

VAKALAT NAMA

NO. _____/20/6

IN THE COURT OF Service Tribunal Peshawar

Asghar Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

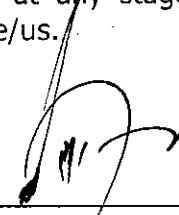
Forest Deptt: (Respondent)
(Defendant)

I/We, Asghar Khan (Appellant)

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

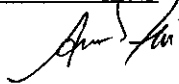
I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding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

Dated _____/20



(CLIENT)

ACCEPTED

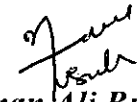


M. ASIF YOUSAFZAI
Advocate Supreme Court
Peshawar.

ATTESTED



Taimur Ali Khan
Advocate



Syed Nauman Ali Bukhari
Advocate

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1247/2015

Muhammad Asghar Khan
Ex-Forester
Environment Department Khyber Pakhtunkhwa.

APPELLANT

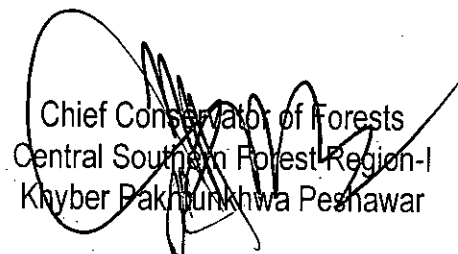
VERSUS

1. The Government of KPK through
The Chief Secretary
Government of Khyber Pakhtunkhwa

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

COUNTER AFFIDAVIT

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


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO.1247/2016

Muhammad Asghar Khan
Ex-Acting SDFO Upper Kohistan Forest Division, Dasso
Environment Department Khyber Pakhtunkhwa.

APPELLANT

VERSUS

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth;

PRELIMINARY OBJECTION

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

FACTS

Parawise comments are as under:

1. Pertains to record hence needs no comments
2. Pertains to record hence needs no comments.
3. Pertains to record hence needs no comments

4. It is correct. However the appellant failed to prove not guilty from the charges leveled against him before the Provincial Inspection Team Khyber Pakhtunkhwa during inquiry proceedings.
5. It is in-correct. The penalty of censure is awarded to two officials namely Muhammad Asalam and Shaiber Khan Forest Guards out of three whereas major penalty of reduction to initial scale was awarded to 3rd official i.e Mr. Azad Wali Forest Guard. The said inquiry not counterpart with the other inquiry / case (Annexure-I).
6. Incorrect. As per report of the inquiry committee the appellant is totally failed to defend the charges leveled against him
7. Incorrect. This is the first inquiry conducted under E&D Rules, 2011 and all the proceedings made in the prescribed manner and according to rules / policy.
8. All chances to the appellant for his defence has been offered by the Inquiry Committee, but as evident from the show cause and reply, he cannot submitted any evidence in his defence (Annexure-II & III).
9. That after observing all codal formalities the appellant was retired compulsorily from service with proportionate recovery of Rs. 2198500/-. The recovery amount is proportionate one as a result of regular inquiry. His departmental appeal processed by this Department and the Competent Authority consulted it and seen.
10. Need no comments.

GROUNDS


- A. This para is incorrect, hence denied. The departmental appeal was properly processed and seen. The impugned order i.e. 30/6/2016 is authoritative and lawful one, passed after observing all codal formalities i.e. extending personal hearing, charge sheets / statement of allegation, proper departmental inquiry and show cause notice / personal hearing.
- B. This Para is incorrect, hence denied that the inquiry was conducted by the inquiry committee within the ambit of prevailing rules and law. No ^mjustice ~~or~~ partiality has been fingered by the appellant.
- C. The inquiry committee has conducted fair inquiry under the existing rules and law.
- D. The plea taken by the appellant do not render the inquiry unlawful or against the rules/procedure, as sufficient evidence, as conceded by the appellant, has already been collected by previous inquiry committees and were placed on record, which were available to this inquiry committee.
- E. It is in-correct, these three officials were not directly incharge of the timber depots, but their assigned duties were on other beats. No discrimination was made to anyone in the case. The employees were dealt according to the nature of duty and responsibility and as a result one of the employees i.e. Mr. Azad Wali Forest Guard has been awarded a major penalty of reduction to initial scale.
- F. It is correct that SDFO Harban vide his letter No. 60/SDFO (H) dated 15.12.2014 in response to DFO Upper Kohistan letter No.569/GE, dated 8.12.2014 confirmed the presence of timber but without measurement rather relied upon report of his

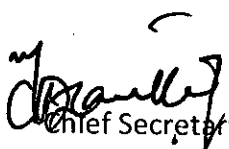
predecessor SDFO Harban however his report No. 24/H013 dated 20.12.2013 reveal that a volume to the tune of 7000 Cft was pilferaged to Darel/Tangir of Northern Areas dated 24.8.2013 and this volume was deleted from already reported volume.


- G. In-correct. The PIT inquiry report was not considered and its findings were not accepted therefore separate inquiry was ordered.
- H. Correct to the extent that the transportation of Timber was suspended for three days but no illicit / stolen Timber was found in any truck during those days. The record also supports that Conservator of Forests Gilgit informed the Conservator of Forests Hazara that 14 tractor carrying timber from Kohistan un-authorisedly have been taken in custody by the Forest staff of Darel, however its retrieval is not substantiated by the record of this office.
- I. The appellant being incharge Sub Divisional Forest Officer was responsible and therefore proceeded against strictly in accordance with rules and Law on the subject. No discrimination done to appellant.
- J. In- correct. The appellant was duly afforded the opportunity of personal hearing and show cause.
- K. The compulsory retirement is major penalty. However the appellant on the quantum of his guilt deserved severe punishment, but keeping in view his length of service he was awarded the penalty of compulsory retirement.
- L. The appellant himself is the reporting authority, being so he himself is plaintiff. Being plaintiff in the case he himself was witness so the stance taken is un called for.
- M. In-correct. The appellant was served with show cause and given the opportunity of personal hearing also.
- N. That the respondents seek permission to advance arguments in support of defence.

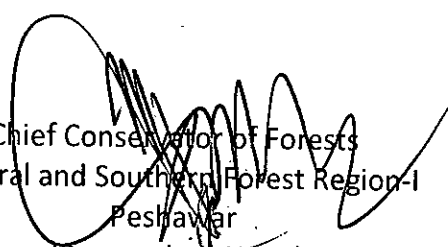
PRAYERS

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


Government of KPK through
Chief Secretary
Govt. of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar
(Respondent No1)


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


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


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

Annexure - I

Q. 63 637

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

Attested -

Q. 2

Divisional Forest Officer
(Director) Forest Division
Khyber Pakhtunkhwa Peshawar

639
69

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

INDEX

S. No.	Description	Annex	Page No.
	- Background		1
	- Proceedings		1
1 st	Meeting dated 19.06.2014		1
2 nd	Meeting dated 02.07.2014		1
3 rd	Meeting dated 15.07.2014		2
4 th	Meeting dated 21.07.2014		2
5 th	Meeting dated 11.08.2014		2
6 th	Meeting dated 21.08.2014		3
7 th	Meeting dated 01.09.2014		4
8 th	Meeting dated 02.09.2014		4
	- General Discussion		5
	- Individual Charge-wise Discussion & Conclusion		5
	Muhammad Tariq, DFO		8
	Muhamad Asghar, Forester		8
	Abdul Manan, Block Officer		13
	Jamir, Forest Guard		15
	Nasib Khan, Forest Guard		17
	Umar Khan, Forest Guard		19
	- General Recommendations		21
	Notification of Enquiry Committee		23
	Charge Sheet - Muhammad Tariq, DFO	1	24
	Statement of Allegation - Muhammad Tariq, DFO	1	25-26
	Charge Sheet - Muhamad Asghar, Forester	2	27-28
	Statement of Allegation - Muhamad Asghar, Forester	3	29
	Charge Sheet - Abdul Manan, Block Officer	4	30
	Statement of Allegation - Abdul Manan, Block Officer	5	31
	Charge Sheet - Jamir, Forest Guard	6	32
	Statement of Allegation - Jamir, Forest Guard	7	33
	Charge Sheet - Nasib Khan, Forest Guard	8	34
	Statement of Allegation - Nasib Khan, Forest Guard	9	35
	Charge Sheet - Umar Khan, Forest Guard	10	36
	Statement of Allegation - Umar Khan, Forest Guard	11	37
	Charge Sheet - Muhammad Tariq, DFO	12	38
	Report of Muhamad Asghar, Forester	13	39-65
	Report of Abdul Manan, Block Officer	14	66-85
	Report of Jamir, Forest Guard	15	86-90
	Report of Nasib Khan, Forest Guard	16	91-94
	Report of Umar Khan, Forest Guard	17	95-98
	Report of Sub-Committee	18	99-102
	Report of Muhammad Tariq, DFO	19	103
	Report of Sub-Committee	20	104-113
	Measurement Report of Northern Area Timber	21	114
	Diaries of Muhammad Tariq, DFO	22	115-121
	Minutes of the meeting of Commissioner Hazara Division	23	122-132
	Resistant Loss to Provincial Ex-Chequer	24	133-135
		25	136

Attested -

Divisional Forest Officer
(Director of Enquiry)
Khyber Pakhtunkhwa Forest Department

641
55

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

I. BACKGROUND

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

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

II. PROCEEDINGS

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

A. 1ST MEETING ON 19.06.2014

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

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Divisional Forest Officer
(Director Forest Department)

643
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major accused officer / officials were requested from the Section Officer (Estb) of Environment Department. Provincial Inspection Team (PIT) enquiry report & preliminary enquiry report conducted by Hashim Ali Khan & others were reviewed. All accused officer / officials were communicated to submit their reply by 30.06.2014.

