humbly prayed that the appeal being unjustified and against the law. The appeal may please be dismissed with cost in the best interest of the state.

Chief Minister
Khyber Pakhtunkhwa
Chief Minister Secretariat Peshawar
(Respondent No. 1)

Chief Secretary
Govt. of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar
(Respondent No. 2)

Secretary
Govt. of Khyber Pakhtunkhwa
Environment Department
Peshawar
(Respondent No. 3)

Chief Conservator of Forests
Central and Southern Forest Region-I
Peshawar
(Respondent No. 4)

Muhammad Tariq
Ex-Divisional Forest Officer
Environment Department Khyber Pakhtunkhwa.

APPELLANT

VERSUS

1. The Chief Minister
Khyber Pakhtunkhwa
Chief Minister's Secretariat, Peshawar
2. The Chief Secretary
Government of Khyber Pakhtunkhwa
Civil Secretariat Peshawar
3. The Secretary
Government of Khyber Pakhtunkhwa
Environment Department, Peshawar.
4. The Chief Conservator of Forests,
Central and Southern Forest Region-I,
Peshawar.....

Respondents

COUNTER AFFIDAVIT

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

CHIEF CONSERVATOR OF FORESTS
CENTRAL AND SOUTHERN FOREST REGION-I
PESHAWAR

original

Before the (Semi) Tribunal
Bhawan.

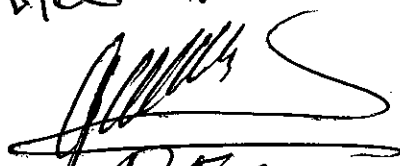
Muhammad Tariq vs Gmt.

Application for
permission to place on file
Statement of Appellant, order
of accountability Com. and
applicability of Appellant.

1. Respectfully Sheweth

1. That the above captioned appeal
is pending which is file for today.
2) That the respondents have in-advertently
~~not~~ not annexed some important
documents which are very important
for disposal of the appeal.

It is also requested that the
respondent may be allowed to
annex order of AAB accountability
Com, Statement of appellant and
his application to meet the end
of justice.


RFO
15/6/18 A/R
CCPI Bhawan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 795 /2015

Muhammad Tariq Applicant/Appellant

Versus

The Chief Minister & others Respondents

APPLICATION FOR EARLY HEARING.

Respectfully Sheweth,

- 1. That the titled appeal is pending before this Hon'ble Tribunal and on the last date of hearing it was adjourned to 11.04.2016 for arguments.
- 2. That the date as fixed is too much long while the appeal is also pending for sufficient long time due to which not only the appellant is suffering but his family is also in agony and embarrassment condition.

It is therefore, humbly prayed that on acceptance of this application, the case may kindly be accelerated to the earliest possible date as convenient to this Hon'ble Tribunal in the interest of justice.

Through **Applicant/Appellant**
 (Khush Dil Khan)
 Advocate,
 Supreme Court of Pakistan

Dated: 24 / 12/ 2015

Put up to the court with relevant appeal.

Residhu

10/11/16

put up before D.B in March, for arguments on appeal. Notice be issued.

Be placed before "DB" for orders deemed appropriate

08.01.16

14/11

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 795 /2015

Muhammad Tariq Applicant/Appellant

Versus

The Chief Minister & others Respondents

Affidavit

I, Muhammad Tariq, Ex, Divisional Forest Officer, Environment Department, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

Deponent

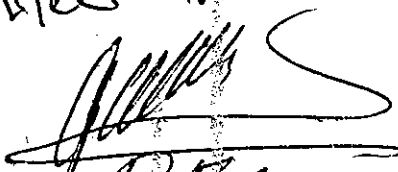
Before the (Semi-Tribunal
behaviour.

Muhammad Tariq vs Gmt.

Application for
permission to place on file
Statement of Appellant, order
of accountability Com. and
application of Appellant.

1. Respectfully Sheweth
1. That the above captioned appeal
is pending which is fee for today.
- 2) That the respondents have in advertisement
~~not~~ not annexed some important
documents which are very important
for disposal of the appeal.

It is also requested that the
respondents may be allowed to
annex order of NAB accountability
Court, Statement of appellant and
his application to meet the end
of justice.


RFO
15/6/2016
CCPI Pakistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 795/2015

**Muhammad Tariq,
Ex-Divisional forest officer,
Environment Department,
Khyber PakhtunkhwaAppellant**

Versus


**The Chief Minister,
Khyber Pakhtunkhwa,
Chief Minister's Secretariat,
Peshawar and others.....Respondents**

INDEX

S.No	Description of Documents	Date	Annexure	Pages
1.	Memo of Reply.			1-2
2.	Copy of the judgment of Peshawar High Court Peshawar in writ petition No. 1892-P/2015.	24-06-2015	Reply/1	3-6


Appellant

Through


**Khush Dil Khan
Advocate,
Supreme Court of Pakistan
9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 091-2213445**

Dated: 17 / 10 / 2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 795/2015

Muhammad Tariq,
Ex-Divisional forest officer,
Environment Department,
Khyber PakhtunkhwaAppellant

Versus

The Chief Minister,
Khyber Pakhtunkhwa,
Chief Minister's Secretariat,
Peshawar and others.....Respondents

**REPLY TO APPLICATION FILED BY THE REPRESENTATIVE OF
RESPONDENT DEPARTMENT REGARDING FILING
ADDITIONAL DOCUMENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

- I. That the application is not maintainable in its present form and shape.
- II. That the reply already filed by the respondent department supported by the relevant documents so further documentation is unjustified when the case is matured and arguments delivered by both the parties. It based on mala fide just to delay the case which unfair and unjust.

Reply to Facts of Application:

delivered thus at this stage submission of such application is unjustified and not warranted by law

2. That para No. 2 of the application is incorrect so denied. The appellant has challenged the order of Accountability Court No. 1 through writ petition No. 1892-P/2015 in the Peshawar High Court Peshawar which was allowed and set aside the impugned order dated 06-05-2015 vide judgment dated 24-06-2015 (**Annexure Reply/1**).

