BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 892/2018

Date of Institution ... 11.07.2018

Date of Decision ... 29.07.2021

Khalid Iqbal S/o Payo Khan (Warder BPS-05)
Wrana Muskan, P.O. Wrana, Takht Nasrati, District Karak.

...(Appellant)

VERSUS

Province of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Department KPK, Peshawar and three others.

... (Respondents)

MISS. ROEEDA KHAN,
Advocate --- For appellant.

MR. JAVED ULLAH,
Assistant Advocate General --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MR. ATIQ-UR-REHMAN WAZIR --- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Brief facts giving rise to filing of the instant service appeal are that the appellant was serving as Warder in Central Prison Bannu, when disciplinary action was initiated against him on the ground of his willful absence from duty from 02.12.2015 till 22.12.2016. On conclusion of the inquiry, the penalty of imposition of removal from service was imposed upon the appellant vide order dated 22.12.2016 passed by the competent Authority. The same was challenged by the appellant through filing of departmental appeal on

08.05.2018, wherein he took the stance that it was on account of blood feud enmity, that the appellant alongwith his family shifted to an unknown locality and could not attend his duty. The departmental appeal of the appellant was declined vide order dated 06.07.2018, hence the instant service appeal.

2. Respondents were summoned, who submitted para-wise comments.

3. Learned counsel for the appellant has argued that whole of inquiry proceedings were conducted at the back of the appellant, which has caused prejudice to the appellant; that the appellant was proceeded against on the ground of willful absence, however the procedure as prescribed in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, was not complied with, which fact has rendered the whole inquiry proceedings as void ab-initio; that the order of removal from service was passed in absence of the appellant without any intimation to him and when the appellant went to Central Prison Bannu for resuming his duty, he came to know regarding his removal from service, therefore, he filed departmental appeal and as such the delay in filing of departmental appeal is condonable; that the impugned orders are not sustainable in the eye of law, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant has remained absent from duty for considerable long period, without any sanctioned leave, therefore, proper disciplinary action was taken against the appellant by fulfilling all codal formalities; that the willful absence of the appellant stood proved in a proper departmental inquiry, therefore, the penalty of removal from service was rightly imposed upon the appellant; that the impugned orders do not need any interference and the appeal of the appellant is liable to be dismissed with costs.

5. Arguments heard and record perused.

6. A perusal of the record would show that the appellant was proceeded against on the ground of willful absence from duty with

effect from 02.12.2015 till 22.12.2016. Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, prescribes the procedure to be adopted in case of willful absence of a government servant. The said rule is reproduced as below:-

*"**9. Procedure in case of willful absence:** Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant".*

7. In view of material available on the record, it is crystal clear that neither any notice was issued to the appellant through registered acknowledgement nor any notice was published in two leading newspapers, directing the appellant to resume his duty. The Authority could have taken *ex-parte* decision only after fulfilling of aforementioned condition, however the procedure as prescribed in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not complied with, therefore, the entire inquiry proceedings are nullity in the eye of law.

8. Furthermore, the impugned order dated 22.12.2016 passed by Superintendent Circle H/PS Prison D.I.Khan would show that the period of willful absence of the appellant was treated as leave without pay. The relevant portion of the impugned order dated 22.12.2016 is reproduced as below:-

"NOW THEREFORE, in exercise of power conferred under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the undersigned being competent Authority after observing all legal procedure formality hereby award major penalty of removal from service to Mr. Khalid Iqbal attached to Central Prison

Bannu for his willful absence. The period of his absence i.e from 02.12.2015 to 22.12.2016 is hereby treated as leave without pay",

9. The appellant was proceeded against on the ground of willful absence with effect from 02.12.2015 to 22.12.2016, however the Authority has treated the said period as leave without pay. As such, the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect derived from the judgment of the august Supreme Court of Pakistan, reported as 2006 SCMR 434.

10. In light of the above discussion, the appeal in hand is accepted and the appellant is reinstated into service, however the intervening period of his absence from duty shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.07.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

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

ORDER
29.07.2021

Miss. Rooeda Khan, Advocate, for the appellant present. Mr. Suleman, Senior Instructor alongwith Mr. Javed Ullah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted and the appellant is reinstated into service, however the intervening period of his absence from duty shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.07.2021

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

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

03.06.2021 Miss. Rooeda Khan, Advocate, for the appellant present and submitted fresh Vakalatnama on behalf of the appellant. Mr. Suleman, Senior Instructor alongwith Mr. Javed Ullah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant also submitted rejoinder, which is placed on file and requested that time may be granted to her for arguments as she has been engaged today. Adjourned. To come up for arguments before the D.B on 29.07.2021.

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

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

04.12.2020 Appellant in person present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Suleman Senior Instructor for respondents present.

Former requests for adjournment as his counsel is not available. Adjourned to 02.03.2021 for arguments before D.B.

(Atiq ur Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

02.03.2021 Junior to counsel for the appellant and Addl. AG for the respondents present.

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, the matter is adjourned to 3.06.2021 for hearing before the D.B.

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

Chairman

19-5.2020 Due to COVID19, the case is adjourned to 10/8/2020 for the same as before.

Reader

10.08.2020 Due to summer vacations case to come up for the same on 12.10.2020 before D.B.

Reader

12.10.2020 Nemo for parties.

Mr. Kabir Ullah Khattak learned Additional Advocate General present.

Preceding two dates were adjourned on a Reader's note, therefore, notice be issued to appellant/counsel and respondents for 04.12.2020 for arguments, before D.B.

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

17.03.2020 Appellant in person present. Addl: AG alongwith Mr. Suleman, Law Officer for respondents present. Due to general strike on the call of Peshawar Bar Council, the instant case is adjourned. To come up for arguments on 19.05.2020 before D.B.

(MAIN MUHAMMAD)
MEMBER

(M.AMIN KHAN KUNDI)
MEMBER

18.10.2019 Appellant in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present. Appellant submitted application for adjournment as his counsel is not available today. Application allowed. Adjourn. To come up for arguments on 26.12.2019 before D.B.

Member Member

26.12.2019 Appellant in person present. Mr. Muhammad Jan, DDA for respondents present. Appellant submitted an application for adjournment. Adjourn. To come up for arguments on 04.02.2020 before D.B.

Member Member

04.02.2020 Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Suleman, Law Officer for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 17.03.2020 for arguments before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

14.05.2019 Appellant in person present. Written reply not submitted. Sheryar Assistant Superintendent representative of respondent department absent. He be summoned with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 01.07.2019 before S.B. Notice be also issued to the respdts for reply/Comments.

Member

01.07.2019 Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Junaid Assistant for the respondents present. Representative of the respondents submitted written reply/comments. Adjourned. To come up for rejoinder/arguments on 03.09.2019 before D.B.

Member

03.09.2019 Appellant with counsel present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.10.2019 before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

09.01.2019 Appellant in person and Addl. AG for the respondents present. It appears that notices were not issued to the respondents as ordered on 28.11.2018. Those shall be positively sent for the next date of hearing. Adjourned to 27.02.2019 before S.B.

Chairman

27.02.2019 Appellant in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Sheher Yar Khan, Sr. ASJ for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments on 09.04.2019 before S.B.

Member
(Ahmad Hassan)

09.04.2019 Counsel for the appellat and Addl. AG on behalf of the respondents present.

Learned AAG requests for time to procure reply of the respondents. The respondents shall positively submit the requisite reply/comments on next date of hearing.

