Sr.	Date of	
No	order/	Order or other proceedings with signature of Judge or Magistrate
	proceeding	
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•	· · · · ·	BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
		Appeal No. 314/2018
·		Date of Institution 06.03.2018 Date of Decision 26.11.2018 Khalil Ullah, Ex warder, High Security Prison Mardan R/O Muallah Shareef Khel, Tehsil & District Nowshera.
		Appellant 1. Inspector General of Prison Khyber Pakhtunkhwa,Peshawar. 2. Superintendent High Security Prison, Mardan. 3. Superintendent Circle Headquarters Prison, MardanRespondents
		Mr. Hussain ShahMember Mr. Muhammad Hamid MughalMember
	26.11.2018	<u>JUDGMENT</u> <u>HUSSAIN SHAH, MEMBER: -</u> Appellant, learned counsel
	SALay	for the appellant and Mr. Riaz Paindakhel learned Assistant
		Advocate General on behalf of the respondents present.
		2. The appellant was appointed as warder in prison service on
		22.01.2015. He was relieved from his duty at high security prison
		Mardan on 19.05.2016 to report to the scout training academy at
		Warsak Peshawar for training. Instead of reporting to the said
		academy he absented himself without any information either to the
		academy or his parent department. On 22.12.2016 an absence
		notice was issued to him through the postal registry at his resident
,		address with direction to report for duty at the high security prison
·		Mardan within 15 days of the receipt of the notice and to explain

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the reason for his absence. In case of non compliance disciplinary action would be taken against him under the KPK Govt. (E&D) rules 2011. The appellant neither reported nor approached his parent department with written reply/written statement to explain the reason for his unauthorized absent. Another notice was published in the newspapers. Wherein again he was directed to report for duty within 15 days. Receiving no response from the appellant, the competent authority issued the order of removal from service with immediate effect and the period of absence on 21.11.2011 till the dated of issuance of order, viz 02.02.2017 converted into extra ordinary leave without pay. The appellant submitted departmental appeal on 12.01.2018 which was regretted/not entertained on 26.02.2018 by the appellate authority on the ground that the appeal was badly time barred. The appellant came to the tribunal with the instant service appeal on 06.03.2018.

3. The learned counsel for the appellant argued that the absence from duty of appellant was not willful because the appellant was under treatment in the Lady Reading Hospital Peshawar from 21.11.2016 to 22.02.2017. To establish this cause of absence he presented the prescriptions of the doctor on the OPD chits for the dates 21.11.2016, 22.12.2016, 23.01.2017 & 22.02.2017. In addition to this learned counsel for the appellant referred to an FIR No.133 dated 25.03.2017 which pertains to fire upon the close relative of the appellant. He further argued that the aforementioned

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circumstances were not in the control of the appellant while the competent authority issued removal from service order without any charge sheet/statement of allegation, formal inquiry and without giving the opportunity of defending himself as such the instant service appeal may be accepted and the impugned order of dated 02.02.2017 and 26.02.2018 may be set aside and the appellant be re-instatement into service with back benefits.

4. The learned Assistant Advocate General contested the facts and grounds mentioned in the appeal and argued that the facts mentioned in the appeal presented by the learned counsel for the appellant are incorrect and mis-leading. The Appellant was appointed in service of prison on 22.01.2015 and absented himself from duty since 21.11.2016 willfully and in violation of rule No. 1083 of the Khyber Pakhtunkhwa Prison rules 1985. The appellant neither submitted medical rest application nor any information about his where-about. He further pointed out that the hospital document annexed to the appeal does not substantiate the fact that the appellant remained hospitalized. Moreover the appellant failed responding to the notices issued and published through postal registry and in the newspaper respectively. The competent authority removed him from service on 02.02.2017 while the FIR, mentioned in the appeal and presented by the learned counsel for the appellant during the arguments, was lodged on 25.03.2017 as such this fact cannot be entertained to justify the absence of the appellant, therefore, the instant service appeal may be rejected

being not covered with the law and rules in addition to being badly time barred.

6. Arguments heard. File perused.

7. The documents on record indicates that the appellant remained absented during the first year of his service without observing the service discipline. The ground of absence due to the alleged health problem and the lodging of FIR are not sufficient evidence which could established the existence of gravely pressing circumstances wherein the appellant was not in position to inform his parent department or the concerned authority about his inability to report either to the training academy or to the high security prison Mardan for duty. He also failed to respond to the notices issued, through the postal registry at his home address and the notice of attendance issue in the newspaper.

8. In view of the above discussion this Tribunal reaches to the conclusion that the action taken by the respondents was in accordance to the prescribed procedure and the appellant has no grounds in his favor. Hence the instant appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

NCED

26.11.2018

STA

(HUSSAIN SHAH) MEMBER

(MUHAMMAD HAMID MUGHAL) MEMBER

4

Service Appeal No. 314/2018

29.08.2018 Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Learned CUMPLS NUMSEDH counsel for the appellant CUMPLE of Mathematical seeks adjournment for arguments. Adjourned. To come up for arguments on 09.10.2018 before D.B.

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seeks adjournment. Granted. Case to come up for arguments on 26.11.2018 before D.B.

(Ahmad Hassan) Member

han Kundi) Member

26.11.2018

Learned counsel for the appellant and Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Vide separate judgment of today of this tribunal placed on file, the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Muhammad Hamid Mughal) Member

<u>ANNOUNCED</u> 26.11.2018

(Hussain Shah) Member

frecord room · (MUHAMMAD HAMID MUGHAL) CAMP COURT SWAT

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" 'respondents present Wide separate judgment offtoday of this bre tribunalplaced on file, the present service appeal is dismissed) " Parties are left to bear their own costs: File be consigned to the

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25-17 2018 Thearned counsels for the appellant and dur Riaz

Paindakher (learner) Assistant' Advocate (General) (10) The

20.03.2018

Appellant with counsel present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Prison Department however, during service he was removed from service vide order dated 21.11.2016 on the allegation of absence from duty. It was further contended that the appellant has filed departmental appeal which was rejected on 26.02.2018 and thereafter the appellant filed the present service appeal on 06.03.2018. It was further contended that the absence period of the appellant was considered by the competent authority as leave without pay therefore, the same has been regularized. It was further contended that the absence of the appellant was not willful therefore, the impugned order is illegal and liable to be set-aside.

Appellent Deposited Security & Process Fee

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 14.05.2018 before S.B.

(Muhammad Amin Khan Kundi) Member

14.05.2018

The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 09.07.2018.

09.07.2018

Counsel for the appellant and Mr. Sardar Shoukat Hayat, Addl: AG alongwith Mr. Junaid Khan, Assistant for the respondents present. Written reply submitted. To come up for rejoinder if any and arguments on <u>29.08.2018</u> before D.B.

Member

Form-A

FORMOF ORDERSHEET

Court of

314/2018 Case No. S.No. Date of order Order or other proceedings with signature of judge proceedings 1 2 3 06/03/2018 The appeal of Mr. Khalil Ullah presented today by Mr. 1 Aslam Khan Khattak Advocate may be entered in the Institution Register and put up to Learned Member for proper order please. REGISTRAR 6/3/18 12/03)18. 2-This case is entrusted to S. Bench for preliminary hearing to be put up there on 20/03/18. MEMBÉR

IN THE HON'BLE COURT SERVICES TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal No <u>314</u> /2018

Khalil Ullah, Ex Warder, High Security Prison, Mardan

.....Appellant

Versus

Inspector General of Prisons KPK, Peshawar & Others.

.....Respondents

S#	Description of Documents	Annexure	Page#	
1.	Memo of appeal with affidavit		1-5	
2.	Application for condonation of delay if any	_	6-7	
3.	Medical Treatment of appellant	A/1-4	8-11	
4.	Impugned Order dated 02-02-2017	В	12	
5.	FIR dated 25-03-2017	С	13-14	
6.	Departmental appeal 12-01-2018	D	15-16	
7	Impugned order 26-02-2018	E	17	
8.	Wakalat Nama	Original	-	

<u>INDEX</u>

Appellant

Through

1. Aslam Khan Khattak

2. Muhammad Khurshid

Advocates, Peshawar.

Dated: <u>06</u>-03-2018

Appeal no<u>3/4</u>2018

Khalil Ullah, Ex warder, High Security Prison Mardan R/O Muhallah Shareef Khel, Tehsil & District Nowshera

Versus

- 1. Inspector General of Prison, KPK, Peshawar.
- 2. Superintendent High Security Prison, Mardan.
- 3. Superintendent Circle Headquarters Prison, Mardan.

....Respondents

....Appellant

Khyber Pakhtukh Service Tribuna

Diary No BIGS

Filledto-day

APPEAL UNDER SECTION 4 OF KPK SERVICE 1974 AGAINST TRIBUNAL ACT THE IMPUGNED ORDER DATED 02/02/2017 VIDE ANNEXURE 'B' COMMUNICATED TO THE APPELLANT ON 14-12-2017 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE WITH IMMEDIATE EFFECT AND HIS ABSENCE PERIOD **FROM** 21/11/2016 HAS BEEN TREATED AS LEAVE WITHOUT PAY AND ALSO AGAINST THE FINAL IMPUGNED ORDER DATED 26/02/2018 VIDE ANNEXURE 'E' WHEREBY THE APPELLANT'S DEPARTMENTAL APPEAL DATED 12/01/2018 AT ANNEXURE 'D' HAS **BEEN REJECTED.**

Prayer:

ON ACCEPTANCE OF APPEAL, BOTH THE IMPUGNED ORDERS AT ANNEXURES 'B' AND 'E' MAY BE SETASIDE AND THE APPELLANT MAY BE REINSTATED IN SERVICE FROM 02/02/2017 WITH ALL BACK BENEFITS.

Respectfully Sheweth

Brief facts leading to the instant appeal are as under:-

- 1. That the appellant having been inducted in service as warder on 22/01/2015.
- 2. That the appellant throughout his whole service has performed his duties with utmost of his capabilities and to the entire satisfaction of his superiors.
- 3. That the appellant was relieved for training at Scout Training Academy Warsak on 19-05-2016 and was directed to report on 21-11-2016 to Scout Training Academy Warsak for training. But the appellant did not report there due to sickness and was under treatment in Lady Reading Hospital, Peshawar from 21-11-2016 to 22-02-2017, vide annexures A/1-4.
- 4. That on 25-03-2017, the following persons in the surrounding of Aga khel Police Station, Nowshera had fired on the relatives of appellant due to which the aunt and wife of appellant's brother were injured with bullets and then died:
 - a. Usman Ullah
 - b. Tahir
 - c. Zahir
 - d. Faisal
 - e. Yasin Sons of Aman Ullah
 - f. Nasrullah
 - g. Saeedullah
 - h. Ansar Sons of Waris Khan

(Copy of FIR is at Annexure 'C').

5. That the impugned order dated 02-02-2017 at annexure 'B' has been communicated to the appellant on 14-12-2017 and the appellant has filed his departmental appeal dated 12-01-2018 at annexure 'D' which has been rejected on 26-02-2018, vide annexure 'E'.

6. That the appellant is being highly aggrieved and is finding no other adequate remedy, hence this appeal inter-alia on the following grounds:-

<u>Grounds:-</u>

A. That the appellant has been removed from service vide impugned order dated 02-02-2017 at annexure 'B' and his absence period from duty has been converted by respondent no-3 into leave without pay. So the appellant's removal from service is not permissible under any law of land and both the impugned orders at annexure B+E may be set aside on this score alone.

B. That it has been proved on record vide annexure D/1-4 that the appellant was sick and was under treatment in Lady Reading Hospital, Peshawar and leave on medical grounds shall not be refused under any law of land. So both the impugned orders dated 02-02-2017 and 26-02-2018 at annexure B and E are illegal under the law and may be set aside.

- C. That during the said period, the appellant's aunt and wife of his brother were also killed by his enemies as revealed from FIR at annexure 'C' and the appellant was unable to report for duty which is also a reasonable ground for reinstatement of appellant in service with all back benefits.
- D. That the charges of absence from duty if even proved is a petty misconduct and the appellant's removal from service on its basis cannot be permitted under any law of land.
- E. That both the impugned orders dated 02-02-2017 and 26-02-2018 at annexure B and E are illegal, malafide,

without jurisdiction and without lawful authority and are liable to be set aside.

F. That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of appeal, both the impugned orders dated 02-02-2017 and 26-02-2018 at annexures B+E may be set aside and the appellant may be reinstated in service with all back benefits.

Date: 06/03/2018

Appellant

Through

agan Aslam Khan Khattak

nad Khurshid

Advocates, Peshawar

Appeal no____2018

Khalil Ullah, Ex warder, High Security Prison Mardan R/O Muhallah Shareef Khel, Tehsil & District Nowshera

....Appellant

Versus

Inspector General of Prison, KPK, Peshawar & Others

<u>Affidavit</u>

I, Khalil Ullah, Ex warder, High Security Prison, Mardan, do hereby solemnly affirm and state on oath that the impugned order dated 02-02-2017 was communicated to me on 14-12-2017. My above statement is true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.

Deponent

Khalil Ullah, Ex warder, High Security Prison Mardan R/O Muhallah Shareef Khel, Tehsil & District Nowshera

....Appellant

Versus

Inspector General of Prison, KPK, Peshawar & Others

APPLICATION FOR CONDONATION OF DELY IF ANY

Respectfully Sheweth:

The Petitioner prays for condonation of delay if any on the following grounds:-

<u>Grounds:</u>

- A. That the grounds maintained in appeal may be treated as the integral part of this application.
- B. That it is the settled law of august Supreme Court of Pakistan that the cases be decided on merits and not on technicalities such as limitation.
- C. That the petitioner's absence period has been treated as leave without pay and to this effect his removal from service is void and no limitation runs against it.

It is, therefore, prayed that on acceptance of this application, the delay if any, may be condoned to meet the ends of justice.

Date:<u>06</u>/02/2018

Appel

Through

1. Aslam Khan Khattak

2. Muhammad Khurshid

Advocates, Peshawar.

Appeal no____2018

Khalil Ullah, Ex warder, High Security Prison Mardan R/O Muhallah Shareef Khel, Tehsil & District Nowshera

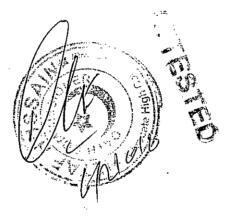
....Appellant

Versus

Inspector General of Prison, KPK, Peshawar & Others

<u>Affidavit</u>

I, Khalil Ullah, Ex warder, High Security Prison, Mardan, do hereby solemnly affirm and state on oath that all contents of application for condonation of delay are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



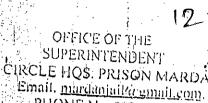
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9.



PIIONE No. 0937843114.

/ P.B Dated: 02/ 03 /20

OFFICE ORDER

WHEREAS, the accused official Mr. Khalif Ullah s/o Begham Sha attached to High Security Prison Maddan yas proceeded against under Rule-3 read with rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipling Rules, 2011 for the charges of his long will absence WEF 21-11-2016, and a notice at his home address was served upon him vide this Headquarter No. 3935 dated 22-12-2016.

AND WHEREAS, due to no response from him, another notice was published in the daily newspapers "Intibah" Peshawar on 11-01-2017 and dura "Mashriq" Peshawar on 12-01-2017 as provided for in the Rule ibid.

AND WHEREAS, the accused official failed to resume duties fill date as reported by the Superintendent High Security Prison Mardan dated 27.01.2017.

NOW THEREFORE, in exercise of the powers conferred under Rule-9 the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 201 the undersigned being competent authority after observing all legal procedure. formalities, hereby award the major per ity of "Removal from Service" with immediate effect to Mr. Khuli Ullah s/a Begum Shah attached to High Security Prison Mardan for his misconduct/long will al absence WEF 21-11-2016, absence period Stiger betreated as eather ordinary Dear

Endst. No. 4728-31

SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

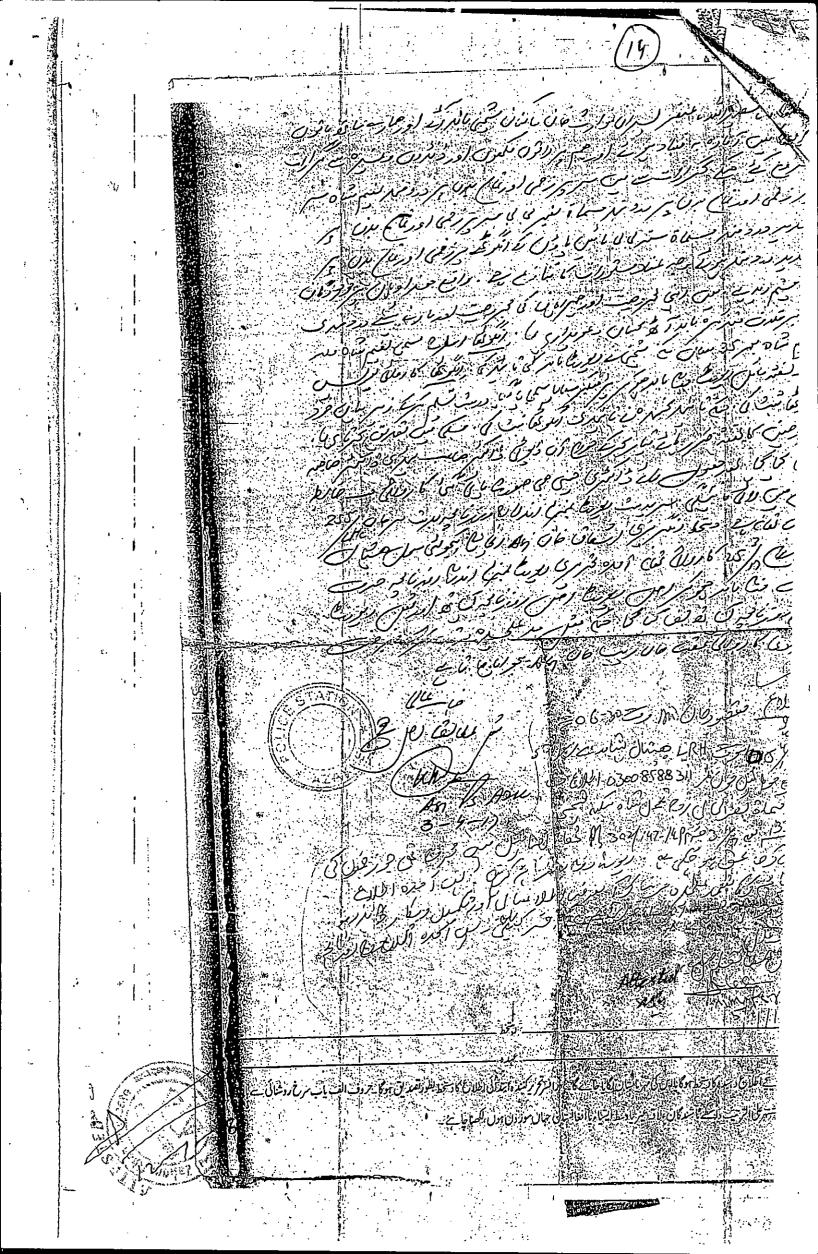
Copy of the above is forwarded to: 1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for

2. The Superintendent High Security Prison Mardan for information with

reference to his report dated 22-12-20 / plause/ 3. The District Accounts Officer Martian for information please. 1. The official concerned R/O Muhalish tharif Knel, Post Office Sheikhi, Attaste Tehsil & District Nowshera.

SUPERINTANIA CIRCHE HOS. HALS

Annexist C تودادا ك برادر جرد 2011.00 فارد (نادم سود جابر) من نادم (بي لس) 12200/13/ 13. تازم فمر الم (1). ابتدابي اطلابي ريورب 0305-5566663 . متدانى اطلاع نسبت جرم قابل دست اندازى بوليس ترسوت معاد مردفة مها مجموعه ضابط توجد إرى حلع _____ -----/Pler 213.00 Cus 25/17 610 ----A 12:00 تاريخ دوت ريورت ما دوست اعلان دیده سیست مسلم محمد من مراجع مند ملس منام بعم 74 ما/ م محک شاقی کارد نیرا بوما تک نیر ۲۱۵ کر 138 - 0300 میل منام و مید ملس منام بعم 77 ما/ م Pc 302-147-149 UKE sy (ur يدود عاملة الدرسة الدرسة عن المراجع المار المراجع المرا مراجع المراجع ا ب بران رمان دمند @ مردسر صعران فاجى كادد جمرا موا تكلير الكام معتبر مرور وارت خان بالمان الدواني جوتسيش مستيلي كي اكراطلان درج كرف بمن توقف بوابولة دجه بيان كردمد جرار مفرع محرم مرضي مع مرس محرف مرتزم تقانته برواتي كي تاريخ ووتت ابتدائي اطلاع فيحيدرن كرو مستسب ستعرير عامر يرجر الرسيس مساهد لنرفي سترون بالمار مرافق كالجمر مت كالربي في مرون مرافع ورام 25 ير حكون مدين (عدى مدين مدين مدين المربي المار و الم بر المربي الم الم الم الم الم الم المربي الم الم بدونند ی منعرف دارد مان ماندان منه در ای مرا در دار من س רא צענות סי مری می مع لین سا ۵ رمز کی ی - - زیر طان می سود مقدم کی مربع را مسل موسر منت عبر الاسر قلاف ما رون با در مع الم منا منت مقدم من منار ما رو مسل موسر منت عبر الاسر قلاف ما رون با در منا المسر من مقدم من مقدم من مسر م م من روز کا فرا ما ن رسر ASI KS ASU الور مرد المن مدرك روز عرف المال من من 30 . 25 من در 25 من - رئي تشريري وير ع منها الدولان من 3 درمان المعان عالى 4 ما جاري الم 25 مرصل هوشر جس کا میں رو اس و الرب الرب من براز عليه على ويت مرتوب إلى قد من هو 13 عن 13 من 15 عن 25 من المراح المراح 25 من مح الطالع العوى وار 15:20 - مایم مرد مسیکان (مان اس فدبان حا- 640 مامن مع مسلم الركون سول عشال من فير عص قرل ماه مد كمس المكره مهر 7 كامن م شاه ميد بنيم شد ه مبر 38 مال م ماه معر بربي روف ر 2 د سال مسی توسته بی ای زم مشرع ان میری و سال سکال روم عمد a o in Ja مر 22 مالی جران می می مصرفتی شاه مرکز کار میں میں میں ماہ مرجور کا سر میں میں شاہ میں موسط مرتب ج بن میں تھر مرتبط سے جب میریت واقد سے ا يمي المرسحي ويجيع باعتمان ورد ملد تفريسا فالم المامر ، لما م



in . Ammenure D ومغراب الراد بمال فرما ف مطور كانسانيه - رم بربا ----. . . Dele_in بر ما مل الله على على معان جامت من معلى الله تعالم منول جل المستدر المست معند من المسترما المرابع م مر مام مر م Attested - Jei En BBA we are FIR يت م رمد مدين مدين مدين مدين مدين مدين مدين - to be the contraction of the - 101 - 5 Show Cause No. 3935 (P.B - Dated 22-12-16 is in the second of the second GK is be wind Show lause and is a wind the wind

הפנית ביל مر المعامة المسب تعلم Anneswel) 25 بيعا برتم المعامر من راي مري سافتر اب راف با من من 16 - برم عالفيب کے کہ سائل المست المستر بمال في الم برم مرا مر منور ب - Julus aning -به مسر بالا تو الحلاع ومن فن مسر مسر مسر . ا فسر الله تو الحلاع ومن المسر المسر المسر Ju is - - ip عید مامنی مامنی میرونی مامنی میران رجروری ~/ies ____ نعت. ملب النم ول عم من ه 17201-6761738-3 0301-5050505 AUDELIN. Attested 0305-5566667 _ الم بوشيده ما معارم رعبل جبري مند all and the all 2)



OFFICE OF THE INSPECTOR GENERAL OF PRISONS KHYBER PAKHTUNKHWA PESHAWAR 2010937 / 9210334

No	6810	/-
Dated_	26-02-18	/-

DIRECTOR (ADMN:)

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Altestek

FOR INSPECTOR GENERAL OF PRISONS KHYBER PAKHTUNKHWA PESHAWAR

Amoresaur

To,

Mr. Khalil Ullah S/O Beghum Shah, Village Azakhel Bala District Nowshera.

Subject:- DEPARTMENTAL APPEAL FOR REINSTATEMENT IN SERVICE

Memo; I am directed to refer to your appeal dated 12-01-2018 on the subject and to convey that your appeal has been considered and regretted /not entertained by the competent authority for the reason that the same is badly time barred.

ASSISTA

2-2018

بعدالت جماب يرجم مؤسر شروك سياد ۲۰۱۶ ، منجاب السلامت بنام السيلة معرف المجالي لينيا، 8-166 مورخه خلس شتر مقازمه دعوكى روس سل جرم باعث تحريرا نكه مقدمه مندرجه عنوان بالاميس اپنی طرف سے واسطے پیروی وجواب دہی دکل کاروائی متعلقہ تان مقام المشاور الملية رغم خلن فلك محر قرر شد الأدلم مقررکر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز و کیل صاحب کوراضی نامہ کرنے دتقر رثالث و فیصلہ پر حلف دیئے جواب دہی اورا قبال دعویٰ اور بصورت د گری کرنے اجراءادر دصول چیک در دیپیار عرضی دعویٰ اور درخواست ہرشم کی تصدیق زراین برد سخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیروی یا ڈگری کیطرفہ باا پل کی برامدگ اور منسوخی نیز دائر کرنے ایل نگرانی دنظر تاتی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل باجزوی کاروائی کے واسطے اور دکیل یا مختار قانونی کواپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ، ہوگا۔اورصاحب مقرر شدہ کوبھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اوراس کاساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر چہ ہرجانہ التوائے مقدمہ کے stested 4 سبب ہے دہوگا کوئی تاریخ پیشی مقام دورہ پر ہو یا حد ہے باہر ہوتو دکیل صاحب پابند ہوں Accept گے۔ کہ پیروی مذکور کریں۔لہٰذا دکالت نامہ کھو یا کہ سندر ہے۔ Rharf astin MKImishid. 3018 P. 166 المرقوم سيد گ الع العب و اه التمادر کے لئے منظور ہے۔ مقاك غدنان شئيشترف مارت حوك مشتشكر ي بيثًا ورش فون 2220193 Mob: 0345-9223239

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

In the matter of

Service appeal No. <u>314 of 2017</u>

Khalil Ullah Ex-warder High Security/Central Prison Mardan

.....Appellant.

----VERSUS-----

1. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.

2: The Superintendent High Security/Central Prison Mardan.

3. The Superintendent Circle Headquarter Prison Mardan.

.....Respondents

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BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

In the matter of `

Service appeal No. <u>314 of 2017</u>

Khalil Ullah Ex-warder High Security/Central Prison Mardan

.....Appellant.

----VERSUS-----

- 1. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
- 2. The Superintendent High Security/Central Prison Mardan.
- 3. The Superintendent Circle Headquarter Prison Mardan.

.....Respondents

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS

PRELIMINARY OBJECTIONS

- 1. That the appeal is incompetent, badly time barred and is not maintainable in its present form.
- 2. That the appellant is estopped by his own conduct to bring the present appeal.
- 3. That the appellant has got no cause of action.
- 4. That the appellant has no locus standi.
- 5. That the appellant is bad for mis-joinder and non-joinder of necessary party.
- 6. That the appeal is hit by laches.

PARA-WISE COMMENTS ON BEHALF OF THE RESPONDENTS

RESPECTFULLY SHEWETH.

- 1. Correct, pertains to record, hence no comment.
- 2. Incorrect, misleading as conduct of the appellant was not satisfactory during his short period of service.
- 3. Correct to the extent that the appellant was relieved from his duties at High Security Prison Mardan on 19.05.2016 with the direction to report

to Scout Training Academy at Warsak Peshawar for training, but he failed to comply with the lawful orders of the competent authority.

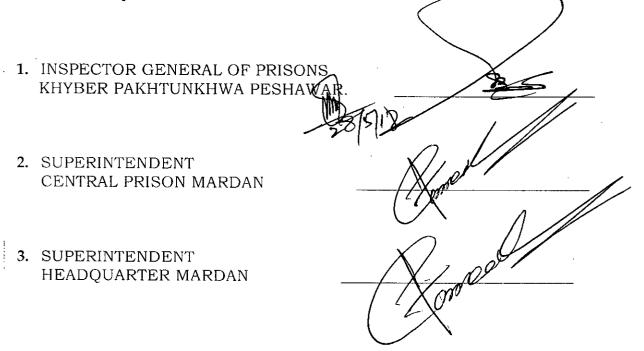
- 4. Pertains to the registration of a criminal case wherein FIR was registered on 25.03.2017 while the accused had been awarded the major punishment of "Removal from Service" on 02.02.2017.
- 5. Incorrect, misleading, as order of punishment was communicated to the appellant through registered cover by the competent authority on 02.02.2017 which has properly been delivered.
- 6. Incorrect, misleading, it was the gross misconduct and willful absence from duties by the appellant which culminated into the imposition of major penalty of "Removal from Service".

GROUNDS.

- A. Incorrect, misleading, as the order of 'Removal from Service" dated 02.02.2017 of the competent authority has been given immediate effect and the absence period has been ordered to be treated in light of rule 19 of the Khyber Pakhtunkhwa Government Servants Revised Leave Rules 1981.
- B. Incorrect, misleading, as the appellant violated rule 1083 of the Khyber Pakhtunkhwa Prison Rule 1985 as the appellant neither submitted any kind of medical rest nor submitted an application for leave on medical grounds to the competent authority. The appellant was served an absence Notice at his home address to which he did not respond. Similarly an absence Notice was also published in the leading Newspapers of the province under rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 to which the appellant did not respond (Annexure-A).
- C. Incorrect, misleading, irrelevant and a lame excuse on the part of the appellant as the appellant was awarded the punishment of "Removal from Service" on 02.02.2017 while the FIR has been lodged on 25.03.2017.

- D. Incorrect, misleading, as the appellant was not interested to continue his service in the Prisons Department, Khyber Pakhtunkhwa as he did not bothered to respond to the absence Notices.
- E. Incorrect, misleading, as the order of "Removal from Service" of the competent authority dated 02.02.2017 and order dated 26.02.2018 of the appellate authority are in accordance with law, rules and procedure as laid down in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 and are not liable to be set aside.
- F. Other grounds of appeal will be replied with the prior permission of this Hon'able Tribunal at the time of arguments.

It is, therefore, humbly prayed that the appeal filed by the Appellant may be rejected being not covered with law and rules and badly time barred please.



(3)

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PÉSHAWAR.

In the matter of

Service appeal No. <u>314 of 2017</u>

Khalil Ullah Ex-warder High Security/Central Prison Mardan

.....Appellant.

----VERSUS----

- 4. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
- 5. The Superintendent High Security/Central Prison Mardan.
- 6. The Superintendent Circle Headquarter Prison Mardan.

.....Respondents

AFFIDAVIT ON BEHALF OF THE RESPONDENTS.

We, the respondents, do hereby solemnly affirm and declare on oath that the contents of the reply/Para wise comments are true and correct to the best of our knowledge and belief and nothing material fact has been concealed and kept secret from this Honorable Tribunal.

 INSPECTOR GENERAL OF PRISONS KHYBER PAKHTUNKHWA PESHAWAR.
 SUPERINTENDENT CENTRAL PRISON MARDAN
 SUPERINTENDENT HEADQUARTER PRISON MARDAN

MNGX1180

Rule 1082.-- (i) No subordinate officer shall, at any time, without the permission of the Deputy Superintendent, if such officer is subordinate to him, and, in any other case, of the Superintendent, be absent from the prison premises, whether by day or night.

(ii) The Deputy Superintendent shall not, without the sanction of the Superintendent, grant leave of absence to any subordinate officer, or permit any such officer to remain absent, for any period exceeding four hours at any one time.

(iii) Whenever any leave is granted by the Deputy Superintendent to any subordinate officer he shall, at the time the leave is granted, record the fact, and the period of leave in his report book.

(iv) Every subordinate officer shall immediately on return from save report the fact to the Deputy Superintendent, who shall forthwith record his arrival in his report book,

(v) The Deputy Superintendent shall similarly record in his report book, all leave granted by the Superintendent and all reports made of return from leave..

Absence caused by illness or other unavoidable cause

Rule 1083. -- Whenever any subordinate officer is at any time prevented by sudden illness or other unavoidable cause, from attending the prison or performing his duties, be shall forth-with give notice to the Superintendent along with his reasons for absence. The Superintendent shall then make suitable arrangements for the due performance of his duties.

OPFICE OF THE SUPERINTENDENT CIRCLE HQS. PRIEON MARDAN No. <u>3837</u> P.B Daust <u>21 (12 (2014</u>)

Warder Khalil Ullah s/o Begham Shah, R/O Muhallah Shareef Khel, Post Office Sheikhi, Tehsil & District Nowshera.

Subject: <u>ABSENCE NOTICE</u>.

To

You were relieved for training at Scout Training Academy Warsek on 19.1.2016, and directed to report on 21.11.2016 to Scout Training Academy Warsak for training but you failed to report there and is absent up to date.

You are therefore directed to report for duty at High Security Prison Mardan within fifteen (15) days of the receipt of this notice and explain then reasons of your absence otherwise strict disciplinary action will be taken against you under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011.

Endst. No: <u>3936-37</u>/

Copy of the above is forwarded to the:-

1- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.

9/ CIRCLE

2- Superintendent High Security Prison Mardan for information with reference his report dated. 22/12/2016 please.

SUPERINT SLE HQS. PRISON MARDAN

SUPERE

HOS. PRISON MA

Shara up the Up successors آب دارا فراران جوکه بانی سیکورنی جیل مردان، دُسترکت جیل وکر، دُسترکت جیل تیمر کمه داده دستر شخص چرد کل استه سور فرخ تاریخوں سے غیرحاضر میں کوبذیریعیہ نوٹس ہذا آخری بار ہدایت کی جاتی ہیں کہ چدوہ {15} ایام سے کندویا ندینا منسو کی گاہ پھوب بال سیکورنی جیل مردان/ ڈسٹرکٹ جیل ڈگر/ڈسٹرکٹ جیل تیمرکر ہ / ڈسٹرکٹ جیل چرال میں کریں اچھا بچھا تھی تجسو مانسولیا کی بھول ہے بتائم بصورت ديمراً ب بحظاف بمطرف كارواني مل الألى جائنكي بتركه الزمت ، يفاضى برهن التي تتحق ب 1- واردر خليل اللدولد يم شاه محله شريف ذا كان في تحسيل وسلع نوشموه بطور بيل وارد ألجه معد 10-11-19 إلى تركيف جل مردان سے برائے زیک سکاؤٹ ٹریک اکیڈی ورسک کے لئے وواند معاند کیا کیا اید جماعت کی تھ کھا پ دبلی 21-11-2016 کو حاضری کریں مکرآپ نے حاضری نہ کی اور نہ جی واپس ہائی یکورٹی جیلی مردان شک جامندگی گی۔ آپ کچھ ہیذکوارٹر جیل مردان نوٹس نمبر 3935 مورخہ 2016-12-22 کوبذ رامیہ رجسٹر ڈیڈاک کھر کے چہ پر جنانت کی گھا کہ چندہ [5] ایام کے اندراندر حاضری کی رپورٹ ہائی سیکورٹی جیل مردان میں حاضر کی کریں۔ کیکن آپ نے کوئی جواب تھے دیا ہون کا بین 2- وار ارار الدالله دلدكل رحمان سكنه محله كميري خيل كالان ماشونكر بذوبي فيادر بطور جيل دارد رآب مورند. 16-11-26 ے ڈسٹرکٹ جیل ڈ کرے غیر حاضر میں۔ آپ کو سرکل ہیڈ کوارٹر جیل مردان نوٹس نبسر 10 39 میں بند 2016 میں بند بذر بعید دجسر ذ ذاک کمر کے بیتہ پر ہدایت کی کن کہ بندرہ {15} ایام کے اندرا ندر ذستر کٹ جیل ذکر شک حاضم کما کم ۔ تکمن آپ نے کوکی جواب مبیں دیاادر نیڈیونی کیلئے حاضر ہوئے۔ 3- المميل داردرآ فشال فدا ارخر فداعلى سمنه مكان نمبر5 464 محله فغل بن معاجب زاده دا كنانه بتوك با<u>د كارتخ</u>صيل وصلع بيناعه بطور جیل نمحل دارڈ رآپ مورخہ 2016-12-19- ڈسٹر کٹ جیل تیمر کروے غیر جامنر ہیں۔ آپ کو سرکل ہیڈ کوادلو بیٹل مردان نولس نمبر7 390 مورجه 2016-12-20 کو بذرایعه د جسر ڈال کھر := پر ہدایت کی گنی کہ چندرہ { 15} لیام کے اندرانیہ د سٹر کمٹ جیل تیمر گر ہ میں جا ضربی کر ہے کیکن آپ نے کوئی جواب نہیں دیا اور نہ ڈیو ٹی کیلیئے جا ضربو گی۔ - • وإردر خيام جان دلد عنايت الله سكنه تحله كمررى شيخان دا كخانه مزار خواني تخصيل وسلع يشاور يطور جيل داردر آب موجد 15-12-2016 كوبذر بعد جسرو ذاك كحرك بية بربدايت كاكن كه بندر، {15 } ايام كماغدانده دسترك جمل تين حاس کر ہے کیکن آپ نے کوئی جواب نہیں دیااور نہ ڈیوٹی کیلئے حاضر ہوئے ۔ Say No Corruption



2- دارذ راسدانند دلدگل رحان سکنه تحکه گیری خیل کا دُن ما شوکگر بذ چه بیرسنی پیثا دربطور جیل دارذ رآ ب مورنه 2016-11-26 سے ذ شرکت جیل ذکر سے فیر حاضر میں ۔ آپ کو سرکل میڈ کوارز جیل مردان نولس نمبر 2910 مورنه 2016-12-20 کو بذریعہ رجسز ڈ ڈاک گھر کے پتہ پر ہدایت کی گئی کہ چندرہ (15) ایام کے اندرا ندر ڈسٹر کٹ جیل ڈکر میں حاضری کر یے لیکن آپ نے کوئی جواب نہیں دیا اور ندائوی کیلیئے حاضر ہوتے ۔

3- لی کمیل دارڈ رآ نشال نداد تر ندائلی سند مکان تمبر 1645 محکد تعلق حق میا حب زادہ ڈاکنا نہ چوک یاد کا رضع لیا در اطور جیل فی میل دارڈ رآ پ2016-12-20 سے ڈسٹر کٹ جیل تم گر د سے خیر حاضر میں ۔ آپ کو سرکل ہیڈ کوارٹر جیل مردان نوش نمبر 3907 مور خدہ 2016-12-20 کو بذریعہ رجنر ڈ ڈاک کے گھر کے پتہ پر جایت کی گئی کہ پندرہ (15) ایا م کے اندرا ندر ڈسٹر کٹ جیل تیم گر د میں حاضر کر کی کر نے کیکن آپ نے کوئی جواب نہیں دیاادر نہ ڈیو ٹی کہلیے حاضر ہوں ہے ۔

4۔ دارڈر خیام جان دلد ممتایت اللہ سکنہ تحکہ کر ضمی شیخان ڈانخانہ ہزار خوالی محصیل دیسلع پشاور بطور جیل دارڈر آپ مور بحد 2016-12-2016 سے ڈمٹر کٹ جیل چتر ال سے غیر حاضر ہیں۔ آپ کو مرکل ہیلد کوارٹر جیل مردان کوش نمبر 3797 مور نے 2016-12-2016 کو بذر بعدر جشرڈ ڈاک کھر کے پتہ پر جایت کی گئی کہ چندرہ (15) ایام کے اندراندر ڈسٹر کٹ جیل چتر ال م حاضری کرے کیکن آپ نے کو کی جواب نہیں دیا اور نہ ڈیو کی کیلئے حاضر ہوئے۔

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E SFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

In the matter of

Service appeal No. <u>314 of 2017</u>

h hali Ullah Ex-warder High Security/Central Prison Mardan

.....Appellant.

----VERSUS-----

- 1 The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
 - 2. The Superintendent High Security/Central Prison Mardan.
 - 3. The Superintendent Circle Headquarter Prison Mardan.

.....Respondents

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS

PRELIMINARY OBJECTIONS

- 1. That the appeal is incompetent, badly time barred and is not maintainable in its present form.
- 2. That the appellant is estopped by his own conduct to bring the present appeal.
- 3. That the appellant has got no cause of action.
- 4. That the appellant has no locus standi.
- 5. That the appellant is bad for mis-joinder and non-joinder of necessary party.
- 6. That the appeal is hit by laches.

FARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS

PESPECTFULLY SHEWETH.

- 1. Correct, pertains to record, hence no comment.
- 2. Incorrect, misleading as conduct of the appellant was not satisfactory during his short period of service.
- 3. Correct to the extent that the appellant was relieved from his duties at High Security Prison Mardan on 19.05.2016 with the direction to report

to Scout Training Academy at Warsak Peshawar for training, but he failed to comply with the lawful orders of the competent authority.

Pertains to the registration of a criminal case wherein FIR was registered on 25.03.2017 while the accused had been awarded the major punishment of "Removal from Service" on 02.02.2017.

- 5. Incorrect, misleading, as order of punishment was communicated to the appellant through registered cover by the competent authority on 02.02.2017 which has properly been delivered.
- 6 Incorrect, misleading, it was the gross misconduct and willful absence from duties by the appellant which culminated into the imposition of major penalty of "Removal from Service".

GROUNDS.

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A. Incorrect, misleading, as the order of 'Removal from Service' dated 02.02.2017 of the competent authority has been given immediate offect and the absence period has been ordered to be treated in light of rule 19 of the Khyber Pakhtunkhwa Government Servants Revised Leave Rules 1981.

B. Incorrect, misleading, as the appellant violated rule 1083 of the Khyber Pakhtunkhwa Prison Rule 1985 as the appellant neither submitted any kind of medical rest nor submitted an application for leave on medical grounds to the competent authority. The appellant was served an absence Notice at his home address to which he did not respond. Similarly an absence Notice was also published in the leading Newspapers of the province under rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 to which the appellant did not respond (Annexure-A).

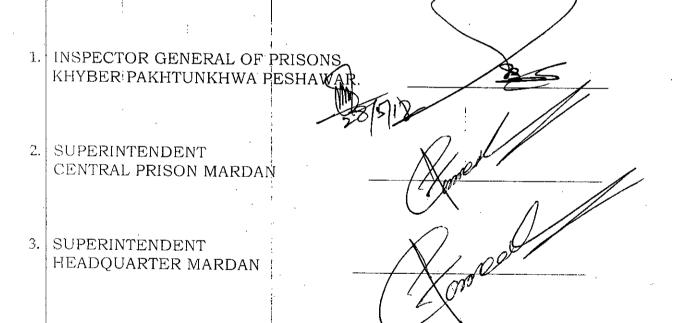
Incorrect, misleading, irrelevant and a lame excuse on the part of the appellant as the appellant was awarded the punishment of "Removal from Service" on 02.02.2017 while the FIR has been lodged on 25.03.2017.

D. Incorrect, misleading, as the appellant was not interested to continue his service in the Prisons Department, Khyber Pakhtunkhwa as he did not bothered to respond to the absence Notices. 3)

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- E. Incorrect, misleading, as the order of "Removal from Service" of the competent authority dated 02.02.2017 and order dated 26.02.2018 of the appellate authority are in accordance with law, rules and procedure as laid down in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 and are not liable to be set aside.
- F. Other grounds of appeal will be replied with the prior permission of this Hon'able Tribunal at the time of arguments.

It is, therefore, humbly prayed that the appeal filed by the Appellant may be rejected being not covered with law and rules and badly time barred please.



BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PÉSHAWAR.

In the matter of

pervice appeal No. <u>314 of 2017</u>

Thail Ullah Ex-warder High Security/Central Prison Mardan

.....Appellant.

----VERSUS----

4 The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.

5 The Superintendent High Security/Central Prison Mardan.

6 The Superintendent Circle Headquarter Prison Mardan.

.....Respondents

Mar 1

AFFIDAVIT ON BEHALF OF THE RESPONDENTS.

We, the respondents, do hereby solemnly affirm and declare on oath that the contents of the reply/Para wise comments are true and correct to the best of our knowledge and belief and nothing material fact has been concealed and kept secret from this Honorable Tribunal.

1 INSPECTOR GENERAL OF PRISONS KHYBER PAKHTUNKHWA PESHAWAF

2. SUPERINTENDENT CENTRAL PRISON MARDAN

3 SUPERINTENDENT HEADQUARTER PRISON MARDAN Rule 1082.-- (i) No subordinate officer shall, at any time, without the permission of the Deputy Superintendent, if such officer is subordinate to him, and, in any other case, of the Superintendent, be absent from the prison premises, whether by day or night.

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(ii) The Deputy Superintendent shall not, without the sanction of the Superintendent, grant leave of absence to any subordinate officer, or permit any such officer to remain absent, for any period exceeding four hours at any one time.

(iii) Whenever any leave is granted by the Deputy Superintendent to any subordinate officer he shall, at the time the leave is granted, record the fact, and the period of leave in his report book.

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Rule 1083. -- Whenever any subordinate officer is at any time prevented by sudden illness or other unavoidable cause, from attending the prison or performing his duties, be shall forth-with give notice to the Superintendent along with his reasons for absence. The Superintendent shall then make suitable arrangements for the due performance of his duties.

OPPICE OF THE SUPERINTENDENT CIRCLE HOS. PRIMOS MARDAN No. <u>38357</u> P.B David <u>21/12/2010</u> 5

Warder Khalil Ullah s/o Begham Shah, R/O Muhallah Shareef Khel, Post Office Sheikhi, Tehsil & District Nowshera.

Subject: <u>ABSENCE NOTICE</u>.

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You were relieved for training at Scout Training Academy Warszk on 19. 19. 2016. and directed to report on 21.11.2016 to Scout Training Academy Warsak for training but you failed to report there and is absent up to date.

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Endst. No: 3936-37/

Copy of the above is forwarded to the:-

1- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.

C/ CIRCLE

2- Superintendent High Security Prison Mardan for information with reference his report dated. 22/12/2016 please.

SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

SUPERI

HÓS. PRÍSON MARD.

15 JUWMAPU 17 آب وارافواران جوكه بالى سيكور فى بيل مردان، وسركت جمل وكر، وسركت بيل يمر كمه واده ومذ من محط بل المرب تاریخوں سے غیر جا سر میں کوبذیر یعد نوٹس ہذا آخری بار ہدایت کی جاتی ہیں کہ چدمدہ (15) ایام سمانند مدانند مدیل اور مدن سیکور فی جیل مردان *ا* ڈسٹر کٹ جیل ڈکر ا ڈسٹر کٹ جیل تیمر کر ہ ا ڈسٹر کٹ جیل چرالی میں کریں اچھا بلی خیر جانسر کی ا^{ی سرس} بن بتائي بصورت ديكرآب بے خلاف يکطرف کارواني مل ميں لاني جائيکي جوا۔ ازمت بيد خاطمي پر من موجي جن ج 1- واردر خليل اللدولديكم شاومكم شريف ذاكان في تحسيل وسلع لوهمو بطور يل وارد تكومد 11-2016 في الأردين جل مردان سے برائے ٹریک کاکٹ ٹریک اکیڈی دوسک کے لیے معاند معاند کیا کیا اور جامت کی تی آب اور 21-21-2016 كوما ضرى كري مكرة ب ف ما ضرى ندى اورندى والجل بانى يكورنى جلى مردان شى ما شرك كى الم بسر ہیز کوار ٹرجیل مردان نوٹس نمبر 3935 مورخہ 2016-12-22 کوبذ والع رجہ وہ ڈاک کھر کے چہ پر جانے کی کا یہ ایک [5] ایام ے اندر اندر عاضری کی رپورٹ مالی سیکورٹی جیل مردان میں حاضرای کر می اسیکن آب نے کوئی جواب تھے، اور ور ان 2- وار اسدالله دلد كل رحمان سكنه محله كيرى خيل كاكل ماشونكر بذوى شلح بطاور الطور بيل وارد رآب مورد 16 20 16-11-23 ے ڈسٹرکٹ جیل ڈگر سے غیر حاضر میں۔ آپ کو سرکل ہیڈ کوارٹر جیل مردان نوٹس نمبر 10 39 مورند 2016- 2012 ب بذر بعد دجشر ذواب كمرك بيته ي مدايت كالى كم بندره {15 } ايام كاندوا ندر اندر شركت جمل وكرشا حاضران كر کوکی جواب نہیں دیااور نیڈیونی کیلیئے حاضر ہوئے۔ 3- نىمىل داردرآ فشال فدا دخر فداعلى سكنه مكان فمبر 1645 محكمة فشل بن مباحب زاده دا تحانيه بجاك بالكار تعميل بشن يشر بطور بیل نیمل دار ڈرآپ مورخہ 2016-12-09 تا مٹرکٹ بیل تیمر کروے فیر جامنر میں ۔ آپ کو کرٹی ہیڈ کا اینے س نولس نمبر7 390 مورخہ 2016-12-20 کو بذرابعہ رجسڑڈ ڈاک کھر پانٹہ پر ہوایت کی تک سیندہ { 15 } لیا کے سیند د سز کت جیل حیر مر ہ میں حاضری کر ہے کیکن آپ نے کوئی جواب تبیس دیا اور کہ ڈیونی کیلیئے حاضر جوئی۔ 4- وإركار خيام جان ولد عنايت الله سكنه تحلّه كمرى شيخان ذا كفانه بزار أخواني عسيل وسلع بشادر الطور جيل دارز أنب سريحه 06-12-2016 یے ڈسٹر کٹ جیل چرال سے غیر حاضر میں۔ آپ کو سرکل میڈ کواوز جیل مردان نوش نبر 7 878-12-2016 کوبذراچ**د جشرڈ ڈ**اک کھرکے چة پر ہوایت کی گنی کہ چندرہ {15} ایام کے اندرا ندید ڈسٹرکٹ ^بنگ^ا چر ب جاضری کر ہے کیکن آپ نے کوئی جواب ہیں دیا اور نے لیے کا نسر ہوئے۔ Say No Corruption

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