It is, therefore, humbly prayed that application of answering respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through


Appellant

Khush Dil Khan

Advocate,

Supreme Court of Pakistan

Dated: 17/10/2016

193

To

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

Subject:- WRIT PETITION NO.1892/P-2015.

R/Sir,

Enclosed please find herewith a copy of the decision made by the honorable Chief Justice Peshawar High Court regarding restriction imposed by the learned Judge Accountability Court No:1.

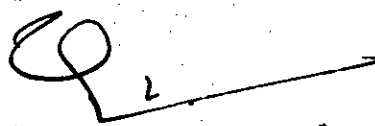
The decision is self explanatory and submitted for favour of information and further necessary action please.

Muhammad Tariq
Ex-Deputy Conservator of Forests

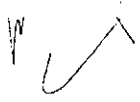
27/7/15

28/7
28/7
no. 150
28/7/2015
ESH
X
CCFL 2817

Attested
1


Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar.

sent by



BEFORE THE HONOURABLE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No 1829/2015

Muhammad Tariq S/O Muhammad R/O House No 10 Kafia Valley,
Colony, Opposite KFC, Peshawar

(Accused/Petitioner)

VERSUS

1. Chairman National Accountability Bureau, Islamabad
2. Director General National Accountability Bureau Khyber Pakhtunkhwa, Phase-V, Hayatabad Peshawar
3. Learned Judge Accountability Court No -1, Peshawar

(Respondents)

Petition under Article 199 of the Constitution
of Islamic Republic of Pakistan, 1973

BRIEF FACTS:-

Brief facts of the case are as under:-

- 1) That the Petitioner was arrested on 20-04-2015 by Respondents and produced before the learned Judge National Accountability Peshawar and succeeded getting remand for 11 days.

That the Petitioner was D.F.O Forest Department and prior to his arrest the due to some departmental inquiry, he was dismissed from service on 12th March, 2015.

- 3) That the Petitioner filed a review petition against the dismissal order on 26-03-2015. In the meanwhile, the Petitioner was arrested and since the Petitioner is suffering from various dangerous diseases i.e.

ATTESTED

EXAMINED
Peshawar High Court

Attested

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar

197

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

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

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	<p>ORDER 24.06.2015</p>	<p><u>Writ Petition No.1872-P/2015</u></p> <p>Present: Sardar Ali Raza, Advocate, for Muhammad Tariq, petitioner.</p> <p>Mr. Umar Farooq, Addl. DPG, for the NAB.</p> <p>*****</p> <p><u>MAZHAR ALAM KHAN MIANKHEL, CJ-</u></p> <p>Muhammad Tariq, petitioner herein, through the instant constitutional petition, has asked for the issuance of an appropriate writ declaring that the order dated 06.05.2015 of the learned Accountability Court No.1, Peshawar to the extent of direction, given to the NAB authorities regarding withdrawal of his review petition by informing the competent authority in this regard, being nullity in the eye of law, is of no effect whatsoever.</p> <p>2. The learned counsel appearing on behalf of the</p>

Attested.

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar

ATTESTED
Peshawar High Court

Handwritten signature/initials

		<p>petitioner contended that when the petitioner due to suffering from some chronic diseases, entered into Voluntary Return agreement with the NAB authorities, the learned Accountability Court was having no authority to force him to write an application restraining him that neither he shall challenge the amount of V.R nor shall challenge his dismissal order in any Court and the review, filed before the competent authority, be considered as withdrawn and no direction should have been issued to the NAB authorities in this regard, which act of the learned Judge is not only violative of the spirit of Section 25 of the NAB Ordinance, 1999 but a sheer example of overstretching the jurisdiction, so vested in it. When the learned Additional DPG was confronted with this situation, though he tried to oppose the contentions of the learned counsel for the petitioner but, in view of the perusal of the impugned order, he couldn't wriggle out of the same.</p> <p>3. We have gone through the available record carefully and considered the submissions made by the learned counsel for both the parties.</p> <p>4. The record of the case would reveal that</p>
--	--	--

petitioner, prior to involvement in the NAB matter, was dismissed from service after departmental inquiry, for which, he filed review petition before the competent authority but, in the meanwhile, arrested by the NAB authorities and due to some diseases i.e. hypocalcaemia, Systemic Lupus Erythematosus (SLE), Rheumatoid Arthritis, Vasculitis, entered into Voluntary Return agreement with the NAB authorities and when he was produced before the Court, the learned Accountability Court No.1 besides passing his release order also passed the impugned findings, mentioned in second last paragraph of the order dated 06.05.2015. Hence, the instant petition.

5. After considering the arguments of the learned counsel for the petitioner and after going through the second last paragraph of the impugned order dated 06.05.2015, we came to safe conclusion that the learned Judge, Accountability Court was not supposed to ask the petitioner for submission of any kind of application nor, on the basis of which, he should have given any kind of direction to the NAB authorities informing the Chief Minister KPK and Chief Conservator Forest Department regarding the statement of the petitioner qua withdrawal of his

Attested

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar

review petition and acknowledgement of Notification dated 12.05.2015. Therefore, we're of the firm view that the learned Judge, Accountability Court has exceeded his jurisdiction, so vested in it, which, under any canons of law, can't be appreciated and is, liable to be struck down.

6. For the reasons discussed above, we allow this writ petition and set aside the impugned order dated 06.05.2015 only to the extent of second paragraph, through which, certain directions were given to the NAB authorities.

Announced.
24. 06. 2015

CHIEF JUSTICE

JUDGE

Justice Magesh Alexander
Justice M. Dawood Khan

CERTIFIED TO BE TRUE COPY

EXAMINED
Peshawar High Court, Peshawar
Authorized Under Section 20 of
The Oath-taking and Affidavit Act, 1956

07 JUL 2015

25505

5F 26-6-15

10.00

07-7-15

07-7-15

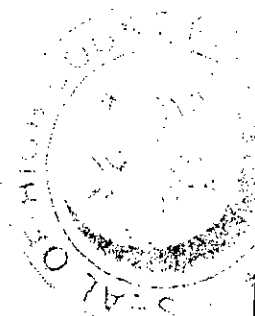
07-7-15

U. A. Memon

(Fayaz)

Page - 857-5908
Charge Sheet against
Muhammad Tahir,
DFO and others
in Peshawar.

