

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 222/2019

Date of Institution ... 19.02.2019

Date of Decision ... 02.02.2022

Muneeb Ur Rahman S/O Nazir Khan, R/O Village Saweer Bala, P/O Darosh District Chitral. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary at Civil Secretariat Peshawar and four others. ... (Respondents)

Noor Muhammad Khattak,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant joined Prison Department on 02-02-2015. During the course of his service, the appellant was proceeded against on the charges of absence from duty and was ultimately removed from service vide order dated 29-06-2018. The appellant filed departmental appeal dated 10-12-2018, which was rejected vide order dated 01-01-2019, hence the instant service appeal with prayers that the impugned orders dated 29-06-2018 and 01-01-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the

Constitution has badly been violated; that the appellant was proceeded against ex-parte and all the proceedings were conducted at the back of the appellant; that the appellant has not been treated in accordance with law and rule on the subject as such violated Article-4 and 25 of the Constitution; that no charge sheet/statement of allegations or show cause notice was issued to the appellant; that no proper enquiry was conducted nor the appellant was afforded any opportunity of personal hearing to defend himself, which were mandatory before passing the impugned order; that absence of the appellant was not willful but was due to compelling reason of his enmity; that the impugned order was not communicated to the appellant and when he attended the office in order to resume duty, it came to his knowledge that he has been dismissed from service.

03. Learned Additional Advocate General for the respondents has contended that the appellant was properly proceeded against under the relevant law for willful absence from lawful duty and was served with showcause notice at his home address; that the respondents issued his absence notice in leading newspaper as per relevant law, but the appellant did not turn up; that it was responsibility of the appellant to inform the respondents about his enmity or his traumatic episode, but neither the appellant informed the office of such episode nor submitted any application to this effect; that inspite of sending notices at his home address and publishing notices in newspaper, the appellant did not turn up before the respondents for personal hearing, hence the punishment of removal from service was awarded to the appellant in absentia.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant remained absent from duty with effect from 31.03-2018 to 29.06.2018 without any prior permission of the competent authority. The appellant was proceeded against under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The impugned order would

suggest that the appellant was proceeded against on the ground of absence for the mentioned period, however the authority has treated the mentioned period as leave without pay, as such the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect derived from the judgment of the august Supreme Court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348. We have observed that absence of the appellant was not willful, but he availed such leave without permission due to compelling reasons of his enmity and the appellant has already taken such stance in his departmental appeal, but which was not taken into consideration. Record would suggest that due to peculiar circumstances in case of the appellant, it appeals to prudent mind that the appellant belonging to remote village of Chitral would not be in position to read newspaper or it would also be not possible with accuracy that show cause notice served at his home address would have been received by him well in time. Moreover his sister was killed by his brother in law, which was a shocking news for the appellant and in a situation, it was but natural that he would not be in a position to respond to the notices well in time, but the respondents did not consider his case on compassionate ground and was removed in an arbitrary manner, which was not warranted. We are of the considered opinion that though the appellant was absent from duty, but his absence was due to enmity based on killing of his sister by his brother in law, hence he deserve to be treated on humanitarian grounds. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground on the basis of which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60.

06. We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. In view of the foregoing, the instant appeal is accepted and the impugned order of removal from service is converted into minor penalty of stoppage of two annual increments for two years without cumulative effect. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
02.02.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER

02.02.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Miss Lubna Bibi, Law Officer for respondents present. Arguments heard and record perused.

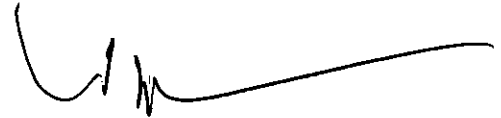
Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted and the impugned order of removal from service is converted into minor penalty of stoppage of two annual increments for two years without cumulative effect. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED

02.02.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN

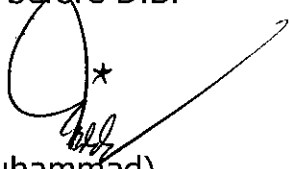



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

09.11.2021 Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former made a request for adjournment in order to prepare the brief; granted. To come up for arguments on 16.12.2021 before D.B.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

16-12-21

DB is on Tour case to come up?

For the same on Dated, 2-2-22

*
Rendez

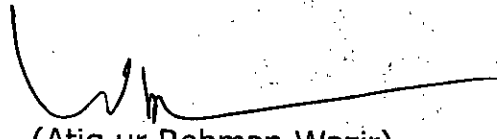
01.04.2021

Appellant present through counsel.


Kabir Ullah Khattak learned Additional Advocate General alongwith Suleman Senior Instructor for respondents present.

Former made a request for adjournment; granted. To come up for arguments on 12 / 07 2021 before D.B.

~~12/07/2021~~ 2021



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

12.07.2021

Appellant in person present.

Mr. Javed Ullah, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B on 09.11.2021.



(ROZINA REHMAN)
MEMBER (JUDICIAL)



CHAIRMAN

12.05.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 17.08.2020 before D.B.



Reader

17.08.2020

Due to summer vacations, the case is adjourned to 19.10.2020 for the same.



Reader

19.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned^{te} 30.12.2020 for hearing before the D.B.



(Miân Muhammad)
Member



Chairman

30.12.2020

Due to summer vacation, case is adjourned to 01.04.2021 for the same as before.



Reader

09.12.2019

Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 11.02.2020 before D.B. Sulaiman H.C representative of the respondent department present and submitted reply placed on file.

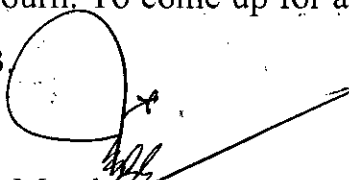

Member


Member

11.02.2020

Appellant in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 09.03.2020 before

D.B.


Member


Member

09.03.2020

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior learned counsel for the appellant is not available. Adjourn. To come up for arguments on 12.05.2020 before D.B.


Member


Member

28.06.2019

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Tariq Shaikh, Senior Law Instructor for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment. Adjourned to 23.08.2019 for written reply/comments before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

23.08.2019

Counsel for the appellant and Addl. AG alongwith Suleman, Senior Instructor for the respondents present.

Representative of respondents seeks further time to submit written reply. Last opportunity is granted for submission of requisite reply/comments on 23.09.2019 before S.B.


Chairman

23.09.2019

Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present.

Written reply/comments on behalf of respondents not submitted despite last opportunity. The appeal is posted for arguments before D.B to 09.12.2019.

CHAIRMAN 

29.03.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Warder) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 29.06.2018 whereby he was awarded major penalty of removal from service on the ground of absence from duty. The appellant has also assailed the order dated 01.01.2019 through which his departmental appeal for reinstatement in service was not entertained. Learned counsel for the appellant argued inter-alia that the appellant received the original impugned order on 25.11.2018 and that the impugned orders were issued without observing the legal requirements and are against the principle of natural justice.

Points urged by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 13.05.2019 before S.B.

Appellant Deposited
Security & Process Fee


Member

13.05.2019



Learned counsel for the appellant present. Written reply not submitted. No one present on behalf of respondent department. Notice be issued to the respondent department for written reply/comments. Adjourn. To come up for written reply/comments on 28.06.2019 before S.B


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 222/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/2/2019	<p>The appeal of Mr. Muneeb-ur-Rehman presented today by Mr. Aqeel A Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 19/2/19</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29-3-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

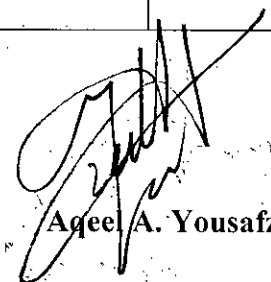
BEFORE THE KHYBER PAKHTUNKHUAWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 222-----2019

Muneeb Ur Rahman vs. Government of Khyber Pukhtunkhwa

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7.	Wakalatnama	-	-



Aqeel A. Yousafzai

Advocate High Court (s)

Barrister Waqar Ali Khan and Associate
Office#1st Floor, J.K. Plaza, Opposite
Arbab Road, University Road Peshawar

Email: adv_aamiralikhan@yahoo.com

Phone: 03219153050

BEFORE THE KHYBER PAKHTUNKHUAWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 222 -2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 200

Dated 19-2-2019

Muneeb Ur Rahman S/O Nazir Khan, R/O Village Saweer Bala, P/O Darosh District
Chitral.

.....Appellant

VERUS

1. Government of Khyber Pukhtunkhwa, through Chief Secretary at Civil Secretariat Peshawar.
2. Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
3. Superintendent, Central Prisons, Haripur.
4. Superintendent, Central Prisons, Swat.
5. Fazal Hameed Khan, Superintendent Circle HQS. Prison Mardan

Filed to-day

Registrar

19/2/19

.....Respondents

Appeal U/S 4 of KPK, Service Tribunal Act 1974 against the impugned Notification bearing No. 1204/PB dated 29-6-2018, whereby Major Penalty of "Removal from Service" has been imposed upon the appellant.

Respectfully Sheweth,

The appellant most earnestly seeks the permission of this Hon'ble Tribunal to submit as under:

BRIEF FACTS

1. That, the appellant is *bonafide* citizen of Islamic Republic of Pakistan and his fundamental Rights are protected under the Constitution of Pakistan, 1973.

2. That, the appellant joined the Prisons Department as Prisons Police on 02.02.2015 and continued to serve the Prisons Department till 31.03.2018. In this entire period, he has served the Prisons Department with the best of his abilities and great zeal.

(Copy of his service card attached as Annex -A)

3. That, appellant's family has been under threat, for the past decade, from his then brother in law. In 2009, the said person murdered the appellant's sister with an axe and was arrested. Later, the Court released the guilty man because of his mental illness.
4. That, the petitioner, in March 2018, discovered that the Petitioner's brother in law had been released by the Court on account of his mental illness. This news caused serious paranoid in the appellant and began fearing for his life.
5. That, it is worth noting that at the time of his sister's murder, the appellant was only 13 years of age, and tragedy of losing his sister through such brutality at the hands of maniac of such order, his childhood was ruined, and he has been living with that scar ever since.
6. That, fearing for his life, he fled his duty station and fearing that someone from his family was going to share his whereabouts to the murderer, the appellant went to Lahore. His family remained unaware of his whereabouts for two months. He returned to his home town in Chitral after that. He was still under fear, however, his family helped him understand that his paranoid was misplaced and that he was safe.

7. That, on 25.11.2018, after recovering from his phobia, he returned to his Department to discover that he had been removed from service. He, for the first time, received a copy of the order of his dismissal from service.

(Copy of his dismissal order attached as Annex-B)

8. That, on 10.12.2018, he filed a departmental appeal against his dismissal order, however, it was rejected on 01.01.2019, on the grounds of it being time barred.

