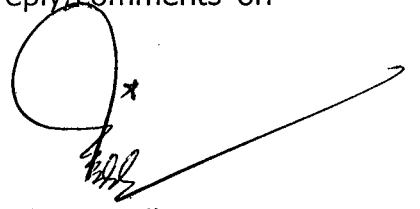


21.06.2022

Miss Uzma Syed, Advocate present and submitted Wakalatnama in favour of the appellant which is placed on file. Preliminary arguments heard

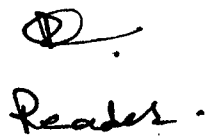
Learned counsel for the appellant contended that this is second round of litigation and the appellant is aggrieved of the impugned order dated 17.12.2020 whereby minor penalty of withholding of increment for one year was awarded to the appellant. In addition, his absence period w.e.f. 01.07.2010 to 15.11.2010 was treated as leave without pay and the intervening period from the date of dismissal from service i.e. 23.07.2011 to the date of reinstatement in service i.e. 19.06.2017 was also treated as leave without pay. The appellant preferred departmental appeal against the impugned order on 16.02.2021, which was, however, not decided within stipulated statutory period whereafter he approached the Service Tribunal through the instant service appeal on 20.09.2021. It was further argued that the appellant is entitled for back benefits for the intervening period and the penalty imposed is not in line with the recommendation of enquiry report. In case the competent authority was not in agreement with the findings/recommendations of the enquiry, he was required to have recorded his reasons, before awarding the impugned penalty. The impugned order being a void order is not maintainable and may graciously be set aside, she concluded.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for submission of written reply/comments on 09.08.2022 before S.B.



(Mian Muhammad)
Member (E)

9.8.2022 Due to The Public Holiday The case is
Adjourned to 30-9-2022

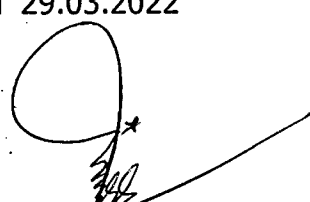


Reader.

27.01.2022

Clerk of learned counsel for the appellant present.

Clerk of learned counsel for the appellant seeks adjournment on the ground that learned counsel is not available today. Adjourned. To come up for preliminary hearing on 29.03.2022 before S.B.

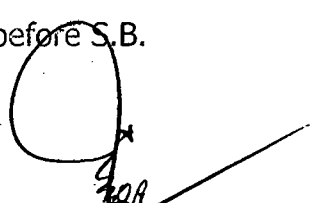


(Mian Muhammad)
Member(E)

29.03.2022

Clerk of learned counsel for the appellant present.

Former requests for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for preliminary hearing on 20.05.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER(E)

20.05.2022

Learned counsel for the appellant present and requested for adjournment in order to further prepare the brief. Adjourned. To come up for preliminary hearing on 21.06.2022 before S.B.



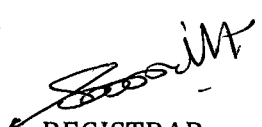

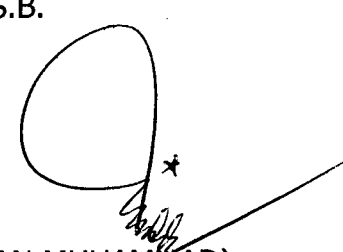
(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2449 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	23/09/2021	<p>The appeal of Mr. Aftab Hussain resubmitted today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p>		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>19.11.2021</p> <p>Clerk of learned counsel for the appellant present.</p> <p>Former requests for adjournment on the ground that learned counsel is not available today. Adjourned. To come up for preliminary hearing on 27.01.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST**

Case Title: Abtab Hussain vs Grant of LAD

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Syed Noman Ali Bulaha</u>	✓	
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?	✓	
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?		
19.	Whether requisite number of spare copies attached?		
20.	Whether complete spare copy is filed in separate file cover?		
21.	Whether addresses of parties given are complete?		
22.	Whether index filed?		
23.	Whether index is correct?		
24.	Whether Security and Process Fee deposited? on _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on _____		
26.	Whether copies of comments/reply/rejoinder submitted? on _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Syed Noman Ali Bulaha

Signature:

[Handwritten Signature]

Dated:

The appeal of Mr. Aftab Hussain son of Fazal Khaliq Technician Central Prison Mardan received today i.e. on 20.09.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Annexures-B, E and I of the appeal are illegible which may be replaced by legible/better one.

No. 1874 /S.T,

Dt. 20/09 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Noman Ali Bukhari Adv. Pesh.

Sir

① objections removed & file re-submitted.
Jawad

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

7449
APPEAL NO. _____/2021


AFTAB HUSSAIN

V/S


Prison Deptt:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal and affidavit	-----	1-7
2.	Copy of condonation of delay	-----	08
3.	Copy of appointment order	A	09
4.	Copy of dismissal order	B	10
5.	Copy of departmental appeal	C	11-13
6.	Copy of judgment	D	14-18
7.	Copy of re-instatement order	E	19-22
8.	Copy of CPLA order	F	23-24
9.	Copy of execution order	G	25-26
10.	Copy of inquiry report	H	27-29
11.	Copy of impugned order	I	30
12.	Copy of departmental appeal	J	31-33
13.	Vakalat nama	-----	34


APPELLANT
AFTAB HUSSAIN

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.

1

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. _____/2021

Aftab Hussain S/O Fazal Khaliq (Technician)
Central Prison Mardan. Appellant

Versus

1. Secretary Home & Tribal Affairs Department
Govt of KPK, Peshawar.
2. Inspector General (Prison) Govt, of Kpk, Peshawar.
..... Respondents

.....

APPEAL UNDER SECTION 4 OF KP SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 17.12.2020 WHEREIN PENALTY OF WITHHOLDING OF INCREMENT FOR ONE YEAR AND THE PERIOD OF ABSENCE AND INTERVENING PERIOD IS TREATED AS ALEAVE WITHOUT PAY ANNUAL AND AGAINST NOT DECIDING DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS. WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE.

PRAYERS IN APPEAL

ON ACCEPTANCE OF THIS APPEAL THE ORDER PASSED BY RESPONDENT NO. 2 DATED 17.12.2020 MAY PLEASE BE SET ASIDE AND THE ANNUAL INCREMENT MAY BE RESTORED TO APPELLANT AND INTERVENING PERIOD W.E.FROM 23.07.2011 TO 12.03.2014 (DATE OF JUDGMENT) AND FROM 13.03.2014 TO 08.06.2017 (DATE OF RE-INSTATEMENT). MAY PLEASE BE TREATED AS FULL PAY OR LEAVE OF

2

THE KIND DUE WITH ALL BACK AND
CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY,
WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND
APPROPRIATE THAT, MAY ALSO BE AWARDED IN
FAVOR OF APPELLANT

Respectfully Sheweth:

1. That the appellant was appointed as Dispenser in the Department of Prison of KPK, on 04-11-2004. (Copy of the appointment letter is attached as Annexure-A).
2. That on 19-4-2010 the appellant got transferred from Dassu (Kohistan) to Sub Jail Daggar Buner where the appellant started his duty and on 08-06-2010 after two months the order of the appellant dated 19-04-2010 was cancelled and the appellant was relieved on 01-07-2010 from Sub Jail Daggar back to Dassu District, Kohistan.
3. That during the meantime the appellant because of some medical problems could not join his duty at Sub Jail Dassu that the other problem faced by the family of the appellant being basically resident of District Swat was also that of the migration from Swat to District Mardan as IDPs during the tenure of about 02 years.
4. That on 26-11-2010 a fresh transfer order from Sub Jail Dassu Kohistan to Sub Jail Daggar, where the appellant join his service. That after joining, so called inquiry proceedings were conducted by the jail Superintendent Swat, and the findings of the Inquiry the stoppage of 04 increments as well as the period of absence, treated as extra ordinary leave without pay were recommended.
5. That inspite of the fact that the punishment of dismissal was not recommended in the findings of the inquiry proceedings, will the appellant was handed over a dismissal order on 23-07-2011. (Copy of the dismissal order is attached herewith as Annexure-"B").

6. That appellant then filed a Departmental Appeal against the above said order on 16-8-2011 which was rejected by the appellate authority. **(Copy of the Departmental Appeal is attached herewith as Annexure-"C").**
7. That the appellant being feeling aggrieved filed service appeal no: 941/2011 and the Hon'able Tribunal is kind enough to accept the appeal of the appellant vide judgment dated 12.03.2014, whereby the impugned orders were set-aside and the appellant was re-instated in to service and the proceeding was remanded to the competent authority for an order a fresh accordance with law. **(Copy of judgment is attached as annexure-D).**
8. That after tribunal judgment the appellant was re-instated in to service vide order dated 08.06.2017 while the back benefit of the intervening period has been left on the decision of the CPLA/denovo inquiry after lapse of three years. **Copy of the re-instatement order is attached as annexure-E.**
9. That thereafter, appellant filed execution petition no: 25/2020 for proper implementation. During execution petition the CPLA was dismissed by the Hon'able Supreme Court vide order 01.09.2020. Thereafter, respondent submitted impugned order dated 17.12.2020, inquiry report and through execution petition on 18.01.2021. **(Copy of the CPLA Order, Execution petition order dated 18.01.2021, inquiry report and impugned order is attached as annexure-F, G, H & I).**
10. That the appellant feeling aggrieved from the impugned order filed departmental appeal which was not decided within statutory period of 90 days. Hence, the present appeal on the following grounds amongst other. **(Copy of the departmental appeal is attached as annexure-J).**

 **GROUND:**

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- A. That the impugned order of the appellant is illegal unlawful without authority/jurisdiction and being based on malafide intentions is liable to be set-aside.
- B. That the malafide intentions of the respondent Department is very much clear from the fact that the appellant was frequently transferred from on place to another place without any cogent reasons.
- C. That no inquiry proceedings as prescribed under the prevailing laws was over conducted, still in the findings of inquiry of punishment recommended was only warning and yet the appellants was awarded withholding on annual increment without mentioning any reasons for dis-agreeing of the recommendations of the inquiry officer.
- D. That the punishment awarded to the appellant was not proportionate with his fault and he was awarded the maximum punishment and the punishing authority did not considered the situation faced by the appellant as during the said period the whole family of the appellant was migrated from Swat to Mardan as IDPs during the said period.
- E. That neither process/procedure as prescribed in the service laws were ever adopted by the respondent Department, nor he was ever served with a final show cause notice as his required under the prevailing laws/rules.
- F. That after Tribunal judgment dated 12.03.2014 the appellant was re-instated in to service vide order dated 08.06.2017 while the back benefit of the intervening period has been left on the decision of the CPLA/denovo inquiry. The reinstatement order of the appellant was issued after lapse of three years which is unjust and unlawful. The treating intervening period as leave without pay we.from the 12.03.2014 till re-instatement is unlawful and against the norms of justice.

- (5)
- G. That according to Supreme Court judgments, if the delay on the part of the department and there is no fault of the appellant in the same, the appellant should not suffer with the same and the benefits was allowed to the appellant for the said period.
- H. That once the appellant re-instated into service without any penalty and only the back benefits is subject to the outcome of denovo inquiry but quite astonishingly the penalty was also awarded to the appellant. Which is illegal and unlawful.
- I. That the appellant cannot be held responsible for the lapse/irregularities committed by the department and in such case the Hon'able Supreme Court of Pakistan has held the department responsible not the appellants.
- J. That it is pertinent to mentioned here that appellant in intervening period after the judgment of tribunal regularly visited the office and so the appellant never remained absent from duty. so if the performance of duties is concerned it is due to illegal dismissal order of the department the appellant not performed duties, so the appellant cannot be suffered for the fault of others.
- K. That the relevant authorities restrain the appellant from performance of duty due to there improper exercise of official power, therefore, the appellant cannot be deprived from his legal right of salary.
- L. That the appellant is not deprived from the back benefits for the period which they remained out of service without any fault from their side, that According to judgment of Supreme Court reported as 2007 PLC Supreme Court-184 as mentioned below:

“the salaried of civil servant would not be withheld for the intervening period when they remained pout of service due to whimsical and arbitrary actions of the functionaries. Civil servant had every right to recover their arrears”

(6)

So, in the light of Supreme Court Judgment the appellant is also legally entitled for their salaries.

- L. That the appellant was not remained gain full employee during the period out of service and the appellant is legally entitled to pay benefits w.e.from 12.03.2014 TO 08.06.2017. according to judgment of Supreme Court Reported as 07 SCMR-855(b), s the appellant is legally entitled for salaries for a such period.
- M. That the respondent No. 2 was bound to give the reasons for not agreeing with the findings/recommendations of the inquiry officers and passing impugned order in such a manner was not warranted under the law.
- M. That even the inquiry officer could not prove in his inquiry proceedings the allegations leveled against the appellant it is therefore the inquiry officer not proposed penalty.
- A) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT
AFTAB HUSSAIN

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.


DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COUR

7

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2021

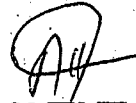
AFTAB HUSSAIN

V/S

Prison Deptt:

AFFIDAVIT

I, AFTAB HUSSAIN, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.



DEPONENT

AFTAB HUSSAIN

8

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2021

Aftab Hussain

V/S

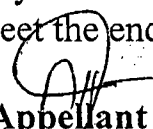
Govt Of KP

.....
**APPLICATION FOR CONDONATION
OF DELAY IN THE INSTANT APPEAL**

RESPECTFULLY SHEWETH:

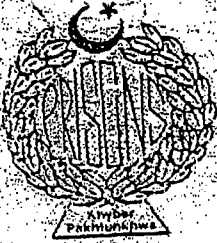
1. That the instant appeal is pending before this Honorable Tribunal in which no date has been fixed.
2. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (2003, PLD (SC) 724.
3. That according to superior court judgment cited as 2002 plc (cs) 1388 no limitation run in case of pay matters.
4. That due to spread of the pandemic disease the appellant was unable to submit appeal in time therefore it is requested to treat the limitation under S-30 of KP Epidemic Control and relief act Act 2020, otherwise, the appeal of the appellant on merit is good enough to be decided on merits.

It is therefore most humbly prayed that the instant appeal may be decided on merit by condoning the delay under S-30 of KP Epidemic Control and relief act Act 2020, to meet the ends of justice.