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar.



2001 P L C (C.S.) 771

[Quetta High Court]

Before Aman Ullah Khan and Ahmed Khan Lashari, JJ

ABDUL BASHIR and 9 others

versus

GOVERNMENT OF BALUCHISTAN through Chief Secretary, Civil Secretariat, Quetta and 3 others

Constitutional Petitions Nos. 950 of 1999 and 548 of 2000, decided on 18th December, 2000.

(a) Constitution of Pakistan (1973)---

----Art. 199(2)(b)(ii)---Quo warranto, writ of---Maintainability---High Court in exercise of its Constitutional jurisdiction is competent to enquire from a person holding a public office as to under what authority of law he claimed to hold that office.

Masoodul Hassan v. Khadim Hussain PLD 1963 SC 203 and Cap. (Retd.) Muhammad Naseem Hijazi Y. Province of Punjab through Secretary, Housing and Physical Planning and 2 others 2000 SCMR 1720 ref.

(b) Interpretation of statutes---

----Departure from Rules---Where a statute requires a thing to be done in a particular way, it must be done by the Authority in the manner as prescribed by the statute, else departure from the Rules would invalidate the thing done in the manner other than prescribed by the Rules.

Atta Muhammad Qureshi v. The Settlement Commissioner, Lahore Division, Lahore and 2 others PLD 1971 SC 61 and Craies on Statutory Laws, 6th Edn. ref.

(c) Constitution of Pakistan (1973)---

Art. 199---Constitutional petition---Appointments made in violation of the Rules and in excess of authority---Inspectors were appointed by the Authorities without relaxing the Rules and without availability of vacancies, in haphazard manner, deviating from the Rules---Validity---Where the appointments were made in violation of the Rules and in excess of authority by the Department, such appointments held of no legal effect---High Court directed the Government departments to make all appointments in accordance, with the Rules and directed the head of the departments that while making such appointments, Rules should be followed strictly to make the process of appointments transparent, so that there should not be any heart burning and ill-will amongst the public servants and other contestants ---Constitutional petition was allowed accordingly.

(d) Civil Service--

----Appointment---Illegal orders---While making appointments, head of departments should not follow illegal orders issued by the concerned Ministers or any other Authority.

H. Shakil Ahmad and Ayaz Sawati for Petitioners (in C.P. No. 950 of 1999).

Mujeeb Ahmad Hashmi with Ashraf Khan Tanoli, A.-G. for Respondents (in C.P. No. 950 of 1999).

Basharatullah and Mujeeb Ahmad Hashmi for Petitioners (in C.P. No. 548 of 2000).

Ashraf Khan Tanoli, A.-G. for Respondents (in C.P. No. 548 of 2000).

Dates of hearing: 16th, 17th and 31st October, 2000.

JUDGMENT

AMAN ULLAH KHAN, J.---By this Judgment, we propose to dispose of Constitutional Petitions Nos.950 of 1999 and 548 of 2000, as in both the petitions, common questions of law and facts are involved.

Succinctly, the facts are, that an advertisement appeared in Daily Newspaper of 12th September, 1999, whereby applications were invited by the Respondent-Secretary, Excise and Taxation Department, for filling vacancies of Inspectors for Kalat, Naseerabad and Kech Districts. The date of submission of applications was 18th September, 1999 and Interviews were to be held on 29th September, 1999. On such advertisement, applications were submitted by number of candidates and ultimately the respondent Director, Excise and Taxation, interviewed the candidates and appointed respondents Nos. 4 to 35 (in Constitutional Petition No.950 of 1999) as Inspectors (hereinafter referred to as "Respondent-Inspectors") by way of initial recruitment vide Notification, dated 27th September, 1999 and thereafter they were posted at various places by means of another Notification of 29th September, 1999. Petitioners (in Constitutional Petition No. 950 of 1999) who are serving as Sub-Inspectors in the Excise and Taxation Department, being aggrieved from the appointment of respondent-Inspectors, have filed Constitutional petition No.950 of 1999, praying therein, for issuance of a writ of quo warranto, requiring the respondents to show, under what authority of law, they claim to hold the said posts of Inspector. For sake of convenience, the prayer clause is reproduced hereinbelow:--

"It is accordingly respectfully prayed that it may be declared:--

- (a) That the order dated 27th September, 1999, whereby respondents Nos.4 to 35 have been appointed as Inspectors in Excise and Taxation Department is unconstitutional, coram non-judice, arbitrary, mala fide and contrary to the relevant rules and of no legal effect;
- (b) That the official respondents may be directed to cancel the appointments so made by them, and to fill the vacancies in accordance with the relevant rules relating to departmental quota.
- (c) Any other relief as may be deemed fit and proper in the circumstances of the case may also be awarded.

The said petition was contested by respondents. They filed their respective counter-affidavits. Respondent-Inspectors, inter alia, also challenged the maintainability of petition.

During pendency of this petition, under the directions of Director, Excise and Taxation, Balochistan, the Director, Excise and Taxation, Quetta, issued show-cause notices to the Respondent-Inspectors; calling upon them; as to why their services may not be terminated, as their appointments being irregular and against the Balochistan Excise and Taxation Department (Grade-1 to 15) Service Rules, 1982 (hereinafter referred to as 'the rules'). Being aggrieved from the issuance of said show-cause notices, the Respondent-Inspectors have filed Constitutional Petition No.548 of 2000 (petitioners herein). The said petition has been vehemently opposed by the Government of Balochistan, Board of Revenue through its Secretary (respondent No. 1) and

Director, Excise and Taxation (respondent No. 2).

We have heard Mr. H. Shakeel Ahmad, learned Counsel for the petitioner (in Constitutional Petition No.950 of 1999), Mr. Basharatullah, learned Counsel for the Respondent-Inspectors (in Constitutional Petition No.950 of 1999 and 548 of 2000) and Mr. Ashraf Khan Tanoli, learned Advocate-General for the official Respondents.

Learned Counsel for the petitioners contended; that Respondent Inspectors have been appointed in violation of the Rules. He pointed out that appendix to the Rules was amended in the year, 1984, whereby the mode of appointment of Inspectors, Excise and Taxation has been prescribed and Quota was fixed for Sub-Inspectors, already working in the department to be promoted as Inspectors, and due to the direct recruitment of Respondent Inspectors, the petitioners' right of promotion has been usurped. Learned Counsel further contended, that at the time of appointment of Respondent Inspectors, there was no vacancy, but after their appointment, the posts were created illegally. He further pointed out that at the time of their appointment, 16 posts were already in excess, falling to the share of direct recruits. Learned Counsel stated, that the appointments were made, purely on the recommendations of the Ex-Minister Ehsan Shah and Ex-Minister Excise and Taxation Department, Mir Abdul Karim Nausherwani. Learned Counsel lastly pointed out, that as per the Advertisement, the appointments were to be made from District. Kalat, Naseerabad and Kech, but candidates from Quetta District were also appointment.

Mr. Basharatullah, learned Counsel for the Respondent-Inspectors, vehemently opposed the petition (Constitutional Petition 950 of 1999) on the ground, that appointment of Respondent-Inspectors, was made by the competent Authority and appointment and removal of a Civil Servant, falls within the competence of Service Tribunal, therefore, this Court has no jurisdiction to adjudicate upon the matter, thus, the petitioners should have approached the Services Tribunal. He further argued, that writ in the nature of quo warranto is discretionary and is to be issued in very exceptional cases, whereas no such ground exists for issuance of writ of quo warranto and since alternate and efficacious remedy is available to petitioners, therefore, this Court should abstain from exercising writ jurisdiction in the nature of quo warranto. Learned Counsel stated that the orders of appointment have been acted upon and at the time of advertisement and Interviews no such objection was raised by petitioners and further the Respondent-Inspectors are performing their duties since the date of their appointments. Therefore, petition (Constitutional Petition No.950 of 1999) merit dismissal. In Constitutional Petition No.548 of 2000, he only contended, that since show cause notices have been issued to Respondent-Inspectors, which have been duly replied, thus, the writ petition, challenging the show-cause notices is competent, as no order has been passed on the same.

Learned Advocate-General, while supporting Constitutional Petition No.950 of 1999 and vehemently opposing Constitutional Petition No.548 of 2000, contended; that respondent-Inspectors were appointed in violation of the Rules, as the vacancies were to be filled by promotion of the Sub Inspectors already working in the department, as per the quota fixed for them and by not doing so, the petitioners have been deprived of the right of their promotion. Learned A.-G. contended, that the Rules were to be followed, strictly in letter and spirit. He also affirmed that at the time of appointment, 16 Inspectors were already appointed in excess of the quota reserved for the direct recruits. Learned Advocate-General emphatically argued, that this Court had the jurisdiction to issue writ of quo warrantor; calling upon the Respondent-Inspectors, as to under what authority, they are holding the posts, and since the very appointment of Respondent-Inspectors has been challenged, therefore, this Court has the jurisdiction to adjudicate upon the matter and burden is upon the respondent-Inspectors, to show, that they have been appointed in accordance with the Rules. Learned Advocate-General, further contended, that at the time of advertisement, no post of Inspector existed and the posts were created subsequently. Thus, the advertisement was made in violation of the Balochistan Civil Servant (Appointment, Transfer and

Promotion) Rules, 1979, which contemplates, that appointment should be made against available vacancies and not against availability of future expected vacancies. Learned Advocate-General, thus argued, that the very basic methodology adopted by the official respondents, was illegal.

We have given our anxious consideration to the arguments of learned Counsel for parties and the record of case has also been perused.

Before dilating upon the merits of case, it is deemed appropriate to first decide the question of jurisdiction.

We are not persuaded to agree with the contention of Mr. Basharatullah, learned Counsel for the Respondent-Inspectors, that petitioner had an alternate remedy by way of approaching the Services Tribunal and that since the matter pertains to appointment of respondents, which is one of the term and condition of the service of a Civil Servant, therefore, this Court has no jurisdiction to adjudication upon the matter.

It may be observed here, that under Article 199(2)(b)(ii) of the Constitution of Islamic Republic of Pakistan, the High Court in exercise of its writ jurisdiction, is competent to enquire from a person; that, by what authority, he is holding an office and in such cases, a writ of quo warranto is maintainable. This question has been resolved by the Hon'ble Supreme Court in the case of Masoodul Hassan. v. Khadim Hussain (PLD 1963 SC 203) wherein following observations were made:--

"Referring again to the monograph on Crown proceedings in volume 11 of Halsbury's Laws of England, the now obsolete writ of quo warranto was in its nature an information lying against a person who 'claimed or usurped an office, franchise or liberty' and 'was intended' to enquire by what authority he supported his claim in order that the right to the office may be determined. It was necessary for the issue of the writ that the office should be one created by the State, by charter or by statute, and that the duty should be of a public nature."

In the same very case, the Hon'ble Supreme Court further observed that "it is well-settled that when the writ is moved by a law officer on behalf of the State, it is for the respondent to establish his legal right to retention of the office in question. But where a private petitioner seeks the writ, right to hold such office is placed upon the petitioner".