(Copies of his departmental appeal and rejection order are attached as Annex-C and D respectively)

9. That, the appellant been aggrieved with the impugned order and order of rejection of departmental appeal, has got no other avenue of seeking a relief, and therefore, files the instant appeal, before this Hon'ble Tribunal, *inter alia*, on the following grounds:

GROUNDS

- A. Because, Rule 9 of the Efficiency and Discipline Rules 2011 mandate that the Government servant willfully absent from service maybe directed through registered courier to his home address to resume duty. In the case at hand, because the appellant hails from a remote village in District Chitral, he did not receive a such a letter within stipulated time. Thus, the first criteria prior to someone's dismissal from service has not been fulfilled.
- B. Because, Rule 9 of the Efficiency and Discipline Rules, 2011 also mandate that after serving the notice mentioned in the above para, the Department shall publish a notice in two leading newspapers directing the willfully absent servant to resume his service. But, in the case at hand, the appellant hails from a remote village in District Chitral, newspapers do not reach his valley. Simultaneously, it should be kindly noted that because newspapers do not reach Chitral until atleast three days

of the publication date. As a consequence, people in Chitral barely read newspapers as they prefer following electronic media which gives them rather up to date information.

- C. Because, the appellant had a genuine fear for his life, which compelled him to flee. In the circumstances at hand, that his absence from service not amount to willful absence, but rather, a attempted escape chosen to save one's life. While, he should have communicated his fear and the level of threat he felt, to the department; his circumstances, his family history and the traumatic episode his sister's brutal murder may be taken into account to award him a concession from this responsibility.
- D. Because, the impugned order is against the principles of natural justice because no opportunity of personal hearings was given to the appellant to defend his case.
- E. Because, the appellant is of young age, and made a misjudgment which can be easily rationalized. He realizes the mistake he has committed and is willing to correct it. However, the penalty imposed on him is too grave for his actions in the aforesaid circumstance.
- F. The appellant seeks prior approval of this Hon'ble Tribunal to take additional arguments at the time of hearing of the instant appeal.

PRAYER

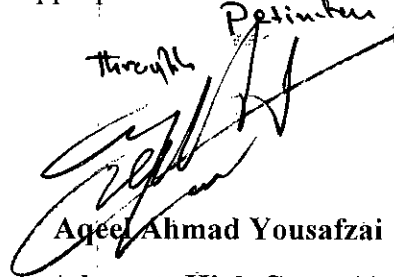
It is, therefore, submitted with profound respect that this Hon'ble Tribunal may very graciously be pleased to:


1. Set aside the impugned order of his dismissal dated 29.06.2018.
2. Reinstate the appellant to his position at the Prisons Department;

Or


1. Mandate the Prisons Department to hear his departmental appeal and grant him a hearing opportunity;
2. Grant any other relief as this Hon'ble Tribunal deems appropriate.

Dated: 19.02.2019

through
Pesimber

Aqee Ahmad Yousafzai
 Advocate High Court (s)

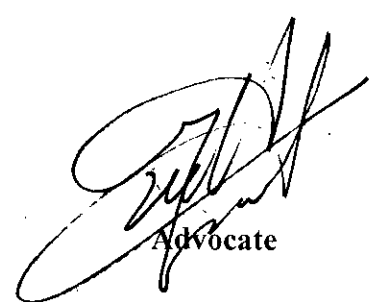

Aamir Ali Khan
 Advocate High Court (s)


Shahid Ali Yaftali
 Advocate


Kamran Jamal Khan
 Advocate

Certificate

It is hereby certified that no such other appeal on the same matter has been filed by the Appellant before this Hon'ble Tribunal before.


 Advocate

BEFORE THE KHYBER PAKHTUNKHUAWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.-----2019

Muneeb Ur Rahman vs. Government of Khyber Pukhtun̄khwa

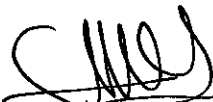
AFFIDAVIT

I, Muneeb ur Rehman S/O Nazir Khan, solemnly affirm and declare on oath that the contents of these comments are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Court.

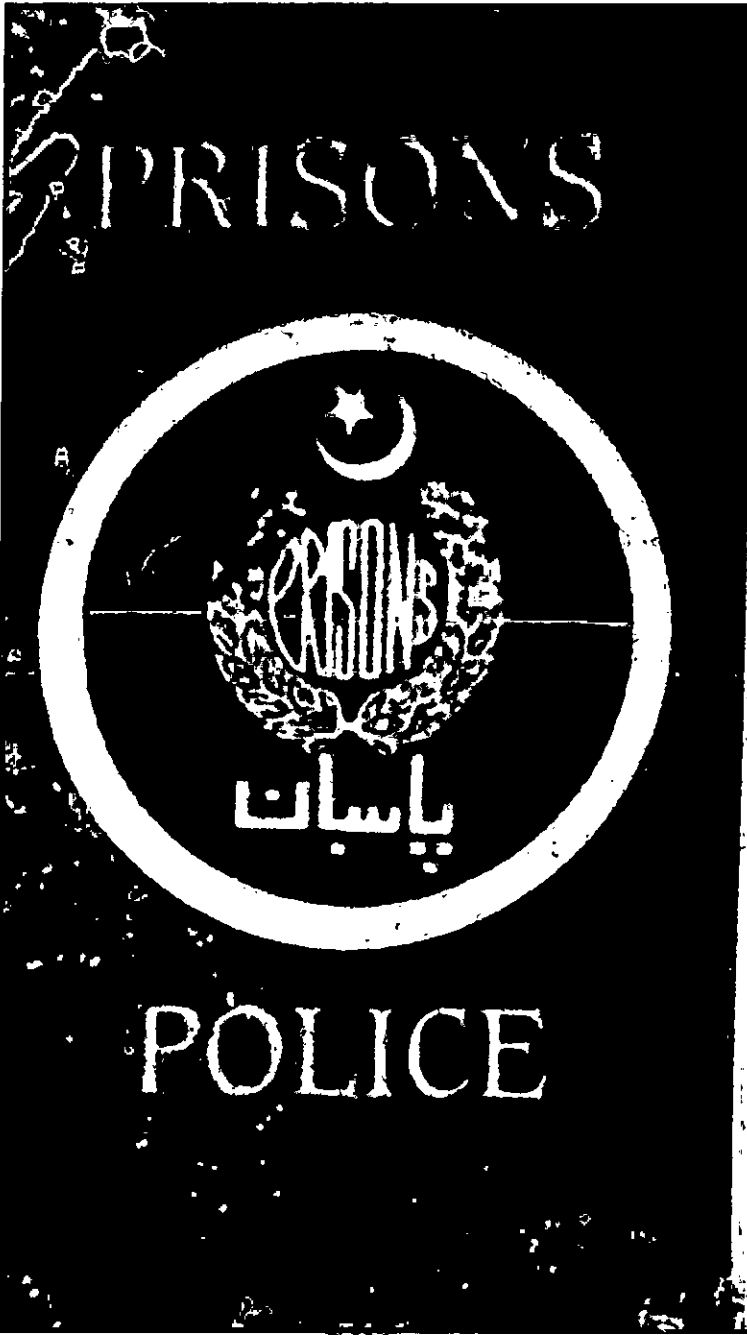
Identified by


Deponent

CNIC No. 15201- 6896140-9


Shahid Ali Yattali
Advocate

ATTESTED

F.Name: NAZIR AHMAD
N.I.C No: 15201-6896140-9
D.O.Birth: 20-03-1996
Date of App: 02-02-2015
Cell No: 0322-9036439
Date of Issue: 09-01-2016
Valid Up to: 09-01-2019
Eyes Color: BLACK
Designation: PRISONS POLICE
Home Address: VILLAGE DROSHI CHITRAL
TEHSIL & DISTRICT CHITRAL

This Card is non Transferable and is the property of KPK, Police.
In the event of loss report immediately to the nearest Police Station
and issuing authority giving original number of the card.
Finder of the card may give it the nearest Police Station.

OR

In Case of Emergency Please Contact:
0948-412949

ATTACHED
To Be True Copy
To Advocate

Amir
7

Amir
7

Amir Ali Khan



MUNEEB UR RAHMAN

PRISONER

President of
M.P. Ch...

ESTED

True
To Advocate

Amir Ali Khan
Advocate High Court
Peshawar

ATTESTED

To Be True Copy
Advocate



8

OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

No. 1204 / PB Dated. 29/06/2018. E-Mail: -mardanjail@gmail.com, 0937-843114

OFFICE ORDER.

WHEREAS, the accused official Mr. Munib Ur Rehman s/o Nazir Khan temporarily attached to Central Prison Haripur and permanently attached to District Jail Swat was proceeded against under Rule-3 read with rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of his wilful absence WEF 31-03-2018, and a notice was served upon him through Superintendent District Jail Swat vide this Headquarters No. 876/PB dated 12-04-2018 and under Superintendent District Jail Swat office letter No. 2572/WE on his home address.

AND WHEREAS, due to no response from him, another notice was published in the daily newspapers "Daily Mashriq" Peshawar on 09-06-2018 and "Daily Aaj" Peshawar on 10-06-2018 as provided as required under the rules.

AND WHEREAS, the accused official failed to resume duties till date as reported by the Superintendent District Jail Swat vide his letter No. 3906 dated 27.06.2018 as well as Superintendent Central Prison Haripur vide his letter No. 5686 dated. 28.06.2018.

NOW THEREFORE, in exercise of the powers conferred under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, the undersigned being competent authority, hereby award the major penalty of "**Removal from Service**" to Mr. Munib Ur Rehman s/o Nazir Khan with immediate effect after observing all legal procedural formalities attached to District Jail Swat for his misconduct/long wilful absence WEF 31-03-2018. He is not entitled for any remuneration for the absence period under rule 19 of the Khyber Pakhtunkhwa Government Servant Revised Leave Rules 1981.

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

Endst: No. 1205-08 / Dated. 29/06/2018.

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Central Prison Haripur for information with reference to his letter No. 3446/WE dated 09.04.2018.
3. The Superintendent District Jail Swat for information and necessary action please.
4. The District Accounts Officer, Swat.
5. Mr. Munib Ur Rehman s/o Nazir Khan R/O Village Saweer Bala, P.O Darosh District Chitral.