B. 2ND MEETING ON 02.07.2014

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

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

C. 3RD MEETING ON 15.07.2014

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

D. 4TH MEETING ON 24.07.2014

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

Attested
[Signature]

Divisional Forest Officer
(Director) Forest
Khyber Pakhtunkhwa

24.7.2014

645
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Mr. M Ashghar Forester, the then incharge SDFO Harben (the accused official) was cross questioned by the Committee & the Prosecutor. During the course of proceedings it was brought to the notice of the Committee that the stolen timber measuring 18000 cft from Basha, Sazin and Harben depot have been retrieved. In order to ascertain the facts a sub-committee comprising of Raja M. Imliaz DFO and Mr. M. Shoalb DFO was constituted to report in the matter on the next date of hearing i.e. 11.08.2014 (Annexure-19). CCF-1 was accordingly requested to take further necessary action in this regard.

E. 5TH MEETING ON 11.08.2014

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

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

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

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

Attested

Page 3 of 23

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar

647

68

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

F. 6th MEETING ON 21.08.2014

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

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


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

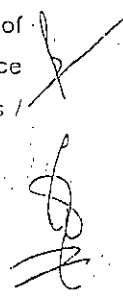
After detailed enquiry proceedings, Mr. Muhammad Shoaib, DFO Lower Kohistan was directed to submit the relevant record before the enquiry committee in next week.

G. 7th MEETING ON 01.09.2014

On peruse of record submitted by DFO (Lower Kohistan) Prosecutor of the Department on 26-08-2014 it came to surface that the re-measured timber of Northern Area in 54 trucks at Tarnol Depot was reduced by 4243 cbf (Annexure-22) which created further doubts in the matter.

In order to clarify the factual position the committee headed by Muhammad Tehmasip, DFO Kaghan along with Conservator of Forest, Abbottabad and Prosecutor were summoned for appearance on 01-09-2014. CCF-1 was accordingly asked to direct the officers / officials for attending the proceedings on due date.

Attested




Divisional Forest Officer
(Director, Forest Division)
Khyber Pakhtunkhwa Forest Deptt.

649
59

H. 8TH MEETING ON 02.09.2014

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

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

III. GENERAL DISCUSSION

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

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

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

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

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Divisional Forest Officer
(Director)
Khyber Pakhtunkhwa

651
70


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



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

That the charge sheet / statement of allegation against the accused were largely based on the findings of these reports.

Simultaneously these reports also highlighted certain flaws in the process adopted in handling the issue besides cross cutting issues involved in the Amnesty Policies of Northern Areas.

Sensitivity of the matter especially KKH was also exploited by the vested interest to transport the stolen timber.

Attested






Divisional Forest Officer
(Director) Forest Division
Khyber Pakhtunkhwa Peshawar

B. While conducting enquiry proceedings, report of the Committee headed by Muhammad Tehmasip, DFO on re-measurement of Northern Area Timber (54 trucks) halted in the jurisdiction of Siran Forest Division which detected that the timber in these 54 trucks was reduced by 264 scants = 1843 cft:

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

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

Attested -




Divisional Forest Officer
(Director) Forest Division
Khyber Pakhtunkhwa Peshawar

IV. INDIVIDUAL CHARGE-WISE DISCUSSION AND CONCLUSION

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

Charge No. (i)

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

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

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

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

Alleged
[Signature]

Divisional Forest Officer
(DFO) Upper Kohistan

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

Charge No. (ii)

"In a meeting held in the office of Commissioner Hazara Division at Abbottabad on 19.09.2013, DC Kohistan expressed his entire dissatisfaction about your performance as DFO Upper Kohistan Forest Division. He categorically mentioned about your continued absence from your headquarter at Dassu since you took over the charge of the Upper Kohistan Forest Division that caused mis-management of the forest resources, lack of effective supervision and control over the subordinate staff necessary to guard against illicit damage to the forests and pilferage / smuggling of timber. As per findings of Provincial Inspection Team confirmed your continued frequent willful absence from station of duty. Furthermore you caused heavy losses to the Government on account of theft of 18,000 cft of timber on the night between 24th and 25th August 2013. The Provincial Inspection Team has recommended recovery of the cost of 18,000 cft timber from you. During the course of enquiry the concerned persons brought in the notice of PIT that you have been paid Rs. 22 / per cft over and above the forest duty @ Rs. 10 / cft. the same has been reflected in the report by PIT, therefore, you indulged in corruption."

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

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

Abdullah Q

Divisional Forest Officer
Upper Kohistan Forest Division

659
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Muhammad Tariq, DFO to appear before them on 14-09-2013 but he did not attend. The accused officer in response stated that he was asked by Superintendent Circle office to direct SDFO and other Field Staff to appear before Provincial Inspection Team on 14-09-2013 and showed ignorance of any direction for his personal appearance. The prosecutor kept silent.

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

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

Charge No. (ii)

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

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

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

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

Alleged -
[Signature]

Divisional Forest Officer
(Diamer) Forest Division

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amalgamated into the timber transported under the Amnesty Policy. The accused officer was away from his headquarter on the night of occurrence and was informed by the SDFO on 25-08-2013 at about 1:00 hrs. The incharge SDFO Mr. Muhamad Asghar had already left the headquarter on 24-08-2013, in the afternoon on the pretext that the timber would be stolen during the night to come and was proceeding to Abbottabad to inform the DFO and Conservator. It is sufficient proof that the whole saga was pre-planned and engineered. The entire staff right from the Forest guard upto the SDFO did not take a single step at the time of occurrence to stop the lifting /stealing of timber - meaning, thereby, clear cut involvement of the accused. Lifting of 18,000 cft timber and its transportation in one night is not possible without active connivance and support of the incharge staff along with the consent of their DFO.

Charge No. (iv)

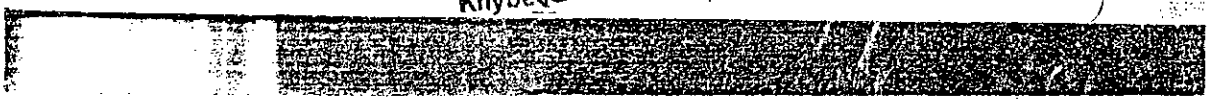
-The Chief Conservator of Forests Northern Forest Region- II Abbottabad called your explanation for continued absence from headland you being a subordinate officer instead of adopting appropriate approach for furnishing reply, used the abusive / obnoxious language for your superior officer not only insulting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

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

Alleged
[Signature]

Page 11 of 23

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa



Charge No. (V)

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

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

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

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

Recommendation

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

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

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

Abdullah Q

Divisional Forest Officer
(Direct) Forest Division

665
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B. Mr. Muhammad Asghar, Forester (BPS-09), Incharge Sub-Divisional Forest Officer, Harben.

Charge No. (i)


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

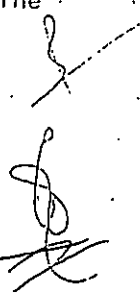
From the detailed analysis of the charge it transpires that the accused official instead of exercising control over his field staff, escaped from the scene and thus the stealing / lifting of 18,000 cft timber occurred - meaning thereby that the charge proved.

