

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 412/2018

Date of institution ... 19.03.2018
Date of judgment ... 13.03.2020

Malik Hameed Khan S/O Daraz Khan
R/o S. No. 04, Mustafa Colony City Town, Haji Camp, Peshawar,
Ex-Constable Warder, No. 512, Central Jail D.I.Khan.
... (Appellant)

VERSUS

1. Superintendent, Circle Hqrs; Prisons, D.I.Khan.
2. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
... (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974, AGAINST OFFICE ORDER NO. 28-30, 02.01.2014 OF RESPONDENT NO. 1, WHEREBY APPELLANT WAS REMOVED FROM SERVICE OR OFFICE ORDER NO. 8300 DATED 12.03.2018 OF RESPONDENT NO. 2, WHEREBY DEPARTMENTAL APPEAL OF APPELLANT WAS REGRETTEED FOR NO LEGAL REASON.

Mr. Arbab Saif-ul-Kamal, Advocate. .. For appellant.
Mr. Riaz Ahmad Paindakheil, Assistant AG .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. MIAN MOHAMMAD .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith Mr. Suleman, Law Officer for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present appeal are that the appellant was serving in Prison Department as Warder. He was imposed major penalty of removal from service vide order dated 02.01.2014 on the allegation of absence from duty with effect from

M. Amin
13.3.2020

01.07.2013. The appellant filed departmental appeal on 19.01.2018 which was dismissed by the departmental authority being time barred vide order dated 12.03.2018 hence, the present service appeal on 19.03.2018.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was appointed as Warder vide order dated 20.10.1993. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 02.01.2014 on the allegation of absence from duty but neither any charge sheet, statement of allegation was served nor proper inquiry was conducted nor any show-cause notice was issued to the appellant nor any absence notice was issued to the appellant at his home address nor absence notice was advertised in two newspapers, therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside. It was further contended that the appellant was having 29 years service to his credit but the same was not considered by the respondents department, therefore, the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving as Warder in Prison Department. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 02.01.2014 on the allegation of absence from duty. It was further

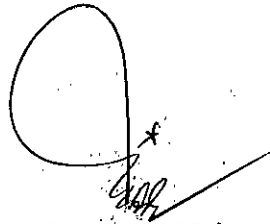
*M. Anwar
13.3.2020*

contended that the appellant was required to file departmental appeal within one month but the appellant has filed departmental appeal on 19.01.2018, therefore, the departmental appeal of the appellant is badly time barred. It was further contended that when the departmental appeal is time barred then the service appeal is not maintainable, therefore, prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving as Warder in Prisons Department. He was imposed major penalty of removal from service vide order dated 02.01.2014 on the allegation of absence from duty, the appellant was required to file departmental appeal within one month but he has filed departmental appeal on 19.01.2018 after a delay of more than four years and the same delay has neither been explained by the appellant in departmental appeal nor in service appeal nor the appellant has filed any application for condonation regarding such delay, therefore, the departmental appeal is badly time barred. As such, without touching the merit of the case, the present service appeal is not maintainable being time barred hence, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

13.03.2020



(MIAN MOHAMMAD)
MEMBER

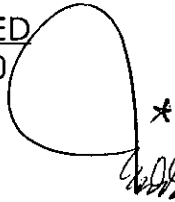
Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

13.03.2020

Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith Mr. Suleman, Law Officer for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, without touching the merit of the case, the present service appeal is not maintainable being time barred hence, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.03.2020

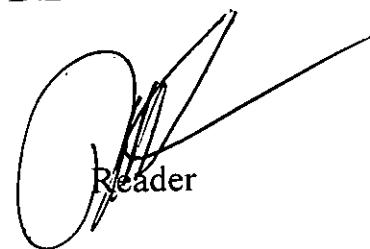


(MIAN MOHAMMAD)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

29.10.2019

Due to incomplete bench the case is adjourned. To come up for the same on 06.01.2020 before D.B.



Reader

06.01.2020

Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 10.03.2020 before D.B.



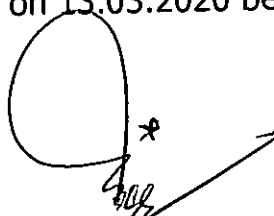
Member



Member

10.03.2020

Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 13.03.2020 before D.B.




