

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 12883/2020

Date of Institution ... 27.10.2020

Date of Decision ... 10.01.2022

Mst: Rukhsana D/o Muhammad Younas R/o Salgaro Banda, P.O Dargai, District Malakand. ... (Appellant)

VERSUS

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

Naila Jan,
Advocate

... For Appellant

Javed Ullah,
Assistant 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 is that the appellant, while serving as warder in prison department, was proceeded on the charges of absence from duty and was ultimately dismissed from service vide order dated 02-07-2020, against which the appellant filed departmental appeal, which was rejected vide order dated 11-08-2020, hence the instant service appeal with prayers that the impugned order dated 02-07-2020 and 11-08-2020 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 impugned orders are against law, fact and norms of natural justice, therefore are not tenable and liable to be set aside; that the impugned orders had been issued

without serving any charge sheet/statement of allegations as well as show cause notice upon the appellant; that no regular or fact finding inquiry has been conducted before issuance of the impugned order, hence the impugned orders are void ab initio; that the appellant has been condemned unheard as no opportunity of personal hearing or defense has been provided to the appellant, hence the respondents violated Article 10-A of the Constitution; that absence of the appellant was not willful but due to maternity, which does not amount to misconduct; that the allegation of un-satisfactory work/conduct has never been issued to the appellant, thus the allegations involve factual controversy, which cannot be proved without conducting regular inquiry; that the word termination is nowhere mentioned in E&D Rules, 2011, hence the impugned order is illegal and against law and rule; that the impugned order has been issued with retrospective effect, hence void.

03. Learned Assistant Advocate General for the respondents has contended that the appellant was granted 45 days of maternity leave on 30-01-2020 and accordingly she was required to resume her duty on 16-03-2020, but she remained absent for three months without provision of any medical documents; that the appellant was issued absence notice vide order dated 03-06-2020 at her home address with no response, thereafter she was terminated vide order dated 02-07-2020.

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

05. Record reveals that the appellant was serving as warder in prison department. During the course of her service, the appellant applied for maternity leave, which was granted by the respondent for the period from 30-01-2020 to 15-03-2020. Placed on record is medical prescription, which would suggest that the delivery could not materialize in the mentioned period, hence the appellant was unable to join her duty. As per leave rule, maternity leave for a period of 45

days is granted prior to delivery and 45 days after delivery. In a situation, the respondents were required to grant leave for another 45 days, which was permissible under the rule, but the respondents without taking into consideration her illness, terminated her from service. Even otherwise absence on medical grounds without permission of competent authority does not constitute gross misconduct entailing major penalty of dismissal from service. Reliance is placed on 2008 SCMR 214. Contention of the respondents to the effect that as per clause-7 of her appointment order, the competent authority was empowered to dispense with her service without assigning any reason does not hold force, as the Supreme Court of Pakistan in its judgment reported in 1997 PLC (CS) 885 has held that if employment contract contained stipulation that services could be terminated without assigning any reason even then no order of termination could be passed without assigning any reason, as long as vacancies existed, persons appointed against those vacancies could not be removed from service arbitrarily without cogent reasons for removal of employee must exist in record though such reasons might not be communicated to the employee. To this effect, another judgment reported in 2017 PLC (CS) 587 has held that law did not authorize any authority to cancel an appointment order and remove the employee from service without any reason. In view of the referred judgments and in the context of natural justice, the term "without assigning any reason" is arbitrary in nature and is contrary to the basic human rights as well as norms of natural justice, which needs revision. Moreover the impugned order provided for penalty to the appellant in terms of termination from service, which as rightly argued by the learned counsel for the appellant is not included in the list of penalties provided in the rules applied on the appellant. The order, therefore, having been passed in blatant disregard of law can only be termed as void and no limitation runs against void order. Reliance is placed on 2019 SCMR 648.

06. In view of the foregoing the instant appeal is accepted. The impugned order dated 02-07-2020 and 11-08-2020 is set aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
10.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

ORDER

10.01.2022

Learned counsel for the appellant present. Mr. Javed Ullah, Assistant Advocate General alongwith Mr. Suleman Senior Instructor for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned order dated 02-07-2020 and 11-08-2020 is set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

10.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN




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

S.A No. 12883/2020

17.11.2021

Learned counsel for the appellant present. Mr. Suleman, Senior Instructor alongwith Mr. Javed Ullah, Assistant Advocate General for the respondents present.

The learned Member (Judicial) Mr. Salah-ud-Din is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments before the D.B on 10.01.2022.