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

پروفیسر صاحب انجینئر صاحبان جملہ نامہ اجماع میں موجود ہے اور اس کے ساتھ
عنوان در خواست کے مطابق یہ سب کچھ ہی ہیں۔

جناب عالی۔
مربیانہ گزارش ہے کہ سائل چونکہ محکمہ جملہ نامہ جات میں پیش
دار اور حلیہ کی ایما کے لئے اہانتا ہے اس لئے اس میں کچھ تنازعات
پیش آئے ہیں اس کے سبب سے سائل وارڈ اور نوکر اور نوکر کے چھوڑ کر جاتا
ہو گیا۔ درجہ سائل کو ہرگز سے حکم سے کیا گیا ہے کہ یہ سائل کو سائل کے لئے ہی
عمر میں کاروں سے تعلق رکھتا ہے۔ سائل وارڈ کے لئے کوئی اور ایما
ہے۔

جناب عالی۔
جو کہ آجائیں سائل اپنے کسی دور سے سائل کو چھوڑ کر چھوڑ کر
جاتا ہے اور اس کے لئے تو کار نوکر کا ہونا ضروری ہے اس لئے اس کے لئے
سائل پیش نہ ہو سکا۔ اور نہ جواب دہی کے لئے کوئی اور
کو وہ آپ صاحبان کی فریفت میں گزارش اور رقم کی دلیل کرنا ہوتا
کہ میرے چھوڑی کو سائل کے لئے چھوڑنے کے لئے نوکر میں ہیبت وارڈ سائل
کو کہے دعاگو دیکھ کر کوئی دعا فرمائیں۔ کہ سائل کو کوئی اور
نوکر ہے اس لئے فرج کے خلاف نہیں کر سکتا۔ اس لئے سائل کو کوئی اور
میں گزارش پیش کرتا ہوں۔ کہ ہرگز سے سائل کو کوئی اور
نوکر ہے۔ جملہ نامہ جات میں سائل کو کوئی اور ایما کے لئے دعاگو
فرمائیں سائل صاحبان دعاگو رہیں گے۔

المعادین عین نوکر سائل

آپ کا نام ہے اور وارڈ سائل کو کوئی اور ایما کے لئے دعاگو رہیں گے۔

ATTESTED
To Be True Copy
Advocate

Scanned by CamScanner

Amir Ali Khan
Advocate High Court
Peshawar

ATTESTED
To Be True Copy
Advocate



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406

091-9213445

www.facebook.com/kpkprisons/

Email prisonsig@gmail.com

No. 173 /-

Dated 01-1-2019 /-

To,

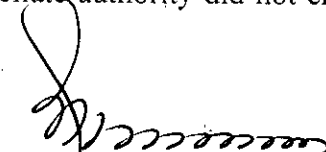
Mr. Muneeb Ur Rahman S/O Nazir Khan,
R/O Village Saweer Bala,
P/O Darosh District Chitral.

Subject:- **DEPARTMENTAL APPEAL FOR REINSTATEMENT IN SERVICE.**
Memo;

I am directed to refer to your appeal dated 10-12-2018 on the subject and to convey that your appeal is badly time barred due to which the appellate authority did not entertain your appeal.

Endst No. _____ /-

Copy of the above is forwarded to the Superintendent HQ Prison Mardan for information with reference to his letter No. 1889 dated 18-12-2018.


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

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

ATTESTED


To Be True Copy
Advocate

Amir Ali Khan
Advocate High Court
Peshawar

Shahid AT Yusuf
Advocate Peshawar.

قیمت 50 روپے	2899			
ایڈوکیٹ: کامران جمال خان / عقیل یوسفزئی		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 689590				
رابطہ نمبر: 0314-4513979				

Service Tribunal KPIC.

بعدالت جناب:

مخائب:	دعویٰ:
Appellant	
Muneeb ur Rehman	علت نمبر:
بنام	مورخہ:
Govt.	جرم:
	تھانہ:

بابت تحریر آئکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام پشاور کیلئے کامران جمال خان ایڈوکیٹ عقیل یوسفزئی، شاہد پنهالی کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 19-02-2019

المقام پشاور کے لیے منظور ہے۔

Attested & Approved:

Kamran Jamil Khan
KAMRAN JAMAL KHAN
Advocate
Peshawar.

Aqeel Ahmad
Adv. High courts

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

منیب الرحیمی ملہ نذیر احمد سکند سمیٹور بالا پونجا نہ درویش
عقیل یوسفزئی
عقیل یوسفزئی

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of

Service Appeal No. 222/2019

Muneeb-ur-Rehman S/O Nazir Khan Ex-Warder R/O village Saweer Bala, P/O
Darosh District Chitral.....**Appellant**

VERSUS

1. Govt of Khyber Pakhtunkhwa, through Chief Secretary
at Civil Secretariat Peshawar.
2. Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar
3. Superintendent
Central Prison Haripur
4. Superintendent
Central Prison Mardan
5. Superintendent
District Jail Swat.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 5

PRELIMINARY OBJECTIONS.

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

ON FACTS

- 1) No comments.
- 2) Admitted to the extent that the appellant was appointed in Prisons
Department on 02-02-2015, however during his entire service, he was
found guilty of various misconduct while reviewing his service record and
he was awarded 05 penalties accordingly. **(Annex-A)**
- 3) No Comments.
- 4) In response to para No.4 of the Appeal, it is the responsibility of the
appellant to be present within Jail premises and perform duties inside
Jail lines. He is also required for reporting to local police for his safety /
security.
- 5) No Comments, having personal matter of the appellant which is not
related with the respondents.
- 6) No Government employee can abandon his official duties for such a long
period of 02 months due to any reason as per Law.
- 7) That the appellant was dismissed from service as per the relevant Law
and Rules due to his absolute absence.
- 8) Agreed.

2.

9) Parawise reply / comments regarding the given grounds are as under.

OBJECTION ON GROUNDS:-

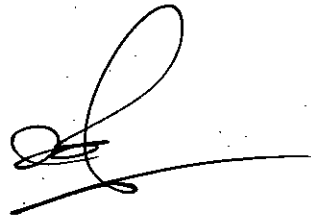
- A) That legal procedure has been followed and he was served with show cause notice on his home address for his absence from duties. (**Annex-B**)
- B) That the respondents published absence notice of the appellant in the leading newspaper as per the relevant law. (**Annex-C**)
- C) That the responsibility lies on the shoulder of the appellatant for not informing this department regarding his Traumatic episode, if true.
- D) That despite of issuing of absence notice on his home address as well as publishing his absence notice in the leading newspaper, he did not appeared before, the respondents for personal hearing punishment of "Removal from Service" was awarded to appellatant based on non-response to the show cause notice / statement of allegations is completely in line with the Khyber Pakhtunkhwa Government Servants efficiency and Discipline Rules 2011.
- E) That the appellatant showed leniency and was granted various opportunities with a view to rectify his conduct, but he was unable to mend his ways.
- F) No Comments.

PRAYERS

It is most humbly prayed that on acceptance of this instant reply on behalf of respondents, the appeal of the appellatant may graciously be dismissed on the basis of merit.



SUPERINTENDENT
Headquarters Prison Mardan
(Respondent No.4)
for on behalf of (Respondent NO.3 & 5)



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



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

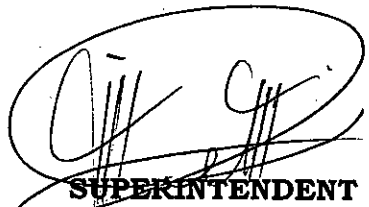
In the matter of
Service Appeal No. 222/2019
Muneeb-ur-Rehman S/O Nazir Khan Ex-Warder R/O village Saweer Bala, P/O
Darosh District Chitral.....**Appellant**

VERSUS

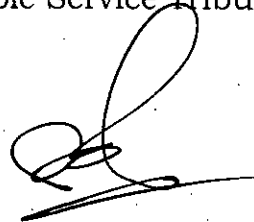
1. Govt of Khyber Pakhtunkhwa, through Chief Secretary
at Civil Secretariat Peshawar.
2. Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar
3. Superintendent
Central Prison Haripur
4. Superintendent
Central Prison Mardan
5. Superintendent
District Jail Swat.....**Respondents.**

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS NO. 1 TO 5.

We the undersigned respondents do hereby solemnly affirm and declare that the contents of Para-wise comments on the above cited Service Appeal are true and correct to the best of our knowledge and belief and that no material facts has been kept secret from this Honourable Service Tribunal.



SUPERINTENDENT
Headquarters Prison Mardan
(Respondent No.4)
for on behalf of (Respondent NO.3 & 5)



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





1	Name with Parentage	Muneeb Ur Rehman s/o Nazir Ahmad
2	Rank	Warder (BPS-05)
3	Date of Birth	20-03-1996
4	Date of Appointment	02-02-2015
5	Punishment awarded during his entire service with date and nature of offence	<ol style="list-style-type: none">1. Two (02) days without pay due to absence from duty w.e.f. 19-03-2016 to 20-03-2016 vide Superintendent District Jail Chitral office letter No. 238 dated 11-04-2016.2. Major Penalty "Reduction to lowest stage" up to two years in his present time pay scale for his misconduct/absence from duty of 49 days w.e.f. 21-07-2016 to 27-07-2016 and 31-07-2016 to 06-09-2016 vide Superintendent Circle HQs Mardan Order Endst No. 4047-52 dated. 28-12-2016.3. Major Penalty "Reduction to lowest stage" up to three years with immediate effect for his misconduct/absence from duty w.e.f. 29-03-2017 to 12-04-2017 fifteen (15) days vide Superintendent Circle HQs Mardan Order Endst No. 1616-19 dated. 15-05-2017.4. Absence period w.e.f. 10-06-2017 to 14-06-2017 five (05) days is hereby treated as leave without pay vide Superintendent District Jail Chitral.5. Minor Penalty of "Censure" and the period of absence w.e.f. 30-10-2016 to 18-11-2016 nineteen (19) days, is hereby ordered to be treated as without pay for twelve (12) days absence period while seven (07) days (verified medical period) shall be treated as leave on medical grounds vide Superintendent Circle HQs Mardan Order Endst No. 2944-47 dated. 05-10-2017.6. Minor Penalty of "Censure" and the period of absence w.e.f. 25-01-2018 to 04-02-2018 ten (10) days are hereby ordered to be treated as without pay vide Superintendent Circle HQs Mardan Order Endst No. 695-99 dated. 19-03-2018.7. On misconduct/ wilful absence w.e.f. 31-03-2018 major penalty of "Removal from Service" with immediate effect vide Superintendent Circle HQs Mardan Order Endst No. 1205-09 dated. 29-06-2017.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

REGISTERED



Ammeuse "B"

(5) NT

OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

0937-843114

No. 876 /PB Dated: 12/04/2018, E-Mail: mardanjail@gmail.com,

To: Warden Munib Ur Rehman,
C/O Superintendent District Jail, Swat.

Subject: **ABSENCE NOTICE.**

While attached to Central Prison Haripur for temporary duties for the period of two months, you absented yourself from duties as well as Jail premises without permission and sanction of leave from the competent authority on 31.03.2018 (FN), as per report ^{of the Super Jail} of the said jail, violating rule 1082(i) of Khyber Pakhtunkhwa Prison rules and is absent up to date.

You are directed to report for duties at Central Prison Haripur within fifteen (15) days of the receipt of this notice otherwise you will be proceeded against under the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules 2011 which can culminate in removal from service.

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

Endst. No: 877-781

Copy of the above is forwarded to:-

- 1- The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
- 2- The Superintendent Central Prison Haripur for information with reference to his memo No. 3446/WE dated. 09-04-2018 please.
- 3- The Superintendent District Jail Swat for information and further necessary action please.

(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT
CIRCLE HQS PRISON MARDAN

Registered

T

6

OFFICE OF THE SUPERINTENDENT DISTRICT JAIL SWAT

April 26th, 2018.

No. 2572/ME

To

Warder Munib Ur Rehman S/O Nazir Ahmed
Village Sweer Bala, P.O. Drosh,
District Chitral.

Subject:

ABSENCE NOTICE

Memo;

Enclose find herewith absence notice vide No:876/PB dated 12.4.2018 of the Superintendent Circle Headquarters Prison Mardan addressed to you for information and compliance of the orders contained therein.

Sd/-
**SUPERINTENDENT
DISTRICT JAIL SWAT**

Endst: No. 2573-74

Copy of the above is forwarded to:

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar, for information please.
2. The Superintendent Head Quarter Circle Prison Mardan for information with respect to above, please.

Sd/-
DA-1/P.B
for M.A.

Sd/-
**SUPERINTENDENT
DISTRICT JAIL SWAT**

MM
07/5/18
07-5-18

اوزنامہ 10 جون 18

Annexure 'C'

7

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نوٹس غیر حاضری

آپ وارڈران جو کہ سنٹرل جیل ہری پور اور سوات جیل سوات سے مندرجہ ذیل تاریخوں سے غیر حاضر ہیں کو بذریعہ نوٹس ہذا آخری بار ہدایت کی جاتی ہے کہ پندرہ (15) ایام کے اندر اندر حاضری کی رپورٹ سنٹرل جیل ہری پور اور سوات جیل سوات میں کریں اور اپنی غیر حاضری کی معقول وجہ بتائیں بصورت دیگر آپ کے خلاف یکطرفہ کارروائی عمل میں لائی جائیگی جو کہ ملازمت سے برخاستگی پر منتج ہو سکتی ہے۔

(1) وارڈراہد علی ولد محمد نواز سکند ریگا ڈگر ڈسٹرکٹ بونیر بطور جیل وارڈر آپ د مورخہ 19/3/2018 کو دس دن کی چھٹی پر چھوڑا گیا آپ کی حاضری 30-3-2018 کو بنتی تھی لیکن آپ حاضر نہ ہوئے اور ابھی تک غیر حاضر ہیں آپ کو سرکل ہیڈ کوارٹر جیل مردان سے نوٹس نمبر 946 مورخہ 23/4/2018 کو بذریعہ رجسٹرڈ پوسٹ گھر کے پتہ پر ارسال کیا اور آپ کو ہدایت کی گئی کہ پندرہ (15) ایام کے اندر اندر سنٹرل جیل مردان میں حاضری کریں لیکن آپ پھر بھی حاضر نہ ہوئے۔

(2) وارڈرنیب الرحمان ولد نذیر احمد سکند سویر بالا ڈاکخانہ دروش ڈسٹرکٹ چترال بطور جیل وارڈر آپ کو ذمہ عارضی ڈیوٹی کیلئے سوات جیل سے سنٹرل جیل ہری پور کو بھیجا گیا تھا آپ بمورخہ 31-3-2018 کو سنٹرل جیل ہری پور سے بغیر کسی اجازت کے لائن اور ڈیوٹی سے غیر حاضر ہوئے آپ کو سرکل ہیڈ کوارٹر جیل مردان سے نوٹس نمبر 876 مورخہ 12/4/2018 بوساطت سوات جیل بھیجا گیا جو کہ سوات جیل نے نمبر 2572 مورخہ 26/4/2018 کو بذریعہ رجسٹرڈ پوسٹ گھر کے پتہ پر ارسال کیا اور آپ کو ہدایت کی گئی کہ پندرہ (15) ایام کے اندر اندر جیل ہری پور میں حاضری کریں لیکن آپ پھر بھی حاضر نہ ہوئے۔



نصرت محمد خان تحصیل سپرنٹنڈنٹ سرکل ہیڈ کوارٹر جیل مردان

also available on www.khyberpakhtunkhwa.gov.pk

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نوٹس غیر حاضری

آپ وارڈاران جو کہ سنٹرل جیل ہری پور ڈسٹرکٹ جیل سوات سے مندرجہ ذیل تاریخوں سے غیر حاضر ہیں کو بذریعہ نوٹس بلا آ آخری بار ہدایات کی جاتی ہے کہ چھدہ (15) ایام کے اندر اندر حاضری کی رپورٹ سنٹرل جیل ہری پور ڈسٹرکٹ جیل سوات میں کریں اور اپنی غیر حاضری کی معقول وجہ بتائیں بصورت دیگر آپ کے خلاف یکطرفہ قانونی کارروائی عمل میں لائی جائے گی جو کہ ملازمت سے برخاستگی پر منتج ہو سکتی ہے۔

1- وارڈران بھٹی ولد محمد نواز سکندر ریگا ڈسٹرکٹ یونیورسٹی بطور جیل وارڈران آپ کو مورخہ 19-03-2018 کو دس دن کی پنشنی پر چھوڑا گیا۔ آپ کی حاضری 30-03-2018 کو بنتی تھی لیکن آپ حاضر نہ ہوئے اور ابھی تک غیر حاضر ہیں۔ آپ کو سرکل ہیڈ کوارٹر جیل مردان سے نوٹس نمبر 946 مورخہ 23-4-2018 کو بذریعہ رجسٹرڈ پوسٹ گھر کے پتہ پر ارسال کیا گیا اور آپ کو ہدایت کی گئی کہ چھدہ (15) ایام کے اندر اندر سنٹرل جیل مردان میں حاضری کریں لیکن آپ پھر بھی حاضر نہ ہوئے۔

2- وارڈران فیضان الرحمان ولد نذیر احمد سکندر سورہ بالا ڈاکٹرانڈر وٹس ڈسٹرکٹ جیل بطور جیل وارڈران آپ کو دو ماہ عارضی ڈیوٹی کیلئے سوات جیل سے سنٹرل جیل ہری پور کو بھیجا گیا تھا۔ آپ بمورخہ 31-03-2018 کو سنٹرل جیل ہری پور سے بغیر کسی اجازت کے لائن اور ڈیوٹی سے غیر حاضر ہوئے۔ آپ کو سرکل ہیڈ کوارٹر جیل مردان سے نوٹس نمبر 876 مورخہ 12.04.2018 بوساطت سوات جیل بھیجا گیا جو کہ سوات جیل نے نمبر 2572 مورخہ 26-04-2018 کو بذریعہ رجسٹرڈ پوسٹ گھر کے پتہ پر ارسال کیا گیا اور آپ کو ہدایت کی گئی کہ چھدہ (15) ایام کے اندر اندر ہری پور جیل میں حاضری کریں لیکن آپ پھر بھی حاضر نہ ہوئے۔

فضل حمید خان فیضان سوات جیل

سرکل ہیڈ کوارٹر جیل مردان

INF(P) 2662 Also available on

VAKALATNAMA

Before the MP Service Tribunal Peshawar

No. _____ /2020

Muneeb-ur-Rehman

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

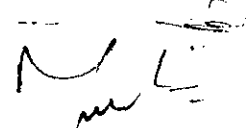
I. G. Prison

(RESPONDENT)
(DEFENDANT)

I/We Muneeb-ur-Rehman

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. _____ / _____ /2020



CLIENT


ACCEPTED

NOOR MOHAMMAD KHATTAK

SHAHZULLAH KHATTAK

MIR Z
A

OFFICE:

Room No. 3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

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- v. That the Appellant has got no cause of action.
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- 4) In response to para No.4 of the Appeal, it is the responsibility of the appellant to be present within Jail premises and perform duties inside Jail lines. He is also required for reporting to local police for his safety / security.
- 5) No Comments, having personal matter of the appellant which is not related with the respondents.
- 6) No Government employee can abandon his official duties for such a long period of 02 months due to any reason as per Law.
- 7) That the appellant was dismissed from service as per the relevant Law and Rules due to his absolute absence.
- 8) Agreed.


9) Parawise reply / comments regarding the given grounds are as under.

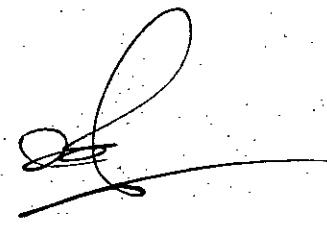
OBJECTION ON GROUNDS:-


- A) That legal procedure has been followed and he was served with show cause notice on his home address for his absence from duties. (**Annex-B**)
- B) That the respondents published absence notice of the appellants in the leading newspaper as per the relevant law. (**Annex-C**)
- C) That the responsibility lies on the shoulder of the appellants for not informing this department regarding his Traumatic episode, if true.
- D) That despite of issuing of absence notice on his home address as well as publishing his absence notice in the leading newspaper, he did not appear before, the respondents for personal hearing punishment of "Removal from Service" was awarded to appellants based on non-response to the show cause notice / statement of allegations is completely in line with the Khyber Pakhtunkhwa Government Servants efficiency and Discipline Rules 2011.
- E) That the appellants showed leniency and was granted various opportunities with a view to rectify his conduct, but he was unable to mend his ways.
- F) No Comments.

PRAYERS

It is most humbly prayed that on acceptance of this instant reply on behalf of respondents, the appeal of the appellants may graciously be dismissed on the basis of merit.


SUPERINTENDENT
Headquarters Prison Mardan
(Respondent No.4)
for on behalf of (Respondent NO.3 & 5)


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



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

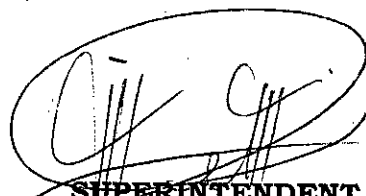
In the matter of
Service Appeal No. 222/2019
Muneeb-ur-Rehman S/O Nazir Khan Ex-Warder R/O village Saweer Bala, P/O
Darosh District Chitral.....**Appellant**

VERSUS

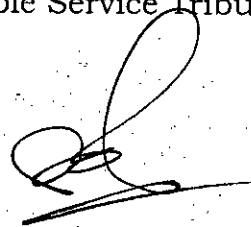
1. Govt of Khyber Pakhtunkhwa, through Chief Secretary
at Civil Secretariat Peshawar.
2. Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar
3. Superintendent
Central Prison Haripur
4. Superintendent
Central Prison Mardan
5. Superintendent
District Jail Swat.....**Respondents.**

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS NO. 1 TO 5.

