

24.06.2019

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourn. To come up for arguments on 09.08.2019 before D.B.


Member


Member

09.08.2019

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Sulaiman Law Officer present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come for arguments on 02.10.2019 before D.B.


Member


Member

02.10.2019

Learned counsel for the appellant present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Arguments heard. To come up for order on 15.10.2019 before D.B.


Member


Member

04.01.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. To come up for written reply/comments on 04.03.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

04.03.2019

Learned counsel for the appellant Written reply not submitted. No one present on behalf of respondent department. Notice be issued to the respondent department with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 08.04.2019 before S.B



Member

08.04.2019

Counsel for the appellant and Addl. AG alongwith Atta Muhammad Legal Instructor for the respondents present.

The representative of respondents has submitted parawise comments on behalf of respondents No. 1 to 3 which are placed on record. To come up for arguments before D.B on 24.06.2019. The appellant may furnish rejoinder within a fortnight, if so desires.

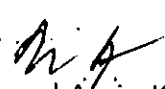

Chairman

02.10.2018

Counsel for the appellant Muhammad Naeem 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 during service he was removed from service vide order dated 30.04.2018 on the allegation that he was supplying narcotics to the prisoners and has committed misconduct. The appellant filed departmental appeal on 07.05.2018 which was rejected on 06.07.2018 hence, the present service appeal on 04.09.2018. It was further contended that neither charge sheet, statement of allegation was served nor regular inquiry was conducted therefore, the impugned major penalty is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days thereafter, notice be issued to the respondents for written reply/comments for 16.11.2018 before S.B.

Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member

06.11.2018



The learned Chairman has not yet assumed the charge. Therefore, the case is adjourned. To come up on 04.01.2019. Written reply not received.


READER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1093/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/09/2018	The appeal of Mr. Muhammad Naeem presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.
2-	S-9-18	<p align="right">  REGISTRAR 4/9/18 </p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>2-10-2018</u></p> <p align="right">  MEMBER </p>

RECEIVED
2018

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	15.10.2019	<p style="text-align: center;"><u>BEFORE THE YBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 1093/2018</p> <p style="text-align: right;">Date of Institution 04.09.2018 Date of Decision 15.10.2019</p> <p>Mr. Muhammad Naeem Ex-Warder (BPS-05), Central Prison, Bannu.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. The Government of Khyber Pakhtunkhwa, through Secretary Home Department Khyber Pakhtunkhwa Peshawar. 2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar. 3. The Superintendent Circle Headquarters Prison, Bannu. <p style="text-align: right;">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Hussain Shah-----Member(E)</p> <p style="text-align: center;"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Appellant present. Learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Sulaiman Law Officer present.</p> <p>2. The appellant (Ex-Warder) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 30.04.2018 whereby he was awarded punishment of removal from service and against the order dated 30.07.2018 through which his departmental appeal against the punishment order was rejected.</p>

15.10.2019

3. Learned counsel for the appellant argued that the appellant was the employee of the respondent department; that vide impugned order dated 30.04.2018 major penalty of removal from service was imposed upon the appellant on the allegation that the appellant supplied narcotics (charas) to the prisoners; that the departmental action was conducted on the back of appellant; that no charge sheet/statement of allegation was served upon the appellant, similarly, the appellant received the Show Cause Notice on the day the impugned punishment order was issued; that no opportunity of defense, cross-examination and personal hearing was granted to the appellant; that the punishment awarded to the appellant is extremely harsh & excessive.

4. As against that learned AAG argued that the appellant committed serious crime by supplying narcotics (charas) to the inmates of prison; that the punishment was awarded to appellant after observing all the legal formalities; that charge sheet/statement of allegation was issued, inquiry officer was appointed; that inquiry officer gave his findings against the appellant and thereafter Show Cause Notice was also issued to the appellant; that convicted prisoners testified in their statements that narcotics were supplied to them by the appellant; that contact number of the appellant was found in the recovered/confiscated mobile phone of prisoner; that the appellant remained involved in supply of narcotics in the past and a disciplinary case was initiated against him however he was exonerated due to lack of evidence.

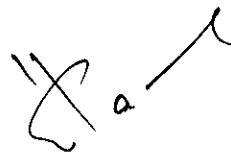
11/5/10.2019

5. Arguments heard. File perused

6. Copy of statement of allegation, inquiry report and Show Cause Notice is available on file. In the inquiry report, the inquiry officer gave his finding against the appellant and recommended his removal from service. In his report, the inquiry officer has also mentioned that after the occurrence of incident, the appellant disappeared from the scene and avoided the situation by fleeing from jail premises.

7. Learned counsel for the appellant could not demonstrate that the findings of inquiry officer are actuated with malice, arbitrary or perverse. However in the circumstances of the case and in view of the fact that the appellant is a very young person, for the purpose of safe administration of justice, the punishment of removal from service is modified and converted into withholding of five (05) annual increments for a period of five (05) years. Intervening period shall be treated as extraordinary leave without pay. The authority shall however keep a vigilant eye over the activities of the appellant. The present service appeal is accepted in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.


(Hussain Shah)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED
15.10.2019

15.10.2019

Appellant present. Learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Sulaiman Law Officer present. Vide separate judgment of today of this Tribunal placed on file, in the circumstances of the case and in view of the fact that the appellant is a very young person, for the purpose of safe administration of justice, the punishment of removal from service is modified and converted into withholding of five (05) annual increments for a period of five (05) years. Intervening period shall be treated as extraordinary leave without pay. The authority shall however keep a vigilant eye over the activities of the appellant. The present service appeal is accepted in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

ANNOUNCED.
15.10.2019

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1093 /2018

Nadeem

MUHAMMAD NAEEM

VS

I.G PRISON

INDEX

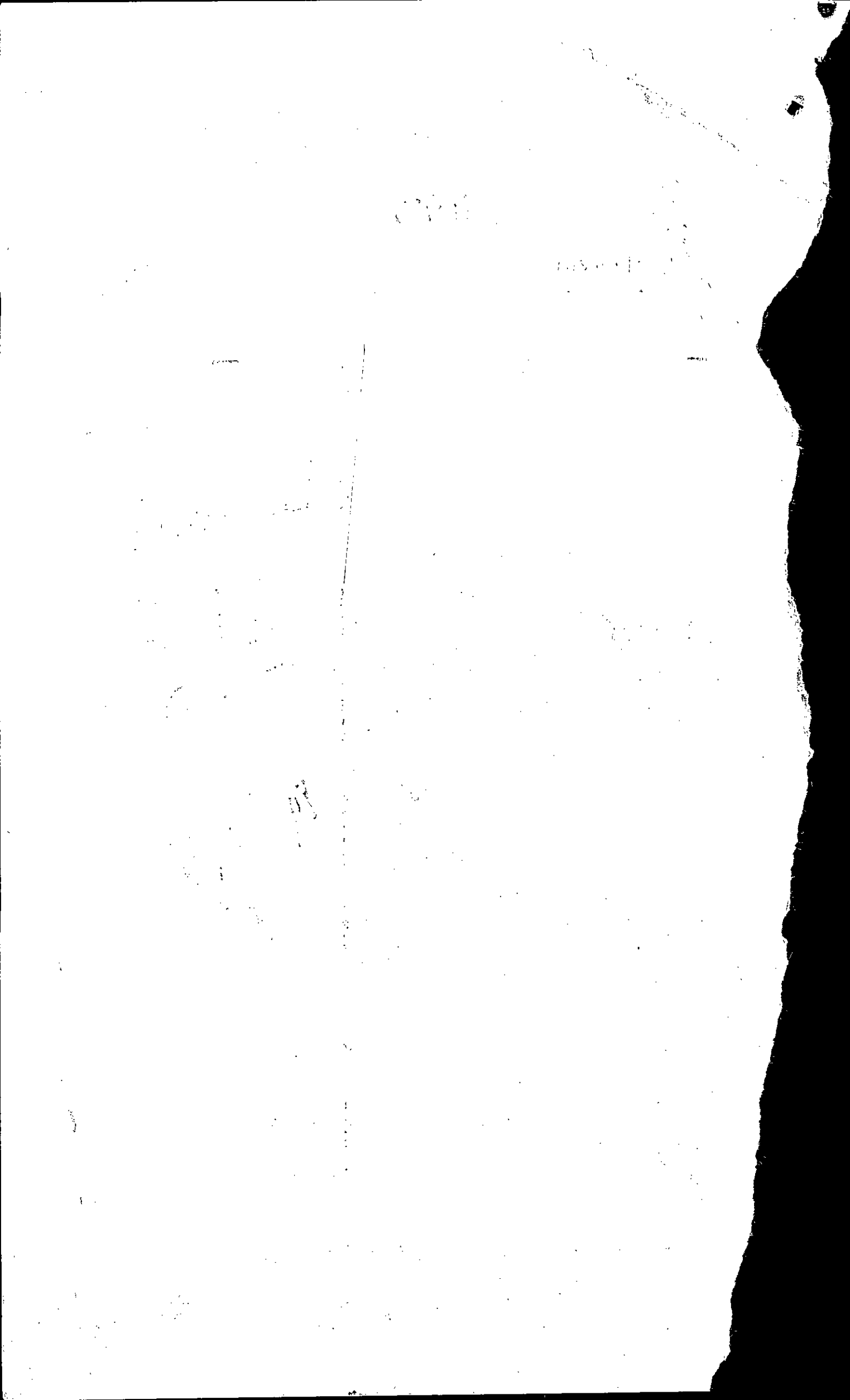
S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	1- 3.
2	Show cause notice	A	4.
3.	Letter	B	5.
4.	Impugned order	C	6.
5.	Departmental appeal	D	7.
6.	Rejection order	E	8.
7.	Vakalat nama	9.

APPELLANT

THROUGH:

**NOOR MOHAMMAD KHATTAK,
ADVOCATE**

Flat No. 3, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0345-9383141



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 1093 /2018

Diary No. 1393

Nadeem,
Mr. Muhammad Nadeem, Ex: Warder (BPS-05),
Central prison, Bannu.....

Dated 04/9/2018

APPELLANT

VERSUS

- 1- The Government Khyber Pakhtunkhwa through Secretary Home Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Prison's, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent, Circle Headquarters Prison, Bannu .

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 30-04-2018 WHEREBY MAJOR PENALTY REMOVAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 30.07.2018 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

PRAYER:

That on acceptance of this appeal the impugned orders dated 30-04-2018 and 30.07.2018 may very kindly be set aside and the respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:
ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was the employee of the respondent Department and was serving as Warder (BPS-5). That right from appointment the appellant was performed his duties quite efficiently and upto the entire satisfaction of his superiors.
- 2- That during service at Circle Headquarters Prison Bannu the appellant was served with show cause notice vide dated 13.4.2017 on the allegation that appellant supplied narcotics to the prisoners. That the said show cause notice was sent

vide order sheet dated 11-9-2020 the name of appellant shall be read as Muhammad Nadeem instead of Muhammad Nadeem in the memo of appeal.

Filed to-day
9/9/18

on the home address of the appellant which was received to the appellant on 30.4.2018 through post office Jehangiri Branch. Copies of the show cause notice and letter are attached as annexure.....**A & B.**

- 3- That it is very pertinent to mention that when the appellant visited the concerned quarter he was astonished that the respondents issued impugned order dated 30.04.2018 whereby major penalty of removal from service has imposed on the appellant. Copy of the impugned order is attached as annexure.....**C.**
- 4- That appellant feeling aggrieved from the impugned order dated 30.04.2018 preferred Departmental appeal before the respondent No.2 but the same has been rejected on no good grounds vide order dated 30.7.2018. Copies of the Departmental appeal and rejection order are attached as annexure.....**D & E.**
- 5- That appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst the others.

GROUNDS:

- A- That the impugned orders dated 30-04-2017 and 30.7.2018 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegation has issued to the appellant before issuing the impugned order dated 30.04.2018.
- D- That only a show cause notice has been served on the appellant by the respondent Department which was also received by the appellant through post office jehangiri on 30.4.2018.
- E- That no regular inquiry has been conducted in the matter before issuing the impugned order dated 30.04.2018 which is as per Supreme Court judgments is necessary in punitive actions against the civil servant.

- F- That no chance of personnel hearing/personnel defense has been given to the appellant before issuing the impugned order dated 30-04-2018.
- G- That the respondent Department acted in arbitrary and malafide manner while issuing the impugned orders dated 30-04-2018 and 30.7.2018.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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


Dated: 29.8.2018.

APPELLANT


MUHAMMAD NADEEM

THROUGH:


NOOR MOHAMMAD KHATTAK

&

MUHAMMAD MAAZ MADNI
ADVOCATES



Show Cause
Notice
Received ml
on 30/4/2018

OFFICE OF THE
SUPERINTENDENT
CIRCLE H/Qs PRISON BANNU
No. _____ /HQ Dt: _____ /2018
PH&FAX NO.0928-633327
cphannu@gmail.com

A- (4)

**SHOW CAUSE NOTICE UNDER RULE-5 (D) READ WITH RULE-7 OF
THE KHYBER PUKHTUNKHWA GOVERNMENT SERVANTS
(EFFICIENCY & DISCIPLINE) RULES-2011.**

You Warder Muhammad Nadeem attached to Central Prison, Bannu, remained involved in supply of narcotics to the prisoners, which was duly affirmed by the prisoners named Kifayat Ullah & Itbar Gul in their written statements during interrogation. Your contact number was also found from the recovered and confiscated mobile of prisoner Kifayat Ullah; hence, rendered yourself liable to be proceeded against you under the Rules.

I, Ghulam Rabbani, Superintendent Headquarter Central Prison Bannu being competent authority, am satisfied by the report submitted by the Inquiry Officer of Central Prison Bannu.

Now therefore, you the above named official are hereby called upon to show cause within 07 days of receipt of this notice as to why the punishment of **Removal from Service** may not be awarded to you for your above stated act of negligence and mis-conduct.

In case your reply does not reach the office of the undersigned within stipulated period, ex-parte action shall be taken against you.

You may appear before the undersigned for personal hearing on 23.04.2018 (Monday) if you wish to.

SUPERINTENDENT
CIRCLE H/QS PRISON BANNU

Endst No. 2930-32 dated 13/4 /2017.

Copy of the above is forwarded to :-

1. The worthy Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar for information, please.
2. Line Officer, Central Prison Bannu for information and necessary action.
3. Warder Muhammad Nadeem attached to Central Prison Bannu

Home Address: Muhammad Nadeem S/O Zafarullah, Jatan Banda, Jehangiri Banda, Tehsil Tekht-e-Nasrati, District Karak.

ATTESTED

SUPERINTENDENT
CIRCLE H/QS PRISON BANNU

صاحب عالی

B-5

تزارش ہے کہ ہمارا دیہاتی علاقہ ہے۔ ڈاک خانہ ایک چھوٹا سا مبرا ہے
 ہے۔ ڈاک خانہ میں کوئی ڈاک نہیں ہے جو کہ ڈاک منے کے ساتھ ساتھ
 صیب بنتی ہے۔ اور ڈاک منے کے ساتھ ساتھ ڈاک منے کے ساتھ ساتھ
 کے بعد (30/18) کو وصول ہوئے ہیں

B.P.M. Schaudhary
 03078076957

تسریں کشتہ ڈاک خانہ جانی پورہ براج و پورہ عرفان

ATTESTED

[Handwritten signature]



Removal
order

OFFICE OF THE
SUPERINTENDENT
CIRCLE H/Qs PRISON BANNU

No. _____ /HQ Dt: 30/4/2018
PH&FAX NO.0928-633327
epbannu@gmail.com

OFFICE ORDER

WHEREAS, the accused warder Muhammad Nadeem attached to Central Prison Bannu was proceeded against under Rule 3 (b)(d) of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules-2011 for the charges of misconducts as mentioned in the Charge Sheet/Show cause Notice served upon him.

AND WHEREAS, he furnished reply to the statement of allegations which was found unsatisfactory and accordingly the Inquiry Officer, recommend him for removal from Service.

AND WHEREAS, the undersigned being competent authority has served final Show Cause Notice upon the accused official and has given a reasonable opportunity of personal hearing on 23.04.2018 vide this office memo: No.2929 dated 13.04.2018, but he completely failed to submit either defense reply or to appear before the undersigned.

NOW THEREFORE, in exercise of power conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules-2011, the undersigned being competent authority, after having considered the charges, evidences on record and report of the Inquiry Officer, the accused official named Warder (BPS-05) Muhammad Nadeem is hereby awarded the punishment of Removal From Service with immediate effect and the intervening period is considered as Leave Without Pay.

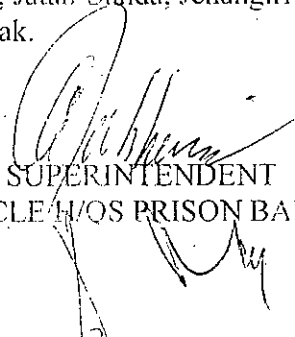

SUPERINTENDENT
CIRCLE H/QS PRISON BANNU

Endst No.. 3335-38 dated 30/4/2018.

Copy of the above is forwarded to :-

1. The worthy Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar for information, please.
2. The District Accounts Officer, Bannu for information & necessary action, please.
3. Line Officer, Central Prison Bannu for information and necessary action.
4. Warder Muhammad Nadeem attached to Central Prison Bannu
Home Address: Muhammad Nadeem S/O Zafarullah, Jatan Banda, Jehangiri Banda,
Tehsil Tekht-e-Nasrati, District Karak.

ATTESTED



SUPERINTENDENT
CIRCLE H/QS PRISON BANNU

بخدمت صاحب اسٹیٹ بینک، صیغہ کارروائی، خیریت کو خواہجہ

(7) - D

دو فرسٹ ہیرا کے محل نوٹ کریں

صاحب عالی

مؤدبانہ گزارش ہے کہ خودی حکم صیغہ کارروائی سے
بطور وارنٹر تعینات تھا۔ اور یوں صیغہ اپنے فرائض
سراٹھام کے رہ گیا۔ کہ عرصہ 30/4/2018 پر خودی
کو حکم 33 کا بند سے ایک شوکار نوٹس موصول ہوا جسکی
معلومات کے ساتھ اسکی اپنے دفتر چھوڑا گیا تو معلوم ہوا کہ اسکی
خودی کو عرصہ 30/4/2018 پر نوٹری سے درخواست کر دیا
گیا ہے۔ اسکی خاتون ایک نہایت مزید خاندان سے ہے اور
اسکی خدوں پر لگانے سے اسکی خاتون غلط اور سے بنیاد سے

لہذا آپ صاحبان سے عرض گزار ہوں کہ مجھے دائیں نوٹری
پر بحال کرنے سے اتفاقات صادر ہوا۔ شکوہ زبانی
ساتھ نامہ دیا گیا ہے

ATTACHED

کلمہ

الغزالی 7/5/2018

مدرسہ
وارنٹر سیکرٹری، صیغہ کارروائی



ORDER

Appeal to I.C. Joud

OFFICE OF THE INSPECTOR GENERAL OF PRISONS KHYBER PAKHTUNKHWA, PESHAWAR

☎ 091-9210334, 9210406 ☎ 091-9213445

No.Estb/Ward-/Orders/ 2288 /-

Dated 30/07/18 /-

E-8

WHEREAS, Warder Muhammad Nadeem S/O Zafar Ullah Khan, while attached to Central Prison Bannu was awarded the major penalty of "Removal from Service" by the Superintendent Headquarters Prison Bannu vide his office order No. 3334 dated 30-04-2018 due to smuggling supply narcotics (Chars) to the prisoners.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available records, and it was observed that the appellant for the charges of his misconduct upon him, and all legal/ procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 16-07-2018. During the course of hearing, he failed to justify his innocence.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of power conferred under Rule-5 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986, the decision of the competent authority is upheld and appeal of the appellant is hereby rejected being without any substance.

INSPECTOR GENERAL OF PRISONS, KHYBER PAKHTUNKHWA, PESHAWAR.

ENDST: NO. 2288-92 /-

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Bannu for information and necessary action with reference to his letter No. 4312-WE dated 22-06-2018.
2. The Superintendent, Central Prison Bannu for information and necessary action.
3. District Accounts Officer concerned for information.
4. Official concerned.

[Signature]
**ASSISTANT DIRECTOR(ADMN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.**

ATTESTED

[Signature]

*Muhammad. Nadeem
S/O. Zafarullah
N.I.C. = 1420390982277
cell No = 03449500701
W.S. No = 0345-9808237*

VAKALATNAMA

Before the KP Service Tribunal Peshawar

OF 2018

Muhammad Naem

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

J. G. Prison & Others

(RESPONDENT)
(DEFENDANT)

I/We Muhammad Naem

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/2018



CLIENT


ACCEPTED

NOOR MOHAMMAD KHATTAK


&
MUHAMMAD MAAZ MADNI
ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No. **0345-9383141**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of
Service Appeal No. 1093/2018
Muhammad Nadeem
Ex Warder Central Prison Bannu**Appellant**

VERSUS

- 1) Government of Khyber Pakhtunkhwa,
Through Secretary Home Department,
Khyber Pakhtunkhwa, Peshawar
- 2) Inspector General of Prisons
Khyber Pakhtunkhwa, Peshawar
- 3) Superintendent,
Circle Headquarter Bannu.....**Respondents**

INDEX

S.NO.	DESCRIPTION OF DOCUMENTS	Annex	Page No.
1-	Para-wise Comments/ Reply	-	1-2
2-	Affidavit	-	3
3-	Statement of allegation dated; 01-03-2018	A	4
4-	Inquiry Report dated;13-04-2018	B	5
5-	Inquiry proceedings/Disciplinary action dated; 28-03-2018	C	6
6-	Written Statements	D	7
7-	Show case Notice dated; 13-04-2018	E	8
8-	Office Order of Headquarter Prisons Bannu dated; 30-04-2018	F	9
9-	I.G. Prisons Office Order dated; 30-07-2018	G	10


DEPONENT

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL NO.1093 OF 2018

Mr. Muhammad Nadeem, Ex: Warder (BPS-05),
Central Prison Bannu (Appellant)

VERSES

1. Govt. Of Khyber Pakhtunkhwa, through Secretary Home Department, Khyber Pakhtunkhwa Peshawar.
2. Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
3. The Superintendent, Circle Headquarters Prison, Bannu.
..... (Respondents)

PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 03
ARE AS UNDER

Respectfully Sheweth;

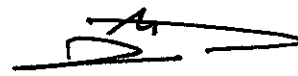
Facts:

- A. That Mr. Muhammad Nadeem was appointed as Warder (BPS-05) in Khyber Pakhtunkhwa Prisons Department on 28.01.2015. However, his appointment order was cancelled by the competent authority on 16.02.2015. Upon appeal before Hon'ble Peshawar High court Peshawar, his cancellation order was withdrawn. The said warder committed a serious crime by supplying narcotics to inmates at his initial and short duration of service. Due to such heinous act, the competent authority took disciplinary action against him. Moreover, Office Order bearing No.3334 dated 30.04.2018 of the Superintendent Circle Headquarters Prison, Bannu, regarding removal from service against warder Muhammad Nadeem (appellant) is based on facts and was served upon him in line with law, rules and regulation of Civil Servant Act 1973. While complete hierarchy of Efficiency & Discipline Rules-2011 was also followed in this regard.
- B. Submitted as above in Para-A.
- C. That the accused warder was issued Statement of allegations when inquiry was initiated against him vide No.1174 dated 01.03.2018. The Inquiry officer duly recommended his removal from service vide his letter No.2924/we dated 13.04.2018. Before issuance of office order regarding removal from service, a Show Cause notice was served upon him vide Superintendent Circle Headquarter Prison, Bannu No.2929 dated 13.04.2018 and opportunity of personal hearing was given to the accused warder. Statements of Allegations, Inquiry Report, Notice of Inquiry officer for Personal Hearing, Inmates' Written Statements, Show Cause Notice, office order Headquarter Prison Bannu and Office order of Inspector General of Prisons, Peshawar are attached as annexure A,B,C,D,E,F&G respectively.
- D. That before issuance of Show Cause notice, statement of allegations was also served upon him as explained above in Para-C.
- E. That, as submitted in Para-C, statement of allegations was served upon him and proper inquiry was conducted. The Inquiry Officer called the accused warder through notice on home address for submission of reply or appearance before inquiry officer for personal hearing on 05.04.2018, vide No.2516 dated

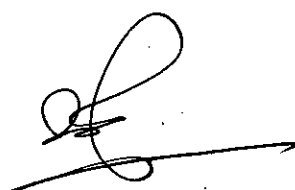
28.03.2018. In response, the accused warder had appeared before the Inquiry Officer and submitted his written reply. Annexure-B.

- F. Submitted incorrect. The accused warder was called in person to the office of the Inquiry Officer on 05.04.2018 vide No.2516 dated 28.03.2018 and this office Show Cause Notice No.2929 dated 13.04.2018, as explained above in Para-C, copy attached Annexure-C and D.
- G. Admitted incorrect. The order of removal from service was issued purely on facts and according to the rules and regulations. The charges levelled against the accused warder were proved against him while the accused warder completely failed to defend the case. That a mobile phone and narcotics were recovered and confiscated from convicted prisoner. It was also found in the dialled list of his phone that phone number of said accused warder was also repeatedly dialled by the convicted prisoner. Later on the convicted prisoner confessed testified that the narcotics were supplied to him by the accused warder Muhammad Nadeem.
- H. No comments

Keeping in view the grounds realities/ proofs against the accused warder as submitted in the above mentioned Para-wise comments, it is humbly prayed that the instant appeal may please be filed with cost.



SECRETARY
HOME & TAS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR
 (Respondent No.01)



INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
 (Respondent No.02)




SUPERINTENDENT
CIRCLE HQS PRISON BANNU
 (Respondent No.03)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In the matter of
 Service appeal No.1093/2018
 Ex-Warder Muhammad Nadeem
 Attached to Central Prison Bannu.....appellant

VERSUS

1. The Government of Khyber Pakhtunkhwa Through Secretary Home and T.A Department, Peshawar.
2. The Inspector General of Prison Khyber Pakhtunkhwa Peshawar.
3. The Superintendent Circle Headquarter Prison Bannu.....Respondents.

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS NO.1 TO 3.


We the undersigned respondents do hereby solemnly affirm and declare that the contents of the parawise comments on the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts has been kept secret from this honourable Tribunal.



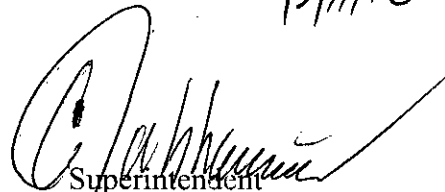
SECRETARY
 Home and T.A Department, Peshawar
 (Respondents-1)



Inspector General of Prison
 Khyber Pakhtunkhwa Peshawar
 (Respondents-2)



15/11/18



Superintendent
 Circle Headquarter Prison Bannu
 (Respondents-3)



AAMEX-A

OFFICE OF THE
SUPERINTENDENT
CIRCLE H/Qs PRISON BANNU
No. 1174 /HQ D; 01 / 3 /2018
PH&FAX NO.0928-633327
cpbannu@gmail.com

DISCIPLINARY ACTION:

I, Ghulam Rabbani, Superintendent Circle Headquarters Prison, Bannu as a competent authority, am of the opinion that Warder Muhammad Nadeem S/O Zafar Ullah attached to Central Prison, Bannu has rendered himself liable to be proceeded by committing the following act of misconduct within the meaning of Section 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011.

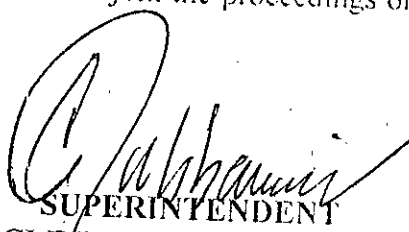
STATEMENT OF ALLEGATIONS.

"As reported by the Deputy Superintendent Jail, Warder Muhammad Nadeem attached to Central Prison Bannu, has remained involved in smuggling of narcotics to the prisoners. Which was duly justified by the prisoners named 1.Kifayat Ullah S/o Noor Nawaz 2.Itbar Gul S/o Naseer Khan in their written statements during interrogation. Also the contact number of dismissed warder was traced out from the recovered and confiscated mobile of prisoner Kifayat Ullah."

Mr. Manaz Gul Assistant Superintendent Jail attached to Central Prison Bannu is hereby appointed as Inquiry Officer.

The Inquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make, within fifteen days of receipt of this order, recommendations as to punish or to take other appropriate actions against the accused officials.

The accused and a representative of Central Prison Bannu shall join the proceedings on the date, time and place appointed by the Inquiry Officer.


SUPERINTENDENT
CIRCLE/H/QS PRISON BANNU

Endst: No. 1175-77 dated: 01 / 3 /2018

Copy of the above is forwarded to:-

1. Mr. Manaz Gul Assistant Superintendent Jail attached to Central Prison Bannu Inquiry Officer for initiating proceedings against the above named warder under the meaning of Section 3 of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rule 2011.
2. The Line Officer Central Prison Bannu for information with reference to his report dated 22.02.2018. One copy of the same duly signed and dated by the accused officials may be furnished to this office in token of its receipt.
3. Warder Muhammad Nadeem attached to Central Prison Bannu with the directions to appear before the Inquiry Officer, on the date, time and place fixed by the Inquiry Officer, for the purpose of inquiry proceedings.

SUPERINTENDENT
CIRCLE H/QS PRISON BANNU

No. 2924-WG

Dated 13-4-18

Annex B

5

From:

Manaz Gul (Inquiry Officer),
Assistant Superintendent Jail
Central Prison Bannu.

To

The Superintendent,
Circle Headquarters Prison, Bannu.

Subject: - INQUIRY REPORT.

R/Sir,

Kindly refer to your office memo: bearing Endst: No.1175-77 dated 01.03.2018.

BRIEF FACTS:

It is submitted that the undersigned was nominated as Inquiry officer in a case of *Warder Muhammad Nadeem who remained involved in smuggling of narcotics to the prisoners, which was duly affirmed by the prisoners named Kifayat Ullah & Itbar Gul in their written statements during interrogation. Contact number of accused warder was also found from the recovered and confiscated mobile of prisoner Kifayat Ullah.*

The undersigned probed thoroughly into the matter and several times directed the accused warder to appear before the undersigned for Inquiry proceedings and to produce reply in defence regarding his case. An apt opportunity of hearing was also given to him. Despite of various notices and verbal directions, he did not appear before the undersigned. Therefore, the undersigned issued final notice for appearance and submission of defence reply. Accordingly, the accused warder appeared before the undersigned wherein cross-questions were posed to him; he also submitted his written reply in defence.

FINDINGS:

As per written statement of the prisoners and mobile record recovered from prisoners where his mobile number was found, his links with prisoners were also confirmed. Moreover, both the convicted prisoners, namely, Kifayat Ullah and Itbar Gul testified in their statement that narcotics have been supplied to them by the accused Warder Muhammad Nadeem. Reportedly, he had also been involved in smuggling of narcotics in past at this Jail and a disciplinary case was initiated against him but he was exonerated from charges due lack of evidences. The time when the above incident occurred, he disappeared from the scene and the undersigned several times attempted to contact him so as to find out the factual position and to bring him face to face with the prisoners from whom narcotics and mobile were recovered but he avoided the situation by fleeing from the Jail premises. Hence, the charges levelled against him are right because his written reply is unsatisfactory having no concrete proofs.

CONCLUSION: -

In view of the above submissions and ground reality, the undersigned reached the conclusion that he committed the above cited offence as all facts signified which were collected during the course of inquiry. Therefore, the undersigned recommends his **Removal From Services** with immediate effect and his intervening period w.e.f. 28.02.2018 to 13.04.2018 may please be treated as **Leave without Pay**.

Yours Obediently

Dated 13-4-18

Lo/PB

To issue final notice
Show-cause notice

13/4/18

(MANAZ GUL)
Inquiry Officer
Assistant Superintendent Jail
Central Prison Bannu

13/4/18

Annex - C

3

No. 2576

Dated: 28/3/08

To: Warden Muhammad Nadeem S/O Zafar Ullah,
R/O Village Janan Banda, Tehsil Takhte Nasrati
District Karak.

Subject: INQUIRY PROCEEDINGS/DISCIPLINARY ACTION.

Memo:

You the above named warden were time and again directed telephonically to submit your defence reply to the statement of charges levelled against you vide Superintendent, Circle Headquarters Prison, Bannu office No.1175-77 dated 01.03.2018, but you failed to follow the directions. Therefore, you are hereby finally directed to attend the office of the undersigned (Inquiry Officer) on 05.04.2018 (Thursday) at 10:00 am positively for inquiry proceedings or submit defence reply, failing to which it will be presumed that you have nothing to put before the Inquiry Officer in your defence. Therefore, ex-parte action will be taken against you.

Manaz Gul
Inquiry Officer
Assistant Superintendent Jail
Central Prison Bannu

Endst No. 2577/-

Copy forwarded to the Superintendent Circle Headquarters Prison, Bannu for kind information with reference to above please.

Manaz Gul
Inquiry Officer
Assistant Superintendent Jail
Central Prison Bannu

PB

28/3/08

سید محمد نواز

Ch. Statement Answer-D

20 جون 28 جون 7-34PM 81 کس کے لئے طریقہ کار سے جو چیزیں تیار

رہیں ان سے جو چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں

چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں

ان سے جو چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں

ان سے جو چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں

ان سے جو چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں

ان سے جو چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں

ان سے جو چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں

چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں

ان سے جو چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں

ان سے جو چیزیں تیار کی گئی ہیں ان سے جو چیزیں تیار کی گئی ہیں



Annex - E

OFFICE OF THE
SUPERINTENDENT
CIRCLE H/Qs PRISON BANNU
No. 2929 /HQ Dt: 13/4/2018
PH&FAX NO.0928-633327
cpbannu@gmail.com

**SHOW CAUSE NOTICE UNDER RULE-5 (I) READ WITH RULE-7 OF
THE KHYBER PUKHTUNKHWA GOVERNMENT SERVANTS
(EFFICIENCY & DISCIPLINE) RULES-2011.**

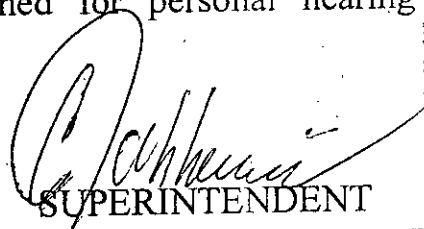
You **Warder Muhammad Nadeem** attached to Central Prison, Bannu, remained involved in supply of narcotics to the prisoners, which was duly affirmed by the prisoners named Kifayat Ullah & Itbar Gul in their written statements during interrogation. Your contact number was also found from the recovered and confiscated mobile of prisoner Kifayat Ullah; hence, rendered yourself liable to be proceeded against you under the Rules.

I, Ghulam Rabbani, Superintendent Headquarter Central Prison Bannu being competent authority, am satisfied by the report submitted by the Inquiry Officer of Central Prison Bannu.

Now therefore, you the above named official are hereby called upon to show cause within 07 days of receipt of this notice as to why the punishment of **Removal from Service** may not be awarded to you for your above stated act of negligence and mis-conduct.

In case your reply does not reach the office of the undersigned within stipulated period, ex-parte action shall be taken against you.

You may appear before the undersigned for personal hearing on 23.04.2018 (Monday) if you wish to.



SUPERINTENDENT
CIRCLE H/QS PRISON BANNU

Endst No.. _____ dated ____ / ____ /2018.

Copy of the above is forwarded to :-

1. The worthy Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar for information, please.
2. Line Officer, Central Prison Bannu for information and necessary action.
3. Warder Muhammad Nadeem attached to Central Prison Bannu

Home Address: Muhammad Nadeem S/O Zafarullah, Jatan Banda, Jehangiri Banda, Tehsil Tekht-e-Nasrati, District Karak..


SUPERINTENDENT
CIRCLE H/QS PRISON BANNU



OFFICE ORDER

Annex - F

9
OFFICE OF THE
SUPERINTENDENT
CIRCLE H/Qs PRISON BANNU
o. 3334 /HQ Dt: 30/4 /2018
PH&FAX NO.0928-633327
cpbannu@gmail.com

WHEREAS, the accused warder Muhammad Nadeem attached to Central Prison Bannu was proceeded against under Rule 3 (b)(d) of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules-2011 for the charges of misconducts as mentioned in the Charge Sheet/Show cause Notice served upon him.

AND WHEREAS, he furnished reply to the statement of allegations which was found unsatisfactory and accordingly the Inquiry Officer, recommend him for removal from Service.

AND WHEREAS, the undersigned being competent authority has served final Show Cause Notice upon the accused official and has given a reasonable opportunity of personal hearing on 23.04.2018 vide this office memo: No.2929 dated 13.04.2018, but he completely failed to submit either defense reply or to appear before the undersigned.

NOW THEREFORE, in exercise of power conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules-2011, the undersigned being competent authority, after having considered the charges, evidences on record and report of the Inquiry Officer, the accused official named Warder (BPS-05) Muhammad Nadeem is hereby awarded the punishment of Removal From Service with immediate effect and the intervening period is considered as Leave Without Pay.

