

28th March, 2023

Junior to counsel for the appellant present. Mr. Fazal Shah Mohmand, Addl. A.G alongwith Yousaf Khan, Superintendent for respondents No. 1 to 3, 5 & 7 present. Nemo on behalf of respondent No. 6.

SCANNED
KPST
Peshawar


Reply/comments on behalf of respondents No. 1 to 3, 5 and 7 already submitted. Respondent No. 6 failed to submit reply/comments despite last chance, hence placed ex-parte. To come up for rejoinder, if any, and arguments on 02.06.2023 before the D.B. Parcha Peshi given to the parties.



(Fareeha Paul)
Member(E)

02.06.2023

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present and requested that the brief of the appeal in hand has been misplaced, therefore, an adjournment may be granted. Adjourned. To come up for arguments on 13.09.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

20.12.2022

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

Reply/comments on behalf of respondents No. 1 to 4 & 7 has already been submitted, while reply/comments on behalf of respondent No. 6 is still awaited. Learned Additional Advocate General seeks further time for submission of reply/comments on behalf of respondent No. 6. Last opportunity given. In case the last chance as given is not availed, the next adjournment shall be subject to prior payment of cost of Rs. 5000/-. Adjourned. To come up for submission of reply/comments on behalf of respondent No. 6 on 07.02.2023 before the S.B.

SCANNED
KPST
Peshawar


(Salah-Ud-Din)
Member (J)

07th Feb. 2023

Clerk of learned counsel for the petitioner present. Mr. Uzair Azam Khan, learned Additional Advocate along with Yousaf Khan Superintendent for respondents No. 1 to 4 and 7 present.

Reply/comments on behalf of respondent No. 6 is still awaited. On the request of learned AAG another chance is given to the respondent No. 6. To come up for reply/comments of respondent No. 6 and cost of Rs. 5000/- as ordered on 20.12.2022 on 28.03.2023 before the S.B.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member(E)

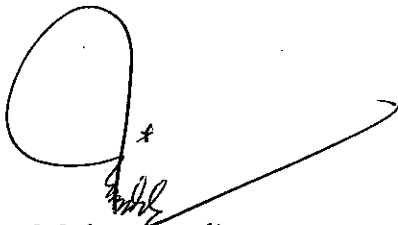
18.11.2022

Nemo for the appellant. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Muhammad Iqbal, Superintendent for respondents No. 1 to 5 & 7 present. Mr. Tariq Shah, Senior Auditor for respondent No. 6 present.

Reply/comments on behalf of respondents No. 1 to 4 & 7 submitted which are placed on file. As per previous order sheet, cost of Rs. 3000/- stands imposed upon the respondents which is paid to Reader of the court namely Mr. Safer Khan, as no one is present on behalf of the appellant. The same be given to the appellant on the next date and receipt thereof be obtained from the appellant on the next date. Reply/comments on behalf of respondent No. 6 are still awaited. Representative of respondents No. 6 stated at the Bar that the department has not received notice in the instant service appeal. The office is directed to issue notice to the respondent No. 6 for submission of reply/comments. To come up for reply/comments of respondent No. 6 on 20.12.2022 before S.B. Notice be also issued to the appellant and his counsel to attend the court on the date fixed.

Respondent No. 6
was put on
Notice &
Counsel was
informed
telephonically on
19/12/2022

SCANNED
K I T
Peshawar


(Mian Muhammad)
Member (E)

17.10.2022

Counsel for appellant present.

Naseer Ud Din Shah, learned Assistant Advocate General alongwith Sajid Anwar Assistant for respondents present.

Despite last chance, reply on behalf respondents was not submitted. Representative of respondents requested for time to submit reply/comments. Granted but on payment of cost of Rs.3000/- to be paid on behalf of respondents. To come up for reply/comments on 18.11.2022 before S.B.

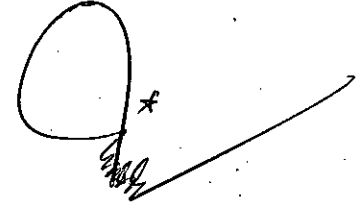


(Rozina Rehman)
Member (J)

19.07.2022

Junior of learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Sajid Anwar, Assistant for the respondents present.

Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments. Adjourned. To come up for reply/comments on 21.09.2022 before S.B.



(Mian Muhammad)
Member (E)

21.09.2022

Junior of learned counsel for the appellant present. Mr. Sajid Anwar, Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

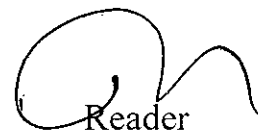
Reply/comments on behalf of respondent not submitted. Last opportunity given to the respondents to submit written reply/comments on the next date positively, failing which their right for submission of written reply/comments shall be deemed as struck of. Adjourned. To come up for submission of written reply/comments on 17.10.2022 before the S.B.



(Salah-Ud-Din)
Member (J)

17.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 12.05.2022 for the same as before.



Reader

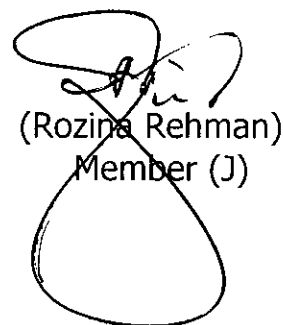
12.05.2022

Appellant present through counsel. Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections with direction to appellant to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for reply/comments. To come up for written reply/comments on 19.07.2022 before S.B.

Rs-900/-
Appellant Deposited
Security & Process Fee

A. H. H. H.
12/5/22



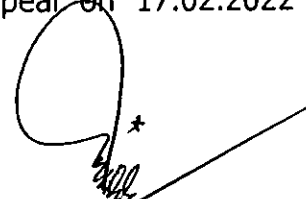


(Rozina Rehman)
Member (J)

FORM OF ORDER SHEET

Court of _____

Case No. - 7577 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/10/2021	<p>The appeal of Mr. Mohsin Ali Khan resubmitted today by Mr. Hafeez-ul-Asad Shangla Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	16.12.2021	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>16/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the appellant present.</p> <p>Learned counsel for the appellant submitted an application stating therein that during pendency of the instant service appeal appellate order was passed on his departmental appeal which was rejected on 04.11.2021. He therefore, requested for submission of amended appeal. Request is acceded to. To come up for further proceedings / amended appeal on 17.02.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>

The appeal of Mr. Mohsin Ali Khan, Deputy Director Mineral Development, District Abbottabad, Hazara Division received today i.e. on 06.10.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Certificate in respect of the appellant has not been signed.
- 2- Copy of inquiry report in respect of appellant mentioned in para-5 of memo of the appeal annexed as annexure L is not attached with the appeal which may also be submitted with the appeal.

No. 1976 /S.T,

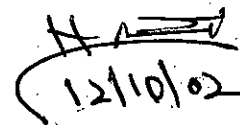
Dt. 06/10 /2021


REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Hafeez-Ul-Asad Shangla Adv.Pesh.

Sir,

objection removed as
certificate for Appellant signed
and copy of inquiry Report
available as Aux-L on
Page No - 4K 4 G.


12/10/21

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Amended Service Appeal No 7577/2021

Mohsin Ali Khan

VERSUS

Government of KP and others

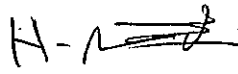
I N D E X

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGE
1.	Grounds of Amended Service Appeal	-	1-23/1
2.	Affidavit	-	23/2
3.	Addresses of the parties	-	23/3
4.	Copy of the additional assumption and Deputy Director Notification	'A'	24-25
5.	Copies of the advertisement, offer letter, relevant section of Income Tax, notice and conditional allotment letter	'B to F'	26-32
6.	Copies of the complaint, report, direction to Dealing Assistant, summary for cancelation of lease and charge relinquished	'G to K'	33-40
7.	Copy of the inquiry report and statement of Appellant	'L'	41-44
8.	Copy of the notification charge sheet and statement of allegations	'M'	45-47
9.	Copy of the reply of Appellant	'N to O'	48-56
10.	Copy of the show cause notice and reply	'P'	57-62
11.	Copy of the letter dated 26-08-2020	'Q'	63
12.	Copy of the previous notification dated 18 th August, 2020	'R'	64-65
13.	Copy of the department and service appeal	'S & T'	66-90
14.	Copy of impugned notification dated 3-5-21	'U'	91-
15.	Copy of the withdrawal order and departmental appeal	'V & W'	92-107
16.	Copy of the impugned order	'W/1'	107A-
17.	Copy of the misc application and order of permission of Service Tribunal	'W/2'	107B-107C

18.	Copy of the notification and letter	'X'	108-113
19.	Copy of the para 105 of note sheet	'Z'	114
20.	Copy of the section 63 of Mines and Mineral Act, 2017 and writ-petition judgment	'Z/1'	115-121
21.	Copy of the cancellation order	'Z/2'	122-
22.	Copy of the high ups direction	'Z/3'	123-127
23.	Wakalat Nama (in original)	-	128

Appellant

Through:


(HAFEEZ-UL-ASAD SHANGLA)
Advocate,
High Court, Peshawar
Cell # 0314-5951897

Dated: -10-01-2022

(1)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Amended Service Appeal No 7577/2022

Mohsin Ali Khan, Deputy Director Mineral Development Hazara
Division Abbottabad (Ex-ADM Nowshera).....(Appellant)

V E R S U S

1. Government of Khyber Pakhtunkhwa, through Chief Secretary at Civil Secretariat Peshawar
2. Government of Khyber Pakhtunkhwa, through Secretary Minerals Development at Civil Secretariat, Peshawar
3. Government of Khyber Pakhtunkhwa through Director General, Mines and Mineral at Khyber Road, Peshawar
4. Chief Minister Khyber Pakhtunkhwa, in capacity of Appellate Authority under Khyber Pakhtunkhwa, Departmental Appeal Rule, 1986 at Chief Minister Secretariat, Peshawar
5. Government of Khyber Pakhtunkhwa, Assistant Director Mineral Development District Nowshera at Tehsil Road, Nowshera Kalan
6. Government of Khyber Pakhtunkhwa through Accountant General, Khyber Pakhtunkhwa, Peshawar Cantt
7. Government of Khyber Pakhtunkhwa through Secretary Administration at Civil Secretariat Peshawar..(Respondents)

Amended Service Appeal under Section 4 (a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order/notification No SOE (MDD/4-20/2019 dated 03rd May, 2021; substituted with the previous issued notification No SOE (MDD)/4-20/2019 dated 18-08-2020, through which minor penalty of “withholding of two (02) annual increments for two years” was imposed upon Appellant on the charges of “mishandling the issue regarding lease of Mr. Shujahat Ali S/O Nasrat Iqbal, who was granted the lease of block of minor mineral over an area of 1773.023 acres in village Mian Essa District Nowshera by District Auction Committee on 25th March, 2019 and against the impugned order No SO (E) MDD/4-20/2020/6565-67 dated 04-11-2021 communicated to Appellant on 02-12-2021 through which department appeal against the above mentioned substituted impugned order dated 03-05-2021 was rejected

PRAYER IN APPEAL:-

On acceptance of this Amended Service Appeal of the Appellant, the impugned notification/order No SOE (MDD)/4-20/2019 dated 03-05-2021 imposing the penalty of “withholding of two annual increments for two years” upon

the Appellant and substituted with the previous issued notification No SOE (MDD)/4-20/2019 dated 18-08-2020 alongwith impugned order No SO (E) MDD/4-20/2020 /6565-67 dated 04-11-2021 communicated to Appellant on 02-12-2021 through which department appeal against the above mentioned impugned order dated 03-05-2021 was rejected may kindly be set aside by declaring being an unlawful order and passed without lawful authority against the norms of justice, hence void ab-initio and consequently the Appellant may kindly be exonerated from the charges leveled against him being an innocent and the Respondents may kindly be directed to immediately restored/grant increments to the Appellant alongwith all arrears and back benefits.

Any other relief, which this Honourable Tribunal deems proper in the circumstances of the appeal may also be granted in favour of Appellant.

Departmental Appeal of the Appellant was rejected during the pendency of service appeal on 04-11-2021 and communicated to Appellant on 02-12-2021 hence this Amended Service Appeal after permission of this Honourable Tribunal.

Respectfully Sheweth:

Brief facts leading to this amended service appeal are as under:-

4

- 1) That the Appellant was appointed as Assistant Director through Khyber Pakhtunkhwa Public Service Commission on 09-12-2009 on regular basis in Mineral Development Department. Later on the Appellant was promoted to the Deputy Director Mineral Development vide Government of Khyber Pakhtunkhwa notification dated 13-05-2019 and currently the Appellant is working as Deputy Director Mineral Development Hazara Division at Abbottabad.
- 2) That the Appellant while posting as Assistant Director Mineral Development Headquarter Office Peshawar was assigned additional look after charge of the Office of Assistant Director Mineral Development Nowshera in April, 2019 and accordingly the Appellant assumed the additional look after charge of the Office of Assistant Director Mineral Development Nowshera on 11-04-2019 and look after additional charge was remained with the Appellant for two months and sixteen days i.e. up-to 26-06-2019. (Copy of the additional charge assumption and Deputy Director Notification is attached as Annex 'A').
- 3) That an advertisement was published in the newspaper regarding auction of Minor Minerals in District Nowshera by the then Assistant Director Mineral Development, Nowshera on 12-03-2019. The auction of area of Minor Mineral Block No 3 comprising of 1773.023 acres situated near village

Mian Essa District Nowshera was held under the Chairmanship of Deputy Commissioner Nowshera on 25th March, 2019. For this area of Block No 3, Mr. Shujat Ali S/O Nausrat Iqbal of District Nowshera offered highest bid of Rs 305,000,000/- and deposited 1/4th of the bid money amounting to Rs 76, 250,000/- at the fall of hammer under Khyber Pakhtunkhwa MSG Act 2017. Accordingly offer letter was issued to him by the then Assistant Director Mineral Development Nowshera (Respondent No 5) on 05-04-2019 after approval of Licensing Authority. Mr. Shujat Ali completed all the formalities of offer letter except payment of advance income tax, which was mandatory under Section 236-A of the Income Tax Ordinance. In the meanwhile, the Appellant was assigned additional look after charge of the office of Assistant Director Mineral Development Nowshera and the Appellant assumed the charge on 11-04-2019 and accordingly the Appellant issued a notice of 14 days to Mr. Shujat Ali for deposit of advance income tax and professional tax certificate on 22-04-2019. On the expiry of notice time, Mr. Shujat Ali failed to deposit advance income tax. Accordingly the then Director General Mines and Minerals directed the Appellant through phone to immediately issue conditional allotment letter to Mr. Shujat Ali. In response, the Appellant issued conditional allotment letter to Mr. Shujat Ali on 06-05-2019. (Copies of

the advertisement, offer letter, relevant section of Income Tax, notice and conditional allotment letter are attached as Annex 'B' 'C' 'D' 'E' and 'F' respectively).

- 4) That Mr. Shujat Ali submitted a complaint/application addressed to the Headquarter Office, Peshawar and copy endorsed to the Regional Office of Nowshera and requested not to issue work order to him till completion of construction work of approached road of the leased area of Block-3 village Mian Essa District Nowshera. In order to verify the content of application, Mr. Tajamal Shah Royalty Sub Inspector and Mr. Jabran Ullah Mineral Guards were directed to visit the area and to submit report. They visited area and submitted report on 14-05-2019. In order to re-verify the report of field staff, the Appellant personally visited the Minor Mineral area of Block-3 situated near village Mian Essa District Nowshera on 27-05-2019 and observed that the area also have other approached roads/paths from Karnal Shair Khan Interchange side. Accordingly the Appellant filed the report of field staff on 27-05-2019 and directed the dealing Assistant to put up the summary for cancellation of the lease to Headquarter Office in case of failure of the lessee to comply with the instructions mentioned in allotment letter. Accordingly summary was forwarded to Headquarter Office, Peshawar for cancelation of Mining lease and forfeiture of security on

10-06-2019. In the meanwhile, Appellant was promoted to the Deputy Director Mineral Development and posted in Hazara Division Abbottabad and relinquished the charge of the Headquarter Office on 26-06-2019. (Copies of the complaint, report, direction to Dealing Assistant, summary for cancelation of lease and charge relinquished is attached as Annex 'G' 'H' 'I' 'J' and 'K' respectively).

- 5) That the then Director General Mines and Minerals conducted inquiry in the matter on the direction of high ups and called the Appellant in his office on 27-06-2019, where the Appellant submitted his statement. (Copy of the inquiry report and statement of Appellant is attached as Annex 'L').
- 6) That the competent authority vide notification No SO (E)/MDD/4-1/2019 dated 26-11-2019 constituted Inquiry Committee, comprising of Additional Secretary Finance and Chief Commissioner of Mines Labour Welfare and charged the Appellant against the charges mentioned in the charge sheet and statement of allegations interestingly not contain the charge of failure to stop/curb illegal excavation and transportation of the Minor Minerals in the area of jurisdiction though this charge was substituted later on through impugned substituted order dated 03-05-2021 and charges are reproduce below.

- i. That you mishandled the issue regarding lease of Mr. Shujat Ali S/O Nusrat Iqbal, who was granted the lease of block of Minor Minerals over an area of 1773.023 acres near village Mian Essa/Massam Dheri, Nowshera by District Auction Committee on 25th March, 2019.
- ii. That you deputed Mr. Tajamal Shah Royalty Sub Inspector Nowshera and Jabran Ullah Mineral Guard Nowshera to probe into the matter and submit report. In their report they stated that approach road to the leased area was in deteriorated condition and transportation of minerals was not possible on the same route. However, the later reports proved that their statement was incorrect as there were alternate routes through which transportation of mineral was possible.
- iii. That you instead verifying the said statement relied upon the same and proceeded further in the matter.
- iv. That you failed to keep secrecy of official record as the said statement was made available to the lessee who submitted it in the Peshawar High Court as evidence in his writ petition.
- v. That you failed to cancel the lease inspite of the fact that he has failed to comply with all the condition of

9

offer letter. Instead you issued him fifteen (15) day's notice/reminder for depositing the dues.

vi. That due to your irresponsible behavior a loss of an amount of Rs 8,472,218/- outstanding against the ex-lessee, after issuance of cancellation letter and forfeiture and adjustment of security towards Government dues, has been caused to Government exchequer". (Copy of the notification charge sheet and statement of allegations is attached Annex 'M').

- 7) That the Appellant then appeared before the Inquiry Committee and submitted his defense statement/written reply on 09-12-2019 and thereafter the Inquiry Committee submitted its report on 31-12-2019 to the competent authority with the recommendation for imposing minor penalty of withholding of one increment for two years over the Appellant. (Copy of the reply of Appellant and inquiry report is attached as Annex 'N and O').
- 8) That thereafter, the Appellant was issued show cause notice vide letter dated 03-03-2020 and then the Appellant submitted reply to the show cause notice on 13-03-2020. (Copy of the show cause and Appellant reply is attached as Annex 'P').
- 9) That the Appellant was directed to appear before Secretary Administration Khyber Pakhtunkhwa for personal hearing. During personal hearing, the Secretary Administration

directed the Appellant to only speak on those allegations, which were proved by the inquiry committee i.e. para 1 (i) of recommendation of the inquiry committee report. Accordingly, the Appellant explained all the evidence regarding para 1 (i) of the recommendation of inquiry committee report and explained innocence before the hearing officer. Accordingly, the hearing officer recommended for initiation of action against the predecessor of the Appellant for issuance of offer letter as during personal hearing the Secretary Administration pointed out that the person who issued offer letter is not charged in the inquiry and the Appellant who issued notice under Section 63 of the act is charged for issuance of notice. Accordingly, the competent authority directed for initiation of action against the predecessor of the Appellant vide letter No SO (E)/MDD/4-20/2019 dated 26-8-2020. However, no action is initiated on the above direction of the competent authority till-date and reportedly the same has been filed by the Government, which shows that para 1 (i) of recommendation of inquiry report is baseless. (Copy of the letter dated 26-08-2020 is attached as Annex 'Q').

- 10) That thereafter, the competent authority vide impugned order/notification dated 18-08-2020, imposed minor penalty of "withholding of two (2) annual increments for two years" over the Appellant on the charges of "Failure to

11

stop/curb illegal excavation and transportation of the minor minerals in the area of jurisdiction". (Copy of the previous impugned notification/order dated 18-8-2020 is attached as Annex 'R').

- 11) That thereafter, the Appellant filed departmental appeal through proper channel before Respondent No 4 on 15-09-2020 against the previous impugned notification dated 18-08-2020 and after the laps of 90 days, filed appeal before Service Tribunal. (Copy of the departmental appeal and service appeal and ser is attached as Annex 'S & T').
- 12) That in the meanwhile instead of to decide the appeal of the Appellant, the competent authority vides impugned notification Ends No SOE (MDD/4-20/2019/7607-17 dated 3rd May, 2021 issued impugned substituted notification and imposed minor penalty of "withholding of two (2) annual increments for two years" over the Appellant on the charges of "Mishandling the issue regarding the lease of block of minor minerals over an area of 1773.023 acres situated near village Mian Essa/Massam Dehri Nowshera by District Auction Committee on 25-03-2019. (Copy of the impugned substituted notification dated 03-05-2021 is attached as Annex 'U').
- 13) That the Appellant on dated 03-06-2021 withdrawn service appeal from the Khyber Pakhtunkhwa Service Tribunal

Peshawar for filing of departmental appeal against the impugned notification No SOE (MDD)/4-20/2019 dated 18th August, 2020 issued on 03-05-2021 and after lapsed of statutory period of 90 filed service appeal against the impugned substituted notification. (Copy of the withdrawal order and departmental appeal is attached as Annex 'V & W').

- 14) That during the pendency of service appeal, the departmental appeal filed by the Appellant was rejected on 04-11-2021 through impugned notification No SO (E)/MDD/4-20/2020/6565-67 communicated to Appellant on dated 02-12-2021. (Copy of the impugned order is attached as Annex 'W/1').
- 15) That thereafter, the Appellant was permitted to file amended service appeal to impugned departmental appeal rejection order dated 04-11-2021, hence this amended service appeal on the following grounds inter-alia: - (Copy of the misc application and order of permission of Service Tribunal is attached as Annex 'W/2').

GROUND:-

- A) That the competent authority previously vide notification dated 18-08-2020, imposed minor penalty of "withholding of two (2) annual increments for two years" over the Appellant on the charges of "Failure to stop/curb illegal excavation and transportation of the minor, minerals in the

area of jurisdiction". However, in the charge sheet, statement of allegations and the show cause notice dated 03-03-2020, the Appellant was never been charged for "failure to stop/curb illegal excavation and transportation of the minor mineral in the area of jurisdiction". Later on instead to decide the departmental appeal of the Appellant, the competent authority vides substituted impugned notification of the same date and number circulated on 03-05-2021 imposed minor penalty of "withholding of two (2) annual increments for two years" over the Appellant on the charged of mishandling the issue regarding the lease of block of minor minerals over an area of 1773.023 acres situated near village Mian Eass/Massam Dehri/Nowshera auctioned by District Auction Committee on 25-03-2019 clearly indicate mala-fide on the part of Respondents coupled with intention to imposed penalty on Appellant through one or other way. Hence the penalty imposed upon the Appellant through impugned substituted order dated 03-05-2021 and upheld through impugned order dated 04-11-2021 by rejecting departmental appeal of the Appellant are liable to be set aside.

- B) That in the order dated 18-08-2020, the Appellant has been punished on the charges which were neither included/ mentioned in charge sheet nor statement of allegation or show cause notice. The Appellant was neither provided

14

opportunity to present his reply regarding allegation of "Failure to stop/curb illegal excavation and transportation of minor minerals in the area of jurisdiction" nor provided personal hearing regarding the efforts made by the Appellant for the stoppage of illegal excavation from the area of Appellant jurisdiction, so the Appellant is suffering unheard, which is against the principle of law and equity; and shows mala-fide on the part of Respondents and when the Appellant impugned this unlawful order of Respondents, they substituted the order with impugned order dated 03-05-2021; hence penalty imposing impugned substituted order and departmental appeal rejection order dated 04-11-2021 are liable to be set aside. Further, the substituted impugned notification of same number and dated circulated on 03-05-2021 is also liable to be set aside as the competent authority before issuance of impugned substituted notification dated 03-05-2021 ignored the decision of Appellate authority dated 30-11-2020, decision of Licensing authority/MTC dated 30-03-2021 and notification dated 29th April, 2021 and also ignored the action of the letter dated 29-04-2021. (Copies of the notification and letter are attached as Annex 'X').

- C) That the whole proceeding against the Appellant is null and void in the eye of law, as the inquiry was conducted under the political influence and the remarks of the then Director

15

General Mines and Minerals in the para No 105 of the note portion of the Book No 3 Mian Essa file, is evidence to this effect. Further, nothing is mentioned against the Appellant in the fact finding inquiry conducted by the then Director General Mines and Minerals dated 05-08-2019. (Copy of the para No 105 of the Note Sheet of file is attached as Annex 'Z').

- D) That first part of para 1 (i) of the recommendations of the inquiry committee "That charge at serial No 1 of the charge sheet partially proved as he had issued reminder to Ex-lessee instead of allotment letter in terms of Section 80 (12) of the act as he followed the footstep of his predecessor and violated the mandatory provision of law" is also against the direction of Appellate Authority/ Secretary Mines and Minerals department letter No SO (Appeal)MDD/6-28/MTC/2019/13008-10 dated 08-11-2019 whereby the Appellate Authority ordered for discouraging of cancellation of mining leases and directed the Director General Mines and Minerals Khyber Pakhtunkhwa/Assistant Directors of the Districts to give reasonable time to the lease holders for recovery of Government dues before the cancellation of mining leases. Hence, the assumption made by the inquiry committee is against the order of Appellate authority, hence order of imposition of penalty upon Appellant and then upholding through impugned

departmental appeal rejection order dated 04th November, 2021 are liable to be declared unlawful, passed without lawful authority, hence ineffective upon the rights of Appellant.

- E) That, the inquiry committee held the Appellant “partially responsible of the charge at serial No I of the charge sheet that Appellant have issued remainder notice to the ex-lessee instead of allotment letter in terms of Sub Section 80 of the Act by following the footstep of his predecessor Assistant Director Mineral Development Nowshera and violated the mandatory provision of the law is totally incorrect, against the law and direction of the Appellate authority dated 08-11-2019. In this regard, it is clarified that, the above mentioned assumption made by the inquiry committee is wrong, against the mandatory provision of law and against the auction notice published dated 12th March, 2019. The Section 236-A of Income Ordinance clearly indicates that the authority selling/leasing of the Government property through auction shall recover the advance income tax, from the highest bidder computed on the basis of total bid money. In light of Section 236-A of Income Tax Ordinance, 2011; no authority can grant lease through auction to highest bidder without recovery of income tax in advance computed on the basis of total bid money. In this case the highest bidder Mr. Shujat Ali S/O

17

Nousrat Iqbal completed all the formalities except to deposit advance income tax and professional tax certificate. Since, the amount of advance income was a huge amount of Rs 45750000/- (forty five million seven hundred fifty thousand and the section 236-A of the Income Tax was also very much clear, hence the Appellate could not took risk of it by issuance allotment letter/work order without collection of advance income tax. Furthermore, the FBR could also take action against the Appellate in case of non-recovery of huge amount of advance income tax. Accordingly the Appellant rightly issued a 14 days' notice for recovery of advance income tax, which is lawfully and covered under the law and after the expiry of notice time, the Appellate forwarded summary to Headquarters office for cancellation of lease and forfeiture of security amount vide letter dated 10-06-2019.

- F) That para 1 (i) of recommendation of inquiry committee is on the false assumptions and both the part of para 1 (i) are contradiction to each other. Fact of the matter is that all the regional offices of Directorate General Mines and Minerals Khyber Pakhtunkhwa are issuing offer letter after the conclusion of auction proceeding under intimation to the licensing authority, detail of which is available in the record of regional as well Headquarter Office. The inquiry committee also admitted this fact. In case such practice

was illegal, then the licensing authority was required to issue circular to all the regional offices; however instead to do so such practice is still continued and the Licensing Authority at the one hand moved a note to the Government to file action against the predecessor of the Appellant and on the other hand issued direction dated 30-03-2021 and 29-04-2021 for issuance of notice, which proves that the whole para 1 (i) of recommendation of inquiry committee is incorrect. The competent authority while issuance of substituted notification dated 03-05-2021 ignored the all above mentioned facts and so penalty imposed on the Appellant on the baseless charges is liable to be set aside.

- G) That 2nd part of the para 1 (i) of the recommendations of the inquiry committee "Moreover he himself issued 15 days notice though under the act Licensing Authority was/is required to issue notice" is against the direction of Appellate Authority dated 08-11-2019 and decision of licensing authority. The competent authority, while issuing of impugned substituted notification dated 03-05-2021 ignored the decision of licensing authority dated 30-3-2021 and ordered of Appellate authority dated 08-11-2020; hence the impugned substituted order dated 03-05-2021 and impugned departmental appeal rejection order on appeal of Appellant dated 04-11-2021 are liable to be set aside.

H) That Section 63 of Khyber Pakhtunkhwa Mineral Government Act, 2017; judgment of Peshawar High Court, Peshawar in writ petition No 487/2011 dated 12-01-2012 and letter No SO (Appeal/MDD/6-28/MTC/2019/3608-10 dated 08-11-2019 issued from the Government of Khyber Pakhtunkhwa Mineral Development Department and many other circulars received from the directorate minutes of the meeting of licensing authority dated 30-03-2021 and recent notification dated 29-04-2021 are on the same verdict that Mining Lease of a concessionaries cannot be cancelled without issuance of a notice. Accordingly, the Appellate being the authorized officer of the licensing authority and Secretary cum Member of the District Auction Committee issued 14 days notice for recover of advance income tax under the law. (Copy of the Section 63 of KP Mines and Minerals Act, 2017, judgment of Peshawar High Court is attached as Annex 'Z/1').

I) That the inquiry committee founded that the charges leveled against the Appellant in the Serial No ii, iii, iv, v and vi in the charge sheet could not be proved, as the charges leveled against Appellant are baseless and only on this point penalty imposed against the Appellate through impugned substituted order and order against impugned order on departmental appeal dated 04-1-201 are liable to be set aside.

- J) That no loss is suffered by the Provincial Government and the inquiry committee also admitted this fact, hence the impugned order is liable to be set aside.
- K) That the Appellate is innocent and there is no evidence against the Appellate in favour of charge which became cause of penalty, hence the penalty imposed against the Appellate through substituted notification dated 3rd May, 2021 alongwith impugned departmental order on appeal dated 04-11-2021 is liable to be set aside.
- L) That the whole proceeding and the penalty against the Appellant is based on mala-fide and the Appellant is innocent.
- M) That the lessee Mr. Shujat Ali filed writ petition in the Peshawar High Court, Peshawar and the Honourable Peshawar High Court, Peshawar vide order dated 3-6-2019, restricts the department not to demand payment from the Petitioner as well as no adverse action shall be taken against the Petitioner. Later on the Honourable Peshawar High Court Peshawar in its order dated 06-09-2019 dispose the application of the Petitioner/lessee for further recovery of the installments and allow the department for recovery of dues etc. After the above mentioned order of the Honourable Court the licensing authority vide order dated 30-09-2019 cancelled the mining lease, forfeited the security and decided to recover the other dues if any as

arrears of land revenue. It is worth mentioning here that the dues and installments were delayed due to the orders of the Honourable Peshawar High Court only and no loss is caused to the Government Exchequer, which is also admitted by the inquiry committee. (Copy of the order in writ petition No 3040/2019 C.M No 2049/19 (Copy of the cancellation order dated 30-9-2019 is attached as Annex 'Z/2').

- N) That the inquiry committee found that the charges leveled against the Appellant in the serial No ii, iii, iv, v and vi in the charge sheet could not be proved, as the charges leveled against Appellant are baseless and only on this point penalty imposed against the Appellant is liable to be set aside.
- O) That no loss is suffered by the Government Exchequer and the inquiry committee also admitted this fact. In this respect, the impugned order dated 18-08-2020 is liable to be set aside.
- P) That the Appellant is innocent and there is no evidence against the Appellant in favour of charge, which became cause of penalty, hence the penalty imposed against the Appellant through impugned notification/order alongwith impugned order dated 04-11-2021 through which departmental appeal of Appellant was rejected are liable to be set aside.

- Q) That this was the requirement of natural justice and equity also to take disciplinary action and to conduct inquiry against the office record keeper of the Nowshera office and also against the predecessor of the Appellant because the letter dated 05-04-2019 was issued by the predecessor of Appellant and this was also noted by competent authority and letter was properly issued for this purpose, but Respondents due to mala-fide conducted inquiry against the Appellant only and not against his predecessor.
- R) That the impugned order dated 18-08-2020 circulated on 03rd May, 2021 is against the law, equity and material available on record, hence liable to be set aside.
- S) That the impugned order is the outcome of non-reading and misreading of the facts and record, hence liable to be set aside. Moreover, departmental appeal rejection order dated 04-11-2021 is non-speaking and ambiguous in nature, hence liable to be set aside.
- T) That all the act, done and order made by the Appellant are for the purpose of enforcing the law and act according to its true spirit and not otherwise; hence the impugned orders are liable to be set aside being unlawful and against the spirit of natural justice.
- U) That the impugned order / notification dated 18-8-2020, 03-05-2021 and 04-11-2021 are based on surmised and conjectures; hence liable to be set aside.

- V) That throughout his career no complaint has ever been made by anyone against the Appellant for mismanagement, misfeasance, nonfeasance or malfeasance and the Appellant always follows the direction of his high ups for the purpose of protection of valuable state assets. (Copy of the direction of high ups is attached as Annex 'Z/3').
- W) That any other ground, not raised specifically may graciously be allowed to be raised at the time of arguments.

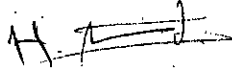
PRAYER:-

It is, therefore, most respectfully prayed that on acceptance of this Amended Service Appeal of the Appellant, the impugned notification/order No SOE (MDD)/4-20/2019 dated 03-05-2021 imposing the penalty of "withholding of two annual increments for two years" upon the Appellant and substituted with the previous issued notification No SOE (MDD)/4-20/2019 dated 18-08-2020 alongwith impugned order No SO (E) MDD/4-20/2020/6565-67 dated 04-11-2021 communicated to Appellant on 02-12-2021, through which department appeal against the above mentioned impugned order dated 03-05-2021 was rejected, may kindly be set aside by declaring being an unlawful orders and passed without lawful authority against the norms of justice, hence void ab-initio and consequently the Appellant may kindly be exonerated from the charges leveled against him being an innocent and the Respondents may kindly be directed to

23/1

immediately restored/grant increments to the Appellant
alongwith all arrears and back benefits.

Any other relief, which this Honourable
Tribunal deems proper in the circumstances of the appeal, may
also be granted in favour of Appellant.

Through: Appellant

(HAFEEZ-UL-ASAD SHANGLA)
Advocate,
High Court Peshawar

Dated: -11-01-2022

NOTE:-

No such amended appeal for the same Appellant against
the impugned substituted notification and impugned
departmental appeal order dated 04-11-2021 has earlier
been filed by me before this Honourable Tribunal prior to
instant one.


Advocate

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Mohsin Ali Khan.....(Appellant)

V E R S U S

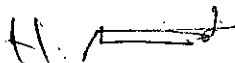
Government of KP and others.....(Respondents)

AFFIDAVIT

I, Mohsin Ali Khan, Deputy Director Mineral Development Hazara Division Abbottabad (Ex-ADM Nowshera), do hereby solemnly affirm and declare on oath that all the contents of accompanying Amended Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Honourable Court.

DEPONENT _____
CNIC # _____
Cell # _____

Identified by:-



(HAFEEZ-UL-ASAD SHANGLA)
Advocate
High Court, Peshawar

23/3

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Mohsin Ali Khan

VERSUS

Government of KP and others

MEMO OF ADDRESSES

APPELLANT

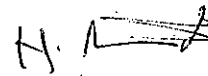
Mohsin Ali Khan; Deputy Director Mineral Development Hazara
Division Abbottabad (Ex-ADM Nowshera)

RESPONDENTS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary at Civil Secretariat Peshawar
2. Government of Khyber Pakhtunkhwa, through Secretary Minerals Development at Civil Secretariat, Peshawar
3. Government of Khyber Pakhtunkhwa through Director General, Mines and Mineral at Khyber Road, Peshawar
4. Chief Minister Khyber Pakhtunkhwa, in capacity of Appellate Authority under Khyber Pakhtunkhwa, Departmental Appeal Rule, 1986 at Chief Minister Secretariat, Peshawar
5. Government of Khyber Pakhtunkhwa, Assistant Director Mineral Development District Nowshera at Tehsil Road, Nowshera Kalan
6. Government of Khyber Pakhtunkhwa through Accountant General, Khyber Pakhtunkhwa, Peshawar Cantt
7. Government of Khyber Pakhtunkhwa through Secretary Administration at Civil Secretariat Peshawar

Appellant

Through:



(HAFEEZ-UL-ASAD SHANGLA)

Advocate,

High Court, Peshawar

Dated: -10-01-2022

Amex-A



~~Amex-A~~

CHARGE ASSUMPTION REPORT

In compliance with order No. SO (E) MDD/2-12/Vol-II/20182232-39, dated: 04.04.2019; Government of Khyber Pakhtunkhwa Peshawar. I Mr. Mohsin Ali Khan Assistant Director (Tech) is hereby assume the additional charge of the post of Assistant Director Mineral Development Nowshera w.c.f 11-04-2019 (F.N).


**Assistant Director (Tech)
Mineral Development Nowshera**

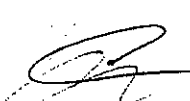
Endst No. 437-61 MDW/AD/NSR/Office Order 2019

Dated: 11 / 04 / 2019

Copy forwarded to:

1. P.A to Director General Mines & Minerals Khyber Pakhtunkhwa Peshawar for information please.
2. The Director Licensing-II H/Q office Peshawar for information please.
3. The Deputy Director Mineral-II H/Q office Peshawar for information please.
4. The Assistant Director (Accounts) H/Q office Peshawar for information please.
- ✓ 5. The District Account office Nowshera for information please.


**Assistant Director (Tech)
Mineral Development Nowshera**


ATTENDED



Government of
Khyber Pakhtunkhwa
Minerals Development Department

Dated Peshawar, June 24, 2019

NOTIFICATION

No. SO (E)/MDD/2-12/2019: Consequent upon their promotion from the post of Assistant Director (BS-17) to the post of Deputy Director (BS-18), the Competent Authority is pleased to post the following officers of the Directorate General, Mines & Minerals, Khyber Pakhtunkhwa as mentioned against each, in the best public interest, with immediate effect:-

S #	Name & Designation of officer	To be posted as
1.	Mr. Mohsin Ali Khan, Deputy Director (Tech) BS-18	Deputy Director (Tech), Abbottabad, Hazara Division against the vacant post.
2.	Mr. Ihsan Ud Din, Deputy Director (Tech) BS-18	Deputy Director (Tech) Swat, Malakand Division against the vacant post.
3.	Mr. Saeed Khan, Deputy Director (Admin & Accounts) BPS-13	Deputy Director Accounts H/Q Office, Peshawar against the vacant post.

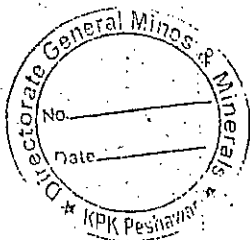
Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Dev: Department

No. SO (E)/MDD/2-12/2019:

Dated Peshawar, June 24, 2019

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
3. PS to Minister for Mines & Minerals Development Department, Peshawar.
4. P.S to Secretary Minerals Development Department, Khyber Pakhtunkhwa.
5. The District Accounts Officers concerned.
6. Officers concerned.
7. Master File.



DDC (A)
25/06/19

Mian Hussain Din
(Mian Hussain Din)

Section Officer (Estt :)

ATTESTED

ATTESTED

5

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روزنامہ مشرق
DAILY MASHRIQ PESHAWAR
 روزنامہ مشرق
 سرکاری اخبار
 ABC
 CERTIFIED

جلد 52، نمبر 04، رجب المرجب 1440ھ، 12 مارچ 2019ء، 28 مہینے تک قیمت 20 روپے

پیغام برائے انہی محدثین

براہ کرم اس کو جان لیوا نہ سمجھیں۔ ان کے خلاف کارروائی کی جائے گی۔ ان کی شناخت کی جائے گی۔ ان کے خلاف کارروائی کی جائے گی۔ ان کے خلاف کارروائی کی جائے گی۔

نمبر	تاریخ	مقدار	ملاحظات
1	24,000,000/-	240,000,000/-	
2	113,000/-	1,122,000/-	
3	205,000/-	2,040,500/-	
4	55,000/-	522,500/-	
5	366,300/-	3,663,000/-	
6	15,000/-	150,000/-	
7	250,000/-	2,500,000/-	
8	754,300/-	7,543,000/-	
9	250,000/-	2,500,000/-	
10	250,000/-	2,500,000/-	
11	200,000/-	2,000,000/-	
12	400,000/-	4,000,000/-	
13	250,000/-	2,500,000/-	
14	250,000/-	2,500,000/-	
15	3,000,000/-	30,000,000/-	

Handwritten signature or stamp in the left margin.

Detailed handwritten notes in Urdu below the table, providing details for each entry.

ATTESTED
ATTESTED

Annex C

27

Annex B



OFFICE OF THE
ASSISTANT DIRECTOR MINERAL DEVELOPMENT
NOWSHERA

No: 618 /MDW/MM/NSR/Mian Essa / Massam Dherai Block No. (03)/ 2019 Dated: 05/04/2019

To

Mr. Shujat Ali S/O Nusrat Iqbal
R/O Moh: Awan, village Badrashi.
District Nowshera

Subject:

OFFER LETTER FOR GRANT OF MINING LEASE OF MINOR MINERAL FOR THE PERIOD OF ONE YEAR OVER AN AREA OF 1773.023 ACRES NEAR VILLAGE MIAN ESSA / MASSAM DHERI BLOCK NO. 03 IN DISTRICT NOWSHERA.

Reference your application dated: 20.03.2019 and subsequent auction conducted on 25.03.2019, under the Chairmanship of Deputy Commissioner Nowshera, for grant of subject mining lease.

The Licensing Authority/Director General Mines & Mineral Khyber Pakhtunkhwa has been pleased to approve your highest bid of Rs: 305,000,000/- (thirty crore and fifty lac only) for the grant of one year mining lease over the subject area.

You are therefore, advised to deposit Rs: 45,750,000/-, as 15% advance withholding tax, Rs: 15000/- as departmental demarcation fee and submit Professional tax certificate, within **Fifteen (15) days** from the date of issuance of this offer letter, so that work order may be issued. In case of failure, your security amounting to Rs: 76,250,000/- shall be forfeited in favor of Government and this offer letter shall be considered as withdrawn.

Furthermore, you will deposit remaining amount in monthly installment so that total auction money may be cleared three months prior of the expiry of lease. And you will abide all the instruction issue by this department from time to time as mention Khyber Pakhtunkhwa mineral Governance act 2017/Rules. Further more you will deposit Rs 33,888,890 as first month installment within fifteen days after issuance of work order.

That this offer letter stand withdrawn as and when the stay of Peshawar High Court Peshawar Abbottabad bench against your black listing is vacated.

05/04/2019
Assistant Director (Tech)
Mineral Development Nowshera

Endst: No: 619 /MDW/MM/NSR/Mian Essa / Massam Dherai Block No. (03)/ 2019 Dated: 05/04/2019

Copy to:

1. The Director General Mines & Mineral Khyber Pakhtunkhwa Peshawar w/r to Directorate approval letter No. 6050/MDW/MM/NSR/Mian Essa Block No. 03 dated: 02-04-2019 for information.
2. The Deputy Commissioner Nowshera for information, please.

ATTESTED

05/04/2019
Assistant Director (Tech)
Mineral Development Nowshera

ATTESTED

(4) Advance tax under this section shall not be collected from Government, a foreign diplomat, a diplomatic mission in Pakistan, or a person who produces a certificate from the Commissioner that his income during the tax year is exempt from tax.

²[236A. Advance tax at the time of sale by auction.— (1) Any person making sale by public auction³[or auction by a tender], of any property or goods⁴ [(including property or goods confiscated or attached)] either belonging to or not belonging to the Government, local Government, any authority, a company, a foreign association declared to be a company under sub-clause (v) of clause (b) of sub-section (2) of section 80, or a foreign contractor or a consultant or a consortium or Collector of Customs or Commissioner of⁵ [Inland Revenue] or any other authority, shall collect advance tax, computed on the basis of sale price of such property and at the rate specified in Division VIII of Part IV of the First Schedule, from the person to whom such property or goods are being sold.

(2) The credit for the tax collected under sub-section (1) in that tax year shall, subject to the provisions of section 147, be given in computing the tax payable by the person purchasing such property in the relevant tax year or in the case of a taxpayer to whom section 98B or section 145 applies, the tax year, in which the "said date" as referred to in that section, falls or whichever is later.

Explanation.- For the purposes of this section, sale of any property includes the awarding of any lease to any person, including a lease of the right to collect tolls, fees or other levies, by whatever name called.]

⁶[(3) Notwithstanding the provisions of sub-section (2), tax collected on a lease of the right to collect tolls shall be final tax.]

⁷[236B. Advance tax on purchase of air ticket.— (1) There shall be collected advance tax at the rate specified in Division IX of Part IV of the First Schedule, on the purchase of gross amount of domestic air ticket⁸ ["."]

⁹["Provided that this section shall not apply to routes of Baluchistan coastal belt, Azad Jammu and Kashmir, Federally Administered Tribal Areas, Gilgit-Baltistan and Chitral."]]

(2) The [airline issuing] air ticket shall charge advance tax under sub-section (1) in the manner air ticket charges are charged.]

¹Added by the Finance Act, 2010.

²Added by the Finance Act, 2009.

³Inserted by the Finance Act, 2011.

⁴The words "confiscated or attached" substituted by the Finance Act, 2010.


⁵The words "Income Tax" substituted by the Finance Act, 2011.


⁶Added by the Finance Act, 2016.

⁷Added by the Finance Act, 2010.

⁸Full stop substituted by Finance Act, 2015.

⁹Added by the Finance Act, 2015.


 ATTESTED


 ATTESTED

**[DIVISION VII
Advance Tax on Purchase, Registration and Transfer of
Motor Vehicles**

(1) The rate of tax under sub-sections (1) and (3) of section 231B shall be as follows:-

S. No.	Engine capacity	For filers	Tax for non-filer
(1)	(2)	(3)	(4)
1.	upto 850cc	Rs. ² ["7,500"]	Rs. 10,000
2.	851cc to 1000cc	Rs. ³ ["15,000"]	Rs. 25,000
3.	1001cc to 1300cc	Rs. ⁴ ["25,000"]	Rs. 40,000
4.	1301cc to 1600cc	Rs. 50,000	Rs. 100,000
5.	1601cc to 1800cc	Rs. 75,000	Rs. 150,000
6.	1801cc to 2000cc	Rs. 100,000	Rs. 200,000
7.	2001cc to 2500cc	Rs. 150,000	Rs. 300,000
8.	2501cc to 3000cc	Rs. 200,000	Rs. 400,000
9.	Above 3000cc	Rs. 250,000	Rs. 450,000 ⁷

(2) The rate of tax under sub-sections (2) of section 231B shall be as follows:-

S. No.	Engine capacity	For filers	Tax for non-filer
(1)	(2)	(3)	(4)
1.	upto 850cc	-	5000
2.	851cc to 1000cc	5,000	15,000
3.	1001cc to 1300cc	7,500	25,000
4.	1301cc to 1600cc	12,500	65,000
5.	1601cc to 1800cc	18,750	100,000
6.	1801cc to 2000cc	25,000	135,000
7.	2001cc to 2500cc	37,500	200,000
8.	2501cc to 3000cc	50,000	270,000

- 1 Division VII of Part IV substituted by the Finance Act, 2015.
- 2 The figure "10,000" substituted by Finance Act, 2017
- 3 The figure "20,000" substituted by Finance Act, 2017
- 4 The figure "30,000" substituted by Finance Act, 2017

9.	Above 3000cc	62,500	300,000
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Provided that the rate of tax to be collected shall be reduced by 10% each year from the date of first registration in Pakistan.⁷

**[Division VIII
Advance tax at the time of sale by auction**

The rate of collection of tax under section 236A shall be ²[10%] of the gross sale price of any property or goods sold by auction ³[for filers and 15% of the gross sale price of any property or goods sold by auction for non-filers⁷]

**[Division IX
Advance tax on Purchase of Air Ticket**

The rate of tax to be deducted under section 236B shall be 5% of the gross amount of air ticket.]

**[Division X
Advance tax on sale or transfer of
Immovable property**

The rate of tax to be collected under section 236C shall be ⁶[1] % of the gross amount of the consideration received ⁷[for filers and ⁸[2] % of the gross amount of the consideration received for non-filers.]]

**[Division XI
Advance tax on functions and gatherings**

The rate of tax to be collected under each sub-sections (1) and (2) of section 236D shall be ¹⁰[5] %].

- 1 Added by the Finance Act, 2009.
- 2 The figure "5" substituted by the Finance Act, 2013.
- 3 Added by Finance Act, 2017
- 4 Added by the Finance Act, 2010.
- 5 Division X added by the Finance Act, 2012.
- 6 Figure "0.5" substituted by the Finance Act, 2016.
- 7 Added by the Finance Act, 2014.
- 8 Figure "1" substituted by the Finance Act, 2016.
- 9 Division XI added by the Finance Act, 2013
- 10 The figure "10" substituted by the figure "5" by the Finance Act, 2014.

ATTESTED

Annex - E

30

Annexed "B1"

OFFICE OF THE
ASSISTANT DIRECTOR MINERAL DEVELOPMENT
NOWSHERA

No: Sec / MDW/MM/NSR/Mian Essa /Block No. 03/ 2019 Dated: 22/04/2019

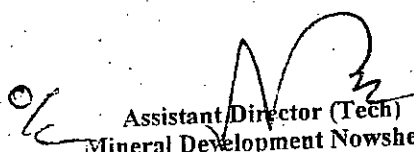
To: Mr. Shujat Ali S/O Nusrat Iqbal
R/O Moh: Awan, village Badrashi,
District Nowshera.

Subject: OFFER FOR THE GRANT OF ONE YEAR MINING LEASE OF
MINOR MINERAL OVER AN AREA OF 1773.023 ACRES NEAR
VILLAGE MIAN ESSA/ MASSAM DHERI BLOCK NO. 03 IN
DISTRICT NOWSHERA.

In continuation of this office letter No. 418 dated: 05.04.2019.

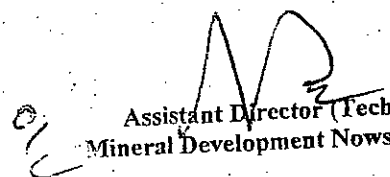
In this connection it is stated that you have submitted T.Challan of 1/4th as security as well as T.Challan of departmental demarcation fee but failed to provide certificate of 15% amount as advance withholding tax as well professional tax certificate.

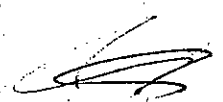
Therefore, you are once again advised to complete the above remaining formalities fortnight from the date of issuance of this notice to proceed further in the matter without any loss of time, please.


Assistant Director (Tech) 22/04/19
Mineral Development Nowshera

Endst: No: Sec / MDW/MM/NSR/Mian Essa /Block No. 03/ 2019 dated: 22-04-2019

Copy to: The Director General Mines & Mineral Khyber Pakhtunkhwa Peshawar for information, please.


Assistant Director (Tech) 22/04/19
Mineral Development Nowshera


ATTESTED
ATTESTED

Annex - F

31

Amended "B"

OFFICE OF THE ASSISTANT DIRECTOR MINERAL DEVELOPMENT
NOWSHERA

No: 29 / MDW/MM/NSR/Mian Essa /Block No. 03/2019 Dated: 02/05/2019.

To: Mr. Shujat Ali S/O Nusrat Iqbal,
R/O Moh: Awan, village Badrashii,
District Nowshera.

Subject: WORK ORDER FOR GRANT OF ONE YEAR MINING LEASE OF MINOR MINERAL OVER AN AREA OF 1773.023 ACRES NEAR VILLAGE MIAN ESSA/ MASSAM DHERI BLOCK NO. 03 IN DISTRICT NOWSHERA.

In pursuance of this office offer letter No. 418/ MDW/MM/NSR/Mian Essa /Block No. 03/ 2019, dated: 05.04.2019 and reminder No. 500 dated: 23.04.2019 on the subject noted above.

Since you have deposited Rs: 76,250,000/- as security vide T Challan No. 110 dated: 27.03.2019, Rs: 15,000/- as departmental demarcation fee vide T. Challan No. 57, dated 19.04.2019, therefore, it has been decided by the Licensing Authority/ Director General Mines & Mineral Khyber Pakhtunkhwa Peshawar to grant you mining lease for the period of one year for minor mineral over the subject area from the date of issuance of this letter, on the terms and conditions mentioned below as well as laid down under the Khyber Pakhtunkhwa Mineral Governance Act-2017. (Sketch of the area enclosed).

1. That you will deposit Rs: 45,750,000/- (four crore fifty seven lacs and fifty thousand only) as 15% of the total bid money as advance withholding tax, as well professional tax certificate and 1st monthly installment of Rs: 33,888,889/- (three crore thirty eight lacs eighty eight thousand eight hundred eighty nine only) of total bid money of Rs: 305,000,000/- within one month from the date of issuance of this letter. In case of failure your mining lease shall be processed for cancellation and security forfeited as per section-80(19) of the act ibid as you have already avail thirty days period for its payment vide letter/notice referred to above.
2. That you will pay the remaining auction money (2nd to 9th installments) of Rs. 271,111,112/- in ~~12~~ (09) equal installments at the rate of Rs: 33,888,889/- per month regularly up to the 7th of each month in advance and will submit original treasury challan to this office.
3. That you will pay the excise duty as per Govt: prescribed/schedule rate.
4. That you will abide all the terms and conditions as laid down in Khyber Pakhtunkhwa Mineral Governance Act-2017 and instructions issue to you by this Department from time to time.
5. That you will demarcate your granted area and erect boundary pillars at appropriate points within 15 days as per Khyber Pakhtunkhwa Mineral Governance Act-2017. if the pillars were found on incorrect points, legal action will be taken as per law.
6. That you will neither transfer any right or interest under the lease, nor part of the area or any part thereof as per of Khyber Pakhtunkhwa Mineral Governance Act-2017.

ATTESTED

ATTESTED

38

That you will utilize verified challan books signed by any officer/official authorized in this behalf for the transportation of minor minerals.

8. That you pay surface rent as per section (81) of Khyber Pakhtunkhwa Mineral Governance Act-2017.

9. The period of mining lease is unless earlier withdrawn shall be valid upto 05.05.2020.

Encl: as above

Assistant Director (Tech)
Mineral Development Nowshera

Dated: 06/05/2019

Endst: No: 30-69 / MDW/MM/NSR/Mian Essa /Block No. 03/ 2019

Copy to:

1. The Director General Mines & Mineral Khyber Pakhtunkhwa Peshawar for information as per direction, please.
2. The Deputy Commissioner Nowshera for information, please.
3. The District Police Officer Nowshera for information please.
4. The GIS Manager H/Q office Peshawar for information, please.
5. The AD Monitoring & Surveillance Unit Nowshera for information, please.
6. The Executive Engineer, Irrigation Department, Mardan Division.
7. The Executive Engineer C & W Department Nowshera.
8. The Deputy Superintendent of Police Akora Khattak (Focal Person) for information, please.
9. Station House Officer Nizampur for information, please.
10. Royalty Sub-Inspector concerned for information, please.

Assistant Director (Tech)
Mineral Development Nowshera

بخدمت جناب ڈائریکٹر جنرل مائنز اینڈ منرل خلیز پختونخوا

پشاور

223

عنوان: آفر لیٹر گرانٹ بابت ایک سال مانگ لیز ادنیٰ معدنیات

میاں عیسیٰ ماسم ڈھیری بلاک نمبر 3 ضلع نوشہرہ 1773.23 ایکٹر

جناب عالی!

گزارش کی جاتی ہے کہ سائل نے ایک عدد لیز مذکورہ بالا کھلی نیلامی میں مبلغ تیس کروڑ پچاس لاکھ روپے سب سے زیادہ بولی دے کر چیئر مین آکشن کمیٹی و دیگر ممبران نے منظوری دے دی منظوری کے بعد سائل نے تین دن کے اندر 1/4 - 76,250,000 روپے بطور سیکورٹی جمع کیا جس کے بعد حتمی منظوری کے لئے سری بیڈ کو ازٹرفس پشاور بھیج دیا گیا پشاور سے حتمی منظوری ہونے کے بعد اسٹنٹ ڈائریکٹر معدنیات نوشہرہ نے سائل کو آفر لیٹر جاری کیا جس میں پندرہ دن کی مودت دی گئی تھی اس میں بتایا فارمیٹی پورا کرے سائل نے آفر لیٹر کے مطابق مبلغ 15 ہزار روپے سرکاری ڈیمارکیشن فیس جمع کیا گیا آفر لیٹر میں انکم ٹیکس جمع کرنے کی ہدایت کی گئی تھی لیکن مذکورہ بالا نیلامی رقم کے مطابق انکم ٹیکس کی رقم بھی بہت زیادہ بنتی ہے۔ جس کے اٹکا کرنے کے لیے بندہ تنگ و دو میں مصروف تھا لیکن اس ساری کارروائی کے دوران سائل نے اپنا لیز شدہ رقبے کا معائنہ کیا تاکہ مانتر تک رسائی کے لئے راستہ بنائے اور زمین کے مالکوں سے مالکانا حقوق کے بارے میں گفت و شنید کریں لیکن اب آپ صاحبان کی توجہ ایک اور بڑے مسئلے کی طرف مبذول کرانا چاہتا ہوں کہ میاں عیسیٰ سے جہانگیرہ تک جو روڈ ہے اس پر تعمیری کام جاری اور کسی قسم کی گاڑی گزارنے کی گنجائش نہیں ہے تو اس سے سائل کو مانتر میں کام شروع کرنا بہت مشکل ہے کیونکہ یہاں لئے ترسیل کے لئے اور کوئی راستہ نہیں ہے اب اسٹنٹ ڈائریکٹر معدنیات نوشہرہ کی طرف سے مورخہ 22-04-2019 کو انکم ٹیکس کے بارے میں نوٹس جاری ہوا ہے تو سائل انکم ٹیکس جمع کرنے کے لئے تیار ہے لیکن آپ صاحبان سے التجا کرتا ہوں کہ ورک آرڈر تک جاری نہ کریں جب تک روڈ پر تعمیری کام مکمل نہیں ہوئی ہو اور گاڑیوں کو گزارنے کے قابل بن جائے کیونکہ اگر ورک آرڈر جاری ہو تو ورک آرڈر کے مدت ایک سال ہوتا ہے تو وہ ویسے ہی گزار جائے گا اور سائل کے لئے بقایا قیسطوں کو ادا کرنا بہت مشکل ہوگا تو اس سے سائل کی عزت اور بہت زیادہ مالی نقصان ہو جائے گا۔

اس لئے آپ صاحبان مہربانی کر کے روڈ کا باقاعدہ معائنہ کریں اور روڈ مکمل ہونے تک ورک آرڈر جاری نہ کرنے کا حکم صادر فرما کر مشکور و ممنون فرمائیں۔ بندہ تاعمر دعا گو رہے گا۔ شکریہ

مورخہ 29-04-2019

ارض

شجاعت علی لیز ہولڈر ادنیٰ معدنیات
میاں عیسیٰ ماسم ڈھیری بلاک نمبر 3 ضلع نوشہرہ

Shujat Ali

کاپی برائے اطلاع:

اسٹنٹ ڈائریکٹر معدنیات ضلع نوشہرہ۔

ATTESTED

7

حکم عدلیہ فیصلہ نمبر ۱۹-۵-۱۴ کو

حکم عدلیہ

گزارش سے کہ آپ صاحبان کے حکم کے مطابق مورخہ ۱۹-۵-۱۴ کو

رود سٹیجی سیراہ صیران اللہ منیر گارڈ میان عیسیٰ ٹو جھانگیرہ
کا (visit) کیا۔ جھانگیرہ سے میان عیسیٰ ٹو رود جو کہ تقریباً

چھوڑنے کے بعد تھیں۔ راستے میں زیادہ توجہ نہیں کی تھی۔
تھیں۔ جس پر قبائلی گارڈوں کا آنا جانا مشکل بنے۔ عدلیہ حکم کے
کے مطابق میان عیسیٰ کے دفتر سے جہاں سے ٹرانسپورٹیشن ہوئی ہے
اسی راستہ سے ہوتا ہے۔ درختوں کا راستہ جو کہ اظہر من الشمس ہے۔

میں میں بھی ملے۔ وغیرہ ہے۔

حکم عدلیہ کے مطابق مورخہ ۱۹-۵-۱۴ کو

میان عیسیٰ میں اچھی تہذیبی تعلیم کی ضرورت ہے۔

مورخہ ۱۹-۵-۱۴ کو

۱۹/۵/۱۴

صیران اللہ منیر گارڈ حکم عدلیہ نمبر ۱۹-۵-۱۴ کو

۱۹/۵/۱۴

DA

ATTESTED

35

B-3 Annexed (1)

DIRECTOR GENERAL MINES AND MINERAL, KHYBER PAKHTUNKHWA

1) It is to inform you that today approval letter vide no. 6050 has been received, and to this effect on 5-4-2019.

If agreed, we may issue letter to the company, please.

DFA is submitted, plz.

2

ADP

to firm pl

Recd 5/4/19

3

sc/c

Firm letter is submitted for signature, plz.

5/4/19

4

ADP

Sign issue pl

5/4/19

Also send through Whatsapp & directed by DDAT (C) Mrs. Giraj K

5/4/19

sc/c

issued no 418-20

5/4/19

Date 05-4-19. sc/c

ATTESTED

ATTESTED

in pursuance of the order after being

Order No. 418 dated 25/11/2019.

The party has deposited Rs. 1500/- and

Demeritization fee and asked to

deposit with holding Tax and professional

Tax

submitted for order etc.

~~ADT~~

Put up a fair

notice and inform the party

to submit tax deposit

Certificate/condition of FBR

with in fortnight to proceed

further please

M

19/11/19

19/11/19

36

DIRECTOR GENERAL MINES AND MINERAL, KHYBER PAKHTUNKHWA

Put up fair as amended
Please.

DA
C.O

M
19/04/19

Fair letter for signature, P.

~~ADT~~

Signed. Issue please.

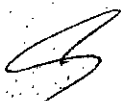
Jasim
22/4/19

DA
S.C

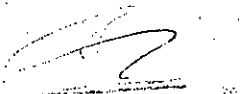
issat no 500-01
22/4/2019

M
22/04/19

Apt The Director Genl Mins &
Mins telephonically directed
to issue conditional work order
with the Direction to issue work
order and inform the party to
deposit income tax, professional Tax
and First Instalment with in
one month. In case of non-compliance
with in one month process the
case for cancellation and forfeiture
of amount th



ATTESTED


ATTESTED

10

In case the party failed to deposit Income Tax and installment etc as mentioned in serial/para I of the writ order then put up for cancellation on 05/06/2019 without time delay ✓

12

Issue of writ no-609 dated 06/05/2019
DA
06/05/19

15

Issue of writ no-609 dated 06/05/2019
DA
06/05/19

19

For writ order for approval/issuance of writ
06/05/19

13

Need to give writ
06/05/19

12

Put up writ order and tax etc
06/05/19

DIRECTOR GENERAL MINES AND MINERAL, KHYBER PAKHTUNKHWA

DFA, is advised for approval, pl
Asly contained application received from

ADT Mr. Skuhart Ali the successful bidder in Mian

ESA placed below for further ^{action} ~~action~~
please. put up for
draft please.