We the undersigned respondents do hereby solemnly affirm and declare that the contents of Para-wise comments on the above cited Service Appeal are true and correct to the best of our knowledge and belief and that no material facts has been kept secret from this Honourable Service Tribunal.



SUPERINTENDENT
Headquarters Prison Mardan
(Respondent No.4)
for on behalf of (Respondent NO.3 & 5)



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





1	Name with Parentage	Muneeb Ur Rehman s/o Nazir Ahmad
2	Rank	Warder: (BPS-05)
3	Date of Birth	20-03-1996
4	Date of Appointment	02-02-2015
5	Punishment awarded during his entire service with date and nature of offence	<ol style="list-style-type: none"> Two (02) days without pay due to absence from duty w.e.f. 19-03-2016 to 20-03-2016 vide Superintendent District Jail Chitral office letter No. 238 dated 11-04-2016. Major Penalty "Reduction to lowest stage" up to two years in his present time pay scale for his misconduct/absence from duty of 49 days w.e.f 21-07-2016 to 27-07-2016 and 31-07-2016 to 06-09-2016 vide Superintendent Circle HQs Mardan Order Endst No. 4047-52 dated. 28-12-2016. Major Penalty "Reduction to lowest stage" up to three years with immediate effect for his misconduct/absence from duty w.e.f 29-03-2017 to 12-04-2017 fifteen (15) days vide Superintendent Circle HQs Mardan Order Endst No. 1616-19 dated. 15-05-2017.
6	Absence period w.e.f 10-06-2017 to 14-06-2017	five (05) days is hereby treated as leave without pay vide Superintendent District Jail Chitral.
7		<ol style="list-style-type: none"> Minor Penalty of "Censure" and the period of absence w.e.f 30-10-2016 to 18-11-2016 nineteen (19) days, is hereby ordered to be treated as without pay for twelve (12) days absence period while seven (07) days (verified medical period) shall be treated as leave on medical grounds vide Superintendent Circle HQs Mardan Order Endst No. 2944-47 dated. 05-10-2017. Minor Penalty of "Censure" and the period of absence w.e.f 25-01-2018 to 04-02-2018 ten (10) days are hereby ordered to be treated as without pay vide Superintendent Circle HQs Mardan Order Endst No. 695-99 dated. 19-03-2018. On misconduct/-wilful absence w.e.f 31-03-2018 major penalty of "Removal from Service" with immediate effect vide Superintendent Circle HQs Mardan Order Endst No. 1205-09 dated. 29-06-2017.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

REGISTERED



Amenduse "B"

(5) NT

OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

876 /PB Dated: 12/04/2018, E-Mail: mardanjail@gmail.com, 0937-843114

Warder Munib Ur Rehman,
C/O Superintendent District Jail, Swat.

Subject: **ABSENCE NOTICE.**

While attached to Central Prison Haripur for temporary duties for the period of two months, you absented yourself from duties as well as Jail premises without permission and sanction of leave from the competent authority on 31.03.2018 (FN), as per report of the said jail, violating rule 1082(i) of Khyber Pakhtunkhwa Prison rules. You is absent up to date.

You are directed to report for duties at Central Prison Haripur within fifteen days of the receipt of this notice otherwise you will be proceeded against under the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011 which can culminate in removal from service.

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

Headst. No: 877-781

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Central Prison Haripur for information with reference to his memo No. 3446/WE dated. 09-04-2018 please.
3. The Superintendent District Jail Swat for information and further necessary action please.

(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT
CIRCLE HQS PRISON MARDAN

Registered

T

6

OFFICE OF THE SUPERINTENDENT DISTRICT JAIL SWAT

April 26th, 2018.

No. 2572/WI

To

Warder Munib Ur Rehman S/O Nazir Ahmed
Village Sweer Bala, P.O. Drosh,
District Chitral.

Subject: **ABSENCE NOTICE**

Memo;

Enclose find herewith absence notice vide No: 876/PB dated 12/4/2018 of the Superintendent Circle Headquarters Prison Mardan addressed to you for information and compliance of the orders contained therein.

**SUPERINTENDENT
DISTRICT JAIL SWAT**

Endst: No. 2573-74

Copy of the above is forwarded to:

The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar, for information please.

2 The Superintendent Head Quarter Circle Prison Mardan for information with respect to above, please.

DD-1/PB
For Ma Pl.

**SUPERINTENDENT
DISTRICT JAIL SWAT**

MM
07/5/18
Supdt
07-5-18

نوٹس ضلع حاضری

آپ دارڈر امان جو کہ سنٹرل جیل ہری پور ڈسٹرکٹ سوات سے مندرجہ ذیل تاریخوں سے غیر حاضر ہیں کو بذریعہ نوٹس ہذا آج ہری پور ڈسٹرکٹ سوات کی جانب سے کہ پندرہ (15) ایما کے اندر اندر حاضری کی رپورٹ سنٹرل جیل ہری پور ڈسٹرکٹ سوات میں کریں اور اپنی غیر حاضری کی معقول وجہ بتائیں بصورت دیگر آپ کے خلاف یکطرفہ کارروائی عمل میں لائی جائیگی جو کہ ملازمت سے برخواستہ کر دیا جاسکتا ہے۔

(1) دارڈر زاہد علی ولد محمد نواز سکینہ ریگا ڈگر ڈسٹرکٹ بونیر بطور جیل دارڈر آپ کو مورخہ 19/3/2018 کو دس دن کی چھٹی پر چھوڑا گیا آپ کی حاضری 2018-3-30 کو ختم تھی لیکن آپ حاضر نہ ہوئے اور ابھی تک غیر حاضر ہیں آپ کو سرکل ہیڈ کوارٹر جیل مردان سے نوٹس نمبر 946 مورخہ 23/4/2018 کو بذریعہ رجسٹرڈ پوسٹ گھر کے پتہ پر ارسال کیا اور آپ کو ہدایت کی گئی کہ پندرہ (15) ایما کے اندر اندر سنٹرل جیل مردان میں حاضری کریں لیکن آپ پھر بھی حاضر نہ ہوئے۔

(2) دارڈر نذیر الرحمان ولد نذیر احمد سکینہ سویر بالا ڈاکخانہ دروش ڈسٹرکٹ چترال بطور جیل دارڈر آپ کو دو ماہ عارضی ڈیوٹی کیلئے سوات جیل سے سنٹرل جیل ہری پور کو بھیجا گیا تھا آپ مورخہ 2018-3-31 کو سنٹرل جیل ہری پور سے بغیر کسی اجازت کے لائن اور ڈیوٹی سے غیر حاضر ہوئے آپ کو سرکل ہیڈ کوارٹر جیل مردان سے نوٹس نمبر 876 مورخہ 12/4/2018 بوساطت سوات جیل بھیجا گیا جو کہ سوات جیل نے نمبر 2572 مورخہ 26/4/2018 کو بذریعہ رجسٹرڈ پوسٹ گھر کے پتہ پر ارسال کیا اور آپ کو ہدایت کی گئی کہ پندرہ (15) ایما کے اندر اندر ہری پور جیل میں حاضری کریں لیکن آپ پھر بھی حاضر نہ ہوئے۔



سوات جیل سوات ڈسٹرکٹ سوات جیل ہری پور

also available on www.khyberpakhtunkhwa.gov.pk

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نوٹس فیروزہ حاضری

آپ وارڈاران جو کہ سنٹرل جیل ہری پور ڈسٹرکٹ جیل سوات سے مندرجہ ذیل تاریخوں سے غیر حاضر ہیں کو بذریعہ نوٹس ہذا آخری بار ہدایات کی جاتی ہے کہ چھدرہ (15) ایام کے اندر اندر حاضری کی رپورٹ سنٹرل جیل ہری پور ڈسٹرکٹ جیل سوات میں کریں اور اپنی غیر حاضری کی معقول وجہ بتائیں بصورت دیگر آپ کے خلاف یکطرفہ قانونی کارروائی عمل میں لائی جائے گی جو کہ ملازمت سے برخاستگی پر منتج ہو سکتی ہے۔

1- وارڈران اہلی ولد محمد نواز سکندر ریگا ڈسٹرکٹ یونیورسٹی جیل وارڈران آپ کو مورخہ 19-03-2018 کو دس دن کی ہٹھی پر چھوڑا گیا۔ آپ کی حاضری 30-03-2018 کو بنتی تھی لیکن آپ حاضر نہ ہوئے اور ابھی تک غیر حاضر ہیں۔ آپ کو سرکل ہیڈ کوارٹر جیل مردان سے نوٹس نمبر 946 مورخہ 23-4-2018 کو بذریعہ رجسٹرڈ پوسٹ گھر کے پتہ پر ارسال کیا گیا اور آپ کو ہدایت کی گئی کہ چھدرہ (15) ایام کے اندر اندر سنٹرل جیل مردان میں حاضری کریں لیکن آپ پھر بھی حاضر نہ ہوئے۔

2- وارڈران فیض الرحمان ولد نذیر احمد سکندر سوربالا ڈاکخانہ دروش ڈسٹرکٹ جیل وارڈران آپ کو دو ماہ عارضی ڈیوٹی کیلئے سوات جیل سے سنٹرل جیل ہری پور کو بھیجا گیا تھا۔ آپ بمورخہ 31-03-2018 کو سنٹرل جیل ہری پور سے بغیر کسی اجازت کے لائن اور ڈیوٹی سے غیر حاضر ہوئے۔ آپ کو سرکل ہیڈ کوارٹر جیل مردان سے نوٹس نمبر 876 مورخہ 12.04.2018 بواسطہ سوات جیل بھیجا گیا جو کہ سوات جیل نے نمبر 2572 مورخہ 26-04-2018 کو بذریعہ رجسٹرڈ پوسٹ گھر کے پتہ پر ارسال کیا گیا اور آپ کو ہدایت کی گئی کہ چھدرہ (15) ایام کے اندر اندر ہری پور جیل میں حاضری کریں لیکن آپ پھر بھی حاضر نہ ہوئے۔

فضل حمید خان جیل سپرنٹنڈنٹ

سرکل ہیڈ کوارٹر جیل مردان

INF(P) 2662 Also available on

2006 SCMR 60**[Supreme Court of Pakistan]****Present: Muhammad Nawaz Abbasi and Mian Shakirullah Jan, JJ****AUDITOR-GENERAL OF PAKISTAN and others---Appellants****Versus****MUHAMMAD ALI and others---Respondents**

Civil Appeals Nos. 199, 200 and 201 of 2002, decided on 6th October, 2005.