Member

Member

09.04.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder and seeks adjournment for arguments. Adjourned. To come up for arguments on 11.06.2019 before D.B.


(AHMAD HASSAN)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

11.06.2019

Counsel for the appellant and Addl. AG for the respondents present.

Due to paucity of time hearing is adjourned to 02.08.2019 before the D.B.


Member


Chairman

02.08.2019

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 29.10.2019 before D.B.


Member


Member

30.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak, AAG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 30.10.2018 before S.B.

MAK
(Muhammad Amin Kundi)
Member

30-10-18

Due to retirement of honorable chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on 14-12-2018

Rehman

14.12.2018

Counsel for the appellant 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 23.01.2019 before S.B.

MAK
Muhammad Amin Khan Kundi
Member

23.01.2019

Junior to counsel for the appellant present. Junaid Assistant representative of the respondent department present and submitted written reply/comments. Adjourn. To come up for rejoinder/arguments on 09.04.2019 before D.B.

MAK
Member

09.04.2018

Learned counsel for the appellant preliminary arguments heard.

Appellant has filed the present service appeal against the order dated 02.01.2014 whereby he was removed from service and against the order dated 12.03.2018 whereby the departmental appeal of the appellant was regretted/not entertained by the competent authority for the reason that the same is badly time barred.

Learned counsel for the appellant was confronted with the situation that against the impugned order of removal from service issued in the year 2014, the appellant has approached this Tribunal in the year 2018.

The present ^{appeal} of the appellant appears to be hopelessly time barred and not competent, however in the interest of justice the present appeal is admitted to regular hearing subject all just/legal objections including the issue of maintainability and limitation. The appellant is directed to deposit security and process within 10 days thereafter notice be issued to respondents for written reply/comments. To come up for written reply/comments on 31.05.2018 before S.B

Appellant Deposited
Security & Process Fee


Member

31.05.2018

Appellant in person and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Learned AAG seeks time to file written reply/comments. Granted. To come up for written reply/comments on 10.07.2018 before S.B


Member

10.07.2018

Neither appellant nor his counsel present. Mr. Usman Ghani, Sr. GP for the respondents present. Written reply not submitted. Requested for adjournment. Granted. To come up for written reply/comments on 30.08.2018 before S.B.


Chairman

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 412/2018


| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 26/03/2018 | <p>The appeal of Malik Hameed Khan resubmitted today by Mr. Saadullah Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p><i>[Signature]</i> REGISTRAR 26/3/18</p> |
| 2- | 27/03/18. | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>09/04/18.</u></p> <p><i>MA</i> MEMBER</p> |

The appeal of Malik Hameed Khan son of Daraz Khan Ex-Constable Warder no. 512 Central Jail D.I.Khan received today by i.e. on 19.03.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of Charge sheet, statement of allegations, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Annexure-B of the appeal is illegible which may be replaced by legible/better one.
- 3- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 605 /S.T,

Dt. 21/03 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

see,
Resubmitted after completion
As per objection No 1 is covered
that will be available with the Dept. My

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BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. 412 /2018

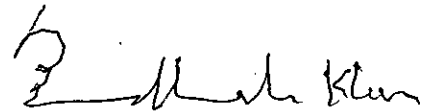
Malik Hameed Khan versus Superintendent & Another

I N D E X

| S.# | Description of Documents | Annex | Page |
|------------|---------------------------------------|--------------|-------------|
| 1. | Memo of Appeal | | 1-3 |
| 2. | Show Cause Notice dated 07-08-2013 | "A" | 4 |
| 3. | Removal from service dated 02-01-2014 | "B" | 5 |
| 4. | Representation dated 24-01-2014 | "C" | 6 |
| 5. | Departmental Appeal dated 19-01-2018 | "D" | 7-8 |
| 6. | Application for documents, 23-02-2018 | "E" | 9 |
| 7. | Rejection order dated 12-03-2018 | "F" | 10 |

Appellant

Through



Saadullah Khan Marwat.
Advocate
21-A Nasir Mansion,
Shoba Bazaar, Peshawar.

