

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

SERVICE APPEAL NO.1506/2023

Mr. Muhammad Hakim s/o Muhammad Nabi

R/O Sheringal District Upper Dir.

(Appellant)

Versus

1. Govt. of KPK through Chief Secretary KPK Peshawar.
2. Secretary to Government for Environment and Forest KPK Peshawar.
3. Chief Conservator of Forests, KPK Peshawar.
4. Chief Conservator of Forests, Malakand Forest Region-III Saidu Sharif (Swat).
5. The Conservator of Forests, Malakand Forest Circle West Timergara.
6. The Divisional Forest Officer, Dir Kohistan Forest Division.

(Respondent).

I N D E X

Sl.No.	Documents	Annexures.	Page No.
1.	Affidavit.	-	01
2.	Para-wise comments.	-	02-06
3.	Office Order No.09 dated 28/07/2020.	Annexure-A	07
4.	Reward Rules,2018.6	Annexure-B	08-09
5.	Duty Register.	Annexure-C	10
6.	Explanation of appellant.	Annexure-D	11

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Mr. Muhammad Hakim s/o Muhammad Nabi
R/O Sheringal District Upper Dir.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9029

Dated 15/11/23

(Appellant)

Versus


1. Govt. of KPK through Chief Secretary KPK Peshawar.
2. Secretary to Government for Environment and Forest KPK Peshawar.
3. Chief Conservator of Forests, KPK Peshawar.
4. Chief Conservator of Forests, Malakand Forest Region-III Saidu Sharif (Swat).
5. The Conservator of Forests, Malakand Forest Circle West Timergara.
6. The Divisional Forest Officer, Dir Kohistan Forest Division.

(Respondent).

AFFIDAVIT

I Sardar Saleh (DFO) Dir Kohistan Forest Division at Sheringal do hereby solemnly affirm and state on oath that the whole contents of this reply to the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Identified by:


Sardar Saleh,
Divisional Forest Officer,
Dir Kohistan Forest Division,
Sheringal.

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(Appellant)

Versus

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(Respondent)

**PARAWISE COMMENTS ON BEHALF OF RESPONDENT
NO.1 to 6.**

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

1. The appellant has no locus standi or cause of action.
2. The appellant has not come to this august forum with clean hands.
3. The appeal is bad for non joinder of necessary parties and mis-joinder of un-necessary parties.
4. That the appeal of the appellant is barred by law and limitation.

Para-wise detailed reply is furnished as under:-

1. Pertains to record.
2. Incorrect. The appellant concealed the facts as he was posted on Sheringal Forest Check Post, vide DFO Dir Kohistan Forest Division office order No.09 dated 28/07/2020 (Annexed-A).
3. That on 31/05/2022 a Hino Oil Tanker bearing registration No.C 2605 loaded with illicit cut deodar timber of 43 Nos.172.0 cft has crossed Sheringal Forest Check Post at 5:11 am with active

(B)

connivance of the appellant as is evident from CCTV Camera recording. The consignment was apprehended by the staff of Patrol Squad Division, Malakand Forest Circle West at Timergara.

4. Incorrect, Patrol Squad Forest Division of Malakand Forest West Circle has apprehended the illicit timber mentioned in para-3 above and chalked damage report as per relevant section of law i.e Forest Ordinance, 2002 against the timber smugglers. Reward is permitted/allowed to forest officials as per Khyber Pakhtunkhwa Delegation of Financial Powers Rules, 2018 item No.10(4.2) page No.23 and 24 (Annexed-B).
5. Incorrect, the illicit timber was smuggled through Oil Tanker and it crossed Sheringal Forest Check Post without any notice & active connivance of the appellant as is evident, from CCTV camera video transcript.
6. Incorrect, the raiding party apprehended the above mentioned oil tanker loaded with illicit timber and imposed fine to the tune of Rs.1020,000 after investigation of the case as per compensation of forest offence and value of case property Rules, 2004. There was no need of further investigation as clarified in Para-5 above.
7. Incorrect, the oil tanker was loaded with illicit timber and it crossed Sheringal Forest Check Post as is evident from CCTV camera footage during the duty hours of the appellant which is clear from the duty register of above referred check post. The CCTV camera is only meant for detection of vehicles passing through the check post not for showing positioning of the official on duty (Annexed-C).
8. Incorrect, the Range Forest Officer Sheringal called explanation from the appellant, vide letter No.16/ROS dated 01/06/2022 (Annexed-D), but the appellant failed to submit written reply upto 17/06/2022. After proper verification/checking of CCTV camera record, wherein the illegal consignment was seen/crossed unchecked through Sheringal Forest Check Post. The appellant was placed under suspension under Rule-6 of the Khyber Pakhtunkhwa Government Servants E & D Rules, 2011.
9. Correct.

10. Correct.

11. It is correct that the DFO Patrol Squad was appointed as inquiry officer. The inquiry officer is authorized to make recommendations under the E&D Rules 2011. However the Competent Authority is not bound to agree with the recommendation of the inquiry officer. In the instant case the inquiry officer has given findings which show that charges have been proved against the petitioner.

12. Incorrect, there was no need of further investigation from the offender or the staff of Shamerdin Forest Check Post as is evident from the CCTV camera installed at Chukiatan and Sheringal Forest Check Post video which clearly shows that none of the appellant was present at forest check post for checking of vehicles and thus the oil tanker loaded with illicit timber has crossed Sheringal Forest Check Post without checking by the appellant. It was proved by the enquiry officer that the said oil tanker loaded with illicit timber crossed Sheringal Forest Check Post during duty hours of appellant. Thus, by reason of the above, the appellant was found guilty on account of inefficiency and misconduct.

13. That, the oil tanker has crossed Sheringal Forest Check Post with the active connivance of appellant ascertained from CCTV Camera installed at Sheringal and Chukiatan, hence it was valid reasons or proofs that the said oil tanker has crossed the Sheringal forest check post without checking.

14. That the appellant was retired from service compulsorily by respondent No.6 being Competent Authority after proper inquiry and subsequent involvements therefore the charges which were proved against the appellant mentioned in the concluding Para of the inquiry report.

15. Pertains to record.

G R O U N D S:-

A) That , the order of respondent No.5 the Conservator of Forests, Malakand Forest Circle West Timergara being appellant

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Authority is correct and in accordance with Law/Rules on the subject.


- B) Proper inquiry against appellant has been conducted under the Khyber Pakhtunkhwa E&D Rules, 2011 in which the appellant was found guilty of in-efficiency and mis-conduct, therefore, punishment imposed upon the appellant by both the respondent No.5 and 06 were as per relevant law/rules after fulfillment of codal formalities on the subject.
- C) That the charges were proved by the inquiry officer mentioned in the concluding para of the inquiry report, hence punishment was imposed against the appellant by respondent No. 5 & 6 in accordance with prevailing law/rules.
- D) That, the appellant was awarded punishment after fulfillment of the codal formalities on the subject once the charges were proved against him by the Inquiry Officer.
- E) That proper inquiry has been conducted against the appellant and in light of recommendations of Inquiry Officer, major penalty was imposed to the appellant. It is crystal clear that the said oil tanker has crossed Sheringal Forest Check Post loaded with illicit timber and apprehended by Circle Squad Party at Shamardin.
- F) Incorrect, there are various check posts in the way upto Timergara. The driver of the said oil tanker was fined by the DFO Patrol Squad Dir Lower as per law/rules.
- G) Incorrect, the oil tanker is very clear in CCTV Camera footage at Sheringal forest check post and the same oil tanker was apprehended by the Patrol Squad party Malakand Forest Circle West Timergara. Furthermore, the attendance register of Sheringal Forest Check Post is also corroborative evidence in respect of the appellant for the official on duty.
- H) Incorrect after proper inquiry, beside clear CCTV videos transcript' of that oil tanker crossed the check post and further CCTV camera was not fixed for locating the staff position at

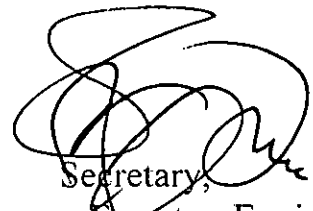
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check post. Moreover, the appellant attendance register was also substantial evidence to proceed as per law.


- I) That the inquiry officer has personally examined CCTV Camera footage and found that the oil tanker has crossed the check post unnoticed / checked.
- J) Incorrect, that regular inquiry has been conducted against the appellant and in light of recommendations of inquiry Officer, penalty was imposed on the appellant as per E&D Rules, 2011.
- K) Incorrect, that all the staff posted on the check posts right from Sheringal forest check post to Shamerdin Forest Check Post have been placed under inquiry proceeding.
- L) Incorrect, that the appellant has rightly been awarded penalty after conducting proper inquiry by the inquiry officer.