(On appeal from the judgment, dated 16-10-2000 passed by the Federal Service Tribunal, Islamabad in Appeals Nos.45/Q of 1999, 1/Q and 2/Q of 2000).

(a) Constitution of Pakistan (1973)---

---Art. 212(3)---Leave to appeal was granted by Supreme Court to consider; whether on the ground of inefficiency and negligence, major penalty of compulsory retirement could have been converted and modified to that of reduction in time scale by three stages in exercise of appellate jurisdiction of Service Tribunal and that what type of inefficiency and negligence could attract imposition of major penalty.

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

---Ss. 4 & 5---Government Servants (Efficiency and Discipline) Rules, 1973, Rr.2 & 3---Compulsory retirement from service---Carelessness, an act of misconduct---Deterrent and reformatory punishment---Import, object and scope---Converting major penalty into minor penalty---Senior officers who equally shared the responsibility of negligence in transaction of over payment, were awarded minor penalty of recovery of nominal amount of Rs.5,000 each, whereas civil servants being subordinate officials, on the basis of same set of facts, had been dealt with severely in the matter of punishment---Service Tribunal allowed the appeal filed by civil servants and penalty of compulsory retirement from service was converted into reduction in time scale by three stages for two years---Plea raised by authorities was that civil servants were negligent and inefficient and were responsible for causing loss to Government exchequer---Validity---Carelessness was an act of negligence which might not strictly fall within the ambit of misconduct as defined in R.2 of Government Servants (Efficiency and Discipline) Rules, 1973 but it was definitely a valid ground on the basis of which a Government servant could be awarded penalty as provided in R.3 of Government Servants(Efficiency and Discipline) Rules, 1973---Element of bad faith and wilfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be wilful to make the same a case of grave negligence inviting severe punishment---Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation---Purpose of deterrent punishment was not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of society---Concept of minor penalty in law was to make an attempt to reform the individual wrong doer---In service matters, extreme penalty for mirror acts depriving a person from right of earning would defeat the reformatory concept of punishment in administration of justice---Supreme Court declined to take any exception to the view of the matter taken by Service Tribunal---Appeal was dismissed.

Raja Muhammad Irshad, D.A.-G. for Appellants.

Hafiz S.A. Rehman, Senior Advocate Supreme Court and M.A. Zaidi, Advocate-on-Record for

Respondents.

Date of hearing: 6th October, 2005.

JUDGMENT

MUHAMMAD NAWAZ ABBASI, J--- These connected appeals by leave of the Court, have been directed against the judgment dated 16-10-2000 passed by the Federal Service Tribunal whereby the major penalties of removal/compulsory' retirement from service awarded to the respondents by the competent authority, were converted into reduction in time scale by three stages for two years without cumulative effect and the appeals of the respondents were partly allowed. These appeals, in which leave was granted vide order, dated 26-2-2002, involving common question of law and facts, are proposed to be disposed of through this single judgment. Leave granting order is read as under: --

"Through this order we propose to dispose of above captioned three petitions filed on behalf of Auditor-General of Pakistan to assail the validity of orders dated 16th of November, 2000 whereby the Federal Service Tribunal accepted the appeals of the respondents, set aside their respective impugned orders and modified their penalty to that of reduction in time scale by three stages for a period of two years without cumulative effect with the consequence that they were reinstated in service with direction that their intervening period would be treated as leave of the kind due.

With the assistance of the learned counsel for the petitioner and respondents, we have gone through the judgment impugned in all three cases. Hafiz S.A. Rehman Advocate Supreme Court representing the respondents has attempted to argue that excess payments paid to recipient Government officers is being recovered from them through the process of law, but we do not find any substantial evidence or the material to believe the same. Anyhow, the crucial question for determination involved in these cases is whether on the ground of inefficiency and negligence, the major penalty of compulsory retirement could have been converted and modified to that of reduction of time scale by three stages in exercise of the appellate jurisdiction of the A Tribunal. Furthermore, so to what type of inefficiency and negligence could attract the imposition of major penalty. To consider these questions, we grant leave to appeal in all three cases with direction to office to fix them for final disposal at an early date."

2. The respondents namely, Kazim Ali, (Assistant Officer) Muhammad Ali and Syed Zahid Mumtaz, (Senior Auditor), were proceeded against for the charge of negligence and inefficiency based on the allegation that they were responsible of causing loss to the Government exchequer on account of the over payment made in certain G.P.F. accounts on final payments. The Inquiry Office (Deputy Accountant-General) having held the respondents guilty of the charge of negligence and inefficiency submitted his report and the authorized officer, on the basis of inquiry report, issued show-cause notice to them proposing major penalty of removal from service. The competent authority, however, awarded the punishment of removal from service to Kazim Ali whereas Muhammad Ali and Syed Zahid Mumtaz were imposed the penalty of compulsory retirement. The respondents after exhausting the departmental remedies filed separate appeals before the Service Tribunal which were partly allowed and in consequence thereto, the punishment awarded to them by the competent authority was modified as stated above and they were reinstated in service with direction of treating the intervening period as leave of the kind due.

3. The learned Deputy Attorney-General has contended that Tribunal having come to the conclusion that respondents were guilty of the charge of inefficiency and negligence was not justified in converting the major penalty of removal from service and compulsory retirement into the reduction of time scale by three stages. However, on pointing out that the Tribunal having taken into consideration the nature of charge, coupled with the fact that there was no allegation of wrongful gain through fraud, misappropriation or embezzlement formed an opinion that punishment of removal and compulsory retirement from service in the circumstances of the case was harsh, reduced the penalty the learned counsel has not been able to satisfy us that the reasons given by the Tribunal for reduction of punishment in exercise of the powers under section 5 of the Service Tribunals Act, 1973, were unfounded or unreasonable and unjustified. The

2007 S C M R 152

[Supreme Court of Pakistan]

Present: Mian Shakirullah Jan and Ch. Ijaz Ahmed, JJ

FEDERATION OF PAKISTAN and others----Appellants

Versus

TAHIR LATIF----Respondent

Civil Appeal No.765 of 2002 in C.P. 2838 of 2001, decided on 11th September, 2006.

(Against the judgment, dated 28-6-2001 passed by the Federal Service Tribunal Lahore Bench, Lahore, in Appeal No.9(L) of 1999).

(a) Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 3 & 5---Constitution of Pakistan (1973), Art.212 (3)---Leave to appeal was granted by Supreme Court to re-examine the submissions made before Service Tribunal and to consider; whether judgment passed by the Tribunal could be sustained in law; and whether under Government Servants (Efficiency and Discipline) Rules, 1973, more than one minor penalties could be imposed on an employee as a result of disciplinary proceedings.

(b) Government Servants (Efficiency and Discipline) Rules, 1973---

----Rr. 3(d) & 5---Absence from duty---Minor penalty---Regular inquiry, non-holding of---Civil servant was selected for a two years course abroad---Course was not completed in due time, therefore civil servant sought ex-Pakistan leave, which was sanctioned---Civil servant sought further extension of leave on the ground that the course was not completed, such further extension was refused by the authorities---Civil servant overstayed for about six months and the period of overstay was treated as absence from duty---After issuing show-cause notice, disciplinary proceedings were conducted against civil servant and penalty of withholding of increment for one year was imposed---Penalty imposed by the Authorities was set aside by Service Tribunal---Validity---Authorities had passed the order against civil servant without holding regular inquiry---In present case the contents of show-cause notice and reply if put in a juxtaposition, it would be clear that matter could not be decided without holding regular inquiry---Competent authority had not passed speaking order against civil servant without holding regular inquiry in terms of R.5 of Government Servants (Efficiency and Discipline) Rules, 1973---Such action of authorities was not in consonance with the settled law laid down by Supreme Court---Clause (d) of R.3 of Government Servants (Efficiency and Discipline) Rules, 1973, was an independent clause which was code in itself---To take action under R.3(d) of Government Servants (Efficiency and Discipline) Rules, 1973, its pre-conditions must exist meaning thereby that it would also be necessary to hold that on such account, retention of civil servant in service was prejudicial to national security---Mere remaining outside the country during his stay period, after submitting his application for extension of leave to the competent authority, did not fall within the parameters prescribed in R.3 (d) of Government Servants (Efficiency and Discipline) Rules, 1973---Authorities failed to raise any substantial question of law of public importance as contemplated in Art.212 (3) of the Constitution---Supreme Court declined to interfere in the judgment passed by Service Tribunal---Leave to appeal was refused.

Ghulam Muhammad Khan's case 1996 SCMR 802 and Nawab Khan's case NLR 1954 Service 54 rel.

(c) General Clauses Act (X of 1897)---

---S. 24-A---Administrative order---Scope---Under S.24-A, General Clauses Act, 1897, it is the duty and obligation of competent authority to award minor punishment after application of mind with reasons.

Messrs Airport Support Services's case 1998 SCMR 2268 rel.

(d) Constitution of Pakistan (1973)--

---Art.212 (3)---Supreme Court---Jurisdiction---Findings of fact---Supreme Court is not a court of appeal to reappraise evidence while exercising power under Art.212 (3) of the Constitution---Findings of fact given by Service Tribunal cannot be disturbed in constitutional jurisdiction.

Miss Naheeda Mehboob Elahi, D.A.-G. with Ch. Akhtar Ali, Advocate-on-Record for Appellants.

Rai Muhammad Nawaz, Advocate Supreme Court for Respondent.

ORDER

CH. IJAZ AHMED, J.---The appellants sought leave to appeal against the judgment, dated 28-6-2001 passed by the Federal Service Tribunal, Lahore Branch, Lahore, in Appeal No.9(L) of 1999 by filing C.P. No.2838 of 2001 before this Court in which leave was granted on 22-5-2002 in the following term:--

"Petitioners seek leave to appeal against the Federal Service Tribunal judgment, dated 28-6-2001, allowing service appeal of the respondent against the award of minor penalty for his unauthorized absence from duty.

Respondent was selected for Post Graduate Course in USA for a period of two years commencing from 15-8-1995 to 14-8-1997. The course of study, according to the respondent, was not completed, therefore, he applied for extension of leave for six months and leave Ex-Pakistan for three months. Three months Ex-Pakistan leave was sanctioned in his favour whereas extension of leave for six months was refused by the competent authority and he was directed to report for duty on or before 11-11-1997. Again through an application dated 15-2-1998 he requested for further extension of leave for the reasons that he had not yet completed the course of his studies. This request was not acceded to and the respondent was issued a show-cause notice, dated 12-5-1998 to explain his over stay. Respondent responded to the notice claiming that his over stay abroad was beyond his control. He actually reported for duty on 21-5-1998.

After initiating disciplinary proceedings the competent authority vide order, dated 31-7-1998 imposed the minor penalty of withholding of increment for one year. His period of absence from 11-11-1997 to 20-5-1998 was regularized by debiting twice the period of absence to be credited to his leave account as extraordinary leave (without pay). Through another letter, dated 10-10-1998 the petitioners called upon the respondent for depositing Rs.78,660 in the public exchequer, being the cost of air ticket from USA to Pakistan, as it was beyond his entitlement as per R'-le, 552 of Passage Regulations, 1980. Respondent challenged the award of minor penalty, treatment of his period of absence as leave without pay and the direction for recovery of amount, before the Tribunal, who after hearing the parties allowed the appeal and set aside the action taken against the respondent.

We have heard Sardar Muhammad Aslam, learned Deputy Attorney-General for petitioners and respondent Tahir Latif in person. It is admitted that the respondent was sanctioned two years ex-Pakistan Leave for study purpose and he undertook in writing before availing of the leave and proceeding to USA that he would complete his course of study within the sanctioned period of

leave and would not claim any extension of leave or any other facility from the employer. However, looking to his genuine difficulty the competent authority had sanctioned further extension of ex-Pakistan Leave on full pay for three months to enable the respondent to complete his course of study. It is the case of the respondent that it was beyond his power and control to resume his duty on expiry of the sanctioned leave, therefore, he had asked for further extension of leave, which was wrongly refused and rightly rectified by the Tribunal.

On perusal of the judgment of the learned Tribunal we tentatively find that the findings of fact are recorded on extraneous and compassionate reasons, rather than on valid grounds. We, therefore, grant leave to appeal to re-examine the submissions made before the Tribunal, and to consider whether the impugned judgment can be sustained in law. We would also like to call upon the learned D.A.-G. to come prepared at the time of hearing of the appeal to satisfy the Court whether under the Government Servants (Efficiency and Discipline) Rules, 1973, more than one minor penalties could be imposed on an employee as a result of disciplinary proceedings."

2. The learned Deputy Attorney submit that competent authority was justified to award more than one minor penalties to the respondent in view of rule 3(d) of the Government Servants (Efficiency and Discipline) Rules, 1973. She further urges that competent authority had not granted leave to the respondent for six months as desired by him, therefore, respondent was found guilty by the competent authority and passed the order against him on 31-7-1998 on the ground that he did not satisfactorily explain his wilful absence from 11-11-1997 to 20-5-1998 and also did not report within the prescribed period after availing the extended leave. The learned Service Tribunal had set aside the order of the appellants in violation of the rules and regulation of the appellants on humanitarian and sympathetic grounds as depicted from para. 4 of the impugned judgment of the Service Tribunal.

3. The learned counsel for the respondent has vehemently supported the impugned judgment. He further maintains that appellant had passed the impugned order against the respondent without any justification without regular inquiry in spite of the fact that matter could not be decided without regular inquiry as evident from the reply of the show-cause notice submitted by the respondent.

4. We have considered the submission of learned counsel for the parties and perused the record. It is an admitted fact that appellants had passed the impugned order on 31-7-1998 against the respondent without holding regular inquiry. In case the contents of show-cause notice and reply of the show-cause notice be put in a juxtaposition, then it is crystal clear that matter could not be decided without holding regular inquiry. It is pertinent to mention here that competent authority had not passed the speaking order against the respondent without holding regular inquiry in terms of rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973. Such action of the appellants is not in consonance with the law laid down by this Court in the following judgments:

(i) Ghulam Muhammad Khan's case 1996 SCMR 802 and (ii) Nawab Khan's case NLR 1954 Service 54.

5. It is pertinent to mention here that respondent had taken a specific ground in reply to show-cause notice that appellants had failed to discharge their obligation while not releasing amount of scholarship to the respondent as is evident from para. 5-C and para.8 of his reply which are reproduced hereunder:--

"5. a to b -----

(c) My tuition fee and subsistence allowance was terminated after 4th Semester and payment for medical insurance was not made after 2nd Semester.

(8) It is worth mentioning that tuition fee for the last two Semesters i.e. 5th and 6th Semester is still to be paid to the University. In case if it is not paid University will not issue degree. Moreover, it is obligation of the department to s a tuition fee, absence of which will bring bad name to country." (underlining is ours).

6. The competent authority did not take into consideration the aforesaid stand of the respondent in the impugned order, dated 31-7-1998. The competent authority had given finding of fact that respondent could not come well in time in the country on account of unavoidable circumstances and unseen problems peculiar to the nature of his research in view of letter dated 10-3-1998 from MR. A.K. Burns, Assistant Professor of Planning Kansas State University read with certificate issued by the First Secretary Education Embassy of Pakistan Washington D.C. according to which respondent had been delayed in USA because of his Convocation on 15-5-1998. Subsequently, he returned to Pakistan and reported for duty on 21-5-1998. These facts show that he had saved the foreign exchange otherwise he would have again visit USA to obtain his degree. Thus, he had taken a lenient view while awarding minor punishment to the respondent as the respondent had secured higher qualification/knowledge relevant to his job requirement and it would be in the interest of the State if he has afforded an opportunity to serve in the MES and contribute in his field. The impugned order itself contradictory in nature. It is the duty and obligation of the competent authority to award the minor punishment to the respondent after application of mind with reasons after addition of section 24-A of General Clauses Act as the law laid down by this Court in Messrs Airport Support Service's case 1998 SCMR 2268. The contention of the learned counsel for the appellants that competent authority had lawful authority to award two punishments to the respondents in view of the rule 3 clause "D" has no force as is depicted from the mere perusal of the said rule which is reproduced hereunder:--

"(3) Grounds for penalty.--- Where a government servant in the opinion of the authority:--- a, b,
c-----

(d) is engaged or is reasonably suspected of being engaged in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person, and his retention in service is, therefore, prejudicial to national security, the authority may impose on him one or more penalties.

7. The following are the ingredients of the said rule:--

(a) when he is engaged in subversive activities;

(b) when he is reasonably suspected of being associated with others engaged in subversive activities; and

(c) when he is guilty of disclosure of official secrets to -any unauthorized person."

8. It is pertinent to mention here that clause "D" is an independent clause which is code in itself. To take action under this section, the aforesaid pre-conditions must be existed meaning thereby that it shall also be necessary to hold that for this account his retention in service is for that reason prejudicial to national security. Mere remaining outside the country during his stay period after submitting his application for extension of leave to the competent authority does not fall within the aforesaid parameters prescribed in the aforementioned clause "D". It is settled law that this Court is not Court of appeal to reappraise evidence while exercising power under Article 212(3) of the Constitution. The learned Service Tribunal had given finding of fact against the appellants which could not be disturbed in constitutional jurisdiction.

9. In view of what has been discussed above, this appeal has no merit. Even otherwise the appellants have failed to raise any substantial question of law of public importance as contemplated in Article 212(3) of the Constitution. The appeal being devoid of any force is dismissed.

M.H./F-23/SC

Appeal dismissed.

PLJ 2009 SC 1013

[Appellate Jurisdiction]

Present: Javed Iqbal, Nasir-ul-Mulk & Sayed Zahid Hussain, JJ.

AKHTAR ALI--Petitioner

versus

DIRECTOR FEDERAL GOVERNMENT EDUCATIONAL INSTITUTION FGET DTA, RAWALPINDI and others--
Respondents

Civil Petition No. 704 of 2008, decided on 21.4.2009.

(On appeal from the judgment dated 19.3.2009 of the Federal Service Tribunal, Islamabad passed in Appeal No. 23(P)(CS) of 2003).

Removal From Service (Special Powers) Ordinance, 2002--

----S. 3(1)(b)--Constitution of Pakistan, 1973--Art. 212(3)--Quantum of punishment--

Civil servant--Habitually absent from duty--Suspension was extended being absent from duty--Civil servant had unblemished service record due to involvement in case he absented from duty--Removal from service, appear to be too harsh and disproportionate--Competent authority had discretion to dismiss or remove from service or compulsorily retire from service--Validity--S. 3(i)(b) of Removal from Service Ordinance, deals with inefficiency of a person in Govt. Service or being habitually absent from duty without prior approval of leave--But a person guilty of misconduct or a person who is corrupt have been dealt with separately--While imposing penalty the competent authority is such expected to keep in mind the gravity and severity of the allegations and past conduct of the person--Removal from service of the civil servant was not only option for the competent authority--He could be awarded other penalty of lesser implications--Held: While hearing petition under Art. 212(3) had been exercising its jurisdiction in appropriate cases of converting its jurisdiction in appropriate cases of converting the penalty found not commensurate to nature of the charges--Further held: Civil servant who had a long unblemished service of about 17 years had by force by circumstances in a case in which he was latter on acquitted been prevented from performing his duty as teacher--He was absent from duty entailing some penalty under law--His removal from service was to harsh a penalty for him--Leave accepted. [P. 1015 & 1017] A, C & D

Service Tribunals Act, 1973--

----S. 5--Appeal before Federal Service Tribunal--Power of Tribunal on appeal to confirm, set aside, vary or modified the order appeal against--Held: No dearth of precedents where tribunal modified the orders of departmental authority by converting penalties and substituting order in place of removal from service. [P. 1016] B 2008 PLC (CS) 77, 2005 SCMR 638, 2005 SCMR 752, 2006 SCMR 60, 2006 SCMR 1018, 2006 SCMR 815, 2007 PLC (CS) 319 & 2008 PLC (CS) 428, rel.

Mr. Amjad Ali, ASC for Petitioner.

Agha Tariq Mehmood, D.A.G. for Respondents.

Date of hearing: 21.4.2009.

Judgment

Sayed Zahid Hussain, J.--Akhtar Ali petitioner was Trained Under Graduate Teacher (TUGT) F.G High School (PRC), Mardan who on 19.8.2000 absented from duty. He was suspended on 27.9.2000 which suspension was extended latter on and was issued notice dated 19.4.2001 for being absent from duty. Since no reply was received show-cause-notice dated 06.7.2001 was issued calling for reply thereto within 15 days. As this notice also remained un-responded, a final show-cause-notice dated 04.9.2001 was issued in terms of section 3 (i)(b) of Removal From Service (Special Powers) Ordinance, 2000. He was eventually removed from service on 23.10.2001. Departmental appeal for reinstatement in service was made by him on 18.11.2002. Having no response to the same, he approached the Federal Service Tribunal through an appeal dated 06.2.2003, which was dismissed by the learned Federal Service Tribunal, Islamabad on 19.3.2008. Aggrieved thereby he has invoked the jurisdiction of this Court under Article 212(3) of the Constitution of the Islamic Republic of Pakistan. In that notice to respondents was ordered to be issued by this Court to consider the quantum of punishment in the matter.

2. The learned counsel for the petitioner and the learned Deputy Attorney General have been heard primarily to consider as to whether the penalty of removal from service was justified in the facts and circumstances of the case. The contention of the learned counsel for the petitioner is that the absence of the petitioner from duty was due to the circumstances beyond his control as he had been involved in a murder case in case FIR No. 511 dated 19.8.2000 registered under Section 302/34 PPC, which fact was brought to the notice of the Headmaster of the School informing that due to threat to his life it had become impossible for him to attend the school and he may be granted leave with effect from 21.8.2000. It is contended that he was acquitted in

that case on 13.11.2002 by the trial Court on the basis of compromise. Whereafter, he approached his school when he learnt of his removal from service and agitated the matter, departmentally and thereafter before the learned Tribunal. According to him the view taken by the learned Tribunal in the case was not based on correct appreciation of the matter. He places reliance upon Auditor-General of Pakistan and others versus Muhammad Ali and others, (2006 SCMR 60) and Abdul Hassan versus Secretary, Education (S&L) N.W.F.P. and 3 others, (2008 PLC (C.S.) 77) to contend that harsh penalty of removal from service deserved to be reduced to some minor penalty.

3. The learned Deputy Attorney General, Pakistan, however, supports the order made by the departmental authority and the judgment of the Federal Service Tribunal and seeks dismissal of the petition.

4. The factual background is not in dispute. We have considered the matter from various angles and find that the petitioner who got employment as Teacher in the year 1984, had unblemished service record but due to involvement in the case he absented from duty with effect from 19.8.2000 due to threat to his life. He had made an application to the Headmaster of the School also to this effect. The notices dated 19.4.2001, 6.7.2001 and 4.9.2001 remained un responded having not been received by him. These were the circumstances preventing him from continuing to perform his duty as a Teacher. As soon as he was acquitted by the Court on 13.11.2002 he approached the authorities and agitated the matter for his reinstatement within the Department and before the Tribunal. No doubt he remained absent but the punishment he has been awarded i.e. removal from service, appear to be too harsh and disproportionate. It may be observed that while proceeding against a person under Section 3 of the Removal From Service (Special Powers) Ordinance 2000, the competent authority had the discretion to dismiss or remove from service or compulsorily retire from service, or reduce the person concerned to lower post or pay scale or impose one or more minor penalties. It may be observed that Clause (a) of Section 3(1) of the Ordinance deals with the inefficiency of a person in Government service or being habitually absent from duty without prior approval of leave. But a person guilty of misconduct (clause b) or a person who is corrupt (clause c) etc. have been dealt with separately. While imposing penalty the competent authority is thus expected to keep in mind the gravity and severity of the allegations and past conduct of the person concerned. The petitioner's removal from service was not the only option for the competent authority. He could be awarded other penalty of lesser implications. When he filed appeal before the Federal Service Tribunal even the learned Tribunal did not advert to this aspect of the matter although under Section 5 of the Service Tribunals Act, 1973, the Tribunal had power on appeal to "confirm, set aside, vary or modify the order appeal against". There is no dearth of precedents where the Tribunal modified the orders of the departmental authority by converting the penalties and substituting order in place of removal from service. For instance in Abdul Hassan versus Secretary, Education (S&L) NWFP and 3 others, (2008 PLC (C.S.) 77), the NWFP Service Tribunal ordered the conversion of dismissal order from service with that of compulsory retirement. Incidentally, in that case also the appellant had been involved in a murder case who had been sentenced to imprisonment for life and after undergoing the sentence, years after his dismissal from service he filed appeal before the Service Tribunal and the Tribunal altered the penalty. The petition for leave C.P. No. 249-P of 2007 filed by the Government of NWFP against the order of the Tribunal was dismissed by this Court on 24.12.2008. In Shamim Ahmed Kazmi versus Pakistan International Airlines Corporation and another, (2005 SCMR 638), the Federal Service Tribunal had ordered the conversion of dismissal from service into compulsory retirement which was maintained by this Court by dismissing the petition thereagainst. In Agriculture Development Bank of Pakistan through Chairman and another versus Akif Javed, (2005 SCMR 752), the penalty of dismissal from service was modified by the Federal Service Tribunal to compulsory retirement where-against the petition was dismissed by this Court. In Auditor-General of Pakistan and others versus Muhammad Ali and others, (2006 SCMR 60), removal from service order was converted into reduction in time scale by the Federal Service Tribunal where against the appeal of the Department was dismissed by this Court. Reference may also be made to Javed Akhtar and others versus Chief Engineer, Highway Department and others, (2006 SCMR 1018). As to the scope of powers of the Tribunal under the Service Tribunals Act and of this Court under Article 212 reference may be made to Islamic Republic of Pakistan versus Dr. Safdar Mahmood, (PLD 1983 SC 100), Water and Power Development Authority, Lahore and 2 others versus Muhammad Yousaf, Test Inspector, (PLD 1996 SC 840), Mian Shafiuddin, Deputy Director and 4 others versus Surat Khan Marri, Director Regional Information Office, Islamabad and 41 others, (1991 SCMR 2216) and Aijaz Nabi Abbasi versus Water and Power Development Authority and another, (1992 SCMR 774).

5. Even this Court while hearing petition under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, had been exercising its jurisdiction in appropriate cases of converting the penalty found not commensurate to the nature of the charges. In Inspector-General (Prisons) NWFP Peshawar and another versus Syed Jaffar Shah, Ex-Assistant Superintendent Jail and others, (2006 SCMR 815), the judgment of the Tribunal was modified to convert the penalties imposed by the departmental authority. In Abdul Sattar and another versus Director Food, Punjab and others (2007 PLC (C.S.) 319), this Court ordered the conversion of penalty of dismissal from service into compulsory retirement from service. In Muhammad Ali S. Bukhari versus Federation of Pakistan through Establishment Secretary, Islamabad and 2 others, (2008 PLC (C.S.) 428), modifying the judgment of the learned Tribunal this Court ordered the conversion of penalty of compulsory retirement into reduction of two steps in time scale for a period of two years.

6. The object of making reference to the above cited precedents is that not only the Tribunal while dealing with an appeal under Section 5 of the Act has the power to vary and modify the order of departmental authority; this Court while sitting in appeal over the judgment of the learned Tribunal can also exercise such a power to meet the ends of justice dependent upon of course the facts and circumstances of each case.

7. In the instant case as noted above the petitioner who had a long unblemished service of about 17 years had by force of circumstances (involvement in a case in which he was latter on acquitted) been prevented from performing his duty as Teacher. He was absent from duty entailing some penalty under the law. His removal from service in the circumstances was too harsh a penalty for him. We had therefore, on conclusion of hearing passed the following short order:--

"For the reasons to be recorded separately, after having heard the learned counsel for the parties at length, we are inclined to convert this petition into appeal which is accepted and penalty of removal from service is converted to that of compulsory retirement."

These are the reasons for the above order accepting the appeal partially with no order as to costs.

(R.A.) Appeal accepted.

2008 P L C (C.S.) 77

[N.-W.F.P. Service Tribunal]

Before Abdul Sattar Khan, Chairman and Adalat Khan, Member

ABDUL HASSAN

Versus

SECRETARY, EDUCATION (S&L) N.-W.F.P. and 3 others

Appeal No.226 of 2006, decided on 16th February, 2007.

North-West Frontier Province Removal from Service (Special Powers) Ordinance (V of 2000)---

---Ss. 3 & 10---North-West Frontier Province Service Tribunals Act (I of 1974), S.4--Penalty of dismissal from Service---Conversion of penalty into compulsory retirement---Appeal to Service Tribunal---Appellant, who was involved in murder case, was sentenced to life imprisonment---Appellant, after undergoing said sentence reported his arrival to the Department, but he had already been dismissed from service---Only contention of appellant was that since he had rendered more than 10 years of service in the. Department, impugned order of his dismissal from service, be converted into compulsory retirement to enable him to get pensionary benefits---Keeping in view service of 10 years rendered by the appellant, impugned punishment of dismissal from service was converted into one of compulsory retirement, which was also a major penalty.

Wazir Zada, Legal Adviser with A.-G.P. for Respondents.

ORDER

Counsel for the appellant and Wazir Zada, Legal Adviser with A.-G.P. for respondent-Department present. Replication not filed. Heard. Record perused.

This appeal under section 4 of the N.-W.F.P. Service Tribunals, Act, 1974 arises against an order, dated 10-6-1998 vide which the appellant was dismissed from service w.e.f. 10-1-1998, with the prayer that on acceptance of this appeal, the impugned dismissal order may be changed into one compulsory retirement enabling the appellant to get pensionary benefits of rendering more than 10 years service.

It appears that the appellant while serving as A.W.I. in the respondent-Department was involved in a murder case. On conclusion of the trial, he was sentenced to imprisonment for life and also to pay a fine of Rs.70,000. The accused/appellant after undergoing the above sentence, reported his arrival to the Director, National, Telecommunication Corporation, Peshawar on 14-8-2005, where his services were already placed on deputation, but before his arrival, he had already been dismissed from service. After exhausting his departmental remedy, the appellant has approached the Tribunal for the redressal of his grievances.

The only contention of the appellant is that since he has rendered more than 10 years of service, therefore, the impugned order of his dismissal from service be converted into one compulsory retirement to enable him (appellant) to get pensionary benefits.

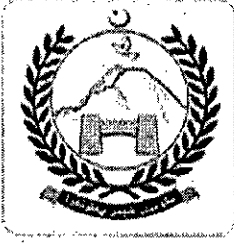
The plea taken by the respondent-Department is that the appellant was involved in a murder case; that he

was convicted by the Court of Additional Sessions. Judge, Takht Bhai in the said murder case and in the light of the judgment of the competent Court of law, the impugned order of dismissal from service of the appellant was passed which being proper calls for no interference by the Tribunal.

After hearing the arguments and perusing the record, the Tribunal tends to agree with the arguments advanced by the learned counsel for the appellant. Before conviction order passed against the appellant, he had already rendered more than 10 years of service, therefore, keeping in view the services rendered by him the impugned punishment of dismissal from service is converted into one compulsory retirement which is also a major penalty. With the above modification/ variation in the impugned order, the instant appeal stands disposed of accordingly, with no order as to costs. File be consigned to the record.

H.B.T./4/N.-W.F.P.(Ser.)

Order accordingly.



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 563 /ST

Dated: 24-2-2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The Superintendent Circle Headquarters Prison,
Government of Khyber Pakhtunkhwa,
Mardan.

Subject: JUDGMENT IN APPEAL NO. 222/2019, MR. MUNEEB UR RAHMAN.

I am directed to forward herewith a certified copy of Judgement dated 02.02.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR