ORDER
25.01.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of the today, passed in Service Appeal bearing No. 1145/2018 "titled Manzoor Khan Versus Government of Khyber Pakhtunkhwa, through Chief Secretary Peshawar and three others", the instant service appeal is accepted and the appellant is entitled for salaries and all other benefits which would have accrued in his favor, has he been not removed from service. Parties are left to bear their respective costs. File be consigned to the record room.

ANNOUNCED
25.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

25.02.2021 Due to Pandemic of Covid-19, the case is adjourned to 03.06.2021 for the same.

Reader

03.06.2021 Nemo for appellant.

Asif Masood Ali Shah learned Deputy District Attorney alongwith Suleman Instructor for respondents present.

Notice be issued to appellant/counsel for 27.09.2021 for arguments before D.B.

(Rozina Rehman)
Member (J)

Chairman

27.9.21

DB is on Tour case to come up For the same on. Dated 25-1-22

Reader

25.01.2022 Clerk of counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA for the respondents present.

Former seeks short adjournment as learned counsel for the appellant is not in attendance due to general strike of the lawyers. Request is accorded. To come up for arguments on 26.01.2022 before the D.B.

(Atiq-Ur-Rehman Wazir)
Member (E)

Chairman

24.07.2020 Nemo for appellant.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

On previous date, the case was adjourned on a Reader's note, therefore, notice be issued to appellant and his counsel for 25.09.2020 for arguments, before D.B

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

25.09.2020 Appellant has not forth come at the moment i.e 02:40 P.M. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of the department Mr. Suleman, Senior Instructor for the respondents are present.

Notice be issued to appellant as well as his respective counsel for 03.12.2020. File to come up for arguments before D.B.

(Mian Muhammad)
Member (Executive)

(Muhammad Jamal Khan)
Member ~~(Judicial)~~

03.12.2020 Due to pandemic of Covid-19 , the case is adjourned to 25.02.2021 for the same as before.

Reader

27.11.2019 Counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. Adjourn. To come up for arguments on 30.01.2020 before D.B.

Member Member

30.01.2020 None for the appellant present. Asst: AG for respondents present. Due to General Strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the instant case is adjourned. To come up for further proceedings/arguments on 30.03.2020 before D.B. Appellant be put on notice for the date fixed.

Member Member

Due to covid, 19 the case is adjourned. To come up for the same on 24.07.20

Reader

13.06.2019 Counsel for the appellant and Addl. AG alongwith Atta Muhammad, Law Officer for the respondents present.

Representative of respondents states that Joint parawise comments of respondents have been prepared and placed before them for signatures. He requests for short adjournment. Adjourned to 10.07.2019 for submission of written reply/comments but as a last chance.

Chairman

10.07.2019 Appellant in person and Addl: AG alongwith Mr. junaid, Assistant present.

Representative of the respondents has submitted written reply/comments which is placed on file.

To come up for arguments on 24.09.2019 for arguments before D.B.

Chairman

24.09.2019 Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Suleman, Senior Instructor for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 27.11.2019 for arguments before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

11.02.2019

Learned counsel for the appellant present and submitted application for extension of time to deposit security and process fee which is placed on file of connected appeal No.1145/2018 filed by Manzoor Ahmad. Application is allowed with direction to deposit security and process within 3 days. Thereafter notices be issued to the respondents for written reply/comments. Adjourn. To come up for written reply/comments on 25.03.2019 before S.B.

Deposited
Security & Process Fee

Member

25.03.2019

Clerk to counsel for the appellant present. Written reply not submitted. Abdul Malik Law Officer representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 24.04.2019 before S.B

Member

24.04.2019

Counsel for the appellant present. Adll: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up for written reply on 13.06.2019 before S.B.

(Ahmad Hassan)
Member

31.12.2018

Counsel for the appellant Muhammad Arif present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Prison Department as Warder. It was further contended that the appellant was removed from service on the allegation that some prisoners escaped from the jail. It was further contended that the appellant filed department appeal as well as service appeal and the service appeal of the appellant was partially accepted vide judgment dated 01.03.2018 and the major penalty was converted into withholding of three increments for three years and the period in which the appellant remained out of service was ordered to be decided by the department in accordance with rules i.e gainful employment during the said period. It was further contended that the appellant was reinstated in service by the department vide order dated 04.04.2018 but the intervening period was treated as extra ordinary leave without pay. It was further contended that the appellant filed departmental appeal but the same was not responded hence, the present service appeal. It was further contended that since major penalty was converted into minor penalty by the Service Tribunal therefore, the appellant was entitled for back benefits but the respondent-department illegally refused the same as the appellant was jobless during the intervening period.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days thereafter, notice be issued to the respondents for written reply/comments for 11.02.2019 before S.B.

Muhammad Amin Khan Kundi
Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1067 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/08/2018	The appeal of Mr. Muhammad Arif presented today by Mr. Yasir Saleem Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.
	29-8-18	REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 20-9-18.
		MEMBER
	22-9-2018	Due to Muharram ul Haram vacation the case was not heard. To Adjourn m 20-9-2018 for 12-11-2018 (Reader)
	12-11-2018	Due to Retirement of Honorable Chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on 31-12-2018 Reader

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No 1067 /2018

Muhammad Arif, Warder (BPS-5), Central Prison Haripur.

(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others.

(Respondents)

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4	Copy of the Order and Judgment dated 01.03.2018 of this Honorable Tribunal	C	15-19
5	Copy of the Office Order dated 04.04.2018	D	20
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M. Arif
Appellant

Through

YASIR SALEEM
&

JAWAD- UR-REHMAN
Advocates, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1067/2018

Muhammad Arif, Warder (BPS-5), Central Prison Haripur.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. That Home Secretary, Khyber Pakhtunkhwa, Peshawar
3. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
4. The Superintendent Central Prison Haripur.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Order dated 04.04.2018, whereby, though the appellant has been re-instated in service, however the intervening period has been treated as Extra- Ordinary leave without pay against which his Departmental Appeal dated 23.04.2018 has not been responded till the lapse of Statutory Period of 90 days.

Prayer in Appeal: -

On acceptance of this appeal the Order dated *04.04.2018,* to the extent of treating the intervening period as Leave without Pay may please be set-aside and the appellant may also be allowed the back benefits of service.

Respectfully Submitted:

1. That the appellant was initially appointed as Warder in the Prison Department in the year 2007. Ever since his appointment, the appellant had performed his duties with zeal and devotion and there was no complaint whatsoever regarding his performance.

2. That the appellant while attached with District Lakki Marwat, on 24/5/2013, an unfortunate incident of escape of under trial prisoners took place due to which a preliminary departmental inquiry was conducted and the appellant along with other Jail Officials were recommended for departmental action.

3. That the appellant was served with Charge Sheet and Statement of allegation dated 20/8/2013, containing certain false and baseless allegations. The appellant duly replied the charge sheet and refuted the allegations so leveled against him as false and baseless.

4. That thereafter, the inquiry officer without associating the appellant properly with the inquiry proceedings conducted a partial inquiry and submitted his findings wherein he recommended the appellant for major punishment. ***(Copy of the inquiry report is attached as Annexure A)***

5. That the appellant was also served with a show cause notice dated 28/12/2013, which he also replied and refuted the allegations.