The said view has been consistently approved by the Hon'ble Supreme Court and even in the latest case of Capt.(Retd.) Muhammad Naseem Hijazi v. Province of Punjab through Secretary, Housing and Physical Planning and 2 others (2000 SCMR 1720) the same has been upheld. Relevant observations therefrom are reproduced hereinbelow.--

Under Article 199(2)(b)(ii) of the Constitution of the Islamic Republic of Pakistan the High Court in exercise of its Constitutional, jurisdiction is competent to enquire from any person, holder of a public office to call upon him to show that under what authority he is holding the said office. In such-like cases where a writ in the nature of quo warranto is instituted the duty of the petitioner is to lay an information before the Court that such and such officer has no local authority to retain such office. For a petitioner who acts, in fact, as an informer is not required to establish his locus standi to invoke the jurisdiction of the Court. In this behalf reference may be made to Masood-ul-Hassan v. Khadim Hussain and another (PLD 1963 SC 203). In this report it has been held that writ of quo warranto in its stature is an information laying against persons who claimed or usurped an office, franchise or liberty and was intended to inquiry by what authority he supported his claim in order that right to office may be determined. It was further held that it is not necessary for the issuance of writ that the office should be one created by the State of character or by statute and that the duty should be of a public nature. Similarly in the case of M.U.A. Khan v. Rana

Muhammad Sultan and another (PLD 1974 SC 228) this Court held that writ of quo warranto could be moved by any person who even may not be an aggrieved party but is holding a public office created by character or statute by the State'. Yet in another case which is reported from the jurisdiction of High Court of Azad Jammu and Kashmir i.e. Ali Hussain Bukhari and 39 others v. Azad Jammu and Kashmir Government through Chief Secretary and 2 others (1992 PLC (C.S) 289), it was observed that any person can move the High Court to challenge the unauthorised occupation of a public office on any such application Court is not only to see that the incumbent is holding the office under the order of a competent Authority but it is to go beyond that and see as to whether he is legally qualified to hold the office or to remain in the office, the Court has only to see if statutory provisions have been violated in making the appointment. The invalidity of appointment may arise not only from one of the qualifications but also from violation of legal provision for appointment.

It may also be observed that on question of locus standi of the respondent to challenge the appointment of petitioner reliance can also be placed on Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahab-ul-Khairi and others v. Federation of Pakistan and others (PLD 1996 SC 234) and Malik Asad Ali and others v. Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs, Islamabad and others (PLD 1998 SC 161). Thus, we are persuaded to hold that Secretary-General Workers' Union i.e., respondent No.3 legitimately invoked the jurisdiction of the Court by filing writ in the nature of quo warranto challenging the status of petition to hold the office in BPS-19 in G.D.A."

Thus, in view of the above settled law and consistent view, the contentions of learned Counsel, as to the jurisdiction of this Court is repelled being without merit.

Reverting to the contention, that the Respondent-Inspectors were appointed in violation of the Rules. Mr. Shakeel Ahmad; Advocate, pointed out that the respondent-Inspectors were appointed in excess of their quota, and further at the time of appointment, already 16 Inspectors appointed against the quota of direct recruitment, were working in excess, the break-up of which, is as under:--

1. Total Strength.	51
2. Departmental quota.	38
3. Posts filled in by promotion so far.	27
4. Less appointments by promotion.	11
5. Quota of direct recruitment.	13
6. Posts filled in by direct recruitment.	29
7. Excess appointment by direct recruitment.	16

Before dilating upon the argument of learned Counsel Mr. Shakeel Ahmad, it is appropriate to refer to the amendment made in the Appendix to the rules, which reads as under:--

Post.	Qualification	Mode of Appointment.
E&T Inspector.	Graduate from a recognized University.	(a) 25% by initial recruitment.

		(b) 65 % by promotion on the basis of seniority- cum-fitness from amongst members of the Service holding the posts of Sub-Inspectors having five years experience as such.
		(c) 10 % by selection on merit from amongst members of the service holding post of Sub-Inspector, who have an outstanding record and are thirty two years of age and possess sound health;
		Provided that where a person with such qualification is not available for appointment to any such vacancy, the vacancy shall be filled in the manner provided in clause(b).

Learned Advocate-General, while supporting the arguments of learned Counsel for petitioner, verified that at the time of appointment of Respondent-Inspectors, already 16 Inspectors in excess were working in the department. Learned Advocate-General further pointed out that Advertisement appeared in the Newspaper, inviting applications for the post of Inspectors on 12-9-1999 and the Interviews were held on 20-9-1999, whereas the posts were created on 24th and 25th September, 1999. Summary was prepared by the Secretary, Excise and Taxation for appointment and approval of respondents and same was approved on 26th September, 1999, by the Authority concerned and the appointment Orders were issued on 27th September, 1999. Learned A.G. argued that the methodology adopted by the official respondents at the time of appointment was illegal, being in violation of the Civil Servant (Appointment, Transfer and Promotion) Rules, 1979, which contemplates that appointment is to be made against the available vacancy and not against the future expected vacancy.

In, the Rules, the quota prescribed for appointment of Inspectors, Excise and Taxation is 25 % by initial recruitment, 65 % by promotion and 10% by selection on merits from amongst the Sub-Inspectors, already working in the department. In the case in hand, admittedly the Inspectors, who were holding the posts, prior to the appointment of Respondent-Inspectors, were in excess of their quota, as the quota for direct recruitment was for 13 Inspectors, whereas 29 Inspectors were appointed and in this way 16 appointments were made in excess. Thus, the appointment orders on the face of it are illegal and in excess of authority. The contention of learned Advocate-General has substance, that without relaxing the Rules and without availability of vacancies, the appointments were made in a haphazard manner, deviating from the rules, causing prejudice to the petitioner, whereby their right of promotion has been denied.

It may be observed, that if a Statute requires a thing to be done in a particular way, it must be done by the authority in the manner as prescribed by the Statute, else departure from the Rules, will invalidate the thing done in the manner other than prescribed by Rules.

