



GOVERNMENT OF KHYBER PAKHTUNKHWA
ENVIRONMENT DEPARTMENT

Dated Pesh: 2nd June, 2014

87

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.

Enging to
M. Tariq DFO.

1827
187/6
ESH
No 2916
18/6/14

(MIR ZALI KHAN)
SECTION OFFICER (ESTT)

OFFICE ORDER NO. 72 DATED NOWSHERA, THE 01 /11/2011, ISSUED BY MUHAMMAD TARIQ, DIVISIONAL FOREST OFFICER, PESHAWAR FOREST DIVISION, NOWSHERA.

Muhammad Ishaq Forest Guard is hereby transferred from Peshawar-Urmer Road to Islamia College forest check post with immediate effect in the interest of public service.

(Muhammad Tariq)
Divisional Forest Officer
Peshawar Forest Division
Nowshera

No. 743-46 /E,

Copy forwarded to the;-

1. PS to Minister for Environment Department Khyber Pakhtunkhwa for information with reference to telephonic directives of the honourable Minister dated 31.10.2011.
2. PS to Minister for Irrigation Department, Khyber Pakhtunkhwa for information with reference to telephonic directives of the honourable Minister dated 31.10.2011.
3. SDFO Peshawar Forest Sub-Division, Peshawar for information and necessary action. He should relieve Muhammad Ishaq F/Guard under local arrangements.
4. Divisional Accountant for information.

Divisional Forest Officer
Peshawar Forest Division
Nowshera

Consequently the impugned Recovery Notice dated 12.04.2011 having been passed on correct premises does not warrant interference.

24. In view of above, Writ Petition No.171 of 2011 is allowed by holding petitioner entitled for LAP of 569 days encashment IN FULL for period of service with previous department; the respondent No.1 is directed to count remaining 389 days LAP of petitioner for encashment according to Para X of Policy dated 06.07.2005. Connected Writ Petition No.1376/2011 having no force is dismissed. No order as to costs.

MH/10/IsI.

Order accordingly.

2016 P L C (C.S.) 454

[Federal Service Tribunal]

Before Sheikh Ahmad Farooq, Chairman
and Syed Nasir Ali Shah, Member

MUHAMMAD SOHAIL BUTT

versus

CHIEF (MGT CUSTOMS) REVENUE DIVISION FEDERAL
BOARD OF REVENUE, ISLAMABAD and another

Appeal No.213(L)CS of 2015, decided on 6th October, 2015.

(a) Civil Servants (Appeal) Rules, 1977---

---R. 3---Government Servants (Efficiency and Discipline) Rules, 1973, R.6-A---Service Tribunals Act (LXX of 1973), S.4---Removal from service---Allegations of inefficiency, misconduct and corruption---Minor penalty, enhancement of---Withdrawal of representation---Effect---Minor penalty of "withholding of four increments" (without cumulative effect) was imposed upon the appellant by the Authorized Officer but "Authority"/"Appellate Authority" modified the said minor penalty to major penalty of "removal from service"---Validity---Departmental appeal filed by the appellant was to be heard and decided by the "Appellate Authority" and not by the "Authority"---Respondent (official) was not sure whether he was acting as "Authority" or "Appellate Authority"---Respondent (official) had arrogated to himself both positions as "Authority" and "Appellate Authority"---Power of revision was available to the "Authority" and not to the "Appellate Authority"---Power conferred under S.6-A of Government Servants (Efficiency and Discipline) Rules, 1973 was revisional and not appellate and same had to be exercised suo motu---Respondent

2016] Muhammad Sohail Butt v. Chief (MGT Customs) Revenue Div. 455
FBR (Syed Nasir Ali Shah, Member)

(official) had acted as "Appellate Authority" and not as "Authority"--- Revisional power was not available to the respondents (official), he had exercised revisional power in his appellate jurisdiction and not suo motu---Section 6-A of Civil Servants (Appeal) Rules, 1977 empowered the Appellate Authority to confirm, set aside or modify the previous order---Authority was required to specify the reasons while enhancing the penalty---Authority merely mentioned in the show cause notice that the penalty imposed by the Authorized Officer was inadequate and did not commensurate with the gravity of the charges established against the appellant---Such was a vague and skimpy statement---No reasons for enhancement of penalty had been given---Authority was not justified in imposing impugned major penalty upon the appellant---Allegation of posting financial loss to the government exchequer could not be foisted upon the appellant---Withdrawal of departmental representation would not have the effect of forfeiting vested right of appellant to assail the imposition of penalty before the Service Tribunal---Inquiry report on the basis of which minor penalty was imposed on the appellant was found to be unfounded and misconceived---No justification existed for imposition of minor penalty upon the appellant---Impugned orders were set aside and appellant was directed to be reinstated into service with all the consequential back benefits---Appeal was accepted in circumstances.

[pp. 457, 458, 459] A, B, C, D, E, F & G

G.M. Pakistan Railways and others v. Muhammad Rafique 2013 SCMR 372 and Secretary, Government of the Punjab (C&W) and others v. Ikramullah and 5 others 2013 SCMR 572 rel.

(b) Estoppel---

---No estoppel could operate against law. [p. 459] F

Appellant in person along with Asif Nazir Awan for Appellant.

Muhammad Nawaz Waseer for Respondents.

Date of hearing: 1st October, 2015.

JUDGMENT

SYED NASIR ALI SHAH, MEMBER.--- This appeal is directed against the order dated 31.10.2014 whereby minor penalty of "withholding of four annual increments" (without cumulative effect) was imposed upon the appellant by the Authorized Officer/respondent No.1 and the subsequent order dated 6.5.2015 whereby respondent No.2 in his position as "Authority"/"Appellate Authority" modified the aforesaid minor penalty to major penalty of "removal from service".

2. Facts leading to the filing of this appeal may be summarised. While posted as Deputy Superintendent (BS-16) Model Customs Collectorate (Preventive), Lahore the appellant was served with a charge sheet by respondent No.1 in his position as "Authorized Officer" on the allegations of inefficiency, misconduct and corruption: It was inter alia alleged that the appellant being hand in glove with the importers of betel leaves facilitated them to evade Government taxes and duties and thereby posted financial loss to the Government exchequer. The appellant in his reply to the charge sheet controverted the allegations levelled against him. Muhammad Irfan Waheed, Additional Collector was appointed as Inquiry Officer to probe into the allegations levelled against the appellant. Vide Inquiry Report dated 21.4.2014 the aforesaid allegations against the appellant stood proved. This respondent No.1/Authorised Officer served a Show-Cause Notice dated 28.4.2015 upon the appellant. The appellant in his reply to the Show Cause Notice again refuted the allegations. Subsequently, vide order dated 31.10.2014 the Authorised Officer/respondent No. 1 imposed minor penalty of "withholding of four annual increments" (without cumulative effect) upon the appellant. On 17.11.2014 the appellant filed a departmental representation against the aforesaid order dated 31.10.2014. However, the aforesaid departmental representation was withdrawn by the appellant on 27/28.3.2015. But vide letter dated 26.3.2015 which was received by the appellant on 30.3.2015 a Show-Cause Notice was served upon the appellant to explain as to why major penalty of dismissal from service be not imposed upon him. The appellant in reply to the Show-Cause Notice again controverted the allegations. He also maintained that he had already withdrawn the departmental representation. However, vide impugned order dated 6.5.2015 major penalty of removal from service was imposed upon the appellant.

3. Against such a ticklish backdrop the appellant brought this appeal by *inter alia* maintaining that the impugned order is defective in that respondent No.2 acted as "Authority" instead "Appellate Authority" and as such lacked competence to impose the impugned penalty upon him. He also maintained that respondent No.2 had not assigned any reason while enhancing minor penalty into major penalty. The appellant thus prayed for setting aside of the impugned orders dated 31.10.2014 and 6.5.2015 with consequential relief of reinstatement into service with back benefits.

4. The appeal was resisted by the respondents. It was inter alia maintained that keeping in view the gravity of the allegations levelled and proved against the appellant during the inquiry respondent No.2 after fulfilling codal formalities had justifiably imposed the major penalty upon the appellant. It was pointed out that the appellant had filed

Nemo for Respondents.

JUDGMENT

ASAD MUNIR, MEMBER:--- The short question involved in this case is whether the claim for unpaid wages can be made through a petition filed under section 25-A of the Industrial Relations Ordinance, 1969. Admittedly, the Respondent's services stood terminated upon his resignation from service on 28.10.2000. After the termination of his services, the Respondent filed before the Punjab Labour Court No.3, Lahore at Ferozwala, a petition under section 25-A of IRO for recovery of dues on account of gratuity, bonus, compensation for un-availed leave et cetera. However, the Petitioner Company through its application under section 35 of the IRO, 1969, sought the dismissal of the grievance petition on the ground that the learned Labour Court lacked jurisdiction to adjudicate upon the grievance petition. By its order dated 04.01.2001, the learned Labour Court has dismissed the Petitioner Company's application after holding that it has jurisdiction in the matter in view of the law laid down in Pak Arab Refinery Limited v. Muhammad Rashid (1999 SCMR 373) and Zain Packages Industries Limited, Karachi, v. Abdul Rashid etc. (1994 SCMR 22).

2. Assailing the legality of the learned Labour Court's order dated 04.01.2001, the learned counsel for the Petitioner Company has argued that the learned Labour Court has not only wrongly concluded that it has no jurisdiction but has also misconstrued and misapplied the law laid down in the cited judgments. Arguments advanced by the learned counsel for the Petitioner Company are unchallenged as none has appeared on behalf of the Respondent who was proceeded against ex parte by this Tribunal vide order dated 16.04.2014 after notice by way of proclamation was published in daily Jang on 09.04.2014.

3. After hearing the learned counsel for the Petitioner Company, I agree with him that the learned Labour Court has not been able to appreciate the law laid down in Zain Packages Industries Limited, Karachi v. Abdul Rashid etc., supra, where a workman's claim for gratuity, filed before the Payment of Wages Authority under the Payment of Wages Act, 1936, was upheld. The said authority does not lay down that the claim for gratuity could be filed before the Labour Court. The judgment in Pak Arab Refinery Limited v. Muhammad Rashid, supra, is also of no help to the Respondent as it involved the issue of termination of services rather than a claim for payment of dues including gratuity, bonus et cetera. Under section 25-A of the IRO 1969, a workman can maintain a petition where he is still in service or where his services have been terminated in connection with or as a consequence of an industrial dispute. The Respondent could not maintain his petition under section

25-A of the IRO, 1969 as neither was he in service when he filed the grievance petition nor his services were terminated in connection with or as a result of an industrial dispute. This view is supported by the cases reported as *Trustees of the Port of Karachi v. Muhammad Saleem* (1994 SCMR 2213) and *Messrs Wah Industries Limited, WAH Cantt. District Rawalpindi v. Punjab Labour Appellate Tribunal, Lahore and 2 others* (1998 PLC 1), wherein it was laid down that an employee, terminated otherwise than in connection with or as a result of an industrial dispute, is not a workman cannot maintain a petition under section 25-A of the IRO, 1969. The Respondent's grievance petition was also not competent under the provisions of Standing Order 12 (3) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, which can be invoked only where the services of a workman are illegally terminated and not when he makes a claim for the recovery of dues after he ceases to be in service. Reference may be made to the provisions of the Payment of Wages Act, 1936, section 15 read with section 22 whereof confers exclusive jurisdiction on the Payment of Wages Authority, to adjudicate upon a claim for wages. In view thereof, the learned Labour Court had no jurisdiction to entertain and adjudicate upon the Respondent's claim for recovery of wages including gratuity, bonus, compensation for un-availed leave et cetera.

4. For what has been stated above, this revision petition is allowed, and the impugned order is set aside with the result that the Respondent's grievance petition stands dismissed.

HBT/2/PLT

Revision allowed.

2016 P L C 42

[Sindh Labour Appellate Tribunal]

Before Ali Sain Dino Metlo, Member.

Mrs. FARHANA

versus

Messrs SINDH SMALL INDUSTRIES CORPORATION
through Managing Director and 2 others

Appeal No. HYD-73 of 2015, decided on 29th September, 2015.

