

Sr. No	Date of order/proceeding	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	16.12.2019	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 1219/2018</p> <p>Date of Institution 01.10.2018 Date of Decision 16.12.2019</p> <p>Asmat Ullah son of Khan Wazir, Warder, High Security Prison Mardan. Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar. The Superintendent Circle Head Quarters, Prison, Mardan. The Superintendent High Security Prison, Mardan. <p align="right">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan-----Member(E)</p> <p align="center"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Appellant</p> <p>with counsel present. Mr. Muhammad Jan learned Deputy District Attorney present.</p> <p>2. The appellant, (Warder) has filed the present service appeal against the order dated 18.04.2018 whereby he was awarded minor penalty of stoppage of one increment for one year moreover he was also found not entitled for any remuneration for the absence period w.e.f 27.05.2016 to 22.07.2016 (55days) and</p>

16.12.2019

the intervening period between his compulsory retirement from service and reinstatement into service was treated as leave without pay. The appellant has also assailed the order dated 31.05.2018 through which his departmental appeal was rejected.

3. Learned counsel for the appellant argued that the appellant was appointed as Warder in the Prison Department; that while serving in the said capacity the appellant applied for 55 days leave for the performance of Umra vide application dated 23.05.2016 which was duly recommended by the concerned officer and the appellant was verbally told that his leave was sanctioned; that the appellant along with his family members proceeded to Saudi Arabia for Umra on 30.05.2016; that after the performance of Umra the appellant returned back on 22.07.2016 and reported for duty; that the appellant was served with Show Cause Notice and major penalty of compulsory retirement from service was imposed upon him vide order dated 09.08.2016 on account of absence from duty and his departmental appeal there against was also rejected. Further argued that consequent upon the acceptance of service appeal of the appellant bearing No.1136/2016 the department was directed to conduct de-novo inquiry vide judgment dated 04.01.2018; that de-novo inquiry was conducted and the inquiry officer recommended minor penalty of *censure*; that the appellant was served with Show Cause Notice and thereafter vide impugned order dated 18.04.2018 minor penalty of stoppage of one increment for one

16.12.2019

year was imposed upon the appellant while depriving him of the back benefits of the period during which the appellant proceeded abroad for performance of Umra as well as the out of service period; that feeling aggrieved against the impugned order dated 18.04.2018 the appellant filed departmental appeal but the same was also rejected vide order dated 31.08.2018. Further argued that the appellant had more than nine years of service and that the appellant has proceeded abroad for performance of Umra, hence the impugned orders are harsh and not tenable; that the appellant has been condemned without observing the legal requirements.


4. As against that learned Deputy District Attorney while defending the impugned orders argued that the appellant absented himself from duty for 55 days without any permission however the authorities have already taken lenient view by awarding minor penalty to the appellant.

5. Arguments heard. File perused.

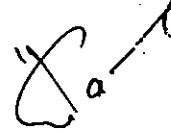
6. The appellant remained absent from duty for a reasonable period without leave/permission from the competent authority. The appellant proceeded abroad without obtaining Ex-Pakistan Leave. It is not the case of appellant that he was departmentally proceeded due to personal grudge or with mala fide intention. In the given circumstances, this Tribunal is of the humble opinion that the authority while taking into account the circumstances of the case/inquiry report, has already taken lenient view by awarding minor penalty to the appellant as mentioned above.

16.12.2019

7. As a sequel to above the appellant remained unable to seek indulgence of this Tribunal. Consequently the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

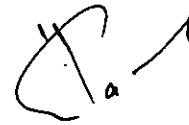
ANNOUNCED
16.12.2019

16.12.2019

Appellant with counsel present. Mr. Muhammad Jan learned Deputy District Attorney present. Vide separate judgment of today of this Tribunal, placed on file, the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member




(Muhammad Hamid Mughal)
Member

ANNOUNCED.
16.12.2019

19.06.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Neither representative of the department present nor written reply submitted therefore, notices be issued to respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Case to come up for written reply/comments on 12.07.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

12.07.2019

Nemo for the parties present. Fresh notices be issued to them. To come up for written reply/comments on 06.09.2019 before S.B.


Member

06.09.2019

Counsel for the appellant present. Nemo for the respondents.

Fresh notices be issued to the respondents by way of last opportunity. To come up for written reply/comments on 30.09.2019 before S.B.

