BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 612/2016

Date of Institution... 06.06.2016

Date of decision... 16.10.2017

Muhammad Riaz, Forest Guard, Kandar Forest Range, Torghar Forest Division, Judbah. ... (Appellant)

Versus

1. Province of Khyber Pakhtunkhwa through Secretary Environment Department, Peshawar and 3 others. ... (Respondents)

. SHAHZADA IRFAN ZIA,
Advocate ... For appellant.
MR. MUHAMMAD BILAL
Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD AMIN KHAN KUNDI, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was aggrieved from an impugned order dated 12.1.2016, whereby he was directed to pay a sum of Rs. 7,49,933/- for damage caused to the plantation, as being Forest Guard he was duty bound to protect. Against this order, he filed a departmental appeal without any date. The same departmental appeal was decided on 11.05.2016. The appellate authority reduced the amount to Rs. 6,74,800/- on 11.05.2016. Feeling aggrieved from this appellate order, the appellant filed the present service appeal on 06.06.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the departmental proceedings were initiated on the basis of a complaint filed by the DFO Petrol Squad, wherein some facts were alleged against the appellant. That the enquiry officer had taken the complaint a gospel truth without enquiring the veracity of the complaint. That the nature of the allegations were such which required the full proof through evidence but the enquiry officer did not bother even to examine the complainant much less the cross examination of the complainant. No other witness has been examined in this respect. The learned counsel for the appellant further argued that when the basic elements of the due process have not been fulfilled then the whole proceedings are vitiated.

4. On the hand the learned Deputy District Attorney argued that the enquiry officer has taken into consideration the complaint of the DFO Petrol Squad. That the appellant himself submitted an affidavit, admitting his guilt by undertaking that he would restore the reported failure. That a checking committee was also constituted by the enquiry officer.

CONCLUSION.

5. The facts as narrated above clearly demonstrate that the enquiry officer has solely relied on the report of DFO Petrol Squad. He had not bothered to examine the said DFO Petrol Squad in order to verify it. The purpose of the appointment of enquiry officer was to probe into the matter and to see whether the complaint was correct or not. The enquiry officer has not taken pains to see whether the complaint was correct or not. The proper course was to have examined the complainant and should have put him to the test of cross examination but nothing of the sort. The enquiry officer was also under obligation to have had examined the independent witnesses regarding the allegations. There is also no material on record to prove that any chance of defence was afforded to the appellant. The personal hearing of the appellant suggests that he was put on some questions in which he

never admitted his guilt. The submission of affidavit by the appellant is never an admission on his part nor it was the duty of the enquiry officer to have taken the affidavit regarding correction of damage. The domain and the jurisdiction of the enquiry officer did not extend to the issue of correction of loss. He was simply to fix the responsibility on the person charged.

6. As a sequel to the above discussion, this appeal is accepted and the impugned order is set aside. The department is however, at liberty to hold denovo enquiry in the light of observations made above. Parties are left to bear their own costs. File be consigned to the record room.

(Nasir Muhammad Khan)
Chairman
Camp Court, A/Abad

(Muhammad Amin Khan Kundi)
Member

ANNOUNCED
16.10.2017

16.10.2017 Appellant alongwith counsel and Mr. Muhammad Bilal, Deputy District Attorney alongwith Faizur Rahman, DFO Torghar for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin
Member

Chairman
Camp Court, A/Abad.

ANNOUNCED
16.10.2017

22.09.2016 None for the appellant present. Mr. Farah Sair, DFO Torghar alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Requested for adjournment. To come up for written reply/comments on 25.11.2016 before S.B at camp court, Abbottabad.

Chairman
Camp court, A/Abad

25.11.2016 Appellant in person and Mr. Farakh Sair, DFO Torghar alongwith Mst. Bushra Bibi, Government Pleader for respondents present. Written reply by respondents No. 1 to 4 submitted. The appeal is assigned to D.B for rejoinder and final hearing for 17.04.2017 at camp court, Abbottabad.

Chairman
Camp Court, A/Abad

17.04.2017 Appellant in person and Mr. Farah Sair, DFO Torghar alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Appellant seeks adjournment to submit rejoinder. To come up for rejoinder and final hearing before the D.B on 16.10.2017 at camp court, Abbottabad.

Chairman
Camp court, A/Abad

15.06.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Forest Guard when vide impugned order dated 12.1.2016, he alongwith forester namely Muhammad Sharif were subjected to enquiry on the allegations of in-efficiency and mis-conduct and an amount of Rs. 749933/- was ordered to be recovered from the appellant and similar amount was also ordered to be recovered from the said Muhammad Sharif, Forester. That the appellant and the said Forester preferred departmental appeals wherein the amount imposed against the appellant was modified to Rs. 674800/- while that of the forester reduced to Rs. 1,68,720/- against this final order, the appellant has preferred the instant service appeal on 06.06.2016.

That the enquiry officer had recommended equal amount of fine against the appellant as well as the said Forester. That the said forester was fined to the tune of Rs. 1,68,720/- while the appellant has been discriminated against.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 22.09.2016 before S.B at camp court, Abbottabad.

Appellant Deposited
Security & Process Fee

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 612/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08/06/2016	The appeal of Mr. Muhammad Riaz resubmitted today by Shahzada Irfan Zia Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-	13.6.2016	This case is entrusted to S. Bench for preliminary hearing to be put up there on 15-6-16. CHAIRMAN

The appeal of Mr. Muhammad Riaz Forest Guard Kandar Forest Range Torghar Forest Division Judbah received to-day i.e. on 06.06.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of order dated 12.1.2016 mentioned in para-4 of the memo of appeal is not attached with the appeal which may be placed on it.

No. 966 /S.T,

Dt. 7/6 /2016

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Shahzada Irfan Zia Adv. Pesh.

The order is of ordinary nature can be produced before the court if found necessary.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 612 / of 2016

Muhammad Riaz, Forest Guard ... ... Appellant

VERSUS

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

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محمد ریاض
Appellant

Through:

(Shahzada Irfan Zia)
Advocate High Court
13-C Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 0300-9345297

Dated: 06.06.2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 612 / of 2016

Muhammad Riaz, Forest Guard
Kandar Forest Range, Torghar Forest Division,
Judbah... ... ... Appellant

VERSUS

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

2. Chief Conservator of Forests-I,
Khyber Pakhtunkhwa, Peshawar.

3. Conservator of Forests,
Upper Hazara Forest Circle, Mansehra.

4. Divisional Forest Officer,
Torghar Forest Division, Judbah... ... Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED FINAL ORDER DATED 11.05.2016 ISSUED BY RESPONDENT NO.3, COMMUNICATED TO THE APPELLANT ON 31.05.2016 WHEREBY THE ORDER OF RESPONDENT NO.4 WAS MODIFIED AND RECOVERY OF RS. 6,74,800/- WAS IMPOSED UPON THE APPELLANT, WHICH MAY BE RECOVERED FROM THE PAY OF THE APPELLANT IN EIGHTY FOUR EQUAL INSTALLMENTS.

Respectfully Sheweth:

FACTS OF THE CASE.

1. Succinctly the facts which formed the background of this case are that the appellant while holding the post of Forest Guard Kandar Forest

Range, Torghar Forest Division, he was served with a Charge Sheet alongwith statement of allegations by respondent No.4 (Annexs: A&B).

2. That in the Charge Sheet certain allegations were levelled against the appellant. The appellant submitted his reply to the Charge Sheet and vindicated his plea and position. The appellant vehemently denied the alleged Charges and submitted a graphic account of all facts, but his submissions went unheeded. (Annex: C).

3. That Mr. Muhammad Siddique DFO Agror Tanawal Forest Division, Oghi was appointed as Inquiry Officer to probe into the matter. The inquiry was conducted and the Inquiry Officer made all possible efforts to prove the appellant guilty. According to the inquiry report charges of misconduct and inefficiency stand proved while the charge of corruption was not proved against the appellant. (Annex: D).

4. That a Show Cause Notice was served upon the appellant and thereafter the respondent NO.4 issued an order dated 12.01.2016 whereby recovery of Rs. 7,49,933/- was imposed upon the appellant, but the order dated 12.01.2016 was not communicated to the appellant. (Annex: E).

5. That feeling aggrieved the appellant approached respondent No.3 through his Departmental Appeal, but on his departmental appeal the respondent No.3 passed the final impugned order dated 11.05.2016 whereby the Appellate Authority modified the order of respondent No.4 and imposed the recovery of Rs. 6,74,800/- upon the appellant,

which may be recovered from the pay of the appellant in Eighty Fours equal installments. (Annexs: F & G), hence the instant appeal is being filed against the impugned final order dated 11.05.2016 inter alia on the following grounds:-

GROUNDS:

a. That the allegations in the Charge Sheet are baseless and based on presumptions as plantation over an area of 148.50 Acre was carried out during February and March 2014 under Special Development Package, Torghar, but the DFO Patrol Squad inspected/visited only 1/2Acre area and after observing the slight damage, presumed that the entire area has the same position, without inspecting the entire 148.50 Acre area. Thus the report of the D.F.O Patrol Squad is not reliable and not worthy of credence. The slight damage is due to cattles/animals passing through that area and is a routine matter and the damage is hardly 20% while the scheme of Plantation is successful approximately 80%.

b. That the damage which is hardly 20% is a result of natural disasters like Drought and the cattles/animals and other reasons which are beyond the control of human beings, therefore, it cannot be presumed that the appellant is responsible for that and he has committed any misconduct and inefficiency.

c. That for substantial justice it is solemn function of Inquiry Officer to consider the facts and circumstances of the case impartially, subject to very close, minutes and rigid scrutiny with great care and caution, and not mechanically. Unfortunately the Inquiry Officer lost his impartiality and relied upon the report of D.F.O Patrol Squad and the Inquiry Officer also not visited the spot neither inspected the entire 148.50 Acre area nor appointed any Commission for inspection of the said area. Thus the inquiry report is also based on presumption and not worthy of credence.

d. That the Inquiry Officer in his report recommended that the amount of recovery which comes out to be 14,99,866/- needs to be apportioned between Muhammad Sharif Forester and Muhammad Riaz Forest Guard at the rate of Rs. 7,49,933/- each, but subsequently the Appellate Authority on departmental appeal of the Forester (Muhammad Sharif) reduced the amount to Rs. 1,68,720/- while in case of Forest Guard Muhammad Riaz the amount of Rs. 6,74,800/- was ordered to be recovered. The action of the Appellate Authority is based on discrimination even against the Constitution of Islamic Republic of Pakistan, 1973 (Annex: H). It is merit to mention that Mr. Muhammad Sharif had the dual charge of Forester and Range Forest Officer, but a lenient view was taken in his case while the appellant was punished severely.

e. That the Inquiry Officer was under legal obligation to record the evidence/statement of independent witnesses and the appellant had given an opportunity to cross-examine them for the purpose of establishing the truth, which he deliberately avoided. The Inquiry Officer just relied upon the report of DFO Patrol Squad and formed his opinion without recording his statement, thus his report is based on hypothesis.

f. That the appellant seeks permission of this Honourable Service Tribunal to raise more grounds at the time of arguments.

In view of the aforesaid facts and circumstances of the case it is humbly prayed that the impugned Final Order dated 11.05.2016 may kindly be set aside being illegal and void, directing the respondents not to recover any amount from the pay of the appellant and if recovered, be refunded to the appellant.

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

محمد ریاض
Appellant

Through:

(Shahzada Irfan Zia)
Advocate High Court
13-C Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 0300-9345297

Dated: 06.06.2016

CERTIFICATE:

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

Advocate

یہ چارج شیٹ بیگم کی بیدنشین والی چھٹی شکایت پر کوئی ہے
جس سے بعد بالا شریف کو چارج شیٹ کیا گیا ہے

(Annex: A)
(6)

CHARGE SHEET

1. I Farrukh Sair Divisional Forest Officer Torghar Forest Division Judbah, as competent authority, hereby charge you Muhammad Riaz Forest Guard Kandar Forest Range of Torghar Forest Division as follows:-

   That you while posted as Forest Guard on pabbal Gali Beat of Kandar Forest Range has committed the following irregularities:

a. Whereas in compliance to the directives of Chief Conservator of Forests Northern Forest Regain-II Abbottabad the Divisional Forest officer patrol Squad Forest Division Abbottabad conducted checking of Tegram plantation area on 07.07.2015 and submitted report vide letter No.45/PS dated 08.07.2015.

b. Whereas as plantation over an area of 148.50 acre was carried out by you during February and March 2014 under Special Development Package (SDP) Torghar.

c. Whereas as per plantation journal the following Species were planted in the area:-

   i- Robinia- 44810 Nos of plants.

   ii- Chir 19788 Nos of plants.

   Total- 64598 Nos of plants

d. Whereas watch and ward of the plantation was continued by employing two Chowkidars.

e. Whereas the plantation was found badly failed almost having less than 20% survival percentage.

f. Whereas the survived plants were badly grazed.

g. Whereas the plantation was not carried out in proper season.

h. Whereas huge loss of Rs: 1874847/- was sustained to the government exchequer due to your negligence poor performance/supervision over the labour which resulted to the failure of plantation area.

i. Whereas you deliberately over looked the plantation work causing huge loss to the government and it was sufficient evidence of your negligence in the performance of government duty and misappropriation of government money. As such you are liable to be proceeded against under the provisions of E&D Rules 2011 on account of inefficiency, misconduct and corruption.

attested.

2. By reason of the above you appear to be guilty of inefficiency, misconduct and corruption under Rule -3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 and therefore you have rendered yourself liable to all or any of the penalties Specified in rule-4 of the rules ibid.

3. You are therefore, directed to submit your written defense within Seven (07) days of the receipt of this charge sheet direct to the inquiry officer/committee, failing which it shall be presumed that you have nothing to defend you and exparte action will be taken against you.
4. Intimate whether you desire to be heard in person.
5. A statement of allegations is enclosed.

Sd- (Farrukh Sair)
Divisional Forest Officer
Torghar Forest Division
Judbah

No.157-61 /GE Dated Judbah the 20 /08/2015.

Copy of the above is forwarded to;-

1- The Chief Conservator of Forests, Northern Forest Region-II Khyber Pakhtunkhwa, Abbottabad for favour of information with reference to his office letter No.615/B&A dated 31/7/2015, please.
2- The Conservator of Forests, Upper Hazara Forest Circle, Mansehra for favour of information, please.
3- Mr. Muhammad Siddique Khan Divisional Forest Officer Agror Tanawal Forest Division at Oghi inquiry officer/committee for initiating proceedings against the accused strictly under the provisions of Khyber Pakhtunkhwa Government servants (Efficiency and Discipline) Rules 2011 and complete the inquiry within stipulated period. Enquiry file from page 01 to 2 is enclosed herewith.
4. - Divisional Forest Officer, Judbah Forest Sub-Division for information and necessary action. He is directed to join the disciplinary proceedings on the date, time and venue fixed by the inquiry officer/committee and vigorously defend Government interest as prosecutor.
5. Muhammad Riaz Forest Guard C/O Range Forest Officer Kandar Forest Range for information and compliance. He is directed to submit reply to the charge sheet served upon him directly to the inquiry officer/ committee within 07 days of the receipt of this memo and also appear before the inquiry officer/Committee on the date time and venue fixed by him for the purpose of the inquiry proceedings.

attested
18/

Divisional Forest Officer
Torghar Forest Division
Judbah

(Annex-E)

(8)

DISCIPLINARY ACTION

1. I Farrukh Sair Divisional Forest Officer, Torghar Forest Division Judbah as competent authority, am of the opinion that Mr. Muhammad Riaz Forest Guard Kandar Forest Range of Torghar Forest Division Judbah (herein after called accused) has rendered himself liable to be proceeded against as he committed the following acts/omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011.

2. **STATEMENT OF ALLEGTATIONS.**

a. Whereas in compliance to the directives of Chief Conservator of Forests Northern Forest Regain-II Abbottabad the Divisional Forest officer patrol Squad Forest Division Abbottabad conducted checking of Tegram plantation area on 07.07.2015 and submitted report vide letter No.45/PS dated 08.07.2015 .

b. Whereas plantation over an area of 148.50 acre was carried out by you during February and March 2014 under Special Development Package (SDP) Torghar.

c. Whereas as per plantation journal the following Species were planted in the area:-

i- Robinia- 44810 Nos of plants.

ii- Chir 19788 Nos of plants.

Total- 64598 Nos of plants

d. Whereas watch and ward of the plantation was continued by employing two Chowkidars.

e. Whereas the plantation was found badly failed almost having less than 20% survival percentage.

f. Whereas the survived plants were badly grazed.

g. Whereas the plantation was not carried out in proper season.

h. Whereas huge loss of Rs: 1874847/- was sustained to the government exchequer due to your negligence poor performance/supervision over labour which resulted to the failure of plantation area.

i. Whereas you deliberately over looked the plantation work causing huge loss to the government and it was sufficient evidence of your negligence in the performance of government duty and misappropriation of government money. As such you are liable to be proceeded against under the provisions of E&D Rules 2011 on account of inefficiency, misconduct and corruption.

3. Therefore, for the purpose of scrutiny of the conduct of the accused and initiating an inquiry against him with reference to the above allegations an inquiry officer/committee comprised of Mr. Muhammad Siddique Khan Divisional Forest Officer, Agror Tanawal Forest Division at Oghi is hereby constituted under rule-10(1)(a) of the rules ibid.

4. The inquiry Officer/committee shall in accordance with the provisions of the Rules ibid, will provide reasonable opportunity of hearing to the accused, record it findings and make within 30 days of the receipt of this order recommendation as to punishment or other appropriate action against the accused.

attested

(Annex: C)
(10)

بخدمت جناب محمد صدیق خان صاحب مہتمم جنگلات اگر ورتناول فارسٹ ڈویژن (انکوائری آفیسر)

عنوان: انضباطی کاروائی

بحوالہ: مہتمم جنگلات تورغر فارسٹ ڈویژن چھٹی نمبر 61-157 جی ای مورخہ 20.08.2015 جدباہ

چھٹی نمبر 66-162 مورخہ 20.08.2015 جدباہ

جناب عالی

چھٹی محولہ بالا کے ذریعہ فدوی پر ذیل الزامات عائد کر کے آنجناب کو انکوائری کے فرائض تفویض کیے گئے ہیں جب کہ فدوی کو دفاع کا کہا گیا ہے۔

۱۔ یہ کہ ٹیگرام شجر کاری جو کہ 148.5 ایکڑ رقبہ پر فروری/ مارچ 2014 میں کی گئی وہ مکمل طور پر ناکام ہے صرف 20 فیصد پودہ جات زندہ ہیں۔

۲۔ یہ کہ زندہ۔ بچ جانے والے پودہ جات مال چرائی شدہ ہے۔

۳۔ یہ کہ شجر کاری مناسب وقت پر نہیں کی گئی۔

۴۔ یہ کہ جان بوجھ کر رقبہ شجر کاری پر توجہ نہیں دی گئی۔

۵۔ یہ کہ حکومت کو 187,4847/ روپے کا نقصان ہوا ہے۔

عالی جاہ: فدوی بوجوہ ذیل دیگر صحت جرم سے انکاری ہے۔

۱۔ یہ کہ جناب ڈی ایف او پٹرول سکواڈ جب کہ ان کی رپورٹ سے عیاں ہیکہ یہ تحریر فرمایا ہے کہ رقبہ تک رسائی والی سڑک بہت حستہ حال ہے۔

عالی جاہ: ڈی ایف او پٹرول سکواڈ رقبہ کے ایک کونے میں پہنچے اور وہاں انہوں نے پلانٹیشن جرنل دیکھا۔ اور بمشکل 1/2 1 ایکڑ رقبہ کا ملاحظہ کیا اور واپس آ گئے۔ سڑک کے قریب وہاں راستہ سے گزرتے مال مویشی پودوں کو نقصان پہنچا دیتے ہیں اس راستہ سے اکثر رات کو بکریوں اور مال مویشی کے زیوڑ اور پر والی چراگاہوں کو آتے جاتے ہیں اور اس طرح سڑک کے قریب چند ایک پودہ جات چرائی شدہ پائے گئے تو جناب DFO صاحب پٹرول سکواڈ نے اس ایک جگہ کو سارے رقبہ پر منطبق کر کے رپورٹ لکھ دی۔

رقبہ آپ خود ملاحظہ کر کے دیکھ سکتے ہیں کہ رقبہ میں پودہ جات 80 فیصد تک کامیاب ہیں۔ الزام بے بنیاد ہے۔

☆ یہ کہ جناب DFO پٹرول سکواڈ نے رقبہ میں گھوم کر اگر مختلف جگہوں پر پلاٹ لیکر اعداد و شمار جمع کیے ہوتے تو الزام ثابت ہوتا، ایسا نہیں کیا گیا۔ جس سے صاف ظاہر ہیکہ جناب DFO صاحب کی طرف سے الزام بلاثبوت ہے۔

☆ جہاں تک اس الزام کا تعلق ہے کہ شجر کاری مناسب وقت پر نہیں کی گئی غلط اور خلاف حقائق ہے موسم بہار کی شجر کاری فروری میں ہی شروع کی جاتی ہے۔ یہ رقبہ مقامی MPA کی نشان دہی پر ان کی استدعا پر لگایا گیا جس کی استدعا MPA صاحب کی طرف سے

attested

فروری میں موسم بہار کی شجر کاری کے افتتاح پر کی گئی۔
فروری مارچ میں عام طور پر بہار کی شجر کاری کی جاتی ہے۔اس لیے یہ الزام خلاف معمول ہے۔شجر کاری مناسب وقت پر افسران بالا کے احکامات کے تحت کی گئی ہے۔الزام غلط اور بے بنیاد ہے۔

☆ جہاں تک اس الزام کا تعلق ہے کہ جان بوجھ کر اس شجر کاری والے رقبہ پر توجہ نہیں دی گئی بلا ثبوت ہے۔رقبہ کو فارسٹ گارڈ اور دو چوکیدار نگرانی کرتے ہیں چونکہ رقبہ مغربی سمت واقع ہے جو گرم ہوتی ہے۔اور بارش میں بھی وقفہ زیادہ ہونے کی بنا پر کچھ پودے خشک ہو گئے ہیں جن کہ جگہ آئندہ شجر کاری کے موسم میں پودے لگا دیئے جائیں گے۔

☆ حکومت کا کوئی نقصان نہیں ہوا معمول کے مطابق شجر کاری زیر بحث ڈویژن میں باقی ماندہ رقبہ جات کے معیار کے مطابق ہے۔اور تجربہ کار مزدوران نے کی ہے۔30 فیصد ناکامی حکومت کے منظور شدہ منصوبوں کے مطابق عام ہے۔اور اگر خشک سالی یا کوئی اور قدرتی آفات آجائیں تو وہ انسانی بساط سے باہر ہیں۔

☆ جہاں تک اس بات کا تعلق ہے کہ سڑک خراب ہونے کی بنا پر تھیلوں میں پودوں سے مٹی ہٹ گئی تھی غلط ہے کیوں کہ تھیلوں کو گاڑی میں رکھنے سے پہلے اچھی طرح پانی دیا گیا تا کہ دوران سفر وہ جھٹکوں سے محفوظ رہیں اور پودوں کو اتارنے کے بعد پھر پانی دیا گیا۔ دوران نقل وحمل پودے خراب نہیں ہوئے صرف 20/25 فیصد پودے ناکام ہوتے ہیں جو کہ معمول کی بات ہے۔

درج بالا حقائق سے واضح ہے کہ الزامات بے بنیاد اور بلا ثبوت ہیں۔جناب DFO پٹرول سکواڈ نے صرف سڑک کے کنارے بمشکل 1/2 ایکڑ رقبہ بھی ملاحظہ نہیں کیا اور اس جگہ کے نتائج کو سارے رقبہ پر منتقل کر دیا گیا۔

فدوی آنجناب سے التماس کرتا ہے کہ آنجناب خود رقبہ ملاحظہ کر کے فدوی کے بیان کی تصدیق کر سکتے ہیں۔لہذا استدعا کی جاتی ہے کہ فدوی کیخلاف عائد کردہ الزامات اور ان کے نتیجہ میں قائم کردہ فرد جرم سے بری فرمایا جائے۔
مزید استدعا ہے کہ فدوی کو ذاتی طور پر پیش ہو کر مزید وضاحت کی اجازت مرحمت فرمائی جائے۔

العارض

محمد ریاض فارسٹ گارڈ انچارج پبل گلی بیٹ کنڈر رینج

تورغر فارسٹ ڈویژن جدباہ

attested

(Annexi D) (12)

ENQUIRY REPORT AGAINST MOHAMMAD SHARIF FORESTER INCHARGE KANDAR FOREST RANGE OF TORGHAR FOREST DIVISION JUDBAH

PREMEABLE/ READ WITH:

i. Chief Conservator of Forests Northern Forest Region-II Abbottabad office letter No. 615/B&A dated 31-7-2015 triggered by DFO Patrol Squad Lower Hazara Forest Circle Abbottabad office letter No. 45/PS dated 8-7-2015.

ii. Divisional Forest Officer Torghar Forest Division constituted inquiry committees vide office endorsement No. 147-51/GE dated 20-8-2015.

iii. Charge Sheet plus Memo of Allegation was served upon the accused vide DFO Torghar office endst: No. 147-51/GE & No. 152-56/GE dated 20-8-2015 respectively.

iv. DFO Torghar requested the enquiry committee vide his office letter No. 1172/GE dated 20-8-2015 to initiate disciplinary proceedings.

v. Enquiry Committee directed the accused vide his office letter No. 785-86/GE dated 26-8-2015 to submit his defence statement and accordingly was reminded vide his office letter No.1769-70/GE dated 20-10-2015 and No. 2014-15/GE dated 5-11-2015 to do the asked needful.

vi. DFO Torghar endorsed a Notification of SO General vide his office endst: No. 817/TG dated 4-11-2015 for expediting the long standing disciplinary cases.

vii. DFO Torghar was beefed up by enquiry committee vide office letter No. 2217/GE dated 10-11-2015 to direct accused to expedite submission of defence reply.

viii. Eventually the accused submitted his defence statement on 06.11.2015.

ix. The accused was directed by enquiry committee vide his office letter No. 2303-2304/GE dated 17-10-2015 to appear before the enquiry committee for recording personal hearing / cross examination on 25-11-2015.

x. The accused attended the office of enquiry committee on 25-11-2015.

xi. The Enquiry committee constituted checking committee vide office order No. 151 dated 11.12.2015.

xii. Checking committee submitted its finding vide letter No. 10/A dated 13.12.2015

BRIEF HISTORY OF THE CASE.

That Mr. Muhammad Sharif Forester (here in after called as accused) while posted as Incharge Kandar Forest Range committed the following irregularities.

i. Whereas plantation over an area of 148.50 acres was carried out by him during February & March 2014 under special development package (SDP) Torghar.

ii. Whereas as per plantation general the following species were planted in the area.

Rabinia	=	44810 Nos
Chir	=	1978 Nos
Total	=	64598 No.

Attested

iii. Whereas watch and ward of the area was continued by the accused by employing two Chowkidar.

iv. Whereas the plantation was found badly failed almost having less than 20% survival percentage.

v. Whereas the plantation was not carried out by the accused in proper season.

vi. Whereas the survived plants were found badly grazed.

vii. Whereas due to aforestated short comings, huge loss of **Rs. 1874847/-** was sustained to Government exchequer due to the negligence, poor performance of the accused and his lack of vigilant supervision over the Labour and field staff which resulted in the failure of plantation area.

viii. Whereas aforestated short comings were detected and communicated by DFO Patrol Squad Lower Hazara Forest Circle Abbottabad vide his office letter No. 45/PS dated 8-7-2015 to CCF-II Abbottabad.

ix. Consequently CCF-II Abbottabad vide his office letter No. 615/B&A dated 31-7-2015 directed DFO Torghar Forest Division Judbah to initiate disciplinary proceedings against the delinquent staff.

By reason of above the accused appears to be guilty of **Mis-conduct, In-efficiency** and **Corruption** under **rule-3 of the Khyber Pakhtunkhwa Government Servant (E&D) Rules 2011** and thus he has rendered himself liable to all or any of the penalties specified in **Rule -4 of the Rules ibid.** For the purpose of scrutinizing the conduct of the said accused within the meaning of above allegations and as **enshrined in Rule-10 (i) (a) of the Rules ibid,** DFO Torghar constituted enquiry committee vide office endorsement No. 147-51/GE dated 20.08.2015 comprising of **Muhammad Siddique Divisional Forest Officer Agror Tanawal Forest Division Oghi.**

PROCEEDING/ DISCUSSION.

- The accused submitted his defense reply. He was heard in person and was cross examined in presence of prosecutor. The checking committee constituted vide office order No. 151 dated 11-12-2015 also submitted its findings.
- The all available record on file was thrashed out / cruised.
- The perusal of available record facts on ground and findings of the checking committee reveal that.

"The plantation area under question is badly failed and having almost 20% survival".

As calculated by DFO Torghar, the investment made so far right from raising 64598 Nos of plants in Nursery to the stage of planting is **Rs. 1874847/-.**

Now 20% survived plants out of 64598 Nos comes out to be 12920 Nos.

The proportionate cost of these 20% survived plants (12920) comes out to be **Rs. 374981/-** which is justified expenditure in the instant case.

attested.

Now the net unjustified amount comes out to be (1874847 – 374981) = Rs.1499866/-.

As Mohammad Riaz Forest Guard is also a co-accused in the same case then the un-justified amount judiciously needs to be apportioned between them.

Therefore the shared amount comes out to be $\frac{1499866}{2}$ = Rs. 749933/- each.

As co-accused Mohammad Riaz Forest has furnished an affidavit on Judiciary Stamp Paper duly vetted by the Oath Commissioner Oghi, vowing and solemnly affirming that he will restock the failures from his own pocket. The accused also renders himself bound to this affidavit.

This statement carries weight in the eyes of law and needs to be weighed/valued.

FINDINGS/ CONCLUSION

The forgoing discussion leads to the finding that "the plantation area under reference is badly failed and the failures have not been beaten up by the accused despite the fact that accused had been repeatedly beefed up to do so.

The above finding leads to the conclusion that.

"Charges of Mis-conduct and In-efficiency stand proved beyond any doubt while charge of Corruption does not stand proved as no monitory benefits on part of accused are vivid from the record"

RECOMMENDATIONS.

The enquiry committee with sky high confidence recommends that.

1. The accused, as per affidavit furnished by co-accused Mohammad Riaz Forest Guard may be made bound to restock the failures from his own pocket within a month time reckoning from the date of issuance of Show Cause Notice.

   In case of failure, the shared amount worths Rs. 749933/- may be recovered from him and till logical conclusion of the restocking process, the pension case of the accused may not be processed.

2. He may be warned to be careful in future.

(Mohammad Siddique)
Divisional Forest Officer
Agror Tanawal Forest Division
Oghi (Enquiry Officer)

attested.
18

(Annex. E)

(15)

Farrukh Sair Divisional Forest Officer		Torghar Forest Division Judbah
No. 682 /E		Dated 23 /12/2015

Mr. Muhammad Riaz Forest Guard
C/O Range Forest Officer
Kandar Forest Range

Subject: SHOW CAUSE NOTICE.

Memorandum:

I Mr. Farrukh Sair Divisional Forest officer, Torghar Forest Division Judbah, as competent authority, under the provisions of Government of Khyber Pakhtunkhwa (E&D) Rules 2011, do hereby serve you a show cause notice as follows:-

3. That consequent upon the completion of inquiry conducted against you by the inquiry committee/officer for which you were given opportunity of hearing and:-
4. On going through the findings and recommendations of the inquiry office the material on record and other connected papers including your Defence before the inquiry committee/officer.

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

c. In-efficiency
d. Mis-Conduct

The inquiry officer/ committee has proved the above charges leveled against you through the charge sheet and recommended the following penalties:

3. Recovery to the amount of Rs. 749933/-
4. Warning to be careful in future.

The undersigned as competent authority, has tentatively decided to impose the above penalties upon you under section-4 of Government of Khyber Pakhtunkhwa (E&D) Rules 2011.
You are therefore, directed to show cause as to why the aforesaid penalties should not be imposed upon your. You are further directed to furnish your reply to the show cause notice within 15 days of its delivery and also attend the office of undersigned on 08/01/2016 for personal hearing.

If no reply to this notice is received within 15 days of its receipt, in the normal course of circumstances, it shall be presumed that you have no Defence to put in and in that case an ex-party action will be taken against you.

The copy of the findings of inquiry officer/ committee is enclosed.

Divisional Forest Officer
Torghar Forest Division
Judbah

attested.

(Annex F)

(16)

بخدمت جناب کنزرویٹر صاحب اپر ہزارہ فارسٹ سرکل مانسہرہ

بوساطت

جناب ڈی ایف او صاحب تورغر فارسٹ ڈویژن

عنوان:۔ اپیل برخلاف آفس آرڈر نمبر 20 مجریہ مورخہ 12-01-2016 از دفتر DFO تورغر فارسٹ ڈویژن

جناب عالی۔

اپیل کنندہ تورغر فارسٹ ڈویژن میں بحیثیت فارسٹ گارڈ ڈیوٹی سرانجام دے رہا تھا اور اس نے اپنی ڈیوٹی کے دوران ٹیگرام میں پلانٹیشن کرائی۔ جس پر شکایت ہوئی اور جناب DFO پٹرول سکواڈ نے انکوائری کر کے یہ الزام لگایا کہ پلانٹیشن 80 فیصد فیل ہوگئی ہے۔ اور یہ نقصان اہلکاروں سے وضع کیا جائے۔

جس پر انکوائری کرائی گئی۔ انکوائری افسر نے الزام کو درست تسلیم کرتے ہوئے اپیل کنندہ پر 7,49,933 روپے ریکوری کی سفارش کی جس پر جناب ڈی ایف او صاحب نے بحوالہ آفس آرڈر متذکرہ عنوان بالا اپیل کنندہ پر ریکوری کا حکم صادر فرما دیا۔

جناب عالی۔

کیس ہذا میں فاضل انکوائری افسر نے استغاثہ کو طلب نہیں کیا اس طرح اپیل کنندہ کو استغاثہ پر جرح کا موقعہ فراہم نہیں کیا گیا۔ جس سے قدرتی کا حق دفاع مجروح ہوا ہے۔ لہذا فاضل انکوائری افسر کی رپورٹ جانبدرانہ ہے اور اس رپورٹ کی سفارشات پر قائم کردہ سزا قانون سے منافی ہے۔

لہذا اپیل کی جاتی ہے کہ آفس آرڈر نمبر 20 مجریہ مورخہ 12/1/2016 از دفتر ڈی ایف او تورغر منسوخ فرما کر فدوی کی سزا کالعدم قرار دی جائے۔

وجوہات اپیل

۱۔ یہ کہ DFO پٹرول سکواڈ نے یہ الزام لگایا کہ پلانٹیشن مناسب وقت پر نہیں ہوئی جس کی وجہ سے پودے فیل ہوگئے۔

عالیجاہ۔ پلانٹیشن جیسا کہ رپورٹ کنندہ افسر نے خود تسلیم کیا ہے کہ فروری، مارچ میں کرائی گئی۔

جناب عالی۔

حکومت کی طرف سے موسم بہار کی شجرکاری کا اجراء فروری میں ہی ہوتا ہے اور اس علاقہ میں شجرکاری کا یہی مناسب موسم ہے۔

۲۔ یہ کہ اپیل کنندہ کو جب پودے ملے اور حکم افسران بالا ملا کہ پلانٹیشن کرنی ہے تو اس نے بغیر وقت ضائع کئے پودے پوری

Attested

احتیاط کے ساتھ لگائے۔

رپورٹ کنندہ افسر نے اور نہ ہی انکوائری افسر نے یہ الزام لگایا کہ پودے کم لگائے گئے اور لکھے زیادہ ہیں۔ یا یہ کہ پودے لگانے میں قصور کیا گیا اور پودے ناکام ہو گئے۔

جناب عالی۔

پودے لاتعداد میں پورے لگائے گئے اور تکنیکی مہارت کے ساتھ درست لگائے گے۔ لیکن موسمی حالات پر انسان کا کنٹرول نہیں۔

عالیجاہ شجر کاری کے بعد خشک سالی رہی اور رقبہ کا رخ بھی مغربی ہے جو نہایت گرم سمت ہوتی ہے۔

پودے خشک سالی کی بناء پر فیل ہو گئے۔ اس میں اپیل کنندہ کا کوئی قصور نہیں یہ قدرتی عمل تھا جس میں اپیل کنندہ رکاوٹ نہیں ڈال سکتا تھا اپیل کنندہ کا قدرت کے معاملات میں کوئی عمل دخل نہیں۔ لہذا اپیل کنندہ بے گناہ ہے۔

اس لئے آنجناب سے اپیل کی جاتی ہے کہ خشک سالی سے فیل ہو جانے والی شجر کاری کا خرچ اپیل کنندہ یا اس کے کسی انچارج افسر سے ریکور کرنا انصاف کے منافی ہے۔

لہذا اپیل کی جاتی ہے کہ حکمنامہ نمبر 20 مجریہ مورخہ 12/01/2016 منسوخ فرما کر اپیل کنندہ کی سزا معاف فرمائی جائے۔

اپیل کنندہ آپ کے اقبال کے لئے دعا گو رہے گا۔

مزید استدعا کی جاتی ہے کہ اپیل کنندہ کو ذاتی طور پر پیش ہو کر مزید وضاحت کی اجازت مرحمت فرمائی جاوے۔

اپیل کنندہ

محمد ریاض فارسٹ گارڈ کمنڈر رینج

تورغر فارسٹ ڈویژن حیر باد

attested
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(18)

OFFICE ORDER NO. 28 DATED MANSERHA THE 11 /05/2016 ISSUED BY
MIR WALI KHAN CONSERVATOR OF FORESTS UPPER HAZARA FOREST CIRCLE MANSEHRA

READ WITH:

i. Chief Conservator of Forests Northern Forest Region-II Abbottabad office letter No. 615/B&A dated 31-7-2015 triggered by DFO Patrol Squad Lower Hazara Forest Circle Abbottabad office letter No. 45/PS dated 8-7-2015.
ii. Divisional Forest Officer Torghar Forest Division constituted inquiry committees vide office endorsement No. 147-51/GE dated 20-8-2015.
iii. Charge Sheet plus Memo of Allegation was served upon the accused vide DFO Torghar office endstt: No. 157-61/GE & No. 162-66/GE dated 20-8-2015 respectively.
iv. DFO Torghar requested the enquiry committee vide his office letter No. 172/GE dated 20-8-2015 to initiate disciplinary proceedings.
v. Enquiry Committee directed the accused vide his office letter No. 785-86/GE dated 26-8-2015 to submit his defence statement and accordingly was reminded vide his office letter No.1769-70/GE dated 20-10-2015 and No. 2114-15/GE dated 5-11-2015 to do the asked needful.
vi. DFO Torghar endorsed a Notification of SO General vide his office endstt: No. 517/TG dated 4-11-2015 for expediting the long standing disciplinary cases.
vii. DFO Torghar was beefed up by enquiry committee vide office letter No. 2217/GE dated 10-11-2015 to direct accused to expedite submission of defence reply.
viii. Eventually the accused submitted his defence statement on 06-11-2015.
ix. The accused was directed by enquiry committee vide his office letter No. 2303-2304/GE dated 17-10-2015 to appear before the enquiry committee for recording personal hearing / cross examination on 25-11-2015.
x. The accused attended the office of enquiry committee on 25-11-2015.
xi. The Enquiry committee constituted checking committee vide office order No. 151 dated 11.12.2015.
xii. Checking committee submitted its finding vide letter No. 10/A dated 13.12.2015
xiii. Statement of Personal hearing dated 21-12-2015
xiv. Enquiry Report of Enquiry Committee submitted vide letter No. 2801/GE dated 15-12-2015
xv. Show Cause Notice No. 682/E dated 23-12-2015 served upon Mohammad Riaz Forest Guard
xvi. DFO Torghar office order No. 20 dated 12-1-2016
xvii. Appeal of the accused official.
xviii. Commends submitted vide DFO Torghar letter No. 1126/GE dated 11-3-2016.

BRIEF HISTORY OF THE CASE.

On receipt of a complaint the Chief conservator of Forests, Northern Forest Region-II Abbottabad vide his letter No. 8990/B&A dated 30-6-2015 directed DFO Patrol Squad Lower Hazara Circle Abbottabad to check plantation area of village Tegram Hassan Zai and report the factual position.

In compliance, the DFO Patrol Squad Lower Hazara Abbottabad alongwith Gul Zaman Deputy Ranger and his staff in presence of DFO Torghar, Range Officer Kandar and Beat Guard inspected above mentioned the plantation area on 7-7-2015 and reported the ground position to Chief Conservator of Forests Northern Forest Region-II Abbottabad vide letter No. 45/PS dated 8-7-2015 alongwith following deficiencies detected during checking of plantation area and recommended that plantation area is failed and the watch and ward kept for the protection of plantation is ineffective and need enquiry.

PROCEEDINGS:

To probe in to the allegation , the DFO Torghar Forest Division served charge sheet No. 157-61/GE dated 20-8-2015 & memo of allegation bearing No. 162-66/GE dated 20-8-2015 upon Mohammad Riaz Forest Guard and appointed Mohammad Siddique Divisional Forest Officer Agror Tanawal Forest Division Oghi as Enquiry Committee.

31/5/2016 نائب وصول پائی گئی رینج آفیسر سے حلفیہ
گارڈ ریاض محمد کو اپیل نامہ دائر کرنے کا جواب بمعہ ثبوت دینا ہے

attested.
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DISCUSSION.

The accused official furnished reply to the Charge Sheet to the enquiry committee. The Enquiry Committee conducted proper disciplinary proceeding against the accused official and submitted his enquiry report vide No. 2802/GE dated 15-12-2015 and imposed recovery of shared amount worth Rs. 749933/- on Mr. Mohammad Riaz Forest Guard. and the DFO Torghar Forest Division agreed with the findings of enquiry committee issued office order No. 20 dated 12-1-2016 for imposition of recovery of Rs. 749933/- on Mr. Mohammad Riaz Forest Guard.

Against the said order the accused preferred an appeal before the Conservator of Forests Upper Hazara Forest Circle Mansehra, which was sent to Divisional Forest Officer Torghar Forest Division Judbah for comments who submitted his comments with relevant file vide No. 1126/GE dated 11-3-2016..

The finding of the checking committee, constituted by the enquiry officer vide his office order No. 151 dated 11-12-2015 are not relevant to the enquiry procedure as observed below.

i. The checking committee was required to clearly mention the percentage of failure or percentage of success which it could not do. .

ii. The checking committee has been constituted on 11-12-2015 who has submitted its report on 13-12-2015. How it is possible to travel to the site in one day and check the whole area the same day?. This is not possible at all. It proves that the whole findings of the checking committee are biased and does not to fulfill the requirement of justice. The accused has the right to cross examine the prosecution, but in this case contrarily the accused is cross examined by the enquiry officer during personal hearing which is against the spirit of the justice/ enquiry. It is concluded that the enquiry officer is not aware of the enquiry procedure otherwise he should have given chance to the accused to cross examine the prosecution, why the accused is not given chance by the enquiry officer to cross examine the prosecution, this is great flaw in this enquiry and justice has not been provided to the accused. As per PC-I provision, total of 148.5 acre Afforestation has been carried out. The expenditure incurred are as under.

iii.	Labour charges.	Rs. 696000/-
iv.	Purchase of Plants	Rs.553265/-
v.	Beating of failure	Rs.228800/-
vi.	Watch & Ward	Rs.205500/-
	Total:	**Rs.1692765/-**

As such per acre expenditure comes to be Rs. 11400/-. In the PC-I, the schedule of beating of failure is as under:-

1.	First Year beating of failure	= 30% of the whole plantation.
2.	2nd year beating of failure	= 20% of the whole plantation.
3.	3rd year beating of failure	= 10% of the whole plantation
	Total beating of failure allowed.	**= 60% of the whole area plantation**

attested.

It is presumed that after carrying 60% beating of failure of the whole plantation, the plantation will be consider as 100% success. But in this case only 30% beating of failure has been carried out yet and 30% beating of failure is still to be done. Therefore, it is concluded that in this the success percentage will be considered as 100 – 30 = 70%. As such the total success full plantation will be considered as follow. As such the success percentage will be assumed as 70% and not 100%. Out of 70% assume success only 20% success is admitted by the DFO Patrol Squad. As such the total failure percentage comes to be 70 – 20 = 50%. The total failed area = 148.5 ÷ 100 x 50 = 74.25 acres say 74 acres.

In the light of the above facts and figure, the accused Forest Ranger Mr. Muhammad Sharif and the accused Forest Guard are responsible for recovery of Rs. 74 acres x 11400 = 843600/-. As such a total loss sustained to the Government exchequer comes to be Rs. 843600/-. As the M. Roll is maintained by the accused Forest Guard, therefore the major responsibility has on the accused Forest Guard not the Range Officer.

ORDER.

Keeping in view the finding of the enquiry committee, the appeal of the accused, the Show Cause Notice issued to the accused, the personal hearing of the accused and the office order No. 20 dated 12-1-2016, issued by the competent authority. The undersigned in the capacity of appellate authority in the case, under the powers conferred on him vide E&D Rules 2011 section- 17 (1), (2) (c) hereby modified the office order No. 20 dated 12-1-2016, issued by the competent authority as under.

The recovery of Rs. 749933/- is hereby reduced to Rs. 674800/-

Imposed recovery of 80% of the total loss of Rs. 843600/- sustained to the Government which comes to be Rs. 674800/- upon the accused official i.e Mohammad Riaz Forest Guard. The amount may be recovered from the pay of Forest Guard in Eighty Four (84) equal installment

As such the case is disposed off.

Sd/- (Mir Wali Khan)
Conservator of Forests
Upper Hazara Forest Circle
Mansehra

Copy forwarded to:-

1. The Divisional Forest Officer Torghar Forest Division Judbah for information and necessary action. The enquiry file file of Mr. Muhammad Riaz Forest Guard received vide your above cited letter is returned herewith.
2. Mr. Mohammad Riaz Forest Guard c/o Divisional Forest Officer Torghar Forest Division Judbah for information and necessary action.
3. Circle Accountant for information.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

attested.

(21)

OFFICE ORDER NO. 27 DATED MANSERHA THE 11 /05/2016 ISSUED BY MIR WALI KHAN CONSERVATOR OF FORESTS UPPER HAZARA FOREST CIRCLE MANSEHRA

READ WITH:

i. Chief Conservator of Forests Northern Forest Region-II Abbottabad office letter No. 615/B&A dated 31-7-2015 triggered by DFO Patrol Squad Lower Hazara Forest Circle Abbottabad office letter No. 45/PS dated 8-7-2015.
ii. Divisional Forest Officer Torghar Forest Division constituted inquiry committees vide office endorsement No. 147-51/GE dated 20-8-2015.
iii. Charge Sheet plus Memo of Allegation was served upon the accused vide DFO Torghar office endstt: No. 147-51/GE & No. 152-56/GE dated 20-8-2015 respectively.
iv. DFO Torghar requested the enquiry committee vide his office letter No. 172/GE dated 20-8-2015 to initiate disciplinary proceedings.
v. Enquiry Committee directed the accused vide his office letter No. 785-86/GE dated 26-8-2015 to submit his defence statement and accordingly was reminded vide his office letter No.1769-70/GE dated 20-10-2015 and No. 2114-15/GE dated 5-11-2015 to do the asked needful.
vi. DFO Torghar endorsed a Notification of SO General vide his office endstt: No. 517/TG dated 4-11-2015 for expediting the long standing disciplinary cases.
vii. DFO Torghar was beefed up by enquiry committee vide office letter No. 2217/GE dated 10-11-2015 to direct accused to expedite submission of defence reply.
viii. Eventually the accused submitted his defence statement on 06-11-2015.
ix. The accused was directed by enquiry committee vide his office letter No. 2303-2304/GE dated 17-10-2015 to appear before the enquiry committee for recording personal hearing / cross examination on 25-11-2015.
x. The accused attended the office of enquiry committee on 25-11-2015.
xi. The Enquiry committee constituted checking committee vide office order No. 151 dated 11.12.2015.
xii. Checking committee submitted its finding vide letter No. 10/A dated 13.12.2015
xiii. Statement of Personal hearing dated 21-12-2015
xiv. Enquiry Report of Enquiry Committee submitted vide letter No. 2801/GE dated 15-12-2015
xv. Show Cause Notice No. 681/E dated 23-12-2015 served upon Mohammad Sharif Forester
xvi. Reply to the Show Cause Notice furnished by Mohammad Sharif Forester dated 8-1-2015.
xvii. DFO Torghar office order No. 19 dated 12-1-2016
xviii. Appeal of the accused official.
xix. Commends submitted vide DFO Torghar letter No. 1125/GE dated 11-3-2016.

BRIEF HISTORY OF THE CASE.

On receipt of a complaint the Chief conservator of Forests, Northern Forest Region-II Abbottabad vide his letter No. 8990/B&A dated 30-6-2015 directed DFO Patrol Squad Lower Hazara Circle Abbottabad to check plantation area of village Tegram Hassan Zai and report the factual position.

In compliance, the DFO Patrol Squad Lower Hazara Abbottabad alongwith Gul Zaman Deputy Ranger and his staff in presence of DFO Torghar, Range Officer Kandar and Beat Guard inspected above mentioned the plantation area on 7-7-2015 and reported the ground position to Chief Conservator of Forests Northern Forest Region-II Abbottabad vide letter No. 45/PS dated 8-7-2015 alongwith following deficiencies detected during checking of plantation area and recommended that plantation area is failed and the watch and ward kept for the protection of plantation is ineffective and need enquiry.

PROCEEDINGS:

To probe in to the allegation , the DFO Torghar Forest Division served charge sheet No. 147-51/GE dated 20-8-2015 & memo of allegation bearing No. 152-56/GE dated 20-8-2015 upon Mohammad Sharif Forester the then Incharge Kandar Forest Range of and appointed Mohammad Siddique Divisional Forest Officer Agror Tanawal Forest Division Oghi as Enquiry Committee.

Attested.

DISCUSSION.

The accused official furnished reply to the Charge Sheet to the enquiry committee. The Enquiry Committee conducted proper disciplinary proceeding against the accused official and submitted his enquiry report vide No. 2801/GE dated 15-12-2015 and imposed recovery of shared amount worth Rs. 749933/- on Mr. Muhammad Sharif Forester the then Incharge of Kandar Forest Range. The DFO Torghar Forest Division agreed with the findings of enquiry committee and issued office order No. 19 dated 12-1-2016 for imposition of recovery of Rs. 749933/- on Mr. Muhammad Sharif Forester the then Incharge of Kandar Forest Range

Against the said order the accused preferred an appeal before the Conservator of Forests Upper Hazara Forest Circle Mansehra, which was sent to Divisional Forest Officer Torghar Forest Division Judbah for comments who submitted his comments with relevant file vide letter No. 1225/GE dated 11-3-2016.

The finding of the checking committee constituted by the enquiry officer vide his office order No. 151 dated 11-12-2015, are not relevant to the enquiry procedure as observed below.

i. The checking committee was required to clearly, mention the percentage of failure or percentage of success which it could not do.

ii. The checking committee has been constituted on 11-12-2015 who has submitted its report on 13-12-2015. How it is possible to travel to the site in one day and check the whole area the same day?. This is not possible at all. It proves that the whole findings of the checking committee are biased and does not to fulfill the requirement of justice. The accused has the right to cross examine the prosecution, but in this case contrarily the accused is cross examined by the enquiry officer during personal hearing which is against the spirit of the justice/ enquiry. It is concluded that the enquiry officer is not aware of the enquiry procedure otherwise he should have given chance to the accused to cross examine the prosecution, why the accused is not given chance by the enquiry officer to cross examine the prosecution, this is great flaw in this enquiry and justice has not been provided to the accused. As per PC-I provision, total of 148.5 acre Afforestation has been carried out. The expenditure incurred are as under.

i.	Labour charges.	Rs. 696000/-
ii.	Purchase of Plants	Rs.553265/-
iii.	Beating of failure	Rs.228800/-
iv.	Watch & Ward	Rs.205500/-
	Total:	**Rs.1692765/-**

attested 18/

As such per acre expenditure comes to be Rs. 11400/-. In the PC-I, the schedule of beating of failure is as under:-

1.	First Year beating of failure	= 30% of the whole plantation.
2.	2nd year beating of failure	= 20% of the whole plantation.
3.	3rd year beating of failure	= 10% of the whole plantation
	Total beating of failure allowed.	**= 60% of the whole area plantation**

It is presumed that after carrying 60% beating of failure of the whole plantation, the plantation will be consider as 100% success. But in this case only 30% beating of failure has been carried out yet. and 30% beating of failure is still to be done. Therefore, it is concluded that in this the success percentage will be considered as 100 – 30 = 70%. As such the total success full plantation will be considered as follow. As such the success percentage will be assumed as 70% and not 100%. Out of 70% assume success only 20% success is admitted by the DFO Patrol Squad. As such the total failure percentage comes to be 70 – 20 = 50%. . The total failed area = 148.5 + 100 x 50 = 74.25 acres say 74 acres.

In the light of the above facts and figure, the accused Forester (the then Incharge Range) Mr. Muhammad Sharif and the accused Forest Guard Mr. Mohammad Riaz are responsible for recovery of Rs. 74 acres x 11400 = 843600/-. As such a total loss sustained to the Government exchequer comes to be Rs. 843600/- . As the M. Roll is maintained by the accused Forest Guard, therefore the major responsibility lies on the accused Forest Guard and not the Forester (the then Incharge Range).

ORDER.

Keeping in view the finding of the enquiry committee, the appeal of the accused, the Show Cause Notice issued to the accused, the personal hearing of the accused and the office order No. 19 dated 12-1-2016, issued by the competent authority. The undersigned in the capacity of appellate authority in the case, under the powers conferred on him vide E&D Rules 2011 section- 17 (1), (2) (c) hereby modified the office order No. 19 dated 12-1-2016, issued by the competent authority as under.

The recovery of Rs. 749933/- is hereby reduced to Rs. 168720/-

Imposed recovery of 20% of the total loss of Rs. 843600/- sustained to the Government which comes to be Rs. 168720/- upon the accused official i.e Mohammad Sharif Forester the then Incharge Kandar Forest Range . This amount may be recovered from the pension of the accused official.

As such the case is disposed off.

Sd/- (Mir Wali Khan)
Conservator of Forests
Upper Hazara Forest Circle
Mansehra

Copy forwarded to:-

1. The Divisional Forest Officer Torghar Forest Division Judbah for information and necessary action. The enquiry file file of Mr. Muhammad Sharif Ex- Forester received vide your above cited letter is returned herewith.
2. Mr. Mohammad Sharif Ex- Forester for information and necessary action.
3. Circle Accountant for information.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

attested.
18/1

BEFORE THE WORTHY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.612/2016

Muhammad Riaz, Forest Guard, Kandar Forest Range, Torghar Forest Division
Judbah.....Appellant

VERSUS

1- **Province of Khyber Pakhtunkhwa through Secretary Environment Department Khyber Pakhtunkhwa Peshawar.**
2- **The Chief Conservator of Forests Central Southern Forest Region-I, Khyber Pakhtunkhwa, Peshawar.**
3- **The Conservator of Forests, Upper Hazara Forest Circle, Mansehra.**
4- **Divisional Forest Officer, Torghar Forest Division Judbah.....Respondents.**

Reply/Parawise comments on behalf of Respondents No.1 to 4.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS

1- **That the appellant has no cause of action.**
2- **That the appeal is not in accordance with Law/Rules.**
3- **That the appeal has got not locus standi.**
4- **That the appeal is bad for misjoinder of un-necessary parties and non joinder of necessary party.**
5- **That the appellant has not come to this Tribunal with clean hands.**

PARA-WISE COMMENTS ON THE FACTS OF THE CASE

1- It is correct that the appellant is holding the post of Forest Guard in Kandar Forest Range of Torghar Forest Division and he was served with a charge sheet alongwith statement of allegations by respondent No.4 .

2- Correct to the extent that all legal formalities of Government Servants (E & D) Rules, 2011 were fulfilled and submission of the appellant went unheeded purely on the basis of merit. (checking report, charge sheet, show cause notice and enquiry report are annexed as Annexure-A,B,C & D).

3- Correct to the extent that Mr.Muhammad Siddique, Divisional Forest Officer Agror Tanawal Forest Division, Oghi was appointed as enquiry officer to probe into the matter and who conducted enquiry proceedings impartially according to the spirit of E & D Rules, 2011. He had no biased intentions against the appellant. It is correct that the charges of in-efficiency and mis-conduct were proved against the appellant.

4- It is correct that a show cause notice was served upon the appellant and therefore recovery of Rs.7,49,933/- (Rupees Seven lacs fourty nine thousand and nine hundred thirty three) was imposed upon him vide office order No.20 dated 12.01.2016 (issued by respondent No.4) but it is incorrect that order dated 12.01.2016 was not communicated to the appellant. The order was communicated to the appellant which was duly received and acknowledged by him on 16.01.2016 (copies of order and acknowledgement receipt are annexed as Annexure – E & F).

5- It is correct that the appellant approached respondent No.3 through his departmental appeal on which final order No. 28 dated 11-5-2016 was passed by the appellate authority and recovery of Rs. 674800/- was imposed upon the appellant, recoverable from the pay of the appellant in 84 equal installments.

PARA-WISE COMMENTS ON THE GROUNDS OF APPEAL

a- Incorrect. Allegations in the charge sheet are based on solid grounds/proofs and not presumptive. In fact the DFO Patrol Squad along with Mr.Gul Zaman, Deputy Ranger and his staff of Upper Hazara Patrol Squad inspected the whole of the plantation area i.e. 148.50 acres in presence of the appellant and submitted detailed report thereof wherein it was clearly stated that the plantation is badly failed almost having less than 20% survival percentage.

b- Incorrect. The damage of plantation area is more than 80% as explained in para (a) above. The appellant as in charge of the plantation area is fully responsible for the failure of plantation, which tentamounts towards in-efficiency and mis-conduct on his part.

c- Incorrect. The Enquiry Officer conducted the enquiry under the guidelines of Khyber Pakhtunkhwa Government Servants E & D Rules, 2011, duly amended, in an impartial manner and although it was not incumbent upon the enquiry officer to personally inspect the plantation area because an honest, trustworthy and responsible officer of worthy credence had carried out the checking in presence of the the appellant. However, to meet the ends of justice and to maintain impartiality, he constituted another enquiry committee/commission to confirm the authenticity of the allegations as served on the appellant vide his office order No.151 dated 11/12/2015. In consequence, the enquiry committee/commission submitted its report vide letter No.10/A dated 13/12/2015 depicting the factual scenario of the area. Hence in the light of fore going facts, the plea of the appellant is basless and strongly rebutted. (copies of reports are annexed as Annexure- G & H).

d- Correct to the extent that enquiry officer in his report recommended that the amount of recovery which comes out to be Rs.14,99,866/- needs to be apportioned between Muhammad Sharif Forester and Muhammad Riaz Forest Guard at the rate of Rs.7,49,933/- each but it is incorrect that action of appellate authority on the departmental appeal of appellant is based on discrimination. As stated at last para of discussion at page-3 of office order No.28 dated 11/5/2016, it has been clearly mentioned that as muster roll is maintained by the accused/appellant Forest Guard, therefore, major responsibility rests on the shoulders of the appellant and not on Range Officer (copy of office order annexed as Annexure-I).

e- Incorrect. The appellant was provided sufficient opportunity of self-defense by the enquiry officer and freely allowed to cross-examine the prosecution as reflected in the statement of personal hearing (copy annexed as Annexure-J). For the assistance of the Honorable Tribunal, it

is further submitted that the appellant himself has declaratory admitted on judicial stamp paper worth of Rs.30 duly attested by the Oath Commissioner, that the failed area will be replanted at his personal expenses within one month after the instant oath.(copy of oath given on stamp paper is annexed as Annexure-K).

f- The respondents also seek permission to raise additional grounds at the time of arguments.

In view of the above submission, the appeal is not competent, also based on flimsy grounds/whims and conjectures/surmises and without legal footing may kindly be dismissed with cost, please.

Divisional Forest Officer
Torghar Forest Division
Judbah
(Respondent No.4)

Conservator of Forests
Upper Hazara Forest Circle
Mansehra
(Respondent No.3)

Chief Conservator of Forests
Central Southern Forest Region-I
Peshawar
(Respondent No.2)

Secretary
Govt. of Khyber Pakhtunkhwa
Forestry, Environment & Wildlife Deptt:
Peshawar
(Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

Appeal No.612/2016.

Mr.Muhammad Riaz Forest Guard,
Kandar Forest Range, Torghar Forest Division,
Judbah..... .....Appellant

VERSUS

1- **Province of Khyber Pakhtunkhwa through Secretary Environment Department Khyber Pakhtunkhwa Peshawar.**

2- **The Chief Conservator of Forest Central Southern Forest Region-I, Khyber Pakhtunkhwa, Peshawar.**

3- **The Conservator of Forests, Upper Hazara Forest Circle, Mansehra.**

4- **Divisional Forest Officer, Torghar Forest Division**
Judbah.....Respondents.

COUNTER AFFIDAVIT

I the undersigned hereby solemnly affirm that the contents of para-wise comments are correct to the best of my knowledge and nothing has been concealed from the Honorable Tribunal/Court.

Divisional Forest Officer
Torghar Forest Division
Judbah

D/R No. 3046/AAG dt. 16/8/2016

BEFORE THE WORTHY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.612/2016

Muhammad Riaz, Forest Guard, Kandar Forest Range, Torghar Forest Division
Judbah.....Appellant

VERSUS

1- **Province of Khyber Pakhtunkhwa through Secretary Environment Department Khyber Pakhtunkhwa Peshawar.**
2- **The Chief Conservator of Forests Central Southern Forest Region-I, Khyber Pakhtunkhwa, Peshawar.**
3- **The Conservator of Forests, Upper Hazara Forest Circle, Mansehra.**
4- **Divisional Forest Officer, Torghar Forest Division Judbah.....Respondents.**

Reply/Parawise comments on behalf of Respondents No.1 to 4.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS

1- **That the appellant has no cause of action.**
2- **That the appeal is not in accordance with Law/Rules.**
3- **That the appeal has got not locus standi.**
4- **That the appeal is bad for misjoinder of un-necessary parties and non joinder of necessary party.**
5- **That the appellant has not come to this Tribunal with clean hands.**

PARA-WISE COMMENTS ON THE FACTS OF THE CASE

1- It is correct that the appellant is holding the post of Forest Guard in Kandar Forest Range of Torghar Forest Division and he was served with a charge sheet alongwith statement of allegations by respondent No.4 .

2- Correct to the extent that all legal formalities of Government Servants (E & D) Rules, 2011 were fulfilled and submission of the appellant went unheeded purely on the basis of merit. (checking report, charge sheet, show cause notice and enquiry report are annexed as Annexure-A,B,C & D).

3- Correct to the extent that Mr.Muhammad Siddique, Divisional Forest Officer Agror Tanawal Forest Division, Oghi was appointed as enquiry officer to probe into the matter and who conducted enquiry proceedings impartially according to the spirit of E & D Rules, 2011. He had no biased intentions against the appellant. It is correct that the charges of in-efficiency and mis-conduct were proved against the appellant ~~and the charge of corruption was not proved~~.

4- It is correct that a show cause notice was served upon the appellant and therefore recovery of Rs.7,49,933/- (Rupees Seven lacs fourty nine thousand and nine hundred thirty three) was imposed upon him vide office order No.20 dated 12.01.2016 (issued by respondent No.4) but it is incorrect that order dated 12.01.2016 was not communicated to the appellant. The order was communicated to the appellant which was duly received and acknowledged by him on 16.01.2016 (copies of order and acknowledgement receipt are annexed as Annexure – E & F).

5- It is correct that the appellant approached respondent No.3 through his departmental appeal on which final order No. 28 dated 11-5-2016 was passed by the appellate authority and recovery of Rs. 674800/- was imposed upon the appellant, recoverable from the pay of the appellant in 84 equal installments.

PARA-WISE COMMENTS ON THE GROUNDS OF APPEAL

a- Incorrect. Allegations in the charge sheet are based on solid grounds/proofs and not presumptive. In fact the DFO Patrol Squad along with Mr.Gul Zaman, Deputy Ranger and his staff of Upper Hazara Patrol Squad inspected the whole of the plantation area i.e. 148.50 acres in presence of the appellant and submitted detailed report thereof wherein it

was clearly stated that the plantation is badly failed almost having less than 20% survival percentage.

b- Incorrect. The damage of plantation area is more than 80% as explained in para (a) above. The appellant as in charge of the plantation area is fully responsible for the failure of plantation, which tentamounts towards in-efficiency and misconduct on his part.

c- Incorrect. The Enquiry Officer conducted the enquiry under the guidelines of Khyber Pakhtunkhwa Government Servants E & D Rules, 2011, duly amended, in an impartial manner and although it was not incumbent upon the enquiry officer to personally inspect the plantation area because an honest, trustworthy and responsible officer of worthy credence had carried out the checking in presence of the the appellant. However, to meet the ends of justice and to maintain impartiality, he constituted another enquiry committee/commission to confirm the authenticity of the allegations as served on the appellant vide his office order No.151 dated 11/12/2015. In consequence, the enquiry committee/commission submitted its report vide letter No.10/A dated 13/12/2015 depicting the factual scenario of the area. Hence in the light of fore going facts, the plea of the appellant is basless and strongly rebutted. (copies of reports are annexed as Annexure- G & H).

d- Correct to the extent that enquiry officer in his report recommended that the amount of recovery which comes out to be Rs.14,99,866/- needs to be apportioned between Muhammad Sharif Forester and Muhammad Riaz Forest Guard at the rate of Rs.7,49,933/- each but it is incorrect that action of appellate authority on the departmental appeal of appellant is based on discrimination. As stated at last para of discussion at page-3 of office order No.28 dated 11/5/2016, it has been clearly mentioned that as muster roll is maintained by the accused/appellant Forest Guard, therefore, major responsibility rests on the shoulders of the appellant and not on Range Officer (copy of office order annexed as Annexure-I).

e- Incorrect. The appellant was provided sufficient opportunity of self-defense by the enquiry officer and freely allowed to cross-examine the

prosecution as reflected in the statement of personal hearing (copy annexed as Annexure-J). For the assistance of the Honorable Tribunal, it is further submitted that the appellant himself has declaratory admitted on judicial stamp paper worth of Rs.30 duly attested by the Oath Commissioner, that the failed area will be replanted at his personal expenses within one month after the instant oath.(copy of oath given on stamp paper is annexed as Annexure-K).

f- The respondents also seek permission to raise additional grounds at the time of arguments.

In view of the above submission, the appeal is not competent, also based on flimsy grounds/whims and conjectures/surmises and without legal footing may kindly be dismissed with cost, please.

Divisional Forest Officer
Torghar Forest Division
Judbah
(Respondent No.4)

Conservator of Forests
Upper Hazara Forest Circle
Mansehra
(Respondent No.3)

Chief Conservator of Forests
Central Southern Forest Region-I
Peshawar
(Respondent No.2)

Secretary
Govt. of Khyber Pakhtunkhwa
Forestry, Environment & Wildlife Deptt:
Peshawar
(Respondent No.1)

Annexed Affidavit and AAG Approved subject to correction
16.8.16

AAG

Approved

Addl: Advocate General
(Service Tribunal) K.P.K
Peshawar.

Divis
Torg

(Annexure-A) 3

0992-9310425		DIVISIONAL FOREST OFFICER PATROL SQUAD LOWER HAZARA CIRCLE ABBOTTABAD
No. 45 /PS	Dated Abbottabad the	08 / 7 /2015

The Chef Conservator of Forests
Northern Forest Region-II
Abbottabad

Subject: **APPLICATION / COMPLAINT**

Reference your office No.9890/B&A, dated 30-6-2015.

The undersigned inspected the plantation area of village Tegrum Hasan Zai on 07-7-2015 along with Mr. Gulzaman Deputy Ranger and his staff of Patrol Squad Upper Hazara Forest Circle Mansehra. The inspection was occupied by the DFO Torghar Mr. Farakh Sair and the concerned RFO and Beat Guard.

The following observation were noticed:

RECORD.

- The plantation is carried out in the year 2014 during the month of February and March over an area of 148.50 acres as per plantation jurnal.
- The species planted are.

  a. Robinia of Nos = 44810 plants.
  b. Chir of Nos = 19788 plants
  Total : = 64598 plants

  As per plantation Jural ***(copy enclosed)***

- The watch & ward of the plantation is continued and two Chowkidars have been employed for the purpose.
- The plantation is carried out on the instruction of Mr. Namroz Khan Ex-MPA of the area and Provincial Minister.
- Mr. Riaz Forest Guard is incharge of the plantation

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Field Notes

- The plantation is badly failed almost having less then 20 % survival percentage

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

(Annexure-A) 5

- The survival plants are badly grazed.
- The plantation area is accessibly by a very poor road which is the main reason of the destruction of soil balls of the chir plants lead to their failure.
- The plantation is not carried out in proper season.
- The labour for plantation is brought from chater plain which is the requirement of the area as the people of Torghar do not prefer labours work and all other departments import labour in Torghar.
- The photo graphs of plants attached with the complaint are not relevant to the area under complained upon.
- The photograph show improper handling of plants during transportation to the planting site of Seri Kohani another site.

FINDING AND RECOMMENDATIONS

The plantation area is failed and the watch and ward kept for the protection of plantation is in effective need enquiry.

Encl: As above.

Divisional Forest Officer
Patrol Squad Lower Hazara Circle
Abbottabad

No. /PS,

Copy forwarded to the Conservator of Forests, Upper Hazara Forest Circle Mansehra for favour of information, please.

Divisional Forest Officer
Patrol Squad Lower Hazara Circle
Abbottabad

Immediate appropriate action be initiated. Also it is not clear under what programme this afforestation has been carried out.

13-7

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-B

CHARGE SHEET

1. I Farrukh Sair Divisional Forest Officer Torghar Forest Division Judbah, as competent authority, hereby charge you Muhammad Riaz Forest Guard Kandar Forest Range of Torghar Forest Division as follows:-

That you while posted as Forest Guard on pabbal Gali Beat of Kandar Forest Range has committed the following irregularities:

a. Whereas in compliance to the directives of Chief Conservator of Forests Northern Forest Regain-II Abbottabad the Divisional Forest officer patrol Squad Forest Division Abbottabad conducted checking of Tegram plantation area on 07.07.2015 and submitted report vide letter No.45/PS dated 08.07.2015.

b. Whereas as plantation over an area of 148.50 acre was carried out by you during February and March 2014 under Special Development Package (SDP) Torghar.

c. Whereas as per plantation journal the following Species were planted in the area:-

   i- Robinia- 44810 Nos of plants.

   ii- Chir 19788 Nos of plants.

   Total- 64598 Nos of plants

d. Whereas watch and ward of the plantation was continued by employing two Chowkidars.

e. Whereas the plantation was found badly failed almost having less than 20% survival percentage.

f. Whereas the survived plants were badly grazed.

g. Whereas the plantation was not carried out in proper season.

h. Whereas huge loss of Rs: 1874847/- was sustained to the government exchequer due to your negligence poor performance/supervision over the labour which resulted to the failure of plantation area.

i. Whereas you deliberately over looked the plantation work causing huge loss to the government and it was sufficient evidence of your negligence in the performance of government duty and misappropriation of government money. As such you are liable to be proceeded against under the provisions of E&D Rules 2011 on account of inefficiency, misconduct and corruption.

2. By reason of the above you appear to be guilty of inefficiency, misconduct and corruption under Rule -3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 and therefore you have rendered yourself liable to all or any of the penalties Specified in rule-4 of the rules ibid.

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-D

3. You are therefore, directed to submit your written defense within Seven (07) days of the receipt of this charge sheet direct to the inquiry officer/committee, failing which it shall be presumed that you have nothing to defend you and exparte action will be taken against you.
4. Intimate whether you desire to be heard in person.
5. A statement of allegations is enclosed.

Sd- (Farrukh Sair)
Divisional Forest Officer
Torghar Forest Division
Judbah

No. 157-61 /GE Dated Judbah the 20 /08/2015.

Copy of the above is forwarded to;-

1- The Chief Conservator of Forests, Northern Forest Region-II Khyber Pakhtunkhwa, Abbottabad for favour of information with reference to his office letter No.615/B&A dated 31/7/2015, please.
2- The Conservator of Forests, Upper Hazara Forest Circle, Mansehra for favour of information, please.
3-✓ Mr. Muhammad Siddique Khan Divisional Forest Officer Agror Tanawal Forest Division at Oghi inquiry officer/committee for initiating proceedings against the accused strictly under the provisions of Khyber Pakhtunkhwa Government servants (Efficiency and Discipline) Rules 2011 and complete the inquiry within stipulated period. Enquiry file from page 01 to 8 is enclosed herewith.
4. - Divisional Forest Officer, Judbah Forest Sub-Division for information and necessary action. He is directed to join the disciplinary proceedings on the date, time and venue fixed by the inquiry officer/committee and vigorously defend Government interest as prosecutor.
5. Muhammad Riaz Forest Guard C/O Range Forest Officer Kandar Forest Range for information and compliance. He is directed to submit reply to the charge sheet served upon him directly to the inquiry officer/ committee within 07 days of the receipt of this memo and also appear before the inquiry officer/Committee on the date time and venue fixed by him for the purpose of the inquiry proceedings.

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-C 17

Farrukh Sair Divisional Forest Officer		Torghar Forest Division Judbah
No 682 /E		Dated 23 /12/2015

Mr. Muhammad Riaz Forest Guiard
C/O Range Forest Officer
Kandar Forest Range

Subject: **SHOW CAUSE NOTICE.**

Memorandum:

I Mr. Farrukh Sair Divisional Forest officer, Torghar Forest Division Judbah, as competent authority, under the provisions of Government of Khyber Pakhtunkhwa (E&D) Rules 2011, do hereby serve you a show cause notice as follows:-

3. That consequent upon the completion of inquiry conducted against you by the inquiry committee/officer for which you were given opportunity of hearing and:-
4. On going through the findings and recommendations of the inquiry office the material on record and other connected papers including your Defence before the inquiry committee/officer.

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

c. In-efficiency
d. Mis-Conduct

The inquiry officer/ committee has proved the above charges leveled against you through the charge sheet and recommended the following penalties:

3. Recovery to the amount of Rs. 749933/-
4. Warning to be careful in future.

The undersigned as competent authority, has tentatively decided to impose the above penalties upon you under section-4 of Government of Khyber Pakhtunkhwa (E&D) Rules 2011.
You are therefore, directed to show cause as to why the aforesaid penalties should not be imposed upon your. You are further directed to furnish your reply to the show cause notice within 15 days of its delivery and also attend the office of undersigned on 08/01/2016 for personal hearing.

If no reply to this notice is received within 15 days of its receipt, in the normal course of circumstances, it shall be presumed that you have no Defence to put in and in that case an ex-party action will be taken against you.

The copy of the findings of inquiry officer/ committee is enclosed.

Divisional Forest Officer
Torghar Forest Division
Judbah

o/c Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure - B

(41)

ENQUIRY REPORT AGAINST MOHAMMAD RIAZ FOREST GUARD INCHARGE TEGRAM PLANTATION OF KANDAR FOREST RANGE TORGHAR FOREST DIVISION JUDBAH

PREMEABLE/ READ WITH:

i. Chief Conservator of Forests Northern Forest Region-II Abbottabad office letter No. 615/B&A dated 31-7-2015 triggered by DFO Patrol Squad Lower Hazara Forest Circle Abbottabad office letter No. 45/PS dated 8-7-2015.

ii. Divisional Forest Officer Torghar Forest Division constituted inquiry committees vide office endorsement No. 147-51/GE dated 20-8-2015.

iii. Charge Sheet plus Memo of Allegation was served upon the accused vide DFO Torghar office endstt: No. 157-61/GE & No. 162-66/GE dated 20-8-2015 respectively.

iv. DFO Torghar requested the enquiry committee vide his office letter No. 172/GE dated 20-8-2015 to initiate disciplinary proceedings.

v. Enquiry Committee directed the accused vide his office letter No. 785-86/GE dated 26-8-2015 to submit his defence statement and accordingly was reminded vide his office letter No.1769-70/GE dated 20-10-2015 and No. 2114-15/GE dated 5-11-2015 to do the asked needful.

vi. DFO Torghar endorsed a Notification of SO General vide his office endstt: No. 517/TG dated 4-11-2015 for expediting the long standing disciplinary cases.

vii. DFO Torghar was beefed up by enquiry committee vide office letter No. 2217/GE dated 10-11-2015 to direct accused to expedite submission of defence reply.

viii. Eventually the accused submitted his defence statement on 06-11-2015.

ix. The accused was directed by enquiry committee vide his office letter No. 2303-2304/GE dated 17-10-2015 to appear before the enquiry committee for recording personal hearing / cross examination on 25-11-2015.

x. The accused attended the office of enquiry committee on 25-11-2015.

xi. The Enquiry committee constituted checking committee vide office order No. 151 dated 11.12.2015.

xii. Checking committee submitted its finding vide letter No. 10/A dated 13.12.2015

BRIEF HISTORY OF THE CASE.

That Mr. Muhammad Sharif Forester **(here in after called as accused)** while posted as Incharge Kandar Forest Range committed the following irregularities.

i. Whereas plantation over an area of 148.50 acres was carried out by him during February & March 2014 under special development package (SDP) Torghar.

ii. Whereas as per plantation general the following species were planted in the area.

- Robinia = 44810 Nos.
- Chir = 19788 Nos
- **Total** = **64598 No.**

Attested

Distt. Forest Officer

iii. Whereas watch and ward of the area was continued by the accused by employing two Chowkidar.

iv. Whereas the plantation was found badly failed almost having less than 20% survival percentage.

v. Whereas the plantation was not carried out by the accused in proper season.

vi. Whereas the survived plants were found badly grazed.

vii. Whereas due to aforestated short comings, huge loss of **Rs. 1874847/-** was sustained to Government exchequer due to the negligence, poor performance of the accused and his lack of vigilant supervision over the Labour and field staff which resulted in the failure of plantation area.

viii. Whereas aforestated short comings were detected and communicated by DFO Patrol Squad Lower Hazara Forest Circle Abbottabad vide his office letter No. 45/PS dated 8-7-2015 to CCF-II Abbottabad.

ix. Consequently CCF-II Abbottabad vide his office letter No. 615/B&A dated 31-7-2015 directed DFO Torghar Forest Division Judbah to initiate disciplinary proceedings against the delinquent staff.

By reason of above the accused appears to be guilty of **Mis-conduct, In-efficiency** and **Corruption under rule-3 of the Khyber Pakhtunkhwa Government Servant (E&D) Rules 2011** and thus he has rendered himself liable to all or any of the penalties specified in **Rule -4 of the Rules ibid.** For the purpose of scrutinizing the conduct of the said accused within the meaning of above allegations and as **enshrined in Rule-10 (i) (a) of the Rules ibid,** DFO Torghar constituted enquiry committee vide office endorsement No. 147-51/GE dated 20.08.2015 comprising of **Muhammad Siddique Divisional Forest Officer Agror Tanawal Forest Division Oghi.**

PROCEEDING/ DISCUSSION.

- The accused submitted his defense reply. He was heard in person and was cross examined in presence of prosecutor. The checking committee constituted vide office order No. 151 dated 11-12-2015 also submitted its findings.
- The all available record on file was thrashed out / cruised.
- The perusal of available record, facts on ground and findings of the checking committee reveal that.

"The plantation area under question is badly failed and having almost 20% survival".

As calculated by DFO Torghar, the investment made so far right from raising 64598 Nos of plants in Nursery to the stage of planting is **Rs. 1874847/-.**

Now 20% survived plants out of 64598 Nos comes out to be 12920 Nos.

The proportionate cost of these 20% survived plants (12920) comes out to be Rs. **374981/-** which is justified expenditure in the instant case.

Attested

Divisional Forest Officer
Torghar Forest Division

Annexure-D
3 (45)

Now the net unjustified amount comes out to be **(1874847 – 374981) = Rs.1499866/-.**

As Muhammad Sharif Forester is also a co-accused in the same case then the un-justified amount judiciously needs to be apportioned between them.

Therefore the shared amount comes out to be $\frac{1499866}{2}$ **= Rs. 749933/- each.**

As accused Mohammad Riaz Forest has furnished an affidavit on Judiciary Stamp paper duly vetted by the Oath Commissioner Oghi, vowing and solemnly affirming that he will restock the failures from his own pocket.

This statement carries weight in the eyes of law and needs to be weighed/valued.

FINDINGS/ CONCLUSION

The forgoing discussion leads to the **finding** that "the plantation area under reference is badly failed and the failures have not been beaten up by the accused despite the fact that accused had been repeatedly beefed up to do so.

The above finding leads to the **conclusion** that.

"Charges of Mis-conduct and In-efficiency stand proved beyond any doubt while charge of Corruption does not stand proved as no monitory benefits on part of accused are vivid from the record"

RECOMMENDATIONS.

The enquiry committee with sky high confidence recommends that.

1. **The accused as per his affidavit may be made bound to restock the failures from his own pocket within a month time reckoning from the date of issuance of Show Cause Notice.**

   In case of failure, the shared amount worths Rs. 749933/- may be recovered from him.

2. **He may be warned to be careful in future.**

Attested

(Mohammad Siddique)
Divisional Forest Officer
Agror Tanawal Forest Division
Oghi (Enquiry Officer)

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-E

OFFICE ORDER NO. 20 DATED TORGHAR THE 12 /01/2016 ISSUED BY MR. FARRUKH SAIR DIVISIONAL FOREST OFFICER, TORGHAR FOREST DIVISION JUDBAH

READ WITH:-

1. DFO Patrol Squad Division Lower Hazara letter No. 45/PS dated 08/07/2015 addressed to Chief Conservator of Forests Northern Forest Region-II Abbottabad.
2. Chief Conservator of Forests, Northern Forest Region-II Abbottabad letter No. 615/B&A dated 31.7.2015.
3. DFO Torghar letter No. 157-61/GE and No. 162-66/GE dated 20.08.2015 (Charge sheet and statement of allegations served upon Muhammad Riaz Forest Guard Incharge Pabbal Gali Beat) and appointment of Mr. Muhammad Siddique DFO Agror Tanawal Forest Division as enquiry officer/committee.
4. DFO Torghar letter No. 172/GE dated 20.8.2015
5. DFO Agror Tanawal letter No. 854/GB dated 31.8.2015
6. Reply to the charge sheet and statement of allegations furnished by Muhammad Riaz Forest Guard dated 02/11/2015, to DFO Agror Tanawal (Enquiry Officer/ committee).
7. DFO Agror Tanawal Office order No. 151 dated 11.12.2015 regarding constitution of a committee to inspect and verify the plantation area at Tegram of Kandar Forest Range.
8. Report of checking committee vide letter No. 10/A dated 13.12.2015
9. Statement of personal hearing dated 21.12.2015.
10. Affidavit on judicial stamp paper dated 22/12/2015 duly attested by oath commissioner furnished by Muhammad Riaz Forest guard for restocking of plantation area within one month.
11. Enquiry report of Enquiry officer/ committee submitted vide letter No.2801/GE dated 15.12.2015.
12. Show cause notice No. 682/E dated 23.12.2015 served upon Muhammad Riaz Forest Guard.

BRIEF HISTORY OF THE CASE:-

On receipt of a compliant the Chief Conservator of Forests, Northern Forest Region-II Abbottabad vide his letter No. 9890/B&A dated 30.06.2015 directed DFO Patrol Squad Lower Hazara Circle Abbottabad to check plantation area of village Tegram Hassan Zai and report the factual position.

In compliance, the DFO Patrol Squad Lower Hazara Abbottabad alongwith Gul Zaman Deputy Ranger and his staff in presence of DFO Torghar, Range Officer Kandar and Beat Guard inspected above mentioned the plantation area on 7.7.2015 and reported the ground position to Chief Conservator of Forests, Northern Forest Region-II Abbottabad vide letter No. 45/PS dated 8.7.2015 alongwith following deficiencies defected during checking of plantation area and recommended that plantation area is failed and the watch & Ward kept for the protection of plantation area is ineffective which need enquiry with the following observations:-

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-E

1. The plantation is badly failed almost having less than 20% survival percentage.
2. The survived plants are badly grazed.
3. The plantation area is accessible by a very poor road which is the main reason of the destruction of soil balls of the Chir plants lead to their failure.
4. The plantation is not carried out in proper season
5. The labor of plantation is brought from Chattar Plain which is the requirement of the area as the people of Torghar do not prefer labor work and all other departments import labor in Torghar.
6. The photographs of plants attached with complaint are not relevant to the area under complained upon.
7. The photograph show improper handling of plants during transportation to the planting site of Seri Kohani another site.

On receipt of detailed report of DFO Patrol Squad Lower Hazara Circle vide letter No. 615/B&A dated 31.7.2015 the Chief Conservator of Forests, Northern Forest Region-II Abbottabad directed the DFO Torghar to recover the financial investment made on the activity from concerned Range Forest Officer and his staff proportionately including cost of planting stock utilized in the area and take disciplinary action against all the delinquent.

PROCEEDINGS.

In compliance with the directives of Chief Conservator or Forests Northern Forest Region-II Abbottabad contained in his letter No. 615/B&A dated 31.7.2015, the DFO Torghar Forest Division Judbah served charge sheet alongwith Statement of allegations on Muhammad Riaz Forest Guard Incharge Pabbal gali Beat vide letter No. 157-61/GE and No. 162-66/GE dated 20.8.2015 respectively under the charges of inefficiency, misconduct and corruption and appointed Mr. Muhammad Siddque DFO Agror Tanawal Forest Division Oghi as enquiry Officer to proceed further against the accused official as per provisions of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 and submit enquiry report.

DISCUSSION:-

Mr. Muhammad Riaz Forest Guard Incharge Pabbal Gali Beat (hereinafter called accused official) furnished his reply to the charge sheet and statement of allegations after issuance of series of reminders in which he denied the allegations leveled against him on the following grounds.

1. The accused states that DFO Patrol Squad has written in his report that the road leading to the plantation area is in a miserable condition. He further states that DFO Patrol Squad has hardly inspected ½ acre plantation area. He reached in a corner of plantation area inspected plantation journal and returned. Cattle moving on the road sometimes damage the nearby plants. The plants planted near road

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-E

were found grazed due to the reason that herds of cattle and goats use the road for moving to upward Rangeland areas. That is why some plants near the road were found grazed. The DFO Patrol Squad has projected these few grazed plants on the whole plantation area is his report. In fact the survival percentage is 80% which can be seen on spot. The allegation is incorrect.

2. The DFO Patrol Squad was required to thoroughly check the whole plantation area and collect the survival data by taking plots at different spots but it was not done in the instant case which shows that allegation is unfounded.
3. The area in question has been planted on special directives of local PMA during the month of February-March which is appropriate season of plantation.
4. The area was properly supervised by the Incharge Forest Guard through two Chowkidars.
5. No loss has been sustained by the Government as there is provision for restocking of failed plantation area up to 30%.
6. The plants planted in the plantation area have been transported up to road head with due care, properly watered before and after transportation.

During personal hearing before the Enquiry Officer Mr. Muhammad Riaz Forest Guard I/C Pabbal Gali Beat again repeated his stance contained in his reply to the charge sheet and statement of allegations. However he has stated that restocking could not be carried out during monsoon due to drought and disputes amongst the respective owners. He is also furnished an affidavit on judicial stamp paper on 22.12.2015, stating that he will restock the area from his own pocket within the month.

After detailed enquiry, the Enquiry Committee/Officer in his enquiry report submitted vide letter No. 2801/GE dated 15.12.2015 in which he concluded that the charges of Misconduct and inefficiency stand proved beyond any doubt while charge of corruption does not stand proved as no monitory benefits on the part of accused are vivid from the record. As a result the enquiry officer/committee recommended following penalties to be imposed upon the accused official.

1. The accused, as per affidavit by may be made bound to restock the failure from his own pocket within a month time reckoning from the date of issuance of show cause notice. In case of failure, the shared amount worth 749933/- may be recovered from him.

2. He may be warned to be careful in future.

On receipt of Enquiry Report and pursuance with the recommendations of Enquiry Officer, s Show Cause notice bearing No. 682/E dated 23.12.2015 was served upon the accused official with the directives to expedite his written defensive reply within fifteen days of its receipt as to why the proposed penalty shall not be imposed besides to appear before undersigned for personal hearing on 8.1.2016. the accused official did not furnished his reply to the show cause notice within stipulated period. Je was also unable to appear before the undersigned for personal hearing. He has failed to provide any substantial evidence to prove him innocent.

Attested

Annexure-E

CONCLUSION:-

The record available in the inquiry file, charge sheet and charges leveled in the statement of allegations, reply furnished by the accused official and statement recorded during personal hearing before the Enquiry Officer, enquiry report of Enquiry Officer has been perused in depth and undersigned has reached to the conclusion that the recommendations of the Enquiry Officer are quite appropriate. In order to authenticate the verdict of accused official that the DFO Patrol Squad has checked only half acre plantation area alongwith road on which he has based the instant report, the Enquiry Officer constituted a checking committee vide office order No. 151 dated 11.1.2015 to check the entire plantation area of Tegram of Kandar Range and to verify that if failure in the area has been restocked or otherwise. In his report vide No. 10/A dated 13.12.2015 the checking committee has blatantly stated that the area in question is joint property of different tribes and they did not allow to restock the area due to some dispute.

The losses sustained by the Government as per recommendations of the Enquiry Officer are quite correct.

ORDER:-

Keeping in view the foregoing facts the undersigned in the capacity of authority perused the whole available record, charges leveled against the accused official in the charge sheet and statement of allegations, reply to the charge sheet and statement of personal hearing before the enquiry officer/ committee has reached to the conclusion that the recommendations of Enquiry Officer in his enquiry report are appropriate as the charges of Inefficacy and Misconduct were found established. Therefore, I, Mr. Farrukh Sair Divisional Forest Officer, Torghar Forest Division Judbah in the capacity of authority do hereby order to impose penalty for recovery of Rs. 749933/- (50% of the total loss assessed by the Enquiry Officer) from the monthly pay of Mr. Muhammad Riaz Forest Guard I/C Pabbal Gali Beat in 60 installments as defined in Rule-4 of Khyber Pakhtunkhwa Government Servants (E&D) rules 2011 at the rates mentioned below:-

1. 59 installments @ Rs: 12500/- per month = 737500/-
2. 01 and final installment @Rs : 12433/- = 12433/-
   Total: - = 749933/-
3. He is warned to be careful in future.

Attested

Sd/- (Farrukh Sair)
Divisional Forest Officer
Torghar Forest Division
Judbah

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-E

Memorandum:-

1. The Chief Conservator of Forests, Northern Forest Region-II Abbottabad for favour of information. This is with reference to his office letter No. 615/B&A dated 31.7.2015
2. The Conservator of Forests, Upper Hazara Forest Circle, Mansehra for favour of information please.
3. Muhammad Riaz Forest Guard for information and necessary action.
4. The Divisional Accountant for information and necessary action.
5. The Establishment clerk for information and necessary action.

Divisional Forest Officer
Torghar Forest Division
Judbah

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-F

رسید

تحریر آنکہ آج مورخہ 16/01/2016 کو آفس آرڈر نمبر 20 مجریہ 12/01/2016 وصول پاکر رسید لکھ دی۔ تاکہ سند رہے۔

محمد یوسف خان سب انسپکٹر ڈسٹرکٹ ٹریننگ سنٹر

16/01/2016

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure. G (29)

OFFICE ORDER NO. 137 DATED MANSEHRA THE 11 /12/2015 ISSUED BY MUHAMMAD SIDDIQUE DIVISIONAL FOREST OFFICER AGROR TANAWAL FOREST DIVISION OGHI

A checking Committee comprising of the following is hereby constituted to inspect the contentious plantation area at Teagram of Kandar Forest Range and to verify whether the failures in the area have been beaten up or otherwise and the shortcomings pinpointed in the said area as envisaged in the charge sheet of the accused M/S Muhammad Sharif Forester Incharge Kandar Forest Range and Mohammad Riaz Forest Guard Pabbal Gali Beat have been rectified or not.

1. Mr. Saeed Anwar SDFO Agror Forest Sub-Division. (Chairman)
2. Syed Meharban Shah Forester of Agror Forest Sub-Division. (Member)

The committee is directed to complete the task within three days most positively.

Sd/- (Muhammad Siddique)
Divisional Forest Officer
Agror Tanawal Forest Division
Oghi.

Copy alongwith copy of complaint forwarded to:

1. The Divisional Forest Officer Torghar Forest Division Judbah for information and necessary action.
2. M/S Saeed Anwar Sub-Divisional Forest Officer Agror Forest Sub-Division (Chairman Committee) and Syed Meharban Shah Forester (Member) c/o SDFO Agror Forest Sub-Division for information and necessary action. They are directed to check the subject plantation area and furnish their report immediately for further course of action. (Copy of Charge Sheet enclosed).
3. Mr. Muhammad Sharif Forester for information and necessary action.

Divisional Forest Officer
Agror Tanawal Forest Division
Oghi

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-H
31

Office of the Forest Sub-Division Agror forest Sub-Division.

To

The D.F.O
ATFD

Disp No. : 10/A
dt : 13/12/2015.

Subject: Report of checking committee.

Reference:
Memo: Reference your office order NO 51 Dated 11/12/2015.

It is stated that in Teagran plantation area at Kandao forest Range restocking was not done because these area is a joint property of different tribes. These tribes have some dispute and they not allowed to restock the plantation area.

Therefore the plantation area was not restock.

GE

Attested

Chairman.
SDFO Agror
Forest Sub-Division.
13/12/2015.

Divisional Forest Officer
Targhar Forest Division
Judbah

Member
Syed Mehrabanshah
Forester.

place in relevant files.

DFont
15/12

Annexure-I

OFFICE ORDER NO. 28 DATED MANSERHA THE 11 /05/2016 ISSUED BY MIR WALI KHAN CONSERVATOR OF FORESTS UPPER HAZARA FOREST CIRCLE MANSEHRA

READ WITH:

i. Chief Conservator of Forests Northern Forest Region-II Abbottabad office letter No. 615/B&A dated 31-7-2015 triggered by DFO Patrol Squad Lower Hazara Forest Circle Abbottabad office letter No. 45/PS dated 8-7-2015.
ii. Divisional Forest Officer Torghar Forest Division constituted inquiry committees vide office endorsement No. 147-51/GE dated 20-8-2015.
iii. Charge Sheet plus Memo of Allegation was served upon the accused vide DFO Torghar office endstt: No. 157-61/GE & No. 162-66/GE dated 20-8-2015 respectively.
iv. DFO Torghar requested the enquiry committee vide his office letter No. 172/GE dated 20-8-2015 to initiate disciplinary proceedings.
v. Enquiry Committee directed the accused vide his office letter No. 785-86/GE dated 26-8-2015 to submit his defence statement and accordingly was reminded vide his office letter No.1769-70/GE dated 20-10-2015 and No. 2114-15/GE dated 5-11-2015 to do the asked needful.
vi. DFO Torghar endorsed a Notification of SO General vide his office endstt: No. 517/TG dated 4-11-2015 for expediting the long standing disciplinary cases.
vii. DFO Torghar was beefed up by enquiry committee vide office letter No. 2217/GE dated 10-11-2015 to direct accused to expedite submission of defence reply.
viii. Eventually the accused submitted his defence statement on 06-11-2015.
ix. The accused was directed by enquiry committee vide his office letter No. 2303-2304/GE dated 17-10-2015 to appear before the enquiry committee for recording personal hearing / cross examination on 25-11-2015.
x. The accused attended the office of enquiry committee on 25-11-2015.
xi. The Enquiry committee constituted checking committee vide office order No. 151 dated 11.12.2015.
xii. Checking committee submitted its finding vide letter No. 10/A dated 13.12.2015
xiii. Statement of Personal hearing dated 21-12-2015
xiv. Enquiry Report of Enquiry Committee submitted vide letter No. 2801/GE dated 15-12-2015
xv. Show Cause Notice No. 682/E dated 23-12-2015 served upon Mohammad Riaz Forest Guard
xvi. DFO Torghar office order No. 20 dated 12-1-2016
xvii. Appeal of the accused official.
xviii. Commends submitted vide DFO Torghar letter No. 1126/GE dated 11-3-2016.

BRIEF HISTORY OF THE CASE.

On receipt of a complaint the Chief conservator of Forests, Northern Forest Region-II Abbottabad vide his letter No. 8990/B&A dated 30-6-2015 directed DFO Patrol Squad Lower Hazara Circle Abbottabad to check plantation area of village Tegram Hassan Zai and report the factual position.

In compliance, the DFO Patrol Squad Lower Hazara Abbottabad alongwith Gul Zaman Deputy Ranger and his staff in presence of DFO Torghar, Range Officer Kandar and Beat Guard inspected above mentioned the plantation area on 7-7-2015 and reported the ground position to Chief Conservator of Forests Northern Forest Region-II Abbottabad vide letter No. 45/PS dated 8-7-2015 alongwith following deficiencies detected during checking of plantation area and recommended that plantation area is failed and the watch and ward kept for the protection of plantation is ineffective and need enquiry.

PROCEEDINGS:

To probe in to the allegation , the DFO Torghar Forest Division served charge sheet No. 157-61/GE dated 20-8-2015 & memo of allegation bearing No. 162-66/GE dated 20-8-2015 upon Mohammad Riaz Forest Guard and appointed Mohammad Siddique Divisional Forest Officer Agror Tanawal Forest Division Oghi as Enquiry Committee.

Attested

Divisional Forest Officer
Torghar Forest Division
Judba

Annexure-I

DISCUSSION.

The accused official furnished reply to the Charge Sheet to the enquiry committee. The Enquiry Committee conducted proper disciplinary proceeding against the accused official and submitted his enquiry report vide No. 2802/GE dated 15-12-2015 and imposed recovery of shared amount worth Rs. 749933/- on Mr. Mohammad Riaz Forest Guard. and the DFO Torghar Forest Division agreed with the findings of enquiry committee issued office order No. 20 dated 12-1-2016 for imposition of recovery of Rs. 749933/- on Mr. Mohammad Riaz Forest Guard.

Against the said order the accused preferred an appeal before the Conservator of Forests Upper Hazara Forest Circle Mansehra, which was sent to Divisional Forest Officer Torghar Forest Division Judbah for comments who submitted his comments with relevant file vide No. 1126/GE dated 11-3-2016..

The finding of the checking committee, constituted by the enquiry officer vide his office order No. 151 dated 11-12-2015 are not relevant to the enquiry procedure as observed below.

i. The checking committee was required to clearly mention the percentage of failure or percentage of success which it could not do. .

ii. The checking committee has been constituted on 11-12-2015 who has submitted its report on 13-12-2015. How it is possible to travel to the site in one day and check the whole area the same day?. This is not possible at all. It proves that the whole findings of the checking committee are biased and does not to fulfill the requirement of justice. The accused has the right to cross examine the prosecution, but in this case contrarily the accused is cross examined by the enquiry officer during personal hearing which is against the spirit of the justice/ enquiry. It is concluded that the enquiry officer is not aware of the enquiry procedure otherwise he should have given chance to the accused to cross examine the prosecution, why the accused is not given chance by the enquiry officer to cross examine the prosecution, this is great flaw in this enquiry and justice has not been provided to the accused. As per PC-I provision, total of 148.5 acre Afforestation has been carried out. The expenditure incurred are as under.

iii.	Labour charges.	Rs. 696000/-
iv.	Purchase of Plants	Rs.553265/-
v.	Beating of failure	Rs.228800/-
vi.	Watch & Ward	Rs.205500/-
	Total:	**Rs.1692765/-**

As such per acre expenditure comes to be Rs. 11400/-. In the PC-I, the schedule of beating of failure is as under:-

1.	First Year beating of failure	= 30% of the whole plantation.
2.	2nd year beating of failure	= 20% of the whole plantation.
3.	3rd year beating of failure	= 10% of the whole plantation
	Total beating of failure allowed.	**= 60% of the whole area plantation**

It is presumed that after carrying 60% beating of failure of the whole plantation, the plantation will be consider as 100% success. But in this case only 30% beating of failure has been carried out yet and 30% beating of failure is still to be done. Therefore, it is concluded that in this the success percentage will be considered as 100 – 30 = 70%. As such the total success full plantation will be considered as follow. As such the success percentage will be assumed as 70% and not 100%. Out of 70% assume success only 20% success is admitted by the DFO Patrol Squad. As such the total failure percentage comes to be 70 – 20 = 50%. The total failed area = 148.5 ÷ 100 x 50 = 74.25 acres say 74 acres.

Attested

Divisional Forest Officer

Annexure-I

In the light of the above facts and figure, the accused Forest Ranger Mr. Muhammad Sharif and the accused Forest Guard are responsible for recovery of Rs. 74 acres x 11400 = 843600/-. As such a total loss sustained to the Government exchequer comes to be Rs. 843600/- . As the M. Roll is maintained by the accused Forest Guard, therefore the major responsibility has on the accused Forest Guard not the Range Officer.

ORDER.

Keeping in view the finding of the enquiry committee, the appeal of the accused, the Show Cause Notice issued to the accused, the personal hearing of the accused and the office order No. 20 dated 12-1-2016, issued by the competent authority. The undersigned in the capacity of appellate authority in the case, under the powers conferred on him vide E&D Rules 2011 section- 17 (1), (2) (c) hereby modified the office order No. 20 dated 12-1-2016, issued by the competent authority as under.

The recovery of Rs. 749933/- is hereby reduced to Rs. 674800/-

Imposed recovery of 80% of the total loss of Rs. 843600/- sustained to the Government which comes to be Rs. 674800/- upon the accused official i.e Mohammad Riaz Forest Guard. The amount may be recovered from the pay of Forest Guard in Eighty Four (84) equal installment

As such the case is disposed off.

Sd/- (Mir Wali Khan)
Conservator of Forests
Upper Hazara Forest Circle
Mansehra

Copy forwarded to:-

1. The Divisional Forest Officer Torghar Forest Division Judbah for information and necessary action. The enquiry file file of Mr. Muhammad Riaz Forest Guard received vide your above cited letter is returned herewith.
2. Mr. Mohammad Riaz Forest Guard c/o Divisional Forest Officer Torghar Forest Division Judbah for information and necessary action.
3. Circle Accountant for information.

Conservator of Forests
Upper Hazara Forest Circle
Mansehra

E/c
18/5.
DFO

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure-J

Personal hearing/Cross examination of Muhammad Riaz Fgd (35)

س نمبر 1:- کیا پرسنٹیج آپ کے بیان میں درج ہے۔

ج۔ جی ہاں۔

س نمبر 2:- DFO چترال سکواڈ نے آپ کے بیان میں غلطی کی تھی۔

ج۔ جی ہاں۔

س نمبر 3:- کیا پرسنٹیج ایریا پر ٹمبر موجود تھا یا تقریباً کتنے عرصہ

ج۔ تقریباً دس سال سے ٹمبر موجود تھا۔

س نمبر 4:- پرسنٹیج کے علاوہ کیا دیگر چارجز تھے

ج۔ موسمی حالات ٹھیک تھے اور فرشتہ سان تھی سمت سود ج کے ساتھ تھا۔

س نمبر 5:- کیا ٹمبر کا ٹھیکیدار تو Payment Uptodate تھی یا

ج۔ جی ہاں

س نمبر 6:- کیا پرسنٹیج ایریا کا نام Restock failure (پرسنٹیج) ہے یا نہیں

ج۔ نہیں

Sd/- Fazal Subhan
DFO Torghar
21/12/2015

Attested 21/12/2015

DFO & PD
(E.I Officer)

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure

وضاحت

جناب عالی۔

DFO صاحب پشاور نے رقبہ ماؤنٹ ہلاوڑ کیا گذشتہ سیزن رقبہ کامیابت ایک دو انچ رقبہ دیکھا ہے۔

اوڑ سائیڈ پر بیٹھ کر پورے رقبہ کو دیکھا اور ایریا کے مرتب کردہ اس وقت ماہ رمضان تھا بسبب کی وجہ سے پورے رقبہ کو نہیں دیکھ سکے جس وجہ اس نے رپورٹ میں لکھا حالانکہ اس وجہ نہیں ہے عیار رقبہ زیادہ کامیاب ہے۔

جناب عالی اس رقبہ کا درخت بالکل سونے کی روشنی کی مانند ہے جس کی وجہ سے سونی جلد کامیاب ہوا ہے۔

موسمی حالات کی وجہ سے کبھی بارش کم ہونے کی صورت میں کبھی رقبہ پر اثر کرتا ہے۔

جہاں تک میری ذمہ داری کا تعلق ہے تو ہم نے رقبہ کا خیال کیا ہے جو ہزار سے کبھی نام لیا نہیں کیونکہ پہلے سال تو سو میں ہم نے اس رقبہ کو بیٹ آپ کرنے کہا تو علاقہ کے لوگوں نے ہمیں بیٹ آپ کرنے نہیں دیا۔

Attested

اس وجہ کو مشکل جاری ہے۔ اس رقبہ میں بیٹ آپ پلانٹیشن ہے۔ تمام رقبہ کامیاب ہو جائے۔

رقبہ میں مویشی کا نقصان ہے جس کی وجہ سے ہم وہ پیس بیٹ آپ نہیں دے سکے ہمارا آپ کی تو مشکل جاری ہے علاوہ ازیں سائیڈ پر رقبہ کی دوبارہ بیٹ آپ کی بیان خلق ہے۔

Attested

Divisional Forest Officer
Torghar Forest Division
Judbah

Annexure - K

F361840

Rupees 30 ۳۰ روپیہ

بیان حلفی

میں محمد ریاض ولد فضل الرحمان ساکن شنڈی کا رحلئے مکمل لوگ فضا
ماشہرہ کا ہوں۔ حلفاً بیان کرتا ہوں کہ میں نے فنر فارسٹ گارڈ ۔ کمانڈو رینجر ریگ
میں حضرت زبانی، تحریری جواب میں لکھ دیا ہے کہ علاوہ سرچ
کوہاٹی، ٹیگرام حسنزئی میں خاتمانی سرچ کوہاٹی اور فاتحیل افغا
کا ٹپہ میں تنازعہ چل رہا ہے۔ جس میں قبائلی لشکر بھی جھگڑے وغیر
ہو رہے ہیں۔ جونہی تنازعہ کا حل ہو جائے گا تو میں فنر شجر کاری
رقبہ ٹیگرام سے فیل شدہ کھنڈہ جات میں دوبارہ اپنے ذمہ
فرض پر پودے لگا کر دوں گا۔ صدر صبہ بالا حقائق پر مبنی
گوشوارہ مفصل رپورٹ شدہ ہے۔ بیان حلفی ہذا سٹنڈ اغر
ہے نا بوقت ضرورت کام آوے۔ المرقوم: 22/12/2015

المدعی

محمد ریاض فارسٹ گارڈ رینجر کمانڈو فضا آخور
حال وارد

13504-8803681-7

Attested
Imtiaz Ali Khan
12/12/2015
Oath Commissioner

Attested

گواہ شد

صدر الدین ولد فضل الرحمان ساکن شنڈی تحصیل و ضلع ٹورغر
13202-0841963-7

گواہ شد

محمد صدیق ولد محمد صدیق ساکن
سلوکڑہ چنار تحصیل و ضلع ٹورغر
13202-0841963-7

گواہ شد

سورمل تحصیل و ضلع ٹورغر
13202-0765365-5

Name: Imtiaz Ali Khan
Registration # 167 Dated 15-01-2005
Nature of Document: 2nd Grade Oath
Place of Execution: Oghi
My Expiry: 31-08-2016
Serial No: 2350
Date: 22/12/2015
Cost so received Rs.

صب ذیل بیان حلفی ہذا محرر ساکن
بیان سمجھا کے تصدیق کرتا ہے

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2318 /ST Dated 26 / 10 / 2017

To

The Conservator of Forests,
Government of Khyber Pakhtunkhwa,
Upper Hazara Circle Mansehra.

Subject: - **JUDGMENT IN APPEAL NO. 612/2016, MR. MUHAMMAD RIAZ.**

I am directed to forward herewith a certified copy of Judgement dated 16.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.