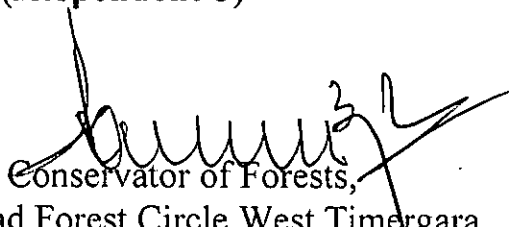
It is therefore humbly prayed that the facts and grounds of appeal are totally un-called for and, therefore, not tenable. The instant service appeal may kindly be dismissed with cost please.



 Chief Secretary,
 Government of Khyber,
 Pakhtunkhwa Peshawar.
 (Respondent.1)
 Waqar Maslam
 Chaudhry


 Secretary,
 Climate Change, Forestry, Environment
 & Wildlife Department Khyber
 Pakhtunkhwa, Peshawar.
 (Respondent.2) Syed Nazam
 Hussain Shah


 Chief Conservator of Forests
 Central Southern Region-I,
 Khyber Pakhtunkhwa
 Peshawar.
 Syed Muqtaada
 Shah
 (Respondent-3)


 Chief Conservator of Forests,
 Malakand Forest Region-III
 Saidu Sharif Swat.
 Syed Muqtaada Shah
 (Respondent-4)


 Conservator of Forests,
 Malakand Forest Circle West Timergara.
 Shaikat Ali
 Khattak
 (Respondent-5)


 Divisional Forest Officer,
 Dir Kohistan Forest Division,
 Sardar Ali
 Sali
 (Respondent-6)

OFFICE ORDER NO: 09 DATED 28/07/2020 ISSUED BY MR. SHAH KHALID,
DIVISIONAL FOREST OFFICER DIR KOHISTAN FOREST DIVISION SHERINGAL.

As requested by Mr. Muhammad Hakim, Forest Guard vide his application dated 26/06/2020, leave without pay granted to him vide this office order No.20 dated 30/12/2019 is hereby cancelled and the Forest Guard is posted in Sheringal Forest Check Post in the interest of public service with immediate effect:-

Sd/- Mr. Shah Khalid Khan,
Divisional Forest Officer,
Dir Kohistan Forest Division

No. 298-301 /G.

Copy forwarded to:-

- 1) The Conservator of Forests, Malakand Forest Circle West Timergara for information please.
- 2) Range Forest Officer, Sheringal.
- 3) Mr. Muhammad Hakim, Forest Guard for information and strict compliance.
- 4) Divisional Accountant for office record.

Shahid
Divisional Forest Officer,
Dir Kohistan Forest Division


Divisional Forest Officer
Dir Kohistan Forest Division
Sheringal.

Attested
Sardar M. L. Khan
DFO
Dir - Kohistan

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4.2 Forests					
S #	Nature of Power	Chief Conservator	Conservator Forest	Divisional Forest Officer	Divisional Forest Officer (Wildlife)
	3. If the lowest tender from an approved contractor is not accepted, reasons thereof shall be recorded and further approval shall be obtained as under; <ul style="list-style-type: none"> a. Chief Conservator Forest upto the value of Rs. 1,000,000. b. Administrative Department, if the value tendered does not exceed Rs. 2,000,000. c. Retendering if the value tendered exceeds Rs. 2,000,000. 				
3	Execution of Forest Contracts	Upto Rs. 4,000,000	Upto Rs. 2,000,000	Upto Rs. 500,000	--
	Specific Condition(s): <ul style="list-style-type: none"> 1. Include Contracts for disposal of forest produce and to fix the terms of contracts. 2. The contract(s) shall be vetted by Law Department. 				
4	To Dismantle & Sell Unserviceable Buildings	Full Powers	Upto Rs. 500,000	Upto Rs. 300,000	--
5	Purchase of Livestock	Upto Rs. 2,000,000	Upto Rs. 1,000,000	--	Upto Rs. 500,000
6	Leases of Land	Full Powers	Full Powers	Full Powers	--
	Specific Condition(s): <ul style="list-style-type: none"> 1. Include Forest Land. 2. The Lease shall be awarded under open public auction/tender. 3. Administrative Department and Chief Conservator may grant lease upto 5 years for irrigated land and 10 years for barani land. 4. Conservator or Divisional Forest Officer may grant lease upto 50 acres for one year in each case. 				
7	To Sanction Sale of Livestock & its By-Products	Upto Rs. 1,000,000 Per annum	Upto Rs. 500,000 Per annum	--	Upto Rs. 200,000 Per annum
8	To Sanction Payments	Upto Rs. 8,000,000	Upto Rs. 4,000,000	Upto Rs. 2,000,000	--
	Specific Condition(s): <ul style="list-style-type: none"> 1. Include Usual payments on sowing and planting etc. under Forestry development and non-development budget. 				
9	Lease of Land Buildings	Upto Rs. 30,000 Per-mensem	--	--	--
	Specific Condition(s): <ul style="list-style-type: none"> 1. Include Lease of land buildings for specific purposes such as mills, timber depots etc. 				
10	Reward in Forest Cases	Full Powers	Full Powers	Full Powers	--

