

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 755/2014

Date of Institution ... 29.05.2014

Date of Decision ... 09.07.2018

Muhammad Zubair S/o Shah Fraz R/o Kotka Mirdil Surrani, Bannu.
... (Appellant)

VERSUS

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

Mr. Saad Ullah Khan Marwat,
Advocate --- For appellant.

Mr. Sardar Shoukat Hayat,
Deputy District Attorney --- For respondents.

MR. AHMAD HASSAN, --- MEMBER(Executive)
MR. MUHAMMAD HAMID MUGHAL --- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 754/2014 titled Shafqat Ali as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The brief facts are that the appellant was serving as Warder at Central Jail D.I.Khan. On the allegations of willful absence, he was removed from service vide impugned order dated 16.01.2014. He preferred departmental appeal on 12.02.2014 which was rejected on 29.04.2014, hence, the instant service appeal on 29.05.2016.

ARGUMENTS

4. Learned counsel for the appellant argued that on the allegations of absence from duty show cause notice was served on him and thereafter he was removed from service vide impugned order dated 06.01.2014. The appellant was seriously ill as such the absence was not willful and deliberate. Proper enquiry was not conducted as such the appellant was condemned unheard. Reliance was placed on case law reported as 2008 SCMR 214. He further contended that penalty awarded did not commensurate with the guilt of the appellant and appeared to be too harsh.


5. On the other hand Learned Additional Advocate General argued that the appellant remained willfully absent from duty from 13.10.2013 to 16.01.2014. Major penalty of removal from service was imposed on him after observance of all codal formalities. The appellant had tainted service and was previously also awarded minor punishment. He requested that the appeal may be dismissed.

CONCLUSION

6. A cursory glance at the appeal revealed that the appellant was absent from duty w.e.f 13.10.2013 to 16.01.2014. Procedure for dealing with cases of absence from duty is given in Rule-9 of the Khyber Pakhtunkhwa (E&D) Rules-2011. In the appeal in hand the respondents deviated from the aforementioned process and served a show cause notice on the appellant, which had no legal backing. As prescribed procedure was not followed so impugned order appears to be illegal, unlawful and nullity in the eyes of law. This Tribunal tend to agree with the assertions of learned counsel for the appellant that penalty awarded to the appellant was very harsh and did not commensurate with the nature of the charge. Our view^{to}point

has also been supported in the case law relied upon by the learned counsel for the appellant.

7. As a sequel to the above, the appeal is accepted and the major punishment of removal from service is modified/converted into minor punishment of stoppage of three increments for three years. The intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
MEMBER



(AHMAD HASSAN)
MEMBER

ANNOUNCED
09.07.2018

755/2014

Order

09.07.2018

Counsel for the appellant present. Mr. Sardar Shoukat Hayat, Additional Advocate General for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted and the major punishment of removal from service is modified/converted into minor punishment of stoppage of three increments for three years. The intervening period shall be treated as leave without pay. Parties are left to bear their own costs. Parties are left to bear their own cost. File be consigned to the record room.

Announced:

09.07.2018



(MUHAMAMD HAMID MUGHAL)
Member



(AHMAD HASSAN)
Member

26.02.2018

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Sohrab Khan, Junior Clerk for the respondents present. Counsel for the appellant seeks adjournment. To come up for arguments on 30.04.2018 before the D.B.



Member



Chairman

30.04.2018

Appellant in person and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore the case is adjourned. To come up for the same on 09.07.2018



READER

23.05.2017

Counsel for the appellant present. Mr. Sohrab Khan, Junior Clerk alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for rejoinder and arguments on 15.09.2017 before D.B.

(GUL ZEB KHAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

15/9/2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for rejoinder and arguments on 22/12/2017 before DB.

MEMBER

Chairman

22.12.2017

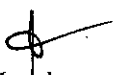
Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Sohrab Khan, Senior Clerk for the respondents present. Counsel for the appellant seeks adjournment. Granted. To come up for arguments on 26.02.2018 before the D.B.