Charge No. (ii)

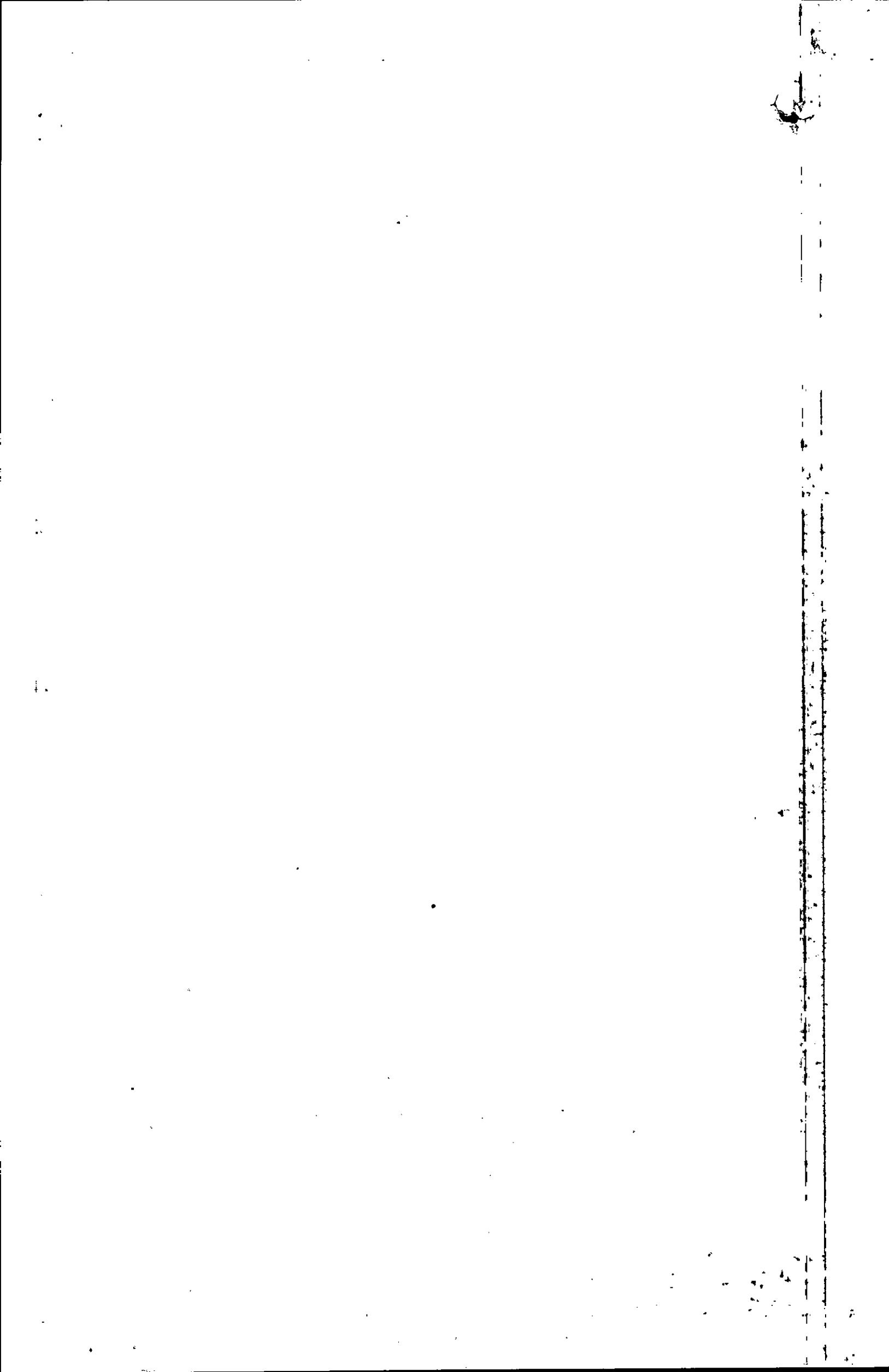
"You failed in adopting preventive measures against admixture of timber of Kohistan origin in timber of Northern Area and hence you severally and jointly along with other accuseds in the case responsible for recovery of losses sustained by the public exchequer, in addition to the interest as per law."

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

Attested -




Divisional Forest Officer
(Director) Forest Division
Khyber Pakhtunkhwa



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Charge No. (iii)

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

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

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

Recommendation

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

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

Compulsory retirement from service with immediate effect.

Attested -

[Signature]

Divisional Forest Officer
(Direct In) Forest Department
Khyber Pakhtunkhwa

79

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

Charge No. (i)

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

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

Charge No. (ii)

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

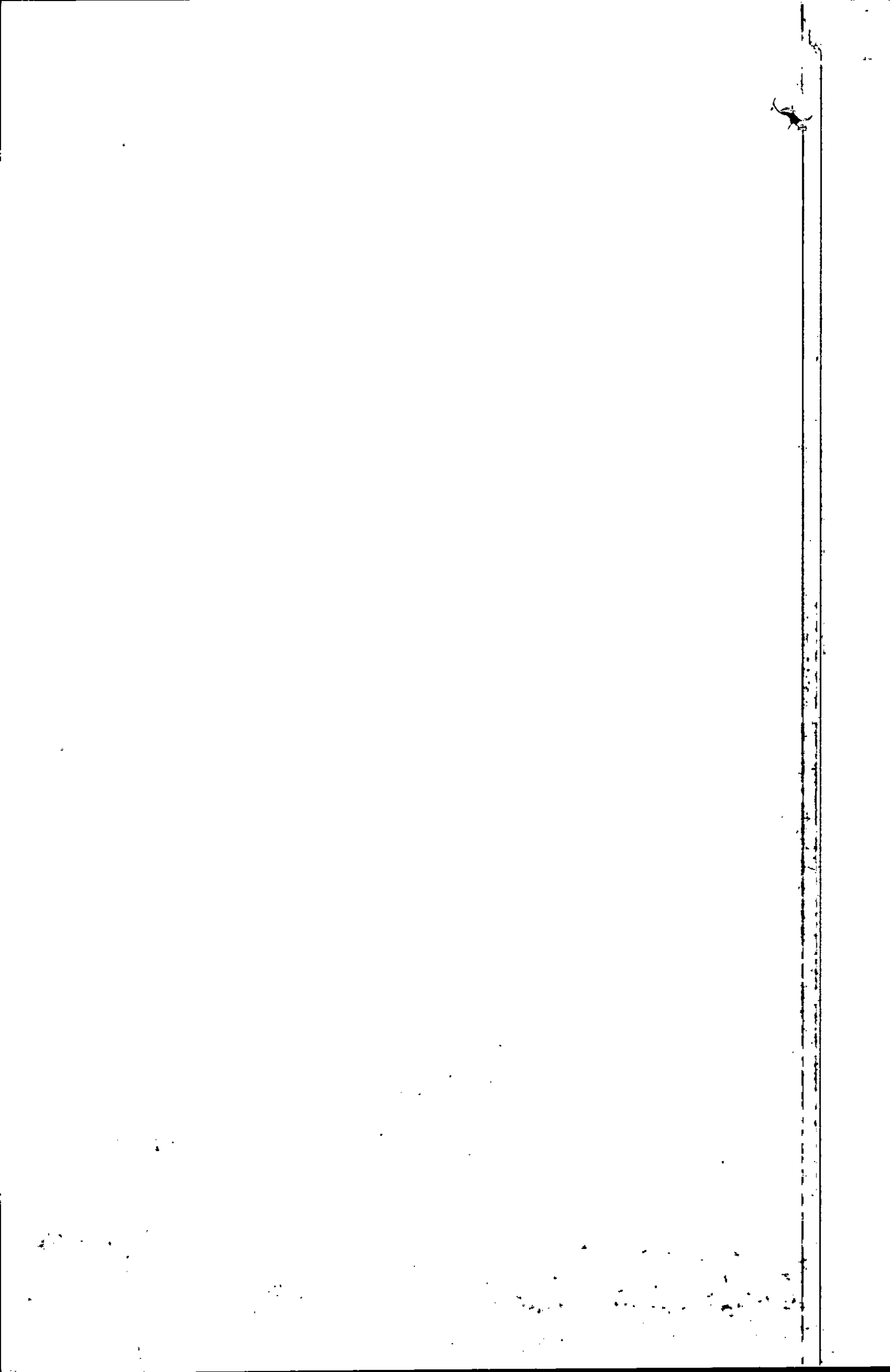
Detailed examination / cross examination of the accused official Mr. Abdul Manan, Block Officer brought to surface that he not only failed to supervise his subordinate staff, incharge road side depots but joined hands clandestinely with the timber mafia and remained away from the scene of occurrence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

Charge No. (iii)

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

As discussed under the above two charges, the accused official in collaboration with his subordinate forest guards (incharge of the road side depots) managed the illegal lifting of 14,000 cft timber

Alleged



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

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

Recommendation

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

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

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Attested -
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Divisional Forest Officer
(Director) Forest Division
Khyber Pakhtunkhwa Forest Deptt

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

Charge No. (i)

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

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

Charge No. (ii)