6. That without considering his defense reply, the appellant was awarded the major penalty of ***Removal from Service*** vide order dated 17/3/2014. ***(Copy of order dated 17.03.2014 is attached as Annexure B)***.

7. That aggrieved from the order dated 17/03/2014, the appellant also submitted his departmental appeal on 02/04/2014, however the same has not been responded despite the lapse of statutory period.

8. That the appellant also filed Service Appeal No. 880/2014 before this Honorable Tribunal which was allowed vide order and judgment dated 01.03.2018 and major penalty of removal from service was converted into withholding of three increments for three years, however, with regard to the issue of back benefits/ intervening

period, the mater was left for the department to decide in accordance with rules i.e, gainful employment during the period. ***(Copy of the Order and Judgment dated 01.03.2018 of this Honorable Tribunal is attached as Annexure C)***

9. That appellant submitted affidavit to the Respondent to the effect that he never remained in gainful employment during the period he was out of service, however the department did not accept the affidavit.

10. That later the Respondent No. 3, though reinstated the appellant in service vide office order dated 04.04.2018, however the intervening period was treated as Extra Ordinary leave without pay. ***(Copy of the Office Order dated 04.04.2018 is attached as Annexure D)***

11. That feeling partially aggrieved from the order dated 04.04.2018, the Appellant submitted his departmental appeal to Respondent No. 2 however the same has not been responded within the statutory period of 90 days. ***(Copy of Departmental Appeal is attached as Annexure E)***

12. That the office order dated 04.04.2018 to the extent of treating the intervening period as leave with pay is illegal, unlawful against law and facts hence liable to be set aside inter alia on the following grounds.

GROUNDS OF THE APPEAL

A. That the appellant has not been treated in accordance with law hence, his right secured and guaranteed under the law are badly violated.

B. That the appellant has not been given any opportunity of personal hearing before treating the intervening period as Leave without Pay thus he has been condemned unheard.

C. That the appellant has never committed any act or omission which could be termed as misconduct. The appellant performed his duties assigned to him with zeal and devotion and never shown any negligence in the performance of his duties and this fact has been accepted by this honorable Tribunal that the appellant is not involved in any way in the escape of the prisoner.

D. That once the appellant was allowed reinstatement by this honorable Tribunal then the respondent should have considered the affidavit submitted by the appellant regarding his joblessness during the intervening period.

E. That this Honorable Tribunal reinstated the appellant and the issue of back benefits i.e, salaries for the intervening period left to the department to see whether the appellant remained or not in any gainful employment during the period he was out of service. So the respondent should have considered the affidavit submitted by the appellant regarding his joblessness.

F. That the appellant remained out of service due to illegal penalty imposed by the respondent which was subsequently set-aside by this Honorable Tribunal and during that period the appellant remained jobless, so he is entitled for the salaries for the intervening period.

G. That the appellant has a large family dependent upon him, since he was jobless due to his illegal Removal from Service, thus not only the appellant but his whole family suffered.

H. That the appellant seek permission of this tribunal to take additional grounds at the time of hearing.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned orders dated 17-03-2014, may please be set-aside and the appellant be re-instated in service with all back benefits of service.

M. Arif
Appellant

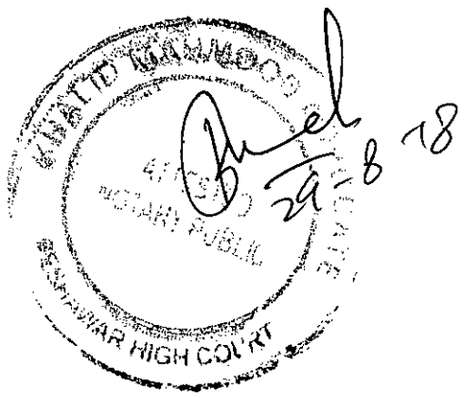
Through

YASIR SALEEM
Advocate Peshawar
&
JAWAD- UR-REHMAN
Advocate Peshawar

AFFIDAVIT

I, ***Muhammad arif, Warder (BPS-5), Central Prison Haripur,*** do hereby solemnly affirm and declare that the contents of the above Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

M. Arif
Deponent



(6) Annexture A

INQUIRY REPORT

Subject: **DEPARTMENTAL PROCEEDINGS INTO THE ESCAPE OF UNDERTRIAL PRISONER UMER RAUF @ AMRI S/O PIR GHULAM FROM DISTRICT JAIL LAKKI MARWAT.**

Background

One under trial prisoner named Umar Rauf @ Amri S/O Pir Ghulam Village Esak Khel, Distt. Lakki Marwat escaped from the District Jail Lakki Marwat on 24.05.2013. He was involved in case FIR No. 440 dated 02.09.2009, U/S 302, 324-34 PPC, Police Station Lakki District Lakki and case FIR No. 202 dated 29.11.2008 U/S 302,34 PPC Police Station Lakky, Distt. Lakky Marwat. Hence he was involved in two murder cases. He escaped from the Jail on 24/05/13 in broad day light, at the time in between 1:15 PM to 1:45 PM. No lock, no prison wall, no window, door or any gate was broken. No tunnel was dug; no instruments like hammer, spade, scissor, knife, rope or ladder have been used in this escape. And the prisoner involved in two murder cases escaped by throwing a dust in the eyes of all watch and ward staff of Distt. Jail Lakky in particular, and in the eyes of prison management system, in general.

2. Apparently it seems that whole system of watch and ward and prison security arrangements, and the overall frame work of prisons management have become ineffective, corrupt and irresponsive. It seems that a huge old structure is crumbling which may fall at any time. The frequent incidents of Jail break and escape of prisoners from the jails is just a tip of an ice-burg. It is an early warning sign of an impending colossal tragedy.

3. The prison authority of District Jail Lakki Marwat have been un-aware about the escape of prisoner for about half an hour and later on when they got wind of this incident they informed the I.G Prison and Police Department and got the case FIR No. 287 dated 24.05.2013 U/S 222, 223, 224, PPC PS Lakky, Distt. Lakky Marwat registered against the six subordinates officials on duty. They were suspended and a preliminary inquiry by Mr. Ehtesham Ahmad Jadoon, Superintend Jail Bannu was conducted. The inquiry officer involved 15 officers/officials in this inquiry, but astonishingly absolved one Abdullah Pervez (chakkar Relief) actual In charge of inner Jail staff and security from 12.00 to 1500 hours, from all charges. Abdullah Pervaz is an accused nominated in the FIR, and the Inquiry Officer didn't give any solid reason/proof for that, except the statement of Abdullah Pervez himself. Moreover The Inquiry officer didn't find any fault in the role played by sentries of Levy Force who were manning outer towers of Lakky Jail. In prima facie, men of Levy Force, doing duty at that particular time on the outer towers of Lakky Jail are equally guilty. Preliminary inquiry report is (Annex-A).

Proceedings

All relevant record was thoroughly scrutinized, site of escape was inspected, and detailed discussions were held with the prison staff, local Police, IG Prison Office and the concerned prisoners still confined in Lakky Jail, before firming up the recommendations. Moreover, the relevant rules were deliberated upon (Annex-B) and the service record of the accused persons was minutely checked. All the

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accused were called along with their written defense. (Annex-C) They were examined and cross- examined (Annex-D) in presence of departmental representative Mr. Muhtarm Shah, Budget Officer, I.G Prison Office. Accused were personally heard and were given a free chance to put their oral, written or circumstantial evidence/ defense.

Site Inspection

District Jail Lakki Marwat was visited. The entry and exit ways were thoroughly inspected. The total area of Distt Jail Lakky Marwat is 14 kanals and 01 marla, and the total area of inner Jail would be hardly 08 kanals, which is guarded by 20 feet high wall and on the top of this wall, live and bare electric wires run across. It is the area where four barracks for the prisoners, a big kitchen, washrooms, two internal watch towers, a tuck-shop and a reasonable courtyard are situated. An internal wall separates the courtyard in two portions. An Iron gate, in this wall, connects two portions of courtyard. The prisoners of each portion freely come and go to other portion. As informed by Lakky Jail administration, there is no sentry on this gate to limit the movements of prisoners in their respective portions. The total strength of Officials/officer present at the time of occurrence was 48. There is cultivated agricultural land on the eastern, western and the southern side of Lakky Jail. It is an old jail. The newly built Jail in Distt Lakky Marwat is under the physical possession of Army. The outer wall and outer watch towers are guarded by Police and Levy Force. It is a very small Jail and the strength of 48 watch & ward staff, excluding police and Levy personals is more than enough for such a small area.

All the accused, prison staff, and other prisoners were examined and cross-examined but no one admitted to have seen the escape with his own eyes. All the accused denied the charges leveled against them in the charge sheet. All claim to be as pure dew.

Individual Responsibility.

1) Mr. Usman Ali, Dy: Supdt: cum Supdt: District Jail Lakki Marwat (BS-17).

He denies the charge No. 1 & 2 as mentioned in his charge sheet reply. The allegation on him is that on the day of incident there were 8 warders out of 10 on double duties and Supdt: Usman Ali didn't prevent this practice of double duties. He was charged with lack of interest in the affair of administration. His written reply is, "it is a common practice in jails that the warder perform double duties and substitute duty hours with their colleagues". It means that all jail warders were competent enough to make laws, rules for themselves and to decide how to run Jail and their boss Supdt: Jail gave a tacit approval to this practice. The reply of charge No. 4 by accused officer is an eye wash. He could not explain that why such huge staff could not prevent this incident. The reply of accused officer in response of charge No. 5 is not very convincing, keeping in view statement of other accused. The officer denies the charge but actually escapee prisoner Umar Rauf was an established Don of the jail being facilitated and treated by the jail staff as a VVIP. No solid defense was produced about charge No. 6 by Usman Ali.

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2) Noor Zaman, Head Warder (BPS-7).

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As per his statement, he came into Jail at 08:00 morning performed his duty very

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11:00. He again entered into Jail at about 2.00pm, and came to know about the escape of prisoner Umar Rauf . He remained there in the Jail and made exit at 06.55 pm. His statement is correct as verified and confirmed from Register No. 16 of Distt: Jail Lakki. The escape occurred in between 01.15pm to 01.45pm when Abdullah Pervez (11.00 to 14.00) was actual In charge of the affairs in the inner Jail. So Noor Zaman Head Warder is innocent in this case. It is further added the said Abdullah Pervez has not been included in this Inquiry by the Inquiry Officer Mr. Ehtizaz Ahmad Jadoon, Suptt. Jail Bannu, without providing any solid reason or defense,except the statement of Abdullah Pervez himself is despite the fact that his name was included in the FIR by Mr .Usman Ali, Supdt Jail, in his earlier report.

3) **Humayun Gul, Junior Clerk (BPS-7)**

He is a junior clerk by designation. Due to granting three days casual leave from 24.05.2013 to 26.052013 to Mr. Muhammad Ibrahim Asst Suptt; Jail, he was entrusted with his duties. His nature of job is quite different. However his boss entrusted him with the duty of Asstt: Suptt; Jail. He couldn't refuse, and he shouldn't refuse. He is a junior Clerk whose job duty is to deal with files and papers. Dealing with hardened criminals requires particular training skills and strong nerves. It is a total different job. Here much fault lies with his boss who tried to make a lamb a lion by giving him the garb of a lion, and expecting him to act with a force of lion. Here the wrong man was doing the wrong job.

4) **Sher Ali Baz, Warder (BPS-5)**

He was patrolling officer in Ihatta No.1 (12:00 to 3:00). The escapee Umar Rauf was confined in Ihatta No. 2. But there is no gate, door or window in Ihatta No. 2. All entry exit ways are located in Ihatta No. 1. The escapee must have used Ihtta No. 1 to escape. Hence patrolling officer at that particular time is direct responsible. Moreover Umar Rauf prisoner was not an ordinary prisoner. He was well known Don of Jail. Being patrolling officer he must have kept a vigilant eye on him specially, but he badly failed. Either he was in connivance with Amri, the escapee, or have slept well during his duty hours 12:00 to 3:00.pm. In both cases he is delinquent character in this story. A witness, in his cross examination, pointed out that said Sher Ali Baz was most upset at 2.00 pm when he entered into jail and saw him.

5) **Hamidullah Warder (BPS-5)**

He was patrolling officer in Ihatta No.2 (12:00 to 3:00). The escapee Amri was confined in Ihatta No. 2 too. But there is no gate, door or window in Ihatta No. 2. The escapee must have walked through the area, where this warder was doing duty. Hence patrolling officer at that particular time is direct responsible. Moreover Amri prisoner was not an ordinary prisoner. He was well known Don of Jail. Being patrolling officer he must have kept a vigilant eye on him specially, but he badly failed. Either he was in connivance with Amri, the escapee, or has slept well during his duty hours 12:00 to 3:00.pm. In both cases he is delinquent character in this story. Moreover during his cross examination, he admitted that he cannot read his own statement written in Urdu and he is illiterate. He didn't know spelling of a word " English." He further added that he was appointed by ex- Minister Prison.

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6) Muhammad Arif Warder. (BPS-5)

He did double duty, first from 9:00 am to 12:00 noon as sentry main gate, and second from 12.00 pm 03.00 pm as Sentry Tower No.1 in place of warder Qayum Nawaz. In his reply he contended that he had simply obeyed the orders and didn't do double at his own will. Internal Tower No.1, where this warder was doing duty, is an alleged place of escape of escapee prisoner. During discussions, it is alleged by his fellow colleagues that he (M. Arif) was in collusion with the escapee, and he facilitated him safe exit through his place of duty i.e. Tower No.1. The accused could not defend the charge in a convincing way. He was either in collusion with the escapee or was full asleep at the tower.

7) Noor Islam Warder(BPS-5)

He also performed double duty, first from 9.00 am to 12.00 noon on a place near Tower No.2 and secondly he was sentry at Tower No.2 from 12:00 noon to 3:00 pm. From this tower the movements of all the prisoners are watched. Moreover all the movements of all the visitors at the main gate of the Jail are also watched from this tower. This warder has badly failed to do his duty in an efficient way. He was either in collusion with the escapee or was full asleep at the tower.

8) Muhammad Sajid Warder(BPS-5)

He was doing his search duty in the main gate from 12.00 noon to 03.00 pm. In case the prisoner escaped from the main gate he is directly responsible in his escape.

9) Zeb Nawaz Warder(BPS-5)

He was doing his duty as Madadgir (Helper) from 12.00 noon to 03.00 pm in the main gate. In case the prisoner escaped from the main gate he is directly responsible in his escape.

10) Nasir Mahmood Warder(BPS-5)

He was doing his duty as sentry at main gate. In case the prisoner escaped from the main gate he is directly responsible in his escape.

11) Manzoor khan Warder(BPS-5)

He was doing his duty as gate keeper at main gate from 12.00 noon to 03.00 pm. In case the prisoner escaped from the main gate he is directly responsible in his escape.

12) Amir Baseer Khan Warder (BPS-5)

He was assigned duties at Beat No. 2 from 12.00 noon to 03.00 pm. In case he kept a vigilant eye on that prisoner who was Don of Lakky Jail and his movements he would not had escaped. Either this warder was in collusion with the escapee or was full asleep during his duty hours. He is directly responsible for the escape.

13) Aseel Janan Warder(BPS-5)

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He has wrongly been involved in this case. As mentioned earlier the actual time of escape is in between 01.15 pm to 01.45 pm. When the prisoner has escaped and the Supdt. Jail was busy in registering a case against the accused officials, this warder was called in to perform duty in place of warder Wali Ayaz, and to avert any untoward situation. He came performed his duty and made exit at 06.50 pm. This fact is duly supported by Register No. 16. So he is innocent.

14) Amir Faraz Warder (Line Muharar) (BPS-5)

There are two charges on this accused. Being Line Muharar, he continued the illegal practice of assigning double duties and he was in collusion with the escapee. From the statements of accused and discussions it transpired that he was the de facto Suptt; of Lakky Jail. He used to assign duties to warders, recommend leaves for the staff, order opening and closing of prisoners barracks, supervise the management of tuck-shop and prisoners kitchen (langer- khawana), keep custody of keys and locks of jail barracks, manage meeting of prisoners with their visitors etc.

Moreover he belonged to the same village from which the escapee Amri belonged. All witnesses, accused and prisoners confirmed that escapee Amri was very close to Amir Faraz Muharar Line. The accused couldn't defend either charge. The charge of assigning double duties has been proved against him, and the charge of collusion has not been defended by him.

15) Aftab Malik Warder (BPS-5)

This warder was assigned the duty to run a tuck shop inside the Jail. He has been charged for having close relations with the accused. He admitted in his cross examination that prisoners have cell phones inside the Jail but he never snatched or recovered any cell phone from any prisoner. Having cell phones inside the Jail is impossible without the collusion of Jail Staff. In his written reply he claims to have been out of Jail at the time of occurrence. It is correct as verified from the record. But he could not defend the charge of having close relation and collusion with the escapee. At the time of occurrence his absence from the Jail is an evidence of his collusion with the escapee prisoner. Moreover during discussions with accused and prisoners it came to light that escapee Amri was often seen sitting and having hours long discussions with this warder. The accused badly failed to defend the charge.

Findings of Inquiry

i) *Usman Ali Dy: Supdt: cum Supdt: is very poor administrator, and a very weak commander to perform his duties in very effective manner. He badly lacks initiatives and quite incapable of shouldering his responsibilities. He didn't know a bitter reality that subordinates often sell their boss, if and when they get a chance to do so. Unfortunately he let himself to be auctioned at the hands of his subordinates.*

ii) *Usman Ali gave tacit approval to the warders to perform double duties and to substitute duty hours with mutual consent of each other. Hence he threw away the whole responsibility to run the Jail to his subordinate staff and afforded them an opportunity to make rules / laws for themselves. It seems, he never exerted himself nor invoked any positive action under the rules against the defaulter subordinates.*

iii) *Owing to this slack attitude the prisoner Umar Rauf involved in two murder cases, was first encouraged to become a Don of Distt: Jail Lakki Marwat and than managed to win some warders and other officials and planned a ...*

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iv) It is quite evident from the statements, examination and cross-examination of all witnesses and accused that the escapee prisoner was a well known figure and a prominent Don of the prison. He was treated as a VVIP. After lock up time, the lock of Barrack was opened if he (Amri) desired so. It speaks volumes of mismanagement and poor Jail Administration. Jail lower staff deduced that by doing help of Umar Rauf in his escape, they would surely get scot- free and this collusion would not hurt them, because the beneficiary was an influential person, an established Don and VVIP.

v) The Jail warders were mostly political appointees. During cross-examination it came to surface that one warder namely Hameed Ullah was quite illiterate. He could not even read his own statement written in Urdu. He did not know the spelling of the word "English". Such appointments, with no regard to merit and qualification, lead to poor administration and ultimate collapse of a system. The loyalties of such appointees can easily be won either through bribes or through their mentors. They are commodities open for sale in an open market. Besides this, such appointment is a big injustice to the deserving, dedicated and committed youth.

vi) The Jail staff, specially the lower formation, is poorly equipped, poorly paid, politically abused, poorly managed and badly treated. The overall morale of the force is low. The high ups have an empathic attitude towards its genuine problems and issues.

vii) Many warders were on double duty at the time of occurrence. There existed a tacit agreement between the constables/warders and Jail Authorities to substitute duty hours among themselves. The warders benefited from this agreement by enjoying more leisure/leaves and Jail Authorities felt relaxed by not assigning frequent duties, frequent checking and frequent patrolling. Hence there became a mess which resulted in this way.

viii) The culture of double duties is still prevalent in all the Jails of Khyber Pakhtunkhwa. It urgently needs to be discouraged and prevented. During visit to Lakki Jail it transpired that most of warders were doing double duties. Double duty devours the energy, initiative and degree of alertness of warders. Hence the quality of vigilance and resultant security level is compromised. This fact has also been admitted by Supt: Usman Ali in his cross examination.

ix) Two outer towers were manned by sentries of Levy force which is under Administrative control of Deputy Commissioner Lakki Marwat. It is a matter of common sense that this force must have been placed under the executive command of Supdt: Lakky Marwat Jail. But unfortunately Suptt; Jail was not their immediate boss. Their boss i.e. Deputy Commissioner was sitting on the other side of river. So the sentries of such a force were their own bosses. Here the fault lies with high level managers of Prison System. As a result these sentries badly failed to prevent this escape due to two reasons.

I) Either the sentries on duty on the two outer towers were not present at the time of escape.

II) OR the sentries on the outer two towers were also in collusion with the escapee prisoner.

In both cases they are equally responsible and have played a major role in the escape of this prisoner.

x) Superintendent Jail could not manage to inform the I.G. Prison well in time. No fax record or

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Advocate

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Advocate

224 PPC Police Station Lakki Marwat it transpired that, the written report of escape was delivered to local police station very late; as the FIR was registered at 21:30, while the distance between Lakki Jail and Police Station Lakki is only three furlong. If the time of occurrence is 14:00 hours, it might have been registered at 14:30. But it was registered at 21:30. There is a delay of about full seven hours, which cannot be defended by any way.

xi) Most of prisoners have mobile phones with themselves in Lakky Jail. It is impossible without the connivance of Jail staff.