Chairman 

30.09.2019

Nemo for the petitioner. Addl. AG alongwith Suleman Senior Instructor for the respondents present.

Respondents have not submitted reply/comments despite last opportunity. The appeal is posted to D.B for arguments on 16.12.2019, for arguments.


Chairman

1219/2018

04.2.2019

Counsel for the appellant has submitted an application for permission to deposit the security and process fee as ordered on 10.12.2018.

Application is allowed and appellant is directed to make the requisite deposit within one week from today, where-after notices be sent to respondents for submission of written reply/comments on 27.3.2019 before S.B.

Appellant deposited
Security & Process Fee

Chairman

27.03.2019

Clerk to counsel for the appellant present. Written reply not submitted. Sheryar Superintendent representative of the respondent department absent. He be summoned with direction to furnish written reply/comments on 25.04.2019 before S.B

Member

25.04.2019

Counsel for the appellant present. Addl: AG alongwith for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments on 19.06.2019 before S.B.

(Ahmad Hassan)
Member

10.12.2018

Counsel for the appellant Asmat Ullah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Prison Department, he was imposed major penalty of compulsory retirement. It was further contended that after departmental appeal, the appellant filed service appeal before this Tribunal which was partially accepted and the respondent-department was directed to conduct de-novo inquiry. It was further contended that after conducting de-novo inquiry the appellant was again imposed minor penalty of stoppage of one increment for a period of one year and the absence period with effect from 27.05.2016 to 22.07.2016 was also treated as an authorized absence and no remuneration/back benefits was issued for the said period. It was further contended that the appellant filed departmental appeal but the same was rejected hence, the present service appeal. It was further contended that since the appellant gone for Umra therefore, the impugned order regarding stoppage of one increment and non issuing of remuneration/back benefits for the said absence period is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 04.02.2019 before S.B.


Muhammad Amin Khan Kundi
Member

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 1219/2018

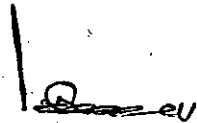
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/10/2018 5-10-18	<p>The appeal of Mr. Asmat Ullah resubmitted today by Mr. Yasir Saleem Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 4/10/18.</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/10/18</u>.</p> <p style="text-align: right;">MA MEMBER</p> <p><i>Due to Retirement of Honorable Chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on 16-12-2018</i></p> <p style="text-align: right;"><i>[Signature]</i> Recorder</p>
2-	23-10-18	

The appeal of Mr. Asmatullah son of Khan Wazir Ex-Warder High Security Prison Mardan received today i.e. on 01.10.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of departmental appeal mentioned in the memo of appeal mentioned in the ~~memo of appeal~~ is not attached with the appeal which may be placed on it.

No. 1980/S.T.

Dt. 2-10/2018.


REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yasir Saleem Adv. Pesh.

The client will not give the department appeal so it is request that put this in the file



0

5

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1219/2018

Asmat ullah S/O Khan Wazir, Warder, High Security Prison Mardan,
(Appellant)

VERSUS

The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar
and others.

(Respondents)

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4	Copies of the Departmental Appeal & Rejection Order dated 28.09.2016	C & D	7-9
5	Copy of the Order and judgment dated 04.01.2018	E	10-13
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Appellant

Through


YASIR SALEEM

Advocate, High Court

&

JAWAD UR REHMAN
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1641

Dated 01-10-2018

Appeal No. 1219/2018

Asmat ullah S/O Khan Wazir, Ex-Warder, High Security Prison
Mardan.

(Appellant)

VERSUS

1. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent Circle Head Quarters Prison, Mardan.
3. The Superintendent High Security Prison, Mardan

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 18.04.2018, whereby the appellant has been awarded the penalty of “stoppage of one increment for one year”, against which the departmental appeal has also been rejected vide order dated 31.05.2018.

Filed to-day

Registrar

01/10/18.

Prayer in Appeal: -

Re-submitted to-day
and filed.

Registrar

4/10/18.

On acceptance of this appeal the orders dated 18.04.2018 and 31.05.2018 may please be set-aside and the Appellant may kindly be reinstated into service with all back benefits.