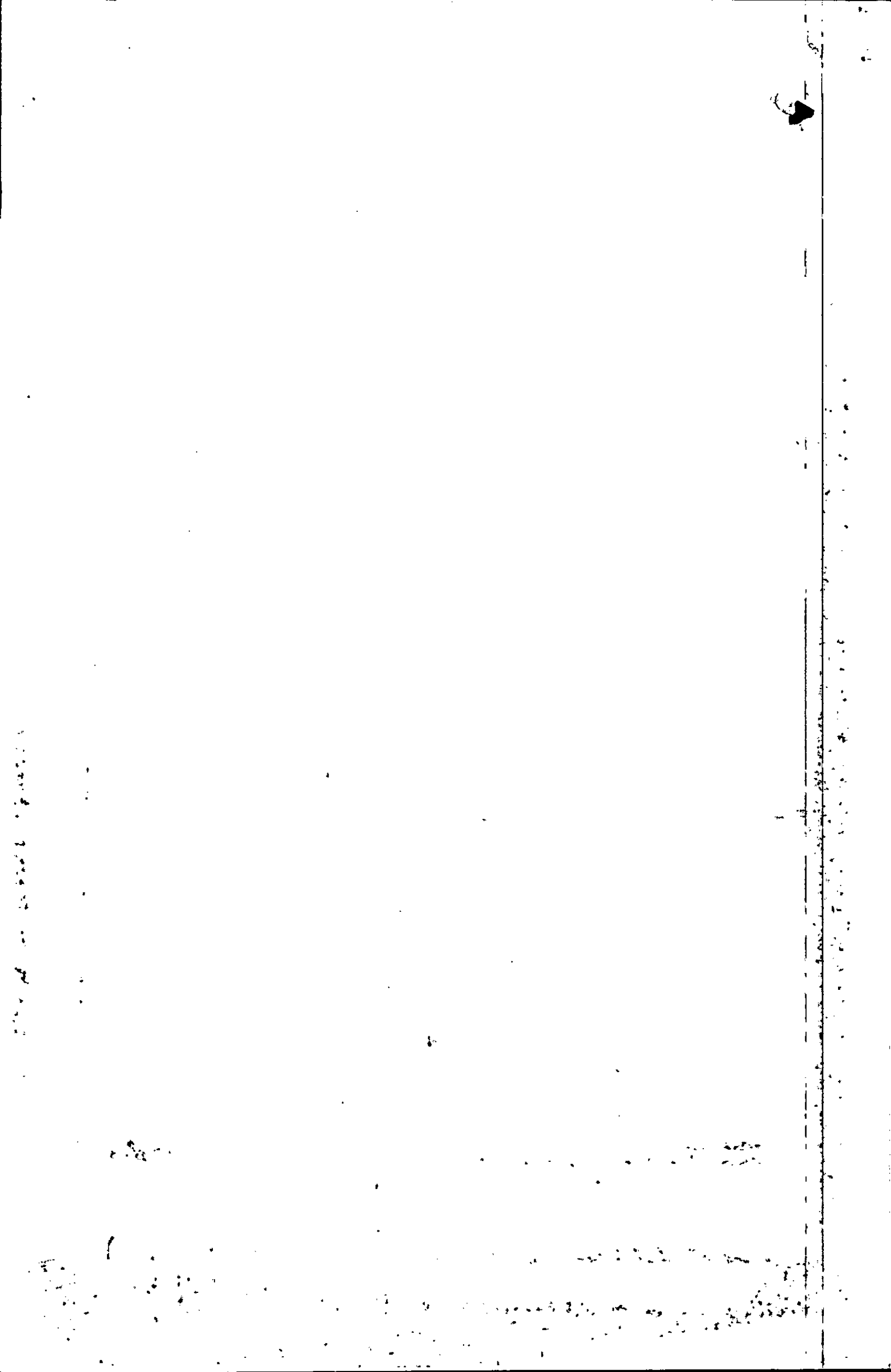
"You were supposed to be extra vigilant during the execution of N.A. Amnesty Policy, 2013, as it was every likelihood of lifting of timber for illegal admixture in the above said policy timber."

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

Charge No. (iii)

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

Attested
[Signature]



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

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

Charge No. (iv)

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

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

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

Recommendation

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

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

Attested

[Signature]

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Divisional Forest Officer 1A of 2011
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar.

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

Charge No. (i)

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

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

Charge No. (ii)

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

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

Charge No. (iii)

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

Divisional Forest Officer
(DFO)

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

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

Charge No. (iv)

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

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

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

Recommendation

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

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

Accepted


Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar

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

Charge No. (i)

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

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

Charge No. (ii)

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

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

Charge No. (iii)

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

Attested

Divisional Forest Officer
Divisional Forest Division
Forest Deptt. Govt. of Punjab

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

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

Charge No. (iv)

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


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

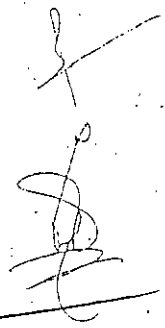
In view of the above facts, the charges of misconduct, inefficiency and corruption under Rule 3 of Khyber Pakhtunkhwa E&D Rules, 2011 stand proved.

Recommendation

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

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

Attested




Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar

685

87

GENERAL RECOMMENDATIONS

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

(Signature) 8/9/14
 (SHAH WAZIR ISHAN)
 MANAGING DIRECTOR
 FOREST DEVELOPMENT
 CORPORATION

(Signature)
 (TARIQ RASHID)
 SECRETARY
 BENEVOLENT FUND CELL

Attested -

(Signature)
 Divisional Forest Officer
 (Division) Forest Division
 Khyber Pakhtunkhwa Peshawar

Annexure - II - I (90) 425

GOVERNMENT OF KHYBER PAKHTUNKHWA
 FORESTRY, ENVIRONMENT & WILDLIFE DEPARTMENT
 No. SO (Estt) Env/1-50(69)/2012/
 Dated Pesh: 21st October, 2014

Mr. Muhammad Asghar,
 Forester (BPS-09),
 C/O Chief Conservator of Forests,
 Northern Forest Region-II, Abbottabad.

SHOW CAUSE NOTICE.

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

Please acknowledge the receipt.

(MIR ZALI KHAN),
 SECTION OFFICER (ESTT)

Date given 4344-4346/mc

Copy is forwarded to :

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

SECTION OFFICER (ESTT)

Attested -

Divisional Forest Officer
 District Forest Division
 Khyber Pakhtunkhwa Peshawar.

Amended - II

427 (91)



GOVERNMENT OF KHYBER PAKHTUNKHWA

SHOW CAUSE NOTICE

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Muhammad Asghar, Forester (BPS-09), Forest Department, as follows:

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

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

- 1. Inefficiency.
- 2. Misconduct.

As a result thereof, I, as Competent Authority, have tentatively decided to impose the penalties of Compulsory retirement from service with immediate effect with effect from 01.10.2014 500/- under rule-14(4) (b) of the Rules

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

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

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

Attested
[Signature]

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER,
KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY
13.10.2014

Divisional Forest Officer
ID: [blank]
[Signature]

Alamgir & Co.

92

عزت مآب جناب وزیر اعلیٰ صاحب خیبر پختونخواہ پشاور

بوساطت: ڈی ایف او صاحب اپر کوہستان فارسٹ ڈویژن داسو

عنوان: شوکار نوٹس

بحوالہ: چھٹی نمبری 2012 (69) 1-50 (Estt) Env/ No. So

بجریہ مورخہ 21 اکتوبر 2014ء

جناب عالی! شوکار ہذا کا جواب دینے سے پہلے درج ذیل حقائق کی وضاحت ضروری ہے۔

(۱) حقائق کے مطابق تمام الزامات چارج شیٹ اور الزامی لی کارروائی درست نہیں۔ اس بناء پر مرتب کردہ شوکار / اظہار وجہ بھی بنی بر حقیقت نہیں اور انصاف کے ستانی ہے۔

جس کی وضاحت کچھ یوں کی جاتی ہے۔ چارج شیٹ کے مطابق (ضمیمہ نمبر ۱)

چارج شیٹ کے حصہ اول میں شق نمبر i، ii کے مطابق

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

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

i اور ii کے جواب میں یہ عرض ہے کہ کسی بھی جگہ اور کسی بھی وقت یہ رپورٹ

Attested
[Signature]

نہیں کی گئی ہے کہ کوہستان کی کوئی لکڑی نادراں ایریا کی عام معافی کی پالیسی میں ملائی / admixture کی گئی ہے۔ اور نہ ہی ایسی کوئی اطلاع یا رپورٹ موجود ہے جس میں کہا گیا ہو کہ کسی بھی گاڑی میں کوئی لکڑی کسی چیک پوسٹ یا فارسٹ بیرر پر پائی گئی ہو یا اسکا جرمانہ وصول کیا گیا یا لکڑی ضبط کی گئی ہو یہ اس بات کا واضح ثبوت ہے کہ سرے سے کوئی لکڑی admixture نہیں کی گئی تھا۔ اس الزام کا تعلق ہے کہ فمدوی موقع سے چلا گیا اس ضمن میں عرض ہے کہ فمدوی نے فوراً افسران بالا کو مطلع کر کے ٹرانسپورٹیشن معطل کرائی تاکہ کوئی لکڑی بیچے نہ جاسکے میرا اسٹاف موقع پر موجود تھا لیکن ایسی بغاوت کو روکنا ہمارے بس نہیں ہی نہ تھا میں نے ٹرانسپورٹیشن معطل کر دیا لکڑی روک دی ہے۔