Appellant
Aftab Hussain

Through


SYED NOMAN ALI BUKHARI
Advocate High Court



ORDER

Bakhtul Ullah
(Signature)

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
No. 41/2-J-2004/8549

Dated 19-04-2010

Following postings/transfers is hereby ordered in the public interest:-

S.No.	NAME OF OFFICIAL	FROM	TO
1.	Mr. Aftab Hussain, Dispenser (BPS-6)	Sub Jail Dassu	Sub Jail Daggar Vice No.2
2.	Mr. Gul Fam, Junior Technician / Dispenser (BPS- 9)	Sub Jail Daggar	Sub Jail Dassu vice No:1

NOTE

- Arrival and departure reports should be sent to all concerned.
- Both the Officials should be relieved of their duties immediately by making the arrangements.
- Minimum joining time may be allowed.

INSPECTOR GENERAL OF PRISONS
NWFP PESHAWAR

ENDST: NO. 8550-56

Copy of the above is forwarded to :-

- The Superintendent, Sub Jail Dassu.
- The Superintendent, Sub Jail Daggar.
For information and necessary action.
- The District Accounts Officer Dassu Kohistan
- The District Accounts Officer Daggar.
- The PA to IG Prisons NWFP
For information
- The PS to Minister for Jails NWFP, for information.
- Office Record Keeper for placing a copy of the said order in personal file of the official concerned.

sd _____
(SAHIBZADA FAZLI RAHIM
ADMINISTRATIVE OFFICER
FOR I.G PRISONS NWFP PESHAWAR)



Better Copy

35

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

No: 412-J-2004 PH/14728

Dated: 23/07/2011

ORDER

On completion of proceedings and in exercise of powers conferred under section-3 read with section-8 of the NWFP Removal from Service (Special Powers) Ordinance 2000, after personal hearing and keeping in view the unsatisfactory reply regarding willful absence from duty with effect from 01-07-2010 to 25-11-2010 as well as submission of bogus medical certificates for the said period by Mr. Aftab Hussain, Dispenser (BPS-6) attached to District Jail Mansehra, the competent authority is pleased to impose major penalty of Dismissal from Service on him with immediate effect.

INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

ENDST; No. 1479 - 34 /-

Copy of the above is forwarded to:-

1. The Superintendent, District Jail Mansehra, for information and necessary action.
2. Mr. Akhtar Munir, Deputy Superintendent Cum Superintendent District Jail Swat, for information with reference to his memo; No. 1322-WE dated 22-4-2011.
3. The Superintendent Sub Jail Daggar (Buner) for information and necessary action.
4. The District Account Officer Mansehra and Daggar (Buner).
5. Mr. Aftab Hussain S/O Fazal Khaliq Mohalla Malook Abad Mingora District Swat for information.

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

Te,

The Honorable Secretary
Home of Khyber Pakhtoon Khwa
at Peshawar

Aftab Hussain S/O Fazal Khaliq Dispenser (Presently dismissed)
R/O Mohalla Malookabad, Mingora Swat Appellant

Departmental appeal against dismissed order of the appellant
dated 23-07-2011 by the inspector General prison of Khyber Pakhtoon
Khwa.

Respected Sir,

The appellant submits the following.

1. That the appellant got appointed as a dispenser in the department of prison of Khyber Pakhtoon Khwa a on 04-11-2004 copy attached as A.
2. That on 19-04-2010 appellant got transferred from Dusso (Kohsitan) to Sub jail Daggar Buner where the appellant started his duty(Order attached as B)
3. That on 08-06-2010 Transfer order of appellant dated 19-04-2010 was got cancelled by competent authority and the appellant was relieved on 01-07-2010 from sub -jail Daggar (Transfer cancellation and relieve and relieving docket attached C and D.)
4. That after relieve from sub- jail Daggar on 01-07-2010 the appellant could not join his duty at Sub-jail dusso due to medical reasons Leubago / (backache). The appellant was stationed at Mardan in those days being an I.D.P therefore he kept continued his treatment from DHQ Mardan.
5. That on 26-11-2010 the appellant was once again transferred from sub jail Dusso to sub -jail Daggar where the appellant started/ joined his service (Copy of transfer order attached as E).
6. That an 06-04-2011 on inquiry was initiated against the appellant for the absence from duty from 01-07-2010 to 26-11-2010 at sub-jail Dusso and the inquiry officer was Mr Akhtar Muneer, Deputy superintendent district jail Swat.


7. That as per direction of the inquiry officer the appellant submitted his submissions/ explanations to the inquiry officer about the absence from duty period (Direction of inquiry officer and submissions are attached as F and G).
8. That after submission of inquiry report the worthy inspector General prison gave a show cause Notice to the appellant of which the appellant gave his reply/ defense (copies attached as H , I and J)
9. That on 23-07-2011 the worthy inspector general (Prison) terminated/ dismissed the appellant from service mainly for production of bogus medical Certificates from 01-07-2011 to 25-11-2011 (order attached as K).
10. That the appellant is suffering from Luebago/ Backache since 2007 and that is the reason that during the service period of the appellant a medical board was constituted regarding his ailment which gave its reports on 10-11-2007 that the appellant was suffering from backache which is available in the office of I.G. prison (in personal file of appellant)(Copy also attached as Z) where upon the I.G.P prison issued a letter dated 27-03-2009 and 29-11-2008 which suggest that the appellant was having Backache which still continued (letters attached as L and M).
11. That the I.G.P has stated in Dismissal order of appellant that opportunity of personal hearing was given to the appellant but the appellant has never been heard.
12. That about bogus medical certificates the appellant has given his reply to the inquiry officer as well as the I.G.P which are G and J.
13. That the inquiry officer has given his opinion in last lines of inquiry report which is attached as "H" while the I.G.P has gone behind the recommendations of the inquiry officer and has awarded capital punishment of dismissal of appellant from service which is injustice and mala fide in the part of I.G.Prison.
14. That the appellant may kindly be given a chance to serve the Deptt. He may kindly be poised at his native district.

15. That on 15-03-2010 post of the appellant was up-graded but the same benefit was not given to the appellant uptill now. (order and seniority list attached and N and O) which is injustice with the appellant.
16. That the appellant is a sincere, devoted and committed employee and that is the reason that no complaint has ever been made against the appellant by anyone.
17. That the appellant belongs to very humble background and is the sole source of income / sole bread earner of his family.
18. That any fault attributed to the appellant is not his intentional and mala fide but could be a mistake and may be kindly pardoned.

PRAYER:

- 1) On acceptance of this appeal the appellant may kindly be restored to his service and dismissal order dated 23-07-2011 may be set-aside.
- 2) The appellant may kindly be up graded from BPS 06 to BPS-09 as per policy of the Government.
- 3) The appellant may kindly be posted in his native district please.

Yours Sincerely

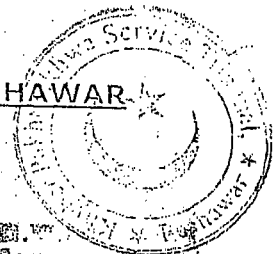

Aftab Hussan
(Dispenser)
Malook Abad Mingora Swat

Dated: 16-08-2011

D

14

BEFORE THE SERVICE TRIBUNAL K.P.K., PESHAWAR



Service Appeal No. 1941 /2011

1823
30/11/2011

Aftab Hussain S/o Fazal Khalid (Ex-Dispenser)
Sub Jail Daggar Buner.....Appellant

Versus

1. Secretary Home & Tribal Affairs Department Govt. of K.P.K., Peshawar.
2. Inspector General (Prisons) Govt. of K.P.K., Peshawar.

.....Respondents

Appeal u/s 4 of NWFP Service Tribunal Act 1974 against the order of respondent No. 2 23.07.2011 whereby the appellant has been dismissed with immediate effect from his service.

[Handwritten signature]
30/11/11

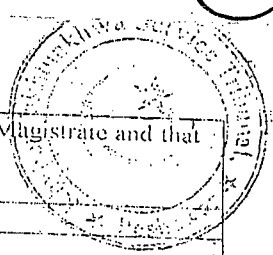
Prayer in Appeal:

On acceptance of this appeal the order of dismissal passed by respondent No. 2 dated 23.07.2011 may please be set-aside and the appellant be reinstated back to his service with all his back benefits

[Handwritten signature]
17/12/11



15



S.No. of order or proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	12.03.2014	<p style="text-align: center;">Appeal No. 19/11/2011 (Aftab Hussain-vs-Secretary Home Department, KPK and another)</p> <p>Appellant with counsel and Mr. Sheharyar Khan, Assistant Supdt. Jail on behalf of respondents with AAG present. Representative of the respondents produced copies of the requisite record, which are placed on file. He, however, stated that the second inquiry relating to absence from duty without intimation upto 8.6.2011 and non-compliance with lawful orders of the competent authority against the appellant is still pending because of dismissal from service of the appellant as a result of earlier departmental proceedings against him on the charges of absence from duty without intimation from 1.7.2010 to 25.11.2010 and production of bogus medical certificate. Arguments heard and record perused.</p> <p>Aftab Hussain (appellant) joined Prison Department as Dispenser on 4.11.2004, and on 8.6.2010, within two months of his transfer from Dasso, Kohistan to Sub Jail Daggar, Buner, on 19.4.2010, the transfer order was cancelled and the appellant was relieved from Sub Jail Daggar for joining duty at Dasso, Kohistan. According to the appellant, he could not join his duty at Sub Jail, Dasso because of some medical problem and other problems being faced by the residence of his home District Swat; and on 26.11.2010 a fresh transfer order from Sub Jail Dasso, Kohistan to Sub Jail, Daggar was issued. The appellant accordingly joined his service, but he was served with a show cause notice, followed by inquiry proceedings by the Jail Superintendent, Swat, who recommended stoppage of four increments as well as treating period of absence as extraordinary leave without pay. Though the Inquiry Officer did not recommend dismissal from service in his findings, the appellant was dismissed from service vide impugned order dated 23.7.2011. The appellant preferred departmental appeal against the impugned order but</p>

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the same was also rejected by the appellate authority and, allegedly, received by the appellant on 3.11.2011, hence this appeal on 30.11.2011.

The appeal has been lodged on the grounds that the appellant was frequently transferred from one place to another without any cogent reasons, that no inquiry proceedings as prescribed by the law were conducted; that the Inquiry Officer recommended penalty of stoppage of four increments but the competent authority awarded major penalty of dismissal from service without mentioning any reasons for disagreeing with the recommendations of the Inquiry Officer; that the penalty awarded to the appellant was not commensurate with the gravity of the charge; that the authority did not take into consideration the fact that during the said period the entire family of the appellant migrated from Swat to Mardan as IDPs; that the immediate officer of the appellant was satisfied with his performance; that the appellant was not served with final show cause notice and that neither reasons for maximum penalty were furnished nor the charge was proved against the appellant.

The appeal was contested by the respondents who filed their joint written reply, wherein, the impugned action was defended on the grounds that the appellant did not join his duty at Sub Jail DASSU, Kohistan, and remained absent from duty for long period from 1.7.2010, to 25.11.2010; and also that fake/bogus medical certificate was furnished by the appellant which was proved as such on verification from the Medical Superintendent, DHIQ Hospital, Mardan. The respondents claimed that proper inquiry proceedings were adopted and the appellant was duly served with a show cause notice. The respondents admitted that though the Inquiry Officer recommended stoppage of four annual increments but keeping in view nature of the charge/offence, the competent authority imposed major penalty upon the appellant strictly in accordance with the rules as the charge of bogus medical certificate stood proved against the appellant. They further claimed that the appellant has been provided

ample opportunity of defence and hearing. The appellant also filed rejoinder to the written reply of the respondents therein reiterating his case

The arguments of learned counsel for the appellant focused on the point that contrary to the recommendations of the Inquiry Officer for stoppage of four annual increments without future effect and treating the period of absence as extraordinary leave without pay, the competent authority i.e. Inspector-General of Prisons, KPK, Peshawar (Respondent No.2) awarded the penalty of dismissal from service, that too, without serving the appellant with final show cause notice therein mentioning the reasons for his disagreement with the recommendations of the Inquiry Officer. Like-wise, according to the learned counsel for the appellant, no reason, let alone cogent reason, was furnished by the appellate authority while rejecting departmental appeal of the appellant vide order conveyed through memo dated 27.10.2011.

The record made available by the respondent-department during the course of arguments would reveal that though the appellant was served with a show cause notice after culmination of inquiry proceedings against him on the charges of wilful absence from duty from 01.7.2010 to 25.11.2010 and production of bogus medical certificate, conveyed to him through charge sheet and statement of allegations dated 22.3.2011; but the show cause notice does not reveal reason of the competent authority for dissenting/disagreeing with the recommendations of the Inquiry Officer. Moreover, through the show cause notice, the competent authority conveyed to the appellant that he has tentatively decided to impose the major penalty of *removal from service*, but in the impugned order dated 23.7.2011, the major penalty of *dismissal from service* was imposed upon the appellant. Needless to say that removal from service and dismissal from service are two different penalties provided for in the NWFP (KPK) Removal from Service (Special Powers) Ordinance, 2000, where-under

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the appellant was proceeded against.

In the absence of reasons furnished by the competent authority in the show cause notice for disagreement with the findings/recommendations of the Inquiry Officer, the impugned order dated 23.7.2011 of the competent authority has been rendered not sustainable on this score alone in the eyes of law and judgment of the august Supreme Court of Pakistan reported as 2011 PLC(C.S) 1094 (a) (Supreme Court of Pakistan). Likewise, the order of the appellate authority conveyed vide memo dated 27.10.2011 is also not sustainable because of absence of reasons in accordance with the provision of section 24-A(2) of the General Clauses Act, 1897.

Consequently, on the acceptance of the appeal, both the impugned orders of the competent authority dated 23.7.2011 and that of the appellate authority conveyed through memo dated 27.10.2011 are set aside, and the appellant is reinstated in service. The departmental proceedings are accordingly remanded to the competent authority for an order afresh strictly in accordance with law and the observations made above as early as possible within the period prescribed by the law. The grant or otherwise of back benefits to the appellant shall be subject to the outcome of departmental/inquiry proceedings. There shall, however, be no order as to costs.