*Sindh Industrial Relations Act (XXIX of 2013)---**---Ss. 34 & 48---Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968), S.O.12---Termination of service---*

Grievance application---Employee, a junior clerk, was terminated, and she on receiving one month pay in lieu of notice, she severed her relations with the employer corporation---Employee after about 10 years of her removal from service, filed grievance application before Labour Court, without filing application or showing any cause for condonation of the delay, in filing grievance application---Employee, had contended that an other employee, whose service was terminated on the same day by a separate, but similar order, having been directed by Labour Court to be reinstated, benefit of Labour Court judgment of that other employee should be given to her as well---Validity---Said other employee who was reinstated, was ten years senior in service to the employee and her rank was also higher---Order of the Labour Court was not "judgment in rem", as it had neither decided any question of law, nor its decision was binding---Facts of the two cases being quite different, the ratio of case of other employee, could not be applied to case of employee. [pp. 43, 44] A, B, C, D & E

Mohammad Mubin-us-Salam's case PLD 2006 SC 602; 2011 PLC 161; 2009 SCMR 1; 1996 SCMR 1185 and 2005 PLC (C.S.) 368 ref.

Ms. Nasim Abbasi for Appellant

Nemo for Respondents.

Date of hearing: 29th September, 2015.

JUDGMENT

ALI SAIN DINO METLO, MEMBER.--- The appellant has challenged order dated 28th May, 2015, of the Sindh Labour Court No. VI, Hyderabad, dismissing her grievance application for reinstatement in service as time-barred.

2. Briefly, the facts are that service of the appellant, a junior clerk (BPS-05) in the respondent corporation, was terminated on 31st December, 2003, and on receiving one month pay in lieu of notice she severed her relations with the corporation.

3. On 1st June, 2013, she sent grievance notice to the respondent and on 8th July, 2013, i.e. after about ten years of her removal from service, she filed grievance application before the Labour Court without filing application, or showing any cause, for condonation of the delay.

4. Learned counsel for the appellant contends that one Mst. Salma, whose service was terminated on the same day by a separate but similar order, had challenged her termination, within time, first before the Service Tribunal and then, after abatement of appeal in the wake of

CHIEF CONSERVATOR OF FORESTS
Northern Forest Region-II



Civil Line Forest Offices Abbottabad
☎ 0992-9310410
Fax 0992-9310343
E-mail: ccfnorth@gmail.com

No. 2125 /E dated Abbottabad the 26 /09/2013

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

(Through Consist)
Confidential

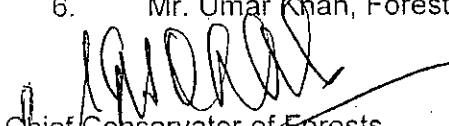
Subject: **DRAFT CHARGE SHEET AGAINST MUHAMMAD TARIQ DFO UPPER KOHISTAN FOREST DIVISION AND HIS STAFF**

Memo:

On receipt of compliant, a committee comprising upon Conservator of Forests Upper Hazara Forest Circle Mansehra and DFO Lower Kohistan Forest Division Pattan was constituted about smuggling of Kohistan origin timber to Northern Area vide this office order No. 28 dated 26.08.2013. The committee has inquired into the matter and reported that information regarding lifting of 18,000-cft timber of Kohistan origin from Basha, Harban and Sazin transit depots for admixture in the Amnesty Policy-2013 timber of Northern Area is confirmed vide their report dated 1175/GL dated 29.08.2013.

Accordingly, the Conservator of Forests Upper Hazara Forest Circle Mansehra vide his letter No. 1521/GB dated 13.09.2013 has furnished Draft Charge Sheets alongwith memo of allegations against the following officers/officials of Upper Kohistan Forest Division Dassu on account of their involvement/connivance with Forests lessee of Northern Area in theft of approximately 18,000-cft timber of Kohistan origin to Northern Area/Down Districts, which are enclosed herewith for further necessary action:-

1. Muhammad Tariq, DFO Upper Kohistan Forest Division Dassu
2. Muhammad Asghar, Forester In-charge SDFO Harban Forest Sub-Division
3. Mr. Abdul Manan, Block Officer
4. Mr. Jamir, Forest Guard In-charge Harban Forest Depot
5. Mr. Nasib Khan, Forest Guard In-charge Sazin Forest Depot
6. Mr. Umar Khan, Forest Guard In-charge Basha Forest Depot


Chief Conservator of Forests
Northern Forests Region-II Abbottabad
Khyber Pakhtunkhwa

Encl. as above

No. — /E

Copy forwarded to the Conservator of Forests Upper Hazara Forest Circle Mansehra for information with reference to his letter cited above.

Chief Conservator of Forests
Northern Forests Region-II Abbottabad
Khyber Pakhtunkhwa

1-10. The charge of a range is ordinarily held by Forest Ranger, but more important ranges may be held by Extra Assistant Conservators and less important ranges by Deputy Rangers. Assistant Conservators are sometimes placed in charge of a range for training.

1-11. The charge of a beat is held by a Forest Guard.

CHAPTER II—DUTIES AND POWERS

Duties of the Chief Conservator.
2-1. (i) The Chief Conservator is the Chief Technical Adviser to Government on forest matters. He is also the head of the Forest Department in the West Pakistan.

(ii) The Chief Conservator is empowered to deal, on his own authority, with all professional questions such as Policy, Accounts, Working Plans, Silvicultural Operations, Development Schemes and fire protection.

(iii) The Chief Conservator deals finally with the preliminary reports, but submits the completed plans to Government for sanction except in the case of Soil Conservation plans which are sanctioned by him. He is responsible for the final approval of the control forms for working plans sanctioned by Government.

(iv) The Chief Conservator submits to Government, for the whole province, the consolidated budget, the appropriation proposals and the annual forest administration report.

(v) The Chief Conservator controls the postings and transfers of officers of W. P. F. S. Class I and Class II and transfers of members of the Subordinate Forest Service between circles. The postings of Provincial Forest Service Officers and Pakistan Forest Service Officers to the charge of Circles are made by Government on his recommendation.

(vi) The Chief Conservator as Head of the Department controls all forest affairs and issues such instructions as he may consider necessary on the administration and working of the forests.

Duties of the Additional Chief Conservator.
2-2. Subject to control by the Chief Conservator of Forests, the Additional Chief Conservator of Forests is empowered to deal all matters including appeals relating to subordinate establishment except promotions to the gazetted rank, sales of Forest Produce, Working Plans, Research and Education and Inspection of Forests.

Duties of Conservator.
2-3. (i) Subject to control by Government and by the Chief Conservator in matters with which he is competent to deal, the Conservator has full control of forest matters within his circle.

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(ii) The Conservator, within his circle, controls the postings and transfers of officers in charge of ranges and of clerks and the transfers of all other subordinates between divisions.

(iii) The Conservator may correspond with Government on all administrative matters affecting his circle through Chief Conservator but questions of personnel, finance, policy and matters which affect the department or province as a whole will be referred to the Additional Chief Conservator who will also be consulted on all important matters, especially sales.

(iv) The Conservator will make frequent tours of inspection and visit once a year as many of the forests under his control as possible. During these tours the following points will receive particular attention, and, if necessary, be specially reported on to Government or the Chief Conservator/Additional Chief Conservator:—

- (a) Surveys and settlements, made or in progress, and their cost, extent to which they are still required, nature and adequacy of the maps and settlement records prepared, results of working under the settlement in force;
- (b) Working plans, already made or in progress, and their cost, extent to which plans are still required; results of working of plans in force;
- (c) Forest boundaries; their nature and state of repairs, demarcation work in progress and its cost, demarcation work still to be done;
- (d) Roads, buildings, and other similar works in existence or under construction, their cost, state of repairs; new roads; buildings, or other works required;
- (e) Executive and protective staff, efficiency, state of discipline, etc.
- (f) Conditions of the forests, the methods of treatment employed; natural reproduction, causes which interfere with it, etc.
- (g) Protection of the forests from injury, by man, by cattle by fires, etc. breaches of the forest rules, their frequency and causes;
- (h) Works of reproduction and cultural improvements, extent, condition and cost of plantations made, conditions of nurseries; new sowings or plantings required; thinnings; creeper cutting, etc. extent to which carried on and required;
- (i) Method of working and management in force, advantages or otherwise of these methods, expenditure incurred on them; outturn of the forests and financial results;

(j) Timber depots, their situation and adequacy; condition in which kept; state of their records, etc.

(v) At the conclusion of each important tour of inspection the Conservator will write a self-contained note dealing with the policy, management and progress of the division which he has visited. The note is intended primarily for the information of the Chief Conservator, who will, however, transmit a copy to Government with his comments, should the note be of sufficient interest or the Conservator desires him to do so. In addition to the full note brief notes may be written on individual forests or projects for the guidance of the Divisional Forest Officer. When of sufficient interest, duplicate copies of these notes may be sent for pasting in the compartment history files.

(vi) The Conservator will see that all money transactions are conducted in accordance with the rules in force; and will examine the cost of current works, and of those which have been spread over several years. He will also ascertain whether the Divisional Officers and other members of the controlling staff are conversant with their duties, that discipline is maintained, and that work is properly supervised.

(vii) A Conservator in control of an irrigated plantation must satisfy by personal inspection during the irrigation season that adequate arrangements have been made by the Divisional Forest Officer to irrigate each plantation.

(viii) The Conservator-in-charge of the heavy earth-moving machinery bulldozers, sub-soilers, etc., will see that the machinery is properly maintained and controlled. He will give progress of the work of reclamation of ravined land by mechanical means in his inspection notes.

2.4. The chief duties of the Officer-in-charge of a forest division are:—

Duties of the Divisional Forest Officer.

- (i) To be responsible for the proper management of the forest business and for the finance of his division;
- (ii) To take an active part in all technical work;
- (iii) Subject to the orders of the working plan and his superior officers, to control the silviculture of his division and to be responsible for the correctness of all technical operations;
- (iv) To make himself thoroughly conversant with the Land Administration Manual and the Land Revenue Settlements of his division;

- (v) To have a wide knowledge of the people with whom he has to deal; to show sympathy for their requirements and to carry out the forest policy prescribed for him with fairness and common sense;
- (vi) To submit a monthly diary or progress report in which he will report briefly the progress of all work going on in the division and any other events of interest and importance. This diary or progress report will be submitted to the Conservator who will record any remarks he may wish to make. Should the jurisdiction of the Divisional Forest Officer extend over more than one district, a separate diary or progress report will be written for each district. Any remarks made by the Conservator except on technical matters, will be shown to the Deputy Commissioner.
- (vii) *For Irrigated Plantation Divisions only*--To ensure by personal inspection and adequate organization and control that each and every compartment in the plantation is properly watered.

2.5. The following are the chief duties of Officers-in-charge of forest ranges:—

Duties of Range Officer.

- (i) To be responsible for all cash disbursements and expenditure within his range. All payments of pay and labour must, as far as possible, be made personally by him and he is personally responsible that labour is not employed for longer than necessary and that disbursements are made without delay;
- (ii) To communicate all orders and instructions to his subordinates, and to see that they understand them and carry them out;
- (iii) To check and control all work within his range, and to ensure that Government funds are used in the most economical and efficient way;
- (iv) To protect Government interests by insisting upon good work from all subordinates and labour, and by producing the highest revenue from his range consistent with the highest principles of forestry;
- (v) To collect, check and consolidate all returns and registers, to prepare the monthly range accounts and to carry out all office work promptly and correctly;
- (vi) To prevent any mis-use of authority by subordinates particularly in compounding forest offences.

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2.6. The duties of Range Assistant are:—

Duties of Range Assistant.

- (i) To assist the Range Officer, to the best of his ability, to carry out the work of the department honestly and efficiently;
- (ii) To carry out all orders that may be given to him;
- (iii) To report to the Range Officer on all important happenings;
- (iv) Thoroughly to understand the rules for compounding forest offences and closely to observe them. Except as laid down in those rules he is forbidden to take money from the accused;
- (v) To prevent the Forest Guards under his control from mis-using their authority, accepting bribes or harassing the people.

2.7. Forester's post requires a technical knowledge of Forest operations. He is required to carry out the following works:—

Duties of Foresters and Block Officers.

- (i) Irrigation of plantations.
- (ii) Nursery works and plantations.
- (iii) Thinnings.
- (iv) Road and building construction.
- (v) Timber works in hills and plains.
- (vi) Wattbandi and drainage.
- (vii) Demarcation and map reading.
- (viii) Floating and rafting.
- (ix) Timber depot works.
- (x) Strictly to observe the rules for detecting and for compounding forest offences in his jurisdiction.

W. J. Dand.

A Block Officer may be a Forester or a Forest Guard will be classed as a technical man with the following qualifications:—

- (a) Minimum service 5 years.
- (b) A certificate that he is expert to carry out at least 4 of operations required of a Forester in addition to item (x) above. His duties will be the same as that of a Forester.

Can be promoted if fulfill the conditions above

Handwritten initials and signatures at the bottom of the page.

2-8. The chief duties of a Forest Guard incharge of a beat are: —
 Duties of Forest Guard.

