


29.08.2022

Clerk of learned counsel for the appellant present. Mr. Abdur Raziq, Assistant Superintendent Jail alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

The Lawyers are on strike and Learned Member (Judicial) Ms. Rozina Rehman is also on leave, therefore, arguments could not be heard. Adjourned. To come up arguments on 21.11.2022 before the D.B.




(Salah-Ud-Din)
Member (Judicial)


21st Nov, 2022

Lawyers on general strike today.

To come up for arguments on 17.01.2023 before D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.



(Fareeha Paul)
Member (E)



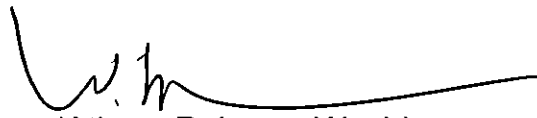
(Kalim Arshad Khan)
Chairman

24.11.2021

Junior to counsel for appellant present.

Mr. Muhammad Adeel Butt, Additional Advocate General
for respondents present.

Former made a request for adjournment as senior
counsel is not available today; granted. To come up for
arguments on 14.03.2022 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

14.03.2022

Due to retirement of the Worthy Chairman, the
Tribunal is defunct, therefore, case is adjourned to
09.06.2022 for the same as before.

9.6.22

Proper D.B is a Taw, therefore the
case is adjourned to 29.8.22 for
same as before.



Reader.

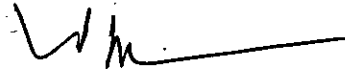


25.01.2021

Nemo for the appellant. Mr. Riaz Khan Paindakhel learned Assistant Advocate General for the respondents present.

On the last date the proceedings were adjourned on the strength of reader's note. The appellant, therefore, shall be issued notice of appearance for next date.

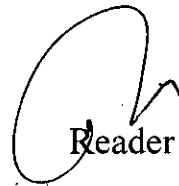
Adjourned to 27.04.2021 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member(E)


Chairman

27.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 23.08.2021 for the same as before.

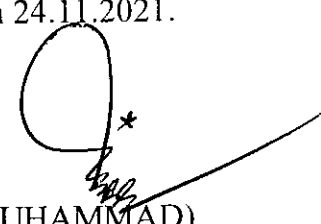

Reader

23.08.2021

Clerk of learned counsel for the appellant present.

Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Suleman, Law Officer for respondents present.

Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant has proceeded to his home due to some emergency. Adjourned. To come up for arguments before the D.B on 24.11.2021.


(MIAN MUHAMMAD)
Member(E)


(SALAH-UD-DIN)
Member(J)

09.06.2020

Bench is incomplete as one learned Member (J) is on leave. Therefore, the case is adjourned. To come up for the same on 20.08.2020 before D.B.



Reader

20.08.2020

Due to summer vacation, the case is adjourned to 22.10.2020 before D.B.

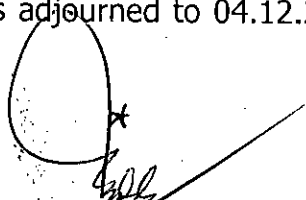


Reader

22.10.2020

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

The Bar is observing general strike today, therefore, the matter is adjourned to 04.12.2020 for hearing before the D.B.



(Mian Muhammad)
Member



Chairman

04.12.2020

Due to pandemic of Covid-19, the case is adjourned to 25.01.2021 for the same as before.



Reader

13.11.2019

Appellant with counsel present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 15.01.2020 before D.B.



Member



Member

15.01.2020 Appellant in person present. Sajid Superintendent representative of the respondent department present. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 24.03.2020 before D.B. Appellant be put to notice for the date fixed.



Member



Member

25.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 09.06.2020 before D.B.



Reader

11/11/2019



15.05.2019

Learned counsel for the appellant present. Written reply not submitted. Sohail Assistant representative of the respondent department ^{no 3} present and seeks time to furnish written reply/comments. No one present on behalf of respondents No.1 & 2. Notice be issued to respondents No.1 & 2 with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 01.07.2019 before S.B.


Member

01.07.2019

Counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith M/S Junaid Assistant on behalf of the respondents No. 1, 2 and Sajid Superintendent on behalf of the respondent No. 3 present. Representative of the respondents department seeks time to furnish written reply/comment. Last opportunity is granted. Adjourned. To come up for written reply/comments on 27.08.2019 before S.B.


Member

27.08.2019

Junior to counsel for the appellant and Addl. AG alongwith Sajid Superintendent Suleman, Senior Instructor for the respondents present.

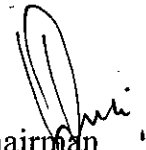
Parawise comments on behalf of the respondents submitted which are placed on record. The appeal is assigned to D.B for arguments ^{on 13/07/2019}. The appellant may submit rejoinder, within a fortnight, if so advised.


Chairman

09.1.2019

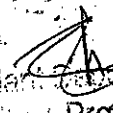
Counsel for the appellant and Addl. AG for the respondents present.

AAG requests for time as the written reply in the process of preparation. Adjourned 04.03.2019 before S.B.


Chairman

04.03.2019

Counsel for the appellant present and requested for time to deposit security and process fee. Request is accepted. Learned counsel for the appellant is directed to deposit the same within three days thereafter, notice be issued to the respondents for written reply/comments for 09.04.2019 before S.B.


Appellant Deposited
Security & Process Fee


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

09.04.2019

Counsel for the appellant and Addl. AG on behalf of the respondents present.

Learned AAG requests for time to procure reply of the respondents. The respondents shall positively submit the requisite reply/comments on next date of hearing.

Adjourned to 15.05.2019 before S.B.

Chairman



20.11.2018

Counsel for the appellant Shaheen Shah present. Preliminary arguments heard. It was contended by the learned counsel for the appellant that the appellant was serving in Police Department as Constable, during service he was dismissed from service vide order dated 04.06.2013 on the allegation of absence. The appellant filed service appeal before this Tribunal, the service appeal of the appellant was partially accepted and the respondent-department was directed to conduct de-novo inquiry. It was further contended that de-novo inquiry was conducted wherein the inquiry officer admitted in the inquiry report that the appellant was ill during the period of absence and recommended for minor penalty. It was further contended that after de-novo inquiry the competent authority vide order dated 11.03.2018 imposed minor penalty of stoppage of one increment for a period of three years and also treated the absence period of the appellant as leave without pay. It was further contended that when the appellant was reported to be ill during absence period by the inquiry officer then no punishment was to be awarded to the appellant. It was further contended that since the absence period has been regularized by the competent authority as leave without pay therefore, the punishment awarded by the competent authority is illegal and liable to be set-aside. It was further contended that the appellant filed departmental appeal but the same was rejected.

The contention raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 09.01.2019 before S.B.

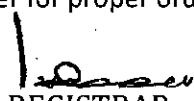


Muhammad Amin Khan Kundi
Member



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1296/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/10/2018	<p>The appeal of Mr. Shaheen Shah resubmitted today by Mr. Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 12/10/18</p>
2-	15-10-2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20-11-2018</u></p> <p style="text-align: right;"> MEMBER</p> <p style="text-align: center;"><i>[Handwritten marks]</i></p>

The appeal of Mr. Shaheen Shah son of Qaim Shah Warder Central Prison Mardan received today i.e. on 27.09.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of reinstatement order, charge sheet, show cause notice and replies thereto are not attached with the appeal which may be placed on it.
- 2- Copy of departmental appeal against the impugned order dated 11.3.2018 is not attached with the appeal which may be placed on it. Annexure-D is an application for release of monthly salaries but not a departmental appeal.

No. 7948/S.T,

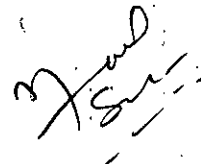
Dt. 28-9/2018.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Noman Ali Bukhari Adv. Pesh.

- ① Charge sheet, And re-instatement order not available with the appellant. same may be requisite from the Dept.
- ② Departmental Appeal is already attached with the appeal. which is for the period of treated leave which Paj and interest.

All objections were removed
file resubmitted.



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1296/2018

Shaheen Shah

V/S

Prison Deptt:

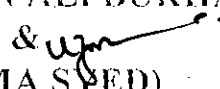
INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-3
2.	Copy of Judgment	-A-	4-06
3.	Copy of inquiry report	-B-	07-08
4.	Copy of impugned order	-C-	09
5.	Copy of departmental appeal	-D-	10
6.	Copy of rejection order	-E-	11
7.	Vakalat Nama	-----	12

APPELLANT

THROUGH:


(SYED NOMAN ALI BUKHARI)


(UZMA SYED)

ADVOCATES, HIGH COURT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. _____/2018

Shaheen Shah S/o Qaim Shah (warder)
Central Prison Mardan.

(APPELLANT)

VERSUS

1. The Inspector General of Prison, KPK, Peshawar.
2. The Superintendent Circle, Headquarter Prison, Mardan.
3. The Secretary Finance Deptt: kpk Civil Secretariat Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 11.03.2018, WHEREBY THE PENALTY OF DISMISSAL WAS CONVERTED IN TO MINOR PENALTY OF STOPPAGE OF ONE INCREMENT FOR THREE YEAR AND PERIOD W.E.FROM 28.06.2016 TO 11.03.2018 WAS TREATED AS LEAVE WITHOUT PAY AND AGAINST THE REJECTION ORDER DATED 30.07.2018 RECEIVED BY APPELLANT ON 27.08.2018 WHEREBY THE APPEAL OF THE APPELLANT WAS REJECTED WITHOUT SHOWING ANY COGENT REASON.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, IMPUGNED ORDER DATED 11.03.2018 AND 30.07.2018 RECEIVED BY APPELLANT ON 27.08.2018 MAY KINDLY BE SET-ASIDE AND RESTORE THE ONE ANNUAL INCREMENT OF THE APPELLANT AND THE PERIOD W.E.FROM 06.05.2016 TO 11.03.2018 TREATED AS FULL PAY WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, IS AWARDED IN FAVOR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is working on the post of warder in central prisoner Mardan.
2. That the appellant was removed from service vide order dated 28.06.2016 against which appellant filed departmental appeal which was not responded.
3. That the appellant being aggrieved from the said orders filed service appeal no. 24/2017 in the Hon'ble Service Tribunal Peshawar, the said appeal was accepted and the direction was given to respondent department to hold denovo inquiry within period of 90 days. **Copy of judgment is attached as Annexure-A.**
4. That the appellant was re-instated in to service for the purpose of denovo inquiry. Thereafter the charges sheet and statement of allegation was issued to the appellant which was properly replied by the appellant, thereafter denovo inquiry was conducted the illness and plea of the appellant was admitted by the inquiry officer but despite that the minor penalty of one annual increment for one year and absence period is treated as leave without pay vide order dated 11.03.2018. **Copy of inquiry report and impugned order is attached as Annexure-B & C.**
5. That appellant filed departmental appeal against the order dated 11.03.2018 which was rejected vide order dated 30.07.2018 received on 27.08.2018. Hence the instant service appeal on the following grounds. **Copy of Departmental appeal and rejection order is attached as Annexure-D & E.**

GROUND:

- A) That the impugned order dated 11.03.2108, and 30.07.2018 are against the law, rules and material on record, therefore liable to be modified.
- B) That denovo inquiry was conducted against the appellant in which denovo inquiry was conducted the illness and plea of the appellant was admitted by the inquiry officer. So according to R-13 of the leave rules 1981. Medical leave shall not be refused, so the appellant is entitled for the absence period because he was serious ill.
- C) That the department references the rule 19 of the leave rules 1981 in impugned order which was not applicable to the appellant. Further it is added that in rule 19 of the leave rules 1981 use


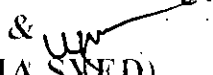
exception means it is applicable to those who remains absent not beyond his control and not applicable to those where circumstances beyond his control. So the appellant is entitled for the salary of period during which remains absent due to illness beyond his control.

- D) That the period appellant remained out of service, it is fault of the department not of the appellant, so the any irregularities committed by the department not held the appellant responsible according to superior courts judgment.
- E) That if the grievance of the appellant is not resolved then the appellant will face huge financial loss even it will affect the pension of the appellant.
- F) That when the period treated as leave without pay its means that the department regularized the absence period then no more ground remained to punished the appellant.
- G) That the appellant cannot be held responsible for the lapse/irregularities committed by the department and in such case the Hon'able Supreme Court of Pakistan has held the department responsible not the appellants.
- H) That the appellant is legally entitled for pay as not a again full employee during that period. Hence the impugned order is liable to be modified and the absence period treated as on full pay.
- I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


 APPELLANT
 Shaheen Shah

THROUGH:


 (SYED NOMAN ALI BUKHARI)
 & 
 (UZMA SYED)
 ADVOCATES, HIGH COURT

A (4)

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Service Appeal No. 24/2017

Date of Institution... 12.01.2017

Date of decision... 22.12.2017



Shaheen Shah, Ex-Warder High Security Prison Mardan R/O Mohallah Saeed Abad Villag and post office hindu Kassi, Tehsil and District, Peshawar. (Appellant)

Versus

1. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

Mr. Aslam Khan Khattak
Advocate.

... For appellant.

MR. Muhammad Riaz Pinda Khel,
Assistant Advocate General.

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL,

... CHAIRMAN
... MEMBER.

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 28.6.2016 from back date i.e. 06.05.2016 which order was communicated to the appellant on 31.08.2016 against which he filed departmental appeal on 26.09.2016 which was rejected on 23.11.2016 and communicated to the appellant on 15.12.2016 and thereafter he filed the present service appeal on 12.01.2017.

ARGUMENTS

ATTESTED


REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

3. The learned counsel for the appellant argued that the absence of the appellant was not willful as he was ill during the training period. That the order was passed with retrospective effect which is a nullity in the eyes of law. That the punishment is too harsh.

4. On the other hand the learned Assistant Advocate General argued that the proceedings were initiated under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. That the whole proceedings were carried out in accordance with the rules and the appellant was rightly removed from service. That the departmental appellate authority while rejecting the departmental appeal maintained the original order dated 28.06.2016 and the appellate order is a valid order and not void. That the appellant has challenged this appellate order. That the codal formalities were fulfilled.

CONCLUSION

5. Without adverting to the merits of the appeal, this Tribunal in a number of appeals has decided that retrospective penalty is void order. The judgments were based on a judgment of the august Supreme Court of Pakistan reported as 1985-SCMR-1178. The arguments of the learned Deputy District Attorney are not convincing that with the rejection of appeal, the effect of original order is vitiated. The appellate order has maintained the original order and original order which is a void order, therefore, the appellate order is also a void order. No limitation shall run in such situation nor void order can be sustained in the eyes of law.

6. As a sequel to the above discussion, this appeal is accepted and the appellant is reinstated in service. However, the department is at liberty to hold de novo proceedings in accordance with law within a period of 90 days from the date of receipt of this judgment. The issue of back benefits etc. shall be subject to de novo

ATTESTED


ASSISTANT ADVOCATE GENERAL
Khyber Pakhtunkhwa
Services Tribunal

proceedings and also subject to rules on the subject. Parties are left to bear their own costs. File be consigned to the record room.

Announced
22.12.2017 Sd/- Niaz Muhammad Khan
Chairman

Certified to be true copy Sd/- M. Hamid Mughal
Member
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 02-01-2018

Number of Words 1200

Copying Fee 8-

Urgent 2-0

Total 10-

Name of Copyist M D

Date of Completion of Copy 02-01-18

Date of Delivery of Copy 02-01-18

3 ①

INQUIRY REPORT

Regarding the allegations against Warder (BPS-05) Syed Shaheen Shah s/o Syed Qaim Shah presently attached to Central Prison Mardan.

The powers entrusted to the undersigned vide the Superintendent Headquarter Prison Mardan Office letter No. 415 dated 15-02-2018 to conduct inquiry against Warder Syed Shaheen Shah s/o Syed Qaim Shah in a disciplinary case under rule 03 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline Rules 2011).

To probe into the allegations levelled against the above named warder, the Superintendent Central Jail Mardan was informed vide this office letter No 415, dated 15-02-2018 that the undersigned will visit the jail under his control on **23-02-2018** to inquire into the allegation levelled against the accused official mentioned in the Circle Headquarter Prison Mardan letter mentioned above. The warder concerned was also advised with the Superintendent Central Jail Mardan with the direction to ensure his presence before the undersigned/inquiry officer for the purpose of inquiry on the date, time and place i.e. Central Jail Mardan on **23-02-2018** at **11:00AM** sharp with written defence, if any.

As per the order the accused official appeared before the undersigned for the purpose of inquiry and submitted his written reply (enclosed as Annexure A). Relevant material of the case was also produced by the Superintendent Central Jail Mardan (enclosed as Annexure B). Statement of the accused official was recorded (enclosed as Annexure C).

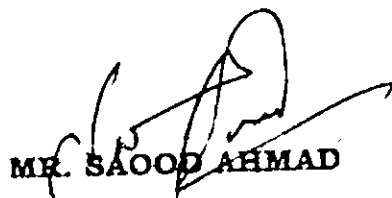
FINDING OF THE INQUIRY

I perused the statement of warder Syed Shaheen Shah s/o Syed Qaim Shah confessing that he was absent from duty for 24 days owing to illness and was ready after completion of treatment in sick condition on 05-02-2018. Further stated that he received the present order of suspension from when he was well & present at Mardan Jail but after that some of his relatives had removed him from service of Prison and he arrived at Central Jail Mardan on 05-02-2018. The order of suspension was received on 12-02-2017.

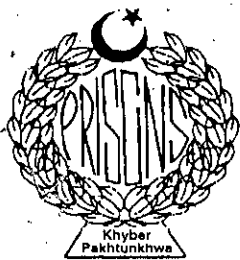
CONCLUSION

All the relevant record and statement of the accused warder perused and reached at the conclusion that the accused warder was found guilty of absenting himself without prior permission of the competent authority and the punishment awarded was too harsh in this case but on the other hand he absented himself deliberately; therefore recommended that his period of absence may be treated as leave without pay as he has not performed duty in this period till the announcement of judgement of Honourable Judge of Services Tribunal Khyber Pakhtunkhwa i.e. 22-12-2017 as his previous record is not good as evident from the perusal of his service book and do not deserve such a huge earned leave. Also recommended the Minor Penalty of Stoppage of Two (02) Increments without future effect.

This inquiry report is submitted for your further disciplinary action please.



MR. SAOOD AHMAD
DEPUTY SUPERINTENDENT / INQUIRY OFFICER
JUDICIAL LOCKUP MALAKAND



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 091-9210334, 9210406 📠 091-9213445

No.Estb/Ward-/Orders/ 22593 /-

Dated 30/07/18 /-

15

ORDER

WHEREAS, warder Shaheen Shah S/O Qaim Shah, attached to Central Prison Mardan, preferred departmental appeal for payment of 18 months salary i.e the intervening period between Removal from Service and re-instated into service is hereby treated as leave without pay to him, by the Superintendent Circle Headquarters Prison Mardan vide his office order No. 664 dated '10-03-2017'.

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 records, and it was observed that the appellant for the charges of his without pay upon him, and all legal/ procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 16-07-2018. During the course of hearing, he failed to justify his innocence.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and 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.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA , PESHAWAR.

ENDST;NO. 22594-97 /.

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No. 1166 dated 19-06-2018.
2. The Superintendent, Central Prison Mardan for information and necessary action.
3. District Accounts Officer concerned for information.
4. Official concerned.

Handwritten notes in left margin: "22594-97" and "30/07/18"

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

Signature of Assistant Director (ADMN)

Handwritten signature: "DS/PB" and "for Mr. P"

Handwritten mark: "9"

Received on 27/08/18

Handwritten signatures and dates: "3/8" and "3/8/18"

VAKALAT NAMA

NO. _____/20

IN THE COURT OF K.P.K Service Tribunal, Pesh

Shahen Sheh (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Prison Deptt (Respondent)
(Defendant)

I/We, Shahen Sheh

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI and Uzma Syed Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

(CLIENT)

ACCEPTED

SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.

&

UZMA SYED
Advocate High Court Peshawar.

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No..... 1295 of 20 12.

Mr. Shabir Ahmad Appellant/Petitioner

Versus

Mr. Ghulam Nabi Khan Respondent

Respondent No..... 2.....

Notice to: - Secretary, Finance Deptt KP/16
Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 11/11/12 at 8.00 A.M. If you wish to urge anything against the appelland/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No..... dated.....

Given under my hand and the seal of this Court, at Peshawar this..... 11/11/12.....

Day of..... 11/11/12 20 12.

114119

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No. 1296 of 20 18 (under 12)

Mr. Shabir Ahmad Siddiqui Appellant/Petitioner
Prison, Peshawar

G.S. of Prison, KPK Pesh. etc. Respondent

Respondent No. 1

Notice to: Inspector General of Prisons,
KPK Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 7-2-18 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 13/2/18

Day of June, 19 2018

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No. 1296 of 2018

Mr. Shafiq Ahmad Khan (Murdar) Appellant/Petitioner

Complaint No. 111/2018 Versus Murdar

Police Station, K.P. Road, Peshawar Respondent

Respondent No. 2

Notice to: Supdt Circle, Headquarters Prison, Murdar.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 1-7-2019 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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-Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 13/6

Day of June, 20

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of

Service Appeal No. 1296/2018

Shaheen Shah (Warder) Central Prison Mardan.....**Appellant**

VERSUS

1. Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar.
2. Superintendent,
Circle Headquarters Prison Mardan.
3. Secretary Finance Department,
Khyber Pakhtunkhwa,
Peshawar.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2 & 3.

PRELIMINARY OBJECTIONS.

- i. That the Appellant has got no cause of action.
- ii. That the Appeal is incompetent and is not maintainable in its present form.
- iii. That the Appellant is estopped by his own conduct to bring the present appeal.
- iv. That the Appellant has no locus standi.
- v. That the Appeal is bad for mis-joinder and non-joinder of necessary parties.
- vi. That the Appeal is time barred.
- vii. That the appeal is hit by R-23 of Khyber Pakhtunkhwa Service Tribunal Rules.

ON FACTS

- 1) Admitted Correct.
- 2) Pertains to record.
- 3) Pertains to record:
- 4) Pertains to record.
- 5) Correct. Hence the appeal of the appellant may be dismissed on the following grounds:-

GROUND:-

- A) That the Orders dated, 11-03-2018 and 30-07-2018 were strictly in accordance with Law/ Rules, as proper procedure was followed and opportunity of personal hearing was provided to the appellant as per rules (copy annexed as **Annexure-A**).
- B) Correct to the extent that "Denovo Inquiry" was conducted within stipulated period under which it was found that due to non-performing of duties by appellant i.e. his absence period from 06-05-2016 to 28-06-2016 (total 53 days without sanction of leave from the competent authority) as well as intervening period from the date of his

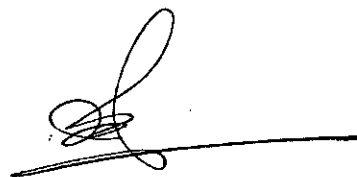
"Removal from Service" to the date of reinstatement into Service, was treated as leave without pay by the Superintendent Headquarters Prison Mardan vide Order No. 664/PB dated, 11-03-2018 for his mis-conduct **(Annexure-B)**, on the basis of well-settled principle "**No pay having no work**" the Department could not pay remuneration for such period.

- C) The statement is baseless and devoid of facts, as the appellant neither applied for leave on Medical Grounds nor responded the absence notice served upon him on his Home Address as well as published in the leading newspaper **(Annexure-C)**. The appellant willfully absented from the duty without prior permission of the competent authority as proved by the Inquiry Officer.
- D) Punishment of "Removal from Service" was awarded to the appellant based on none response to the show cause notice / statement of allegations, whereas the punishment awarded to him is completely in line with the Law/ rules, as mentioned in Para-B above.
- E) Not admitted correct, hence no comments.
- F) "Leave Without Pay" is a settled principle by Rules as quoted in Para-B above and lenient action has been taken against the appellant throughout.
- G) That the appellant was unable/ badly failed to defend his case before the Inquiry Officer.
- H) As referred in Para-B & D above.
- I) That the respondents also seek permission to raise additional grounds at the time of arguments.

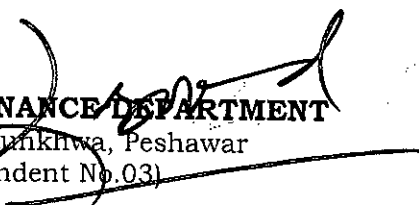
In view of the above Para-wise comments, appeal of the appellant may graciously be dismissed with cost.



SUPERINTENDENT
Circle Headquarters Prison Mardan
(Respondent No.02)



INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa, Peshawar
(Respondent No.01)



SECRETARY FINANCE DEPARTMENT
Khyber Pakhtunkhwa, Peshawar
(Respondent No.03)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

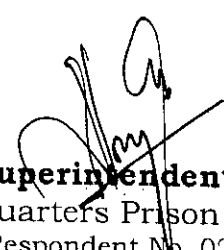
In the matter of
Service Appeal No. 1296/2018
Shaheen Shah (Warder) Central Prison Mardan.....**Appellant**

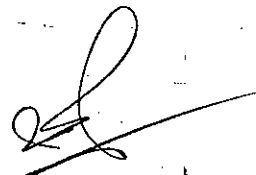
VERSUS

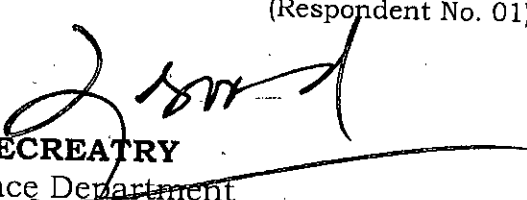
1. Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar
2. Superintendent,
Circle Headquarters Prison Mardan
3. Secretary Finance Department
Khyber Pakhtunkhwa,
Peshawar.....**Respondents.**

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS
NO. 1 to 3.

We the undersigned respondents do hereby solemnly affirm and declare that the contents of the Para-wise Comments in the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts have been concealed from this Honourable Service Tribunal.


Superintendent
Circle Headquarters Prison Mardan
(Respondent No. 02)


Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar
(Respondent No. 01)


SECRETARY
Finance Department
Khyber Pakhtunkhwa Peshawar.
(Respondent No. 03)



OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

No. 664 /PB Dated: 19/03/2018, E-Mail: mardanjail@gmail.com, 0937-843114

OFFICE ORDER

WHEREAS, accused official/ Warder Syed Shaheen Shah s/o Syed Qaim Shah was charged within the meaning of Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of his misconduct contained in statement of Allegations/ Disciplinary Action served on him vide this Headquarter endorsement No. 385-88 dated. 15-02-2018 wherein Mr. Saood Ahmad, Deputy Superintendent Jail, Judicial Lockup Malakand was appointed as Inquiry Officer.

AND WHEREAS, he furnished his written reply/defence to the Inquiry Officer without any documentary proof/evidence and the allegations/charges against him were fully proved.

AND WHEREAS, the accused official was proceeded against under Rule-14(4) for the charges of his misconduct/ Wilful absence, as mentioned in the Show cause Notice vide No.594-96 dated 09.03.2018.

AND WHEREAS, he furnished his written reply/defence without any documentary proof/evidence which was found un-satisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 19-03-2018 as provided for under rules ibid.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the Inquiry report, charges levelled against him and evidence on record, the undersigned being Competent Authority, after observing all legal procedural formalities, hereby award the Minor penalty of **"One increment stopped for three (03) years"** to Mr. Syed Shaheen Shah s/o Syed Qaim Shah attached to Central Prison Mardan for his misconduct/ wilful absence, He is not entitled for any remuneration for the absence period w.e.f 06-05-2016 to 28-06-2016 fifty four (54) days under rule 19 of the Khyber Pakhtunkhwa Government Servant Revised Leave Rules 1981 and the intervening period between Removal from Service and reinstatement in to service is hereby treated as leave without pay.

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

Endst: No. 665-69 /PB Dated: 19/03/2018

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Central Prison Mardan for information and necessary action please.
3. Mr. Saood Ahmad, Deputy Superintendent cum Superintendent Jail, Judicial Lockup Malakand (Inquiry Officer) with reference to his inquiry report No. 525/WE dated, 08-03-2018.
4. The District Accounts Officer, Mardan for information and necessary action please.
5. The Warder concerned c/o Superintendent Central Prison Mardan.

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

**MOST IMMEDIATE/
BY FAX**

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

☎ 091-9210334, 9210406 📠 091-9213445

No. 20260 /-

Dated 05-07-18 /-



To

The Superintendent,
Headquarters Prison Mardan.

Subject:- **DEPARTMENTAL APPEAL**
Memo:

I am directed to refer to your letter No.1166/WE dated 19-06-2018 on the subject and to ask you to please direct **Warder Syed Shaheen Shah S/O Syed Qaim Shah** to appear before the worthy I.G on 12-07-2018 at 11.00 AM for personal hearing in his appeal case. Also deputed a well conversant officer alongwith Service Book as well as original record of the case to attend this office on the date and time fixed above please

[Signature]
**ASSISTANT DIRECTOR (ADMN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.**

ENDST;NO. _____ /

Copy of the above is forwarded to PA to I.G. Prisons Khyber Pakhtunkhwa Peshawar, for information.

[Signature]
**ASSISTANT DIRECTOR (ADMN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.**

No. 3553

DS-1/P.B
[Signature]

[Signature]
Supdt
9.7.18

16/07/18
17/7/18



6782
3/8/18

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

No.Estb/Ward-/Orders/ 22593 /-

Dated 30/07/18 /-

ORDER

WHEREAS, warder Shaheen Shah S/O Qaim Shah, attached to Central Prison Mardan, preferred departmental appeal for payment of 18 months salary i.e the intervening period between Removal from Service and re-instated into service is hereby treated as leave without pay to him, by the Superintendent Circle Headquarters Prison Mardan vide his office order No. 664 dated '10-03-2017'.

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 records, and it was observed that the appellant for the charges of his without pay upon him, and all legal/ procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 16-07-2018. During the course of hearing, he failed to justify his innocence.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and 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.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA , PESHAWAR.

ENDST;NO. 22594-97 /-

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No. 1166 dated 19-06-2018.
2. The Superintendent, Central Prison Mardan for information and necessary action.
3. District Accounts Officer concerned for information.
4. Official concerned.

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

DS/PB

for mra

3/8

Supd
3/8/18

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INQUIRY REPORT

Regarding the allegations against Warder (BPS-05) Syed Shaheen Shah s/o Syed Qaim Shah presently attached to Central Prison Mardan.

The powers entrusted to the undersigned vide the Superintendent Headquarter Prison Mardan office order endst; No.385-88 dated 15-02-2018 to conduct inquiry against **Warder Syed Shaheen Shah s/o Syed Qaim Shah** in a disciplinary case under rule 03 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline Rules 2011).

To probe into the allegations levelled against the above named warder, the Superintendent Central Jail Mardan was informed vide this office letter No.415, dated 19-02-2018 that the undersigned will visit the jail under his control on **23-02-2018** to inquire into the allegation levelled against the accused official mentioned in the Circle Headquarter Prison Mardan letter mentioned above. The warder concerned was also informed with C/O Superintendent Central Jail Mardan with the direction to ensure his appearance before the undersigned/Inquiry Officer for the purpose of Inquiry proceedings on the date, time and place i.e. Central Jail Mardan on **23-02-2018 at 11:00AM** sharp, with written defence, if any.

As per schedule, the accused official appeared before the undersigned for inquiry proceedings and submitted his written reply (enclosed as Annexure-A). Relevant record of the case was also produced by the Superintendent Central Jail Mardan (enclosed as Annexure-C to Annexure-J). Statement of the accused official was recorded (enclosed as Annexure-B).

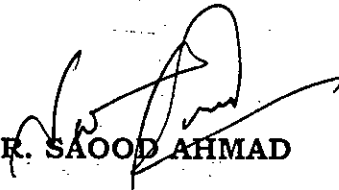
FINDING OF THE INQUIRY.

I perused the statement of warder Syed Shaheen Shah s/o Syed Qaim Shah confessing therein that he had been remained absent for 54 days owing to illness as he was relieved after completion of training in sick condition on 06-05-2016. Further stated that he received treatment from Private Doctors and when became well; reported arrival at Mardan Jail but the then Superintendent already removed him from service. So I Proceeded to Services Tribunal Khyber Pakhtunkhwa and received the order of reinstatement into service on 22-12-2017.

CONCLUSION

All the relevant record and statement of the accused warder perused and reached at the conclusion that the accused warder was found guilty of absenting himself without prior permission of the competent authority and the punishment awarded was too harsh in this case but on the other hand he absented himself deliberately; therefore recommended that his period of absence may be treated as leave without pay as he has not performed duty in this period till the announcement of judgement of Honourable Judge of Services Tribunal Khyber Pakhtunkhwa i.e. 22-12-2017 as his previous record is not good as evident from the perusal of his service book and do not deserve such a huge earned leave. Also recommended the Minor Penalty of Stoppage of Two (02) Increments without future effect.

This inquiry report is submitted for your further disciplinary action please.



MR. SAOOD AHMAD
DEPUTY SUPERINTENDENT / INQUIRY OFFICER
JUDICIAL LOCKUP MALAKAND

OFFICE OF THE
SUPERINTENDENT HIGH SECURITY PRISON
MARDAN

NO: _____ DATED: 16 /05/2016

To,

Warder Syed Shaheen Shah S/O Syed Qaim Shah,
R/O Tehsil & District Peshawar P/O Hindu Kassi Mohallah
Syed Abad, Village Hindu Kassi.Subject: ABSENT NOTICE

Memo;

It is hereby inform you that you were relived on 06-05-2016 from Elite Training Course Nowshera to High Security Prison Mardan but you failed to report for duty and is still at large. You are directed to resume your duties immediately after receiving of this notice otherwise strict disciplinary action will be taken against you.

SUPERINTENDENT
HIGH SECURITY PRISON MARDANEndorsement No: 3163 /

Copy of the above is forwarded to The Superintendent Circle Headquarter Prison Mardan for information please.

SUPERINTENDENT
HIGH SECURITY PRISON MARDAN

INF(P) 2794

وزارت داخلہ پاکستان

فوق العادہ ضابطہ حاضری

آپ دارالمرکز ہونے کے باعث ہائیڈروجن ٹیبلٹوں سے استفادہ کرنے کے لیے درخواستیں منظور کی گئی ہیں۔ آپ کو بذریعہ اس ہدف سے جانکاری دی جاتی ہے کہ 15 دن کے اندر امداد فراہم ہونے پر حاضری کا رجسٹر کرنا ضروری ہے۔ رجسٹر کرنا لازمی ہے۔ اگر آپ کے رجسٹر سے رجسٹرنگ نہیں ہو سکتی ہے۔

تفصیل	نام دارالمرکز
<p>دارالمرکز ہونے کے باعث آپ کو 03-05-2018 کو ایڈمنسٹریشن سٹرکٹرڈ سے رجسٹرنگ کے لیے درخواستیں منظور کی گئی ہیں۔ آپ کو بذریعہ ایڈمنسٹریشن سٹرکٹرڈ سے رجسٹرنگ نمبر 3182 مورخہ 18-05-2018 کو مقرر کیا گیا ہے۔ رجسٹرنگ کے لیے درخواستیں منظور کی گئی ہیں۔</p>	<p>دارالمرکز ہونے کے باعث آپ کو 03-05-2018 کو ایڈمنسٹریشن سٹرکٹرڈ سے رجسٹرنگ کے لیے درخواستیں منظور کی گئی ہیں۔ آپ کو بذریعہ ایڈمنسٹریشن سٹرکٹرڈ سے رجسٹرنگ نمبر 3187 مورخہ 18-05-2018 کو مقرر کیا گیا ہے۔ رجسٹرنگ کے لیے درخواستیں منظور کی گئی ہیں۔</p>
<p>دارالمرکز ہونے کے باعث آپ کو 03-05-2018 کو ایڈمنسٹریشن سٹرکٹرڈ سے رجسٹرنگ کے لیے درخواستیں منظور کی گئی ہیں۔ آپ کو بذریعہ ایڈمنسٹریشن سٹرکٹرڈ سے رجسٹرنگ نمبر 3187 مورخہ 18-05-2018 کو مقرر کیا گیا ہے۔ رجسٹرنگ کے لیے درخواستیں منظور کی گئی ہیں۔</p>	<p>دارالمرکز ہونے کے باعث آپ کو 03-05-2018 کو ایڈمنسٹریشن سٹرکٹرڈ سے رجسٹرنگ کے لیے درخواستیں منظور کی گئی ہیں۔ آپ کو بذریعہ ایڈمنسٹریشن سٹرکٹرڈ سے رجسٹرنگ نمبر 3187 مورخہ 18-05-2018 کو مقرر کیا گیا ہے۔ رجسٹرنگ کے لیے درخواستیں منظور کی گئی ہیں۔</p>

صاحبزادہ شاہ جہان

Say No to Corruption

وزارت داخلہ پاکستان

INF(P) 2626





13/06/2016

نوٹس غیر حاضری

آپ وارڈران جو کہ ہائی سیکورٹی جیل مردان سے مندرجہ ذیل تاریخوں سے غیر حاضر ہیں کو بذریعہ نوٹس ہذا اطلاع دی جاتی ہے کہ پندرہ دن کے اندر اندر دفتر ہذا میں حاضری کی رپورٹ کریں اور اپنی غیر حاضری کی معقول وجہ بتائیں بصورت دیگر آپ کے خلاف یکطرفہ قانونی کارروائی عمل میں لائی جائے گی جو کہ آپ کے ملازمت سے برخاستگی پر منتج ہو سکتی ہے۔

تفصیل	نام وارڈر جمعہ ولدیت
بطور جیل وارڈر آپ مورخہ: 06-05-2016 کو ایلیٹ ٹریڈنگ سنٹر نوشہرہ سے ریلیو کر دیا اور ہائی سیکورٹی جیل مردان میں ڈیوٹی کیلئے رپورٹ کرنے کو کہا گیا لیکن آپ ابھی تک حاضر نہیں ہوئے۔ آپ کو بذریعہ ہائی سیکورٹی جیل مردان سے رجسٹرڈ نوٹس نمبر۔ 3162 مورخہ:۔ 16-05-2016 کو گھر کے پتے پر مطلع کیا گیا کہ آپ پندرہ یوم کے اندر اندر حاضری یقینی بنائیں لیکن آپ حاضر نہ ہوئے۔	1- وارڈر سید شاہین شاہ ولد سید قائم شاہ سکنتہ محلہ سعید آباد گاؤں ہندو کسی تحصیل ضلع پشاور
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صاحبزادہ شاہ جہان سپرنٹنڈنٹ سرکل ہیڈ کوارٹر ہائی سیکورٹی جیل مردان

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of

Service Appeal No. 1296/2018

Shaheen Shah (Warder) Central Prison Mardan.....**Appellant**

VERSUS

1. Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar
2. Superintendent,
Circle Headquarters Prison Mardan
3. Secretary Finance Department
Khyber Pakhtunkhwa,
Peshawar.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2 & 3.

PRELIMINARY OBJECTIONS.

- i. That the Appellant has got no cause of action.
- ii. That the Appeal is incompetent and is not maintainable in its present form.
- iii. That the Appellant is estopped by his own conduct to bring the present appeal.
- iv. That the Appellant has no locus standi.
- v. That the Appeal is bad for mis-joinder and non-joinder of necessary parties.
- vi. That the Appeal is time barred.
- vii. That the appeal is hit by R-23 of Khyber Pakhtunkhwa Service Tribunal Rules.

ON FACTS

- 1) Admitted Correct.
- 2) Pertains to record.
- 3) Pertains to record.
- 4) Pertains to record.
- 5) Correct. Hence the appeal of the appellant may be dismissed on the following grounds:-


GROUNDS:-

- A) That the Orders dated, 11-03-2018 and 30-07-2018 were strictly in accordance with Law/ Rules, as proper procedure was followed and opportunity of personal hearing was provided to the appellant as per rules (copy annexed as **Annexure-A**).
- B) Correct to the extent that "Denovo Inquiry" was conducted within stipulated period under which it was found that due to non-performing of duties by appellant i.e. his absence period from 06-05-2016 to 28-06-2016 (total 53 days without sanction of leave from the competent authority) as well as intervening period from the date of his

"Removal from Service" to the date of reinstatement into Service, was treated as leave without pay by the Superintendent Headquarters Prison Mardan vide Order No. 664/PB dated, 11-03-2018 for his mis-conduct **(Annexure-B)**, on the basis of well-settled principle **"No pay having no work"** the Department could not pay remuneration for such period.

- C) The statement is baseless and devoid of facts, as the appellant neither applied for leave on Medical Grounds nor responded the absence notice served upon him on his Home Address as well as published in the leading newspaper **(Annexure-C)**. The appellant willful absented from the duty without prior permission of the competent authority as proved by the Inquiry Officer.
- D) Punishment of "Removal from Service" was awarded to the appellant based on none response to the show cause notice / statement of allegations, whereas the punishment awarded to him is completely in line with the Law/ rules, as mentioned in Para-B above.
- E) Not admitted correct, hence no comments.
- F) "Leave Without Pay" is a settled principle by Rules as quoted in Para-B above and lenient action has been taken against the appellant throughout.
- G) That the appellant was unable/ badly failed to defend his case before the Inquiry Officer.
- H) As referred in Para-B & D above.
- I) That the respondents also seek permission to raise additional grounds at the time of arguments.

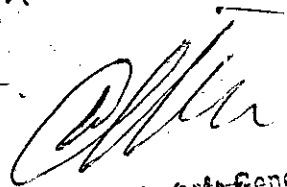
In view of the above Para-wise comments, appeal of the appellant may graciously be dismissed with cost.


SUPERINTENDENT
 Circle Headquarters Prison Mardan
 (Respondent No.02)

INSPECTOR GENERAL OF PRISONS
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No.01)

SECRETARY FINANCE DEPARTMENT
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No.03)

*Vetted Subject to correction & attachment
 of all Annexes and affidavit.*


Additional Advocate General
 Khyber Pakhtunkhwa
 Service Tribunal Peshawar

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of

Service Appeal No. 1296/2018

Shaheen Shah (Warder) Central Prison Mardan.....**Appellant**

VERSUS

1. Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar.
2. Superintendent,
Circle Headquarters Prison Mardan.
3. Secretary Finance Department,
Khyber Pakhtunkhwa,
Peshawar.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2 & 3.

PRELIMINARY OBJECTIONS.

- i. That the Appellant has got no cause of action.
- ii. That the Appeal is incompetent and is not maintainable in its present form.
- iii. That the Appellant is estopped by his own conduct to bring the present appeal.
- iv. That the Appellant has no locus standi.
- v. That the Appeal is bad for mis-joinder and non-joinder of necessary parties.
- vi. That the Appeal is time barred.
- vii. That the appeal is hit by R-23 of Khyber Pakhtunkhwa Service Tribunal Rules.

ON FACTS

- 1) Admitted Correct.
- 2) Pertains to record.
- 3) Pertains to record.
- 4) Pertains to record.
- 5) Correct. Hence the appeal of the appellant may be dismissed on the following grounds:-

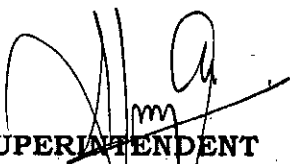
GROUND:-

- A) That the Orders dated, 11-03-2018 and 30-07-2018 were strictly in accordance with Law/ Rules, as proper procedure was followed and opportunity of personal hearing was provided to the appellant as per rules (copy annexed as **Annexure-A**).
- B) Correct to the extent that "Denovo Inquiry" was conducted within stipulated period under which it was found that due to non- performing of duties by appellant i.e. his absence period from 06-05-2016 to 28-06-2016 (total 53 days without sanction of leave from the competent authority) as well as intervening period from the date of his

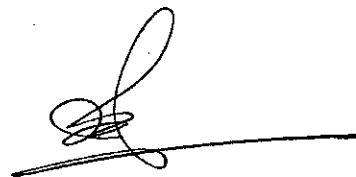
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- H) As referred in Para-B & D above.
- I) That the respondents also seek permission to raise additional grounds at the time of arguments.

In view of the above Para-wise comments, appeal of the appellant may graciously be dismissed with cost.



SUPERINTENDENT
Circle Headquarters Prison Mardan
(Respondent No.02)



INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa, Peshawar
(Respondent No.01)



SECRETARY FINANCE DEPARTMENT
Khyber Pakhtunkhwa, Peshawar
(Respondent No.03)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

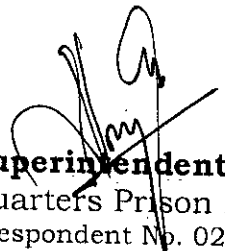
In the matter of
Service Appeal No. 1296/2018
Shaheen Shah (Warder) Central Prison Mardan.....**Appellant**

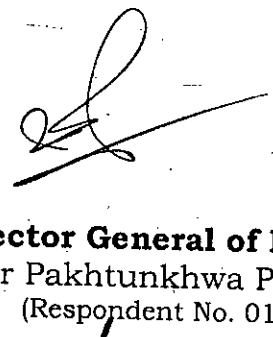
VERSUS

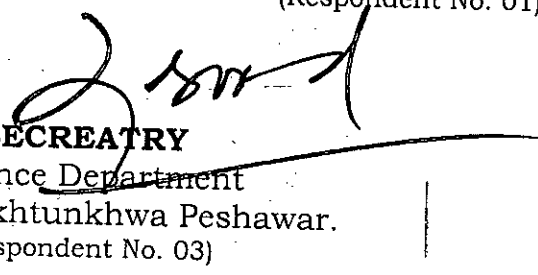
1. Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar
2. Superintendent,
Circle Headquarters Prison Mardan
3. Secretary Finance Department
Khyber Pakhtunkhwa,
Peshawar.....**Respondents.**

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS
NO. 1 to 3.

We the undersigned respondents do hereby solemnly affirm and declare that the contents of the Para-wise Comments in the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts have been concealed from this Honourable Service Tribunal.


Superintendent
Circle Headquarters Prison Mardan
(Respondent No. 02)


Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar
(Respondent No. 01)


SECRETARY
Finance Department
Khyber Pakhtunkhwa Peshawar.
(Respondent No. 03)



OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

664 /PB Dated: 19/03/2018, E-Mail: mardanjail@gmail.com, 0937-843114

OFFICE ORDER

WHEREAS, accused official/ Warder Syed Shaheen Shah s/o Syed Qaim Shah was charged within the meaning of Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of his misconduct contained in statement of Allegations/ Disciplinary Action served on him vide this Headquarter endorsement No. 385-88 dated. 15-02-2018 wherein Mr. Saood Ahmad, Deputy Superintendent Jail, Judicial Lockup Malakand was appointed as Inquiry Officer.

AND WHEREAS, he furnished his written reply/defence to the Inquiry Officer without any documentary proof/evidence and the allegations/charges against him were fully proved.

AND WHEREAS, the accused official was proceeded against under Rule-14(4) for the charges of his misconduct/ Wilful absence, as mentioned in the Show cause Notice vide No.594-96 dated 09.03.2018.

AND WHEREAS, he furnished his written reply/defence without any documentary proof/evidence which was found un-satisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 19-03-2018 as provided for under rules ibid.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the Inquiry report, charges levelled against him and evidence on record, the undersigned being Competent Authority, after observing all legal procedural formalities, hereby award the Minor penalty of **"One increment stopped for three (03) years"** to Mr. Syed Shaheen Shah s/o Syed Qaim Shah attached to Central Prison Mardan for his misconduct/ wilful absence, He is not entitled for any remuneration for the absence period w.e.f 06-05-2016 to 28-06-2016 fifty four (54) days under rule 19 of the Khyber Pakhtunkhwa Government Servant Revised Leave Rules 1981 and the intervening period between Removal from Service and reinstatement in to service is hereby treated as leave without pay.

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

Endst: No. 665-69 /PB Dated: 19/03/2018

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Central Prison Mardan for information and necessary action please.
3. Mr. Saood Ahmad, Deputy Superintendent cum Superintendent Jail, Judicial Lockup Malakand (Inquiry Officer) with reference to his inquiry report No. 525/WE dated, 08-03-2018.
4. The District Accounts Officer, Mardan for information and necessary action please.
5. The Warder concerned c/o Superintendent Central Prison Mardan.

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

MOST IMMEDIATE/
BY FAX

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 091-9210334, 9210406 ☎ 091-9213445

No. 20260 /-

Dated 05-07-18 /-



To

The Superintendent,
Headquarters Prison Mardan.

Subject:- **DEPARTMENTAL APPEAL**

Memo:

I am directed to refer to your letter No.1166/WE dated 19-06-2018 on the subject and to ask you to please direct **Warder Syed Shaheen Shah S/O Syed Qaim Shah** to appear before the worthy I.G on 12-07-2018 at 11.00 AM for personal hearing in his appeal case. Also deputed a well conversant officer alongwith Service Book as well as original record of the case to attend this office on the date and time fixed above please

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

ENDST;NO. _____ /

Copy of the above is forwarded to PA to I.G. Prisons Khyber Pakhtunkhwa Peshawar, for information.

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

No. 3553

DS-1/P.B
Saw Ma M.

Supdt
9.7.018

Handwritten notes in Urdu script, including dates like 16/07/18 and 19/7/18.



ORDER

6782
3/8/18

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

☎ 091-9210334, 9210406 📠 091-9213445

No.Estb/Ward-/Orders/ 22583 /-

Dated 30/07/18 /-

WHEREAS, warder Shaheen Shah S/O Qaim Shah, attached to Central Prison Mardan, preferred departmental appeal for payment of 18 months salary i.e the intervening period between Removal from Service and re-instated into service is hereby treated as leave without pay to him, by the Superintendent Circle Headquarters Prison Mardan vide his office order No. 664 dated '10-03-2017'.

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 records, and it was observed that the appellant for the charges of his without pay upon him, and all legal/ procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 16-07-2018. During the course of hearing, he failed to justify his innocence.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and 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.

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

ENDST;NO. 22584-87 /-

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No. 1166 dated 19-06-2018.
2. The Superintendent, Central Prison Mardan for information and necessary action.
3. District Accounts Officer concerned for information.
4. Official concerned.

[Signature]
**ASSISTANT DIRECTOR(ADMN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.**

AS/PB

for m9

[Signature]

[Signature]

*Supdt
3/8/18*

[Signature]

INQUIRY REPORT

Regarding the allegations against Warder (BPS-05) Syed Shaheen Shah s/o Syed Qaim Shah presently attached to Central Prison Mardan.

The powers entrusted to the undersigned vide the Superintendent Headquarter Prison Mardan office order endst; No.385-88 dated 15-02-2018 to conduct inquiry against **Warder Syed Shaheen Shah s/o Syed Qaim Shah** in a disciplinary case under rule 03 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline Rules 2011).

To probe into the allegations levelled against the above named warder, the Superintendent Central Jail Mardan was informed vide this office letter No.415, dated 19-02-2018 that the undersigned will visit the jail under his control on **23-02-2018** to inquire into the allegation levelled against the accused official mentioned in the Circle Headquarter Prison Mardan letter mentioned above. The warder concerned was also informed with C/O Superintendent Central Jail Mardan with the direction to ensure his appearance before the undersigned/Inquiry Officer for the purpose of Inquiry proceedings on the date, time and place i.e. Central Jail Mardan on **23-02-2018 at 11:00AM** sharp, with written defence, if any.

As per schedule, the accused official appeared before the undersigned for inquiry proceedings and submitted his written reply (enclosed as Annexure-A). Relevant record of the case was also produced by the Superintendent Central Jail Mardan (enclosed as Annexure-C to Annexure-J). Statement of the accused official was recorded (enclosed as Annexure-B).

FINDING OF THE INQUIRY.

I perused the statement of warder Syed Shaheen Shah s/o Syed Qaim Shah confessing therein that he had been remained absent for 54 days owing to illness as he was relieved after completion of training in sick condition on 06-05-2016. Further stated that he received treatment from Private Doctors and when became well; reported arrival at Mardan Jail but the then Superintendent already removed him from service. So I Proceeded to Services Tribunal Khyber Pakhtunkhwa and received the order of re-instatement into service on 22-12-2017.

8

CONCLUSION

All the relevant record and statement of the accused warder perused and reached at the conclusion that the accused warder was found guilty of absenting himself without prior permission of the competent authority and the punishment awarded was too harsh in this case but on the other hand he absented himself deliberately; therefore recommended that his period of absence may be treated as leave without pay as he has not performed duty in this period till the announcement of judgement of Honourable Judge of Services Tribunal Khyber Pakhtunkhwa i.e. 22-12-2017 as his previous record is not good as evident from the perusal of his service book and do not deserve such a huge earned leave. Also recommended the Minor Penalty of Stoppage of Two (02) Increments without future effect.

This inquiry report is submitted for your further disciplinary action please.


MR. SAOOD AHMAD

DEPUTY SUPERINTENDENT / INQUIRY OFFICER
JUDICIAL LOCKUP MALAKAND

OFFICE OF THE
SUPERINTENDENT HIGH SECURITY PRISON
MARDAN

NO: _____ DATED: 16 /05/2016

To,

Warder Syed Shaheen Shah S/O Syed Qaim Shah,
R/O Tehsil & District Peshawar P/O Hindu Kassi Mohallah
Syed Abad, Village Hindu Kassi.

Subject: ABSENT NOTICE

Memo;

It is hereby inform you that you were relived on 06-05-2016 from Elite Training Course Nowshera to High Security Prison Mardan but you failed to report for duty and is still at large. You are directed to resume your duties immediately after receiving of this notice otherwise strict disciplinary action will be taken against you.

SUPERINTENDENT
HIGH SECURITY PRISON MARDAN

Endorsement No: 3163 /

Copy of the above is forwarded to The Superintendent Circle Headquarter Prison Mardan for information please.

SUPERINTENDENT
HIGH SECURITY PRISON MARDAN



13/06/2016

نوٹس غیر حاضری

آپ وارڈران جو کہ ہائی سیکورٹی جیل مردان سے مندرجہ ذیل تاریخوں سے غیر حاضر ہیں کو بذریعہ نوٹس ہذا اطلاع دی جاتی ہے کہ پندرہ دن کے اندر اندر دفتر ہذا میں حاضری کی رپورٹ کریں اور اپنی غیر حاضری کی معقول وجہ بتائیں بصورت دیگر آپ کے خلاف یکطرفہ قانونی کارروائی عمل میں لائی جائے گی جو کہ آپ کے ملازمت سے برخاستگی پر منتج ہو سکتی ہے۔

تفصیل	نام وارڈر جمعہ ولدیت
بطور جیل وارڈر آپ مورخہ: 06-05-2016 کو ایلیٹ ٹریننگ سنٹر نوشہرہ سے ریلیو کر دیا اور ہائی سیکورٹی جیل مردان میں ڈیوٹی کیلئے رپورٹ کرنے کو کہا گیا لیکن آپ ابھی تک حاضر نہیں ہوئے۔ آپ کو بذریعہ ہائی سیکورٹی جیل مردان سے رجسٹرڈ نوٹس نمبر۔ 3162 مورخہ: 16-05-2016 کو گھر کے پتے پر مطلع کیا گیا کہ آپ پندرہ یوم کے اندر اندر حاضری یقینی بنائیں لیکن آپ حاضر نہ ہوئے۔	1۔ وارڈر سید شاہین شاہ ولد سید قائم شاہ سکنہ محلہ سعید آباد گاؤں ہندو کسی تحصیل ضلع پشاور
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صاحبزادہ شاہ جہان سیرٹیفکٹ سرکل ہیڈ کوارٹرز ہائی سیکورٹی جیل مردان

Say No to Corruption * InfoKPGovt * @InfoKPGovt * Send KP to 8333 INF(P)2828

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of

Service Appeal No. 1296/2018

Shaheen Shah (Warder) Central Prison Mardan.....**Appellant**

VERSUS

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Khyber Pakhtunkhwa Peshawar
2. Superintendent,
Circle Headquarters Prison Mardan
3. Secretary Finance Department
Khyber Pakhtunkhwa,
Peshawar.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2 & 3.

PRELIMINARY OBJECTIONS.

- i. That the Appellant has got no cause of action.
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- iii. That the Appellant is estopped by his own conduct to bring the present appeal.
- iv. That the Appellant has no locus standi.
- v. That the Appeal is bad for mis-joinder and non-joinder of necessary parties.
- vi. That the Appeal is time barred.
- vii. That the appeal is hit by R-23 of Khyber Pakhtunkhwa Service Tribunal Rules.

ON FACTS

- 1) Admitted Correct.
- 2) Pertains to record.
- 3) Pertains to record.
- 4) Pertains to record.
- 5) Correct. Hence the appeal of the appellant may be dismissed on the following grounds:-

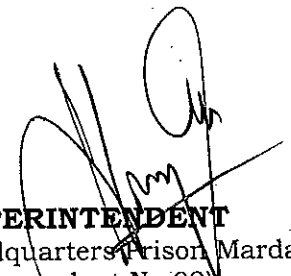
GROUND:-

- A) That the Orders dated, 11-03-2018 and 30-07-2018 were strictly in accordance with Law/ Rules, as proper procedure was followed and opportunity of personal hearing was provided to the appellant as per rules (copy annexed as **Annexure-A**).
- B) Correct to the extent that "Denovo Inquiry" was conducted within stipulated period under which it was found that due to non-performing of duties by appellant i.e. his absence period from 06-05-2016 to 28-06-2016 (total 53 days without sanction of leave from the competent authority) as well as intervening period from the date of his

"Removal from Service" to the date of reinstatement into Service, was treated as leave without pay by the Superintendent Headquarters Prison Mardan vide Order No. 664/PB dated, 11-03-2018 for his mis-conduct **(Annexure-B)**, on the basis of well-settled principle **"No pay having no work"** the Department could not pay remuneration for such period.

- C) The statement is baseless and devoid of facts, as the appellant neither applied for leave on Medical Grounds nor responded the absence notice served upon him on his Home Address as well as published in the leading newspaper **(Annexure-C)**. The appellant willful absented from the duty without prior permission of the competent authority as proved by the Inquiry Officer.
- D) Punishment of "Removal from Service" was awarded to the appellant based on none response to the show cause notice / statement of allegations, whereas the punishment awarded to him is completely in line with the Law/ rules, as mentioned in Para-B above.
- E) Not admitted correct, hence no comments.
- F) "Leave Without Pay" is a settled principle by Rules as quoted in Para-B above and lenient action has been taken against the appellant throughout.
- G) That the appellant was unable/ badly failed to defend his case before the Inquiry Officer.
- H) As referred in Para-B & D above.
- I) That the respondents also seek permission to raise additional grounds at the time of arguments.

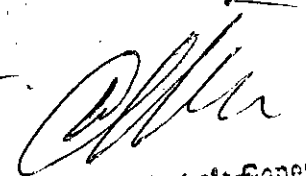
In view of the above Para-wise comments, appeal of the appellant may graciously be dismissed with cost.


(SUPERINTENDENT)
 Circle Headquarters Prison Mardan
 (Respondent No.02)

INSPECTOR GENERAL OF PRISONS
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No.01)

SECRETARY FINANCE DEPARTMENT
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No.03)

*Vetted Subject to correction & attachment
 of all Annexes and affidavit.*


Additional Advocate General
 Khyber Pakhtunkhwa
 Service Tribunal Peshawar