Learned Counsel for the petitioner, contended, that amendment made in the Rules, was to be followed strictly, specifically when appointments were being made in large number. According to learned Counsel, the Rules can be relaxed only in an individual case, and that too, purely on the

ground of public interest. But since the Respondent-Inspectors, who are 31 in number and were appointed in violation of the Rules and without relaxation of the same, thus, their appointments were in utter violation of the Rules, which has caused grave prejudice to the petitioners, who as a result of such appointments, were deprived of the right of their promotion to a higher post, as they were entitled to be considered for promotion, against the reserved quota, as per the Rules and they have been denied the right of competing for the posts of Inspectors. Besides, the appointments against the posts of Inspectors were already in excess of their quota. In this regard, reliance is placed on the case of *Atta Muhammad Qureshi v. The Settlement Commissioner, Lahore Division Lahore and 2 others* (PLD 1971 SC 61) wherein following observations have been made:--

"It is well-settled that the neglect of the plain requirement of a statutory enactment, which prescribes how something is to be done, will invalidate the thing being done in some other manner if the enactment is absolute but not if it is merely directory. The real question which thus arises for consideration is when an enactment is to be considered as absolute and when as merely directory? It is not possible to lay down a general rule of universal application in this behalf, but the one which is suggested by reported authorities in this connection is the affirmative or negative character of the language in which the provision is couched. It is negative, that is to say, if the statute enacts that certain action shall be taken in a certain manner and in no other manner, it has been held that the requirements are absolute and that neglect to attend them will invalidate the whole - procedure. If on the other hand, the language is affirmative, it may be considered as a directory provision. Nonetheless, it appears that in several reported English cases, it has been held that an enactment, prescribing the formalities which are to be observed for validating an action, are not absolute, although expressed in negative or prohibitory language."

In the said Report, it was further observed that "One other principle which has been enunciated in this behalf is that as a general rule, statutes which enable persons to take legal proceedings under certain specified circumstances, demand that those circumstances must be accurately obeyed, notwithstanding the fact that the provisions thereof are expressed in merely affirmative language. At page 226 of the *Craies on Statutory laws*, 6th Edition. this rule is stated thus:--

"That when a statute confers jurisdiction upon a tribunal of limited authority and of statutory origin, the conditions and qualifications annexed to the grant must be strictly applied."

Thus, in view of the above discussion, it is held that the appointments of Respondent-Inspectors was made in violation of the Rules and in excess of Authority by the department, which even otherwise, has also been admitted by the department in the parawise comments filed in Constitutional Petition No.950 of 1999). As a result, Constitutional Petition No. 950 of 1999 is accepted and the appointments of respondent-Inspectors (respondents Nos.4 to 35 in Constitutional Petition No. 950 of 1999) are declared as of no legal effect and Constitutional Petition No.548 of 2000 is dismissed. '

No order as to costs.

Before parting with the Judgment, we may observe that it has been invariably noticed that many appointments in the past have been made in violation of the Rules, on extraneous consideration. Thus, the Government's Departments, are directed to make all appointments in future, strictly in accordance with the rules and concerned Head of the Departments, are required that while making such appointments the Rules should be followed strictly, in letter and spirit to make the process of appointment transparent, so that there should not be any heart burning and ill-will amongst the public servants and other Contestants. Concerned Head of the Departments are also directed not to follow the illegal orders, issued by the concern Ministers or any other Authority, while making appointments.

Copy of this Judgment be sent to the Chief Secretary, Government of Balochistan, for information and compliance.

Q.M.H./M.A.K./67/Q

Petition allowed.

Fav Appeal

For Official Use



A COMPENDIUM OF LAWS AND RULES CONTAINING EFFICIENCY AND DISCIPLINE RULES

**PAKISTAN PUBLIC ADMINISTRATION RESEARCH
CENTRE
ESTABLISHMENT DIVISION
CABINET SECRETARIAT
ISLAMABAD
2012**

PREFACE

Pakistan Public Administration Research Centre (PPARC), Establishment Division, publishes various government publications like Estacode, Civil Establishment Code, Compendium of Laws & Rules, Instructions and Statistical Bulletin of Federal Government Employees etc.

2. The compendium includes all amendments/drafts and new instructions issued by concerned authorities during the period 2007-2011. The material included in this book is applicable to Federal Government Civil Servants. Apart from the chapter on efficiency and discipline, it also contains rules relating to Federal Investigation Agency(FIA), National Accountability Ordinance and Wafaqi Mohtasib Ordinance. It is hoped that this book would definitely serve the users and stakeholders.

3. I would like to express my thanks to those persons who helped us in the preparation of the compendium especially Establishment Division, FIA, National Accountability Bureau and Wafaqi Mohtasib for providing a valuable technical assistance to PPARC.

4. In addition, I specially appreciate the efforts made by PPARC and its Manuals Section for their contribution and interaction with other Ministries and Divisions in the compilation and printing of this valuable book.

5. Any suggestion for further improvement of the Manual will be welcome which may be addressed to Director General, Pakistan Public Administration Research Centre, M.S.Wing, Establishment Division, Islamabad.

**(Raja Hasan Abbas)
Additional Secretary
Establishment Division**

Islamabad 21st March,2012.

3. The above instructions may also be brought to the notice of attached departments/subordinate offices for compliance in future.

[**Authority** - Estt. Division O.M. No. 2/1/82-D-2, dated 11-1-1982 as modified vide Estt. Division O.M. of even number dated 3-7-1985].

Sl. No. 29 Requirement to Issue a Fresh Show Cause Notice If the Penalty Imposed Under Government Servants (Efficiency and Discipline) Rules, 1973, or Proposed to be Imposed is Greater than that Specified in the Show Cause Notice, or is Proposed to Be Enhanced by the Appellate Authority

As a result of disciplinary action taken against a government servant, the appellate authority considered the penalty imposed by the authorized officer to be inadequate and enhanced the penalty. The government servant filed an appeal against enhancement of penalty before the Services Tribunal (Appeal No. 2(K) of 1980). The Services Tribunal, while accepting the appeal, observed that the penalty was enhanced without giving the appellant an opportunity of being heard which was against natural justice and further observed that "we are of the firm opinion that even if the rules are silent on the subject, any time an appellant's punishment is enhanced, he will be given a show cause and a hearing. This requirement of natural justice shall always be read into the rules." The Division concerned referred the observation of the Services Tribunal to the Ministry of Law who confirmed that, while it was open to the appellate authority to revise the sentence upward, it would be appropriate for the appellate authority to give a show cause notice to the appellant and hear him before passing the order. They advised that the order of the Tribunal should, therefore, be obeyed:

2. The observations of the Service Tribunal and the advice of the Justice Division mentioned in para 1 is brought to the notice of all

Ministries/Divisions and Departments for guidance and compliance.