Ph: 0300-5872676
0311-9266609

Dated 16-03-2018

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWARS.A No. 412/2018

Malik Hameed Khan S/O Daraz Khan,
R/o S. No. 04, Mustafa Colony,
City Town, Haji Camp, Peshawar,
Ex-Constable Warder, No. 512,
Central Jail D.I. Khan Appellant

Khyber Pakhtunkhwa
Service TribunalDiary No. 416Dated 19-3-2018**VERSUS**

1. Superintendent, Circle Hqrs;
Prisons, D.I. Khan.
2. Inspector General of Prisons,
KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
1974 AGAINST OFFICE ORDER NO. 28-30, 02-01-
2014 OF R. NO. 1, WHEREBY APPELLANT WAS
REMOVED FROM SERVICE OR OFFICE ORDER NO
8300 DATED 12-03-2018 OF R. NO. 02, WHEREBY
DEPARTMENTAL APPEAL OF APPELLANT WAS
REGRETTED FOR NO LEGAL REASON:**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Filed to-day
19/3/18
Registrar

Respectfully Sheweth:

Short facts giving rise to the present appeal are as under:-

1. That appellant was appointed as Warder on 20-10-1993 in Prison Department. He was posted at Central Jail Bannu.
2. That appellant has in his credit 19/20 years service but no benefit of the same was extended to him despite the fact that he became disabled during attacks over prisons.

Re-submitted to -day
and filed.

Registrar
26/3/18

3. That in the year 2012, the miscreants attacked the Jail and released Adnan Rasheed who was awarded punishment of death sentence on attack over the then Chief of Army Staff, General Parvez Musharraf. He being principal accused was rescued by the miscreants from the Jail along with other notorious proclaimed offenders.
4. That during the encounters, appellant became serious injured and was unable to perform his official duties. The treatment was continued in District Hospital Bannu at the cost of Government expenses. After recovery, he was transferred to Central Jail D.I. Khan.
5. That Central Jail D.I. Khan was also attacked by the miscreants and as a result numerous officials were killed / murdered, injured etc. In such a circumstances, appellant also met the said situation but no heed was paid to him by the agency as till date he has not gained normal health.
6. That appellant had also enmity of Land with relatives and to avoid any abnormal situation, he shifted to Peshawar along with his family members and is residing permanently at Peshawar since then.
7. That on 07-08-2013, R. No. 01 issued Charge Sheet for service upon appellant under two different enactments regarding absence from duty but the same was not served upon him as is evident from the same. This Show Cause Notice was neither sent to appellant at his home address but the same was to serve through R. No. 01 as is evident from endorsement No. 02, so this notice was not replied due to the aforesaid reason. (Copy as Annex "A")
8. That no enquiry as per the mandate of Law was conducted, yet on 02-01-2014, appellant was removed from service by R. No. 01. (Copy as Annex "B")
9. That appellant submitted representation before R. No. 02 on 24-01-2014, but without any response. (Copy as Annex "C")
10. That on 19-01-2018, appellant submitted subsequent representation before R. No. 02 for reinstatement in service explaining position therein of the whole episode, followed by application for supply of

the documents mentioned therein on 23-02-2018, but in vain.
(Copies as Annex "D" & "E")

11. That on 12-03-2018, departmental appeal for reinstatement in service of appellant was regretted by R. No. 02. (Copy as Annex "F")
2003 SCMR 826

Hence this appeal, inter alia, on the following grounds:-

GROUND S

- a. That the absence, if any was beyond the control of appellant as he met time and again to the situation stated above.
- b. That FIRs were registered against the miscreants as well as numerous employees of the department but finally they were acquitted of the charges.
- c. That the co-employees who were dismissed/removed from service were finally reinstated either by the department herself or through the judgments of the hon'ble Tribunal Peshawar.
- d. That no enquiry as per the mandate of Law was ever conducted to prove the guilt. No statement of any witness was ever recorded in presence of appellant nor he was afforded opportunity of cross examination and personal hearing, being mandatory.
- e. That appellant was dealt with under two different enactments, having different mechanism, so the impugned orders are not only illegal but ab-initio-void.

It is, therefore, most humbly prayed that on acceptance of the appeal, the impugned orders dated 02-01-2014 and 12-03-2017 of the respondents be set aside and appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Through

Appellant

Saadullah Khan Marwat

Arbab Saif-ul-Kamal
Advocates,

Dated 16-03-2018

A

4

7-8-13

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

You warder (BPS-05) Malik Hameed (under Suspension) attached to Central Prison DIKhan himself from duties lines at his own accord on 01-07-2013.

