


S.A No.361/2015

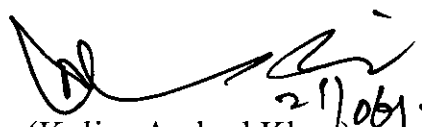
ORDER

21st June, 2023

1. Nobody is present on behalf of appellant. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.
2. This case was called time and again but no one put appearance on behalf of appellant, therefore, the appeal in hand is dismissed in default.
3. *Pronounced in open Court at Abbottabad given under our hands and seal of the Tribunal on this 21st day of June, 2023.*

SCANNED
KPST
Peshawar


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

*Adnan Shah, P.A *

23.01.2023

Clerk to counsel for the appellant present. Muhammad
Jan learned District Attorney for respondents present.

Lawyers are on strike today. To come up for arguments
on 27.03.2023 before D.B at camp court Abbottabad


(Fareeha Paul)

Member (E)
Camp Court Abbottabad



(Rozina Rehman)
Member (J)
Camp Court Abbottabad


27.03.2023

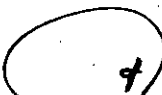
Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney
alongwith Lutfullah ADEO for respondents present.

Former made a request for adjournment as he has not
prepared the brief. Adjourned. To come up for arguments on
25.04.2023 before D.B. Parcha Peshi given to the parties.

**SCANNED
KPST
Peshawar**


(Muhammad Akbar Khan)
Member (E)
Camp Court, A/Abad


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

25-4-23
Rt Note

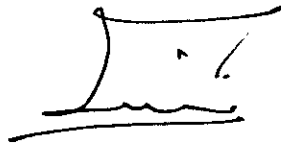
Due to public holiday to come
up for the case before on 21/6/23



13th Dec, 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 16.12.2022 before the D.B at Camp Court Abbottabad.



(Salah Ud Din)
Member (Judicial)
Camp Court Abbottabad

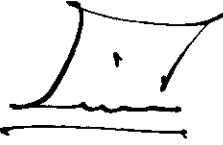


(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

16th Dec, 2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant seeks further time for preparation of arguments. Adjourned. To come up for arguments on 23.01.2023 before the D.B at Camp Court Abbottabad.



(Salah Ud Din)
Member (Judicial)
Camp Court Abbottabad



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

SCANNED
KPST
Peshawar

17th Nov, 2022

Nemo for the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Counsel are on strike, therefore, the case is adjourned to 12.12.2022 for arguments before the D.B at Camp Court Abbottabad.

SCANNED
KPSI
Peshawar



(Salah Ud Din)
Member (Judicial)
Camp Court Abbottabad



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

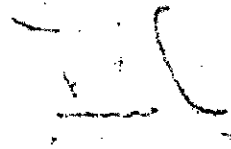
12th Dec, 2022

Nemo for the appellant. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.


To come up for arguments on 13.12.2022 before the D.B at Camp Court Abbottabad.

(Salah Ud Din)
Member (Judicial)
Camp Court Abbottabad

(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad





18.03.2022 Due to retirement of the Hon'ble Chairman, the Tribunal is defunct, therefore, the case is adjourned for the same on 16.05.2022.


Reader

16.05.2022 None for the appellant present. Mr. Muhammad Riaz Khan, Assistant Advocate General for respondents present.

Previous date was adjourned through Reader note, therefore, notice for prosecution of appeal be issued to the appellant as well as her counsel. Adjourned. To come up for arguments before D.B on 13.06.2022 at camp court Abbottabad.



(Fareeha Paul)
Member(E)



(Kaleem Arshad Khan)
Chairman
Camp Court Abbottabad

13.06.2022 Nemo for parties.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General present.

Despite directions, parties were not put on notice. The concerned Moharrir is warned to be careful in future. Both the parties be put on notice for 18.08.2022 for arguments before D.B at Camp Court, Abbottabad.


(Fareeha Paul)
Member (E)
Camp Court, A/Abad


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

15.06.2021

Due to cancellation of tour, Bench is not available. Therefore, case to come up for the same as before on 29.09.2021.


Reader

29.09.2021

Nemo for the appellant. Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Javed Ali, SDFO for the respondents present.

Notices be issued to appellant/counsel for the next date. Case to come up for arguments on 18.01.2022 before the D.B at Camp court, Abbottabad



(Rozina Rehman)
Member(Judicial)
Camp Court, A/Abad



Chairman
Camp Court, A/Abad

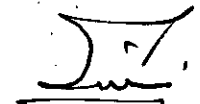
18.01.2022

Nemo for appellant. Mr. Kabir Ullah Khattak, learned Additional Advocate General for respondents present.

Notice be issued to the appellant as well as his counsel through registered post and to come up for arguments on 18.03.2022 before D.B at Camp Court, Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court A/Abad



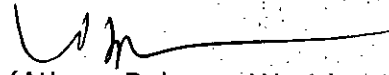
(Salah-Ud-Din)
Member (J)
Camp Court A/Abad

19.10.2020

Nemo for appellant.

Learned Assistant Advocate General alongwith Zahid Mehosd SDFO for respondents present.

Lawyers are on general strike therefore the case is adjourned. To come up for arguments on 14.12.2020 before D.B at Camp Court, Abbottabad. Notice be issued to appellant and his counsel for the date fixed.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

14.12.2020

Due to Covid-19, case is adjourned to 15.03.2021 for the same as before.



Reader

15.03.2021

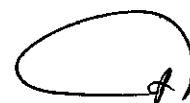
Nemo for parties.

Asif Masood Ali Shah, learned Deputy District Attorney for respondents present.

Preceding date was adjourned on a Reader's note, therefore, notice be issued to both the parties for 15/06/2021 for arguments before D.B at Camp Court, Abbottabad.



(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

20.01.2020

None for the appellant. Mr. Ziaullah, DDA alongwith Mr. Zahid Mahsood, SDFO for respondents present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 19.02.2020 before D.B at camp court Abbottabad. Appellant be put on notice for the date fixed.


Member


Member
Camp Court A/Abad

19-2-20

Due to covid ,19 case to come up for the same on 14/4/20 at camp court abbottabad.

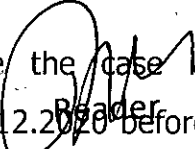

Reader

None for appellant.

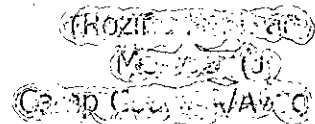
Due to summer vacation case to come up for the same on 1/19

Learned Assistant Advocate General alongwith Zahid Mahsood SDFO for respondents present.

Lawyers are on general strike therefore the case is adjourned to come up for arguments on 14.12.2020 before D.B at Camp Court, Abbottabad. Notice be issued to appellant and his representatives accordingly.



Reader






19.09.2019

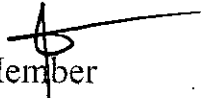
Counsel for the deceased appellant and Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr. Zahid Masood, SDFO for the respondents present. Learned counsel for the deceased appellant requested for adjournment. Adjourned to 20.11.2019 for rejoinder and arguments before D.B at Camp Court Abbottabad.

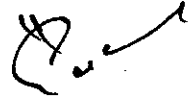

(Hussain Shah)
Member
Camp Court Abbottabad


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

20.11.2019

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Zahid Masood, SDFO for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 16.12.2019 before D.B at camp court Abbottabad. *Last opportunity is granted to the appellant.*



Member


Member
Camp Court Abbottabad

16.12.2019

Appellant in person and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Maqsood-ur-Rehman, SDFO for the respondents present. Appellant submitted an application for adjournment on the ground that his counsel is ill today and cannot attend the Tribunal today. Application is placed on record. Another last chance is granted to appellant for arguments. Adjourned to 20.01.2020 for arguments before D.B at Camp Court Abbottabad.


(Hussain Shah)
Member
Camp Court Abbottabad


(M. Amin Khan Kundi)
Member
Camp Court Abbottabad

361/15


19.06.2019

Mr. Hassan Sufian son of deceased appellant alongwith Mr. Muhammad Naeem Advocate and Mr. Muhammad Bilal, DDA alongwith Zahid Maqsood, SDFO for the respondents present.

List of legal heirs of deceased appellant Muhammad Sufian has been submitted alongwith Wakalatnama in favour of learned counsel. Office shall include the names of legal heirs in the memorandum of appeal.

Adjourned to 20.08.2019 for arguments also on the question of maintainability of instant appeal before the D.B at camp court, Abbottabad


Member


Chairman
Camp court, A/Abad

20.08.2019

Learned counsel for the appellant absent. Mr. Muhammad Bilal learned Deputy District Attorney for respondents present. Mr. Hassan Sufian, son of the appellant present and submitted application for adjournment.. Adjourned on payment of cost of Rs. 2000/- to be paid on behalf of the appellant to the respondents. To come up for rejoinder and arguments on 19.09.2019 before D.B at camp court Abbottabad.



Member


Member
Camp Court A/Abad

19.02.2019

Counsel for the appellant present. Mr. Muhammad Bilal, DDA for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 17.04.2019 before D.B at camp court Abbottabad.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member
Camp Court Abbottabad


17.04.2019

Mr. Hassan Sufian, son of deceased appellant and Mr Muhammad Bilal, DDA alongwith Zahid Maqsood, SDFO for the respondents present.

Former requests for adjournment as his learned counsel is not available today. Adjourned to 19.06.2019 before the D.B at camp court, Abbottabad.


The list of legal heirs of deceased appellant shall be submitted on next date of hearing.


Member


Chairman
Camp court, A/Abad.

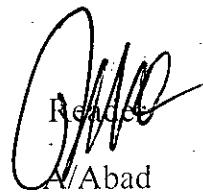
18.09.2018

Since 20th September, 2018 has been declared as public holiday on account of Moharram therefore, case is adjourned to 15.11.2018 for arguments before the D:B at camp court, Abbottabad.


Chairman
Camp court, A/Abad

15.11.2018


Appellant in person and Mohammad Pervaz RFO for the respondent present. Due to retirement of the Hon'ble Chairman the Service Tribunal is incomplete. Tour to Camp Court Abbottabad has been cancelled. To come up for the same on 14.01.2019 at camp court Abbottabad.


Member
A/Abad

14.01.2019

Appellant absent. Learned counsel for the appellant absent. Mr. Muhammad Bilal learned Deputy District Attorney alongwith Muhammad Parvez Range Forest Officer ^{Present.} Adjourn. To come up for arguments on 19.02.2019 before D.B at Camp Court Abbottabad.


Member


Member
Camp Court Abbottabad


20.02.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. To come up for arguments on ^{22.5.}2018 before the D.B at camp court, Abbottabad.


Member
Chairman
Camp court, A/Abad.

22.05.2018

Appellant with counsel present. Mr. Usman Ghani learned District Attorney alongwith Muhammad Hasnain SDFO for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.07.2018 before D.B at camp court Abbottabad.


Member
Chairman
Camp court, A/Abad

18.07.2018


Appellant Muhammad Sufian in person alongwith his counsel Mr. Muhammad Naeem Khan, Advocate present. Mr. Muhammad Pervaiz, Range Forest Officer for the respondents alongwith Mr. Usman Ghani, District Attorney present. Learned counsel for the appellant made a request for adjournment. Granted. To come up for arguments on 20.09.2018 before the D.B at camp court, Abbottabad.


Member
Chairman
Camp Court, A/Abad

361/15

21.12.2016

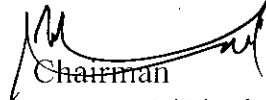
Counsel for the appellant and Mr. Aminul Islam, SDFO alongwith Mr. Muhammad Siddique, Sr. GP for the respondents present. Due to non-submission of rejoinder and incomplete bench arguments could not be heard. To come up for rejoinder and final hearing on 19.06.2017 before D.B at camp court, Abbottabad.


Chairman
Camp court, A/Abad

19.06.2017


Counsel for the appellant and Mr. Muhammad Siddique, Sr. GP alongwith Mr. Hasanain, SDFO for respondents present. Counsel for the appellant requested for adjournment. Adjourned for final hearing before the D.B on 18.12.2017 at camp court, Abbottabad.

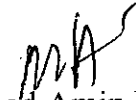

Member


Chairman
Camp court, A/Abad

18.12.2017

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 20.02.2018 before D.B at Camp Court Abbottabad.


(Gul Zeb Khan)
Member (Executive)
Camp Court Abbottabad


(Muhammad Amin Khan Kundi)
Member (Judicial)
Camp Court Abbottabad

20.1.2016

Appellant in person present. Security and process fee not deposited. The same be deposited within a week, where-after notices be issued to the respondents for written reply/comments for 20.4.2016 before S.B at Camp Court A/Abad.

Appellant Deposited
Security & Process Fee


Chairman
Camp Court A/Abad


20.04.2016

Counsel for the appellant and Mr. Aminul Islam, SDFO Mansehra alongwith Muhammad Siddique, Sr.GP for the respondents present. Requested for adjournment. To come up for written reply/comments on 23.06.2016 before S.B at camp court, Abbottabad.


Chairman
Camp court, A/Abad

23.06.2016

Counsel for the appellant and Mr. Aminul Islam, SDFO alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Written reply submitted. The appeal assigned to D.B for rejoinder and final hearing for 21.12.2016 at camp court, Abbottabad.


Chairman
Camp court, A/Abad,

15.9.2015

Appellant with counsel present. Submitted Wakalat Nama and requested for adjournment. Last opportunity granted. To come up for preliminary hearing on 20.10.2015 before S.B at Camp Court A/Abad.


Chairman
Camp Court A/Abad

20.10.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Forest Guard when subjected to inquiry on the allegations of involvement in illicit cutting of trees and vide order dated 28.11.2012 compulsorily retired from service regarding which he preferred departmental appeal wherein the said order was converted into the penalty of reduction of two lower stages below the present time scale with the observations that he may not be posted at any responsible position and stoppage of promotion for a period of six months. Against the said order appellant preferred departmental appeal on 24.6.2014 which was rejected on 24.3.2015 but not communicated to the appellant and hence the instant service appeal on 23.4.2015.

That the appellant was neither given any opportunity of hearing nor the inquiry was conducted in accordance with the directions of the appellate authority and, moreover, the allegations attributed to the appellant are false. That since financial benefits are involved as such the appeal is not hit by time limitation.

Points urged need consideration. Admit, subject to limitation. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 20.01.2016 before S.B at Camp Court A/Abad.


Chairman
Camp Court A/Abad

4

21.05.2015

Appellant in person present. His counsel has not turned up from Peshawar. Requested for adjournment. Adjourned for preliminary hearing to 16.6.2015 before S.B. at Camp Court Abbottabad.




Chairman
Camp Court Abbottabad

5

16.6.2015

Appellant in person present. Counsel for the appellant is stated indisposed. Adjourned to 18.8.2015 for preliminary hearing before S.B at camp court A/Abad.



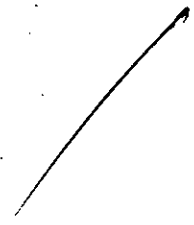
Chairman
Camp Court A/Abad

18.08.2015

Appellant in person present. Counsel for the appellant is not in attendance. Requested for adjournment. Last opportunity granted. To come up for preliminary hearing on 15.09.2015 before S.B at camp court A/Abad.






Chairman
Camp Court Abbottabad



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 361/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23.04.2015	<p>The appeal of Mr. Muhammad Sufian presented today by Mr. Shahzada Irfan Zia Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	27-4-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>31-4-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	30.04.2015	<p>None present for appellant. Notice to counsel for the appellant be issued for preliminary hearing for 21.5.2015 at Camp Court Abbottabad.</p> <p style="text-align: right;"> Chairman</p>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE;

Service Appeal No. _____ / of 2015

Muhammad Sufian Ex. Forest Guard Appellant

VERSUS

Province of Khyber Pakhtunkhwa, through
Secretary Environment Department and others... .. Respondents

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3.	Reply of Charge Sheet		Not Available
4.	Inquiry Report	'B'	7 - 10
5.	Show Cause Notice		Not Available
6.	Reply of Show Cause Notice	'C'	11
7.	Order dated 28.11.2012	'D'	12 - 13
8.	Departmental Appeal	'E'	14 - 15
9.	Impugned order dated 6.6.2013	'F'	16 - 17
10.	Departmental Appeal	'G'	18
11.	Final order dated 24.3.2015	'H'	19
12.	Vakalat Nama		

Through:

محمد سفیان
16
Appellant

(Shahzada Irfan Zia)

Advocate

13-C Haroon Mansion

Khyber Bazar, Peshawar

Cell # 0300-9345297

Dated: 22.04.2015

name of Legal Heirs

- ① Mst - perveen Akhtar wife
- ② Gul Hamid son
- ③ Hassan Sajid "
- ④ Gul Rahim daughter

Imputed
side work
sheet dated
19-6-2019

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 361 / of 2015

K.P. Provincial
Service Tribunal

Diary No. 407

Dated 23-4-2015

Muhammad Sufian Ex. Forest Guard son of
Jehangir, resident of Village Dharmung, P.O: Dhodial,
Tehsil and District Mansehra...

... Appellant

VERSUS

1. Province of Khyber Pakhtunkhwa, through
Secretary Environment Department,
Civil Secretariat, Peshawar.

2. Chief Conservator of Forests,
Khyber Pakhtunkhwa Peshawar.

3. Conservator of Forests; Lower Hazara
Forest Circle, Abbottabad.

4. Divisional Forest Officer, Siran Forest
Division, Mansehra...

... Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED
6.6.2013 WHEREBY THE APPELLANT HAS
BEEN AWARDED DIFFERENT PENALTIES IN A
SINGLE ORDER AND HIS DEPARTMENTAL
APPEAL AGAINST THE IMPUGNED ORDER
WAS REJECTED BY RESPONDENT NO.3 VIDE
ORDER DATED 24.3.2015.

Respectfully Sheweth:

FACTS OF THE CASE.

1. That the appellant while posted as Incharge Balakot Beat of Lower
Siran Forest Sub-Division, he was served with a Charge Sheet, wherein
certain allegations of misconduct, inefficiency and corruption were
levelled against him. (Annex: A).

Filed to-day
3/4/15

2. That the appellant submitted his reply to the charge sheet and vindicated his plea and position, but to his utter dismay that his reply though was well founded and reasonable, went unheeded.
3. That Mr. Muhammad Riaz SDFO was appointed as Inquiry Officer to probe into the matter, who failed to conduct the inquiry in a impartial manner and did not fulfill the legal requirements of an Inquiry proceedings. (Annex: B).
4. That a Show Cause notice was served upon the appellant which he properly replied, but respondent No.4 on 28.11.2012 passed/issued an order whereby the appellant was compulsorily retired. (Annex: C&D), *from service.*
5. That feeling aggrieved the appellant submitted his departmental appeal before respondent No.3, which was accepted by the Appellate Authority vide his order dated 7.2.2013, which was not communicated to the appellant. The Appellate Authority advised the respondent NO.4 for withdrawal of order dated 28.11.2012 and directed respondent NO.4 to re-consider the case. (Annex: E).
6. That on the direction of respondent No.3 the respondent No.4 withdrew his order dated 28.11.2012 and issued another order dated 6.6.2013, without conducting de-novo inquiry and imposed following penalties upon the appellant as mentioned herein below:-
 - (i) Reduction of Two Lower Stages below the present time scale,
 - (ii) The accused official may not be posted on any responsible position in his remaining service.
 - (iii) He will not be considered for promotion to higher rank for a period of six months. (Annex: F).
7. That the appellant submitted his Departmental Appeal before respondent No.3, against the impugned order dated 6.6.2013, but the Appellate Authority rejected his Departmental Appeal vide order dated

24.3.2015. It is worth to mention that the impugned order dated 6.6.2013 was communicated to the appellant on 28.5.2014 while the appellant had become retired on April 2014 after attaining the age of Superannuation. However, the appellant submitted his departmental appeal on 24.6.2014 after retirement. (Annex: G&H). Hence the present appeal is being filed inter alia on the following grounds:-

GROUND:

- a. That while imposing the penalty of reduction to a lower stage in time scale the respondents altogether ignored the mandatory requirement of F.R 29, which provides that the authority ordering such reduction shall state the period for which it shall be effective. In absence of requirement of F.R 29 the appellant will suffer two fold losses, loss in Pension and loss in Commutation.
- b. That the Inquiry Proceedings were not conducted according to the law and rules. The pre-requisite of an Inquiry Proceedings is the recording of evidence of the witnesses and the accused is entitled to cross-examine the complainant and witnesses, but the Inquiry Officer ignored this legal requirement of rules and submitted his findings to the authority without examining the evidence of witnesses, hence the appellant was deprived of his right of defense. It is strange that neither the complainant was examined nor the complaint was exhibited in the Inquiry Proceedings. It is the reason that the respondent No.3 advised the respondent No.4 to withdraw the order of compulsory retirement.

- c. That it is worthwhile to mention that respondent No. 3 advised the respondent No.4 to withdraw his order dated 28.11.2012, and on the direction of No.3, the respondent No.4 withdrew his order dated 28.11.2012. After withdrawal of the said order he was under legal obligation to appoint an Inquiry Officer for de-novo inquiry, but the respondent No.4 on 6.6.2013 passed an other order of punishment without conducting de-novo inquiry, thus his entire proceedings are illegal and based on malafide. The order dated 6.6.2013 was kept secret and communicated to the appellant after his retirement, hence the proceedings smacks malice.
- d. That in the impugned order dated 6.6.2013 different penalties were awarded in a single order, which is against the spirit of the law. As per law the authority can impose single penalty whether major or minor, proportionate to guilt in a single order, thus the order dated 6.6.2013 is illegal, void and unwarranted by law.
- e. That the order of Appellate Authority dated 24.3.2015 is not sustainable as he rejected the appeal of the appellant without any reasons. Actually due to non initiation of de-novo inquiry the Appellate Authority was unable to decide the Departmental Appeal of the appellant as no evidence was available on the record to find out the truth.

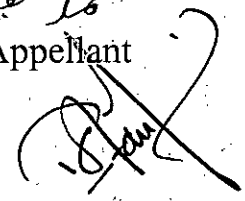
- f. That the appellant seeks permission to raise more legal grounds at the time of arguments.

In view of the aforesaid facts and circumstances of the case it is humbly prayed that the impugned order dated 6.6.2013 passed by respondent No.4 and final order dated 24.3.2015 passed by respondent No.3 may graciously be set aside being illegal and void, directing the respondents to restore the appellant to his original time scale with retrospective effect with all back benefits.

Any other relief though not specifically asked for to which the appellant is found entitled in the circumstances of the case may also be granted to the appellant.


Appellant

Through:


(Shahzada Irfan Zia)
Advocate, Peshawar.

Dated: 22.04.2015

CERTIFICATE:

Certified that as per instructions of my client no such Service Appeal on behalf of the appellant has earlier been filed in this Honourable Service Tribunal on the subject matter.


Advocate.

CHARGE SHEET

I, Ejaz Qadir, Divisional Forest Officer Siran Forest Division Mansehra, as competent authority hereby charge you Muhammad Sufian Forest Guard incharge Balakot beat of Lower Siran Forest Sub Division as follows:

That you while posted as Incharge Balakot beat of Lower Siran Forest Sub-Division committed the following irregularities of heinous nature leading to huge destruction of forests under your control.

1. That huge illicit damage of 73 trees = 18986-Cft of kail and 06 trees = 787-Cft of Chir Un-reported illicit damage occurred in Massar RFC-18 with your active connivance.
2. That it is sufficient evidence of your involvement and more so reflecting your Inefficiency, Misconduct & Corruption.
3. That you deliberately kept silent and facilitated the offenders in cutting of 73 trees = 18986-Cft of kail and 06 trees = 787-Cft of Chir (Total = 79 trees = 19773-Cft) precious timber and as such causing great loss to the Government.

By doing so you appear to be guilty of Inefficiency, (ii) Misconduct and (iii) Corruption under Section-3 of the NWFP Removal from Service (Special Powers) Ordinance-2000 Amendment Act, 2005 and therefore, you have rendered yourself liable to all or any of the penalties specified in Section-3 of the Act *ibid*.

You are, therefore, directed to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer/Committee, as the case may be.

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

Intimate whether you desire to be heard in person.

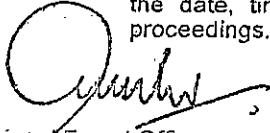
The statement of allegations is enclosed.

Sd/-(Mr. Ejaz Qadir)
Divisional Forest Officer
Siran Forest Division Mansehra

No. 7254-56 /GE Dated Mansehra the 12/04/2011

Copy of the above is forwarded to:-

1. Mr. Muhammad Riaz SDFO Mansehra Forest Sub-Division (Enquiry Officer) for initiating proceeding against the accused under the provision of NWFP Removal from Service (Special Powers) Ordinance-200 Amendment Act, 2005.
2. The Sub-Divisional Forest Officer Lower Siran Forest Sub-Division/Departmental Representative for information and necessary action with reference to his No. 59/LS dated 9-4-2011. He is directed to join the disciplinary proceedings on the date, time and place fixed by the Enquiry Officer and defend the cases as prosecutor.
3. Muhammad Sufian Forest Guard c/o SDFO Lower Siran Forest Sub-Division for information and necessary action. He is directed to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer for the purpose of enquiry proceedings.


Divisional Forest Officer
Siran Forest Division Mansehra

12/04/2011

attested
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Enquiry Report of Mohammed Sufian Forest guard
the then in charge Balakot Beat of Lower Saram
Forest Sub. Division

A: Read with:

- (1) Charge sheet vide NO 7254-56
dated 12.4.2011 issued by
the DFO Saram Forest Division
Mansehra.
- (2) Checking Report of SDFO
Lower Saram vide his No 59/hs
dated 9-4-2011
- (3) Checking lists of illicit stumps
in Massar RF 18(ii).
- (4) Enquiry officer letter No 244/MA
dated 25.6.2011
- (5) Reply to the Charge sheet by
accused forest guard dt. 17.7.2011
- (6) Personal hearing, Cross examination
dated 18.7.2011.

B: Brief History of the Case:

On a complaint regarding illicit damage in Massar RFC-18 the SDFO Lower Saram Forest Sub. Division constituted a Committee comprising of M/s Noor Zaman, Abdul Weheed II and Mohammed Naseem forest guard to thoroughly check Massar RF C-18 on 7.4.2011 and 8.4.2011 and reported that:

- (1) After thorough checking the Committee submitted a list of 73 Kail trees = 18986 cft and 6 cheir trees = 787 cft unreported illicit damage occurred in Massar RF-18 (ii) under the supervision of SDFO Lower Saram Forest Sub. Division and sent to the DFO Saram Forest Division Mansehra vide

attested
18/7

(2)

(8)

(41)

his letter NO 59/KS dated 9.4.2011 for further lawful action.

- (2) That the said checking lists reveals huge illicit damage of green trees occurred in Massara RF C-18 (ii) with the active connivance of Mr. Muhammad Sufian Forest guard incharge Balakot Beat of Lower Suran Forest Sub Division.
- (3) The occurrence of huge illicit damage in above mentioned Comptl. shows that incharge Forest guard remained in-league with the Timber Smugglers and failed to extend proper protection to the Forest Resource which otherwise is his basic responsibility. It is sufficient evidence of involvement of accused Forest guard in this heavy illicit damage and further more so reflecting his in-efficiency, Misconduct and Corruption.
- (4): That he deliberately kept silent and facilitated the Forest offenders in Cutting of 73 Kail Trees = 189869 and 6-Char Trees = 78791. Un-reported illicit damage occurred in Massara RF C-18 (ii) and as such causing great loss to the Govt ex-chequer. For the purpose of scrutinizing the conduct of the said accused official with reference to the above allegations undersigned was appointed as enquiry officer (under Section 1) of NWFP removed from Service (Special Powers) Ordinance 2000 amendment act 2005.

(C)

Proceedings:

In the Capacity of enquiry officer vide DFO Suran Manshral No 7248-50/GE dt 12.4.2011 issued letter No 244/MA dated 25-6.2011 to

attested
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Statement to the Charge Sheet and Memo of allegations. The accused Forest guard was further advised to appear before undersigned for personal hearing if he wish to be heard. The accused Forest guard availed the opportunity submitted his written defence reply to the Charge Sheet on 17.7.2011, also heard in person verbally, Crossly examined on record on 18.7.2011. The reporting officer Mr. Sultan Khan the then SDFo. lower Siram also joined the Disciplinary proceeding on due date, Time and place and defended the Case as Main prosecutor. During the Course of enquiry proceedings and Cross examination the reporting officer Main prosector strongly proved his report and allegations levelled against the accused Forest guard through defects and figures of Checking lists of Massar RF C-18 (ii) which was Completed under his own Supervision. While on the other hand the accused Forest guard the then in charge of Massar RF-C-18 (ii) of Balakot Beat had no solid proofs to prove his innocence of illicit Cutting of 79 Kail and Chir trees = 19773 cu ft the precious Govt. property. Rather the accused official remained quite silent to the question of illicit Cutting/damage of Forest for which he was suppose to protect it at any cost. It is to worth mention here that the accused Forest guard tried his best to hide the ground facts by making false statement/ explanation regarding his function/ Transfer from Balakot Forest Beat.

attested.
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and political influence in this connection which found totally wrong, baseless and against the ground realities.

(D) Findings:

The scrutiny of relevant record, evidence statement of reporting officer, mode of forest damage occurred and attitude of accused forest guard towards forest protection proved him the "guilty" of the charges levelled against Mr. Mohammad Sufian forest guard who then in charge of Balakot Beat.

(E) Recommendations:

Being guilty of the charges Mr. Mohammed Sufian forest guard is recommended to be awarded any one of the Major Penalty prescribed in (Special Power) ordinance 2000 amendment act 2005. which may lead him to be removed from services compulsorily.

17/9/2011
 Muhammad Riaz
 SFO Manshra
 (Enquiry officer)

attested
 (1/8/11)

OFFICE ORDER NO. 113 /DATED MANSEHRA THE 28 /11/2012. ISSUED BY
 RAJA IMTIAZ AHMED DIVISIONAL FOREST OFFICER, SIRAN FOREST
 DIVISION MANSEHRA

Read with:

- i. SDFO Lower Siran Forest Sub-Division letter No. 59/LS dated 9-4-2012.
- ii. Statement of allegation served upon the accused vide DFO Siran No. 7248-50/GE dated 12-4-2011.
- iii. Charge Sheet served upon the accused vide DFO Siran No. 7254-56/GE dated 12-4-2011.
- iv. Reply to the Charge Sheet by the accused dated 17-7-2011.
- v. Personal hearing of the accused dated 18-7-2011.
- vi. Enquiry report submitted by Mr. Muhammad Riaz SDFO Mansehra Sub-Division Enquiry Officer vide No. 27 MA dated 17-9-2011.
- vii. Show cause Notice served upon accused official vide No. 2540/GE dated 03-11-2011 & No. 2830/GE dated 25-11-2011.
- viii. Reply to the Show Cause Notice dated 23-11-2011.
- ix. Personal hearing of the accused dated 08-5-2012.

BRIEF HISTORY OF THE CASE

On a complaint regarding illicit damage in Massar RFC-18 the Sub-Divisional Forest Office Lower Siran Forest Sub-Division constituted a committee comprising Upon M/S Noor-Zaman, Abdul Waheed-II and Muhammad Naseem Forest Guard to thoroughly check Massar RFC-18 on 17-4-2011 and 8-4-2011. The committee after thorough checking, submitted list of 73 trees = 18986-Cft of Kail and 06 trees = 787-Cft of Chir Un-reported illicit damage occurred in Massar RFC-18. The report received through SDFO Lower Siran Forest Sub-Division vide letter No. 59/LS dated 9-4-2011.

Therefore, in order to probe into the matter, a charge sheet along with statement of allegations was served upon the accused vide No. 7248-50/GE dated 12-4-2011 and No. 7254-53/GE dated 12-4-2011. Mr. Muhammad Riaz Sub Divisional Forest Officer Mansehra Forest Sub Division was appointed as Enquiry Officer/committee. In the statement of allegation it was alleged:-

1. That the said checking lists prove huge illicit damage of green trees occurred in Massar RFC-18 with the active connivance of the accused Muhammad Sufian Forest Guard the then Incharge Balakot Beat of Lower Siran Forest Sub-Division.
2. That occurrence of huge illicit damage in the above mentioned compartment clearly revealed that the Incharge Forest Guard was in-league with the timber smugglers and failed to extend proper protection of the forest resource which other-wise was his basic responsibility. It is sufficient proof of involvement of the accused because heavy illicit damage occurred during his tenure which amounts to Inefficiency, Misconduct & Corruption on his part.
3. That he deliberately remained silent and facilitated the offenders in cutting of 73 trees = 18986-Cft of Kail and 06 trees = 787-Cft of Chir Un-reported illicit damage occurred in Massar RFC-18. He caused great loss to the Government exchequer.

Mr. Sufian Forest Guard
 SDFO - LS

attested
 18/11

بخدمت جناب کنزرویٹو صاحب محکمہ جنگلات لوئر ہزارہ فارسٹ سروسز کل ایبٹ آباد

اپیل برخلاف آفس آرڈر نمبر 113 مجریہ مورخہ 28 نومبر 2012

عنوان:

جناب عالی:

اپیل کنندہ سرن فارسٹ ڈویژن میں بطور فارسٹ گارڈ ڈیوٹی سرانجام دے رہا تھا کہ اپیل کنندہ کا حقیقی بھتیجا قتل ہو گیا۔ اپیل کنندہ اس کی تجویز و تکلیف میں مصروف تھا کہ جناب SDFO صاحب لوئر سرن نے اپیل کنندہ کی عدم موجودگی میں ماسٹر کپارٹمنٹ نمبر 18 کی پڑتال فارسٹ گارڈان کی کمیٹی سے کروا کر اپیل کنندہ کے خلاف جناب DFO صاحب سرن کو رپورٹ کر دی۔ جس پر اپیل کنندہ کو چارج شیٹ کر کے انکوائری مقرر کر دی گئی، انکوائری افسر نے اپیل کنندہ کو مجرم ٹھہرا دیا۔ جس پر اپیل کنندہ کو شوکانوٹس جاری کیا جس کا اپیل کنندہ نے شافی جواب دیا لیکن اسکی بد قسمتی کہ جناب ڈی۔ ایف۔ او صاحب کو مطمئن نہ کر سکا جس پر جناب ڈی۔ ایف۔ او صاحب نے اپیل کنندہ کو آفس آرڈر نمبر 113 مجریہ مورخہ 28-11-2012 کے ذریعہ سروس سے جبری سبکدوش کر دیا۔ جناب عالی! آفس آرڈر نمبر 113 مجریہ مورخہ 28-11-2012 بوجہ قانونی سقم کا حامل ہے اس لئے قابل تیسخ ہے، لہذا اپیل کی جاتی ہے کہ اپیل کنندہ کی اپیل منظور فرما کر آفس آرڈر نمبر 113 مجریہ مورخہ 28-11-2012 از دفتر ڈی۔ ایف۔ او سرن فارسٹ ڈویژن منسوخ فرما کر اپیل کنندہ جملہ حقوق اور مراعات کے ساتھ سروس پر بحال فرمایا جائے۔

وجوہات اپیل

۱- یہ کہ جنگل کی پڑتال اپیل کنندہ کی عدم موجودگی میں ہوئی نہ معلوم کمیٹی کے فارسٹ گارڈان نے کسی جنگل کا معائنہ کیا کیونکہ ماسٹر کپارٹمنٹ نمبر 18 کے ساتھ ست بنی اور دیگر گزارہ جات ملتی ہیں۔

۲- یہ کہ ریکارڈ سے اس بات کی تصدیق نہیں کی گئی کہ آیا ماسٹر کپارٹمنٹ نمبر 18 میں کتنا نقصان جنگل رپورٹ شدہ ہے۔

۳- یہ کہ انکوائری افسر نے پڑتال کنندہ کمیٹی کو گواہی کے لئے نہ ہی طلب کیا اور نہ ہی اپیل کنندہ کو اس کمیٹی پر جرح کا موقعہ فراہم کیا۔ اس طرح فاضل انکوائری افسر نے اپیل کنندہ کو اس کے حق و دفاع سے محروم رکھا۔

۴- یہ کہ اپیل کنندہ کو اس کے حق و دفاع سے محروم کرنے سے فاضل انکوائری افسر کی جانبداری کسی شک و شبہ سے بغیر ثابت ہے۔

۵- عالیجاہ انصاف کا تقاضا تو یہ تھا کہ فاضل انکوائری افسر اپیل کنندہ کی استدعا پر کمیٹی کو اپیل کنندہ کے ہمراہ موقعہ پر لے جاتے اور موقعہ نقصان خود ملاحظہ کر کے فہرست کی تصدیق کرتے نہ تو اس طرح تصدیق کی اور نہ ہی کمیٹی سے فہرست مرتب کردہ کی تصدیق کرائی گئی اور نہ ہی ان پر جرح کا موقعہ عطا کیا۔

۶- جناب عالی! درج بالا حقائق سے واضح ہے کہ انکوائری افسر نے واضح جانبداری کا مظاہرہ کرتے ہوئے بغیر نقصان جنگل کی تصدیق اور ملاحظہ ریکارڈ کے بغیر اپیل کنندہ کو مجرم ٹھہرایا جو انصاف کے تقاضوں کے منافی ہے۔

۷- یہ کہ اس پر جناب ڈی۔ ایف۔ او صاحب سرن نے اظہار وجوہ کا نوٹس جاری کیا جس میں استدعا کی گئی کہ فاضل انکوائری

attested
[Signature]

افسر نے اپیل کنندہ کو اس کے حق دفاع سے محروم کرتے ہوئے جانبداری کا مظاہرہ کیا، زبانی بھی استدعا کی گئی لیکن اپیل کنندہ کی
شکوائی نہ کی گئی۔

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عالیجاہ، حقائق بالا سے ثابت ہے کہ انکوائری جانبدارانہ ہے اور اس پر قائم کردہ آفس آرڈر بھی قانونی اعتبار سے ناقص ہے۔
لہذا اپیل کی جاتی ہے کہ آفس آرڈر نمبر 113 مجریہ مورخہ 28-11-2012 منسوخ فرما کر اپیل کنندہ کو تمام سابقہ حقوق اور
مراعات کے ساتھ نوکری پر بحال فرمایا جائے۔

مزید استدعا ہے کہ اپیل کنندہ کو خود پیش ہو کر مزید وضاحت کی اجازت مرحمت فرمائی جائے۔

اپیل کنندہ

محمد علی

الہ عثمان ولد ہاشم
ساکن دھرمنگ ڈاکخانہ ڈھولیاں
تفصیل ضلع مانسہرہ

attested
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OFFICE ORDER NO. 329 /DATED MANSEHRA THE 06 /06/2013, ISSUED BY (Annex: F)
ZAFFAR ALI KHAN DIVISIONAL FOREST OFFICER, SIRAN FOREST DIVISION
MANSEHRA

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Read with:

- i. SDFO Lower Siran Forest Sub-Division letter No. 59/LS dated 9-4-2012.
- ii. Statement of allegation served upon the accused vide DFO Siran No.7248-50/GE dated 12-4-2011.
- iii. Charge Sheet served upon the accused vide DFO Siran No.7254-56/GE dated 12-4-2011.
- iv. Reply to the Charge Sheet by the accused dated 17-7-2011.
- v. Personal hearing of the accused dated 18-7-2011.
- vi. Enquiry report submitted by Mr. Muhammad Riaz SDFO Mansehra Sub-Division/ Enquiry Officer vide No.27/MA dated 17-9-2011.
- vii. Show cause Notice served upon accused official vide No.2540/GE dated 03-11-2011 & No. 2830/GE dated 25-11-2011
- viii. Reply to the Show Cause Notice dated 23-11-2011
- ix. Personal hearing of the accused dated 08-5-2012
- x. DFO Siran Office Order No. 113 dated 28-11-2012.
- xi. Appeal against office order No. 113 dated 28-11-2012 preferred by accused Forest Guard received through Conservator of Forests Lower Hazara Forest Circle Abbottabad letter No. 2978/GE dated 20-12-2012.
- xii. Comments furnished by DFO Siran vide No. 4146/GE dated 21-1-2013.
- xiii. Decision of Conservator of Forests Lower Hazara Forest Circle Abbottabad on the appeal of accused Forest Guard vide No. 3964/GE dated 7-2-2013.
- xiv. DFO Siran Office Order No. 268 dated 14-2-2013.
- xv. Enquiry Officer letter No. 2110/GE dated 8-4-2013.
- xvi. Fresh Show Cause Notice served upon the accused vide DFO Siran No. 6257/GE dated 10-4-2013.
- xvii. Reply to Show Cause notice dated 29-4-2013
- xviii. Personal hearing dated 30-5-2013.

BRIEF HISTORY OF THE CASE

On a complaint regarding illicit damage in Massar RFC-18 the Sub-Divisional Forest Officer Lower Siran Forest Sub-Division constituted a committee comprising upon M/S Noor Zaman, Abdul Waheed-II and Muhammad Naseem Forest Guard to thoroughly check Massar RFC-18 on 17-4-2011 and 8-4-2011. The committee after thorough checking, submitted list of 73 trees = 18986-Cft of Kail and 06 trees = 787-Cft of Chir Un-reported illicit damage occurred in Massar RFC-18, received through SDFO Lower Siran Forest Sub-Division vide letter No. 59/LS dated 9-4-2011.

In order to probe into the matter, a charge sheet alongwith statement of allegations was served upon the accused vide No. 7248-50/GE dated 12-4-2011 and No.7251-53/GE dated 12-4-2011. Mr. Muhammad Riaz Sub Divisional Forest Officer Mansehra Forest Sub Division was appointed as Enquiry Officer/Committee. In the statement of allegation it was alleged:-

1. That the said checking lists prove huge illicit damage of green trees occurred in Massar RFC-18 with the active connivance of the accused Muhammad Sufian Forest Guard the then Incharge Balakot Beat of Lower Siran Forest Sub-Division.
2. That occurrence of huge illicit damage in the above mentioned compartment clearly revealed that the Incharge Forest Guard was in-league with the timber smugglers and failed to extend proper protection of the forest resource which other-wise was his basic responsibility. It is sufficient proof of involvement of the accused because heavy illicit damage occurred during his tenure which amounts to Inefficiency, Misconduct & Corruption on his part.
3. That he deliberately remained silent and facilitated the offenders in cutting of 73 trees = 18986-Cft of Kail and 06 trees = 787-Cft of Chir causing great loss to the Government exchequer.

PROCEEDING.

attested
18/1

28/5/2014
Riaz

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"The scrutiny of relevant record evidence statement of reporting officer, Mode of Forest damage occurred and attitude of accused Forest Guard towards Forest Protection provide him the guilty of the charges leveled against Muhammad Sufian Forest Guard the then Incharge of Balakot beat. Being guilty of the Charges Muhammad Sufian Forest Guard is recommended to be awarded any one of the Major Penalty prescribed in (Special Power) Ordinance 2000 amended act, 2005 which may led him to be removal from service compulsorily".

Accordingly, a show cause notice was served upon the accused official vide this office No.2540/GE dated 03-11-2011 & No. 2830/GE dated 25-11-2011

Reply to show cause notice furnished by the accused official was critically examined. The accused official was heard in person on 8-5-2012 offering him last opportunity to explain and justify his innocence in the case. During the course of personal hearing accused official failed to justify his non-involvement in illicit damage. The accused was therefore liable to be proceeded/ removed from Service but in view of his long services rendered to the department he was compulsorily retired from service vide DFO Siran Office Order No. 113 dated 28-11-2012

Against the said compulsorily retirement order, the accused preferred an appeal before the appellate authority.

The appellate authority accept the appeal vide his No.3964/GE dated 7-2-2013 and advised this office for withdrawal of office order No. 113 & 114 dated 28-11-2012 and re-considered the case in light of findings of the enquiry officer. On receipt of above cited letter this office withdrawn office order No. 113 & 114 dated 28.11.2012 and Mr. Azhar Ali Khan DFO Upper Kohistan Forest Division Dasso appointed as enquiry officer to conduct denove enquiry vide this office order No. 208 dated 14-2-2013. The enquiry officer vide his No. 2110/GE dated 08.4.2013 returned the enquiry file, with the request to issue a fresh show cause notice and based on findings of already concluded enquiry, and finalize the case accordingly.

Therefore a show cause notice bearing No. 6257/GE dated 10-4-2013 was served upon the accused official.


Reply to show cause notice furnished by the accused official was critically examined. The accused official was also heard in person on 30-5-2013 offering the last opportunity to explain and justify his innocence in the case. During the course of personal hearing accused official failed to justify the non involvement in illicit cutting of trees. The accused is therefore, liable to terminate from Service, but keeping in view his long Service, the undersigned in the capacity of authority is hereby ordered to impose the following penalties upon the accused official:

1. Reduction of Two (2) lower stages below the present time scale of accused namely Muhammad Sufian Forest Guard.
2. The accused official may not be posted on any responsible position in his remaining service
3. The intervening period from 28-11-2012 to 14-2-2013 is hereby treated as leave with pay.
4. He will not be considered for promotion to higher rank for a period of Six months.

Sd/-(Zaffar Ali Khan)
Divisional Forest Officer
Siran Forest Division Mansehra

Copy forwarded to:-

1. Muhammad Sufian Forest Guard c/o SDFO Mansehra Forest Sub-Division for information and necessary action.
2. Head Clerk/Divisional Accountant for information & necessary action.


Divisional Forest Officer
Siran Forest Division Mansehra

attested.
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بخدمت جناب کنزرویٹو صاحب لوئر ہزارہ فارسٹ سرکل ایبٹ آباد

عنوان: اپیل برخلاف DFO صاحب سرن بحوالہ آفس آرڈر نمبر 329 مجریہ 06/06/2013

جناب عالی! اپیل برخلاف DFO صاحب سرن بحوالہ آفس آرڈر نمبر 329 مجریہ 06/06/2013

درج ذیل عرض خدمت ہے۔

1۔ یہ کہ فدوی کو ایک من گھڑت انکوائری کیس بابت نقصان جنگل ماسٹر RF کپارٹمنٹ نمبر 18 میں مورد الزام ٹھہرا کر DFO صاحب سرن نے انکوائری آفیسر کی رپورٹ پر بیک وقت چار سزاؤں دے دیں، جو کہ خلاف قاعدہ و قانون ہیں۔
2۔ یہ کہ فدوی کو متذکرہ آفس آرڈر کی کاپی بھی بروقت نہیں دی گئی تاکہ فدوی دی گئی چار سزاؤں کے خلاف بروقت اپیل کرنا، جو فدوی کا بنیادی قانونی حق اور انسانیت کا تقاضا تھا۔ لیکن جاری شدہ آفس آرڈر کو فدوی سے مخفی رکھا گیا۔ جو سراسر ظلم اور زیادتی کی انتہا ہے۔

3۔ یہ کہ فدوی کو ایک ہی کیس میں بیک وقت چار سزاؤں دے دینا اور اے قانون ہے۔ کسی ایک کیس میں کبھی بھی چار سزائیں نہیں ہو سکتیں۔

4۔ یہ کہ ات جیکند فدوی ریٹائر ہو چکے اور ریٹائرمنٹ کے بعد فدوی کو سزا کا آرڈر ملا جس سے فدوی کی پنشن پر بہت برا اثر پڑا ہے اور ریٹائرمنٹ کے دوران نقصان سے جو فدوی کیلئے سزا قابل برداشت ہے۔

5۔ فدوی نے 35/40 سال تک سزاؤں میں خدمات سرانجام دی ہیں اب فدوی کو مالی مشکلات میں دھکیل کر نا انصافی کی گئی ہے۔

استدعا ہے کہ فدوی کی Two Lower Stages کی سزا کو معاف فرما کر من جملہ تنخواہ بحال فرمائی جائے تاکہ فدوی پنشن سے بچوں کا پیٹ پال سکے۔ فدوی کو اصلاً پیش ہو کر وضاحت کرنے کی اجازت فرمائی جائے۔

الارض

محمد سفیان فارسٹ، گارڈ (ریٹائرڈ)

محلہ 24/6/14

الله

(Annex: H)

19

**OFFICE ORDER NO. 77 DATED ABBOTTABAD THE 24/03/2015 ISSUED BY
MR. JAVED ARSHAD CONSERVATOR OF FORESTS, LOWER HAZARA FOREST CIRCLE
ABBOTTABAD**

Readwith

- 1- Divisional Forest Officer Siran Forest Division, Mansehra office order No. 329, dated 06-06-2013
- 2- Appeal dated 24-06-2014 preferred by Muhammad Sufian, Forest Guard
- 3- Comments furnished by Divisional Forest Officer, Siran Forest Division Mansehra vide letter No. 137/GE dated 07-07-2014.
- 4- Personal hearing dated 18-03-2015.

Brief History

Muhammad Sufian Forest Guard while posted as incharge Balakot Beat of Lower Siran Forest Sub-Division was involved in illicit damage as under:

Name of Forest	Species	No. of trees	Volume (Cft)
Massar RF C-18	Kail	73	18986
	Chir	06	787
Total		79	19773

To probe into the matter, the Divisional Forest Officer Siran Forest Division Mansehra being competent authority appointed Muhammad Riaz the then SDFO Mansehra Forest Sub-Division Mansehra as an Enquiry Officer into the case under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 vide his office endorsement No. 7248-50/GE dated 12-04-2011, who accordingly finalized the case and recommended one of the major penalty.

The Divisional Forest Officer Siran Forest Division, Mansehra after conducting personal hearing of the Forest Guard ordered for compulsorily retirement vide his office order No. 113, dated 28-11-2012.

Discussion

The appellant preferred an appeal before the Conservator of Forests, Lower Hazara Forest Circle Abbottabad (appellate authority) against the said order. The DFO, Siran was advised vide this office letter No. 3964/GE dated 07-02-2013 to withdraw his office order No. 113, dated 28-11-2012 and re-consider the entire case in the light of findings of Enquiry Officer and office order be then modified accordingly. The DFO, Siran withdraw the said office order and appointed Mr. Azhar Ali Khan the then DFO, Upper Kohistan Forest Division, Dasso as Enquiry Officer vide his office order No. 208, dated 14-02-2013 to conduct de novo enquiry, who vide his letter No. 2110/GE dated 08-04-2013 returned the case with the remarks to issue a fresh show cause notice and based on the findings and already conducted concluded enquiry, fresh order be passed accordingly.

The DFO, Siran after issuing another fresh Show Cause Notice and conducting personal hearing of the Forest Guard ordered as under vide his office order No. 329, dated 06-06-2013:

- 1- Reduction of two (2) lower stages below the present time scale of accused namely, Muhammad Sufian Forest Guard.
- 2- The accused official may not be posted on any responsible position in his remaining service.
- 3- The intervening period from 28-11-2012 to 14-02-2013 is hereby treated as leave with pay.
- 4- He will not be considered for promotion to higher rank for a period of Six months.

The appellant preferred an appeal dated 24-06-2014 before the Conservator of Forests, Lower Hazara Forest Circle Abbottabad (appellate authority) against the said office order. The appeal was sent to DFO Siran for his comments, who vide his letter No. 137/GE dated 07-07-2014 furnished comments.

Order

Personal hearing of the Forest Guard has been conducted on 18-03-2015 and his explanations were not justified, hence, appeal rejected.

Sd/- Javed Arshad
Conservator of Forests
Lower Hazara Forest Circle
Abbottabad

Memo.

Copy forwarded to:-

- 1- Divisional Forest Officer Siran Forest Division, Mansehra for information with reference to his letter No. 137/GE dated 07-07-2014. The Enquiry file from page-1 to 168 is returned herewith, which may be acknowledged.
- 2- Muhammad Sufian Forest Guard C/O DFO, Siran Forest Division Mansehra for information with reference to his appeal dated 24-06-2014

Conservator of Forests
Lower Hazara Forest Circle
Abbottabad

attested
JA

DBM No. 12
 BC No. 10-2754
 Name of Advocate. محمد لقمہ خان

S.No. 6316



Manshera Bar Association
 Manshera
 2017 Advocate High Court
 General Secretary
 District Bar Ass: Manshera

وکالت نامہ

بعدالت صوبائی سرسبز سوسائٹی اور ایس آر

عنوان: لقمہ خان بنام سائیکل کے رولز

منجانب: شہزاد لقمہ خان نوعیت مقدمہ رولز

دریں مقدمہ عنوان بالا میں اپنی طرف سے برائے بیرونی وجوہ دہی بمقام...
 محمد لقمہ خان...
 کو بدیں شرائط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بند بیہ مختار خاص رو بروعدالت حاضر ہوتا ہوں گا اور بوقت پکارے جانے وکیل موصوف کو اطلاع دیکر حاضر کروں گا اگر کسی پیشی پر مظہر حاضر نہ ہو اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو وکیل موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل موصوف صدر مقام پکھری کے علا کسی اور جگہ پکھری کے مقررہ اوقات سے پہلے یا بروز تعطیل بیرونی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام پکھری کے علا کسی اور جگہ سماعت ہوا یا پکھری کے اوقات کے آگے پیچھے سماعت ہونے پر مظہر کو کوئی نقصان پہنچے تو وکیل موصوف ذمہ نہ ہوں گے اور وکیل موصوف کو عرضی دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست بیان حلفی و تصدیق کرنے اور اسپر دستخط کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپرد دہائی دراضی نامہ دستبرداری و اقبال دعویٰ کا اختیار بھی ہوگا بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری بکطرفہ درخواست حکم اتنا ہی یا فیصلہ قبل از ڈگری اجراء ڈگری بھی وکیل موصوف کو بشرط ادائیگی علیحدہ محتاتہ ادا کرنے کا مجاز ہوگا اور بصورت ضرورت بدوران مقدمہ یا اپیل و نگرانی کسی دوسرے وکیل یا پیر سٹر کو بجائے خود یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیار حاصل ہوں گے جیسے وکیل موصوف کو اور اگر پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو وکیل موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیرونی نہ کریں اور ایسی حالت میں میرا مطالبہ وکیل موصوف کے برخلاف نہیں ہوگا مجھے کل ساختہ پر داختم وکیل موصوف مثل ذات خود منظور و قبول ہوگا۔ لہذا وکالت نامہ لکھ دیا ہے اور دستخط/انگوٹھا ثبت کر دیا ہے تاکہ سند ہے۔ مضمون وکالت نامہ من لیا ہے۔ اور اچھی طرح سمجھ لیا ہے۔

محمد لقمہ خان
 شہزاد لقمہ خان
 دستخط

مورثہ 15/9/15

ACCEPTED

Handwritten signature and text.

Cell #

15/9/15

03005614436

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

Appeal No. 361/2015

Muhammad Sufian Ex-Forest Guard
Son of Jehangir, resident of Village Dharmang
Post Office Dhodial Tehsil and District
Mansehra

Appellant

VERSUS

1. Province of Khyber Pakhtunkhwa Through
Secretary Environment Department,
Civil Secretariat Peshawar
2. Chief Conservator of Forests
Khyber Pakhtunkhwa Peshawar
3. Conservator of Forests,
Lower Hazara Forest Circle, Abbottabad

Divisional Forest Officer
Siran Forest Division Mansehra

Respondents

PRELIMINARY OBJECTIONS

1. That the appellant has no cause of action.
2. The appellant has no locus standi to file the appeal.
3. The appeal is bad for non joinder of necessary parties and mis-joinder of necessary parties.
4. That the appellant has been estopped by his own conduct to file the appeal.
5. That the appeal is badly bared by time.
6. That the appeal is not maintainable its ^{present} permanent forum.
7. That the Honorable Tribunal has no jurisdiction to entertain the appeal.

REPLY BY THE RESPONDENTS

1. It is correct.

2. It is correct to the extent that the appellant has furnished his reply to the charge sheet and statement of allegations but has failed to provide substantial evidence to prove himself innocent. Therefore the punishment awarded by the competent authority on the recommendation of Enquiry Officer is quite correct rather lesser than that the guilt of appellant.
3. It is incorrect. The Enquiry Officer has conducted the enquiry judiciously and impartially in accordance with the law. It was up to the appellant to provide substantial documentary evidence in rebuttal of allegations leveled against him but he failed. All the legal requirements have been completed by the Enquiry Officer as per provisions of rules.
4. The Show Cause notice was served upon the appellant by the competent authority keeping in view the recommendations of Enquiry Officer. In fact the appellant failed to prove himself innocent by providing substantial evidences either oral or documentary, therefore, the decision of the competent authority with regard to compulsorily retirement is quite correct and justified.
5. It is correct to the extent that the appellate authority accepted the departmental appeal of appellant preferred against DFO Siran (competent authority) office order No. 113 dated 28.11.2012 vide letter No. 3964/GE dated 7.2.2013 (**Annex-1**) and directed to withdraw the office order through which the appellant was penalized. In compliance the DFO Siran vide office order No. 208 dated 14.02.2013 (**Annex-2**) accordingly withdrawn the office order, entrusted denovo enquiry to Mr. Azhar Ali Khan the then DFO Upper Kohistan with a copy to appellant. In compliance the Enquiry Officer vide his letter No. 2110/GE dated 8.4.2013 (**Annex-3**) returned the enquiry file with the remarks to issue a fresh show cause notice based on findings of already concluded enquiry and fresh orders be passed accordingly. A fresh Show Cause notice was accordingly served upon the appellant vide DFO Siran letter No. 6257/GE dated 10.4.2013 (**Annex-4**) in the light of recommendations of Enquiry Officer. The appellant in compliance furnished his reply dated 29.4.2013 (**Annex-5**) and accordingly heard in person on 30.5.2013 (**Annex-6**) but the appellant again failed to produce substantial evidence in rebuttal of allegations

leveled against him. Therefore competent authority has correctly awarded the punishments vide office order No. 329 dated 06.06.2013.

6. It is correct. The appellate authority has directed vide his letter No. 3964/GE dated 7.2.2013 (**Annex-1**) only to withdraw his order dated 28.11.2012 but has categorically directed to reconsider the entire case in the light of findings of Enquiry Officer. In such evade, denovo enquiry was not required therefore competent authority has rightly served show cause notice on the appellant a fresh in the light of recommendations of Enquiry Officer. On receipt of written reply of the appellant and after personal hearing in order to ensure justice, the required procedure has fully and rightly been completed. The punishment so awarded to the appellant and therefore quite correct and is justified according to the rules on the subject.

7. The appellant was required to prefer an appeal before the appellate authority within 30-days as per provision of Appeal Rules 1981 but has failed to do so and preferred the appeal on 24.6.2014. After obtaining Para-wise comments, the appellate authority has rightly rejected the time barred appeal. It is incorrect that the decision of appellate authority dated 6.6.2013 has been received by the appellant on 28.5.2014 after attaining his age of superannuation. In fact the office order No. 329 dated 6.6.2013 was received from Divisional Office by the SDFO Mansehra (controlling officer) on 11.6.2013 (**Annex-7**) for delivery to appellant and accordingly the pay of appellant was reduced. How the appellant could say that the decision of competent authority was received by him on 28.5.2015 while he has withdrawn revised/reduced pay.

GROUNDS

- a. It is correct to the extent that FR-29 provides that punishment so awarded to the appellant should have been for a specific period but if the reduction of two stages below in the time scale is awarded for a minimum period of one year that would also be completed after retirement of appellant on superannuation of age. Hence the decision of competent authority is quite correct and justified.

- b. It is incorrect. The checking was carried out by the checking party headed by Mr. Sultan Khan the then SDFO Lower Siran was properly heard in person on 18.07.2011 (**Annex-8**) by the Enquiry Officer in presence of appellant. It was the liberty of appellant to cross examine the Prosecution Witness but he remained silent during the entire proceeding. As is evident of the report of Checking Officer/Prosecution Witness, the appellant was accompanied the checking party on first day of checking of forest (i.e 7.04.2011), night stayed at Jehandwal but on second day on receipt of an information regarding murder of his nephew the appellant returned back to home (**Annex-8**). In fact the Respondent No. 3 has never objected on the process of enquiry proceedings but has directed the competent authority vide his letter No. 3964/GE dated 7.2.2013 (**Annex-1**) to reconsider the entire case in the light of findings of Enquiry Officer. The recommendations of the Enquiry Officer contained in his enquiry report is reproduced as under:

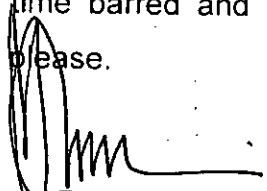
Being guilty of the charges Mr. Muhammad Sufian Forest Guard is recommended to be awarded any one of the Major Penalty prescribed in (Special Powers) Ordinance 2000 amended act 2005 which may led him to be removed from services compulsorily.

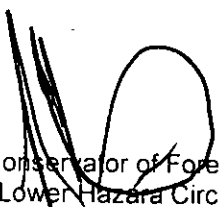
- c. As explained above, the appellate authority though has directed vide his letter No. 3964/GE dated 7.2.2013 (**Annex-1**) to withdraw his order dated 28.11.2012 but has categorically directed to reconsider the entire case in the light of findings of Enquiry Officer. In such circumvent, denovo enquiry was neither required nor advisable under the rules, therefore, competent authority has rightly served show cause notice a fresh in the light of recommendations of Enquiry Officer. On receipt of written reply of the appellant and after personal hearing as per provision of rules and natural justice, the required procedure has fully and rightly been completed. The punishment so awarded to the appellant and, therefore, quite correct and is justified according to the rules on the subject.
- d. It is incorrect. In fact only single punishment has been awarded to the appellant as per item-1 of the impugned order. In item-3, the intervening period i.e 28.11.2012 to 14.02.2013 during which the appellant remained out from service has been decided as leave with pay which was mandatory. While in item-2 and 4 are neither penalty in accordance with the provisions contained in Special Powers Ordinance 2000 but are just administrative instructions which were

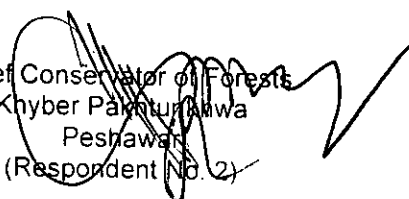
highly essential keeping in view the ill performance of appellant with regard to forest protection.

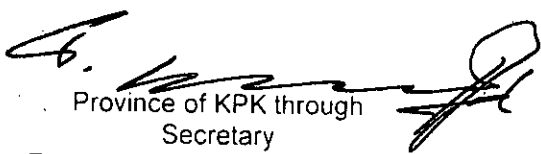
- e. It is incorrect. The appeal was barred by time, therefore, the appellate authority after obtaining required comments of competent authority has rightly and correctly rejected the appeal rather the appellant failed to produce any legal and substantial evidence in his defense and to prove himself innocent.
- f. It is incorrect. The appellant was required to mention all the legal grounds in instant appeal enabling the department/respondents to rebut the same in writing under the rules. However, the respondents also seek leave to raise additional grounds at the time of arguments.

It is humbly prayed that the appeal being infructious, based on conjecture, surmises, time barred and not maintainable under the rules may kindly be dismissed please.


 Divisional Forest Officer
 Siran Forest Division
 Mansehra
 (Respondent No. 4)


 Conservator of Forests
 Lower Hazara Circle
 Abbottabad
 (Respondent No. 3)


 Chief Conservator of Forests
 Khyber Pakhtunkhwa
 Peshawar
 (Respondent No. 2)


 Province of KPK through
 Secretary
 Forestry, Environment & Wildlife
 Department Peshawar
 (Respondent No. 1)

لواء کرسٹل ٹریبونل K.P.K پشاور

لہریاں Ex Foreign Guard سڈ ڈھڑنگ بچل ڈھڑیال پشاور
دنام النیہز - ابلہنت

تیاک
حکومت K.P.K پشاور و نیرہ - رماہرہنت

اپیل کرسٹل

فیا بلی، منیرت نامتاماں اور تاد شری مونی لہریاں ذیل
میں ہے

سماہ پر دین افتر بیوہ -

گل صید ح ^{سنیاں} لیران
سماہ گل رنا دفتر لہریاں ساٹان دھڑنگ
ڈھڑیال لہریاں نام النیہز -

الترم ۰۱۹ / ۱۸ / ۶

لہریاں مونی بزارہ ح سنیاں

لہریاں دیکے از شری دارا

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DBAM No. _____

54

S.No _____

13052

BC No. _____

10-2704

Fee Rs. 100/-

Name of Advocate _____

محمد اعجاز

وکالت نامہ

General Secretary
District Bar Association
Mansehra



بعدالت: سرکار سبٹریٹل فیوڈ کرم صدر سٹیٹوہ اسٹیٹوہ

عنوان: محمد عثمان بنام: کے ٹیکہ فیوڈ کرم

منجانب: اسٹیٹوہ سٹیٹوہ نوٹس مقدمہ: سرکار سبٹریٹل
رہنما
باحث تحریر آنکہ

دریں مقدمہ عنوان بالا میں اپنی طرف سے برائے پیروی و جواب دہی بمقام کے لئے
 محمد اعجاز
 کو بدیں شرائط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بوقت پکارے
 جانے وکیل موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہوا اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ
 میرے خلاف ہو گیا تو وکیل موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل موصوف صدر مقام پکھری کے علاوہ
 کسی اور جگہ پکھری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ پکھری کے علاوہ
 کسی اور جگہ سماعت ہوا یا پکھری کے اوقات کے آگے پیچھے سماعت ہونے پر مظہر کو کوئی نقصان پہنچے تو وکیل موصوف ذمہ دار
 نہ ہوں گے اور وکیل موصوف کو عرضی دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست
 بیان حلفی و تصدیق کرنے اور اسپر دستخط کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرانے اور قسم کاروبہ وصول
 کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپر دہاشی و راضی نامہ و دستبرداری و اقبال دعویٰ کا اختیار بھی ہوگا
 بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا فیصلہ قبل از ڈگری اجراء ڈگری بھی وکیل موصوف
 کر بشرط ادا ہوگی علیحدہ محتاتانہ ادا کرنے کا مجاز ہوگا اور بصورت ضرورت بدوراں مقدمہ یا اپیل و نگرانی کسی دوسرے وکیل یا بیرسٹر کو
 بجائے خود یا اپنے ہمراہ مقرر کریں اور مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے وکیل موصوف کو
 اور اگر پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو وکیل موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت
 میں میرا مطالبہ وکیل موصوف کے برخلاف نہیں ہوگا مجھے کل سہ ماہیہ پر داختم وکیل موصوف مثل ذات خود منظور و قبول ہوگا۔
 لہذا وکالت نامہ لکھ دیا ہے اور دستخط/انگوٹھا ثبت کر دیا ہے تاکہ سند رہے۔ مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے۔

مورخہ 19/7/19ء 20

ACCEPTED

محمد اعجاز

سرکار سبٹریٹل فیوڈ کرم صدر سٹیٹوہ اسٹیٹوہ

Handwritten notes and signatures on the right margin.