3. The cases in which a penalty is enhanced may be as follows:-

- (i) Where the authority decides to enhance the penalty proposed by the authorized officer and which is greater than the maximum penalty shown in the show cause notice issued by the authorized officer in terms of rule 5 (1) (iii) of the Government Servants (Efficiency & Discipline) Rules, 1973, or in the show

2002 P.L.C (C.S.) 1349

[Karachi Service Tribunal]

Before (Recd.) Abdul Ghani Shaikh, Chairman,
Ghulam Sarwar Kher and Muhammad Iqbal Kazi, Members

For Appellant

AJMAL TUFAIL

versus

THE GOVERNMENT OF SINDH Through Chief Secretary and another

Appeal No.43 of 2001, decided on 30th January, 2002.

(a) Sindh Civil Servants (Efficiency and Discipline) Rules, 1973---

----Rr. 4(1)(b)(iii), (iv) & 4(2)---"Removal from service" and "dismissal from service"
---Distinction and effect---Civil servant was intimated that he was liable to penalty of removal from service, but in fact was awarded penalty of dismissal from service instead of removal---Though "removal from service" and "dismissal from service" were major penalties in view of R.4(2) of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, penalty of dismissal from service was much harsher than penalty of removal from service---According to R.4(2) of Rules, 1973 removal from service would not, but dismissal from service would disqualify civil servant for future employment---Penalty of dismissal from service, in circumstances, was not in accordance with penalty proposed to be inflicted upon civil servant in show-cause notice as well as in final show-cause notice.

1996 SCMR 630; NLR 1985 TD 396 and 1996 PLC (C.S.) 868 ref.

(b) Sindh Civil Servants (Efficiency and Discipline) Rules, 1973---

----S.S--Holding inquiry in case of misconduct against civil servant--Question as to whether a regular enquiry was to be held in a case of misconduct against a civil servant or not, would depend on facts of each case---Civil servant in the present case, was charged with a very serious allegations of misconduct which civil servant had vehemently denied in his reply to first show-cause notice as well as to final show-cause notice--Authority, in circumstances, could not have resorted to R.5(3) of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 by dispensing with regular enquiry, which course was not warranted by law.

Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1997 PLC (C.S.) 868; Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222; The Deputy Inspector General of Police, Lahore v. Anis-ur-Rehman Khan PLD 1985 SC 134 and Alamgir v. D.F.C. Multan and others 1993 SCMR 603 ref.

(c) Sindh Civil Servants (Efficiency and Discipline) Rules, 1973---

----Rr.4(a), (b) & 5(4)(a), (b)---Imposition of minor penalty and major penalty---First show-cause notice as also final show-cause notice were issued by Authorised Officer who under R.5(4)(a) of

Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 was competent to impose minor penalty as mentioned in R.4(a), but was not competent to impose major penalty as described in R.4(b) of the Rules---Imposition of major penalty could be ordered by "Competent Authority" alone whereas minor penalty could be imposed by "Authorised Officer" ---Authorised Officer who had issued first and final show-cause notice, was not legally competent to impose major penalty of dismissal from service on civil servant and it was obligatory upon the Authorised Officer to forward, the case to Competent Authority alongwith his recommendations, which exercise was not undertaken---Effect---Order imposing major penalty of dismissal from service upon civil servant passed by Authorised Officer was nullity in eye of law and was liable to be set aside.

Abrar Bokhari for Appellant.

Muhammad Qasim Mirjat, Asstt. A.-G. for Respondents.

Date of hearing: 6th December, 2001

JUDGMENT

JUSTICE (RTD.) ABDUL GHANI SHAIKH, CHAIRMAN.--Appellant Ajmal Tufail while posted as Excise and Taxation Inspector, District Central, Karachi was served with a show-cause notice, dated 21-7-1999 issued by the Secretary Government of Sindh, Excise and Taxation Department, being an Authorised Officer, wherein it is alleged that, some accused were arrested in between 19/20 May, 1999 but the F.I.R. No. 13 of 1999 was lodged on 23-5-1999, co-accused was also arrested but was let-off without any reason, accused were kept in the office instead of lock-up, identification form of accused was prepared on 21-5-1999 but was signed on 20-5-1999 i.e. 3 days prior to lodging of F.I.R., quantity of heroin (powder) seized was shown as one K.G. which after belended with Chemical was declared as 5 Kgs., Rs.2 lacs recovered on the pointing of accused were not shown in case papers and that accused were escaped in between 27/28-5-1999 but in roznamcha date was mentioned as 29-5-1999. The appellant in his reply dated 11-8-1999 vehemently denied the allegations and professed his innocence. He was then served with final show-cause notice dated 23-2-2000, which too was replied by the appellant. Finally, vide impugned order, dated 28-9-2000 the appellant was awarded major penalty of dismissal from service by the Secretary, Excise and Taxation Department. Feeling aggrieved, appellant preferred departmental appeal to the Chief Secretary Sindh, getting no response and after passage of 90 days, the appellant was obliged to file instant appeal before this Tribunal on 22-2-2001.

2. Respondent No.2 filed written statement and supported the impugned order, while respondent No. 1 adopted the written statement tiled by respondent No.2. ,

3. Mr. Bukhari, learned counsel for the appellant has assailed the impugned order on following legal grounds.

(1) Show-cause notice issued against the appellant was not in accordance with rule 5(3)(a) of the Sindh Civil Servants (Efficiency and Discipline) Rues, 1973.

(2) The charges against the appellant being of very serious nature, which he vehemently denied, the respondent No.2 could not have dispensed with the regular enquiry under rule 5(3) of the Rules.