(iii) You failed to protect the timber and sufficient evidence in this regard are available that with your involvement with the timber mafia 18000 Cft pilfered timbers were theft for which you are solely responsible

iii- اس شق میں بزور اٹھائی گئی 18000 ہزار کسرف لکڑی کا ذکر ہے کہ یہ ہماری لا پر وہی اور ملی بھگت سے اٹھائی گئی ہے۔

جب کہ حقیقت میں یہ لکڑی زبردستی اٹھائی گئی جس میں سے کچھ لکڑی دریائے سندھ کے پار داریل / آنگر گئے اور باقی گجرات کے کچھ لکڑی بھاشا اور ہرنہ میں مختلف جگہوں پر چھپائی گئی تھی تاہم یہاں سے رپورٹوں، ڈور ڈھوپ اور چیچ و پکار کی وجہ سے ان لکڑیوں کو ایسے جگہوں پر لایا گیا جہاں سے انہیں مختلف اوقات میں ملنے لگا۔ لکڑی کے لئے ایسے جگہوں پر لایا گیا ہے جہاں پر آمادہ بھی ہوئے اور کسی بطور ثبوت سپرد نامے بھی دیے۔ (ضمیمہ 2) ان کے لئے ڈاکٹریں / اسٹیمپس مختلف جگہوں کے افسران کی اطلاع اور تصدیق سے سڈیو نے کی ہے جو ہاشم بی خان صاحب کی رپورٹ میں مندرجہ ذیل ہے۔

سڈیو نے کہا ہے کہ کوہستان سے اٹھائی گئی لکڑی نادراں ایریا کے

Attested

Divisional Forest Officer
(District) Forest Division
K. S. S. ...

پالیسی کی لکڑی Admixture کا کوئی ثبوت نہیں ہے اور اسی طرح بزور نے جانی لکڑی، نادرن ایریا کے محکمہ جنگلات کے تعاون سے واپس لیں گئی۔ جس کا ذکر بھی ضمیمہ میں موجود ہے۔

اس کے علاوہ معززین و اکابرین علاقہ کے بیان، preliminary انکوائری رپورٹ اور ان کے سپرنٹنڈنٹس میں موجود ہے اور سپرنٹنڈنٹس کی لکڑی محکمہ جنگلات کو بہتان فارسیٹ ڈویژن کے پاس موجود ہے جو کہ سرکاری دستاویزات چارج رپورٹس وغیرہ میں مذکور ہیں

(ضمیمہ نمبر 3)

جناب عالی مزید برآں کوہستان وہ ضلع ہے جہاں پر 1997 تا 2002 تک تقریباً 35 لاکھ لکڑیوں سے زیادہ لکڑی سیر قانونی طریقے سے کاٹی گئی اس غیر قانونی لکڑی کو ضبط کرنے اور ملزمان کو کفر کر دیا گیا ہے۔ محکمہ جنگلات پولیس، ڈسٹرکٹ انتظامیہ کسٹمر، کام نظر آئی جس کی وجہ سے حکومت نے مجبوراً مختلف اوقات میں لکڑیوں کو ضبط کیا اور ان کو جیلوں میں رکھا۔ حکومت کے پہلے سے کٹر و گرفت مزید کٹر و ہوئی اور کوہستان میں غیر قانونی کٹائی جنگلات اور ناجائز لکڑی کے خلاف قانونی کارروائی ایک خواب بن گئی۔

(۲) 2009 کی آخری اسٹیٹسٹی پالیسی کے اختتام کے بعد بھی ہر بن سب ڈویژن میں لکڑیوں کے ذخائر کٹر و ہوئی ہوں اور لکڑیوں کو پالیسی کی شرائط کے مطابق ضبط کرنا تھا مگر اس بابت کوئی پیمیں وقت نہ ہوئی اور آج تک یہ لکڑی مختلف مقامات پر پڑی ہوئی ہے۔

(۳) 2002 کے تحت 60 کے تحت جائز لکڑی کے ڈپو پر بھی نقصان کے ذمہ دار محکمہ کے اہلکار نہیں ہوتے جبکہ یہ لکڑی تو سے ہی ناجائز جس کی حفاظت کے ذمہ دار محکمہ کے اہلکار ان طبعی نہیں جبکہ یہ لکڑی مالکان کی تحویل میں ہے

Attested

3/9 3/10

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Province

محکمہ کے ذریعہ کارڈ پر ہے اور یہی محکمہ کی تحویل میں ہے نہ ہی فنڈز کا کوئی ہیڈ (Head of funds) جس کے تحت اس لکڑی کی حفاظت کی جاسکے حکومت کی جانب سے اجراء ہوا ہے۔

(۴)۔ جملہ لکڑی دارانوں کے پاس لکڑی کی تحویل کے لیے جس میں محکمہ کا صرف 20% ہوتا ہے (بشکل لکڑی)۔

(۵)۔ یہ لکڑی دارانوں کے پاس لکڑی کی تحویل کے لیے اٹھائی گئی تھی چونکہ محکمہ کے پاس پالیسی کو معطل کر کے ٹھیکہ داران پر پریشر ڈالنے کا موقع تھا اس لئے اس موقع سے فائدہ اٹھاتے ہوئے پالیسی کو معطل کیا گیا اور ٹھیکہ داران کو مجبور کر کے لکڑی واپس لادی گئی۔

(۶)۔ جملہ چوری شدہ لکڑی دارانوں کے پاس لکڑی کی تحویل کے لیے اس لکڑی کو واپس لانا تقریباً پارٹی سے تصدیق کی جاسکتی ہے ورنہ عام حالات میں اس لکڑی کو واپس لانا تقریباً ناممکن تھا۔

مندرجہ بالا حقائق کو مد نظر رکھتے ہوئے شوکار کا جواب اس امید پر درجہ اول معروضات میں دیا گیا ہے کہ میرے ساتھ انصاف ہوگا اور مجھے ہر قسم کے الزامات سے بری فرمایا جائیگا۔

جناب عالی!

چھٹی محولہ میں یہ کہا گیا ہے کہ فدوی کے خلاف انکوائری کمیٹی نے جو تحقیق و تفتیش کی ہے اس میں فدوی کو (۱) نااہلی (۲) بدانتظامی کا مجرم پایا جس پر فدوی کو اظہار وجوہ کے لئے کہا گیا کہ کیوں نہ آپ کو ذیل سزا دی جائے۔

(۱)۔ فدوی کی فوری طور پر سروس سے سبکدوشی۔

(۲)۔ مبلغ 21,98,500 روپے 1/4 حصہ لکڑی کی قیمت ڈیوٹی اور فارمٹ ڈیولپمنٹ

فنز کی وصولی۔

Attested

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar

4/9

4/10

437

96

عالیجا! فدوی بوجہ ذیل و دیگر صحت جرم سے انکاری ہے اور استدعا کرتا ہے کہ فدوی کو مجوزہ سزا پر ہمدردانہ غور فرما کر بری فرمایا جائے۔

(۱)۔ یہ کہ قاضی کمیشن نے فدوی کی درخواست کو یکسر نظر انداز کیا اور ان حالات سے صرف نظر کیا جو فدوی نے اپنے دفاع میں پیش کی تھیں۔ دوران انکوائری کمیشن نے کوئی گواہ یا دستاویز حرجے سے پیش ہی نہیں کی جو کہ قانون کے تحت درخواستی تھا۔ بد قسمتی سے بغیر کسی ثبوت کے سہ شہادت مرتب کی گئی ہیں۔

(۲)۔ یہ کہ فدوی نے اپنی تمام کاوشوں کا صحیح ثبوت ذکر کیا جو اس نے لکڑی کی حفاظت کے لئے کی ہیں لیکن قاضی کمیشن نے ان کو یکسر نظر انداز کر دیا

عالیجا!