Adjourned to 14.05.2019 before S.B.

Chairman

be issued to the respondents for written reply/comments for 23.10.2018 before S.B.

(Ahmad Hassan)
Member

23-10-18

Due to Retirement of Honorable Chairman The Tribunal is non functional therefore the case is adjourned to come up for the same on 20-11-2018

Reader

20.11.2018 Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Representative of the department is not in attendance, 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 09.01.2019 before S.B.

Appellant Deposited Security & Process Fee

Muhammad Amin Khan Kundi
Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 892/**2018**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/07/2018	The appeal of Mr. Khaled Iqbal resubmitted today by Mr. Mian Jamal Shah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
	18-7-2018	REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 20-8-2018.
		CHAIRMAN
	20.08.2018	Appellant with counsel present. Learned counsel for the appellant argued that on account of absence from duty disciplinary proceedings were initiated against the appellant and upon culmination major penalty of removal from service was imposed on him vide impugned order dated 22.12.2016. The period of his absence was treated as leave without pay. He filed departmental appeal on 08.05.2018 which was rejected on 06.08.2018, hence, the instant service appeal. Learned counsel for the appellant when confronted on the point of limitation informed that an application for condonation of delay has been submitted. Reliance was also placed on 2006 SCMR 434. The appellant has not been treated in according to law and rules. Points urged need consideration. The appeal is admitted for regular hearing subject to limitation and all legal objections. The appellant is directed to despot security and process fee within 10 days thereafter, notice

The appeal of Mr. Khaled Iqbal son of Payo Khan Warder Warana Muskan Districrt Karak received today i.e. on 11.07.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of order dated 22/12/2016 is illegible which may be replaced by legible/better one.
2- Annexures of the appeal may be attested.
3- Annexures of the appeal may be flagged.
4- Annexues of the appeal may be page marked.
5- Four copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1413 /S.T,

Dt. 12/07 /2018.

REGISTRAR 12/7/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Adv.
Mian Jamal Shah Adv. Pesh.

Re-submitted Sir, after necessary compliance

BEFORE THE HON'BLE
SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 892 /2018

Khalid Iqbal

_____(Appellant)

VERSUS

The Province of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Department KPK, Peshawar and others

_____(Respondents)

INDEX

Petitioner

Through

Mian Jamal Shah
Advocate High Court,
Peshawar

Dated: 11.07.2018

BEFORE THE HON'BLE
SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 892 /2018

Khalid Iqbal S/o Payo Khan (Warder BPS-05)
Wrana Muskan, P.O. Wrana, Takht Nasrati, District Karak
_____(Appellant)

VERSUS

1) The Province of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Department KPK, Peshawar
2) The Inspector General of Prisons, KPK Peshawar
3) The Superintendent Circle, Headquarters Prison, Dera Ismail Khan
4) The Superintendent Headquarters Prison, Peshawar

_____(Respondents)

Appeal Under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, whereby the appellant has been removed from service vide order dated 22.12.2016 and his departmental appeal against the impugned order was rejected by respondent No. 2 vide order dated 06.07.2018.

Respectfully Sheweth,

The appellant humbly submits as under:

1) That the appellant applied for the post of Warder and after fulfillment of all codal formalities called upon for interview, hence appointed as Warder (BPS-05) in the office of respondents at District Jail Lakki Marwat vide office order No. 8344/PB dated 22.01.2015. **(Copy of appointment order is attached as Annexure A)**

2) That the appellant was issued health and age certificate from the office of the Medical Superintendent DHQ Hospital Karak and accordingly resumed his duty. **(Copy of health and age certificate is attached as Annexure B)**

3) That the appellant was then transferred from District Jial Lakki Marwat to Central Prison Bannu wherein the appellant performed his duty to the entire satisfaction of his superiors.

4) That unfortunately due to enmity, serious threat arose to the life of the appellant and his family, hence was restrained to join duty due to the reason mentioned above and the appellant due to serious threats to his life went to unknown place with his family members to save his and his family members lives and subsequently after settlement of dispute, the appellant resumed his official duties but the appellant was informed that he has been removed from his service vide order dated 22.12.2016 on the ground of absence from duty. **(Copies of Verification Report from Nazim V/c Warana Musakan (Karak) and removal order No. 8464/HQ dated 22.12.2016 are attached as Annexure C & D respectively)**

5) That on receiving the impugned order dated 22.12.2016 the appellant immediately filed his departmental appeal dated 08.05.2018 before respondent No. 2 but the same was rejected by the appellate authority on 06.07.2018. **(Copies of departmental appeal and final order are attached as Annexure E & F respectively)**

6) That feeling aggrieved from the above mentioned impugned orders, the appellant prefer instant appeal inter alia on the following grounds.

GROUNDS:

a) That both the impugned orders referred above are illegal, void therefore not sustainable in the eyes of law.

b) That the appellant was removed from his service during probation period but on the ground of misconduct, therefore the department was under legal obligation to conduct regular inquiry i.e. by serving show cause notice and all other legal requirements which are pre-requisites for a regular inquiry, the department did not conduct any regular proceeding against the appellant and immediately passed the impugned order dated 22.12.2016 which is against the principle of natural justice.

c) That the competent authority regularized the absence period from 22.12.2015 to 22.12.2016 by treating the same as leave without pay, therefore the penalty awarded is unwarranted and unsustainable under the law.

d) That no publication was made in the daily newspaper which is a violation of Rule 9 of E&D Rules 2011, therefore entire proceeding conducted against the appellant are liable to be struck down being illegal and void.

e) That the appellant seeks permission of this hon'ble tribunal to raise more legal grounds at the time of arguments.

In view of the afore said facts and circumstances of the case, it is most humbly prayed that the impugned removal from service order dated 22.12.2016 and final order dated 06.07.2018, both may kindly be set aside, being illegal and void, directing the respondents to reinstate the appellant into service with all back benefits.

Any other relief not specifically asked for and which this hon'ble tribunal deems fit and proper may also be granted in the best interest of justice and fair-play.

Petitioner

Through

Mian Jamal Shah
Advocate High Court,
Peshawar

Dated: 11.07.2018

Certificate:

As per instruction of my client, it is certified that no such appeal has earlier been filed before this hon'ble tribunal on behalf of the appellant.

ADVOCATE

BEFORE THE HON'BLE
SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No._____/2018

Khalid Iqbal

_____(Appellant)

VERSUS

The Province of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Department KPK, Peshawar and others

_____(Respondents)

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth,

The appellant humbly submits as under:

1) That the instant appeal has been filed before this hon'ble tribunal today wherein no date has yet been fixed.

2) That unfortunately due to enmity, serious threat arose to the life of the appellant / petitioner and his family, hence was restrained to join duty due to the reason mentioned above and the appellant / petitioner due to serious threats to his life went to unknown place with his family

members to save his and his family members lives and subsequently after settlement of dispute, the appellant resumed his official duties but the appellant was informed that he has been removed from his service vide order dated 22.12.2016 on the ground of absence from duty by not fulfilling codal legal formalities and unawareness in respect of proceeding carried against the appellant / petitioner, therefore could not file departmental appeal within due time.

3) That delay in filing of the departmental appeal is not willful or intentional but for the reason mentioned.