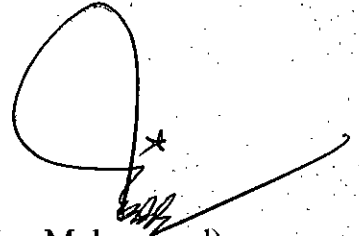
(Mian Muhammad)
Member (E)

08.03.2021

Appellant in person present. Addl: AG for respondents present.

Written reply not submitted. Learned AAG seeks time to contact the respondents for submission of written reply/comments.

Adjourned to 18.05.2021 before S.B.



(Mian Muhammad)
Member (E)

18.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 06.07.2021 for the same as before.

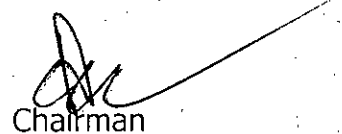


Reader

06.07.2021

Appellant in person and Mr. Kabirullah Khattak, Addl. AG alongwith Suleman, Instructor for respondents present.

Respondents have submitted reply/comments through office. The appeal is entrusted to D.B for arguments on 17.11.2021.



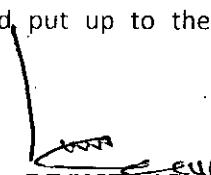

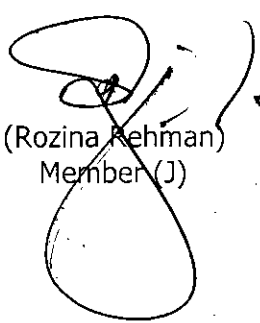
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 12883 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/10/2020	<p>The appeal of Mst. Rukhsana presented today by Naila Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	11.12.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11/12/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant present through counsel. Preliminary arguments heard. File perused.</p> <p>Points raised need consideration. Admitted to 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 respondents for written reply/comments. To come up for written reply/comments on 08.03.2021 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

Appellant Deposited
Security Process Fee
11/12/20

BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

S.A _____/2020

Rukhsana

VERSUS


Inspector General of Prison, KP, Peshawar & other

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Appellant

Through


Naila Jan
Advocate, High Court
Peshawar.

Dated: 26-10-2020

1

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa Service Tribunal

Diary No. 13335

Dated 27/10/2020

S.A. 12883/2020

Mst: Rukhsana D/o Muhammad Younas R/o Salgaro Banda, P.O Dargai, District Malakand.

-----**(Appellant)**

VERSUS

1. Inspector General of Prison, KP Peshawar.
2. Superintendant Circle Head Quarter, Mardan.

-----**(Respondents).**

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 02/07/2020, WHEREBY THE APPELLANT WAS TERMINATED FROM HER SERVICE IN A CURSORY MANNERS AND ORDER DATED 11/08/2020 COMMUNICATED ON 09/10/2020 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED FOR NO GROUNDS.

Filed to-day
ew
Registrar
 27/10/2020

PRAYERS:-

ON ACCEPTANCE THE SERVICE APPEAL, THE IMPUGNED ORDER DATED 02/07/2020 AND ORDER

M

**DATED 11/08/2020 MAY KINDLY BE
SET ASIDE BEING VOID, ILLEGAL AND
THE APPELLANT MAY KINDLY BE
REINSTATED IN SERVICE WITH ALL
BACK BENEFITS.**

Respectfully Sheweth,

The appellant submits as under:-

1. That the appellant was appointed as female warder (BPS-7) and since her appointment, the appellant performed her duties with great zeal, zest and to the entire satisfaction of her superiors.
2. That the appellant due to pregnancy, was unable to perform duty and the doctor advice the appellant for complete bed rest. **(Copies of the Medical prescription is attached as Annexure "A")**
3. That the appellant after recovery when reached to the place of duty she was handed over the termination order which contain some baseless allegations of absence unsatisfactory work/ conduct/ willful

absence. **(Copy of the impugned termination order is attached as Annexure "B").**

4. That feeling aggrieved from the impugned order, the appellant filed departmental appeal along-with the medical certificates, however, Respondent No: 1 without awarding opportunity of personal hearing rejected the departmental appeal vide order dated 11/08/2020 communicated on 09/10/2020. **(Copies of Departmental Appeal & Order are attached as Annexure "C" & "D")**

5. That feeling aggrieved form the impugned orders, the appellant filing the instant appeal on the following grounds inter-alia:-

GROUND:-

- A. That the impugned orders are against the law, rules, principle of natural justice, hence void ab-initio.

2

B. That the impugned order has been issued without using charge sheet, statement of allegations or show-cause notice.

C. That no regular or even a fact finding inquiry has been conducted before issuing the impugned orders, hence the impugned orders are void ab-intio.

D. That neither the inquiry was conducted nor did a show-cause Notice was issued under Rule-5 read with Rule 7 of the E& D Rules 2011.

E. That the appellant has been condemn unheard as no opportunity of personal hearing or defense has been provided to the appellant, hence the respondents violated Article 10-A of the Constitution of Islamic Republic of Pakistan 1973.

F. That the absence of the appellant was not willful but due to maternity which does not amount to misconduct.

D

G. That the allegations of unsatisfactory work/ conduct has never been alleged inquired or any such notice has never been issued to the appellant, thus the allegations involved factual controversies which was to be proved through regular inquiry.

H. That the word termination is no where mention in E & D Rules 2011, hence against the law and rules.

I. That the impugned order has been issued with retrospective effect, hence void.

J. That since the impugned order, the appellant is jobless.

K. That any other ground may be raised at the time of arguments with the kind permission of this Hon'ble Tribunal.

It is, therefore, most humbly prayed that on acceptance of instant service appeal, the impugned orders dated 02/07/2020 and order dated 11/08/2020 may kindly be set aside as

A

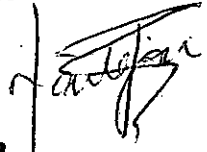
6

being void, illegal and the appellant may kindly be reinstated in service with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.


Appellant

Through


Naila Jan
Advocate, High Court
Peshawar.

Dated: 26/10/2020

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2020

Rukhsana

VERSUS

Inspector General of Prison, KP, Peshawar & other

ADDRESSES OF PARTIES

APPELLANT.

Mst: Rukhsana D/o Muhammad Younas R/o Sargano
Banda, P.O Dargai, District Malakand.

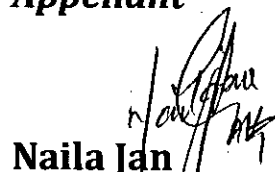
RESPONDENTS

1. Inspector General of Prison, KP Peshawar.
2. Superintendent Circle Head Quarter, Mardan



Appellant

Through



Naila Jan
Advocate, High Court
Peshawar.

Dated: 26/10/2020

9

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2020

Rukhsana

VERSUS

Inspector General of Prison, KP, Peshawar & other

APPLICATION FOR CONDONATION OF DELAY

RESPECTFULLY SHEWETH:

Applicant submits as under.

1. That the above mentioned appeal is filing before this Hon'ble Court in which no date is fixed for hearing so far.
2. That impugned order has never been communicated and the appellant with her own efforts got copy of the appellate order on 09/10/2020, hence the instant appeal is within time, however, if there is any delay, the same is condonable on the following grounds.

GROUND:

- A. That the impugned order as it is retrospective order so no limitation runs against void order.
- B. That vested rights of the appellant is attached with the instant appeal.

AK

10

C. That there are numbers of precedents of Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities. (2003 PLD-SC 724).

It is, therefore, requested that the limitation period (if any) may kindly be condoned in the interest of justice.

Dated: 26/10/2020



Appellant

Through



Naila Jan
Advocate, High Court,
Peshawar.

SHAHAB MATERNITY HOME

24 hours Service

11
Aukw
A
103

Address: Chagharzi Road Village Matwani.

REPORT OF OBSTETRIC ULTRASOUND

Mobil No: 0334-3391033, 0346-5204312

Name: Rukhsana Age: — Date: 22/5/2020
 LMP: Cephalic EDD: —

FINDINGS.

No of Fetus: Single Twin Multiple.
 Heart Beat: Present Absent
 Movement: Present Absent
 LIQUOR: Adequate Oligohydranmois Polyhydranmois

FETAL MEASUREMENT.

CRL: — BPD: 9.9 cm FL: 8.0 cm FAC: 9.0 cm

Gestational Sac: —

GESTATIONAL AGE: 39 ± 2 weeks

PLACENTAL POSITION:

Upper Segment Lower Segment Rt Lateral
 Left Lateral Anterior Posterior
 Partial Previa Complete
 Fundal

Congenital Anomalies: Single alive fetus

Location: uterine fundal

Diaphragmatic Movement: Crossing

Comments: 9. sac 39 ± 2 weeks

Qin 22/5/2020 Consultant Radiologist

Charges

① Delivery = 7500

② Medicine = 1000

③ Admission = 500

Total = 9000/-

①

Dr
22/5/2020

~~A~~

OFFICE OF THE SUPERINTENDENT CIRCLE HQS PRISON MARDAN

No. 1083 /PB Dated: 02/07/2020. E-Mail: mardanjail@gmail.com. Phone: 0937 843114

OFFICE ORDER

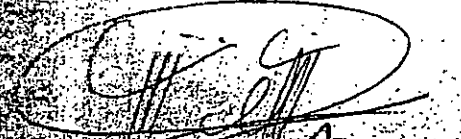
Services of Female Warden Mst. Rukhsana Bibi D/O Muhammad Younas attached to Central Prison Mardan are here by terminated from the date of absence for an unsatisfactory work/conduct/wilful absence from duty with effect from 15-05-2020 to 02-07-2020.

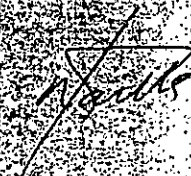
SUPERINTENDENT
CIRCLE HQS PRISON MARDAN

Endst: No. 1083-1/PB Dated: 02/07/2020

Copy of the above is forwarded to

- 1- The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
- 2- The Superintendent Central Prison Mardan for information and necessary action with reference to his report dated 30-05-2020.
- 3- The District Accounts Officer Mardan for information and necessary action please.
- 4- Mst. Rukhsana Bibi D/O Muhammad Younas R/O Saigart Banda, Post Office Darga Mardan for information.


SUPERINTENDENT
CIRCLE HQS PRISON MARDAN



پشاور

بخدمت جناب آئی جی جیل خانہ جاخبر خواہ

درخواست برائے دوبارہ بحالی برائے
سرکارِ عمل از عت جوہ لوجہ بندھانہ
علاقت ملازمت سے درخواست کی
گئی ہے۔ نیز دیگر دائرہ سی جوہ بندھانہ
عت انفا ہوں فرمت فرمائی جاے

جناب عالی درخواست تبدیل عرض کیا کہ

1) یہ کہ سائلہ موضع فضل درگاہ عالی باسندہ
(2) یہ کہ سائلہ محلہ جیل خانہ جات عیب بطور
میل وارد ڈسٹرکٹ مردان عیب تصنیات
گئی

(3) یہ کہ سائلہ کو محلہ جیل خانہ جات سپرنٹنڈنٹ
مردان جیل کی طرف سے برطرفی کی حکم نامہ
موصول ہوا عیب سائلہ کو محردہ 2020
سے 2020-2027 وہ تک بندھانہ سی ہو رہی
عیب لوٹری سے برطرف کیا گیا
(لیفٹیننٹ درخواست ہدایت)

(4) یہ کہ سائلہ اس دوران سٹریڈیٹنگ
اور لوجہ بندھانہ ڈپٹی سیکریٹری
اور ڈائریکٹریٹ میں آج کل
(سید فضل دلوڈ لفتی)

(5) یہ کہ محردہ 2020-2025 کو سائلہ نے ہاں
اولاد سید اسوئی اور ڈپٹی سیکریٹری سے فار
(دلوڈ لفت عرض کے)

۴۷۔ یہ تہ سائلہ فی عنہ حاضر فی قصر اعمیرانہ

تھی۔ بلکہ لوجہ بالا تھی۔ نیز یہ تہ سائلہ

آب غریب جانڈان سے تعلق رکھتی ہے

اور جانڈان کی لغات کا واحد زرد ہے

۴۸۔ تہ تہ بر طرفی از ملازمت بلا اجواز اور غیر قانونی

ہے۔ اور مینی بر انصاف و قانون و شرک ہے

تہ تہ۔ اور سائلہ کی ملازمت بیرون بارہ

دینیاتی قانون کے مطابق ہے

لینڈ اسٹریٹ عرض ہے کہ درجوا

سائلہ بر ہر درانہ غور فرمائیں سائلہ

خورد و بارہ چیل مردان میں بطور

فیل وارر فر دینیاتی کے احکامات

جارجا فرمائے جائے

نیز ریگداری ہی جو قرین عن انصاف

یوں، وہ بھی مرکت فرمائی جائے

سائلہ: ڈھیلانہ زوجہ فرید ممل

سئلہ درجی حاصل درجی

ضلع ملالند

۴/۵



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

91-9210334, 9210406 091-9213445

No. Estb/Ward-/Orders/

Dated 11-08-2020

ORDER:

WHEREAS, Ex Female Warder Rukhsana D/o Fareed Gul while attached to Central Prison Mardan was awarded the major penalty of "Termination from service" with immediate effect by the Superintendent Headquarters Prison Mardan vide his office order No. 1088 dated 02-07-2020.

AND WHEREAS, the said female warder preferred his departmental appeal for setting aside the penalty awarded to her, which was examined in light of the available record of the case and it was observed that the charges leveled against the appellant was proved.

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

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

Endst; No. 27828-31-1

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No. 1193-WJE dated 14-07-2020.
2. The Superintendent Central Prison Mardan for information.
3. The District Account Officer Mardan for information.
4. The appellant concerned C/O Superintendent Headquarter Prison Mardan for information.

11/8
ASSISTANT DIRECTOR
INSPECTORATE GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

Received on
9/10/2020

Rul

11/8/2020

11/8

وکالت نامہ

عدالت صفا - P.P. سے سٹریٹجیٹل سٹانڈ
 نام - جسٹس صاحبہ سید مراد
 منجانب: اعلیٰ عدالت - تاریخ 22/10/2020

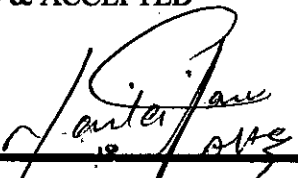
باعث تحریر آنکہ

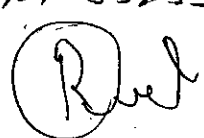
مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام جسٹس صاحبہ کے لیے ہے۔

نانکہ جان ایڈوکیٹ ہائی کورٹ پشاور

کو بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رو بروئے عدالت حاضر ہوتا ہوں گا اور ہونگی اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کرونگا اگر پیشی پر من مظهر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پشوری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پشوری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پشوری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہو گا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہو گا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قری یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختیار نامہ پیروی کا اختیار ہو گا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہو گا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں نیز ایسے مشیر قانون کو ہر امر میں وہی اور ایسے ہی اختیارات حاصل ہوں گے جیسے کہ صاحب موصوف کو حاصل ہیں اور پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہو گا۔ لہذا یہ مختیار نامہ لکھ دیتا کہ سدر ہے۔ مورخہ 22/10/2020 مضمون مختیار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

ATTESTED & ACCEPTED


 نانکہ جان ایڈوکیٹ پشاور ہائی کورٹ پشاور

ایڈوائس رضوانہ ولد محمد رحیم
 15401-5525589-6


BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

In the matter of Service Appeal No. 12883 of 2020

Mst. Rukhsana D/o Muhammad Younas R/o Salgaro Banda, P.O Dargai, District Malakand

.....**Appellant.**

VERSUS

1. The Inspector General of Prisons; Khyber Pakhtunkhwa Peshawar
2. The Superintendent Circle Headquarters Prison, Mardan.

.....**Respondents.**

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DEPONENT

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of Service appeal No. 12883 of 2020

MST: Rukhsana D/O Muhammad Younas R/O Salgaro Banda, P.O Dargai,
District Malakand.

(Appellant)

----VERSUS----

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent Circle Headquarters Prison, Mardan.

(Respondents)

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS

PRELIMINARY OBJECTIONS

1. That the appeal is incompetent, badly time barred and is not maintainable in its present form.
2. That the appellant is estopped by his own conduct to bring the present appeal.
3. That the appellant has got no cause of action.
4. That the appellant has no locus standi.
5. That the appellant is bad for mis-joinder and non-joinder of necessary party.
6. That the appeal is hit by laches.

PARA-WISE COMMENTS ON BEHALF OF THE RESPONDENTS

RESPECTFULLY SHEWETH.

1. Correct.....No Comments.
2. Correct.....No Comments.
3. Not-Admitted/Incorrect, as the appellant was granted 45 days Maternity-Leave on 30-01-2020, and accordingly she was required to resume her duty on 16-3-2020. But she remained absent for 03 months and seventeen days without the provision of any Medical-Documents. Thereafter, as per rules, she was issued Absent-Notice vide this office No. 924/PB Dated 03-6-2020 at her home address with no-response **(Copy attached as annexure "A")**, after lapse of 15 days Time-Period. Hence, thereafter, she was terminated accordingly being under-probation as per the Rules. **(Copy of appointment order attached as annexure "B")**

4. She was issued Absent-Notice vide No. 924/PB Dated 03-06-2020, but she failed to respond and report for duty within the stipulated-time. Thereafter, as per condition No.2 of "Her Appointment-Order her Appointment/ Services are liable to be terminated at any time a 15 days' Notice without assigning any reasons". She was terminated accordingly.
5. No Comments.

GROUND.

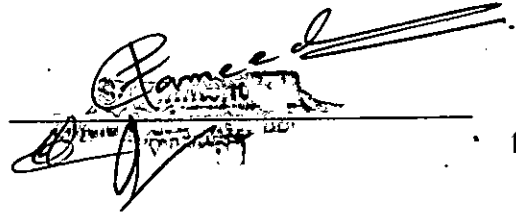
- (A) Not-Admitted/Incorrect, as she was terminated under the Rule-9 of E & D Rules 2011.
- (B) Not-Admitted/Incorrect, as her Appointment/Service was under Probation-Period (One-Year) therefore, No-Chance of conducting any Inquiry or issuing any Show-Cause/Charge-Sheet was extended to her.
- (C) As Explained -Above. (Para-B).
- (D) Not-Admitted/Incorrect, as she was terminated due to her Probation-Period. However, she was issued Absent-Notice under the said-rule. (E&D-2011).
- (E) As Explained-Above under Para-D.
- (F) Not-Admitted/Incorrect, as she was granted 45-days maternity-Leave. She was required to resume her duty on the expiry of the said-leave, but she remained absent for couple of months without prior-permission of the competent authority she did not justify her Absent-Period at the time and that No Medical-Res certificate/Document was received meanwhile. Thereafter, this office being the Competent-Authority, after observing of legal formalities, imposed the major-penalty of "Termination from Service" vide this office order No. 188 Dated 02-07-2020. **(Copy attached as annexure "C")**.
- (G) Not-Admitted/Incorrect, as she was issued Absent-Notice vide-No 929/PB Dated 03-06-2020 at her Home-Address with No-Response, after lapse of 15 days Time-Period. And thereafter, being in probation-Period. She was terminated accordingly.
- (H) No Comments.
- (I) No Comments.
- (J) No Comments.
- (K) No Comments.

Keeping in view of the above fact, It is, therefore, humbly prayed that the appeal filed by the Appellant may be rejected being not based on truth and against the law, please.

1. INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR.



2. SUPERINTENDENT
HEADQUARTER PRISON MARDAN



BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of Service appeal No. 12883 of 2020

MST: Rukhsana D/O Muhammad Younas R/O Salgaro Banda, P.O Dargai,
District Malakand.

(Appellant)

----VERSUS----

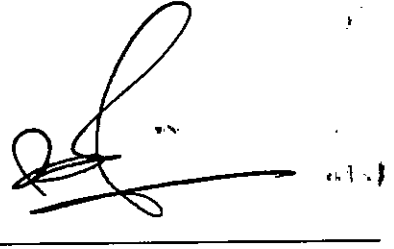
1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent Circle Headquarters Prison, Mardan.

(Respondents)

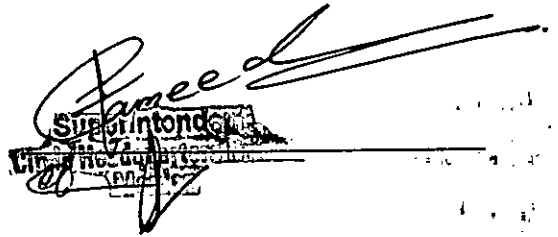
AFFIDAVIT OF THE RESPONDENTS.

We, the respondents, do hereby solemnly affirm and declare on oath that the contents of the reply/Para wise comments are true and correct to the best of our knowledge and belief and nothing material fact has been concealed and kept secret from this Honorable Tribunal.

1. INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR.



2. SUPERINTENDENT
HEADQUARTER PRISON MARDAN





Annexure 'A'

OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

No. _____ /PB Dated: 03/06/2020, E-Mail: mardanjail@gmail.com, 0937-843114

To

Mst. Rukhsana Bibi D/O Muhammad Younas, Female Warder,
R/O Village Salgaru Banda, Post Office Dargai Kharakai,
Tehsil Dargai, District Malakand.

Subject: ABSENCE NOTICE.

As per report of the Superintendent Central Prison Mardan, you were granted forty five (45) Maternity leave on 30-01-2020 and were required to resume duty after expiry of Maternity leave. But you failed to resume duty and remained absent from 15.03.2020 and is absent up to date.


You are therefore directed to report to Central Prison Mardan within fifteen (15) days of the receipt of this Notice and explain then reasons of your absence otherwise strict disciplinary action will be taken against you as per condition of your appointment Order under which may result in termination from service.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endst. No: 2526/1.

Copy of the above is forwarded to:-

- 1- The Inspector General of Prison Khyber Pakhtunkhwa, Peshawar for information please.
- 2- The Superintendent Central Prison Mardan for information with reference to his report dated. 01-06-2020 please.


SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

**OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR**

No: _____ P/B Dt: 03/10/2019

OFFER OF APPOINTMENT

Upon recommendation of the Departmental Selection Committee, Rukhsana D/o Muhammad Younas is hereby appointed against the post of **Female Warder (BPS-05)** in the Khyber Pakhtunkhwa Prisons Department in Basic Pay Scale Rs. (10260-500-25290) plus other usual admissible allowances on the following terms and conditions:-

- 1- Her appointment will take effect from the date of joining duty at her place of posting.
- 2- Her appointment is purely temporary and her services are liable to be terminated at any time on 15 days' notice without assigning any reasons.
- 3- No TA/DA will be admissible to her for joining first appointment.
- 4- In case she wishes to resign at any time she will give one month notice OR in lieu thereof one month's pay will be forfeited from her subject to the discretion of the competent authority in public interest and will leave the service after acceptance of her resignation.
- 5- Her appointment is subject to Medical fitness for Government Service.
- 6- She will be eligible for continuance on the post if her work and conduct remained satisfactory during the period of her temporary appointment provided the vacancy against which she has been appointed continues.
- 7- She will be on probation for a period of one year extendable upto another year. During probation period her services will be terminated if her work and conduct is not found satisfactory OR the vacancy ceases to exist.
- 8- She will be liable to serve anywhere in the Prisons Department of Khyber Pakhtunkhwa.
- 9- For all other purposes such as Pay, T.A and Medical Attendance, etc; she will be governed by such Rules as may be issued by the Government for the category of Government Servants of the Prisons Department to which she will belong.
- 10- She will be governed by the Khyber Pakhtunkhwa Government Servants (Conduct) Rules 1987, the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules 1986, the Khyber Pakhtunkhwa Civil Servants Act, 1973, the Civil Servants (Appointment, Promotion and Transfer) Rules 1989, the Khyber Pakhtunkhwa (E&D) Rules 2011, the Khyber Pakhtunkhwa Prison Department Service Rules and all other rules / regulations framed or to be framed by the Government from time to time.
- 11- Her service will be liable to termination / reversion at any stage if her Academic Certificates / Degrees (if any), CNIC, Domicile etc; are found fake, her services will be considered as terminated automatically and FIR will be lodged against her.
- 12- Her salary will be released after making proper verification of her antecedents/ character roll, Domicile, and Academic Qualification Certificates / Degrees etc; from the quarter concerned by the jail of her first posting. Moreover, if any verification charges are involved on this account, the same will be paid by the appointee.
- 13- If she accepts the appointment on the above cited terms and conditions, she should report to the Superintendent Judicial Lockup Malakand within 30 (Thirty) days of the receipt of this offer of appointment at her own expense. In case she fails to join duty within the same period, the offer of appointment will be treated as cancelled / withdrawn.

[Signature]
SUPERINTENDENT

HEADQUARTERS PRISON PESHAWAR

Endorsement No: 62-65 /-

Copy of the above is forwarded to:-

- 1- Superintendent Circle Headquarters Prison Mardan.
- 2- **The Superintendent Judicial Lockup Malakand** for information. On arrival of the above named official an undertaking should be taken on judicial stamp paper from her to the effect that she has accepted all terms and conditions contained in the offer of her appointment and submitted to this office for record. **The condition No. 12 may be fulfilled before releasing her salary within shortest possible time.**
- 3- The District Account Officer Malakand for information & further necessary action.
- 4- **Mst: Rukhsana D/o Muhammad Younas R/o Dargai Bazar Malakand Agency Near Govt High School No 1 Mohallah Ahmad** for information and necessary action.

[Signature]
SUPERINTENDENT

HEADQUARTERS PRISON PESHAWAR

E-mail: hqprisonpeshawar@gmail.com

[Handwritten]
Supdt
12/10/19

[Handwritten]
No. 3766



Ameeduse C

OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

No. 1088 /PB Dated: **02/07/2020**, E-Mail: mardanjail@gmail.com,




0937-843114

OFFICE ORDER


Services of Female Warder MST Rukhsana Begum D/O Muhammad Younas attached to Central Prison Mardan are here by terminated from the date of absence for unsatisfactory work/conduct/wilful absence from duty with effect from 15-03-2020 to 02-07-2020.

Endst: No. 1088-12 /PB Dated: **02/07/2020**.


SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Copy of the above is forwarded to:-

- 1- The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
- 2- The Superintendent Central Prison Mardan for information and necessary action with reference to his report dated. 01-06-2020.
- 3- The District Accounts Officer Mardan for information and necessary action please.
- 4- Mst. Rukhsana Bibi D/O Muhammad Younas R/O Salgaru Banda, Post Office Dargai Kharakai, Tehsil Dargai, District Malakand for information.


SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

پشاور

حضرت صاحب آئی بی جیل خانہ جا حیدر خواجہ

درخواست برائے دوبارہ بحالی برائے
سرکاری ملازمت جو کہ لوجہ سہ سہ روزی
علاقت ملازمت سے درخواست کی
گئی ہے۔ نیز دیگر دائرہ سی جو مہربان
عین انفا ہوں برہت سرکاری طور

حنا عالی درخواست حسب ذیل عرض کیا کہ

(۱) یہ کہ سائلہ موضع فضل درگاہ خاں ہالسی باس رہے
(۲) یہ کہ سائلہ محلہ جیل خانہ جات عین بطور
مہل وارد ڈسٹرکٹ مردان عین قصبات
کئی

(۳) یہ کہ سائلہ کو محلہ جیل خانہ جات سیر سیر
مردان جیل کی طرف سے برطرفی کی حکم نامہ
موصول ہوا۔ عین عین سائلہ کو محردہ ۵۳/۲۰۲۵
سے ۵۷-۲۰۲۵ تک سرکاری سی صورت
عین لٹری سے برطرف کیا گیا
(سیر لٹری درخواست ہڈی)

(۴) یہ کہ سائلہ اس دوران ستر ستر بھاری
اور لوجہ بیماری ڈلویٹی بر جافر نہ ہو سکی ہے
اور ڈالری علی الام کامشورہ دیا تھا
(سیر لٹری دلود ڈلویٹی)

(۵) یہ کہ محردہ ۵۵-۲۰۲۵ کو سائلہ نے ہات
اولاد سیر اسوی اور ڈلویٹی بر جاز سے قافر
(دلود ڈلویٹی عرض ہے)

۱۶) یہ کہہ سائلہ کی عنبر حاضری قصداً عذر ہے
 تھی۔ بلکہ لوجہ بالائے ہی۔ نیز یہ کہہ سائلہ کہہ
 اے (عرب خاندان سے تعلق رکھتی ہے
 اور خاندان کی کفالت کا واحد ذریعہ ہے۔
 (۷) کہہ بہد طریقہ از ملازمت بلا اجواز اور عذر خالوں
 ہے اور مہنی بد اضافہ و خالوں و شریک
 نہ ہے۔ اور سائلہ کی ملازمت بد رو بارہ
 قصباتی خالوں کے مطابق ہے۔

لہذا اس طرح سے کہہ رہا ہے
 سائلہ بد ہر درانہ غور فرما کر سائلہ
 جو دوبارہ جیل میں دوران میں بطور
 فعل وارزہ ہر قصباتی کے احکامات
 ہر خاصہ کے جانے
 نیز دیگر دارسی جو وہ بین میں انصاف
 یوں، وہ بھی مرہمت فرمائی جانے

سائلہ: جسٹس زوجہ فریڈرل
 سائلہ درجی تحصیل درجی
 ضلع جلالپور

n/p

Annexure
"E"

(17)

11/8



ORDER:

WHEREAS, Ex Female Warder Rukhsana D/o Fareed Gul while attached to Central Prison Mardan was awarded the major penalty of "Termination from service" with immediate effect by the Superintendent Headquarters Prison Mardan vide his office order No. 1088 dated 02-07-2020 .

AND WHEREAS, the said female warder preferred his departmental appeal for setting aside the penalty awarded to her, which was examined in light of the available record of the case and it was observed that the charges leveled against the appellatant was proved.

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

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

Endst; No.

27828-31-1

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No.1193-WJE dated 14-07-2020.
2. The Superintendent Central Prison Mardan for information.
3. The District Account Officer Mardan for information.
4. The appellatant concerned C/O Superintendent Headquarter Prison Mardan for information.

11/8
**ASSISTANT DIRECTOR
INSPECTORATE GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.**

*Received on
9/10/2020*

11/8/2020

Rul

[Signature]

10/11/2022 DB Push (T)

is (O)

~~Sajad Khan - Ashfaq~~

~~28/3/2019~~

~~Bazir Akram - Arque bin Saif~~

Appointed 3/10/2019.

Terminated 2/7/2020

D.A/

Rejected.

Revised.

S.A

18/2/2020

9/10/2020

26/10/2020

absence

15/3/2020

To 29/7/2020



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 242 /ST

Dated: 01/02 /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,
Government of Khyber Pakhtunkhwa,
Mardan.

Subject: JUDGMENT IN APPEAL NO. 12883/2020 MST. RUKHASANA.

I am directed to forward herewith a certified copy of Judgement dated 10.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR