

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.10009/2020

Date of Institution ... 02.09.2020
Date of Decision ... 30.06.2022

Atif Ullah S/O Mir Tawal Khan Ex-Warder, Circle Head Quarter, Prison
Mardan. R/O Mattaki Bizenkhel, F.R Bannu.

... (Appellant)

VERSUS

Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar and
two others.

... (Respondents)

Bashir Khan Wazir,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

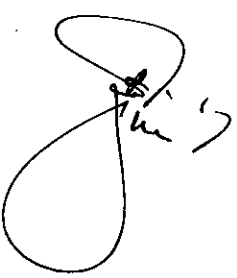
Salah-Ud-Din
Rozina Rehman

... Member (J)
... Member (J)

JUDGMENT

ROZINA REHMAN, MEMBER(J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the
prayer as copied below:

**"On acceptance of this appeal the order dated
14.05.2020 and order dated 07.08.2020 being illegal,
unlawful, without lawful authority and void ab-initio in
the eyes of law, may please be set aside and the
appellant may kindly be reinstated into service with all
back benefits".**



2. Brief facts of the case are that appellant was appointed as Jail Warder BS-5 after fulfillment of all codal formalities and on the recommendation of Departmental Selection Committee; that his wife was seriously ill and was hospitalized being in critical situation, he, therefore, made request for leave which was verbally considered and he was asked to leave. During the course of treatment of his wife, he wanted to resume his duty but he was refused and he was proceeded against departmentally but without serving upon him charge sheet and without conducting any inquiry. When he came to know about his termination order, he filed departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Bashir Khan Wazir, Advocate learned counsel for the appellant and Kabir Ullah Khattak, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Bashir Khan Wazir Advocate, learned counsel for the appellant argued inter alia that the appellant was not treated in accordance with law hence his rights secured and guaranteed under the law and Constitution were badly violated. He submitted that the impugned order is against law, facts and norms of natural justice as he never committed misconduct and the proceedings conducted against him are thus illegal and unlawful. It was further submitted that no proper procedure was followed by the respondents before termination order as the appellant was never associated with the inquiry proceedings and the statement of witnesses, if any, were never recorded in presence of appellant and he was never afforded any opportunity of cross-examination. He contended that in case of major penalty, where



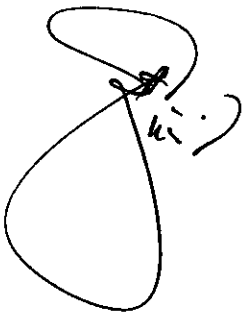
serious allegations are made, a regular inquiry is a must but in the instant case, no inquiry was conducted and the appellant was condemned unheard as no chance of personal hearing was afforded.

5. Conversely, learned AAG submitted that soon after his appointment, the conduct of appellant remained unsatisfactory during probation period. Being in probation period, he violated the terms & condition of his service and he was therefore, terminated from service by violating the terms & condition of service as well as Khyber Pakhtunkhwa Prisons Rules, 2018.

6. From the record it is evident that upon the recommendation of Departmental Selection Committee, appellant was appointed against the post of Warder (BPS-05) in the Khyber Pakhtunkhwa Prisons Department vide appointment order dated 08.10.2019. It is on record that he was very much present for duty on 24.03.2020 when he received a call in respect of the illness of his wife. Relevant documents in respect of ailment of his wife are available on file and the same were never objected to by the respondent Department in their comments. No doubt, as per Prisons Rules, no subordinate officer shall be absent from the prison premises without the permission of Deputy Superintendent. However, whenever any subordinate officer is at any time prevented by sudden illness or other unavoidable cause, from attending the prison or performing his duties, he shall forthwith give notice to the Superintendent alongwith his reasons for absence. The appellant also tried to inform but he failed in getting proper permission consequently, services of the appellant were terminated from the date of absence for unsatisfactory



work/conduct/willful absence from duty w.e.f 24.03.2020 to 14.05.2020 vide order of Superintendent Circle Headquarters, Prisons Mardan dated 14.05.2020. From the above order of termination, it is evident that three different allegations were leveled against appellant. The first is unsatisfactory work of the appellant but no performance indicator was shown that the appellant's performance was not good. Neither any show cause notice or explanation or any warning administered to the appellant for unsatisfactory work was ever produced before this Bench. Similarly, no documentary evidence was produced in respect of unsatisfactory conduct of the appellant. The third charge was his willful absence from duty w.e.f 24.03.2020 to 14.05.2020 for which the appellant produced medical record of his wife which was not taken into consideration by the competent authority. It merits to mention here that absence notice was issued by the Superintendent Circle Headquarter Prison Mardan bearing endorsement No.512/13 dated 06.04.2020 directing the appellant to report to Central Prison Mardan within 15 days. This absence notice was properly replied by the respondent and the reply has been annexed by the respondents with their comments. The appellant was charged for willful absence and Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides procedure in case of willful absence. In the instant case, notice was issued by the competent authority and the appellant replied the same well within time, therefore, in view of his reply, major penalty could not be imposed upon appellant in the circumstances. As per law, on receipt of reply of the accused or on expiry of the stipulated period, if



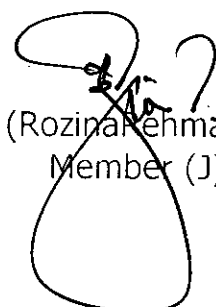
no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness. In the instant case, a strange order was passed by the competent authority without affording any opportunity of personal hearing to the appellant. His departmental appeal also met the same fate. His service record in shape of comments on the annotated format on behalf of the Superintendent Circle Headquarter Prison Mardan are also available on file which shows that except one entry in respect of three days leave, there is nothing which could show that his performance was unsatisfactory or that he was habitual absentee or that he is incorrigible.

7. The punishment in the instant case in shape of termination for 45 days absence is harsh, therefore, we allow this appeal, reinstate the appellant and convert the punishment into stoppage of one year increment without cumulative effect. The entire period of absence is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
30.06.2022



(Salah-ud-Din)
Member (J)



(Rozina Rehman)
Member (J)

7-3-22 Due to Retirement of the Hon^{ble}
Chairman the case is adjourned on
30-6-22

Y. Ullah
Redder

ORDER

30.06.2022

Appellant present through counsel.

Kabir Ullah Khattak, Additional Advocate General for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of today of this Tribunal placed on file, we allow this appeal, reinstate the appellant and convert the punishment into stoppage of one year increment without cumulative effect. The entire period of absence is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

30.06.2022



(Salah Ud Din)
Member (J)



(Rozina Rehman)
Member (J)

10009/2020

01.07.2021 Junior to counsel for the appellant present.
Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 15.11.2021 before the D.B.

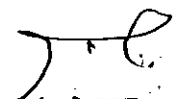
Appellant Deposited
Security & Process Fee

27/07/21


Chairman

15.11.2021 Clerk of learned counsel for the appellant present. Mr. Suleman, Senior Instructor alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Reply/comments on behalf of respondents submitted, which is placed on file and copy of the same is handed over to clerk of learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments before the D.B on 07.03.2022.


(Salah-Ud-Din)
Member (J)

24.12.2020

Counsel for the appellant present.

Requests for time to further prepare the brief and also to bring on record some more documents relevant for the purpose of instant appeal.

Adjourned to 18.03.2021 before S.B.



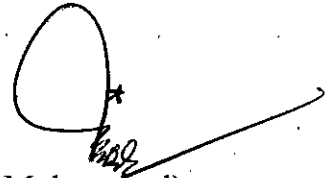
Chairman

18.03.2021

Junior to counsel for the appellant present.

Former requests for adjournment as learned senior counsel is not available today.

Adjourned to 01.07.2021 for preliminary hearing, before S.B.



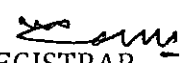

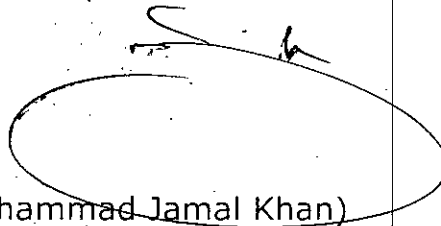
(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 10009 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/09/2020	<p>The appeal of Mr. Atifullah presented today by Mr. Bashir Khan Wazir 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-	19.10.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/10/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>The legal fraternity is observing strike today, therefore, the case is adjourned to 24.12.2020 on which date to come up for preliminary hearing before S.B.</p> <p style="text-align: right;"> (Muhammad Jamal Khan) Member (Judicial)</p>

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BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PUKHTOON
KHWA PESHAWAR

Service Appeal No _____/2020

Atif UllahAppellant

VERSUS

Inspector General of Prison,


Khyber Pakhtunkhwa Peshawar & othes.....Respondents

I N D E X

S#	Description of Documents	Annex	Pages
1.	Service Appeal		1-9
2.	Affidavit		10
3.	Addresses of parties		11
4.	Copy of Appointment Order	"A"	12-14
5.	copies of medical report	"B"	15-25
6.	Copy of termination order dated 14.05.2020	"C"	26-
7.	copy of the departmental appeal along with better copy of Decision	"D"	27-30
8.	Wakalatnama		31


Appellant

Through


BASHIR KHAN WAZIR,
Advocate,
High court Peshawar.

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PUKHTOON

KHWA PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9406

Service Appeal No 100009 /2020

Dated 08/19/2020

Atif Ullah S/o Mir Tawal Khan Ex-Warder, Circle Head
Quarter, Prison Mardan. R/o Mattaki Bizenkhel, F.R
Bannu.....(Appellant)

VERSUS

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

(Respondents)

Filed to-day
Registrar
2/9/2020

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974,
AGAINST THE ORDER DATED .14.05.2020,
WHEREBY THE APPELLANT HAS BEEN TERMINATED
FROM SERVICE, DUE TO ABSENCE FROM DUTY,
THEREAFTER, THE APPELLANT FILLED
DEPARTMENTAL APPEAL TO THE APPELLAT
AUTHORITY I.E RESPONDENT NO.1 WHICH HAS
FINALLY BEEN REJECTED VIDE DATED 07.08.2020.

Prayer in Appeal: -

On acceptance of this appeal the order dated 14.05.2020, , & order dated, 07.08.2020, being illegal, unlawful, without lawful authority and void ab-initio in the eyes of law, may please be set aside and the appellant may kindly be reinstated into service with all back benefits.

Respectfully Submitted:

1. That the appellant was appointed as Jail Warder BPS-5 by the respondents after fulfillment of all coddle formalities and on the recommendation of Departmental Selection Committee. The appellant also served for sufficient time in respondents department. (Copy of Appointment Order is attached as annexure "A")
2. That ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance.
3. That the wife of appellant was seriously sick and was hospitalized being in critical situation, as the appellant was the only person who was responsible for look after of his wife, that's why he had made request for leave to his high ups, which

was verbally considered and made assurance that the wife of the appellant is in critical situation he may left the duty, the appellant while left his duty on the verbal permission of his high ups, whereas the Doctor had admitted, and the wife of appellant was put under observations for sufficient time, due to which the appellant remained absent from duty, due to the said unavoidable reason, moreover the appellant during this period requested for leave, but the same has not been ever considered by the respondents. (copies of medical report is attached as annexure "B")

4. That during the course of treatment of the wife of appellant, the appellant visited to his place of duty and went to assume his duty, regardless of the fact that his wife was in critical situation and he has produced the medical report of consultant, but the respondent no. 2 refused to honour his request and he has been directed for leaving of duty and even did not hear the request of the appellant, after few days the respondent no.2 had been issued the impugned termination order of the appellant. (Copy of termination order dated 14.05.2020 is attached as annexure "C")

5. That the appellant was proceeded against departmentally and without serving upon him a charge sheet and without conducting of even inquiry, the appellant was ordered to be terminated from service.

6. The appellant after got the knowledge in respect of his termination order, visited to the office of high ups/respondents against the impugned termination order and submitted a departmental appeal on the genuine reason of his wife situation for withdrawal of impugned order, however the respondents even not considered the medical ground of his wife and rejected the departmental appeal on dated 07/08/2020. And upheld the illegal termination order as intact. (copy of the departmental appeal along with better copy is attached as annexure "D")

7. That without properly allowing opportunity of defense to the appellant, and without considering his defense statement; and also the reason of appellant absentees due to the above mentioned reasons, and even the departmental appeal of the appellant being not considered which has been rejected by the appellate authority.

8. That the appellant feeling aggrieved from orders impugned are illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUND OF APPEAL

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law and constitution is badly violated.
- B. That the appellant has never involved himself in any commission or omission that could be termed as misconduct, and the proceedings conducted against him are thus illegal and unlawful.
- C. That no proper procedure has been followed before awarding the termination order from Service to the appellant, no proper inquiry has been conducted, the appellant has not been properly associated with the inquiry proceedings, statements of witnesses if any were never recorded in presence of the appellant nor he has been allowed opportunity of cross examination, thus the whole proceedings were defective in the eyes of law and the impugned order of dismissal from service being based on such

defective proceedings, is thus liable to be set at naught on this score alone.

D. That no full fledge inquiry was contemplated, held it is well settled principle of law that in case of awarding major punishment, a proper inquiry is to be conducted an accordance with law where a full opportunity of defense is to be provided to the delinquent officer as according to rules its clearly stipulates that in case of charge which has been defined in section 3 of dismissal from service ordinance 2000, a full fledge inquiry is to be conducted which admittedly has not been done in this case. Case relied upon PLJ 2005 SC 113.

E. That it is a well settled principle, that in case of major penalty where serious allegations were made and same were denied by the employee, a regular inquiry into the allegations, was absolutely necessary and a final notice had also to be issued and employee had to be given a chance of personal hearing. Such having not been done in case of the appellant, penalty of termination from service could not be imposed, impugned order of termination from service, without holding regular inquiry, without showing final show cause notice and also without.

giving appellant an opportunity of hearing, could not be maintained.

F. That the appellant has not been provided proper opportunity of personal hearing thus he has been condemned unheard.

G. That even neither any enquiry has been conducted nor the appellant has ever been associated in any enquiry in respect of allegation leveled against the appellant regarding the absence from duty, inspite of the fact that the appellant wife was seriously been sick and the doctor prescribed medicine in first round and thereafter, put under observations, the appellant presence was necessary with her, as the appellant had already been submitted his request for leave and the respondents initially made assurance, but subsequently he has been penalized and without considering of his unavoidable reasons mentioned above terminated from service, the subsequent termination order is amount to a ridiculous act of the respondents, liable to be set aside.

H. That the reason given in the rejection order, therefore it was required to have fully probe the matter and given opportunity to the appellant. There was no question of limitation involved in the case thus the

Honorable Appellate Authority has completely gone on wrong presumption while giving such reasons for rejection of appeal of the appellant.


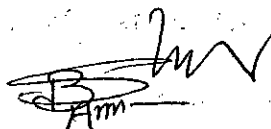
- I. That the appellant has never committed any act or omission which could be termed as misconduct, he had performed his duties and have showed no dereliction from duty, but has been awarded major punishment of removal from service.

- J. That it is much important to see the order of termination of the appellant issued by the respondent no.2, without adopting of proper procedure of E&D rules and ordinance prior to the issuance of termination order, which is mandatory and every delinquent after being given proper opportunity of hearing could be punished, on this score alone the impugned order of termination issued by the respondents is illegal, unlawful and void ab-initio, liable to be set aside.

- K. That the appellant has at his credit the qualification for the post and has since undergone the necessary recruit courses is thus a qualified person, moreover he is young and energetic and wants to serve for the department, but his termination from service has deprived him of his lively hood.

- L. That under the circumstance of the case the Penalty of termination from service is too harsh and is liable to be set aside.
- M. That the appellant is jobless since the imposition of illegal penalty upon him.
- N. That the appellant seeks permission of this Honourable Tribunal to rely on additional grounds at the hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned termination order dated 14.05.2020, & thereafter, order dated, 07.08.2020, whereby the departmental appeal of the appellant has been rejected, being illegal, unlawful, without lawful authority and void ab-initio in the eyes of law, may please be set aside and the appellant may kindly be reinstated into service with all back benefits.

Through  Appellant

BASHIR KHAN WAZIR,
 Advocates,
 High court Peshawar.

10

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PUKHTOON
KHWA PESHAWAR

Service Appeal No _____/2020

Atif UllahAppellant

VERSUS

Inspector General of Prison,
Khyber Pakhtunkhwa Peshawar & othes.....Respondents

AFFIDAVIT

I, Atif Ullah S/o Mir Tawal Khan Ex-Warder, Circle Head Quarter, Prison Mardan. R/o Mattaki Bizenkhel, F.R Bannu, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal of delay are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.


DEPONENT

D

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PUKHTOON
KHWA PESHAWAR

Service Appeal No _____/2020

Atif UllahAppellant

VERSUS

Inspector General of Prison,

Khyber Pakhtunkhwa Peshawar & othes.....Respondents

ADDRESSES OF PARTIES

APPELLANT


Atif Ullah S/o Mir Tawal Khan Ex-Warder, Circle Head Quarter,
Prison Mardan. R/o Mattaki Bizenkhel, F.R Bannu

RESPONDENTS

1. Atif Ullah S/o Mir Tawal Khan Ex-Warder, Circle Head Quarter, Prison Mardan. R/o Mattaki Bizenkhel, F.R Bannu
Inspector General of Prison, Khyber Pakhtunkhwa Peshawar.
2. Superintendent of Circle, Headquarters Prison, Mardan.
3. Superintendent of Headquarters Prison, Peshawar.


Appellant

Through


BASHIR KHAN WAZIR,
Advocate,
High court Peshawar.

HEADQUARTERS PESHAWAR

OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No: 1369-1457 P/B Dt: 08/10/2019

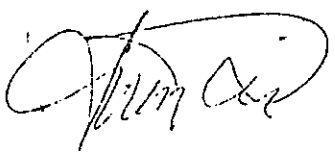
OFFER OF APPOINTMENT

Upon recommendation of the Departmental Selection Committee, the below noted candidates of Zone-1 are hereby appointed against the post of Warders (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:

S#	Name	Father Name	Domicile District	Place of Posting
1.	Shahid Ullah	Walayat Khan	Khyber	Central Prison Mardan
2.	Abdul Wasai	Yardil Khan	FR(Peshawar)	Central Prison Mardan
3.	Gul Nawaz Khan	Gul Wazir Khan	Khyber	Central Prison Mardan
4.	Ihsan Ullah	Amanullah	Khyber	Central Prison Mardan
5.	Muhammad Arif	Hakeem Khan	Khyber	Central Prison Mardan
6.	Sadam Hussain	Gherat Gul	Khyber	Central Prison Mardan
7.	Abdul Aziz	Aurang Zeb	Khyber	Central Prison Mardan
8.	Muhammad Tayyab	Mastan Shah	Khyber	Central Prison Mardan
9.	Ashaal Usman	Said Mian Gul	Khyber	Central Prison Mardan
10.	Adil Khan	Laiq Shah	FR Peshawar	Central Prison Mardan
11.	Iqbal Ullah	Muhammad Salim	Khyber	Central Prison Mardan
12.	Samar Khan	Said Wazir Khan	Khyber	Central Prison Mardan
13.	Inayat Shah	Ziaraat Shah	Khyber	Central Prison Mardan
14.	Muhammad Amin	Speen Gul	Khyber	Central Prison Mardan
15.	Nisar Muhammad	Janat Gul	Khyber	Central Prison Mardan
16.	Samir Jan	Qismai Khan	Khyber	Central Prison Mardan
17.	Imran Khan	Abdul Haq	Khyber	Central Prison Mardan
18.	Rehman Ullah	Falak Sher	FR Bannu	Central Prison Mardan
19.	Abrar Khan	Ajmal Khan	FR Bannu	Central Prison Mardan
20.	Younas Wali	Surat Wali	FR(Banu)	Central Prison Mardan
21.	Dial Khan	Nazeer Jan	Khyber	Central Prison Mardan
22.	Wahid Ali	Sher Zali Khan	FR(Banu)	Central Prison Mardan
23.	Fahir Ullah	Khalil Rahman	FR(Banu)	Central Prison Mardan
24.	Umar Sadeen	Amal Gul	FR Peshawar	Central Prison Mardan
25.	Ali Ullah	Mir Tawal Khan	FR Bannu	Central Prison Mardan
26.	Asad Ullah	Muhammad Raza Khan	FR(Banu)	Central Prison Mardan
27.	Fida Mubaramad	Haider Khan	FR Bannu	Central Prison Mardan
28.	Muhammad Kamran	Sheikh Farid	FR(Banu)	Central Prison Mardan
29.	Basoor Ahmad Afridi	Stalabad Shah	Khyber	Central Prison Mardan
30.	Haseer Khan	Anwar Shah	Khyber Agency	Central Prison Mardan
31.	Shahid Khan	Taj Muhammad	Khyber	Central Prison Mardan
32.	Haroon Rasheed	Arman Gul	Khyber	Central Prison Mardan
33.	Anir Khan	Jan Alam	Khyber	Central Prison Mardan
34.	Haseeb Khan	Sarfaz Khan	Khyber	Central Prison Mardan
35.	Munir Mansoor	Mansoor Khan	FR Bannu	Central Prison Mardan
36.	Sadiq Ullah Khan	Muhammad Noorani	FR(Banu)	Central Prison Mardan
37.	Irfan Khan	Khurshid Ahmad	Bajaur	Central Prison Mardan
38.	Alamgir Khan	Afsar Khan	Khyber	Central Prison Mardan
39.	Nadir Khan	Farooq Khan	Khyber	Central Prison Mardan
40.	Waqar Ahmad	Akbar Hussain	Khyber	Central Prison Mardan
41.	Nasim Ullah	Naqib Ullah Khan	FR(Banu)	Central Prison Mardan
42.	Sami Ullah	Gulbaz Khan	FR Bannu	Central Prison Mardan
43.	Adnan Khan	Zafar Ali	Khyber	Central Prison Mardan
44.	Shamsur Rehman	Mir Shahbaz Khan	FR(Banu)	Central Prison Mardan
45.	Muhammad Fawad	Muhammad Saleem	FR Peshawar	Central Prison Mardan
46.	Selim Ullah	Gul Nawaz	FR(Banu)	Central Prison Mardan
47.	Muqadder Khan	Tawas Khan	Khyber	Central Prison Mardan
48.	Sadiq Khan	Khad Gul	FR Bannu	Central Prison Mardan
49.	Ghazal Khan	Zahir Khan	Khyber	Central Prison Mardan
50.	Mirza Md Din	Samir Zada	Bajaur	Central Prison Mardan
51.	Asif Ullah Khan	Mashra Khan	FR Bannu	Central Prison Mardan
52.	Zia ur Rehman	Semant Khan	FR Peshawar	Central Prison Mardan
53.	Islam Nabi	Muhammad Afzal	Khyber	Central Prison Mardan

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OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No: _____ P/B Dt: 08/10/2019

13

S#	Name	Father Name	Domicile District	Place of Posting
54.	Suliman Khan	Shah Jehan	Bajaur	Central Prison Mardan
55.	Usman Khan	Mirafzal Khan	Bajaur	Central Prison Mardan
56.	Arshad Khan	Khaista Gul	FR Peshawar	Central Prison Mardan
57.	Fazal Wahid	Sultan Zaib	Bajaur	Central Prison Mardan
58.	Shafiq Khan	Sharbat Khan	Khyber	Central Prison Mardan
59.	Naheed Ullah	Hameed Ullah	FR Bannu	Central Prison Mardan
60.	Fida Hussain	Mir Hashim Khan	FR(Banu)	Central Prison Mardan
61.	Pir Muhammad Khan	Muhammad Yousaf	Bajaur	Central Prison Mardan
62.	Nasir Usman	Muhammad Usman	FR Bannu	Central Prison Mardan
63.	Bilal Khan	Qabel Khan	FR(Banu)	Central Prison Mardan
64.	Anees Afridi	Khial Zada	Khyber	Central Prison Mardan
65.	Adil Khan	Mir Daraz Khan	FR(Banu)	Central Prison Mardan
66.	Muhammad Tahir	Noor Must Khan	Khyber	Central Prison Mardan
67.	Kaleem Ullah Afridi	M. Jabeen Afridi	Khyber	Central Prison Mardan
68.	Imran Yousaf	Abdul Shakoor	Bajaur	Central Prison Mardan
69.	Muhammad Shuaib	Humayun Shah	FR Peshawar	Central Prison Mardan
70.	Qismat Ullah	Sher Daud	FR(Banu)	Central Prison Mardan
71.	Younas Khan	Muhamamd Rahim	Bajaur	Central Prison Mardan
72.	Saif Ullah	Balqiaz Khan	FR(Banu)	Central Prison Mardan
73.	Muhammad Kaffi	Muhammad Afzal Khan	Khyber	Central Prison Mardan
74.	Zahir Zaman	Muhammad Ilyas Khan	FR(Banu)	Central Prison Mardan
75.	Mahboob Ur Rehman	Mir Qad Ayaz Khan	FR(Banu)	Central Prison Mardan
76.	Nusrat Shah	Maqbool Shah	Khyber	Central Prison Mardan
77.	Aman Ullah	Haji Gul Marjan	Khyber	Central Prison Mardan
78.	Fayaz Uddin	Muhammad Yousaf	Bajaur	Central Prison Mardan
79.	Abdullah Noor	Dil Nawaz Khan	FR Bannu	Central Prison Mardan
80.	Zekriya Khan	Qamar Ali Khan	FR Bannu	Central Prison Mardan
81.	Niaz Ullah	Iqbal Khan	FR(Banu)	Central Prison Mardan
82.	Tarig Jamil	Abdul Samad Khan	FR(Banu)	Central Prison Mardan
83.	Shahab Ud Din	Sharaf Din	Khyber	Central Prison Mardan
84.	Adnan	Akher Zaman	FR Bannu	Central Prison Mardan
85.	Khan Ghani	Muhammad Umar	Khyber	Central Prison Mardan
86.	Fakhar Zaman	Muhammad Anwar Khan	FR Bannu	Central Prison Mardan
87.	Muhammad Tahir	Gul Hameer	FR(Peshawar)	Central Prison Mardan
88.	Abdul Jalil	Noor Mast Khan	Khyber	Central Prison Mardan
89.	Shah Niaz	Inar Gul	FR Bannu	Central Prison Mardan

TERMS & CONDITIONS

- 1- Their appointment will take effect from the date of joining duty at their place of posting.
- 2- Their appointment is purely temporary and their 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 them for joining first appointment.
- 4- In case they wish to resign at any time they will give one month notice OR in lieu thereof one month's pay will be forfeited from them subject to the discretion of the competent authority in public interest and will leave the service after acceptance of their resignation.
- 5- Their appointment is subject to Medical fitness for Government Service.
- 6- They will be eligible for continuance on the post if their work and conduct remained satisfactory during the period of their temporary appointment provided the vacancy against which they have been appointed continues.
- 7- They will be on probation for a period of one year extendable upto another year. During probation period their services will be terminated if their work and conduct is not found satisfactory OR the vacancy ceases to exist.
- 8- They will be liable to serve anywhere in the Prisons Department of Khyber Pakhtunkhwa.
- 9- For all other purposes such as Pny, T.A and Medical Attendance etc; they 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 they will belong.
- 10- They 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.



Next page...

OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No: _____ P/B Dt: 08/10/2019

14

- 11- Their service will be liable to termination / reversion at any stage if their Academic Certificates / Degrees (if any), CNIC, Domicile etc; are found fake, their services will be considered as terminated automatically and FIR will be lodged against them.
- 12- Their salary will be released after making proper verification of their antecedents/ character roll, Domicile, and Academic Qualification Certificates / Degrees etc; from the quarter concerned by the jail of their first posting. Moreover, if any verification charges are involved on this account, the same will be paid by the appointees.
- 13- If they accept the appointment on the above cited terms and conditions, they should report to the **Superintendent Central Prison Mardan** within 30 (Thirty) days of the receipt of this offer of appointment at their own expense. In case they fail to join duty within the same period, the offer of appointment will be treated as cancelled /withdrawn.

- sd -
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Endorsement No: 1458-61 /

Copy of the above is forwarded to:-

- 1- The Superintendent Circle Headquarters Prison Mardan.
- 2- **The Superintendent Central Prison Mardan** for information. On arrival of the above named appointees, an undertaking should be taken on judicial stamp paper from them to the effect that they have accepted all terms and conditions contained in the offer of their appointment and submitted to Headquarters office for record. **The condition No. 12 may be fulfilled before releasing their salaries within shortest possible time.**
- 3- The District Account Officer Mardan for information & further necessary action.
- 4- Appointees concerned.

Wahid
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
E-mail: hqprisonpeshawar@gmail.com

Act
[Signature]

مدینہ کلر الشرا سوانڈ سنٹر



15

Dr. Rehana Alam Zeb

M.B.B.S (Lahore)

Ultrasound Specialist

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital Bannu)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O (MNCH) Bannu



ڈاکٹر ریحانہ عالم زیب

الٹراساؤنڈ سپیشلسٹ ایم۔ بی۔ بی۔ ایس (لاہور)

سابقہ ڈبلیو ایم، او UNHCR

سابقہ ڈبلیو ایم، او مشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو ایم، او MNCH بنوں

Pt. Name

حلمہ

Ref by

Date 2020-03-08

PG n 36/5K R

BREECH

Temp

Pulse

B.P.

Wt:

110 / 70 - 41
53 kg

تھریڈ ہارڈ کورڈس
کروا رہی

Complaints:

PG n 36/5K R

suprapubic

Pain

Dysuria

4504

Metrogil

4504

Zenicare

4504

4504

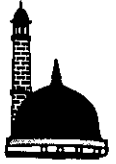
4504

رابطہ نمبر: ڈاکٹر: 0336-9485500

پتہ: زنانہ ہسپتال روڈ بالمقابل ڈاکٹر غنی کلینک بنوں شہ

Atc

مدینہ کلر الٹرا سونڈ سینٹر



Dr. Rehana Azeem Zeb

(Ultrasound Specialist) MBBS (Lahore)

Ex. W.M.O. (UNICEF)

Ex. W.M.O. (Mission Hospital, Dera)

Ex. Medical Officer (Ministry of Health, MALAYSIA)

W.M.O. (NIGERIA)



ڈاکٹر ریحانہ اعجازی

الٹراساؤنڈ سپیشلسٹ ایم. بی. بی. ایس (لاہور)

سابقہ ڈبلیو ایم او، UNHCR

سابقہ ڈبلیو ایم او، میشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو ایم او، MNCH بنوں

P. Name _____

Ref. By Self

Date 28-3-2020

BIOPHYSICS ULTRA SOUND

No. of fetus 1 / Alive / Breed. / Mab

Fetal sex Male

Fetal weight 3.5 kg

Fetal length 45 cm

Fetal head 10 cm

Fetal chest 10 cm

Fetal abdomen 10 cm High No Provs

Fetal position Transverse for this Gest. Li

BIO PHYSICIAN NAME

Name _____

Signature _____

Date _____

Time _____

Place _____

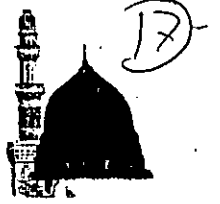
مگر ہم کسی نہ کوئی
بیمہ اسٹاپ ہے ہمیں
کی ضرورت ہے

2020-3-28

پتہ: زنانہ ہسپتال روڈ بالماقبل ڈاکٹر غنی کلینک بنوں سٹی

AKK
JK

مدینہ کلر الٹرا ساؤنڈ سنٹر



Dr. Rehana Alam Zeb

M.B.B.S (Lahore)

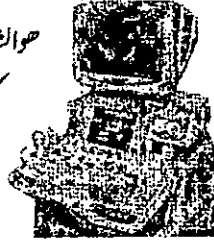
Ultrasound Specialist

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital Bannu)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O (MNCH) Bannu



ڈاکٹر ریحانہ عالم زیب

الٹراساؤنڈ سپیشلسٹ ایم۔ بی۔ بی۔ ایس (لاہور)

سابقہ ڈبلیو، ایم، او UNHCR

سابقہ ڈبلیو، ایم، او میشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو، ایم، او MNCH بنوں

Pt. Name

Ref by

Date 1-3-2022

PG @ 8 months Rx

Temp

No.

Pulse

B.P.

110/70 mmHg

Wt:

51 kg

Complaints:

→ Preg for

ANC.

→ لمبا سجدہ کریں

→ walk کریں



→ cap. Sarpolun

① ①

→ 96. oss. ba. 11

① ①

→ Dijes M.P.

2+1

Handwritten signature

رابطہ نمبر: ڈاکٹر: 0336-9485500

پتہ: زنانہ ہسپتال روڈ بالمقابل ڈاکٹر غنی کلینک بنوں سٹی

Aeu

Handwritten signature

مدینہ کلر ایئر اسائونڈ سنٹر



18

Dr. Rehana Alam Zeb

M.B.B.S. (Lahore)

(Ultrasound Specialist)

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital BANNU)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O. MNCH BANNU



ڈاکٹر ریحانہ عالم زیب

التراساؤنڈ سپیشلسٹ ایم، بی، ایس (لاہور)

سابقہ ڈبلیو، ایم، او، اے UNHCR

سابقہ ڈبلیو، ایم، او، اے مین ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو، ایم، او، اے MNCH بنوں

P.Name

حلیمہ عیوبہ اللہ

Ref. By

Date

22-03-2020

OBSTETRICS ULTRA SOUND

No. of Foetuses / G. Sac :-

Single / Alm / Breech / ~~Moh~~

F.Heart: (+)

C.R.L:

B.P.D:

FL:

Gest Age:

Placenta:

Amniotic Fluid:

73.7 mm
63.1 mm
32 / Wks.
Posterior / Low
Adequate

E.D.D.
22-04-2020
~~22-04-2020~~

BIO PHYSICAL PROFILE

Heart:

G.B.M:

Tone:

Liquor:

Resp:

بازرسی کی گئی ہے
بازرسی کی جا رہی ہے

ڈاکٹر: 0336-9485500



پتہ: زنانہ ہسپتال روڈ بالقابل ڈاکٹر غنی کلینک بنوں سٹی

Handwritten signature

مدینہ کلر الٹرا سائونڈ سنٹر

19



Dr. Rehana Alam Zeb

M.B.B.S (Lahore)

Ultrasound Specialist

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital Bannu)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O (MNCH) Bannu



ڈاکٹر ریحانہ عالم زب

الٹراساؤنڈ سپیشلسٹ ایم۔ بی۔ بی۔ ایس (لاہور)

سابقہ ڈبلیو، ایم، او UNHCR

سابقہ ڈبلیو، ایم، او مشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو، ایم، او MNCH بنوں

Pt. Name

حلمہ عارف

Ref by

Date 20-12-20

24 months

مرحہ صاف جسم کریں

Temp

Pulse

B.P. 110/70/44

Wt: 49.1 kg

Complaints:

→ Preop
→ Abdi pain
→ In di ges Au
→ دل پر لو ڈھ ہونا
→

→ 430i Sockt.
2010
→ cap. Jefe! vi-
① ②
→ To. Absc!
① ②

(Signature)

رابطہ نمبر: ڈاکٹر: 0336-9485500

پتہ: زنانہ ہسپتال روڈ بالمقابل ڈاکٹر غنی کلینک بنوں سٹی

(Signature)

مدینہ کلر الٹراساؤنڈ سنٹر



20

Dr. Rehana Alam Zeb

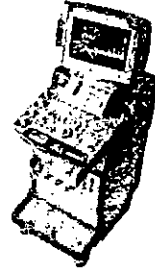
(Ultrasound Specialist) M.B.B.S. (Lahore)

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital BANNU)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O. MNCH BANNU



ڈاکٹر ریحانہ عالم زیب

الٹراساؤنڈ سپیشلسٹ ایم. بی. بی. ایس (لاہور)

سابقہ ڈبلیو ایم او UNHCR

سابقہ ڈبلیو ایم او مشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو ایم او MNCH بنوں

P.Name حلمہ / عاتقہ اللہ

Ref. By Self

Date 20-12-2019

OBSTETRICS ULTRA SOUND

No. of Foetuses / G. Sac :

Single / Alive / Cephalic / ♂

F.Heart: +

C.R.L:

B.P.D: 48.0 mm

FL: 33 mm

Gest Age: 20/Week

Placenta: Posterior - Low lying

Amniotic Fluid: Adequate

END.

29-4-2020

BIO PHYSICAL PROFILE

Heart:

G.B.M:

Tone:

Liquor:

Resp:

ڈاکٹر: 0336-9485500

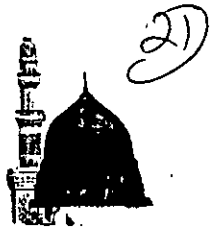


پتہ: زنانہ ہسپتال روڈ بالمقابل ڈاکٹر غنی کلینک بنوں سٹی

At

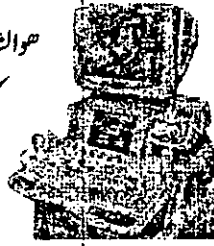
R

مدینہ کلر الشرا ہاؤس سینٹر



Dr. Rehana Alam Zeb

M.B.B.S (Lahore)



ڈاکٹر ریحانہ عالم زب

الٹراساؤنڈ سپیشلسٹ ایم۔ بی۔ بی۔ ایس (لاہور)

سابقہ ڈبلیو ایم او UNHCR

سابقہ ڈبلیو ایم او مشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو ایم او MNCH بنوں

Ultrasound Specialist

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital Bannu)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O (MNCH) Bannu

Pt. Name

حلمہ عارف

Ref by

Date 24-4-2022

P 40 Tem

Rx

Temp

Pulse

B.P. 120/80 L-44

Wt: 55 kg

Complaints:

for Ant-NcL
check up

cx. anterior
/v: os: soft-admit
tip of finger
Head, ↓↓

گھٹا
Rt + 9p + 2000
- Hb
- Hcv, Hbs
- HIV
صفر درجہ میں
روسنہ ڈاکٹر
ڈبلیو ایم او

75. Spes

25 + 2 + 2 + 2

Lilloe: S

11 جولائی 2022

12 بجے لائی گئی

رابطہ نمبر: ڈاکٹر: 0336-9485500

پتہ: زرنانہ ہسپتال روڈ بال مقابل ڈاکٹر غنی کلینک بنوں سٹی

Atc
R

مدینہ کلر الٹراساؤنڈ سنٹر



Dr. Rehana Alam Zeb

M.B.B.S. (Lahore)

(Ultrasound Specialist)

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital BANNU)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O. MNCH BANNU



ڈاکٹر ریحانہ عالم زب

الٹراساؤنڈ سپیشلسٹ ایم. بی. بی. ایس (لاہور)

سابقہ ڈبلیو ایم اور UNHCR

سابقہ ڈبلیو ایم اور مشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو ایم اور MNCH بنوں

P.Name

حلمہ عاتقہ اللہ

Ref. By

So/-

Date

24-4-2020

OBSTETRICS ULTRA SOUND

No. of Foetuses / Sex :- *Single / Abw / cephalic / Male*

F.Heart: (+)

C.R.L:

R.P.D: 99.5 mm

FL: 78.6 mm

Gest Age: 40 / wk +

Placenta: Fundo - Posterior

Amniotic Fluid: Adequate

EDD.

24-4-2020

BIO PHYSICAL PROFILE

Heart:

G.B.M:

Tone:

Liquor:

Resp:

ڈاکٹر: 0336-9485500



پتہ: زنانہ ہسپتال روڈ بالمقابل ڈاکٹر غنی کلینک بنوں شی

Acc
R

مدینہ کلر الٹراساؤنڈ سنٹر



23

Dr. Rehana Alam Zeb

M.B.B.S. (Lahore)

(Ultrasound Specialist)

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital BANNU)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O. MNCH BANNU



ڈاکٹر ریحانہ عالم زبیب

الٹراساؤنڈ سپیشلسٹ ایم. بی. بی. ایس (لاہور)

سابقہ ڈبلیو ایم او UNHCR

سابقہ ڈبلیو ایم او میشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو ایم او MNCH بنوں

P.Name

Halima Aatif

Ref. By

Date

28-1-2020

OBSTETRICS ULTRA SOUND

No. of Foetuses / G. Sac :

Single / Plm / Breech

F.Heart:

(+)

C.R.L:

B.P.D: 65.5 mm

FL: 48.9 mm

Gest Age: 26 / Wk - 3 / days

Placenta: Posterior - low lying

Amniotic Fluid: Adequate

20-4-2020

BIO PHYSICAL PROFILE

Heart:

G.B.M:

Tone:

Liquor:

Resp:

موجودہ حوالی
Regularly استعمال کریں۔
باجا عدہ جیڈ اے
کریں

ڈاکٹر: 0336-9485500



پتہ: زنانہ ہسپتال روڈ بالمقابل ڈاکٹر غنی کلینک بنوں سٹی

Atc

مدینہ کلر الٹرا سائونڈ سینٹر



Dr. Rehana Alam Zeb

M.B.B.S (Lahore)

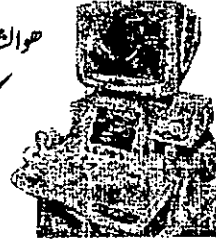
Ultrasound Specialist

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital Bannu)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O (MNCH) Bannu



ڈاکٹر ریحانہ عالم زیب

الٹراساؤنڈ سپیشلسٹ ایم۔ بی۔ بی۔ ایس (لاہور)

سابقہ ڈبلیو۔ ایم۔ او۔ UNHCR

سابقہ ڈبلیو۔ ایم۔ او۔ میشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈبلیو۔ ایم۔ او۔ MNCH بنوں

Pt. Name

حلمہ عیسیٰ ابوالکلام

Ref by

Date 25/11/2019

M 2019 Rx

Temp

Pulse

B.P.

Wt:

Complaints:

?? over due: 3 months
- P/L Sp. Hing today

- Months to
Complete pregnancy

1st @ 1st

Adv - investigate +
refused.

→ 96 Duplex

La ① + ①

- Cap. Transari

① 25 → ① 11 → 5000

→ 96 Sofolu

① ① ① ① ① ①

(Handwritten signature)

مدینہ کلر ایس او اینڈ سنٹر



Dr. Rehana Alam Zeb

M.B.B.S. (Lahore)

(Ultrasound Specialist)

Ex. W.M.O. (UNHCR)

Ex. W.M.O. (Mission Hospital BANNU)

Ex. Medical Officer Ministry Of Health (MALAYSIA)

W.M.O. MNCH BANNU



ڈاکٹر ریحانہ عالم زیب

التراساؤنڈ سپیشلسٹ ایم. بی. بی. ایس (لاہور)

سابقہ ڈیپو ایف ایم اور UNHCR

سابقہ ڈیپو ایف ایم اور مشن ہسپتال بنوں

سابقہ میڈیکل آفیسر وزارت صحت ملائیشیا

ڈیپو ایف ایم اور MNCH بنوں

P.Name

حاجہ / حاجہ / حاجہ

Ref. By

Seep

Date

15-11-2019

OBSTETRICS ULTRA SOUND

No. of Foetuses / G. Sac :-

Single / Alive / Breech

F.Heart:

(+)

C.R.L:

B.P.D:

34 2 mm

FL:

22.5 mm

Gest Age:

16 / wks

Placenta:

All around

Amniotic Fluid:

Adequate

EDD

22-4-2020

BIO PHYSICAL PROFILE

Heart:

G.B.M.:

Tone:

Liquor:

Resp:

ڈاکٹر: 0336-9485500



پتہ: زنانہ ہسپتال روڈ بال تقابل ڈاکٹر غنی کلینک بنوں سٹی

Acc



OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

No. 806/PB Dated: **14/05/2020**, E-Mail: mardanjail@gmail.com,



0937-843114

26

OFFICE ORDER

Services of Warder Atif Ullah S/O Mir Tawal Khan attached to Central Prison Mardan is here by terminated from the date of absence for un-satisfactory work/conduct/wilful absence from duty with effect from 24-03-2020 to 14-05-2020.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endst: No. 807-09/PB Dated: **14/05/2020**.

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. 06-04-2020.
- 3- The District Accounts Officer Mardan for information and necessary action please.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Ato

To,

The Hon'ble Inspector General of Prison
Khyber Pakhtunkhwa Peshawar

"D"
27

Subject:- DEPARTMENTAL APPEAL FOR REINSTATEMENT
OF THE APPELLANT WHEREBY THE
SUPERINTENDENT CIRCLE HEADQUARTER
PRISON MARDAN HAS ISSUED TERMINATION
ORDER OF THE APPELLANT ON DATED
16.05.2020 BEARING NO. 806/PB.



RESPECTFULLY SHEWETH,

1. That the Appellant was appointed as Warder and he was serving in the Circle Headquarter Prison Mardan.
2. That the wife of the Appellant was seriously sick and was hospitalized due to the critical situation due to which the Appellant was the only person who was responsible for look after of his wife and that is why he was unable to present on his duty, furthermore as the Appellant had already been informed his high ups for granting leave in the above issue, but the competent authority as high ups deaf ear on his request, inspite of the fact that he has submitted his genuine reason to his high ups and after got recovery by the wife of the Appellant he has assumed his duty and produced all the Medical prescriptions to the competent authority. **(Copies of the Medical prescriptions are attached)**
3. That inspite of the above unavoidable reasons the Superintendent Prison Mardan has issued the impugned termination order against the Appellant without giving any opportunity of being heard and without any show cause notice and any intimation in respect of termination issued order dated 16.05.2020 bearing No 806/PC. **(Copy of the Terminating Order is attached)**

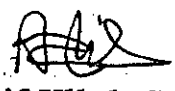
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4. That the Appellant time and again approached to the high ups for cancelation of above mentioned illegal impugned Order, but had given deaf ear and after lapse of sometime the high ups completely refused, hence the instant Departmental Appeal.

It is, therefore, humbly prayed that on acceptance of the instant Appeal, the impugned Termination Order passed by the Superintendent Circle Headquarters Prison Mardan against the Appellant may kindly be set aside and the Appellant may kindly be reinstated with all back benefits.

Appellant

Dated: 10.06.2020



Atif Ullah S/o Mir Tawal khan
Ex-Warder, Circle Headquarter
Prison Mardan
Cell # 0334-8834593

Receipt code m 10 ⁰⁶ / 2020

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

No. Estab/Ward/Orders 27279/
Dated 07.08.2020

ORDER

WHEREAS, Ex-Wander Arif Ullah S/o Mir Tawal Khan while attached to Central Prison Mardan was awarded the major penalty of "Termination from Service" by the Superintendent Headquarters Prison Mardan vide his office order No.806 dated 14.05.2020.

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

NO THEREFORE, keeping in view the facts and 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.

Sd/-xxxxxx

ADDITIONAL INSPECTOR GENERAL OF PRISON
KHYBER PAKHTUNKHWA, PESHAWAR

Endst No.27280-82/-

Copy of the above is forwarded to

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No.1069 dated 26.06.2020.
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

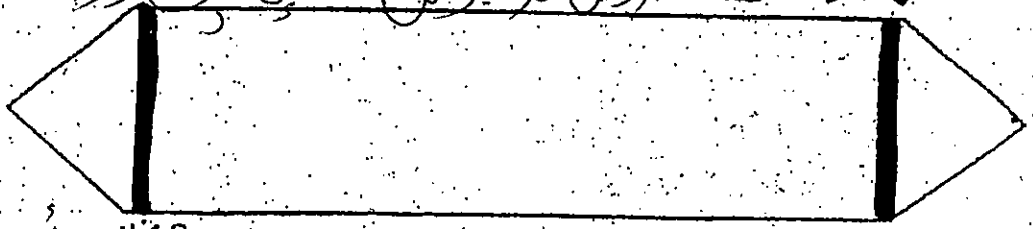
Sd/-xxxxxx

ASSISTANT DIRECTOR
INSPECTOR GENERAL OF PRISON
KHYBER PAKHTUNKHWA, PESHAWAR

Ate



بعدالت سرویس ڈیویژن کے پی آر



2. پنجاب ہسٹری
کالج اٹھ بنام حکومت

سرویس ریسٹ

موزخہ
مقدمہ
دعویٰ
جیم

باعث تخریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
 آج مقام پیر خاں و فیروز پور کے لیے
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی بڑائی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائد التوائے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیروی
 مذکور کریں۔ لہذا کالت نامہ لکھد یا کہ سندر ہے۔

Abd

الرقوم 28 ماہ اکتوبر 20

Accepted by

بمقام

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR.**

In the matter of

Service appeal No. 10009 of 2020

Atif Ullah s/o Mir Tawal Khan Ex-Warder, Circle Head Quarter, Prison Mardan.

R/O Mattaki Bizenkhel, F.R Bannu----- **(Appellant)**

VERSUS

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent Circle Headquarters Prison, Mardan.
3. The Superintendent Headquarters Prison, Peshawar----- **(Respondents)**

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Deponent

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of

Service appeal No. 10009 of 2020

Atif Ullah s/o Mir Tawal Khan Ex-Warder, Circle Head Quarter, Prison Mardan. R/O
Mattaki Bizenkhel, F.R Bannu----- (Appellant)

VERSUS

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent Circle Headquarters Prison, Mardan.
3. The Superintendent Headquarters Prison, Peshawar----- (Respondents)

SUBJECT:

**Joint PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO 1
TO 3**

Respectfully Sheweth

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action to file the present appeal.
2. That the present appeal is incompetent in its in present form.
3. That the appellant has no locus standi.
4. That the appellant is bad for mis-joinder and non-joinder of necessary party.
5. That the appellant is estopped by his own conduct to file the present appeal.
6. That the appellant is violated the terms and condition of service which amount to gross mis-conduct and appeal is liable to be dismissed.

OBJECTION ON FACTS

1. Admitted to the extent of his appointment soon after of his appointment his conduct remained un-satisfactory during the period of probation.
2. The appellant was served as warder in prison department but his services was not satisfactory. The appellant being on probationary period violated the terms & condition of his service mentioned at serial No. 02 which clearly stated that:

“Their appointment is purely temporary and their services are liable to be terminated at any time on 15 days’ without assigning any notice/reasons.

As the appellant was under probation as he was inducted on 08-10-2019 in Prison Department and soon after of his induction he was terminated from Service by violating the terms and conditions of his service as well as violating rule 1082/1083/1096 of Khyber Pakhtunkhwa Prison rule-2018. (**Appointment order is Annexure-A**).

3. Incorrect and not admitted. The appellant did not follow the mechanism for granting leave as embodied in rule/1082/1083/1096 of Khyber Pakhtunkhwa Prison rule-2018 which provide a proper procedure for leave hence the appellant

violated such rules and did not approach to competent authority for leave and remained absent from official duty which amount to serious mis-conduct and inefficiency being sensitive force of Prison Department. (**Copy of Prison rules is Annexure-B**).

4. As elaborated in Para-03 above. Moreover the appellant did not report for duty as per record of Roznamcha.
5. As explained in para No. 02 above.
6. Incorrect and not admitted. The decision of departmental appeal duly conveyed to the appellant through Superintendent Jail Mardan and the departmental appeal of the appellant was rejected. (**Departmental appeal and rejection order is "C" & "D"**).
7. Incorrect and not admitted. Proper absence notice pertaining to his absence was issued vide Superintendent Central Prison Mardan letter No. 511 dated 06-04-2020 was served upon him. (**Copy of absence notice is Annexure-E**) in pursuance of his absence notice he submitted written statement which was unsatisfactory. (**Copy of written statement is Annexure-F**) consequently upon his mis-conduct the appellant was terminated from service vide Superintendent Central Prison Mardan order No. 806 dated 14-05-2020 (**Superintendent order is Annexure G**).

OBJECTION ON GROUNDS.

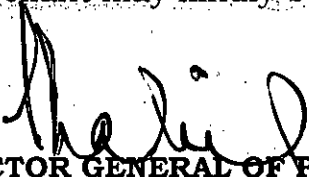
- A. The appellant has been treated as per condition of his Appointment letter as explained in Para No.02.
- B. The appellant was absent from duties for 50 days i.e. 24-03-2020 to 14-05-2020 without permission of the competent authority which speak, volumes about his Mis-conduct and un-satisfactory service record.
- C. As explained at para-A.
- D. The appellant has been treated as per terms and conditions of Appointment Order, which already explains that service is purely temporary and can be terminated. As the appellant was absent without permission for 50 days, which manifests his poor conduct thus he was terminated from service.
- E. As explained at para-A & D.
- F. The appellant was personally heard but he didn't provide any plausible reason for his absence.
- G. No record of the appellant was found for his leave application and the appellant left the station without permission of the competent authority.
- H. As explained at para-A & D.
- I. The appellant willfully absented himself from official duties, which amount to gross mis-conduct and inefficiency on his past Terms and conditions of the appointment order were followed in letter and spirit.
- J. No. Comments.
- K. No. Comments.

L. Incorrect and not admitted. The punishment has been awarded to him as per Law.


M. Irrelevant, hence need no comments.

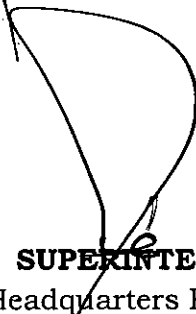
PRAYER

It is therefore humbly requested that on acceptance of above Joint Para-wise Comments on behalf of respondent's No. 1 to 3 the instant appeal of the appellant may kindly be dismissed with cost being devoid of merit and Law.


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


10.9.21


SUPERINTENDENT
Circle Headquarters Prison Mardan
(Respondent No.2)


SUPERINTENDENT
Circle Headquarters Prison Peshawar
(Respondent No.3)

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of

Service appeal No. 10009 of 2020

Atif Ullah s/o Mir Tawal Khan Ex-Warder, Circle Head Quarter, Prison Mardan. R/O
Mattaki Bizenkhel, F.R Bannu----- (Appellant)

----VERSUS----

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

(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.

[Signature] 10.9.2021

[Signature]

2. SUPERINTENDENT
CIRCLE HEADQUARTER PRISON MARDAN

[Signature]

3. SUPERINTENDENT
HEADQUARTER PRISON PESHAWAR.

[Signature]

[Signature]
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

No: 1368-1457 P/B Dt: 08/10/2019

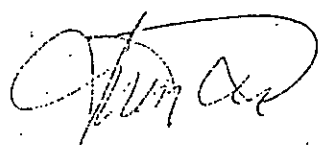
OFFER OF APPOINTMENT

Upon recommendation of the Departmental Selection Committee, the below noted candidates of Zone-1 are hereby appointed against the post of Warders (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:-

S#	Name	Father Name	Domicile District	Place of Posting
1.	Shahid Ullah	Walayat Khan	Khyber	Central Prison Mardan
2.	Abdul Wasai	Yardil Khan	FR(Peshawar)	Central Prison Mardan
3.	Gul Nawaz Khan	Gul Wazir Khan	Khyber	Central Prison Mardan
4.	Ihsan Ullah	Amanullah	Khyber	Central Prison Mardan
5.	Muhammad Arif	Hakeem Khan	Khyber	Central Prison Mardan
6.	Sadam Hussain	Gherat Gul	Khyber	Central Prison Mardan
7.	Abdul Aziz	Aurang Zeb	Khyber	Central Prison Mardan
8.	Muhammad Tayyab	Mastan Shah	Khyber	Central Prison Mardan
9.	Ashaat Islam	Said Mian Gul	Khyber	Central Prison Mardan
10.	Adil Khan	Laiq Shah	FR Peshawar	Central Prison Mardan
11.	Israr Ul Haq	Muhammad Salim	Khyber	Central Prison Mardan
12.	Samar Khan	Said Wazir Khan	Khyber	Central Prison Mardan
13.	Inayat Shah	Ziarat Shah	Khyber	Central Prison Mardan
14.	Muhammad Amin	Speen Gul	Khyber	Central Prison Mardan
15.	Nisar Muhammad	Janat Gul	Khyber	Central Prison Mardan
16.	Samin Jan	Qismai Khan	Khyber	Central Prison Mardan
17.	Imrar Khan	Abdul Haq	Khyber	Central Prison Mardan
18.	Rehman Ullah	Falak Sher	FR Bannu	Central Prison Mardan
19.	Abrar Khan	Ajmal Khan	FR Bannu	Central Prison Mardan
20.	Younas Wali	Surat Wali	FR(Banu)	Central Prison Mardan
21.	Rizal Khan	Nazeer Jan	Khyber	Central Prison Mardan
22.	Wahid Ali	Sher Zoli Khan	FR(Banu)	Central Prison Mardan
23.	Tahir Ullah	Khalil Rahman	FR(Banu)	Central Prison Mardan
24.	Umar Sadeeq	Amal Gul	FR Peshawar	Central Prison Mardan
25.	Aul Ullah	Mir Tawal Khan	FR Bannu	Central Prison Mardan
26.	Asad Ullah	Muhammad Razu Khan	FR(Banu)	Central Prison Mardan
27.	Fida Muhammad	Haider Khan	FR Bannu	Central Prison Mardan
28.	Muhammad Kamran	Sheikh Farid	FR(Banu)	Central Prison Mardan
29.	Basir Ahmad Afridi	Sialhabd Shah	Khyber	Central Prison Mardan
30.	Ihsanullah	Anwar Shah	Khyber Agency	Central Prison Mardan
31.	Shah Said	Taj Muhammad	Khyber	Central Prison Mardan
32.	Haroon Rasheed	Arman Gul	Khyber	Central Prison Mardan
33.	Amir Khan	Jan Alam	Khyber	Central Prison Mardan
34.	Masud Khan	Sarfraz Khan	Khyber	Central Prison Mardan
35.	Munir Mansood	Magsood Khan	FR Bannu	Central Prison Mardan
36.	Sadiq Ullah Khan	Muhammad Noorani	FR(Banu)	Central Prison Mardan
37.	Irfan Ullah	Khurshid Ahmad	Bajaur	Central Prison Mardan
38.	Alamgir Khan	Afsar Khan	Khyber	Central Prison Mardan
39.	Nadir Khan	Farooq Khan	Khyber	Central Prison Mardan
40.	Waqar Ahmad	Akbar Hussain	Khyber	Central Prison Mardan
41.	Nasim Ullah	Naqib Ullah Khan	FR(Banu)	Central Prison Mardan
42.	Sami Ullah	Gulbaz Khan	FR Bannu	Central Prison Mardan
43.	Atiq Khan	Zafar Ali	Khyber	Central Prison Mardan
44.	Shamsur Rehman	Mir Shahbaz Khan	FR(Banu)	Central Prison Mardan
45.	Muhammad Fawad	Muhammad Saleem	FR Peshawar	Central Prison Mardan
46.	Salim Ullah	Gul Nawaz	FR(Banu)	Central Prison Mardan
47.	Muqadar Khan	Tawas Khan	Khyber	Central Prison Mardan
48.	Shah Khalid	Khad Gul	FR Bannu	Central Prison Mardan
49.	Ghazi Khan	Amin Khan	Khyber	Central Prison Mardan
50.	Miraj Ud Din	Khair Zada	Bajaur	Central Prison Mardan
51.	Asmat Ullah Khan	Mashra Khan	FR Bannu	Central Prison Mardan
52.	Zia Ur Rehman	Samand Khan	FR Peshawar	Central Prison Mardan
53.	Islam Nabi	Muhammad Afzal	Khyber	Central Prison Mardan

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[Signature]

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(12)

**OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR**

No: _____ P/B Dt: 08/10/2019

S#	Name	Father Name	Domicile District	Place of Posting
54.	Suliman Khan	Shah Jehan	Bajaur	Central Prison Mardan
55.	Usman Khan	Mirafzal Khan	Bajaur	Central Prison Mardan
56.	Arshad Khan	Khaista Gul	FR Peshawar	Central Prison Mardan
57.	Fazal Wahid	Sultan Zaib	Bajaur	Central Prison Mardan
58.	Shafiq Khan	Sharbat Khan	Khyber	Central Prison Mardan
59.	Naheed Ullah	Hameed Ullah	FR Bannu	Central Prison Mardan
60.	Fida Hussain	Mir Hashim Khan	FR(Banu)	Central Prison Mardan
61.	Pir Muhammad Khan	Muhammad Yousaf	Bajaur	Central Prison Mardan
62.	Nasir Usman	Muhammad Usman	FR Bannu	Central Prison Mardan
63.	Bilal Khan	Qabel Khan	FR(Banu)	Central Prison Mardan
64.	Anees Afridi	Khial Zada	Khyber	Central Prison Mardan
65.	Acil Khan	Mir Daraz Khan	FR(Banu)	Central Prison Mardan
66.	Muhammad Tahir	Noor Must Khan	Khyber	Central Prison Mardan
67.	Kaleem Ullah Afridi	M. Jabeen Afridi	Khyber	Central Prison Mardan
68.	Imran Yousaf	Abdul Shakoor	Bajaur	Central Prison Mardan
69.	Muhammad Shuaib	Humayun Shah	FR Peshawar	Central Prison Mardan
70.	Qismat Ullah	Sher Daud	FR(Banu)	Central Prison Mardan
71.	Younas Khan	Muhammad Rahim	Bajaur	Central Prison Mardan
72.	Saif Ullah	Balqiaz Khan	FR(Banu)	Central Prison Mardan
73.	Muhammad Kafil	Muhammad Afzal Khan	Khyber	Central Prison Mardan
74.	Zahir Zaman	Muhammad Ilyas Khan	FR(Banu)	Central Prison Mardan
75.	Mahboob Ur Rehman	Mir Qad Ayaz Khan	FR(Banu)	Central Prison Mardan
76.	Nusrat Shah	Maqbool Shah	Khyber	Central Prison Mardan
77.	Aman Ullah	Haji Gul Marjan	Khyber	Central Prison Mardan
78.	Favaz Udain	Muhammad Yousaf	Bajaur	Central Prison Mardan
79.	Abdullah Noor	Dil Nawaz Khan	FR Bannu	Central Prison Mardan
80.	Zekriya Khan	Qamar Ali Khan	FR Bannu	Central Prison Mardan
81.	Niaz Ullah	Iqbal Khan	FR(Banu)	Central Prison Mardan
82.	Teriq Jamil	Abdul Samad Khan	FR(Banu)	Central Prison Mardan
83.	Shahab Ud Din	Sheraf Din	Khyber	Central Prison Mardan
84.	Adnan	Akher Zaman	FR Bannu	Central Prison Mardan
85.	Khan Ghani	Muhammad Umar	Khyber	Central Prison Mardan
86.	Fakhar Zaman	Muhammad Anwar Khan	FR Bannu	Central Prison Mardan
87.	Muhammad Tahir	Gul Hameer	FR(Peshawar)	Central Prison Mardan
88.	Abdul Jalil	Noor Mast Khan	Khyber	Central Prison Mardan
89.	Shah Niaz	Inar Gul	FR Bannu	Central Prison Mardan

TERMS & CONDITIONS

- 1- Their appointment will take effect from the date of joining duty at their place of posting.
- 2- Their appointment is purely temporary and their 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 them for joining first appointment.
- 4- In case they wish to resign at any time they will give one month notice OR in lieu thereof one month's pay will be forfeited from them subject to the discretion of the competent authority in public interest and will leave the service after acceptance of their resignation.
- 5- Their appointment is subject to Medical fitness for Government Service.
- 6- They will be eligible for continuance on the post if their work and conduct remained satisfactory during the period of their temporary appointment provided the vacancy against which they have been appointed continues.
- 7- They will be on probation for a period of one year extendable upto another year. During probation period their services will be terminated if their work and conduct is not found satisfactory OR the vacancy ceases to exist.
- 8- They 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; they 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 they will belong.
- 10- They 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.



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OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No: _____ P/B Dt: 08/10/2019


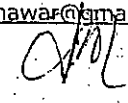
- 11- Their service will be liable to termination / reversion at any stage if their Academic Certificates / Degrees (if any), CNIC, Domicile etc; are found fake, their services will be considered as terminated, automatically and FIR will be lodged against them.
- 12- Their salary will be released after making proper verification of their antecedents/ character roll, Domicile, and Academic Qualification Certificates / Degrees etc; from the quarter concerned by the jail of their first posting. Moreover, if any verification charges are involved on this account, the same will be paid by the appointees.
- 13- If they accept the appointment on the above cited terms and conditions, they should report to the **Superintendent Central Prison Mardan** within 30 (Thirty) days of the receipt of this offer of appointment at their own expense. In case they fail to join duty within the same period, the offer of appointment will be treated as cancelled /withdrawn.


- 2 -
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Endorsement No: 1458-61

Copy of the above is forwarded to:-

- 1- The Superintendent Circle Headquarters Prison Mardan.
- 2- The Superintendent Central Prison Mardan for information. On arrival of the above named appointees, an undertaking should be taken on judicial stamp paper from them to the effect that they have accepted all terms and conditions contained in the offer of their appointment and submitted to Headquarters office for record. **The condition No. 12 may be fulfilled before releasing their salaries within shortest possible time.**
- 3- The District Account Officer Mardan for information & further necessary action.
- 4- Appointees concerned.


SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
E-mail: hqprisonpeshawar@gmail.com


Act


1

**GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT.**

NOTIFICATION

Peshawar, dated the 14th March 2018.

No.SO(P&R)HD/3-3/2018.-In exercise of the powers conferred by section 59 of the Prisons Act, 1894 (IX of 1894) and in supersession of rules issued in this behalf, the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

**THE KHYBER PAKHTUNKHWA
PRISONS RULES, 2018.**

**Chapter-1
General Provision**

1. Short title and commencement.---(1) These rules may be called the Khyber Pakhtunkhwa Prisons Rules, 2018.

(2) It shall come into force at once.

2. Definitions.---(1) In these rules, unless otherwise prescribed the following expressions shall have the meaning hereby respectively assigned to them, that is to say-

- (a) "Act" means the Prisons Act, 1894 (Act IX of 1894);
- (b) "Additional Inspector General" means Additional Inspector General of Prisons appointed by Government under these rules;
- (c) "Assistant Superintendent" means Assistant Superintendent of the Prisons and includes Senior Assistant Superintendent or Senior Lady Assistant Superintendent appointed by Government;
- (d) "Central Prison" means a Central Prison declared as such by Government;
- (e) "Chief Warder" means Chief Warder either male or female, as the case may be, in respective ward in a Prison;
- (f) "Code" means the Code of Criminal Procedure, 1898 (V of 1898);
- (g) "condemned prisoner" means prisoner sentenced to death and his sentence of death confirmed by the Supreme Court of Pakistan;

1080. Prohibition against business and pecuniary transactions.---(1) No prison officer shall directly or indirectly engage in any trade, business or employment other than his legitimate duties.

(2) No prison officer shall lend money to, borrow money from, enter into any pecuniary transaction with, or incur any obligation in favor of any other officer or any prisoner.

1081. Residential quarters.---(1) Rent free residential quarters shall ordinarily be provided at each prison for the Superintendent, Deputy Superintendent, Senior Assistant Superintendent, Assistant Superintendents, Senior Medical Officer, Medical Officer, Pharmacy Technician, Assistants and Clerical Staff, Storekeepers, Instructors, Teachers, Head Warders and the Warders.

(2) Every prison official for whom the residential quarters are not available in prison shall reside within such distance from the prison as the Superintendent may direct,

1082. Leave to Subordinate Officers.---(1) No subordinate officer shall, at any time, without the permission of the Deputy Superintendent, if such officer is subordinate to him, and, in any other case, of the Superintendent, be absent from the prison premises, whether by day or night.

(2) The Deputy Superintendent shall not, without the sanction of the Superintendent, grant leave of absence to any subordinate officer, or permit any such officer to remain absent, for any period exceeding four hours at any one time.

(3) Whenever any leave is granted by the Deputy Superintendent to any subordinate officer he shall, at the time the leave is granted, record the fact, and the period of leave in his report book.

(4) Every subordinate officer shall immediately on return from leave report the fact to the Deputy Superintendent, who shall forthwith record his arrival in his report book.

(5) The Deputy Superintendent shall similarly record in his report book, all leave granted by the Superintendent and all reports made of return from leave.

(6) Fifteen (15) days recreation leave shall be granted to every employee of Department once in a calendar year on rotation basis.

1083. Absence caused by illness or other unavoidable cause.---Whenever any subordinate officer is at any time prevented by sudden illness or other unavoidable cause, from attending the prison or performing his duties he shall forthwith give notice to the Superintendent along with his reasons for absence. The Superintendent shall then make suitable arrangements for the due performance of his duties.

1084. Acquaintance with these rules and directions.---It shall be the duty of every prison officer to make himself thoroughly acquainted with the duties of his office and these rules and directions. He shall discharge his duties with zeal, efficiency, honesty, alacrity and regularity.

1085. Note Book.---Every subordinate officer shall keep a notebook with him in which he shall record every order given to him by his superior officers.

1086. Subordinate Officer to render prompt obedience.---It shall be the duty of every subordinate officer at all times to render prompt and implicit obedience to every lawful order, given to him by superior officer, with proper courtesy and respect.

1087. Prohibition against communicating with prisoners, their-relatives and friends.---(1) No subordinate officer shall, otherwise than with the special permission of the Superintendent, at any time,-

- (a) correspond or communicate with any relative or friend of any prisoner;
- (b) hold any unauthorized communication with any prisoner;
- (c) correspond or communicate with any discharged prisoner; or
- (d) permit any discharged prisoner or any relative of any prisoner to visit or remain at his quarters.

(2) No subordinate officer shall, at any time,-

- (a) hold any unnecessary conversation with any prisoner; or
- (b) treat any prisoner with familiarity; or
- (c) discuss any matter relating to the discipline or of the prison with or within the hearing of any prisoner.

1088. ---[incorporated in Uniform Chapter]

1089. Officer not to leave place of duty idle about or quarrel.---(1) Every subordinate officer when on duty, except when ordered by a superior officer to go elsewhere, shall not leave his beat or place of duty. Idleness or lounging about the prison premises is prohibited.

(2) No subordinate officer shall at any time, while on duty, smoke sing or talk loudly, or cook or eat his food, or do any act likely to distract his attention from his duty, or in any way conduct himself in an unseemly or disorderly manner.

(3) All quarrelling or disputes between prison officers is prohibited. Any dispute between subordinate officers about any matter connected with their duties shall at once be referred to the Deputy Superintendent.

(4) When any subordinate officer is accused or suspected of having committed any of the following offences, and a prima facie case against him exists, a proceedings shall be initiated,-

- (a) willfully or negligently permitting a prisoner to escape or any other serious offence punishable under the Penal Code
- (b) any offence punishable under section 42 of the Act.
- (c) any breach of rule 1094 or clause (c) of rule 1095; and
- (d) any breach of section 9 or section 10 of the Act.

1090. Visitors to subordinate officers.---No subordinate officer shall at any time be permitted to receive any visitor inside the prison or while on duty outside the prison.

1091. Complaints.---(1) Any subordinate officer desiring to make any complaint of any kind shall do so in writing to the Superintendent within twenty-four hours of the occurrence of the cause of complaint.

(2) The making of frivolous, vexatious or false complaints is prohibited.

1092. Combined action by officers forbidden.---Subordinate officers are forbidden from taking part in any agitation for the redress of any grievance or supposed grievance, or for any other purpose whatsoever.

1093. Care and Custody of Keys.---(1) No subordinate officer who is at any time entrusted with any key shall, under any circumstances or any pretext whatsoever,-

- (a) take any key belonging to a lock in use for securing the custody of any prisoner out of the prison; or
- (b) leave any such key lying about; or
- (c) deliver any such key to any person other than a Prison officer duly authorized to receive such key or to have the care or custody thereof; and
- (d) leave his post of duty or the prison without delivering such key to the officer duly authorized to receive the same from him.

(2) The key of any cell, barrack, ward, godown, main gate or main gate wicket, shall not, under any circumstances or under any pretext, be at any time made over to any prisoner.

(3) If any key is lost or misplaced, the lock shall at once be condemned and destroyed by the Superintendent. The Officer held responsible for the loss shall be liable to pay the cost of the lock.

(4) Every warder shall keep the bunch of keys secured to his waist belt with a stout chain.

(5) Locks supplied to prisons shall not be provided with duplicate keys.

1094. Officers not to resign without Notice.---No subordinate officer shall, without permission in writing of the Superintendent, resign or otherwise leave service, unless he has submitted a notice in writing for a period of not less than two months, of his intention to resign and the period of such notice has expired.

1095. Prohibitions against sleeping on duty or other irregularities.---No subordinate officer shall at any time,-

- (a) be in a state of intoxication;
- (b) sleep while on duty;
- (c) enter any enclosure reserved for women prisoners unless he is authorized to do so under the rules and is accompanied by a woman wader;
- (d) commit, or permit or abet the commission of any irregularity in the supply of distribution of food, clothing, or other articles to prisoners;
- (e) display cowardice in the discharge of his duties;
- (f) be guilty of any act of insubordination, disobedience, breach of discipline or neglect of duty; and
- (g) malingering or render himself unable or unfit to discharge his duties.

1096. ~~Grant of leave by whom sanctioned.~~---(1) Leave, other than casual leave, to Deputy Superintendents, Senior Assistant Superintendents, Assistant Superintendent, Budget and Accounts Officer, Clerical Staff, Teacher, Instructor, Psychologist, Junior Pharmacy Technician, etc., shall be sanctioned by the Appointing Authority but any officer to whom a certificate of sickness is granted by the Medical Officer, may be allowed to proceed on leave in anticipation of the sanction of the Inspector General.

(2) In the case of others, the grant of all kinds of leave shall rest with the Superintendent.

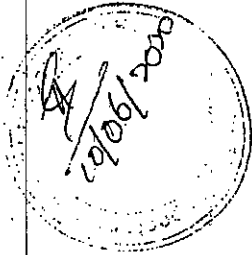
(3) Application for leave from officers mentioned in sub-rule (1) shall be submitted to the Inspector General one month before the date on which the leave is required.

To,

The Hon'ble Inspector General of Prison
Khyber Pakhtunkhwa Peshawar

Subject:-

DEPARTMENTAL APPEAL FOR REINSTATEMENT
OF THE APPELLANT WHEREBY THE
SUPERINTENDENT CIRCLE HEADQUARTER
PRISON MARDAN HAS ISSUED TERMINATION
ORDER OF THE APPELLANT ON DATED
16.05.2020 BEARING NO. 806/PB.



RESPECTFULLY SHEWETH,

1. That the Appellant was appointed as Warder and he was serving in the Circle Headquarter Prison Mardan.
2. That the wife of the Appellant was seriously sick and was hospitalized due to the critical situation due to which the Appellant was the only person who was responsible for look after of his wife and that is why he was unable to present on his duty, furthermore as the Appellant had already been informed his high ups for granting leave in the above issue, but the competent authority as high ups deaf ear on his request, inspite of the fact that he has submitted his genuine reason to his high ups and after got recovery by the wife of the Appellant he has assumed his duty and produced all the Medical prescriptions to the competent authority. (Copies of the Medical prescriptions are attached)
3. That inspite of the above unavoidable reasons the Superintendent Prison Mardan has issued the impugned termination order against the Appellant without giving any opportunity of being heard and without any show cause notice and any intimation in respect of termination issued order dated 16.05.2020 bearing No 806/PC. (Copy of the Terminating Order is attached)

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4. That the Appellant time and again approached to the high ups for cancelation of above mentioned illegal impugned Order, but had given deaf ear and after lapse of sometime the high ups completely refused, hence the instant Departmental Appeal.

It is, therefore, humbly prayed that on acceptance of the instant Appeal, the impugned Termination Order passed by the Superintendent Circle Headquarters Prison Mardan against the Appellant may kindly be set aside and the Appellant may kindly be reinstated with all back benefits.

Dated: 10.06.2020

Appellant

Atif Ullah

Atif Ullah S/o Mir Tawal Khan
Ex-Warder, Circle Headquarter
Prison Mardan
Cell # 0334-8834593

Receipt made on 10/06/2020

Atc

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INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 011-0218444, 0218445

☎ 011-0218444

🌐 www.facebook.com/kpkprisons/

✉ prisonsig@gmail.com

No. 21568-UB

Dated 23-6-2020


To,

The Superintendent,
Headquarter Prison Murdan.

Subject:- DEPARTMENTAL APPEAL
Memo:

I am directed to refer to the subject and to forward herewith a copy of appeal submitted by Ex-Warder **Alif Ullah S/O Mir Tawal Khan** attached to your jail (self-explanatory) for information and submission of your views/comments alongwith history of his service on the below noted format for further necessary action by this office:-

S.No.	Name & Percentage	Rank	Date of Birth	Date of appointment.	Detail Of Postings	Penalty if any awarded
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ASSISTANT DIRECTOR
INSPECTORATE GENERAL OF PRISON
KHYBER PAKHTUNKHWA PESHAWAR

9/S/40

S. Jatt
25/6/2020

No. 1245



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INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406

091-9213445

www.facebook.com/kpkprisons/

Email prisonsiq@gmail.com

No. _____/-

Dated _____/-

To,

The Superintendent,
Headquarter Prison Mardan.

Subject:- **DEPARTMENTAL APPEAL**
Memo:

I am directed to refer to the subject and to forward herewith a copy of appeal submitted by Ex-Warder **Atif Ullah S/O Mir Tawal Khan** attached to your jail (self-explanatory) for information and submission of your views/comments alongwith history of his service on the below noted format for further necessary action by this office:-

S.No.	Name & Parentage	Rank	Date of Birth	Date of appointment.	Detail Of Postings	Penalty if any awarded
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ASSISTANT DIRECTOR
INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

REGISTERED

original



OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

No. 1061/2020 Dated: 26/06/2020, E-Mail: mardanprison@gmail.com

0937-843114

To:

The Inspector General of Prisons,
Khyber Pakhtunkhwa, Peshawar.

Subject:

DEPARTMENTAL APPEAL
Reference your memo No. 21508/WE dated. 23-06-2020.

Re/Sir:

The requisite comments on the annotated format on behalf of the undersigned in respect of Ex-warder Atif Ullah S/O Mir Tawal Khan are submitted as under:-

1.	Name with Parentage	Atif Ullah S/O Mir Tawal Khan
2.	Rank	Warder
3.	Date of Birth	15-02-1996
4.	Date of Appointment	24-10-2019
5.	Punishment awarded during his entire service with date and nature of offence.	<ol style="list-style-type: none"> 1. Absence period w.e.f. 16-03-2019 to 19-03-2019 three (03) days is hereby treated as leave without pay vide Superintendent Circle Headquarter Prison Mardan Order No. 2505 dated, 06-04-2020. 2. "Terminated from Service" from the date of absence for unsatisfactory work/ conduct/ wilful absence from duty w.e.f. 24-03-2020 to 14-05-2020 vide Superintendent Circle Headquarter Prison Mardan Order No. 806 dated, 14-05-2020.

The appellant was awarded the punishment of **"Terminated from Service"** from the date of absence for unsatisfactory work/ conduct/ wilful absence from duty w.e.f. 24-03-2020 to 14-05-2020 after observing proper procedure and completion of all legal formalities.

Therefore his appeal may kindly be rejected as proceedings against him were conducted strictly in accordance with rules please.

[Signature]
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

REGISTERED



OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

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



0937-843114

To,

The Inspector General of Prisons,
Khyber Pakhtunkhwa, Peshawar.

Subject: DEPARTMENTAL APPEAL.

Reference your memo No. 21568/WE dated. 23-06-2020.

R/Sir;

The requisite comments on the annotated format on behalf of the undersigned in respect of Ex-warder Atif Ullah S/O Mir Tawal Khan are submitted as under:-

1.	Name with Parentage	Atif Ullah S/O Mir Tawal Khan
2.	Rank	Warder
3.	Date of Birth	15-02-1996
4.	Date of Appointment	24-10-2019
5.	Punishment awarded during his entire service with date and nature of offence.	<ol style="list-style-type: none">1. Absence period w.e.f. 16-03-2019 to 19-03-2019 three (03) days is hereby treated as leave without pay vide Superintendent Circle Headquarter Prison Mardan Order No. 2505 dated. 06-04-2020.2. “Terminated from Service” from the date of absence for unsatisfactory work/ conduct/ wilful absence from duty w.e.f 24-03-2020 to 14-05-2020 vide Superintendent Circle Headquarter Prison Mardan Order No. 806 dated. 14-05-2020.

The appellant was awarded the punishment of **“Terminated from Service”** from the date of absence for unsatisfactory work/ conduct/ wilful absence from duty w.e.f 24-03-2020 to 14-05-2020 after observing proper procedure and completion of all legal formalities.

Therefore his appeal may kindly be rejected as proceedings against him were conducted strictly in accordance with rules please.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

ORDER:

Original

WHEREAS, Ex Warden Aftab Ullah S/o Mir Tawal Khan while attached to Central Prison Marjhan was awarded the charge of posts of "Termination from service" by the Superintendent Headquarters Prison Marjhan vide his office order No. 1024 dated 14.05.2020

AND WHEREAS, the said warden preferred his departmental appeal for setting aside the penalty awarded to him, which was examined at length in the available record of the case and it was observed that the charges framed against the appellant was proved.

NOW THEREFORE, keeping in view the facts on record, the provisions of rules in force, in exercise of power conferred under Rule-3 of Hyderabad Public Service Civil Service Appeal Rules 1946, the decision of the competent authority in appeal and appeal of the appellant is hereby rejected being without any substance.

ADDITIONAL INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.

Order No. 27280-83

- 1. The Superintendent, Headquarters Prison Marjhan for information and necessary action with reference to his letter No. 1024 dated 24-05-2020
- 2. The Superintendent Central Prison Marjhan for information
- 3. The District Account Officer Marjhan for information
- 4. The appellant concerned C/O Superintendent Headquarters Prison Marjhan for information



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

No. Estab/Ward/Orders 27279/
Dated 07.08.2020

ORDER

WHEREAS, Ex-Wander Arif Ullah S/o Mir Tawal Khan while attached to Central Prison Mardan was awarded the major penalty of "Termination from Service" by the Superintendent Headquarters Prison Mardan vide his office order No.806 dated 14.05.2020.

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

NO THEREFORE, keeping in view the facts and 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.

Sd/-xxxxx

**ADDITIONAL INSPECTOR GENERAL OF PRISON
KHYBER PAKHTUNKHWA, PESHAWAR**

Endst No.27280-82/-

Copy of the above is forwarded to

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No.1069 dated 26.06.2020.
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

Sd/-xxxxx

**ASSISTANT DIRECTOR
INSPECTOR GENERAL OF PRISON
KHYBER PAKHTUNKHWA, PESHAWAR**

A/c





THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

/PB Dated: 06/04/2020, E-Mail: mardanjail@gmail.com 0937-843114

خاطف ارشد

Warder Mr. Atif Ullah S/O Mir Tawal Khan,
R/O Bizan Khel, PO Mattaki Bizan Khel Tehsil Domail, District Bannu.

Subject: ABSENCE NOTICE.

As per report of the Superintendent Central Prison Mardan, you absented yourself from duties as well as jail premises without permission and sanction of leave from the competent authority on 24.03.2020 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: 512-13/

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 please..

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

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Superintendent
Circle Headquarters
Mardan

2020
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OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

No. 806/PB Dated: 14/05/2020, E-Mail: mardanjail@gmail.com,

0937-843114

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OFFICE ORDER

Services of Warder Atif Ullah S/O Mir Tawal Khan attached to Central Prison Mardan is here by terminated from the date of absence for un-satisfactory work/conduct/wilful absence from duty with effect from 24-03-2020 to 14-05-2020.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endst: No. 807-09/PB Dated: 14/05/2020.

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. 06-04-2020.
- 3- The District Accounts Officer Mardan for information and necessary action please.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Atc

2009 S C MR 605

[Supreme Court of Pakistan]

Present: Sabihuddin Ahmed and Sarmad Jalal Osmany, JJ

Mrs. ABIDA PARVEEN CHANNAR----Appellant

Versus

HIGH COURT OF SINDH at Karachi----Respondent

Civil Appeal No.1669 of 2007 arising out of Civil Petition No.219-K of 2007, decided on 23rd February, 2009.

(On appeal against the judgment, dated 5-4-2007 passed by Sindh Subordinate Judiciary Service Tribunal at Karachi in Appeal No.6 of 2005).

(a) Sindh Judicial Service Rules, 1994----

----R. 9-A---Services of probationer could be dispensed with before expiry of probation period.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 rel.

(b) Civil service---

----Probationer only on successful completion of probation period could acquire a sure footing---Principles.

Appointment of a probationer can only acquire a sure footing, if he successfully completes the period of probation and the appointing authority is fully satisfied with his conduct and performance of duties.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 fol.

(c) Civil service---

----Misconduct, charge of---Employee's right to show-cause notice before passing of termination order against him by competent authority---Scope stated.

A right to notice is riot to be premised merely upon the question whether the order of termination indicated a stigma, but whether allegations of misconduct had any bearing upon the mind of the competent authority passing the order.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 rel.

(d) Sindh Service Tribunals Act (XV of 1973)---

S. 3-B---Constitution of Pakistan (1973), Art.212(3)---Termination of service during

probation period---Judicial Magistrate---Misconduct, charge of ---Imposition of such penalty on basis of discreet enquiries conducted by District Judge---Dismissal of appeal by Service Tribunal---Validity---In view of serious allegations of misconduct levelled against appellant, recording definite conclusion against him on basis of discreet enquiries was highly improper---Competent authority had erred by failing to summon entire record, when appellant had levelled allegations of bias against District Judge. in departmental appeal---Report of District Judge submitted two months after assuming charge contained allegations relating to period prior to his appointment and same being unrelated to performance of duties by appellant possibility of bias could not be altogether ignored---Supreme Court, set aside orders of Service Tribunal and competent authority with direction to reinstate appellant in service while allowing competent authority to initiate enquiry into allegations of misconduct, if considered necessary.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 and Pakistan State Oil v. Muhammad Tahir Khan PLD 2001 SC 980 ref.

(e) Administration of justice---

---Public functionaries---All public powers must be exercised reasonably and honestly for purpose for which same are conferred.

(f) Civil service---

---Misconduct, charge of --Judicial Officer---Discreet enquiries---Validity---Not proper to record definite conclusion on basis of such enquiries-Principles.

When serious allegations of misconduct are levelled against the judicial officers, it is highly improper to record conclusions on the basis of "discreet enquiries". Indeed such inquiries may be permissible for the purpose of enabling the competent authority to determine whether appropriate action should be initiated so as to prevent unnecessary harassment. Nevertheless there can be no justification to come to definite conclusions on the basis of such enquiries.

(g) Civil service---

---Inquiry proceedings---Duty of Judicial Officer---Scope-Judicial officers should honestly and faithfully report failings of their subordinates to enable competent authority to apply their independent judgment rather than attempting to foist their own prejudices.

M.M. Aqil Awan, Advocate Supreme Court and Suleman Habibullah, Advocate-on-Record for Appellant.

Abdul Fateh Malik, Additional Advocate-General, Sindh for Respondent.

Date of hearing: 23rd February, 2009.

JUDGMENT

SABIHUDDIN AHMED, J.--- This appeal by leave of the Court is directed against the judgment of the learned Sindh Subordinate Judiciary Service Tribunal, Karachi dated 5-4-2007 upholding the order of the Honourable Chief Justice terminating the appellant's services during

the period of probation.

2. Briefly the relevant facts appear to be that the appellant was appointed as Judicial Magistrate on the basis of recommendations of the Provincial Selection Board on regular basis on 11-12-2001 and was required to undergo a period of probation for two years. She was posted at Thatta. She was granted maternity leave for 90 days with effect from 8-9-2003 and during the period of such leave, her services were terminated vide order dated 30-10-2003 with the observation that during the 1 year 10 months and 15 days of service, her conduct had been unsatisfactory and her retention in service was not desirable. The appellant after submitting an application for review, which came to be dismissed, approached the Service Tribunal which also dismissed her appeal vide the impugned order. Leave to appeal however was granted by this Court, inter alia, on the grounds that the appellant was condemned unheard and the law declared by this Court in the case of Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan reported in PLD 1974 SC 393 had been misapplied.

3. We have heard Mr. M.M. Aqil Awan, learned counsel for the appellant and Mr. Abdul Fatch Malik, learned Additional Advocate General on behalf of the respondent respectively and have also gone through the record.

4. As regards the first ground upon which leave was granted, with profound respects we are not inclined to subscribe to the contention of Mr. M.M. Aqil Awan inasmuch as rule 9 of the Sindh Judicial Service Rules, 1994 explicitly empower the dispensing with the services of an officer on probation before the expiry of his probationary period as correctly recorded in the order of the then Chief Justice. It is well-settled as has also been observed in the above case of Muhammad Siddiq Javaid Chaudhry (supra) that appointment of a probationer can only acquire a sure footing if he successfully completes the period of probation and the appointing authority is fully satisfied with his conduct and performance of duties. In this respect the findings of the learned Service Tribunal appear to be unexceptionable.

5. Nevertheless the second contention of learned counsel appears to have substantial force. In this context learned counsel referred to a six page report dated 24-7-2009 brought on record pursuant to permission granted in the leave granting order containing a variety of allegations against the appellant, which, according to learned counsel appear to be the real basis for the termination of her services. The contents of such report and the contention of its having impacted the decision of the Honourable Chief Justice were not seriously disputed. Apart from the others the report contained the following allegations:--

"(4) One Abdullah son of Abdul Aziz Khuwaja had addressed your Lordship sending fax and telegram dated 23-9-2002 regarding undue favouritism to accused by the above said Judicial Magistrate and the copy was endorsed to the different authorities including the then District Judge Mr. Rasheed Ali Mirza who asked the mover of application to file his affidavit which was filed on 12-10-2002 and comments of Judicial Magistrate were called which were submitted and discreet enquiry was ordered by Honourable High Court through Member Inspection Team. In response of discreet enquiry the then District & Sessions Judge submitted his reply vide letter dated 6-2-2003 (Copies enclosed Mark 12 to 17).

(6) It has also come to knowledge that she during her posting at Thatta has acquired a plot No.D/290-D in Unit No.2 admeasuring 229.2 square yards in Makli Co-operative Housing Society on 2-10-2002 (within seven months of her posting at Thatta). It is yet to

ascertain whether the said plot has been acquired with the permission of the Honourable High Court or the same has been disclosed in her declaration of assets. She encroached upon the area other than the allotted one by misusing her position being a Judicial Magistrate and such letter was initiated by the Chairman of the said Co-Operative Society (Copies enclosed Mark 25 and 25-A) which is self explanatory."

6. Learned counsel argued that the allegations of granting undue favour to a litigant before her acquiring property through misuse of office on the part of a Judicial Officer clearly amounted to misconduct and could have only been established through a proper enquiry or the appellant should have at least been accorded opportunity of being heard.
7. Mr. Abdul Fateh Malik on the other hand argued that the order of termination did not refer to any misconduct allegedly committed by the appellant and did not carry any stigma. As such the findings of the Service Tribunal were entirely unexceptionable. He further stated that by assailing the impugned order the appellant might invite the risk of being removed with a stigma but Mr. Awan contended that she was prepared to take that risk as she was certain that the allegations were baseless and could never be established in a fair enquiry.
8. We have carefully gone through the judgment of the Honourable Service Tribunal and that of this Court in the reported case of Muhammad Siddiq Javaid Chaudhry (supra). Mr. Awan pointed out that in the aforesaid precedent the order of termination in cases of all the probationers only spoke of their work and conduct having been found to be unsatisfactory and such orders on their face did not show anything entitling them to show-cause notice. Nevertheless when it was discerned from the record produced before the Court that allegations of corruption or misconduct existed, their Lordships held them entitled to notice and set aside the orders of termination. The law declared by this Court, therefore, appears to be that a right to notice is not to be premised merely upon the question whether the order of termination indicated a stigma but whether allegations of misconduct had any bearing upon the mind of the competent authority passing the order.
9. Reading the impugned judgment in the context of the above pronouncement it appears that the conclusion recorded simply on the basis of the order of termination was not open to any exception. Nevertheless their lordships erred in confining 'themselves merely to the order without calling for the entire record and attempting to discern the real grounds for such action. We can certainly appreciate that they were handicapped by the fact that the report of the District & Sessions Judge was not available before them. Nevertheless they fell into an error by failing to summon the entire record when the appellant had levelled allegations of bias against the Sessions Judge in a guarded language in her Memo of Appeal and her departmental application annexed to the same. In para.10 of the latter she had categorically alleged that she had applied for supply of certain documents but nothing except the order of termination was made available to her.
10. It needs to be kept in view that all public powers must be exercised reasonably and honestly for the purpose for which it is conferred. When serious allegations of misconduct are levelled against the judicial officers it is highly improper to record conclusions on the basis of "discreet enquiries". Indeed such inquiries may be permissible for the purpose of enabling the competent authority to determine whether appropriate action should be initiated so as to prevent unnecessary harassment. Nevertheless there could be no justification to come to definite conclusions on the basis of such enquiries. Mr. Aqil Awan also urged that even in respect of employees of State owned commercial enterprises, whose terms of service are only governed by contracts, this Court has held in *Pakistan State Oil v. Muhammad Tahir Khan*, PLD 2001 SC 980

PLJ 2020 Tr.C (NIRC) 26**[National Industrial Relations Commission, Karachi Bench]***Present : FAHMEEDA QADEER, MEMBER*

TRADING CORPORATION OF PAKISTAN EMPLOYEES UNION KARACHI--Petitioner

versus

CHAIRMAN TRADING CORPORATION OF PAKISTAN and another--Respondents

Case No.4A(378)/2016-K & CMA No.24(384)/2016-K,
decided on 1.2.2019**Industrial Relations Act, 2012--**

---S. 54(e) & (g) R/W S. 31--Deduction of amount from salaries of late comer staff--Non-issuance of show cause notice--Application for waving of late coming deduction which was not responded--Stay proceedings--Challenge to--It is very much clear that CBA union can agitate for collective rights of workers and in my opinion deduction of salary on account of late coming of some employees is not a collective cause, Further it is astonishing that respondent management belatedly start deduction of salary of late coming staff without issuance of any explanation show cause notice which is also against norms of Islam justice--It is clear that neither in our Islam and nor in law, no one can be punished without issuing any show cause notice or any explanation. [P. 28] A & B

*Mr. Sanaullah Noor Ghauri, Advocate for Petitioner.**Syed Ashfaq Hussain, Advocate for Respondents.*

Date of hearing : 1.2.2019.

ORDER

The instant petition filed under Section 54(e)(g) Read with Section 31 of IRA, 2012, with the prayer that to direct the respondents not to commit unfair labour practice; to refund the deducted amount from the salaries of the staff; not to deduct any further amount due to late coming of the staff; and to hold that actions of the respondents through 02 impugned order dated 27.04.2016 and 28.04.2016 are hopelessly time barred and have been passed in violation of labour laws. An application for interim relief accompanied with affidavit has also been filed.

2. Brief facts leading to file the instant petition are that the respondent management issued a letter dated 27.04.2016 regarding deduction of amount from the salaries of late comer staff for the month of March, April and May 2015, and likewise *vide* impugned letter dated 28.04.2016 finance Division were directed to deduct the late coming charges from the pay of 130 employees. Some employees jointly sent application to the Chairman TCP/Respondent No. 1, for waving of the late coming deduction which has not been responded; hence the petitioner union has this Commission upon which the learned predecessor while hearing the interim application on 24.11.2016 has restrained the respondents from deducting any further amount from the salaries of the employees. Notices were issued to the respondents who filed reply to the main petition and counter affidavit to the stay application, arguments on stay application has been heard.

3. The learned counsel for the petitioner contended that the petitioner is a registered trade union and being CBA it is responsible to safe guard the rights of the workers employed in the respondent corporation; the respondent management *vide* letters dated 27.04.2016 and 28.04.2016 directed for deduction of the amount from the salaries of late comer employees, which act on the part of the respondent constitute unfair labour practice and an attempt to interfere with or in any way influencing the balloting for the determination of the CBA and an attempt to instigate the workman that CBA is not working for their welfare and betterment regarding terms and conditions of their services; the direction for deduction of amount on account of late coming without issuance of any explanation/ show-cause notice is against the norms of Islam so also the rules and law. He prayed that the interim order may be confirmed and the respondents may be permanently restrained from deduction of such amount.

4. The learned counsel for the respondent argued that the petitioner filed petition alongwith application with *malafide* intention in order to get the facilities of workmen while holding positions of grade 16 officers; that the late coming in the office is itself misconduct and disobedience of the law and also enormous inconvenience for the respondents and impediment towards smooth running of the business

of the Corporation. He prayed that the stay application alongwith main petition may be dismissed.

5. Heard the learned counsel for the parties. Perused the record which reveals that the instant petition filed by a union registered with the Registrar Trade Unions Government of Sindh Karachi and Clause 1(3) of the Act, 2012 provides that the said Act shall apply to all persons employed in any establishment or industry, in the Islamabad Capital Territory or carrying on business in more than one province, further in the judgments of the Superior Courts it has also been viewed that in the trans-provincial establishment local unions having become ceased to exist. 2ndly this petition filed by the trade union namely Trading Corporation of Pakistan Employees Union Karachi which is also Collective Bargaining Agent and it is very much clear that the CBA union can agitate for the collective rights of the workers and in my opinion deduction of salary on account of late coming of some employees is not a collective cause, Further it is astonishing that the respondent management belatedly start deduction of the salary of late coming staff without issuance of any explanation/ show-cause notice which is also against the norms of Islam justice. In this context Surah-e-Namal parah 19 Waqal-Ul-Lazim Aya No. 20 and 21 are very relevant, recite as, *"When Hud Hud(wood peaker came late, Hazrat Suleman was thinking to punish him, but Hazrat Suleman at first asked the reason of coming late) which was in fact show-cause and on its explanation forgave him"*. Therefore it is clear that neither in our Islam and nor in law, no one can be punished without issuing any show-cause notice or any explanation. With these observations this petition is disposed of by leaving the parties to bear their own cost.

(MMR) Petition Disposed of.

For Appellee

Before Gul Muhammad Khan, C.J., Mufti Syed Shujaat Ali Qadri, Muftakhiruddin Kamal Mustafa Bokhary, Abdur Rahman Khan Kaif, Ibadat Yar Khan and Allama Fida Muhammad Khan, JJ

IN RE: THE PASSPORTS ACT, 1974 S.S.M.No.270 of 1983, decided on 24th April, 1989.

(a) Constitution of Pakistan (1973)-

---Art.203-D--Passports Act (XX of 1974), S.8(2), proviso—Provisions of S.8(2), proviso are repugnant to the Injunctions of Islam in so far, as it does not provide for due notice of the action proposed to be taken and opportunity of showing cause against such action-Necessary modification/ amendment in the law on the lines indicated by Federal Shariat Court was ordered to be carried out by the 30th September, 1989, failing which the objectionable provisions shall cease to have effect.

The Passports Act, 1974 was enacted to regulate departure from and entry into Pakistan and visits to foreign countries of citizens of Pakistan and to provide for matters ancillary thereto as its preamble shows. Generally speaking the right of an individual cannot be sacrificed on the mere assumption that it is in the public interest unless a proper opportunity of hearing is provided to such person. The proviso to subsection (2) of section 8 of the Passports Act, 1974 is admittedly harsh placing restrictions on the right of the free movement. It becomes more harsh when looked at from the angle that the action for the mentioned period can be taken even without any notice. A person may be in need of immediate departure on the ground of health, business, Hajj, Umrah or other urgent matters. Action in such circumstances taken without any notice and for such a long period in such cases is likely to cause irreparable loss to the person concerned.

The principle of natural justice required that every statute should be read as incorporating in itself the requirement to give a notice to show cause against any action intended to be taken against the person unless the statute expressly or by necessary implication excludes such a Rule. The denial or withholding of passport to a citizen has been considered throughout one of the principal instruments of intimidation since in that manner the individual concerned is virtually imprisoned at home without a passport. Thus looked at from whatever angle the existence of the said proviso in the relevant section of the Passports Act is in a way denial of free movement to a citizen as well as the right of hearing.

Everyone whose rights are involved should be given an opportunity of hearing. In the circumstances, it is therefore, to be seen whether the said proviso is repugnant to the Injunctions of the Holy Quran and Sunnah of the Holy Prophet. The right of free movement from one place to another to all human beings has been fully recognised in Islam. This right has not only been recognised by the Holy Quran, but in several verses a clear incentive has been given to undertake journey and to travel on the earth.

There are number of instances in the Holy Quran of due notice. From numerous verses in the Holy Quran, it is evident that every individual will, be confronted with the record of his deeds on the Day of Judgement and would be afforded opportunity of hearing before the decision is taken. Allah Almighty had bestowed the right on human being to be aware of what he is being punished for.

The provisions of the proviso under challenge are repugnant to the Injunctions of Islam in so far as they do not provide for due notice of the action proposed to be taken and opportunity of showing cause against, such action. However, in some cases of immediate nature difficulties may arise as it may not be possible to communicate all the grounds while serving a notice. Such difficulties can be solved by modifying the proviso in a manner whereby the Injunctions of Islam are not violated and at the same time the object of law is achieved.

A person can be detained for 24 hours for the purposes of proper verification and investigation. On the

above analogy necessary amendment can be made in the relevant provisions. If as an emergent measure immediate action is necessary a passport can be impounded for 24 hours and the notice for showing cause can be dispensed with, but such opportunity of showing cause and that of hearing shall be afforded to the affected passport-holder soon thereafter, In such a situation the onus shall always be on the concerned Department taking, the action.

Necessary modification/amendment in the law ph the lines indicated above should be carried out by the 30th of September, 1989, failing which the objectionable provision shall cease to have effect.

(b) Islamic Jurisprudence---

---Administration of justice--Due notice--No one can be condemned unheard.

In Islam a person cannot be condemned unheard.

All provisions of law wherein someone can be condemned unheard are against the Quranic command as supplemented and interpreted by the Sunnah of the Holy Prophet.

There are number of instances in the Holy Quran of due notice. From numerous verses in the Holy Quran, it is evident that every individual will be confronted with the record of his deeds on the Day of Judgement and would be afforded opportunity of hearing before the decision is taken. Allah Almighty has bestowed the right on human being to be aware of what he is being punished for.

It was after hearing the explanation from Iblis which was not found tenable that he was condemned by the Almighty.

Condemning someone without making proper enquiry has been prohibited. It is a common principle which governs the administration of justice in Islam that in case of liability with penal consequences or deprivation of basic right, a notice as well as an opportunity of hearing are of absolute necessity.

It is clear from the various Injunctions of the Holy Quran that for doing complete justice it requires not only equal treatment between man and man but also protects the rights of one against unfair treatment.

When a public authority is to be exercised for resolving a controversy regarding rights and liabilities, the decision could not be rendered without proceedings in which the persons affected is also afforded an opportunity of hearing.

3:137; 22:46; 29:20; 98 (Al--Nisa); 100 (Al-Nisa); verses 13 and 14 of Surah 17; verses 11 to 13 of Surah VII; 29 (Al-Araf); 58 (Al-Nisa); 420 (Al-Maida); Tirmizi; Abu Daud; Ibn Majah; 288/2 (Jamia-ul-Tirmazi, Tufatul-Ahuzi) and 102/4 (Hak-ul-Mustadrin) ref.

(c) Islamic Jurisprudence--

---Administration of justice--Equality before law.

It is clear from the various Injunctions of the Holy Quran that for doing complete justice it requires not only equal treatment between man and man but also protects the rights of one against unfair treatment.

Hafiz S.A. Rehman, Standing Counsel, Muhammad Iqbal Khan (J.S.), Ismail Niazi, (Deputy Secretary) and Qadeer Siddique, Ministry of Interior for the Federal Government.

Muhammad Aslam Uns for the Government of Punjab.

Mir Rehman Khan Khalil, Asstt. A.G., N.W.F.P. for the Government of N.W.F.P.

Dates of hearing: 3rd, 4th May, 1988; 22nd, 24th and 25th January, 1989.

JUDGMENT

ABDUR REHMAN KHAN KAIF, J.--This Court undertook the Suo Moto examination of Passports Act, 1974 (Act No. XX of 1974) with a view to determine whether the provisions of the said statute were repugnant to the Injunctions of Islam as contained in the Holy Quran and the Sunnah of the Holy Prophet. It was found that while section 8 of the Act authorised the Federal Government to cancel, impound or confiscate a passport after giving notice in writing calling upon the holder thereof to show cause why the order should not be made, there were, however, two exceptions to the service of show cause notice. Proviso to subsection (2) of section 8 provides that no such notice shall be given if the order of impounding a Passport is for a period not exceeding four months. Similarly, subsection (3) provides that such notice would not be necessary if the Government had reason to believe that the person concerned holding the passport was involved in subversive activities or in activities which are prejudicial to the interest of Pakistan or to Pakistan's relations with any foreign powers. While disposing of SSM No.270/83 this Court observed that no objection could be taken to the exception in subsection (3) but the exception in the proviso in subsection (2) to section 8 of the Act regarding four months period without notice was repugnant to the Injunctions of Islam and, therefore, it was directed that the said proviso be repealed. The relevant part of the Order SSM No. 270/83 is reproduced as under:-

"No objection can be taken to subsection (3) because it requires on the ground given in it an immediate order. The interest of the holder of the Passport is protected since that order can be cancelled in review to be filed by the person aggrieved within thirty days of the order. This provision itself amounts to exercise by the aggrieved person of a right to satisfy the Government that the charges against him are not correct but since immediate order may be necessary, no objection can be taken to this exception. However, the exception in the proviso in subsection (2) regarding four months period gives a handle to the Officers of the Federal Government to make arbitrary order for a period of four months and thus to cause sometime, irreparable damage or loss to the Passport holder. The proviso is directed to be repealed."

2. An appeal was preferred by the Federation of Pakistan under Article 203-F of the Constitution against the mentioned judgment. In support of the appeal it was submitted that no reason had been given in the impugned judgment to indicate as to how and why the mentioned proviso to subsection (2) of section 8 was repugnant to the Injunctions of Islam. The above appeal was heard alongwith four other similar appeals by the Supreme Court of Pakistan (Shariat Appellate Bench). All the above appeals were disposed of by a single judgment dated 19-2-1986 and the cases were remanded to the Federal Shariat Court for fresh decisions in accordance with the Law. The concluding para of the judgment of the Appellate Court runs as under:-

"In the light of the foregoing, on account of the omission by the Federal Shariat Court to give reasons by making references to the Holy Quran and Sunnah and their principles as discussed earlier, together with the directions for the enactment of certain laws, as also with the observations in the above paragraphs, these appeals are allowed; and, the cases are remanded to the Federal Shariat Court for fresh decisions in accordance with the Law."

3. The case remanded was heard afresh at length and is being disposed of in accordance with the directions given by the learned Appellate Court.

4. The Passports Act, 1974 was enacted on 7th of March, 1974 to regulate departure from and entry into Pakistan and visits to foreign countries of citizens of Pakistan and to provide for matters ancillary thereto

as its preamble shows. Generally speaking the right of an individual cannot be sacrificed on the mere assumption that it is in the public interest unless a proper opportunity of hearing is provided to such person. The proviso in question is admittedly harsh placing restrictions on the right of free movement. It becomes more harsh when looked at from the angle that the action for the mentioned period can be taken even without any notice. A person may be in need of immediate departure on the ground of health, business, Hajj; Umrah or other urgent matters. Action in such circumstances taken without any notice and for such a long period in such cases is likely to cause irreparable loss to the person concerned.

5. It is now well settled that the principle of natural justice required that every statute should be read as incorporating in itself the requirement to give a notice to show cause against any action intended to be taken against the person unless the statute expressly or by necessary implication excludes such a Rule. The denial or withholding of Passport to a citizen has been considered throughout one of the principle instruments of intimidation since in that manner the individual concerned is virtually imprisoned at home without a passport. Thus looked at from whatever an angle the existence of the said proviso in the relevant section of the Passport Act is in a way denial of free movement to a citizen as well as the right of hearing.

6. Representative of the Government in the concerned Department appearing before us submitted that the impugned provision was necessary for the reason that in some cases time is required for collecting material needed for the service of notice on the basis of such material and the only purpose of the said proviso is to deal effectively in the situation occasionally arising in such like cases. We appreciate the background in which the impugned provision has been enacted, but would observe that all provisions of law wherein someone can be condemned unheard are against the Quranic command as supplemented and interpreted by the Sunnah of the Holy Prophet. It has been held by the Supreme Court in the case of Pakistan and others v. Public-at-Large and others (PLD 1987 SC 204 at 330/331) (Shariat Appellate Bench) that everyone whose rights are involved should be given an opportunity of hearing. In the circumstances, it is therefore, to be seen whether the said proviso is repugnant to the Injunctions of the Holy Quran and Sunnah of the Holy Prophet. The right of free movement from one place to another to all human beings has been fully recognised in Islam. This right has not only been recognised by the Holy Quran, but in several verses a clear incentive has been given to undertake journey and to travel on the earth. Some of the verses are stated as under:-

"Systems have passed away before you. Do but travel in the land and see the nature of the consequence for those who did deny (the messengers)" (3:137)

"Have they not travelled in the land, and have they hearts wherewith to feel and ears wherewith to hear? For indeed it is not the eyes that grow blind, but it is the hearts, which are within the bosome, that grow blind." (22:46).

"Say (O Muhammad): Travel in the land and see how He originated creation, then Allah bringeth forth the late growth. Lo! Allah is able to do all things." (29:20)

Was not the earth of God specious enough for you to move yourselves away."

"He who forsakes his home in the cause of God finds in the earth many refuge, wide and specious."

7. Coming to the next question concerning the right of hearing, there are number of instances in the Holy Quran of due notice. From numerous verses in the Holy Quran, it is evident that every individual will be confronted with the record of his deeds on the Day of Judgment and would be afforded opportunity of hearing before the decision is taken. Allah Almighty had bestowed the right on human being to be aware what he is being punished for. In this connection reference can be made to verses 13 and 14 of Surah 17 which read as, under:-

13. "Every man's fate
We have fastened

On his own neck,
On the Day of Judgment
We shall bring out
For him a scroll,
Which he will see
Spread open."

4. (It will be said to him):
"Read thine (own) record:
Sufficient is thy soul
This day to make out
An account against thee."

8. The next instance is that of the story of Iblis in the Holy Quran. The relevant verses of the Holy Quran in that connection are verses 11 to 13 of Surah VII which read as under:-

11. "It is We Who created you
And gave you shape;
Then We bade the angels
Bow down to Adam, and they
Bowed down; not so Iblis;
He refused to be of those
Who bow down."

12. "(Allah) said: "What prevented
Thee from bowing down
When I commanded thee?
He said: "I am better
Than he: Thou didst create
Me from fire and him from clay."

13. "(Allah) said: "Get thee down
From this: It is not
For thee to be arrogant,
Here get out, for thou
Art of the meanest (of creatures)"

9. It is clear from the above verses that it was after hearing the explanation from Iblis which was not found tenable that he was condemned by the Almighty. In the story of "Hudhud" also it is clearly given that an opportunity of hearing before decision was necessary. Similarly, the decision in the case of 99 sheep by Hazrat Dawood was found defective by the Almighty Allah for the reason that the opposite party was not heard. The reading of each one of the afore-quoted verses makes it clear that condemning someone without making proper enquiry has been prohibited. It is a common principle which governs the administration of justice in Islam that in case of liability with penal consequences or deprivation of basic right, a notice as well as an opportunity of hearing are of absolute necessity.

10. It is clear from the various Injunctions of the Holy Quran that for doing complete justice it requires not only equal treatment between man and man but also protects the rights of one against unfair treatment. In this connection reference can be made to the following verses:-

11. The above-mentioned Quranic commands are supplemented and interpreted by the Sunnah of the Holy Prophet (P. B. U. H.) in various traditions connected with the administration of justice. Directions have been given that when a public authority is to be exercised for resolving a controversy regarding rights and liabilities, the decision could not be rendered without proceedings in which the person affected

is also afforded an opportunity of hearing:-

All reported: The Messenger of Allah sent me to Yemen as a judge. I said: O Messenger of Allah: you are sending me while I am young in years and I have no knowledge of judgeship. He said: Verily Allah will soon give guidance to your heart and make your tongue firm. When two persons come to you for decision, don't give decree in favour of the first till you hear the argument of the other, because that is more necessary that decision may become clear to you." (Tirmizi, Abu Daud, Ibn Majah).

12. To a similar effect is the following tradition:-

It is thus, clear that in Islam a person cannot be condemned unheard.

13. From the above discussion, it becomes clear that the provisions of the proviso under challenge are repugnant to the Injunctions of Islam in so far as it does not provide for due notice of the action proposed to be taken and opportunity of showing cause against such action. However, we agree that in some cases of immediate nature difficulties may arise as it may not be possible to communicate all the grounds while serving a notice. Such difficulties in our opinion can be solved by modifying the proviso in a manner whereby the Injunctions of Islam are not violated and at the same time the object of law is achieved. In this connection the following tradition of the Holy Prophet shall provide a basis for taking action without notice for a brief period: -

According to the above tradition of the Holy Prophet a person can be detained for 24 hours for the purposes of proper verification and investigation. On the above analogy necessary amendment can be made in the relevant provisions. If as an emergent measure immediate action is necessary a passport can be impounded for 24 hours and the notice for showing cause can be dispensed with, but such opportunity of showing cause and that of hearing shall be afforded to the affected passport-holder soon thereafter. In such a situation the onus shall always be on the concerned Department taking the action according to the following saying of the Holy Prophet:-

14. Necessary modification/amendment in the law on the lines indicated above should be carried out by the 30th of September, 1989, failing which the objectionable provision shall cease to have effect.

M.B.A. 7469/F.S.C.

Modification /amendment ordered.

2008 S C M R 214

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Muhammad Nawaz Abbasi, JJ

MUHAMMAD ALI S. BUKHARI----Appellant

Versus

FEDERATION OF PAKISTAN through Establishment Secretary, Islamabad and 2 others----
Respondents

Civil Appeal No.86 of 2005, decided on 28th August, 2007.

(On appeal from the judgment of Federal Service Tribunal, Islamabad, dated 30-7-2004 passed in Service Appeal No.554(K) (C.S.) of 2002).

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

----Rr. 3(b) & 4(b)(i)(ii)(iii)---Civil Servants Act (LXXI of 1973), S.18---Constitution of Pakistan (1973), Art.212(3)---Removal from service---Charge of non-compliance of order of superiors and absence from duty without prior permission---Conversion of such penalty into compulsory retirement by Service Tribunal in appeal of civil servant---Plea of civil servant that he was not supposed to accept special assignment without order in writing; and that he had availed medical leave on advice of doctor---Validity---In service discipline, oral order of superiors in relation to official business would be as good order as in writing---Civil servant could earn leave on his own right, but for its grant, he must have followed proper procedure provided under the Rules---Civil servant was not supposed to avail any kind of leave entirely in his discretion and choice in departure to the Rules and service discipline---Absence from duty without leave, even if not wilful, but same being an act of disorder in service would constitute misconduct---Availing of medical leave without permission could not be considered an act of gross misconduct entailing major penalty of dismissal from service---Charge against civil servant was not so grave as to propose any of such two penalties---Major penalty of compulsory retirement was harsh and did not commensurate with nature of charge---Supreme Court converted penalty of compulsory retirement into reduction of two steps in time scale for a period of two years in consequence to which civil servant would be deemed to have earned two increments for a period of two years.

(b) Civil service---

----Oral order of superiors---Validity---In service discipline, oral order of superiors in relation to official business would be as good order as in writing.

(c) Civil Servants Act (LXXI of 1973)---

---S. 18---Leave, right of---Scope---Civil servant would not be supposed to avail any kind of leave entirely in his discretion and choice in departure to the Rules and service discipline---Principles.

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

---R. 3(b)---Civil Servants Act (LXXI of 1973), S.18---Misconduct---Absence from duty without leave, even if not wilful, but same being an act of disorder in service, would constitute 'misconduct'.

(e) Civil service---

---Disciplinary proceedings---Penalty, imposition of---Scope---Penalty in service matters would always be imposed in the light of charge against civil servant---Concept of major or minor penalty in service laws would be to determine quantum of punishment in the light of nature and gravity of charge.

Appellant in person.

Rizwan Ahmed Siddiqui, Deputy Attorney-General for Pakistan.

A.S.K. Ghouri, Advocate-on-Record for Respondent No.2.

Date of hearing: 28th August, 2007.

JUDGMENT

MUHAMMAD NAWAZ ABBASI, J.--- This appeal by leave of the Court, has been directed against the judgment of Federal Service Tribunal, dated 30-7-2004 passed in Appeal No.554(K)(C.S.) of 2002 whereby the penalty of removal from service awarded to the appellant was converted into compulsory retirement from service.

2. The leave was granted in this appeal vide order, dated 26-1-2005 as under:--

"It is inter alia, contended that the petitioner was subjected to discriminatory treatment in the matter of successive show-cause notices and inquiries; that the Inquiry Officer kept on consulting with the Director-General, Commercial Audit, who was unfavourably disposed and hostile towards the petitioner; that enquiry was not conducted according to law; that the charges of not submitting the project reports and unauthorized absence from duty were not established against him; that the statement of the petitioner was recorded in question-answer format which has caused miscarriage of justice and that despite the recommendation of the Authorized Officer for lesser penalty competent authority imposed major penalty or removal from service on the petitioner.

Leave to appeal is granted to consider the above questions which appear to be of public importance."

3. The short facts leading to the filing of this appeal are that appellant, a Grade-18 Officer of Audit and Account Service, while posted as Deputy Director Audit, Office of the Director-General Commercial Audit and Evaluation (South) Karachi, was served with a show-cause notice, dated 1-11-1997 by the Auditor-General for Pakistan to the effect that despite Director-General's repeated directions, he failed to submit audit report of Saindak Metals Ltd. and similarly he did not comply with the orders regarding special assignment of audit of Port Qasim Authority given to him and thereby he committed an act of insubordination. The appellant, on rejection of his application submitted on 25-9-1997 for grant of 15 days LFP, was directed to appear before the D.G. but he absented from duty, therefore, he was served with a charge-sheet on 3-3-1998 containing the above charges. In view of the nature of allegations, successive inquiries were held against the appellant and he having been found guilty of the charges, was awarded major penalty of removal from service vide order, dated 8-8-2002. The appellant after availing the remedy of departmental appeal, approached the Federal Service Tribunal and the Tribunal with conversion of penalty of removal from service into compulsory retirement, disposed of his appeal and appellant being dissatisfied with the judgment of Tribunal has filed this appeal before this Court in which leave was granted as aforesaid.

4. The main charge against the appellant was that he having disobeyed the orders of his superiors in respect of the assignment of special audit given to him committed an act of insubordination and also was guilty of wilful absence from duty. The appellant giving an evasive reply to the show-cause notice stated that he was not given an order in writing for the special assignment and similarly the absence of the

appellant from duty was not deliberate and wilful rather his failure to attend the duty, was due to his ailment and he availing the medical leave under the advice of the doctor, sent an intimation to the office therefore, he could not be treated absent from duty without permission. In nutshell submission of the appellant, was the departmental action against him was the result of mala fide of the Director-General and the forums below without giving due consideration to the circumstances leading to the departmental action, held him guilty of the charge in a perfunctory manner. The appellant when confronted that the departmental authorities namely the Inquiry Officer as well as the Authorized Officer and competent authority having found him guilty of the charge concurrently proposed major penalty of removal from service, he submitted that initially penalty of reduction in time scale was proposed but subsequently, he was imposed the penalty of removal from service and Tribunal converted the same into compulsory retirement from service.

5. Learned D.A.-G., on the other hand, has submitted that the appellant being a senior member of Accounts Service, was not supposed to behave in the manner he acted and that the act of wilful absence from duty would be sufficient to constitute the misconduct and insubordination entailing major penalty of dismissal or removal from service and in view of the fact that Tribunal has converted the penalty of removal from service imposed upon the appellant into compulsory retirement, no further indulgence is required in the matter.

6. Having perused the record with the assistance of learned D.A.-G. and the appellant in person, we have found that the charge regarding non-compliance of order of the superiors and absence from duty, without prior permission, stood established against the appellant who instead of repenting on his conduct and giving plausible explanation, has made an attempt to convince us that he was neither supposed to accept the special assignment without order in writing nor his absence from duty would be treated without permission as he availed the medical leave as per his entitlement. This may be seen that in the service discipline, the oral order of the superior in relation to the official business, is as good as order in writing and the mere fact that order passed by the Director-General on the file deputing the appellant to special audit assignment was not conveyed to him in writing, would not be sufficient to justify his conduct and he without denying the fact relating to the special assignment given to him and absence from duty, denied charges with unsatisfactory explanation.

7. The civil servant can avail earned leave in his own right but for grant of such right he must follow the proper procedure provided under the rules and is not supposed to avail any kind to leave entirely in his discretion and choice in departure to the rules and service discipline. The conduct of appellant was thus, unbecoming of a good officer and in the given circumstances, the absence of appellant from duty without leave even if was not wilful, it being an act of disorder in the service, would certainly constitute misconduct and consequently, no exception can be taken to the opinion expressed by the Tribunal. However, in service matters, the penalty is always imposed in the light of nature of charge and in the present case the charge against the appellant was not so grave to propose major penalty of removal from service or compulsory retirement.

8. The leave is right of a civil servant which can be availed in terms of the rules and mere fact that appellant did not obtain permission before proceeding on sick leave, rather availed medical leave on the advice of doctor, may not be considered an act of gross misconduct entailing major penalty of dismissal from service. The concept of major and minor penalty in the service laws is to determine the question of punishment in the light of nature of gravity of the charge and we find that in the present case, concerned authorities without attending this aspect of the case, awarded major penalty to the appellant. In the light of facts and circumstances of the present case, we are of the view that major penalty of compulsory retirement is harsh and does not commensurate with the nature of charge, therefore, we while modifying the judgment of Tribunal, convert the penalty of compulsory retirement into reduction of two steps in time scale for a period of two years in consequence to which the appellant would be deemed not to have earned two increments for a period of two years.

9. In the light of foregoing reasons, this appeal, with the above modification, in the penalty of appellant, is partly allowed with no order as to costs.

2009 S CMR 605

[Supreme Court of Pakistan]

Present: Sabihuddin Ahmed and Sarmad Jalal Osmany, JJ

Mrs. ABIDA PARVEEN CHANNAR---Appellant

Versus

HIGH COURT OF SINDH at Karachi---Respondent

Civil Appeal No.1669 of 2007 arising out of Civil Petition No.219-K of 2007, decided on 23rd February, 2009.

(On appeal against the judgment, dated 5-4-2007 passed by Sindh Subordinate Judiciary Service Tribunal at Karachi in Appeal No.6 of 2005).

(a) Sindh Judicial Service Rules, 1994---

---R. 9-A---Services of probationer could be dispensed with before expiry of probation period.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 rel.

(b) Civil service---

---Probationer only on successful completion of probation period could acquire a sure footing---Principles.

Appointment of a probationer can only acquire a sure footing, if he successfully completes the period of probation and the appointing authority is fully satisfied with his conduct and performance of duties.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 fol

(c) Civil service---

---Misconduct, charge of---Employee's right to show-cause notice before passing of termination order against him by competent authority---Scope stated.

A right to notice is not to be premised merely upon the question whether the order of termination indicated a stigma, but whether allegations of misconduct had any bearing upon the mind of the competent authority passing the order.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 rel.

(d) Sindh Service Tribunals Act (XV of 1973)---

---S. 3-B---Constitution of Pakistan (1973), Art.212(3)---Termination of services during

probation period---Judicial Magistrate---Misconduct, charge of ---Imposition of such penalty on basis of discreet enquiries conducted by District Judge---Dismissal of appeal by Service Tribunal---Validity---In view of serious allegations of misconduct levelled against appellant, recording definite conclusion against him on basis of discreet enquiries was highly improper---Competent authority had erred by failing to summon entire record, when appellant had levelled allegations of bias against District Judge, in departmental appeal---Report of District Judge submitted two months after assuming charge contained allegations relating to period prior to his appointment and same being unrelated to performance of duties by appellant possibility of bias could not be altogether ignored---Supreme Court, set aside orders of Service Tribunal and competent authority with direction to reinstate appellant in service while allowing competent authority to initiate enquiry into allegations of misconduct, if considered necessary.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 395 and Pakistan State Oil v. Muhammad Tahir Khan PLD 2001 SC 980 ref.

(e) Administration of justice---

---Public functionaries---All public powers must be exercised reasonably and honestly for purpose for which same are conferred.

(f) Civil service---

---Misconduct, charge of --Judicial Officer---Discreet enquiries---Validity---Not proper to record definite conclusion on basis of such enquiries-Principles.

When serious allegations of misconduct are levelled against the judicial officers, it is highly improper to record conclusions on the basis of "discreet enquiries". Indeed such inquiries may be permissible for the purpose of enabling the competent authority to determine whether appropriate action should be initiated so as to prevent unnecessary harassment. Nevertheless there can be no justification to come to definite conclusions on the basis of such enquiries.

(g) Civil service---

---Inquiry proceedings---Duty of Judicial Officer---Scope-Judicial officers should honestly and faithfully report failings of their subordinates to enable competent authority to apply their independent judgment rather than attempting to foist their own prejudices.

M.M. Aqil Awan, Advocate Supreme Court and Suleman Habibullah, Advocate-on-Record for Appellant.

Abdul Fateh Malik, Additional Advocate-General, Sindh for Respondent.

Date of hearing: 23rd February, 2009.

JUDGMENT

SABIHUDDIN AHMED, J.--- This appeal by leave of the Court is directed against the judgment of the learned Sindh Subordinate Judiciary Service Tribunal, Karachi dated 5-4-2007 upholding the order of the Honourable Chief Justice terminating the appellant's services during

the period of probation.

2. Briefly the relevant facts appear to be that the appellant was appointed as Judicial Magistrate on the basis of recommendations of the Provincial Selection Board on regular basis on 11-12-2001 and was required to undergo a period of probation for two years. She was posted at Thatta. She was granted maternity leave for 90 days with effect from 8-9-2003 and during the period of such leave, her services were terminated vide order dated 30-10-2003 with the observation that during the 1 year 10 months and 15 days of service, her conduct had been unsatisfactory and her retention in service was not desirable. The appellant after submitting an application for review, which came to be dismissed, approached the Service Tribunal which also dismissed her appeal vide the impugned order. Leave to appeal however was granted by this Court, inter alia, on the grounds that the appellant was condemned unheard and the law declared by this Court in the case of Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan reported in PLD 1974 SC 393 had been misapplied.

3. We have heard Mr. M.M. Aqil Awan, learned counsel for the appellant and Mr. Abdul Fateh Malik, learned Additional Advocate General on behalf of the respondent respectively and have also gone through the record.

4. As regards the first ground upon which leave was granted, with profound respects we are not inclined to subscribe to the contention of Mr. M.M. Aqil Awan inasmuch as rule 9 of the Sindh Judicial Service Rules, 1994 explicitly empower the dispensing with the services of an officer on probation before the expiry of his probationary period as correctly recorded in the order of the then Chief Justice. It is well-settled as has also been observed in the above case of Muhammad Siddiq Javaid Chaudhry (supra) that appointment of a probationer can only acquire a sure footing if he successfully completes the period of probation and the appointing authority is fully satisfied with his conduct and performance of duties. In this respect the findings of the learned Service Tribunal appear to be unexceptionable.

5. Nevertheless the second contention of learned counsel appears to have substantial force. In this context learned counsel referred to a six page report dated 24-7-2009 brought on record pursuant to permission granted in the leave granting order containing a variety of allegations against the appellant, which, according to learned counsel appear to be the real basis for the termination of her services. The contents of such report and the contention of its having impacted the decision of the Honourable Chief Justice were not seriously disputed. Apart from the others the report contained the following allegations:--

"(4) One Abdullah son of Abdul Aziz Khuwaja had addressed your Lordship sending fax and telegram dated 23-9-2002 regarding undue favouritism to accused by the above said Judicial Magistrate and the copy was endorsed to the different authorities including the then District Judge Mr. Rasheed Ali Mirza who asked the mover of application to file his affidavit which was filed on 12-10-2002 and comments of Judicial Magistrate were called which were submitted and discreet enquiry was ordered by Honourable High Court through Member Inspection Team. In response of discreet enquiry the then District & Sessions Judge submitted his reply vide letter dated 6-2-2003 (Copies enclosed Mark 12 to 17).

(6) It has also come to knowledge that she during her posting at Thatta has acquired a plot No.D/290-D in Unit No.2 admeasuring 229.2 square yards in Makli Co-operative Housing Society on 2-10-2002 (within seven months of her posting at Thatta). It is yet to

ascertain whether the said plot has been acquired with the permission of the Honourable High Court or the same has been disclosed in her declaration of assets. She encroached upon the area other than the allotted one by misusing her position being a Judicial Magistrate and such letter was initiated by the Chairman of the said Co-Operative Society (Copies enclosed Mark 25 and 25-A) which is self explanatory."

6. Learned counsel argued that the allegations of granting undue favour to a litigant before her acquiring property through misuse of office on the part of a Judicial Officer clearly amounted to misconduct and could have only been established through a proper enquiry or the appellant should have at least been accorded opportunity of being heard.

7. Mr. Abdul Fateh Malik on the other hand argued that the order of termination did not refer to any misconduct allegedly committed by the appellant and did not carry any stigma. As such the findings of the Service Tribunal were entirely unexceptionable. He further stated that by assailing the impugned order the appellant might invite the risk of being removed with a stigma but Mr. Awan contended that she was prepared to take that risk as she was certain that the allegations were baseless and could never be established in a fair enquiry.

8. We have carefully gone through the judgment of the Honourable Service Tribunal and that of this Court in the reported case of Muhammad Siddiq Javaid Chaudhry (supra). Mr. Awan pointed out that in the aforesaid precedent the order of termination in cases of all the probationers only spoke of their work and conduct having been found to be unsatisfactory and such orders on their face did not show anything entitling them to show-cause notice. Nevertheless when it was discerned from the record produced before the Court that allegations of corruption or misconduct existed, their Lordships held them entitled to notice and set aside the orders of termination. The law declared by this Court, therefore, appears to be that a right to notice is not to be premised merely upon the question whether the order of termination indicated a stigma but whether allegations of misconduct had any bearing upon the mind of the competent authority passing the order.

9. Reading the impugned judgment in the context of the above pronouncement it appears that the conclusion recorded simply on the basis of the order of termination was not open to any exception. Nevertheless their lordships erred in confining 'themselves merely to the order without calling for the entire record and attempting to discern the real grounds for such action. We can certainly appreciate that they were handicapped by the fact that the report of the District & Sessions Judge was not available before them. Nevertheless they fell into an error by failing to summon the entire record when the appellant had levelled allegations of bias against the Sessions Judge in a guarded language in her Memo of Appeal and her departmental application annexed to the same. In para.10 of the latter she had categorically alleged that she had applied for supply of certain documents but nothing except the order of termination was made available to her.

10. It needs to be kept in view that all public powers must be exercised reasonably and honestly for the purpose for which it is conferred. When serious allegations of misconduct are levelled against the judicial officers it is highly improper to record conclusions on the basis of "discreet enquiries". Indeed such inquiries may be permissible for the purpose of enabling the competent authority to determine whether appropriate action should be initiated so as to prevent unnecessary harassment. Nevertheless there could be no justification to come to definite conclusions on the basis of such enquiries. Mr. Aqil Awan also urged that even in respect of employees of State owned commercial enterprises, whose terms of service are only governed by contracts, this Court has held in *Pakistan State Oil v. Muhammad Tahir Khan*, PLD 2001 SC 980

a Service Tribunal is required to hold an enquiry into the question whether it was termination simpliciter or 'termination' in the garb of dismissal. We are inclined to think that this principle would apply with greater force in respect of public authorities in view of the inherent constraints on exercise of public powers.

11. At the same time we are constrained to observe that the report of the District and Sessions Judge dated 24-7-2003 was submitted barely two months after having assumed charge as is evident from its face. Moreover it contains several allegations relating to period prior to his appointment and some unrelated to her performance of duties. As such a possibility of bias cannot be altogether ignored. Judicial Officers must remember that they should honestly and faithfully report the failings of their subordinates to enable the authority to apply his independent judgment rather than attempting to foist their own prejudices.

12. For the foregoing reasons we would allow this appeal and set aside the order of the Service Tribunal as well as that of the Honourable Chief Justice and direct that the appellant be reinstated in service. However, since the matter is very old we have refrained from passing any order with respect to back benefits, which may be decided by the Honourable Chief Justice after determining whether the appellant has been engaged in gainful employment during the intervening period. At the same time we would order that the Honourable Chief Justice may initiate enquiry into the allegations of misconduct in case he considers it fit to do so.

S.A.K./A-18/SC

Appeal accepted.

PLJ 2020 Tr.C (NIRC) 26**[National Industrial Relations Commission, Karachi Bench]***Present : FAHMEEDA QADEER, MEMBER*

TRADING CORPORATION OF PAKISTAN EMPLOYEES UNION KARACHI--Petitioner

versus

CHAIRMAN TRADING CORPORATION OF PAKISTAN and another--Respondents

Case No.4A(378)/2016-K & CMA No.24(384)/2016-K,
decided on 1.2.2019**Industrial Relations Act, 2012--**

---S. 54(e) & (g) R/W S. 31--Deduction of amount from salaries of late comer staff--Non-issuance of show cause notice--Application for waving of late coming deduction which was not responded--Stay proceedings--Challenge to--It is very much clear that CBA union can agitate for collective rights of workers and in my opinion deduction of salary on account of late coming of some employees is not a collective cause, Further it is astonishing that respondent management belatedly start deduction of salary of late coming staff without issuance of any explanation show cause notice which is also against norms of Islam justice--It is clear that neither in our Islam and nor in law, no one can be punished without issuing any show cause notice or any explanation. [P. 28] A & B

*Mr. Sanaullah Noor Ghauri, Advocate for Petitioner.**Syed Ashfaq Hussain, Advocate for Respondents.*

Date of hearing : 1.2.2019.

ORDER

The instant petition filed under Section 54(e)(g) Read with Section 31 of IRA, 2012, with the prayer that to direct the respondents not to commit unfair labour practice; to refund the deducted amount from the salaries of the staff; not to deduct any further amount due to late coming of the staff; and to hold that actions of the respondents through 02 impugned order dated 27.04.2016 and 28.04.2016 are hopelessly time barred and have been passed in violation of labour laws. An application for interim relief accompanied with affidavit has also been filed.

2. Brief facts leading to file the instant petition are that the respondent management issued a letter dated 27.04.2016 regarding deduction of amount from the salaries of late comer staff for the month of March, April and May 2015, and likewise *vide* impugned letter dated 28.04.2016 finance Division were directed to deduct the late coming charges from the pay of 130 employees. Some employees jointly sent application to the Chairman TCP/Respondent No. 1, for waving of the late coming deduction which has not been responded; hence the petitioner union has this Commission upon which the learned predecessor while hearing the interim application on 24.11.2016 has restrained the respondents from deducting any further amount from the salaries of the employees. Notices were issued to the respondents who filed reply to the main petition and counter affidavit to the stay application, arguments on stay application has been heard.

3. The learned counsel for the petitioner contended that the petitioner is a registered trade union and being CBA it is responsible to safe guard the rights of the workers employed in the respondent corporation; the respondent management *vide* letters dated 27.04.2016 and 28.04.2016 directed for deduction of the amount from the salaries of late comer employees, which act on the part of the respondent constitute unfair labour practice and an attempt to interfere with or in any way influencing the balloting for the determination of the CBA and an attempt to instigate the workman that CBA is not working for their welfare and betterment regarding terms and conditions of their services; the direction for deduction of amount on account of late coming without issuance of any explanation/ show-cause notice is against the norms of Islam so also the rules and law. He prayed that the interim order may be confirmed and the respondents may be permanently restrained from deduction of such amount.

4. The learned counsel for the respondent argued that the petitioner filed petition alongwith application with *malafide* intention in order to get the facilities of workmen while holding positions of grade 16 officers; that the late coming in the office is itself misconduct and disobedience of the law and also enormous inconvenience for the respondents and impediment towards smooth running of the business

above analogy necessary amendment can be made in the relevant provisions. If as an emergent measure immediate action is necessary a passport can be impounded for 24 hours and the notice for showing cause can be dispensed with, but such opportunity of showing cause and that of hearing shall be afforded to the affected passport-holder soon thereafter, In such a situation the onus shall always be on the concerned Department taking the action.

Necessary modification/amendment in the law ph the lines indicated above should be carried out by the 30th of September, 1989, failing which the objectionable provision shall cease to have effect.

(b) Islamic Jurisprudence---

---Administration of justice--Due notice--No one can be condemned unheard.

In Islam a person cannot be condemned unheard.

All provisions of law wherein someone can be condemned unheard are against the Quranic command as supplemented and interpreted by the Sunnah of the Holy Prophet.

There are number of instances in the Holy Quran of due notice. From numerous verses in the Holy Quran, it is evident that every individual will be confronted with the record of his deeds on the Day of Judgement and would be afforded opportunity of hearing before the decision is taken. Allah Almighty has bestowed the right on human being to be aware of what he is being punished for.

It was after hearing the explanation from Iblis which was not found tenable that he was condemned by the Almighty.

Condemning someone without making proper enquiry has been prohibited. It is a common principle which governs the administration of justice in Islam that in case of liability with penal consequences or deprivation of basic right, a notice as well as an opportunity of hearing are of absolute necessity.

It is clear from the various Injunctions of the Holy Quran that for doing complete justice it requires not only equal treatment between man and man but also protects the rights of one against unfair treatment.

When a public authority is to be exercised for resolving a controversy regarding rights and liabilities, the decision could not be rendered without proceedings in which the persons affected is also afforded an opportunity of hearing.

3:137; 22:46; 29:20; 98 (Al-Nisa); 100 (Al-Nisa); verses 13 and 14 of Surah 17; verses 11 to 13 of Surah VII; 29 (Al-Araf); 58 (Al-Nisa); 420 (Al-Maida); Tirmizi; Abu Daud; Ibn Majah; 288/2 (Jamia-ul-Tirmazi, Tufatul-Ahuzi) and 102/4 (Hak-ul-Mustadrin) ref.

(c) Islamic Jurisprudence--

---Administration of justice--Equality before law.

It is clear from the various Injunctions of the Holy Quran that for doing complete justice it requires not only equal treatment between man and man but also protects the rights of one against unfair treatment.

Hafiz S.A. Rehman, Standing Counsel, Muhammad Iqbal Khan (J.S.), Ismail Niazi, (Deputy Secretary) and Qadeer Siddique, Ministry of Interior for the Federal Government.

Muhammad Aslam Uns for the Government of Punjab.

Mir Rehman Khan Khalil, Asstt. A.G., N.W.F.P. for the Government of N.W.F.P.

Dates of hearing: 3rd, 4th May, 1983; 22nd, 24th and 25th January, 1989.

JUDGMENT

ABDUR REHMAN KHAN KAIF, J.--This Court undertook the Suo Moto examination of Passports Act, 1974 (Act No. XX of 1974) with a view to determine whether the provisions of the said statute were repugnant to the Injunctions of Islam as contained in the Holy Quran and the Sunnah of the Holy Prophet. It was found that while section 8 of the Act authorised the Federal Government to cancel, impound or confiscate a passport after giving notice in writing calling upon the holder thereof to show cause why the order should not be made, there were, however, two exceptions to the service of show cause notice. Proviso to subsection (2) of section 8 provides that no such notice shall be given if the order of impounding a Passport is for a period not exceeding four months. Similarly, subsection (3) provides that such notice would not be necessary if the Government had reason to believe that the person concerned holding the passport was involved in subversive activities or in activities which are prejudicial to the interest of Pakistan or to Pakistan's relations with any foreign powers. While disposing of SSM No.270/83 this Court observed that no objection could be taken to the exception in subsection (3) but the exception in the proviso in subsection (2) to section 8 of the Act regarding four months period without notice was repugnant to the Injunctions of Islam and, therefore, it was directed that the said proviso be repealed. The relevant part of the Order SSM No. 270/83 is reproduced as under:-

"No objection can be taken to subsection (3) because it requires on the ground given in it an immediate order. The interest of the holder of the Passport is protected since that order can be cancelled in review to be filed by the person aggrieved within thirty days of the order. This provision itself amounts to exercise by the aggrieved person of a right to satisfy the Government that the charges against him are not correct but since immediate order may be necessary, no objection can be taken to this exception. However, the exception in the proviso in subsection (2) regarding four months period gives a handle to the Officers of the Federal Government to make arbitrary order for a period of four months and thus to cause sometime, irreparable damage or loss to the Passport holder. The proviso is directed to be repealed."

2. An appeal was preferred by the Federation of Pakistan under Article 203-F of the Constitution against the mentioned judgment. In support of the appeal it was submitted that no reason had been given in the impugned judgment to indicate as to how and why the mentioned proviso to subsection (2) of section 8 was repugnant to the Injunctions of Islam. The above appeal was heard alongwith four other similar appeals by the Supreme Court of Pakistan (Shariat Appellate Bench). All the above appeals were disposed of by a single judgment dated 19-2-1986 and the cases were remanded to the Federal Shariat Court for fresh decisions in accordance with the Law. The concluding para of the judgment of the Appellate Court runs as under:-

"In the light of the foregoing, on account of the omission by the Federal Shariat Court to give reasons by making references to the Holy Quran and Sunnah and their principles as discussed earlier, together with the directions for the enactment of certain laws, as also with the observations in the above paragraphs, these appeals are allowed; and, the cases are remanded to the Federal Shariat Court for fresh decisions in accordance with the Law."

3. The case remanded was heard afresh at length and is being disposed of in accordance with the directions given by the learned Appellate Court.

4. The Passports Act, 1974 was enacted on 7th of March, 1974 to regulate departure from and entry into Pakistan and visits to foreign countries of citizens of Pakistan and to provide for matters ancillary thereto

as its preamble shows. Generally speaking the right of an individual cannot be sacrificed on the mere assumption that it is in the public interest unless a proper opportunity of hearing is provided to such person. The proviso in question is admittedly harsh placing restrictions on the right of free movement. It becomes more harsh when looked at from the angle that the action for the mentioned period can be taken even without any notice. A person may be in need of immediate departure on the ground of health, business, Hajj, Umrah or other urgent matters. Action in such circumstances taken without any notice and for such a long period in such cases is likely to cause irreparable loss to the person concerned.

5. It is now well settled that the principle of natural justice required that every statute should be read as incorporating in itself the requirement to give a notice to show cause against any action intended to be taken against the person unless the statute expressly or by necessary implication excludes such a Rule. The denial or withholding of Passport to a citizen has been considered throughout one of the principle instruments of intimidation since in that manner the individual concerned is virtually imprisoned at home without a passport. Thus looked at from whatever an angle the existence of the said proviso in the relevant section of the Passport Act is in a way denial of free movement to a citizen as well as the right of hearing.

6. Representative of the Government in the concerned Department appearing before us submitted that the impugned provision was necessary for the reason that in some cases time is required for collecting material needed for the service of notice on the basis of such material and the only purpose of the said proviso is to deal effectively in the situation occasionally arising in such like cases. We appreciate the background in which the impugned provision has been enacted, but would observe that all provisions of law wherein someone can be condemned unheard are against the Quranic command as supplemented and interpreted by the Sunnah of the Holy Prophet. It has been held by the Supreme Court in the case of Pakistan and others v. Public-at-Large and others (PLD 1987 SC 204 at 330/331) (Shariat Appellate Bench) that everyone whose rights are involved should be given an opportunity of hearing. In the circumstances, it is therefore, to be seen whether the said proviso is repugnant to the Injunctions of the Holy Quran and Sunnah of the Holy Prophet. The right of free movement from one place to another to all human beings has been fully recognised in Islam. This right has not only been recognised by the Holy Quran, but in several verses a clear incentive has been given to undertake journey and to travel on the earth. Some of the verses are stated as under:-

"Systems have passed away before you. Do but travel in the land and see the nature of the consequence for those who did deny (the messengers)" (3:137)

"Have they not travelled in the land, and have they hearts wherewith to feel and ears wherewith to hear? For indeed it is not the eyes that grow blind, but it is the hearts, which are within the bosom, that grow blind." (22:46).

"Say (O Muhammad): Travel in the land and see how He originated creation, then Allah bringeth forth the late growth. Lo! Allah is able to do all things." (29:20)

Was not the earth of God specious enough for you to move yourselves away."

"He who forsakes his home in the cause of God finds in the earth many refuge, wide and specious."

7. Coming to the next question concerning the right of hearing, there are number of instances in the Holy Quran of due notice. From numerous verses in the Holy Quran, it is evident that every individual will be confronted with the record of his deeds on the Day of Judgment and would be afforded opportunity of hearing before the decision is taken. Allah Almighty had bestowed the right on human being to be aware what he is being punished for. In this connection reference can be made to verses 13 and 14 of Surah 17 which read as, under:-

13. "Every man's fate
We have fastened