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Divisional Forest Officer
Div Kohistan Forest Division
Sheringal.

(9)

4.2 Forests					
S #	Nature of Power	Chief Conservator	Conservator Forest	Divisional Forest Officer	Divisional Forest Officer (Wildlife)
	Specific Condition(s): 1. Include i) Out of the sum accepted as compensation not exceeding ¼ of the amount realized, ii) Out of the sum accepted as compensation plus value of property not exceeding ¼ of the amount realized.				
11	To Write Off Irrecoverable Forest Revenue	Upto Rs. 40,000	Upto Rs. 20,000		
	Specific Condition(s): 1. The Administrative Department shall have a restricted delegated power upto Rs. 100,000.				

5. Establishment & Administration Department

S #	Nature of Power	Chief Secretary	Secretary Administration
1	To Sanction Expenditure		
(i)	Rent of Residential Buildings & Housing Subsidy	Full Powers	Full Powers
	Specific Condition(s): 1. 75% of the Basic Pay of the Occupant, or intending Occupant subject to standing instructions and certificate from Communication & Works that rent is reasonable.		
(ii)	Ceremonial Functions & State Entertainments	Full Powers	Upto Rs. 100,000 At a time
	Specific Condition(s): 1. Include Ceremonial functions and State entertainments administered/organized by Establishment & Administration Department.		
2	Acceptance of Tenders	Full Powers	Full Powers
	Specific Condition(s): 1. The rates quoted and/or amounts tendered are such that the total cost of a project/programme/works shall not exceed the amount for which the project/programme/works is administratively approved by more than 45%. 2. If the lowest tender from an approved contractor is not accepted, reasons thereof shall be recorded and further approval shall be obtained as under: a. Special Secretary upto the value of Rs. 1,000,000. b. Administrative Department, if the value tendered does not exceed Rs. 3,000,000. c. The P&D Department, if the value tendered exceeds Rs. 3,000,000.		

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[Signature]
Divisional Forest Officer
Dir Kohistan Forest Division
Sheringal.

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STAFF ATTENDANCE REGISTER

For the month of July 2022 (Annexu)

No.	No.	No.
Name: <u>M. Raza</u>	<u>M. Hakim</u>	<u>Yashad Ali</u>
Designation: <u>FC</u>	<u>F.G</u>	<u>FC</u>
Phone # <u>Indrag 71</u>		
N.I.C #		

Dates	Arr.	Sig.	Dep.	Sig.	Arr.	Sig.	Dep.	Sig.	Arr.	Sig.	Dep.	Sig.	Arr.	Sig.	Dep.	Sig.
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STATEMENT OF LEAVES TAKEN

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This month																
Previous																
Total																

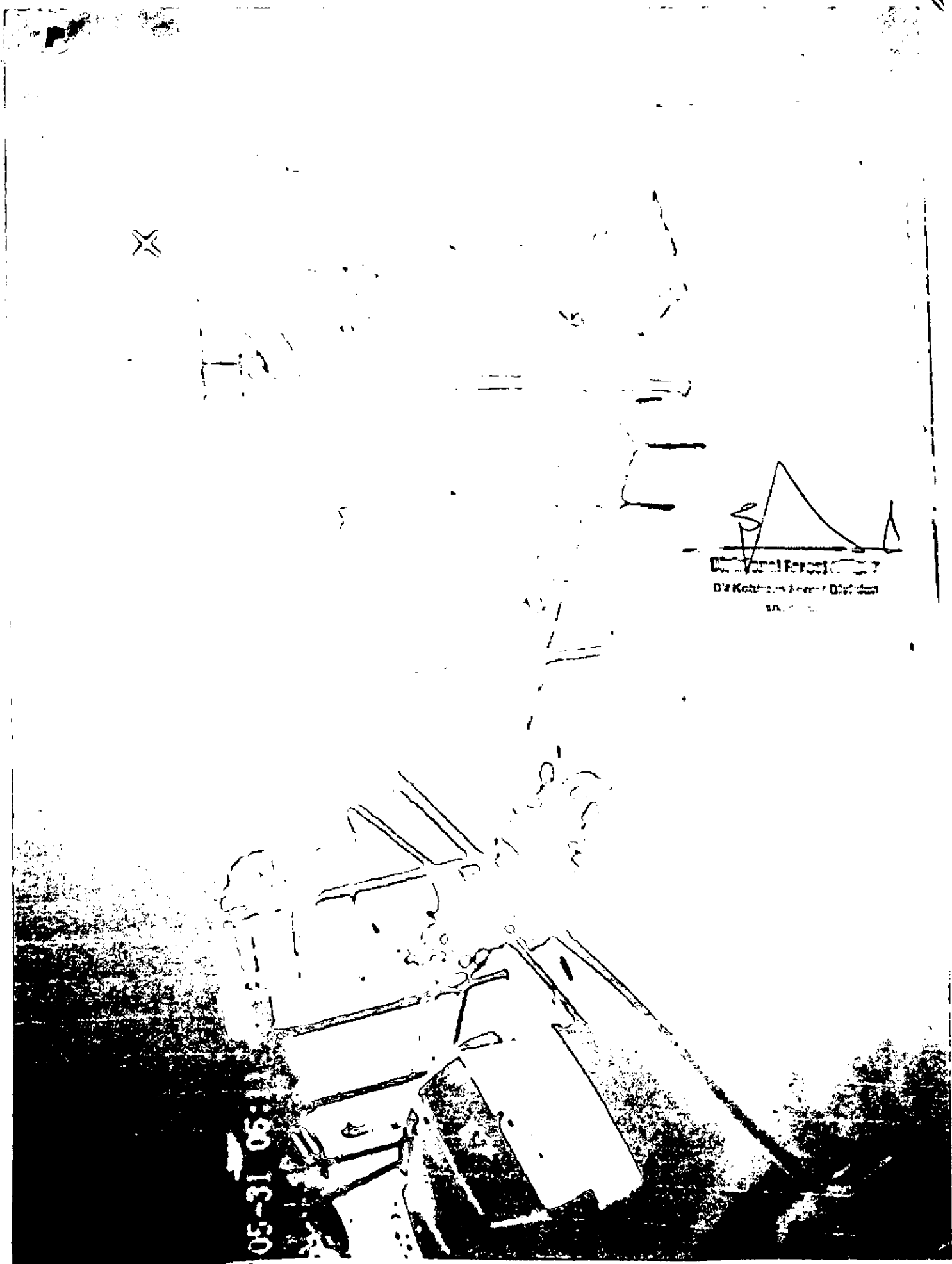
Dated: _____

Headmistress/Headmaster
 Range Forest Officer
 District Forest Office

(Handwritten signature)

Range Forest Officer
 Dir Kohistan Forest Division
 Sheringal

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OFFICE OF THE RANGE FOREST OFFICER, SHERINGAL FOREST RANGE

To,

Mr. Muhammad Hakim, (Forester)

Sheringal Forest Check Post

No. 16 /ROS, Dated Sheringal, the 01/05/2022.

SUBJECT: ILLEGAL TRANSPORTATION OF TIMBER/ Apprehension of oil Tanker.

Memorandum:

It has been noticed that an oil tanker loaded with illegal timber has been crossed Forest Check post Sheringal during your duty hours without checking by you and apprehended by the Patrol Squad Party of Lower Dir Forest Division during 7:00 am to 8:00 pm on 31/05/2022. It is very clear from CCTV camera photographs that you have not stopped nor checked the oil tanker at Barrear/ Check post and shown negligence in your assigned duty.

You are therefore, directed to explain to your position within three (03) days more positively otherwise disciplinary action shall be initiated against you under E & D Rules, 2002.

[Signature]
RANGE FOREST OFFICER
SHERINGAL FOREST RANGE

No. 17 /ROS,

Copy forwarded to the Divisional Forest Officer, Dir Kohistan Forest Division for favour information and further necessary action please.

[Signature]
RANGE FOREST OFFICER
SHERINGAL FOREST RANGE

[Signature]
Divisional Forest Officer
Dir Kohistan Forest Division
Sheringal.

[Signature]
A. H. S. T. E. D.