Respectfully Submitted:

1. That the appellant was appointed as Warder in the Prison Department and was lastly posted at High Security Prison Mardan.
2. That ever since his appointment, the appellant is performing his duties as assigned to him with zeal and devotion and without giving any chance of complaint whatsoever regarding his performance to his superiors.
3. That while serving in the said capacity, the appellant applied for fifty days leave for the performance of Umra vide application dated 23.05.2016, which was duly recommended by the concern officer and the appellant was verbally told that his leave is sanctioned. Thereafter the appellant alongwith family members included female members proceeded to Saudi Arabia for Umra on 30.05.2016. *(Copy of leave application dated 23.05.2016 is attached as Annexure A)*
4. That the appellant after the performance of Umra, returned back on 22.07.2016 and reported for duty, however it was alleged to him that the appellant remained absent from duty from 27.05.2016. Thereafter the appellant was served with a show cause notice dated 25.07.2016.
5. That thereafter the appellant was awarded the major penalty of “*Compulsory retirement from service*” from 27.05.2016 vide order dated 09.08.2016. *(Copy of the order dated 09.08.2016 is attached as annexure B).*
6. That against the order dated 09.08.2016, the appellant filed his departmental appeal however it was also rejected vide order dated 28.09.2016. *(Copies of the Departmental Appeal & Rejection Order dated 28.09.2016 are attached as Annexure C & D).*
7. That the appellant also filed service appeal No. 1136/2016 before this Honorable Tribunal which was allowed vide order and Judgment dated 04.01.2018, however the department was directed to conduct de-novo inquiry and the issue of back benefits was subjected to the outcome of inquiry. *(Copy of the Order and judgment dated 04.01.2018 is attached as Annexure E).*
8. That thereafter, without serving any charge sheet and statement of allegations a de-novo inquiry was conducted and the inquiry officer recommended the appellant for minor penalty of “*Censure*” vide his report dated 29.03.2018. *(Copy of the inquiry report dated 29.03.2018 is attached as Annexure F)*

9. That the appellant was served with show cause notice dated 12.04.2018 containing the allegations of will full absence to which the appellant duly replied vide his reply dated 15.04.2018. *(Copies of show cause notice dated 12.04.2018 and reply dated 15.04.2018 are attached as Annexure G & H)*
10. That without considering his reply dated 15.04.2018, the appellant has been awarded the minor penalty of stoppage of one increment for one year, besides, the appellant was also not held entitled for remuneration of 55 days alleged absence period and the intervening period i.e, period between compulsory retirement and reinstatement into service has been treated as Leave without pay vide order dated 18.04.2018. *(Copy of the Office Order dated 18.04.2018 is attached as Annexure I)*
11. That feeling aggrieved from the penalty order dated 18.04.2018, the appellant filled his departmental appeal which was also rejected vide order dated 31.08.2018. *(Copy of the rejection order dated 31.08.2018 is attached as Annexure J)*
12. That both the impugned orders are illegal unlawful without lawful authority and are thus liable to be set aside inter alia on the following grounds:

GROUND OF APPEAL.

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before awarding the penalty to the appellant, the appellant has not been served with charge sheet thus the orders so made are liable to be set aside.
- C. That the inquiry officer has recommended the minor penalty of censure while the appellant was awarded the penalty of stoppage of increment and he was also not allowed to remuneration for the alleged absent period. thus the impugned order is defective in the eye of law.
- D. That the appellant is awarded more than one penalty for the one alleged offense which is unconstitutional.

- E. That the inquiry officer in his report himself admitted that the appellant filed his leave application through proper channel which was initially recommended by the subordinate officers and he was allowed to proceed for the Holy cause of Umra. Even then the appellant was punished which is illegal and liable to be set aside.
- F. That the appellant has not committed any act or omission which can be termed as misconduct. The appellant duly applied for leave which was recommended and he was verbally assured that his leave would be sanctioned.
- G. That the appellant has at more than 09 years service career at his credit, the penalty imposed upon him is too harsh and is liable to be set aside.
- H. That the appellant seeks permission of this honorable tribunal to rely on additional grounds at the time of hearing of appeal.

It is therefore, humbly prayed that on acceptance of this appeal the orders dated 18.04.2018 and 31.05.2018 may please be set-aside and the Appellant may kindly be reinstated into service with all back benefits.

Through

Asmat Ullah Saleem
Appellant

Yasir Saleem

YASIR SALEEM

Advocate, High Court

Jawad Ur Rehman
JAWAD UR REHMAN

Advocate Peshawar

AFFIDAVIT

I, **Asmat ullah S/O Khan Wazir, Warder, High Security Prison Mardan**, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.

