

23.01.2017

Counsel for the appellant and Additional AG alongwith Mr. Shehryar Khan, Assistant Supdt: Jail for the respondents present. Learned AAG requested for adjournment. To come up for final hearing on 05.06.2017 before D.B.

Member

Chairman

05.06.2017

Appellant in person present. Mr. Sheharyar Khan, Assistant Superintendent Jail alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Due to strike of the bar learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 01.08.2017 before D.B.

(GUL ZEB KHAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

28.09.2016

Counsel for the appellant and Mr. Shehryar, ASJ
alongwith Addl: AG for respondents present. Arguments
partly heard. To come up for remaining arguments on
22.11.2016 before this D.B.


Member


Chairman

22.11.2016

Counsel for the appellant and Mr. Sohrab Khan,
Junior Clerk alongwith Assistant AG for respondents
present. Learned counsel for the appellant submitted before
the court that the instant case has been partially heard by
the other bench, therefore, it would be appropriate to assign
this case to the bench concerned. Perusal of the order sheet
dated 16.03.2016 revealed that previously the case in hand
was partly heard by other bench, therefore the instant cases
be placed before the learned Chairman for entrustment to
the bench concerned. To come up for arguments on
23.1.2017.



(ABDUL LATIF)
MEMBER


(MILHAMMAD AAMIR NAZIR)
MEMBER

16.03.2016

Counsel for the appellant and Mr. Sheharyar Khan, ASJ alongwith Addl: A.G for respondents present. During the course of arguments it transpired that a fact-finding inquiry was also conducted report of which is not available on record. The same is very important for the disposal of the case, therefore, respondents are directed to produce the copy of fact finding inquiry on the next date. To come up for such record and arguments on 31.5.16 before D.B.



MEMBER



MEMBER

31.05.2016

Counsel for the appellant and Addl. AG for respondents present. Inquiry report placed on file. Learned counsel for the appellant submitted before the court that the instant, case has been partially heard by the other bench. Therefore, it would be appropriate to assign this case to the other bench. Perusal of the order sheet revealed that previous by case in hand was partly heard by other bench, therefore the instant case be placed before the learned Chairman for entrustment to the bench concerned. To come up for arguments on 2.6.2016.

Member



Member

02.06.2016

Junior to counsel for the appellant and Mr. Sheharyar Khan, ASJ alongwith Addl AG for respondents present. Copy of fact finding inquiry submitted which is placed on file. Since learned counsel for the appellant is not available today before the Court therefore, case is adjourned for arguments to 28.9.16 before D.B.



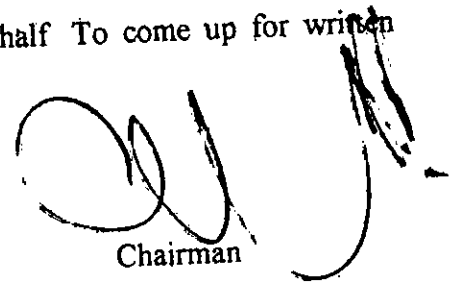
MEMBER



MEMBER

31.10.2014

Counsel for the appellant and Mr. Sheharyar, Assistant Supdt. Jail on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply has not been received on behalf of the respondents, and request for further time made on their behalf. To come up for written reply/comments, positively, on 11.12.2014.


Chairman

11.12.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments on 27.02.2015.



Reader.

27.02.2015

Counsel for the appellant and Mr. Sheharyar Khan, ASJ for respondents alongwith Addl. A.G present. Written reply submitted. The case is assigned to D.B for rejoinder and final hearing for 21.09.2015.


Chairman

21.09.2015

Appellant in person and Mr. Muhammad Jan, GP for respondents present. Rejoinder submitted on behalf of the appellant which is placed on file. To come up for arguments on 16.12.16


Member


Member

14

07.05.2014

Appeal No. 707/2013
Mr. Rishit Singh

Counsel for the appellant and Mr. Ziaullah, GP for the

respondents present. Counsel for the appellant filed an application for early hearing as well as application for correction/rectification in the heading of the instant appeal. Application allowed. To come up for preliminary hearing on 08.05.2014 instead of 02.06.2014..


Member

15

08.05.2014

Counsel for the appellant and Ziaullah, GP for the respondents present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 20.12.2012, he filed departmental appeal on 26.12.2012, which has been rejected on 21.03.2013, hence the present appeal on 15.04.2013. He further contended that the impugned order dated 21.03.2013 has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 15.07.2014.

Appellant Deposited
Security & Process Fee
Rs. 180/- Bank
Receipt is attached with File.

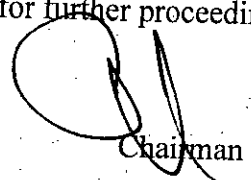



Member

6

08.05.2014

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


Chairman

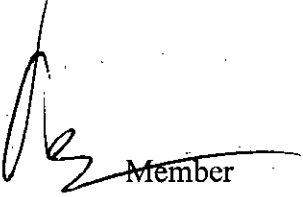
15.7.14

The Honbl. bench is on Recd
Proffor, Com is signed on
31-10-14.

pe

11.
24.02.2014

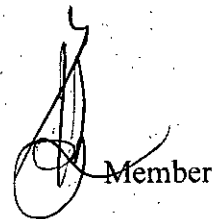
Clerk of counsel for the appellant and Mr. Zia Ullah, GP for the respondents present. Preliminary arguments could not be heard due to general strike of the Bar. To come up for preliminary hearing on 31.03.2014.


Member

12.
31.03.2014

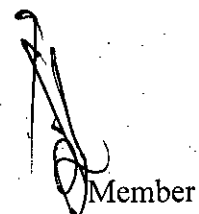
Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Preliminary arguments partly heard. During the course of arguments the learned GP pointed out that the heading of appeal at paga No.1 is not in consonance with the prayer of page No.7 of the instant appeal. In this connection the learned counsel for the appellant requested for adjournment to properly ~~handle~~ ^{in accordance with the law.} the issue. To come up for further preliminary hearing on 22.04.2014.




Member

13.
22.04.2014

Clerk of counsel for the appellant and Mr. Ziaullah, GP for the respondent present. Clerk of counsel for the appellant requested for adjournment due to general strike of the Bar. To come up for preliminary hearing as per order sheet dated 31.03.2014 on 02.06.2014.


Member

It would be seen that not only the use of words "of any final order" and not "final order" enlarges the scope of final order but the use of words "whether original or appellate" would further enhance the scope and embrace the original order of the competent authority in case of disciplinary proceedings as well.

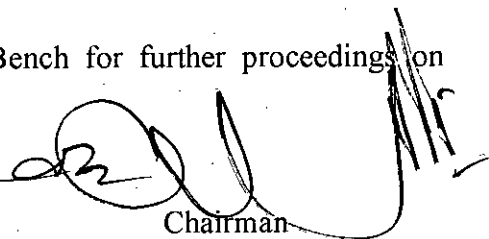
Moreover, in our humble view, the powers conferred on the Tribunal under section 7 of the Service Tribunal Act, 1974, to confirm, set aside, vary or modify the order appealed against would be rendered limited and restricted, and thereby opening avenues for further litigation, if strict interpretation is placed on the words "final order" and thereby the appeal is confined to the order of the appellate authority only, as in that case, even if the final order is eventually set aside, the original order of the competent authority in disciplinary proceedings will remain in the field thereby creating not only legal complications but hardships for a civil servant which has never been the intention of any piece of legislation.

Furthermore, rule 27 of the NWFP (KPK) Service Tribunal Rules, 1974, empowers the Tribunal to make such orders as are necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

While drawing wisdom from the above provisions of law, established practice of the Tribunal over the years, not ever challenged at any point of time in the history of the Service Tribunal, together with absence of any law or precedent in support of the view held by the learned Member, and while feeling inclined to hold a view facilitating smooth administration of justice, and obviating the chances of hardships to the civil servants through multiplicity of litigation, we hold that the appellant is well within right to impugn both the orders of the appellate as well as original order of the competent authority in cases of departmental proceedings if he feels that if the original order of the competent authority remains in the field that would lead to legal complications, hardships to him and result in multiplicity of litigation. Order announced. The appeal is accordingly

returned to the learned Primary Bench for further proceedings on 24.2.2014.

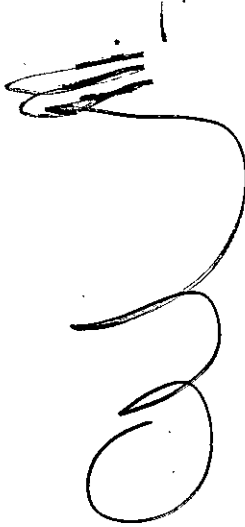

Member


Chairman

10.
27.01.2014

Counsel for the appellant and AAG for the respondents present. Arguments on the question of maintainability of the appeal while both the orders of the competent authority and that of the appellate authority are challenged, were heard.

The matter came up before this larger Bench when the learned Member, presiding over the Primary Bench, raised objection to the maintainability of the appeal on the ground that instead of challenging the 'final order' of the appellate authority, the appellant had also challenged order of the competent authority. The learned Member holds the view that since the words 'final order' are used in section-4 of the NWFP (KPK) Service Tribunal Act, 1974, a civil servant can only call in-question the final order, be that of the competent authority or appellate authority, and not both the orders of the competent as well as appellate authority.



The learned counsel for the appellant, while arguing the point raised before us, candidly admitted that inspite of thorough search, he could not find a reported judgment on the issue, whereby, the words 'final order' have been defined. However, the learned counsel referred to a case reported as 1999 PLC(C.S) 409 (Supreme Court of Pakistan), wherein, the august Supreme Court of Pakistan declared that interpretation of the word 'order' as used in section-4 of the Service Tribunals Act, 1973 had to be confined within four corners of Civil Servants Act, 1973 and Service Tribunals Act, 1973 and that appeal against an 'order' was relatable to terms and conditions of a civil servant. In the same judgment, the august Supreme Court of Pakistan enumerated various orders which are to be passed by the competent authority within the contemplation of the rules governing disciplinary action.

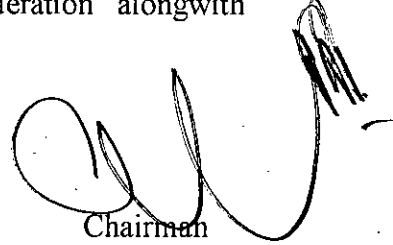
In order to properly appreciate spirit of the law and also arrive at a just conclusion for smooth administration of justice, it would be appropriate to refer to the relevant provision of law contained in section-4 of the NWFP (KPK) Service Tribunal Act, 1974:

"Section-4. Appeal to Tribunals.-Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him (or within six months of the establishment of the appropriate Tribunal, whichever is later,) prefer an appeal to the Tribunal having jurisdiction in the matter."

7.

29.10.2013

Counsel for the appellant and AAG for the respondents present. To come up for arguments/consideration alongwith connected appeal on 26.11.2013.

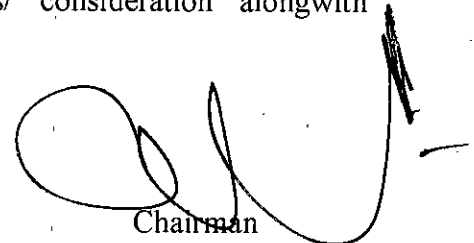


Chairman

8.

26.11.2013

Counsel for the appellant and AAG for the respondents present. To come up for arguments/ consideration alongwith connected appeal on 31.12.2013.

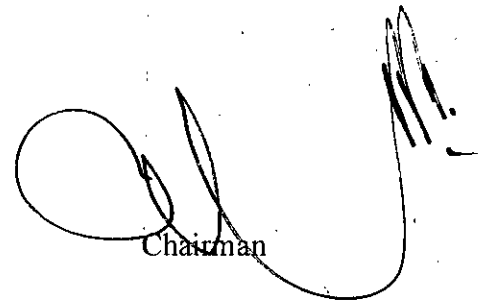


Chairman

9.

31.12.2013

Counsel for the appellant and AAG for the respondents present. To come up for arguments/consideration alongwith connected appeal on 27.1.2014.



Chairman

Appeal No. 707/2013
Mr. Rightingue

4. 09.07.2013

Clerk of counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013) the case is adjourned on note Reader for proceedings as before on 11.09.2013.


Reader

5. 11.09.2013

Counsel for the appellant present and requested for adjournment to rectify mistakes in the memo of appeal and submit amended memo of appeal alongwith spare sets. To come up for amended appeal/preliminary hearing on 25.09.2013.


Member

6. 25.9.2013


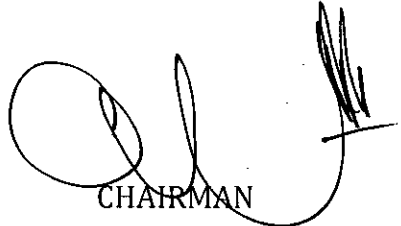

Appellant with counsel present. It was pointed out that in similar nature cases, an issue has been raised for adjudication by a larger Bench against the observation of learned Member presiding over primary Bench. To come up for arguments/consideration alongwith connected appeals on 29.10.2013.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 707/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19/04/2013	<p>The appeal of Mr. Rishtiaque resubmitted today by Mr. Asif Hameed Qureshi 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	22-4-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>5-6-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	5.6.2013	<p>Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 9.7.2013.</p> <p style="text-align: right;"> Reader</p>

The appeal of Mr. Rishtiaque Ex-Warder Central Prison Haripur received today i.e. on 15/04/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.


- 1- Appeal may be got signed by the appellant.
- 2- Departmental appeal having no date be dated.


No. 643 /S.T,

Dt. 15/04 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR. ASIF HAMEED QURESHI ADV. PESH.

Sir,
 objection no (1): The signature of the appellant has been obtained on the appeal.

 objection no (2): The departmental appeal was filed by appellant on 26/12/12 through registered post. (The copies of appeal and postal receipt are attached for ready reference.)

Re submitted
after compliance

Done by
19-4-13
Counsel for the appellant.

211 1/2 in appeal no 111: The operation of the
appeals in this instance
or the appeal

111 1/2 in appeal no 111: The operation of the
appeals in this instance
or 21/12/12 through reference
list. (The copy of appeal and
have been sent on several
for ready reference.)

In connection
with completion

111 1/2 in appeal no 111
for the appeal

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No:- 707 /2013


Rishtiaque Ex-Warder **Versus** I.G Prisons K.P.K etc



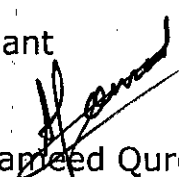
INDEX

S#	Description of the Documents	Annex	Pages
1.	<i>Service Appeal with Affidavit</i>	*	1-8
2.	<i>Addresses of Parties</i>	*	9
3.	<i>Copy of Charge Sheet and reply</i>	"A" & "B"	10-14
4.	<i>Copy of Inquiry Report</i>	"C"	15-38
5.	<i>Copy of Show Cause Notice and reply</i>	"D" & "E"	39-43
6.	<i>Copy of order dated 20/12/2012 of respondent No 1</i>	"F"	44-45
7.	<i>Copies of appeal and order dated 21/03/2013 of respondent No 2</i>	"G" & "H"	46-49
8.	<i>Wakalat Nama</i>	*	

Dated:- 12 /04/2013


Appellant

Through:-


Asif Hameed Qureshi,
Advocate High Court,
Peshawar.

OFFICE ADDRESS:-
KOKMANG HOUSE ZARYAB
COLONY, PESHAWAR.
CELL: 0321-9116224.

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

Service Appeal No:- 707 /2013

R.W.P. Province
763
18-4-13

Rishtiaque Ex-Warder, Central Prison
Haripur, S/o Mohammad Sadiq R/o Tehsil
& District Abbottabad, presently Central
Jail, Haripur.

..... Appellant

Versus

1.
2.

Inspector General Of Prisons Khyber
Pakhtunkhwa, Peshawar.

Secretary to Govt: of Khyber Pakhtunkhwa,
Home and Tribal Affaris Department,
Peshawar.

3. Superintendent, Central Prison Haripur.

..... Respondents



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APPEAL UNDER SECTION 4 OF THE K.P.K
SERVICE TRIBUNAL ACT, 1974, R/W
SECTION 19 OF THE KPK GOVT:
SERVANTS E & D RULES 2011 AGAINST
THE ORDER DATED 20/12/2012 OF
RESPONDENT NO 1, WHEREBY THE
APPELLANT HAS BEEN DISMISSED FROM
SERVICE WITH IMMEDIATE EFFECT AND
ALSO AGAINST THE ORDER DATED
21/03/2013 OF RESPONDENT NO 2,
WHEREBY DISMISSAL OF THE APPELLANT
HAS BEEN CONVERTED INTO REMOVAL
FROM SERVICE FROM THE DATE OF HIS
DISMISSAL ORDER.

Handwritten signature and checkmark on the right margin.

12.10.2017

Counsel for the appellants present. Mr. Usman Ghani, District Attorney for the respondents present. The present case may be fixed before the D.B concerned for ~~further~~ *proceeding on 18-10-2017.*

MA
Member
(Judicial)

[Signature]
Member
(Judicial)

18.10.2017

Counsel for the appellants and Mr. Usman Ghani, D.A for respondents present. Due to none availability of concerned D.B arguments could not be heard. Case is adjourned. To come up for further proceedings on 14.11.2017 before D.B.

[Signature]
Member
(Executive)

[Signature]
Member
(Judicial)

14.11.2017

Appellants in person present. Mr. Zia Ullah, Deputy

14.11.2017 District Attorney for the respondents present. Appellant stated at the bar Representative of the appellants present. Mr. Zia Ullah, Deputy District Attorney present. To come up for alongwith connected appeal on 15.12.2017 before D.B.

[Signature]
(Gul Zeb Khan) Gul Zeb Khan
Member Member (E)

[Signature]
(Muhammad Hamid Mughal) Muhammad Hamid Mughal
Member Member

15.12.2017

Clerk of counsel for the appellants present. Learned DDA for the respondents present. Vide our separate/common judgment of today placed on file of appeal No.943/2013 filed by Abdul Satar, the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

[Signature]
(GUL ZEB KHAN)
MEMBER

[Signature]
(MUHAMMAD HAMID MUGHAL)
MEMBER

1/8/2017

Counsel for the appellant and Mr. Sheharyar Khan, Assistant Superintendent Jail alongwith Mr. Muhammad Adeel Butt, AAG for the respondents present. Learned AAG requested for adjournment. To come up for argument on 28/8/2017 before DB.

(GUL ZEB KHAN)
MEMBER

(MUHAMMAD HAMID MUGHAL)
MEMBER

0-----25 28.08.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondent present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 21.09.2017 before D.B.

(Gul Zeb Khan)
Member (E)

(Muhammad Hamid Mughal)
Member (J)

21.09.2017

Counsel for the appellant present. Learned Additional Advocate General for the respondents present. Partial arguments heard. To come up for further proceedings on 12.10.2017 before D.B.

Member
(Executive)

Member
(Judicial)

②

Prayer in appeal:-

On acceptance of this appeal, the impugned ~~order~~ dated ~~20/2/2012~~ of respondent No 1 and order dated 21/03/2013 of respondent No 2 may kindly be set aside ~~and the appellant may kindly be ordered to be reinstated into service with all back benefits.~~

Respectfully Sheweth:-

The facts pertaining to this appeal are as under:-

1. *That the appellant joined the respondent No 1 department as Warder and having eight years service to his credit and during whole period of his service he performed his duties with honesty and full devotion and entire satisfaction of his superior officials. It is pertinent to mention here that during his service period he was never found in any kind of negligence nor he committed any irregularity.*
2. *That on night between 20th and 21st October, 2012 the incident of escaping of four prisoners, three convicted and one under trial from Central Jail Haripur was happened.*
3. *That the appellant was also posted as Warder in the Central Jail, Haripur from 12:00 to 03:00 hours between the night, in which the above stated incident was happened.*

3

4. *That after the above stated occurrence, the respondent No 1 issued Charge Sheet with Statement of allegations on 02/11/2012 to appellant alongwith 17 other officials, to which the appellant submitted his reply on 14/11/2012. (Copies of Charge Sheet and reply are attached as annexures "A" & "B" respectively).*
5. *That in pursuance of Charge Sheet issued by respondent No 1, the inquiry was conducted against appellant and other nominated officials in the above stated incident and inquiry officer submitted his report to respondent No 1, in which he suggested /recommended major penalty be imposed on appellant and other officials. (Copy of inquiry report is attached as annexure "C").*
6. *That in the light of report of inquiry officer, the respondent No 1 issued Show Cause Notice to appellant by imposing major penalty of dismissal from service, the appellant filed his reply in which he categorically denied all the allegations levelled against him by inquiry officer and made request for withdrawal of ibid show cause notice. (Copies of show cause notice and reply are attached as annexures "D" & "E" respectively).*
7. *That respondent No 1 without considering the detailed reply (Annexure "D") of the appellant passed the impugned order of dismissal from*

service on 20/12/2012. Which was arbitrary, perverse and against the principal of natural justice. (Copy of the impugned order of respondent No 1 dated 20/12/2012 is attached as annexure "F").

8. That feeling aggrieved from the above said order of respondent No. 1, the appellant preferred an appeal before respondent No. 2, who vide impugned order dated 21/03/2013 rejected the same. (Copies of appeal and impugned order of respondent No 2 dated 21/03/2013 are attached as annexures "G" & "H" respectively).

9. That now the appellant is filing the instant appeal against the above said impugned orders of respondent No 1 and 2 dated 20/12/2012 and 21/03/2013 on the following amongst other grounds:-

original

Grounds:-

- A. That the impugned orders^v of respondent No ① & 2 dated 20/12/2012 and 21/03/2013 are ^{is} against law and facts and material available on record, hence untenable under the law, and liable to be set-aside.
- B. That the appellant performed his duty, honestly and viginently from 12:00 to 03:00 am. He left the place of his duty after 03:00 pm and

according to relevant prison rules no one can leave, the Jail premises from main gate before the completion of his duty hours and in this respect there is also a book/registrar maintained by concerned official at main gate of Jail in which the time of entry and exit is mentioned. The appellant left the jail premises at about 03:15 pm and the alleged occurrence/incident was happened at about 03:50 pm. It is humbly submitted that to confirm the above stated contentions/submission of the appellant, the Honourable Court may kindly summon the ibid record i.e. registry Book No 16 from Central Jail, Haripur of the relevant day of occurrence in the larger interest of justice.

- C. That the arrangement/deployment of substitute on the closing time of Warder on duty was the responsibility of the officer concerned of the Jail, as a matter of routine, but on the day of occurrence no such arrangement was made in this regard. Moreover there is nothing on record, which could prove that the timing of the duty of appellant had been extended by any concerned officer on the day of alleged incident.
- D. That the alleged occurrence took place about 03:50 am whereas the appellant left the Jail

premises at about 03:15 am. It is also brought to the knowledge of this Honourable Tribunal that the distance between beat No 4 (place of duty of appellant) and incident place is about 260 yards and light system was also not in proper order inside the Jail.

- E. That the inquiry officer has not conducted the inquiry in proper manner and in accordance with law, because no evidence/material has been collected in rebuttal of assertions made by appellant in his statement/reply. The punishment has been recommended by inquiry officer without any cogent proof against the appellant, thus the same is totally perverse, arbitrary and without any legal justification.

- F. That in the light of submissions made in the preceding paras the appellant could not be held responsible for the escape of the prisoners.

- G. That the impugned order of respondent No 2 is not only perverse, arbitrary but also discriminatory because Warder Hameed Gul who had been charge sheeted on the same grounds as the appellant, but his appeal has been accepted and exonerated from the charge, thus the impugned order of respondent No 2 is

(8) (7)

against the principles of natural justice and liable to be set-aside.


H. *That any other grounds which has not been specifically taken in the instant appeal may be argued at the time of arguments with the permission of this Honourable Tribunal.*

It is, therefore, humbly prayed that on acceptance of this appeal, the impugned orders of respondent No 1 dated 20/12/2012 and order dated 21/03/2012 of respondent No 2 may kindly be set-aside/and ^{modified} the appellant may kindly be ordered to be re-instated in service with all back benefits.

Dated:- 12 /04/2013


Appellant.

Through:-


Asif Hameed Qureshi,
Advocate High Court,
Peshawar.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No:- _____/2013

Rishtiaque Ex-Warder

Versus

I.G Prisons K.P.K etc



AFFIDAVIT

I, Mr. Rishtiaque Ex-Warder, Central Prison
Haripur, S/o Mohammad Sadiq R/o Tehsil & District
Abbottabad, presently Central Jail, Haripur do
hereby solemnly affirm and declare on oath that the
contents of this accompanying Service Appeal are true
and correct to the best of my knowledge and belief and
nothing has been concealed from this Honourable
Court.

12 APR 2013

ATTESTED



DEPONENT

CNIC 13101-0959079-7



Annexure
"A"

(10)

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

NO. 27966

DATED 02-11-2012

DISCIPLINARY ACTION

I, **Shafirullah** I.G.Prisons Khyber Pakhtunkhwa as the competent authority, am of the opinion that **Warder (BPS-5) Rishtiaque** attached to **Central Prison Haripur** has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants(Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

He was posted at inside beat No.4 from 12.00 to 3.00 AM in the night between 20/21-10-2012 did not prevent escape as he left his place of duty early and without arrival of substitutes in violation of Rule 1149 of NWFP Prison Rules 1985.

2. For the purpose of inquiry against the said accused with reference to the above allegations, **Mr.Akhter Saeed Turk Deputy Secretary (Finance/Dev;) Home and T.As Department Peshawar** is hereby appointed as Inquiry Officer under Rule-10(1)(a) of the ibid rules.
3. The Inquiry Officer shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.
4. The accused and a well conversant representative of Central Prison Haripur shall join the proceedings on the date, time and place fixed by the Inquiry officer.


INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

ENDST;NO. 27967-701.

Copy of the above is forwarded to:

1. The Secretary to Government of Khyber Pakhtunkhwa Home & T.As Department Peshawar, for information.
2. **Mr.Akhter Saeed Turk Deputy Secretary (Finance/Dev;) Home and T.As Department Peshawar**, the Inquiry Officer for initiating proceedings against the accused under the provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011. A copy of charge sheet is enclosed herewith.
3. The Superintendent Central Prison Haripur, with the direction to produce the relevant record before the Inquiry Officer and assist him during the Inquiry proceedings. Charge sheet in duplicate is sent herewith. One copy of the same duly signed and dated by above named official may be returned to this office in token of its receipt.
4. **Warder Rishtiaque** attached to Central Prison Haripur with the direction to appear before the Inquiry Officer, on the date, time and place fixed by the Inquiry Officer, for the purpose of inquiry proceedings.


INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

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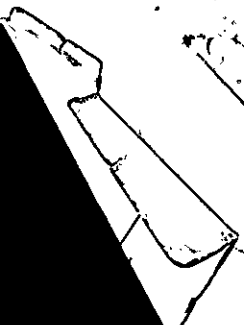
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The Honourable Inspector General of Prisons,
Khyber Pukhtunkhwa,
PESHAWAR.

Through Proper Channel.

Subject:- DISCIPLINARY ACTION.

Respected Sir,

With reference to the letter No.27966 dated 02-11-2012 and endorsement No.27967-70 (**Statement of Allegations**) on the above mentioned subject passed under the signature of your Highness and delivered to me on 08-11-2012 by the Superintendent, Central Jail, Haripur. Though nothing has been mentioned there-in with regard to responding the same yet I have verbally been directed to submit its reply for onward transmission to your Highness. The allegations as attributed against me are reproduced here below for ready reference:-

"He was posted at inside beat No.4 from 120 to 0300 AM in the night between 20/21-10-2012 did not prevent escape as he left his place of duty early and without arrival of substitutes in violation of Rule 1149 of NWFP Prison Rules 1985".

I submit my reply to the aforementioned allegation as under:-

1. Sir, the allegation is incorrect hence, straightaway denied. It is incorrect that I left my place of duty early and without arrival of substitute in violation of Rule 1149 of NWFP Prison Rules 1985. I remained quite present at the place of my duties from 1200 to 0300 AM.

certified to be true copy
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2. That I marked my entry/signed the register at the Main Gate of Jail at 1200 hours on the night between 20/21-10-2012 and took over the charge of beat No.4. ^{Reportedly} The alleged occurrence took place at beat No.5. The distance between my place of duty and incident place is about 260 yards.
3. That both the round/patrolling officers deployed inside and outside the area from 1200 to 0300 between the night of 20/21-10-2012 reported everything as O.K. The occurrence did not take place during my duty timings i.e. 1200 to 0300 AM. Photo copy enclosed as annex: A.
4. That question of preventing the escapees does not arise as no such occurrence has ever taken place during my duties hours. No one had made his escape from Beat No.4 where I was performing my duties that night.
5. That during my duties hours from 1200 to 0300 AM, I remained alert and in active position. I performed my duty with devotion, dedication & honesty. Asstt. Superintendent Jail Mr. Fazal-e-Mahmood, Night Duty Officer alongwith Sher Bahadar Round/Patrolling Officer and Shah Qaisar visited my place of duty at about 0245, they checked me and they found me alert as well as most vigilant. I also asked ^(NDO) him about my reliever that there is no one deployed after me at beat No.4 and he told me that you can go at 03:00 AM.
6. That while I took over my charge at 1200 hours, I was told by the **OUTER OHDEDAR** that there was no reliever/substitute deployed after 0300 AM who would relieve me after completion of my duty hours. In this


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connection ROUTINE DUTY REGISTER can be examined which will speak itself that no one is deployed at Beat No.4 after 0300 AM on 21-10-2012. Moreover, I asked Akhtar Zaman Sentry on duty at Tower No.2 about time, he told me time as 0300 AM and then I left beat and came to Jail Main Gate as there was no Reliever deployed at Beat No.4.

7. That on the morning of 21-10-2012 right till 0300 AM, I remained actively present at the place of my duty at Beat No.4 and thereafter I came to Main Gate of the Jail. I marked my entry in the Register and signed it. As there was no Reliever/Substitute was deployed at Beat No.4, therefore, the Officer available at Main Gate of the Jail allowed leave the Jail for my residential quarter.
8. That it is also submitted for your kind information that whenever a Substitute is deployed for relieving a Sentry on duty in the Jail, the officer available at Main Gate will never allowed such a sentry to go out or leave his place of duty until the charge is handed over to his Reliever.
9. That as detailed above, I have done all that I could do in discharge of my duties with devotion, dedication and honesty. Hence, the charge that I did not prevent the escape is totally incorrect, false, baseless and rests upon conjectures and surmises.
10. That I have discharged my assigned duties efficiently, effectively, with dedication, devotion and honesty. The alleged incident has neither happened due to my negligence or fault nor during the timings of my duties

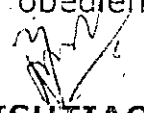
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hence, allegation as leveled against me is incorrect and therefore denied. When I left my place of duty at 0300 hours every thing was O.K.

- 11. That I have about 08' years service at my credit and having meritorious service record. Throughout of my entire service I have always performed my assigned duties with zeal, zest and honesty.
- 12. That in the instant case, I am totally innocent and have falsely been involved, hence the statement of allegations needs to be withdrawn for the dispersion of justice.
- 13. That I am a young, educated and trained Warder and the only supporter of my family consisting upon my old ailing parents, younger brothers, sisters & minor children.

PRAYER: In view of the facts and circumstances narrated here above, it is hoped that my instant reply will be considered sympathetically and **statement of allegations** issued to me will be withdrawn for the sake of justice for being innocent and not responsible for the incident look place. I shall be very thankful to your Highness for this act of kindness and pray for your long life & good health.

Your obedient servant


(RISHTIAQUE)
 WARDER(UNDER SUSPENSION)
 CENTRAL PRISION HARIPUR

Dated: 14-11-2012

C.C. Singh

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Annexure C

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ENQUIRY UNDER E&D RULES AGAINST CENTRAL PRISON HARIPUR STAFF

INTRODUCTION

On account of escape of four prisoners, three convicted and one under-trial, from Central Prison Haripur on night between 20th and 21st October, 2012, fact finding inquiry was conducted to fix responsibility. Subsequently Inspector General of Prisons has served charge Sheets and Statements of Allegations on some officers and officials of Central Prison Haripur and nominated the undersigned as Inquiry Officer to probe their conduct vis-à-vis these charges.

ENQUIRY PROCEEDINGS

Superintendent central jail Haripur was informed vide **Annex-I**, that the undersigned shall visits the central jail on 21/11/2012 and requested to inform all the accused and to ensure their presence on the date along with their written defence. All the accused were present on the date. They were given ample opportunity for their defence and were cross examined in the presence of relevant staff. Relevant record was procured from the office of the Superintendent Central Jail Haripur.

CHARGES AGAINST THESE EMPLOYEES AND THEIR REPLIES ARE REPRODUCED BELOW.

S.#	CHARGES	JIST OF THEIR REPLIES
1.	<p><u>Charges Against Muhammad Naeem Khan Senior Assistant Superintendent Jail (Annex-II)</u></p> <p>i. As per statement of recaptured under trial prisoner Muhammad Safdar, iron cutter and tranquilizer tablets were provided to the escapees by their brother Irshad in interview on 25/09/2012 which shows failure on his part as in-charge interviews and resulted into the mishap of escape of four prisoners from the jail in the night between 20/21-10-2012.</p> <p>ii. The escapes kept on cutting the iron bar of the window of the barrack for 4/5 days but neither had he noticed it which shows negligence/inefficiency on his part. He also failed to properly search his sector/barrack to recover the prohibited articles despite</p>	<p>i. He in his reply at Annex-II-A, has denied the charges and stated that it is the responsibility of he warder staff who have been assigned duties of search on the main entrance, main gate of the jail and chakkar. No items are passed/given through Interview room rather the items pass through the Main Gate. Under rule 559 of the PPR it was/is the responsibility of the warder to search every prisoner before and after interview.</p> <p>ii. He has performed his duties efficiently and there is no violation of any rule. He had attended all the lock-ups except that of 20th October, 2012 as he was on leave. Checking and searching the barracks is the duty</p>

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	<p>provision in rules and despite repeated instructions recorded by the Superintendent jai in his journal. Meaning thereby that locks up were made without following the procedure given in rule 704 of prisons rules. Thus he has violated rule 657, 705, 1072 and 1095(f) of the NWFP Prison rules 1985.</p>	<p>of watch and ward staff as envisaged under various rules of PPR.</p> <p>iii. Since there is no adverse report or explanation has ever been called of him therefore he has not violated rule 1095(f).</p>
<p>2.</p>	<p><u>Charges Against Zahoor Elahi Senior Assistant Superintendent Jail (Annex-III)</u></p> <p>He supervised lockups of sector 4 on 20/10/2012 but failed to ensure that the procedure laid down in rule 704 properly and effectively carried out which resulted into the mishap of escape of four prisoners from the jail in the night between 20/21-10-2012. Thus he has violated rule 657, 705, 1072 and 1095(f) of the NWFP Prison rules 1985.</p>	<p>i. He vide his statement at Annex-III-A, denied the charges leveled against him and took the plea that he was not responsible for Sector 4 as he has been assigned Sector 1 by the Superintendent.</p>
<p>3.</p>	<p><u>Charges against Fazal Mehmood Senior Assistant Superintendent Jail (Annex-IV)</u></p> <p>i. Due to his gross negligence / inefficiency in the performance of his duties four prisoners made good their escape from the jail in the night between 20/21-10-2012 at about 03:00 AM, thus he has violated rule 657, 1072 and 1095(f) of the NWFP Prison Rules 1985.</p> <p>ii. he failed to keep proper supervision over the staff on duty.</p> <p>iii. He also failed to ensure timely change of guard and presence of warder staff on duty till arrival of substitute in the night of occurrence.</p>	<p>i. He denied all the charges vide statement at Annex-IV-A, and stated that he performed his duties efficiently and honestly.</p> <p>ii. He supervised all the staff under his control.</p> <p>iii. Change of guards was carried out well in time by him.</p>
<p>4.</p>	<p><u>Charges against Head Warder Abdul Sattar (Annex-V).</u></p> <p>i. The escaped prisoners kept on cutting the iron bar of the window of the barrack for 4/5 days but neither</p>	<p>He also denied all the charges against him vide his statement at Annex-V-A and stated that he performed his duties well and effeciently and the incident had not occurred during his duty hours.</p>

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	<p>had he noticed it which shows negligence / inefficiency of his part being in-charge of sector No. 4 and resulted into mishap of escape of four prisoners from jail in the night between 20/21-10-2012. He also failed to properly search his sector / barrack to recover the prohibited articles despite provision in the rules and despite repeated instructions recorded by the Superintendent jail in his journal. Meaning thereby that lockup were made without following the procedure given in rule 704 of the prison rules. Thus he has violated rule 1139 of the NWFP Prison Rules 1985.</p> <p>ii. He did not act in accordance with the procedure in rule 704 of the rules ibid and locked up the prisoners without search and without testing the windows gratings in violation of rule 704 of the NWFP Prison Rules 1985 although he certified in the lock register that prisoners were locked up after search and all locks, gratings were checked.</p>	<p>He checked all the gratings and found in order.</p>
<p>5.</p>	<p><u>Charges against Warder Bahrawar (Annex-VI).</u> As per statement of recaptured under trial prisoner Muhammad Safdar, iron cutter and tranquilizer tablets were provided to the escapees by their brother Irshad in interview on 25/09/2012 which shows failure on his part as search duty in interview room on that day afforded full advantage to the escapees to make good their escape from the Jail in the night between 20/21-10-2012.</p>	<p>He denied the charges against him vide statement at Annex-VI-A, and stated that his duty was not in Interview Room rather he was assigned duty on main gate. He performed his duty of search effeciently. No prohibited article has entered into jail during his duty hour or through main gate.</p>
<p>6.</p>	<p><u>Charges against Warder Siddique (Annex-VII).</u> As per statement of recaptured under trial prisoner Muhammad Safdar, iron</p>	<p>He denied the charges against him vide statement at Annex-VII-A and stated that his duty was not in Interview Room rather he was assigned duty on</p>

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	<p>cutter and tranquilizer tablets were provided to the escapees by their brother Irshad in interview on 25/09/2012 which shows failure on his part as search duty in interview room on that day afforded full advantage to the escapees to make good their escape from the Jail in the night between 20/21-10-2012.</p>	<p>main gate. He performed his duty of search effeciently. No prohibited article has entered into jail during his duty hour or through main.</p>
7.	<p><u>Charges against Warder Shah Qaisar (Annex-VIII).</u> He was performing the duty of patrolling officer from 12:00 AM to 03:00 AM in the night between 20/21-10-2012, failed to perform his duties of keeping at alert the warders in beats inside parameter wall and on watch towers and checking the Numberdars counting the prisoners and testing bolts, locks, grating. Thus he has violated rule 712 of the NWFP Prison Rules 1985.</p>	<p>He denied the charges leveled against him and stated vide statement at Annex-VIII-A that he performed his duties efficiently. He had handed over charge to his substitute Tajdar Ali well in time and everything was ok then. All the staff on duty during 11:00 PM to 3:00 AM has given OK report.</p>
8.	<p><u>Charges against Warder Sher Bahadur (Annex-IX).</u> He was performing the duties as Round / Patrolling officer Chakkar from 01:00 AM to 03:00 AM in the night between 20/21-10-2012 failed to keep staff and Numberdar in sector No. 4 barrack No. 5 alert in violation of rule 712 of the NWFP Prison Rules 1985 ibid due to which the prisoners succeeded in slipping out their barrack.</p>	<p>He vide statement at Annex-IX-A has refuted the charges against him and stated that he performed his duty in effective manner by checking all the concerned staff and numberdar who were alert. He further stated that he didn't leave his place of duty before time. Rather he handed over charge to his substitute Jamal ud Din on time. In his statement in Urdu (Annex-IX-B) he has not offered any defence.</p>
9.	<p><u>Charges against Warder Jamal Uddin (Annex-X).</u> He was performing the duties of round officer Chakkar from 03:00 AM lockout in the night between 20/21-10-2012 did not reach sector 4 in time and failed to notice the escape of the prisoners from the barracks which delay rendered their recapture</p>	<p>He denied the charges against him vide Annex-X-A and stated that he took over charge at 3:00 AM, made a round and met the Night Duty Officer Fazal Mahmood. Suddenly they received a call from the Main gate asking for reaching to the gate immediately. On reaching the Main gate they saw that an escaped prisoner</p>

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	impossible.	was recaptured. He stated that the incident has occurred much before his arrival and not during his duty hours.
10.	<p><u>Charges against Warder Mianzoor Khan (Annex-XI).</u></p> <p>He was performing the duty in sector No 4 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 bitterly failed in performance of his duties and did not keep the Numberdar alert nor did ensure the safety of the prisoner in violation of rule 711 of NWFP Prison Rules 1985 ibid due to which the escapes slipped out of the barrack while the Numberdar was asleep.</p>	He vide statement at Annex-XI-A also denied the charges against him and stated that he performed his duty very well, made around of Sector 4 and found the numberdars alert and the incident has taken after 3:00 AM when he had left the charge. As per his statement no one is assigned duty in Chakkar after 3:00 AM to 6:00 AM.
11.	<p><u>Charges against Warder Hameed Gul (Annex-XII).</u></p> <p>He was posted inside beat No 5 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 did not prevent the escape as he left his place of duty early and without arrival of substitute in violation of rule 1149 of NWFP Prison Rules 1985.</p>	As per his statement at Annex-XII-A he performed his duty in effective manner and didn't leave his place of duty before time. He left the charge after arrival of his substitute. The incident has not occurred during his duty hours.
12.	<p><u>Charges against Warder Bishtlaque (Annex-XIII).</u></p> <p>He was posted inside beat No 4 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 did not prevent the escape as he left his place of duty early and without arrival of substitute in violation of rule 1149 of NWFP Prison Rules 1985.</p>	He has stated vide statement at Annex-XIII-A that the incident has not taken place during his duty hours. He did his job in efficient manner. As per his statement left he left the place of duty after Night Duty Officer told that no substitute was available for him and he could go after 3:00 AM.
13.	<p><u>Charges against Warder Aktiar Zaman (Annex-XIV).</u></p> <p>He did not perform duty properly at tower No 2 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 failed to prevent escape although the area from where</p>	He also denied the charges vide Annex-XIV-A and stated that he performed his duty very well. It was he who noticed the the recaptured escapee after having heard sound of falling of something and shouted at his height to make the people alert and

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	escape took place was visible from tower.	asked for help. Two colleagues came and recaptured the escapee. Being locked in the tower he couldn't come out to capture the escapee. He tried to fire shots but the gun didn't work.
14.	<p><u>Charges against Warder Mohammad Ibrahim (Annex-XV).</u></p> <p>i. He did not perform duty properly at tower No 3 from 12:00 AM to 03:00AM in the night between 20/21-10-2012 failed to prevent escape although the area from where escape took place was visible from tower.</p> <p>ii. He left his place of duty early without arrival of his substitute violating rules 1149 of NWFP Prison Rules 1985.</p>	He, vide Annex-XV-A , also denied the charges and stated that lighting system in the area was out of order. The place i.e beat No.4 wherefrom the escape had taken place is nearer to tower No.2 and not tower No.3 where he was deployed. Since he was locked in the tower therefore leaving the place without waiting for a substitute doesn't arise.
15.	<p><u>Charges against Warder Zamarak Khan (Annex-XVI).</u></p> <p>He was posted as patrolling officer outside the parameter wall from 03:00 AM to 06:00 AM in the night between 20/21-10-2012 did not reach his place of duty due to which assistance to the warders who captured one of the escapees reached late and search operation was delayed.</p>	He also refuted the charges against him. As per his statement at Annex-XVI-A he took charge from Sakhawat Hussain at 3:05 AM and was making a round when he heard a voice of fire. He went towards Tower No.4 and then Tower No.3 when he saw that warder Imran had captured/controlled the escaped prisoner Safdar.
16.	<p><u>Charges against Warder Sakhawat Hussain (Annex-XVII).</u></p> <p>He was performing duties as patrolling officer outside the parameter wall from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 did not check the staff on duty at outer beats and also failed to keep them alert and present on duty which resulted into escape. Thus he has violated rule 712 of NWFP Prison Rules 1985.</p>	He refuted the charges against him (Annex-XVII-A) and stated that he performed his duties in effective manner and keep the staff alert constantly. The incident has not taken place in his duty hours.
17.	<p><u>Charges against Warder Muhammad Saeed (Annex-XVIII).</u></p> <p>He was performing duties duly</p>	He also denied the charges vide Annex-XVIII-A and stated that he handed over charge to his substitute

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	<p>armed at outer beat from tower No 2 to 3 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 failed to perform his duty properly and left his place of duty early and without arrival of substitute in violation of rule 1149 of NWFP Prison Rules 1985, due to which the escapees safely crossed the parameter wall.</p>	<p>Shah Faisal near Tower No.3 at 3:05 AM and everything was ok at that point of time. The escape has not taken place during his duty hours.</p>
<p>18.</p>	<p><u>Charges against Warden Muhammad Yasir(Annex-XIX).</u> He was performing duties duly armed at outer beat from tower No 2 to 3 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 failed to perform his duty properly and left his place of duty early and without arrival of substitute in violation of rule 1149 of NWFP Prison Rules 1985, due to which the escapees safely crossed the parameter wall</p>	<p>He also denied the charges and stated vide his reply at Annex-XIX-A that he handed over charge to his substitute Imran near Tower No.3 at 3:05 AM and everything was ok at that point of time. The escape has not taken place during his duty hours.</p>

Before discussing the findings against each of the accused it would be appropriate to highlight the relevant rules concerning the procedure for management of prisoners, their locking and unlocking and the duties and responsibilities of the Prison staff.

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Discipline and movements of prisoners

Rule 657.-- Prisoners shall be kept and shall remain under strict order, discipline and control both by day and night. All movements of prisoners shall be conducted in an orderly and regular manner, under strict control.

Unlocking of prisoners

Rule 660.-- One hour before sunrise the bugler shall sound the reveille, and the prisoners shall rise as soon as it is sounded. They shall arrange their bedding and spare clothing neatly on their sleeping berths and shall then sit there and counted by the convict officers. On the arrival of the Deputy-Superintendent or Assistant

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Superintendent and warden, each barrack shall be unlocked; the prisoners marched in pairs and counted by the day head warden. The officer detailed for this duty shall verify the number of prisoners counted out of each barrack by comparison with the entries in the lock-up register. When the prisoners have been counted and the Deputy Superintendent has satisfied himself that the number of prisoners unlocked is correct, the night duty warden shall be marched out of the prison. The completion of unlocking shall be announced by the bugle call.

Distribution into work parties

Rule 664.-- (i) After breakfast, the prisoners shall be distributed into their respective work parties. A record of the names of the prisoners made over to each warden during the day shall be kept in a register and every subsequent change of a prisoner from one party to another shall be recorded therein. Each party shall be made over to its responsible officer and marched to its working place.

(ii) Prisoners who are to work in the prison factory shall be assembled in an orderly manner at the factory gate under the supervision of chief warden or head warden. They shall be handed over to the head warden incharge of the factory who will count them and give a proper receipt for them. He shall maintain a daily attendance register of all prisoners working in the factory. The same procedure will be observed in the afternoon at the closure of the factory. All prisoners leaving the factory shall be searched by the head warden in the presence of the Assistant Superintendent incharge of the factory.

The duties of warders Incharge of outside parties

Rule 702.--Every warden Incharge of a party working outside the prison shall keep a vigilant eye on the prisoners in his party and shall not allow them to wander or go out of work area on any pretext whatever. He shall be personally responsible for their safe custody throughout the whole period of his duty. He shall check the prisoners frequently during his hours of duty. Prisoners working all day at a distance from the prison shall be provided with a temporary latrine in close proximity to the work and under the eye of the warden incharge. Permanent warders with experience should be placed in charge of out-parties. Every warden incharge of an out-party shall keep a list of prisoners which shall be initialed by the checking officer at the time of his visit.

Checking of out-parties

Rule 703. (i) The chief warden or a head warden shall check the out-parties at least twice daily once before noon and once in the afternoon.

(ii) The Deputy Superintendent or an Assistant Superintendent shall check the out-parties twice daily once in the morning and again in the afternoon at uncertain hours.

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(iii) The Superintendent shall pay surprise visits to the out-parties at least once a month and satisfy himself that the rules are duly complied with and shall record the fact in his order book.

Evening count and lock up of prisoners

Rule 704.-- After the evening meal as over the prisoners shall be locked up hi the following manner:-

(i) Every barrack, ward and cell shall be searched by the head warder Incharge. Clothing, bedding and other articles of prisoners shall also be searched. The gratings of doors and windows shall also be checked by him.

(ii) The head warder, warders and convict officers shall then carefully search every, prisoner with due regard to privacy and decency.

(iii) The name of every prisoner shall then be called from the attendance register of the barrack who shall then enter the barrack. The head warder shall keep a count of the prisoners. The prisoners shall sit on their berths where the convict officers on night duty shall again count them and report the number to the head warder. When the head warder is satisfied that the number is correct he shall lock the barrack. The number lock-up in the barrack shall be written by chalk on a black slab outside the barrack door.

(iv) When all the prisoners, except the convict Officers on duty in enclosures and main wall, have been locked up, the total number of prisoners shall be verified. The number of prisoners locked up in each barrack, ward and cell block as well as the total number of prisoners in the prison shall be recorded in the lock up register to which the Deputy Superintendent shall append his signatures in token of correctness.

(v) Lock up of prisoners shall be completed before sunset.

Deputy Superintendent, Assistant Superintendents to be present at lock up

Rule 705.-- All Assistant Superintendents shall be present in their respective charges at evening lock up and ensure that the procedure laid down in the preceding rule is being properly and effectively carried out. The Deputy Superintendent shall be present in, the prison at this time, and shall ascertain by surprise visits to various parts of the prison, that all officers are present at their posts, and lock up is being carried out properly.

Duties of warders on night watch

Rule 711.-- The duties of every warder on night watch are:-

- (i) To patrol the main wall of the prison, he shall not quit his nest or sit down, and shall be armed with a baton;
- (ii) To watch the prisoners and premises vigilantly in order to preserve silence, order and security;

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- (i) To see that convict officers do not sit but patrol the barracks constantly during their watch; -
- (iv) To be constantly on the move examining each barrack to see that every prisoner is on his berth, and that the ward is properly lighted.
- (v) To examine frequently bolts, locks, gratings and doors in order to satisfy himself fully that they are intact;-
- (vi) To get the prisoners counted by convict officers on duty at least once in every hour and to satisfy himself that the number is correct and
- (vii) To give immediate alarm by blowing his whistle on the happening of any occurrence requiring prompt action such as escape, riot, fire etc.

Duties of patrolling Officers

Rule 712.-- The duties of every head warder or warder on patrol duty at night are:-

- (i) To see that night sentries both inside and outside the barracks are on the alert;
- (ii) To go around each barrack or cell block ones every hour, examining lock, bolts, gratings, doors, walls and roofs in order to satisfy himself fully that they are intact;
- (iii) To frequently get the prisoners counted by convict officers on duty and to satisfy himself that the number is correct;
- (iv) To see that every association barrack confining prisoners is well lighted;
- (v) To patrol the main wall and ensure that warder convict officers are alert and watch tower sentries are vigilant;
- (vi) To report immediately any cases of serious sickness to the junior Medical Officer and the Assistant Superintendent on duty who shall, if necessary, take steps for the removal of the sick prisoner to hospital and
- (vii) To raise alarm and send immediately information to the Assistant Superintendent on night duty and the Deputy Superintendent of any occurrence requiring prompt action, such as an escape, riot, fire etc.

System of watch inside the barracks at night

Rule 715.-- Every Barrack in which prisoners are confined shall be patrolled inside by a convict officer at a time who shall be relieved at the time the warder guard is

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changed. A roster showing the names of the convict officers detailed for duty in each barrack or ward, with the hours of duty shall be kept in the night duty register of convict officers. The duties of these convict officers shall be changed at every fortnight. When exceptional precautions are necessary or a barrack is on unusual length, more convict officers may be placed on duty at one time, each being allotted a definite beat.

General Duties

- Rule 1044.*— (i) An assistant superintendent shall, subject to the orders of the superintendent, be competent to perform any of the duties, and be subjected to all the responsibilities, of a Deputy Superintendent under the Prisons Act, or any rule there under.
- (ii) Assistant Superintendent shall be subordinate to the Deputy Superintendent and shall obey all orders issued by him.
- (iii) The Assistant Superintendent may be assigned to the Assistant Superintendent when this officer is temporary absent or incapacitated for duty.
- (iv) Some of the duties of the Deputy Superintendent may be assigned to the Assistant Superintendents, who shall perform such duties under the general supervision of the Deputy Superintendent.

Assignment of duties

Rule 1045.— (i) The Assistant Superintendent shall perform such duties as the superintendent may prescribe in writing in his order book. The duties shall be clearly prescribed and shall be changed periodically to afford them every opportunity to acquire a thorough training and all round experience of every detail of prison management.

(ii) The following duties shall ordinarily be allocated to the Assistant Superintendents: -

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- (1) Direct charge of a section of the prison including the prisoners confined there and the Government property that may be located there.
- (2) Admission, transfer and release of prisoner.
- (3) Award of ordinary remission to prisoners.
- (4) Appeals and petitions of prisoners.
- (5) Supervision of factories.

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- (6) Supervision and drill of warder guard.
- (7) Supervision of cookhouse, issue of rations to the cooks and the examination of cooked food and its distribution.
- (8) Supervision of interviews and letters of prisoners.
- (9) Search of prisoners and buildings under their charge.
- (10) Maintenance of registers pertaining to their duties and responsibility for their correctness.
- (11) Maintenance of report book, when incharge of a factory or circle to record discharge of their daily duties, and any important matter concerning their duties which may be necessary to bring to the notice of the Superintendent.
- (12) Presence and supervision at distribution of meal and at evening lock-up.
- (13) Night round on turn and search of relieving and relieved night guard once a week.

(iii) The Assistant Superintendents shall perform all other duties as are prescribed in the various chapters of the Prison Rules.

Weekly checking of clothing and equipment

Rule 1047.-- Every Thursday evening the Assistant Superintendents incharge of circles shall hold a parade of the prisoner confined in their circles and shall-

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- (a) Carefully inspect every prisoner;
- (b) Examine and check the clothing bedding, utensils and history tickets of every prisoner
- (c) Check the barrack register and satisfy themselves that every prisoner is present or accounted for; and satisfy themselves generally that everything is in proper order. They shall record in their report book the shortages (if any), the state of clothing, cleanliness of barracks and yards and any other matter of important relating to prisoners of their circle

Duties of chief warder and head of chief warder*Rule 1138.--* The chief warder in Central and first class District Prisons and the senior head warder in other prison shall: -

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- (a) Post the warders under the orders of the Deputy Superintendent explaining to each warder the duties and responsibilities of his post and supervise the warders on duty;
- (b) Assist the Deputy Superintendent at unlocking midday count and look-up and in the distribution of various parties in the morning and their collection in the evening and the maintenance of attendance register.
- (c) Visit and count at uncertain hours all parties working inside the prison and for with report to the Deputy Superintendent any unusual occurrence.
- (d) Visit the main wall and satisfy him that the convict officers on the main wall duty are preset at their posts, and are on the alert.
- (e) Supervise the distribution of food and the conservancy arrangements.
- (f) Cause all gratings door or other openings of enclosures and barracks in which prisoners are confined to be secured and satisfy himself by personal inspection that they are secure.
- (g) Pay surprise is its to all outside parties and visit them at least once daily and,
- (h) Be responsible for the general cleanliness of the warders line, and see that all warders live in the quarters provided for them. He shall report warders who absent themselves without leave, or who permit released prisoners or friends and relatives of prisoners to remain in or to visit their quarters.

Duties of Head warder

Rule 1139.-- It shall be the duty of every head-warders to: -

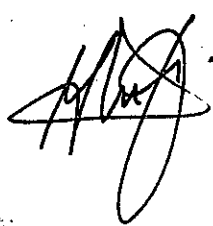
- (a) Superintendent the warders subordinate to him in the discharge of their duty ties;
- (b) Assist in every possible way in the management of the prison, the prevention of escapes and the maintenance of order and discipline generally amongst subordinate officers and prisoners;
- (c) Comply with the requirement of all rules regulations, and orders- about the duties he is to perform and the manner in which he is to perform them;
- (d) Assist the Deputy Superintendent in all routine duties;
- (e) Open the cells barracks and other compartments each morning and count the prisoners;

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- (f) Distribute the prisoners, who are liable to labour to their work parties each morning;
- (g) Cause the name and prison number of every prisoner placed in-charge of any warder to be entered in the attendance register;
- (h) Issue all necessary tools: raw materials and other articles required for the day's work and to keep a record of all articles issued;
- (i) Collect all such articles, together with the produce of the prisoners' labor in the evening;
- (j) Satisfy him self that all articles issued have been duly returned to him or accounted for;
- (k) Measure or check the task performed by each prisoner and note the same in, the task sheet;
- (l) Supervise the use of latrines, bathrooms and the distribution of meals
- (m) Check all prisons at each change of guard
- (n) Check all gratings, locks bolts and the like daily and satisfy him that they are secure.
- (o) Keep all the building under his charge neat and clean and in proper state of repair.
- (p) Cause all bamboos, scantlings, poles, Ladders, ropes, well-gear and other articles likely to facilitate escape to be removed and, kept in a safe place, beyond reach of prisoners.
- (q) Keep constantly moving about while on day duty amongst the prisoners, supervising the work and discipline of the prison and keeping the warders and Convict officers on the alert.
- (r) In the presence of the Assistant Superintendent, to count, search and lock the prisoners in cells, barracks, etc., at the prescribed time, each evening and
- (s) Give the warders half an hour's drill daily.

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Duties of Head warders on reliving guard Rule 1140.-- (i) No head-warder or warder shall keep his post of duty until he has been duly relieved and his responsibility shall continue till he is relieved.



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- (ii) The senior head-warder shall, at least ten minutes before the hour fixed for reliving the guard on duty, collect the warders of the relieving guard in the main gate. At the proper time he shall march the relieving guard to their respective posts and remove the guard to be relieved. The relief shall be carried out with military precision.
- (iii) No relief whether by day or night shall be effected otherwise than in the presence of both the relieved and the relieving officers and also of the senior head warden carrying out the relief such head warden shall satisfy himself that the party is complete and corresponds with the number in the attendance register.
- (iv) Warden whether going on or off duty shall be marched, in double file. When the relief is complete the relieved head-warder shall march the relieved wader to the main gate.

Detailed duties

Rule 1148.-- It shall be the duty of every warden: -

- (a) Not to take off any portion of his uniform or lie or sit down while on duty.
- (b) To know the number of prisoners in his charge, to count them frequently during his hours of duty and to satisfy himself that he has in his custody, not only the correct number, but also the particular prisoners for whom he is responsible
- (c) To search the prisoners as well as the factories, cells and barracks in which they are confined at the time of receiving and making over charge.
- (d) To report every prisoner whom he considers to have committed a prison offence;
- (e) To see that any prisoner who has to go to the latrine at unauthorized times, is made over to the charge of a responsible officer whilst away from the party
- (f) To maintain scrupulous cleanliness in the buildings in his charge and see that the drains are clean and kept free from silt;
- (g) To bring to the notice of the Assistant Superintendent and Junior Medical Officer any prisoner appearing to be ill or complaining of illness.

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- (h) To report any plots for escape, assault, out-break, or for obtaining prohibited articles.
- (i) To give an immediate alarm by blowing, his whistle if a prisoner is missing, or if any disturbance appears imminent or takes place.
- (j) To prepare prisoners for parades and see that each prisoner takes his place in proper order and behaves well; and.
- (k) To keep his arms and accoutrements clean, in good order and fits for immediate use.

No warder to leave his post

Rule 1149.-- No warder shall, while on duty, at any times, under any circumstances, on any pretext, leave his post or absent himself from duty until relieved in due course and released from duty. Provided that he may leave his seat to prevent an escape or to assist in sub during a disturbances taking place within his sight when he is on main-wall duty or when is in-charge of prisoners, if he can do so without serious risk to the safe custody of his prisoners.

Duties on being relieved

Rule 1150.-- A warder on being relieved shall explain to his successor what the duties of the charge are, and shall bring to the notice any long-termed and dangerous prisoners. The relieving warder shall, before taking charge, satisfy himself that the property and the number of prisoners made over to him are correct.

FINDING

Each accused was given full opportunity to explain his position. From the statements of the recaptured prisoner, accused officers and officials, inspection of all the sites of jail including Interview room and site of occurrence following facts came to the fore:-

1. The incident was a very coordinated and well-planned. The escaped prisoners were preparing for the escape for quite long time as they not only cut the thick iron bar of the window of their barrack but also prepared a ladder for which they stock the prohibited articles like ropes and wooden rods of TV Antenna.
2. The convict officers/numbardars of the barrack also extended their support as they neither searched the barrack effectively nor stopped the escaped prisoners from cutting the iron bar.

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- 3. Staff deployed during day-time also failed to notice the prohibited articles near their barrack which were subsequently used in the escape. It was responsibility of the entire staff to be vigilant and prevent occurrence of such incident.
- 4. There was no lighting system near the factory and the escaped prisoners took full advantage of this. After breaking the iron bar, they came out, went to the factory side, stayed there for preparing the ladder and waited for the watch and ward staff to leave their places of duty and go for change of guard. Since the staff neither performed duty till their duty time nor reach their place of duty well in time, therefore, they succeeded in escape in those 10-15 minutes when there was no one either on beat No.4 &5 or outside parameter wall. Staff deployed on watch towers also couldn't notice the escape which shows that they were not alert all the time.
- 5. There were 20 beats in Haripur jail since its very inception but now their number has been reduced to 8 and at some time some of these are also without any watch and ward staff. Discussions with the staff members revealed that warders are deployed at the bungalow of the Superintendent.
- 6. Gate Keeper Register is not properly maintained. This register if properly maintained and entries made well on time will show exact time of the persons be they staff members or visitors who enter or leave the main gate. Relevant pages of the said register at **Annex-A** are silent about entry and exit time of some of the accused.
- 7. Lock up of prisoners is a very elaborate process and requires presence and attention of the senior officers, incharge of the sectors to ensure that the procedure laid down in PPRs is strictly followed. But it is being taken a Business as usual.

8. **MUHAMMAD NAEEM KHAN SENIOR ASSTT. SUPERINTENDENT**

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The said Senior Assistant Superintendent Jail is serving the Prisons Department since long. Being incharge of Sector 4 he was responsible for the duties as enshrined in rules 1044 to 1047 as highlighted above.

First charge of negligence on his part while performing duty in Interview Room is not proved as he is not supposed to check and search the articles brought by the visitors for their relative prisoners. This is the responsibility of the warders deputed at the main gate to check these items. Moreover, there are more than three points where search of items meant for the prisoners is carried out.

The second charge that he didn't perform his duty as Sector Incharge is partially proved. Though he was on leave on 20th October, 2012 but under the rules being Sector incharge he was supposed/required to supervise that

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unlocking and locking of prisoners is carried out as per rules/procedure mentioned in the Pakistan Prison Rules which he couldn't ensure. Had he ensured that all the barracks of Sector 4 has been carried out by the Head Warder and Warders and prohibited articles recovered this incident might not have occurred. Under rule 1072, he along with other staff was required to take all lawful measures to prevent the commission of any prison offence and to enforce all rules, regulations and orders for the time being in force in regard to conduct and discipline of the prisoners and the administration of the prison. Though he was on leave on 20th october, 2012 but even two days before he failed to lock up the prisoners in Sector 4 though he was incharge. Zahoor Elahi locked up the prisoners in Sector 4 as is evident from initials in Ginti Band (lock up) register which is also called AAmad Kharij Register at **Annex-B** (initials are highlighted). Lock ups of prisoners is a crucial process in the prisons but it has become a routine matter and is not taken seriously. Most of the time prisoners are locked up under the supervision of Head Warders and not Assistant Superintendent and anyone put his initial on the register.

9. ZAHOOR ELAHI ASSISTANT SUPERINTENDENT

Charge against him stands proved. Though he was not incharge of Sector 4 on that fateful night but he supervised the lock up process. If he was not responsible for Sector 4 then why he signed the "Amad Kharij Register" (relevant pages at **Annex-B**) which proves that he supervised the counting of prisoners, scrutinized the newly entered prisoners in Sector and the prisoners shifted to other sectors or released. He failed to ensure that lock up is carried out as per procedure laid down in rule 704 of the PPR. He also failed to perform duties as prescribed in rule 1045 of the PP. As is evident from his initials and entries at Annex-A, he locked up the prisoners in Sector 4 two days earlier as well.

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10. FAZAL MAHMOOD KHAN ASSISTANT SUPERINTENDENT

Charges against Fazal Mahmood Khan stand proved. Though he made rounds, checked the staff on duty for some time but failed to ensure that all he staff on duty is alert. Further he failed to ensure that change of guards is carried out well in time and as per procedure laid down in the PPR. Warders on duty left their places of duty before 3:00 AM but he not only failed to ensure that they are on their duty places till the time of duty i.e 3:00 AM but didn't report that matter. At night he was responsible for the whole jail. Had he kept them alert all the time

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the incident might not have occurred. Mere escape of four prisoners is sufficient to prove that he could not properly supervise the jail at night.

11. ABDUL SATTAR HEAD WARDER

Charges against him proved as he failed to carry out search and check duty in Sector 4 for which he was responsible as per rule 704 of the PPR. Had he properly performed duty he would have found that iron cutter was available with the escaped prisoners which they used for some days for cutting the bar but he failed to notice even the cutting process. As per rule 704 he was required to search every barrack. Clothing, bedding and other articles were also to be searched. Gratings of doors and windows were also to be checked by him but he failed to do which resulted into the escape of four prisoners. He had reported in register that all gratings and windows were checked and found in order as is evident from entries in the register (relevant pages are at **Annex-C**. As per statement of the recaptured prisoner Safdar at **Annex-D** which was recorded immediately his recapture they succeeded in cutting the iron bar completely on 20-10-2012 and at 2:25 AM they escaped from the barrack and entered the factory area and stayed there for some time waiting for the change of guards. They perhaps had noted the routine in jail and were aware of the fact that watch and ward staff leave their place of duty ahead of their time which helped them a lot in their escape.

12. BAHRAWAR WARDER

Charges against him partially proved. He was on duty on Main gate and not in Interview Room as stated/alleged in the charge sheet and statement of allegations. All the statements of other accused officials and discussion with Mr. Riaz Moharrar, the representative of Superintendent Central Prison Haripur show that the iron cutter did not pass through the main gate or interview room rather the same was stolen from the factory where these articles are available in abundance. However about tranquillizer tablets their reply is not satisfactory. Discussions with doctors of the jail reveal that they only prescribe medicine on proper investigation/examination. It is most likely that these tranquillizers were passed through main gate under the pretext of medicines.

13. SIDDIQUE WARDER

Charges against him partially proved. He was on duty on Main gate and not in Interview Room as stated/alleged in the charge sheet and statement of allegations. All the statements of the accused officials and discussion with Mr. Riaz Moharrar, the representative of Superintendent Central Prison Haripur show that the iron cutter did not pass through the main gate or interview room rather the same was stolen from the factory where these articles are available in abundance. However about tranquillizer tablets their reply is not satisfactory. Discussions with doctors of the jail reveal that they only prescribe medicine on proper investigation/examination. It is most likely that these tranquillizers were passed through main gate under the pretext of medicines.

14. SHAH QAISER WARDER

He was responsible for patrolling duty inside the parameter wall and to keep vigil on the staff posted inside the wall on beats but he utterly failed to perform his duty as per provisions of PPRs. He was required under rule 711 and 712 of the PPRs to examine frequently bolts, locks, gratings and doors in order to satisfy himself that they are fully intact. Though he denied the charge and stated that he performed his duty efficiently but circumstantial evidence goes against him. Had performed his duties the incident could have been averted.

15. SHER BAHADAR WARDER

Charges against him stand proved. Though he denied the allegations vide his statement at **Annex-IX-A**. But in his another written statement at **Annex-IX-B** (in Urdu) he has not written in his defence rather shifted his responsibility to others. Had he performed his duty with full devotion and followed the procedure as laid down in the PPRs the incident might not have occurred.

16. JAMAL UD DIN WARDER

Charge against him proved though he also denied in his statement but circumstances and statement of other co-accused show that the incident had occurred at the time of change of guards. Since neither the guards waited for their substitutes and left their place of duty much before time nor the relievers reached in time which culminated in the escape. Had reached to his place of duty well in time the recapture would have become possible.

17. MANZOOR KHAN WARDER

Charges against him also proved as he failed to perform his duty as per provisions of the PPRs. He was on duty in Sector 4 on that night but failed to

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check the gratings, keep the numberdars alert all the time. Though for some time he performed his duty but left his place before his duty time. This negligence on his part resulted into the escape. Had he checked the gratings he would have noticed that the iron bar was not intact and in order. This fact he has admitted in his statement in Urdu at **Annex-XI-B** that he could not check the gratings as the prisoners protest and shout over such checking.

18. HAMEED GUL WARDER

Charges against him proved. He denied the fact that the incident has occurred in his duty time. As per his statement he left the place of duty i.e beat No. 5 after arrival of substitute however statement of other accused officials and escape of prisoners show that he left his place of duty i.e beat No. 5 well before time which is violation of rule 1149 which provides that no warder shall leave his place of duty in any circumstances, on any pretext or absent himself from duty untill relieved in due course and released from duty. His statement is silent on the issue of time of his releaving.

19. RISHTIAQUE WARDER

Charges against him proved. He is one the main responsible officials for this escape. He not only failed to perform his duty efficiently as per PPRs but also left his place of duty much before time which resulted into this mishap. In his written statement he has admitted that he left his place of duty without arrival of substitute. Beat No.4 where he was posted is the place wherefrom the escape took place. Had he been on duty till his exact time and alert the escape might have averted. Though he stated that he was asked by Fazal Mahmood Khan Night Duty Officer to leave the place but rules doesn't allow such kind of attitude towards performance of duty as required under the rules.

20. AKHTAR ZAMAN WARDER

He was posted as Sentry at Watch Tower No.2 and was required under the rules to be alert, keep a vigil on his place of duty. Beat No.4 and 5 wherefrom the escape had taken place is visible from his tower. But he could not keep an eye on those places and failed to notice the escape of prisoners. Though he denied the charges but circumstantial evidence shows that he failed miserably in performance of his duties. Had he been vigilant he would have noticed the escapees and the escape might not have occurred.

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21. MUHAMMAD IBRAHIM WARDER

Charges against him proved partially. The charge that he left his place i.e tower cannot be proved as he was locked in the tower and keys of towers are kept in the main gate and the relieving warder takes keys with him and unlock the warder on duty in the tower. However the first charge stands proved as he was posted as Sentry at Watch Tower No.3 and was required under the rules to be alert, keep a vigil on his place of duty. Beat No.4 and 5 wherefrom the escape had taken place is visible from his tower. But he could not keep an eye on those places and failed to notice the escape of prisoners. Though he denied the charges but circumstantial evidence shows that he failed miserably in performance of his duties. Had he been vigilant he would have noticed the escapees and the escape might not have occurred.

22. ZAMARAK KHAN WARDER

He was performing duty as patrolling Officer outside the parameter wall of jail but he failed to keep the warders on duty between watch towers No. 2 &3 alert but also failed to notice the escape. Charge against him proved. His timing of duty was 3:00 AM to 6:00 AM (lock out) but as per his statement he took charge from Sakhawat Hussain his predecessor at 3:05 AM thus admitted late arrival. He was supposed to be on his place of duty at 3:00 AM. In the instant case even a single minute mattered a lot.

23. SAKHAWAT HUSSAIN WARDER

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Charge against him proved as it was during his duty hours that the escape took place. It appears from the statement of the recaptured prisoner at Annex-B and other statements of the co-accused that the escape took place between 2:45 AM to 3:10 AM. Had he not left his place before time and had he been vigilant and kept the staff alert the incident might not have occurred.

24. MUHAMMAD SAEED WARDER

Charge against him proved as he failed to ensure his presence on the place of his duty i.e beat between tower No. 2 &3. He not showed irresponsible attitude towards his duty for being not alert but also left his place of duty before time. As per the statement of the warders at Annex-E, who captured one of the escaped prisoner Safdar Mr. Muhammad Saeed alongwith his colleague Yasir left charge near hostel located between Towers No. 3 and 4 which is far away

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from their place of duty. This fact is supported by circumstantial evidence and escape of the prisoners. They were required to hand over their charge of duty to their relievers at fixed time and on the proper place of duty. Though he and Mr. Yasir denied the fact that the incident took place between their duty hours but circumstantial evidence and statement of the recaptured prisoner reveal that escape occurred in their duty hours.

25. MUHAMMAD YASIR WARDER

Charge against him proved as he failed to ensure his presence on the place of his duty i.e beat between tower No. 2 & 3. He not showed irresponsible attitude towards his duty for being not alert but also left his place of duty before time. As per the statement of the warders who captured one of the escaped prisoner Safdar, he alongwith his colleague Muhammad Saeed warder left charge near hostel located between Towers No. 3 and 4 which is far away from their place of duty. They were required to hand over their charge of duty to their relievers at fixed time and on the proper place of duty. Though he and Mr. Yasir denied the fact that the incident took place between their duty hours but circumstantial evidence and statement of the recaptured prisoner reveal that escape occurred in their duty hours.

RECOMMENDATIONS

In view of the facts narrated above following recommendations are submitted for approval of the competent authority:-

1. Any one of the major penalties given in rule 4 of the E&D Rules 2011 (Annex-F) may be imposed on the following officers and officials:-

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- I. Muhammad Naeem Khan Senior Assistant Superintendent
- II. Zahoor Elahi Senior Assistant Superintendent
- III. Fazal Mahmood Senior Assistant Superintendent
- IV. Abdul Sattar Warder
- V. Bahrawar warder
- VI. Siddique warder
- VII. Shah Qaisar Warder
- VIII. Sher Bahadar warder
- IX. Jamal ud Din warder
- X. Manzoor Khan warder
- XI. Rishtiaque warder
- XII. Hameed Gul warder
- XIII. Akhtar Zaman warder
- XIV. Muhammad Ibrahim warder

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- XV. Zamarak Khan warder
- XVI. Sakhawat Hussain warder
- XVII. Muhammad Saeed warder
- XVIII. Muhammad Yasir warder

2. Instructions may be issued to all superintendents of jail to ensure compliance of PPRs at all cost and not to comprise on the efficient management of prisons so as to avert such like incidents.

Saeed
29/11/2012

AKHTAR SAEED TURK
DEPUTY SECRETARY (D&F)
HOME DEPARTMENT/INQUIRY OFFICER

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SHOW CAUSE NOTICE

Annexure
"D"

I, **Khalid Abbas**, I.G. Prisons Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, do hereby serve you, **Warder (BPS-5) (under suspension) Rishtiaque** attached to Central Prison Haripur, as following :-

- i. That consequent upon the completion of inquiry conducted against you by the Inquiry Committee for which you were given opportunity of hearing
- ii. On going through the findings and recommendations of the Inquiry Officer, the material on record and other connected papers including your defence before the Inquiry Officer.

I am satisfied that you have committed the following acts/omissions specified in rule-3 of the said rules:-

You were posted at inside beat No.4 from 12.00 to 3.00 AM in the night between 20/21-10-2012 do not prevent escape as you left your place of duty early and without arrival of substitute in violation of Rule 1149 of NWFP Prison Rules 1985.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the major penalty of "**dismissal from service**" under rule-4 of the said rules.
3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. A copy of the findings of the Inquiry Officer is enclosed.

Unjail
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

Received

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10.12.2012

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Annexure ^{CO} E ²³

To,

The Honourable Inspector General of Prisons,
Khyber Pakhtunkhwa,
Peshawar.

Through proper channel.

Subject: REPLY TO THE SHOW CAUSE NOTICE.

Respected Sir,

It is submitted that the SHOW CAUSE NOTICE issued under your signatures dated 04-12-2012 alongwith a copy of findings of Inquiry Officer dated 29-11-2012 has been delivered to me on 10-12-2012 through Superintendent Central Prison Haripur. The allegation is still leveled as under:-

"You were posted at inside beat No.4 from 1200 to 0300 AM in the night between 20/21-10-2012 did not prevent escape as you left your place of duty early and without arrival of substitute in violation of Rule 1149 of NWFP Prison Rules 1985."

I submit my reply to the aforementioned allegation as under:-

1. That previously only statement of allegations bearing No. 27966 dated 02-11-2012 signed by your Highness was delivered to me on 08-11-2012 by the Superintendent Jail, Haripur. The said statement of allegation was duly replied in detail on 14-11-2012. But it is very astonishing and perplexing one that my reply based on facts and credible information seems to have not been considered properly and justly for dispensing justice & equity on preliminary stages of departmental inquiry as envisaged by the law and rules. However the facts and circumstances of the incident are again submitted here under for kind consideration and favourable action.
2. That the allegation is incorrect hence, straightaway denied. It is incorrect that I left my place of duty early and without arrival of substitute in violation of Rule 1149 of NWFP Prison Rules 1985. I remained quite present at the place of my duties from 1200 to 0300 AM as I asked about time to warder Akhtar Zaman (sentry of tower No. 2) and he confirmed that its 3'O clock and than I left the beat (my place of duty).

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3. That on the said very night nobody was posted at beat No. 04 as my substitute after 0300 AM as per routine. In this connection **DUTY REGISTER** can be examined which will speak it self that no one was deployed and this was the routine for the last month or so.
4. That I also asked **OUTER OHDEDAR** about my reliever/substitute that whether anyone deployed after 0300 AM and he told me that there is no one posted /deployed at beat No. 04 after 0300 AM as per routine therefore you can leave the beat at 0300 AM.
5. That I marked my entry/signed the register at the main gate of jail at 1200 hours on the night between 20/21-10-2012 and took over the charge of beat No.04. The alleged occurrence took place at beat No.4. The distance between my place of duty and incident place is about 260 yards.
6. That both round / patrolling officers deployed inside and outside the area from 1200 to 0300 AM on the night of occurrence reported every thing as OK. **The occurrence did not take place during my duty timings i.e 1200 to 0300 AM.**
7. That question of preventing the escapees does not arise as no such occurrence has taken place during my duty hours. No one had made his escape from Beat No. 4 where I was performing my duties that night.
8. That during my duty hours from 1200 to 0300 AM, I remained alert and in active position. I performed my duty with devotion, dedication and honesty. **Assistant Superintendent Jail Mr. Fazal Mehmood, Night Duty Officer** alongwith **Sher Bahadar Round/Patrolling Officer** and **Shah Qaiser** visited my place of duty at about 0245, they checked me and found me alert as well as most vigilant. I also asked Mr. Fazal Mehmood about my substitute and he also told me that there is no one deployed after me at beat No.4 after 0300 AM as per routine.

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9. That incharge of main gate (Talashi Gate & sentry) never allow any one to go out of jail without handing over the charge to the reliever but on the said night when I reached at main gate the officer available at main gate (Talashi gate) allow me to leave the jail for my residential quarter. That time **Mr. Fazal Mehmood was also present at jail main gate and he also allow me to go out of jail without arrival of substitute** as there was no one deployed after 0300 at beat No.04 (my place of duty from 1200 to 0300 AM).

10. That the allegation that I left my duty place early is totally baseless as I left the duty place after 0300 AM as evident from Register No. 16 of jail main gate in which my exit time is recorded as 03:15 AM. The distance from my duty place to main gate is of about 6 to 7 minutes and I came to main gate at **03:15 AM (Register No. 16 can be examined)**. It means I did not leave my duty spot before end of duty timings.

11. That as detailed above, I have done all that I could do in discharge of my duties with devotion, dedication and honesty. Hence, the charge that I did not prevent the escape is totally incorrect, false and baseless and rest upon conjectures and surmises.

12. That it is incorrect that the charges against me have been proved. No evidence has been brought against me during the inquiry. The cross-examination/ questions put to me by the Inquiry Officer were duly answered. But my said answers have not been mentioned in the inquiry report / findings by the Inquiry Officer. Neither I was confronted by any record if any and produced before the inquiry officer. I was also not provided with the opportunity of cross examination.

13. That the inquiry officer is totally non-technical person and also not suitable for such like inquiry as neither he has served in prison department nor has knowledge about prison duty routine. Rule 1149 of PPR is applicable where the reliever/substitute is deployed but on the very night no one was deployed after me from 0300 AM to onwards. Thus rule 1149 is not applicable against me.

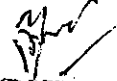
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14. That Inquiry Officer has summarily recorded the inquiry findings and did not bother to probe in to the facts and circumstances of the matter in the light of oral as well as documentary evidence. Hence inquiry is based on surmises and conjectures recorded in hastily manner thus having no nexus with truth and reality of the incident.
15. That Inquiry Officer did not take care to have considered the answers given by me to the questions put by him and went on to record inquiry findings emotionally and superficially.
16. That I have about 08 years service at my credit and having meritorious service record. Throughout of my entire service I have always performed my assigned duties with zeal, zest and honesty.
17. That in the instant case, I am totally innocent and have falsely been involved, hence the show cause notice needs to be withdrawn for the dispersion of justice.
18. That I am a young, educated and trained Warder and the only supported of my family consisting upon my old ailing parents, young brothers, sisters and minor children.

PRAYER: In view of the facts and circumstances narrated here above, it is hoped that my instant reply will be considered sympathetically and **SHOW CAUSE NOTICE issued to me will be withdrawn for the sake of justice** for being I am innocent and not responsible for the incident took place. I shall be very thankful to your highness for this act of kindness and pray for your long life and good health.

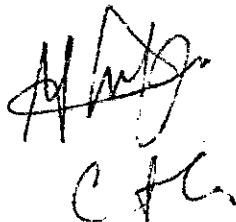
Your Obedient Servant



(RISHTIAQUE)

WARDER (Under Suspension)
Central Prison Haripur.

Dated 17. -12-2012.



C.A.C.

17-12-12 864



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

NO. 2/14-J-2010 P2/32056

DATED 20-12-2012

ORDER

On completion of proceedings and in exercise of powers conferred under Rule-14 sub rule-5 of Khyber Pakhtunkhwa Government Servants(Efficiency & Discipline) Rules 2011, after having considered the charges, evidence on record, the explanations of the accused officers/officials and affording an opportunity of personal hearing to the accused and keeping in view of recommendation of the Inquiry Officer, the undersigned being competent authority is pleased to pass the orders as noted against each officers/officials with immediate effect in a case regarding escape of four prisoners from Central Prison Haripur in the night between 20/21-10-2012 :-

*Amenul
"F"*

S.No.	NAME OF /OFFICERS/ OFFICIALS	ORDERS/PENALTY
1.	Mr.Muhammad Nacem, Senior Assistant; Superintendent Jail (BPS-16).	Reduction to lower post/grade of Assistant Superintendent Jail (BPS-14).
2.	Mr.Fazal Mehmood, Senior Assistant Superintendent Jail: (BPS-16).	Dismissal from service.
3.	Head warder(BPS-7) Abdul Sattar.	Dismissal from service.
4.	Warder(BPS-5) Bahrawar.	Compulsory retirement from service.
5.	Warder(BPS-5) Siddique Muhammad.	Compulsory retirement from service.
6.	Warder(BPS-5) Shah Qaiser.	Dismissal from service.
7.	Warder(BPS-5) Sher Bahadar.	Dismissal from service.
8.	Warder(BPS-5) Jamal-ul-Din.	Compulsory retirement from service.
9.	Warder(BPS-5) Manzoor Khan.	Dismissal from service.
10.	Warder(BPS-5) Muhammad Rishtiaque.	Dismissal from service.
11.	Warder(BPS-5)Hamced Gul.	Dismissal from service.
12.	Warder(BPS-5) Akhtar Zaman.	Dismissal from service.
13.	Warder(BPS-5) Muhammad Ibrahim.	Dismissal from service.
14.	Warder(BPS-5) Zamarak Khan.	Dismissal from service.
15.	Warder(BPS-5) Sakhawat Hussain.	Dismissal from service.
16.	Warder(BPS-5) M.Saced Khan S/O Mir Subhan.	Dismissal from service.
17.	Warder(BPS-5) Muhammad Yasir.	Dismissal from service.

The period for which Official at S.No.8 above(Jamal-ud-Din) remained under suspension shall be treated as duty for all purposes.

Waleed
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR

ENDST.NO. 32057-65

Copy of the above is forwarded to :-

1. The Secretary to Government of Khyber Pakhtunkhwa, Home and T.As Department Peshawar, for information.
2. Mr.Akhtar Saeed Turk, Deputy Secretary(D/F) Home and T.As Department Peshawar (Inquiry Officer) for information with reference to his letter No.PA(DS(D&F)HD/Escapes inquiry/2012 dated 29-11-2012.
3. The Superintendent, Headquarters Prison Haripur/Peshawar, for information and necessary action.
4. The Superintendent, Central Prison Haripur.

clio

ctc
[Signature]

48

SONSYP

FAX NO. : 3445

Dec. 20 2012 35:30AM 92



P-2-

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

NO. _____

DATED _____

5. The Superintendent, Sub Jail Battagram.
for information and immediate necessary action. All concerned may be informed and necessary entries may also please be made in their Service Books under proper attestation.
6. The District Accounts Officer. Haripur Battagram., for information.
7. Office Record Keeper for placing a copy of the said orders in personal files of officers at S.No.1 & 2 above.

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

Handwritten date and initials
20/12/12

Handwritten text
etc. H.K.G.

To

The Honourable Home Secretary,
Home Department,
Khyber Pakhtunkhwa Peshawar.

Amexme "G"

Subject

APPEAL AGAINST THE IMPUGNED DECISION/
ORDER DATED 20.12.2012 OF INSPECTOR GENERAL
PRISON KHYBER PAKHTUNKHWA PESHAWAR AND
APPELLANT BE REINSTATED.

Respected Sir,

1. That the appellant service has been dismissed through the order/decision of Inspector General of Prison KPK Peshawar on 20.12.2012. Copy of decision is annexed.
2. That on the day of occurrence dated 20/21.10.2012 the appellant remained on duty at Beat No.4 from 12:00 to 3:00AM at night, the appellant properly signed on the relevant arrival/ leaving register. Copies are annexed.
3. That the appellant never left the place of duty, the appellant left the duty place after completion of duty hours i.e. 3:00AM and there was no any substitute was deputed by the concerned Night Officer at Beat No.4. During the duty I asked the Night Duty Officer that any person will be deputed in my place after completion of my duty hours i.e. 3:00AM at night so that I will leave my duty place. The duty officer replied that after completion of your duty you can leave the beat No.4 without awaiting any substitute.
5. That on the day of occurrence, no any person was deputed by the concerned night officer, which is crystal clear from the blank space available on the record. On completion of duty hours the appellant left the duty place signed the leaving register and appellant left the jail premises.

COC. H. H. H.

- 6. That the occurrence took place after leaving the jail premises of appellant, it is crystal clear that one escapee was arrested by the 2nd shift person who were substituted at the place of 1st shift persons, who also left the place of duties.
- 7. That Para No.19 of the inquiry report is totally incorrect and baseless. The only ground has been mentioned that the appellant left the place of duty without arrival of substitute, where the appellant was posted at Beat No.4. The inquiry officer without scrutinizing the available record and without reading my written reply, the appellant has been declared guilty the charge leveled against the appellant is liable to be set aside. The show cause notice, inquiry record and written reply of appellant is annexed.
- 8. That the appellant is an innocent and decision/order dated 20.12.2012 is baseless and against the natural justice, hence not tenable.

PRAYER

It is humbly prayed that the impugned order/decision dated 20.12.2012 passed by the Inspector General of Prisons KPK Peshawar may graciously be set aside and appellant kindly be reinstated in the best interest of natural justice.

Dated 26/12/12

Sd/-
 Appellant
Muhammad Rishtiaque
 Warder BPS-5
 Central Jail Haripur

Cte
Admn.



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GOVERNMENT OF KHYBER PAKHTUNKHWA HOME & TRIBAL AFFAIRS DEPARTMENT



53667

Dated Peshawar the March 21, 2013

ORDER

SO(Com/Eng)/HD/1-39-B/2012-13 WHEREAS, The following officials of the Inspectorate of Prisons, Khyber Pakhtunkhwa; were proceeded against under rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the charges mentioned in the show cause notices dated 04/12/2012, served upon them individually.

AND WHEREAS, the competent authority i.e. the Inspector General of Prisons, Khyber Pakhtunkhwa granted them an opportunity of personal hearing as provided for under Rules ibid and awarded major penalty i.e. Dismissal from Service.

NOW THEREFORE, the dismissed officials of Inspectorate of Prisons, Khyber Pakhtunkhwa submitted an appeal to the Appellate Authority i.e. the Home Secretary, Khyber Pakhtunkhwa, against the order of dismissal from service dated 20/12/2012. The Appellate Authority (The Home Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, the explanation of the accused officials and affording an opportunity of personal hearing to the accused, findings of the enquiry committee and exercising his power under rule-3 read v Rule-17 (2) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 has been pleased to pass the following orders noted against the name of each official with immediate effect;

S.No	Name & Designation	Orders
1	Fazal Mahmood, Ex-Sr. Asstt: Supt: Jail Haripur	His order of dismissal from service is set aside by converting it into Compulsory Retirement from Service from the date of his dismissal order.
2	Muhammad Yasir, Ex-Warder, C.P. Haripur.	His order of dismissal from service is set aside by converting it into suspension without increment without accumulative effect.
3	Zamarik Khan, Ex-Warder, C.P. Haripur.	His order of dismissal from service is set aside by converting it into Removal from Service from the date of his dismissal order.
4	Sakhawat Hussain, Ex-Warder, C.P. Haripur	His order of dismissal from service is set aside by converting it into suspension without increment from the date of his dismissal order.
5	Hameed Gul, Ex-Warder, C.P. Haripur	His appeal has been allowed and he is Exonerated from the charges.

Copy
[Signature]



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**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT**

6	Muhammad Manzoor, Ex-Warder, C.P. Haripur	His order of dismissal from service has been set aside by converting it into Compulsory Retirement from Service from the date of his dismissal order
7	Sher Bahadar, Ex-Warder, C.P. Haripur	His order of dismissal from service has been set aside by converting it into Compulsory Retirement from Service from the date of his dismissal order
8	Muhammad Ibrahim, Ex-Warder, C.P. Haripur	His order of dismissal from service has been set aside by converting it into Removal from Service from the date of his dismissal order
9	Muhammad Rishtique, Ex-Warder, C.P. Haripur	His appeal has been rejected and his Dismissal from Service will remain intact
10	Akhtar Zaman, Ex-Warder, C.P. Haripur	His order of dismissal from service has been set aside by converting it into Compulsory Retirement from Service from the date of his dismissal order
11	Shah Qaiser, Ex-Warder, C.P. Haripur	His order of dismissal from service has been set aside by converting it into Compulsory Retirement from Service from the date of his dismissal order
12	Abdus Saffar, Ex-Warder, C.P. Haripur	His order of dismissal from service has been set aside by converting it into Compulsory Retirement from Service from the date of his dismissal order
13	Muhammad Saeed, Ex-Warder, C.P. Haripur	His order of dismissal from service has been set aside by converting it into stoppage of one increment without accumulative effect.

**SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA HOME DEPARTMENT**

Endst. No. SO(Com/Eng)/HD/1-39-B/2012-13, Dated **Peshawar** the March 21, 2013

Copy of the above is forwarded to the:

1. Inspector General of Prisons, Inspectorate of Prisons, Khyber Pakhtunkhwa Peshawar.
2. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.

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21/3/13

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[Signature]
21/3/13
(BAHSIR AHMAD)
SECTION OFFICER (Com/Eng)
Ph. No. 091-9214149

[Signature]

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA, PESHAWAR**

In Re: Service Appeal No 707/2013

Rishtiaque.....(Appellant)

VERSUS

I.G.P and others.....(Respondents)

Application for correction/rectification
in the heading of the instant appeal
regarding the decision of Respondent
No 2 dated 21-03-2013 on the
departmental appeal of the Appellant

Respectfully Sheweth:-

The Applicant/Appellant humbly submits as under:-


- 1) That the above titled appeal is pending before this Honourable Tribunal and is fixed for today.
- 2) That the impugned order/decision of Respondent No 2 dated 21-03-2013 on the departmental appeal was "rejection of Appellant's appeal" whereas in the heading of the instant appeal inadvertently written as "dismissal of appellant has been converted into removal from service from the date of his dismissal order", which needs to be rectified in consonance with the impugned order of Respondent No 2 dated 21-03-2013.

- 3) That this Honourable Tribunal has got ample power and jurisdiction to entertain the instant application in the interest of justice.

It is, therefore, humbly prayed that on acceptance of this application, the last four lines in the heading of the instant appeal may kindly be deleted and the following assertion i.e. "whereby the appeal of the Appellant has been rejected and his dismissal from service will remain intact" may kindly be brought in the instant appeal.

Applicant/Appellant

Through:


(ASIF HAMEED QURESHI)
Advocate,
Supreme Court of Pakistan

Dated: -22-04-2014

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA, PESHAWAR**

In Re: Service Appeal No 707/2013

Rishtiaque.....(Appellant)

VERSUS

I.G.P and others.....(Respondents)

AFFIDAVIT

I, Asif Hameed Qureshi, Advocate, (as per information given by my client), all the contents of accompanied application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.



Asif Hameed
Advocate

/BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

In the case Appeal No. 707/13

325
25/4/14

RISHTIAQUE

V E R S U S

IGP AND OTHERS

APPLICATION FOR EARLY
FIXATION OF ABOVE TITLED CASE.

Respected Sir,

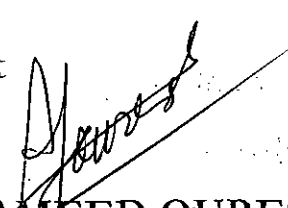
Petitioner submits as under:-

1. That the above titled case is pending before this Honourable Tribunal for 02/06/2014.
2. That the above titled case has been filed in this Honourable Tribunal on 15/04/2013 and the same is still pending in preliminary arguments due to query made by this Honourable Bench on the point that whether initial / original order could be challenged or not in the instant appeal, then the matter was referred to full bench of this Honourable Tribunal.
3. That after hearing the arguments the Honourable Full Bench held that the Initial/ Original order can be challenged in the instant appeal.
4. That the above titled case was fixed for preliminary arguments on 22/04/2014^{but} due to strike of Lawyer the case was adjourned to 02/06/2014 without any progress.

5. That the above titled case is pending adjudication in preliminary stage more than a year. It is also brought to the knowledge of this Honourable Tribunal that identical appeals **bearing No. 591/13 and 706/13 against the same impugned order** have already been admitted for regular hearing by this Honourable Tribunal. (Copies of above referred appeal are attached).
6. That in the light of above submissions the case needs to be fixed and heard at an early date.

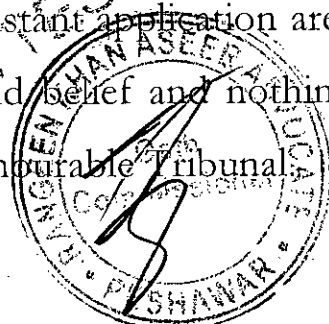
It is therefore, humbly prayed that on the acceptance of this application the above titled case may kindly be fixed for at in early date as convenient to this Honourable Tribunal.

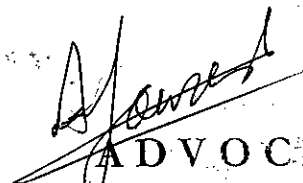
Dated: 24/04/2014

Appellant
Through

ASIF HAMEED QURESHI
Advocate, Supreme Court, of Pak-
Islamabad.

AFFIDAVIT:-

I, ASIF HAMEED QURESHI, advocate, do hereby solemnly affirm and declare on oath that as per instruction of my client, all the contents of instant application are true and correct to the best of my knowledge and belief and nothing has been concealed or misstated from this Honourable Tribunal.




ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of
Service Appeal No.707/2013
Reshtiaque Ex-Warder
attached to Central Prison Haripur **Appellant.**

VERSUS

1. Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar
2. Secretary to Government of Khyber Pakhtunkhwa,
Home and T.A Department.
3. Superintendent
Central Prison Haripur **Respondents.**

PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 1,2 & 3.

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 barred by law.

ON FACTS

- 1- Pertains to record, hence no comments.
- 2- Though it is on record that incident of the 04 Prisoners from Central Prison Haripur happened on the night between 20 & 21/10/2012 and on the basis of formal departmental inquiry, the appellant was dismissed from service after completion of all codal formalities.
- 3- Correct up to the extent that the appellant (the then warder) was posted to Central Prison Haripur at Beat No. 04 but it was his sheer failure that he could not perform his assigned duties according to the parameter laid down in the Prison Rules and due to his cowardliness, the ugly incident of escape of Prisoners from the Central Prison Haripur materialized.
- 4- As elaborated in Para-3 above, that according to the laid down procedure, he was charge sheeted and in its aftermath, he was dismissed from service after fulfilling all his codal formalities.
- 5- Pertains to record, hence no comments.
- 6- Correct to the extent of issuing final Show Cause Notice reply of the Appellant was not found satisfactory and he was awarded punishment according to law.
- 7- Incorrect, as per Para-6 of this reply.
- 8- Pertains to record, however the departmental appeal of the appellant has been filed because the competent authority found no such material of worth consideration.

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27.02.17

GROUNDS: -

- A. Incorrect, misleading. After formal departmental proceeding against the appellant and the full satisfaction of the competent authority and keeping in view the specific directions of the August Supreme Court of Pakistan in such like / similar cases that all found guilty in such escapes from Prisons should be treated with an iron hand and they should be made an example / model for others so that the trend of escaping of Prisoners from the Jail could be discouraged as per the following citation:

That "in our considered opinion such an officer did not deserve to continue to be in such a service saddled with the high responsibility of ensuring safe detention of prisoners in custody". Moreover, it is to bring on record that in the said judgment of the August Supreme Court of Pakistan in the escape case of Ordinary Prisoners the punishment awarded of reduction to lowest stage in the present time scale of the concerned officer, the Court observed that we are of the opinion that the least that should have been done in the matter was to retire the Respondent from service. That is why that punishment of compulsory retirement was therefore awarded to the Respondent and the earlier awarded punishment i.e. reduction to lowest stage in the present time scale was substituted for the penalty imposed on him by the competent authority (Copy of Judgment of Supreme Court of Pakistan is Annexed-A).

- B. Incorrect, misleading, as proved by the departmental inquiry officer in his departmental proceedings against the appellant that the appellant did not follow the Prison Rules as quoted by him in his inquiry report that the appellant did not formally assigned the post responsibility, where he was on duty, to his successor duty Warder and left the post thereby meaning that he intentionally facilitated the escapees and resultantly they made their escape good from the Jail:

No Warder to leave his post.

Rule-1149. No warder shall, while on duty, at any times, under any circumstances, on any pretext, leave his post or absent himself from duty until relieved in due course and released from duty. Provided that he may leave his seat to prevent an escape or to assist in sub-during a disturbances taking place within his sight when he is on main-wall duty or when is in-charge of prisoners, if he can do so without serious risk to the safe custody of his prisoners.

- C. Incorrect, misleading. The appellant by virtue of his assigned duty had to wait to formally hand-over the responsibility of the post to his successor warder on duty

without waiting for any formal writing or verbal orders being a matter of common sense.

- D. Incorrect, misleading. On one hand, the appellant is denying the facts of his sheer failure to response to the call of his duties and on the other hand making lame excuses that the point of occurrence was away enough to be looked out during night time without proper lighting which automatically establishes his failure and in-efficiency regarding his assigned duties.
- E. Incorrect, misleading. Being seasoned Senior Officer with good reputation, the enquiry officer minutely dig out each and every fact of hidden facts, he made recommendation for major penalty to the appellant (inquiry Report **Annex-B**).
- F. Incorrect, misleading. By all parameters and ethical virtues, the appellant was held responsible and accordingly treated as per relevant law / rule.
- G. Mis-reading and misleading, quoting such examples on one hand but ignoring on the other hand those co-accused who alongside the appellant were also dismissed from services as well as removed from service etc. vide "**Annex-C**". Furthermore, it is an admitted fact that the constitution of Pakistan provides that all citizens of Pakistan are equal in the eyes of law, but even the superior Judiciary and almost all appellate Courts awarding punishment and imposing penalties in accordance to the involvement of the accused, keeping in mind the level of responsibilities. In the instant case, the competent authority also adopted the said practice which is by no means contrary to natural justice.
- H. No Comments. However, the respondents seek permission of this Honourable Tribunal to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that on acceptance of this reply, instant appeal may kindly be dismissed with cost throughout.

7/9/14
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No.1)

7/9/14
SECRETARY TO GOVERNMENT
KHYBER PAKHTUNKHWA
HOME & T.AS DEPARTMENT
PESHAWAR.
(Respondents No.2)

7/9/14
SUPERINTENDENT
CENTRAL PRISON HARIPUR
(Respondents No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

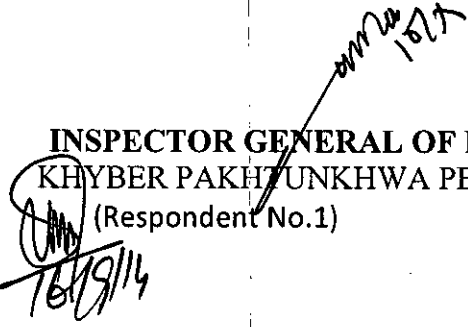
In the matter of
Service Appeal No.707/2013
Reshtiaque Ex-Warder
attached to Central Prison HaripurAppellant.


VERSUS

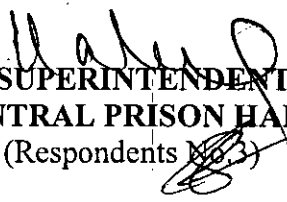
1. Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar
2. Secretary to Government of Khyber Pakhtunkhwa,
Home and T.A Department.
3. Superintendent
Central Prison HaripurRespondents.

PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 1,2 & 3.

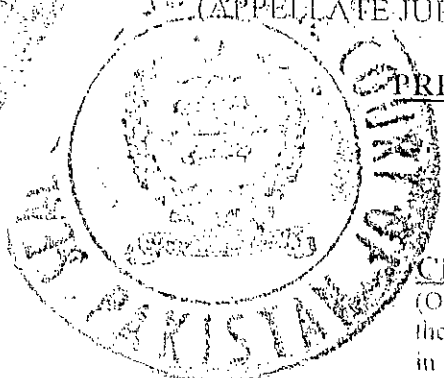
We the undersigned respondents do hereby solemnly affirm and declare that the contents of the parawise comments on the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts have been kept secret from this Honorable Tribunal.


**INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**
(Respondent No.1)


**SECRETARY TO GOVERNMENT
KHYBER PAKHTUNKHWA
HOME & T.A.S DEPARTMENT PESHAWAR.**
(Respondents No.2)


**SUPERINTENDENT
CENTRAL PRISON HARIPUR**
(Respondents No.3)

THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)



PRESENT:

MR. JUSTICE KHALIL-UR-REHMAN RAMDAY
MR. JUSTICE RAJA FAYYAZ AHMED

CIVIL PETITION NO. 741-P OF 2004
(On appeal from the judgment dated 8.7.2004 of
the NWFP Service Tribunal, Peshawar, passed
in Appeal No.487 of 2002)

U.G. (Prisons) NWFP, Peshawar etc.

...Petitioners.

VERSUS

Mr. Muhammad Israil, Asstt. Superintendent Jail Haripur,

...Respondent.

For the petitioners:

Mr. Shakeel Ahmed, ASC with
Mr. M. A. Qayyum Mazhar, AOR.

For the respondent:

Mr. Nasir Hussain, ASC with
Syed Safdar Hussain, AOR and the
Respondent in person.

Date of hearing:

19.6.2006.

JUDGMENT

KHALIL-UR-REHMAN RAMDAY, J.- Five under trial prisoners escaped from Manshera Sub-Jail at about 1.30 a.m. on the night between the 10th and the 11th of July, 2001. The Incharge of the said Jail, namely, Muhammad Israil; the Duty Round Officer, namely, Warder Dolat Khan; the Duty Patrolling Officer, namely, Warder Taj Mali Khan; the Duty Sentry at the front main gate of the said Jail, namely, Warder Sultan Afsar and Warder Hazrat Hussain on duty at the TALASHI GATE were charge-sheeted in the said connection. The Superintendent of Central Prison, Peshawar, namely, Muhammad Muzaffar was appointed as the Inquiry Officer who found all the above-named persons guilty of the charges levelled against them as a consequence whereof the Inspector General of Prisons, in exercise of the powers conferred on him under section 3 of the NWFP Removal from Service (Special Powers) Ordinance, 2000, dismissed the said four Warders from service but punished the Incharge of the said Jail, namely, Muhammad Israil, Assistant Superintendent, with reduction to the lowest stage in his present time scale.

MR. JUSTICE KHALIL-UR-REHMAN RAMDAY
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2. The said four Warders finally reached the learned Service Tribunal, through Appeals No.416, 460, 461 and 602 of 2002, impugning the above-noticed punishments awarded to them. Through a judgment of the learned Tribunal dated 9.1.2004 passed in the said appeals, the findings of guilt recorded against them by the competent authority were maintained but the punishments of dismissal from service were converted into the punishment of stoppage of three months without cumulative effect. These Warders then approached this Court through Civil Petitions No.220-P to 223-P of 2004 which were dismissed vide a judgment dated 11.5.2005, thus affirming the said findings of guilt recorded against them.

3. In the matter of Muhammad Israil respondent, the learned Tribunal, however, chose to take a different view of the matter through the impugned judgment dated 8.7.2004; accepted the appeal filed by him; exonerated him of the said charges and consequently set aside the punishment recorded against him.

4. Hence this petition by the Inspector General of Prisons and the Home Secretary of the NWFP.

5. Muhammad Israil respondent, who is present under notice, has been heard in some detail through his learned counsel. The learned ASC for the petitioners has also been heard and we have also perused the record in the light of the submissions made before us.

6. It had been found by the above-mentioned Inquiry Officer that Warder Sultan Afsar was not present at the place of his duty i.e. at the front main gate of the Jail at the time of the incident and if he had not left his place of duty, the incident in question may not have taken place. It had also been found by him that the place of duty Warder Hazrat Hussain at the relevant time was at the TALASHI Gate which was adjacent to the room where the escapees were confined and only iron bars separated the said two places and further that if the said Warder was present at his place of duty at the time in question then the steps taken by the escapees to break open the room could not have gone un-noticed by him. Similar was the findings of the Inquiry Officer with respect to Warders Dolat Khan and Taj Mali who were the Round Officer and the Patrolling Officer respectively at the relevant time.

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7. Muhammad Israil respondent was the Incharge of the Sub-Jail in question. As per rule 1002 of Pakistan Prison Rules, 1978, the expression "Deputy Superintendent" for the purpose of duty included an "Assistant Superintendent" of Jail and every other person who was performing duties of a Deputy Superintendent for the time being. According to the provisions contained in Chapter 41 of the said Rules, such an officer was the Chief Executive of the Prison; was not allowed to be absent from the Prison during night without permission in writing of the Superintendent; was required to take every action necessary and expedient, inter alia, for the safe custody of the prisoners; was required to visit every cell and barrack etc. at least once a day and was required to remain always present within the Prison or its premises. He was also charged with the responsibility of maintaining and enforcing discipline amongst the sub-ordinate officers.

8. The Inquiry Officer had found that Muhammad Israil had been grossly negligent in the discharge of his obligations; that he had failed to maintain and enforce discipline amongst his sub-ordinates and that the breach of his obligations had gone to the extent that none of the Warders who were required to be on duty at the relevant time, were so present or available. According to Rule 724 of the said Prison Rules, the respondent was required to make at least two, surprise night visits every week which had not been done by him as according to Jail record, he had made such a visit to the Jail only twice during the month preceding the night of the incident i.e. on 11.6.2001 and on 9.7.2001. This was then the level and the quality of performance of the respondent and the manner in which he was discharging his highly sensitive obligation of securing the prisoners.

9. The learned Tribunal set aside the punishment awarded to the respondent on the ground that the Jail in question was over-crowded with 280 prisoners instead of the sanctioned capacity of 148; that due to some hurricane, there was a breakdown of electricity in Jail which had helped the escape of the prisoners; that the said incident had taken place on account of the negligence of the staff on duty and not on account of any negligence or involvement of the respondent and finally that the respondent was not on duty in the Jail when the said incident had taken place.

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Deputy Superintendent
Jail

10. The case was one where the escapees had broken open the room by cutting the iron wires and was not a case where the hurricane was said to have blown the under-trial prisoners out of the Jail. Neither the respondent nor the accused Warders had brought any thing in evidence from the record of the electricity department about the duration for which the supply of electricity had remained interrupted on the night of the incident. Nevertheless, even if it be presumed, that the electricity had gone off at the relevant time then the same should have put the concerned staff on additional caution and had the relevant officials been present on duty then at least the sound produced by the cutting of wires by the escapees could not have gone un-noticed. The learned Tribunal while shifting the entire burden on to the shoulders of accused Warders, omitted to realize that the respondent was the one who was responsible for the efficient and proper discharge of obligations by his sub-ordinates and any negligence of the staff meant an aggravated negligence on the part of the respondent. He had brought nothing on record to establish that he was not on duty on the night of the occurrence.

11. In the circumstance, the impugned judgment of the learned Service Tribunal absolving the respondent of his liability towards the incident in question, could not be sustained. Needless to add that higher the post, higher are the responsibilities and graver are the implications and consequences of their neglect. Consequently, we hold that the impugned findings of the Tribunal exonerating the respondent of the charges levelled against him was the result of an apparent error emanating from a gross mis-reading and mis-appreciation of the material available on record.

12. Resultantly, this petition is converted into an appeal which is allowed as a result whereof the impugned judgment of the NWFPS Service Tribunal dated 8.7.2001 passed in Appeal No.487 of 2002, is set aside.

13. This brings us to the question of punishment deserved by the respondent for his above-noticed misconduct.

14. We are conscious of the fact that the competent authority had selected only a punishment of "reduction to lowest stage in his present time scale" for the respondent which

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 Date of Signature

punishment should have been ordinarily restored after setting aside the intervening judgment of the learned Tribunal but then we are also conscious of the Constitutional obligations cast on this Court to do complete justice in any case or matter pending before it in terms of Article 187 of the Constitution. As has been discussed above in detail, the respondent being Incharge of the Jail in question had suffered escape of five under trial prisoners from the custody of the State which was a serious matter. We are surprised that despite findings of guilt recorded against the said officer, the competent authority still found him good enough to man the prisons. In our considered opinion, such an officer did not deserve to continue to be in such a service saddled with the high responsibility of ensuring safe detention of prisoners in custody.

15. We, therefore, issued a further notice to the respondent to show cause why the above-noticed punishment awarded to him by the competent authority be not enhanced. Having heard the respondent on the said issue; having considered all aspects of the matter and for the reasons discussed above, we are of the opinion that the least that should have been done in the matter was to retire the respondent from service. A punishment of compulsory retirement from service is, therefore, awarded to the respondent which punishment shall now stand substituted for the penalty imposed on him by the competent authority. It is ordered accordingly.

16. Copies of this judgment shall be sent to the Home Secretary and the Inspector General of Prisons of the NWFP, for information and compliance.

Sd/- Khalid Rehman Lomday, J
Sd/- Raja Payyaz Ahmed, J.

Peshawar, the
19th June, 2006.

APPROVED FOR REPORTING.

M. Faridun

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28/6
JUDICIAL OFFICE
GENERAL SERVICES DIVISION
PESHAWAR

Certified to be true copy

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28/7/06
Assistant Registrar
High Court of Pakistan
Peshawar.

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Annexure C 33

ENQUIRY UNDER E&D RULES AGAINST CENTRAL PRISON HARIPUR STAFF

INTRODUCTION

On account of escape of four prisoners, three convicted and one under-trial, from Central Prison Haripur on night between 20th and 21st October, 2012, fact finding inquiry was conducted to fix responsibility. Subsequently Inspector General of Prisons has served charge Sheets and Statements of Allegations on some officers and officials of Central Prison Haripur and nominated the undersigned as Inquiry Officer to probe their conduct vis-à-vis these charges.

ENQUIRY PROCEEDINGS


Superintendent central jail Haripur was informed vide Annex-I, that the undersigned shall visits the central jail on 21/11/2012 and requested to inform all the accused and to ensure their presence on the date along with their written defence. All the accused were present on the date. They were given ample opportunity for their defence and were cross examined in the presence of relevant staff. Relevant record was procured from the office of the Superintendent Central Jail Haripur.

CHARGES AGAINST THESE EMPLOYEES AND THEIR REPLIES ARE REPRODUCED BELOW.