4) That it is well settled proposition of law that no one should be condemned unheard and reasonable opportunity may be afforded to the party to establish his case in the best interest of justice and fair play.

In view of aforesaid facts and circumstances of the case, the delay in filing of departmental appeal may kindly be condoned in the best interest of justice.

Petitioner

Through

ATTESTED

Mian Jamal Shah
Advocate High Court
Peshawar

MIAN HAKIM SHAH M.A.L.L.B. Khyber Pakhtoonkhwa (KPK) Pakistan NOTARY PUBLIC Advocate High Court Peshawar

Dated: 11.07.2018

AFFIDAVIT

I, **Khalid Iqbal** S/o Payo Khan (Warder BPS-05) R/o Wrana Muskini, P.O. Wrana, Takht Nasrati, District Karak, do hereby solemnly affirm and declare on Oath that the contents of the instant application are true and correct to the best of my knowledge and belief.

DEPONENT CNIC No. 14203-4174134-5

OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No. 8335 /P.B/ Dt: 22-01-2015

(7)

To

Mr. KHALID IQBAL S/O PAYO KHAN
R/o Wrana Muskan, PO Wrana, Takht Nus at Distt: Karak

Subject: **APPOINTMENT AS WARDER (BPS-05)**

Memo:

Reference your test/ interview for the subject post.

You are hereby offered the post of temporary Warder in BPS-05 (5400-260-13200) and all other usual allowances as admissible under the rules subject to the following conditions: -

1- You are liable to serve anywhere in the Jails/ Judicial Lockups/ Internment Centers of Khyber Pakhtunkhwa.

2- Your appointment is purely temporary and your services can be terminated at any time without assigning any reason during probationary period.

3- For all other purposes such as pay, T.A, & medical attendance etc, you will be governed by the rules applicable to the government servants of your category.

4- The terms and conditions of your appointment as Warder (BPS-05) will be those as laid down in the Khyber Pakhtunkhwa Prison Rules 1985, Prisons Department (Recruitment, Promotion & Transfer) rules 1980 and all other rules and regulations prescribed for Government Servants or the rules which may be promulgated by the Government from time to time in this behalf.

5- You appointment will be subject to your medical fitness and prescribed physical standard.

6- No TA/ DA will be admissible to you on joining your first appointment.

7- You cannot resign from the service immediately but will have to put in writing at least one month prior notice or in lieu thereof, one month pay shall be forfeited from you.

8- Your appointment is subject to fulfillment of all the conditions laid down in the service rules.

9- You will be on probation for a period of two years extendable to one more year.

10- Your appointment will be subject to verification of your antecedents/ character.

11- If you report for duty, it will be taken for granted that you have accepted all the above terms and conditions and if you failed to report within 10 days of the receipt of this appointment order, it will be presumed that you have declined to accept this offer, hence this order of appointment shall stand cancelled/ withdrawn.

12- You are directed to report to the Superintendent District Jail Lakki Marwat for duties.

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Endorsement No: 8346-46 /-

Copy of the above is forwarded to the: -

1- Superintendent District Jail Lakki Marwat. The above named newly appointed Warder is attached with his jail for all purposes. He may be got medically examined by the Medical Superintendent concerned and a copy of his Medical Examination Certificate may be sent to this office for record. His SSC certificate may also be verified from the concerned board within one month and the result be communicated to this Headquarters.

2- District Accounts Officer, Lakki Marwat.

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Musawer/-

ATTESTED
MIAN JAMAL SHAH
Advocate High Court
Peshawar

(8)

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL KARAK

HEALTH & AGE CERTIFICATE

Name: Khalid Iqbal

Father Name: Payo Khan

Nationality: Pakistani

Cast: Afghan / Khattak

Residence: Warana Muskaba P/O Warana Teh. Tanawati Distt. Karak

Date of Birth: 01-05-1999 Height: 5'-7"

Personal mark of Identification: Mole on Face

HEAD OF OFFICE

I hereby certify that I have examined Mr. /Mrs. Khalid Iqbal A candidate for employment in the office of the Distt Jail Lakki Marwat department and cannot discover that He / She has any communicable disease constitutional affection or badly infirmity except nil

I do not considered his/her disqualification for employment in the as above Department.

His/her age according to his own statement/ N.I.Card is (26) years, and by Physical appearance he/She is about Twenty Six years of age.

LEFT/RIGHT HAND THUMB FINGER IMPRESSION

Thumb	Fore Finger	Middle Finger	Ring Finger	Little Finger

Medical Superintendent, 27/1/20
DHQ Hospital Karak.

Medical Superintendent D.H.Q Hospital Karak

Medical Superintendent D.H.Q Hospital Karak

Mian Waheed Gul

ATTESTED
MIAN JAMAL SHAH
Advocate High Court
Peshawar

Abdur Rauf
Nazim
Village Council Warana Musakan (Karak)
Mob: 0342-9327384

(9)

Ref No:..... Date: 11-7-18

تصدیق نامہ

مسمی خالد اقبال ولد پیاؤ خان سکنہ وارنہ موسکان تحصیل و ضلع کرک کا میرے
ایک شہری فیملی کے ساتھ تعلقات رہے ہیں مسمی خالد اقبال کا عدالت میں
خاندانی دشمنی چلنے اور کیس جیلی جانے سے مسمی خالد اقبال کو جان کا خطرہ تھا
مزید مسمی خالد اقبال کیس پولیس جیل سے غیر حاضری کی وجہ سے (Terminate)
کیا گیا ہے جو کہ مسمی خالد اقبال کے سراسر زیادتی اور ناانصافی ہوئی ہے
جبکہ اصل صورت عدالت میں خاندانی دشمنی کی جیلی جانے سے اثر رونما
نہ حاضر رہا تھا ایسے مسمی خالد اقبال مستقبل میں ڈیوٹی طریقے سے جیل ڈیوٹی
میں ڈیوٹی سرانجام دینے پابند ہونگے
اور فی الحال بحیثیت ناظم ویلج کونسل وارنہ موسکان تحصیل و ضلع کرک
کرتے ہیں کہ صحت کی اور حفاظت دینے کے لئے سفارش
اور مسمی خالد اقبال کو زیادتی سے بچایا جائے

11/7/18

ABDUR RAUF
NAZIM
VIC Warana musakan(karak)

عبدالرؤف ناظم ویلج کونسل وارنہ موسکان
تحصیل و ضلع کرک

ATTESTED
MIAN JAMAL SHAH
Advocate High Court
Peshawar

OFFICE OF THE
SUPERINTENDENT
CIRCLE H.Qs PRISON D.I.KHAN
No 8464 /HQ Dt 22/ 12 /2016
PH&FAX NO.0966-9280299
Centraljail dikhan@yahoo.com

(10)

OFFICE ORDER

WHEREAS, the accused official Mr.Khalid Iqbal attached to Central Prison Bannu was proceeded against under Rule3 read with Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of his long willful absence i.e from 02.12.2015 to 22.12.2016 and show cause notice No 2211-18 Dated 25.10.2016 was sent at his home address vide Superintendent Central Prison Bannu letter no 4833 dated 04.11.2016 and another notice served upon him vide letter No.7790 dated 23.11.2016 on his home address.

AND WHEREAS, the accused official not only failed to resume duty till date but also failed to justify his willfull absence.

NOW THEREFORE, in exercise of power conferred under Rule-09 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the undersigned being competent authority after observing all legal procedural formalaties hereby award major penality of removal from service to Mr.Khalid Iqbal attached to Central Prison Bannu for his willful absence. The period of his absence i.e from 02.12.2015 to 22.12.2016 is hereby treated as Leave With out Pay.

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

ENDST NO 8465-69 / 22-12-16

Copy of the above is forwarded the; -

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information.
2. Superintendent Circle Head Quarter Prisons Peshawar for information please.
3. The Superintendent Jail Central Prison Bannu. Necessay entry may please be made in the service book of official concerned under proper attestation.
4. DAO Bannu.
5. Warder Khalid Iqbal Central Prison Bannu.

SUPERINTENDENT
CIRCLE H/QS PRISON D.I.Khan

ATTESTED
MIAN JAMAL SHAH
Advocate High Court
Peshawar

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Musawer/-

(11)

بحضور جناب انسپکٹر جنرل صاحب جیل خانہ جات خیبر پختونخوا پشاور

عنوان! درخواست دربارہ بحالی ملازمت بطور وارڈر (Warder)

جناب عالی!

مودبانہ گذارش ہے ساتھ سائل ذیل عرض رساں ہے

(1) سائل کو آرڈر نمبر No 8344 / P.B / Dt 22/01/2015 کے ذریعے محکمہ جیل خانہ جات ڈسٹرکٹ جیل بنوں میں وارڈر بی بی ایس کے تعینات کیا گیا تھا۔

(2) کچھ عرصہ بعد سائل کا تبادلہ ڈسٹرکٹ جیل بنوں سے سنٹرل جیل بنوں کر دیا گیا اور ڈیوٹی سرانجام دیتا رہا۔

(3) دریں اثنا سائل کو سخت خاندانی دشمنی کی وجہ سے جان و مال اور عزت و آبرو کو سخت خطرہ لاحق ہوا۔ اسلئے سائل کیلئے ڈیوٹی سرانجام دینا اور بال بچوں کو اکیلا چھوڑنا مشکل ہو گیا جسکی بناء پر سائل نوکری سے غیر حاضر رہا۔

(4) چونکہ سائل عیال دار آدمی ہے۔ ملازمت کے علاوہ معاش کا اور کوئی وسیلہ نہیں ہے۔ قرض کا کافی بوجھ سر پر پڑ گیا ہے۔

(5) اب دشمنوں کے ساتھ صلح صفائی ہو چکی ہے اور سائل دوبارہ بلا کسی خوف و خطرے کے نوکری کر سکتا ہے۔ اسلئے جناب سے عاجزانہ استدعا کیجاتی ہے کہ سائل کو دوبارہ اپنی ملازمت پر بحال کرنے کے احکامات صادر فرمائیں۔ سائل کمترین اپل و عیال کے تاعمر دعا گو رہیں گے۔

مورخہ 8 مئی 2018ء

العارض

خالد اقبال ولد پیاؤ خان ایکس وارڈر سنٹرل جیل بنوں خیبر پختونخوا

مستقل پتہ۔ گاؤں ولانہ موسکان ڈاکخانہ ولانہ تحصیل تخت نصرتی ضلع کرک

موبائل نمبر 0346 9085226 (0346 9085 226)

Musawer/.

ATTESTED
MIAN JAMAL SHAH
Advocate High Court
Peshawar

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

(12)

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 091-9210334, 9210406 091-9213445

No. 20499 /-

Dated 6-7-2018 /-

To,

Mr. Khalid Iqbal S/O Pio Khan,
Village Wadana Mouskan P/O Wadana,
Tehsil Takht Nusrati District Karak.

Subject:- **DEPARTMENTAL APPEAL FOR REINSTATEMENT IN SERVICE.**

Memo;

I am directed to refer to your appeal dated 04-07-2018 on the subject and to convey that you have removed from service on 22-01-2015 and according to rules you were required to prefer your departmental appeal within 30 days after the decision of the competent authority but you filed appeal on 04-07-2018 which is badly time barred due to which the appellate authority did not entertain your appeal.

ASSISTANT DIRECTOR (ADMN:)
FOR INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

Endst No. /-

Copy of the above is forwarded to the Superintendent HQ Prison Bannu for information.

ASSISTANT DIRECTOR (ADMN:)
FOR INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

ATTESTED
MIAN JAMAL SHAH
Advocate High Court
Peshawar

قیمت 50 روپے

43365

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ: میاں جمال شاہ ایڈووکیٹ ہائی کورٹ

بار کونسل / ایسوسی ایشن نمبر: bc-10-7383

رابطہ نمبر: 0301-8812158

بعدالت جناب: سروس ٹریبونل KPK صوبہ

منجانب: اپیلانٹ خالد اقبال

خالد اقبال

بنام

سیکرٹری خیبر پختونخوا وغیرہ

دعویٰ: سروس اپیل

علت نمبر:

مورخہ:

جرم:

تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور ہائی کورٹ پشاور کیلئے میاں جمال شاہ ایڈووکیٹ کو وکیل مقرر

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 11-7-2018

العبد

گواہ شد

العبد

خالد اقبال ولد پیاؤ خان ساکن ورنہ مسکان تحصیل تخت نصرتی ضلع کرک

مقام

کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

ATTESTED
MIAN JAMAL SHAH
Advocate High Court
Peshawar

2006 S C M R 434

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C. J. and Tassadduq Hussain Jillani, J

LAHORE DEVELOPMENT AUTHORITY and others----Petitioners

Versus

MUHAMMAD NADEEM KACHLOO and another---Respondents

Civil Petition No.1282-L of 2004, decided on 23rd January, 2006.

(On appeal from the judgment, dated 30-12-2003 passed by Punjab Service Tribunal in Appeal No.823 of 2003).

Constitution of Pakistan (1973)---

----Art. 212 (3)---Dismissal from service---Converting absence without leave into leave of the kind due---Frivolous litigation---Absence of civil servant was initially converted into the leave of kind due but later on he was dismissed from service on the charge of being absent without leave---Service Tribunal set aside the dismissal order and his absence was treated as a leave of the kind due---Validity---Authority had itself condoned the period of absence by allowing him leave without pay---Leave was due to the civil servant and he had been making applications time and again accompanied by medical certificates for the purpose of extending the period of his leave---Authority did not have any justification to institute the present petition because of the fact that absence of the civil servant had been regularized---Supreme Court issued notice to the authorities to explain as to why costs be not imposed upon them for filing frivolous petition, knowing well that the competent authority had treated the period during which the civil servant remained absent, as leave without pay---Supreme Court declined to interfere in the judgment passed by Service Tribunal---Leave to appeal was refused.

Muhammad Rashid Ahmad, Advocate Supreme Court and Tanvir Ahmad, Advocate-on-Record for Petitioners.

Nemo for Respondents.

Date of hearing: 23rd January, 2006.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C.J.---Petitioner seeks leave to appeal against the judgment, dated 30th December, 2003 passed by Punjab Service Tribunal, Lahore.