Asmat Ullah Saleem
DEPONENT

محترم صاحب کھانا بہادر کھانا کھانا کھانا کھانا

5 عنوان: بہادر عمرہ بیت اللہ شریف

Answer "4" جناب عالی

بیت اللہ شریف کے ساتھ التماس کی جاتی ہے کہ سائل کو عمرہ شریف
جانے کا جنوری حد تک کا شوق ہے اور اللہ تعالیٰ کی عہد شکنی
ہے کہ سائل کو دولت سعودیہ نے عمرہ ادا کرنے کا اجازت
نہی دیا ہے اور سائل نے فوراً 16/5/20 کو جہاز کا ٹکٹ
لیا ہے اور اس لیے آپ صاحبان سے گزارش کی جاتی
ہے کہ سائل کو عمرہ کی سعادت کرنے کیلئے 50 یو ایم کی
رہتی بنائیت و فیکر مشکو و ماویں

خانم نعیمہ میں آپ صاحبان کیلئے دعا اور بیوی
المرقوم 23/05/16

نوٹ: ویزہ عمرہ شریف اور جہاز کا ٹکٹ جمع لف ہے

انکالاہ و زمان وارڈ علیہ السلام ضلع بنوں

Handwritten signature

Recommended as requested please

24/5/16

Accessed

WHEREAS, the accused official Mr. Asmat Ullah Shah S/O Khan Zarin

Shah attached to High Security Prison Mardan was proceeded against under Rule-3 read with Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of this misconduct as mentioned in the Show Cause Notice No.2117-79 dated 25-07-2016 served upon him on his absence.

AND WHEREAS, he furnished reply but the same was found unsatisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 08-08-2016 as provided for under rules 1(b). The accused official completely failed to defend his case with documentary proof/evidence. In addition to this concerned official is habitual of absenting himself from line and duties and indiscipline, lethargic duty attitude, which is crystal cleared from his service record.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the charges, evidence on record, the explanation of the accused official and after affording the opportunity of personal hearing, the undersigned being competent authority, hereby award major penalty of "Compulsory Retired from the Service" from the date of absence i.e. 27-05-2016 to Mr. Asmat Ullah Shah S/O Khan Zarin Shah attached to High Security Prison Mardan for his misconduct.

Void order

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endorsement No. 2265-68

Copy of the above is forwarded to the:-
1- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2- Superintendent High Security Prison Mardan for information with reference to his endorsement No. 3596-97 dated 23-07-2016.
3- District Accounts Officer Mardan for information please.
4- Official concerned attached to High Security Prison Mardan.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Annex B

No. _____
P.B/Dt: 09/11/2016

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

OFFICE ORDER

Admission
7

The Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER
DATED 09/08/2016 WHEREBY I HAVE BEEN AWARDED MAJOR
PENALTY OF COMPULSORY RETIREMENT FROM SERVICE FROM
27/05/2016

Sir,

1. I have the honour to submit that I was inducted in service on 04/10/2007 and I performed my duties with utmost of my capability and to the entire satisfactions of my superiors.
2. That I proceeded to Saudi Arabia for Umrah and prior to proceeding to Umrah, I have submitted leave application to Superintendent Central Jail Mardan, which was recommended but no action was taken on it.
3. That thereafter, I submitted another application for leave without pay and also no action was taken on it.
4. That thereafter I approached the I.G.P. Peshawar, and who told to his subordinate officer to sanction him leave and thereafter his subordinates the permitted me to proceed to Umrah.

Atesha

(8)

5. That now I have been punished and have awarded me major penalty of compulsory retirement from service. Now I requested that the impugned order dated 09/08/2016 may be set aside in view of the following grounds:-

Grounds:

A. That the absence from duty is an extreme minor misconduct and major penalty cannot be imposed upon it.

B. That I went to Umrah and major penalty cannot be imposed upon me because my absence from duty was never intentional.

it is, therefore, prayed that on acceptance of this departmental appeal, the impugned order dated 09/08/2016 may be set aside and I may be reinstated in service with all back benefits.

Your most obedient servant

Dated: 16/08/2016

Asmat Ullah Shah

ASMAT ULLAH SHAH

S/o Khan Zarin Shah

Ex Warder High Secretary Prison

Mardan

R/o Kotka Sayedan Nizam Bazar

Bannu.