Endst No.. 3335-38 dated 30/4 /2018.

SUPERINTENDENT
CIRCLE H/QS PRISON BANNU

Copy of the above is forwarded to :-

1. The worthy Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar for information, please.
2. The District Accounts Officer, Bannu for information & necessary action, please.
3. Line Officer, Central Prison Bannu for information and necessary action.
4. Warder Muhammad Nadeem attached to Central Prison Bannu
Home Address: Muhammad Nadeem S/O Zafarullah, Jatan Banda, Jhangiri Banda,
Tehsil Tekht-e-Nasrati, District Karak.

SUPERINTENDENT
CIRCLE H/QS PRISON BANNU



ORDER

OFFICE OF THE
DIRECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

tb/Ward-/Orders/ 22588 /-

Dated 30/07/18 /-

Annex - G

10

WHEREAS, Warder **Muhammad Nadeem S/O Zafar Ullah Khan**, while attached to Central Prison Bannu was awarded the major penalty of "**Removal from Service**" by the Superintendent Headquarters Prison Bannu vide his office order No. 3334 dated 30-04-2018 due to smuggling supply narcotics (Chars) to the prisoners.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available records, and it was observed that the appellant for the charges of his misconduct upon him, and all legal/ procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 16-07-2018. During the course of hearing, he failed to justify his innocence.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of power conferred under Rule-5 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986, the decision of the competent authority is upheld and appeal of the appellant is hereby rejected being without any substance.

**INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.**

ENDST;NO. 22588-82 /-

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Bannu for information and necessary action with reference to his letter No. 4312-WE dated 22-06-2018.
2. The Superintendent, Central Prison Bannu for information and necessary action.
3. District Accounts Officer concerned for information.
4. Official concerned.

[Signature]
**ASSISTANT DIRECTOR(ADMN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.**

[Signature]
22/07/18
fern/aa
[Signature]
BTR

[Handwritten]
3/3/16/9/05

[Handwritten]
NO: 2187
2/8/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 1093/2018

MUHAMMAD NADEEM

VS

I.G. PRISON

REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO THE REPLY SUBMITTED BY THE
OFFICIAL RESPONDENTS

R/SHEWETH:

All the objections raised by the respondents are in correct, baseless and not in accordance with law and rules, rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Admitted correct to the extent that the appellant was appointed as Warder while the remaining Para is incorrect. That right from appointment the appellant was performing his duty with devotion, honesty and efficiently. Furthermore, the respondents without fulfilling the codal formalities straight issued the impugned order dated 30.04.2019 whereby the appellant has been removed from service.
- 2- Needs no comments.
- 3- Incorrect and not replied accordingly. That no any charge sheet and statement of allegation has been issued to the appellant. Only a show cause notice dated 13.4.2018 was addressed on home address of the appellant which was received to appellant on 30.04.2018. That on the said show cause the appellant visited the concerned quarter but on the same day the respondents handed over the impugned removal order to appellant.
- 4- Incorrect and not replied accordingly. No charge sheet and statement of allegation has been issued to appellant.
- 5- Incorrect and not replied accordingly. No chance of personal hearing was provided to the appellant before issuing the impugned order.
- 6- Incorrect and not replied accordingly. Already stated in the above para-3.

7- Incorrect and replied accordingly. That the respondents malafide involved the appellant into the matter. That the statement of the prisoner was recorded but the same has not been cross examined by the appellant. That the impugned removal order has been issued on the basis of malafide intention of the respondents.

GROUND:

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. That no charge sheet and statement of allegation has been issued to the appellant. That no regular inquiry/fact finding inquiry has been conducted into the matter. That no chance of personal hearing/defence has been provided to the appellant before issuing the impugned order dated 30.4.2018.

It is therefore, most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may kindly be accepted in favor of the appellant with all back benefits.

APPELLANT

mez
MUHAMMAD NADEEM

THROUGH:

Sp
**NOOR MOHAMMAD KHATTAK
ADVOCATE**

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1926 /ST

Dated 4-11- 2019

To


The Superintendent Circle Headquarters Prison,
Government of Khyber Pakhtunkhwa,
Bannu.

Subject: -

JUDGMENT IN APPEAL NO. 1093/2018, MR. MUHAMMAD NADEEM.

I am directed to forward herewith a certified copy of Judgement dated 15.10.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 1404 /ST/SCJ/SA-1093/2018

Dated: 26/07/2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To,

The Registrar,
Supreme Court of Pakistan,
Islamabad.

Subject: CIVIL APPEAL NO. 139 OF 2021

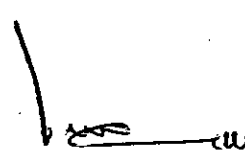
Government of Khyber Pakhtunkhwa through Secretary Home
Department, Peshawar and others

Versus

Muhammad Nadeem

Dear Sir,

I am directed to acknowledge the receipt of your letter no
C.A.139/2021-SCJ dated 30-06-2021 alongwith its enclosure.


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

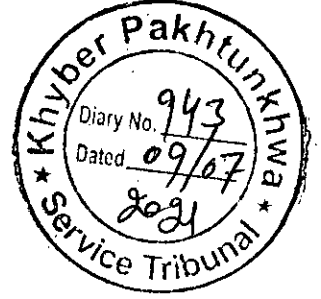
Ph: 9214461
Fax: 9220406

REGISTERED
No. C.A.139/2021 - SCJ
SUPREME COURT OF PAKISTAN

Islamabad, dated 30-06 2021

From The Registrar,
Supreme Court of Pakistan,
Islamabad.

To The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.



Subject: **CIVIL APPEAL NO. 139 OF 2021**

Government of Khyber Pakhtunkhwa through Secretary Home
Department, Peshawar and others
Versus
Muhammad Nadeem

**On appeal from the Judgment/Order of the Khyber Pakhtunkhwa
Service Tribunal, Peshawar dated 15/10/2019 in Appeal-1093/2018.**

Dear Sir,

In continuation of this Court's letter of even number dated 27-02-2021,
I am directed to enclose herewith a certified copy of the Order of this Court dated
24/06/2021 allowing the above cited case in the terms stated therein for information
and further necessary action.

I am further directed to return herewith the original record of the Service
Tribunal, received under the cover of your letter No.476 dated 04/03/2021.

Please acknowledge receipt of this letter along with its enclosure
immediately.

Encl: Order:
2. O/Record:

Yours faithfully,

(MUHAMMAD MUHAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Seen.

26/7/2021
Chain - on.

59/21

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

CIVIL APPEAL NO.139 OF 2021

[Against the judgment dated 15.10.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, in Service Appeal No.1093 of 2018]

Government of Khyber Pakhtunkhwa through Secretary, Home Department, Peshawar and others ...Appellants

Versus

Muhammad Nadeem ...Respondent

For the Appellants : Mr. Zahid Yousaf Qureshi,
Addl. Advocate General,
Khyber Pakhtunkhwa
Sheharyar, Sr. Asstt. Supdt. Jail

Respondent : Mr. Salamat Shah, ASC

Date of Hearing : 24.06.2021

ORDER

W

GULZAR AHMED, CJ.- The respondent was employed as a Warder, Central Prison, Bannu. He was alleged to be supplying narcotics to the prisoners in the Jail. He was issued charge sheet and statement of allegations. Enquiry was conducted. Show Cause Notice was issued to him and thereafter, he was awarded penalty of removal from service vide order dated 30.04.2018. After availing the remedy of departmental appeal, the respondent filed Service Appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar (the Tribunal). The Tribunal in the impugned judgment dated 15.10.2019, found that the enquiry

WITNESSED



Court Associate
Supreme Court of Pakistan
Islamabad

was rightly conducted against the respondent and the recommendation of the Inquiry Officer that of removal from service and thereafter, the order of penalty was in accordance with law, and that there was no malice or arbitrary or perverse exercise of power. The Tribunal, however, by assigning the reason that the respondent is a very young person proceeded to modify the penalty from removal from service to that of withholding of five annual increments for a period of five years.

2. The learned Additional Advocate General, Khyber Pakhtunkhwa (AAG) contends that the Tribunal did not assign valid reason for exercising the jurisdiction of modification of the penalty and, thus, such modification was not in accordance with law.

3. The learned ASC appearing for the respondent tried to argue the case on merit but the respondent having not challenged the impugned judgment, thus, the question of considering the merit of the case does not arise. He was, however, unable to substantiate or support the impugned judgment, modifying the penalty imposed upon the respondent. This Court has consistently held that the Tribunal cannot exercise jurisdiction of modification of penalty in isolation rather it has to give legal and persuasive reasoning and not to act in a whimsical and arbitrary manner. In this regard, reference is made to the cases of Deputy Postmaster General, Central Punjab, Lahore and another v. Habib Ahmed (2021 SCMR 584), Government of the Punjab through Chief Secretary v. Muhammad Arshad and 2 others (2020 SCMR 1962)

W

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

and Commissioner Faisalabad Division, Faisalabad and another v. Allah Bakhsh (2020 SCMR 1418).

4. We have heard the learned counsel for the parties and gone through the record. It seems that the Tribunal exceeded its jurisdiction of modifying the penalty imposed upon the respondent. Thus, to the extent of modification of penalty by the Tribunal in the impugned judgment, the same is set aside and the original penalty imposed by the department on the respondent that of removal from service is restored. The appeal is allowed.

Sd/-
Sd/-
Sd/-

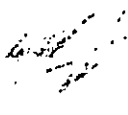
Bench-I
Islamabad
24.06.2021
Mahtab/*

29/6/21



Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad



Small, faint text or markings in the bottom left corner, possibly a signature or a date.


11.09.2020

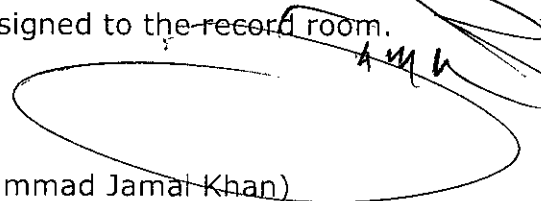
Mr. Noor Muhammad Khattak, Advocate for petitioner is present. Mr. Riaz Ahmad Painsakheil, Assistant Advocate General for the respondents is also present.

Learned counsel for the petitioner while arguing submitted that the name of present petitioner namely, Muhammad Nadeem has inadvertently been written as Muhammad Naeem in the heading of appeal although while endorsing this signature his name has correctly been mentioned as Muhammad Nadeem, this clerical error has appeared in the appeal of this august Tribunal which has been decided on 15.10.2016 vide appeal bearing No. 1093/2018 captioned Muhammad Naeem Versus the Government of Khyber Pakhtunkhwa through its Secretary Home Department and two other respondents therefore, the erroneous entry made therein is liable to be corrected and this Tribunal has plenary powers of making the sought for rectification.

3. On the other hand the learned Assistant Advocate General for the respondents raised no objection on the acceptance of the subject application for the requisite correction.

4. The record on file do confirm that the name of petitioner in the heading of appeal was scribed as Muhammad Naeem however, while endorsing his signature at the end of appeal his name has been written as Muhammad Nadeem, the above mentioned mistake has been repeated in the heading of the judgment rendered by this august Service Tribunal on 15.10.2019 and the appeal is rectifiable under section 7 of the Service Tribunal Act, 1974, and read with rule 27 of the Service Tribunal Rules, 1974, and section 152 of the Civil Procedure Code the Service Tribunal has powers to make an order for correction of a clerical mistake apparent on the face of record being made due to inadvertence, for ascertainment as to the correct name of the petitioner we examined his original Computerized identity card wherein his name has been entered as Muhammad Nadeem rather than Muhammad Naeem therefore, we accept the instant application and in consequence thereof the name of the petitioner has to be read and written as Muhammad Nadeem instead of Muhammad Naeem, the office has to make the requisite correction in the appeal as well as in the judgment in accordance with law. Order announced. The requisitioned record along with the record of the instant petition has to be consigned to the record room.


(Attiq-ur-Rehman)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

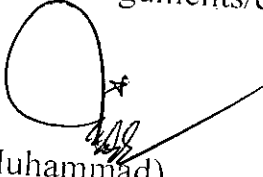
ANNOUNCED
11.09.2020

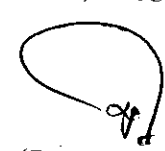
27.07.2020

Appellant/petitioner alongwith counsel present.

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

Record shows that an application was filed by Muhammad Nadeem seeking correction of his name in the relevant record. Notice whereof was served upon respondents but date was adjourned on a Reader's note, therefore, fresh notice be issued to respondents for 07.08.2020 for arguments/consideration, before D.B.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

07.08.2020

Due to summer vacation case to come up for the same on

~~11.09~~ 2020 before D.B.


Reader

22.01.2020

Appellant in person present and submitted application for correction of his name in judgment order dated 15.10.2019. Application is placed on file. Adjourned. To come up for arguments on application on 11.03.2020 before D.B. Notice be issued to the respondents for the date fixed.


(Hussain Shah)



(M. Amin Khan Kundi)


11.03.2020

Member

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney alongwith Sulaiman Senior Instructor present. Learned counsel for the appellant is not available. Adjournment requested. Adjourn. To come up for further proceedings on 29.04.2020 before D.B.

Member


Member


Member

29.04.2020

Due to public holidays on account of Covid-19, the case adjourned. To come up for the same on 27.07.2020 before D.B.


Reader



درخواست نمبر ۱۹۱۱/۲۰۱۹ اسم مدعی/سائیل لوبم غلط اندراج اسم مدعی/سائیل
بوقت داخل کرنے سروس اپیل نمبری ۱۰۹۳/۲۰۱۸ بعنوان "محمد نسیم بنام
حکومت KPK دہلیہ"

درخواست سائیل/مدعی حسب ذیل عین ہے۔

① یہ کہ اپیل عنوان بالا زیر تجزیہ عدالت صفحہ نمبر مورم ۱۵-۱۰/۲۰۱۹ کو صفحہ
صفحہ ۱۰ (صفحہ دہم مورم ۱۵-۱۰/۲۰۱۹ لف درخواست عطا ہے)

② یہ کہ بوقت ارجاء سروس اپیل مدعی کے صحیح نام "محمد نسیم" کے بجائے
سہواً "محمد نسیم" درج کیا گیا ہے جو کہ مورث رشتہ اسم مدعی میں ہے۔

③ یہ کہ لوبم غلط اندراج اسم مدعی عدالت کے فیصلے میں ہی مدعی کے رشتہ
نام "محمد نسیم" کے بجائے "محمد نسیم" درج کیا گیا ہے جو کہ مورث رشتہ اسم مدعی
میں ہے

④ یہ کہ عدالت صفحہ نمبر التماس ہے کہ صفحہ مورم ۱۵-۱۰/۱۹ میں محمد نسیم کو حذف کرنا
محمد نسیم درج کرنے کا حکم صادر فرمایا جائے

⑤ یہ کہ بوقت Re-instatement عدالت نے بحال کرنے میں ان کے نام غلط اسم پر
جو کہ صفحہ دہم اور سروس اپیل میں درج ہے پر اعتراض کر کے نا اعلیٰ عدالتی
ذمہ داری مدعی/سائیل پر عائد ہوئی۔ (سروس اپیل کا نمبر ۱۹۱۱/۲۰۱۹)

اسد علی نے کہ منظوری درخواست عطا اسم مدعی کے رشتہ
نام کے اندراج کا حکم صادر فرمایا جائے

تاریخ ۰۲/۰۱/۲۰۲۰

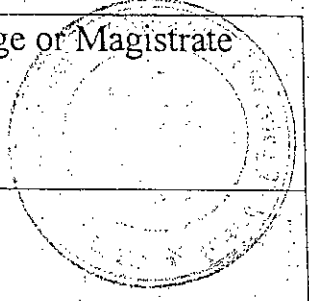
پٹ اپ تو تھو court دل نظر نہ
will relevant appeal.

Reedhu.

3/1/2020

Notice of this application
be given to respondent
for a date in 3rd week
of January, 2020.

6/1



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

BEFORE THE YBER PAKHTUNKHWA SERVICE TRIBUNAL
Service Appeal No. 1093/2018

Date of Institution 04.09.2018
Date of Decision 15.10.2019

Mr. Muhammad Naeem Ex-Warder (BPS-05), Central Prison, Bannu.

Appellant

Versus

1. The Government of Khyber Pakhtunkhwa, through Secretary Home Department Khyber Pakhtunkhwa Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent Circle Headquarters Prison, Bannu.

Respondents

15.10.2019

Mr. Muhammad Hamid Mughal-----Member(J)
Mr. Hussain Shah-----Member(E)

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: Appellant

present. Learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Sulaiman Law Officer present.

2. The appellant (Ex-Warder) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 30.04.2018 wherby he was awarded punishment of removal from service and against the order dated 30.07.2018 through which his departmental appeal against the punishment order was rejected.


15.10.2019

Yber Pakhtunkhwa
Service Tribunal,
Bannu

3. Learned counsel for the appellant argued that the appellant was the employee of the respondent department; that vide impugned order dated 30.04.2018 major penalty of removal from service was imposed upon the appellant on the allegation that the appellant supplied narcotics (charas) to the prisoners; that the departmental action was conducted on the back of appellant; that no charge sheet/statement of allegation was served upon the appellant; similarly, the appellant received the Show Cause Notice on the day the impugned punishment order was issued; that no opportunity of defense, cross-examination and personal hearing was granted to the appellant; that the punishment awarded to the appellant is extremely harsh & excessive.

4. As against that learned AAG argued that the appellant committed serious crime by supplying narcotics (charas) to the inmates of prison; that the punishment was awarded to appellant after observing all the legal formalities; that charge sheet/statement of allegation was issued; inquiry officer was appointed; that inquiry officer gave his findings against the appellant and thereafter Show Cause Notice was also issued to the appellant; that convicted prisoners testified in their statements that narcotics were supplied to them by the appellant; that contact number of the appellant was found in the recovered/confiscated mobile phone of prisoner; that the appellant remained involved in supply of narcotics in the past and a disciplinary case was initiated against him however he was exonerated due to lack of evidence.

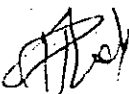
15/10/2019

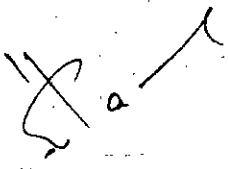
RECEIVED

 ...
 ...
 ...

5. Arguments heard. File perused


6. Copy of statement of allegation, inquiry report and Show Cause Notice is available on file. In the inquiry report, the inquiry officer gave his finding against the appellant and recommended his removal from service. In his report, the inquiry officer has also mentioned that after the occurrence of incident, the appellant disappeared from the scene and avoided the situation by fleeing from jail premises.

7. Learned counsel for the appellant could not demonstrate that the findings of inquiry officer are actuated with malice, arbitrary or perverse. However in the circumstances of the case and in view of the fact that the appellant is a very young person, for the purpose of safe administration of justice, the punishment of removal from service is modified and converted into withholding of five (05) annual increments for a period of five (05) years. Intervening period shall be treated as extraordinary leave without pay. The authority shall however keep a vigilant eye over the activities of the appellant. The present service appeal is accepted in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.


 (Hussain Shah)
 Member


 (Muhammad Hamid Mughal)
 Member

ANNOUNCED
 15.10.2019

Certified to be true copy

 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Handwritten notes:
 Date of presentation of appeal 15-10-19
 Number of pages 1200
 Copy fee Rs. 14-00
 14-00
 26-11-19
 02-12-19

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1093 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1393

Dated 04/9/2018

Mr. Muhammad Naeem, Ex: Warder (BPS-05),
Central prison, Bannu.....

APPELLANT

VERSUS

- 1- The Government Khyber Pakhtunkhwa through Secretary Home Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Prison's, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent, Circle Headquarters Prison, Bannu .

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED 30-04-2018
WHEREBY MAJOR PENALTY REMOVAL FROM SERVICE
HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST
THE APPELLATE ORDER DATED 30.07.2018 WHEREBY
THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS
BEEN REJECTED ON NO GOOD GROUNDS.**

PRAYER:

That on acceptance of this appeal the impugned orders dated 30-04-2018 and 30.07.2018 may very kindly be set aside and the respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:
ON FACTS:**

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was the employee of the respondent Department and was serving as Warder (BPS-5). That right from appointment the appellant was performed, his duties quite efficiently and upto the entire satisfaction of his superiors.

That during service at Circle Headquarters Prison Bannu the appellant was served with show cause notice vide dated 13.4.2017 on the allegation that appellant supplied narcotics to the prisoners. That the said show cause notice was sent

on the home address of the appellant which was received to the appellant on 30.4.2018 through post office Jehangiri Branch. Copies of the show cause notice and letter are attached as annexure.....A & B.

3- That it is very pertinent to mention that when the appellant visited the concerned quarter he was astonished that the respondents issued impugned order dated 30.04.2018 whereby major penalty of removal from service has imposed on the appellant. Copy of the impugned order is attached as annexure.....C.

4- That appellant feeling aggrieved from the impugned order dated 30.04.2018 preferred Departmental appeal before the respondent No.2 but the same has been rejected on no good grounds vide order dated 30.7.2018. Copies of the Departmental appeal and rejection order are attached as annexure.....D & E.

5- That appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst the others.

GROUND:


A- That the impugned orders dated 30-04-2017 and 30.7.2018 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That no charge sheet and statement of allegation has issued to the appellant before issuing the impugned order dated 30.04.2018.

D- That only a show cause notice has been served on the appellant by the respondent Department which was also received by the appellant through post office jehangiri on 30.4.2018.

E- That no regular inquiry has been conducted in the matter before issuing the impugned order dated 30.04.2018 which is as per Supreme Court judgments is necessary in punitive actions against the civil servant.

ATTESTED

E-1

- F- That no chance of personnel hearing/personnel defense has been given to the appellant before issuing the impugned order dated 30-04-2018.
- G- That the respondent Department acted in arbitrary and malafide manner while issuing the impugned orders dated 30-04-2018 and 30.7.2018.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 29.8.2018.

APPELLANT

MUHAMMAD NADEEM

THROUGH:

NOOR MOHAMMAD KHATTAK

**MUHAMMAD MAAZ MADNI
ADVOCATES**

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Copy 19-12-18
 Number of Pages 1200
 Copying Fee 14-00
 Total 14-00
 Name of Applicant
 Date of Copying 19-12-18
 Date of Delivery of Copy 19-12-18