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

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

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

You may appear before the undersigned for personal hearing on 20-8-2013, if you wish to.

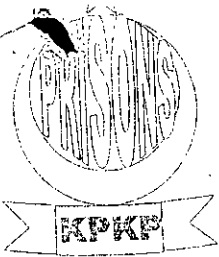
Endst No. 9413-14 dated 21/8/2013
SUPERINTENDENT
HEADQUARTER PRISONS DIKHAN

Copy of the above is forwarded to :-

1. Superintendent Central Prison DIKhan (Line Officer), a copy of showcause notice duly signed / dated by the accused warder may please be returned to this Headquarter as a token of receipt and office record.
2. Warder (BPS-05) Malik Hameed (under suspension) c/o Superintendent Central Prison DIKhan.

SUPERINTENDENT
HEADQUARTER PRISONS DIKHAN

M. Binyamin
[Signature]



OFFICE ORDER

OFFICE OF THE
SUPERINTENDENT
CIRCLE H/Qs PRISON D.I.KHAN

No. _____/H/Q Dated _____

Warder Malik Hameed son of Daray Khan r/o Mandhori Patal Shal Post Office Ismail Khel District Bannu remained absent with effect from 01-7-2013 from duty as well as from line. Served with show cause notice under rule No. 05 (1) read with Rule 7 of Khyber Pakhtunkhwa Government Servant Efficiency & Discipline Rule 2011 vide endorsement No.9413-14 dated 07-08-2013 on his home address vide Registered No.1313. No reply has been received uptill now nor requested for personal hearing.

Therefore the undersigned taken ex parte action and his services **REMOVAL FROM SERVICE** is hereby accorded with immediate effect.

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

NO. 28-30 DATED 02/01/2014

Copy of the above is forwarded to the :-

1. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
2. Superintendent Central Prison DIKHAN (Line Officer).
3. District Accounts Officer DIKHAN.

For information and necessary action

SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

Attended
Qif

9
Signature
designated
the Head
office
attesting
in attes
column

خدمتِ خباب الیکٹر جنرل آف پریزیڈنٹ کے پی ایچ او

DPMS-64

تاریخ 24.1.24

بجالی سروس

خواب خانی

مورد بائہ گزارش ہے کہ سائیل 2010 کو

93

تعمیر میں وارد ہوئی تھی۔ سال 2012 میں سنٹرل سہیل نیوں اور سال 2014 میں سنٹرل سہیل ڈی آئی خان پریزیڈنٹ کے صلے کیا۔ یہاں سے ملز میں نقل اور ڈھکی ہوئے پتھر بچان میں شامل تھا۔ جو کہ جہاں کی طور پر ناکارہ ہوا۔

سائیل کے خلاف قانونی کارروائی نہیں کی گئی ہے اور

ملائے گا تو قانونی کارروائی کے سروس پر عرفاً یہ کیا ہے۔ سائیل کی 1912 سے 21 سروس تھی لیکن اس کے کوئی ٹائڈ نہیں دیا گیا ہے۔

استدعا ہے کہ کل پورے مورخ 1/2 کو رقم کر کے

سائیل کو سروس پر سائیل مراعات کے ساتھ بچان پرنٹ کا صلے صادر کیا جائے۔

مورخ 1/24

انوار

عبید خاں وارڈر ساکن مندرجہ سائیل تہہ

کوئی ٹائڈ دیا جائے گا۔ صلے میں

Handwritten signature

Handwritten signature and stamp

کثرت جناب والد اللہ الیکٹر جنرل آف پوزن بسے پی لٹاور

محکمہ اسپل برکے محالی بر ملازمت

جناب عالی - ذیل گزارش ہے

۱۔ یہ سائیل مورفہ $2m \times 93$ کو پولیس میں کینیٹل کوری ہوا۔ نہایت خوش اسلوب سے خدمات سے انجام دارم تھا کہ بنوں جیل پر سال 2012ء میں شریکوں نے علم کیا۔ جس سے سائیل شدہ زخمی ہوا۔ اور ڈیوٹی کی انجام دیا سے مامور ہے۔