2. Precisely stating facts of the case are that respondent was proceeded departmentally on account of absence for 260 days from his duty. Director, Administration L.D.A., Lahore awarded him major penalty of dismissal from service vide order, dated 27th May, 2002. Contents of the order are reproduced hereinbelow:--

> "Consequent upon finalization of disciplinary proceedings initiated against Mr. Muhammad Nadeem Kichloo, Assistant Director (Accounts) L.D.A., through show-cause notice under the Punjab Removal From Service (Special Powers) Ordinance, 2000 read with Punjab Removal From Service (Special Powers) (Amendment) Ordinance, 2001, the authority i.e. Director General, L.D.A. has awarded major penalty of dismissal from service upon the said officer with immediate effect, under the said Ordinance. His absence period from duty is ordered to be treated as leave without pay."

A perusal of the above order indicates that same was passed by Director-General/Authority on 23rd May, 2002 but was conveyed to the respondent on 27th May, 2002. There is another aspect of the case which requires notice that L.D.A., while awarding major penalty of dismissal from service, treated absence of the respondent as leave without pay.

3. Appeal filed by the respondent before the Secretary failed, who the same on 31st March, 2003.Against the above order, respondent preferred appeal before the Service Tribunal which has been allowed vide impugned judgment. Concluding para. is reproduced hereinbelow : --

> "I have considered contentions from both sides. Without touching detailed merits of the case, I find that the appellant has already been allowed leave (leave without pay) for the period he remained allegedly absent from duty. The authority while dismissing the appellant, also allowed the appellant extra-ordinary leave without pay for the said period and in this way regularized his absence. This being so, very ground had vanished on which the appellant had been proceeded against. When the appellant was considered on leave, then he could not have been considered absent. In this view of the matter, appeal is accepted and the impugned orders, presently being assailed by the appellant are set aside. Resultantly, the appellant shall stand reinstated and the period intervening shall be treated as leave of the kind due."

4. Learned counsel for the petitioner contended that respondent remained absent from his duty therefore, the Director-General, L.D.A./ Authority rightly dismissed him from service.

5. In view of the observations made by the Tribunal in the concluded para., noted hereinabove, and also having gone through the contents of the order of the L.D.A. dated 27th May, 2002 we called upon learned counsel to explain as to whether, after allowing the respondent leave without pay during the period when he was absent from duty, there was any justification to dismiss him from service, he could not answer satisfactorily except saying that the period of absence was treated as leave without pay in order to grant him service benefits. We are surprised that once a person has been ordered to be dismissed from service, could at all the benefits of salary etc. can be given to him? As it has been pointed out hereinabove that Director-General himself had condoned the period of absence by allowing him leave without pay. Learned counsel also admitted that leave was due to the respondent and he had been making applications time and again accompanied by medical certificates for the

purpose of extending the period of his leave. In this view of the matter, we are of the opinion that Director-General, L.D.A. had no justification to institute this petition because of the fact that absence of the respondent had been regularized.

6. Thus, for the foregoing reasons, petition is dismissed. However, notice be issued to both the petitioners to explain as to why costs may not be imposed upon them for filing frivolous petition, knowing well that the competent authority vide order, dated 23-5-2005 had treated the period during which respondent remained absent as leave without pay. Learned counsel for the petitioners shall submit details of the petitions with particulars and thereafter notice be issued to them for their appearance during week commencing 30th June, 2006.

M.H./L-
1/SC??
Petition dismissed.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO: 892/2018
Khalid Iqbal (Warder)
Central Prison D.I Khan.....**APPELLANT**

VERSUS

Government of Khyber ..... **RESPONDENTS**

INDEX

DEPONENT
21203-8890814-7

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 892/2018

Khalid Iqbal s/o Payo Khan warder Bps (05), R/o Wrana Muskan, P.O Wrana, Teakhte Nasrati, District Karak.

..... (Appellant)

VERSUS

1. The Province of Kyber Pakhtunkhwa through Secretary Home & Tribal Affairs department KPK Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent, Circle Head Quarter Prison, DIKhan
4. The Superintendent, Circle Head Quarter Prison, Peshawar.

..... (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS ARE AS UNDER

Respectfully Sheweth;

Preliminary objections

a. That the appeal is **badly time barred.**
b. That the appellant has no locus standi to file appeal against the Respondents before this Honb'le Court.
c. That the petitioner is estopped by his own conduct to file the instant appeal.
d. That the petitioner has concealed material facts from this Honb'le Court.
e. That the appellant has no cause of action against the Respondents

Facts

1. No. comments.
2. No comments
3. No comments.
4. That the appellant has Concealed facts. He has absented himself from duty and jail premises without permission of the competent authority. He was not interested in duty and this can be judged from the fact that he has approached for departmental appeal nearly after two years of his removal from service. There is no documentary proof i.e FIR etc that he had any enmity in his village nor he had ever reported to the department about his enmity. He is concealing facts by hiding behind a fabricated story.

5. That again appellants' statement shows lack of interest in duties as he was removed from service on 22.12.2016 and he had filed departmental appeal before the respondent No. 02 on 08.05.2018, which was rejected by the respondent No.02 being badly time barred.

GROUNDS

a. The orders of removal from service passed by the Superintendent Circle Head Quarter Prison DIkhan (respondent No.03) and orders of Inspector General of Prison Khyber Pakhtunkhwa Peshawar No. 20499 Dated 06.07.2018 are lawful, legal and codal formalities have been fulfilled.

b. Legal proceedings have been carried out against the appellant. Inquiry officer was nominated to proceed against the appellant vide No. 7455-57 dated 09.12.2015 but the appellant never bother to resume his duty or appear before the Inquiry officer. Showcause Notice No. 7211-12 Dated 25.10.2016 was served upon his home address through the Superintendent Central Prison Bannu letter No. 4833 Dated 04.11.2016 but no response was received from the appellant side.

c. True. As the appellant has absented himself during the said period and did not perform any duty, therefore, the period was treated as leave without pay. No duty no pay.

d. The appellant was well aware of his absence and disciplinary proceedings against him. He was served with the showcause Notice No. 7211-12 Dated 25.10.2016 on his home address i.e Khalid Iqbal s/o Payo Khan R/O Warana, Tehsil Takht-e-Nasrati District Karak, through registered post.

e. All the codal formalities have been fulfilled after which the appellant was given major penalty of Removal From Service, the appeal is badly time barred which shows that the appellant lacked any interest in duties.

In view of the above reply it is humbly requested that the said appeal may kindly be dismissed with cost.

SECRETARY TO GOVERNMENT,
HOME & TRIBAL AFFAIRS DEPARTMENT,
KHYBER PAKHTUNKHWA
PESHAWAR
(RESPONDENT NO. 01)

INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA
PESHAWAR
(RESPONDENT NO. 02)

8/4/19

SUPERINTENDENT,
CIRCLE HEAD QUARTER,
PRISONS, DIKHAN
(RESPONDENT NO. 03)

SUPERINTENDENT,
CIRCLE HEAD QUARTER,
PRISONS, PESHAWAR.
(RESPONDENT NO. 04)

5

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 892/2018

Khalid Iqbal s/o Payo Khan Ex-warder Bps (05), R/o Wrana Muskan, P.O Warana, Teakhte Nasrati, District Karak.

..... (Appellant)

VERSUS

1. The Province of Kyber Pakhtunkhwa through Secretary Home & Tribal Affairs department KPK Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent, Circle Head Quarter Prison, DIKhan.
4. The Superintendent, Circle Head Quarter Prison, Peshawar.

..... (Respondents)

AFFIDAVIT

I, Mr. Binyamin Khan, Superintendent, Circle Headquarter Prisons D.I.Khan do hereby solemnly affirm and declare on oath that the contents of Parawise Comments in above appeal are correct and true the best of my knowledge and belief that nothing has been concealed from this Honourable Court.

DEPONENT

BINYAMIN KHAN
SUPERINTENDENT
CIRCLE HEADQUARTER
PRISONS D.I.KHAN
RESPONDENT NO.03

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 892/2018

Khalid Iqbal s/o Payo Khan warder Bps (05), R/o Wrana Muskan, P.O Wrana, Teakhte Nasrati, District Karak.

..... (Appellant)

VERSUS

1. The Province of Kyber Pakhtunkhwa through Secretary Home & Tribal Affairs department KPK Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent, Circle Head Quarter Prison, DIKhan
4. The Superintendent, Circle Head Quarter Prison, Peshawar.

..... (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS ARE AS UNDER

Respectfully Sheweth;

Preliminary objections

a. That the appeal is **badly time barred.**
b. That the appellant has no locus standi to file appeal against the Respondents before this Honb'le Court.
c. That the petitioner is estopped by his own conduct to file the instant appeal.
d. That the petitioner has concealed material facts from this Honb'le Court.
e. That the appellant has no cause of action against the Respondents

Facts

1. No. comments.
2. No comments
3. No comments.
4. That the appellant has Concealed facts. He has absented himself from duty and jail premises without permission of the competent authority. He was not interested in duty and this can be judged from the fact that he has approached for departmental appeal nearly after two years of his removal from service. There is no documentary proof i.e FIR etc that he had any enmity in his village nor he had ever reported to the department about his enmity. He is concealing facts by hiding behind a fabricated story.

5. That again appellants' statement shows lack of interest in duties as he was removed from service on 22.12.2016 and he had filed departmental appeal before the respondent No. 02 on 08.05.2018, which was rejected by the respondent No.02 being badly time barred.

GROUNDS

a. The orders of removal from service passed by the Superintendent Circle Head Quarter Prison DIkhan (respondent No.03) and orders of Inspector General of Prison Khyber Pakhtunkhwa Peshawar No. 20499 Dated 06.07.2018 are lawful, legal and codal formalities have been fulfilled.
b. Legal proceedings have been carried out against the appellant. Inquiry officer was nominated to proceed against the appellant vide No. 7455-57 dated 09.12.2015 but the appellant never bother to resume his duty or appear before the Inquiry officer. Showcause Notice No. 7211-12 Dated 25.10.2016 was served upon his home address through the Superintendent Central Prison Bannu letter No. 4833 Dated 04.11.2016 but no response was received from the appellant side.
c. True. As the appellant has absented himself during the said period and did not perform any duty, therefore, the period was treated as leave without pay. No duty no pay.
d. The appellant was well aware of his absence and disciplinary proceedings against him. He was served with the showcause Notice No. 7211-12 Dated 25.10.2016 on his home address i.e Khalid Iqbal s/o Payo Khan R/O Warana, Tehsil Takht-e-Nasrati District Karak, through registered post.
e. All the codal formalities have been fulfilled after which the appellant was given major penalty of Removal From Service, the appeal is badly time barred which shows that the appellant lacked any interest in duties.

In view of the above reply it is humbly requested that the said appeal may kindly be dismissed with cost.

(Contd) 02 (1)

SECRETARY TO GOVERNMENT,
HOME & TRIBAL AFFARS DEPARTMENT,
KHYBER PAKHTUNKHWA PESHAWAR
(RESPONDNET NO. 01)

INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
(RESPONDNET NO. 02)

SUPERINTENDNET,
CIRCLE HEAD QUARTERS,
PRISONS,D.I.KHAN
(RESPONDNET NO. 03)

SUPERINTENDNET,
CIRCLE HEAD QUARTERS,
PRISONS,PESHAWAR
(RESPONDNET NO. 04)

Facts and grounds of the instant S.Appeal are same with S.Appeal No-2/2014.

15/4/2019

Assistant Advocate General
Khyber Pakhtunkhwa
Service Tribunal Peshawar

(1) So Courts.

بحضور جناب عمران صاحبان پنج I سرزکر ہسپتال

خالد اقبال ولد

892/18

عنوان: درخواست بمراد تبدیلی تاریخ پیشی

جناب عالی

گزارش یہ ہے کہ میرا وکیل صاحب
کوہاٹ کورٹس میں ایک اہم کیس میں
بعد مصروف ہے جس کی وجہ سے آج
آپکی عدالت میں پیش ہونے سے قاصر ہے
لہذا آپ صاحبان سے التماس ہے کہ
تاریخ تبدیل فرمائی جائے
میرا لائق ہوگا

خالد اقبال

Khalid

اپیلنٹ

حوالہ 18/10

عبداللہ جناب محمد صاحب KPK سروس ٹریبونل پشاور

خالد اقبال بنام پولیس دیپارٹمنٹ

درخواست برائے تبدیلی تاریخ پیشی بعنوان 26/12/2019

جناب عالی!

مسائل حسب ذیل عرض گزار ہے۔

1) مسائل حسب ذیل عرض گزار ہے۔

2) کہ مسائل کا مقدمہ عنوان بالا جناب محمد صاحب کی عدالت میں برائے بحث زیر تجویز ہے۔

3) کہ مسائل کے وکیل صاحب بوجہ بیماری عدالت حضور میں حاضر نہیں ہو سکتے۔

لہذا استدعا ہے کہ منظوری درخواست ہذا مسائل کے مقدمہ عنوان بالا میں تاریخ پیشی تبدیل کرنے کا حکم صادر فرمایا جائے۔

المرقوم 26/12/2019

(مسائل) خالد اقبال (اپیلانٹ)

Khalid

قیمت: 50 روپے

87262

ایڈووکیٹ:

بارکونسل/ایسوسی ایشن نمبر:

رابطہ نمبر: 03330265900

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: خیبر سروس ٹریبونل پشاور

منجانب:

دعویٰ:

علت نمبر:

مورخہ

جرم:

تھانہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے رضوان صاحب کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تا کہ سند رہے

المرقوم: 31/6/2021

گواہ شد

العبد العبد

مقام پشاور کے لیے منظور ہے۔

Accepted By

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In S.A # 892/2018

Khalid Iqbal

Versus

The Province of Khyber Pakhtunkhwa to Secretary Home & Tribal Affairs & Others

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth,

All the Preliminary objection raised by the Respondents are incorrect and baseless and not in accordance with law and rules rather the Respondents are stopped due to their own conduct to raised any objection at the stage on the appeal.

Facts

All the facts of the appeal are correct, while reply of respondent department is incorrect and not according to law & rules because the absentee of the appellant was not intestinally or deliberate but due to domestic problems as such at the month of November 2015. Unfortunately serious threat arose to the live

of the appellant and his family by the opponent due to enmity and that's why the appellant alone his family went to unknown place to save his family members lives, subsequently after settlement of dispute with the opponent at the month of April 2018 when the appellant visited to respondent department for joining his duty on 10.04.2018 whereby the appellant came to know that the appellant has been removed from his service on 22.12.2016 on the ground of absentee by the respondent department. In this regard statement of Nazim Illaqa concern is also recorded which is available on file.

ON GROUNDS:-

All the grounds of the appeal are correct and accordance with law and prevailing rules and that of the Respondents are incorrect baseless because no notice has been issue are received on home address of the appellant, no publication has been made and two leading newspaper which is a clear cut violation of rule 9 of E&D rules 2011. NO opportunity of personal hearing and fare trial has been provided to the appellant, no department inquiry has been conducted against the appellant the order dated 22.12.2016 comes under the definition of vide order because it

has been passed without fulfilling codal formalities.

It is, therefore, requested that the appeal may kindly be accepted as prayed for.

Dated 03/06/2021

Petitioner

Through

Roeeda Khan
Advocate, High Court
Peshawar.

KHYBER PAKHTUNKWA

SERVICE TRIBUNAL, PESHAWAR

No. 1533 / ST

Dated: 05/08 /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 Superintendent Circle Headquarters Prison,
Government of Khyber Pakhtunkhwa,
D. I. Khan.

Subject: **JUDGMENT IN APPEAL NO. 892/2018, MR. KHALID IQBAL.**

I am directed to forward herewith a certified copy of Judgement dated 29.07.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

No. 20499 /-

Dated 6-8-2018 /-

To,

Mr. Khalid Iqbal S/O Pio Khan,
Village Wadana Mouskan P/O Wadana,
Tehsil Takht Nusrati District Karak.

Subject:- **DEPARTMENTAL APPEAL FOR REINSTATEMENT IN SERVICE.**

Memo;

I am directed to refer to your appeal dated 04-07-2018 on the subject and to convey that you have removed from service on 22-01-2015 and according to rules you were required to prefer your departmental appeal within 30 days after the decision of the competent authority but you filed appeal on 04-07-2018 which is badly time barred due to which the appellate authority did not entertain your appeal.

ASSISTANT DIRECTOR (ADMN:)
FOR INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

Endst No. /-

Copy of the above is forwarded to the Superintendent HQ Prison Banati for information.

ASSISTANT DIRECTOR (ADMN:)
FOR INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

OFFICE OF THE
SUPERINTENDENT
CIRCLE H/Qs PRISON D.I.KHAN
No. 8464 /HQ DG, 22/ 12 /2016
PH&FAX NO.0966-9280299
Centraljail_dikhan@yahoo.com

KPKP 3

OFFICE ORDER

WHEREAS, the accused official Mr.Khalid Iqbal attached to Central Prison Bannu was proceeded against under Rule3 read with Rule-9of Khyber Pakhtunkhwa Government Servants(Efficiency & Discipline) Rules, 2011 for the charges of his long willful absence i.e from 02.12.2015 to 22.12.2016 and show cause notice No 7211-12 Dated 25.10.2016 was sent at his home address vide Superintendent Central Prison Bannu letter no 4833 dated 04.11.2016 and another notice served upon him vide letter No.7790 dated 23.11.2016 on his home address.

AND WHEREASE, the accused official not only failed to resume duty till date but also failed to justify his wilfull absence.

NOW THEREFORE, in exercise of power conferred under Rule-09 of Khyber Pakhtunkhwa Government Servants(Efficiency & Discipline) Rules, 2011, the undersigned being competent authority after observing all legal procedural formalatics hereby award mojor penality of removal from service to Mr.Khalid Iqbal attached to Central Prison Bannu for his willful absence. The period of his absence i.e from 02.12.2015 to 22.12.2016 is hereby treated as Leave With out Pay.

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

ENDST NO 8465-69 / 22-12-16

Copy of the above is forwarded the; -

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information.
2. Superintendent Circle Head Quarete Prisons Peshawar for information please.
3. The Superintendent Jail Central Prison Bannu. Necessay entry may please be made in the service book of official concerned under proper attestation.
4. DAO Bannu.
5. Warder Khalid Iqbal Central Prison Bannu

SUPERINTENDENT
CIRCLE H/QS PRISON D.I.Khan

FINAL SHOW CAUSE NOTICE

I, Binyamin Khan Superintendent Headquarter Prison D.I.Khan, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, do hereby serve you Warder Khalid Iqbal attached to Central Prison Bannu, as follow;

1. (i). that consequent upon direct show cause notice uner Rule-5(I) read with Rule-7 of Khyber Pakhtunkhwa Peshawar Govt Servants Efficiency and Disciplinary Rule 2011.

(ii). On going through the findings and the material on record and other connected papers including your defence, I am satisfied that you have committed the following acts / omissions specified in rule-3 of the said rules;

You **Warder (BPS-05)** Khalid Iqbal attached to Central Prison Bannu absented yourself w.e.f 02.12.2015 and still at large. Assistant Superintendent Muhammad Ishaq was appointed as inquiry officer but you did not appear before the inquiry officer also. Show cause notice No.7211-12 dated 25.10.2016 was also served upon you but you also did not reply.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of **Removal From Service** under rule-4 of the said rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply o this notice is received within seven days or no more than fifteen days of its delivery, it shall be assumed that you have no defence to put in and in that case as ex-partee action shall be taken against you.

5. You can appear for personal hearing before the undersigned on 28/11/01, if you wish to.

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

Endst No. 7790-91 dated 23/11/2016

Copy of the above is forwarded to :-

1. Superintendent Central Prison Bannu For information please.
2. **Warder (BPS-05)** Khalid Iqbal S/O Payo Khan, R/O Warana, Tehsil Takhte-e-Nasrati District Karak.

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON DERA ISMAIL
KHAN

No. _____ /

Dated 04 / 11 /2016

REGISTERED

To

Warder Khalid Iqbal S/O Payo Khan,
R/O Wirana, Tehsil Takht-e-Nasrati
District Karak.

Subject: SHOW CAUSE NOTICE.

Memo:

Original Show Cause Notice received from Superintendent, Circle Headquarters Prison D.I. Khan vide No. 7211-12 dated 25.10.2016 is sent herewith for taking action. You are hereby asked to return one copy of the same duly signed and dated by you so as to be sent to Superintendent, Circle Headquarters Prison, D.I. Khan as token of receipt.

SUPERINTENDENT
CENTRAL PRISON

Endt: No. 4834 /

Copy of the above is forwarded to the Superintendent, Circle Headquarters Prison, D.I. Khan for information with reference to his notice quoted above please.

SUPERINTENDENT
CENTRAL PRISON
04/11/2016

PB
4/11/16

1733
8.11.16

SHOW CAUSE NOTICE UNDER RULE-5 (1) READ WITH RULE-7 OF THE KHYBER PUKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES.2011.

You **Warder (BPS-05)** Khalid Iqbal attached to Central Prison Bannu absented yourself w.e.f 02.12.2015 and still at large. Assistant Superintendent Muhammad Ishaq was appointed as inquiry officer but you did not appear before the inquiry officer also.

I, Muhammad Binyamin Superintendent Headquarter Central Prison DIKhan competent authority, am satisfied by the report submitted by the Superintendent Central Prison Bannu and there is no need of holding any further inquiry.

Now therefore, you above named **Warder Khalid Iqbal** 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 misconduct.

In case your reply does not reach this office within stipulated period ex-party action shall be taken against you.

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

Endst No. 72.11-12 dated 25/10/2016

Copy of the above is forwarded to :-

1. Superintendent Central Prison Bannu a copy of show cause notice be sent on home address of the said warder through registered post.
2. **Warder (BPS-05)** Khalid Iqbal c/o Superintendent Central Prison Bannu.

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON BANNU

NO. 3640 /

Dated 22 / 8 /2016

To

The Superintendent,
Headquarters Prison, D.I.Khan.

SUBJECT - Disciplinary Action against the prolong absenteers

Memo:

It is submitted that your goodself will well aware of the facts that the following (03) warders absented themselves from the period as noted against each names without cogent reasons/ permission of the competent authority.

Sl#	Name & Designation	Absented from	Remarks
1	Warder Shamim ul Islam	10.06.2016 and still at large. He has also not been appeared before the inquiry officer.	Inquiry Proceedings against him is in progress. Hence, recommended for major punishment dismissal from service being absent since long.
02	Warder Khalid Iqbal	02.12.2015 and still at large. A/Supdtt: Ishaq was appointed as inquiry officer. Action taken in the matter is still awaited.	Inquiry Proceedings against him is in progress. Hence, recommended for major punishment dismissal from service being absent since l[illegible]
03	Warder Amjad Ullah	He was relieved for ICL on 08.08.2015 for temporary duty, but failed and inquiry against him was conducted. The CHQrs DIK vide his order No. 515 dated 26.01.2016 reinstated him in his service and absence period w.e.f 09.08.2015 to 26.01.2016 treated as leave without pay. Despite those orders he again failed and still at large of his own accord.	Hence, he is not a willing worker. He is unnecessary liability on the department. Therefore, the undersigned recommended for major punishment of dismissal from service.

In view of above, it is requested that necessary orders may kindly be issued on the recommendations of the undersigned in the best interest Jail administration.

SUPERINTENDENT
CENTRAL PRISON BANNU.

25-08-2016

REMINDER-II

No._____ Dated: 26-1-2016

To

Warder Mr. Khalid Iqbal S/o Payo Khan,
R/O Warana Tehsil Takhat-a-Nasrati,
District Karak, cell No.0346-9085226.

Subject: - **DISCIPLINARY ACTION.**

Memo:

Reference the Inquiry Officer memo: No. 5098/WE dated 19.12.2015.

Photocopy of letter No.7455-57 dated 09.12.2015 of the Superintendent Circle Headquarter Prison DIKhan has already been sent to you on your Home address vide this office above referred memo. However, you failed, either to submit your defense reply or to present before the the undersigned for inquiry proceedings.

You are hereby again directed to present before the Inquiry officer at Central Prison Bannu or submit your reply to the statement of allegation leveled against you within three (03) days of the receipt of this letter, otherwise ex-partee will be initiated against you and you will be dismissal from service as per rules.

Muhammad Ishaq(Inquiry Officer)
Assistant Superintendent
Central Prison Bannu

Endst: No. 403

Copy of the above is forwarded to the Superintendent Circle Headquarter Prison DIKhan for information with reference to Endst: No. 5099 on even date please.

Muhammad Ishaq (Inquiry Officer)
Assistant Superintendent
Central Prison Bannu

156
29-01-016

REGISTERED

No. 12 **Dated:18.12.2015**

To

Warder Mr. Khalid Iqbal S/o Payo Khan,
R/O Warana Tehsil Takhat-a- Nasrati,
District Karak, cell No.0346-9085226.

Subject: - **DISCIPLINARY ACTION.**

Memo:

Refer to the Superintendent Circle Headquarter Prison DIKhan Endst: No.7455-57 dated 09.12.2015 on the subject and the undersigned is nominated Inquiry officer in the subject case.

You are hereby directed to present before the Inquiry officer at Central Prison Bannu or submit your reply to the statement of allegation leveled against you within three (03) days of the receipt of this letter, otherwise ex-partee will be initiated against you and you will be dismissal from service as per rules.

Muhammad Ishaq(Inquiry Officer)
Assistant Superintendent
Central Prison Bannu.

Endst: No. 5098 /

Copy of the above is forwarded to the Superintendent Circle Headquarter Prison DIKhan for information please.

1827
23-12-2015

19-12-2015

Muhammad Ishaq (Inquiry Officer)
Assistant Superintendent
Central Prison Bannu.

O. PRISONS OFFICE

P.3.

OFFICE OF THE
SUPERINTENDENT
CIRCLE H/Qs PRISON D.I.KHAN
No. 7455 /HQ Dt: 9/12/15
PH&FAX NO.0966-9280299
Centraljail_dikhan@yahoo.com

DISCIPLINARY ACTION

I, Muhammad Binyamin Khan Superintendent Headquarter Prison DIKhan as competent authority, am of the opinion that **Warders Khalid Iqbal ,Zaharullah and Warder Hafiz Ullah No.02** attached to Central Prison Bannu has rendered themselves liable to be proceeded against them committed the following acts of misconduct within the meaning of Section 3 of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rule 2011.

STATEMENT OF ALLEGATION:

i). Warder Khalid Iqbal absented himself from 22.11.2015 to 25.11.2015(03) days and also absented himself 02.12.2015 onwards.

ii). Warder Zaharullah absented himself from 02.12.2015 onwards.

iii) Warder Hafiz Ullah No.02 absented himself 02.12.2015 onwards.

2. Mr. Ishaq Khan Assistant Superintendent Jail attached to Central Prison Bannu is hereby appointed as Inquiry Officer.

3. The Inquiry Officer shall in accordance with the provisions of the Ordinance provide a reasonable opportunity of hearing to the accused, record his findings and make within fifteen days of receipt of this order, recommendation as to punishment or other appropriate action against the accused officials.

4. The accused officials and a well conversant representative of the department shall join the proceedings at the date, time, place fixed by the Inquiry Officer.

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

O/C

Endorsement No. 7455 – 57

Copy of the above is forwarded to the:-

1. Mr.Ishaq Khan Assistant Superintendent Jail attached to Central Prison Bannu. Inquiry Officer for initiating proceedings against the above named warders under the meaning of Section, 3 of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rule 2011.
2. **Warders Khalid Iqbal,Zaharullah and Hafiz Ullah No.2** attached to Central Prison Bannu with the directions to appear before the Inquiry Officer for the purpose of inquiry proceedings.
3. Superintendent Central Prison Bannu for information with reference to his memo; No.4863 dated 03.12.2015 with the request to produce the relevant record before the Inquiry Officer and assist them during the inquiry proceedings. One copy of the same duly signed and dated by above named officials may be returned to this office as a token of receipt.

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

O/C

OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON BANNU

NO. 4863 /

Dated 03/12/2015

To,

The Superintendent,
Circle Headquarters Prison, D.I.Khan.

Subject:- **DISCIPLINARY ACTION.**

Memo:

The following warders attached to this Jail absented from their duties as well as from Jail premises on the dates mentioned against their names without prior permission of the competent authority on their own accords:-

S.#	Name of Warder	Date of Absence
01	Warder Khalid Iqbal	Absent from 22.11.2015 to 25.11.2015(03 days), & also Absent from 02.12.2015 to till date.
02	Warder Zahar Ullah	Absent from 02.12.2015 to till date.
03	Warder Hafiz Ullah#02	Absent from 02.12.2015 to till date.

It is therefore requested that strict Disciplinary action may please be initiated against them under the rules please.

SUPERINTENDENT
CENTRAL PRISON BANNU

1746
03/12/2015