Cell# 0336-9681074

Asmat Ullah Shah



(9) ANNEA DO

**OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**

☎ 091-9210334, 9210406 📠 091-9213445

No.Estb/Ward-/Orders/ 23127 /1-

Dated 28-09-2016 /1-


ORDER

WHEREAS, Ex-warder Asmat Ullah Shah S/O Khan Zarin Shah attached to HSP Mardan, was awarded the major penalty of "Compulsory retired from Service" by the Superintendent Headquarters Prison Mardan vide his office order No.2264 dated 09-8-2016 due to his willful absence with effect from 27-5-2016 to 22-7-2016(56 days).

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available record of the case and it was observed that the appellant remained absent for long period as mentioned above and legal, procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 28-9-2016. During the course of hearing he failed to defend / justify his long willful absence.

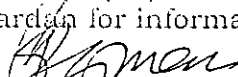
NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of power conferred under Rule-5 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986, the decision of the competent authority is upheld and appeal of the appellant is hereby rejected being without any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


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

ENDST;NO. 23128-301.

Copy of the above is forwarded to :-

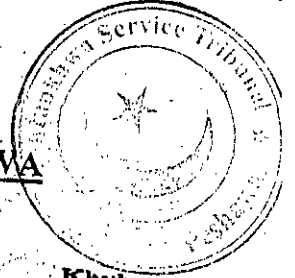
1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No.2609-WE dated 01-9-2016.
2. The Superintendent, HSP Mardan for information and necessary action with reference to the Superintendent HQ Prison Mardan order referred to above. He is directed to inform the appellant accordingly and also to make necessary entry in his Service Book under proper attestation.
3. The appellant concerned C/O the Superintendent HSP Mardan for information.


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



10

APPEAL - E



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

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1136 /2016

Diary No. 1131

Dated 26-10

Asmat ullah S/O Khan Wazir, Ex-Warder, High Security Prison
Mardan.

(Appellant)

VERSUS

1. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent Circle Head Quarters Prison, Mardan.
3. The Superintendent High Security Prison, Mardan

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 09.08.2016, whereby the appellant has been awarded the major penalty of "Compulsory Retirement from service", and against which the departmental appeal dated 16.08.2016 has also been rejected vide order dated 28.09.2016.

Prayer in Appeal: -

Filed to-day

[Signature]
Registrar

26/10/16

On acceptance of this appeal the orders dated 09.08.2016 and 28.09.2016 may please be set-aside and the Appellant may kindly be reinstated into service with all back benefits.

Re-submitted to-day
and filed.

[Signature]
Registrar

10/11/16

ATTESTED

[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1136/2016

Date of Institution ... 26.10.2016

Date of Decision ... 04.01.2018



Asmat Ullah S/O Khan Wazir, Ex-Warder, High Security Prison Mardan.
(Appellant)

VERSUS

1. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar
and 2 other. (Respondents)

MR. YASIR SALEEM,
Advocate --- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney --- For respondents.

MR. AHMAD HASSAN, MEMBER(Executive)
MR. MUHAMMAD AMIN KHAN KUNDI MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER. Arguments of the learned counsel for
the parties heard and record perused.

ATTESTED

MEMBER (Executive)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

FACTS

2. The brief facts are that the appellant was serving as Warder in the Prison
Department. Disciplinary proceedings were initiated against him on account of
willful absence from duty. Upon culmination he was awarded major penalty of
compulsory retirement from service vide impugned order dated 09.08.2016.
Against the impugned he preferred departmental appeal on 16.08.2016 which
was rejected vide order dated 28.09.2016, hence, the instant service appeal on
26.10.2016.

CONCLUSION

5. Without adverting to the merit of the case the impugned order was passed
with retrospective effect, hence, the same is illegal, void ab-initio and not
sustainable in the eyes of law.

ATTESTED

6. As a sequel to above, the appeal is accepted and the impugned order is set aside. Respondents are directed to conduct de-novo enquiry within a period of 90 days after receipt of this Judgment. The issue of back benefits shall be subject to outcome of the de-novo proceedings. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- Ahmad Hassan,
Member

Sd/- M. Anis Khan Kundi
Member

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 16-01-2018
 Number of Witnesses 1600
 Copying Fee 10
 Urgent 2
 Total 12
 Name of Copyist [Signature]
 Date of Copying 16-01-18
 Date of Delivery of Copy 16-01-18

Alleged

14

Approved F

**INQUIRY REPORT IN RESPECT OF WARDER ASMATULLAH S/O KHAN ZARIN
SHAH ATTACHED TO CENTRAL PRISON BANNU**

I have been appointed as Inquiry Officer in respect of above mentioned accused warder for scrutinizing his conduct with reference to the allegations/ charges leveled against him in the charge sheet.

Keeping in view the order of the worthy and distinguished Superintendent, Circle Headquarter Prison, Mardan, the accused warder was directed/ informed to appear before the Inquiry Officer (undersigned) on 20.03.2018 at 10:00 AM in the office of the undersigned at Internment Centre, Lakki Marwat alongwith the relevant record in his defense and if he failed to appear on due date and time, ex-parte action will be recommended against him.

PROCEEDINGS OF THE INQUIRY

As directed, the accused warder appeared before the Inquiry Committee/ Officer on 20.03.2018 for the inquiry proceedings. Ample opportunity and full freedom of expression was given to him to defend himself against the allegations leveled against him in the charge sheet.

ILLEGATIONS

That the warder absented himself from duty as well as jail premises without sanction of leave from the competent authority form 27-05-2016 to 22-07-2016 for fifty five (55 days).

FINDINGS OF THE INQUIRY

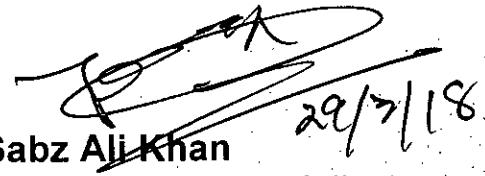
The undersigned concluded the following findings out of the inquiry process:-

- a. That the warder was awarded major penalty of "**compulsory retirement from service**" on 09-08-2016, due to his willful absence from duty, by the order of Circle Headquarter Prison, Mardan.
- b. That departmental appeal of the warder was rejected by the competent authority on 28-09-2016.
- c. That according to the written statement of warder and judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar, he was proceeding to perform Umra and filed application for grant of 50 days Ex-Pakistan leave through proper channel to Superintendent Central Prison Mardan which was recommended by subordinate officers and he was allowed to proceed for performance of Umra, however, later on his leave was not sanctioned by Superintendent Jail and his leave application was rejected and he was shown as absent from duty (copy of his statement alongwith copy of his application duly recommended by line officer and Deputy Superintendent with the remarks that "Recommended as the applicant is a pious and practical Muslim, efficient in his duties too" along with its enclosure is attached).

d. That in the Culminating Para of his written statement, he begs pardon that he should be given a chance owing to his lengthy and valuable service, moreover, he has taken leave for sacred and religious cause.

RECOMMENDATIONS

In view of the above, the undersigned has reached to the conclusion that accused warder Asmatullah S/o Khan Zarin Shah has made negligence in the performance of his duty, violated the rules & regulations, and rendered himself to be punished accordingly. However, he has committed that he will not repeat any such negligence in performance of his duties in future. Therefore looking forward to his goodwill and to give him an opportunity this time may be to mend his ways in future; therefore, it is hereby recommended a minor penalty of "Censure" and his absence period (55 days) may be treated as leave without pay subject to title.



Sabz Ali Khan
Sr. Asstt: Superintendent Jail,
(INQUIRY OFFICER)

9/c

29/7/18



16
APR 12 - 9
SHOW CAUSE NOTICE

I, Fazal Hameed Khan Khel, Superintendent Headquarter Prison Mardan, as competent authority, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, do hereby serve you, Warder (BPS-05) Asmat Ullah s/o Khan Zareen attached to Central Prison Mardan as follows:-

1- (i) That consequent upon the completion of inquiry conducted against you by the Inquiry Officer for which you were given opportunity of hearing vide this office communication No. 438-41 dated. 19-02-2018.

(ii) On going through the findings and recommendations and other connected papers including your defence before the said Inquiry Officer, I am satisfied that you have committed the following act/ omission specified in section 3 of the said rules:-

You absented yourself from duty as well as jail premises without sanction of leave from the competent authority from 27-05-2016 to 22-07-2016 for fifty five (55) days, which constitute gross misconduct on your part.

2- As a result thereof, I, as competent Authority have tentatively decided to impose upon you the Major Penalty of "Removal from Service" under section 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, also intimate whether you desire to be heard in person.

4- If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

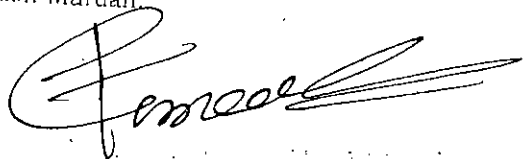
5- A copy of the findings of the inquiry officer is enclosed.

(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT
CIRCLE HQS PRISON MARDAN

Endorsement No. 870-72/08 / Dated. 12/04/2018.

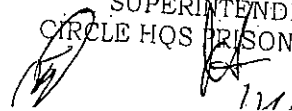
Copy of the above is forwarded to:-

- 1 The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
- 2 The Superintendent Central Prison Mardan for information and with the request that one copy of the Show Cause Notice duly signed and dated by the accused official as a token of its receipt may be returned to this office for record please.
- 3 Above name Warder c/o Superintendent Central Prison Mardan.



(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT
CIRCLE HQS PRISON MARDAN





جناب سپرنٹنڈنٹ صاحب ہیڈ کوارٹر جیل مردان (اتھارٹی)

عنوان: شوکار شیٹ

جناب عالی!

بحوالہ سرکاری چھٹی نمبر 72-70/WE مورخہ 12-04-2018

سائل حسب ذیل عرض کرنا چاہتا ہے۔

- ۱۔ یہ کہ سائل فیملی کے ساتھ "عمرہ شریف" کی ادائیگی کیلئے سعودی عرب جانا چاہتا تھا جس بابت تمام کاغذات مکمل تھے اور ہوائی جہاز کا ٹکٹ بھی کنفرم تھا (کاغذات لف ہیں)
 - ۲۔ یہ کہ جناب سپرنٹنڈنٹ صاحب سنٹرل جیل مردان کو چھٹی کیلئے درخواست دیا جسکو اُس نے نامنظور کیا۔ اللہ تعالیٰ نے منظوری دی تھی اپنے گھر بلا لیا لیکن اُس نے منظوری نہیں دی۔ کیونکہ سارے محکمے کو معلوم ہے کہ صاحبزادہ صاحب "حقوق اللہ" کا خیال رکھتا تھا لیکن "حقوق العباد" کا پروا نہیں کرتا تھا۔
 - ۳۔ یہ کہ سائل کو انکوائری آفس نے بھی معمولی سزا Censure دیا کہ اسندہ کیلئے محتاط رہے۔
 - ۴۔ یہ کہ سائل کو درمیان مدت "برخواستگی اور بجا لگی" کے پیروڈ کی ادائیگی بھی کیا جائے۔
- لہذا سائل درخواست کرتا ہے کہ سائل کے خلاف چارج شیٹ کو ختم کیا جائے اور سائل کو تنخواہ کی ادائیگی کا حکم صادر فرمایا جائے۔ سائل تاحیات دعا گور ہے گا۔

عین نوازش ہوگی۔

مورخہ: 15-04-2018

العارض
Aswatul H
سائل وارڈر عصمت اللہ شاہ سنٹرل جیل مردان

(Handwritten signature)



18
Approved I

OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

No. _____ / PB Dated: 18/04/2018, E-Mail: mardanjail@gmail.com, 0937-843114

OFFICE ORDER

WHEREAS, accused official/ Warder Asmat Ullah s/o Khan Zareen was charged within the meaning of Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of his misconduct contained in statement of Allegations/ Disciplinary Action served upon him vide this Headquarter endorsement No. 438-41 dated. 11-02-2018 wherein Mr. Sabz Ali Khan, Senior Assistant Superintendent Jail, In-charge Interment Centre Lakki Marwat was appointed as Inquiry Officer.

AND WHEREAS, he furnished his written reply/defence to the Inquiry Officer without any documentary proof/evidence and the allegations/charges against him were fully proved.

AND WHEREAS, the accused official was proceeded against under Rule-14(4) for the charges of his misconduct/ negligence in the performance of duty, as mentioned in the Show cause Notice vide No. 870-72 dated 12.04.2018.

AND WHEREAS, he furnished his written reply/defence without any documentary proof/evidence which was found unsatisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 17-04-2018 as provided for under rules ibid.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the Inquiry report, charges levelled against him and evidence on record, the undersigned being Competent Authority, after observing all legal procedural formalities, hereby award the Minor penalty of **"One increment stopped for one (01) year"** to Mr. Asmat Ullah s/o Khan Zareen while attached to Central Prison Mardan and presently attached to Central Prison Bannu for his misconduct/ wilful absence, He is not entitled for any remuneration for the absence period w.e.f 27-05-2016 to 22-07-2016, fifty five (55) days under rule 19 of the Khyber Pakhtunkhwa Government Servant Revised Leave Rules 1981 and the intervening period between Compulsory Retirement from Service and reinstatement into service is hereby ordered to be treated as leave without pay.

(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endst: No. 917-23 / PB Dated: 18/04/2018

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Central Prison Mardan/Bannu for information and necessary action please.
3. Mr. Sabz Ali Khan, Senior Assistant Superintendent Jail, In-charge Interment Centre Lakki Marwat (Inquiry Officer) with reference to his inquiry report No. 824/WE dated, 29-03-2018.
4. The District Accounts Officer, Mardan/Bannu for information and necessary action please.
5. The Warder concerned c/o Superintendent Central Prison Bannu.

Asmat Ullah

Fazal Hameed Khan Khel

(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

No. Estb/Ward/Orders/ 25521 1-

Dated 31-08-2018 1-

ORDER

WHEREAS, warder Asmat Ullah Shah S/O Zarin, attached to Central Prison Bannu, preferred departmental appeal for payment of 18 months salary i.e the intervening period between compulsory retired from Service from the date of absence i.e 27-05-2016 and re-instated into service is hereby treated as leave without pay to him, by the Superintendent Circle Headquarters Prison Mardan vide his office order No. 917-23 dated 18-04-2018.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available records, and it was observed that the appellant for the charges of his willful absence from 27-05-2016 and re-instated into service, and all legal/ procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 16-08-2018. During the course of hearing, he failed to justify his innocence.

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

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.

ENDST: NO. 25522-251

Copy of the above is forwarded to :-

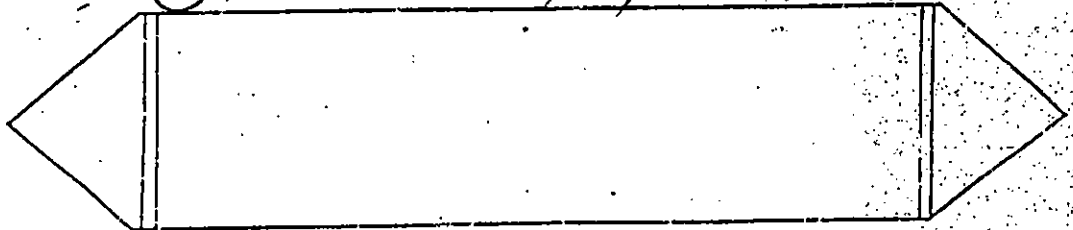
- 1 The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No. 1351 dated 06-08-2018.
- 2 The Superintendent, Central Prison Bannu for information and necessary action.
- 3 District Accounts Officer concerned for information.
- 4 Official concerned.

for entry in Service Book
ASSISTANT DIRECTOR (ADMN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

★ P.B./L.O
[Handwritten signature]

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بعدالت فیہ رد کتبہ خواہ سہیں شہرہ اولیٰ



مورخہ
مقدمہ
دعویٰ
تسمیہ

عہدہ اللہ
بنام آئی جی و سٹیٹ

باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی وکل کاروائی متعلقہ
 آن مقام کیلئے سلسلہ سیم اسٹیٹ جوائنٹ لٹریچر ایسوسی ایشن
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو رضی نامہ کرنے و تقرر ثالثیت فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
 ضرورت ذکر کی کرنے اجراء اور وصولی چیک دروپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 دریں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برادگی اور مشورتی
 نیز دائر کرنے اپیل گمرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لایا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساتھ
 داخلہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
 کوئی تاخیر پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا اوکالت نامہ لکھ دیا کہ سند ہے۔

الہرقوم _____ ماہ _____ 20

واہ العبد
 Accepted
 J. P. K. K. K.
 Ameer
 J. P. K. K. K.
 Ameer

Accepted

لیدر لکھنؤ جناب سر سید احمد خان

حکومت اللہ بنام پولیس

دفعہ 144 کے تحت جاری کیے گئے مسائل

میں سے متعلقہ مسائل

۱۔ ۲۰۱۹ میں جاری کیے گئے مسائل

میں سے متعلقہ مسائل

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محمد امجد
Armat