ADT Take report from ^{farm} ~~farm~~ 09/5/19

DD Staff up, put up plates/06/19
do need full dev. ~~farm~~

ADT The RSI submitted a sub. contained application
placed below for further ^{action} ~~action~~ 18/6/19

ADT Present filed ^{farm} ~~farm~~
done falling. Patz 16/5/19

DD 16/11/19; The ^{farm} ~~farm~~ in 10 feet
inspected ^{farm} ~~farm~~ has approach road/
path from Kamal shah Khan
interchange side. Do need of

ADT Done M
done full dev. ^{farm} ~~farm~~ 21/05/19

ATTESTED

C3

22 DFA is advised for approval, ph

ADT

put up fair
draft please

Jarm
10/6/19

23

M

DA

10/06/19

24

Hand gel dev.
plan

Jarm
10/06/19

DA

Q/123

10/6/19

25

Send Issu
Order

M


10/06/19

DA

386
colot/2910

Q/123

38 - Annexed on J

 OFFICE OF THE ASSISTANT DIRECTOR MINERAL DEVELOPMENT NOWSHERA	
No: <u>886</u> / MDW/MM/NSR/Mian Essa /Block No. 03/ 2019	Dated: <u>10</u> / <u>06</u> / 2019.

To: The Director General,
Mines and Minerals Khyber Pakhtunkhwa,
Peshawar.

Subject: WORK ORDER FOR GRANT OF ONE YEAR MINING LEASE OF MINOR MINERAL OVER AN AREA OF 1773.023 ACRES NEAR VILLAGE MIAN ESSA/ MASSAM DHERI BLOCK NO. 03 IN DISTRICT NOWSHERA.

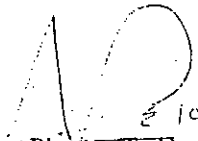
Reference to this office letter No. 629/ MDW/MM/NSR/Mian Essa /Block No. 03/ 2019 dated: 06.05.2019 on the subject noted above.

In this connection, it is submitted that one year mining lease over the subject area was granted to Mr. Shujat Ali (1st Bidder) S/O Nusrat Iqbal R/O District Nowshera in lieu of Rs: 305,000,000/- through open auction. The party deposited security of 1/4th of the total bid money. However, he failed to deposit to advance withholding tax of 15% of the total bid money. Accordingly, the conditionally work order was issued to the party as per direction vide this office letter dated: 06.05.2019. However, till date the party has failed to deposit Rs: 45,750,000/- (four crore fifty seven lacs and fifty thousand only) as 15% of the total bid money as advance withholding tax, as well professional tax certificate and Rs: 33,888,889/- (three crore thirty eight lacs eighty eight thousand eight hundred eighty nine only) as 1st installment of total bid money as per section-80(19) of the Khyber Pakhtunkhwa Mineral Governance Act-2017.

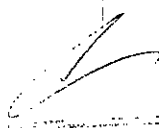
Furthermore, the party has submitted application on 07.05.2019 with the request to not issue work order till completion of road construction nearby subject granted area and also requested for inspection. The undersigned inspected the area and observed that the subject area has also other approach road/path for transportation from Kernel Sher Khan Interchange side. It is added that, the party also failed to start mining operation in his granted area till date. (Copy of application dated: 07.05.2019 is enclosed).

In view of the above, it is submitted for consideration of Licensing Authority with the proposal to cancel the subject mining lease due to failure of the lessee to deposit first monthly installment, professional tax certificate and also failure of the party to deposit advance withholding tax 15% of the total bid money as per conditions mentioned in the work order. The security deposited by the party may be forfeited and adjusted against the Govt: dues/installments and Advance withholding tax etc and also allow the District Auction Committee to re-advertise the subject area for auction or advice this office in the matter, please.

Enclosed As Above.


 10/06/19
 Assistant Director (Tech)
 Mineral Development Nowshera

RECEIVED


 ASSISTANT DIRECTOR
 MINERAL DEVELOPMENT
 NOWSHERA

39

Assistant Treasury Officer
Nowshera.

CHALLAN NO
CHALLAN OF CASH PAID INTO THE
NATIONAL BANK OF PAKISTAN

Provincial
NR 4165

TO BE FIELD IN BY THE REMITTER		TO BE FIELD IN BY THE DEPARTMENT OFFICER / TREASURY		
BY WHOM TENDER	NAME OF DESIGNATION AND ADDRESS OF THE PERSON WHOSE BEHALF MONEY IS PAID	FULL PARTICULARS OF THE REMITTANCE AND AUTHORITY TRANS	AMOUNT	HEAD OF ACCOUNT
Mr. Shujat Ali	ASSISTANT DIRECTOR MINERAL DEVELOPMENT NOWSHERA	Deposition of 3% Security of Baluchistan for the area Minai Bakh/Musum Dheri Block No (03) District Nowshera	Rs. 76250000/- (0332)	G-10107

RECEIVED BY CASII
21 MAR 2018

Signature

Can't Branch 0300
Nowshera

Rs: 76250000/-

(In Words rupees Received Payment)

Seventy Six Million Two Hundred Fifty Thousand Rupees only

TREASURY

ACCOUNTANT

TREASURY OFFICER NOWSHERA

27-03-19

ATTESTED

40

Annexed 'K'

31

Dated: Peshawar, the 21st December, 2018.

CHARGE RELINQUISHMENT REPORT

In compliance with the Government of Khyber Pakhtunkhwa Mineral Development Department Notification Endst.No.SO(E)/MDD/2-12/Vol-II/2018;/1244768 dated 17-12-2018, regarding Posting/Transfer of the undersigned to the office of the Assistant Director Mineral Development Shangla, I, Engr. Mohsin Ali Khan Assistant Director Technical Mineral Development BS-17 hereby relinquish the charge of the post Assistant Director Mineral Development Head Quarter Office Peshawar on 26-12-2018 (AN).

o/c (Engr. MOHSIN ALI KHAN)
Assistant Director (Technical)
H/Q Office Peshawar 26/12/2018

2221-27
Endst.No. /Personnel File/2018

Dated: Peshawar, the 21st December, 2018.

Copy forwarded for information to:

- 1) The Director General Mines and Minerals, Khyber Pakhtunkhwa, Peshawar.
- 2) The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 3) PS to Secretary Minerals Development Department, Government of Khyber Pakhtunkhwa.
- 4) Section Officer (Establishment), Minerals Development Department, Government of Khyber Pakhtunkhwa, w.r.t. the notification referred above.
- 5) The Assistant Director (Admin), Directorate General Mines and Minerals, Khyber Pakhtunkhwa, Peshawar.
- 6) The Assistant Director (Accounts), Directorate General Mines and Minerals, Khyber Pakhtunkhwa, Peshawar.
- 7) District Account Officer Shangla Khyber Pakhtunkhwa.



o/c (Engr. MOHSIN ALI KHAN)
Assistant Director (Technical)
H/Q Office Peshawar 26/12/2018

ATTACHED

ACCEPTED

-13

51

Statement

Subject: Leased Area of Minor Minerals over 1773/283 acres near village Mirhau/ Masam River Block no 03 District Nowshera

It is stated that I have assumed the additional charge of the office of ADM Nowshera on 10/11/2017. The subject minor mineral area along with others areas were advertised for auction and the auction was held under the chairmanship of De Nowshera on 25/03/2019. For the subject area one Mr. Shafiq Ali offered highest bid of Rs. 30500000/- and deposited 1/4th of the bid money at the fall of hammer under the law. Accordingly offer letter was issued to him after the approval of Licensing Authority on 05/04/2019. He deposited departmental Demarcation fee but he failed to deposit Advance Income Tax under section 236A of Income Tax Ordinance despite of a reminder (42) notice. On the direction of M.A office conditional work order was issued to the lessee on 06/05/2019.

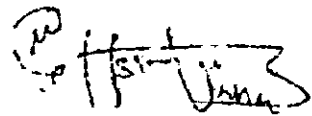
On 20/05/2019 the lessee submitted a complete application addressed to H/O office and copy to the regional office of Nowshera and requested that the work order to him till completion of construction of son's marks Application. Self response and the copy of the same is enclosed. Enclosed to verify content of the application, Mr. Tajwar and Mr. Tabranullah MA were directed to visit area and report. The field staff visited and submitted report on 14/05/2019. Copy enclosed to be reviewed by the report of field staff. The lessee's field staff visit to the area on 27/05/2019 and observed that

7/2

(2)

The subject area has also other approach road/path for transmission from Service Road of Kernal Street Khan Waterway Interchange Side. Accordingly the report of field staff was filed on 27/05/2019 and the clerical staff was directed to forward summary for cancellation to H/A office in case of failure of the lessee to comply with the instruction mentioned in the Allocation/work order letter. Hence summary for cancellation was forwarded to the H/A office on 10/06/2019. (Copy enclosed).

In view of the above, it is submitted that no misreporting concerning road problem is made by me nor any contribution was made in favor of the lessee. It is therefore requested to exonerate me from the responsibility being innocent please.



Mohsin Ali Khan
Deputy Director (Tech)

Dated: 27/06/2019



43
Annexed "D" 2
Signature - K
REGISTERED

DIRECTORATE GENERAL MINES & MINERAL

KHYBER PAKHTUNKHWA, PESHAWAR.
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX, KHYBER ROAD, PESHAWAR.
Ph: 091-9211146/9211153 Fax: 091-9210236

OFFICE ORDER

In pursuance of Government of KPK Notification dated No. SO(Appeal) / MDIV 5-19871/ 19 dated 24-06-2019 and letter dated 09-07-2019, The undersigned conducted enquiry in the case as per detail given below.

BACKGROUND OF THE CASE.

The regional office, District Nowshera advertised Mian Essa area through daily Newspaper dated 12-03-2019 and auction was fixed on 25-03-2019 (Annexure "A"). Nine applicants participated (Annexure "B") in the auction proceeding one Mr. Shujat Ali S/o Mr. Nasrat Iqbal resident of Mohallah Awan village Badrashi District Nowshera offered highest bid of Rs. 30,500,000/- against the reserve price of Rs. 240,000,000/- in the said auction (Annexure "C"). The highest bidder deposited Rs. 762,500,00/- as 1/4th of the bid money on 27-03-2019 (Annexure "D"). After approval of the bid from the Competent Authority offer letter dated 05-04-2019, was issued to Mr. Shujat Ali for completion of all the codal formalities i.e. to deposit Rs. 15000/- as demarcation fee and Rs. 457,50000/- as 15 % advance withholding Tax within 15 days (Annexure "E"). The highest bidder failed to deposit the above mentioned amount in the specified time limit. The regional office then issued another notice dated 22-04-2019, for completion of formalities of the offer letter (Annexure "F"). On 06-05-2019 Mr. Shujat Ali was issued work order with the condition for payment of AWT within one month (Annexure "G"). Mr. Shujat Ali aggrieved with the work order filed appeal in the court of Appellate Authority with the request to defer the work order for 45 days due to ongoing construction on local road. The Appellate Authority dismissed the appeal of Mr. Shujat Ali on the grounds that the appeal being devoid of any substance and

ATTENDED

44

convincing evidence (Annexure "H"): Being Aggrieved with the dismissal of appeal, Mr. Shujat Ali filed Writ Petition in Peshawar High Court, Peshawar and obtained stay (Annexure "I"). The Peshawar High Court vide order dated 03-06-2019 directed that no demand shall be made from petitioner for the payment of First Installment and further, no adverse action shall be taken against him. The case is still subjudice in Peshawar High Court and next date is fixed on 22-08-2019 (Annexure "J").

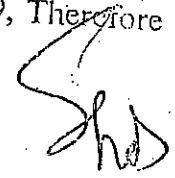
It is further added that the undersigned personally visited the area on 20-07-2019, for ascertaining the Factual Position of the under construction road and mining activities in the area. During the course of visit, mining activities in the area was found totally stopped. However construction work on the road was found at various places, however, he can transport send through the route. During the visit it was observed that the lessee could easily transport the sand / minor mineral through other alternate approach road and the plea of the lessee does not seem to be realistic / accordingly to ground realities. The additional Director General with his team also visited / conducted enquiry in the subject case. The enquiry conducted by additional Director General also suggested that the area is connected with various approach road / paths which has been shown in the enclosed goggle map, the same can be used as alternative route for transportation of minor Mineral from the granted area.

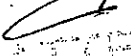
FINDING

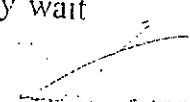
1. The period requested by the lessee for deferments of work order has already been expired.
2. At present the case is subjudice in Peshawar High Court, Peshawar and next date is fixed on 22-08-2019.
3. From spot Inspection it is evident that lessee can use this alternate approach road / paths for transportation.

RECOMMENDATIONS

Since the case is involved in writ petition and the Peshawar High Court, has granted stay / status quo till 22-08-2019, Therefore we may wait till the date. 22-08-2019 please.


Director General
Mines and Minerals


ATTESTED


ATTESTED



Government of
Khyber Pakhtunkhwa
Minerals Development Department

Dated Peshawar, November 26, 2019

NOTIFICATION

No. SO (E)/MDD/4-1/2019:

In exercise of the powers conferred by Rule-10 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority has been pleased to constitute an Inquiry Committee, comprising the following officers to conduct inquiry against the staff of the Minerals Development Department into the charges/allegations leveled against them in the Charge Sheets and Statement of Allegations.

- i. Mr. Akhtar Saeed Turk (PMS BS-19), Addl: Secretary, Finance Department.
- ii. Mr. Ziarat Khan, Chief Commissioner of Mines Labour Welfare (BS-20), Commissionerate of Mines Labour Welfare, Khyber Pakhtunkhwa.

2. The Inquiry Committee is requested to submit findings / inquiry report within thirty (30)-days, positively.

3. Deputy Director (Tech), H/Q Office, Directorate General, Mines & Minerals, Khyber Pakhtunkhwa is nominated as Departmental Representative to assist the Inquiry Committee.

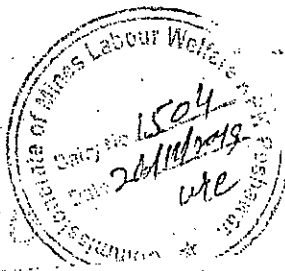
Chief Secretary, Khyber Pakhtunkhwa

Dated Peshawar, November 26, 2019

No. SO (E)/MDD/4-1/2019 / 13831-40

Copy is forwarded to:

1. Mr. Akhtar Saeed Turk, Addl: Secretary, Finance Department (Inquiry Officer), alongwith copies of Charge Sheets and Statement of Allegations.
- ✓ 2. Mr. Ziarat Khan, Chief Commissioner of Mines Labour Welfare (BS-20), Commissionerate of Mines Labour Welfare, Khyber Pakhtunkhwa (Inquiry Officer), alongwith copies of Charge Sheets and Statement of Allegations.
3. Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals), Nowshera, BPS-17 (now Deputy Director (Tech), BS-18, Abbottabad) (Accused), alongwith copies of Charge Sheets and Statement of Allegations with the direction to appear before the Inquiry Committee on the date, time and place fixed by the Inquiry Committee for the purpose of inquiry proceedings.
4. Mr. Tajjamul Shah, Ex-Royalty Sub-Inspector (BPS-10), Nowshera (now under suspension in another case) (Accused), alongwith copies of Charge Sheets and Statement of Allegations with the direction to appear before the Enquiry Committee on the date, time and place fixed by the Enquiry Committee for the purpose of inquiry proceedings.
5. Mr. Jibranullah, Mineral Guard (BPS-03), Nowshera (Accused), alongwith copies of Charge Sheets and Statement of Allegations with the direction to appear before the Enquiry Committee on the date, time and place fixed by the Inquiry Committee for the purpose of inquiry proceedings.
6. PSO to Chief Secretary, Khyber Pakhtunkhwa, for information.
7. PS to Secretary Minerals Development Department, Khyber Pakhtunkhwa, for information.
8. Director General, Mines & Minerals, Khyber Pakhtunkhwa, for information.
9. Master File.
10. Personal File



(Mian Hussain Din)
Section Officer (Estt.)

46

CHARGE SHEET

I, Dr. Kazim Niaz, Chief Secretary, Khyber Pakhtunkhwa as competent authority, hereby charge you, Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals), Nowshera, BPS-17 (now Deputy Director (Tech), BS-18, Abbottabad), as follows:

- i. that you mishandled the issue regarding lease of Mr. Shujat Ali s/o Nusrat Iqbal who was granted the lease of block of minor minerals over an area of 1773.023 Acres near village Mian Essa / Massam Dheri, Nowshera by District Auction Committee on 25-03-2019.
- ii. that you deputed Mr. Tajjamul Shah, Royalty Sub-Inspector, Nowshera and Mr. Jibranullah, Mineral Guard, Nowshera to probe into the matter and submit report. In their report they stated that approach road to the leased area was in deteriorated condition and transportation of minerals was not possible on the same route. However, the later reports proved that their statement was incorrect as there were alternate routes through which transportation of minerals was possible.
- iii. that you instead of verifying the said statement relied upon the same and proceeded further in the matter.
- iv. that you failed to keep secrecy of official record as the said statement was made available to the lessee who submitted it in the Peshawar High Court as evidence in his writ petition.
- v. that you failed to cancel the lease inspite of the fact that he had failed to comply with all the condition of offer letter. Instead you issued him fifteen (15) days' notice / reminder for depositing the dues.
- vi. that due to your irresponsible behavior, a loss of an amount of Rs.8472218/-, outstanding against the ex-lessee, after issuance of cancellation letter and forfeiture and adjustment of security towards government dues, has been caused to Government exchequer.

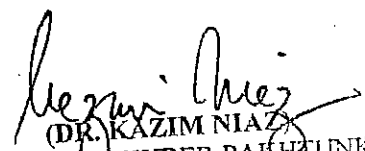
2. By reason of the above, you appear to be guilty of in-efficiency and misconduct under Rule-3 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified under Rule-4 of the Rule ibid.

3. You are, therefore, required to submit your written defence within seven (07) days of the receipt of this charge sheet to the Inquiry Officer/Committee, as the case may be.

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

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

6. A statement of allegations is enclosed.


(DR. KAZIM NIAZ)
CHIEF SECRETARY, KHYBER PAKHTUNKHWA
(COMPETENT AUTHORITY)

ATTESTED

42

DISCIPLINARY ACTION

I, Dr. Kazim Niaz, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals), Nowshera, BPS-17, (now Deputy Director (Tech), BS-18, Abbottabad), has rendered himself liable to be proceeded against, as he committed the following act/omissions, within the meaning of Rule-3 of the Government of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

That he, while posted as Assistant Director Minerals (BPS-17) Nowshera has failed to:

- i. handle properly the issue regarding lease of Mr. Shujat Ali s/o Nusrat Iqbal who was granted the lease of block of minor minerals over an area of 1773.023 Acres near village Mian Essa / Massam Dheri, Nowshera by District Auction Committee on 25-03-2019.
- ii. verify the statement submitted by Mr. Tajjamul Shah, Royalty Sub-Inspector, Nowshera and Mr. Jibrannullah, Mineral Guard, Nowshera and instead he relied upon the same and proceeded further in the matter.
- iii. Keep the said report secret which was made available to the lessee who submitted it in the Peshawar High Court as evidence in his writ petition.
- iv. cancel the lease of the lessee inspite of the fact that he had failed to comply with all the condition of offer letter and instead he issued fifteen (15) days' notice / reminder to the lessee for depositing the dues.
- v. Issue cancellation letter and forfeiture and adjustment of security towards government dues in time and due to his irresponsible behavior, a loss of an amount of Rs.8472218/-, outstanding against the ex-lessee, has been caused to Government exchequer.

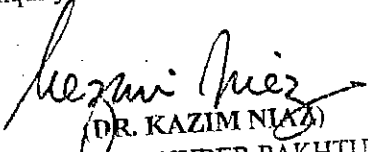
2. For the purpose of Inquiry against the said accused with reference to the above allegations, an Inquiry Officer/Inquiry Committee, consisting of the following is constituted under rule 10 (1) (a) of the ibid rules:-

- i. Mr. Akhtun Saeed Turki, A.S. Finance
- ii. Ms. Ziasat Khan, Chief Commr of Mines,

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

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

ATTACHED


(DR. KAZIM NIAZ)
CHIEF SECRETARY, KHYBER PAKHTUNKHWA
(COMPETENT AUTHORITY)

Annex - N

48

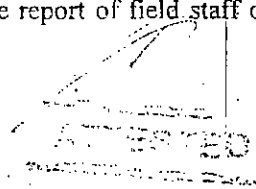
Annex B1

WRITTEN REPLY OF CHARGE SHEET

1. I Mr. Mohsin Ali Khan, Deputy Director Mines and Mineral Development Hazara Division Abbottabad, states that all the charges leveled against me in the charge sheet are incorrect and baseless. Detail reply of para wise charges is mentioned below.

- i. Para i of the charge sheet is incorrect and baseless. In reply it is submitted that I did not mishandle the issue regarding the lease of Mr. Shujat Ali S/O Nusrat Iqbal. I have assumed the Additional charge of the office of Assistant Director Mineral development Nowshera on 11/04/2019 (copy enclosed as Annex A-1). The leased area of minor mineral block No.3, of 1773.023 acres situated near village mian essa, district nowshera was advertised for auction (copy enclosed as Annex A-2) along with other areas and the auction was held under the chairmanship of deputy commissioner nowshera on 25/03/2019. For this area of Block No. 3, one Mr. Shujat Ali S/O Nusrat Iqbal of district nowshera offered highest bid of Rs. 305000000/- and deposited 1/4th of the Bid money amounting to Rs. 45750000/- at the fall of hammer under KPK MG Act 2017. Accordingly offer letter was issued to him by the then Assistant Director Mineral Development Nowshera after approval of Licensing Authority on 05/04/2019. Mr. Shujat Ali completed all the formalities of offer letter except payment of Advance income tax which was mandatory under section 236-A of the income tax ordinance (copy enclosed as Annex A-3). Accordingly I issued a notice of 14 days to Mr. Shujat Ali on 22/04/2019 for deposit of advance Income tax and professional tax certificate (copy enclosed as Annex A-4). On the expiry of notice time Mr. Shujat Ali failed to deposit Advanced Income tax. Accordingly the then Director General Mines and minerals telephonically directed me to immediately issue conditional allotment letter to Mr. Shujat Ali. In response I issued conditional Allotment letter to Mr. Shujat Ali on 06/05/2019 (copy enclosed as Annex A-5).
- ii. Para ii of the charge sheet is incorrect. It is submitted that on 07/05/2019, the lessee Mr. Shujat Ali submitted a complaint/ application addressed to the headquarter office Peshawar and copy endorsed to the regional office of nowshera and requested to not issue work order to him till completion of construction work of approach road of the leased area of block No.3 (copy enclosed as Annex B-1). In order to verify the content of application, Mr. Tajamal Shah Royalty sub inspector and Mr. Jabranullah Mineral Guards were directed to visit the area and report. They visited area and submitted report on 14/05/2019 (copy enclosed as Annex B-2). In order to re verify the report of field staff, I personally visited the minor mineral area of block no.3 situated near village mian.essa on 27/05/2019 and observed that the area also have other approach paths from kernel shair khan interchange side. Accordingly I filed the report of field staff on 27/05/2019 and



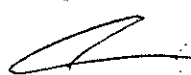


directed the dealing assistant to put up the summary for cancellation of the lease to headquarter office in case of failure of the lessee to compliance with the instructions mentioned in the Allotment Letter (copy enclosed as Annex B-3).

iii. Para iii of the charge sheet is incorrect and baseless. I did not relied on the statement of field staff as mentioned in above para ii. I personally visited the area on 27/05/2019 for re verification of report of the field staff. During inspection it was observed that the leased area also have its approach path from kernel shair khan interchange side. Accordingly I filed the report of field staff on 27/05/2019 and forwarded summary to headquarter office for cancellation of Mining lease and forfeiture of security on 10/06/2019 (copy enclosed as Annex C).

iv. Para iv of the charge sheet is incorrect. It is submitted that neither the report of the field staff was kept secret as the same was filed after verification nor Honourable peshawar high court granted stay order to the lessee on the basis of this report which is evident from the court order dated 03/06/2019. Further I was working as Assistant Director Mineral Headquarter office Peshawar and later on 11/04/2019, I was assigned additional duty of the post of Assistant Director Mineral development Nowshera up to 26/06/2019. I was not the record keeper of nowshera office as the same is the duty of dealing assistant of the office. The dealing assistant of the nowshera office neither was included in the initial inquiry conducted by the then Director General nor he is charge sheet in the instant process. In fact in every office the dealing assistant of the office is the record keeper of that office. Hence the charge level against me is incorrect, baseless and against the official routine work of an office.

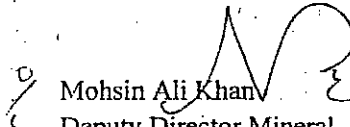
v. Para v of the charge sheet is totally incorrect. In reply it is submitted that, the lessee after issuance of 15 days offer letter date 05/04/2019, completed all the other formalities required under the KP MG Act 2017 except the deposit of advance income tax required under section 236-A of the income tax ordinance. Copy of challon of 1/4th of the bid money and demarcation fee deposited by the lessee are attached as evidence (Annex D-1. and D-2). Further section 63 of the KP MG Act 2017, judgment of PHC Peshawar in WP. No.487/2011 dated 12/07/2012 and the letter no. SO(Appeal)/MDD/6-28/MTC/2019/13008-10 dated 08/11/2019 issued from the Government of Khyber pakhtunkhwa mineral development department are on the same verdict that mining lease of the concessionaire cannot be cancelled without issuance of a notice (copy of the all are enclosed as Annex D-3, D-4. & D-5)). Hence action taken by issuance of notice dated 22/04/2019 is lawful and covered under the law please.


ATTESTED
ATTESTED

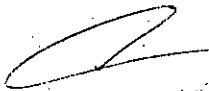
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vi. Para vi of the charge sheet is incorrect. The lessee Mr. Shujahat Ali filed Writ petition in the Peshawar high court Peshawar and the honorable Peshawar high court vides dated 03/06/2019 restrict the department to not demand payment from the petitioner as well as no adverse action shall be taken against the petitioner (copy of the court order is enclosed as Annex E-1). Later on the Honorable Peshawar high court Peshawar in its order dated 06/09/2019 dispose the application of the petitioner for further recovery of the installments and allow the department for recovery of dues etc. (copy of the judgment dated 06/09/2019 is attached Annex E-2). After the above mentioned order of the honorable court the licensing authority vides order dated 30/09/2019 cancelled the mining lease, forfeited the security and decided to recover the other dues if any as arrear of land revenue (copy attached as Annex E-3). It is added that the dues and installments were delayed due to the orders of the honorable Peshawar high court only and no loss is faced by the government. Hence charge leveled against me is baseless and is liable to be set aside.


2. I also desired to hear in person
3. In view of the above it is submitted that all the charges leveled against me are incorrect, baseless and are without any justification. It is therefore requested to exonerate me from the inquiry being innocent please.


Mohsin Ali Khan
Deputy Director Mineral
Development Rawara division

Abbottabad


ATTESTED



57

Annexed 



COMMISSIONERATE OF MINES LABOUR WELFARE Govt of Khyber Pakhtunkhwa

☎ 091-9211723, 091-9210317

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 <https://www.twitter.com/comiwkp>

No.Com/Mines/580

Dated 31/12/2019

To: The Additional Secretary,
Minerals Development Department,
Peshawar.

Subject: ENQUIRY REPORT

with reference to Notification No.SO(E)(MDD)4-1/2019/13231-40 dated 26.11.2019,
enclosed please find herewith requisite enquiry report.

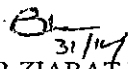
Submitted for further necessary action please.

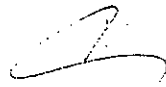
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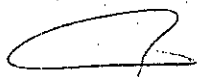
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AS

31/12/19


31/12/2019
(ENGR. ZIARAT KHAN)
Chief Commissioner Mines Labour
Welfare, Khyber Pakhtunkhwa





RECEIVED

31/12/2019

COMMISSIONERATE OF MINES
LABOUR WELFARE
PESHAWAR

31/12/19

31/12/19

INQUIRY REPORT

ORDER OF ENQUIRY

The Competent Authority vide Notification No SO(E)/MDD/4-1/2019 dated 26-11-2019 constituted an inquiry committee, comprising both the undersigned, to conduct an inquiry against the staff of the Minerals Development Department into the charges/allegations leveled against them in the charge sheets and statement of allegations and to submit findings/inquiry report. Mr. Ashfaq, Deputy Director, Directorate General Mines and Minerals Khyber Pakhtunkhwa was nominated as Departmental Representative to assist the inquiry Committee.

BACK HISTORY

An advertisement was floated in the newspapers regarding auction of minor mineral areas in District Nowshera on 25-03-2019 (**Annexed-A**). Auction of the area of 1773.023 acres near village Mian Essa/Mossam Dherai Block No 3 was also conducted by the Auction Committee, Chaired by Deputy Commissioner Nowshera, on the same day. Sketch plan showing the auction area is at **Annexed-B**. Mr. Shujat Ali S/O Nusrat Iqbal R/O Mohallah Awan Village Badrashi Tehsil and District Nowshera offered the highest bid of Rs. 30,50,00,000/- against the reserved price of Rs 24,00,00,000/- for the same area.

Mr. Shujat Ali deposited Rs 7,62,50,000/- as 25% security of the bid money on 27-03-2019 as required under sub-section 9 of Section 80 of the Minerals Sector Government Act, 2017/(Now Mines and Minerals Act, 2017). Approval for grant of one year mining lease for minor mineral over the aforementioned area to Mr. Shujat Ali was granted by the Licensing Authority vide letter dated 02-04-2019 (**Annexed-C**). Offer letter dated 05-04-2019 was issued to the party (**Annexed-D**). Reminder dated 22-04-2019 was issued to the party advising him to provide certificate of 15% amount as advance withholding tax as well as professional tax certificate within 15 days (**Annexed-E**). Mr. Shujat Ali responded vide application dated 29-04-2019 requesting therein that work order should not be issued to him till completion of the under construction road from Mian Essa to Jehangira and also requested for inspection of the same road (**Annexed-F**). However, work order with certain terms and conditions was issued to the lessee on 06-05-2019 where in mining lease was valid up to 05-05-2020 (**Annexed-G**).

The lessee filed an appeal with the Appellate Authority on 10.05.2019 and requested to defer the work order for 45 days on the plea that due to ongoing construction work on local road, transportation from the lease area has been suffered. The Appellate Authority vide order dated 16-05-2019 dismissed the appeal being devoid of any substance and convincing evidence (**Annexed-H**).

On the direction of the accused Assistant Director Minerals Development Nowshera, Mr. Tajamal Shah, Royalty Sub-Inspection and Mr. Jibranullah, Mineral Guard visited the site and submitted their report on 14-05-2019 confirming the impossibility of transportation on the under construction Jehangira to Mian Essa Road (**Annexed-I**).

The accused Assistant Director Mineral Development Nowshera vide letter dated 10-06-2019 reported that he has inspected the area and observed that the subject area has also other approach road/path for transportation from Kernal Sher Khan Interchange side. He proposed to the licensing Authority to cancel the mining lease due to failure of the lessee to deposit first monthly installment, Professional tax certificate and also failure of the party to deposit advance withholding tax @ 15% of the total bid money as per condition of the work order. He further requested forfeiture of the security

deposited by the lessee and its adjustment against the Government dues as well as to allow the District Auction Committee to re-advertise the area for auction (**Annexed-J**).

The lessee filed writ petition No 3040/2019 in the Peshawar High Court Peshawar praying that the impugned order dated 06-05-2019 may be declared illegal, without lawful authority, un-equitable, unjust, unfair and of no legal effect and consequently this order may be kept hold in abeyance/deferred and date of work order of the mining lease may be reckoned after a period of 45 days in view of blockage of road or any other order deemed proper in the matter may kindly be passed. The August Court on 03-06-2019 ordered as follows:-

"Adjourned to 26-06-2019. Till then, no demand shall be made from the petitioner for the payment of first installment and further no adverse action be taken against him".

The Director General Mines and Minerals was directed vide office order bearing No. SO(Appeal)/MDD/5-19871/19 dated 24-06-2019 to personally conduct an inquiry into the allegations mentioned in such letter and furnish report on priority basis. The Director General Mines and Minerals submitted inquiry report to the Admin Department vide letter No 16906/DGMM/NSR/Block-3 (Mia Essa)/2017 dated 05-08-2019. He stated in the inquiry report that during his visit of the area it was observed that the lessee could easily transport the sand/minor mineral through other alternate approach road and the plea of the lessee does not seem to be realistic/according to ground realities (**Annexed-K**).

A Committee consisting of 03 officers of the Directorate General Mines and Mineral also inspected the area and reported that the Committee has checked all possible approach roads/paths of the subject area/block in detail and it was observed that the area has various approach road/routes, shown in the sketch and can be used as alternative route for transportation of minor mineral from the granted area (**Annexed-L & M**).

The August Court vide order sheet dated 06-09-2019 disposed of the application (CM) of the lessee (**Annexed-N**). In light of the decision of the August Court, the H/Q office advised the accused Assistant Director Minerals Development Nowshera vide letter dated 26-09-2019 to send summary for cancellation as the lessee has not cleared the outstanding amount due against him. The accused Assistant Director Minerals Development Nowshera sent a detail letter dated 10-06-2019 to the Directorate General Mines & Minerals requesting therein that the mining lease may be cancelled under Sub-Section 19 of Section 80 of the Minerals Sector Government Act 2017 (**Annexed-O**).

The mining lease was cancelled vide letter dated 30-09-2019 by the Licensing Authority (**Annexed-P**). The lessee was advised vide letter dated 01-10-2019 to hand over possession of the area (**Annexed-Q**). Perusal of the record shows that the aggrieved with the cancellation order dated 01-10-2019, the lessee filed an appeal with the Appellate Authority under Section 102 of the said Act.

PROCEEDINGS

Soon after receipt of order of inquiry, the inquiry committee initiated inquiry proceedings. Record at H/Q office was taken/procured and thoroughly perused. The accused were telephonically directed to appear before the inquiry committee on 09.12.2019 at 10:30 am along-with written statements.

The accused appeared before the committee on due date and time. They were personally heard in detail. They submitted their written defense (**Annexed-R to T**).

ATTESTED

54

The statements of the accused are summarized as follow:-

**STATEMENT OF ACCUSED MOHSIN ALI KHAN, EX-ASSISTANT DIRECTOR
MINERALS DEVELOPMENT NOWSHERA**

He stated that all the charges leveled against him in the charge sheet are incorrect and baseless. According to him he has not mishandled the issue regarding the lease of Mr. Shujat Ali. He added that he resumed the charge of the post of Assistant Director Minerals Development Nowshera on 11-04-2019 whereas the area in question was auctioned on 25-03-2019. He further added that he issued a 14 days' notice to the lessee on 22-04-2019 for depositing of advance income tax and professional tax certificates. He issued conditional work order to the lessee on telephonic directive of the then Director General Mines & Minerals, he added.

He further stated that instead of relying upon the report of the field Staff dated 14-05-2019, he personally visited the area on 27-05-2019 and observed that the leased area had its approach path from Kernal Sher Khan Interchange side. According to him he forwarded letter to the H/Q office on 10-06-2019 for cancellation of such lease and forfeiture of the security deposited by the lessee.

He denied that Peshawar High Court has granted stay order to the lessee on the basis of report of the field staff. According to him, the Dealing Assistant of Nowshera office was the record keeper and not he. He further added that the dues and installments were delayed due to the orders of the Hon'ble Peshawar High Court only and no loss has been faced/suffered by Government.

STATEMENT OF ACCUSED MR. TAJAMUL SHAH, ROYALTY SUB-INSPECTOR

He stated that he has not mishandled the issue of Block No.3. According to him, they visited the road from Jehangira to Mian Essa on 14-05-2019 on the order of the Assistant Director Minerals Development Nowshera and reported actual facts. He further stated that the Mian Essa /Massam Dheri Kernal Sher Interchange road has never been used for transportation of minor mineral as it is at double distance from Jehangira Road. The Jehangira to Mian Essa road was found under construction at the day of inspection and could not be used for heavy traffic, he added.

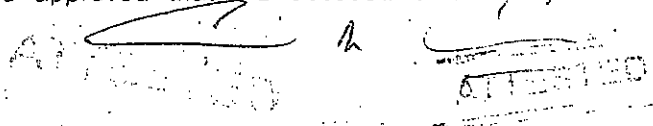
He further stated that they do not keep any record or file with them and the same are in custody of the record keeper of the office. We know nothing regarding official record, he added. He stated that he knows nothing regarding misplace/leakage of official record.

STATEMENT OF ACCUSED MR. JIBRANULLAH, MINERAL GUARD

His statement was similar to the statement of Mr. Tajamal Shah as narrated above.

OBSERVATIONS

- (1) Mr. Shujat Ali, the lessee has failed to comply with the conditions of the offer letter except payment of demarcation fee.
- (2) The accused Assistant Director Minerals Development Nowshera issued reminder as well as 15 days notice to the lessee instead of seeking advice from the higher ups of the Directorate in the matter in question.
- (3) The Directorate General Mines & Minerals viewed the attitude of the said accused officer very seriously and approved that the accused officer may

A handwritten signature is present above a rectangular stamp. The stamp contains the word "ATTACHED" in capital letters.

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immediately issue conditional work order to Mr. Shujat Ali, the highest bidder without further loss of time.

- (4) Application of Mr. Shujat Ali for deferment of work order was filed by the Directorate General Mines & Minerals as work order was already issued to him by the accused officer.
- (5) Mr. Shujat Ali attached a copy of the report of the field staff dated 14.05.2019 with his writ petition filed in the Peshawar High Court Peshawar.

FINDINGS

- (1) The report of the accused officials dated 14.05.2019 gave way to the petitioner for obtaining stay order from the August Court in his favour as the same report has confirmed the plea of the petitioner towards closure of the approach road to his leased area. However, both the accused officials have denied that they had shared their report with the petitioner and stated that record keeping is the responsibility of the relevant Assistant of the office.
- (2) According to sub-section 12 of section 80 of the said Act, the Secretary of the District Auction Committee shall issue an allotment letter on receipt of approval of the Licensing Authority whereupon the lease shall stand granted to the highest bidder. As per sub-section 13 of section 80 of the Act, the allotment letter shall state the terms and conditions of the lease and indicate the dates on which the lessee would be required to pay the installments, if any.
- (3) There is no provision of issuance of offer letter dated 05-04-2019 (issued by predecessor of the accused AD) and subsequent reminder dated 22-04-2019 (issued by the accused AD) to the highest bidder in the Minerals Sector Governance Act, 2017. However, the same practice is in vogue in the Directorate since long though not provided for in the law.
- (4) No loss to the Government has occurred as the outstanding dues are to be recovered as arrears of land revenue in terms of sub-section 19 of section 80 of the said Act.
- (5) In terms of sub-section 19 of section 80 of the said Act, the Licensing Authority may cancel the mining lease subject to 15 days' notice and take possession of the area through authorized officer in this behalf.

RECOMMENDATIONS

1. In respect of the accused Mohsin Ali Khan, Ex-Assistant Director Mineral Development Nowshera

Based on the following it is recommended that minor penalty of withholding of 01 increment for 2 years may be imposed.

- i. The charge at Serial No. i of the charge sheet partially proved as he had issued reminder to the ex-lessee instead of allotment letter in terms of sub-section 12 of section 80 of the Act, as he followed the footsteps of his predecessor and violated the mandatory provision of law. Moreover, he himself issued 15 days notice though under the Act, the Licensing Authority was/is required to issue notice.
- ii. Charges No. ii, iii, iv and v of the charge sheet could not be proved as he had visited the site himself and submitted a report dated 10-06-2019 to this effect stating therein that alternate routes were available for transportation of the

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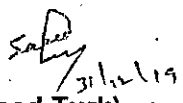
material from the leased site. Moreover, he had sent a case for cancellation of the lease to the licensing authority which under the law is empowered to cancel the lease.

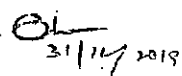
- iii. Charge No. vi of the charge sheet could not be established as no loss to the Government has occurred as the outstanding dues amounting to Rs.8472218/- against the ex-lessee Mr. Shujat Ali are to be recovered as arrears of land revenue in terms of sub-section 19 of section 80 of the Act.

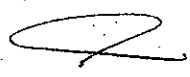
2. In respect of the accused Tajamul Shah, Royalty Sub-Inspector and Jibranullah, Mineral Guard.

Based on the following it is recommended that minor penalty of withholding of 02 increments for 2 years may be imposed.

- i. The charges No. I & ii of the charge sheet proved as the accused submitted false statement that the road to the leased area was in deteriorated condition and transportation of minerals was not possible on the same route whereas there were alternate routes through which transportation of minerals was possible.
- ii. The charges No.iii of the charge sheet not proved as keeping of secrecy of official record was the responsibility of the concerned dealing assistant.
- iii. Charge No. iv of the charge sheet could not be established as no loss to the Government has occurred as the outstanding dues amounting to Rs.8472218/- against the ex-lessee Mr. Shujat Ali are to be recovered as arrears of land revenue in terms of sub-section 19 of section 80 of the Act.


(Akhtar Saeed Turk)
Additional Secretary
Finance Department
Khyber Pakhtunkhwa


(Engr. Ziarat Khan)
Chief Commissioner Mines
Labour Welfare
Khyber Pakhtunkhwa



57

Annexed P



DIRECTORATE GENERAL OF MINES AND MINERALS
KHYBER PAKHTUNKHWA

Attached Departments Complex Khyber Road Peshawar

Phone: & Fax # 091-9210236

No. 4810-19/DGMM/Complaints/Peshawar Division.

Dated 03 /03/2020

To

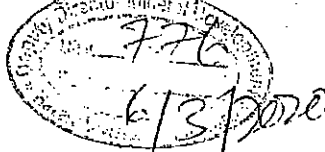
1. Mr. Mohsin Ali Khan, Ex-Assistant Director Minerals BS-17, Nowshera (Now Deputy Director Tech BS-18, Abbottabad Hazara Division).
2. Mr. Tajjamul Shah, Royalty Sub-Inspector (BPS-10), Nowshera (Now under suspension in another case).
3. Mr. Jibrannullah, Mineral Guard (BS-03), Nowshera.

Subject: - **SHOW CAUSE NOTICE**

I am directed to refer to the SO (Estt.) Minerals Development Department Khyber Pakhtunkhwa letter No. SO(E)/MDD/4-1/2019/3361-62 dated: 28.02.2020 on the subject noted above and to enclose herewith copies of Show Cause Notices (in each case) alongwith Inquiry Report with the advice to submit your replies through Director General Mines & Mineral within seven (07) days of the delivery of this letter, failing which ex-parte action shall be taken against you under the E&D Rules 2011.

Kindly furnish acknowledgement receipt.

Encls: as above



Assistant Director (Admin)
HQ Office Peshawar

No. _____/DGMM/Complaints/Peshawar Division.

Dated _____/03/2020

Copy is forwarded to:

1. PA to Director General Mines and Minerals Khyber Pakhtunkhwa.
2. Section Officer (Estt.) Minerals Development Department with referred to letter above.
3. Assistant Directors Mineral, Nowshera with advice to handover the Show Cause Notice to the concerned officials please and furnish acknowledgment receipt.
4. Master File/DGMM/Admin.

Assistant Director (Admin)
HQ Office Peshawar

ATTACHED

ATTACHED

58



Government of
Khyber Pakhtunkhwa
Minerals Development Department

No. SO (E)/MDD/4-1/ 2019
Dated Peshawar, February 28, 2020

3361-62

To:

1. Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals) BS-17, Nowshera (now Deputy Director (Tech) BS-18, Abbottabad, Hazara Division).
2. Mr. Tajjamul Shah, Royalty Sub-Inspector (BPS-10), Nowshera (now under suspension in another case).
3. Mr. Jibranullah, Mineral Guard (BS-03), Nowshera.

C/O Director General, Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar.

Subject: SHOW CAUSE NOTICE.

I am directed to refer to the subject noted above and to enclose herewith copies of the Show Cause Notices (in each case) alongwith Inquiry Report with the directions that replies of the Show Cause Notices may be submitted through Director General Mines & Minerals being Head of Attached Department within the stipulated period of seven (07) days of its delivery, failing which it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you under the Khyber Pakhtunkhwa, E&D Rules 2011.

2. Kindly furnish acknowledgement receipt.

*Suma-II
Nowshera complaint
File
3/3/20
ABC*

*AD
R-1
28/02/20*

*(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT)*

Encl: As Above.
Endst: No & Date even:

Copy is forwarded to:

*AD/AS
3/3/20*

- i. Director General Mines & Minerals, Khyber Pakhtunkhwa, Peshawar, with the request to ensure submission of consolidated replies of Show Cause Notices of the above named accused officers/officials to this department within stipulated period for onward submission to the Competent Authority for final orders.
- ii. P.S to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department for information.

*3/3/20
02/3/20
R-To Day*

Directorate General Mines & Minerals
No. 784
Date 02/03/2020
Peshawar

SECTION OFFICER (ESTT)

ATTESTED

SHOW CAUSE NOTICE

I, **Mehmood Khan, Chief Minister, Khyber Pakhtunkhwa**, as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby serve you, **Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals) BS-17, Nowshera** (now Deputy Director (Tech) BS-18, Abbottabad, Hazara Division), as follows:

- 1. (i) That consequent upon the completion of inquiry conducted against you by the Inquiry Officer/Inquiry Committee for which you were given opportunity of personal hearing on 09-12-2019; and
- (ii) That going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defense before the inquiry officer/inquiry committee,-

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

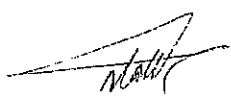
- (a). Inefficiency
- (b). misconduct
- (c). _____

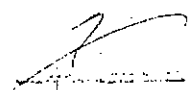
2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Withholding of 02 (two) annual increments for two years. under Rule 4 of the said rules.

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

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the inquiry officer/inquiry committee is enclosed.


(MEHMOOD KHAN)
 Chief Minister, Khyber Pakhtunkhwa
 (COMPETENT AUTHORITY)


ATTESTED

(69)

Approved & Registered



**OFFICE OF THE DEPUTY DIRECTOR
MINERAL DEVELOPMENT HAZARA DIVISION ABBOTTABAD,
Shah Zaman Town, near Khan Khel Plaza, Jhangli, Abbottabad Tel: 0992408251**

No. 691...../MDW/DD/HA /Misc(01)/2020

Dated: 13/03/2020

To


The Director General Mines and Mineral,
Khyber Pakhtunkhwa Peshawar.

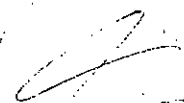
Subject: SHOW CAUSE NOTICE

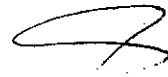
Reference SO (Estt.) Mineral Development Department Khyber Pakhtunkhwa letter No. SO (E)/MDD/4-1/2019, 3361-62, dated Peshawar 28-02-2020 and your letter No. 480-12/DGMM/complaints/Peshawar Division, dated 03-03-2020 on the subject noted above.

Enclosed please find herewith reply to show cause notice dated 28-02-2020 for further necessary action of Competent Authority. please.

Enclose (As above)


% MOHSIN ALI KHAN 13/03/2020
Deputy Director (Tech)
Mineral Development
Hazara Division Abbottabad


ATTESTED


ATTESTED



61

Registered

OFFICE OF THE DEPUTY DIRECTOR
MINERAL DEVELOPMENT HAZARA DIVISION ABBOTTABAD.
Shah Zaman Town, near Khan Khel Plaza, Jhangi, Abbottabad Tel: 0992408251

No. /MDW/DD/HA /Misc(01)*2020

Dated: /03/2020

To

The Honorable Chief Minister,
Khyber Pakhtunkhwa Peshawar.

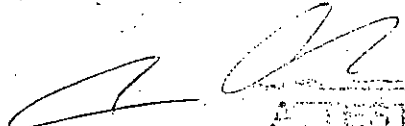
Subject: **SHOW CAUSE NOTICE**

Kindly refer letter No. SO (E)/MDD/4-1/2019, 3361-62, dated Peshawar February, 28, 2020 and to state that

My reply to the show cause notice is as under.

1. I Mr., Mohsin Ali Khan Deputy Director Mineral Development Hazara Division Abbottabad, Ex Assistant Director Mineral Development Peshawar was assigned additional duty of the office of Assistant Director Mineral Development Nowshera and accordingly I assumed the charge of the office of Assistant Director Mineral Development Nowshera on 11/04/2019. I relinquished the charge of the office of Assistant Director Mineral Development Nowshera on 26/06/2019 and remained as Assistant Director Mineral Development Nowshera for 76 days.
2. That, the inquiry committee held me "*partially responsible of the charge at serial No. i of the charge sheet that, I have issued reminder notice to the ex-lessee instead of Allotment Letter in terms of sub-section 80 of the Act by following the footsteps of my predecessor Assistant Director Mineral Development Nowshera and violated the mandatory provision of the law. Moreover I himself issued 15-days notice though under the Act, the Licensing Authority is required to issue*".

In this regard, it is clarified that, the above-mentioned assumption made by the inquiry committee is wrong, against the mandatory provision of law and against the auction notice published dated 12/03/2019. The Section 236-A of Income Ordinance clearly indicates that, the authority selling/ Leasing of the government property through auction shall recover the advance income tax, from the highest bidder computed on the basis of total bid money. In light of Section 236-A of income tax ordinance 2011. No authority can grant lease through auction to highest bidder without recovery of income tax in advance computed on the basis of total bid money. In this case the highest bidder Mr. Shujat Ali S/o Nusrat Iqbal completed all the formalities except to deposit advance income tax and professional tax certificate. Since the amount of advance income tax was a huge amount of Rs. 45750000/- (forty-five million seven hundred fifty thousand), and the Section 236A of the income tax was also very much clear hence I could not

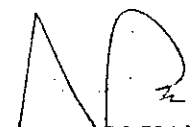

ATTESTED
ATTESTED


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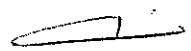
took risk of it by issuance of Allotment letter/work order without collection of advance income tax. Further the FBR could also take action against me in case of non-recovery of huge amount of advance income tax. Accordingly I issued a 14-days' notice for recovery of advance income tax, which is law full and covered under the law. Accordingly after the expiry of notice time. I forwarded summary to H/Qrs office for cancellation of lease and forfeiture of security amount. vide letter dated 10/06/2019. (Copy of the Section 236A of income tax ordinance 2011, advertisement notice dated 12/03/2019 and summary dated 10/06/2019 are enclosed as Annex A, B & C respectively).

Further it is added that, Section 63 of Khyber Pakhtunkhwa Mineral Governance Act, 2017, Judgment of Peshawar High Peshawar in writ petition No. 487/2011, dated 12-01-2012 and letter No. SO (Appeal/MDD/6-28/MTC/2019/3608-10 dated 08-11-2019 issued from the government of Khyber Pakhtunkhwa Mineral Development Department and many other circulars received from the directorate are on the same verdict that. Mining Lease of a concessionaries cannot be canceled without issuance of a notice. Accordingly I being the authorized officer of the licensing authority issued 14 days' notice for recovery of advance income tax under the law. (Copy of section 63 of KP MG Act 2017, Order of PHC dated 12/01/2012 in WP No.487/2011 and KPK Government letter dated 08/11/2019 are enclosed as Annex D, E & F respectively)

3. The inquiry committee indicated that. the charges leveled against me in the serial No. ii, iii, iv, v and vi in the charge sheet could not be proved. as. the charges leveled against me are baseless and against the laws.
4. The inquiry committee also indicated in the inquiry report that charge leveled against me at serial no v of the charge sheet could not be established as no loss to government has occurred.
5. That I do not know till date what is inquiry in this case and what section of law has been violated by me.
6. In view of the above, it is humbly prayed that, the penalty of withholding of increment for two years tentatively decided by the competent authority may be filed and I may be exonerated being innocent. please.
7. I may also be heard in person, please.


13/03/2020
MOQSIN ALI KAH
Deputy Director (Tech)
Mineral Development
Hazara Division Abbottabad


ATTESTED


Attested

Arif -  63

IMMEDIATE



Government of
Khyber Pakhtunkhwa
Minerals Development Department

No. SO (E)/MDD/4-20/2019/8365
Dated Peshawar, August 26, 2020

To ✓
Director General,
Mines & Minerals,
Khyber Pakhtunkhwa.

Subject: INITIATION OF DISCIPLINARY PROCEEDING.

1. I am directed to refer to the subject noted above and to state that one Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals) BS-17, Nowshera, now Deputy Director (Tech) BS-18, Abbottabad, Hazara Division and others were proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on the charges of failure to stop / curb illegal excavation and transportation of minor minerals in the area of their jurisdiction. Accordingly, minor penalty of "Withholding of two (02) annual increments for two years" upon the said accused officer / officials were imposed after fulfillment of all codal formalities vide this Department's Notification of even number dated 18-08-2020 (copies enclosed for ready reference).

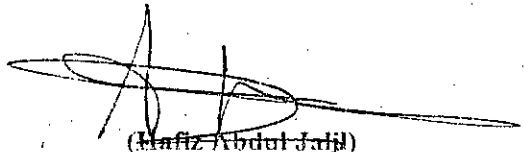
2. However, the Competent Authority has noticed that predecessor of Mohsin Ali Khan i.e the officer who issued the office letter No.419-20/MDW/MM/NSR/Mian Essa/Massam Dherai Block No.3/2019, dated 05-04-2019 to the lessee has not been included in the instant disciplinary proceedings by the Administrative Department and directed to initiate disciplinary proceedings against him accordingly.

3. In view of the above, it is requested to prepare comprehensive charge sheets and statement of allegations against the predecessor of Mohsin Ali Khan i.e. the officer who issued the office letter dated 05-04-2019 to the lessee with specific charges by quoting relevant Rules/ Act and forward to this Department for further course of action and taking disciplinary action against him under Khyber Pakhtunkhwa, Govt. Servants (Efficiency & Discipline), Rules, 2011 as directed by the Competent Authority.

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DA-I
Mines & Minerals
on file
3878

Stamp: Director General Mines & Minerals
No. 2028
27/8/2020
Endst: No & Date even:

Handwritten initials: MS



(Hafiz Abdul Jafir)
SECTION OFFICER (ESTT)

Handwritten date: 27/08/20

Copy is forwarded to PS. to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department for information.

R. To day
Jahid
to AGS 28/7/20

DD (Admin)


28-8-20
SECTION OFFICER (ESTT)

64

Annexed R



Government of Khyber Pakhtunkhwa Minerals Development Department

Dated Peshawar, August 18, 2020

NOTIFICATION

No. SOE (MDD)/4-20/2019: WHEREAS, Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals) BS-17, Nowshera, now Deputy Director (Tech) BS-18, Abbottabad, Hazara Division was proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on the charges of failure to stop / curb illegal excavation and transportation of minor minerals in the area of his jurisdiction.

2. AND WHEREAS, an Inquiry Committee comprising M/S Ziarat Khan, Chief Commissioner of Mines Labour Welfare (BS-20), Commissionerate of Mines Labour Welfare, Khyber Pakhtunkhwa and Akhtar Saeed Turk (PMS BS-19) Additional Secretary, Finance Department was constituted to conduct formal inquiry against the accused official.

3. AND WHEREAS, the Inquiry Committee, after having examined the charges, evidences on record and explanation of the accused official, submitted its report.

4. AND WHEREAS, the Competent Authority authorized the Secretary Administration, Khyber Pakhtunkhwa to afford the opportunity of personal hearing to the accused official on his behalf.

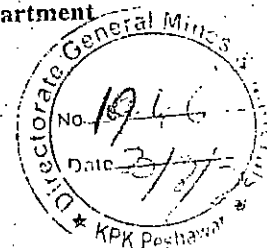
5. NOW THEREFORE, the Chief Minister, Khyber Pakhtunkhwa being Competent Authority, under Rules-14 (a) (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-4 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 has been pleased to impose minor penalty of "withholding of two (02) annual increments for two years" upon Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals) BS-17, Nowshera, now Deputy Director (Tech) BS-18, Abbottabad, Hazara Division.

Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Dev: Department

Endst: No & Date even: 7871-81

Copy for information is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa.
2. PSO to Chief Minister, Khyber Pakhtunkhwa.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. The Director General, Mines & Minerals, Khyber Pakhtunkhwa.
5. The District Accounts Officer, Nowshera / Abbottabad.
6. Mr. Mohsin Ali Khan, Deputy Director (Tech) BS-18, Abbottabad, Hazara Division.
7. Assistant Director (Admn), DGMM for necessary action.
8. PS to Special Assistant to Chief Minister for Minerals Dev: Department.
9. The Private Secretary to Secretary Minerals Development Department.
10. Master File.
11. Personal File.



(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT)

ATTESTED

DD (Admin)

R. To-day

19/08/20
A to ADC 20/8/20

Handwritten notes and signatures on the left margin, including 'JA-I', '25/8/20', 'AD (Admin)', and '20/8/20'.

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To,

The Director General
Mines and Minerals
Khyber Pakhtunkhwa Peshawar.

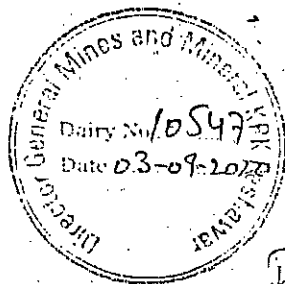
Subject: **NOTIFICATION**

It has been heard by the undersigned that minor penalty of withdrawal of two increments for two years has been imposed upon the undersigned by the Competent Authority on 18-08-2020 but the said notification has not yet been received to the undersigned.

It is therefore, requested to kindly provide the said notification so that proper appeal could be submitted to the Competent Authority in time please.

Mohsin Ali Khan
Deputy Director Mineral Development
Malakand Division Swat

03/09/2020



o/c Reced

ES

Anex - 5

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①

To,

The Director General
Mines and Minerals
Khyber Pakhtunkhwa.

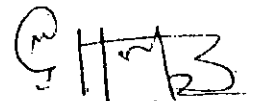
Through Proper Channel

Subject: **DEPARTMENTAL APPEAL BEFORE THE CHIEF MINISTER KHYBER
PAKHTUNKHWA AGAINST THE ORDER DATED 18-08-2020**

Enclosed please find herewith Departmental Appeal before the Chief Minister Khyber Pakhtunkhwa through proper channel against the order dated 18-08-2020 whereby minor penalty of withholding of two annual increments for two years was imposed upon the appellant/ undersigned.

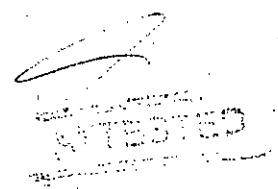
It is therefore, requested to forward the appeal to the Honorable Chief Minister Khyber Pakhtunkhwa Peshawar for further necessary action please.

Encl: As Above.



Engr. Mohsin Ali Khan
Deputy Director Mineral
Malakand Division Swat

15/09/2020



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**HONORABLE CHIEF MINISTER KHYBER PAKHTUNKHWA
PESHAWAR**

THROUGH PROPER CHANNEL

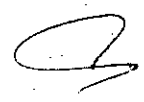
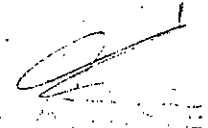
DEPARTMENTAL APPEAL AGAINST THE ORDER NO. SOE(MDD)/4-20/2019, DATED 18/08/2020 WHEREBY MINOR PENALTY OF WITHHOLDING OF TWO ANNUAL INCREMENTS FOR TWO YEARS WAS IMPOSED UPON THE APPELLANT ON THE CHARGES OF FAILURE TO STOP /CURB ILLEGAL EXCAVATION AND TRANSPORTATION OF MINOR MINERALS IN THE AREA OF JURISDICTION.

PRAYER IN APPEAL:

By allowing the instant appeal the minor penalty of withholding of two increments for two years as imposed on the Appellant vides notification No. SOE(MDD)/4-20/2019, dated 18/08/2020 be set aside and consequently the appellant may kindly be exonerated for being innocent.

RESPECTFULLY SHEWETH

Appellant submits as under:-

 
UNREGISTERED

FACTS OF THE CASE:-

1. That the appellant Mr. Mohsin Ali Khan was appointed as Assistant Director through Khyber Pakhtunkhwa public service commission on 19/12/2009 on regular basis in Mineral development department. Later on the appellant was promoted to the Deputy Director. Mineral development vides government of khyber Pakhtunkhwa notification

dated 13/05/2019 and currently the appellant is working as Deputy Director Mineral development Malakand division at swat.

2. That the appellant while posting as Assistant Director Mineral development headquarter office Peshawar was assigned additional look after charge of the office of Assistant Director Mineral development Nowshera in April 2019 and accordingly the appellant assumed the additional look after charge of the office of assistant director mineral development Nowshera on 11/04/2019 (Annexed-A). The look after additional charge of the office of Assistant Director Mineral Development Nowshera was remained with the appellant for two months and sixteen days i.e. up to 26/06/2019.
3. That an advertisement was floated in the newspapers regarding auction of minor minerals in district Nowshera by the then Assistant Director mineral Development Nowshera on 12/03/2019 (Annexed-B1). The auction of area of minor mineral block No.3, comprising of 1773.023 acres situated near village Mian Essa, district Nowshera was held under the chairmanship of deputy commissioner Nowshera on 25/03/2019. For this area of Block No. 3, Mr. Shujat Ali S/O Nusrat Iqbal of district Nowshera offered highest bid of Rs. 305000000/- and deposited 1/4th of the Bid money amounting to Rs. 76250000/- at the fall of hammer under KPK MG Act 2017. Accordingly offer letter was issued to him by the then Assistant Director Mineral Development Nowshera on 05/04/2019 (Annexed-B2) after approval of Licensing Authority. Mr. Shujat Ali completed all the formalities of offer letter except payment of Advance income tax which was mandatory under section 236-A (Annexed-B3) of the income tax ordinance. In the meanwhile the appellant was assigned additional look after charge of the office of Assistant Director mineral development Nowshera and the appellant assumed the charge on 11/04/2019 and accordingly the appellant issued a notice of 14 days to Mr. Shujat Ali for deposit of advance Income tax and professional tax certificate on 22/04/2019 (Annexed-B4). On the expiry of notice time Mr. Shujat Ali failed to deposit Advanced Income tax. Accordingly the then Director General Mines and minerals directed the appellant to immediately issue conditional allotment letter to Mr. Shujat Ali. In response the Appellant issued conditional Allotment letter to Mr. Shujat Ali on 06/05/2019 (Annexed-B5).
4. Mr. Shujat Ali submitted a complaint/ application addressed to the headquarter office Peshawar and copy endorsed to the regional office of nowshera and requested to not issue work order to him till completion of construction work of approach road of the leased area of block No.3 (Annexed-C1). In order to verify the content of application, Mr. Tajamal

Shah Royalty sub inspector and Mr. Jabranullah Mineral Guards were directed to visit the area and report. They visited area and submitted report on 14/05/2019 (Annexed-C2). In order to re verify the report of field staff, the appellant personally visited the minor mineral area of block no.3 situated near village Mian Essa on 27/05/2019 and observed that the area also have other approach paths from Kernel Shair Khan interchange side. Accordingly the appellant filed the report of field staff on 27/05/2019 and directed the dealing assistant to put up the summary for cancellation of the lease to headquarter office in case of failure of the lessee to comply with the instructions mentioned in the Allotment Letter (Annexed-C3). Accordingly summary was forwarded to headquarter office Peshawar for cancellation of Mining lease and forfeiture of security on 10/06/2019 (Annexed-C4). In the mean while I was promoted to the deputy director mineral development and posted in Hazara Division Abbottabad and I relinquished the charge of the headquarter office on 26/06/2019 (Annexed-C5).

5. That the then Director General Mines and minerals conducted inquiry in the matter on the direction of higher ups and called the appellant in his office on 27/06/2019, copy of the statement of the appellant along with copy of the inquiry report is attached (Annexed D1 & D2).

6. That the competent authority vide notification No. SO (E)/MDD/4-1/2019, dated 26/11/2019 constituted inquiry committee, comprising of Mr. Akhtar Saeed Turk additional secretary finance and Mr. Ziarat Khan, chief commissioner mines and charged the appellant against the charges mentioned in the charge sheet and statement of allegations (Annexed-E) also reproduced below. "

- i. ***That you mishandled the issue regarding lease of Mr. Shujat Ali S/O Nusrat Iqbal who was granted the lease of block of minor minerals over an area of 1773.023 acres near village Mian Essa/Massam Dheri, Nowshera by district auction committee on 25/03/2019.***
- ii. ***That you deputed Mr. tajamal shah, royalty sub inspector, Nowshera, and Mr. Jabranullah Mineral Guard Nowshera to probe into the matter and submit report. In their report they stated that approach road to the leased area was in deteriorated condition and transportation of minerals was not possible on the same route. However the later reports proved that their statement was incorrect as there were alternate routes through which transportation of mineral was possible.***

[Signature]
 27/12/2019

- iii. *That you instead verifying the said statement relied upon the same and proceeded further in the matter.*
 - iv. *That you failed to keep secrecy of official record as the said statement was made available to the lessee who submitted it in the Peshawar high court as evidence in his writ petition.*
 - v. *That you failed to cancel the lease inspite of the fact that he has failed to comply with all the condition of offer letter. Instead you issued him fifteen (15) days' notice / reminder for depositing the dues.*
 - vi. *That due to your irresponsible behavior a loss of an amount of Rs. 8472218/- outstanding against the ex-lessee, after issuance of cancellation letter and forfeiture and adjustment of security towards government dues, has been caused to government exchequer".*
7. That The appellant appeared before the inquiry committee and submitted his defense statement dated 09/12/2019 (Annexed-F1) and the inquiry committee submitted its report dated 31/12/2019 (Annexed-F2) to the competent Authority with the recommendation for imposing minor penalty of withholding of one increment for two years over the appellant.
 8. That the appellant was issued show cause notice vide letter dated 03/03/2020 (Annexed-G1). The Appellant submitted reply of the show cause notice on 13/03/2020 (Annexed-G2).
 9. That the competent Authority vide notification dated 18/08/2020, imposed minor penalty of "Withholding of two (2) Annual increments for two years" over the appellant on the charges of "Failure to stop /curb illegal excavation and transportation of the minor minerals in the area of jurisdiction" (Annexed-H).

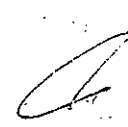
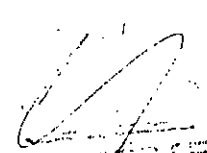
Grounds

The order dated 18/08/2020 of the competent authority regarding imposition of Minor penalty of withholding of two annual increments for two years over the appellant is liable to be set aside on the following grounds.

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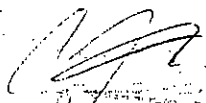
ATTESTED

- a. That the competent Authority vide notification dated 18/08/2020, imposed minor penalty of **"Withholding of two (2) Annual increments for two years"** over the appellant on the charges of **"Failure to stop /curb illegal excavation and transportation of the minor minerals in the area of jurisdiction"**. However in the charge sheet, statement of allegations and the show cause notice dated 03/03/2020, the appellant was never been charged for **"failure to stop/curb illegal excavation and transportation of the minor minerals in the area of jurisdiction"**. Hence the penalty imposed against the appellant is liable to be set aside.
- b. That in the order dated 18/08/2020; the appellant has been punished on the charges which were neither included/mentioned in charge sheet nor statement of allegations or show cause notice. The appellant was neither provided opportunity to present his reply regarding allegation of **"Failure to stop/curb illegal excavation and transportation of minor minerals in the area of jurisdiction"** nor provided personal hearing regarding the efforts made by the appellant for the stoppage of illegal excavation from the area of appellant jurisdiction, so appellant is suffering unheard which is against the principal law and equity hence penalty imposed is liable to be set aside.
- c. That the whole proceeding against the appellant is null and void in the eye of law as the inquiry was conducted under the political influence and the remarks of the then Director General Mines and Minerals in the Para 105 of the note portion of the Bock.No.3 Mian Essa file, (Annexed-i) is evidence to this effect. Further nothing is mentioned against the appellant in the fact finding inquiry conducted by the then director general mines and minerals dated 05/08/2019.
- d. That, the inquiry committee held the appellant "partially responsible of the charge at serial No. i of the charge sheet that, I have issued reminder notice to the ex-lessee instead of Allotment Letter in terms of sub-section 80 of the Act by following the footsteps of my predecessor Assistant Director Mineral Development Nowshera and violated the mandatory provision of the law. Moreover the appellant himself issued 15-days' notice though under the Act, the Licensing Authority is required to issue". In this regard, it is clarified that, the above-mentioned assumption made by the inquiry committee is wrong, against the mandatory provision of law and against the auction notice published dated 12/03/2019. The Section 236-A of Income Ordinance clearly indicates that, the authority selling/ Leasing of the government property through auction shall recover the advance income tax, from the highest bidder computed on the basis of total bid money. In light of Section 236-A of income tax ordinance 2011, No authority can grant lease through auction to highest



ATTESTED

bidder without recovery of income tax in advance computed on the basis of total bid money. In this case the highest bidder Mr. Shujat Ali S/o Nusrat Iqbal completed all the formalities except to deposit advance income tax and professional tax certificate. Since the amount of advance income tax was a huge amount of Rs. 45750000/- (forty-five million seven hundred fifty thousand), and the Section 236A of the income tax was also very much clear hence the appellant could not take risk of it by issuance of Allotment letter/work order without collection of advance income tax. Further the FBR could also take action against the appellant in case of non-recovery of huge amount of advance income tax. Accordingly the appellant rightly issued a 14-days' notice for recovery of advance income tax, which is lawful and covered under the law and after the expiry of notice time, the appellant forwarded summary to H/Qrs office for cancellation of lease and forfeiture of security amount, vide letter dated 10/06/2019.

- e. That, Section 63 of Khyber Pakhtunkhwa Mineral Governance Act, 2017(Annexed-J1), Judgment of Peshawar High Court in writ petition No. 487/2011, dated 12-01-2012(Annexed-J2) and letter No. SO (Appeal/MDD/6-28/MTC/2019 /3608-10 dated 08-11-2019(Annexed-J3) issued from the government of Khyber Pakhtunkhwa Mineral Development Department and many other circulars received from the directorate(Annexed-J4) are on the same verdict that, Mining Lease of a concessionaries cannot be cancelled without issuance of a notice. Accordingly the appellant being the authorized officer of the licensing authority and secretary cum member of the district auction committee issued 14 days' notice for recovery of advance income tax under the law.
- f. That neither the report of the field staff was kept secret as the same was filed after verification by the appellant nor the Honorable Peshawar High Court granted stay order to the lessee on the basis of any report of the appellant which is evident from the court order dated 03/06/2019(Annexed K1). Further the appellant was not the record keeper of Nowshera office as the same was the duty of dealing assistant of the office. The dealing assistant of the Nowshera office was neither included in the inquiry conducted by the then Director General nor he was charge sheet. In fact in every office the dealing assistant of the office is the record keeper of that office which is also admitted by the inquiry committee. Hence penalty imposed is liable to be set aside.


ACCEPTED

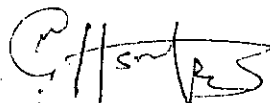
- g. That the lessee Mr. Shujahat Ali filed Writ petition in the Peshawar high court Peshawar and the honorable Peshawar high court vides dated 03/06/2019 restricts the department to not demand payment from the

petitioner as well as no adverse action shall be taken against the petitioner (Annexed-K1). Later on the Honorable Peshawar high court Peshawar in its order dated 06/09/2019 dispose the application of the petitioner for further recovery of the installments and allow the department for recovery of dues etc.(Annexed-K2). After the above mentioned order of the honorable court the licensing authority vides order dated 30/09/2019 cancelled the mining lease, forfeited the security and decided to recover the other dues if any as arrear of land revenue (Annexed-K3). It is added that the dues and installments were delayed due to the orders of the honorable Peshawar high court only and no loss is faced by the government which is also admitted by the inquiry committee.

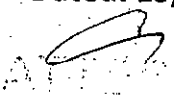
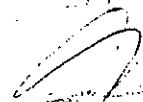
- h. That the inquiry committee founded that, the charges leveled against the appellant in the serial No. ii, iii, iv, v and vi in the charge sheet could not be proved, as, the charges leveled against appellant are baseless and only on this point penalty imposed against the appellant is liable to be set aside.
- i. That no loss is suffered by the provincial government and the inquiry committee also admitted this fact.
- j. That the appellant is innocent and there is no evidence against the appellant in favors of charge which became cause of penalty, hence the penalty imposed against the appellant is liable to be set aside.

In view of the above, it is humbly prayed that, the minor penalty of withholding of two increments for two years imposed by the competent authority vides notification dated 18/08/2020 may kindly be set aside being baseless and consequently it is requested to exonerate the appellant from charges being an innocent, please.

Dated: 15/09/2020

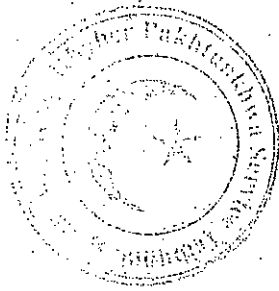

 Engr. Mohsin Ali Khan
 Deputy Director Mineral
 Development Malakand
 Division Swat
 Ex-ADM Nowshera

15/09/2020



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74 (1) Ant. T

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 10

Dated 05/01/2021

Service Appeal No 16 /2021


Mohsin Ali Khan, Deputy Director Mineral Development Malakand
Division Swat (Ex-ADM Nowshera)..... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary at Civil Secretariat Peshawar
2. Government of Khyber Pakhtunkhwa, through Secretary Minerals Development at Civil Secretariat, Peshawar
3. Government of Khyber Pakhtunkhwa through Director General, Mines and Mineral at Khyber Road, Peshawar
4. Chief Minister Khyber Pakhtunkhwa, in capacity of Appellate Authority under Khyber Pakhtunkhwa, Departmental Appeal Rule, 1986 at Chief Minister Secretariat, Peshawar
5. Government of Khyber Pakhtunkhwa, Assistant Director Mineral Development District Nowshera at Tehsil Road, Nowshera Kalan
6. Government of Khyber Pakhtunkhwa through Accountant General, Khyber Pakhtunkhwa, Peshawar Cantt
7. Government of Khyber Pakhtunkhwa through Secretary Administration at Civil Secretariat Peshawar.. (Respondents)

Filed by
Registrar
23/11/2021

ATTESTED


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

75 (2)

Appeal under Section 4 (a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order No SOE (MDD/4-20/2019 dated 18th August, 2020, whereby minor penalty of withholding of two annual increments for two years was imposed upon Appellant on the charges of failure to stop/curb illegal excavation and transportation of minor minerals in the area within the jurisdiction of Appellant

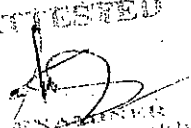
PRAYER IN APPEAL:-

On acceptance of this Service Appeal of the Appellant, the minor penalty of withholding of two increments for two years imposed upon the Appellant vide impugned notification SOE (MDD)/4-20/2019 dated 18-08-2020 may kindly be set aside and consequently the Appellant may kindly be exonerated from the charges leveled against him being an innocent and any other relief, which this Honourable Tribunal deems proper in the circumstances of the appeal may also be granted in favour of Appellant.

Department Appeal of the Appellant is pending since 15th September, 2020 and yet not been decided, hence this appeal after the lapse of 90 days statutory period.

Respectfully Sheweth:

Brief facts leading to this service appeal are as under:-

ATTESTED

GEN. SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 1) That the Appellant was appointed as Assistant Director through Khyber Pakhtunkhwa Public Service Commission on 09-12-2009 on regular basis in Mineral Development Department. Later on the Appellant was promoted to the Deputy Director Mineral Development vide Government of Khyber Pakhtunkhwa notification dated 13-05-2019 and currently the Appellant is working as Deputy Director Mineral Development Malakand Division at Swat.
- 2) That the Appellant while posting as Assistant Director Mineral Development Headquarter Office Peshawar was assigned additional look after charge of the Office of Assistant Director Mineral Development Nowshera in April, 2019 and accordingly the Appellant assumed the additional look after charge of the Office of Assistant Director Mineral Development Nowshera on 11-04-2019 and look after additional charge was remained with the Appellant for two months and sixteen days i.e. up to 26-06-2019. (Copy of the additional charge assumption and Deputy Director Notification is attached as Annex 'A').
- 3) That an advertisement was published in the newspaper regarding auction of Minor Minerals in District Nowshera by the then Assistant Director Mineral Development, Nowshera on 12-03-2019. The auction of area of Minor Mineral Block No 3 comprising of 1773.023 acres situated near village Mian Essa District Nowshera was held under the

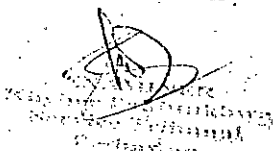
ATTESTED

[Signature]
 Deputy Director
 Mineral Development
 Peshawar

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Chairmanship of Deputy Commissioner Nowshera on 25th March, 2019. For this area of Block No 3, Mr. Shujat Ali S/O Nausrat Iqbal of District Nowshera offered highest bid of Rs 305,000,000/- and deposited 1/4th of the bid money amounting to Rs 76, 250,000/- at the fall of hammer under Khyber Pakhtunkhwa MSG Act 2017. Accordingly offer letter was issued to him by the then Assistant Director Mineral Development Nowshera (Respondent No 5) on 05-04-2019 after approval of Licensing Authority. Mr. Shujat Ali completed all the formalities of offer letter except payment of advance income tax, which was mandatory under Section 236-A of the Income Tax Ordinance. In the meanwhile, the Appellant was assigned additional look after charge of the office of Assistant Director Mineral Development Nowshera and the Appellant assumed the charge on 11-04-2019 and accordingly the Appellant issued a notice of 14 days to Mr. Shujat Ali for deposit of advance income tax and professional tax certificate on 22-04-2019. On the expiry of notice time, Mr. Shujat Ali failed to deposit advance income tax. Accordingly the then Director General Mines and Minerals directed the Appellant through phone to immediately issue conditional allotment letter to Mr. Shujat Ali. In response, the Appellant issued conditional allotment letter to Mr. Shujat Ali on 06-05-2019. (Copies of the advertisement, offer letter, relevant section of Income

TESTED


Assistant Director
Mineral Development
Nowshera

78

Tax, notice and conditional allotment letter are attached as Annex 'B' 'C' 'D' 'E' and 'F' respectively).

- 4) That Mr. Shujat Ali submitted a complaint/application addressed to the Headquarter Office, Peshawar and copy endorsed to the Regional Office of Nowshera and requested not to issue work order to him till completion of construction work of approached road of the leased area of Block-3 village Mian Essa District Nowshera. In order to verify the content of application, Mr. Tajamal Shah Royalty Sub Inspector and Mr. Jabran Ullah Mineral Guards were directed to visit the area and to submit report. They visited area and submitted report on 14-05-2019. In order to re-verify the report of field staff, the Appellant personally visited the Minor Mineral area of Block-3 situated near village Mian Essa District Nowshera on 27-05-2019 and observed that the area also have other approached roads/paths from Karnal Shair Khan Interchange side. Accordingly the Appellant filed the report of field staff on 27-05-2019 and directed the dealing Assistant to put up the summary for cancellation of the lease to Headquarter Office in case of failure of the lessee to comply with the instructions mentioned in allotment letter. Accordingly summary was forwarded to Headquarter Office, Peshawar for cancelation of Mining lease and forfeiture of security on 10-06-2019. In the meanwhile, Appellant was promoted to

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Regional Office
Nowshera

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the Deputy Director Mineral Development and posted in Hazara Division Abbottabad and relinquished the charge of the Headquarter Office on 26-06-2019. (Copies of the complaint, report, direction to Dealing Assistant, summary for cancelation of lease and charge relinquished is attached as Annex 'G' 'H' 'I' 'J' and 'K' respectively).

- 5) That the then Director General Mines and Minerals conducted inquiry in the matter on the direction of high ups and called the Appellant in his office on 27-06-2019, where the Appellant submitted his statement. (Copy of the inquiry report and statement of Appellant is attached as Annex 'L').
- 6) That the competent authority vide notification No SO (E)/MDD/4-1/2019 dated 26-11-2019 constituted Inquiry Committee, comprising of Additional Secretary Finance and Chief Commissioner of Mines Labour Welfare and charged the Appellant against the charges mentioned in the charge sheet and statement of allegations interestingly not contain the charge of failure to stop/curb illegal excavation and transportation of the Minor Minerals in the area of jurisdiction and charges are reproduce below.

- i. *That you mishandled the issue regarding lease of Mr. Shujat Ali S/O Nusrat Iqbal, who was granted the lease of block of Minor Minerals over an area of 1773.023 acres near village Mian Essa/Massam*

ATTESTED
[Signature]
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Dheri, Nowshera by District Auction Committee on 25th March, 2019.

- ii. That you deputed Mr. Tajamal Shah Royalty Sub Inspector Nowshera and Jabran Ullah Mineral Guard Nowshera to probe into the matter and submit report. In their report they stated that approach road to the leased area was in deteriorated condition and transportation of minerals was not possible on the same route. However, the later reports proved that their statement was incorrect as there were alternate routes through which transportation of mineral was possible.
- iii. That you instead verifying the said statement relied upon the same and proceeded further in the matter.
- iv. That you failed to keep secrecy of official record as the said statement was made available to the lessee who submitted it in the Peshawar High Court as evidence in his writ petition.
- v. That you failed to cancel the lease inspite of the fact that he has failed to comply with all the condition of offer letter. Instead you issued him fifteen (15) day's notice/reminder for depositing the dues.-

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ATTESTED
[Signature]
District Auction Committee
Nowshera

81 C8

- vi. *That due to your irresponsible behavior a loss of an amount of Rs 8,472,218/- outstanding against the ex-lessee, after issuance of cancellation letter and forfeiture and adjustment of security towards Government dues, has been caused to Government exchequer". (Copy of the notification charge sheet and statement of allegations is attached Annex 'M')*
- 7) That the Appellant then appeared before the Inquiry Committee and submitted his defense statement/written reply on 09-12-2019 and thereafter the Inquiry Committee submitted its report on 31-12-2019 to the competent authority with the recommendation for imposing minor penalty of withholding of one increment for two years over the Appellant. (Copy of the reply of Appellant and inquiry report is attached as Annex 'N and O').
- 8) That thereafter, the Appellant was issued show cause notice vide letter dated 03-03-2020 and then the Appellant submitted reply to the show cause notice on 13-03-2020. (Copy of the show cause and Appellant reply is attached as Annex 'P').
- 9) That the Appellant was directed to appear before Secretary Administration Khyber Pakhtunkhwa. (Respondent No 7) for personal hearing. During personal hearing, Respondent No 7 directed the Appellant to only speak on those allegations, which were proved by the inquiry committee i.e. para 1 (i)

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Secretary
Khyber Pakhtunkhwa
Government

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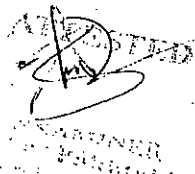
of the recommendation of inquiry report. Accordingly the Appellant explained all the evidence regarding para 1 (i) of the recommendation of inquiry committee report and explained his innocence before hearing officer regarding para 1 (i) of the recommendation of the inquiry report. Hence, the para 1 (i) of the recommendation of inquiry report could not become the cause of penalty of the Appellant.

- 10) That thereafter, the competent authority vide impugned order/notification dated 18-08-2020, imposed minor penalty of "withholding of two (2) annual increments for two years" over the Appellant on the charges of "Failure to stop/curb illegal excavation and transportation of the minor minerals in the area of jurisdiction". (Copy of the impugned notification/order dated 18-8-2020 is attached as Annex 'Q').
- 11) That thereafter, the Appellant filed departmental appeal through proper channel before Respondent No 4 on 15-09-2020 against the impugned notification dated 18-08-2020, which is still pending though a statutory period of 90 days has passed, hence this appeal on the following grounds inter-alia. (Copy of the departmental appeal is attached as Annex 'R').

GROUNDS:-

ANNEXURE
No. 10/2020
Dated 15/09/2020

- A) That the competent authority vide impugned notification/ order dated 18-08-2020, imposed minor penalty of *"withholding of two annual increments for two years"* over the Appellant on the charges of *"Failure to stop/curb illegal excavation and transportation of the minor minerals in the area of jurisdiction"*. However, in the charge sheet, statement of allegations and the show cause notice issued by the Respondents, the Appellant was never been charged for *"Failure to stop/curb illegal excavation and transportation of the minor minerals in the area of jurisdiction"*. Hence, the penalty imposed against the Appellant is liable to be set aside.
- B) That through impugned notification/order dated 18-8-2020, the Appellant has been punished on the charges, which were neither included/mentioned in charged sheet nor statement of allegations or show cause notice. The Appellant was neither provided opportunity to present his reply regarding allegation of *"Failure to stop/curb illegal excavation and transportation of the minor minerals in the area of jurisdiction"* nor provided personal hearing regarding the efforts made by the Appellant for the stoppages of illegal excavation from the area of Appellant's jurisdiction, so the Appellant is suffering unheard which is against the principle of law, equity and natural justice;

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hence penalty imposed on Appellant is liable to be set aside.

- C) That the whole proceeding against the Appellant is liable to be declared null and void; because the inquiry was conducted under the political influence and the remarks of the then Director General Mines and Minerals in the para 105 of the note portion of the Block No 3 Mian Essa file, is evidence to this effect. Further nothing is mentioned against the Appellant in the fact finding inquiry conducted by the then Director General Mines and Minerals dated 05-08-2019. (Copy of the note page is attached as Annex 'S').
- D) That the Inquiry Committee held the Appellant "partially responsible of the charge at serial No 1 of the charge sheet that, I have issued reminder notice to the ex-lessee instead of allotment letter in terms of Sub Section 80 of the Act by following the footsteps of my predecessor Assistant Director Mineral Development Nowshera and violated the mandatory provision of law. Moreover, the Appellant himself issued 15 days notice though under the Act; the Licensing Authority is required to issue". In this regard, it is clarified that the above mentioned assumption made by the Inquiry Committee is wrong, against the mandatory provision of law and against the auction notice published dated 12th March, 2019. The Section 236-A of Income Ordinance

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clearly indicates that the authority selling/leasing of the Government property through auction shall recover the advance income tax, from the highest bidder computed on the basis of total bid money. In light of Section 236-A of Income Tax Ordinance, 2011 No authority can grant lease through auction to highest bidder without recovery of income tax in advance computed on the basis of total bid money. In this case the highest bidder Mr. Shujat Ali S/O Nusrat Iqbal completed all the formalities except to deposit advance income tax and professional tax certificate. Since, the amount of advance income tax was a huge amount of Rs 45,750,000/- and the Section 236-A of the Income Tax was also very much clear; hence the Appellant could not took risk of it by issuance of allotment letter/work order without collection of advance income tax. Further, the FBR could also take action against the Appellant in case of non-recovery of huge amount of advance income tax. Accordingly the Appellant rightly issued a 14-days notice for recovery of advance income tax, which is lawful and covered under the law and after the expiry of notice time, the Appellant forwarded summary to Headquarters Office for cancellation of lease and forfeiture of security amount vide letter dated 10-06-2019.

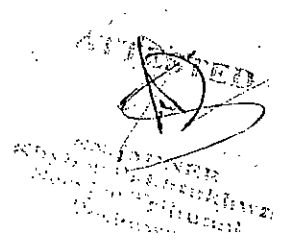
- E) That neither the report of the field staff kept secret as the same was filed after verification by the Appellant nor the

ATTACHED
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RECEIVED
10/06/2019
HEADQUARTERS OFFICE
FEDERAL BUREAU OF INVESTIGATION
ISLAMABAD

31

Honourable Peshawar High Court granted stay order of the lessee on the basis of any report of the Appellant, which is evident from the Court order dated 03-06-2019. Further the Appellant was not the record keeper of Nowshera office as the same was the duty of dealing Assistant of the Office. The dealing Assistant of the Nowshera office was neither included in the inquiry conducted by the then Director General nor he was charge sheet. In fact in every office the dealing Assistant of the office of the record keeper of that office, which is also admitted by the inquiry committee. Hence, penalty imposed is liable to be set aside.

- F) That without issuing of show cause notice, state functionary cannot take any action for depriving anyone of his right although such show cause notice is provided or not provided in the law, but it shall be consider and deemed to have been included inherently therein and following this principle of natural justice, now gained the status of binding law being based on the principle of natural justice as well as direction of high ups and law, prior to cancellation of lease. being an authorized officer of licensing authority issued 14 days notice to lease holder for recovery of advance income tax as per law, hence penalty imposed through impugned order is liable to be set aside. (Copy of the high ups direction is attached as Annex 'T').


PESHAWAR HIGH COURT
PESHAWAR

G) That the lessee Mr. Shujat Ali filed writ petition in the Peshawar High Court, Peshawar and the Honourable Peshawar High Court, Peshawar vide order dated 3-6-2019, restricts the department not to demand payment from the Petitioner as well as no adverse action shall be taken against the Petitioner. Later on the Honourable Peshawar High Court Peshawar in its order dated 06-09-2019 dispose the application of the Petitioner/lessee for further recovery of the installments and allow the department for recovery of dues etc. After the above mentioned order of the Honourable Court the licensing authority vide order dated 30-09-2019 cancelled the mining lease, forfeited the security and decided to recover the other dues if any as arrear of land revenue. It is worth mentioning here that the dues and installments were delayed due to the orders of the Honourable Peshawar High Court only and no loss is caused to the Government Exchequer, which is also admitted by the inquiry committee. (Copy of the order in writ petition No 3040/2019 C.M No 2049/19 dated 6-9-2019 and 3-6-2029 as well as cancellation order dated 30-9-2019 is attached as Annex 'U').

H) That the inquiry committee founded that the charges leveled against the Appellant in the serial No ii, iii, iv, v and vi in the charge sheet could not be proved, as the charges leveled against Appellant are baseless and only on

~~SECRET~~

this point penalty imposed against the Appellant is liable to be set aside.

- I) That no loss is suffered by the Government Exchequer and the inquiry committee also admitted this fact. In this respect, the impugned order dated 18-08-2020 is liable to be set aside.
- J) That the Appellant is innocent and there is no evidence against the Appellant in favour of charge, which became cause of penalty, hence the penalty imposed against the Appellant through impugned notification/order is liable to be set aside.
- K) That this was the requirement of natural justice and equity also to take disciplinary action and to conduct inquiry against the office record keeper of the Nowshera office and also against the predecessor of the Appellant because the letter dated 05-04-2019 was issued by the predecessor of Appellant and this was also noted by competent authority and letter was properly issued for this purpose, but Respondents due to mala-fide conducted inquiry against the Appellant and not against his predecessor. (Copy of the letter dated 26-08-2020 is attached as Annex 'V').
- L) That the impugned order dated 18-08-2020 is against the law, equity and material available on record, hence liable to be set aside.

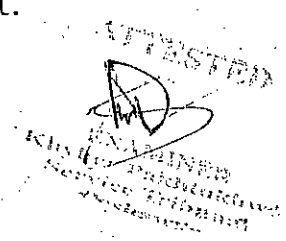
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SECRETARY
INTEGRITY & ETHICS
GOVERNMENT OF PUNJAB
CHANDIGARH

- M) That the impugned order is the outcome of non-reading and misreading of the facts and record, hence liable to be set aside.
- N) That all the act, done and order made by the Appellant are for the purpose of enforcing the law and act according to its true spirit and not otherwise; hence the impugned order is liable to be set aside.
- O) That the impugned order/notification dated 18-8-2020 is based on surmised and conjectures; hence liable to be set aside.
- P) That throughout his career no complaint has ever been made by anyone against the Appellant for mismanagement, misfeasance, nonfeasance or malfeasance.
- Q) That any other ground, not raised specifically may graciously be allowed to be raised at the time of arguments.

PRAYER:-

It is, therefore, most respectfully prayed that on acceptance of this Appeal, the minor penalty of withholding of two increments for two years imposed against the Appellant vide impugned notification SOE (MDD)/4-20/2019 dated 18-08-2020 may kindly be set aside and consequently the Appellant may kindly be exonerated from the charges leveled against him being an innocent.


APPELLATE AUTHORITY
KINSHASA
MINISTRY OF DEFENSE
KINSHASA

90

Any other relief, which this Honourable Tribunal deems proper in the circumstances of the appeal, may also be granted in favour of Appellant.

Appellant - 

Through:



(HAFEEZ-UL-ASAD SHANGLA)
Advocate,
High Court Peshawar

Dated: -04-01-2021

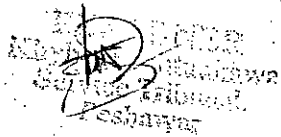
NOTE:-

No such appeal for the same Appellant has earlier been filed by me before this Honourable Tribunal prior to instant one.



Advocate

Certified to be true copy


The Tribunal
Peshawar

Date of Presentation of Application	17/6/21
Number of Words	6800
Copying Fee	70.00
Urgent	
Total	70.00
Name of Copyist	
Date of Completion of Copy	23/6/21
Date of Delivery of Copy	23/6/21



TO BE SUBSTITUTED WITH THIS DEPARTMENT'S
NOTIFICATION OF SAME NUMBER & DATE

**Government of
Khyber Pakhtunkhwa
Minerals Development Department**

Dated Peshawar, August 18, 2020

NOTIFICATION

No. SOE (MDD)/4-20/2019: WHEREAS, Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals) BS-17, Nowshera, now Deputy Director (Tech) BS-18, Abbottabad, Hazara Division was proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on the charges of mishandling the issue regarding lease of Mr. Shujat Ali S/o Nusrat Iqbal who was granted the lease of block of minor minerals over an area of 1773.023 Acres near village Mian Essa/Massan Dheri, Nowshera by District Auction Committee on 25-03-2019.

2. **AND WHEREAS**, an Inquiry Committee comprising M/S Ziarat Khan, Chief Commissioner of Mines Labour Welfare (BS-20), Commissionerate of Mines Labour Welfare, Khyber Pakhtunkhwa and Akhtar Saeed Turk (PMS BS-19) Additional Secretary, Finance Department was constituted to conduct formal inquiry against the accused official.

3. **AND WHEREAS**, the Inquiry Committee, after having examined the charges, evidences on record and explanation of the accused official, submitted its report.

4. **AND WHEREAS**, the Competent Authority authorized the Secretary Administration, Khyber Pakhtunkhwa to afford the opportunity of personal hearing to the accused official on his behalf.

5. **NOW THEREFORE**, the Chief Minister, Khyber Pakhtunkhwa being Competent Authority, under Rules-14 (a) (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-4 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, has been pleased to impose minor penalty of "withholding of two (02) annual increments for two years" upon Mr. Mohsin Ali Khan, Ex-Assistant Director (Minerals) BS-17, Nowshera, now Deputy Director (Tech) BS-18, Abbottabad, Hazara Division.

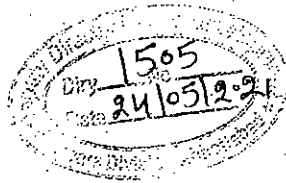
**Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Dev: Department**

Endst: No. SOE (MDD)/4-20/2019:

707-17
Dated Peshawar, 03rd May, 2021

Copy for information is forwarded to:

1. The Accountant General, Khyber-Pakhtunkhwa.
2. PSO to Chief Minister, Khyber Pakhtunkhwa.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. The Director General, Mines & Minerals, Khyber Pakhtunkhwa.
5. The District Accounts Officer, Nowshera / Abbottabad.
6. Mr. Mohsin Ali Khan, Deputy Director (Tech) BS-18, Abbottabad, Hazara Division.
7. Assistant Director (Admn), DGMM for necessary action.
8. PS to Special Assistant to Chief Minister for Minerals Dev: Department.
9. The Private Secretary to Secretary Minerals Development Department.
10. Master File.
11. Personal File.



(Signature)
**(Hafiz Abdul-Jalil)
SECTION OFFICER (ESTT)**

(Signature)
ATTACHED

92

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Civil Misc Application No _____ of 2021

In Re:

Service Appeal No 16/2021



Mohsin Ali Khan, Deputy Director Mineral Development Malakand
Division Swat (Ex-ADM Nowshera).....(Applicant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary at Civil Secretariat Peshawar
2. Government of Khyber Pakhtunkhwa, through Secretary Minerals Development at Civil Secretariat, Peshawar
3. Government of Khyber Pakhtunkhwa through Director General, Mines and Mineral at Khyber Road, Peshawar
4. Chief Minister Khyber Pakhtunkhwa, in capacity of Appellate Authority under Khyber Pakhtunkhwa, Departmental Appeal Rule, 1986 at Chief Minister Secretariat, Peshawar
5. Government of Khyber Pakhtunkhwa, Assistant Director Mineral Development District Nowshera at Tehsil Road, Nowshera Kalan
6. Government of Khyber Pakhtunkhwa through Accountant General, Khyber Pakhtunkhwa, Peshawar Cantt
7. Government of Khyber Pakhtunkhwa through Secretary Administration at Civil Secretariat Peshawar..(Respondents)

SECRETARY
ADMINISTRATION
CIVIL SECRETARIAT
PESHAWAR

93

APPLICATION FOR WITHDRAWAL THE INSTANT
APPEAL WITH THE PERMISSION TO FILE FRESH ONE

Respectfully Sheweth:-

It is submitted as under:-

- 1) That the above titled service appeal is pending before this Honourable Tribunal, in which Appellant impugned notification No SOE(MDD)/4-20/2019 through which the minor penalty of withholding of two annual increment for two years, was imposed upon Applicant/Appellant on the charges of failure to curb/stop illegal excavation and transportation of minor minerals in the area within the jurisdiction of Appellant/Applicant. (Copy of the impugned notification is attached herewith).
- 2) That now the Respondents substituted the impugned notification with another notification having same number and date i.e. NO SOE (MDD)/4-20/2019 dated 18-8-2020 issued on 03-05-2021 communicated to Appellant on 24th May, 2021. (Copy of the notification is attached herewith).
- 3) That now the Appellant wants to impugned the substituted notification through departmental appeal.
- 4) That others grounds will be raised at the time of arguments with the permission of this Honourable Court.

It is therefore, most humbly prayed that on acceptance of this Application, the Applicant/Appellant may kindly be permit to withdraw the service appeal pending before

this Honourable Tribunal and to file fresh one after impugning the substitute notification, if need so in larger interest of justice.

Applicant/Appellant

Through:

(HAFEEZ UL ASAD SHANGLA)

Advocate,
High Court, Peshawar

Dated:-01-06-2021

Certified to be true copy

May be
Service of Court,
Peshawar

Date of Presentation of Application 17/6/21

Number of Writs 1200

Charging Fee 1400

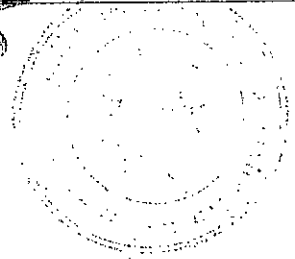
Urgent —

Total 1400

Date of Receipt of Copy 23/6/21

Date of Delivery of Copy 23/6/21

93
Appeal No. 16/2021
Mohsin Ali Khan vs Govt



03.06.2021

Counsel for the appellant present and states that the appellant through the instant appeal has challenged notification No.SOE(MDD)/4-20/2019 through which minor penalty of withholding of two annual increments for two years, was imposed upon him. Now the department has substituted the impugned notification with another one, having same number and date issued vide Endst: No. SOE(MDD)/4-20/2019/7602-17, dated 03rd May, 2021. The appellant wants to challenge the substituted notification through departmental appeal. He requests for withdrawal of instant appeal with permission to file fresh one.

In view of the above, the appeal is dismissed as withdrawn. After exhausting departmental remedy, the appellant may file fresh appeal, in accordance with law, if advised. File be consigned to the record room.

ANNOUNCED
03.06.2021

Chairman

Certified to be true copy

Registrar
Punjab Administrative
Service Tribunal
Lahore

Date of Presentation of Application 17-6-21
Number of Words 400
Copying Fee 6.00
Urgent _____
Total 6.00
Name of Officer _____
Date of Completion of Copy 23-6-21
Date of Delivery of Copy 23-6-21

Anex-W

96

No. 1158 (MDD)/DD/Personal File/Mohsin Ali Khan

Dated: 11/06/2021

To

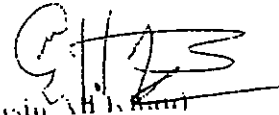
The Director General Mines and Minerals
Khyber Pakhtunkhwa Peshawar


Subject:

DEPARTMENT APPEAL/REVIEW PETITION THROUGH PROPER
CHANNEL BEFORE THE CHIEF MINISTER KHYBER PAKHTUNKHWA
AGAINST THE SUBSTITUTED NOTIFICATION CIRCULATED ON 3RD
MAY 2021.

Enclosed please find copy of appeal filed by the undersigned before the Chief Minister
Khyber Pakhtunkhwa Peshawar through proper channel against the substituted notification
No.SOE (MDD)/4 20/2019/7007 17, DATED 3RD May 2021, received on 24/05/2021 for further
necessary action please.

Enclosure (As above)


(Mohsin Ali Khan)
Deputy Director
Mineral Development
Hazara Division Abbottabad


ATTESTED

AUG 14 2021

37

**HONORABLE CHIEF MINISTER KHYBER PAKHTUNKHWA
PESHAWAR**

THROUGH PROPER CHANNEL

DEPARTMENTAL APPEAL AGAINST THE SUBSTITUTED NOTIFICATION NO. SOE (MDD)/4-20/2019, DATED 18/08/2020 CIRCULATED VIDE ENDST: NO.SOE (MDD)/4-20/2019/7607-17, DATED 3RD MAY 2021 (RECEIVED ON 24/05/2021) WHEREBY MINOR PENALTY OF WITHHOLDING OF TWO ANNUAL INCREMENTS FOR TWO YEARS WAS IMPOSED UPON THE APPELLANT ON THE CHARGES OF MISHANDLING THE ISSUE REGARDING THE LEASE OF BLOCK OF MINOR MINERALS OVER AN AREA OF 1773.023 ACRES SITUATED NEAR VILLAGE MIAN ESSA/MASSAM DEHRI NOWSHERA BY DISTRICT AUCTION COMMITTEE ON 25/03/2019, SUBSTITUTED WITH THE EARLIER ISSUED ORDER NO. SOE(MDD)/4-20/2019, DATED 18/08/2020 WHEREBY MINOR PENALTY OF WITHHOLDING OF TWO ANNUAL INCREMENTS FOR TWO YEARS WAS IMPOSED UPON THE APPELLANT ON THE CHARGES OF FAILURE TO STOP /CURB ILLEGAL EXCAVATION AND TRANSPORTATION OF MINOR MINERALS IN THE AREA OF JURISDICTION.

PRAYER IN APPEAL:

By allowing the instant appeal the minor penalty of withholding of two annual increments for two years as imposed on the Appellant vides notification No. SOE(MDD)/4-20/2019, dated 18/08/2020 and thereaftersubstituted through notification of same number and date circulated vides Notification Endst: No. SOE(MDD)/5-20/2019/7607-17, dated 3rd May, 2021 received on 24/05/2021'be set aside and consequently the appellant may kindly be exonerated for being innocent.

98

RESPECTFULLY SHEWETH

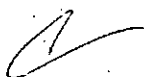
Appellant submits as under:-

FACTS OF THE CASE:-

1. That the appellant Mr. Mohsin Ali Khan was appointed as Assistant Director through Khyber Pakhtunkhwa public service commission on 19/12/2009 on regular basis in Mineral development department. Later on the appellant was promoted to the Deputy Director Mineral Development vides Government of Khyber Pakhtunkhwa notification dated 13/05/2019 and currently the appellant is working as Deputy Director Mineral Development Hazara division at Abbottabad.
2. That the appellant while posting as Assistant Director Mineral development headquarter office Peshawar was assigned additional look after charge of the office of Assistant Director Mineral development Nowshera in April 2019 and accordingly the appellant assumed the additional look after charge of the office of assistant director mineral development Nowshera on 11/04/2019. The look after additional charge of the office of Assistant Director Mineral Development Nowshera was remained with the appellant for two months and sixteen days i.e. up to 26/06/2019. (copy of the additional charge assumption report and Deputy Director notification is attached as Annex 'A')
3. That an advertisement was floated in the newspapers regarding auction of minor minerals in district Nowshera by the then Assistant Director Mineral Development Nowshera on 12/03/2019. The auction of area of minor mineral block No.3, comprising of 1773.023 acres situated near village Mian Essa, district Nowshera was held under the chairmanship of deputy commissioner Nowshera on 25/03/2019. For this area of Block No. 3, Mr. Shujat Ali S/O Nousrat Iqbal of district nowshera offered highest bid of Rs. 305000000/- and deposited 1/4th of the Bid money amounting to Rs. 76250000/- at the fall of hammer under KPK MG Act 2017. Accordingly offer letter was issued to him by the then Assistant Director Mineral Development Nowshera(**Predecessor of the Appellant**) on 05/04/2019 after approval of Licensing Authority. Mr. Shujat Ali completed all the formalities of offer letter except payment of Advance income tax which was mandatory under section 236-A of the income tax ordinance. In the meanwhile the appellant was assigned additional look after charge of the office of Assistant Director mineral development Nowshera and the appellant assumed the charge on 11/04/2019 and accordingly the appellant issued a notice of 14 days to Mr. Shujat Ali for deposit of advance Income tax and professional tax certificate on

22/04/2019. On the expiry of notice time Mr. Shujat Ali failed to deposit Advanced Income tax. Accordingly, the then Director General Mines and minerals directed the appellant to immediately issue conditional allotment letter to Mr. Shujat Ali. In response the Appellant issued conditional Allotment letter to Mr. Shujat Ali on 06/05/2019. (copy of the advertisement, offer letter, relevant section of income tax ordinance, notice and conditional allotment letter are attached as Annex 'B, C, D, E and F' respectively).

4. Mr. Shujat Ali submitted a complaint/ application addressed to the headquarter office Peshawar and copy endorsed to the regional office of nowshera and requested to not issue work order to him till completion of construction work of approach road of the leased area of block No.3 . In order to verify the content of application, Mr. Tajamal Shah Royalty sub inspector and Mr. Jabranullah Mineral Guards were directed to visit the area and report. They visited area and submitted report on 14/05/2019. In order to re verify the report of field staff, the appellant personally visited the minor mineral area of block no.3 situated near village Mian Essa on 27/05/2019 and observed that the area also have other approach paths from kernel shair khan interchange side. Accordingly, the appellant filed the report of field staff on 27/05/2019 and directed the dealing assistant to put up the summary for cancellation of the lease to headquarter office in case of failure of the lessee to comply with the instructions mentioned in the Allotment Letter. Accordingly, summary was forwarded to headquarter office Peshawar for cancellation of Mining lease and forfeiture of security on 10/06/2019. In the mean while I was promoted to the Deputy Director Mineral Development (BPS 18) and posted in hazara division Abbottabad and I relinquished the charge of the headquarter office on 26/06/2019. (copies of complaint, report, direction to dealing assistant, summary for cancellation of lease and charge relinquished is attached as Annex 'G, H, I, J and K' respectively)
5. That the then Director General Mines and minerals conducted inquiry in the matter on the direction of higher ups and called the appellant in his office on 27/06/2019. (copy of the inquiry report and the statement of appellant is attached as Annex 'L')
6. That the competent authority vides notification No. SO(E)/MDD/4-1/2019, dated 26/11/2019 constituted inquiry committee, comprising of Mr. Akhtar Saeed Turk additional secretary finance and Mr. Ziarat Khan, chief commissioner mines and charged the appellant against the charges mentioned in the chargesheet and statement of allegations also reproduced below. "


 ATTESTED

- i. *That you mishandled the issue regarding lease of Mr. Shujat Ali S/O Nusrat Iqbal who was granted the lease of block of minor minerals over an area of 1773.023 acres near village Mian Essa/Massam Dheri, Nowshera by district auction committee on 25/03/2019.*
 - ii. *That you deputed Mr. tajjamal shah, royalty sub inspector, Nowshera, and Mr. Jabranullah Mineral Guard Nowshera to probe into the matter and submit report. In their report they stated that approach road to the leased area was in deteriorated condition and transportation of minerals was not possible on the same route. However the later reports proved that their statement was incorrect as there were alternate routes through which transportation of mineral was possible.*
 - iii. *That you instead verifying the said statement relied upon the same and proceeded further in the matter.*
 - iv. *That you failed to keep secrecy of official record as the said statement was made available to the lessee who submitted it in the Peshawar high court as evidence in his writ petition.*
 - v. *That you failed to cancel the lease inspite of the fact that he has failed to comply with all the condition of offer letter. Instead you issued him fifteen (15) days' notice / reminder for depositing the dues.*
 - vi. *That due to your irresponsible behavior a loss of an amount of Rs. 8472218/- outstanding against the ex-lessee, after issuance of cancellation letter and forfeiture and adjustment of security towards government dues, has been caused to government exchequer". (copy of the charge sheet and statement of allegations are attached as annex 'M').*
7. That The appellant appeared before the inquiry committee and submitted his defense statement dated 09/12/2019. (copy of the statement is attached as Annex 'N')
8. The inquiry committee submitted its report dated 31/12/2019 to the competent Authority with the recommendation for imposing minor penalty of **withholding of one annual increment for two years** over the appellant. Recommendation para of the inquiry report is reproduced below

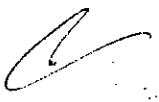
101

"Based on the following it is recommended that minor penalty of withholding of 1 increment for two years may be imposed

- i. The charge at the serial no. i of the charge sheet partially proved as he had issued reminder to the ex-lessee instead of Allotment letter in terms of sub section 12 of section 80 of the act as he followed the footsteps of his predecessor and violated the mandatory provision of law. Moreover, he himself issued 15 days' notice though under the Act the Licensing Authority was/is required to issue notice.*
- ii. Charges No. ii, iii, iv, and v of the charge sheet could not be proved as he has visited the site himself and submitted a report dated 10/06/2019 to this effect stating therein that alternate routes were available for transportation of the material from the leased site. Moreover, he had sent case for the cancellation of the lease to the Licensing Authority which under the law is empowered to cancel the lease.*
- iii. Charge No. vi of the charge sheet could not be established as no loss to the government has occurred as the outstanding dues amounting to Rs. 8472218/- against the ex-lessee Mr. Shujat Ali are to be recovered as arrears of land revenue in terms of section 19 of section 80 of the act". (copy of the inquiry report is attached as Annex 'O')*

9. That the appellant was issued show cause notice vide letter dated 03/03/2020. The Appellant submitted reply of the show cause notice on 13/03/2020. (copy of the show cause notice and the appellant reply is attached as Annex 'P').

10. That the appellant was directed to appear before Secretary Administration Khyber Pakhtunkhwa for personnel hearing. During personnel hearing the secretary administration directed the appellant to only speak on those allegations which were proved by the inquiry committee i.e. para 1(i) of recommendation of the inquiry committee report. Accordingly, the appellant explained all the evidence regarding para 1(i) of the recommendation of inquiry committee report and explained my innocence before the hearing officer. Accordingly, the hearing officer recommended for initiation of action against the predecessor of the appellant for issuance of offer letter as during personnel hearing the secretary administration pointed out that the person who issued offer letter is not charged in the inquiry and the appellant who issued notice under section 63 of the act is charged for issuance of notice. Accordingly, the competent authority directed for initiation of action against the predecessor of the appellant vides


ATTESTED

letter SO(E)/MDD/4-20/2019 dated 26/08/2020. However, no action is initiated on the above direction of the competent authority till date and reportedly the same has been filed by the Government which shows that para 1(i) of recommendation of inquiry report is baseless. (copy of letter dated 26/08/2020 is attached as Annex 'Q')

11. That the competent Authority vide notification dated 18/08/2020, imposed minor penalty of **"Withholding of two (2) Annual increments for two years"** over the appellant on the charges of **"Failure to stop /curb illegal excavation and transportation of the minor minerals in the area of jurisdiction"**. (copy of the notification dated 18/08/2020 is attached as Annex 'R').
12. That in the order dated 18/08/2020; the appellant punished on the charges which were neither included/mentioned in charge sheet nor statement of allegations or show cause notice.
13. That thereafter the appellant filed departmental appeal through proper channel on 15/09/2020 against the notification dated 18/08/2020 which is still pending. (copy of the departmental appeal is attached as Annex 'S').
14. That after a lapse of 90 days of statutory period the appellant filed appeal before the Khyber Pakhtunkhwa service tribunal Peshawar. (copy of the appeal before the Khyber Pakhtunkhwa service tribunal Peshawar is attached as Annex 'T')
15. That in the mean while instead to decide the appeal of the appellant the competent authority vides notification ENDST No.SOE (MDD)/4-20/2019/7607-17, DATED 3RD May 2021, issued substituted notification and imposed minor penalty of **"Withholding of two (2) Annual increments for two years"** over the appellant on the charges of **"Mishandling The Issue Regarding The Lease Of Block Of Minor Minerals Over An Area Of 1773.023 Acres. Situated Near Village Mian Essa/Massam Dehri Nowshera By District Auction Committee On 25/03/2019."** (copy of the substituted notification dated 3/05/2021 is attached as Annex 'U').
16. That the appellant on dated 03/06/2021 withdrawn service appeal from the Khyber Pakhtunkhwa service tribunal Peshawar for filling of present departmental appeal against the impugned notification circulated on 3rd May 2021.

103

Grounds

The order dated 18/08/2020 and substituted order dated 3rd May 2021 of the competent authority regarding imposition of Minor penalty of withholding of two annual increments for two years over the appellant is liable to be set aside on the following grounds.

- a. That the competent Authority vide notification dated 18/08/2020, imposed minor penalty of **"Withholding of two (2) Annual increments for two years"** over the appellant on the charges of **"Failure to stop /curb illegal excavation and transportation of the minor minerals in the area of jurisdiction"**. However in the charge sheet, statement of allegations and the show cause notice dated 03/03/2020, the appellant was never been charged for **"failure to stop/curb illegal excavation and transportation of the minor minerals in the area of jurisdiction"**. Later on instead to decide the appeal of the appellant, the competent authority vides substituted notification circulated on 3rd May 2021 imposed minor penalty of **"Withholding of two (2) Annual increments for two years"** over the appellant on the charges of **"mishandling the issue regarding the lease of block of minor minerals over an area of 1773.023 acres situated near village mian essa/massam dehri nowshera by district auction committee on 25/03/2019"** which is double jeopardy against the appellant, Hence the penalty imposed against the appellant is liable to be set aside.

- b. That in the order dated 18/08/2020; the appellant has been punished on the charges which were neither included/mentioned in charge sheet nor statement of allegations or show cause notice. The appellant was neither provided opportunity to present his reply regarding allegation of **"Failure to stop/curb illegal excavation and transportation of minor minerals in the area of jurisdiction"** nor provided personal hearing regarding the efforts made by the appellant for the stoppage of illegal excavation from the area of appellant jurisdiction, so appellant is suffering unheard which is against the principal law and equity hence penalty imposed is liable to be set aside. Further the substituted notification of same number and date circulated on 3rd May 2021, is also liable to be set aside as the Competent Authority before issuance of notification dated 3rd May 2021 ignored the decision of Appellate Authority dated 30/11/2020, decision of Licensing Authority/MTC dated 30/03/2021, and notification dated 29/04/2021 and also ignored the action on the letter dated 26/08/2020.

ATTESTED

c. That the whole proceeding against the appellant is null and void in the eye of law as the inquiry was conducted under the political influence and the remarks of the then Director General Mines and Minerals in the Para 105 of the note portion of the Bock.No.3 Mian Essa file, is evidence to this effect. Further nothing is mentioned against the appellant in the fact finding inquiry conducted by the then director general mines and minerals dated 05/08/2019.(copy of Para 105 of note sheet of file is attached as Annex 'V')

d. That first part of Para 1(i) of the recommendations of the inquiry committee **"That charge at serial No 1 of the charge sheet partially proved as he had issued reminder to Ex-lessee instead of Allotment letter in terms of section 80(12) of the act as he followed the footstep of his predecessor and violated the mandatory provision of law"** is against the section 236 A of the income tax ordinance 2001. In the first part of para 1(i), the inquiry committee partially proved the charge and explained that the predecessor of the appellant was required to issue allotment letter under section 80 (12) of the act without collection of advanced withholding tax which is against section 236 A of the income tax ordinance as well the auction notice. Hence the assumptions made by the inquiry committee is wrong and against the income tax ordinance. Proof to this effect is that the competent authority vides notification No. SO(E)/MDD/4-20/2019 dated 26/08/2020 directed the director general mines and minerals Khyber Pakhtunkhwa to initiate disciplinary proceeding against the predecessor of the appellant who issued offer letter instead of allotment letter and violated the section 80(12) of the act. However, since this assumption of the competent authority and recommendations of the inquiry committee was wrong and against the law hence no action is initiated by the department against the predecessor of the appellant having same charge and moved a note to the government for filing the same. Hence the recommendation in para 1(i) of the inquiry report against section 236 A of income tax ordinance, auction notice dated 12/03/2019 and is also null and void in the eye of law.

e. That first part of Para 1(i) of the recommendations of the inquiry committee **"That charge at serial No 1 of the charge sheet partially proved as he had issued reminder to Ex-lessee instead of Allotment letter in terms of section 80(12) of the act as he followed the footstep of his predecessor and violated the mandatory provision of law"** is also against the direction of appellate authority/ secretary mines and minerals department letter no. SO(Appeal)/MDD/6-28/MTC/2019/13008-10, dated 08/11/2019 where by the appellate authority ordered for discouraging of cancellation of mining leases and

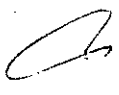
directed the director general mines and minerals Khyber Pakhtunkhwa/ assistant directors of the districts to give reasonable time to the lease holders for recovery of government dues before the cancellation of mining leases. Hence the assumption made by the inquiry committee is against the order of Appellate Authority.

f. That, the inquiry committee held the appellant "partially responsible of the charge at serial No. i of the charge sheet that, I have issued reminder notice to the ex-lessee instead of Allotment Letter in terms of sub-section 80 of the Act by following the footsteps of my predecessor Assistant Director Mineral Development Nowshera and violated the mandatory provision of the law is totally incorrect, against the law and direction of the appellate authority dated 08/11/2019. In this regard, it is clarified that, the above-mentioned assumption made by the inquiry committee is wrong, against the mandatory provision of law and against the auction notice published dated 12/03/2019. The Section 236-A of Income Ordinance clearly indicates that, the authority selling/ Leasing of the government property through auction shall recover the advance income tax, from the highest bidder computed on the basis of total bid money. In light of Section 236-A of income tax ordinance 2011, No authority can grant lease through auction to highest bidder without recovery of income tax in advance computed on the basis of total bid money. In this case the highest bidder Mr. Shujat Ali S/o Nusrat Iqbal completed all the formalities except to deposit advance income tax and professional tax certificate. Since the amount of advance income tax was a huge amount of Rs. 45750000/- (forty-five million seven hundred fifty thousand), and the Section 236A of the income tax was also very much clear hence the appellant could not take risk of it by issuance of Allotment letter/work order without collection of advance income tax. Further the FBR could also take action against the appellant in case of non-recovery of huge amount of advance income tax. Accordingly the appellant rightly issued a 14-days' notice for recovery of advance income tax, which is lawful and covered under the law and after the expiry of notice time, the appellant forwarded summary to H/Qrs office for cancellation of lease and forfeiture of security amount, vide letter dated 10/06/2019.

g. That para 1(i) of recommendation of inquiry committee is on the false assumptions and both the parts of para 1(i) are contradiction to each other. Fact of the matter is that all the regional offices of directorate general mines and minerals Khyber Pakhtunkhwa are issuing offer letter after the conclusion of auction proceeding under intimation to the licensing authority detail of which is available in the record of regional as well as headquarter office. The inquiry committee also admitted this fact.

In case such practice was illegal, then the licensing authority was required to issue circular to all the regional offices, however instead to do so such practice is still continued and the Licensing Authority at the one hand moved a note to the government to file action against the predecessor of the appellant and on the other hand issued direction dated 30/03/2021, 29/04/2021 for issuance of notices, which proofs that the whole para 1(i) of recommendation of inquiry committee is incorrect. The competent authority while issuance of substituted notification dated 3rd May 2021, ignored the all above mentioned facts and double jeopardy the appellant on the baseless charges and liable to be set aside.

- h. That 2nd part of Para 1(i) of the recommendations of the inquiry committee **"Moreover he himself issued 15 days notice though under the act Licensing Authority was/is required to issue notice"** is against the direction of Appellate Authority dated 08/11/2019 and decision of licensing authority. The competent authority while issuance of substituted notification dated 3rd May 2021, ignored the decision of licensing authority dated 30/03/2021 and ordered of Appellate Authority dated 08/11/2020, hence the substituted ordered dated 3rd May 2021 is liable to be set aside.
- i. That, Section 63 of Khyber Pakhtunkhwa Mineral Governance Act, 2017, Judgment of Peshawar High Peshawar in writ petition No. 487/2011, dated 12-01-2012 and letter No. SO (Appeal/MDD/6-28/MTC/2019/3608-10 dated 08-11-2019 issued from the government of Khyber Pakhtunkhwa Mineral Development Department and many other circulars received from the directorate minutes of the meeting of licensing Authority dated 30/03/2021, and recent notification dated 29/04/2021 are on the same verdict that, Mining Lease of a concessionaries cannot be cancelled without issuance of a notice. Accordingly, the appellant being the authorized officer of the licensing authority and secretary cum member of the district auction committee issued 14 days' notice for recovery of advance income tax under the law. (copy of the section 63 of KP mines and Minerals act 2017, judgment of Peshawar high court, letter dated 08/11/2019, 29/04/2021 and the minutes of the MTC meeting dated 30/03/2021 are attached as Annex 'W')
- j. That the inquiry committee founded that, the charges leveled against the appellant in the serial No. ii, iii, iv, v and vi in the charge sheet could not be proved, as, the charges leveled against appellant are baseless


 ATTESTED

107

and only on this point penalty imposed against the appellant is liable to be set aside.

k. That no loss is suffered by the provincial government and the inquiry committee also admitted this fact.

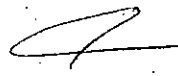
l. That the appellant is innocent and there is no evidence against the appellant in favor of charge which became cause of penalty, hence the penalty imposed against the appellant is liable to be set aside.

m. That the whole proceeding and the penalty against the appellant is based on malafide and the appellant is innocent.

In view of the above, it is humbly prayed that, the minor penalty of withholding of two increments for two years imposed by the competent authority vide notification dated 18/08/2020 and substituted notification circulated on 3rd May 2021 may kindly be set aside being baseless, without any proof, double jeopardy and consequently it is requested to exonerate the appellant from charges being an innocent, please.

Dated: 11/06/2021

Engr. Mohsin Ali Khan
Deputy Director Mineral
Development Hazara
Division Abbottabad
Ex-ADM Nowshera



11/06/2021

Ms - 3/11

107A



Government of Khyber Pakhtunkhwa
Minerals Development Department

No.SO (E)/MDD/4-20/2020
Dated Peshawar, 04.11.2021 / 565-67

To

Mr. Mohsin Ali Khan,
Deputy Director (BS-18),
Malakand Division Swat,
Directorate of Mines & Minerals,
Khyber Pakhtunkhwa.

Subject: - DEPARTMENTAL APPEALS BEFORE THE CHIEF MINISTER
KHYBER PAKHTUNKHWA AGAINST THE ORDER DATED 18.08.2020

I am directed to refer to your departmental appeal dated 11.06.2021 before the Chief Minister Khyber Pakhtunkhwa/appellant authority, on the subject noted above and to state that the Competent Authority has considered your appeal and rejected.

(Hafiz Abdul Jalil)
Section Officer (Estt:)

Endst: No & Date even:

Copy is forwarded for information to:

1. Assistant Director (Admn), Directorate General of Mines & Minerals, Khyber Pakhtunkhwa, w.r.t his letter No.24188/2/1132/DGMM/Admin, dated 14-09-2021.
2. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department.

Section Officer (Estt:)

17826-
05-11-21-

Photo copy Recd from Adm. v
Section
M
02/12/2021

10.11.21
Suppl

(107 B)

Ms W (A)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR



Service Appeal No 7577 /2021

Diary No. 7703
Dated 06/10/2021

Mohsin Ali Khan, Deputy Director Mineral Development Hazara
Division Abbottabad (Ex-ADM Nowshera).....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary at Civil Secretariat Peshawar
2. Government of Khyber Pakhtunkhwa, through Secretary Minerals Development at Civil Secretariat, Peshawar
3. Government of Khyber Pakhtunkhwa through Director General, Mines and Mineral at Khyber Road, Peshawar
4. Chief Minister Khyber Pakhtunkhwa, in capacity of Appellate Authority under Khyber Pakhtunkhwa, Departmental Appeal Rule, 1986 at Chief Minister Secretariat, Peshawar
5. Government of Khyber Pakhtunkhwa, Assistant Director Mineral Development District Nowshera at Tehsil Road, Nowshera Kalan
6. Government of Khyber Pakhtunkhwa through Accountant General, Khyber Pakhtunkhwa, Peshawar Cantt
7. Government of Khyber Pakhtunkhwa through Secretary Administration at Civil Secretariat Peshawar.. (Respondents)

6/10/21
Registrar

12/10/21
Registrar

AD
Service Tribunal
Peshawar

1070

Form-A

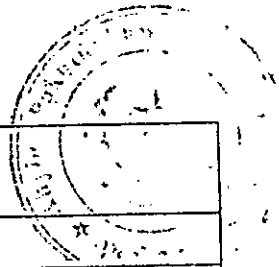
FORM OF ORDER SHEET

Court of _____

Case No. -

7574

/2021



S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/10/2021	<p>The appeal of Mr. Mohsin Ali Khan resubmitted today by Mr. Hafeez-ul-Asad Sharqia Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;">REGISTRAR</p>
2-	16.12.2021	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>16/12/21</u>.</p> <p style="text-align: right;">CHAIRMAN</p> <p>Counsel for the appellant present.</p> <p>Learned counsel for the appellant submitted an application stating therein that during pendency of the instant service appeal appellate order was passed on his departmental appeal which was rejected on 04.11.2021. He therefore, requested for submission of amended appeal. Request is acceded to. To come up for further proceedings / amended appeal on 17.02.2022 before S.B.</p> <p>Date of Presentation: _____ Number of Writs: <u>800</u> Copies: <u>10/-</u> Fees: <u>10/-</u> Date of Filing: _____ Date of Delivery of Copy: <u>03/01/22</u></p> <p style="text-align: right;">(MIAN MUHAMMAD) MEMBER (E) Certified to be true copy Khyber Pakhtunkhwa Service Tribunal, Peshawar</p>



DIRECTORATE GENERAL

MINES & MINERALS, KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX, KHYBER ROAD,
PESHAWAR, CANTT.

Registered

Phone: 091-9210275 - 9211140 Fax: 091-9210236

No. 10048-71 /MDW/DGMM/MTC/ (01)/2021(Decision)/Vol-I Dated: 15/04/2021
To

1-26. The Assistant Director's Mineral Development
Abbottabad, Haripur, Mansehra, Kohistan, Swat, Malakand,
Buner, Shangla, Chitral, Bannu, Kohat, Karak, D.I Khan, Peshawar,
Nowshera, & Mardan, Swabi, Charsadda/Mohmand, Timergarah, Bajaur,
South Waziristan, North Waziristan, Orakzai/Kurram & Khyber.

Subject: MINUTES OF MINERAL TITLES COMMITTEE MEETING DATED 10/03/2021, 17/03/2021, 18/03/2021, 24/03/2021, 25/03/2021 & 30/03/2021

Enclosed find herewith minutes of the meetings of Mineral Titles Committee dated 10/03/2021, 17/03/2021, 18/03/2021, 24/03/2021, 25/03/2021 & 30/03/2021 held under the Chairmanship of the Director General Mines & Minerals, Khyber Pakhtunkhwa, Peshawar for immediate implementation. It is further requested that if any error or any agenda item found inconsistent with the Act the same may please be communicated at earliest for further necessary action.

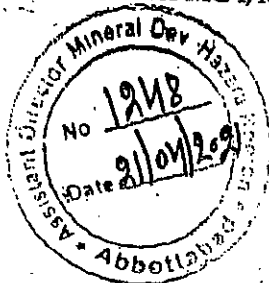
Encl: As above.

Secretary Mineral Titles Committee
For Director General

Endst: No. _____ /MDW/DGMM/MTC/(01)/2021(Decision)/Vol-I Dated: /04/2021

Copy along with copy of the above cited minutes is forwarded to;

1. PS to Minister for Minerals Development Department, Govt. of Khyber Pakhtunkhwa Peshawar for information.
2. PS to Secretary Minerals Development Department Govt. of Khyber Pakhtunkhwa, Peshawar.
3. Chairman Mineral Titles Committee (Director General) Mines & Minerals Khyber Pakhtunkhwa.
4. The Additional Director General Mines & Minerals, Directorate General Mines & Minerals H/Q office Peshawar.
5. The Deputy Secretary Law, Parliamentary Affairs & Human Rights Department, Govt. of Khyber Pakhtunkhwa, Peshawar.
6. The Deputy Secretary Forestry, Environment & Wild Life Department, Govt. of Khyber Pakhtunkhwa, Peshawar.
7. The Commissioner Mines, Commissionerate of Mines, Labour Welfare, Khyber Pakhtunkhwa, Peshawar.
8. The Chief Inspector of Mines, Inspectorate of Mines, Khyber Pakhtunkhwa, Peshawar.
9. The Director Licensing-North, Center & South H/Q Office Peshawar.
10. Director Exploration Director /Co-ordination, H/Q Office Peshawar.
11. Deputy Director Mineral- North, Center, South and Litigation H/Q Office Peshawar.
12. Manager GIS, H/Q Office Peshawar with the advice to please update your all token wise detail list in the online system.
13. Assistant Director Royalty, H/Q Office Peshawar.
14. Assistant Director Survey & Drawing, H/Q Office Peshawar.
15. Assistant Director CDN, H/Q Office Peshawar.
16. Assistant Director Administration, H/Q Office Peshawar.
17. Assistant Director MC-I, MC-II, MC-III, MC-IV & MC-V (FATA), H/Q Office Peshawar.



Secretary Mineral Titles Committee
For Director General





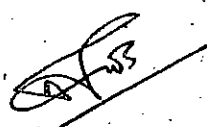

MTC dated: 18/03/2021

MTC -03/2021

109


MINUTES OF MINERAL TITLES COMMITTEE MEETING HELD ON 18/03/2021 AT 10:00 AM UNDER THE CHAIRMANSHIP OF DIRECTOR GENERAL MINES & MINERALS KHYBER PAKHTUNKHWA, PESHAWAR

The meetings of the Mineral Titles Committee were held on 18/03/2021 at 10:00 AM under the Chairmanship of the Director General Mines & Minerals Khyber Pakhtunkhwa, Peshawar. The following attended the meeting: -

01. Mr. Fazl-e-Qadir,
Director General Mines & Minerals,
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar. Chairman
02. Mustafa Kamal Shah,
Additional Director General Mines & Minerals,
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar. Member 
03. Muhammad Bilal, (Section officer)
Deputy Secretary,
Law Parliamentary Affairs, & Human Rights Deptt.,
Govt. of Khyber Pakhtunkhwa, Peshawar. Member 
04. Mr. Saad Qaisrani,
Deputy Secretary,
Forestry, Environment, & Wild Life Department,
Govt. of Khyber Pakhtunkhwa, Peshawar. Member 
05. Muhammad Tahir,
Commissioner Mines,
Commissionerate of Mines, Labour Welfare,
Khyber Pakhtunkhwa, Peshawar. Member
06. Mr. Ihsanullah, Mahum Akhond
Representative of Chief Inspector of Mines,
Inspectorate of Mines,
Khyber Pakhtunkhwa, Peshawar. Member 
07. Mr. Aamir Muhammad,
Director Exploration,
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar. Member 
08. Mr. Irshad Khan
Director Licensing-South / Secretary MTC,
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar. Member-cum-Secretary 

Regular agenda items circulated vide Letter No. dated No. 6826-35/MDW/DGMM/MTC/(01)2021 (Decision)/Vol-I dated 09/03/2021 were thoroughly discussed in the meeting and the following decisions were taken:

1 | Page



S.No.	Agenda Item	Decision
		i. pay all Govt. dues including fine for non-payment of annual rent if any before issuance of renewal letter; ii. work in accordance with the approved Development and Exploitation Scheme; iii. retain 05 mineral titles; iv. comply with Section 35 of the said Act in true letter and spirit, v. carry out safe and scientific/mechanized mining, and vi. that the area does not fall in designated forest land/resume land as per Section 40 of the said Act.

SPECIAL INSTRUCTIONS

1. The Mineral Titles Committee, in exercise of Powers conferred under Section, 92 of the Khyber Pakhtunkhwa Mines and Minerals Act, 2017, hereby delegate its powers to /authorize:

i. Director General Mines & Minerals to conduct personal hearing under Section, 48 of the Act ibid and shall charge royalty up to ten times of the notified rate on the quantity of Mineral under reported, however, if in his opinion the mineral title is fit for cancellation the same shall be placed before Mineral Title Committee.


ii. Assistant Director Minerals Development concern to serve thirty days' notice in writing upon the mineral title holder under Section, 63 of the Act ibid before submission of a case to the Mineral Titles Committee.


iii. Assistant Director (Mineral/Surveillance), Mineral Development officer, Royalty Inspector, Royalty Sub Inspector _____ under Section, 86 (3) of Act ibid to report to respective Police Station for registration of a case against the accused, under their respective jurisdiction.

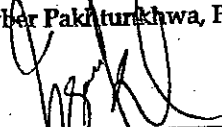
2. All Assistant Directors (Specially Merged Districts) are directed to incorporate GIS and Survey reports in all the working paper furnished for grant, conversion, renewal, validation, amendment etc of the Mineral Titles.

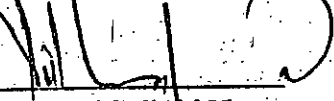
The Assistant Director Co-ordination is directed to issue necessary office order(s) in this respect.

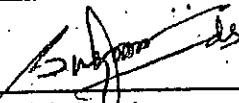
LIST OF PARTICIPANTS AND THEIR SIGNATURES



Muhammad Javed
Section Officer,
Law, Parliamentary Affairs, & Human Rights
Department, Govt. of Khyber
Pakhtunkhwa, Peshawar.

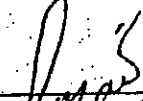

Mustafa Kamal Shah.
Additional Director General.
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar.



Mr. Ihsanullah
Senior Inspector of Mines,
Inspectorate of Mines,
Khyber Pakhtunkhwa, Peshawar.


Muhammad Zulkifal Khan
Director Licensing-North/ Secretary MTC.
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar.


Mr. Saad Qaisrani
Deputy Secretary;
Forestry, Environment, & Wild Life
Department Govt. of Khyber
Pakhtunkhwa, Peshawar. *(disputing note attached)*


Mr. Aamir Muhammad
Director Exploration,
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar.


Syed Mujahid Ali Shah
Commissioner Mines,
Commissionerate of Mines, Labour
Welfare, Khyber Pakhtunkhwa, Peshawar.


Mr. Fazl-e-Qadir,
Director General Mines & Minerals
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar



DIRECTORATE GENERAL

MINES & MINERALS, KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX, KHYBER ROAD,
PESHAWAR, CANTT.

Phone: 091-9210275 - 9211140 Fax: 091 9210236

No. 10921-62 /MDW/CDN-6(25)/2018

Dated: 25/04/2021

ORDER:

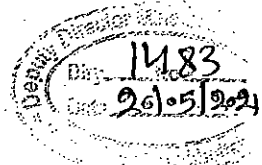
The Licensing Authority / Mineral Titles Committee, in exercise of Powers conferred under Section 92 of the Khyber Pakhtunkhwa Mines & Minerals Act, 2017, hereby delegate it powers to / authorize;

- i. Director General Mines & Minerals to conduct personal hearing under Section 48 of the Act ibid and shall charge royalty up to ten times of the notified rate on the quantity of Mineral under reported, however, if in his opinion the mineral title is fit for cancellation the same shall be placed before Mineral Title Committee.
- ii. Assistant Director Mineral Development concern to serve thirty days' notice in writing upon the mineral title's holder under Section 63 of the Act ibid before submission of case to the Mineral Title Committee.
- iii. Assistant Director (Mineral / Surveillance), Mineral Development Officer, Royalty Inspector, Royalty Sub-Inspector under Section 86 (3) of Act ibid to report to respective Police Station for registration of a case against the accused, under their respective jurisdiction.

Assistant Director (Coordination)

Copy for information to:-

- 1- PA to Director General Mines & Minerals Khyber Pakhtunkhwa Peshawar, please.
- 2- PA to Additional Director General Mines & Mineral Khyber Pakhtunkhwa Peshawar, please.
- 3- Director Licensing Centre, North & South, please.
- 4- Secretary Mineral Titles Committee with reference to minutes of the Mineral Titles Committee meeting dated 30-03-2021, please.
- 5- Deputy Director Centre, North, South and Litigation, please.
- 6- Deputy Director Malakand Division & Hazara Division, please.
- 7- Deputy Director Surveillance Karak, please.
- 8- Assistant Director MC-I, MC-II, MC-III, MC-IV, MC-V and Royalty, please.
- 9- Assistant Director Mineral Development / Surveillance, Abbottabad, Mansehra, Haripur, Kohistan, Swat, Malakand, Buner, Shangla, Chitral, Timergara, Charsadda, Nowshera, Mardan, Swabi, Peshawar, Kohat, Lakki Marwat / Bannu, Karak, D.I Khan, N.Waziristan, S.Waziristan, Bajaur, Mohamand, Orakzai, Kurram, and Khyber, please.



Assistant Director (Coordination)

112/1



Registered

DIRECTORATE GENERAL

MINES & MINERALS, KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX, KHYBER ROAD,
PESHAWAR, CANTT.

Phone: 091-9210275 - 9211140 Fax: 091-9210236

No: 5712-24 /MDD/DGMM /MTC/2018

Dated: 01/03/2018

To

✓ The Assistant Director Mineral Development
Abbotabad, Mansehra, Swat, Mardan, Kohat,
Kohistan, Shangla, D.I Khan, Banuu, Buner, Timergarh,
Chitral & Nowshera.

Subject: MINUTES OF MINERAL TITLES COMMITTEE MEETING DATED 19-02-2018

Enclosed please find herewith the minutes of the meeting Mineral Titles Committee dated 19-02-2018 held under the Chairmanship of the Director General Mines & Minerals, Khyber Pakhtunkhwa, Peshawar for implementation please.

Encl: As above.

Secretary Mineral Titles Committee
For Director General

Endst: No. _____ /MDD/DGMM /MTC/2018

Dated: / /2018

Copy along with a copy of the minutes is forwarded to:

1. PS to Secretary Minerals Development Department Govt. of Khyber Pakhtunkhwa, Peshawar.
2. Chairman Mineral Titles Committee (DGMM).
3. The Deputy Secretary Law, Parliamentary Affairs & Human Rights Department, Govt. of Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Secretary Forestry, Environment & Wild Life Department, Govt. of Khyber Pakhtunkhwa, Peshawar.
5. The Commissioner of Mines, Commissionrate of Mines, Labour Welfare, Khyber Pakhtunkhwa, Peshawar.
6. The Chief Inspector of Mines, Inspectorate of Mines, Khyber Pakhtunkhwa, Peshawar.
7. The Director Licensing-I & II, H/Q Office Peshawar.
8. Director Exploration, H/Q Office Peshawar.
9. Deputy Director Mineral-I & II, H/Q Office Peshawar.
10. Manager GIS, H/Q Office Peshawar.
11. Assistant Director CDN, H/Q Office Peshawar.
12. Assistant Director Royalty, H/Q Office Peshawar.
13. Assistant Director Survey & Drawing, H/Q Office Peshawar
14. MC-I, MC-II, MC-III, & MC-IV Section H/Q Office Peshawar
15. Folder of Secretary Mineral Titles Committee.

Secretary Mineral Titles Committee
For Director General

112/2

MINUTES OF MINERAL TITLES COMMITTEE MEETING HELD ON 19/02/2018 AT 10:00 AM UNDER THE CHAIRMANSHIP OF DIRECTOR GENERAL MINES & MINERALS KHYBER PAKHTUNKHWA, PESHAWAR.

A meeting of the Mineral Titles Committee was held on 19/02/2018 at 10:00 AM under the Chairmanship of the Director General Mines & Minerals, Khyber Pakhtunkhwa, Peshawar. The following attended the meeting:-

01. Mr. Fazli Wahid,
Director General Mines & Minerals,
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar. Chairman
02. Mr. Muhammad Yaseen, Section Officer (General),
Representative of Deputy Secretary Assembly,
Law Parliamentary Affairs, & Human Rights Deptt.,
Govt. of Khyber Pakhtunkhwa, Peshawar. Member A
03. Mr. Hazrat Ali,
Deputy Secretary,
Forestry, Environment, & Wild Life Department,
Govt. of Khyber Pakhtunkhwa, Peshawar. Member
04. Mr. Ziarat Khan,
Commissioner Mines,
Commissionerate of Mines Labour Welfare,
Khyber Pakhtunkhwa, Peshawar. Member
05. Mr. Fazli Raziq,
Chief Inspector of Mines,
Inspectorate of Mines,
Khyber Pakhtunkhwa, Peshawar. Member
06. Mr. Fazli Raziq,
Director Licensing-I / Secretary MTC,
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar. Member-cum-Secretary

The regular agenda items circulated vide Letter No. 4853-59/DD/DCMM/MTC/2018 dated 19-02-2018 were thoroughly discussed in the meeting and the following decisions were taken:-

S.No	Agenda Item No.	Decision
1.	Application from M/S Central Exchange Mining Limited, Islamabad for exploration License (E/L) for base metal over an area an area of 415 SQ KM (Approximately) at Bar Rokhan District Upper Dir.	The committee decided that fresh working paper, incorporating therein details of reconnaissance work carried out by the Licensee and with clear recommendations as per Khyber Pakhtunkhwa Mineral Governance Act-2017, be placed before the committee for consideration in its next

112/3

		<p>Governance Act-2017 have been violated by the licensee or otherwise:</p> <ul style="list-style-type: none">iii. report as to how the un-authorized excavated mineral was transported during the period of time and whose challans were used. That whether the mineral guards were not deputed in the area and that whether Assistant Director concerned was not aware of the fact during all this era.iv. report regarding payment of Surface Rent as per Section-38 of the said Act;v. conduct cash assessment of the un-authorized mining carried out by licensee or other person else. <p>The committee shall submit its findings within fortnight positive</p>
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SPECIAL INSTRUCTIONS

The committee further decided as under:

1. Notice to all Mineral Title Holders shall be issued to submit an affidavit on Judicial Stamp Paper to the effect that such holders do not possess more than 03 mineral titles across the province and in case of wrong information in this regard the lessees shall be black listed and their mineral titles shall stand cancelled.
2. All Assistant Directors shall co-ordinate with each other to ensure that Section-25 (2) of the Khyber Pakhtunkhwa Minerals Governance Act, 2017 is implemented in letter and spirit prior to issuance of renewal, conversion, assignment, allotment letter, etc.
3. A 30 days' notice under Section-63 of said Act shall be issued before the issuance of cancellation letter to those Titles Holders who have not been served upon with such notice earlier.
4. All the regional offices shall submit working papers, complete in all respect, as per provisions of the said Act for consideration of the Mineral Titles Committee in future.

The meeting ended with a vote of thanks.

112/4

LIST OF PARTICIPANTS AND THEIR SIGNATURES

Mr. Muhammad Yaseen,
Section Officer (General),
Representative of Deputy Secretary,
Law, Parliamentary Affairs, & Human Rights
Department, Govt. of Khyber
Pakhtunkhwa, Peshawar.

Mr. Hazrat Ali
Deputy Secretary,
Forestry, Environment, & Wild Life
Department Govt. of Khyber Pakhtunkhwa,
Peshawar.

Mr. Fazli Raziq,
Director Licensing-I/Secretary MTC,
Directorate General Mines & Minerals, Khyber
Pakhtunkhwa, Peshawar.

Mr. Ziarat Khan
Commissioner Mines,
Commissionerate of Mines, Labour
Welfare, Khyber Pakhtunkhwa, Peshawar.

Mr. Fazli Raziq,
Chief Inspector of Mines,
Inspectorate of Mines,
Khyber Pakhtunkhwa, Peshawar.

Mr. Fazli Wahid
Director General Mines & Minerals
Directorate General Mines & Minerals,
Khyber Pakhtunkhwa, Peshawar

113

7

Aix

8



GOVERNMENT OF
KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT DEPARTMENT

No.SO(Appeal)/MDD/6-28/MTC/2019
Dated. 08-11-2019

13008-16

To

Director General,
Mines and Minerals, Khyber Pakhtunkhwa,
Peshawar.

Subject: - CANCELLATION OF LEASES.

I am directed to refer to the subject noted above and to state that while hearing Appeals, the Secretary of the Department has noted many instances where MTC, having cursory glance at the report of field staff cancels leases, on the charges of un-authorized mining by the lessee of a particular mining leases, from area outside his granted area. These reports usually lack evidence and facts.

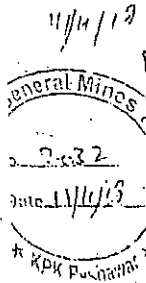
2. Secondly, leases are also cancelled on account of non-payment of government dues without providing sufficient time/ opportunity to the lease holders. In few cases, merely on 15 days' notice, leases have been cancelled by the MTC. This tendency has escalated number of cases, not only at the level of Appellate Authority but Higher Judiciary as well. Besides, it results in huge financial loss to the Government exchequer as leases are one of the main sources of revenue of the Minerals Development Department

3. Foregoing in view, I am directed to advise that:-

- i) The Assistant Director concerned while recommending case for cancellation of mining lease of the adjacent lease holder on the charges of un-authorized mining shall conduct proper verification and gather irrefutable evidence and then forward the same to MTC, which shall also carefully examine it.
- ii) In case dues are outstanding against any lease holder, then AD concerned should make his own efforts for its early recovery and reasonable time be given for clearance of dues.
- iii) Cancellation of the leases as explained in Para-3 (i & ii) should be avoided by MTC and the option may be exercised in un-avoidable circumstances.

The above instructions shall be followed in letter and spirit.

AC-II
Discussions
ADS
SW



11/11/19
DL-C/DL-N/DL-S MF
12-11-19

Dist: No. & Date Even

Copy forwarded to:-

- 1. PS to Secretary, Minerals Development Department, Khyber Pakhtunkhwa
- 2. PA to Additional Secretary, Minerals Development Department.

For necessary circulation
Muzaffar Ali
Section Officer (Appeal)
13-11-19

Muhammad Ali
Section Officer (Appeal)

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Handwritten signature and stamp

114

2

DIRECTOR GENERAL MINES AND MINERAL, KHYBER PAKHTUNKHWA

105 The minister wants that we may
conduct an inquiry in this regard
preferably by some body from
out side of the Directorate,
please send it to Secretary
MDD

~~DL-C~~

M
6/5/19

106

DDM-I Digenity, P.
AD/ Hostl. MM

M
07.5.19

107

put up DFA

07.5.19

108

~~CA~~

CL

early please.

09-5-19

ATTESTED

109

Fawaz Khan received today
submitted for information

09/05/19

13/05/19

AD/

signed in

ATTESTED

115

Annexed

81. KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 15th NOVEMBER, 2017

(2) The holder of the title shall also to the like extent restore the surface of the land and buildings and other structures not belonging to him which he may have damaged in the course of prospecting, exploration or mining.

59. Black listing.— (1) A person may be black listed by the Licensing Authority on account of serious and repeated violations of this Act.

(2) The mineral title held by such person shall stand terminated and such person shall be debarred from obtaining any mineral title.

(3) In case such person or any partner of such firm or a director of such company forms a new firm or becomes a director of another company it shall render such other firm or company ineligible for the grant of mineral title.

60. Establishment of check posts.— (1) The Licensing Authority may, for the purpose of verification or collection of royalty on minerals dispatched from the licensed or leased areas, establish check posts at suitable places, authorize any official to check the mineral in transit and recover royalty.

(2) The Licensing Authority may order the collection of royalty on minerals dispatched from the licensed or leased area or areas, as the case may be, through sealed tenders or open auction on the terms and conditions determined by it.

61. Forfeiture of plants etc.— If any machinery, building structure, mineral or other property belonging to the holder of a mineral title is not removed by him from the licensed or leased area within three months after the date of expiry or determination of the mineral title, the Licensing Authority, or any officer authorized by it, may enter upon the said land, take possession of all the machinery, building structures, minerals or any other property belonging to the holder of the title and may dispose it off in any manner as it may deem fit.

62. Auction of area with proven mineral reserves.— The cancelled areas containing proven mineral reserves, and the areas having economic mineral reserves proved as a result of studies carried out at the public expense or areas the Licensing Authority may consider appropriate for auction, may lease out such areas through open auctions on prescribed terms and conditions; and in case of non-auction in five consecutive efforts or not fetching reasonable bids in five consecutive auctions may grant through normal procedure.

**PART-V
CANCELLATION AND SURRENDER OF MINERAL TITLES.**

63. Cancellation of mineral titles.— (1) The Licensing Authority may, by serving thirty days notice in writing, cancel a mineral title, if the holder of the mineral title—

- (a) fails to use the land subject to the title for the purpose for which the title was granted; or

ATTACHED

196

KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 15th NOVEMBER, 2017. 82

- (b) uses that land for any purpose other than the purpose for which the title was granted; or
- (c) fails to comply with any requirement of this Act or rules which the holder is bound to comply; or
- (d) fails to comply with a condition of the title; or
- (e) fails to comply with a direction lawfully given under this Act or with a condition on which any certificate of surrender is issued or on which any exemption or consent is given under this Act or rules; or
- (f) fails to pay any amount payable by him under this Act or rules within one month after the amount becomes due; or
- (g) being an individual is adjudged bankrupt, or enters into any agreement or scheme of composition with creditors or takes advantage of any law for the benefit of debtors; and
- (h) is a Company against which an order is made or a resolution is passed for winding up the affairs of the Company.

(2) On the cancellation of a mineral title, the rights of the holder of the title there under shall cease, and the cancellation shall not affect any liability incurred before the cancellation and any legal proceedings that might have commenced against the holder of the title shall continue against him.

64. Surrender of mineral titles and effect of certificate of surrender. — (1) The holder of a mineral title, other than the lease holder in minor minerals, who wishes to surrender all or a part of the area subject to the mineral title shall apply to the Licensing Authority for a certificate of surrender in respect of the area not less than three months before the date on which he wishes the surrender to have effect.

(2) The Licensing Authority shall issue a certificate of surrender, either unconditionally or subject to such conditions as are specified in the certificate, in respect of the area to which the application relates.

(3) The Licensing Authority shall not issue a certificate of surrender to an applicant who is in default, or to an applicant who fails to comply with any reasonable requirement of the Licensing Authority, or if it is not satisfied that the applicant will surrender the area on which reconnaissance, exploration, prospecting or mining operations have been conducted in a safe and good condition.

(4) Where a certificate of surrender is issued, the Licensing Authority shall cause the title to be amended accordingly, if only a part of the area subject to a mineral title is surrendered and cause the mineral title to be cancelled, in any other case.

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Annex - 3

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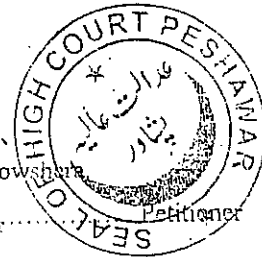
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IN THE PESHAWAR HIGH COURT PESHAWAR

W.P.No. 3040 /2019

Shujat Ali Khan s/o Nusrat Iqbal

R/o Mohallah Awan P.O. Nowshera Cantt District Nowshera



VERSUS

- 1) Govt. of Khyber Pakhtunkhwa through Secretary Mineral Department Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2) Director General Mines and Minerals Khyber Pakhtunkhwa, Peshawar.
- 3) Assistant Director Mineral Development, Khyber Pakhtunkhwa, Nowshera.
- 4) Secretary Mineral Development Department Govt. of Khyber Pakhtunkhwa (Appellate Authority)
- 5) Tajamal Shah, Royalty Sub Inspector Mineral department District Nowshera.
- 6) Jibrannullah Mineral Guard, Mineral Department District Nowshera.

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth:

1. That petitioner is a law abiding citizen of Pakistan and belongs to a respectable and humble family of Nowshera. Petitioner for past couple of years has entered into his family's mining business and has been bidding in auctions for minor minerals around the province and is

one copy of the said order placed
sent to the Mineral and Secto
11/11/19

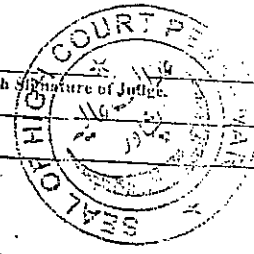
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ATTESTED

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EXAMINER
Peshawar High Court

246

PESHAWAR HIGH COURT, PESHAWAR
ORDER SHEET



Date of Order of Proceedings	Order or other Proceedings with Signature of Judge
1	2

03.06.2019 W.P. No. 3040-P/2019.

Present: Mr. Abdul Sattar Khan, Advocate for the petitioner.

Mr. Mujahid Ali Khan, AAG for the respondents alongwith Mr. Ishfaq Ahmad Sajid, Deputy Director.

After hearing, we would like to direct the respondent No:2 to file comments within a fortnight.

Interim Relief.

Adjourned to 26.06.2019. Till then, no demand shall be made from the petitioner for the payment of first installment and further no adverse action shall be taken against him.

No. 22197

Date of Presentation of Application 03/06/19

No of Pages 2

Copying fee 300

Total 300

Date of Preparation of Copy 03/06/19

Date of Delivery of copy 03/06/19

Received By [Signature]

[Signature]

JUDGE

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized under Article 87 of
The Constitution of Pakistan Order 1952

03 JUN 2019

Attested (DB) Hon'ble Mr. Justice Iftikhar Ibrahimi, Judge
Hon'ble Mr. Justice Syed Arshad Ali, Judge.

[Signature]
ATTESTED

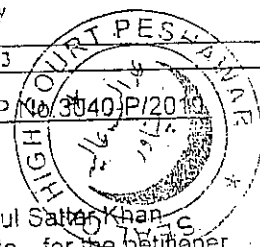
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1219

PESHAWAR HIGH COURT, PESHAWAR
FORM "A"
FORM OF ORDER SHEET.

Court of
Case No.

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	06.09.2019.	<p>CM 2049-P/2019 in WP No. 3040/P/2019</p> <p><u>Present:-</u></p> <p>Mr. Abdul Sattar Khan, Advocate, for the petitioner.</p> <p>Mr. Rab Nawaz Khan AAG for official for respondents.</p> <p>=====</p> <p><u>IKRAMULLAH KHAN, J.:-</u> Through the instant Miscellaneous Application (CM), petitioner seeks suspension of notice/ letter No.1767/MDW/MM/NSR/ MIAN ESSA/ Block No.03/2019 dated 29.8.2019 regarding deposit of 2nd and 3rd minor mineral monthly installment till final decision of instant writ petition.</p> <p>2. We heard learned respective counsel for the parties in light of available record.</p> <p>3. Petitioner had filed Writ Petition No.3040-P/2019, for the following relief:-</p> <p><i>"that in view of the facts and grounds enumerated in the</i></p>



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EXAMINER
Peshawar High Court

instant petition, the impugned order bearing No.627/MDW/ MM/NSR/ Mian Essa/Block No.03/2019 dated 6.5.2019 of respondent No.4 may be declared illegal, without lawful authority, unequitable, unjust, unfair and of no legal effect and consequently this order may be kept held in abeyance/ deferred and date of work order of the subject mining lease may be reckoned after a period of 45 days in view of blockage of road or any other order deemed proper in the matter may kindly be passed."

2. This Court vide interim order dated 3.6.2019 had directed that no payment of first installment shall be recovered / taken from the petitioner as well as no adverse action shall be taken against him, however, the petitioner in his petition has prayed for grace period of 45 days after issuance of work order dated 6.5.2019.

3. No doubt the Court had stayed first installment but technically 45 days had already been expired therefore, this Court cannot pass any further order in order to restrain the respondents from the recovery of future installment where, the grace period

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EXAMINER
 Reshawar High Court

[Signature]
Attested

asked by petitioner had already been expired.

The petitioner is bound to pay the onward installment in accordance with the lease agreement and shall operate in the mine according to the work order issued to him, the second and third installment would start after expiry of 45 days to be reckoned from the work order issued to the petitioner.

With these observations, this application (CM) is disposed of accordingly:

Announced,
6.9.2019.

JUDGE

JUDGE

No.	3789
Date of Presentation of Application	12/9/19
No of Pages	27
Copying Fee	
Total	271
Date of Preparation of Copy	12/9/19
Date of Delivery of copy	12/9/19
Received By	T. G. 16

CERTIFIED TO BE TRUE COPY

[Signature]
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 8.7.01
The Qanun-e-Shahadat Order 1908

12/9/19

"A. Qayum P.A"

(DB)

Hon'ble Mr. Justice Iqbalullah Khan & Hon'ble Mr. Justice Muhammad Naeem Anwar.

ATTESTED

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33

Ant - 2/2

122

DIRECTORATE GENERAL MINES & MINERALS
GOVERNMENT OF KHYBER PAKHTUNKHWA
PESHAWAR


Reg:

No. 21 DGM/MSR/Block-03/Jan/Esso/2017/ Dated: 27 / 12 / 2017

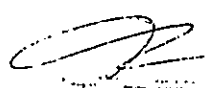
To: The Assistant Director
Mineral Development Nowshera

Subject: CANCELLATION OF ONE YEAR MINING LEASE FOR MINOR MINERALS OVER AN AREA OF 1773.022 ACRES NEAR VILLAGE MIAN ESSA MASSAM, DHERI, BLOC-03-DISTRICT NOWSHERA.

I am directed to refer to the subject noted above and your office letter No. 1099/DGM/MSR/Block-03/Jan/Esso/2017 dated 10/09/2017 and to inform you that the Licensing Authority, Director General Mines & Minerals is pleased to cancel the subject mining lease over your recommendation vide letter as mentioned above. The security amount Rs. 2,02,50,000/- and adjust it towards the Government dues and the remaining outstanding dues will be recovered as arrears of land revenue under the law. Necessary field staff should be deputed to ensure stoppage of illegal mining operations mineral transportation and to proceed as per Mineral Sector Governance Act-2017.


Assistant Director (Tech)
For Director General





APPROVED

Ans - 7/3 723

Registered



**DIRECTORATE GENERAL MINES & MINERALS
KHYBER PAKHTUNKHWA, PESHAWAR**

ATTACHED DEPARTMENT, NEAR JUDICIAL COMPLEX, KHYBER ROAD PESHAWAR
Ph: 091-9211153 Fax: 091-9210236

No 8714-734 /MDW/Add Director General

Dated 23/06/2020

To

1-3

The Deputy Director Mineral Development Hazara, Malakand Division and Deputy Director Mineral Development (Surveillance) Karak.

4-21

The Assistant Director Mineral Development, Abbottabad, Bannu, Buter, Chitral, Charsadda, D.I.Khan, Haripur, Kohat, Kohistan, Karak, Malakand, Mansehra, Mardan, Nowshera, Swat, Shangla, Timergara and Peshawar.

Subject:

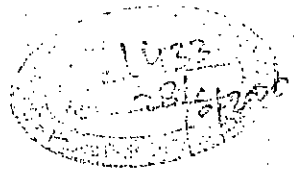
1. UN-AUTHORIZED MINING OF MINOR MINERALS.
2. TIMELY AUCTION OF MINOR MINERAL / MAJOR MINERAL AREAS.
3. RECOVERY OF GOVERNMENT OUTSTANDING DUES.
4. ATTENDING OF COURT CASES.

Reference is invited to the Directorate circular letter endorsement No. 8590-09/MDW/CDN-5(59)/2015 (illegal mining)-FIR dated 19-06-2020 on the subjects noted above and to state that it has been reported with great concern that un-authorized mining / transportation of minerals and minor minerals are being carried out by un-authorized persons in different districts of the province in violation of Khyber Pakhtunkhwa Mines and Minerals Act, 2017 and Khyber Pakhtunkhwa Mineral Sector Governance Act, 2019, on account of which the Provincial Exchequer is sustaining huge financial losses. You were directed time and again to take legal action against the defaulters and curb un-authorized mining / transportation.

Moreover, recovery of the Government outstanding dues from the defaulting parties on account of assessment and annual rent is still pending.

You are therefore, directed to pull on your socks, regularly visit all such areas, where un-authorized mining / transportation is reported, seek the assistance of local administration by lodging proper FIRs against the culprits and establish proper check post for curbing un-authorized mining / transportation. Furthermore, make assessment of un-authorized mining and make recoveries from defaulters after adopting proper procedure under the Act. You are also directed to ensure recovery of Government dues from the defaulting parties, also ensure that auction of minor mineral areas are timely auctioned. Furthermore submit the cases of major mineral areas reserved for auction, so that the interest of the Provincial Government is safeguarded. Also, attend the court cases regularly and submit reply covered under the law properly, failing which necessary action will be initiated against you under the E&D rules 2011.

This should be treated as "Most Urgent".



Additional Director General
Mines and Minerals Khyber Pakhtunkhwa

Endst.No _____ MDW/Add Director General

Dated 23/06/2020

Copy to:

1. PA to Director General Mines and Minerals Khyber Pakhtunkhwa.
- 2-3 Director Licensing Center and South H/Q office Peshawar.
- 4-6 Deputy Director North, South and Center H/Q office Peshawar.

For follow up action

Additional Director General
Mines and Minerals Khyber Pakhtunkhwa

ATTESTED



Registered

DIRECTORATE GENERAL

MINES & MINERALS, KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX, KHYBER ROAD,
PESHAWAR, CANTT.

Phone: 091-9210276 - 9211140 Fax: 091 9210236

No. 23756-68 / MDW/DL North Un-authorized Mining/2019

Dated: 29 /10/2019

To

- 1-2 The Deputy Director Mineral Development Hazara, Malakand Division.
- 3-12 The Assistant Director Mineral Development, Abbottabad, Haripur, Kohistan, Mansehra, Malakand, Timergara, Swat, Shangla, Buner and Chitral.

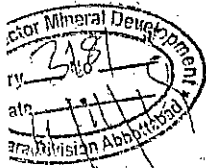
- Subject:
1. UNAUTHORIZED MINING OF MINOR MINERALS
 2. TIMELY AUCTION OF MINOR MINERAL / MAJOR MINERAL AREAS
 3. RECOVERY OF GOVERNMENT OUTSTANDING DUES
 4. ATTENDING OF COURT CASES

Reference is invited to the Directorate circular letter endorsement No. 23585-92/MDW/CDN-5 (59)/2015 (Illegal Mining)-FIR dated 28-10-2019 on the subject noted above.

It has been observed with grave concern that unauthorized mining / transportation of minerals is being carried out by un-authorized persons in different districts of the province in sheer violation of Khyber Pakhtunkhwa Mineral Sector Governance Act, 2017. Therefore, the Provincial Exchequer sustained huge financial losses in shape of royalty and excise duty as well as other regulatory taxes. You were directed time and again to take action regarding the subjects matters being sensitive nature issues, but no action seems to have been taken by you so far.

You are therefore, directed to visit all such areas, where unauthorized mining / transportation is carried out, seek the assistance of local administration by lodging proper FIRs against the culprits. You are further advised to make assessment of un-authorized mining and recover the assessed amount from the concerned persons. Also ensure timely auction of minor mineral areas and submit the cases of major mineral areas reserved for auction. The recovery of Government outstanding dues be ensured. The court cases should also be attended regularly and vacate stay / status quo orders if granted by any relevant court of law, so that the interest of the Provincial Government is safeguarded. A comprehensive report to this effect be submitted for consideration of the Competent Authority within 14 days positively, failing which necessary action under the relevant rules will be taken against you.

This should be treated as "Most Urgent".



Yaqoob Nawaz
Director Licensing (North)
H/Q office Peshawar

Dated: 29 /10/2019

Endst. No. 23756-68 MDW/DL North Un-authorized Mining/2019
Copy to:

1. PA to Director General Mines and Minerals, Khyber Pakhtunkhwa for information please.
2. The Additional Director General Mines and Minerals Khyber Pakhtunkhwa for information please.
3. The Deputy Director North H/Q office Peshawar for follow up action.
4. The Dealing Assistant MC-I and MC-IV H/Q office Peshawar for necessary action.

Yaqoob Nawaz
Director Licensing (North)
H/Q office Peshawar

RECEIVED



DIRECTORATE GENERAL

MINES & MINERALS, KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX, KHYBER ROAD,
PESHAWAR, CANTT.

Registered

No. 3564-84 / MDW/CDN-5(59)/2015(Illegal Mining)-FIR
Phone: 091-9210276 - 9211140 Fax: 091 9210236

Dated: 28/10 2019

To 1-3 The Deputy Director Mineral Development Hazara, Malakand Division and Deputy Director Mineral Development (Surveillance) Karak.

4-21 The Assistant Director Mineral Development, Abbottabad, Bannu, Buner, Chitral, Charsadda, D.I.Khan, Haripur, Kohat, Kohistan, Karak, Malakand, Mansehra, Mardan, Nowshera, Swat, Shangla, Timergara and Peshawar.

- Subject:
1. UNAUTHORIZED MINING OF MINOR MINERALS
 2. TIMELY AUCTION OF MINOR MINERAL / MAJOR MINERAL AREAS
 3. RECOVERY OF GOVERNMENT OUTSTANDING DUES
 4. ATTENDING OF COURT CASES

I am directed to refer to this Directorate letter No. 14669-89/MDW/CDN-59/ 2015 (Illegal mining)-FIR dated 17-07-2019 and to state that it has been observed with grave concern that unauthorized mining / transportation of minerals is being carried out by unauthorized persons in different districts of the province in sheer violation of Khyber Pakhtunkhwa Mineral Sector Governance Act, 2017. Therefore, the Provincial Exchequer sustained huge financial losses in shape of royalty and excise duty as well as other regulatory fees. You were directed time and again to take action regarding the subjects matters being sensitive nature issues, but no action seems to have been taken by you so far.

You are therefore, directed to visit all such areas, where unauthorized mining and transportation is carried out, seek the assistance of local administration by lodging proper FIRs against the culprits. Also ensure timely auction of minor mineral areas and submit the cases of reserved or mineral areas reserved for auction. The recovery of Government outstanding dues be expedited. The court cases should also be attended regularly and vacate stay / status quo orders granted by any relevant court of law, so that the interest of the Provincial Government is safeguarded. A comprehensive report to this effect be submitted for consideration of the competent Authority within 14 days positively, failing which necessary action under the relevant law will be taken against you.

This should be treated as "Most Urgent"

Deputy Director (Coord)

No. MDW/CDN-5(59)/2015(Illegal Mining)-FIR

Dated: 28/10 2019

- To:
- PS to Minister for Minerals Development Khyber Pakhtunkhwa.
 - PS to Secretary Minerals Development Department Khyber Pakhtunkhwa.
 - SA to Director General Mines and Minerals Khyber Pakhtunkhwa.
 - The Additional Director General Mines and Minerals Khyber Pakhtunkhwa.
 - Director Licensing North, Center, South H/Q office Peshawar.
 - II Deputy Director H/Q office Peshawar.

For follow up action

Deputy Director (Coord)

ATTESTED

126

DIRECTORATE GENERAL

MINES & MINERALS, KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX, KHYBER ROAD,
PESHAWAR, CANTT.

Phone: 091-9210276 - 9211140 Fax: 091-9210236

Dated: 28/01/2020

MDW/DL-N/2020

3559-70

1. Deputy Director Mineral Development Hazara, Division Abbottabad.
2. Deputy Director Mineral Development Malakand, Division Swat.
- 4-9. Assistant Director Mineral Development, Buner, Chitral, Malakand, Swat, Shangla and Timergara.
- 10-13. Assistant Director Mineral Development Abbottabad, Mansehra Kohistan, and Haripur.

Subject:

1. UNAUTHORIZED MINING OF MINOR MINERALS
2. TIMELY AUCTION OF MINOR MINERAL / MAJOR MINERAL AREAS
3. RECOVERY OF GOVERNMENT OUTSTANDING DUES
4. ATTENDING OF COURT CASES

Reference is invited to the Directorate endorsement letter No. 1992-2002MDW/CDN-5(59)/2015 (Illegal Mining)-FIR dated 21.01.2020 on the cited subject.

In this connection it is stated that it has been reported with great concern that unauthorized mining / transportation of minerals is being carried out by un-authorized persons in different districts of the province in violation of Khyber Pakhtunkhwa Mineral Sector Governance Act, 2017, on account of which the Provincial Exchequer sustained huge financial losses, you were directed time and again to take legal action against the defaulters and curb un-authorized mining / transportation. Moreover, recovery of the Government outstanding dues from the defaulting parties on account of assessment and annual rent is still pending.

You are therefore, directed to regularly visit all such areas, where unauthorized mining / transportation is reported, seek the assistance of local administration by lodging proper FIRs against the culprits for curbing un-authorized mining / transportation. You are also directed to ensure recovery of Government dues outstanding from the defaulting parties, also ensure that timely auction of minor mineral areas, submit the cases of major mineral areas reserved for auction, so that the interest of the Provincial Government is safeguarded, furthermore, attend the court cases regularly and submit reply covered under the law properly, failing which necessary action will also be initiated against you under the E&D Rules 2011.

Stamp: Agency Director Mineral Development Hazara
 Date: 24/01/2020

This should be treated as "Most Urgent".

Signature
Yaquub Nawaz
Director Licensing (North)
H/Q office Peshawar

Dated: ___/01/2020

Endst.No. ___ MDW/DL-N/2020

Copy to:

1. PA to Director General Mines and Minerals Khyber Pakhtunkhwa for information please.
2. The Additional Director General Mines and Minerals Khyber Pakhtunkhwa for information please.
3. Deputy Director Minerals (North) H/Q office Peshawar for follow up action.

Signature

Signature
29/01/2020

Signature
Yaquub Nawaz
Director Licensing (North)
H/Q office Peshawar

Signature
ATTACHED

Signature

787

Registered



DIRECTORATE GENERAL

MINES & MINERALS, KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX, KHYBER ROAD,
PESHAWAR, CANTT.

Phone: 091-9210276 - 9211140 Fax: 091-9210238

No. 1977-91 / MDW/CDN-5(59)/2015(Illegal Mining)-FIR

Dated: 21-01-2020

To 1-3 The Deputy Director Mineral Development Hazara, Malakand Division and Deputy Director Mineral Development (Surveillance) Kafak.

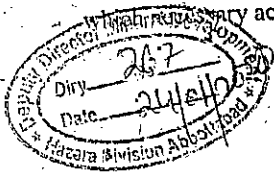
4-21 The Assistant Director Mineral Development, Abbottabad, Bannu, Buner, Chitral, Charsadda, D.I.Khan, Haripur, Kohat, Kohistan, Karak, Malakand, Mansehra, Mardan, Nowshera, Swat, Shangla, Timergara and Peshawar.

- Subject:
1. UNAUTHORIZED MINING OF MINOR MINERALS
 2. TIMELY AUCTION OF MINOR MINERAL / MAJOR MINERAL AREAS
 3. RECOVERY OF GOVERNMENT OUTSTANDING DUES
 4. ATTENDING OF COURT CASES

Reference is invited to the subjects noted above and to state that it has been reported with grave concern that unauthorized mining / transportation of minerals is being carried out by unauthorized persons in different districts of the province in violation of Khyber Pakhtunkhwa Mineral Sector Governance Act, 2017, on account of which the Provincial Exchequer sustained huge financial losses; you were directed time and again to take legal action against the defaulters and curb un-authorized mining / transportation.

Moreover, recovery of the Government outstanding dues from the defaulting parties on account of assessment and annual rent etc. is still pending.

You are therefore, directed to pull on your socks, regularly visit all such areas, where unauthorized mining / transportation is reported, seek the assistance of local administration by lodging proper FIRs against the culprits and establish proper check posts for curbing un-authorized mining / transportation. You are also directed to ensure recovery of Government dues outstanding from the defaulting parties, also ensure that timely auction of minor mineral areas and submit the cases of major mineral areas reserved for auction, so that the interest of the Provincial Government is safeguarded, furthermore attend the court cases regularly and submit reply covered under the law properly, failing which any action will also be initiated against you under the E&D Rules 2011.



This should be treated as "Most Urgent".

[Signature]
Deputy Director (Coord)

Dated: / 12 / 2019

Endst.No. MDW/CDN-5(59)/2015(Illegal Mining)-FIR

- Copy to:
1. PS to Minister for Minerals Development Khyber Pakhtunkhwa.
 2. PS to Secretary Minerals Development Department Khyber Pakhtunkhwa.
 3. PA to Director General Mines and Minerals Khyber Pakhtunkhwa.
 4. The Additional Director General Mines and Minerals Khyber Pakhtunkhwa.
 - 5-7 Director Licensing North, Center, South H/Q office Peshawar.
 - 8-11 All Deputy Director H/Q office Peshawar.

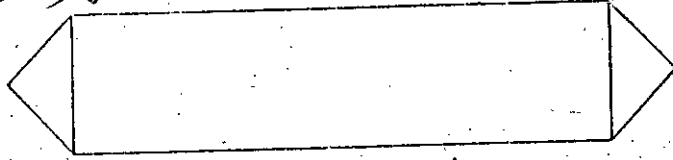
For follow up action

ATTESTED
[Signature]

[Signature]
23/01/2020

Deputy Director (Coord)

بعد الت جتا سروس گریڈنگ (۱۹۹) لپٹاؤ



مورخہ 6 اکتوبر 2021ء منجانب سائل (ریبلنٹ) مقدمہ دعویٰ جرم

منجانب بنام حکومت

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام سروس گریڈنگ کیلئے حفظ ال اسسٹنٹ سیکریٹری

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت 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۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داخستہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے و ہوگا۔ کوئی تارتخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

الرقوم 6 ماہ اکتوبر 2021ء

العبد گواہ العبد

مقام سروس گریڈنگ کے لئے منظور ہے۔

سین علی خان
06/10/2021

Accepted

H. A.

عبدالرحمن شیخ
پوک اشٹری چارنگ
2220197
Mob: 0345-9223239

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 7577/2020

Mr. Mohsin Ali Khan Director (BPS-19) Appellant

Versus

Secretary to Government of Khyber Pakhtunkhwa, Minerals Development &
others Respondents

AFFIDAVIT

I Muhammad Iqbal Superintendent (Admin) (BPS-17), Directorate General Mines & Mineral do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from Honorable Tribunal.



DEPONENT

Identified by

1	7	3	0	1	-	1	5	7	1	3	9	0	-	3
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B

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR.**

In APPEAL NO. 7577/ 2020.

Mohsin Ali Khan.....Appellant

Versus

1. The Honorable Chief Secretary Khyber Pakhtunkhwa, Peshawar
2. The Honorable Secretary Administration Civil Secretariat, Peshawar
3. The Honorable Director General Mines Minerals, Peshawar
4. Assistant Director Mineral Development District, Nowshera

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS

RESPECTFULLY SHEWETH,

The answering respondents most earnestly seek permission of this Service Tribunal to submit Joint Para-Wise Comments as under:

PRELIMINARY OBJECTIONS.

- i. That the appellant has got no cause of action against the respondents.
 - ii. That the instant appeal is not maintainable in its present form.
 - iii. That no vested right of the appellant has been infringed as such the appeal is liable to be dismissed on merit.
 - iv. That the appellant has not come to this Hon'ble Tribunal with clean hands.
 - v. That the appeal is not tenable and is liable to be dismissed.
 - vi. That the appellant is estopped from filing the instant appeal. That the appeal in its present form is bad, defective hence liable to be dismissed.
- m. J. m.*

ON FACTS: -

1. Para-1 pertained to record, hence needs no comments.
2. Para-2 is correct to the extent that, the Appellant was assigned additional charge of the office of Assistant Director Mines and Mineral Development Nowshera Office for two months and fifteen days w. e. f 11.04.2019 to 26.06.2019.

3. Para-3 is correct to the extent that auction of the area of minor mineral block No.3, comprising of 1773.023 acres situated near village Mian Essa, District Nowshera held under the chairmanship of Deputy Commissioner Nowshera on 25.03.2019. Since the highest bidder namely Shujat Ali S/o Nusrat Iqbal of District Nowshera completed all codal formalities and deposited 1/4th of the total bid money, hence the appellant was required to issue allotment letter, instead of issuance of notice of recovery of advance income tax. It is further added that, the appellant by himself issued advance income tax notice, however under section 63 of the Khyber Pakhtunkhwa Mines and Minerals Act 2017, the Licensing Authority is empowered for issuance of the letter before cancellation of the mineral titles. Due to this serious violation of the Act, the respondents have proceeded against the appellant.
4. Para-4 is pertained to record, however, as per direction of the Head Office to visit the minor mineral block No.3, comprising of 1773.023 acres situated near village Mian Essa, District Nowshera and find-out the development and working statutes of the said area, in response to Mr, Tajamal Shah Royalty Sub-Inspector(Now Royalty Inspector) and Mineral guard Jibranullah Mines and Mineral Development Nowshera Office, visited the said area on 14.05.2019 and reported that the said area is under construction and there is no way to start work because of ongoing road construction. On the other hand, the appellant visited the said area on 27.5.2019 and submitted his totally contradicted report that there is another way to approach the granted area and put up summary for cancellation of lease due to non-comply with the instructions mentioned in allotment letter.
5. Para-5 is correct to the extent that Additional Director General also visited with his team and conducted inquiry in the subject case, and Additional Director General suggested that the area is connected with various approach road / paths which can be seen in the enclosed goggle map, the same can be used as alternate route for transportation of minor minerals from the granted area, but the case was subjudiced before Peshawar High Court, and stay order was issued so the enquiry was put for waiting till further order.
6. Para-6 is correct, the Competent Authority/Director General Mines & Minerals has been constituted inquiry committee to investigate the charges against the appellant, Tajamal Shah Royalty Sub-Inspector (Now Royalty Inspector) and Mineral Guard Jibranullah,
- i. The appellant mishandled the issue regarding lease of Mr. Shujat Ali S/o Nusrat Iqbal.
 - ii. The appellant deputed Tajamal Shah Royalty Sub-inspector and Mineral Guard Jibranullah Nowshera to probe in the matter and submit report.
 - iii. That the appellant instead of verifying the said statement relied upon the same and proceeded further in the matter.
 - iv. The appellant failed to keep secrecy of the official record.
 - v. The appellant failed to cancel the lease despite of the fact that the lease holder had failed to comply with the conditions of the offer letter, instead of the appellant issued 15 days' notice for depositing dues.

vi. The very unofficial, unethical, unlawful and irresponsible behavior of the appellant caused loss of amount of Rs.8472218/- outstanding against the ex-lessee, after issuance of cancellation letter and forfeiture and adjustment of security towards government dues, has been caused to Government exchequer.

7. Para-7 is correct, Proper opportunity of personal hearing has been provided to the appellant, the appellant submitted his written reply. The Inquiry Committee members after inquiring into the matter has found the appellant guilty of the charges leveled against him and recommended minor penalty of withholding of 01 increment for 2 years may be imposed on the appellant.
8. Para-8 is correct, Show Cause Notice was issued to the appellant on 03.03.2020, and reply of Show Cause Notice was submitted by the appellant on 13.03.2020, however the reply of the appellant was not satisfactory.
9. Para-9 is correct to the extent that, second opportunity for personal hearing was given to the appellant to defend himself before the Secretary Administration against his allegations which were already proved by the Inquiry Committee i.e para 1 (i) of the recommendation of the inquiry committee reports. After a proper hearing of the appellant, the Incharge Officer requested to prepare a comprehensive charge sheet and statement of allegation against the predecessor of the appellant, and take disciplinary action against him according to law, the Competent Authority did not discharge the appellant from the allegations.
10. Para-10 is correct to the extent that, the Competent Authority vide notification dated 18.08.2020, imposed minor penalty of "Withholding of two (2) Annual increments for two years" over the appellant on the charges of "Failure to stop /curb illegal excavation and transportation of the minor minerals in the area of jurisdiction" which is lawful, and covered under the law, and no injustice has been done with the appellant. Later on the above mentioned notification was substituted with some additional charges of "Mishandling the issue regarding lease of block of minor minerals over an area of 1773.023 acres situated near village Mian Essa/Massam Deri Nowshera by District Auction Committee on 25.03.2019", against the appellant and imposing the same penalty of "Withholding of two (2) Annual increments for two years".
11. Para-11 pertained to record, however a Show Cause Notice had been issued to the appellant by the Honorable Chief Minister that why the aforesaid penalty should not be imposed upon you, On unsatisfactory written reply of the appellant, the Honourable Chief Minister being the Competent Authority, under rules-14 (a) (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-4 (1) (i) of the "Khyber Pakhtunkhwa Civil Servants (appointment, Promotions & Transfer) Rules 1989" imposed minor penalty of "Withholding of two (2) Annual increments for two years" upon the appellant.
12. Para-12 is incorrect, hence denied. The Notification vide dated: 03.05.2021 issued in light of the recommendations of the Inquiry Committee.
13. Para-13 is pertained to record hence needs no comments.
14. Para-14 is pertained to record hence needs no comments.

15. Para-15 needs no comments. Appeal is liable to be dismissed on the following grounds.

GROUND:

- A. Incorrect, and vehemently denied. The imposition of minor penalty of "Withholding of two (2) Annual increments for two years" upon the appellant was totally in accordance with law. The Competent Authority has constituted inquiry committee to investigate charges against the appellant, like mishandled the issue regarding granted lease, "Failure stop/curb illegal excavation and transportation of minor, minerals in said jurisdiction. The penalty was lawful, justified and in accordance with the law.
- B. Incorrect and misconceived. All the charges were clearly mentioned in the charge sheet and statement of allegations. The appellant was also provided opportunity of personnel hearing before the inquiry committee and before the Secretary Administration.
- C. Incorrect, the departmental inquires proceeded as per-law. No discrimination/injustice has been done with the appellant.
- D. The findings of the inquiry committee are legal and covered under the law.
- E. Incorrect, baseless, and misconceived. The inquiry committee recommended fully responsible the appellant for charges leveled against him. Detail reply has been given in the above paras.
- F. Incorrect hence denied, however, the charges against the appellant were not on false assumption, opportunity of hearing in person was given to the appellant twice, and on unsatisfactory written reply, or unsatisfactory answers minor penalty was imposed according to law.
- G. Incorrect, the appellant failed to cancel the lease despite the fact that the lease holder had failed to comply with the conditions of the offer letter, instead of the appellant issued 15 days' notice for depositing dues. Details are at ibid.
- H. Needs no comments.
- I. Incorrect hence denied. However, The Inquiry Committee, Secretary Administration has expressed that the charges leveled against the appellant at the serial No. II, III, IV, V and VI of the Charge Sheets were not baseless, and the appellant has been found defaulter due to all the charges leveled against him.
- J. Incorrect, the appellants^s unlawful, unprofessional and irresponsible behavior caused huge loss of amount of Rs.8472218/-, outstanding against the ex-leasee, after issuance of cancellation letter and forfeiture and adjustment of security toward government dues, has been caused to government exchequer.
- K. Incorrect, hence denied. The proper inquiry proceeded in the matter and the appellant has been proved defaulter due to the charges leveled against him.

- L. Para-L is incorrect, as replied above.
- M. Incorrect, hence denied. The said C.M 2049-p/2019 in W.P 3040-P/2019 disposed with the direction that the grace period asked by the petitioner has already been expired and Court cannot pass any further order to restrain the respondents from recovery of future installments. The petitioner is bound to pay the onwards installments in accordance with the lease agreement and shall operate in the mine according to the work order issued to him.
- N. Incorrect, hence denied. The Inquiry Committee, Secretary Administration has found that the charges leveled against the appellant at the serial No. II, III, IV, V and VI of the Charge Sheet were not baseless, and the appellant has been found guilty of all the charges leveled against him.
- O. Incorrect, hence denied. The unlawful, unprofessional and irresponsible behavior of the appellant caused huge loss of amount of Rs.8472218/-, outstanding against the ex-lessee, after issuance of cancellation letter and forfeiture and adjustment of security toward government dues, has been caused to government exchequer.
- P. Incorrect, hence denied. The Inquiry committee, Secretary Administration has found that the charges leveled against the appellant at the serial No. II, III, IV, V and VI of the Charge Sheet were not baseless, and the appellant has been found guilty of all the charges leveled against him.
- Q. Incorrect, hence denied. The Inquiry Committee, Secretary Administration during the inquiry has found that the predecessor of the appellant are also responsible in this matter, and requested to prepare comprehensive Charge Sheet and statement of allegations against the predecessor of the appellant, i.e. the officer who issued the office letter dated 05.04.2019 to the lessee with specific charges by quoting relevant Rules/Act and forwarded to the Department for further course of action and taking disciplinary action against him under Khyber Pakhtunkhwa, Govt. Servants (Efficiency & Discipline), Rules, 2011 as directed by the Competent Authority.
- R. Incorrect, hence denied. The order of imposition of minor penalty is totally in accordance with the law, and no injustice has been done with the appellant.
- S. Incorrect hence denied. The departmental appeal was rejected after fair opportunity of hearing was provided to the appellant.
- T. Incorrect, hence denied. That the unlawful, unprofessional and irresponsible behavior of the appellant caused huge loss, outstanding against the ex-lessee, after issuance of cancellation letter and forfeiture and adjustment of security toward government dues, has been caused to government exchequer. All acts of the appellant were against the law, and the appellant acted in his personal capacity.
- U. Incorrect, hence denied. The order/notification dated 18.8.2020, 03.05.2021, and 04.11.2021 are in accordance with law.
- V. Incorrect, as replied above.

15. Para-15 needs no comments. Appeal is liable to be dismissed on the following grounds.

GROUND:

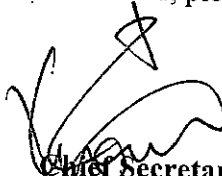
- A. Incorrect, and vehemently denied. The imposition of minor penalty of "Withholding of two (2) Annual increments for two years" upon the appellant was totally in accordance with law. The Competent Authority has constituted inquiry committee to investigate charges against the appellant, like mishandled the issue regarding granted lease, "Failure stop/curb illegal excavation and transportation of minor, minerals in said jurisdiction. The penalty was lawful, justified and in accordance with the law.
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- C. Incorrect, the departmental inquires proceeded as-per-law. No discrimination/injustice has been done with the appellant.
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- G. Incorrect, the appellant failed to cancel the lease despite the fact that the lease holder had failed to comply with the conditions of the offer letter, instead of the appellant issued 15 days' notice for depositing dues. Details are at. ibid.
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- J. Incorrect, the appellant's unlawful, unprofessional and irresponsible behavior caused huge loss of amount of Rs.8472218/-, outstanding against the ex-leasee, after issuance of cancellation letter and forfeiture and adjustment of security toward government dues, has been caused to government exchequer.
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- P. Incorrect, hence denied. The Inquiry committee, Secretary Administration has found that the charges leveled against the appellant at the serial No. II, III, IV, V and VI of the Charge Sheet were not baseless, and the appellant has been found guilty of all the charges leveled against him.
- Q. Incorrect, hence denied. The Inquiry Committee, Secretary Administration during the inquiry has found that the predecessor of the appellant are also responsible in this matter, and requested to prepare comprehensive Charge Sheet and statement of allegations against the predecessor of the appellant, i.e. the officer who issued the office letter dated 05.04.2019 to the lessee with specific charges by quoting relevant Rules/Act and forwarded to the Department for further course of action and taking disciplinary action against him under Khyber Pakhtunkhwa, Govt. Servants (Efficiency & Discipline), Rules, 2011 as directed by the Competent Authority.
- R. Incorrect, hence denied. The order of imposition of minor penalty is totally in accordance with the law, and no injustice has been done with the appellant.
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- U. Incorrect, hence denied. The order/notification dated 18.8.2020, 03.05.2021, and 04.11.2021 are in accordance with law.
- V. Incorrect, as replied above.

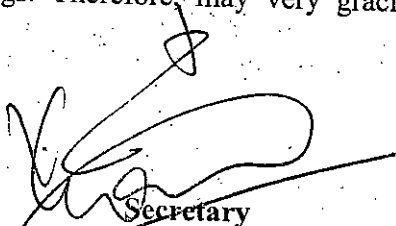

W. The respondent may be allowed to raise additional grounds at the time of arguments.

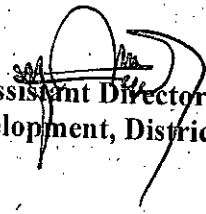
Keeping in view the foregoing facts, and circumstances it is crystal clear that the appeal in hand is without legal footings. Therefore, may very graciously be dismissed, pleas.

Govt. of Khyber Pakhtunkhwa
Minerals Dev. Department,
Peshawar.
Secretary to
Mineral Development
Department,
Khyber Pakhtunkhwa


Chief Secretary
Khyber Pakhtunkhwa, Peshawar


Secretary
Administration,
Khyber Pakhtunkhwa, Peshawar


Secretary
Mineral Development Department,
Khyber Pakhtunkhwa, Peshawar
Secretary to
Govt. of Khyber Pakhtunkhwa
Minerals Dev. Department,
Peshawar.

Director General
Mines & Minerals,
Khyber Pakhtunkhwa Peshawar


Assistant Director
Mineral Development, District Nowshera