(3) Respondent No.2 had acted in dual capacity i.e. as an 'Authorised Officer' so also as 'Competent Authority' and thus violated the mandatory provision of rule 5(4)(b) of the Rules.

In support of his above contentions, he relied upon, (1) 1996 SCMR 630 (2) NLR 1985 TD 396, and (3) 1996 PLC (C.S.) 868.

4. Mr. Mirjat, learned Assistant Advocate-General while controverting the above submissions has submitted that in the first so also in the final show-cause notice, the penalty proposed to be imposed on the appellant has specifically been mentioned, thus there is no violation of any rule. He next contended that under rule 5(3) of the Rules, the Authorized Officer is very much competent to dispense with the regular enquiry. Further, he submitted that respondent No.2 is an 'Authority' in respect of the Excise and Taxation Inspector and was fully empowered to award major penalty of dismissal from service to the appellant.

5. We have considered the above submissions, perused the case papers and have gone through the case-law referred to by the learned counsel for the appellant.

6. We first deal with ground No. 1 and have seen the show-cause notice issued to the appellant and find that in para. 2 it was laid down as under:--

"I, therefore, by this Notice inform you that on the above ground it is proposed to impose upon you the Major penalty of removal from service as described in rule 4 of the said Rules. You are accordingly called upon to show cause why the proposed action should not be taken against you. "

From the simple look of the show-cause notice it appears that appellant was intimated that he was liable to the penalty of removal but in fact the appellant was awarded major penalty of dismissal from service instead of removal. Though the removal from service and dismissal from service are major penalties as described in rule 4(b)(iii) and (iv) of said Rules, but in view of sub-rule (2) of rule 4 of the said Rules the penalty of dismissal from service is much harsher than the penalty of removal from service. Sub-rule (2) of rule 5 says, "removal from service does not, but dismissal from service does, disqualify from future employment. The penalty of dismissal from service is thus not in accordance with the penalty proposed to be inflicted upon the appellant in the show-cause notice as well as in the final show-cause notice.

7. So far ground No.2 argued by learned counsel for the appellant is concerned, it is by now a well-settled principle of law that the question as to whether a regular enquiry is to be held in a case of misconduct against an accused civil servant/employee or not will depend on the facts of each case. In the instant case, the appellant was charged with a very serious allegations of misconduct contained in the statement of allegations as highlighted hereinabove in para. 1, which the appellant vehemently denied in his reply to first show-cause notice as well to final show-cause notice. In this view of the matter, the respondent No.2 could not have resorted to rule 5(3) of the said Rules by dispensing with the regular enquiry, which was not warranted by law.

8. It will suffice to reproduce para. 5 of the judgment in the case of Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1997 PLC (C.S.) 868.

"5. It has been consistently held by this Court that there is a marked distinction between rule 5 and rule 6 of the Rules, inasmuch as under the former rule, a regular enquiry can be dispensed with, whereas the latter rule envisages conducting of regular inquiry which will necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge of a particular misconduct needs

holding of a regular enquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular enquiry could not be dispensed with. Reference may be made in this behalf to the case of Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222".

Reference is also invited to the cases of (1) The Deputy Inspector-General of Police, Lahore v. Anis-ur Rehman Khan PLD 1985 SC 134 and (2) Alamgir v. D.F.C. Multan and others 1993 SCMR 603.

9. Now we deal with the last ground taken by the appellant in support of his appeal. There is no denial of the fact in the instant case, the first showcause notice so also the final show-cause notice were issued by the respondent No.2 in the capacity of 'Authorized Officer'. The Authorized Officer, under rule 5(4)(a) of the said rule though is competent to impose minor penalty as mentioned in rule 4(a) of the said Rule but is not competent to impose major penalty as described in rule 4(b) of the Rules.

10. Rule 5(4)(a) and (b) of the said Rules, for the sake of convenience are reproduced as under:--

"5(4). On receipt of the report of the Inquiry Officer or Inquiry Committee, or where no such officer or Committee is appointed, on receipt of the explanation of the accused if any, the authorized officer shall determine whether the charge has been proved: and

(a) If it is proposed to impose a minor penalty shall pass the order accordingly;

(b) If it proposed to impose a major penalty he shall forward the case to the authority alongwith the charge and statement of allegations served on the accused, the explanation of the accused, the findings of the Inquiry Officer or Inquiry Committee if appointed and his own recommendations regarding the penalty to be imposed and the authority shall pass such orders as it may deem fit and proper. "

11. From the simple reading/perusal of the above said rule, it is crystal clear that the imposition of major penalty can be ordered by the "Competent Authority" alone whereas minor penalty only can be imposed by the "Authorized Officer".

12. In the case, as stated earlier, the first and final show-cause notices were issued by the Secretary, Excise and Taxation Department in the capacity of "Authorized Officer", he was thus not legally competent to impose/award major penalty of dismissal from service. Under rule 5(4)(b) of the said Rules, it was obligatory upon the 'Authorized Officer' (respondent No.2) to forward the case papers to the Competent Authority alongwith his recommendations, which exercise was not undertaken in the instant case. The impugned order passed by respondent No.2 being nullity in the eyes of law, coram non judice and in excess of the powers conferred upon him, is thus not sustainable in law and by no stretch of imagination the same can be maintained.

13. For the aforesaid reasons, the impugned order dated 28-9-2000 passed by respondent No.2 being illegal and without lawfully authority is hereby set aside. The appeal is allowed and respondent No.2 is directed to initiate the proceedings against the appellant afresh after issuing a proper show-cause notice and appointing an Inquiry Officer who shall proceed further in accordance with law. Meanwhile, we direct that the appellant shall be reinstated in service. So far back benefits are concerned, the same shall follow the result of disciplinary proceedings.

Announced in open Court.

Given under our hands and the Seal of this Tribunal this 30th day of January, 2002.

H.B.T./76/K(Sr.Trib.)

Appeal allowed.