Recommendations:

1) Major penalty of compulsory retirement may be imposed on Deputy Supdt:/Cum Supdt: Mr. Usman Ali (BPS-17).
2) Noor Zaman Head warder (BPS-7) and, Aseel Janan Warder (BPS-5) may be exonerated from the charges.
3) Amir Faraz Line Muharir, (BPS-5) may be compulsory retired from service.
4) Hamayun Gul, Junior Clerk (BPS-7), may be given minor punishment of stoppage of three annual increments.
5) Minor penalty of stoppage of three increments may be imposed on Nasir Mehmud. Warder (BPS-5)

6) Major penalty of removal from service may be imposed on following:-

i) Muhammad Arif Warder BS-5.
ii) Aftab Malik, Warder BS-5.
iii) Shar Alibaz, Warder BS-5.
iv) Noor Islam, Warder BS-5.
v) Hamidullah, Warder BS-5
vi) Amir Baseer, Warder BS-5.
vii) Manzoor Khan, Warder BS-5.
viii) Zab Nawaz , Warder BS-5.
ix) Muhammad Sajid, Warder BS-5.

7) Formal departmental proceedings may be initiated against Abdullah Pervez Warder BS-5.(Chakker relief).

8) Formal Departmental Proceedings may be initiated against those men of Levy Force and Police who were on duty at that particular time on 24.05.2013. in Lakky Jail.

ATTESTED

KALIMULLAH KHAN BALOCH (PMS BS -18)
CONTROLLER/INQUIRY OFFICER
Govt: Printing & Stationery Deptt
Khyber Pakhtunkhwa, Peshawar.

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Advocate

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(13) (19) "Annexture B"

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

90150

ORDER

SO(Com/Enq)/HD/Lakki Jail/2013, WHEREAS, The following officer / officials of the Inspectorate of Prisons, Khyber Pakhtunkhwa, were proceeded against under rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the charges mentioned in the show cause notices dated 17/12/2013, served upon them individually.

AND WHEREAS, the competent authority i.e the Chief Secretary, Government of Khyber Pakhtunkhwa, granted them an opportunity of personal hearing as provided for under Rules ibid.

NOW THEREFORE, the competent authority (The Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidences on record, the explanation of the accused officer / officials and affording an opportunity of personal hearing to the accused, findings of the enquiry committee and exercising his power under rule-3 read with Rule-14 (5) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 has been pleased to pass the following orders noted against the name of each officer / officials with immediate effect;

S.No	Name & Designation	Orders
1.	Mr. Usman Ali (BPS-17), Deputy Superintendent Jail, District Jail Lakki Marwat.	Compulsory retirement
2.	Mr. Amir Faraz, Warder (BPS-05), District Jail Lakki Marwat.	Compulsory retirement
3.	Mr. Hamayun Gul, Junior Clerk (BPS-07), District Jail Lakki Marwat.	Stoppage of three (03) annual increments.
4.	Mr. Nasir Mehmood, Warder (BPS-05), District Jail Lakki Marwat.	Stoppage of three (03) annual increments.
5.	Mr. Sher Ali Baz, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
6.	Mr. Hamidullah, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service

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Advocate

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Advocate

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

7.	Mr. Muhammad Arif, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
8.	Mr. Noor Islam, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
9.	Mr. Muhammad Sajid, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
10.	Mr. Zaib Nawaz, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
11.	Mr. Manzoor Khan, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
12.	Mr. Amir Baseer, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
13.	Mr. Aftab Malik, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service

SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA HOME DEPARTMENT

Endst. No. SO(Com/End)/HD/Lakki Jail/20[illegible]3 dated Peshawar the March 17, 2014

Copy of the above is forwarded to the:-

1. Inspector General of Prisons, Inspectorate of Prisons, Khyber Pakhtunkhwa Peshawar.
2. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
4. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
5. Officer/officials concerned.

SECTION OFFICER (Com/Enq)

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Advocate

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18-3-14

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Advocate

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ANNEX "C"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 880/2014

Date of Institution ... 18.06.2014

Date of Decision ... 01.03.2018

Manzoor Khan, Ex-Warder (BPS-5) District Jail, Lakki Marwat.
... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 3 others.
... (Respondents)

Mr. Yasir Saleem, Advocate.
Mr. Javed Iqbal Gulbela, Advocate
Arbab Saiful Kamal, Advocate
Mst. Uzma Syed, Advocate
... For appellants

Mr. Ziaullah,
Deputy District Attorney,
... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN:- This judgment shall also dispose of connected service appeals No. 777/2014 Malik Afab, No. 799/2014 Amir Basir, No. 819/2014 Muhammad Arif, No. 871/2014 Hamid Ullah, No. 878/2014 Zaib Nawaz, No. 879/2014 Muhammad Sajid, No. 908/2014 Noor Islam and No. 909/2014 Sher Ali Baz as in all the appeals common questions of law and facts are involved.

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2. Arguments of the learned counsel for the parties heard and record perused.

(16)

FACTS

3. An under trial prisoner escaped from Lakki Jail in the year, 2013. The appellants being servants of the said prison were charge sheeted for the escape of the said prisoner. Finally the enquiry officer held the appellants guilty and the Authority imposed penalty of removal from service on all the appellants before this Tribunal. Some other officers/officials were either exonerated or were awarded other penalties. All the appellants then filed departmental appeals within time which were not responded to and there-after they approached this Tribunal within time.

ARGUMENTS.

4. All the learned counsel representing the appellants argued that the charge sheet against the appellants were mainly based on violation of Prison Rules in the performance of their duties. That in none of the charge sheet it was specifically written that when and from where the prisoner escaped. That the whole findings of the enquiry officer were based on surmises and conjectures and on presumptions. That some of the officials who were held responsible at par with the appellants were awarded minor penalties. That no one could be awarded penalty without assigning specific role followed by specific proof of the role. That a criminal case was also registered against some of the appellants. That all the appellants were acquitted of the charges in the criminal case.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

5. On the other hand, the learned Deputy District Attorney argued that all the formalities of due process were complied with. That under the circumstances of the case, the prisoner could not escape the jail without the active connivance of the appellants as the appellants were posted on different stations in the Prison. That the prisoner did not break open any wall, room etc. and, hence it was proved that he must have been helped by the present appellants in escaping from the prison. The learned DDA pressed into service a judgment of the august Supreme Court of Pakistan in a case entitled *"I.G. Prisons Khyber Pakhtunkhwa Vs. Muhammad*

ATTESTED

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Israil" decided on 19.06.2006 bearing C.P. No. 741-P/2004. While banking on this judgment, the learned DDA argued that in this very case, the august Supreme Court of Pakistan took a serious view and also issued notices to those employees of the prison for enhancement of penalty.

CONCLUSION.

6. All the charge sheets against the appellants do not attribute any specific role to any of the appellants except the charge of violating the Prison Rules. These allegations of violating the rules were also based not on any solid ground. The enquiry officer in his report opined that since the accused/civil servants before him were required to have a vigilant eye on the station of their posting within the jail and if a prisoner escaped from jail it would give presumption that each individual official failed to perform his duty and then concluded on this presumption that each one of such employees would be guilty of helping the prisoner escaped from the prison. On the basis of such presumption, the appellants have been awarded the major penalty of removal from service. It is a settled principle of administrative law that charge against an employee should be proved on the basis of evidence and especially when a major penalty is imposed. If we go through the report of the enquiry officer we will not find any proof of the fact that any one of the appellants violated his duty except the presumption that the escape of the prisoner would give the impression that each one of the appellants violated the rules.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

7. The Authority after receiving the enquiry report and fulfilling other formalities awarded different penalties to different employees charged for the escape of the prisoner. All the appellants before this Tribunal were awarded the major penalty of removal from service. The other officials were either compulsorily retired or were awarded penalty of stoppage of three annual increments. The findings of the enquiry officer qua all the 13 accused employees were similar. For example Mr. Nasir Mahmood accused (official not before this Tribunal) was

ATTESTED

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awarded the penalty of stoppage of three annual increments though his role was the same as those of others and he was also held responsible for the escape of prisoner on the same ground as were the appellants.

8. The judgment of the august Supreme Court of Pakistan relied upon by the learned DDA was gone through in detail and it was found by this Tribunal that the charges and the circumstances of the escape of 5 prisoners in that appeal were totally different. In that appeal it was alleged that five prisoners escaped by opening the room by cutting the iron wires. It was also proved in that case that one of the warders was not present at the place of his duty and that some other warders were also not present in place of their duties. Similarly the Deputy Superintendent Jail was absent from the prison during night without permission. Similarly, Muhammad Israil was held responsible due to his administrative negligence as none of the warders who were required to be on duty at the relevant time were so present and available. The august Supreme Court of Pakistan further held in that case that even cutting of wire etc. must have been heard by the officials stationed on duty and concluded that they were responsible for the same. But in the present case no such finding of the enquiry officer is there by which it could be gathered that anyone of the appellants was not present or that the prisoner escaped through breaking some door/wall etc. Therefore, this case cannot be at par with the one decided by the august Supreme Court of Pakistan. At the most the Authority should have awarded minor penalty, if in his opinion the collective responsibility should have been the cause of the penalty or that in his opinion the presumptions could be drawn for violating the prison rules but imposition of major penalty was not the case of the appellants and especially when one or two co-accused, co-employees were awarded minor penalties of stoppage of three annual increments as discussed above.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

9. This Tribunal is therefore, of the view that though it is not proved that the appellants were in any way involved in the escape of the prisoner, however, due to

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their collective responsibility and presumptions they could at the most be awarded minor penalty at par with others as mentioned above.

10. Resultantly, the major penalty of removal is converted to withholding of three increments for three years and the appeal is disposed of in the above terms. The period in which the appellants remained out of service should be decided by the department in accordance with rules i.e. gainful employment during the period. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- Niaz Muhammad Khan,
Chairman

Sd/- Ahmad Hassan,
Member

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 20-3-18
Number of Words 2000
Copying Fee 12-00
Urgent 2-00
Total 14-00
Name of Copyist
Date of Completion of Copy 20-3-18
Date of Delivery of Copy 20-3-18

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20 Annexure 'D'

DS/Lc/Sc
for n/a on the arrival of officials concerned

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

No.Estb/Ward-/Orders/ 10725 /-

Dated 04/04/18 /-

ORDER

In pursuance of the Khyber Pakhtunkhwa Service Tribunal Judgment dated 01-03-2018 in service appeals, cases of the below noted officials, the penalties awarded to them vide the Department Order No. SO(Com/Enq)/HD/Lakki Jail/2013 dated 17-03-2014are hereby modified as noted against their names as under:-

Name of official	Penalty awarded by the competent authority.	Decision of the Service Tribunal dated 01-03-2018.
Warder Noor Islam.	Removal from Service.	Withholding of three (03) annual Increments for three (03) years.
Warder Sher Ali Baz.	-do-	-do-
Warder Manzoor Khan.	-do-	-do-
Warder Mahi Aftab.	-do-	-do-
Warder Zaib Nawaz.	-do-	-do-
Warder Hameed Ullah	-do-	-do-
Warder Muhammad Arif.	-do-	-do-
Warder MuhammadSajid.	-do-	-do-
Warder Amir Baseer.	-do-	-do-

Officials from S.No.01 to 08 are hereby re-instated into service with immediate effect. intervening period of these officials shall be treated as extra-ordinary leave without pay.

Upon re-instatement into service, they are hereby transferred and posted to Central Jail Haripur against the vacant posts for all purposes, **except official at S.No.9 viz Amir Baseer, who has died during the intervening period as per some reliable information.**

Sd/-
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA , PESHAWAR.

ENDST:NO. 10726-40 /-

Copy of the above is forwarded to :-

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar for information with reference to his letter No 586/ST dated 19-03-2018 please.
2. The Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar for information please.
3. The Superintendents Headquarters Prison Haripur for information and further necessary action.
4. The Superintendents Headquarters Prison Bannu & D.I.Khan for information and similar necessary action.
5. The Superintendent, Central Prison Huripur for information and necessary action.
6. The Superintendent, District Jail Lakki Marwat for information and necessary action. He is directed to contact legal heirs of warder Amir Baseer for producing his death certificate issued by competent forum for further action.
7. The District Accounts Officers Lakki Marwat & Haripur , for information.
8. Appellants concerned.

ASSISTANT DIRECTOR(Litg) 04/4/18
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

4/4/18

ATTESTED

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ANNEX "B"

بخدمت جناب ہوم سیکرٹری صاحب خیبر پختونخواہ پشاور

بعنوان درخواست برائے اجراء تنخواہ کے لیے: 17-3-014 / 1-3-018 سے لیکر

جناب عالی. مودبانہ گذارشات ہکہ سائلان محکمہ جیلخانہ جات کے ملازمین ہیں 17.3.2016 کو ڈسٹرکٹ جیل لکی مروت سے ایک خوالاتی کی فراری کی کیس میں محکمانہ کاروائی کے بعد سائلان کو ریموو فرام سروس کیا گیا تھا. بعد میں سائلان کی اپیل پر سروس ٹربیونل نے سروس بحال کردی سالانہ تین انکریمنٹ بند کردی اس کے بعد جناب آئی جی جیلخانہ جات کے حکم پر سائلان بری پور سنٹرل جیل ڈیوٹی پر حاضری کا حکم فرما گئے اور ریموو فرام سروس کے دورانیہ تنخواہ وید آؤٹ کردی گئی ہیں

جناب عالی. سائلان کو 17.3.2016 سے لیکر 1.3.2018 تک تنخواہ نہیں ملی ریموو فرام سروس کے دوران بے روزگار ہی رہے ہیں اور اپنی ڈیوٹی سرٹیفکیٹ آئی جی صاحب کے دفتر میں جمع کروائی تھی

جناب عالی. سائلان کا تعلق غریب خاندانوں سے ہیں اور ریموو فرام سروس کے دوران لوگوں سے قرضے لے کر اپنی ضروریات پورے کرتے ہیں کیونکہ اس سروس کے علاوہ سائلان کی اور کوئی زریعہ معاش نہیں. سرکاری ڈیوٹی ایمانداری سے انجام دیتے ہیں لہذا آگے رمضان مبارک کا مہینہ شروع ہونے والا ہے اور سائلان کے

P. T. O

ضیف العمر والدین اور چھوٹے چھوٹے بچے ہیں ان کی تعلیم اور خوراک بیماری میں
علاج وغیرہ سے مجبور ہیں ۔

جناب عالی سے عاجزانہ التماس جملہ (17.3.2016 سے لیکر 1.3.2018) بند تنخواہ
سائلان کی دادرسی فرماتے ہوئے بند شدہ تنخواہ کی اجراء کے
احکامات صادر فرمائیں ۔

تاکہ سائلان ماہ رمضان میں اپنی ضروریات پوری کر سکیں
سائلان تاحیات دعاگو رہیں گے ۔

العارض الحقیر

سائلان ۔ واڈرز

(1) منظور خان	(3) محمد ساجد M. Sajid
(2) زیب نواز زیب نواز ملک فرد	(4) حمید اللہ Hamid ullah
(5) محمد عارف M. Arif	(6) ملک افتاب ملک افتاب اعلم فرد

(8) عرضگزار بری پور سنٹرل جیل ھنڈارہ

POWER OF ATTORNEY/WAKALAT NAMA

IN THE COURT OF Khyber Pakhtunkhwa Service Tribunal

In Re Appeal # 667/ of 2018

Muhammad Ariz

{Plaintiff
{Appellant
{Petitioner
{Complaint
{Decree Holder

Versus

Govt of Khyberpakhtunkhwa

{Defendant
{Respondent
{Accused
{Judgment Debtor

I/We Muhammad Ariz

the Appellant above named hereby appoint **Yasir Saleem & Jawad ur Rehman** Advocates the above-mentioned case, to do all or any of the following acts, deeds and things.

1. **To** appear, act, and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/Tribunal in which the same may be tried or heard, and any other proceedings arising out of or connected therewith.

2. **To** sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits, and applications for compromise or withdrawal, or for submission to arbitration of the said case, or prosecution or defense of the said case at all its stages.

3. **To** receive payments of, and issue receipts for, all money that may be or become due and payable to us during the course or on the conclusion of the proceedings.

   To do all other acts and things which may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:

a. **To** ratify whatever the said Advocate may do in the proceedings.

b. **Not** to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequences of their absence from the Court/Tribunal when it is called hearing.

c. **That** the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fees remains unpaid.

In witness whereof I/WE have signed this Power of Attorney/Vakalatnama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____ day of _____ at Peshawar _____

MA-Ariz

Signature of executant/s

Attested/accepted subject to the term regarding payment of fee

Yasir Saleem
Advocate

Jawad ur Rehman
Advocate

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO: 1067/2018
Muhammad Arif (Warder)
Central Prison Haripur.....**APPELLANT**

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa
2. Government of Khyber Pakhtunkhwa through Home Secretary Khyber Pakhtunkhwa
3. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar
4. Superintendent Central Prison Haripur..... **RESPONDENTS**

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2-	Affidavit	-	3
3-	I.G Office order No.10725 dated 04-04-2018	A	4

DEPONENT
21203-8890814-7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Service Appeal No. 1067/2018
Muhammad Arif Warder Central Prison Haripur .....**Appellant**

VERSUS

1. Government of Khyber Pakhtunkhwa
   Through Chief Secretary Khyber Pakhtunkhwa Peshawar

2. Home Secretary Government of Khyber Pakhtunkhwa
   Peshawar

3. Inspector General of Prisons
   Khyber Pakhtunkhwa Peshawar

4. Superintendent
   Central Prison Haripur .....**Respondents.**

JOINT PARAWISE COMMENTS/REPLY ON BEHALF OF RESPONDENTS NO. 1, 2,3 &4.

PRELIMINARY OBJECTIONS.

i. That the Appellant has got no cause of action.
ii. That the Appeal is incompetent and is not maintainable in its present form.
iii. That the Appellant is estopped by his own conduct to bring the present appeal.
iv. That the Appellant has no locus standi.
v. That the Appeal is bad for mis-joinder and non-joinder of necessary parties.
vi. That the Appeal is time barred.
vii. The Appellant has not come to court with clean hands.

ON FACTS

1) Pertains to record. Hence no comments.

2) Admitted.

3) Correct to the extent that the appellant was served with charge sheet and statement of allegation dated, 20-08-2013, but the allegation was strictly in accordance with law/ Rules.

4) Not admitted correct. The inquiry proceeding conducted by the inquiry officer is totally impartial. The appellant has been given an opportunity of proper hearing by issuing him a show cause notice. The inquiry officer after keeping in view facts and circumstances of the case, found the appellant guilty of negligence /inefficiency, in the performance of his duty and imposed a major penalty of "Removal from Service" on the appellant.

5) Correct.

6) Correct to the extent that the appellant was awarded a major penalty of "Removal from Service", reply to the rest of the para is mentioned in Para-4.

7) Pertains to record, hence no comments.

8) Correct.

9) Pertains to record, hence no comments.

10) Correct to the extent that the respondent No. 3 re-instated the appellant in service vide office order dated, 04-04-2018, however the intervening period was treated as Extra Ordinary Leave without pay, because the Department on the basis of well settled principle "No Work No Pay", could not pay salary to the petitioner for the period during which he did not performed his duty.

11) Pertains to record, hence no comments.

12) Not admitted correct. The order dated, 04-04-2018 to the extent of intervening period is leave without pay is legal, law-full and strictly in accordance with law/rules and hence the appeal may graciously be dismissed on the following grounds.

GROUNDS:-

A) That the appellant has been treated with Law/ Rules.

B) Not admitted correct.

C) Incorrect. The appellant has committed cross negligence /misconduct in the performance of his duty as stated in Para-4.

D) Correct to the extent that appellant was allowed reinstatement by this learned Tribunal, rest of the para is denied as replied in Para-4.

E) As per Para-D above.

F) Incorrect and misleading, hence not considerable.

G) As per Para-F above.

H) That the respondents also seek permission to raise additional grounds at the time of hearing.

In view of the above Para-wise comments/reply, appeal of the appellant may graciously be dismissed with cost.

SUPERINTENDENT
Central Prison Haripur
(Respondent No.04)

INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa Peshawar
(Respondent No.03)

16/4/18

HOME SECRETARY
Khyber Pakhtunkhwa, Peshawar
(Respondent No.02)

Chief Secretary
Government of Khyber Pakhtunkhwa Peshawar
(Respondent No.01)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Service Appeal No. 1067/2018
Muhammad Arif Warder Central Prison Haripur .....**Appellant**

VERSUS

1. Government of Khyber Pakhtunkhwa
   Through Chief Secretary Khyber Pakhtunkhwa Peshawar

2. Home Secretary Government of Khyber Pakhtunkhwa
   Peshawar

3. Inspector General of Prisons
   Khyber Pakhtunkhwa Peshawar

4. Superintendent
   Central Prison Haripur .....**Respondents.**

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS No. 01to 04

We the undersigned respondents do hereby solemnly affirm and declare that the contents of the Para-wise comments/reply on the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts have been concealed from this Honorable Tribunal.

SUPERINTENDENT
Central Prison Haripur
(Respondent No.04)

INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa Peshawar
(Respondent No.03)

16/4/2019

HOME SECRETARY
Khyber Pakhtunkhwa, Peshawar
(Respondent No.02)

Chief Secretary
Government of Khyber Pakhtunkhwa Peshawar
(Respondent No.01)

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
091-9210334, 9210406 091-9213446
No.Estb/Ward-/Orders/ 10725 /-
Dated 04/04/18 /-

DS/Lit/SC
for n/a on the arrival of officials concerned

ORDER

In pursuance of the Khyber Pakhtunkhwa Service Tribunal Judgment dated 01.03.2018 in service appeals, cases of the below noted officials, the penalties awarded to them vide the Department Order No. SO(Com/Enq)/HD/Lakki Jail/2013 dated 17-03-2014are hereby modified as noted against their names as under:-

Name of official	Penalty awarded by the competent authority.	Decision of the Service Tribunal dated 01-03-2018.
Warder Noor Islam.	Removal from Service.	Withholding of three (03) annual increments for three (03) years.
Warder Sher Ali Baz.	-do-	-do-
Warder Manzoor Khan.	-do-	-do-
Warder Malik Allah.	-do-	-do-
Warder Zaib Nawaz.	-do-	-do-
Warder Hameed Ullah.	-do-	-do-
Warder Muhammad Arif.	-do-	-do-
Warder MuhammadSajid.	-do-	-do-
Warder Amir Baseer.	-do-	-do-

Officials from S.No.01 to 08 are hereby re-instated into service with immediate effect. intervening period of these officials shall be treated as extra-ordinary leave without pay.

Upon re-instatement into service, they are hereby transferred and posted to Central on Haripur against the vacant posts for all purposes, **except officialli at S.No.9 viz Amir Baseer, ro has died during the intervening period as per some reliable information.**

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA , PESHAWAR.

ENDST;NO. 10726-40 /,

Copy of the above is forwarded to :-

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar for information with reference to his letter No.586/ST dated 19-03-2018 please.
2. The Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar for information please.
3. The Superintendents Headquarters Prison Haripur for information and further necessary action.
4. The Superintendents Headquarters Prison Bannu & D.I.Khan for information and similar necessary action.
5. The Superintendent, Central Prison Haripur for information and necessary action.
6. The Superintendent, District Jail Lakki Marwat for information and necessary action. He is directed to contact legal heirs of warder Amir Baseer for producing his death certificate issued by competent forum for further action.
7. The District Accounts Officers Lakki Marwat & Haripur , for information.
8. Appellants concerned.

ASSISTANT DIRECTOR(Litg) 04/4/18
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

4/4/18

FROM : FAX NO. : 5 Apr. 2018 2:55PM

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Service Appeal No. 1002/2018
Noor Islam Warder District Jail Lakki Marwat .....**Appellant**

VERSUS

1. Home Secretary Government of Khyber Pakhtunkhwa Peshawar

2. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar

3. Superintendent District Jail Lakki Marwat .....**Respondents.**

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2&3.

PRELIMINARY OBJECTIONS.

i. That the Appellant has got no cause of action.
ii. That the Appeal is incompetent and is not maintainable in its present form.
iii. That the Appellant is estopped by his own conduct to bring the present appeal.
iv. That the Appellant has no locus standi.
v. That the Appeal is bad for mis-joinder and non-joinder of necessary parties.
vi. That the Appeal is time barred.

ON FACTS

1) Pertains to record. Hence no comments.

2) Admitted.

3) Correct to the extent that the appellant was re-instated into service by Khyber Pakhtunkhwa Learned Service Tribunal Peshawar vide Order dated, 01-03-2018 by converting major penalty of "Removal from Service" into minor penalty of withholding of three Annual increments for three (03) years. The said order also let the Department to decide the period during which the appellant was removed from service.

4) Not admitted correct. The competent authority treated the intervening period (from 18-03-2014 to 01-03-2018) of the appellant as Extraordinary Leave Without Pay vide office order Endst; No 10725 dated, 01-04-2018 **(Annexure-A)**, because the Department could not pay salary to the petitioner for the period during which he did not performed duty.

5) Irrelevant, hence no comments.

6) Not admitted correct. The appellant was not considered and informed vide this office letter No. 19359 dated, 27-06-2018 **(Annexure-B).**

7) That the appeal of the appellant may graciously be dismissed on the following grounds :-

GROUNDS:-

A) As replied in Para-4 above.

B) Irrelevant, and misleading, hence not considerable.

C) As per Para-B above.

D) That the respondents also seek permission to raise additional grounds at the time of hearing.

In view of the above Para-wise comments/reply, appeal of the appellant may graciously be dismissed with cost.

SUPERINTENDENT
District Jail Lakki Marwat
(Respondent No.03)

INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa Peshawar
(Respondent No.02)

HOME SECRETARY
Khyber Pakhtunkhwa, Peshawar
(Respondent No.01)

Facts of the instant S. Appeal are same with S. Appeal No 2/2019.

15/4/2019

Assistant Advocate General
Khyber Pakhtunkhwa
Service Tribunal Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Rejoinder
In
Service Appeal No. 1067/2018

Muhammad Arif Warder.....Appellant

VERSUS

Govt of KPK through Chief Secretary & others.....Respondents

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth:

The appellant submits as under: -

Preliminary Objections

1. Contents incorrect. The appellant, being an aggrieved civil servant, has the cause of action.

2. Contents incorrect. The appeal is fully competent and maintainable in its present form.

3. Contents incorrect. No rule of estoppel is applicable in the instant appeal.

4. Contents incorrect. The appellant has locus standi to file the present appeal.

5. Contents incorrect. All the necessary parties are arrayed as respondents.

6. Contents incorrect. The present appeal is filed within the stipulated period of time.

7. Contents incorrect. The appellant has come to the court with clean hands.

On Facts:

1. No comments.

2. No comments being admitted.

3. Contents incorrect. Contents of para No. 03 of the appeal are true and correct.

4. Contents incorrect. Contents of para No. 04 of the appeal are true and correct.

5-9 Para No. 5 to 9 needs no comments being admitted.

10. Correct to the extent of reinstatement rest of the para as laid is incorrect. The appellant was due to the illegal removal order passed by the respondent was constrained to keep away from his duties and the allegations upon which the appellant was removed were never proved and for that reason on filing service appeal, he was reinstated by this Honb'le Tribunal so. During the intervening period the appellant, due to the illegal act of the respondent, remained jobless so in the circumstances he was entitled for full pay.

11. No comments.

12. Contents incorrect. Contents of para 12 of the appeal are true and correct.

GROUNDS:

A-H Grounds A to H are legal and shall be argued at the time of arguments.

It is therefore prayed that the appeal may kindly be allowed as prayed for

Appellant

Through

Yasir Saleem
Advocate, High Court
Peshawar.

Date: 27-Nov-19

AFFIDAVIT

I do hereby solemnly affirm and declare that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT

ATTESTED
Shoukat Hayat Khan Advocate
Oath Commissioner
High Court Peshawar
27/11/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Rejoinder
In
Service Appeal No. 1067/2018

Muhammad Arif Warder.....Appellant

VERSUS

Govt of KPK through Chief Secretary & others.....Respondents

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Shoukat Hayat Khan Advocate
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27/11/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Rejoinder
In
Service Appeal No. 1067/2018

Muhammad Arif Warder.....Appellant

VERSUS

Govt of KPK through Chief Secretary & others.....Respondents

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Appellant

Through

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Date: 27-Nov-19

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DEPONENT

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27/11/2019