Adv Member

Adv Chairman

ANNOUNCED
12.03.2014

Certified to be a true copy

[Signature]

18.3.2014

[Signature]

[Signature]

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[Signature]

18.3.2014

18.3.2014

Best copy E (19)

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

C.M No. 37/2017

In

Service Appeal No. 1941/2011

Aftab Hussain S/o Afzal Khaliq Ex-Dispenser Sub Jail Daggar
Buner Appellant

VERSUS

Secretary Home & Tribal Affairs Department Govt of KPK Peshawar
and others Respondents

INDUX

S.No.	Description of Documents	Annex	Pages
1.	Application		1-2
2.	Copy of Judgment		3-7
3.	Copy of Application		8
4.	Wakalat Nama		

Applicant

Through

Ghulam Nabi
&

Mian Tajjam Ul Shah

Advocates, Peshawar

Cell# 0300-5845943

Dated 09-03-2017

E
19

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

CM No. 37 /2017

In

Service Appeal No. 1941/2011

Aftab Hussain S/o Fazal Khaliq Ex-Dispenser Sub Jail Duggar
Buner Appellant

VERSUS

Secretary Home & Tribal Affairs Department Govt of KPK,
Peshawar and others Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
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2.	Copy of Judgment		1-1
3.	Copy of the application		8
4.	Wakalat Nama		

Applicant

Through

Ghulam Nabi
Ghulam Nabi

& *Mian Tajamul UrShah*
Mian Tajamul UrShah

Advocates, Peshawar

Cell# 0300-5845943

Dated: - 09.03.2017

BEFORE THE SERVICE TRIBUNAL KPIC, PESHAWAR.

C.M.No. _____/2017

In

Service Appeal No. 1941/2011

Aftab Hussain S/o Fazal Khaliq Ex-Dispenser Sub Jail Daggar
Buner..... Appellant

VERSUS

1. Secretary Home & Tribal Affairs Department Govt of KPK Peshawar
 2. Inspector General (Prisons) Govt of KPK, Peshawar
- Respondents

APPLICATION FOR IMPLEMENTATION OF
THE JUDGMENT/ORDER OF THIS HON'BLE
TRIBUNAL DATED 12.03.2014 IN THE ABOVE
MENTION APPEAL.

Respectfully Sheweth:-

1. That the above noted service appeal was submitted before this Hon'ble Tribunal by the appellant.
2. That feeling aggrieved the Applicant/Judgment filed in Service Appeal No. 1941/2011 which was decided on 12.03.2014, in favour of the applicant (Copy of judgment is attached as Annexure "A").

- (21)
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3. That the representative on the respondent side was also present in said date, hence the respondent will be informed well in time with the regard to the judgment/order of this Hon'ble Court.
 4. That the applicant also submit an application on 23.04.2014 to the concern respondents regard to the implementation of the order/judgment of this Hon'ble Tribunal. (Copy of the application is attached as Annexure "B").
 5. That although the tenure of since 3 years have been passed after the passing of the above noted judgment, however till to pay the concerned respondents are not inclined towards the implementation of the orders of the Hon'ble Court.

It is, therefore, most humbly prayed that on acceptance of this application the concern departments may please be directed to implement the above noted order/judgment of this Hon'ble Tribunal dated 12.03.2014.

Applicant

Through

Glulam Nabi
Glulam Nabi

Mian Tajam Ullah
Mian Tajam Ullah

Advocates, Peshawar

Dated:- 09.03.2017

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

ORDER

WHEREAS, Mr. Aftab Hussain Dispenser /JTP while attached to District Jail Mansehra were awarded major penalty of Dismissal from Service for his willful absence from duty with effect from 01-07-2010 to 25-11-2010 as well as submission of fake medical certificate for the period of his absence vide this office order No. 14728 dated 23-07-2011.

AND WHEREAS, upon rejecting of his Departmental appeal he preferred service appeal No. 1941/2011 for set-aside the penalty awarded to him. On 12-03-2014 the learned Service Tribunal has decided his appeal and remanded the case to the Department for a fresh inquiry proceeding against him. The learned Tribunal further ordered that the grant of back benefits to the above name appellant shall be subject to outcome of fresh inquiry proceeding. Accordingly, the case was referred to Law Department for placing the Same to the Scrutiny Committee to decide as to whether the case is fit for CPLA in the August Session Court of Pakistan otherwise. The scrutiny committee concerned declare fit case for filing CPLA which accordingly filed by the Department and his case is pending in the August Session Court of Pakistan.

AND WHEREAS, the appellant filed execution Petition No. 37/2017 implementation of the Judgment dated 12-03-2014 and the learned Service Tribunal has asked for implementation of their Judgment referred to above.

AND WHEREAS, keeping in view the facts on record, as per orders of the learned Service Tribunal Mr. Aftab Hussain Dispenser/JTP is hereby reinstated into service with immediate effect and his intervening period i.e from the date of dismissal to the date of reinstatement in service will be decided on the basis of final outcome to CPLA/ denov inquiry.

On his reinstatement in service he is hereby posted to Central Prison Mardan against the vacant post of Junior Technician Pharmacy.

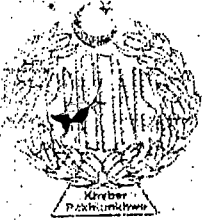
**INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA, PESHAWAR**

Endst No _____

Copy of the above forwarded to the:-

1. The Secretary to Government of Khyber Pakhtunkhwa Home and T.A Department Peshawar, for information with reference to Home Department letter No. SO (Courts)/HA/4313/2016 dated 13/04/2017.
2. The Superintendent Central Prison Mardan for information and further necessary action. A copy of Judgment dated 12-03-2014 of the learned Service Tribunal enclosed herewith.
3. The Superintendent District Jail Bannu and Mansehra for information and necessary action.
4. The District Accounts Officer Mansehra, Bannu and Mardan for information.
5. The registrar Service Tribunal Khyber Pakhtunkhwa Peshawar for information.

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



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 091-9210334, 9210406

☎ 091-9213445

No. Estb/Ward/Orders/ 13078

Dated 8-6-2017

ORDER

WHEREAS, Mr. Aftab Hussain Dispenser /JTP while attached to District Jail Manshera was awarded major penalty of Dismissal from Service for his willful absence from duty with effect from 01-7-2010 to 25-11-2010 as well as submission of fake medical certificate for the period of his absence vide this office order No. 14728 dated 23-7-2011.

AND WHEREAS, upon rejecting of his departmental appeal he preferred service appeal No. 1941/2011 for set-aside of the penalty awarded to him. On 12-3-2014 the learned Service Tribunal has decided his appeal and remanded the case to the department for afresh inquiry proceedings against him. The learned Tribunal further ordered that the grant of back benefits to the above named appellant shall be subject to outcome of fresh inquiry proceeding. Accordingly, the case was referred to Law Department for placing the same to the Scrutiny Committee to decide as to whether the case is fit for filing CPLA in the August Supreme Court of Pakistan or otherwise. The Scrutiny Committee concerned declared fit case for filing CPLA which accordingly filed by the department and the case is pending in the August Supreme Court of Pakistan.

AND WHEREAS, the appellant filed execution Petition No. 37/2017 for implementation of the judgement dated 12-3-2014 and the learned Service Tribunal has asked for implementation of their judgement referred to above.

NOW THEREFORE, keeping in view the facts on record, as per orders of the learned Service Tribunal Mr. Aftab Hussain Dispenser /JTP is hereby re-instated into service with immediate effect and his intervening period i.e. from the date of dismissal to the date of re-instatement in service will be decided on the basis of final outcome of CPLA/departmental inquiry.

On his re-instatement in service he is hereby posted to Central Prison Mardan against the vacant post of Junior Technician Pharmacy.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.

ENDST. NO. 13079-93

Copy of the above is forwarded to:

1. The Secretary to Government of Khyber Pakhtunkhwa Home and FAs Department Peshawar, for information with reference to Home Department letter No. SO(Courts)/HA/4-313/2016 dated 13-4-2017.
2. The Superintendent Central Prison Mardan for information and further necessary action. A copy of judgement dated 12-3-2014 of the learned Service Tribunal enclosed herewith.
3. The Superintendents District Jail Bannu & Manshera for information and necessary action.
4. The District Accounts Officers Manshera, Bannu and Mardan for information.
5. The Registrar, Service Tribunal Khyber Pakhtunkhwa Peshawar for information.

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

F (23)

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan

Civil Petition No. 287-P of 2014

[Against the order dated 12.03.2014, passed by the Service Tribunal, KP,
Peshawar in Service Appeal No. 1941 of 2011]

Secretary Home & Tribal Affairs Department,
Government of KP, Peshawar and another. ...Petitioners

Versus

Aftab Hussain

...Respondent

For the Petitioners

: Mr. Atif Ali Khan, Additional
Advocate General, KP

Respondent

: N.R.

Date of Hearing

: 01.09.2020

ORDER

Gulzar Ahmed, CJ:- We have heard the learned Additional
Advocate General, KP.

2. The respondent was proceeded against on being absent from duty without authorization and filing of fake and bogus medical certificate. Regular enquiry was conducted in which the Inquiry Officer recommended stoppage of four (04) increments as well as treating the period of absence as Extra Ordinary Leave without pay (EOL). However, the competent authority after issuing of show cause notice through letter dated 23.07.2011 imposed penalty of dismissal from service. This penalty was challenged by the respondent by filing of a service appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar (the Tribunal). By the impugned order dated 12.03.2014 the order of imposition of penalty was set aside by the Tribunal and while reinstating the respondent in service, the matter was remanded to the

ATTESTED

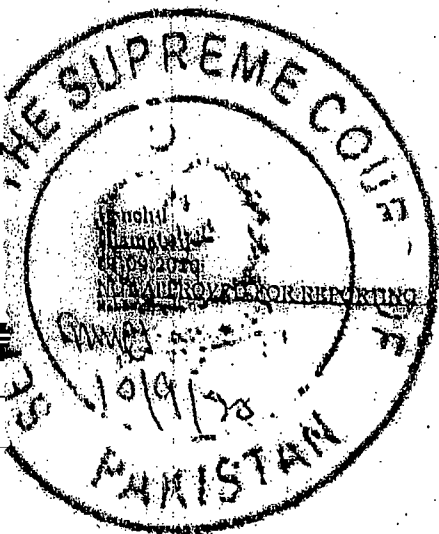
department for passing of the order afresh, strictly in accordance with law, however, the back benefits of the respondent were dependent upon such order.

3. Learned Additional Advocate General, KP contends that the competent authority has given reason in its order and in this respect relies upon a document available at Page-35 of the paper-book. We have gone through such document and apparently find nothing in it that may constitute a reason for disagreeing with the recommendation of the Inquiry Officer. The Tribunal has remanded the matter and the department is free to take action in accordance with the impugned order. No illegality in the impugned order is shown to us nor any substantial question of law of public importance in terms of Article 212(3) of the Constitution is raised. The petition is, therefore, dismissed and leave refused.

Sd/-HCJ
Sd/-J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



10/9/20

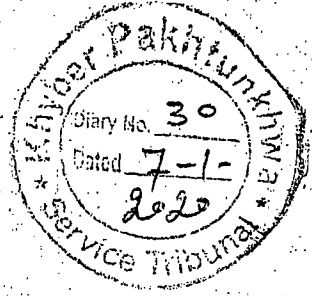
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BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M No _____/2019
In Re:
Service Appeal No 1941/2011



Aftab Hussain S/O Fazal Khaliq presently Dispenser Sub Jail,
Internment Centre Saudi Sharif Swat.....(Petitioner)

VERSUS

1. Secretary Home and Tribal Affairs Development Government
of KP, Peshawar
2. Inspector General (Prisons) Government of Khyber
Pakhtunkhwa, Peshawar.....(Respondents)

Application for implementation of the
judgment and order dated
12/3/2014 of this Honourable
Tribunal in the above mentioned appeal

Respectfully Sheweth:-

The Applicant/Appellant humbly submits as under:-

- 1) That the Applicant/Appellant was serving in the Respondent
Department.
- 2) That the Applicant/Appellant earlier filed service appeal No
1941/2011 before this Honourable Tribunal, which was
decided in favour of Appellant on dated 12-03-2014. (Copy
of the appeal is attached herewith).

Execution Petition No. 25/2020
Aftab Hussain vs Govt

46

18.01.2021

This case was fixed for 10.02.2021 but was requisitioned on the written request of the respondent department being directed by the learned Chairman.

Nemo for petitioner.

Kabir Ullah Khattak learned Additional Advocate General alongwith Atta Muhammad Law Officer for respondents present.

As per record, the application in hand was submitted for implementation of order dated 12.03.2014 of this Tribunal vide which petitioner was reinstated in service and departmental proceedings were remanded to the competent authority for an order afresh. The respondents' department filed CPLA and vide order dated 01.09.2020 petition was dismissed and leave was refused. Accordingly, order was passed by Inspector General of Prisons on 17.12.2020 vide which minor penalty of withholding of increment for one year was awarded and absence period from 01.07.2010 to 25.11.2010 and intervening period from the date of dismissal from service to the date of reinstatement in service was treated as leave without pay. Today, neither the petitioner nor his counsel is available. Therefore, case is adjourned to 10.02.2021 before S.B, however, salary of the representative and respondents No.1 & 2 stands released.

(Rozina Rehman)
Member (J)

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INQUIRY REPORT REGARDING ABSENCE OF MR. AFTAB HUSSAIN
TECHNICIAN FROM DUTY AT SUB JAIL DASSU KOHISTAN.

BRIEF FACT: -

The undersigned was nominated as Inquiry Officer under rule-14/6 of the E&D Rules-2011, to conduct inquiry against Mr. Aftab Hussain Technician for his absentia through bogus Medical Certificate vide the Worthy Inspector General of Prisons order No.35072/WE dated 05.10.2020. The undersigned proceeded to District Jail Swat in order to probe into the matter, to examine the case thoroughly and to submit recommendation to the competent authority. The accused official was informed about the date of Inquiry proceedings as well as the Superintendent Sub Jail Dassu Kohistan was also informed to provide record on the date of Inquiry at District Jail Swat under Rule-12 of the E&D Rules-2011. Resultantly, the accused official appeared before the Inquiry Officer on the fixed date while a Junior Clerk from Sub Jail Dasu Kohistan also appeared as representative and provided relevant record. Vast opportunity of hearing was given to the accused official without any stress during the inquiry proceedings about his guilt. The following charges were leveled against him by the competent authority under rule-3 of E&D Rules-201:-

1. *Mr. Aftab Hussain upon cancellation of his transfer order from Sub Jail Dassu to Sub Jail Daggar was relieved by the Superintendent Sub Jail Daggar on 01.07.2010 with usual days joining time with the direction to report to Superintendent Sub Jail Dassu. After expiry of joining time, he remained absent from duty without intimation from 01.07.2010 to 25.11.2010.*
2. *He produced Medical certificates for the period of his willful absence i.e. from 01.07.2010 to 25.11.2010 which on verification were found bogus as conveyed vide Medical Superintendent DHQ Hospital Mardan letter No.1823 dated 26.02.2010.*

As per available record, the accused official was relieved on 01.07.2010 from Sub Jail Daggar at Buner for duty at Sub Jail Dassu Kohistan, but the accused failed to resume his duty within stipulated time and remained absent from his duty at Sub Jail Dassu w.e.f 01.07.2010 to 25.11.2010. After resuming duty, he provided Medical Rest Certificates obtained from District Headquarter Hospital Mardan which were found bogus. Therefore, the competent authority ordered an inquiry and Mr. Akhtar Munir (Late) Ex-Deputy Superintendent Jail conducted Inquiry.

② 23 16

The Inquiry Officer submitted detailed report with recommendation that 04 increments might be stopped and absence period be treated as Leave Without Pay.

However, the competent authority went a step ahead of the recommendations and Dismissed the accused from Services, under rules-4 of the E&D rules-2011. Upon dismissal, the accused official approached the Learned Service Tribunal and finally after gap of about 06 years, in the light of Judgment dated 12.03.2014 of the Learned Service Tribunal, (copy attached as Annexure-A), the competent authority re-instated him into Government Services vide order No.13078 dated 08.06.2017.

FINDINGS: -

The accused official was inquired through cross examinations as well as recorded his written statement (copy of written statement attached as Annexure-B). During cross examinations, the following findings were recorded: -

He was questioned about his appointment and his period of absentia w.e.f. 01.07.2010 to 25.11.2010, to which he replied that he was appointed as pharmacy technician in 2004 and on 01.07.2010, he was relieved from Sub Jail Dagger at Buner for duty at Sub Jail Dassu Kohistan, but he felt Backache and instead of resuming duty, he consulted with a doctor at District Headquarter Hospital, Mardan.

However, here a doubt arises as to why he had submitted Medical Rest Certificates, obtained from DHQ Hospital Mardan instead from a Hospital at Swat as he was permanent resident of District Swat. But he answered accurately that due to Military Operation in District Swat, he migrated alongwith his family to District Mardan as such during the course of Operation various families were migrated from District Swat to other districts.

When he was asked about submission of Bogus Medical Rest Certificates, his reply was not satisfactory as he stated that he was regularly checked by the specialist at DHQ Mardan and advised rest, however, an unfamiliar Class-IV employee provided the rest certificates and he did not know about the fact that the Rest Certificates were fake/bogus.

This sort of answer creates doubt in the mind of Inquiry Officer. However, to that extent if we agree with his statements then as per Law "Ignorantia facit non excusat". But keeping in view of his penalty of dismissal from services and as such

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he remained jobless for more than 06 years without any back benefit, so it is to be considered that he has spent more than 06 years of life without any Job.

The accused official was also inquired as how he earned and supported his family during the course of his dismissal from Services to which he answered that he belonged to a poor family and badly suffered during military operation in Swat. In such critical condition he was working as labourer in Mardan, due to which some leniency is required to be extended in his favour. (Cross Questionnaire attached as Annexure-C)

The accused official had been appointed as Junior Technician Pharmacy since 2004 while rendered more than 07 years Services including 03 years services in hard mountainous area Dasu Kohistan and already suffered his sentence.

CONCLUSION:-

After thoroughly examining the case and record on ground, the undersigned reached to the conclusion that it would be like flogging a dead horse to penalize him for his past acts. Almost the incumbent remained 06 years jobless which is sufficient punishment for him. To this effect some official were also inquired about his recent conduct, which was found satisfactory.

RECOMMENDATIONS:-

Keeping in view the above submissions, the undersigned reached to the conclusion that in this stage some leniency & benignancy may be afforded in favour of accused official. Therefore, it is recommended:-

1. That absent period may be treated as *Leave without Pay*.
2. That intervening period i.e. from date of Dismissal to date of re-instatement into Services may be treated as *Extra ordinary Leave without Pay*.
3. That he may be strictly *warned* to be careful in future.
4. That he may be transferred from District Jail Swat to District Jail Timergara for all purpose as he is attached with District Jail Timergara for purpose of Pay only.

Inquiry Officer



(SAMIULLAH KHAN)
Deputy Superintendent Cum
Superintendent CP Bannu

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INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
091-9210334, 9210406, 091-9213445

ORDER

WHEREAS, MR. Aftab Hussain Technician while attached to District Jail Mansehra was awarded major penalty of Dismissal from service for his willful absence from duty with effect from 01-07-2010 to 25-11-2010 as well as submission of fake medical certificate for the period of his absence vide this office order No. 14728 dated 23-07-2011.

AND WHEREAS, upon rejecting of his departmental appeal he preferred service appeal No. 1941/2011 for setting aside the penalty awarded to him. On 12-03-2014 the learned Service Tribunal has decided his appeal and remanded the case to the department for fresh inquiry proceedings against him. The learned Tribunal further order that the grant of back benefits to the above named appellant shall be subject to outcome of fresh inquiry proceeding. Accordingly, the case was referred to Law Department for placing the same to the Scrutiny Committee to decide as to whether the case is fit for filing CPLA in the August Supreme Court of Pakistan on otherwise. The Scrutiny Committee concerned declared fit case for filing CPLA which accordingly filed by the Department and the Supreme Court of Pakistan dismissed the petition of the Department and uphold the decision of the Khyber Pakhtunkhwa Service Tribunal to conduct a denovo inquiry in the case vide Judgment dated 12-03-2014 and learn Service Tribunal asked for implementation of their Judgment and accordingly he was re-instated in service vide this office order No. 13078 dated 08-06-2017.

AND WHEREAS, Mr. Samiullah Khan Deputy Superintendent-cum-Superintendent Central Prison Bannu was appointed as Inquiry Officer for conducting de-nevo inquiry in the matter vide this office endst; No. 35073-75-WE dated 05-10-2020.

AND WHEREAS, the inquiry officer concerned submitted its findings according to which charges has been proved against him.

AND WHEREAS, the undersigned being competent authority issued the Show Cause Notice and the accused furnished his reply but failed to justify his innocence.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 15-12-2020 as provided under rules ibid. During the course of personal hearing the accused official again failed to justify his innocence.

NOW THEREFORE, in exercise of powers conferred under Rule-14 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the charges, evidence on record the explanation of the accused official as well as the recommendations of the Inquiry Officer and after affording the opportunity of personal hearing the under signed being competent authority is pleased to award the minor penalty of **withholding of increment for one year** to the accused Mr. Aftab Hussain Technician. in addition his absence period i.e from 01-07-2010 to 25-11-2020 is treated as leave without pay and his intervening period i.e from the date of dismissal from service (23-07-2011) to the date of reinstated in service (19-06-2017) is also hereby treated as leave without pay.

INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA, PESHAWAR

Endst No. _____

Copy forwarded to:-

1. Mr. Samiullah, Deputy Superintendent-cum-Superintendent Central Jail Prison Bannu (Inquiry Officer) for information with reference to his letter No. 7158-WE dated 02-11-2020.
2. The Superintendent, District Jail in Timergara for information and necessary action. Necessary entry may be made in his Service Book after proper attestation.
3. The District Accounts Officer Timergara for information.

ASSISTANT DIRECTOR
INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA



(I) 30

**INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**

091-9210334, 9210406

091-9213445

No. 4112-J-2024-44167-1

Dated 17-12-2020

ORDER

WHEREAS, Mr. Aftab Hussain Technician while attached to District Jail Mansehra was awarded major penalty of Dismissal from Service for his willful absence from duty with effect from 01-7-2010 to 25-11-2010 as well as submission of fake medical certificate for the period of his absence vide this office order No. 14728 dated 23-7-2011.

AND WHEREAS, upon rejecting of his departmental appeal he preferred service appeal No. 1941/2011 for set-asideing the penalty awarded to him. On 12-3-2014 the learned Service Tribunal has decided his appeal and remanded the case to the department for afresh inquiry proceedings against him. The learned Tribunal further ordered that the grant of back benefits to the above named appellant shall be subject to outcome of fresh inquiry proceeding. Accordingly, the case was referred to Law Department for placing the same to the Scrutiny Committee to decide as to whether the case is fit for filing CPLA in the August Supreme Court of Pakistan or otherwise. The Scrutiny Committee concerned declared fit case for filing CPLA which accordingly filed by the department and the Supreme Court of Pakistan dismissed the petition of the department and uphold the decision of the Khyber Pakhtunkhwa Service Tribunal to conduct a de-novo inquiry in the case vide judgement dated 01-09-2020 in C. Petition No. 287-P of 2014. Before the decision of August Supreme Court of Pakistan he filed execution Petition No. 37/2017 for implementation of Service Tribunal judgement dated 12-03-2014 and learn Service Tribunal asked for implementation of their judgement and accordingly he was re-instated in service vide this office order No. 13078 dated 08-06-2017.

AND WHEREAS, Mr. Samiullah Khan Deputy Superintendent-cum-Superintendent Central Prison Bannu was appointed as Inquiry Officer for conducting de-novo inquiry in the matter vide this office order No. 35073-75-WE dated 05-10-2020.

AND WHEREAS, the Inquiry Officer concerned submitted its findings according to which charges has been proved against him.

AND WHEREAS, the undersigned being competent authority issued the Show Cause Notice and the accused furnished his reply but failed to justify his innocence.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 15-12-2020 as provided under rules ibid. During the course of personal hearing the accused official again failed to justify his innocence.

NOW THEREFORE, in exercise of powers conferred under Rule-14 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the charges, evidence on record, the explanation of the accused official as well as the recommendations of the Inquiry Officer and after affording the opportunity of personal hearing, the undersigned being competent authority is pleased to award the minor penalty of withholding of increment for one year to the accused Mr. Aftab Hussain Technician. In addition, his absence period i.e from 01-07-2010 to 25-11-2010 is treated as leave without pay and his intervening period i.e from the date of dismissal from service (23-07-2011) to the date of re-instatement in service (19-06-2017) is also hereby treated as leave without pay.

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

ENDST. NO. 44169-170

Copy of the above is forwarded to:-

1. Mr. Samiullah, Deputy Superintendent-cum-Superintendent Central Prison Bannu (Inquiry Officer) for information with reference to his letter No. 7158-WE dated 02-11-2020.
2. The Superintendent, District Jail Timergara for information and necessary action. Necessary entry may be made in his Service Book after proper attestation.
3. The District Accounts Officer Timergara for information.

ASSISTANT DIRECTOR

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

To,

The Honorable Secretary
Home of Khyber Pakhtoon Khwa
at Peshawar

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**Aftab Hussain S/O Fazal Khaliq (Senior Technician Distt Jail Daggar)
R/O Mohalla Malookabad, Mingora Swat Appellant**

**Departmental appeal against back benefits order 41/2-J-2004-44167
dated 17-12-2020 by the inspector General prison of Khyber Pakhtoon
Khwa.**

Respected Sir,

The appellant submits the following:

1. That the appellant got appointed as a dispenser in the department of prison of Khyber Pakhtoon Khwa a on 04-11-2004 copy attached as A.
2. That on 19-04-2010 appellant got transferred from Dusso (Kohsitan) to Sub-jail Daggar Buner where the appellant started his duty(Order attached as B)
3. That on 08-06-2010 Transfer order of appellant dated 19-04-2010 was got cancelled by competent authority and the appellant was relieved on 01-07-2010 from sub -jail Daggar (Transfer cancellation and relieve and relieving docket attached C and D)
4. That after relieve from sub- jail Daggar on 01-07-2010 the appellant could not join his duty at Sub-jail dusso due to medical reasons Leubago / (backache). The appellant was stationed at Mardan in those days being an I.D.P therefore he kept continued his treatment from DHQ Mardan.
5. That on 26-11-2010 the appellant was once again transferred from sub jail Dusso to sub -jail Daggar where the appellant started/ joined his service (Copy of transfer order attached as E).
6. That an 06-04-2011 on inquiry was initiated against the appellant for the absence from duty from 01-07-2010 to 26-11-2010 at sub-jail Dusso and the inquiry officer was Mr Akhtar Muner, Deputy superintendent district jail Swat.

7. That as per direction of the inquiry officer the appellant submitted his submissions/ explanations to the inquiry officer about the absence from duty period (Direction of inquiry officer and submissions are attached as F and G).
 8. That after submission of inquiry report the worthy inspector General prison gave a show cause Notice to the appellant of which the appellant gave his reply/ defense (copies attached as H , I and J)
 9. That on 23-07-2011 the worthy inspector general (Prison) terminated/ dismissed the appellant from service mainly for production of bogus medical Certificates from 01-07-2011 to 25-11-2011 (order attached as K).
 10. That the appellant is suffering from Luebago/ Backache since 2007 and that is the reason that during the service period of the appellant a medical board was constituted regarding his ailment which gave its reports on 10-11-2007 that the appellant was suffering from backache which is available in the office of I.G. prison (in personal file of appellant)(Copy also attached as Z) where upon the I.G.P prison issued a letter dated 27-03-2009 and 29-11-2008 which suggest that the appellant was having Backache which still continued (letters attached as L and M).
- The appellant was also undergoing treatment from Distt Jail Daggar Medical Officer and also give to the appellant a certificate his personal memo.
11. That the I.G.P has stated in Dismissal order of appellant that opportunity of personal hearing was given to the appellant but the appellant has never been heard.
 12. That about bogus medical certificates the appellant has given his reply to the inquiry officer as well as the I.G.P which are G and J.
 13. That the inquiry officer has given his opinion in last lines of inquiry report which is attached as "H" while the I.G.P has gone behind the recommendations of the inquiry officer and has awarded capital punishment of dismissal of appellant from service which is injustice and mala fide in the part of I.G.Prison.

14. That If the department had agreed with the recommendation of first inquiry in 2011, not much time would have been wasted to day. However the service Tribunal in favor of the appellant and the supreme court along with service Tribunal also agreed with decision of the same inquiry officer and dismissed the department appeal.

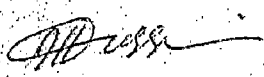
15. That the appellant belongs to every humble background and is the sole source of income / sole bread earner of his family.

16. That the appellant is a sincere devoted and committed employee and that is the reason that no complaint has ever been made against the appellant by anyone.

PRAYER

- i) On acceptance of this appeal and the I.G (Prison) order No-41/2-J-2004-44167 dated 17-12-2020 may be set aside and order to give the whole Back benefits to the appellant.
- ii) The appellant will be very thankful to you for his kind favour on me and my family.

Yours Sincerely


Aftab Hussain
S. Technician
District Jail Daggar
Buner

Dated: 16 / 02 / 2021