۲۔ کچھ رفاہ کے بعد سائیل کو سنٹرل جیل ڈی ڈی خان کو تبدیل کیا گیا۔ وہاں پر بد قسمتی نے ساتھ نہ چھوڑا۔ مین گیٹ پر ڈیوٹی تھا کہ اس جیل پر بھی شریکوں نے حملہ کیا اور تقریباً سارے زخمی ہوئے۔ سائیل کی حالت بہت بری تھی بیشابکے ماموروں کا انا معمول بن گیا تھا جو ناظر دیہی عارضہ لاحق ہے۔

۳۔ برکے حکومت کو اپنی ملازمت سے تو ڈیوٹی لینے کی فکر ہوتی ہے لیکن ان جیسے حالات سے دوچار ملازم کا فکرم سے ہے، پوجنا بھی نہیں بلکہ اللہ کے رحم و کرم پر چھوڑ دینا ہے۔ اور جان چھوٹوں کی زنگی گزارتا ہے۔ اور موت کے منتظر میں بیٹھا رہتا ہے۔ یا ساعدہ حالات اور تنازعات اراحق پر لٹاور منتقل ہو کر لٹن منتقل اختیار ہی۔

۴۔ یہ سائیل کورنر ٹوٹوں خارج ٹیٹک ویا گیا ہے۔ نہ کوئی انکوائری قانونی و مطالبی کی گئی ہے۔ بلکہ تیلڈر کارروائی کو معرض وجود میں لا کر مورفہ $2 \frac{1}{14}$ کو جناب ایسی بی صاحب سرکل ہڈ کو لڈر برزی ڈی ڈی خان نے سروس سے برطرفی کا حکم جاری کیا۔

۵۔ یہ کہ درخواست گزار کے قبل سائیل نے انسر ان کو بجالی رکھنے
 کئی ایک درخواستیں دی ہیں۔ جن میں روداد بالا بیان کی ہے۔ لیکن
 جسود۔ نیز کان مقدمہ کا اطلاق نہیں ہوا ہے۔
 ۴۔ یہ کہ باوجود بالا کٹاؤں کے سائیل نے 22/12 سال بے کوٹ
 خدمات مکمل کر دی ہیں۔ لیکن اسکے کوئی فائدہ نہیں دیا گیا ہے۔

غائب سے التماس ہے کہ صلح باللاکو منسوخ فرما کر سائیل
 کو تمام سابقہ خدمات کے ساتھ سروس کی سہولتیں فراہم کر دیا جائے
 اور وہ۔ کیونکہ صلح باللائم صرف اخلاقی قانون ہے۔ بلکہ Ab-initio
 لکھا ہے۔ اور یہی بہتر رہتی ہے۔

دی گورنمنٹ

موزہ 19/18

الکوارٹر

حمید خان ولد دراز خان سائن مندر دی پتلن شاہ
 0332-9606496
 رسائی میں خلیل بنون

ریگس کانسٹیبل جنرل سنٹرل جیل ڈی آئی خان
 حال:- مصطفیٰ کالونی۔ گلی نمبر 4، سٹی ٹاؤن حاجی کیمپ پشاور
 سائیل برائے التلاخ:-
 سپرنٹنڈنٹ سنٹرل جیل ڈی آئی خان

الیکٹر جنرل آف پوزن کے پی پشاور

اللہ
 19/18

خدمتِ قباب السید جنرل آف یو ایس جیلخانہ جات کے در

درخواستِ عمارت عظامتہ کی نقولِ ذیل

ضامہ جاتی۔

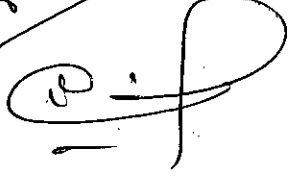
عرض دارم کہ سائیل کو نوٹری کے سے پر طرف کیا گیا ہے۔ لیکن نہ تو برطرفی کا حکم سائیل کو جمعاً کیا ہے نہ یہاں انکو نوٹری کا

حال ہی میں سائیل نے ایک اور اپیل کی۔ سائیل کی

اپیل کے مطابق وہ صرف 29 کو فرج 244 کے تحت قیام کیا گیا ہے۔ اپنی کئی کئی سائیل کو ایسی دیا گیا ہے۔

قباب سے اتنا ہی ہے کہ سائیل کو ذیل نقول عظامتہ کا حکم صادر فرما دیا جائے گا۔

- 1. حاج سید یا شوکار نوٹری۔ اربوں۔
- 2. انور انوری۔ قاتل شوکار نوٹری۔ 2
- 3. اصغر بھٹو۔ حاجیم ایسی بر حکم نوٹری 29/18
- 4. رئیس دستارزاد۔ قاتل ایسی عذر۔

Attested


سید

محمد ظفر ولد دراز خان سائیل عظامتہ میں شامل رہا جس کی نقول

23/18 حال کھلی غریب۔ مصلحتی لاٹری۔ کسی ناموں، حاجیم ایسی

0317-1674620 ~ 0332-9606496



F

10

12-3-18

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 9210937 / 9210334

No. 8300 /-

Dated 12/03/18 /-

To,

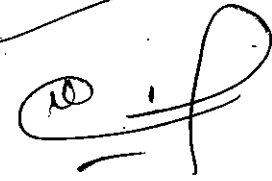
Mr. Malik Hameed Khan S/O Daraz Khan,
R/O Madoori Patan Shah Ismail Khel.

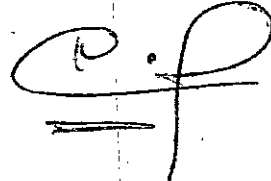
Subject:- **DEPARTMENTAL APPEAL FOR REINSTATEMENT IN SERVICE**

Memo;

I am directed to refer to your appeal dated 19-01-2018 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.


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

Attested




بیت عدالت جناب سرسری ٹریبونل صوبہ سرحد پشاور

منجانب ایڈووکیٹ
منگ حمید خان بنام محکمہ جیل خانہ جات دہریہ
دعویٰ اپیل

باعتراف شکریہ ایتمک

مسترد مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹیم سٹیشن افسر خان بدونتے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کالین اختیار ہوگا نیز وکیل صاحب کو کرنے باہمی نامہ و تقریر ثالث و فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور لہجہ شدہ ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست ہر قسم کی تقدیرین اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور یا کسی چیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مندرجہ کے کل یا اجزوی کاروائی کے واسطے اور وکیل یا شہار قانونی کو اپنے ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا اور اس پر مقرر شاہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منٹاؤز قبول ہوگا و دوران مقدمہ میں جو شرحہ و ہر جانہ التواء مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا دضرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام ردورہ پر ہو یا عدسے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

المرقوم 16/3/18

القائد القیید القیید

ارباب سید اسمان
ایڈووکیٹ

سید اللہ خان مرقت
ایڈووکیٹ

Handwritten flourish

من رضیہ خانہ
ایڈووکیٹ

Original

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

In the matter of
Service Appeal No.412/2018
Malik Hameed Khan S/O Daraz Khan Ex-Warder
Attached to Circle Headquarters Prison D.I.Khan

.....**Petitioner.**

VERSUS

1. Inspector General Prisons
Khyber Pakhtunkhwa Peshawar
2. Superintendent
Circle Headquarters Prison D. I Khan.....**Respondents.**

INDEX

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| 3- | Annexure-A | A | 5 |
| 4- | Annexure-B | B | 6 |

DEPONENT

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 412/2018

Malik Hameed Khan s/o daraz Khan, R/o s. No. 04, Mustafa colony, city tpown
Haji Camp Peshawar, Ex-constable

..... (Appellant)

VERSUS

1. The Superintendent, Circle Head Quarter Prison, DIKhan
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.

..... (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS ARE AS UNDER

Respectfully Sheweth;

Preliminary objections



- a. That the appellant has no cause of action against the Respondents.
- 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 appeal badly time barred.

Facts

1. No comments.
2. Yes he had a long service but he was not interested in his duties. The same is reflected from the fact that he had knocked the door of Honourable court after approximately five years.
3. No comments.
4. He got minor injuries and recovered soon. He was transferred to Central Prison DIKhan during mass transfers of watch and ward staff from Central Prison Bannu to other jails on administrative grounds.
5. Yes Central Prison DIKhan was attacked by the militants on the night between 29 and 30 July 2013 but the appellant had absented himself long before the occurrence of the attack i.e since 01.07.2013.

- 6. This is the personal matter of the appellant.
- 7. Show cause notice nO. 9413-14 Dated 07.08.2013/was served upon him through registered post vide registry no. 1313/ ^(Amex AS) but no reply was received from the appellant.
- 8. The inquiry would have been conducted only if the appellant had resumed his duties. He was not resuming his duties, therefore, direct show-cause notice under rule 05- (I) read with rule -07 of the Khyber Pakhtunkhwa Government Servants () efficiency and discipline rule 2011 was served upon him through registered post.
- 9. That the appellant's appeal before the Respondent No. 02 (as shown in annexure "c" of the appeal) is fake and no appeal for reinstatement was submitted by the appellant on 24.01.2014.
- 10. That the appellant actually submitted application for reinstatement into service on 19.01.2018 which was badly time barred.
- 11. That the appeal was badly time barred therefore regretted by the Respondent No. 02

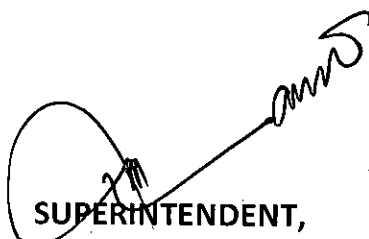
GROUNDS

- a. He had only got minor injury during Central Prison Bannu attack and he had not suffered any loss during DIKhan jail attack as he was absent long before the occurrence of the incident i.e 01.07.2013 while the DIKhan jail attack occurred on 29 & 30-07-2013.
- b. No comments.
- c. The co-employees of the appellant have not been acquitted and their inquiry is still pending with the Government. It is pertinent to mention here that the appellant has not been removed from service on charges of negligence during attack, instead he was absent long before the incident of jail break. He was not interested in duties.
- d. That the appellant never bother to resume duties nor gave reply to any showcause notice served upon him through registered post. The appellant

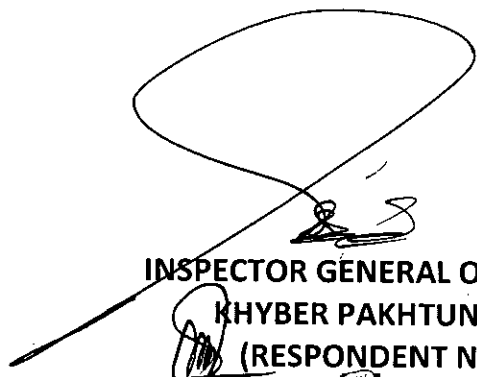
was given the date for personal hearing i.e 20.08.2013 but he failed to appear for personal hearing. As the appellant was not interested in duties and never resumed his duties, therefore, there was no chance of personal hearing or cross examination.

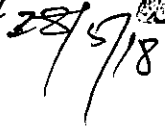
- e. That all the codal formalities have been fulfilled after which the appellant was given major penalty of Removal From Service.

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


SUPERINTENDENT,
CIRCLE HEAD QUARTER,
PRISONS, DIKHAN
(RESPONDENT NO. 01)




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



Ms. Sherya Asj (urgent)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 412/2018

Malik Hameed Khan s/o daraz Khan, R/o s. No. 04, Mustafa colony, city tpown
Haji Camp Peshawar, Ex-Warder.

..... (Appellant)

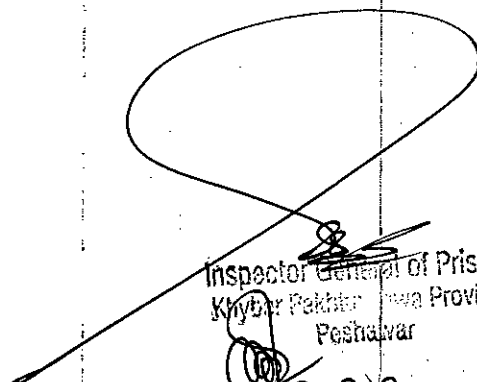
VERSUS



1. The Superintendent, Circle Head Quarter Prison, DIKhan
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, 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.


 Inspector General of Prisons
 Khyber Pakhtunkhwa Province
 Peshawar
 28/5/18

DEPONENT 
 BINYAMIN KHAN
 SUPERINTENDENT
 CIRCLE HEADQUARTER
 PRISONS D.I.KHAN
 RESPONDENT NO.0122


Amex-A

S

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

You warder (BPS-05) Malik Hameed (under Suspension) attached to Central Prison DIKhan himself from duties lines at his own accord on 01-07-2013.

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

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

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

You may appear before the undersigned for personal hearing on 20-8-2013, if you wish to.

Endst No. 9413-10 dated 21/8/2013 17/8
SUPERINTENDENT
HEADQUARTER PRISONS DIKHAN

Copy of the above is forwarded to :-

1. Superintendent Central Prison DIKhan (Line Officer), a copy of showcause notice duly signed / dated by the accused warder may please be returned to this Headquarter as a token of receipt and office record.
2. **Warder (BPS-05)** Malik Hameed (under suspension) c/o Superintendent Central Prison DIKhan.

SUPERINTENDENT
HEADQUARTER PRISONS DIKHAN
17/8

Anna B

No. 1313

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. 30/- Ps.

Received & registered* addressed to

Date-Stamp

Initials of Receiving Officer. *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) (in words) Insurance fee Rs. Ps. (in words) Weight Kilo Grams Name and address of sender

No. 1314

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. 30/- Ps.

Received & registered* addressed to

Date-Stamp

Initials of Receiving Officer. *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) (in words) Insurance fee Rs. Ps. (in words) Weight Kilo Grams Name and address of sender

No. 1315

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. 30/- Ps.

Received & registered* addressed to

Date-Stamp

Initials of Receiving Officer. *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) (in words) Insurance fee Rs. Ps. (in words) Weight Kilo Grams Name and address of sender

No. 1316

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. 30/- Ps.

Received & registered* addressed to

Date-Stamp

Initials of Receiving Officer. *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) (in words) Insurance fee Rs. Ps. (in words) Weight Kilo Grams Name and address of sender

9681

PL 185m 5m Com
Please find under separate

RB

06-08-2013

Forwarded for
the purpose of
the project
on 07-07-13
on 07-07-13
on 07-07-13

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S. A. No. 412/2018

Malik Hameed Khan

versus

S.P & Others

REPLICATION

Respectfully Sheweth,

Preliminary Objections:

All the preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has got no cause of action, locus standi, estoppel, concealment of material facts and badly time barred.

ON FACTS

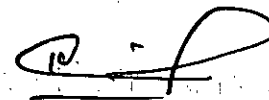
1. Not commented upon by the respondents.
2. Admitted correct by the respondents regarding 19/20 years service but without any benefit.
3. Not commented upon regarding attack on Bannu Jail.
4. Not correct. Para of the appeal is correct regarding serious injuries with the attackers / assailants.
5. Admitted correct by the respondents regarding attack of miscreants at Central Jail D. I. Khan too.
6. Needs no comments.
7. Not correct. No notice was served upon appellant as is evident from the same.
8. Not correct. Appellant was present at his home but as is evident from the Show cause Notice the same was not addressed to him for service and reply. No one can be booked under two different enactments.
9. Not correct. The para of the appeal is correct regarding submission of appeal on 24-01-2014.

10. Not correct. The representation was not decided by the authority.
11. Not correct. The appeal was rejected by respondents on 12-03-2018 and the appeal was filed before the hon'ble Tribunal on 19-03-2018 which is well within time.

GROUND:

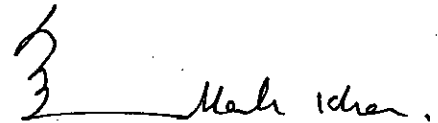
All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect. The same are again adopted.

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



Appellant

Through



Saadullah Khan Marwat

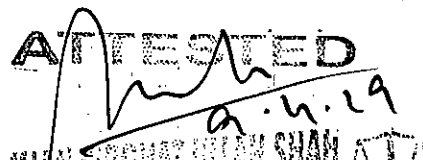
Advocate,

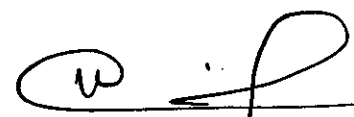
Dated: 09-04-2019

AFFIDAVIT

I, **Malik Hameed Khan**, appellant do hereby solemnly affirm and declare that contents of the **Appeal & replication** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

ATTESTED

 a.u.19
 MALIK SIDDIQ ULLAH KHAN
 ADVOCATE
 Notary Punjab District Commissioner
 Peshawar High Court Peshawar



DEPONENT