- (i) To be fully acquainted with his beat and to have knowledge of everything taking place therein.
 - (a) Beat Guard—
- (ii) To be fully acquainted with and to possess a list of the rights, privileges and concessions, that may be exercised by the people in the forests of his beat.
- (iii) To observe the rules strictly for compounding forest offences.
- (iv) To carry out under orders of the Range Officer, repairs to the boundary pillars, roads and buildings in his beat;
- (v) To carry out, without orders—
 - (a) the maintenance of fences;
 - (b) tending operations in regeneration areas and plantings;
 - (c) weeding of young plants, but not to incur expenditure on these works without the Range Officer's sanction.
- (vi) to see that the shooting rules are observed and to put a stop to illegal shooting and trapping.
- (vii) To regularly patrol all the forests in his beat and see that no illicit damage to the forest is caused and that no illicit encroachment on the forest land takes place. All breaches of forest rules should be reported immediately through the Guard Damage Report Book.

The duties of a Forest Guard incharge of a resin depot are:—

(a) Resin Guard.

- (i) To recruit sufficient labour for resin work, both during the tapping season, and for preparatory work during the winter;
- (ii) To maintain order and neatness in his depot, to see to the weighing, soldering, numbering and despatch of resin tins as laid down in orders;
- (iii) To patrol his resin tapping areas and to see that the coolies are carrying out the tapping and collection to the best of their ability, and that the tapping rules are closely observed.

The duties of a Forest Guard employed on special works such as felling are :—

(c) Guards on Special Works.

- (i) To carry out such work to the best of his ability and to protect the interest of Government;
- (ii) To be responsible for the protection of all forest produce and Government stores entrusted to his care.

The duties of a Forest Guard incharge of a river beat are:—

(d) River Guards.

- (i) To patrol the part of the river in his charge and to prevent the theft of timber in transit;
- (ii) To be thoroughly conversant with the river rules and to detect and to report all breaches thereof immediately through the Guard Damage Report Book.
- (iii) To keep the river abhandas clear of all stranded timber. For this purpose, he will remain in touch with the mates appointed by the drift contractors, and will see that every piece of timber collected is sent to the nearest catching depot.
- (iv) To make every piece of timber received at the catching depot, according to the orders in force, and to enter it in the depot forms;
- (v) If required by the Range Officer to do so, to check all Rafts passing through his beat and to prevent the raftsmen collecting any stranded timber while in transit;
- (vi) To report on the legal position of any timber lying within the three miles limit, for which a permit to saw has been applied.

The duties of a Forest Guard employed in a Sale Depot are—

(e) Depot Guards.

- (i) To check the rafts on their arrival at the landing ghat and to report to the Depot Officer any discrepancies detected;
- (ii) To supervise the carriage of timber from the landing ghat to the Sale Depot and to see that no timber is lost in transit;
- X (iii) To check and count the timber as it is received in the Sale Depot;
- X (iv) To supervise classification and stacking;

X (v) If required to do so, to take his turn at watching the depot by night;

X (vi) To supervise the removal of timber from the depot by purchasers and to see that none but timber marked with the sale hammer is removed.

2-9. (a) (1) The following posts in the West Pakistan Forest Department which at the time of appointment require technical knowledge of forest operations are classed as technical posts:—

Technical posts.

- (i) W. P. F. S., Class I.
- (ii) W. P. F. S., Class II.
- (iii) Forest Rangers.
- *(iv) Deputy Rangers.
- *(v) Foresters.
- (vi) Forest Guards who have passed the Forest School Course.

(2) Forest Guards posts require no technical qualifications at the time of appointment, but after 5 years or so Forests Guards in the majority of divisions acquire a knowledge of technical operations which entitles them to be classed as technical men.

A Forest Guard may be classed by his Conservator as a technical man when he possesses the following qualifications:—

- (a) Minimum service 5 years.
- (b) A certificate that he is expert in at least three of the following operations:—
 - (i) Irrigation of plantations.
 - (ii) Nursery work and plantations.
 - (iii) Thinnings.
 - (iv) Road and building construction.
 - (v) Timber works in the Hills.
 - (vi) Watthandi and drainage.
 - (vii) Demarcation and map reading.
 - (viii) Floating and rafting.
 - (ix) Timber Depot work.

*Note—If directly appointed then only when they have obtained the Forest School Certificate.

Note—A certificate will be given by a Divisional Forest Officer only after personal inspection of the Forest Guard's work.

CHIEF CONSERVATOR OF FORESTS-II
KHYBER PAKHTUN KHWA



Shami Road Peshawar

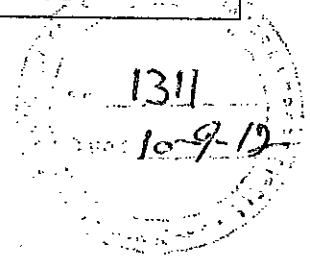
Phone No. 091-9212177
Fax No. 091-9211478
E-Mail: chiefforests@gmail.com

NO. /GB

Dated Peshawar the

04 / 09 / 2012

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



Subject:-

STATUS REPORT OF ILLICIT TIMBER LEFTOVER FROM THE LAST AMNESTY POLICY AND RELATED ISSUES.

As a result of the prolonged of ban by the Federal Govt. on Commercial harvesting of forest since , 1993, locals Kohistan could not obtain financial benefit as source of livelihood i.e. sale of the timber in the shape of royalty concession and employment.

The local community instigated by the investors joined hand together and resorted to irregular/unlawful cutting of trees. A large number of trees were felled and Govt. of Khyber Pakhtunkhwa taking cognizance of Forests owners and concession, its diverse issues and circumstances promulgated a special policy in 1998 for the disposal of such illicitly cut timber on the analogy of policy given by Federal Govt. for Northern Areas.

Since 1998 the Govt. of Khyber Pakhtunkhwa has announced/favored the Kohistanis by awarding the policies for the disposal of illicit cut timber/trees in Kohistan District with salient features. The gist of the policies promulgated since 1998 to 2009 along with volume of illicit timber allowed /transported to Goharabad Timber market is highlight as under:-

Policy	Volume allowed	Timber transported under the policy and market cft	Rate fixed
1st policy -1998	-	14,59,254	50/-per cft
2 nd Policy-2004	1.5 million cft	3,50,052	Deodar 250/-Kail/Fir 150/- alongwith duty and FDF
3 rd policy-2005	11,48,319 cft	4,12,086	-do-
4 th Policy- 2007	10,76,214 cft	8,97,725	-do-
5 th Policy-2009 period of policy w.e.f. 6.12.2009 to 5.6.2010	21,00,000	3,57,964 cft which includes 71592.83 cft Govt. share	Deodar =350/- Kail =250/- Fir =150/-

Now the CF-Upper Hazara has reported that the matter has thoroughly been discussed by DFO Upper Kohistan Forest Division in a special meeting convened and chaired by DCO Kohistan on 26.6.2012, participated by DPO Kohistan, DFO Upper and Lower Kohistan. Minutes of meeting are as annex-I CF Upper Hazara Forest Circle Mansehra has further

reported that in the nut-shell, the local administration has expressed its inability in extending any assistance to take cognizance of the leftover illicit timber.

Besides, the DFO Upper Kohistan vide his letter No. 1742/GL dated 29.3.2012 has sent the status report of subject timber left from the amnesty policy, 2009 to CF Upper Hazara (copy attached) which is self explanatory. (Annex-I)

The CF Upper Hazara has requested to take up the case with Administrative Department in light of the recommendations contained in the concluding Para of status report and seeks advice for further course of action in the matter.

As experienced from the previous polices the practice for grant of policy for illicit timber is continuing which is not a viable solution rather it has weekend the writ of Department besides tarnishing its image.

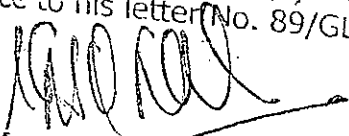
The CF Upper Hazara in foregoing Para that local administration has showed its inability in extending any assistance to take cognizance of the left over illicit timber and Forest Department lonely is unable to formulate such policy in the area.

Therefore, in view the above exposition this office recommends that let the available confiscated timber rot as to discourage this phenomena which has almost because a regular feature.

Chief Conservator of Forests-II
Khyber Pakhtunkhwa, Peshawar.

No. 286 /GB

Copy forwarded to CF-Upper Hazara Forest Circle Mansehra for information with reference to his letter No. 89/GL dated 9.7.2012 please.


Chief Conservator of Forests-II
Khyber Pakhtunkhwa, Peshawar.

699

MINUTES OF MEETING HELD UNDER THE CHAIRMANSHIP OF DCO KOHISTAN IN HIS OFFICE ON 26.06.2012

A meeting was held in the office of District Coordination Officer Kohistan under his Chairmanship. The following attended the meeting:

- 1. DCO Kohistan
- ✓ 2. DPO Kohistan
- ✓ 3. DFO Upper Kohistan
- 4. DFO Lower Kohistan

DCO Kohistan opened the discussion and asked DFO Upper Kohistan to elaborate the issue of illicit timber left out of the "Amnesty Policy 2009" for which the instant meeting was scheduled. DFO Upper Kohistan apprised the house with background of anarchic cutting and its past history. He referred amnesty policies promulgated by the Government one after another for lifting of all such stocks which otherwise encouraged such timber business. The action proposed by the Forest Department in favour of Forest conservation and establishing writ of Law were highlighted which could not be entertained in the past, despite mustering strength from NAB, due to fragile Law and order situation and expected retaliation by the owners. These policies remained a continuous attraction for illicit timber business during ban on regular harvesting. But under the policy of 2009, the fine imposed was a bit higher which clipped the profit for stakeholders hence all the timber could not be drained to market within the valid period of policy.

As growing domestic and commercial need within the area is a continuous threat for pilferage of timber which definitely reduces its size over the time and also resulted in change of stakeholders. The house was requested to extend possible assistance in taking seizure of all this timber for confiscation in favour of Government under the Law which in turn will vanish the hopes of illicit timber traders in future.

DPO Kohistan responded to the desired proposals for disposal of illicit timber stacks and informed that he is already deficit in required force strength to cope with various issues of Law and order and curbing crimes in the area so how he can afford to provide requisite strength to Forest Department in addressing such an issue which could never be addressed earlier due to its large spread in the area. The same opinion was endorsed by the Chair and the above discussion was culminated on the following decisions:

- 1. Timber cannot be seized or taken into custody at present due to meager resources of force and other Law and Order priorities.
- 2. The Forest Department may consider promulgation of another special policy with liberal terms and condition for disposal of such timber.

At the end the Chair paid thanks.

At the end
26/7/12
 Divisional Forest Officer
 Upper Kohistan Forest Division
 Dasso

26/7/12
 District Coordination Officer
 District Kohistan

26/7/12
 DFO, Upper Kohistan

5615-18 / DCOTE
 28/7/12

701

OFFICE OF THE DIVISIONAL FOREST OFFICER, UPPER KOHISTAN
FOREST DIVISION DASSU.

To, |
The Conservator of Forests
Upper Hazara Forest Circle
Mansehra

No. 04 /GL dated Dassu the 03/07/2012.

Subject: STATUS REPORT OF ILLICIT TIMBER LEFTOVER FROM THE LAST
AMNESTY POLICY AND RELATED ISSUES.

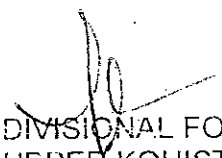
Reference: CCF-II letter No.789/GB, dated 09/4/2012 endorsed vide your
No.6172/GL, 09/5/2012 and this office endorsement No.2167/GL,
dated 23/5/2012.


As directed by CCF-II, matter has been thoroughly discussed in a special
meeting convened and chaired by DCO Kohistan and participated by DPO
Kohistan on 26/6/2012. Minutes of meeting are enclosed.

In the nutshell, the local administration has showed its inability in extending any
assistance to take cognizance of the leftover illicit timber.

You are therefore requested to please consider the points highlighted in this
office letter No.1742/GL, dated 29/03/2012.

It is pertinent to mention that like the previous ones, any new amnesty policy
would also prove counterproductive.


DIVISIONAL FOREST OFFICER
UPPER KOHISTAN FOREST DIVISION
DASSU


Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

703

OFFICE OF THE CONSERVATOR OF FORESTS, UPPER HAZARA FOREST
CIRCLE MANSEHRA

To,

The Chief Conservator of Forests-II
Khyber Pakhtunkhwa
Peshawar

No. /GL, dated Mansehra the 9/07/2012.

Subject: STATUS REPORT OF ILLICIT TIMBER LEFTOVER FROM THE LAST
AMNESTY POLICY AND RELATED ISSUES.

Memo: Reference your office letter No.789/GB, dated 18/4/2012.

DFO Upper Kohistan vide his letter No.04/GL, dated 03/7/2012 has reported that the matter has thoroughly been discussed in a special meeting convened and chaired by DCO Kohistan on 26/6/2012 and participated by DPO Kohistan, DFO Upper & Lower Kohistan on 26/6/2012. Minutes of meeting are enclosed.

In the nutshell, the local administration has showed its inability in extending any assistance to take cognizance of the leftover illicit timber.

You are therefore requested to please consider the points highlighted in DFO Upper Kohistan letter No.1742/GL, dated 29/03/2012 already submitted to head office vide this office No.5615/GL, dated 09/4/2012.

It is pertinent to mention that like the previous ones, any new amnesty policy would also prove counterproductive.

Encl: as above.

Abdul Manom
Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

No: 670 /GL

Copy forwarded to DFO Upper Kohistan Forest Division Dassu for information with reference to his letter cited above.

[Signature]
Conservator of Forests
Upper Hazara Forest Circle
Mansehra

COURT ATTENDANCE CERTIFICATE

Certified that Mr. Muhammad Tariq Khan DFO Upper Kohistan has attended this court today on 25.09.2013 in case titled "Mst. Azram Jan Vs Aman Ullah etc". Next date of hearing is 25.10.2013.


READER
Additional Session Judge VI
Abbottabad

Before The Honourable Service Tribunal KPK Peshawar.

Service Appeal No. 795/2015

Muhammad Tariq, Ex-Divisional Forest Officer
Environment department, KPK.

versus

Chief Secretary Khyber Pakhtunkhwa & Others.

Subject:- Application for Submission of Additional
documents & better parawise Reply.

Respectfully Sheweth,

That, the ~~undersigned~~ subject Appeal is
pending before this honourable Tribunal fixed
today ve, 05-10-2017. That

That the Respondent department wants to
submit the additional documents in the
instant appeal.

It is therefore humbly prayed that
this honourable Tribunal may kindly allow
to file the additional documents in the
subject Appeal.

Dated: 05/10/17

Deponent
M. Lalumf
Representative of
Respondent Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 795/2015

637

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

Appellant

Versus

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

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT. 1 TO 04

Respectfully Sheweth;

PRELIMINARY OBJECTION

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

FACTS:

1. Though the appellant did serve in Forest Department but his assertion as to "his service record without stigma" is not correct. Besides the instant case wherein the appellant was dismissed from service alongwith the imposition of recovery of Rs. 1548,200, an inquiry against the appellant regarding carried out huge quantity of Forest Marking measuring 7.290 million cube foot in 119 compartments without adopting proper procedure was under process in Kohistan Forest Division. Moreover, during his tenure of posting as DFO Galies Forest Division 65 trees = 6,764 cft (standing volume) was illicitly cut and he failed (to report it) to exercise affection check over field staff and a tune of Rs. 507,300/- and Rs. 1521900/- as per compensation rate of Rs. 150/cft and Rs. 450/cft as per market rate, loss occurred to the Government. In this connection an inquiry against the appellant and others 27 Officers/Officials are under process in the Provincial Inspection Team Khyber Pakhtunkhwa. It is further stated that the NAB authorities ordered an inquiry against the appellant regarding accumulation of assets beyond known source of 20 million under section 25(a) of NAO 1999 (Annexure-I). Charge sheet was also issued to appellant in 2002 by the Chief Conservator of Forests Khyber Pakhtunkhwa when he was Forest Ranger (BPS-16) and inquiry report furnished by the DFO FATA-1, whereby the appellant was found guilty of charges of mis- conduct and corruption.

- 639
2. Correct to the extent that on the basis of the PIT report, the appellant was suspended, a departmental fact finding inquiry was carried out and disciplinary proceedings under the Khyber Pakhtunkhwa E&D Rules 2011 were initiated against him with the approval of the competent authority.
 3. In-Correct. The previous inquiry officer failed to complete the disciplinary proceedings as a result of which disciplinary action was ordered against him (Dr. Ambar Ali). Moreover the competent authority superseded the earlier Inquiry Committee vide Notification dated 02.01.2014, and constituted another committee comprising Mr. Tariq Rashid (SG BPS-19), Reform Coordination, Finance Department and Mr. Shah Wazir CF/MD FDC (BPS-19) who conducted the inquiry/disciplinary proceedings, for the said charges leveled against the appellant, and as per the procedural formalities in the prescribed manner.
 4. Correct to the extent that the appellant denied the charges but could not convincingly defend/clarify the charges leveled against him. The other order relates to his suspension was issued separately. The competent authority approved both orders.
 5. Incorrect, the enquiry has been conducted properly, as per law, rules on the subject, by giving opportunity of personal hearing and evidence on record. As regard, the contention as to PIT report, the factual position has already been explained at Para-2 above.
 6. Correct to the extent that with the approval of the competent authority show cause notice was issued to the appellant.
 7. Correct to the extent that the appellant filed a reply to the show cause notice. But it is incorrect that he was not given an opportunity of personal hearing. He was heard in person. He failed to provide any fresh convincing evidence for his defence during the personal hearing. 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. Therefore, the penalty imposed upon the appellant is in accordance with the rules and regulations and after fulfilling all codal formalities.
 8. In-Correct. As per own statement of the appellant dated 06/05/2015 verified by Judge Accountability Court No. 1, Peshawar, the appellant himself preferred, that the appellant does not press the review petition and the same may be considered as dismissed and withdrawn (Annexure- II).

GROUNDS

- A. In-correct. All the charges leveled against the appellant have been proved by the Enquiry Committee during the enquiry proceedings.
- i. The assertion of the appellant is in-correct. In fact the charge of absence of appellant from official duty was proved against him. The inquiry committee concluded that "the appellant casually attended his office and for most of the time remained stationed at Abbottabad and disposing of his official correspondence from there".

- 69
- ii. The charge No. II is clearly linked with charge No. III, which is proved. Moreover, PIT after proper investigation has also confirmed the charge in its report.
 - iii. Incorrect. The charge has been proved and the enquiry committee categorically mentioned that appellant was clear cut involved in the lifting/stealing of 18000 cft timber and its transportation in one night.
 - iv. It is incorrect. 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. Incorrect.

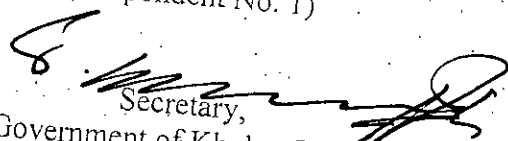
- B. Incorrect. He was given equitable opportunity to defend himself as per norms of justice.
- C. Incorrect, under Section-14(5) (ii) of the Khyber Pakhtunkhwa E&D Rules, 2011, the competent authority is empowered to impose any major or minor penalty.
- D. Incorrect as explained above. Furthermore the Inquiry Committee have no power to recommend any penalty in the Inquiry Report.
- E. Incorrect. As explained above the punishment is in accordance with the rules as explained in Para No. C.
- F. Incorrect. As explained above.
- G. Incorrect. The appellant was dealt with in accordance with law.

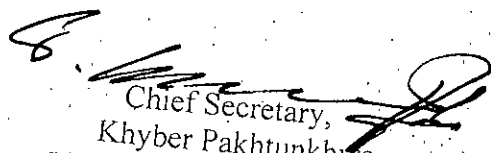
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- H. As per Para- 8 of the facts.

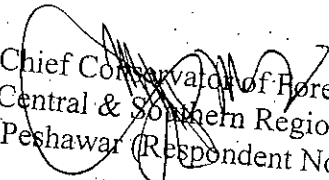
PRAYERS

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, Peshawar.
(Respondent No. 1)


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


Chief Secretary,
Khyber Pakhtunkhwa
Peshawar (Respondent No. 2)


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

2/17/12

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 795/2015

637

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

Appellant

Versus

1. The Chief Minister, Khyber Pakhtunkhwa, Peshawar.
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3. The Secretary to Government of Khyber Pakhtunkhwa, Environment Department, Peshawar.
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GROUNDS

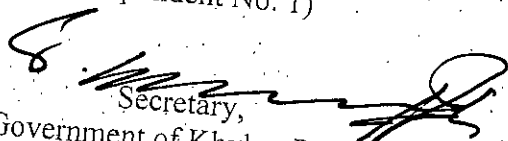
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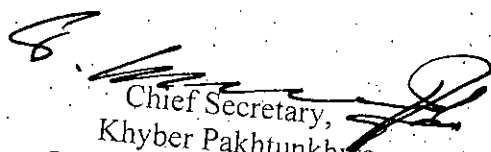
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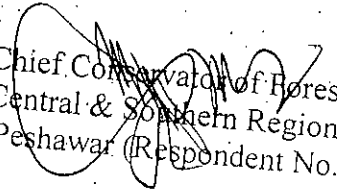
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Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)


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


Chief Secretary,
Khyber Pakhtunkhwa
Peshawar (Respondent No. 2)


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

50	36105
ایڈوکیٹ: <u>Jul Mulad</u>	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
بار کونسل ایسوسی ایشن نمبر: <u>12-3456-BC</u>	
رابطہ نمبر: <u>0345-9159148</u>	

بعدالت جناب: خیبر پختونخواہ سروس ٹریڈنگ کمپنی

دعویٰ:	منجانب: <u>Appellant</u>
علت نمبر:	<u>محمد طارق</u>
مورخہ:	<u>بنام</u>
جرم:	<u>حکومت وینز</u>
تھانہ:	

باعت تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام کیس نمبر 23/4/2018 جہاں محمد طارق نے محمد طارق کو محمد طارق کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 23/4/2018

المقام: کیس نمبر

المقام: کیس نمبر کے لیے منظور ہے۔

Jul Mulad
Advocate

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Jul Mulad
Advocate

محمد طارق

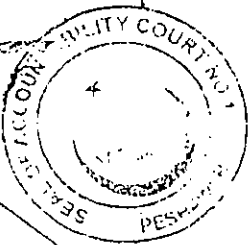
533

ACCOUNTABILITY COURT NO.1,
PESHAWAR.

ORDER.
6-5-2015.

Accused Muhammad Tariq S/O Muhammad Yousaf is produced in custody by Saud Khan, Investigation Officer NAB (KPK). Syed Asif Ali Shah Counsel for accused and Mushtaq Ahmad, Senior Prosecutor on behalf of NAB in person are present. Mst. Nighat widow of Ghulam Nabi, mother-in-law of accused Muhammad Tariq is also in attendance.

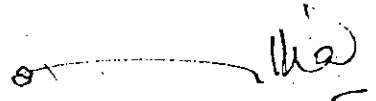
Following the application preferred by Saud Khan Investigation Officer duly forwarded by learned Senior Prosecutor for defreezing of account No.20622714152679 at Habib Metropolitan Bank Limited, Saddar Road Branch Peshawar already under freezing order dated 30-4-2014 passed by the learned Judge, Accountability Court No.4, Peshawar in Misc.App.No.13 of 2015. Since accused Muhammad Tariq and Mst. Nighat widow of Ghulam Nabi of her own have recorded their separate statements for defreezing this account in favour of the Chairman NAB Islamabad, thus, the freezing Order dated 30-4-2014 is withdrawn. Further, the amount of Rs.20 Millions from account No.20622714152679 at Habib Metropolitan Bank Limited, Saddar Road Branch Peshawar maintained in the name of Mst. Nighat widow of Ghulam Nabi is transferred in favour of Chairman NAB. The Manager of the concerned bank shall immediately prepare a Pay Order Demand Draft in the name of the Chairman NAB Islamabad out of the entire deposit in the said account through the Investigation Officer NAB.



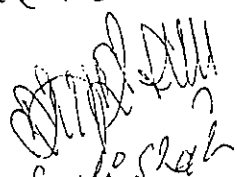
Statement of accused Muhammad Tariq, Ex Divisional Forest Officer (BPS-18) of Forest Department, Khyber Pakhtunkhwa, on Oath.

I have been served with notification vide endorsement No.SO(Est)FEWD/1-8/Tariq DFO/2k14/2826-30 dated Peshawar the 12th March 2015. It is regarding my dismissal from service and recovery of Rs.15,48,200/-. The fine under the recovery has been adjusted towards my Gratuity /GPFund / Salary etc. I acknowledge this notification to be true and correct. I have preferred a review petition before the Chief Minister Khyber Pakhtunkhwa which is still pending. I do not press the same and the same may be considered as dismissed and withdrawn.

(Muhammad Tariq)
Accused.
6-5-2015.


Judge
Accountability Court No.1,
Peshawar

Accused Muhammad Tariq
is identified who made/heard
his statement in my presence today
before the honorable accountability court today


Syed Ali Shah
(advocate) Zorawar

Before the Judge Accountability Court No: 1
Peshawar.

The State vs Muhammad Hanif

R/Sir, I have no objection if the account bearing No. 20622714152679 maintained at Habib Metro Politain Bank Limited, Saddar road Branch Peshawar is discredited by this court in connection with my VR agreement entered with the NAB. Moreover, I shall not challenge the amount to the tune of Rs. 20 million deposited in the above mentioned account in any court of law in any capacity. I have also no objection if the Demand Draft to the tune of Rs. 20 million mentioned above is prepared in the name of Chairman NAB Islamabad. I have neither asked nor the instant application voluntarily nor without any promise of pressure from any quarter the same bears necessarily my signature. I accept any demand order made by the competent authority from the Service and shall not challenge it in any court of law. Moreover, any serious petition pending CRI KPK may be considered as well as mine.

Muhammad Hanif
7/6/15/2015

Be fore the Justice, Tribunal, etc,
Peshawar

Manan Block office — appellant
vs.
Election minister etc — Respondent
Justice, appeal.

Respected Sir,

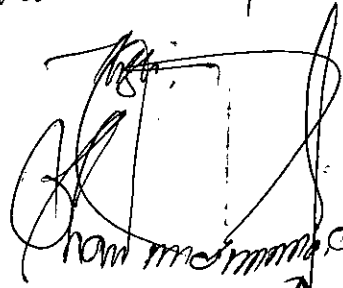
1. That the appeal of appellant was
admitted which was being heard
at Compt. Cont. Tribunal.
That appeal was requested to be
heard at Honorable Court.

2. That appeal of Manan Alghar
Ummar Khan, Nalek Khan and
Jama Khan, an abrogation by
the Honorable Tribunal.

3. As, all the abrogation appeals
have been filed in appeal of
appellants, who are being in
district, 12th district as
the jurisdiction lies with
the Honorable court of
Compt. Cont. Tribunal.

It is therefore requested that the
above mentioned appeals may
kindly be transferred off
Compt. Cont. Tribunal.

Manan Block office, appellant.


From memorandum

Manindra

12/7/18.

To:

The Divisional Forest Officer,
Upper Kohistan Forest Division
Dassu.

Subject: ILLCIT POLICY TIMBER-Enquiry thereof

Reference: Vide your letter No. 569/GE, dated 8/12/2014.

It is submitted that in compliance of your cited letter above, I summon all the related officials and concern owner of the timber vide letter No. 50-59/SDFO(H) dated 10/12/2014 to identified the timber in question above and date fixed for verification/identification for 12.12.2014

On due date all the concerned staff and owners of the timber accompanied with us to identified the timber.

On total pointation and identification of concern staff I inspect the timber and randomly checked the timber on spot which stacked sepret in 4 different portion at Harban Das and in Basha Roadside depot as per Damage report chalked previous. Damage Report No. mentioned on the timber which seems that the timber which was previously pilferage and retrieved stacked in the depot, and also confirmed by my predecessor SDFO Harban in his statement before the preliminary enquiry committee.

From all the concern staff and owners obtain , statement of staff and on oath statement of the owners (which are enclosed) stamp paper and confirmation by the previous SDFO the timber is present on spot and in the custody of concern owners.

Report is submitted for favor of information, perusal and record, please.

No 60/SDFO(H) dtd 15.12.2014

[Signature]
Sub Divisional Forest Officer
Harban Forest Sub Division

[Handwritten mark]

[Signature]
Divisional Forest Officer
Upper Kohistan Forest Division
Dassu

✓

وکالت نامہ

کورٹ فیس

KPK Service Tribunal بعدالت

عنوان: سی آر جی 10/15 بینام KPK

منجانب: Service Appeal No 1247/15

Appellant

نوعیت مقدمہ:

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب وہی کل کارروائی متعلقہ آں مقام

عبدالغفور خان ریسٹورنٹ مالدار

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ و تقرر حالت و فیصلہ بر حلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کارروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر داختم مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست برآمد استجارت ناشر، بصیغہ مفلسی کے دائرہ کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المقوم: 20/10/15

بمقام:

Accepted

15/10/2015

محمد علی خان

ایمپلائمنٹ

BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR

S.A No. _____ /2017

Muhammad Tariq Vs Forest Department.

WRITTEN ARGUMENTS FOR AND ON BEHALF OF APPELLANT.

FACTS SHEET OF CASE TITLED "MUHAMMAD TARIQ VS FOREST DEPARTMENT"

S. No	Year	Description of Documents	Annexure	Page
1	1980	The Appellant was appointed in the Forest Department of Khyber Pakhtunkhwa.		
2	2007	The Appellant was promoted as Sub-Divisional Forest Officer in BPS-17.		
3	2010	The Appellant was promoted as DFO/Deputy Conservator of Forest in BPS-18		
4	17/07/2013	Appellant was transferred/ posted and took over charge as DFO upper Kohistan Forest Division		
5	01/10/2013	Appellant was suspended and transferred from DFO upper Kohistan Forest Division and attached with Chief Conservator Office Peshawar Region-I, on the recommendations of the Provincial Inspection Team (PIT) in the inquiry carried out on 17-09-2013.	A	14
6	02/06/2014	Inquiry committee consisting of Tariq Rasheed, Reforms Coordinator Forest Department and Shah Wazir, MD, Forest Development Corporation was constituted.	D	18
7	25/5/2014	Charge sheet was served upon the Appellant by the competent authority		20
8		Reply of the Appellant to the charge sheet	F	23

The inquiry committee consisting of Tariq Rasheed, Reforms Coordinator Forest Department and Shah Wazir, MD, Forest Development Corporation was constituted to look into the following:-

S. No.	Charge
1	Remain absent from his headquarter at Dassu without any prior permission.
2	i. Lack of effective supervision and control over sub-ordinate staff necessary to guard against illicit damage to forest and pilferage/smuggling of timber. ii. Caused huge loss to Govt. exchequer due to theft of 18000 cft timber on night of 24 th and 25 th august 2013. iii. Provincial Inspection Team recommended recovery of cost of 18000 cft from him. iv. He has been paid Rs. 22/per cft over and above the forest duty of Rs.

	30/cft, reflected in PIT report, so involved in corruption.
3	Willfully / deliberately/maliciously abstained and did not appear before PIT in the enquiry proceedings of theft of 18000 cft timber.
4	In reply to explanation called from him for long absence, he used abusive/obnoxious language for his superior officer.
5	Occupied residential bungalow at Abbottabad from July 2008 to date and upon request of vacating the same, he not only refused but also replied in disrespectful manner.

9	08/09/2014	Inquiry Report against the Appellant and their recommendations	G	28
10		<p><u>Charges of corruption and misconduct, partly proved and inefficiency not proved;</u></p> <p><u>Recommendation</u></p> <p>On the basis of aforesaid discussion and conclusions, the following recommendations are made:-</p> <p>“Recovery of Rs 15,48,200/- being 1/4th of the price, forest duty and FDF of 18000 cft timber (10,000 cft Deodar scants plus 8000 cft Kail @ 20% government share) from Mr. Muhammad Tariq Ex-DFO Upper Kohistan to make the losses sustained by the Provincial exchequer.</p> <p>Reversion from the post of DFO (BPS-18) to the post of SDFO (BPS-17) with immediate effect”.</p>		41
11	21/10/2014	<p>Show cause notice was issued in respect of <u>inefficiency and misconduct.</u></p> <p>(i) Tentative punishment--- Reversion from post of DFO to the post of SDFO with immediate effect.</p> <p>(ii) Recovery of an amount of Rs. 15,48,200/-</p>	H	53
12		Reply to show cause Notice filed by Appellant		55
13	12/03/2015	Notification for dismissal from service and recovery of Rs. 15,48,200/- was imposed. (Major penalty was imposed upon the Appellant)		
14		Review Petition filed by the Appellant	K	62

Following are the questions of law arising out of the captioned appeal and the illegalities committed by the inquiry committee and the competent authority in passing the impugned order:

- i. Whether the findings of inquiry committee are in accordance with service law especially violation of rule 11 of E & D Rules, 2011 wherein it is mandatory that right to cross examine the witness shall be given to the accused.
- ii. Whether the inquiry committee was justified when in its findings in respect of charge No. ii it was held "the charge regarding taking of bribe could not be established as no evidence except reference in provincial inspection team was ever produced" but at the time of giving final conclusion it held as "charges of corruption and misconduct partly established. The charge of inefficiency, however was not established".
- iii. Whether the competent authority has not committed illegality as the show cause notice issued to the accused/appellant was on charges of inefficiency and misconduct inspite of the fact that the inquiry committee held in its findings that charges of misconduct and corruption established and inefficiency not established.
- iv. Whether the competent authority was legally justified not to follow the recommendation of inquiry committee and thereby enhance the penalty and impose major penalty of dismissal from service without recording any reason and without serving any show cause notice upon the accused for enhancing the penalty.
- v. Whether the impugned order of dismissal from service passed by the competent authority can be termed as "Speaking Order".
- vi. Whether the competent authority has not exceeded its power and misused its authority while passing the impugned order.

CASE LAW:

1. Not following (E & D) Rules, 2011 by not giving opportunity to cross examine witness or produce his own witness:

✓ 2006 P L C (C.S.) 727

Record had revealed that whole disciplinary proceedings initiated, conducted and concluded against appellant were in glaring violation and flagrant floatation of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973--- Purpose of conducting inquiry was to record evidence of witnesses from both sides and after putting both the versions in juxtaposition coupled

with other documentary evidence and Inquiry Officer had to form his opinion about guilt or otherwise of civil servant concerned---Neither charge was framed nor any witness was examined, nor any document was taken into consideration nor even appellant was associated with inquiry proceedings---Copy of inquiry report was not supplied to the appellant and final show-cause notice was also not given to him---Penalty imposed upon appellant was not maintainable in circumstances---Impugned order was set aside.

1988 PLC 246 ✓

--- Domestic enquiry---Cross examination of witnesses by employee under enquiry essential-- Witness not allowed to be cross examined, held, amounts to refusal of defense opportunity.

1986 S C M R 234

CASE LAW:

2. Enhancement of punishment by competent authority without recording reasons:

2016 P L C (C S.) 454 ✓

Authority was required to specify the reasons while enhancing the penalty--- Authority merely mentioned in the show cause notice that the penalty imposed by the Authorized Officer was inadequate and did not commensurate with the gravity of the charges established against the appellant---Such was a vague and skimpy statement---**No reasons for enhancement of penalty had been given**---Authority was not justified in imposing impugned major penalty upon the appellant-----Impugned orders were set aside and appellant was directed to be reinstated into service with all the consequential back benefits---Appeal was accepted in circumstances.

2014 SCMR 147 ✓

---S. 3---Service Tribunals Act (LXX of 1973), S. 4---Major penalty---Show cause notice, non-issuance of---Competent Authority imposed major penalty of

dismissal from service to civil servant, against the recommendation of Inquiry Officer---Validity---Competent Authority was not bound by recommendation of Inquiry Officer regarding award of penalty to accused officer---While disagreeing and awarding higher penalty than recommended by Inquiry Officer, Competent Authority had to firstly provide opportunity of hearing to accused officer and secondly he had to pass a reasoned order with conscious application of mind---Although Inquiry Officer found civil servant to be negligent in his conduct and charge of 'mal-administration' was not proved, yet Competent Authority while awarding major penalty of dismissal from service found that there was substantial evidence on record to prove the charges---No reference to the evidence or material was available which found favour with Competent Authority to award major penalty of dismissal from service---No allegation was on record that accused civil servant was guilty of corruption or of financial gain---Supreme Court set aside the order passed by Competent Authority and remanded the matter to it for decision afresh after hearing the civil servant---Appeal was allowed.

2002 SCMR 1064

---S. 3---Service Tribunals Act (LXX of 1973), S. 4---Major penalty---Show cause notice, non-issuance of---Competent Authority imposed major penalty of dismissal from service to civil servant, against the recommendation of Inquiry Officer---Validity---Competent Authority was not bound by recommendation of Inquiry Officer regarding award of penalty to accused officer---While disagreeing and awarding higher penalty than recommended by Inquiry Officer, Competent Authority had to firstly provide opportunity of hearing to accused officer and secondly he had to pass a reasoned order with conscious application of mind---Although Inquiry Officer found civil servant to be negligent in his conduct and charge of 'mal-administration' was not proved, yet Competent Authority while awarding major penalty of dismissal from service found that there was substantial evidence on record to prove the charges---No reference to the evidence or material was available which found favour with Competent Authority to award major penalty of dismissal from service---No allegation was on record that accused civil servant was guilty of corruption or of financial gain---Supreme Court set aside the order passed by Competent Authority and remanded the

matter to it for decision afresh after hearing the civil servant---Appeal was allowed.

2009 SCMR 281

---Competent authority did not record any reason for not following recommendations of authorized officer---Supreme Court set aside penalty of removal from service being unwarranted and since certain allegations against civil servant stood established, those could not be allowed to go un-noticed altogether---Supreme Court reinstated civil servant with back-benefits and remanded the case to competent authority to decide whether penalty proposed by authorized officer or such lighter penalty as it could consider fit, ought to be imposed in the interest of justice---Appeal was allowed.

2002 P L C (C.S.) 1349

---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.

2004 P L C (C.S.) 725

Inquiry Committee recommended for minor penalty which aspect of the matter was not taken into consideration by the competent authority and also by Service Tribunal ---Validity ---Penalty of removal from service was excessive and was not in proportion to the nature of misconduct ---Supreme Court in the light of recommendation of Inquiry Committee while upholding the charge of misconduct, converted the penalty of removal from service into penalty of one step lower in pay scale.

1996 SCMR 248

Exoneration from charges of misconduct by Authorized Officer on recommendation of Inquiry Officer-- Competent Authority, however, disagreed with finding of Inquiry Officer and Authorized Officer and sent notice to civil servant and on receipt of his reply imposed upon him minor penalties and recovery of pecuniary loss of specified amount ---Service Tribunal, however, accepted civil servant's appeal against imposition of said penalty ---Validity ---Leave to appeal was granted to consider whether show

cause notice served on civil servant itself embodied reasons which fully satisfied requirements of law.

2017 PLC (CS) 437 Lahore

---Ss. 4(b) (iii), 10 (1) & 13 (1) (5) (i) (ii) (6)---Taxation officer Tehsil Municipal Administration--- Allegation of irregularities---Recommendations of Inquiry Officer for imposition of penalty for forfeiture of past service of two years---Penalty, enhancement of---Requirements---Inquiry Officer had recommended penalty for forfeiture of past service of two years but the Competent Authority enhanced the penalty and dismissed the employee---Contention of employee was that he was not afforded opportunity to cross-examine the witness produced by the department---Validity---**When witness was produced by one party, the other would be entitled to cross-examine such witness**---Employee had been deprived of his right to cross-examine the witness produced by the other side---Inquiry could not be held in an arbitrary manner and principles of natural justice must be followed---Fair chance of cross-examination and production of evidence in rebuttal must be provided---Inquiry had not been conducted in accordance with procedure provided under S.10 of Punjab Employees Efficiency, Discipline and Accountability Act, 2006---Competent authority had not considered that charge sheet was defective and inquiry officer without cross-examination had compiled his final report---**Competent authority had to weigh the recommendations of Inquiry Officer and it could not differ with the same without assigning any reasons**---Department had not properly examined the defence of the employee---No reasons had been given for disagreeing with the recommendations of inquiry officer---**Competent Authority could either proceed in terms of S.13(5)(i) and (ii) or could have proceeded in terms of S.13(6) of Punjab Employees Efficiency, Discipline and Accountability Act, 2006 and remand the inquiry or could have directed de novo inquiry after recording reasons in writing if merits of the case had been ignored or there were other sufficient grounds**---Having not agreed with finding and recommendations made in the inquiry report the Competent Authority instead of following the option available to him under S.13(6) of Punjab Employees Efficiency, Discipline and Accountability Act, 2006 proceeded to award major penalty of dismissal from service which was against the

spirit of S.13 of the Act---Nothing was on record that Competent Authority had disagreed specifically with the recommendations of inquiry officer---No specific findings had been given for enhancing the penalty from forfeiture of past service of two years to dismissal from service---**Impugned order passed by the department was non-speaking**---Authority was bound to act within four corners of the mandate of Constitution and Punjab Employees Efficiency, Discipline and Accountability Act, 2006 and pass a speaking order---Once Competent Authority received a report from the Inquiry Officer it should examine the said report and relevant case material---Competent Authority had failed to determine as to whether inquiry had been concluded in accordance with the provisions of Punjab Employees Efficiency, Discipline and Accountability Act, 2006---Impugned order passed by the Authority was set aside and authorities were directed to hold de novo inquiry---Constitutional petition was allowed in circumstances.

2016 PLC (CS) 616

---Disciplinary proceedings---Penalty---Inquiry Officer recommended major penalty of recovery of Rs.108,536 and reduction to a lower post and pay scale from the current post for a period of two years but competent authority imposed major penalty of removal from service and recovery of said amount---Validity---Competent authority was not bound by the recommendations, of Inquiry Officer qua the award of penalty to the accused officer---**If competent authority was not inclined to agree with the recommendations of Inquiry Officer then it had to give notice to the accused officer and had to pass a reasoned order for disagreeing with the recommendations of Inquiry Officer and for enhancement of punishment with conscious application of mind**---Competent authority had not made any specific reference to the evidence or material which was found favour with the same to award major penalty of dismissal from service---Major penalty of dismissal from service did not appear to be in conformity with the evidence on record---Impugned orders were declared to be illegal and without lawful authority---Authority was directed to re-consider the matter and decide same afresh keeping in view the entire evidence available on record and after affording an opportunity of hearing to the employee in accordance with law within a stipulated period---Constitutional petition was disposed of in circumstances.

2010 PLC (CS) 501

---Rr. 5 & 8---Removal from Service (Special Powers) Ordinance (XVII of 2000), Ss.3, 5 & 8---Inquiry Committee---Recommendations---Scope---
Firstly the recommendations of Inquiry Committee must be given due weight, secondly recommendations of Inquiry Committee are not binding on competent Authority and thirdly where competent Authority decides to disagree with the recommendations of Inquiry Committee, it must do so for valid recorded reasons and cannot act arbitrarily and capriciously.

2017 PLC (CS) 659

2017 SCMR 356

3. Non speaking order:

2004 PLC (CS) 896

---S. 4---Constitution of Pakistan (1973), Art.212(3)---Judgment passed by Service Tribunal--- Non-speaking order--- Although pleadings of the parties had been reproduced through and through but the contentions of the parties and points on which they were resting their cases were not taken into consideration at all by the Service Tribunal--- Effect ---Forums seized with the judicial matters are required to pass such a speaking judgment that it should give impression to readers that the legal, and factual aspects of the case which were raised before it for the purpose of decision, had been considered and decided in the light of recognized principles of law on the subject instead of disposing of in slipshod manner -----Petition for leave to appeal was converted into appeal and the case was remanded to Service Tribunal for decision afresh--- Appeal was allowed.

PLD 1970 SC 173

Art. 98 & High Court's order disposing of writ petition-Must be a speaking order manifesting by itself that Court applied its mind to resolution of issues involved- Perfunctory order: "application rejected as there is no substance in it"-Such summary disposal of petition (involving important legal question) not approved by Supreme Court.

4. Treatment in accordance with law:

1993 SCMR 1533

--- Where express statutory power is conferred on a public functionary, it should not be pushed too far, for such conferment implies a restraint in operating that power, so as to exercise it justly and reasonably--- Excessive use of lawful power is itself unlawful.

2013 SCMR 817

---Misconduct---Punishment, award of---Findings of competent authority- Interference in such findings by concerned Service Tribunal---Scope---Award of appropriate punishment under the law was primarily the function of the concerned administrative (competent) authority and the role of the Tribunal/Court was rather secondary---Court, ordinarily would not substitute its own finding with that of the (competent) authority unless the latter's opinion was unreasonable or was based on irrelevant or extraneous considerations or was against the law declared.

---Misconduct---Punishment, award of---Purpose and scope---Punishment to a delinquent public servant was premised on the concept of retribution, deterrence or reformation---While awarding punishment competent authority had to keep in mind the underlying object of law and the severity of misconduct.

In view of the above submissions, the captioned appeal filed by the appellant be accepted and the impugned order be set aside and the appellant be reinstated in service along with all back benefits.

Through

Appellant


Counsel

2006 P L C (C.S.) 727

[Sindh Service Tribunal]

Before Justice (Retd.) Abdul Ghani Shaikh, Chairman and Muhammad Ayub Shaikh,
Member-11

GHULAM RASOOL

Versus

**SECRETARY, GOVERNMENT OF SINDH, FOOD AND CO-OPERATION, KARACHI and
others**

Appeal No.77 of 2002, decided on 14th July, 2005.

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

---Rr. 3(1)(a), 4(1)(a)(iv), 5(6) & 6---Sindh Service Tribunals Act (XV of 1973), S.4---Causing pecuniary loss to government by negligence or breach of orders---Recovery of amount of loss---Appellant serving as Inspector Co-operative Societies, was proceeded with departmentally on account of gross negligence in performance of government duties and breach of trust---Allegation against appellant was that on account of carelessness and negligence in performance of government duties, a huge amount was blocked and that appellant had given a deliberate loss to Co-operative Farm Service Centre for which he was personally responsible---Inquiry Officer in his report found appellant along with others guilty of the charge that they were liable to make loss good proportionately or individually as they were jointly and severally responsible for payment of alleged amount---On basis of said report, appellant was awarded penalty to pay amount being the loss sustained by government---In both inquiry reports, name of appellant no where figured---Parallel and separate inquiry proceedings were initiated against appellant, in utter disregard and violation of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973---Record had revealed that whole disciplinary proceedings initiated, conducted and concluded against appellant were in glaring violation and flagrant floatation of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973---Purpose of conducting inquiry was to record evidence of witnesses from both sides and after putting both the versions in juxtaposition coupled with other documentary evidence and Inquiry Officer had to form his opinion about guilt or otherwise of civil servant concerned---Neither charge was framed nor any witness was examined, nor any document was taken into consideration nor even appellant was associated with inquiry proceedings---Copy of inquiry report was not supplied to the appellant and final show-cause notice was also not given to him---Penalty imposed upon appellant was not maintainable in circumstances---Impugned order was set aside.

Appellant in person.

Mrs. Tabasum Ghazanfar, Asstt. A.G. for Respondents.

Date of hearing: 29th June, 2005.

JUDGMENT

JUSTICE (RETD.) ABDUL GHANI SHAIKH (CHAIRMAN)---Appellant Ghulam Rasool Soomro who was serving as Inspector Cooperative Societies, Nawabshah was proceeded with departmentally on account of gross negligence in performance of Government duties and breach of trust. He was served with a charge sheet dated 1-10-1992 issued by the Registrar, Cooperative Societies' Sindh/Authority, alleging therein that appellant while working as Manager, Nawabshah Cooperative Farm Service Centre Limited, Jam Sahib the Board of Directors of the said organization relied upon him and nominated him as one of the member of the purchase committee in its meeting dated 26-6-1991 in pursuance to Bye-laws (c) of the registered bye-laws of the centre and for the proper utilization of the funds released under the Annual Development program by the Government. In addition to that the department also relied upon him by sending him on deputation as Manager of the said organization but instead of performing his legitimate duties diligently well, he joined hands with the Assistant Registrar, Cooperative Societies, Nawabshah and with mala fide intention booked Fiat-640 Tractor Model 1991 for Nawabshah Cooperative Farm Service Centre, Jam Sahib from Shafi Sons, Shah Maki Road, Hyderabad and paid full cost of the Tractor amounting to Rs.3,04,900 (Rupees Three Lac Four thousand nine hundred only) to the said dealer through cheque No.C-31/379993 dated 24-8-1991 for booking of the tractor. By doing so he had not only shaken the reliance of the Board of Directors but of the department also. It was further alleged that on account of appellant's carelessness and negligence in performance of Government duties he had blocked an amount of Rs.3,04,900 with the dealer since 24-8-1991 and has given a deliberate loss to the Nawabshah Cooperative Farm Service Centre, Jam Sahib for which he was personally responsible.

2. Appellant in his reply denied the allegations and explained his position. Though no inquiry officer was appointed/nominated as per charge sheet, yet later-on Mr. Nawaz Ali M. Shaikh, Deputy Registrar, Cooperative Societies, Sukkur Division, Sukkur was appointed/ nominated as an Inquiry Officer. In his inquiry report dated 23-10-1993, the inquiry officer holds the appellant, the Board of Directors and the Assistant Registrar, Cooperative Societies, Nawabshah as guilty of the charge that they are liable to make the loss good proportionately or individually as they are jointly and severally responsible for payment of the said full amount.

3. On the basis of said report appellant by order dated 11-4-1999 was awarded penalty to pay Rs.3,04,900 being the loss sustained by Government. Feeling aggrieved, appellant preferred departmental appeal to the respondent No.1, which was rejected as per letter dated 25-1-2002 received by appellant on 2-3-2002. He then filed revision which too was rejected as per letter dated 22-3-2002. It may be stated that during pendency of appellant's departmental appeal he on attaining the age of superannuation retired from service on 5-9-1999 vide order dated 7-9-1999.

4. Appellant appeared in person and has argued that he has falsely been implicated in the present case. He stated that he had nothing to do with the purchase of tractor as the entire process of purchase was in the hands of Mr. Nazir Ahmed Pathan, the then Assistant Registrar, Cooperative Societies, Nawabshah, who had palced the order of the Tractor so also handed over the cheque to M/s. Shafi Sons but failed to collect the Tractor. He submitted that cheque was signed by M/s Haji Muhammad Ibrahim Jamali, the President of the Nawabshah Cooperative Farm Service Centre Limited, Jam Shaib and Mr. Nazir Ahmed Pathan, Assistant Registrar. While referring letter dated 8-3-1994 of Mr. Nazir Ahmed Pathan, Deputy Registrar, Cooperative Societies, Larkana Division, addressed to the Registrar, Cooperative Societies, Sindh Hyderabad, appellant contended that from the contents of letter it is crystal clear that entire responsibility of purchasing the Tractor was upon said Nazir Ahmed Pathan who on failure to get the possession of Tractor lodged F.I.R. against M/s Shafi. Sons and case was proceeded in the criminal Court of law but accused i.e. the owner of M/s

Shafi Sons was acquitted as the matter was of civil nature. Further, appellant stated that the disciplinary proceedings were also conducted against said Nazir Ahmed Pathan but he was exonerated and since the appellant has committed no irregularity, illegality or any kind of misconduct, he may also be exonerated.

5. In rebuttal, learned Asstt. A.G. supported the impugned order. She contended that appellant being the Manager of the Society was equally responsible for purchase of Tractor, the possession of same was never taken. Therefore, appellant cannot be absolved from responsibility and was thus rightly penalized.

6. We have considered the above submissions and perused the material placed on the record. On careful scrutiny of the record it transpires that a four member committee comprising M/s Nazir Ahmed Pathan, Assistant Registrar (Chairman), Muhammad Ibrahim Jamali (President), Zafar Ahmed Bhatti (Director) and appellant Ghulam Rasool Soomro (Manager) of the Nawabshah Cooperative Farm Centre, Jam Sahib, was constituted to purchase Fiat Tractor for the Society. The committee approved the quotation of M/s. Shafi Sons, Kaimkhani Shopping Centre, Shah Maki Road, Hyderabad of Rs.3,04,900 being lowest. Therefore, a cross cheque dated 24-8-1991 drawn at United Bank Limited, Masjid Road, Nawabshah was issued under the joint signature of Mr. Nazir Ahmed Pathan and Haji Ibrahim Jamali. The cheque was then delivered by Mr. Nazir Ahmed Pathan to M/s Shafi Sons. The cheque was encashed but the Tractor was not delivered to the society though promised that its delivery shall be made within two weeks from the encashment of cheque. Therefore, as is evident from letter dated 8-3-1994 of Mr. Nazir Ahmed Pathan, addressed to the Registrar, Cooperative Societies, Sindh the efforts were made by Mr. Nazir Ahmad Pathan to take delivery of the tractor, but he failed, as such he filed complaint to the D.I.G.P. Hyderabad, on whose direction F.I.R. for offences under sections 420 and 406 P.P.C. was registered at P.S. Shah Maki against M/s Shafi Sons, who obtained pre-arrest bail. The matter was proceeded in the Court of learned Vth Extra Joint Civil Judge and F.C.M. Hyderabad, but it was disposed of on 3-3-1994 with a conclusion that matter being of civil nature, the parties should seek resort from competent civil Court. Mr. Nazir Ahmed Pathan then through letter dated 8-3-1994 recommended to the Registrar, Cooperative Societies, Sindh to institute civil suit for recovery of amount through the Assistant Registrar, Cooperative Societies, Nawabshah. However, as it appears, no step towards that direction was ever taken by the department.

7. It is very much pertinent to mention here that prior to that the Registrar, Cooperative Societies, vide his letter dated 21-12-1992 addressed to Mr. Nazir Ahmed Pathan, Assistant Registrar, Cooperative Societies, Nawabshah, directed him to recover the amount of cheque with upto date profit from M/s Shafi Sons, else disciplinary proceedings would be initiated against him. For the sake of brevity, the contents of letter are reproduced hereunder:

"You were instructed by the Deputy Registrar Cooperative Societies, Sukkur, through telegram dated 25-6-1992 and copy in confirmation by post No. DR/Gen/-1105, dated 25-6-1992, to you as well as to this office, in which you were directed that the transaction with regard to purchase of Fiat 940 Tractor, through M/s Shafi and Sons may be stayed till further orders. The recovery of the amount has not been made, instead of repeated requests from Deputy Registrar, Cooperative Societies, Sukkur and this office. Though as per report of Deputy Registrar, Cooperative Societies, Sukkur No.DR/Genl-1713/92 dated 4-8-1992, you were neither nominated Director of the Board nor got any power to make interference in the day to day working of the society and created mix-up all along. As per above report of Deputy Registrar, Cooperative Societies, Sukkur you are directly involved in this transaction

and is personal responsible, as such you have taken this disadvantage by putting your joint Signature with the authorized Director/member of the society, on the cheque at the time of withdrawal of the amount from the Bank.

Due to the above, you are hereby instructed to recover the amount of the cheque of Rs.3,04,900 from M/s. Shafi and Sons, Shah Maki Road, Hyderabad on the scheduled date, along with entire up-to-date profit for the period at Bank rate and deposit the same in the society Account. Intimate the compliance telegraphically, else disciplinary action will be taken as per Rules please."

On account of failure to recover amount, disciplinary departmental proceedings were initiated against Mr. Nazir Ahmed Pathan. He was served with charge sheet dated 10-5-1994 issued by the Secretary, Government of Sindh, Cooperative Department. Mr. Ahmed Saeed Abbasi, Joint Registrar, Cooperative Societies, Sindh, Hyderabad was nominated/appointed as Inquiry Officer, who conducted full-fledged inquiry and in his inquiry report dated 7-8-1994 it was concluded that:

"To sum up the enquiry, I have come to the conclusion that Mr. Nazir Ahmed Pathan, Assistant Registrar, Cooperative Societies, Nawabshah has utterly failed to perform Government duties and has committed gross negligence and breach of trust while placing an order for the purchase of Fiat Tractor from Mr. Muhammad Shafi prop. Of Shall Sons, whose very existence is questionable and with the result that the Cooperative Farm Service Centre, Jam Sahib at Nawabshah suffered a irreparable loss to the tune of Rs.3.04,900. He has neither been able to procure the delivery of the Tractor from the Dealer who was personally known to him nor secured/realized the amount in question. As such he has committed an act of gross negligence and breach of trust in the performance of Government duties and found guilty, thus he had rendered himself liable for all or any action under the provisions of the Sindh Civil Servants (E&D) Rules, 1973.

Besides, he should be made accountable to make pecuniary loss good caused to Government by negligence in his duties which has ultimately sustained by the Cooperative Farm Service Centre, Jam Sahib, Nawabshah."

As it appears, the Secretary, Cooperation Department/Authorised Officer on the basis of findings of the Inquiry officer, recommended major penalty against said Nazir Ahmed Pathan, to the Authority i.e. Minister. However, the competent authority was not satisfied with the findings of the inquiry officer, who constituted a review committee, comprising M/s Mir Lutuf Ali Talpur, Principal, Government Cooperative College, Hyderabad and Ghulam Hussain Buriro, Deputy Secretary, Food and Cooperation. Department, Govt. of Sindh, Karachi. The said review committee in its report, exonerated Nazir Ahmed Pathan from the charges, Ultimately, vide order dated 22-3-1995, said Nazir Ahmed Pathan was exonerated by the Secretary, Cooperation Department, Karachi.

8. In both the inquiry reports submitted by Mr. Ahmed Saeed Abbasi, Joint Register, Cooperative Societies, Sindh, Hyderabad and review committee constituted under the orders of competent authority/Minister the name of appellant no where figures. However, parallel and separate inquiry proceedings were initiated against the appellant, in utter disregard and violation of the Sindh Civil Servants C (E&D) Rules, 1973. Appellant was served with a charge sheet dated 1-10-1992 issued by the Registrar, Cooperative Societies, Sindh in the capacity of 'Authority'. Although in the said charge sheet, it is no where mentioned if any inquiry officer was appointed/nominated to conduct an inquiry against appellant, yet Mr. Muhammad Nawaz Shaikh, Deputy Registrar,

1988 P L C 246

[Labour Appellate Tribunal Punjab]

Present: Muhammad Abdul Ghafoor Khan Lodhi,

Appellate Tribunal

PASROOR SUGAR MILLS Ltd.

versus

ABDUL QADEER

Appeal No. GA-665 of 1986, decided on 17th December, 1986

(a) Industrial dispute--

--- Domestic enquiry--Cross-examination of witnesses by employee under enquiry essential--Witness not allowed to be cross-examined, held, amounts to refusal of defence opportunity.

(b) Industrial dispute—

--Misconduct--Using filthy language against General Manager and management, held, would amount to misconduct.

(c) Industrial dispute--

---Misconduct--Compromise of management with some workers guilty of misconduct was no bar to take action against others and it would not mean that employee did not commit alleged misconduct.

(d) Industrial Relations Ordinance (XXIII of 1969)—

---Ss. 25-A & 38(3)--Re-instatement--Back benefits--Grievance petition against termination for misconduct--Prosecutor on whose information proceedings started not allowed to be cross-examined by employee-Labour Court setting aside impugned termination order and awarding re-instatement with back benefits--Plea that re-instatement having been awarded only due to one defect, petitioner was not entitled to back benefits--Plea repelled by Appellate Tribunal--Held Since impugned order was not maintainable petitioner workman was entitled to back benefits.

Kamal Mufti for Appellant.

Date of hearing: 10th December, 1986.

JUDGMENT

This is an appeal directed against the decision dated 18-10-1986 recorded by the learned Presiding Officer, Punjab Labour Court No.7, Gujranwala, whereby the respondent has been directed to be re-instated in service with back benefits.

2. The ground on which the order of dismissal has been set aside by the learned lower Court is that the prosecutor was not allowed by the inquiry officer to be cross-examined by the respondent. The learned counsel for the appellant has argued that the inquiry officers not being judicial officers and trained in holding inquiries are apt to make such mistakes, therefore, the only defect that the prosecutor was not allowed to be cross-examined was not sufficient to set aside the order of dismissal. On the face of it the argument is without force. If a witness has not been allowed to be cross-examined, it means that opportunity to the person under inquiry has not been given to defend himself. The witness on whose information the proceedings are started is a very important prosecution witness. However, I cannot agree with the learned lower Court in its views that using of filthy language against the General Manager and the management does not amount to misconduct. The simple reason that on the basis of the alleged threats given and filthy language alleged to have been used by the respondent no criminal case was got registered against him was not sufficient to say that no misconduct was committed. Likewise, if the management compromise with other office holders, it does not mean that no action could be taken against the respondent or that for this reason the respondent did not commit any misconduct. So the only defect remains that the prosecutor was not allowed to be cross-examined. This argument of the learned counsel is also devoid of force that since only for one defect the respondent has been directed to be re-instated in service, he was not entitled to back benefits. Since the order of dismissal was not maintainable, the respondent was entitled to back benefits. He asserted in his statement that right from the date of dismissal he remained jobless. There is, therefore, no ground to interfere with the impugned decision.

3. As a result, the appeal fails and is dismissed in limine.

A. E./225/Lb.P

Appeal dismissed.

2016 P L C (C.S.) 454

[Federal Service Tribunal]

Before Sheikh Ahmad Farooq, Chairman and Syed Nasir Ali Shah, Member

MUHAMMAD SOHAIL BUTT

Versus

CHIEF (MGT CUSTOMS) REVENUE DIVISION FEDERAL BOARD OF REVENUE,
ISLAMABAD and another

Appeal No.213(L)CS of 2015, decided on 6th October, 2015.

(a) Civil Servants (Appeal) Rules, 1977---

---R. 3---Government Servants (Efficiency and Discipline) Rules, 1973, R.6-A---Service Tribunals Act (LXX of 1973), S.4---Removal from service---Allegations of inefficiency, misconduct and corruption---Minor penalty, enhancement of---Withdrawal of representation---Effect---Minor penalty of "withholding of four increments" (without cumulative effect) was imposed upon the appellant by the Authorized Officer but "Authority"/"Appellate Authority" modified the said minor penalty to major penalty of "removal from service"---Validity---Departmental appeal filed by the appellant was to be heard and decided by the "Appellate Authority" and not by the "Authority"---Respondent (official) was not sure whether he was acting as "Authority" or "Appellate Authority"---Respondent (official) had arrogated to himself both positions as "Authority" and "Appellate Authority"---Power of revision was available to the "Authority" and not to the "Appellate Authority"---Power conferred under S.6-A of Government Servants (Efficiency and Discipline) Rules, 1973 was revisional and not appellate and same had to be exercised suo motu---Respondent (official) had acted as "Appellate Authority" and not as "Authority"---Revisional power was not available to the respondents (official), he had exercised revisional power in his appellate jurisdiction and not suo motu---Section 6-A of Civil Servants (Appeal) Rules, 1977 empowered the Appellate Authority to confirm, set aside or modify the previous order---Authority was required to specify the reasons while enhancing the penalty---Authority merely mentioned in the show cause notice that the penalty imposed by the Authorized Officer was inadequate and did not commensurate with the gravity of the charges established against the appellant---Such was a vague and skimpy statement---No reasons for enhancement of penalty had been given---Authority was not justified in imposing impugned major penalty upon the appellant---Allegation of posting financial loss to the government exchequer could not be foisted upon the appellant---Withdrawal of departmental representation would not have the effect of forfeiting vested right of appellant to assail the imposition of penalty before the Service Tribunal---Inquiry report on the basis of which minor penalty was imposed on the appellant was found to be unfounded and misconceived---No justification existed for imposition of minor penalty upon the appellant---Impugned orders were set aside and appellant was directed to be reinstated into service with all the consequential back benefits---Appeal was accepted in circumstances.

G.M. Pakistan Railways and others v. Muhammad Rafique 2013 SCMR 372 and Secretary, Government of the Punjab (C&W) and others v. Ikramullah and 5 others 2013 SCMR 572 rel.

(b) Estoppel---

---No estoppel could operate against law.

Appellant in person along with Asif Nazir Awan for Appellant.

Muhammad Nawaz Waseer for Respondents.

Date of hearing: 1st October, 2015.

JUDGMENT

SYED NASIR ALI SHAH, MEMBER.--- This appeal is directed against the order dated 31.10.2014 whereby minor penalty of "withholding of four annual increments" (without cumulative effect)" was imposed upon the appellant by the Authorized Officer/respondent No.1 and the subsequent order dated 6.5.2015 whereby respondent No.2 in his position as "Authority"/"Appellate Authority" modified the aforesaid minor penalty to major penalty of "removal from service".

2. Facts leading to the filing of this appeal may be summarised. While posted as Deputy Superintendent (BS-16) Model Customs Collectorate (Preventive), Lahore the appellant was served with a charge sheet by respondent No.1 in his position as "Authorized Officer" on the allegations of inefficiency, misconduct and corruption. It was inter alia alleged that the appellant being hand in glove with the importers of betel leaves facilitated them to evade Government taxes and duties and thereby posted financial loss to the Government exchequer. The appellant in his reply to the charge sheet controverted the allegations levelled against him. Muhammad Irfan Waheed, Additional Collector was appointed as Inquiry Officer to probe into the allegations levelled against the appellant. Vide Inquiry Report dated 21.4.2014 the aforesaid allegations against the appellant stood proved. Thus respondent No.1/Authorised Officer served a Show-Cause Notice dated 28.4.2015 upon the appellant. The appellant in his reply to the Show Cause Notice again refuted the allegations. Subsequently, vide order dated 31.10.2014 the Authorised Officer/respondent No. 1 imposed minor penalty of "withholding of four annual increments" (without cumulative effect) upon the appellant. On 17.11.2014 the appellant filed a departmental representation against the aforesaid order dated 31.10.2014. However, the aforesaid departmental representation was withdrawn by the appellant on 27/28.3.2015. But vide letter dated 26.3.2015 which was received by the appellant on 30.3.2015 a Show-Cause Notice was served upon the appellant to explain as to why major penalty of dismissal from service be not imposed upon him. The appellant in reply to the Show-Cause Notice again controverted the allegations. He also maintained that he had already withdrawn the departmental representation. However, vide impugned order dated 6.5.2015 major penalty of removal from service was imposed upon the appellant.

3. Against such a ticklish backdrop the appellant brought this appeal by inter alia maintaining that the impugned order is defective in that respondent No.2 acted as "Authority" instead "Appellate Authority" and as such lacked competence to impose the impugned penalty upon him. He also maintained that respondent No.2 had not assigned any reason while enhancing minor penalty into major penalty. The appellant thus prayed for setting aside of the impugned orders dated 31.10.2014 and 6.5.2015 with consequential relief of reinstatement into service with back benefits.

4. The appeal was resisted by the respondents. It was inter alia maintained that keeping in view the gravity of the allegations levelled and proved against the appellant during the inquiry respondent

No.2 after fulfilling codal formalities had justifiably imposed the major penalty upon the appellant. It was pointed out that the appellant had filed departmental appeal before the Chairman, FBR, Islamabad, which has not yet been decided and as such the instant appeal is incompetent.

5. We have heard the learned counsel for the parties and gone through the available record with their able assistance.

6. As noted supra, the impugned penalty of removal from service was imposed by respondent No.2 upon the appellant. First of all it has to be seen and determined as to in what capacity respondent No.2 had imposed the aforesaid penalty upon the appellant. Section 3 of the Civil Servants (Appeal) Rules, 1977 reads as under:-

"3. Every civil servant shall be entitled to appeal, to the appellate authority from an order passed by an authority or an authorized officer imposing upon him any penalty."

In the case in hand, as noted above, the minor penalty of "withholding of four annual increments" (without cumulative effect) was imposed upon the appellant by the Authorized Officer. As such the departmental appeal which was filed by the appellant against the aforesaid order was to be heard and decided by respondent No.2 in his position as "Appellate Authority" and not as an "Authority". But a perusal of the impugned order dated 6.5.2015 reveals that respondent No.2 was himself not sure whether he was acting as "Authority" or "Appellate Authority". In the impugned order respondent No.2 arrogated to himself both positions as "Authority" and "Appellate Authority". Not only this the Show-Cause Notice which was issued by respondent No.2 to the appellant for imposition of major penalty provision of Rule 6-A of The Government Servants (Efficiency and Discipline) Rules, 1973 was invoked which reads as under:-

"6-A (Revision).--- The authority may call for the record of any case pending before or disposed of by the authorized officer and pass such order in relation thereto as it may deem fit."

A bare reading of the aforesaid provision of law makes it abundantly clear that this power is available to "Authority" and not the "Appellate Authority". Additionally, the power conferred under the aforesaid provision of law is revisional and not appellate and has to be exercised suo motu. But the respondent No.2 was acting as "Appellate Authority" and not as "Authority". As such the aforesaid revisional power was not available to him. Besides, the respondent No.2 exercised this power in his appellate jurisdiction and not suo motu. As such reliance on the aforesaid provision of law was misconceived and untenable.

7. Notwithstanding the above we have to see whether respondent No.2 was justified in enhancing the minor penalty already imposed upon the appellant by the Authorised Officer to the major penalty. Section 6(a) of the Civil Servants (Appeal) Rules, 1977 does empower the Appellate Authority to confirm, set aside or modify the previous order. But in G.M. Pakistan Railways and others v. Muhammad Rafique (2013 SCMR 372) it was held that while enhancing the penalty the Authority is required to specify the reasons for the proposed enhancement. Similar view was adopted in Secretary, Government of the Punjab (C&W) and others v. Ikramullah and 5 others (2013 SCMR 572).

8. Now we have to see whether respondent No.2 while issuing Show-Cause Notice to the appellant for the enhancement of penalty had specified the reasons. In the Show-Cause Notice dated

25.3.2015 issued to the appellant by respondent No.2, it was merely mentioned that the penalty imposed by the Authorised Officer "is inadequate and does not commensurate with the gravity of the charges established against you". Similarly while imposing enhanced major penalty of removal from service vide impugned notification dated 6.5.2010 the aforesaid assertion made in the Show-Cause Notice was reiterated. This was a vague and skimpy statement and as such it is difficult to hold that respondent No.2 had specified reasons for the enhancement of the penalty within the contemplation of the aforesaid pronouncements of the Hon'ble Supreme Court of Pakistan. Viewed in such a perspective respondent No.2 was not justified in imposing impugned major penalty upon the appellant.

9. Not only this it has to be seen whether charges were proved against the appellant during the departmental inquiry. It is pertinent to mention that in the concluding paragraph of the Inquiry Report the Inquiry Officer had felt not inhibition in concluding that "the Department could not place on record direct or corroborated evidence pertaining to Corruption of the accused official in this case. The charge of corruption thus remains unsustainable at this stage." Besides, gravamen of the respondents against the appellant is that he failed to check weight of betel leaves and did not point out its inordinate tare weight. It is pertinent to mention that weighing of betel leaves was the responsibility of the examining officer and not of the appellant. As such the appellant could not be held responsible for this lapse. Besides, it was not the duty of the appellant to assess duty and taxes leviable on the import of betel leaves in question. As such the allegation of posting financial loss to the Government exchequer cannot be foisted upon the appellant. Not only this, the findings of the Inquiry Officer are based on hypothesis and conjectures.

10. As noted supra, initially the minor penalty of "withholding of four annual increments (without cumulative effect)" was imposed upon the appellant. The appellant did file departmental representation against the aforesaid minor penalty but subsequently withdrew the same. But it needs to be kept in mind that there is no estoppel in law. As such withdrawal of the departmental representation by the appellant will not have the effect forfeiting his vested right to assail the imposition of the aforesaid minor penalty of withholding of four annual increments (without cumulative effect)" before this Tribunal. As noted above findings of the Inquiry Report on the basis of which the impugned minor penalty was imposed upon the appellant have been found to be unfounded and misconceived. As such there was no justification of imposition of the aforesaid minor penalty upon the appellant.

11. Lastly a few words may be said about the objection of the respondent that the instant appeal is incompetent as the departmental appeal filed by the appellant before the Chairman, FBR is still pending. In the preceding paragraph we have already held that respondent No.2 was acting as "Appellate Authority" and not "Authority". This being so after the decision of the Appellate Authority dated 6.5.2015 there was hardly any necessity to file the departmental representation against the same. As such the aforesaid departmental representation, if filed by the appellant, is inconsequential and of no legal effect.

12. For the foregoing reasons, while accepting the instant appeal, the impugned orders dated 31.10.2014 and 6.5.2015 are accordingly set aside. Consequently, the appellant is ordered to be reinstated into service with effect from 6.5.2015 with all consequential back benefits.

13. No order as to costs.

14. Parties be informed accordingly.

2014 S C M R 147

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jilani, Mian Saqib Nisar and Muhammad Ather Saeed, JJ

ASIF YOUSAF---Appellant

Versus

SECRETARY REVENUE DIVISION, CBR, ISLAMABAD and another---Respondents

Civil Appeal No.62 of 2011, decided on 2nd October, 2013.

(On appeal from the judgment dated 22-3-2010 passed by the Federal Service Tribunal Islamabad in Appeal No.555(L)CS/2006.)

(a) Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 3---Constitution of Pakistan, Art. 212(3)---Leave to appeal was granted by Supreme Court to consider; whether before converting minor penalty as suggested by Inquiry Officer into major penalty of dismissal from service, competent authority served the notice upon petitioner; and whether sufficient material was available before competent authority to pass order assailed before Service Tribunal.

(b) Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 3---Service Tribunals Act (LXX of 1973), S. 4---Major penalty---Show cause notice, non-issuance of---Competent Authority imposed major penalty of dismissal from service to civil servant, against the recommendation of Inquiry Officer---Validity---Competent Authority was not bound by recommendation of Inquiry Officer regarding award of penalty to accused officer---While disagreeing and awarding higher penalty than recommended by Inquiry Officer, Competent Authority had to firstly provide opportunity of hearing to accused officer and secondly he had to pass a reasoned order with conscious application of mind---Although Inquiry Officer found civil servant to be negligent in his conduct and charge of 'mal-administration' was not proved, yet Competent Authority while awarding major penalty of dismissal from service found that there was substantial evidence on record to prove the charges---No reference to the evidence or material was available which found favour with Competent Authority to award major penalty of dismissal from service---No allegation was on record that accused civil servant was guilty of corruption or of financial gain---Supreme Court set aside the order passed by Competent Authority and remanded the matter to it for decision afresh after hearing the civil servant---Appeal was allowed.

Khalid Mansoor v. Director FIA 2008 SCMR 1174 and Abid Hussain v. Chairman, NESCOM 2009 SCMR 1025 ref.

Syed Zulfiqar Abbas Naqvi, Advocate Supreme Court for Appellant.

Jamroz Khan Afridi, Advocate Supreme Court for Respondent No.1.