(الف)۔ فدوی نے درخواست سے پہلے جب نادرین ایریا کی پالیسی شروع ہوئی اپنے افسر ڈی اے ڈی (DFO) صاحب کو روٹا جانی اور تحریری طور پر بتایا کہ ڈپٹی کمشنر اور SP صاحب کو ہستان سے رابطہ کیا جائے اور ان کی مدد حاصل کی جائے تاکہ کوئی لکڑی کو ہستان سے جو سڑک پر پڑی ہے کسی بھی طرح نادرین ایریا کی پالیسی لکڑی میں ملاوٹ نہ ہونے پائے لیکن قاضی کمیشن نے میری اس کاوش کو نظر انداز کیا۔

(ب)۔ فدوی نے درخواست میں DFOD صاحب کو متعدد بار عرض کیا کہ فدوی کے پاس انٹاف کی کمی ہے دیگر جگہوں سے نادرین ایریا کی پالیسی کے دوران ہرگز میں متعین کیا جائے اس بارے میں خط و کتابت کی نقولات لف ہیں۔

(ضمیمہ نمبر 4)

(ج)۔ یہ کہ نادرین ایریا کے پینشنرز 2002ء کے جس نمبر 77 کے تحت پولیس بھی لکڑی کی سسٹنگ یا پیداواری جنگل کی نقل و حرکت پر کارروائی کی باقاعدہ پابند ہے جس طرف کہ محکمہ جنگلات۔

اور موبائل گاڑیاں گشت کر رہی ہیں لیکن اس

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Allosteed

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

لکڑی کو باوجود درخواست دینے کے پولیس نے کوئی بھی قانونی کارروائی عمل میں نہیں لائی۔ اور خاموش تماشائی بنی رہی۔

تاریخ: 13/07/2013 کو جس نے جناب DFO صاحب کو چھٹی تحریر کی تھی افس ہے۔ (ضمیمہ 5)

جس پر جناب DFO صاحب نے فی الفور کارروائی کرتے ہوئے مورخہ: 15/07/2013 کو SP صاحب کو برائے کارروائی چھٹی تحریر

کی (ضمیمہ نمبر 6) جس پر SP صاحب کوہستان نے 1 ماہ اور 8 دن کے بعد چھٹی نمبر: 252 مورخہ: 23/08/2013 کو ڈسپلینری کی جو لف ہذا ہے

(ضمیمہ نمبر 7) اور مورخہ: 24/08/2013 کو یہ دعوہ رونما ہوا اتنی دیر سے چھٹی تحریر کرنے کا کیا مطلب اخذ کیا جاسکتا ہے اور کس سے مدد اور انصاف حاصل کیا جاسکتا ہے۔

(د)۔ فدوی نے کوہستان کے مخصوص حالات کا مجبوراً ذکر بھی کیا جہاں حکومت کی رٹ (Writ) سرے سے نہیں لوگ اپنی من مانی کرتے ہیں جسکے نتیجے میں نہ صرف نادران ایریا سے

بلکہ کوہستان کے دیگر علاقوں کو بھی نقصان پہنچا رہا ہے جس کی بنا پر پولیس نے تیسری کیٹیجی میں ان خاص حالات کو بھی نظر انداز کیا۔

(3)۔ ناظرین کیٹیجی میں DFO صاحب (مقررہ) کے اس خط کو جس میں اس نے یہ لکھا کہ انہوں نے کوہستان سے لائی گئی لکڑی اپنے قبضے میں لے لی ہے اور وہ لکڑی ازلان پور میں لائی گئی جس کی تصدیق موقع پر موجود SDFO مہرین نے بدوران ابتدائی کیٹیجی کے انکو اٹری ممبران کے سامنے کی تھی جس کا انہوں نے اس وقت کوہستان میں کیا ہے۔

لیکن ناظرین کیٹیجی نے اس کا کہیں کوئی ذکر نہیں کیا کیٹیجی کی رپورٹ لکھی ہے۔

(ضمیمہ 8)

Attest -

6/9

6/10

Divisional Forest Officer
(Direction) Forest Division
Muzaffargarh Peshawar.

(۴)۔ فوری کی استدعا پر محکمہ نے 26.08.2013 سے تاثرات ایریا کی لکڑی کی ترسیل برائے کوہستان میں منع کر دی تھی تاکہ ہر بن سب ڈویژن سے اٹھائی گئی لکڑی کو

پہنچانے سے روکا جاسکے
حاصل کیے گئے اس کا کوئی ذکر نہیں کیا۔

عالیجا!

بعد تصدیق کہ جو لکڑی اٹھائی گئی تھی وہ تاثرات ایریا کی پالیسی کی لکڑی میں نہیں ملائی گئی SDEO نے اپنے قبضہ میں لے لی تھی جو واپس ہر بن لائی گئی۔ جبکہ باقی لکڑی ماکان سڑک سے اٹھا کر پیچھے گاؤں کی طرف لے گئے تاکہ شریپند ان کی لکڑی کو تاثرات ایریا کی لکڑی میں شامل نہ کیا جائے اور اسکا ثبوت بھی فائنل کمیٹی کو پیش کیا جائے۔ اس کی رپورٹ میں اس کا کہیں ذکر نہیں کیا۔

(۵)۔ یہ کہ فائنل کمیٹی نے رپورٹ کے صفحہ 7 پر (GID) میں برائی سے حقائق کو مسخ کر کے یہ تحریر کیا کہ 54 ٹریک سڑک فاریس ڈویژن میں زائد لکڑی اور کوہستان سے چوری شدہ لکڑی کے لئے اس کے ذریعے حقائق کو مسخ کرنے کی واضح مثال ہے۔ یہ ٹریک پالیسی کی اصلاحات میں ہر بن سڑک ڈیپے لگے تھے۔ اس زائد لکڑی یا کوہستان سے چوری شدہ لکڑی کی وجہ سے روکے گئے تھے۔ جس کا کوئی ثبوت فائنل کمیٹی کی رپورٹ میں لکڑی کے لئے ڈیپے لگائے گئے اور تاثرات ایریا سے چوری شدہ لکڑی کی بارشوائی کے لئے ڈیپے لگائے گئے اور اس کے معطل کر دی گئی تھی اور بعد از تفتیش کوہستان کی لکڑی تاثرات ایریا کی لکڑی میں نہیں ملائی گئی تب ٹرانسپورٹیشن کی رپورٹ میں اس کا ذکر کیا گیا۔

جناب عالی!

ایک غیر جانبدار جوڈیشل اگوائزی کرائی جائے جس سے حقائق سامنے آجائیں گے کہ جو لکڑی لوگ اٹھا کر لے گئے وہ وہاں سے لائی گئی ہے جس کی تصدیق قوم نے (ماکان) سے اور SDEO ہر بن نے بھی کر دی ہے۔

7/9

7/10

Attested

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar

25.08.2013 کی رات کے بعد ٹرانسپورٹیشن معطل کر دی گئی اور تصدیق سے بعد ٹرانسپورٹیشن کی اجازت دی گئی اور تمام بیریز پر سختی سے پڑتال کی گئی کسی بھی چیمپ پوسٹ پر کوئی لکڑی جو کوہستان سے اٹھائی گئی نہیں پائی گئی۔

عالیجا! درج بالا حقائق سے واضح ہے کہ جو لکڑی اٹھائی گئی تھی وہ واپس لائی گئی چوری نہیں ہوئی لکڑی لوگوں کی ملکیت ہے اور مالکان اور حکومت کو کسی قسم کا نقصان نہیں ہو اور اگر کسی بھی قدرتی آفت یا موسمی اثرات یا حادثے کی صورت میں کسی پیداوار جنگل کو جو محکمہ کی تحویل میں ہو نقصان ہو جائے تو اسکی ذمہ داری حکومت اور اسے اہلکاران پر نہیں آتی جیسا کہ خیبر پختونخواہ کے فارسٹ آرڈینینس 2002ء کی دفعہ 60 میں صراحت کر دیا گیا ہے۔ فاضل کمیٹی نے اس کا ذکر ضرور کیا لیکن اسٹورز پر بحث نہیں لایا۔

عالیجا! لکڑی زیر بحث محکمہ کی تحویل میں نہ ہے نہ تھی اس لئے محکمہ کسی بھی طرح اس لکڑی کا ذمہ دار نہیں۔

لیکن فدوی کی بد قسمتی ہے کہ فاضل کمیٹی نے فدوی کی معروضات کو یکسر نظر انداز کیا جو کہ جانبداری اور بد نیتی پر منحصر ہے۔

مزید یہ کہ بدوران انکوائری ہم نے ایک مشترکہ طور پر گواہان کو طلب کرنے اور جرح کرنے کے لئے ایک تحریری درخواست جناب شاہ وزیر خان FDC MD ممبر کمیٹی (میکینکل آفیسر) کو پیش کی کہ گواہان کی طلب کیا جائے تاکہ ہم ان پر جرح کریں لیکن بجائے گواہان طلب کرنے کے مذکورہ ممبر کمیٹی نے درخواست ہی لینے سے انکار کر دیا اور ہم سے دفاع کا حق بھی جان بوجھ کر چھین لیا گیا کاپی لف ہے (ضمیمہ نمبر 9) ہم نے ایک اور درخواست چیئر مین کمیٹی کو دی۔ جس میں مذکورہ ممبر کمیٹی کی تبدیلی کیلئے Request کی گئی۔ کہ ات انکوائری کمیٹی سے علیحدہ کیا جائے کیونکہ (i) ہم نے بدوران انکوائری محسوس کر لیا کہ ہمیں مکمل طور پر دفاع کا حق نہیں دیا جا رہا اور نہ ہی سنا جا رہا ہے (ii) انکوائری

Attest

445

150

کمیٹی ممبر کا حقیقی بھائی کسی حاجی شاہ جو کہ کوہستان میں لکڑی کا بڑا کاروباری
اشکیدار ہے کسی بھی موقع پر اس کو غلط کام سے روکا ہوگا۔ ہو سکتا ہے کہ اس دل
میں وہی انتقام ہو۔ ممبر کمیٹی شاہ وزیر صاحب کا بھائی حاجی شاہ ٹھیکیداری کا
ثبوت نقل اشام لف ہے (ضمیمہ نمبر 10) لیکن ہماری کسی بھی درخواست پر کوئی
عمل درآمد نہیں ہوا اور جلالت میں یکطرفہ اور نامکمل انکوائری کر کے آنجناب کی
خدمت میں حقائق کو مسخ کر کے پیش کیا گیا۔ درخواست کاپی لف ہے۔

(ضمیمہ نمبر 11)

(۶)۔ یہ کہ فاضل کمیٹی نے پوری انکوائری کے دوران کبھی بھی دفتر سے نکلنے کی
زحمت گوارا نہیں کی۔ کہ ہم دور دراز دشوار گزار سفر طے کر کے از خود موقع پر
جا کر لکڑی چیک کریں کہ آیا لکڑی واقعی موقع پر موجود ہے کہ نہیں۔ اس سلسلہ
میں ہم نے فاضل کمیٹی کو متعدد بار التجا کی لیکن کوئی شنوائی نہ ہوئی۔

(۷)۔ لکڑی متذکرہ تعدادی 18 ہزار فٹ جو کہ ملازمین جنگلات متعلقہ نے از خود کارروائی
کر کے Damage Report ہائے چاک کیں علاوہ ازیں پولیس میں FIR کے
لئے درخواست بھی دی اور از خود جدوجہد کر کے لکڑی واپس اپنے مقام پر لے
آئے جس سے حکومت اور مالکان کو کوئی نقصان نہیں ہوا۔ کاپی Damage
Report ہائے درخواست کاپی برائے FIR لف ہے۔ (ضمیمہ نمبر 12 اور 13)

نیز یہ کہ لکڑی کی واپسی پر اور موقع پر موجود رہنے کا ثبوت بھی لف ہے۔
اس ضمن میں جناب فرہاد ساجد ڈی ایف او بطور ثبوت لف ہے۔ بحوالہ چٹخنی
نمبر 60/H مورخہ 15.12.2014۔

(۸)۔ عالیجا! کمیٹی نے مالکان کو نہ طلب کیا نہ انکا موقف سنا کہ آیا لکڑی چوری ہوئی ہے یا نہ۔
کاپی سپرد نامہ و بیان حلفی اشامپ متعلقہ مالکان لف ہے۔

(ضمیمہ 14)



9/9

9/9

9/10

Divisional Forest Officer
(Direction) Forest Division
Khyber Pakhtunkhwa Peshawar

447

151

عالیجا!

درج بالا حقائق سے واضح ہے کہ اٹھائی گئی لکڑی چوری نہیں ہوئی اور واپس اپنی جگہ پر رکھ دی گئی ہے جس کی تصدیق SDFQ ہر بن نے کر دی تھی اس طرح حکومت اور مالکان کو کسی قسم کا کوئی نقصان نہیں ہوا۔

یہ امر انتہائی اہم ہے کہ مقدمہ ہذا میں چھٹی نمبر 1887 موروثی 10.10.2013 میں 8 ہلکاران شامل تھے جن میں ہلکاران سلسلہ نمبر 4 شہیر خان، 5 محمد اسلم خان، 6 آزاد ولی فارست گارڈ کی انگوٹری جناب فرہاد علی صاحب ڈی ایف او نے کی اور حقائق کی بنیاد پر ان ہلکاران کو انصاف دیتے ہوئے ان کو بری کر دیا جب اسی اصول و قانون کا اطلاق زیر نظر اپیل کنندہ گان پر ہوتا ہی انصاف کا تقاضا ہے۔ (ضمیمہ نمبر 15)

لہذا استدعا کی جاتی ہے فدوی کے خلاف تجویز کردہ سزا سے فدوی کو بری فرمایا جائے مزید استدعا ہے کہ فدوی کو اصالتاً پیش ہو کر مزید وضاحت کی اجازت رحمت فرمائی جائے۔

المرقومہ 287016/01

محمد اصغر خان فارست گارڈ کوہستان فارست ڈویژن داسو..... مسائل

Attested -

107/10

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

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1247/2016

Asghar Khan

VS

Forest Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

19-1-2018
RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-8) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Admitted correct as the service record of the appellant is present with the department.
2. Admitted correct as the concerned record is present with the department.
3. Admitted correct as the concerned record is present with the department.
4. Incorrect. The appellant has denied the allegation leveled against him during the inquiry proceeding.
5. Incorrect. appellant along with 7 other officials were nominated for disciplinary proceeding, however through another letter dated 4.4.2014, in these 7 officials, three officials namely Shaiber Khan, Muhammad Aslam and Azad Wali, separate inquiry was conducted against them and were exonerated by the inquiry officer and minor penalty of censure was given to them vide order dated 7.10.2015, which means that the appellant was discriminated as the same benefit has not given to the appellant.
6. Incorrect. The appellant denied the allegation in his reply to charge sheet and clear the entire situation about the accident.
7. Incorrect. The inquiry conducted by the inquiry committee was not according to the prescribed procedure as the appellant has not given the chance of proper opportunity as neither the statement was recorded in the presence of the appellant nor gave him opportunity of cross examination. Moreover the inquiry is biased one as the appellant has filed an objection one of the member of the committee but no action has

been taken on his objection and inquiry was conduct by the that inquiry committee.

8. Incorrect. No proper chance of defence was provided to appellant by inquiry committee. Moreover, denied other allegations and clear the entire situation about the issue.
9. Incorrect. The impugned order of compulsory retirement from service was passed without observing the codal formalities. Moreover, the departmental appeal was not responded in a statutory period of ninety days.
- 10.No comments endorsed by department that para 10 of appeal is correct.

GROUND:

- A. Incorrect. The departmental appeal was not responded within a statutory period of ninety days. In the impugned order dated 30.06.2016 is against the law and facts and material on record. Therefore, not tenable and liable to be set aside.
- B. Not replied according to para B. Moreover, Para B is correct.
- C. The inquiry committee has not conducted the inquiry according to the prescribed procedure.
- D. Incorrect. The appellant did not concede any allegation, but he clearly denied the allegations and clears the situation to the inquiry officer/inquiry committee.
- E. Incorrect. While para E of the appeal is correct.
- F. Incorrect. While para F of the appeal is correct.
- G. Incorrect. The PIT inquiry report should also be considered as it was conducted on the same issue. Moreover, Chief Minister KPK directed to conduct inquiry on three observations on issue of illicit timber in which inquiry was conducted by inquiry committee in favour of appellant on these observations. (Copy of inquiry report is attached as Annex-A).
- H. Incorrect. While para H of appeal is correct.
- I. Incorrect. Muhammad Shireen (Forester) is also the employee of concerned department and also responsible as appellant but no action has been taken by the department but appellant was made scapegoat by finalizing him despite the fact that illicit timber has been recovered.

J. Incorrect. The appellant was not provided opportunity of personal hearing and self defence.

K. Incorrect. While Para K of appeal is correct.

L. Incorrect. While Para L of appeal is correct.

M. Not replied according to para M of the appeal. Moreover, para M of appeal is correct.

N. Being legal need no comments.

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

Through: APPELLANT


M. ASIF YOUSAFZAI
ADVOCATE SUPREME COURT

&


TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

AFFIDAVIT

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

ATTESTED
Oath Commissioner
Zahoor Ahmad Advocate
Distt: Cou. Peshawar


DEPONENT

19 JAN 2018

A

Comments on Review Petition preferred by Muhammad Asghar Forester (BS-09), Abdul Manan Forest Guard (BS-07) and Umar Khan Forest Guard (BS-07) before the Chief Minister KP (Appellate Authority)

BACKGROUND

The Honorable Chief Minister Khyber Pakhtunkhwa in the capacity of competent authority, while deciding the inquiry proceeding regarding unauthorized lifting / forcible theft of 18000 cubic meter timber of Kohistan Forest Division for admixing & transportation under guise of Gilgit Baltistan (GB) Amnesty Policy 2013, imposed major penalty upon the accused vide notification No. SO (Estt.) FE&WD/1-8/2k 14/2826-30 dated 12-03-2015, No. SO (Estt.) FE&WD/1-8/2k 14/2568-71 dated 30-06-2016, No. SO (Estt.) FE&WD/1-8/2k 14/ 2572-73 dated 30-6-2016, No. SO (Estt.) FE&WD/1-8/2k 14/2563-68 dated 30-6-2016, No. SO (Estt.) FE&WD/1-8/2k 14/2817-20 dated 02-4-2015 & No. SO (Estt.) FE&WD/1-8/2k 14/2821-25 dated 12-3-2015 as follows respectively for inefficiency, corruption, mis conduct

1. Muhammad Tariq BPS-18 dismissal from service and recovery of Rs. 1,546,000/-
2. Muhammad Asghar BPS-9 I/C SDFO Harban compulsory retired from service and recovery of Rs. 2,193,500/-
3. Abdul Manan Forest Guard (B.O) BPS-7 compulsory retire from service and recovery of Rs. 897,900/-
4. Umar Khan Forest Guard BPS-7 compulsory retire from service and recovery of Rs. 464,400/-
5. Naseeb Khan Forest Guard BPS-7 dismissal from service and recovery of Rs. 650,300/-
6. Jamil Khan Forest Guard BPS-7 dismissal from service and recovery of Rs. 433,500/-

Feeling aggrieved, the persons at S.No: 2, 3 & 4 hereinafter called the petitioners, preferred review petition before the honorable chief minister Khyber Pakhtunkhwa. The appellant authority while considering the review petition has kindly instructed the department to clarify the following.

"Please assign the task to a senior officer preferably Conservator of Forests Lower Hazara Forest Circle Abbottabad to furnish his report and clarify that either the timber logs were in possession of Government or community and had the Forest Department officials reported missing of logs to police or otherwise. It should also be clarified that either this wood's falling in illicit policy or not".

For the purpose, the govt of Khyber Pakhtunkhwa constituted a committee consisting Mr. Azhar Ali Khan Conservator of Forest Lower Hazara (chairman) and Mr. Shaukat Fiaz DFO Patrol Squad Abbottabad vide Notification No: SO(Estt)FE&WD/150(69)/Appeals/2016 dated Peshawar the 27th February, 2017.

PROCEEDINGS

To ascertain the situation regarding the observations of appellate authority, all relevant record pertaining to the inquiry was requisitioned from divisional forest officer Upper Kohistan Forest Division. M/S Altaf Qureshi SDFO & Muhammad Yousaf Lease Clerk produced the record before the committee. The petitioners M/S Muhammad Asghar and Abdul Manan also attended the proceedings for verifying certain questions regarding documentation of the issue.

DISCUSSION

The honorable chief Minister has made the following three observations:

1. Whether the timber was in possession of the Department.
2. Whether any FIR have been lodged with local police regarding the forceful theft.

Whether the timber was included in illicit policy (axiomatically latest Policy 2016-17).

Without recourse to outcomes of previously conducted fact finding or formal enquiries, the above three observations are clarified as under:

A. WHETHER THE TIMBER WAS IN POSSESSION OF DEPARTMENT

Perusal of the record i.e. initial Damage Reports (Annex-1), minutes of meetings with district administration (Annex-2) and correspondences made by DFO Upper Kohistan with different quarters (Annex-3) reveal that:

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

B. WHETHER FIR HAVE BEEN LODGED WITH THE LOCAL POLICE

The record reveal that the petitioners preferred application on 25/08/2013 for lodging of FIR (Annex-4) against the unknown offenders for forceful theft of timber from Kohistan for admixing in GB's amnesty policy 2013. But, instead, the police registered formal FIR NO: 07 dated 28/2013 against the officials of forest department for their alleged involvement in said theft (Annex-5). Nevertheless, it is clear that the staff endeavored to lodge FIR against unknown offenders for the said larceny.

C. WHETHER THE TIMBER WAS INCLUDED IN ILLICIT POLICY

As mentioned in the Damage Reports No. 73/45, 15/H,72/45 and 32/50 chalked out against incidence of reported forceful theft timber occurred on 25/08/2013 (Annex-6), the impugned timber belongs to Damage Reports No. 92/42, 13/55, 68/42, 60/45 and 31/50 as per Annex-1, chalked out during 2007. A portion of this timber was already disposed off under Amnesty Policy 2009. The accounts of initially reported timber, disposal in Amnesty Policy 2009 and that stolen on 25-26/08/2013 vis-à-vis subsequent reassessments, supplied by representatives of DFO Upper Kohistan (Annex-7), show that out of the 18000 cft impugned timber, timber measuring 8000 cft is included in the Policy 2016-17.

Azhar Ali Khan
Conservator Forest Lower
Hazara Forest Circle Abbottabad
(Chairman)

Shaukat Fiaz
Divisional Forest Officer
Patrol Squad (Member)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1247/2016

Asghar Khan

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Forest Deptt:

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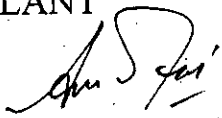

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Through: APPELLANT

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ADVOCATE SUPREME COURT
&

TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

AFFIDAVIT

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DEPONENT

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Comments on Review Petition preferred by Muhammad Asghar Forester (BS-09), Abdul Manan Forest Guard (BS-07) and Umar Khan Forest Guard (BS-07) before the Chief Minister KP (Appellate Authority).

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"Please assign the task to a senior officer preferably Conservator of Forests Lower Hazara Forest Circle Abbottabad to furnish his report and clarify that either the timber logs were in possession of Government or community and had the Forest Department officials reported missing of logs to police or otherwise. It should also be clarified that either this woods falling in illicit policy or not".

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DISCUSSION

The honorable chief Minster has made the following three observations

1. Whether the timber was in possession of the Department.
2. Whether any FIR have been lodged with local police regarding the forceful theft.

Whether the timber was included in illicit policy (axiomatically latest Policy 2016-17).

Without recourse to outcomes of previously conducted fact finding or formal enquiries, the above three observations are clarified as under:

A. WHETHER THE TIMBER WAS IN POSSESSION OF DEPARTMENT

Perusal of the record i.e. Initial Damage Reports (Annex-1), minutes of meetings with district administration (Annex-2) and correspondences made by DFO Upper Kohistan with different quarters (Annex-3) reveal that:

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

B. WHETHER FIR HAVE BEEN LODGED WITH THE LOCAL POLICE

The record reveal that the petitioners preferred application on 25/08/2013 for lodging of FIR (Annex-4) against the unknown offenders for forceful theft of timber from Kohistan for admixing in GB's amnesty policy 2013. But, instead the police registered formal FIR NO: 07 dated 28/2013 against the officials of forest department for their alleged involvement in said theft (Annex-5). Nevertheless, it is clear that the staff endeavored to lodge FIR against unknown offenders for the said larceny.

C. WHETHER THE TIMBER WAS INCLUDED IN ILLICIT POLICY

As mentioned in the Damage Reports No. 73/45, 15/H,72/45 and 32/50 chalked out against incidence of reported forceful theft timber occurred on 25/08/2013 (Annex-6), the impugned timber belongs to Damage Reports No. 94/42, 13/55, 58/42, 60/45 and 31/50 as per Annex-1, chalked out during 2007. A portion of this timber was already disposed off under Amnesty Policy 2009. The accounts of initially reported timber, disposal in Amnesty Policy 2009 and that stolen on 25-26/08/2013 vis-à-vis subsequent reassessments, supplied by representatives of DFO Upper Kohistan (Annex-7), show that out of the 18000 cft impugned timber, timber measuring 8000 cft is included in the Policy 2016-17.

Azhar Ali Khan
Conservator Forest Lower
Hazara Forest Circle Abbottabad
(Chairman)

Shaukat Fiaz
Divisional Forest Officer
Patrol Squad (Member)

وکالت نامہ

کورٹ فیس

KPK Service Tribunal

بعدالت

عنوان: محامیوں و مہتمم بنام KPK Tribunal

Petitioner

منجانب:

Service Appeal 1246/16

نوعیت مقدمہ:

باعث تحریر آنکہ

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

عبدالعزیز بن محمد و دیگر

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب

موصوف کو کرنے راضی نامہ و تقرر حالت و فیصلہ برحلف دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء

وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور

کی کل یا کسی جزوی کارروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار

میں ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پرداختہ مجھ کو منظور و

قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ اتوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔

نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا جہ سے باہر ہو تو وکیل صاحب موصوف

پابند ہوں گے کہ بیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف

مقدمہ کی بیروی کے پابند نہ ہوں گے۔ نیز درخواست برآمد تجارت ناٹش بیخہ مفلسی کے دائرہ کرنے اور اس کی

بیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

الرقوم: 18 - 10 - 15

بمقام:

عبدالعزیز بن محمد
18/10/15

عبدالعزیز بن محمد

عبدالعزیز بن محمد