Member

Chairman

17.05.2016

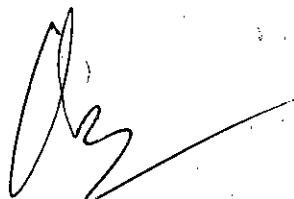
Counsel for the appellant and Assistant AG for respondents present. Counsel for the appellant requested for time to file rejoinder. Request accepted to come up for rejoinder/arguments on 5.9.2016.


Member


Member

05.09.2016

Agent to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder not submitted and requested for further time to file rejoinder. Request accepted. To come up for rejoinder and arguments on S-1-2017 before D.B.


Member


Member

05.01.2017

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Rejoinder not submitted. Learned counsel for the appellant requested for further time for filing rejoinder. Request accepted. To come up for rejoinder and arguments on 23.05.2017 before D.B.


MUHAMMAD AAMIR NAZIR
MEMBER

4.3.2015

Counsel for the appellant and requested for time to deposit security and process fee and security. Request is accepted. Security and process fee be deposited within 7 days. Thereafter, notices be issued to the respondents. Case to come up for written reply on 10.6.2015.

Appellate Deposited
Security & Process Fee


MEMBER

10.06.2015

Counsel for the appellant and Mr. Sheharyar, ASJ alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 3.9.2015 before S.B.


Chairman

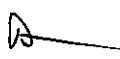
03.09.2015

Counsel for the appellant and Mr. Sheharyar Khan, ASJ alongwith Addl: A.G for respondents present. Para-wise reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 21.12.2015.


Chairman

21.12.2015

Counsel for the appellant and Asstt: AG for respondents present. Counsel for the appellant requested for time to submit rejoinder. To come up for rejoinder on 17.5.2016.


Member
Member

Reader Note

07.08.2014


Counsel for the appellant present. The learned Member is on leave, therefore case to come up for preliminary hearing on 02.10.2014.


Reader


02.10.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 16.01.2014, vide which the appellant was awarded major punishment of Removal from service. Against the above referred impugned order appellant filed departmental appeal on 12.02.2014 which was rejected vide order dated 29.04.2014, hence the instant appeal on 29.05.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 16.12.2014.


Member

02.10.2014

This case be put before the Final Bench  for further proceedings.


Chairman

16.12.2014



Junior to counsel for the appellant and Mr. Ziaullah, GP present. Security and process fee have not been deposited. The Tribunal is incomplete. To come up for the same on 4.3.2015.


READER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 755 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	29/05/2014	<p>The appeal of Mr. Muhammad Zubair presented today by Mr. Saadullah Khan Advocate, may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	3-6-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>7-8-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 755 /2014

Muhamad Zubair

Versus

I.G Prisons & others

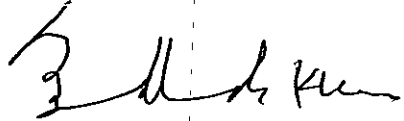
I N D E X

S.No	Documents	Annex	P.No.
1.	Memo of Appeal		1-2
2.	Removal Order, 16.01.2014	"A"	3
3.	Departmental Appeal, 12.02.2014	"B"	4
4.	Rejection Order, 29.04.2014	"C"	5
5.	Judgment, 28.06.2010	"D"	6-7

Appellant

Through

Dated. 29.05.2014



Saad Ullah Khan Marwat
Advocate.

21-A Nasir Mension,
Shoba Bazar, Peshawar.
Ph:0300-5872676

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 755 /2014

Muhammad Zubair S/o Shah Fazl,
R/o Kotka Mirzaeil Seemai Bannu
Ex-Wardar Central Jail D.I.Khan. Appellant

Versus

1. Inspector General of Prison of KP,
Peshawar.
2. Superintendent, Head Quarters Prisons,
D.I.Khan. Respondents

794
29/5/2014

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT,
AGAINST OFFICE ORDER NO. 11127,
DATED 29.04.2014 OF R. NO.1, WHEREBY APPEAL
AGAINST OFFICE ORDER NO. 410-13, DATED
16.01.2014, OF R. NO. 1, DISMISSING APPELLANT
FROM SERVICE, WAS REJECTED FOR NO LEGAL
REASON.

29/5/14

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth;

1. That appellant was enlisted as Constable in the year, 2007.
2. That on 28.10.2013, appellant become severely ill and was going under treatment, yet he gained his health and reported for duty on 09.11.2013.
3. That appellant was not fully recovered from the illness, so he again fell on 22.11.2013.
4. That on the aforesaid allegations appellant was removed from service on 16.01.2014. (Copy as annex "A")
5. That on 12.02.2014, appellant submitted departmental appeal before R. No. 1 for reinstated in service which was rejected on 29.04.2014. (Copies as annex "B" & "C")
6. That similar fault and law point become under consideration in A. No. 1559/09 and others before this Hon'ble Tribunal which was accepted

vide judgment dated 28.06.2010 with all back benefits. (Copy as annex "D")

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


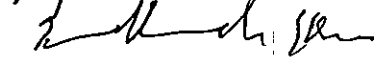
GROUND S:


- a. That absence was neither willful nor intentional but was due to the compelling circumstances.
- b. That legal procedure was not adhered to by the respondents as no regular inquiry was ever conducted nor appellant was afforded opportunity of personal hearing, cross examination, being mandatory.
- c. That the enactment under which appellant was dealt with, was never specified in the charge sheet.
- d. That order of rejection of departmental appeal is not a speaking order, so is liable to set aside.
- e. That absence does not constitute any misconduct.
- f. That no specific order was passed by R. No. 2 and order dated 16.01.2014 was not order of removal from service but recommendation of the Inquiry Officer were approved.
- g. That from the aforesaid stated legal point when appellant was neither associated with inquiry nor the same was conducted as per the mandate of law nor any statement of any one was recorded nor he was given opportunity of cross examination and self defence, so the impugned orders are then based on malafide and are ab-initio void.

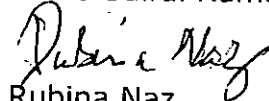
It is, therefore, most humbly prayed that on acceptance of appeal, order dated 29.04.2014 or 16.01.2014 of the respondents be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Dated. 29.05.2014

Through


Appellant

Saad Ullah Khan Marwat


Arbab Saiful Kamal

& 
Rubina Naz,
Advocates.



A

3

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

No. _____/H/Q Dated _____

OFFICE ORDER

Warder Muhammad Zubar attached to Central Prison DIKhan was called for heard in person on 16-01-2014. He attended and not furnished no any satisfactory reply in the disciplinary action initiated by Superintendent Central Prison DIKhan. Further more the charged also proved about his absence w.e.f dated 13-10-2013 till date. He is also habitual absentee previously he was punished for stoppage of one increment for one year on 04-08-2010 vide Suprintendent Headquatar Prisons Peshawar Endt: No.1913-15 dated 09-06-2013. moreover he was also removed from service on 23-11-2013 vide Suprintdent Headquatar Prison DIKhan Endst: No.7768-73 dated 19-11-2012.

Therefore in the instent case of absence w.e.f 13-10-2013 till date and also in the light of previous record of punishment, the recommendation of the Inquiry Officer (a) REMOVAL FROM SERVICE has been approved with immediate effect.

SUPERINTENDENT
CIRCLE H/Qs PRISON DIKHAN

ENDST NO 410-13 16/01/14

Copy of the above is forwarded the:-

1. Inspector Genral of Prison Khyber Pakhtunkhwa Peshawar for information.
2. Superintendent Central Prison DIKhan (Line Officer)
3. District Accoupts Officer, DIKhan for information and necessary action.
4. Mr. Abdul Hakim Khan Assistant Superintendent Central Prison DIKhan for information.

SUPERINTENDENT
CIRCLE H/Qs PRISON DIKHAN
16/01/14

Abdul Hakim Khan
Sy

B

4

Before the inspector general of prison K.P.K Peshawar

Subject: Appeal from order dated 16-01-2014 of superintendent circle prison D.I.Khan vide which the appellant has been removed from service.

Prayers: On acceptance of this appeal against the order dated 16-01-2014, and the appellant may please re-instate to his service as warder with all back benefits.

Respected Sir,

The appellant with great respect as under,

- 1) That the appellant has been appointed initially as warder in PBS-5 and from the date of the date of his appointment neither he has been deliberately absent, nor any other type of complaint has been received by the higher-authorities against the appellant.
- 2) The prior to issuing removal order to the appellant, no show cause/charge sheet and statement of allegations were provided to him while, he was removed from service and he was condemned unheard.
- 3) That the appellant was removed from service on the basis of his absence from duty, but at the relevant days he was seriously ill, therefore, he could not perform his duties.

Therefore, it is humbly prayed that on acceptance of this appeal in hand and the appellant may kindly be re-insate of his service as warder with all back benefits.

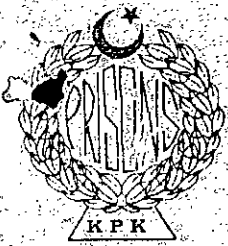
Thank you

Date: 12 / 2 / 2014

Your's Obediently,

Handwritten signature

*Handwritten text in Urdu: محمد زبیر علی شاد پشاور
کوئٹہ میرٹھ سروسٹاڈ
لائی بارڈر سروسٹاڈ
D.I.Khan*



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

NO. 11127

DATED 29-4-2014

To

The Superintendent,
Headquarters Prison D.I.Khan.

Subject:- DEPARTMENTAL APPEAL
Memo:

I am directed to refer to your letter No.2186 dated 24-3-2014 on the subject and to convey that appeal of Mr.Muhammad Zubair Ex-warder for set asiding the penalty of Removal from Service has been considered and rejected by the competent authority(I.G).

Please inform him accordingly.

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

my

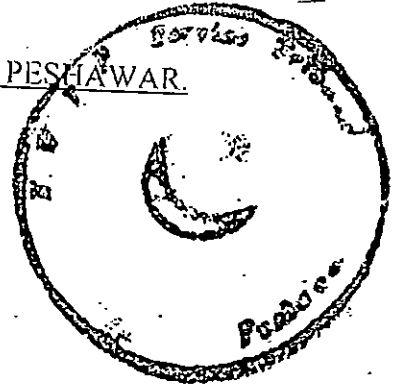
6

18-6-10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1559/2009

Date of Institution. ... 02.9.2009
Date of Decision ... 28.6.2010



Asmatullah Shah, Ex-Warder,
District Jail, Bannu.

(Appellant)

VERSUS

1. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent Headquarters Prison, Peshawar.
3. Superintendent, Central Prison, D.I.Khan.
4. Superintendent, Central Prison, Bannu.

(Respondents)

APPEAL AGAINST THE IMPUGNED ORDER DATED 25.6.2009 WHEREBY APPELLANT HAS BEEN TERMINATED FROM SERVICE WITH IMMEDIATE EFFECT AND ALSO AGAINST THE IMPUGNED ORDER DATED 12.8.2009 WHEREBY THE APPELLANT'S REPRESENTATION FOR REINSTATEMENT IN SERVICE HAS BEEN FILED.

MR. ASLAM KHAN KHATTAK,
Advocate

For appellant

MR. SHERAFGAN KHATTAK,
Addl. Advocate General

For respondents.

MR. SULTAN MAHMOOD KHATTAK, ...
MR. NOOR ALI KHAN, ...

MEMBER
MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER. - This appeal has been filed against the order dated 25.6.2009, whereby the appellant has been terminated from service and against the order dated 12.8.2009, whereby departmental appeal of the appellant has been rejected.

2. Brief facts of the case as narrated in the memo of appeal are that the appellant while serving in Central Prison Bannu was transferred to Central Prison D.I.Khan and was relieved from duty on 09.5.2009 but due to illness of his mother, he could not join duty at D.I.Khan. His services were terminated vide impugned order dated 25.6.2009. Feeling aggrieved, the appellant preferred departmental appeal on 30.6.2009, which was rejected on 12.8.2009, hence the present appeal.

ATTESTED
EXAMINER
KWP/FP Service Tribunal
Peshawar

3. The learned counsel for the appellant contended that the appellant has been terminated from service without but no show cause notice has been served upon him nor proper enquiry conducted, which was not only a formalities but was mandatory under the law. He relied on NLR 1991 TD 475. Counsel for the appellant further argued that in similar cases other official namely Shafqat Ali, Warder has been reinstated in service and the appellant is also entitled to the same treatment, which has been meted out with his other colleague. In support of his arguments, the learned counsel for the appellant relied on 1994 PLC (C.S)1134. He requested that the appeal may be accepted the appellant may be reinstated in service with all back benefits.

4. The learned AAG, on the other hand, argued that the appellant was relieved from Central Prison Bannu on 09.5.2009 to join duty at Central Prison D.I.Khan but he failed to joint duty at Central Prison D.I.Khan inspite of lapse of one and a half months nor he conveyed any information about his long absence. He further contended that the appellant was under probation and his services were rightly terminated due to his unsatisfactory conduct. He requested that the appeal may be dismissed with cost.

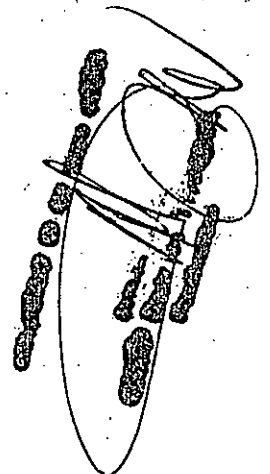
5. The Tribunal observes that the appellant has been terminated from service vide order dated 25.6.2009, but no proper procedure has been adopted by the respondents. No charge sheet/statement of allegations has been issued to the appellant nor proper enquiry conducted in the matter, which were not only a formality but mandatory under the law. Similarly, other colleague of the appellant namely Shafaqat Ali, Warder has been reinstated while the appellant has been discriminated. The appellant has made out a case for indulgence of the Tribunal.

6. In view of the above, the appeal is accepted, the impugned order dated 25.6.2009 is set aside and the appellant is reinstated into service with all back benefits. No order as to costs. File be consigned to the record.

ANNOUNCED.
28.6.2010

(NOOR ALI KHAN)
MEMBER

(SULTAN MAHMOOD KHATTAK)
MEMBER



Handwritten notes at the top right, including the word "مستحق" (Mastahiq) and other illegible script.

Handwritten notes on the left side, including the word "مستحق" (Mastahiq).

Three horizontal lines with handwritten markings below them.

Handwritten word "المستحق" (Al-Mastahiq).

Main body of handwritten text, appearing to be a list or detailed notes, written in a cursive style.

Two small circles (o) flanking a horizontal line.

Handwritten word "المستحق" (Al-Mastahiq) written below the line.

Handwritten word "المستحق" (Al-Mastahiq) on a line.

Handwritten word "المستحق" (Al-Mastahiq) on a line.

Handwritten word "المستحق" (Al-Mastahiq) on a line.

Handwritten word "المستحق" (Al-Mastahiq) on a line.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Service Appeal No.755/2014
Ex-Warder Mr. Muhammad Zubair
Attached to Central Prison D.I.Khan.....Appellant

VERSUS

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

PARAWISE REPLY ON BEHALF OF RESPONDENTS

Preliminary Objections.

- i. That the appellant has got no cause of action.
- ii. That the appeal is incompetent and is not maintainable in its present form.
- iii. That the appellant is estopped by his own conduct to bring the present appeal.
- iv. That the appellant has no locus standi.
- v. That the appeal is bad for mis joinder and non-joinder of necessary parties.
- vi. That the appeal is badly time barred.


ON FACTS

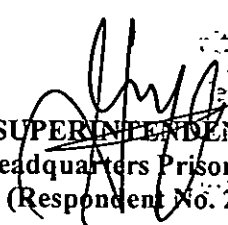
- 1- No Comments.
- 2- Incorrect, the appellant has neither informed about his illness nor submitted any medical certificate issued by the competent authority. In this connection his statement is false.
- 3- As in Para#2.
- 4- The appellant absented himself w.e.f 13.10.2013 to 16.01.2014 willfully and in this regard he was served a show cause notice under Khyber Pakhtunkhwa Govt: Servant E&D Rules-2011 vide Endst No.214-15 dated 08.01.2014 and also called him by the inquiry officer Mr. Abdul Hakim Khan Assistant Superintendent for personal hearing on 06.01.2014 vide memo No. 16002-04 dated 31.12.2013 on his home address i.e. village and post office Kotka Mirdal Surrani Bannu by the inquiry officer. Show Cause notice and memo dated 31.12.2013 are annexed as "A" and "B" respectively.
- 5- The departmental appeal was considered in accordance with law which was regretted on sound reason (order annexed as "C").
- 6- The refer case is not similar to the case of appellant both on point of law on facts, hence irrelevant.

GROUNDS: -

- a. Incorrect, the appellant remained absent from duty willfully and intentionally. The appellant also failed to justify his willful absence from duty. The appellant even not submitted reply to show cause notice and failed to appear before the inquiry officer.
- b. Incorrect, all the codal formalities were observed in according with the rules. He was also called for hearing but he did not attend the inquiry officer on due date & time.
- c. Incorrect, the specific charge of his willful absence were served upon him in the show cause notice vide Superintendent Headquarter Prisons D.I.Khan Ends No. 214-15 dated 08.01.2014.
- d. Incorrect, the departmental appeal has been rejected by the competent authority vide his memo No.11128 dated 29.04.2014 on sound reason and also communicated to Superintendent Central Prison D.I.Khan vide memo No. 3638 dated 06.05.2014.
- e. Incorrect, his willful absence and previous service record as also cover his misconduct.
- f. Incorrect, the appellant was removed from service by the competent authority under the proper order vide endst order NO. 427-30 dated 16.01.2014.
- g. Incorrect, proper inquiry was conducted in the matter wherein all the opportunity of defense was provided to the appellant but he failed to attend any process of the inquiry deliberately.

In view of the above, it is therefore requested that the appeal may kindly be dismissed with cost throughout.


INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)


SUPERINTENDENT
Circle Headquarters Prison D.I.Khan
(Respondent No. 2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In the matter of
Service Appeal No.755/2014
Ex- Warder Mr. Muhammad Zubair
Attached to Central Prison DIKhan

.....Appellant.

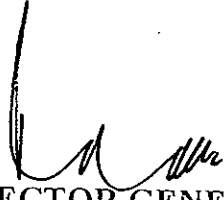
VERSUS

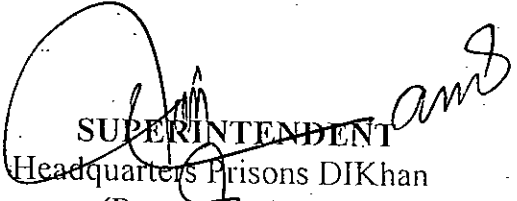
1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent Headquarters Prisons DIKhan.

.....Respondents.

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS NO. 1 TO 2.

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


1. INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


2. SUPERINTENDENT
Headquarters Prisons DIKhan
(Respondent No.2)



Annex A

OFFICE
SUPERINTENDENT
CENTRAL PRISON D.I.KHAN

No. _____ / Dated _____

REGISTERED / A.D

To.

- 1). Warder Muhammad Zubair s/o Shah Faraz Khan,
Kotka Meerdal Surrani,
Post Office Nizam Bazar, Bannu.
- 2). Warder Shafqat Ali s/o Afsar Ali,
Village & Post Office Mithakhel, Mandhan Road,
Nizam Bazar, Bannu.
- 3). Warder Umar Ali s/o Khalil-ur-Rahman,
Village Dilghan Shady Khan,
Post Office Fazal Haq Mandhan Surrani, Bannu.

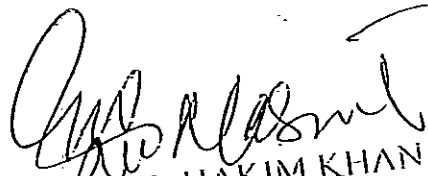
Subject:-

DISCIPLINARY ACTION.

Memo:-

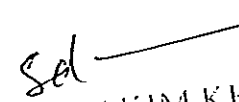
Reference Superintendent HQ Prison DIKhan Indst: No.12472-74 dated
10-12-2013.

You were directed to appear before the undersigned for inquiry
proceeding against you in the willful absence case on dated 06-01-2014 at Cent
Prison DIKhan positively, in case non-compliance exparte action will
recommended against you.


ABDUL HAKIM KHAN
ASSISTANT SUPERINTENDENT
INQUIRY OFFICER
CENTRAL PRISON D.I.KHAN

Indst: No. 16005 dated 31/12/013

Copy of the above is forwarded to the Superintendent HQ
DIKhan for information with reference to above please.


ABDUL HAKIM KHAN
ASSISTANT SUPERINTENDENT
INQUIRY OFFICER
CENTRAL PRISON D.I.KHAN

Annex-B

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

You (BPS-05) attached to Central Prison DIKhan absented themselves from duties lines, at his own accord on the dates mentioned below against your names: -

- 1. Warder Muhammad Zubair
- 2. Warder Umar Ali
- 3. Shafqat Ali

13-10-2013 till date.
 23-10-2013 till date.
 28-10-2013 till date. ✓

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

Now therefore, you above named warders 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 yours above stated act of negligence and misconduct.

In case yours reply does not reach to this office within stipulated period exparte action shall be taken against you.
You may appear before the undersigned for personal hearing on 16-01-2014 if you wish to.

Ends No. 214-15 dated 08/01/2014
 SUPERINTENDENT
 HEADQUARTER PRISONS DIKHAN
 8.1.2014

- 1. Superintendent Central Prison DIKhan (Line Officer), a copy of show cause notice duly signed / dated by the accused warders may please be returned to this Headquarter as a token of receipt and office record.
- 2. Warders (BPS-05) Muhammad Zubair, Umar Ali & Shafqat Ali.

ذاتاً علی
 2/1/14

SUPERINTENDENT
 HEADQUARTER PRISONS DIKHAN
 8.1.2014

Annex C

29-4-14



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

NO.

11127

DATED

29-4-2014

To

The Superintendent,
Headquarters Prison D.I.Khan.

Subject:- DEPARTMENTAL APPEAL
Memo:

I am directed to refer to your letter No.2186 dated 24-3-2014 on the subject and to convey that appeal of Mr.Muhammad Zubair Ex-warner for set asiding the penalty of Removal from Service has been considered and rejected by the competent authority(I.G).

Please inform him accordingly.

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

The Suprintendent,
Head Quater Jail, D.I. Khan.

Subject: INQUIRY.

Reference Your No. 12472.74 dated 10-12-2013
on the subject noted above.

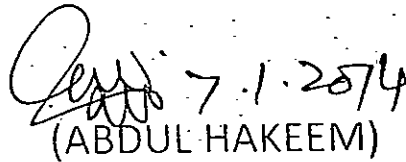
It is submitted that the following warders were
wilfully absented from their duties as well as jail premises
without permission of the competent authority on the dates as
mentioned again their names;-

s.No.	Name of warder.	Date of absent from duties.
1.	<u>Muhammad Zubair.</u>	13/10/2013 till date.
2.	Umar Ali.	23/10/2013 till date.
3.	Shafqat Ali.	28/10/2013 till date.

Statements of allegations were sent on their home
addresses vide this office registered letter No.12472-74 dated
10/12/2013 but they were failed to submit their replies to the
undersigned in stipulated period. They were also directed to
appear before the undersigned for inquiry proceeding against
you in the wilful absence case on 06/01/2014 vide registered
letter No.16002-4 dated 3/12/2013 but they were failed to
appear before the undersigned on the date fixed.

It is recommended that ex-parte action may
please be taken against the above mentioned warders.

Submitted for order please.


(ABDUL HAKEEM)

INQUIRY OFFICER/ASSTT; SUPDT;
CENTRAL PRISON D.I.KHAN.



A

3

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

No. _____/H/Q Dated _____

OFFICE ORDER

Warder Muhammad Zubar attached to Central Prison DIKhan was called for heard in person on 16-01-2014. He attended and not furnished no any satisfactory reply in the disciplinary action initiated by Superintendent Central Prison DIKhan. Further more the charged also proved about his absence w.e.f dated 13-10-2013 till date. He is also habitual absentee previously he was punished for stoppage of one increment for one year on 04-08-2010 vide Suprintendent Headquatar Prisons Peshawar Endt: No.1913-15 dated 09-06-2013, moreover he was also removed from service on 23-11-2013 vide Suprintendent Headquatar Prison DIKhan Endst: No.7768-73 dated 19-11-2012.

Therefore in the instent case of absence w.e.f 13-10-2013 till date and also in the light of previous record of punishment, the recommendation of the Inquiry Officer (REMOVAL FROM SERVICE) has been approved with immediate effect.

SUPERINTENDENT
CIRCLE H/Qs PRISON DIKHAN

ENDST NO 4/0 - 13 16/1/14

Copy of the above is forwarded the:-

1. Inspector General of Prison Khyber Pakhtunkhwa Peshawar for information.
2. Superintendent Central Prison DIKhan (Line Officer)
3. District Accounts Officer, DIKhan for information and necessary action.
4. Mr. Abdul Hakim Khan Assistant Superintendent Central Prison DIKhan for information.

SUPERINTENDENT
CIRCLE H/Qs PRISON DIKHAN

16/1/14



PB

OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON D.I.KHAN

No. 11707 / Dated 8/11/13

To,

The Superintendent,
Headquarter Prison DI Khan.

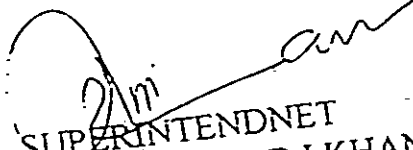
Subject: - DISCIPLINARY ACTION.

Memo,

It is submitted that the following Watch & Ward staff absented themselves from duties as well as from jail premises without permission of the competent authority with effect from the dates mention against their names: -

1. Warder Mohammad Zubair-----13-10-2013.
2. Warder Umer Ali-----23-10-2013.
3. Warder Shafqat Ali-----28-10-2013. ✓
4. Warder Ihsanullah No.2-----28-10-2013.
5. Warder Salman Shah-----03-11-2013.

Therefore strict disciplinary proceeding are requested against the above noted staff under intimation to this office please.


SUPERINTENDENT
CENTRAL PRISON D.I.KHAN
11/11/13

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 1460 /ST

Dated 23 /07/2018


To

The Inspector General of Prison,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 755/2014, MR.MUHAMMAD ZUBAIR AND ONE OTHER.**

I am directed to forward herewith a certified copy of Judgment/Order dated 09/07/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

de