S.#	CHARGES	JIST OF THEIR REPLIES
1.	<p><u>Charges Against Muhammad Naeem Khan Senior Assistant Superintendent Jail (Annex-II)</u></p> <p>i. As per statement of recaptured under trial prisoner Muhammad Safdar, iron cutter and tranquilizer tablets were provided to the escapees by their brother Irshad in interview on 25/09/2012 which shows failure on his part as in-charge interviews and resulted into the mishap of escape of four prisoners from the jail in the night between 20/21-10-2012.</p> <p>ii. The escapes kept on cutting the iron bar of the window of the barrack for 4/5 days but neither had he noticed it which shows negligence/inefficiency on his part. He also failed to properly search his sector/barrack to recover the prohibited articles despite</p>	<p>i. He in his reply at Annex-II-A, has denied the charges and stated that it is the responsibility of he warder staff who have been assigned duties of search on the main entrance, main gate of the jail and chakkar. No items are passed/given through Interview room rather the items pass through the Main Gate. Under rule 559 of the PPR it was/is the responsibility of the warder to search every prisoner before and after interview.</p> <p>ii. He has performed his duties efficiently and there is no violation of any rule. He had attended all the lock-ups except that of 20th October, 2012 as he was on leave. Checking and searching the barracks is the duty</p>

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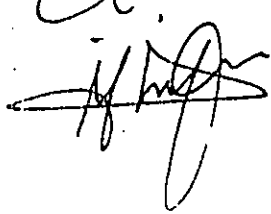
	<p>provision in rules and despite repeated instructions recorded by the Superintendent jai in his journal. Meaning thereby that locks up were made without following the procedure given in rule 704 of prisons rules. Thus he has violated rule 657, 705, 1072 and 1095(f) of the NWFP Prison rules 1985.</p>	<p>of watch and ward staff as envisaged under various rules of PPR.</p> <p>iii. Since there is no adverse report or explanation has ever been called of him therefore he has not violated rule 1095(f).</p>
<p>2.</p>	<p><u>Charges Against Zahoor Elahi Senior Assistant Superintendent Jail (Annex-III)</u></p> <p>He supervised lockups of sector 4 on 20/10/2012 but failed to ensure that the procedure laid down in rule 704 properly and effectively carried out which resulted into the mishap of escape of four prisoners from the jail in the night between 20/21-10-2012. Thus he has violated rule 657, 705, 1072 and 1095(f) of the NWFP Prison rules 1985.</p>	<p>i. He vide his statement at Annex-III-A, denied the charges leveled against him and took the plea that he was not responsible for Sector 4 as he has been assigned Sector 1 by the Superintendent.</p>
<p>3.</p>	<p><u>Charges against Fazal Mehmood Senior Assistant Superintendent Jail (Annex-IV)</u></p> <p>i. Due to his gross negligence / inefficiency in the performance of his duties four prisoners made good their escape from the jail in the night between 20/21-10-2012 at about 03:00 AM, thus he has violated rule 657, 1072 and 1095(f) of the NWFP Prison Rules 1985.</p> <p>ii. he failed to keep proper supervision over the staff on duty.</p> <p>iii. He also failed to ensure timely change of guard and presence of warder staff on duty till arrival of substitute in the night of occurrence.</p>	<p>i. He denied all the charges vide statement at Annex-IV-A, and stated that he performed his duties efficiently and honestly.</p> <p>ii. He supervised all the staff under his control.</p> <p>iii. Change of guards was carried out well in time by him.</p>
<p>4.</p>	<p><u>Charges against Head Warder Abdul Sattar (Annex-V).</u></p> <p>i. The escaped prisoners kept on cutting the iron bar of the window of the barrack for 4/5 days but neither</p>	<p>He also denied all the charges against him vide his statement at Annex-V-A and stated that he performed his duties well and effeciently and the incident had not occurred during his duty hours.</p>

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	<p>had he noticed it which shows negligence / inefficiency of his part being in-charge of sector No. 4 and resulted into mishap of escape of four prisoners from jail in the night between 20/21-10-2012. He also failed to properly search his sector / barrack to recover the prohibited articles despite provision in the rules and despite repeated instructions recorded by the Superintendent jail in his journal. Meaning thereby that lockup were made without following the procedure given in rule 704 of the prison rules. Thus he has violated rule 1139 of the NWFP Prison Rules, 1985.</p> <p>ii. He did not act in accordance with the procedure in rule 704 of the rules ibid and locked up the prisoners without search and without testing the windows gratings in violation of rule 704 of the NWFP Prison Rules 1985 although he certified in the lock register that prisoners were locked up after search and all locks, gratings were checked.</p>	<p>He checked all the gratings and found in order.</p>
<p>5.</p>	<p><u>Charges against Warder Bahrawar (Annex-VI).</u></p> <p>As per statement of recaptured under trial prisoner Muhammad Safdar, iron cutter and tranquilizer tablets were provided to the escapees by their brother Irshad in interview on 25/09/2012 which shows failure on his part as search duty in interview room on that day afforded full advantage to the escapees to make good their escape from the Jail in the night between 20/21-10-2012.</p>	<p>He denied the charges against him vide statement at Annex-VI-A and stated that his duty was not in Interview Room rather he was assigned duty on main gate. He performed his duty of search effeciently. No prohibited article has entered into jail during his duty hour or through main gate.</p>
<p>6.</p>	<p><u>Charges against Warder Siddique (Annex-VII).</u></p> <p>As per statement of recaptured under trial prisoner Muhammad Safdar, iron</p>	<p>He denied the charges against him vide statement at Annex-VII-A and stated that his duty was not in Interview Room rather he was assigned duty on</p>

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	<p>had he noticed it which shows negligence / inefficiency of his part being in-charge of sector No. 4 and resulted into mishap of escape of four prisoners from jail in the night between 20/21-10-2012. He also failed to properly search his sector / barrack to recover the prohibited articles despite provision in the rules and despite repeated instructions recorded by the Superintendent jail in his journal. Meaning thereby that lockup were made without following the procedure given in rule 704 of the prison rules. Thus he has violated rule 1139 of the NWFP Prison Rules, 1985.</p> <p>ii. He did not act in accordance with the procedure in rule 704 of the rules ibid and locked up the prisoners without search and without testing the windows gratings in violation of rule 704 of the NWFP Prison Rules 1985 although he certified in the lock register that prisoners were locked up after search and all locks, gratings were checked.</p>	<p>He checked all the gratings and found in order.</p>
<p>5.</p>	<p><u>Charges against Warder Bahrawar (Annex-VI).</u></p> <p>As per statement of recaptured under trial prisoner Muhammad Safdar, iron cutter and tranquilizer tablets were provided to the escapees by their brother Irshad in interview on 25/09/2012 which shows failure on his part as search duty in interview room on that day afforded full advantage to the escapees to make good their escape from the Jail in the night between 20/21-10-2012.</p>	<p>He denied the charges against him vide statement at Annex-VI-A and stated that his duty was not in Interview Room rather he was assigned duty on main gate. He performed his duty of search efficiently. No prohibited article has entered into jail during his duty hour or through main gate.</p>
<p>6.</p>	<p><u>Charges against Warder Siddique (Annex-VII).</u></p> <p>As per statement of recaptured under trial prisoner Muhammad Safdar, iron</p>	<p>He denied the charges against him vide statement at Annex-VII-A and stated that his duty was not in Interview Room rather he was assigned duty on</p>

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	<p>cutter and tranquilizer tablets were provided to the escapees by their brother Irshad in interview on 25/09/2012 which shows failure on his part as search duty in interview room on that day afforded full advantage to the escapees to make good their escape from the Jail in the night between 20/21-10-2012.</p>	<p>main gate. He performed his duty of search effeciently! No prohibited article has entered into jail during his duty hour or through main.</p>
7.	<p>Charges against Warder Shah Qaisar (Annex-VIII). He was performing the duty of patrolling officer from 12:00 AM to 03:00 AM in the night between 20/21-10-2012, failed to perform his duties of keeping at alert the warders in beats inside parameter wall and on watch towers and checking the Numberdars counting the prisoners and testing bolts, locks, grating. Thus he has violated rule 712 of the NWFP Prison Rules 1985.</p>	<p>He denied the charges leveled against him and stated vide statement at Annex-VIII-A that he performed his duties efficiently. He had handed over charge to his substitute Tajdar Ali well in time and everything was ok then. All the staff on duty during 11:00 PM to 3:00 AM has given OK report.</p>
8.	<p>Charges against Warder Sher Bahadur (Annex-IX). He was performing the duties as Round / Patrolling officer Chakkar from 01:00 AM to 03:00 AM in the night between 20/21-10-2012 failed to keep staff and Numberdar in sector No. 4 barrack No. 5 alert in violation of rule 712 of the NWFP Prison Rules 1985 ibid due to which the prisoners succeeded in slipping out their barrack.</p>	<p>He vide statement at Annex-IX-A has refuted the charges against him and stated that he performed his duty in effective manner by checking all the concerned staff and numberdar who were alert. He further stated that he didn't leave his place of duty before time. Rather he handed over charge to his substitute Jamal ud Din on time. In his statement in Urdu (Annex-IX-B) he has not offered any defence.</p>
9.	<p>Charges against Warder Jamal Uddin (Annex-X). He was performing the duties of round officer Chakkar from 03:00 AM lockout in the night between 20/21-10-2012 did not reach sector 4 in time and failed to notice the escape of the prisoners from the barracks which delay rendered their recapture</p>	<p>He denied the charges against him vide Annex-X-A and stated that he took over charge at 3:00 AM made a round and met the Night Duty Officer Fazal Mahmood. Suddenly they received a call from the Main gate asking for reaching to the gate immediately. On reaching the Main gate they saw that an escaped prisoner</p>

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	impossible.	was recaptured. He stated that the incident has occurred much before his arrival and not during his duty hours.
10.	<p><u>Charges against Warder Manzoor Khan (Annex-XI).</u></p> <p>He was performing the duty in sector No 4 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 bitterly failed in performance of his duties and did not keep the Numberdar alert nor did ensure the safety of the prisoner in violation of rule 711 of NWFP Prison Rules 1985 ibid due to which the escapes slipped out of the barrack while the Numberdar was asleep.</p>	He vide statement at Annex-XI-A also denied the charges against him and stated that he performed his duty very well, made around of Sector 4 and found the numberdars alert and the incident has taken after 3:00 AM when he had left the charge. As per his statement no one is assigned duty in Chakkar after 3:00 AM to 6:00 AM.
11.	<p><u>Charges against Warder Hameed Gul (Annex-XII).</u></p> <p>He was posted inside beat No 5 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 did not prevent the escape as he left his place of duty early and without arrival of substitute in violation of rule 1149 of NWFP Prison Rules 1985.</p>	As per his statement at Annex-XII-A he performed his duty in effective manner and didn't leave his place of duty before time. He left the charge after arrival of his substitute. The incident has not occurred during his duty hours.
12.	<p><u>Charges against Warder Rishiq Hussain (Annex-XIII).</u></p> <p>He was posted inside beat No 4 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 did not prevent the escape as he left his place of duty early and without arrival of substitute in violation of rule 1149 of NWFP Prison Rules 1985.</p>	He has stated vide statement at Annex-XIII-A that the incident has not taken place during his duty hours. He did his job in efficient manner. As per his statement left he left the place of duty after Night Duty Officer told that no substitute was available for him and he could go after 3:00 AM.
13.	<p><u>Charges against Warder Akhtar Zaman (Annex-XIV).</u></p> <p>He did not perform duty properly at tower No 2 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 failed to prevent escape although the area from where</p>	He also denied the charges vide Annex-XIV-A and stated that he performed his duty very well. It was he who noticed the the recaptured escapee after having heard sound of falling of something and showed at his height to make the people alert and

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<p>escape took place was visible from tower.</p>	<p>asked for help. Two colleagues came and recaptured the escapee. Being locked in the tower, he couldn't come out to capture the escapee. He tried to fire shots but the gun didn't work.</p>
<p>14. <u>Charges against Warden Mohammad Ibrahim (Annex-XV).</u> i. He did not perform duty properly at tower No 3 from 12:00 AM to 03:00AM in the night between 20/21-10-2012. failed to prevent escape although the area from where escape took place was visible from tower. ii. He left his place of duty early without arrival of his substitute violating rules 1149 of NWFP Prison Rules 1985.</p>	<p>He, vide Annex-XV-A, also denied the charges and stated that lighting system in the area was out of order. The place i.e beat No.4 wherefrom the escape had taken place is nearer to tower No.2 and not tower No.3 where he was deployed. Since he was locked in the tower therefore leaving the place without waiting for a substitute doesn't arise.</p>
<p>15. <u>Charges against Warden Zamarak Khar (Annex-XV).</u> He was posted as patrolling officer outside the parameter wall from 03:00 AM to 06:00 AM in the night between 20/21-10-2012 did not reach his place of duty due to which assistance to the warders who captured one of the escapees reached late and search operation was delayed.</p>	<p>He also refuted the charges against him. As per his statement at Annex-XVI-A he took charge from Sakhawat Hussain at 3:05 AM and was making a round when he heard a voice of fire. He went towards Tower No.4 and then Tower No.3 when he saw that warden Imran had captured/controlled the escaped prisoner Safdar.</p>
<p>16. <u>Charges against Warden Sakhawat Hussain (Annex-XVII).</u> He was performing duties as patrolling officer outside the parameter wall from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 did not check the staff on duty at outer beats and also failed to keep them alert and present on duty which resulted into escape. Thus he has violated rule 712 of NWFP Prison Rules 1985.</p>	<p>He refuted the charges against him (Annex-XVII-A) and stated that he performed his duties in effective manner and keep the staff alert constantly. The incident has not taken place in his duty hours.</p>
<p>17. <u>Charges against Warden Muhammad Saeed (Annex-XVIII).</u> He was performing duties duly</p>	<p>He also denied the charges vide Annex-XVIII-A and stated that he handed over charge to his substitute</p>

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	<p>armed at outer post from tower No 2 to 3 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 failed to perform his duty properly and left his place of duty early and without arrival of substitute in violation of rule 1143 of NWFP Prison Rules 1955, due to which the escapees safely crossed the parameter wall.</p>	<p>Shah Faisal near Tower No.3 at 3:05 AM and everything was ok at that point of time. The escape has not taken place during his duty hours.</p>
<p>18.</p>	<p><u>Charges against Yasir (Annex-XII)</u> He was performing duties duly armed at outer post from tower No 2 to 3 from 12:00 AM to 03:00 AM in the night between 20/21-10-2012 failed to perform his duty properly and left his place of duty early and without arrival of substitute in violation of rule 1143 of NWFP Prison Rules 1955, due to which the escapees safely crossed the parameter wall.</p>	<p>He also denied the charges and stated vide his reply at Annex-XIX-A that he handed over charge to his substitute Imran near Tower No.3 at 3:05 AM and everything was ok at that point of time. The escape has not taken place during his duty hours.</p>

Before discussing the findings against each of the accused it would be appropriate to highlight the relevant rules concerning the procedure for management of prisoners, their locking and unlocking and the duties and responsibilities of the Prison staff.

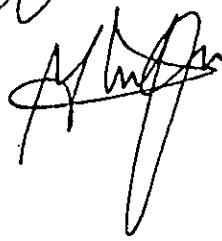
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Discipline and movements of prisoners

Rule 657.-- Prisoners shall be kept and shall remain under strict order, discipline and control both by day and night. All movements of prisoners shall be conducted in an orderly and regular manner, under strict control.

Unlocking of prisoners

Rule 660.-- One hour before sunrise the bugler shall sound the reveille, and the prisoners shall rise as soon as they are called. They shall arrange their bedding and spare clothing neatly on their sleeping benches and shall then sit there and counted by the convict officers. On the order of the Deputy-Superintendent, or Assistant

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Superintendent and warder, each barrack shall be unlocked; the prisoners marched in pairs and counted by the day head warder. The officer detailed for this duty shall verify the number of prisoners counted out of each barrack by comparison with the entries in the lock-up register. When the prisoners have been counted and the Deputy Superintendent has satisfied himself that the number of prisoners unlocked is correct, the night duty warden shall be marched out of the prison. The completion of unlocking shall be announced by the bugle call.

Distribution into work parties

Rule 664.-- (i) After breakfast, the prisoners shall be distributed into their respective work parties. A record of the names of the prisoners made over to each warder during the day shall be kept in a register and every subsequent change of a prisoner from one party to another shall be recorded therein. Each party shall be made over to its responsible officer and marched to its working place.

(ii) Prisoners who are to work in the prison factory shall be assembled in an orderly manner at the factory gate under the supervision of chief warder or head warder. They shall be handed over to the head warder incharge of the factory who will count them and give a proper receipt for them. He shall maintain a daily attendance register of all prisoners working in the factory. The same procedure will be observed in the afternoon at the closure of the factory. All prisoners leaving the factory shall be searched by the head warder in the presence of the Assistant Superintendent incharge of the factory.

The duties of warders Incharge of outside parties

Rule 702.--Every warder Incharge of a party working outside the prison shall keep a vigilant eye on the prisoners in his party and shall not allow them to wander or go out of work area on any pretext whatever. He shall be personally responsible for their safe custody throughout the whole period of his duty. He shall check the prisoners frequently during his hours of duty. Prisoners working all day at a distance from the prison shall be provided with a temporary latrine in close proximity to the work and under the eye of the warder incharge. Permanent warders with experience should be placed in charge of out-parties. Every warder incharge of an out-party shall keep a list of prisoners which shall be initialed by the checking officer at the time of his visit.

Checking of out-parties

Rule 703. (i) The chief warder or a head warder shall check the out-parties at least twice daily once before noon and once in the afternoon.

(ii) The Deputy Superintendent or an Assistant Superintendent shall check the out-parties twice daily once in the morning and again in the afternoon at uncertain hours.

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(ii) The Superintendent shall pay surprise visits to the out-parties at least once a month and satisfy himself that the rules are duly complied with and shall record the fact in his order book.

Evening count and lock up of prisoners

Rule 704.-- After the evening meal as over the prisoners shall be locked up in the following manner:-

(i) Every barrack, ward and cell shall be searched by the head warden in charge. Clothing, bedding and other articles of prisoners shall also be searched. The gratings of doors and windows shall also be checked by him.

(ii) The head warden, warders and convict officers shall then carefully search every prisoner with due regard to privacy and decency.

(iii) The name of every prisoner shall then be called from the attendance register of the barrack who shall then enter the barrack. The head warden shall keep a count of the prisoners. The prisoners shall sit on their berths where the convict officers on night duty shall again count them and report the number to the head warden. When the head warden is satisfied that the number is correct he shall lock the barrack. The number lock-up in the barrack shall be written by chalk on a black slab outside the barrack door.

(iv) When all the prisoners, except the convict Officers on duty in enclosures and main wall, have been locked up, the total number of prisoners shall be verified. The number of prisoners locked up in each barrack, ward and cell block as well as the total number of prisoners in the prison shall be recorded in the lock up register to which the Deputy Superintendent shall append his signatures in token of correctness.

(v) Lock up of prisoners shall be completed before sunset.

Deputy Superintendent, Assistant Superintendents to be present at lock up

Rule 705.-- All Assistant Superintendents shall be present in their respective charges at evening lock up and ensure that the procedure laid down in the preceding rule is being properly and effectively carried out. The Deputy Superintendent shall be present in the prison at this time, and shall ascertain by surprise visits to various parts of the prison, that all officers are present at their posts, and lock up is being carried out properly.

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Duties of warders on night watch

Rule 711.-- The duties of every warden on night watch are:-

- (i) To patrol the main wall of the prison, he shall not quit his post or sit down, and shall be armed with a baton;
- (ii) To watch the prisoners and premises vigilantly in order to preserve silence, order and security;

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To see that convict officers do not sit but patrol the barracks constantly during their watch; -

- (iv) To be constantly on the move examining each barrack to see that every prisoner is in his berth, and that the ward is properly lighted.
- (v) To examine frequently bolts, locks, gratings and doors in order to satisfy himself fully that they are intact; -
- (vi) To get the prisoners counted by convict officers on duty at least once in every hour and to satisfy himself that the number is correct and
- (vii) To give immediate alarm by blowing his whistle on the happening of any occurrence requiring prompt action such as escape, riot, fire etc.

Duties of patrolling Officers

Rule 712.-- The duties of every head warder or warder on patrol duty at night are:-

- (i) To see that night sentries both inside and outside the barracks are on the alert;
- (ii) To go around each barrack or cell block ones every hour, examining lock, bolts, gratings, doors, walls and roofs in order to satisfy himself fully that they are intact;
- (iii) To frequently get the prisoners counted by convict officers on duty and to satisfy himself that the number is correct;
- (iv) To see that every association barrack confining prisoners is well lighted;
- (v) To patrol the main wall and ensure that warder convict officers are alert and watch tower sentries are vigilant;
- (vi) To report immediately any cases of serious sickness to the junior Medical Officer and the Assistant Superintendent on duty who shall, if necessary, take steps for the removal of the sick prisoner to hospital and
- (vii) To raise alarm and send immediately information to the Assistant Superintendent on night duty and the Deputy Superintendent of any occurrence requiring prompt action, such as an escape, riot, fire etc.

System of watch inside the barracks at night

Rule 715.-- Every Barrack in which prisoners are confined shall be patrolled inside by a convict officer at a time who shall be relieved at the time the warder guard is

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changed. A roster showing the names of the convict officers detailed for duty in each barrack or ward, with the hours of duty shall be kept in the night duty register of convict officers. The duties of these convict officers shall be changed at every fortnight. When exceptional precautions are necessary or a barrack is on unusual length, more convict officers may be placed on duty at one time, each being allotted a definite beat.

General Duties

- Rule 1044.*-- (i) An assistant superintendent shall, subject to the orders of the superintendent, be competent to perform any of the duties, and be subjected to all the responsibilities, of a Deputy Superintendent under the Prisons Act, or any rule there under.
- (ii) Assistant Superintendent shall be subordinate to the Deputy Superintendent and shall obey all orders issued by him.
- (iii) The Assistant Superintendent may be assigned to the Assistant Superintendent when this officer is temporary absent or incapacitated for duty.
- (iv) Some of the duties of the Deputy Superintendent may be assigned to the Assistant Superintendents, who shall perform such duties under the general supervision of the Deputy Superintendent.

Assignment of duties

Rule 1045.-- (i) The Assistant Superintendent shall perform such duties as the superintendent may prescribe in writing in his order book. The duties shall be clearly prescribed and shall be changed periodically to afford them every opportunity to acquire a thorough training and all round experience of every detail of prison management.

(ii) The following duties shall ordinarily be allocated to the Assistant Superintendents: -

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- (1) Direct charge of a section of the prison including the prisoners confined there and the Government property that may be located there.
 - (2) Admission, transfer and release of prisoner.
 - (3) Award of ordinary remission to prisoners.
 - (4) Appeals and petitions of prisoners.
 - (5) Supervision of factories.

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- (6) Supervision and drill of warder guard.
- (7) Supervision of cookhouse, issue of rations to the cooks and the examination of cooked food and its distribution.
- (8) Supervision of interviews and letters of prisoners.
- (9) Search of prisoners and buildings under their charge.
- (10) Maintenance of registers pertaining to their duties and responsibility for their correctness.
- (11) Maintenance of report book, when in charge of a factory or circle to record discharge of their daily duties, and any important matter concerning their duties which may be necessary to bring to the notice of the Superintendent.
- (12) Presence and supervision at distribution of meal and at evening lock-up.
- (13) Night round on turn and search of relieving and relieved night guard once a week.

(iii) The Assistant Superintendents shall perform all other duties as are prescribed in the various chapters of the Prison Rules.

Weekly checking of clothing and equipment

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Rule 1047.-- Every Thursday evening the Assistant Superintendents in charge of circles shall hold a parade of the prisoner confined in their circles and shall-

- (a) Carefully inspect every prisoner;
- (b) Examine and check the clothing bedding, utensils and history tickets of every prisoner
- (c) Check the barrack register and satisfy themselves that every prisoner is present or accounted for; and satisfy themselves generally that everything is in proper order. They shall record in their report book the shortages (if any), the state of clothing, cleanliness of barracks and yards and any other matter of important relating to prisoners of their circle

Duties of chief warder and head of chief warder Rule 1138.-- The chief warder in Central and first class District Prisons and the senior head warder in other prison shall: -

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- (a) Post the warders under the orders of the Deputy Superintendent explaining to each warder the duties and responsibilities of his post and supervise the warders on duty;
- (b) Assist the Deputy Superintendent at unlocking midday count and look-up and in the distribution of various parties in the morning and their collection in the evening and the maintenance of attendance register.
- (c) Visit and count at uncertain hours all parties working inside the prison and for with report to the Deputy Superintendent any unusual occurrence.
- (d) Visit the main wall and satisfy him that the convict officers on the main wall duty are preset at their posts, and are on the alert.
- (e) Supervise the distribution of food and the conservancy arrangements.
- (f) Cause all gratings door or other openings of enclosures and barracks in which prisoners are confined to be secured and satisfy himself by personal inspection that they are secure.
- (g) Pay surprise is its to all outside parties and visit them at least once daily and,
- (h) Be responsible for the general cleanliness of the warders line, and see that all warders live in the quarters provided for them. He shall report warders who absent themselves without leave, or who permit released prisoners or friends and relatives of prisoners to remain in or to visit their quarters.

Duties of Head warder

Rule 1139.-- It shall be the duty of every head-warders to:-

- (a) Superintendent the warders subordinate to him in the discharge of their duty ties;
- (b) Assist in every possible way in the management of the prison, the prevention of escapes and the maintenance of order and discipline generally amongst subordinate officers and prisoners;
- (c) Comply with the requirement of all rules regulations, and orders- about the duties he is to perform and the manner in which he is to perform them;
- (d) Assist the Deputy Superintendent in all routine duties;
- (e) Open the cells barracks and other compartments each morning and count the prisoners;

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- (f) Distribute the prisoners, who are liable to labour to their work parties each morning;
- (g) Cause the name and prison number of every prisoner placed in-charge of any warder to be entered in the attendance register;
- (h) Issue all necessary tools: raw materials and other articles required for the day's work and to keep a record of all articles issued;
- (i) Collect all such articles, together with the produce of the prisoners labor in the evening;
- (j) Satisfy him self that all articles issued have been duly returned to him or accounted for;
- (k) Measure or check the task performed by each prisoner and note the same in, the task sheet;
- (l) Supervise the use of latrines, bathrooms and the distribution of meals
- (m) Check all prisons at each change of guard
- (n) Check all gratings, locks bolts and the like daily and satisfy him that they are secure.
- (o) Keep all the building under his charge neat and clean and in proper state of repair.
- (p) Cause all bamboos, scantlings, poles, Ladders, ropes, well-gear and other articles likely to facilitate escape to be removed and, kept in a safe place, beyond reach of prisoners.
- (q) Keep constantly moving about while on day duty amongst the prisoners, supervising the work and discipline of the prison and keeping the warders and Convict officers on the alert.
- (r) In the presence of the Assistant Superintendent, to count, search and lock the prisoners in cells, barracks, etc., at the prescribed time, each evening and
- (s) Give the warders half an hour's drill daily.

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Duties of Head warders on reliving guard Rule 1140.-- (i) No head-warder or warder shall keep his post of duty until he has been duly relieved and his responsibility shall continue till he is relieved.

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- (ii) The senior head-warder shall, at least ten minutes before the hour fixed for relieving the guard on duty, collect the warders of the relieving guard in the main gate. At the proper time he shall march the relieving guard to their respective posts and remove the guard to be relieved. The relief shall be carried out with military precision.
 - (iii) No relief whether by day or night shall be effected otherwise than in the presence of both the relieved and the relieving officers and also of the senior head warden carrying out the relief such head warden shall satisfy himself that the party is complete and corresponds with the number in the attendance register.
 - (iv) Warden whether going on or off duty shall be marched, in double file. When the relief is complete the relieved head-warder shall march the relieved warden to the main gate.

Detailed duties

Rule 1148.-- It shall be the duty of every warder: -

- (a) Not to take off any portion of his uniform or lie or sit down while on duty.
- (b) To know the number of prisoners in his charge, to count them frequently during his hours of duty and to satisfy himself that he has in his custody, not only the correct number, but also the particular prisoners for whom he is responsible
- (c) To search the prisoners as well as the factories, cells and barracks in which they are confined at the time of receiving and making over charge.
- (d) To report every prisoner whom he considers to have committed a prison offence;
- (e) To see that any prisoner who has to go to the latrine at unauthorized times, is made over to the charge of a responsible officer whilst away from the party
- (f) To maintain scrupulous cleanliness in the buildings in his charge and see that the drains are clean and kept free from silt;
- (g) To bring to the notice of the Assistant Superintendent and Junior Medical Officer any prisoner appearing to be ill or complaining of illness.

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- (h) To report any plots for escape, assault, out-break, or for obtaining prohibited articles.
- (i) To give an immediate alarm by blowing, his whistle, if a prisoner is missing, or if any disturbance appears imminent or takes place.
- (j) To prepare prisoners for parades and see that each prisoner takes his place in proper order and behaves well; and.
- (k) To keep his arms and accoutrements clean, in good order and fit for immediate use.

No warder to leave his post

Rule 1149.-- No warder shall, while on duty, at any times, under any circumstances, on any pretext, leave his post or absent himself from duty until relieved in due course and released from duty. Provided that he may leave his seat to prevent an escape or to assist in sub during a disturbances taking place within his sight when he is on main-wall duty or when is in-charge of prisoners, if he can do so without serious risk to the safe custody of his prisoners.

Duties on being relieved

Rule 1150.-- A warder on being relieved shall explain to his successor what the duties of the charge are, and shall bring to the notice any long-termed and dangerous prisoners. The relieving warder shall, before taking charge, satisfy himself that the property and the number of prisoners made over to him are correct.

FINDING

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Each accused was given full opportunity to explain his position. From the statements of the recaptured prisoner, accused officers and officials, inspection of all the sites of jail including Interview room and site of occurrence following facts came to the fore:-

1. The incident was a very coordinated and well-planned. The escaped prisoners were preparing for the escape for quite long time as they not only cut the thick iron bar of the window of their barrack but also prepared a ladder for which they stock the prohibited articles like ropes and wooden rods of TV Antenna.
2. The convict officers/numbardars of the barrack also extended their support as they neither searched the barrack effectively nor stopped the escaped prisoners from cutting the iron bar.

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3. Staff deployed during day-time also failed to notice the prohibited articles near their barrack which were subsequently used in the escape. It was responsibility of the entire staff to be vigilant and prevent occurrence of such incident.
4. There was no lighting system near the factory and the escaped prisoners took full advantage of this. After breaking the iron bar, they came out, went to the factory side, stayed there for preparing the ladder and waited for the watch and ward staff to leave their places of duty and go for change of guard. Since the staff neither performed duty till their duty time nor reach their place of duty well in time, therefore, they succeeded in escape in those 10-15 minutes when there was no one either on beat No.4 &5 or outside parameter wall. Staff deployed on watch towers also couldn't notice the escape which shows that they were not alert all the time.
5. There were 20 beats in Haripur jail since its very inception but now their number has been reduced to 8 and at some time some of these are also without any watch and ward staff. Discussions with the staff members revealed that warders are deployed at the bungalow of the Superintendent.
6. Gate Keeper Register is not properly maintained. This register if properly maintained and entries made well on time will show exact time of the persons be they staff members or visitors who enter or leave the main gate. Relevant pages of the said register at Annex-A are silent about entry and exit time of some of the accused.
7. Lock up of prisoners is a very elaborate process and requires presence and attention of the senior officers, incharge of the sectors to ensure that the procedure laid down in PPRs is strictly followed. But it is being taken a Business as usual.

8. MUHAMMAD NAEEM KHAN SENIOR ASSTT. SUPERINTENDENT

The said Senior Assistant Superintendent Jail is serving the Prisons Department since long. Being incharge of Sector 4 he was responsible for the duties as enshrined in rules 1044 to 1047 as highlighted above.

First charge of negligence on his part while performing duty in Interview Room is not proved as he is not supposed to check and search the articles brought by the visitors for their relative prisoners. This is the responsibility of the warders deputed at the main gate to check these items. Moreover, there are more than three points where search of items meant for the prisoners is carried out.

The second charge that he didn't perform his duty as Sector Incharge is partially proved. Though he was on leave on 20th October, 2012 but under the rules being Sector incharge he was supposed/required to supervise that

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unlocking and locking of prisoners is carried out as per rules/procedure mentioned in the Pakistan Prison Rules which he couldn't ensure. Had he ensured that all the barracks of Sector 4 has been carried out by the Head Warder and Warders and prohibited articles recovered this incident might not have occurred. Under rule 1072, he along with other staff was required to take all lawful measures to prevent the commission of any prison offence and to enforce all rules, regulations and orders for the time being in force in regard to conduct and discipline of the prisoners and the administration of the prison. Though he was on leave on 20th October, 2012 but even two days before he failed to lock up the prisoners in Sector 4 though he was in charge. Zahoor Elahi locked up the prisoners in Sector 4 as is evident from initials in Ginti Band (lock up) register which is also called AAmad Kharij Register at Annex-B (initials are highlighted). Lock ups of prisoners is a crucial process in the prisons but it has become a routine matter and is not taken seriously. Most of the time prisoners are locked up under the supervision of Head Warders and not Assistant Superintendent and anyone put his initial on the register.

9. ZAHOOOR ELAHI ASSISTANT SUPERINTENDENT

Charge against him stands proved. Though he was not in charge of Sector 4 on that fateful night but he supervised the lock up process. If he was not responsible for Sector 4 then why he signed the "Amad Kharij Register" (relevant pages at Annex-B) which proves that he supervised the counting of prisoners, scrutinized the newly entered prisoners in Sector and the prisoners shifted to other sectors or released. He failed to ensure that lock up is carried out as per procedure laid down in rule 704 of the PPR. He also failed to perform duties as prescribed in rule 1045 of the P.P. As is evident from his initials and entries at Annex-A, he locked up the prisoners in Sector 4 two days earlier as well.

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10. FAZAL MAHMOOD KHAN ASSISTANT SUPERINTENDENT

Charges against Fazal Mahmood Khan stand proved. Though he made rounds, checked the staff on duty for some time but failed to ensure that all the staff on duty is alert. Further he failed to ensure that change of guards is carried out well in time and as per procedure laid down in the PPR. Warders on duty left their places of duty before 3:00 AM but he not only failed to ensure that they are on their duty places till the time of duty i.e 3:00 AM but didn't report that matter. At night he was responsible for the whole jail. Had he kept them alert all the time

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the incident might not have occurred. Mere escape of four prisoners is sufficient to prove that he could not properly supervise the jail at night.

11. ABDUL SATTAR HEAD WARDER

Charges against him proved as he failed to carry out search and check duty in Sector 4 for which he was responsible as per rule 704 of the PPR. Had he properly performed duty he would have found that iron cutter was available with the escaped prisoners which they used for some days for cutting the bar but he failed to notice even the cutting process. As per rule 704 he was required to search every barrack. Clothing, bedding and other articles were also to be searched. Gratings of doors and windows were also to be checked by him but he failed to do which resulted into the escape of four prisoners. He had reported in register that all gratings and windows were checked and found in order as is evident from entries in the register (relevant pages are at Annex-C. As per statement of the recaptured prisoner Safdar at Annex-D which was recorded immediately his recapture they succeeded in cutting the iron bar completely on 20-10-2012 and at 2:25 AM they escaped from the barrack and entered the factory area and stayed there for some time waiting for the change of guards. They perhaps had noted the routine in jail and were aware of the fact that watch and ward staff leave their place of duty ahead of their time which helped them a lot in their escape.

12. BAHRAWAR WARDER

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Charges against him partially proved. He was on duty on Main gate and not in Interview Room as stated/alleged in the charge sheet and statement of allegations. All the statements of other accused officials and discussion with Mr. Riaz Moharrar, the representative of Superintendent Central Prison Haripur show that the iron cutter did not pass through the main gate or interview room rather the same was stolen from the factory where these articles are available in abundance. However about tranquillizer tablets their reply is not satisfactory. Discussions with doctors of the jail reveal that they only prescribe medicine on proper investigation/examination. It is most likely that these tranquillizers were passed through main gate under the pretext of medicines.

13. SIDDIQUE WARDER

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Charges against him partially proved. He was on duty on Main gate and not in Interview Room as stated/alleged in the charge sheet and statement of allegations. All the statements of the accused officials and discussion with Mr. Riaz Moharrar, the representative of Superintendent Central Prison Haripur show that the iron cutter did not pass through the main gate or interview room rather the same was stolen from the factory where these articles are available in abundance. However about tranquillizer tablets their reply is not satisfactory. Discussions with doctors of the jail reveal that they only prescribe medicine on proper investigation/examination. It is most likely that these tranquillizers were passed through main gate under the pretext of medicines.

14. SHAH KAISER WARDER

He was responsible for patrolling duty inside the parameter wall and to keep vigil on the staff posted inside the wall on beats but he utterly failed to perform his duty as per provisions of PPRs. He was required under rule 711 and 712 of the PPRs to examine frequently bolts, locks, gratings and doors in order to satisfy himself that they are fully intact. Though he denied the charge and stated that he performed his duty efficiently but circumstantial evidence goes against him. Had performed his duties the incident could have been averted.

15. SHER BAHADAR WARDER

Charges against him stand proved. Though he denied the allegations vide his statement at Annex-IX-A. But in his another written statement at Annex-IX-B (in Urdu) he has not written in his defence rather shifted his responsibility to others. Had he performed his duty with full devotion and followed the procedure as laid down in the PPRs the incident might not have occurred.

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16. JAMAL UD DIN WARDER

Charge against him proved though he also denied in his statement but circumstances and statement of other co-accused show that the incident had occurred at the time of change of guards. Since neither the guards waited for their substitutes and left their place of duty much before time nor the relievers reached in time which culminated in the escape. Had reached to his place of duty well in time the recapture would have become possible.

17. MANZOOR KHAN WARDER

Charges against him also proved as he failed to perform his duty as per provisions of the PPRs. He was on duty in Sector 4 on that night but failed to

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check the gratings, keep the numberdars alert all the time. Though for some time he performed his duty but left his place before his duty time. This negligence on his part resulted into the escape. Had he checked the gratings he would have noticed that the iron bar was not intact and in order. This fact he has admitted in his statement in Urdu at Annex -XI-B that he could not check the gratings as the prisoners protest and shout over such checking.

18. HAMEED GUL WARDER

Charges against him proved. He denied the fact that the incident has occurred in his duty time. As per his statement he left the place of duty i.e beat No. 5 after arrival of substitute however statement of other accused officials and escape of prisoners show that he left his place of duty i.e beat No. 5 well before time which is violation of rule 1149 which provides that no warder shall leave his place of duty in any circumstances, on any pretext or absent himself from duty untill relieved in due course and released from duty. His statement is silent on the issue of time of his relieving.

19. RISHTIAQUE WARDER

Charges against him proved. He is one the main responsible officials for this escape. He not only failed to perform his duty efficiently as per PPRs but also left his place of duty much before time which resulted into this mishap. In his written statement he has admitted that he left his place of duty without arrival of substitute. Beat No.4 where he was posted is the place wherefrom the escape took place. Had he been on duty till his exact time and alert the escape might have averted. Though he stated that he was asked by Fazal Mahmood Khan Night Duty Officer to leave the place but rules doesn't allow such kind of attitude towards performance of duty as required under the rules.

20. AKHTAR ZAMAN WARDER

He was posted as Sentry at Watch Tower No.2 and was required under the rules to be alert, keep a vigil on his place of duty. Beat No.4 and 5 wherefrom the escape had taken place is visible from his tower. But he could not keep an eye on those places and failed to notice the escape of prisoners. Though he denied the charges but circumstantial evidence shows that he failed miserably in performance of his duties. Had he been vigilant he would have noticed the escapees and the escape might not have occurred.

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21. MUHAMMAD IBRAHIM WARDER

Charges against him proved partially. The charge that he left his place i.e tower cannot be proved as he was locked in the tower and keys of towers are kept in the main gate and the relieving warder takes keys with him and unlock the warder on duty in the tower. However the first charge stands proved as he was posted as Sentry at Watch Tower No.3 and was required under the rules to be alert, keep a vigil on his place of duty. Beat No.4 and 5 wherefrom the escape had taken place is visible from his tower. But he could not keep an eye on those places and failed to notice the escape of prisoners. Though he denied the charges but circumstantial evidence shows that he failed miserably in performance of his duties. Had he been vigilant he would have noticed the escapees and the escape might not have occurred.

22. ZAMARAK KHAN WARDER

He was performing duty as patrolling Officer outside the parameter wall of jail but he failed to keep the warders on duty between watch towers No. 2 & 3 alert but also failed to notice the escape. Charge against him proved. His timing of duty was 3:00 AM to 6:00 AM (lock out) but as per his statement he took charge from Sakhawat Hussain his predecessor at 3:05 AM thus admitted late arrival. He was supposed to be on his place of duty at 3:00 AM. In the instant case even a single minute mattered a lot.

23. SAKHAWAT HUSSAIN WARDER

Safdar

Charge against him proved as it was during his duty hours that the escape took place. It appears from the statement of the recaptured prisoner at Annex-B and other statements of the co-accused that the escape took place between 2:45 AM to 3:10 AM. Had he not left his place before time and had he been vigilant and kept the staff alert the incident might not have occurred.

24. MUHAMMAD SAEED WARDER

Charge against him proved as he failed to ensure his presence on the place of his duty i.e beat between tower No. 2 & 3. He not showed irresponsible attitude towards his duty for being not alert but also left his place of duty before time. As per the statement of the warders at Annex-E, who captured one of the escaped prisoner Safdar Mr. Muhammad Saeed alongwith his colleague Yasir left charge near hostel located between Towers No. 3 and 4 which is far away.

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from their place of duty. This fact is supported by circumstantial evidence and escape of the prisoners. They were required to hand over their charge of duty to their relievers at fixed time and on the proper place of duty. Though he and Mr. Yasir denied the fact that the incident took place between their duty hours but circumstantial evidence and statement of the recaptured prisoner reveal that escape occurred in their duty hours.

25. MUHAMMAD YASIR WARDER

Charge against him proved as he failed to ensure his presence on the place of his duty i.e beat between tower No. 2 & 3. He not showed irresponsible attitude towards his duty for being not alert but also left his place of duty before time. As per the statement of the warders who captured one of the escaped prisoner Safdar, he alongwith his colleague Muhammad Saeed warder left charge near hostel located between Towers No. 3 and 4 which is far away from their place of duty. They were required to hand over their charge of duty to their relievers at fixed time and on the proper place of duty. Though he and Mr. Yasir denied the fact that the incident took place between their duty hours but circumstantial evidence and statement of the recaptured prisoner reveal that escape occurred in their duty hours.

RECOMMENDATIONS

In view of the facts narrated above following recommendations are submitted for approval of the competent authority:-

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1. Any one of the major penalties given in rule 4 of the E&D Rules 2011 (Annex-F) may be imposed on the following officers and officials:-

- I. Muhammad Naeem Khan Senior Assistant Superintendent
- II. Zahoor Elahi Senior Assistant Superintendent
- III. Fazal Mahmood Senior Assistant Superintendent
- IV. Abdul Sattar Warder
- V. Bahrawar warder
- VI. Siddique warder
- VII. Shah Qaisar Warder
- VIII. Sher Bahadar warder
- IX. Jamal ud Din warder
- X. Manzoor Khan warder
- XI. Rishtiaque warder ✓
- XII. Hameed Gul warder
- XIII. Akhtar Zaman warder
- XIV. Muhammad Ibrahim warder

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- XV. Zamarak Khan warder
- XVI. Sakhawat Hussain warder
- XVII. Muhammad Saeed warder
- XVIII. Muhammad Yasir warder

2. Instructions may be issued to all superintendents of jail to ensure compliance of PPRs at all cost and not to comprise on the efficient management of prisons so as to avert such like incidents.

Saeed
29/11/2012

AKHTAR SAEED TURK
DEPUTY SECRETARY (D&F)
HOME DEPARTMENT/INQUIRY OFFICER

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DATED 20-12-2012

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ORDER

On completion of proceedings and in exercise of powers conferred under Rule-14 sub rule-5 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, after having considered the charges, evidence on record, the explanations of the accused officers/officials and affording an opportunity of personal hearing to the accused and keeping in view of recommendation of the Inquiry Officer, the undersigned being competent authority is pleased to pass the orders as noted against each officers/officials with immediate effect in a case regarding escape of four prisoners from Central Prison Haripur in the night between 20/21-10-2012 :-

S.No.	NAME OF OFFICERS/OFFICIALS	ORDERS/PENALTY
1.	Mr. Muhammad Naeem, Senior Assistant, Superintendent Jail (BPS-16).	Reduction to lower post/grade of Assistant Superintendent Jail (BPS-14).
2.	Mr. Fazal Mehmood, Senior Assistant Superintendent Jail (BPS-16).	Dismissal from service.
3.	Head warden (BPS-7) Abdul Sattar.	Dismissal from service.
4.	Warder (BPS-5) Bahrawar.	Compulsory retirement from service.
5.	Warder (BPS-5) Siddique Muhammad	Compulsory retirement from service.
6.	Warder (BPS-5) Shah Qaiser.	Dismissal from service.
7.	Warder (BPS-5) Sher Bahadar.	Dismissal from service.
8.	Warder (BPS-5) Jamal-ul-Din.	Compulsory retirement from service.
9.	Warder (BPS-5) Manzoor Khan.	Dismissal from service.
10.	Warder (BPS-5) Muhammad Rishtiaque.	Dismissal from service.
11.	Warder (BPS-5) Hameed Gul.	Dismissal from service.
12.	Warder (BPS-5) Akhtar Zaman.	Dismissal from service.
13.	Warder (BPS-5) Muhammad Ibrahim.	Dismissal from service.
14.	Warder (BPS-5) Zamarak Khan.	Dismissal from service.
15.	Warder (BPS-5) Saichawat Hussain.	Dismissal from service.
16.	Warder (BPS-5) M. Saood Khan S/O Mir Subhan	Dismissal from service.
17.	Warder (BPS-5) Muhammad Yasir.	Dismissal from service.

The period for which Official at S.No.8 above (Jamal-ud-Din) remained under suspension shall be treated as duty for all purposes.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

ENDST. NO. 32057-65

Copy of the above is forwarded to :-

1. The Secretary to Government of Khyber Pakhtunkhwa, Home and T.As Department Peshawar, for information.
2. Mr. Akhtar Saeed Turk, Deputy Secretary (D/F) Home and T.As Department Peshawar (Inquiry Officer) for information with reference to his letter No. PA(DS(D&F)HD/Escape inquiry/2012 dated 29-11-2012.
3. The Superintendent, Headquarters Prison Haripur/Peshawar, for information and necessary action.
4. The Superintendent, Central Prison Haripur.

c/o Page-2

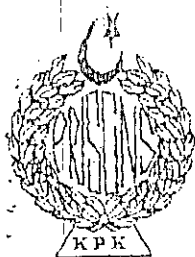
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FAK NO. 13443

Dec. 20 2012 05:38AM 00



P-R-

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

NO. _____

DATED _____

5. The Superintendent, Sub Jail Battagram.
for information and immediate necessary action. All concerned may be informed and necessary entries may also please be made in their Service Books under proper attestation.
6. The District Accounts Officer Haripur Battagram., for information.
7. Office Record Keeper for placing a copy of the said orders in personal files of officers at S.No.1 & 2 above.

Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar

Handwritten signature
20/12/12

etc. Haf.

207/13 For Appellant
Rashtia

serve, while deciding cases, two purposes; one, the private purpose of deciding disputes between the parties and two, the public purpose of making law to ensure uniformity and thereby to ensure confidence in the administration of justice and in appropriate cases to clarify the law, the practice and procedures and thereby to help maintain the standards of first instance Courts and tribunals. As Lord Diplock observed in *Hoffmann-La Roche v. Secretary of State* "Although such a decision is directly binding only as between the parties to the proceedings in which it was made, the application of the doctrine of precedent has the consequence of enabling the benefit of it to accrue to all other persons whose legal rights have been interfered with in relying on the law which the statutory instrument purported to declare".

"The classic example of such a decision being binding upon third parties is *Cooper v. Aaron*. Although the State of Arkansas was not a party in the historical *Brown* case, yet the governor and the legislature of that state were held bound by the Supreme Court's decision in *Brown*."

"The use of precedent also promotes equality, namely, the ideal that like cases should be treated alike, which is one of the most important ingredients of justice. Like cases must be decided alike, not only to achieve distributive justice but primarily to maintain the certainty". (underlining by me for relevance and emphasis)

12. It may be kept in view that while maintaining and observing the distinction between a judgment in-rem and a judgment in-personam, as highlighted in the premier judgment of this Court in *Pir Bakhsh and others v. The Chairman, Allotment Committee and others* PLD 1987 SC 145, the benefit can still not be denied to the employees in this case, as the petitioner bank had been a party before this Court, who not only was bound by the judgment but also was under a legal duty to apply equally to all those falling within the scheme.

13. A distinction between a benefit and liability under a legislative instrument or judgment cannot also be overlooked. For instance in *Messrs Army Welfare Sugar Mills Ltd. and others v. Federation of Pakistan and others* 1992 SCMR 1652, while construing a notification it was observed that "there is a marked distinction between a notification which purports to impair existing/vested rights or imposes new liabilities or obligations retrospectively and a notification which purports to confer benefit retrospectively". Thus, the principle governing the issues of liabilities and benefits are not the same. Analogically the employees

herein became entitled to the benefits the moment this Court interpreted the scheme and laid down principles as to its import and efficacy. |G

14. There is yet another aspect spelt out from the latter judgment dated 3-2-2005 numbered as 4th and 5th. Had the intention of the Court been to restrict the benefit only to the parties to those cases, the employees (non-parties) would have been non-suited by dismissing their petitions instead of directing them to approach the Bank for relief and to approach the proper forum, in case the need so arises. The intention is manifestly clear. |H

15. According to the learned counsel the judgment was rendered by the learned Judges of the High Court of Sindh, Karachi, after long time of bearing the matter, but this itself does not have the effect of impairing the correctness, legality and efficacy thereof as all essential aspects of the matter have been given due care and is reflective of application of mind to the real controversy.

16. It cannot be ignored that all the employees have now been granted relief by the High Court through the impugned judgment. Undoubtedly, the judgment of this Court has the binding force unless it is reviewed. It has remained intact so far. It has got to be enforced and complied with. There is no use, rather it will be unjust, if the employees were to be knocked out on the principle of laches in approaching the High Court or for availing some other remedy as just and fair order has been made by the High Court. It will advance the cherished goal of justice for all, similarly situated. The equity and the justice of the case demands that leave may not be granted in such a case. |J

17. In view of the above, we find no justification for grant of leave. |K
Leave to appeal is accordingly declined. The petitions are dismissed.

S.A.K./S-43/SC

Leave refused.

2010 SCMR 431

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali,
Khilji Arif Hussain and Tariq Parvez Khan, JJ

GOVERNMENT OF THE PUNJAB through
Chief Secretary, Punjab, Lahore---Appellant

versus

NASEER AHMAD KHAN through L.P.s.
and others---Respondents

Civil Appeal No. 1382 of 2002, decided on 30th October, 2009.

(On appeal from the judgment, dated 20-3-2001 of the Lahore High Court, Lahore, passed in I.C.A. No.411 of 1980).

Per Tariq Pervez Khan, J, Anwar Zaheer Jamali, J, agreeing---

(a) West Pakistan Acquisition of Property (Residence of Government Officials) Ordinance (XXV of 1963)---

---Preamble---Constitution of Pakistan (1973), Art.185(3)---Leave to appeal was granted by Supreme Court to consider; legal status of West Pakistan Acquisition of Property (Residence of Government Officials) Ordinance, 1963; whether the Ordinance, could fall into the category of law; whether issuance of notice was necessary before proceeding in the matter under the Ordinance; and if at all acquisition was valid then as to whether proper compensation as envisaged in law had been paid. [p. 434] A

(b) West Pakistan Acquisition of Property (Residence of Government Officials) Ordinance (XXV of 1963)---

---S. 1 & Sched.---Acquisition of property---Effect---Bungalow in question was allotted to respondent but authorities retained possession on the basis of West Pakistan Acquisition of Property (Residence of Government Officials) Ordinance, 1963---Validity---Ordinance in question was for individual benefit and not for benefit of public at large and as the same had taken away fundamental rights of citizen of country was unconstitutional and all acts done thereunder were void ab initio---Supreme Court declined to interfere in the judgment passed by High Court---Appeal was dismissed. [p. 437] B

Nawabzada Muhammad Umar Khan (represented by his legal heirs) and 4 others v. Pakistan through Secretary, Cabinet Division and 2 others PLD 1982 Pesh. 1 and Pakistan through Cabinet Division, Islamabad and others v. Nawabzada Muhammad Umar Khan now represented by Kh. Muhammad Khan of Hoti and others 1992 SCMR 2450 ref.

Per Khilji Arif Hussain, J, agreeing with Tariq Parvez Khan, J.---

(c) Constitution of Pakistan (1973)---

---Art. 25---Equality---Principle of reasonable classification---Scope---Doctrine of equality, as contained in Art. 25 of the Constitution, enshrines golden rules of Islam and states that every citizen, no matter how highsoever, must be accorded equal treatment with similarly situated persons---State may classify persons and objects for the purpose of legislation and make laws applicable only to persons or

objects within a class---In fact all legislations involve some kind of classification whereby some people acquire rights or suffer disabilities whereas others do not---What, however, is prohibited under principle of reasonable classification, is legislation favouring some within a class and unduly burdening others---Basic rule for exercise of such discretion and reasonable classification is that all persons placed in similar circumstances must be treated alike and reasonable classification must be based on reasonable grounds in given set of circumstances but the same in any case must not offend spirit of Art.25 of the Constitution. [p. 440] C

(d) Good governance---

---Executive/Legislative are expected to act like a mother, to provide protection to deprived child/class of persons, rather than to those who enjoy power and privileges---Most of the time those to whom power has been entrusted by common man, use the same to provide more privilege to elite without any just classification. [p. 442] D

(e) West Pakistan Acquisition of Property (Residence of Government Officials) Ordinance (XXV of 1963)---

---S. 1 & Sched.---Constitution of Pakistan (1973), Art. 2-A & Chap.I [Arts.8 to 28]---Fundamental rights---Scope---Acquisition of property---Bungalow in question was allotted to respondent but authorities retained possession on the basis of West Pakistan Acquisition of Property (Residence of Government Officials) Ordinance, 1963---Validity---No law could be made against provisions of Constitution and if any law was unreasonable and it offended any of Fundamental Rights, the same could be struck down---Keeping in view the principle laid down by Supreme Court and fundamental rights guaranteed under the Constitution read with Art. 2-A of the Constitution, authorities had failed to give any valid or cogent reasons as to why West Pakistan Acquisition of Property (Residence of Government Officials) Ordinance, 1963, had been issued in respect of a specified property instead of proceedings, if the property was required for public interest under Land Acquisition Act, 1894, and to pay compensation at prevailing market rate to the owner of the property---Supreme Court declined to interfere in the judgment passed by High Court---Appeal was dismissed. [p. 442] E

Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and others PLD 1993 SC 341 and Sh. Liaquat Hussain and others v. Federation of Pakistan and others PLD 1999 SC 504 rel.

Muhammad Hanif Khattana, Additional Advocate-General, Punjab for Appellant.

Abid Hassan Minto, Senior Advocate Supreme Court for Respondents Nos.3-5.

Date of hearing: 30th October, 2009.

JUDGMENT

TARIQ PARVEZ KHAN, J.— The matter was filed before this Court through Civil Petition for Leave to Appeal No.1579 of 2001, wherein leave to appeal was granted on 18-10-2002 to the appellant, inter alia, on the following grounds:—

- (i) What is the legal status of the Ordinance XXV of 1963 of the West Pakistan Acquisition of property (Residence of Government Officials) Ordinance, 1963?
- (ii) As held by the Courts below, whether this Ordinance can fall into the category of law?
- (iii) Whether issuance of notice was necessary before proceeding this matter under the afore-said Ordinance?
- (iv) If at all, the acquisition is valid, then as to whether a proper compensation as envisaged in law has been paid?

2. Background of present litigation which has commenced in the year, 1963 is that respondent-Naseer Ahmad Khan, late now through his legal heirs, was a claimant displaced person. He has filed his claim under the Displaced Persons (Compensation and Rehabilitation) Act, 1958 and to his luck house bearing No.96-A, Upper Mall, Lahore was given to him on the transfer price of Rs.96,000. He was issued PTO on 1-2-1960 and PTD on 16-11-1961.

3. At that stage of time Col. Mukhtar Hussain, Military Secretary to the Governor was in its occupation and when was approached by the respondent to pay them the rent, it was replied in return that said house be sold to him i.e. to Col. Mukhtar Hussain.

To the good luck of Col. Mukhtar Hussain and bad luck of the respondent first Martial Law was imposed in the country and the country was divided into Zones for Administration purposes. In Zone "B" of the Martial Law Administrator fall Province of West Pakistan as it then was.

4. Martial Law Order No.115 was issued by the Administrator of the Zone "B" directing the Provincial Government to acquire house

occupied by Col. Mukhtar Hussain for the use of Government officials. Such acquisition was challenged by Writ Petition No.121 of 1963 but it appears that such writ petition became infructuous on promulgation of the West Pakistan Acquisition of Property (Residence of Government Officials) Ordinance XXV of 1963 (hereinafter referred to as "the Ordinance") was one time and was in respect of one house only i.e. suit-house.

5. The constitutionality and legality of the Ordinance was challenged through Writ Petition No.1625 of 1965 and matter remained pending litigation and awaiting decision till date. Writ petition was heard by a learned Single Judge of Lahore High Court and decided on 26-5-1980. The said judgment which was then challenged by the Provincial Government through filing I.C.A. No.411 of 1980. The learned Division Bench of High Court handed down the impugned judgment dated 20-3-2001.

6. It has been ruled by the High Court that they would not dilate upon mala fides but have their finding on the constitutionality and legality of the Ordinance. Learned High Court has ruled that the Ordinance under challenge could be held to be a legislative judgment which the legislator is not permitted by the Constitution to pass as it would be intrusion in the field reserved for the judiciary.

7. Keeping in view leave to appeal granting order we are of humble view that if we decide first question as formulated by this Court remaining three questions may not be addressed.

8. Learned Additional Advocate General, Punjab appearing for the appellant has argued that the Ordinance was issued by the Authority competent to issue i.e. the then Governor and that same was placed before the province legislature which has approved its promulgation through resolution; therefore, the Ordinance is good piece of legislation. Second contention is that it is the prerogative of the Government to acquire any property of any person but for public purpose. Contention is that the house in question after it was acquired is permanently used by the senior officers serving with the Governor of the province and therefore, the action of the Provincial Government cannot be challenged on the touchstone of mala fide. It is further submitted that if the Ordinance was competently promulgated and consequence upon Ordinance property was acquired and such property is under the use of Government officials which was the object of acquisition no exception can be taken.

9. However, as question of attributing mala fide to the legislature was left open still it was argued that the legislator being supreme institution, all wisdom is attributable to the institution therefore, the

Ordinance cannot be said to be un-constitutional on any ground whatsoever.

10. Learned counsel for the respondent has argued that where the Ordinance was never put to the house for debates but was adopted, it cannot be equated with that piece of legislation which was properly moved through a bill and was debated upon by members of the Assembly. His further contention is that house was illegally acquired because it was so recorded in the Ordinance itself that no permanent transfer deed was entered in favour of the respondent when the house was acquired whereas the fact is that PTD was issued in the name of the respondents' predecessor on 16-11-1961.

11. Learned counsel argued that Rs.96,000 which was returned to the respondent who received it under protest was not market value of the house in question and that when the house was taken by the provincial Government on payment of Rs.96,000 only as is mentioned in the Ordinance itself one fails to understand as what was the yardstick for fixing the price of the house.

12. It is argued that since house was in occupation of Military Secretary and because there was Martial Law, therefore, it has to be inferred that Military Secretary of Governor prevailed in getting such piece of Ordinance which was related to the single property therefore, no question that it was acquired is in public interest. Learned counsel has also argued that under Article 14 of Constitution of Islamic Republic of Pakistan, 1962 and now under Article 23 of the Constitution of Islamic Republic of Pakistan, 1973 no person can be deprived of his property except as envisaged in the Constitution itself.

13. After we have heard Additional Advocate General, Punjab for the appellant and learned counsel for the respondents. Undisputed fact would be that the house in question was given to the predecessor of the respondent and so transferred in his name through PTO dated 1-2-1960 and PTD dated 16-11-1961. It is also not disputed that it was acquired under Ordinance XXV of 1963 and for a price of Rs.96,000.

14. Question before us is that shall the citizen of Pakistan to be deprived of its rights which were and which are constitutionally guaranteed, can such right be taken away by any subordinate legislation including an Ordinance? Our short reply is, that it is the responsibility of the State to preserve and protect fundamental rights of its citizen whereas in the instant case instead of preservation respondent were deprived of their fundamental rights. It is also not disputed that it was a single house which was mentioned in the Ordinance and no other

house was subject of the Ordinance thus it was one time one house and against one person.

15. Law has been defined by the jurist, but we take guidance from the reported judgment of Peshawar High Court reported as Nawabzada Muhammad Umar Khan (represented by his legal heirs) and 4 others v. Pakistan through Secretary, Cabinet Division and 2 others PLD 1982 Pesh: 1 that order was upheld by this Court in its judgment reported as Pakistan through Secretary, Cabinet Division, Islamabad and others v. Nawabzada Muhammad Umar Khan (deceased) now represented by Kh. Muhammad Khan of Hoti and others 1992 SCMR 2450.

16. We have our own stand point against the action of the then Governor by promulgating Ordinance as to why by-passed law on the subject i.e. the Land Acquisition Act No.1 of 1894, the Act include in itself a detail procedure through which Government can acquire property of any citizen but on payment of compensation, of course condition precedent that object of acquisition should be public interest.

17. In this case for reasons not known, novel way was adopted by, by passing the general law applicable on the subject. On no good whatsoever one can justify the issuance of the Ordinance in question which was for individual benefit and not for the benefit of public at large. It is therefore, held that the Ordinance which has taken away fundamental rights of citizen of the country would be unconstitutional and all the acts done thereunder ab initio void.

18. For the foregoing reasons, this appeal is therefore, dismissed. There is no orders as to costs. However, after we deliver this judgment, we feel it our legal and moral duty to bring on record our displeasure because of the agony suffered by the respondents by putting them into unnecessary legal battle for nearing half century that too under the garb of so-called legislation.

Respondents are however, at liberty to knock the door of any forum to redress their half century long agony by filing proceedings in the shape of damages, if so desire.

(Sd.) Anwar Zaheer Jamali, J.
(Sd.) Tariq Parvez Khan, J.

I have added additional note.

(Sd.) Khilji Arif Hussain, J.

Civil Appeal No.1382 of 2002

KHILJI ARIF HUSSAIN, J.--- I had the privilege of reading the judgment of my learned brother and agree with it. However, I wish to

record additional reasons for reaching the same conclusions. In order to appreciate the question involved in the appeal, I would like to reproduce Ordinance No. XXV of 1963 which has been impugned by the respondents by filing a Constitutional Petition under Article 98 of the Constitution of Islamic Republic of Pakistan, 1962.

'AN' Ordinance

to provide for a acquisition of certain proper situate in Mauza Mian Mir, District Lahore for use as residence of Government officials and to validate actions taken under the Martial Law Order No.115 issued by the Martial Law Administrator, Zone "B".

Whereas the property described in the Schedule was evacuee property and in pursuance of the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (Act XXVII of 1958), had been provisionally transferred to Mr. Nasir-ud-Din and party in lieu of ninety six thousand rupees.

And, whereas, the Martial Law Order No.115 was issued by the Martial Law Administrator, Zone "B" on the 24th February 1962, providing for the acquisition of the said property for the purpose of residence of Government officials.

And, whereas, the validity of the said Martial Law Order and the action taken thereunder has been questioned.

And, whereas, it is expedient in the public interest to provide for the acquisition of the said property for the purpose of residence of Government officials and to validate the actions taken in pursuance of the said Martial Law Order No.115.

And, whereas, the Provincial Assembly of West Pakistan is not in session and the Government of West Pakistan is satisfied that circumstances exist which render immediate legislation necessary.

Now, therefore, in exercise of the powers conferred on him by clause (1) of Article 79 of the Constitution, the Governor of West Pakistan is pleased to make and promulgate the following Ordinance.

1. (1) Short title and commencement.--- This Ordinance may be called the West Pakistan Acquisition of Property (Residence of Government Officials) Ordinance, 1963.

- (2) It shall come into force at once and shall be deemed to have taken effect on and from the 24th-February, 1962.

Definition.--- In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say.

- (a) "Government" means the Government of West Pakistan.
 - (b) "Martial Law Order No.115" means the Martial Law Order No.115, issued by the Martial Law Administrator, Zone "B" on the 24th February, 1962, and
 - (c) "Property" means the property described in the schedule to this Ordinance.
- (3) Notwithstanding anything to the contrary contained in the Land Acquisition Act, 1894 (Act I of 1894), the Town Improvement Act, 1922 (Punjab Act IV of 1922), as amended by the Punjab Town, Improvement (West Pakistan Amendment) (Ordinance XVII of 1962), the Municipal Administration Ordinance, 1960 (Ordinance No.X of 1960) or any other law for the time being in force, or in any decree, judgment or order of any Court or Authority.
 - (a) Government shall forthwith take possession of the property, summarily ejecting, if necessary, any person in occupation of any part thereof.
 - (b) Government shall pay, ninety-six thousand rupees by way of compensation to Nasir-ud-Din and party or any other person found to be entitled thereto.
 - (c) Thereon the property shall be deemed, to have been duly acquired by Government free from all encumbrances and the actions taken under Martial Law Order No.115 shall be deemed to have been validly taken under this Ordinance and shall be continued.

SCHEDULE

96-A Upper Mall, Lahore constructed on the land bearing Khasra No.2057, Mauza Mian Mir, Tehsil and District Lahore, measuring 11 Kanals, 7 Marlas, and 205 Square feet and comprising certain buildings and vacant site."

2. From a perusal of the Ordinance, it appears that the same was issued in the exercise of power under clause (1) of Article 79 of the Constitution in respect of one specific property not withstanding anything

to the contrary contained in the Land Acquisition Act, 1894 (Act I of 1894), the Town Improvement Act, 1922 (Punjab Act IV of 1922), as amended by the Punjab Town Improvement (West Pakistan Amendment) (Ordinance XVIII of 1962), the Municipal Administration Ordinance, 1960 or any other law for the time being in force.

3. The property in question at the relevant time was in possession of one Col. Mukhtar Hussain, Military Secretary to the Governor.

4. The doctrine of equality, as contained in Article 25 of the Constitution, enshrines the golden rules of Islam. It states that every citizen, no matter how highsoever, must be accorded equal treatment with similarly situated persons. The principle is well settled that a State may classify persons and objects for the purpose of legislation and make laws applicable only to persons or objects within a class. In fact almost all legislation involves some kind of classification whereby some people acquire rights or suffer disabilities whereas others do not. What, however, is prohibited under this principle, is legislation favouring some within a class and unduly burdening others.

5. The basic rule for the exercise of such discretion and reasonable classification is that all persons placed in similar circumstances must be treated alike and the reasonable classification must be based on reasonable grounds in a given set of circumstances, but the same in any case must not offend the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

6. In the case of Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and others, PLD 1993 SC 341, this Court laid down the following principle of equality under Article 25 of the Constitution of Islamic Republic of Pakistan 1973:---

- (i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
- (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis.
- (iii) that different laws can be validly enacted for different sexes, persons in different age group, persons having different financial standing, and persons accused of heinous crimes;
- (iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;

- (v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reasons for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- (vi) that equal protection of law means that all persons equally placed to be treated alike both in privilege conferred and liabilities imposed;
- (vii) that in order to make a classification reasonable it should be based--
 - (a) on an intelligible differentia which distinguished persons or things that are grouped together from those who have been left out;
 - (b) that the differentia must have rational nexus to the object sought to be achieved by such classification.

Although class legislation has been forbidden, it permits reasonable classification for the purpose of legislation. Permissible classification is allowed provided the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group and such classification and differentia must be on rational relation to the objects sought to be achieved by the act. There should a nexus between the classification and the objects of the act. This principle symbolizes those persons or things similarly situated cannot be distinguished or discriminated while making or applying the law. It has to be applied equally to persons situated similarly and in the same situation. Any law made or action taken in the violation of these principles is liable to be struck down. If the law clothes any statutory authority or functionary with unguided and arbitrarily power enabling it to administer in a discriminatory manner, such law will violate equality clause. Thus, the substantive and procedural law and action taken under it can be challenged as violative of Articles 8 and 25".

7. In the case of Sh. Liaquat Hussain and others v. Federation of Pakistan and others PLD 1999 SC 504 it was held that:---

- (i) No mala fide can be attributed to the Parliament, as it is a Sovereign body, to legislate on any subject which it has been empowered under the Constitution to legislate. The Court can not strike down a statute on the ground of mala fide, but the same can be struck down on the ground that it is violative of a constitutional provision.

8. The Executive/Legislative are expected to act like a mother, to provide protection to deprived child/class of persons, rather than to those who enjoy power and privileges. However, most of time it has been noted that those to whom power has been entrusted by the common man, use the same to provide more privilege to the elite without any just classification. In the current scenario, no reason what to say plausible, has been given for not taking action under codified law in the field, and to issue Ordinance in respect of specific property.

9. It is an admitted position of law that no law can be made against the provisions of the Constitution and that if any law is unreasonable and it offends any of the Fundamental Rights, the same can be struck down.

10. Keeping in view the principles laid down by this Court in various pronouncements and fundamental rights guaranteed under the Constitution read with Article 2-A of the Constitution, the appellant has failed to give any valid or cogent reasons as to why the Ordinance has been issued in respect of a specified property instead of proceedings, if the property is required to public interest, under the Land Acquisition Act, 1894 and to pay compensation at the prevailing market rate to the owner of the property.

11. The appeal for the foregoing reasons is therefore dismissed with no order as to costs.

MH/G-36/SC

Appeal dismissed

2010 S C M R 442

[Supreme Court of Pakistan]

Present: Javed Iqbal and
Mahmood Akhtar Shahid Siddiqui, JJ

CHIEF EXECUTIVE OFFICER, QUETTA
ELECTRIC SUPPLY COMPANY (QESCO)
and others---Petitioners

versus

Rana SHAMIM AKHTAR and another---Respondents

Civil Petition No.26 of 2009, decided on 28th July, 2009.

(On appeal from the judgment, dated 3-11-2008 passed by
Federal Service Tribunal, Islamabad, in Appeal No.10(Q)CE of 2004).

(a) Service Tribunals Act (LXX of 1973)---**---S. 4---Appeal---Condonation of delay---Service Tribunal,**

jurisdiction of---Question of condonation of delay squarely falls within jurisdictional domain of Service Tribunal and no restriction has been imposed by any law---Condonation of delay can be granted in suitable cases and question of suitability is to be assessed by Service Tribunal itself. [p. 445] A

1986 SCMR 1086; 1976 SCMR 262; 1976 SCMR 268; 1990 SCMR 1513; 1990 SCMR 1519 and 1990 SCMR 1504 rel.

(b) Service Tribunals Act (LXX of 1973)---

---S. 4---Constitution of Pakistan (1973), Art. 212 (3)---Petition for leave to appeal---Raising of new plea---Scope---Plea raised by authorities was that Service Tribunal did not have any jurisdiction to decide the matter---Validity---Question of jurisdiction was never agitated before Service Tribunal and it was too late to resolve such academic question which otherwise had no substantial bearing on merits of the case. [p. 445] B

(c) Pakistan Water And Power Development Authority Employees (Efficiency and Discipline) Rules, 1978---

---R. 5---Constitution of Pakistan (1973), Art.212(3)---Disciplinary proceedings---Major penalty---Proof---Civil servant was compulsorily retired from service on the allegation of taking illegal gratification, which order was set aside by Service Tribunal---Validity---No incriminating evidence or material could be pointed out on the basis whereof major penalty of compulsory retirement could be justified---Heinousness or gravity of accusation carried a little importance unless substantiated by cogent and concrete evidence which was lacking---All proceedings had been conducted in haphazard, careless and highly irresponsible manner which spoke of mala fides and depicted inefficiency and lack of knowledge of concerned authorities regarding service laws---No infirmity or illegality could be pointed out in judgment passed by Service Tribunal, which being unexceptionable did not warrant interference---Leave to appeal was refused. [p. 446] C & D

Raja Muhammad Ibrahim Satti, Senior Advocate Supreme Court
for Petitioners.

Haider Hussain, Advocate Supreme Court along with M.S.
Khattak, Advocate-on-Record for Respondent No.1.

Date of hearing: 28th July, 2009.

JUDGMENT

JAVED IQBAL, J.--- Precisely stated the facts of the case as

For Appellant

7. In the light of foregoing discussion, this petition is dismissed and the short order, dated 2-3-2006 is treated as part of this judgment. Leave is accordingly refused.

S.M.B./F-24/SC

Petition dismissed.

2007 S C M R 410

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan,
Muhammad Nawaz Abbasi and Saiyed Saeed Ashhad, JJ

Miss SHAZIA BATOOL—Appellant

versus

GOVERNMENT OF BALOCHISTAN and others—Respondents

Civil Appeal No.436 of 2004, decided on 3rd November, 2006.

(On appeal from the judgment, dated 2-10-2002 of the High Court of Balochistan, Quetta passed in C.P. No.137 of 2002)

Per Saiyed Saeed Ashhad, J.; Sardar Muhammad Raza Khan, J. agreeing [Majority view]—

(a) Prospectus of Bolan Medical College, year 2000-2001—

---Paras. 3, 4, 7, 10 & 23---Constitution of Pakistan (1973), Arts.2-A, 22, 25, 37 (c) & 185 (3)---Leave to appeal was granted by Supreme Court to consider; whether incorporation of clauses 3, 4, 7, 10, 23 and introduction of classification between candidates of Quetta Urban and Quetta Rural in Prospectus of Bolan Medical College, Quetta were discriminatory, violative of provisions of Arts.2-A, 22, 25 and 37(c) of the Constitution and law laid down by Supreme Court; and whether it was necessary for candidate to implead in constitutional petition all other candidates who had secured lesser marks than him and were admitted to M.B.,B.S. First Professional Examination course, on quota basis. [p. 415] A

Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary, Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR 1161; Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education, Islamabad and others 2002 SCMR 1218 and Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163 rel.

2007] Shazia Batool v. Government of Balochistan (Saiyed Saeed Ashhad, J)

(b) Prospectus of Bolan Medical College (2000-2001)---

---Paras. 3, 4, 7, 10 & 23---Constitution of Pakistan (1973), Arts.2-A, 22, 25, & 37(c)---Educational institution---Admission to medical college---District-wise quota---Grievance of candidate was that district wise quota and reservation of seats for certain classes of students as mentioned in paras.3, 4, 7, 10 and 23 of Prospectus of Bolan Medical College (2000-2001) was violative of the provisions of the Constitution---Validity---Distribution of merit seats amongst districts / agencies and classification on the basis of disability, reciprocal basis, reservation for foreign nationals and for backward and underdeveloped regions would be deemed to have been done with a view to provide better and equal opportunities to the students of backward and underdeveloped areas of districts / agencies and regions---No deserving student was deprived under paras. 3 and 4 of Prospectus of Bolan Medical College (2000-2001), from being admitted to medical college, thus those paras were not repugnant/violative of Arts.2-A, 22, 25 & 37(c) of the Constitution---Minimum qualification for a candidate's admission to M.B.,B.S./B.D.S. classes, under para. 23 of Prospectus of Bolan Medical College (2000-2001) was Intermediate Science (pre-medical) examination from Board of Intermediate and Secondary Education, Balochistan, Quetta or any recognized Board or University and such para was also not repugnant to or violative of Arts.2-A, 22, 25 or 37(c) of the Constitution---High Court had rightly dismissed Constitutional petition of the candidate and no ground was made out for interference with the judgment---Appeal was dismissed. [pp. 420, 425, 426] B, C & D

Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary, Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR 1161; Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education, Islamabad and others 2002 SCMR 1218; Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163 and The Chairman, Selection Committee, Bolan Medical College, Quetta and others v. Miss Safia Hameed and others 1979 SCMR 529 rel.

Per Muhammad Nawaz Abbasi J.---

(c) Constitution of Pakistan (1973)---

---Art. 25---Reasonable classification---Necessary ingredients---Principle of equity is subject to reasonable classification, which means that it should be based on intelligible differentia, which distinguishes persons or things that are grouped together from those which have been left out and that the differentia must have rational nexus to the object sought to be achieved by such classification. [p. 429] E

(d) Constitution of Pakistan (1973)—

—Art. 25—Equal protection of law—Principles—Concept of equal protection of law envisages that a person or class of persons should not be denied the rights, which are enjoyed by other persons in the same situation. [p. 429] F

(e) Constitution of Pakistan (1973)—

—Art. 25—Equality of citizens—Principle of reasonable classification—Applicability—Reasonable classification must be based on an intelligible differentia, which distinguishes individuals or one group of persons from other group in a particular set of circumstances—Reasonable classification must be found on reasonable basis and must have rational nexus to the object sought to be achieved by such classification—General presumption is of constitutionality of the principle regarding reasonable classification but no such presumption can be carried if there is nothing on the face of law and surrounding circumstances on the basis of which reasonableness of classification can be regarded. [p. 431] G

Per Muhammad Nawaz Abbasi, J. Contra [Minority view]—

Prospectus of Bolan Medical College (2000-2001)—

—Paras. 3, 4, 7, 10 & 23—Constitution of Pakistan (1973), Arts. 2, 22, 25 & 37(c)—Educational institution—Admission to medical college—District-wise quota—Intelligible differentia, principle of—Applicability—Grievance of candidate was that District-wise quota and reservation of seats for certain classes of students as mentioned in paras. 3, 4, 7, 10 and 23 of Prospectus of Bolan Medical College (2000-2001) was violative of the provisions of the Constitution—Validity—Classification on the basis of intelligible differentia must be reasonable and must have nexus with the object sought to be achieved—Reservation of seats in Medical Colleges for every district without any justification in law was in disregard to the merit policy, which was neither in consonance with the natural justice as ordained by the Holy Qur'an and Sunnah nor in the spirit of Art. 25 of the Constitution—Prospectus of Bolan Medical College (2000-2001) provided a specific quota allocated for each district in preference to open competition of seats to the ratio of 70% and 30% without any distinction and District-wise distribution—District-wise allocation of seats would only be justified if every district of Province of Balochistan would have been declared and notified by Government as backward area—Division of District Quetta into rural and urban and separate allocation of seats for Quetta rural and Quetta urban was without any justification—Allocation of seats for each District of Balochistan might have some political or other reason but it was

based on the principle of reasonable classification—Fixation of District-wise quota in the Prospectus had neither any nexus with the actual state of affairs nor was in the spirit of Arts. 22(4) and 25 of the Constitution—General policy of allocating seats for each district of the Province was against the law laid down by Supreme Court and also being not based on intelligible differentia, was in conflict with the principle of equality as well as the rule of open merit in consequence of which students who had secured the highest marks in the open merit list were deprived of their legitimate rights—Candidate was allowed to get admission in next session on open merit—Appeal was allowed. [pp. 431, 432, 433] H, I & J

Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary, Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR 1161; Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education, Islamabad and others 2002 SCMR 1218 and Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163. rel.

Appellant in person.

Amanullah Tareen, Additional Advocate-General, Balochistan, Quetta, Kamran Murtaza, Advocate Supreme Court, Raja Abdul Ghafoor, Advocate-on-Record Manzoor Hussain, Additional Secretary, and Abdul Malik, Principal, Bolan Medical College for Respondents.

Date of hearing: 6th May, 2005.

JUDGMENT

SAIYED SAEED ASHHAD, J.— This appeal by leave of the Court is directed against the judgment of the Balochistan High Court, dated 2-10-2002 whereby appellant's petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was dismissed.

2. Brief facts of the case are that the appellant passed Intermediate Science examination in medical group in the year 2000 and applied for admission in Bolan Medical College, against a seat reserved for District Quetta. According to the marks obtained by her, she did not come within the quota of seats allocated for District Quetta. The appellant submitted that 75 students who had secured lesser marks than her were provided admission in Bolan Medical College on the basis of District-wise quota of medical seats available in the Province of Balochistan. The appellant further submitted that had the concerned authority for the purpose of admission to Bolan Medical College laid down or framed a policy on Provincial merit basis solely without making any allocation or distribution of seats for the districts/various agencies or reservation of seats against various quotas, then she would have secured admission in Bolan Medical College as she was placed at Serial No. 74 of the merit list

on all Balochistan basis and at Serial No.34 of the merit list of Quetta District prepared on District basis. As the appellant did not succeed in obtaining admission in Bolan Medical College, she filed constitutional petition with the following reliefs:--

- (a) That the provisions 3, 4, 7 and 10 of the Prospectus of B.M.C., Quetta for the Session 2000-2001 are liable to be struck down being unreasonable and discriminatory and un-Islamic and unconstitutional.
- (b) That the bifurcation of M.B.,B.S. seats allocated to Quetta District into Quetta Urban and Quetta Rural is unreasonable and illegal and prayed to be declared as such.
- (c) That the respondents 5, 6 and 7 are admitted illegally and without entitlement by the unlawful authority.
- (d) That the petitioner is entitled for admission to First Year M.B.,B.S. Class of B.M.C., Quetta for the Session 2000-2001 under every circumstances on open merit seats or District merit seats or on compensatory grounds as an exceptional case.
- (e) That the clauses (3), (4), (7) and (10) of the Prospectus may be reviewed as the inter alia laid down by the decisions and judgments of superior Courts and provisions of the Constitution.
- (f) That P.M.D.C. Regulations may be followed by the B.M.C. in order to maintain the standard of medical education at par with the other medical institutions.
- (g) That the petitioner may be granted interim relief by allowing her provisional admission in First Year M.B.,B.S. class pending disposal of this amended petition on merits.
- (h) That officials respondents may be directed that in future they must start the process of M.B.,B.S. admission just within the three months after the announcement of F.Sc. result by Balochistan Board,
- (i) Any other relief which this Honourable Court may deem fit and proper under the circumstances of the case may be granted in the interest of justice and equity and fairplay."

3. A learned Division Bench of Balochistan High Court vide judgment dated 2-10-2002 dismissed the constitutional petition. Feeling aggrieved and dissatisfied with the impugned judgment of the High Court, the appellant filed Civil Petition No.71-Q of 2002 which was

(Saiyed Saeed Ashhad, J)

allowed vide order, dated 11-5-2004 and leave to appeal was granted, inter alia, to consider the following questions:--

- (j) Whether the incorporation of clauses 3, 4, 7, 10, 23 and introduction of classification between candidates of Quetta Urban and Quetta Rural of the Prospectus of Bolan Medical College, Quetta were discriminatory, violative of provisions of Arts.2-A, 22, 25 and 37(c) of the Constitution of Islamic Republic of Pakistan and the impugned law laid down by this Court in the cases of Mst. Attiya Bibi Khan v. Federation of Pakistan through Secretary, Education (Ministry of Education), Civil Secretariat, Islamabad and others 2001 SCMR 1161; Shireen Raza and others v. Federation of Pakistan through Secretary, Ministry of Education, Islamabad and others 2002 SCMR 1218 and Abdul Baqi and others v. Muhammad Akram and others PLD 2003 SC 163.
- (k) Whether it was necessary for the petitioner to implead, in the writ petition all other candidates who had secured lesser marks than him and were admitted to M.B.,B.S. First Professional Examination course, on quota basis."

4. We have heard the arguments of the appellant who was represented by his attorney/father Dr. Imdad Hussain, Mr. Amanullah Tareen, Additional Advocate-General on behalf of Government of Balochistan, and Mr. Kamran Murtaza, Advocate Supreme Court on behalf of the Principal of Bolan Medical College.

5. Dr. Imdad Hussain, attorney of the appellant at the very outset submitted that allocation of distribution of seats in Bolan Medical College on the basis of Districts and Agencies or on any other basis and further that reservation of seats under various quotas was against the provisions of the Constitution and natural justice as it amounted to deprive a citizen of his right to acquire education as per his or her choice which was the duty of the Government to guarantee such right to every citizen by formulating or providing an admission policy according to which admissions to Medical Colleges ought to be given solely on the basis of merit list to be provided on Provincial basis without allocation/distribution of seats to the districts or agencies or classification on the basis of students in different categories which would result in depriving meritorious and good students from admission and enable average or below average students to obtain admissions, consequently resulting in deterioration and diminishing the standard and quality of the Doctors and medical profession. According to him, this would be harmful, damaging and cause immense hardships and problems to the public-at-large. In view of his above arguments, he submitted that the provisions of

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Appellant

an extract from daily diary in support of the above report was also produced before the Court and adduced in evidence. The Patwari recorded the report in daily diary was also not produced before the Court to prove his report. Careful perusal of the attestation order shows that Allah Ditta was not present before the Revenue Officer though it was shown Mehdi Lambardar identified him. Admittedly, the land in question situate in the revenue estate of Chak Sanatta but the mutation was effected in favour of Chak Khizri in order to prove a valid gift. It was very much obligatory on the defendant to prove voluntary nature of the gift in his favour by adducing convincing evidence and cogent reasons about the presence of Allah Ditta before the Revenue Officer for the purposes of admitting the gift by him. As stated hereinabove, in this case, neither the Patwari who entered the mutation, nor the Girdawar-Halqa, who verified its entries nor the Revenue Officer who finally attested the gift mutation appeared at the trial to prove the transaction at Chak Khizri. In the ordinary course of nature the mutation should have been taken up in the revenue estate to which it belonged. There is no explanation as to why it was taken to another revenue estate. The evidence shows that he got interest but by itself was not sufficient to prove a gift of whole of his land by Allah Ditta. It was abundantly proved on this concurrent finding of the Courts below was not challenged by the appellant before the learned High Court. From the above narrative it becomes quite clear that it was a strange phenomenon that the appellant denied the relationship of the respondent with Allah Ditta. In evidence the appellant went to the extent of even saying that he had never seen the respondent, which shows that it was a false defence and incorrect deposition. Therefore, his testimony on the material point of gift of valuable land should not have been accepted by the trial Court as well as by the Appellate Court.

11. It would be pertinent to refer to section 149 of Principles of Mahomedan Law, by D.F. Mulla's, which reads as under:-

"149. The three essentials of a gift.—It is essential to the validity of a gift that there should be (1) a declaration of gift by the donor, (2) an acceptance of the gift, express or implied, by or on behalf of the donee, and (3) delivery of possession of the subject of the gift by the donor to the donee as mentioned in section 150. If these conditions are complied with the gift is complete."

In this connection it has been held by this Court in *Ami Chand v. State*, 1997 SC 1001 that "alleged donor who was alive had delivered gift—Delivery of possession to the alleged donee had not been established. Circumstances fairly strong, led to the only reasonable and logical inference that the donee had not made any gift to the alleged donee."

circumstances. It would be advantageous to refer here the case of *Abdul Wahab v. Aurangzeb and 2 others* 1997 SCMR 1077 wherein it has been held that:-

"Plaintiff's suit was decreed by all the Courts including High Court. ... High Court repelled such contention by holding that recital in a deed about disputed fact was not conclusive proof of the same and once gift was challenged on the ground of same having not been completed for want of delivery of possession of land under the same, recitals in such deed could be proved to be incorrect according to firmly settled law—High Court found that donor (plaintiff) was still in possession of land in question."

12. In view of the evidence, provisions of Mahomedan Law and the provisions referred to herein above, we are of the considered opinion, that Allah Ditta donor did not make a valid gift in favour of appellant Nasrullah Khan.

13. The sum up of the above discussion is that the High Court after due consideration rightly accepted the second appeal of the respondent setting aside the concurrent findings of the Courts below. In our view, the learned High Court with sound and plausible reasons allowed the second appeal of the respondent. We also do not find any misreading or non-reading of evidence or jurisdictional error in the impugned judgment, which is based on the principles laid down by this Court. There is no substance in this appeal, which is hereby dismissed with no order as to costs.

M.H./M.A.K./N-42/S

Appeal Dismissed.

2001 S C M R 1161

[Supreme Court of Pakistan]

Present: Muhammad Bashir Jehangiri,
Nazim Hussain Siddiqui and Rana Bhagwan Das, JJ

Mst. ATIYYA BIBI KHAN
and others—Appellants

versus

FEDERATION OF PAKISTAN through
Secretary of Education (Ministry of Education),
Civil Secretariat, Islamabad and others—Respondents

Civil Appeals Nos. 758, 759, 760, 761, 765, 766, 768, 769, 772, 876, 887, 888, 889, 890, 891, 892, 901, 902, 928, 929, 930, 931, 932, 933, 934,

935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 1307, 1998, 343 of 1999, 48 of 2000 and Civil Petition No. 1905 of 2000, decided on 22nd March, 2001.

(On appeal from the judgment/order dated 25-3-1998 of the Lahore High Court, Lahore passed in Writ Petitions Nos. 3772, 2384, 329, 2901, 2989, 3010, 3221, 3336, 3639, 1505, 2722, 2908, 3187, 4143, 4536, 3187, 2843 and 4023 of 1998).

Per Nazim Hussain Siddiqui, J.—

(a) Educational Institution—

---Admission to Medical College—Candidates for admission were the contesting parties, and to safeguard their individual interest, they had challenged the entitlement of the rival candidates—Fate of such candidates could not be decided without affording them an opportunity of being heard. [p. 1177] A

Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1977 463; Syed Ahmed Saeed Kirmani v. Punjab Province and others 1982 590 and Mussarat Uzma Usmani and another v. Government of Punjab through Secretary Health, Lahore and another PLD 1987 Lahore distinguished.

(b) Maxim—

---"Audi alteram partem"---Applicability---Admission to Medical College—Candidates for admission were the real contesting parties, and to safeguard their individual interest, they had also challenged the entitlement of the rival candidates—Fate of such rival candidates could not be decided without affording them an opportunity of being heard. [p. 1177] A

Mushtaq Ahmed Mohal v. The Lahore High Court and others 1987 SCMR 1041 ref.

(c) Educational institution—

---Admission to Medical Colleges---Locus poenitentiae, principle of Application—Phrase "till a decisive step is taken"---Significance—Relevant Authority though could recede before "decisive step" was taken, but admissions in the college were granted to the candidates, in accordance with the prospectus, and the results were communicated to them before Constitutional petitions were filed, they had not committed any error. Decisive steps in the matters thus were already taken and thereafter contrary to their interest could not be taken and principle of locus poenitentiae was attracted in these cases. [p. 1178] B

Pakistan and another v. S. Hussain Ali Shah A. Fazalani PLD

(Nazim Hussain Siddiqui, J.)
SC (Pak.) 310 and Pakistan through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi PLD 1969 SC 407 ref.

Per Rana Bhagwan Das, J.—

(d) Educational institution—

---Admission to Medical College—Candidates whose process of selection and admission had been finalized before the verdict of High Court on the subject, would not be affected by the judgment of High Court especially when they were not party to the proceedings before the High Court as they had acquired a valuable right on the strength of the admission policy and the representation bona fide made by the relevant Authorities. [p. 1183] K & L

(e) Judgment—

---Operation of—Judgment would be operative from the date of announcement and would have no retroactive legal implications. [p. 1183] L

(f) Constitution of Pakistan (1973)—

---Art. 25—Equal protection of law and equal treatment before law—Principles stated—

Following are the principles with regard to equality of citizens:

- (i) That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
- (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
- (iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;
- (iv) that no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
- (v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- (vi) that equal protection of law means that all persons equally should be treated alike both in privileges conferred and liabilities imposed;

(vii) that in order to make a classification reasonable, it should be based—

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification. [p. 1183] M

Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islamabad 1997 SCMR 1026 and Mushtaq Ahmad Mohal v. Hon'ble Lahore High Court 1997 SCMR 1043 ref.

I.A. Sherwani v. Government of Pakistan 1991 SCMR 1010 quoted.

(g) Constitution of Pakistan (1973)—

—Arts. 25A, 22, 25, 29, 37(c), 18 & 2A—Educational Institutions—Admission in Medical Colleges—Equality of citizens—Reasonable classification—Concept—Discrimination—Effect—Principles

Article 25 of the Constitution unambiguously guarantees that citizens are equal before law and are entitled to equal protection of law that they shall not be discriminated on the basis of sex alone. Inter-Articles 2A, 18 and 25 of the Constitution are designed, intended and directed to bring about an egalitarian society based on Islamic concept of social justice. There is no difference between individuals of mankind on the basis of race, colour and territory and that all human beings are equal in the eyes of Allah as He created all from a quintessence of clay. [p. 1184] N

No doubt, concept of reasonable classification has been held to be implicit in Article 25 of the Constitution which guarantees equality of citizens and equal protection of law. Nevertheless, it is equally well established that the classification must be reasonable and must have nexus with the objects sought to be achieved by such classification.

Constitution must be read as an organic whole and all its provisions must be harmoniously reconciled instead of picking out inconsistencies between different provisions. [p. 1185] O

Article 25, apart from stipulating equality and equal protection of law to all citizens, expressly prohibits discrimination on the basis of sex and provides that the State may make special provisions for protection of women and children. Article 22 of the Constitution forbids discrimination on grounds of race, religion, caste or place of birth in educational institutions receiving aid from public revenue but enables a public authority to make special provisions for the advancement of any socially or educationally backward class of citizens. [p. 1185] P

Article 37(c), inter alia, requires that the State shall make technical and professional education generally available and higher education equally accessible to all on the basis of merit. [p. 1185] Q

Admission to Government aided institutions was not exclusively covered by Article 22 of the Constitution but Article 25 was equally applicable. On the same principle there is no reason for ignoring the requirements of Article 37(c) of the Constitution. No doubt, aforesaid Article occurs in the Principles of Policy and is not directly enforceable nevertheless Article 29 of the Constitution requires each organ or authority of State to act in accordance with those Principles. These Principles of Policy are "conscience of the Constitution and the basis of all executive and legislative action". The provisions relating to Fundamental Rights ought to be read together with the directive Principles of Policy. [p. 1185] R

Article 37(c) ought to be read with Article 25 in matters concerning admission to Professional Colleges. Thus, reading Article 25 along with Articles 2A, 22 and 37(c) of the Constitution would show that only such classification could be deemed reasonable which fosters the objects of the Constitution i.e. to make higher education available on merits and at the same time to accommodate the interests of the socially or economically disadvantaged sections of the people for the purpose of fostering genuine rather than nominal equality. [p. 1186] S

The concept of a reasonable classification is premised on the principle that the object is not to secure nominal or formal equality but genuine equality amongst different classes or groups of citizens. [p. 1186] V

Nusrat Baig Mirza v. Government of Pakistan PLD 1992 FSC 412; Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473; Shrin Mir v. Government of Punjab PLD 1990 SC 95; Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 418; Employees of the Pakistan Law Commission v. Ministry of Works 1994 SCMR 1548; Abdul Qadir Shaikh v. Registrar, N.E.D. University of Engineering and Technology 1992 CLC 222; Abdul Fareed v. N.E.D. University of Engineering and Technology 2001 CLC 347; C.P.L.As. Nos. 474-P and 494-P of 2000; Abdul Qadir Bhatti v. Government of Sindh PLD 1976 Kar. 1102 and Ejaz Aslam v. University of Peshawar PLD 1975 Pesh. 186 ref.

Interpretation of Constitution—

Constitution must be read as an organic whole and all its provisions must be harmoniously reconciled instead of picking out inconsistencies between different provisions. [p. 1185] O

Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473 ref.

For Appellant

place either from the date of knowledge or the attornment of the tenants or on obtaining of possession."

In this case the time started running from the date of refusal i.e. 7-5-1995 and came to an end on 6-5-1998 and there can be no revival of cause of action afresh after the expiry of limitation prescribed by Article 113 of Limitation Act.

As far as the contention of Mr. Umer Soomro that only contents of the plaint has to be seen and no other document can be considered for deciding the application under Order VII, Rule 11, C.P.C. has no force. The plaintiff has suppressed the letter dated 7-5-1995 and subsequent correspondence and cannot claim benefit of its known wrong. Furthermore, the Hon'ble Supreme Court in the case of S.M. Shaif Ahmad Zaidi v. Malik Hassan Ali Khan has held as under:-

"14. Besides, averments made in the plaint other material available on record which on its own strength is legally sufficient to completely refute, the claim of the plaintiff, can also be looked into for the purpose of rejections of the plaint. It does not necessarily mean that the other material shall be taken as conclusive proof of the facts stated therein, but it actually moderates that other material on its own intrinsic value be considered along with the averments made in the plaint."

In another case reported as Mst. Mazhar Khanum v. Sheikh Saleem Ali and others 2004 CLC 799 a learned Division Bench of Lahore High Court has held as under:-

"..... The instances can be multiplied where it is permissible for the Court to look beyond the contents of the plaint itself. It is the duty of the plaintiff to place before the Court absolutely clean cards and to disclose all relevant facts forming the background of the dispute as a whole, without in any manner, suppressing any material fact or aspect of the case. He should not deliberately conceal the earlier litigation, if any, with malicious and vexatious design. In a case where the suit of the plaintiff is conceived out of motives and unbecoming tactics and tricks designed to harassing the defendant, the latter has every right to seek indulgence of the Court to look beyond the contents of such a plaint. And, if the defendant brings to the notice of the Court facts which, though in existence at the time the suit was filed by the plaintiff who was supposed to plead the same, but were withheld for any reason whatsoever, the Court cannot shut its eyes, and to sit as a mute spectator or observer, rather it must take into consideration already existing relevant facts, brought to its notice through the written statement and the

undisputed documents filed in support thereof, and treating those facts as an integral part of the plaint, it would be justified to determine whether the suit is ultimately to fail, and, if so, not to subject the defendant to the rigours of a protracted trial, inconvenience, waste of time and money, besides mental agony and torture. If on consideration of the overall facts and circumstances, the Court comes to a definite conclusion, without unduly leaning towards the defendant and at pains of unnecessarily stretching the facts in his favour, with obvious motive to shutting out altogether the plaintiff once for good, it can certainly put an end to the matter. Therefore, we are of the considered view that the Courts below were justified in looking beyond the contents of the plaint. The impugned decisions cannot, therefore, be set at naught on this hyper technical ground."

From the perusal of the above two judgments it is now permissible to look beyond the averments made in the plaint and to consider other documents available on record to completely refute the claim of the plaintiff.

The upshot of the above discussion is that the suit instituted on 6-5-2004 is hopelessly time barred and the claim of the plaintiff is, therefore, rejected under Order VII, Rule 11, C.P.C.

S.A.K./M-89/K Plaint rejected

A 21/25

P L D 2006 Karachi 629

Before Rehmat Hussain Jafferi and Ali Sain Dino Metlo, JJ

Shaikh AJAZUR REHMAN---Petitioner

versus

THE STATE (NAB) through Director-General (NAB) and another---Respondents

Constitutional Petition No. D-407 of 2006, decided on 18th April, 2006.

Mr Ali Sain Dino Metlo, J.--

1) Constitution of Pakistan (1973)---

---Art- 25---Equality before law---Equality before law was one of the cardinal principles of jurisprudence recognized by all civilized societies---All persons, high or low, were equal before law---Justice

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must be even-handed and should not be selective even in the matter of procedure. Not desirable to adopt different procedures in the trial of cases simply on the basis of the parties being high or low. Judges should not be respecters of persons. Even a law prescribing different procedures for the trial of cases according to the status of the parties might not stand the test of reasonable classification. Any attempt to give special treatment to a case on the basis of high status of a party could have the effect of undermining common man's confidence in the independence, impartiality and fairness of judiciary. [p. 633] A

(b) Criminal Procedure Code (V of 1893)---

---Chap. XXV [Ss.353 to 365]---Qanun-e-Shahadat (10 of 1984), Arts.131 & 133---Mode of taking and recording evidence---Procedure prescribed under Chapter XXV, Cr.P.C., providing for recording evidence in writing only, was quite comprehensive; it was in vogue and had successfully catered for administering justice for the last more than a century without any serious complaint, criticism or demand for change from any quarter and had stood the test of time. There might be a desire for recording Court proceedings in audio or video tapes or such like other devices, but mere desire, howsoever strong it might be, without sufficient urgency and utility, could not be sufficient for judicial innovation and for the present there seemed to be no urgency and there was no utility of adopting such procedure. Before taking any decision in that regard, issue would have to be examined thoroughly from different angles including its utility and feasibility. One of important legal requirements for recording evidence as contained in Article 131 of Qanun-e-Shahadat 1984, was to exclude irrelevant and inadmissible evidence from being recorded. While recording evidence in audio or video cassettes, all evidence, relevant as well as irrelevant, admissible as well as inadmissible, would stand recorded as soon as it would come out from the mouth of witness. Some modalities would have to be worked out for excluding such irrelevant and inadmissible evidence for authentication of recorded cassettes; as well as for preparation and certification of their copies. Availability of human and material resources, would also be an important factor for consideration. Moreover, the procedure, if adopted, would have to be generally for all cases and not for one particular case. Task would be easier for the Legislature. [p. 634] B

Per Rehmat Hussain Jafferi, J--

(c) Criminal Procedure Code (V of 1898)---

---Chap. XXV [Ss.353 to 365]---Qanun-e-Shahadat (10 of 1984), Arts.131 & 133---Constitution of Pakistan (1973), Art.25---Mode of taking and recording evidence---Adopting new methods, techniques and devices---Sessions Judge or Magistrate, was required to take down the

evidence in his own hand in the language as mentioned in Chap. XXV, Cr.P.C. and it was not incumbent upon the Judge or Magistrate to record evidence in audio cassette. Because of modern technology, a benefit could be taken from said technology to preserve evidence and proceedings of the Court in modern devices. Evidence would contain examination-in-chief, cross-examination, re-examination, if any, ruling of the Court about admissibility or otherwise of evidence etc. Control of the gadget would be with the Presiding Officer who could pause or get it paused at any time while recording evidence that would stop recording inadmissible evidence which would then not become the part of record and it would not violate provisions of Articles 131 & 133 of Qanun-e-Shahadat, 1984. In appropriate cases, in addition to take down evidence in the manner provided in Chap. XXV, Cr.P.C., evidence could be preserved and recorded through modern technology on different kinds of devices, such as audio cassettes, C.Ds., etc. with the help of voice, tape recorder or computer. Even the proceedings and evidence could be recorded in video cassette through video camera, electronic short hand machine, evidence tape recording devices etc., in appropriate cases; for that the decision lay with the Trial Court to exercise same keeping in view importance of the case, person involved in it, gravity of offence, in highly sensitive and high profile cases. Such classification was not against the spirit of Article 25 of Constitution, but was permissible as in the field of criminal justice, a classification was permissible on the basis of heinousness of crime committed. Courts were required to adopt new methods, techniques and devices obtained through advancement of science without affecting the original intention of law. By adopting those new methods, Court would be in a better position to serve advancement of cause of justice, to do fair play between the parties and to make proceedings more transparent. [pp. 637, 639] C & G

National Textile Workers' Union v. P.R. Ramakrishnan (1983) SCC 228; State v.S.J. Choudhary (1996) W SCC 428; SIL Import USA v. Exim Aides Silk Exporters (1999) 4 SCC 567; Basavaraj R. Patil v. State of Karnataka (2000) 8 SCC 740; State of Maharashtra v. Praful D. Desai AIR 2003 SC 2053; Dewan Singh v. Emp., 42 Cr.LJ 284 and Abdul Rehman's case 28 Cr.LJ 25 (PC) ref.

(d) Constitution of Pakistan (1973)---

---Art. 25---Equal protection of law---Equal protection of law appearing in Art.25 of the Constitution did not mean that every citizen, no matter what his condition, must be treated in the same manner; it only would mean that those persons, similarly situated or in similar circumstances, should be treated in the same manner. Differentiation could be made on the basis of occupations or privileges or special needs of a particular locality or a particular community or age groups or different

Article 25 of the Constitution guaranteed equality and not identity of rights--Equal protection clause of Article 25 of the Constitution did not demand uniformity of procedure--Legislature could classify and adopt one type of procedure for one class and a different type for another class--Different procedure could be adopted in different cases depending upon the facts and circumstances of each case. [p. 637] D

F.B. Ali v. State PLD 1975 SC 506 and Khan Asfandyar Wali v. Federation of Pakistan PLD 2001 SC 607 ref.

(e) Practice and procedure--

---If there was no specific prohibition to a particular procedure in procedural law then same was deemed to be permissible--Apparent reason behind it was that law had to go along with the time, to meet with the requirements and needs of the Society and to effectively travel with the changing time. [p. 638] E

(f) National Accountability Ordinance (XVIII of 1999)--

---S. 17(c)--Procedure to be followed by Accountability Court--Section 17(c) of National Accountability Ordinance, 1999, had permitted Accountability Court to follow any procedure as it might deem fit in the circumstances of a case and could dispense with any provision of Cr.P.C.--Law had permitted Accountability Court to follow any procedure that would include recording of evidence in modern devices in the trial of any case, after fulfilling conditions mentioned in S.17(c) of National Accountability Ordinance, 1999--Accountability Court had such discretionary powers, but said discretion had to be exercised on sound judicial principles keeping in view the requirements of each individual case. [p. 638].F

(g) Constitution of Pakistan (1973)--

---Art. 199--Qanun-e-Shahadat (10 of 1984), Art.164--Constitutional jurisdiction--Scope--Entire evidence, in the present case, had been recorded--Cross-examination of investigation officer was going on--Advocate for petitioner had cross-examined witness for eight days and same was at the last stage of conclusion--Case was not such where proceedings and evidence could be recorded in the audio cassettes--Discretion exercised by the Trial Court in rejecting application for recording remaining cross-examination of prosecution's last witness in his voice in audio cassette, did not suffer from any illegality or irregularity and same did not require any interference under Art.199 of the Constitution. [p. 647] H

Raja Qureshi for Petitioner.

Safdar Hussain Shah Bukhari, ADPGA for the State.

Date of hearing: 14th April, 2006.

JUDGMENT

ALI SAIN DINO METLO, J.--Petitioner Shaikh Aijaz-ur-Rehman, facing trial before the Accountability Court No.II, Karachi, by way of this constitutional petition, seeks direction to the trial Court for recording remaining cross-examination of prosecution's last witness Inspector Ghulam Asghar Jatol in his voice in audio cassette, mainly on the ground that he was giving evasive replies to the questions put to him in cross-examination. The request, which was made by the learned counsel on 29-3-2006 after cross-examining the witness for eight days i.e. on 15-2-2006, 20-2-2006, 22-2-2006, 16-3-2006, 17-3-2006, 24-3-2006, 27-3-2006 and 28-3-2006, was rejected by the trial Court on 1-4-2006 on the ground that evidence was being recorded properly according to the law and there was 'no cogent reasons or lawful necessity' for recording evidence in witness's voice in audio-cassette.

2. Learned counsel for the petitioner, at the very outset, stated that the petitioner had full confidence in the integrity, efficiency and impartiality of the Judge presiding the trial Court. Nevertheless, he contended that there was no prohibition in law to record evidence in audio or video cassettes, which, according to him, would bring more accuracy. He further argued that in past also some special Courts had done so in some 'high profile cases'. He cited the cases of Mian Muhammad Nawaz Sharif and Daniel Pearl in which the Anti-Terrorism Courts had recorded evidence in audio cassettes.

3. The learned A.D.P.G.A. vehemently opposed the petition on the grounds that in law there was no provision for recording evidence in audio tapes: that petitioner's case was not a high-profile case: that the request was made when only a part of cross-examination of prosecution's last witness remained to be recorded: and that there was no valid reasons or justification for the suggested innovation of procedure, particularly when the petitioner had full faith in the efficiency and impartiality of the learned Judge of the trial Court.

4. As regards the precedents of recording evidence in audio-tapes by Anti-Terrorism Courts in the two cases referred to by the learned counsel for the petitioner, it may be mentioned that they do not have any binding or even persuasive force under any law. Moreover, equality before law is one of the cardinal principles of jurisprudence recognized by all civilized societies. It is enshrined in Article 25(1) of our Constitution. All, high or low, are equal before law. Justice must be evenhanded. It should not be selective even in the matters of procedure.

/BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

In the case Appeal No. 707/13

RISHTIAQUE V E R S U S IGP AND OTHERS

APPLICATION FOR EARLY
FIXATION OF ABOVE TITLED CASE.

Respected Sir,

Petitioner submits as under:-

1. That the above titled case is pending before this Honourable Tribunal for 02/06/2014.
2. That the above titled case has been filed in this Honourable Tribunal on 15/04/2013 and the same is still pending in preliminary arguments due to query made by this Honourable Bench on the point that whether initial / original order could be challenged or not in the ~~instan~~ appeal, then the matter was reffered to full bench of this Honourable Tribunal.
3. That after hearing the arguments the Honourable Full Bench held that the Initial/ Original order can be challenged in the instant appeal.
4. That the above titled case was fixed for preliminary arguments on 22/04/2014^{but} due to strike of Lawyer the case was adjourned to 02/06/2014 without any progress.

5. That the above titled case is pending adjudication in preliminary stage more than a year. It is also brought to the knowledge of this Honourable Tribunal that identical appeals bearing No. 591/13 and 706/13 against the same impugned order have already been admitted for regular hearing by this Honourable Tribunal. (Copies of above referred appeal are attached).
6. That in the light of above submissions the case needs to be fixed and heard at an early date.

It is therefore, humbly prayed that on the acceptance of this application the above titled case may kindly be fixed for at in early date as convenient to this Honourable Tribunal.

Dated: 24/04/2014

Through

Appellant


ASIF HAMEED QURESHI

Advocate, Supreme Court, of Pak.

Islamabad.

AFFIDAVIT:-

I, ASIF HAMEED QURESHI, advocate, do hereby solemnly affirm and declare on oath that as per instruction of my client, all the contents of instant application are true and correct to the best of my knowledge and belief and nothing has been concealed or misstated from this Honourable Tribunal.


ADVOCATE

(1)

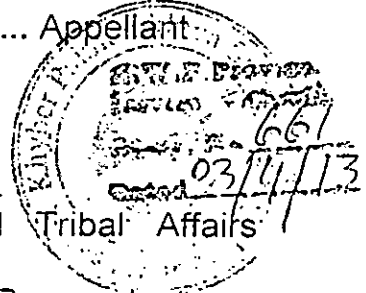
BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 591/2013

Mohammad Ibrahim Ex Warder, Central prison Haripur S/O Farhad Khan R/O Dhakki Tehsil and District Charsadda..... Appellant

VERSUS

1. Inspector General of Prisons KPK Peshawar.
2. Secretary to Govt. of KPK Home and Tribal Affairs Department Peshawar.
3. Superintendent, Central prison Haripur..... Respondents



APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974/RW SECTION 19 OF THE KPK GOVT. SERVANTS E & D RULES 2011 - AGAINST THE ORDER DATED 20-12-2012 OF RESPONDENT NO 1 WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE WITH IMMEDIATE EFFECT AND ALSO AGAINST THE ORDER DATED 21-03-2013 OF RESPONDENT NO 2 WHEREBY DISMISSAL OF THE APPELLANT HAS BEEN CONVERTED INTO REMOVAL FROM SERVICE FROM THE DATE OF HIS DISMISSAL ORDER.


PRAYER:-

On acceptance of this appeal the impugned orders dated 20-12-2012 of Respondent No 1 and order dated 21-03-2013 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated into service with consequential benefits.

Respectfully Submitted:-

1. That the appellant joined the respondent Department as warder on 16-05-2012 and since then performed his duties with honesty and full devotion and to the entire satisfaction of his superior officers.

ATTESTED

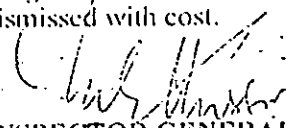

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

officer. In the entire procedure utmost efforts were made to fulfill norms of natural justice and the plea of the appellant is just to waste the precious time of the Honorable Tribunal.

GROUND: -


- A. Incorrect. The orders is strictly in accordance with rules and tenable in the eyes of law.
- B. Incorrect, as elaborated in the preceding Para's not only ample opportunity was provided for the defense even the departmental appeal was properly considered to by the competent authority, resultantly the punishment of dismissal from service converted into Removal from Service.
- C. Incorrect, misleading. The Prisons personnel while performing his duty especially standing at any Tower of the Central Prison can observed the slightest movements beneath in the Jail building / Barracks. The plea of the appellant is a lame excuse, if the appellant performs vigilant, this ugly escape / incident could easily be thwarted, but un-fortunately he failed to do so and the occurrence occurred by adding another black and bleak stigma for the already shuttered Prison Department.
- D. Incorrect, misleading. The area from where the escape took place was visible from his duty place / Tower No.3.
- E. Incorrect, misleading. This approach / plea of the appellant was required to put forth before the Preliminary inquiry forum and then to the formal inquiry forum. At this belated stage such approach is nothing to do facilitate him at this stage of Tribunal which is only mint to thrash out any illegality in the procedure.
- F. Incorrect, as elaborated in the preceding Para's all out efforts were made to facilitate all the accused including the appellant to defend their case but they failed to do so. As per inquiry procedure formally they have been questioned and on the basis of response recommendation were made.
- G. Incorrect, misleading. No discrimination with anyone involved in the ugly episode have been made. According to the quantum of responsibility each individual accused have been treated accordingly.
- H. Incorrect, after formal procedure and conduct, the appellant has been found guilty and accordingly treated.
- I. No comments.
- J. that the respondents seek permission of Honorable Tribunal to raise additional ground at the time of arguments.

It is therefore, humbly prayed that on acceptance of this reply, instant appeal may kindly be dismissed with cost.

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

2- SECRETARY TO GOVERNMENT
Khyber Pakhtunkhwa
Home & T.As Department Peshawar.
(Respondents No.2)

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

SUPERINTENDENT
Central Prison Haripur
(Respondent NO.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of
Service Appeal No.591/2013
Mohammad Ibrahim, Ex-Warder
attached to Central Prison Haripur.....Appellant.

VERSUS

- 1- Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar.
- 2- Secretary to Government of Khyber Pakhtunkhwa,
Home and T.As Department
- 3- Superintendent
Central Prison Haripur.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 TO 3

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 barred by law.

ON FACTS

- 1- Pertains to record, however no comments.
- 2- Pertains to record, however no comments.
- 3- Incorrect, misleading. On the basis of preliminary inquiry as per procedure formal inquiries was held and on the basis of recommendations made by the Inquiry Officer the appellant alongwith other co-accused were awarded major punishment because the allegations were formally proved against all of them. Ample opportunities were provided to the accused for their defense and plea of the appellant that allegation against him proved partially is baseless and just concealing the facts from the learned Tribunal / Court. Though the appellant was awarded major punishment of dismissal from service keeping in view the intensity of offence however at a later stage the competent authority (Home Secretary) while considering his departmental appeal the dismissal from service has been converted into Remoyal from Service.
- 4- Pertains to record, however no comments.
- 5- Correct.
- 6- As already elaborated in Para-3 above.
- 7- Incorrect, misleading. Both orders have been issued by the competent authorities (I.G Prisons / Home Secretary) on the basis of recommendations made by the inquiry.

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

21.2.2014

Appellant with counsel and Mr. Sheharyar Khan, Assistant Superintendent Jail on behalf of respondents with AAG present. Written reply/para-wise comments received on behalf of the respondents, copy whereof is handed over to the appellant for rejoinder on 16.5.2014.

Sd Chairman

Certified to be true copy

NM
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 21-4-14
Number of Words 1600
Copying Fee 10-00
Urgent 2-00
Total 12-00
Name of Copyist Hanis
Date of Completion of Copy 21-4-14
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 706 /2013

Mr. Zamarak Khan, Jail Warder (BPS-7),
Central Jail Haripur, District Haripur **APPELLANT**

VERSUS

- 1- The Govt: of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent Headquarter Prisons, Khyber Pakhtunkhwa Peshawar.
- 4- The Superintendent Central Prison Haripur, District Haripur.
..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDERS DATED 20.12.2012 AND 21.3.2013 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED ON THE APPELLANT UNDER THE NEWLY AMENDED (E&D) RULES 2011 WHICH WAS LATER ON CONVERTED TO REMOVAL FROM SERVICE ON THE DEPARTMENTAL APPEAL OF APPELLANT

PRAYER:

That on acceptance of this appeal the impugned order of removal dated 21.3.2013 may be set aside and the appellant may be very kindly be re-instated in to service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R.SHEWETH:

FACTS:

- 1- That the appellant was appointed as Jail warder (BPS-7) in the respondent Department in the year 2002. That appellant has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors for more than ten years.

Mr. Zamarak Khan
106/2013

706
13-4-13

18/1/13

ACCEPTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of
Service Appeal No.706/2013
Zamarak Khan, Ex-Warder
attached to Central Prison Haripur.....Appellant.

VERSUS

- 1- Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Peshawar.
- 2- Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar.
- 3- Superintendent
Headquarters Prison Peshawar.
- 4- Superintendent
Central Prison HaripurRespondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 TO 4


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 barred by law.

ON FACTS

- 1- Pertains to record, however no comments.
- 2- Correct to the extent that due to his gross negligence while performing his duties in the capacity of Patrolling Officer outside the parameter wall from 03:00 AM to 06:00 AM in the night between 20/21-10-2012, the escapee successfully materialized their plot of escape. Thus four prisoners, three convicted and one under trial escaped. Resultantly Show Cause Notice was served upon him, later on, inquiry officer has established the charges against him and he was accordingly dismissed from service but later on his departmental presentation his dismissal from service was converted in to removal from service.
- 3- Incorrect, misleading. As elaborated in the receding para the appellant was properly proceeded alongwith other co-accused and after fulfilling all the laid down parameters and finally after establishing the charges against the appellant, major penalty was imposed upon him. There is no lapse with regard to the conduct of formal inquiry proceedings against all the accused in the instance case.

ATTORNEY


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

4- Incorrect. Here in this Para the appellant at the same time while submitting certain arguments in support of his appeal unknowingly, deny the arguments put forth in Para-3 of the instant appeal. So far the escape of the escapee is concerned it is a fact that they were confined and made their attempt from inside but as per Prison Rules the appellant was deputed outside the parameter wall with the intention and expectation that he would mobilize the subordinate/co-warders deployed outside the parameter wall to foil any such attempt from outside also, if these responsible for the inside security failed to perform to the required extent.

5- Comments with regard to the grounds arguments are as under:-

GROUND:-

- A. Incorrect. The orders is strictly in accordance with rules and tenable in the eyes of law.
- B. Incorrect, no violation of any Article of the constitution made in the instant case. All codal formalities were accordingly fulfilled. All the accused were given ample opportunities to defend themselves by any means.
- C. Incorrect, misleading. As evident from Annex-A and B proper charge sheet/statement of allegations were served upon the appellant at proper time.
- D. Incorrect, as elaborated above, his dismissal from service already been converted into removal from service, hence no discrimination has been done with any accused. All of them were treated strictly according to the relevant law/rules.
- E. Incorrect, the appellant himself in the same breath is admitting and denying the fact. If he did not get the chance of personal hearing than on what grounds conversion of penalty came into existence.
- F. Incorrect, all possible opportunities were granted/provided to the appellant.
- G. Incorrect, misleading. No malafide took place and all were treated in accordance with the law.
- H. As elaborated in Para-E above. (Copy of inquiry report is enclosed as Annex-C).
- I. No comments. However, the respondents seek permission of Honorable Tribunal to raise additional ground at the time of arguments.

It is therefore, humbly prayed that on acceptance of this reply, instant appeal may kindly be dismissed with cost throughout.

2- INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa Peshawar
(Respondent No.2)

CHIEF SECRETARY GOVERNMENT
Khyber Pakhtunkhwa.
(Respondents No.1)

3- SUPERINTENDENT
Headquarters Prison Peshawar
(Respondent NO.3)

4- SUPERINTENDENT
Central Prison Haripur
(Respondent NO.4)

ATTESTED

[Signature]
SECRETARY
Khyber Pakhtunkhwa
Tribunal,
Peshawar

12.3.2014

Clerk of counsel for the appellant and Mr. Sheharyar Khan, Assistant Supdt. Jail for respondents with AAG present. Written reply received on behalf of the respondents, copy whereof is handed over to the clerk of counsel for the appellant for rejoinder along with *connected* appeal on 9.6.2014.

Sd Chairman

Certified to be true copy.

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 21-4-14
Number of _____ 1600
Copying Fee _____ 10 - 00
Urgent _____ 2 - 00
Total _____ 12 - 00
Name of Copye _____ Haru
Date of Completion of _____ 21-4-14
Date of Delivery of Copy _____ 21-4-14