

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

In the matter of

Service Appeal No. 7449/2021

Aftab Hussain s/o Fazal Khaliq (Technician) Central Prison Mardan
..... (Appellant)

VERSUS

1. Secretary Home & Tribal Affairs Department
Govt of KPK Peshawar .
2. Inspector General (Prisons) Govt of KPK Peshawar.

..... (Respondents)

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Deponent

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

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.....(Appellant)

VERSUS

1. Secretary Home & Tribal Affairs Department
Govt of KPK Peshawar.
2. Inspector General (Prisons) Govt of KPK Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2726

Date: 5/1/23

.....(Respondents)

SUBJECT: JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 AND 2.

Respectfully Sheweth:-

PRELIMINARY OBJECTION:

- i. That the Present service appeal is incompetent in its present form.
- ii. That the appellant has got no locus standi to file the instant appeal.
- iii. That the appellant has been estopped by his own conduct to file appeal.
- iv. That the appellant has not come to this Honourable Service Tribunal with clean hands.
- v. That the present appeal is bad for mis-joinder and non-joinder of necessary parties.
- vi. That the present appeal is badly Time-barred.

Objection on Facts:

1. Pertains to record, hence no comments.
2. Incorrect, misleading and based on false statements actually upon cancellation of his transfer order the appellant was supposed to join duty back at Sub Jail Dassu Kohistan but he remained absent from duty for long period i-e from 01/07/2010 to 25/11/2010 and in support of his wilful absence a fake/bogus medical certificates were produced when he was asked by the department. The department has referred the said medical certificates for verification to the Medical Superintendent DHQ Hospital Mardan which is proved as bogus and fake vide Medical Superintendent Letter No.1823 dated 26/02/2011. The appellant has clearly violated Rule 1083 of NWFP Prison Rules 1985. The accused official failed to resume his duty within stipulated time and remained absent from his duty at Sub Jail Dassu w.e.f 01/07/2010 to 25/11/2010.
3. Incorrect and not admitted. The story of the appellant is baseless and unjustified duly explained in Para-2 above.
4. Admitted to the extent that the inquiry proceeding was initiated on the basis of wilful absence as well as submission of fake and bogus medical certificate which was required to be proved and to be inquired through solid reason, while the inquiry officer duly conducted the whole proceedings on the direction of the Superintendent Jail and recommended him for minor penalty, it is up-to the extent of competent authority under Rule 9 Of E & D Rule 2011 whether agree or disagree to the inquiry officer findings, ultimately imposed upon him the major penalty of dismissal from service

vide order dated 23-07-2011 (**Inquiry report as well as dismissal order as Annexure C & D**).

- 5. Incorrect and not admitted. The detail reply is elaborated in Para above.
- 6. Admitted as correct.
- 7. Admitted to the extent that the Honourable Service Tribunal conditionally accepted the service appeal and re-instated him into service for the purpose of denovo-inquiry and remanded back to the respondent department. The respondent referred the impugned judgment 12-03-2014 to Law Department for its suitability whether to file appeal/ CPLA in upper coram or otherwise. Accordingly, on the recommendation of the Committee CPLA duly filed, but unfortunately leave to appeal refused by the august Supreme Court of Pakistan. After that denovo-inquiry was conducted in its true spirit observing all legal codal formalities by respondent Department. On the conclusion of the inquiry proceeding the competent authority treated its intervening period as well as absence period as leave without pay (**Copy of judgment dated 12-03-2014 and copy of order dated 17-12-2020 as Annexure E & F**).
- 8. Admitted to the extent that with compliance the appellant had been re-instated into service for the purpose of denovo-inquiry while the competent authority treated his intervening period as leave without pay as he did not perform duty in that period hence not liable for any remuneration. In the light of Supreme Court judgment "No work no Pay".
- 9. Admitted to the extent that the denovo-inquiry proceeding was initiated after the dismissal of CPLA and initiated inquiry and his complete proceedings along with order of the competent authority was duly submitted to the Honourable Service Tribunal in the execution petition 25/2020 in service appeal No. 1941/2011 which is now fixed for 26-09-2022.
- 10. Pertain to record, hence no comments.


OBJECTION ON GROUNDS:

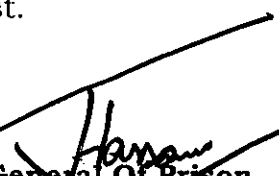
- A) Incorrect and not admitted, the impugned order of the competent authority is legal and lawful without any malafide intention on the part of the respondent.
- B) Incorrect and not admitted. As per section-10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 the authority having vast power to post and transfer any public servant to anywhere for duty purpose. The Civil servant have no authority to serve on his own whim at a particular place. Therefore, the allegation leveled by the appellant is unjustified, unlawful liable to be dismissed.
- C) The appellant produced medical certificates for the period of his willful absence i.e from 01-07-2010 to 25-11-2010 which on verification were found bogus as conveyed vide Medical Superintendent DHQ Hospital Mardan letter No. 1823 dated 26-02-2011.


- D) Incorrect and not admitted. The authority proceeds him for the charge of willful absence on the basis of fake and bogus medical reports and awarded him the major penalty of dismissal from service.
- E) All legal/codal formalities were observed and final show cause notice was served upon the appellant with the provision of ample opportunity of personal hearing before the competent authority as evident from (Annexure-H).
- F) Incorrect and not admitted. The detail reply is elaborated in Para-8 above.
- G) Incorrect and not admitted. The department conducted their whole proceeding within time and rightly refused to him the back benefit for the reason "No work no Pay" as also supported by the no of judgment of the Supreme Court.
- H) Incorrect and not admitted. The detail reply is elaborated in Para-9 above.
- I) As replied in above Paras.
- J) Incorrect and not admitted .The detail reply is elaborated in Para-2 above.
- K) Incorrect and not admitted. The official concerned is on duty from 2017 while the matter pertains to his back benefit which is rightly refused by the authority on the basis of No work No Pay and the appellant did not perform any sort of duty for that period which is under claimed.
- L) Incorrect and not admitted. The detail reply is elaborated in Para-K above.
- M) Incorrect and not admitted. The impugned order which is based on solid ground.
- N) Incorrect and not admitted. The inquiry officer recommended him for minor penalty while the competent authority under Rule-9 of E & D Rule of 2011 having ample power to whether agree or disagree and imposed any sort of penalty..
- O) The respondents also seek permission from the Honorable Service Tribunal to raise additional objection at the time of arguments.

Prayer:

It is therefore, most humbly prayed that on acceptance of the Joint Para-wise comments on behalf of respondent No. 01 and 02 the service appeal filed by the appellant may please graciously be dismissed with cost.


Secretary Home
 Khyber Pakhtunkhwa Peshawar
 (Respondent No. 1)


Inspector General Of Prison
 Khyber Pakhtunkhwa Peshawar
 (Respondent No. 2)


 18-08-2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of

Service Appeal No. 7449/2021

Aftab Hussain s/o Fazal Khaliq (Technician) Central Prison Mardan
.....(Appellant)

VERSUS

1. Secretary Home & Tribal Affairs Department
Govt of KPK Peshawar.
2. Inspector General (Prisons) Govt of KPK Peshawar.

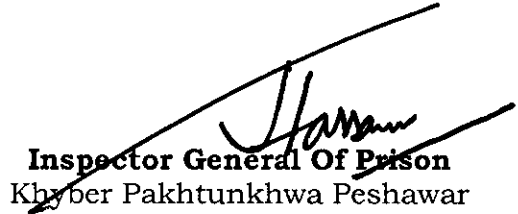
.....(Respondents
)

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1 and 2


We the following respondents do hereby solemnly affirm and declare that the contents of Para-wise Comments are true and correct to the best of our Knowledge and belief and nothing have been concealed from this Honorable Service Tribunal.



Secretary Home
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)



Inspector General Of Prison
Khyber Pakhtunkhwa Peshawar
(Respondent No. 2)

 18/8/2022

THE
NWFP PRISONS RULES

1985

PRISON RULES

(JAIL MANUAL)
(U/S 59 OF PRISONS ACT, 1894)
(Rules for the Superintendence and Management of the Prisons of
Pakistan)

CONTAINING

- THE PRISONS ACT, 1894
- THE PRISONERS. ACT, 1900
- THE REFORMATORY SCHOOLS ACT, 1897
- THE PUNJAB BORSTAL ACT, 1926

**RULES FOR THE SUPERINTENDENCE AND MANAGEMENT OF THE PRISONS OF
NWFPAN (APPLICABLE TO ALL CONCERNED JAILS IN NWFP.**

Prohibition against business and pecuniary transactions

Rule 1080.-- (i) No prison officer shall directly or indirectly engage in any trade, business or employment other than his legitimate duties.

(ii) 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 or any prisoner.

Residential quarters

Rule 1081.-- (i) Rent free residential quarters shall ordinarily be provided at each prison for the Deputy Superintendent, Assistant Superintendents, Assistant Medical Officer, Dispensers, Assistant and Clerical Staff, Storekeepers, Instructors, Teachers and the warder establishment.

(ii) Every prison official for whom the residential quarters are not available a prison shall reside within such distance of the prison as the Superintendent may direct.

Leave to Subordinate Officers

Rule 1082.-- (i) No subordinate officer shall, at any time, without the per. mission 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.

(ii) 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.

(iii) 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.

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

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

Absence caused by illness or other unavoidable cause

Rule 1083.-- 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 forth-with 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.

Acquaintance with rules and regulations

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

Note Book

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

Subordinate Officer to render prompt obedience

Rule 1086.-- 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.

Prohibition against communicating with prisoners, their-relatives and friends

Rules 1087.-- (i) 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.

(ii) No subordinate officer shall at any time --

(a) hold any unnecessary conversation with any prisoner;

(b) treat any prisoner with familiarity ; or

- 7
- (c) discuss any matter relating to the discipline or regulations of the prison with or within the hearing of any prisoner.

Uniforms

Rule 1088.-- (i) Every subordinate officer for whom uniform is prescribed shall wear such uniform at all times when on duty except the duty Assistant Superintendent during the night.

(ii) Every subordinate officer shall at all times and on all occasions be neat and clean in his dress and person.

Officer not to live place of duty idle about or quarrel

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

(ii) 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 him from his duty, or in any way conduct himself in sit unseemly or disorderly manner

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

Visitors to Subordinate Officers

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

Complaints

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

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

Combined action by Officers forbidden

Rule 1092.-- 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.

Care and Custody of Keys

Rule 1093.-- (i) No subordinate officer who is at any time entrusted with any key shall, under any circumstances or any protect whatsoever --

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

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

(iii) If any key is lost or mislaid, 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.

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

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

Officers not to resign without Notice

Rule 1094.-- 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.



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

NO.

4/2-J-2004/399, 12/E

DATED

07-01-2011

Confidential

Razh

To

The Medical Superintendent,
DHQ Hospital Mardan.

Subject:-


MEDICAL CERTIFICATES IN RESPECT OF MR. AFTAB HUSSAIN
DISPENSER.

Memo:

I am directed to refer to the subject and to forward herewith photocopies of medical/fitness certificates for the period from 25-6-2010 to 25-11-2010 in respect of Mr. Aftab Hussain Dispenser for information.

As per office seal affix thereon, the medical certificate, issued from your Hospital, therefore, it is, requested that necessary verification/confirmation may please be made to proceed further in the matter.

The matter may be considered on priority basis as departmental proceeding is pending against the said Dispenser.


ADMINISTRATIVE OFFICER
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

#3
⑨

547

No. **OUT-PATIENTS DEPARTI**

NAME James [unclear]

YEARLY NO. 44315

DATE 28 11

RESIDE

James [unclear]

Coastguard [unclear]

and Mr. [unclear]

Do day New Well

for duty

Mr.

Medical Officer
S.M.C. HOSPITAL
MARDIA
A. [unclear]
ZMM
8/12/10

No.

Re. 51

OUT-PATIENTS DEPARTMENT

NAME

YEARLY NO

DATE

DISEASE

J. S. G. L.

5331-124

3-11-12

Bell's Palsy

PAGE VALUE NUMBER

PAGE VALUE NUMBER

#5
10

in D. H. Q. Hospital
in D. H. Q. Hospital
in D. H. Q. Hospital

M. Uman **Countersigned**

Dr. Muzich

Dr. Sarker

Dr. Anwar

Medical Superintendent
D.H.Q. Hospital Mardan

A. H. Khan
2/11/12
8/12/12

Dr. Bell's Palsy of face 3-11-12

3-11-12

Medical Officer
D.H.Q. HOSPITAL,
MARDAN,
3-11-12

11/12/12

No.

Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME

YEARLY NO.

DATE

MESSAGE

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14-12-67

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Dr
Dr
CSP

The provisions

Countersigned

Dr. ...

Dr. ...

Medical Superintendent
D.H.O. Hospital Mardan

Dr. ... from 14-12-67

Medical Officer
D.H.O. HOSPITAL
MARDAN.

Admitted
2/12/67
8/12/67

14-12-67

No.

Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME J. G. I.

YEARLY NO. 5831 - 30

DATE 20-9-6

DISEASE Black Ach

FACE VALUE RUPEES 5/-

119
12

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Dr. Teyanidun **Countersigned**

Dr. Subben 2

Dr. Senthil **Medical Superintendent**
D.H.Q. Hospital Mardan

Adm Bed Report of 20-9-6
up to 13-10-6

Medical Officer
D.H.Q. HOSPITAL
MARDAN.

Admitted
ZM
8/12/6

1125 345

No. *555* Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME *Amir Ali*

YEARLY NO. *34539-15*

DATE *27-8-15*

DISEASE *B. coli sens.*

PAGE VALUE NUMBER

13

Diagnosis was
in suspicion of
 Dr. A. O. *on* **Countersigned.**
 Dr. *Mansoor* **only**
 Dr. *Amir* **Medical Superintendent**
D.H.O. Hospital Mardan

on bed rest from 27-8-15
to 19-9-15

Medical Officer
D.H.O. HOSPITAL,
MARDAN.
27-8-15

checked
ZAM
8/10/15

No.

Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME

S. C. S.

YEARLY NO.

53431-31

DATE

6-8-10

DISEASE

Beriberi

FACE VALUE THREE RUPEES

107
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*of Vajrapur
D. H. Q. Hospital
M. S. D. Hospital*

Countersigned

*M. S. D. Hospital
D. H. Q. Hospital
M. S. D. Hospital
6-8-10*

Medical Superintendent
D. H. Q. Hospital Mardan

Medical Officer
D. H. Q. HOSPITAL
MARDAN

*Assisted
ZMR
8/12
10*

OUT-PATIENTS DEPARTMENT

NAME [Handwritten]
YEARLY NO. 5311-31
DATE 15-7-10
DISEASE Bent's

FACE VALUE NUMBER 9.

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15

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of ...

of ... Medical Officer
D.H.O. Hospital

of ...

of ...
Medical Officer
D.H.O. HOSPITAL,
MARDAN.

of ...

No. _____

Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME

YEARLY NO. 3671-17

DATE 21-6-10

DISEASE Bent Aet

FACE VALUE THREE RU.

~~107~~
(16)

of operations Dr C S Pl
OPM

Dr Bramwell Countersigned

Dr J. N. A. M. J. Medical Superintendent
D.H.G. Hospital Mardan

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upto 14-7-10
Medical Officer
D.H.G. HOSPITAL,
MARDAN.
21-6-10

Allected
ZMR
8/2/10

J. H. 11-1-10

OUT-PATIENTS DEPARTMENT

Rs. 5/-

NAME: Mr. C. V. J.
 YEARLY NO: 3671-17
 DATE: 25-6-12
 DISEASE: Bruise A/c

FACE VALUE RUPEES 5/-

~~10~~
(17)

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Adn

by hospital

In framed
1st

Countersigned

At present come by

At

[Signature]
 Medical Superintendent
 D.H.Q. Hospital, Madras

Ad Bed rest from 25-6-12
 up to 14-7-12

[Signature]
 Medical Officer
 D.H.Q. HOSPITAL,
 MADRAS

Sp/ Ra. 51.

OUT-PATIENTS DEPARTMENT

NAME 50-51
 YEARLY NO. SB11-31
 DATE 15-7-10
 DISEASE Bent Ach

FACE VALUE NOTES 5.

FACE VALUE NOTES 5.

18

4 Trauma in
in growth in

Dr. Melrose 10 **Countersigned**

Dr. [unclear]

Dr. [unclear]

Medical Superintendent
D.H.O. Hospital Mardan

Dr. [unclear] 10-7-10
[unclear] 5-5-20

Medical Officer
D.H.O. HOSPITAL,
MARDAN.

Medical Office
D.H. Hospital
WARDAN

Medical Superintendent
D.H. Hospital Mardan

Countersigned

Dr. Khan
M.D. / M.B. / B.S.

4/10/68

OUT-PATIENTS DEPARTMENT
1951/52

NAME: _____

YEARLY NO: 38431-39

DATE: 6-8-68

DISEASE: B.C. / TB

PAGE VALUE PAPER

119
23

135
(20)

No. 57
GUT-PATIENTS DEPARTMENT
NAME
YEARLY NO 9315-111
DATE 14-1-14
DISEASE Bruise

FACE VALUE SUPPLY

Dr
Dr
C. S. P.

The procedure is
Dr. [unclear] countersigned
Dr. [unclear]
Dr. [unclear]
Dr. [unclear]
Dr. [unclear]
Medical Superintendent
D.H.Q. Hospital Mardan

Dr. [unclear] from 14-1-14
14-1-14
Medical Officer
D.H.Q. HOSPITAL
MARDAN.
14-1-14

MEDICAL OFFICE
D.H.O. HOSPITAL
WARDEN 2

For duty
to duty from 11:00 AM to
12:00 PM on 11/11/57
Certificate of duty given

J. G. ...

FACE VALUE CURSES &

DATE 2-6-11-57
HEALTHY NO. 44315-11
NAME ...
OUT-PATIENTS DEPARTMENT
Rs. 5/-

(21)
~~11/11~~

569 No. 51-

OUT-PATIENTS DEPARTMENT

FACE VALUE RUPEES 5/-

728
(22)

NAME Jul. 20/1

YEARLY NO 34539-15

DATE 27-8-15

DISEASE Bath sin

1) D. Chafinias was
 in suspension
 of D. O. on **Countersigned**
 of M. S. G. on
 of **Medical Superintendent**
 D.H.Q. Hospital Mardan.
 on Bath sin from 27-8-15
 27-8-15

Medical Officer
D.H.Q. HOSPITAL,
MARDAN.
 27-8-15

591 Rs. 5/-

OUT-PATIENTS DEPARTMENT

NAME J. G. I.
YEARLY NO. 5831-30
DATE 20-5-10
DISEASE Back Ach

FACE VALUE THREE RS.

~~21~~
(23)

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n. tegensid
n. Sub ven. 2
n. Scrotal

Countersigned

Medical Superintendent
D.H.Q. Hospital Mardan

Ad Bed Rest from 20-5-10
up to 13-10-10

Medical Officer
D.H.Q. HOSPITAL
MARDAN.

J. G. I.

515/Rs. 5/-
MENTS DEPARTMENT

NO 5331-124

3-11-77

CASE Ball-Ber

in Didi...

in Didi...

in G... ..

in Countersigned

Dr.

Dr.

Dr.

Am Bed Ber from 3-11-77

... ..

Medical Superintendent
D.H.Q. Hospital Mardan

Medical Officer
D.H.Q. HOSPITAL,
MARDAN.
3-11-77

PAGE VALUE RUPPEE

~~115~~
(24)

OFFICE OF THE MEDICAL SUPERINTENDENT
DISTRICT HEADQUARTER HOSPITAL, MARDAN.

PH#0937-9230145 FAX 9230226

No. 1823
To

Date:	26/2/2011
Inspector General:	<i>[Signature]</i>
A.I.G.:	<i>[Signature]</i>
Admin. Officer:	<i>[Signature]</i>

The Inspector General of Prisons
Khyber Pakhtoon Khawa Peshawar

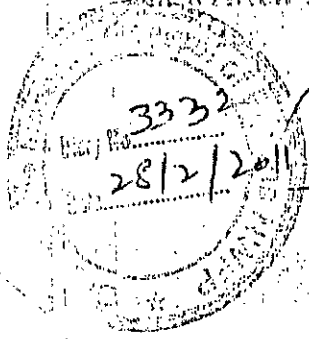
SUBJECT: MEDICAL CERTIFICATES IN RESPECT OF MR. AFTAB
HUSSAIN DISPENSED.

f=581

Reference your letter No. 41/2-J-2004/3335 dated 17.1.2011 and
reminder No. 41/2-J-2004/399-W/E dated 7.1.2011.

The Medical Certificates in respect of Mr. Aftab Hussain
Dispenser were delivered to the concerned officers for verification but they have stated
in written that the same signatures are totally bogus and entries are not in the OPD

The report is submitted for further necessary action.



04/03/2011

[Signature]
Medical Superintendent
D.H.O. Hospital Mardan.

26

**OFFICE OF THE MEDICAL SUPERINTENDENT
DISTRICT HEADQUARTER HOSPITAL MARDAN**

PH#0937-9230145 FAX 9230226

No. 1823 /-

Dated 26/02/2011

To

The Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar

SUBJECT:-

MEDICAL CERTIFICATES IN RESPECT OF MR.AFTAB HUSSAIN
DISPENSER

Memo:

Reference your letter No.41/2-J-2004/3335 dated 17-02-2011 and
reminder No.41/2-J-2004/399-WE dated 07-01-2011.

The medical certificates in respect of Mr. Aftab Hussain Dispenser
were delivered to the concerned officer for verification but they have stated in written
that the same signatures are totally bogus and entries are not in the OPD.

The report is submitted for further necessary action.

Medical Superintendent
D.H.Q Hospital Mardan



INSPECTOR GENERAL OF PRISON
KHYBER PAKHTUNKHWA PESHAWAR

NO. 35072

DATED 05-10-2010

55

(27)

DISCIPLINARY ACTION

I, **Masud-ur-Rahman**, I.G.Prison Khyber Pakhtunkhwa, as the competent authority, am of the opinion that **Mr.Aftab Hussain Technician presently attached to District Jail Swat** has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- i. As reported by Superintendent Sub Jail Dassu vide his letter No.1138 dated 15-10-2010(copy enclosed),Mr.Aftab Hussain upon cancellation of his transfer order from Sub Jail Dassu to Sub Jail Daggar was relieved by Superintendent Sub Jail Daggar on 01-7-2010 with usual days joining time with the direction to report to Superintendent Sub Jail Dassu for further duties there. After expiry of joining time, he absented from duty without intimation, from 1-7-2010 to 25-11-2010.
- ii. He produced Medical Certificates for the period of his willful absence i.e from 1-7-2010 to 25-11-2010 which on verification were found bogus as conveyed vide Medical Superintendent DHQ Hospital Mardan letter No.1823 dated 26-2-2011 (copy enclosed).

2. For the purpose of inquiry proceedings against the afore-said accused with reference to the above allegations, **Mr.Samiullah Khan Deputy Superintendent-cum-Superintendent Central Prison Bannu** is hereby appointed as Inquiry Officer, under Rule 10(1)(a) of the E&D Rules, 2011.

3. The Inquiry Officer shall, in accordance with the provisions of the Rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to the punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of Sub Jail Dassu Kohistan shall join the proceedings on the date, time and place fixed by the Inquiry Officer.

all INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

ENDST.NO. 35073-75-414E

Copy of the above is forwarded to:

1. **Mr.Samiullah Khan Deputy Superintendent-cum-Superintendent Central Prison Bannu** the Inquiry Officer for initiating proceedings against the accused under the provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011. A copy of charge sheet is enclosed herewith. Photocopies of medical certificates produced by the accused official is also enclosed.
2. The Superintendent, District Jail Swat for information and necessary action. Charge sheet in duplicate is sent herewith. One copy of the same duly signed and dated by the above named official may be returned to this office in token of its receipt.
3. Mr.Aftab Hussain Technician C/O Superintendent District Jail Swat for information.

[Signature]
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

OFFICE OF THE SUPERINTENDENT DISTRICT JAIL SWAT

No. 2515/WE

December 10th, 2020

(28)

Handwritten: 11/12/2020

The Superintendent,
District Jail Timergara.

Subject: **DISCIPLINARY ACTION AGAINST MR.AFTAB AHMAD HUSSAIN
TECHNICIAN.**

Respected Sir,

Handwritten: P-213

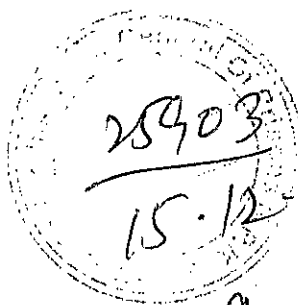
Enclosed please find herewith photocopies of letter received from the Worthy Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar bearing No.43459 dated. 09-12-2020 on the subject cited above, for further necessary action.

Further added that one copy of the same may be duly signed and dated by the concerned Technician, and returned to this office as token of its receipt please.

Handwritten: -sd-
**SUPERINTENDENT
DISTRICT JAIL SWAT**

Endst: No.2516

Copy of the above is forwarded to the worthy Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar, for information with reference to his office letter No. referred to above, please.



Handwritten signature: Aftab Ahmad Hussain
**SUPERINTENDENT
DISTRICT JAIL SWAT**

Handwritten: NFA

Handwritten: 21-12-20


~~5/11~~ 29

CHARGE SHEET

I. Masud-ur-Rahman, I.G.Prisons Khyber Pakhtunkhwa Peshawar, as competent authority, hereby charge you Mr. Aftab Hussain as follows:

That you, while posted as **Dispenser/ Technician at Sub Jail Dassu Kohistan** committed the following irregularities:

- i. As reported by Superintendent Sub Jail Dassu vide his letter No.1138 dated 15-10-2010, you upon cancellation of your transfer order from Sub Jail Dassu to Sub Jail Daggar was relieved by Superintendent Sub Jail Daggar on 01-7-2010 with usual days joining time with the direction to report to Superintendent Sub Jail Dassu for further duties there. After expiry of joining time, you absented from duty without intimation, from 1-7-2010 to 25-11-2010.
 - ii. You produced Medical Certificates for the period of your willful absence i.e from 1-7-2010 to 25-11-2010 which on verification were found bogus as conveyed vide Medical Superintendent DHQ Hospital Mardan letter No.1823 dated 26-2-2011 (copy enclosed).
2. For the reasons above, you appear to be guilty of inefficiency/misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.
3. You are, therefore required to submit your written defense within seven(07) days of the receipt of this Charge Sheet to the Inquiry Officer, as the case may be.
4. Your written defense, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.


INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.



Tel & Fax: 0928-633327
cpbannu@gmail.com

(30)

59

OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON BANNU

No. _____
Dated: 13-10-2020

To

The Superintendent,
District Jail Swat.

SEEN	
IG	
A.I.G	
D.I.C	
A.D.	

Subject: - DISCIPLINARY ACTION

Dear Sir:

Reference of worthy Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar letter No. 35072/WE dated 05.10.2020

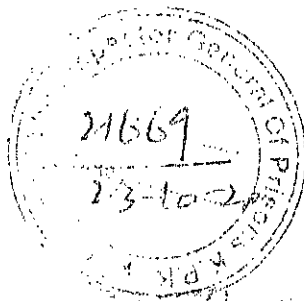
It is submitted that the undersigned is nominated as inquiry officer and will visit to your jail on 16.10.2020 for inquiry against Mr. Aftab Hussain Technician attached to District Jail Swat regarding submitting of bogus Medical Certificates

It, therefore, requested that the concerned official may please be directed to present and produced record on the scheduled date, please.

Sd/-
SUPERINTENDENT
CENTRAL PRISON BANNU

Endst: No. 35211

Copy of the above is forwarded to the Worthy Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar, for information with reference to above, please.



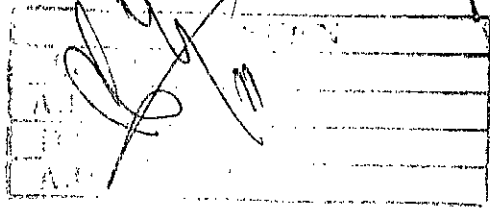
Sd/-
SUPERINTENDENT
CENTRAL PRISON BANNU

28-10-20

NFA



Tel & Fax: 0928-633327
epbanuu@gmail.com



61
OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON B

No. 7158-we
Dated: 2-11-2020

(34)

To

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

Subject:- **INQUIRY REPORT**

R/Sir;

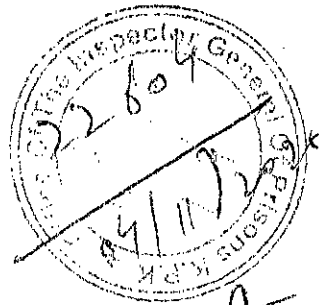
Kindly refer to your letter No.35072/We dated 05.10.2020.

Detail inquiry report regarding absence of Mr. Aftab Hussain Technician from duty at Sub Jail Dassu Kohistan is submitted herewith for further necessary action, please.

Encls as above:

P-105

**SUPERINTENDENT
CENTRAL PRISON BANNU**



24-11-20

75

(32)



**INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**

091-9210334, 9210406 091-9213445

No. 11/2-J-2004 PWD 38564 1-

Dated 03-11-2020 1-

To

Mr. Samiullah Khan,
Deputy Superintendent -cum- Superintendent,
Central Prison Bannu.

Subject:- DISCIPLINARY PROCEEDING AGAINST MR. AFTAB HUSSAIN
TECHNICIAN.

Memo:

I am directed to refer to this office endst; No. 35073-75-WE dated 05-10-2020 on the subject and to ask you to expedite submission of your findings/recommendations in the subject cited case without further delay.

P-105
03/11
ASSISTANT DIRECTOR
INSPECTORATE GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

65 (33)

003

INQUIRY REPORT REGARDING ABSENCE OF MR. AFTAB HUSSAIN
TECHNICIAN FROM DUTY AT SUB JAIL DASSU KOHISTAN.

BRIEF FACT:-

The undersigned was nominated as Inquiry Officer under rule-14/6 of the E&D Rules-2011, to conduct inquiry against Mr. Aftab Hussain Technician for his absentia through bogus Medical Certificate vide the Worthy Inspector General of Prisons order No.35072/WE dated 05.10.2020. The undersigned proceeded to District Jail Swat in order to probe into the matter, to examine the case thoroughly and to submit recommendation to the competent authority. The accused official was informed about the date of Inquiry proceedings as well as the Superintendent Sub Jail Dassu Kohistan was also informed to provide record on the date of Inquiry at District Jail Swat under Rule-12 of the E&D Rules-2011. Resultantly, the accused official appeared before the Inquiry Officer on the fixed date while a Junior Clerk from Sub Jail Dasu Kohistan also appeared as representative and provided relevant record. Vast opportunity of hearing was given to the accused official without any stress during the inquiry proceedings about his guilt. The following charges were leveled against him by the competent authority under rule-3 of E&D Rules-201:-

1. Mr. Aftab Hussain upon cancellation of his transfer order from Sub Jail Dassu to Sub Jail Dagger was relieved by the Superintendent Sub Jail Daggar on 01.07.2010 with usual days joining time with the direction to report to Superintendent Sub Jail Dassu. After expiry of joining time, he remained absent from duty without intimation from 01.07.2010 to 25.11.2010.
2. He produced Medical certificates for the period of his willful absence i.e. from 01.07.2010 to 25.11.2010 which on verification were found bogus as conveyed vide Medical Superintendent DHQ Hospital Mardan letter No.1823 dated 26.02.20101.

As per available record, the accused official was relieved on 01.07.2010 from Sub Jail Daggar at Buner for duty at Sub Jail Dassu Kohistan, but the accused failed to resume his duty within stipulated time and remained absent from his duty at Sub Jail Dassu w.e.f 01.07.2010 to 25.11.2010. After resuming duty, he provided Medical Rest Certificates obtained from District Headquarter Hospital Mardan which were found bogus. Therefore, the competent authority ordered an inquiry and Mr. Akhtar Munir (Late) Ex-Deputy Superintendent Jail conducted Inquiry.

The Inquiry Officer submitted detailed report with recommendation that 04 increments might be stopped and absence period be treated as Leave Without Pay.

However, the competent authority went a step ahead of the recommendations and Dismissed the accused from Services under rules-4 of the E&D rules-2011. Upon dismissal, the accused official approached the Learned Service Tribunal and finally after gap of about 06 years, in the light of Judgment dated 12.03.2014 of the Learned Service Tribunal, (copy attached as **Annexure-A**), the competent authority re-instated him into Government Services vide order No.13078 dated 08.06.2017.

FINDINGS: -

The accused official was inquired through cross examinations as well as recorded his written statement (copy of written statement attached as **Annexure-B**). During cross examinations, the following findings were recorded: -

He was questioned about his appointment and his period of absentia w.e.f. 01.07.2010 to 25.11.2010, to which he replied that he was appointed as pharmacy technician in 2004 and on 01.07.2010, he was relieved from Sub Jail Dagger at Buner for duty at Sub Jail Dassu Kohistan, but he felt Backache and instead of resuming duty, he consulted with a doctor at District Headquarter Hospital, Mardan.

However, here a doubt arises as to why he had submitted Medical Rest Certificates, obtained from DHQ Hospital Mardan instead from a Hospital at Swat as he was permanent resident of District Swat. But he answered accurately that due to Military Operation in District Swat, he migrated alongwith his family to District Mardan as such during the course of Operation various families were migrated from District Swat to other districts.

When he was asked about submission of Bogus Medical Rest Certificates, his reply was not satisfactory as he stated that he was regularly checked by the specialist at DHQ Mardan and advised rest, however, an unfamiliar Class-IV employee provided the rest certificates and he did not know about the fact that the Rest Certificates were fake/bogus.

This sort of answer creates doubt in the mind of Inquiry Officer. However, to that extent if we agree with his statements then as per Law "Ignorantia facit non excusat". But keeping in view of his penalty of dismissal from services and as such

He remained jobless for more than 06 years without any back benefit, so it is to be considered that he has spent more than 06 years of life without any Job.

The accused official was also inquired as how he earned and supported his family during the course of his dismissal from Services to which he answered that he belonged to a poor family and badly suffered during military operation in Swat. In such critical condition he was working as labourer in Mardan, due to which some leniency is required to be extended in his favour. (Cross Questionnaire attached as **Annexure-C**)

The accused official had been appointed as Junior Technician Pharmacy since 2004 while rendered more than 07 years Services including 03 years services in hard mountainous area Dasu Kohistan and already suffered his sentence.

CONCLUSION: -

After thoroughly examining the case and record on ground, the undersigned reached to the conclusion that it would be like flogging a dead horse to penalize him for his past acts. Almost the incumbent remained 06 years jobless which is sufficient punishment for him. To this effect some official were also inquired about his recent conduct, which was found satisfactory.

RECOMMENDATIONS: -

Keeping in view the above submissions, the undersigned reached to the conclusion that in this stage some leniency & benignancy may be afforded in favour of accused official. Therefore, it is recommended: -

1. That absent period may be treated as *Leave without Pay*.
2. That intervening period i.e. from date of Dismissal to date of re-instatement into Services may be treated as *Extra ordinary Leave without Pay*.
3. That he may be strictly *warned* to be careful in future.
4. That he may be transferred from District Jail Swat to District Jail Timergara for all purpose as he is attached with District Jail Timergara for purpose of Pay only.

Inquiry Officer



(SAMIULLAH KHAN)
Deputy Superintendent Cum
Superintendent CP Bannu



INSPECTORATE GENERAL OF
KHYBER PAKHTUNKHWA PRISONS

69 (36)
091-9210334, 9210406 091-9213445

No. 41/2-J-2004-44167-1-

Dated 17-12-2020

ORDER

WHEREAS, Mr. Aftab Hussain Technician while attached to District Jail Mansehra was awarded major penalty of Dismissal from Service for his willful absence from duty with effect from 01-7-2010 to 25-11-2010 as well as submission of fake medical certificate for the period of his absence vide this office order No.14728 dated 23-7-2011 .

AND WHEREAS, upon rejecting of his departmental appeal he preferred service appeal No.1941 /2011 for set-aside the penalty awarded to him. On 12-3-2014 the learned Service Tribunal has decided his appeal and remanded the case to the department for afresh inquiry proceedings against him. The learned Tribunal further ordered that the grant of back benefits to the above named appellant shall be subject to outcome of fresh inquiry proceeding. Accordingly, the case was referred to Law Department for placing the same to the Scrutiny Committee to decide as to whether the case is fit for filing CPLA in the August Supreme Court of Pakistan or otherwise. The Scrutiny Committee concerned declared fit case for filing CPLA which accordingly filed by the department and the Supreme Court of Pakistan dismissed the petition of the department and uphold the decision of the Khyber Pakhtunkhwa Service Tribunal to conduct a de-novo inquiry in the case vide judgement dated 01-09-2020 in C, Petition No.287-P of 2014. Before the decision of August Supreme Court of Pakistan he filed execution Petition No.37/2017 for implementation of Service Tribunal judgement dated 12-03-2014 and learn Service Tribunal asked for implementation of their judgement and accordingly he was re-instated in service vide this office order No.13078 dated 08-06-2017.

AND WHEREAS, Mr.Samiullah Khan Deputy Superintendent-cum-Superintendent Central Prison Bannu was appointed as Inquiry Officer for conducting de-novo inquiry in the matter vide this office endst; No.35073-75-WE dated 05-10-2020.

AND WHEREAS, the Inquiry Officer concerned submitted its findings according to which charges has been proved against him.

AND WHEREAS, the undersigned being competent authority issued the Show Cause Notice and the accused furnished his reply but failed to justify his innocence.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 15-12-2020 as provided under rules ibid. During the course of personal hearing the accused official again failed to justify his innocence.

NOW THEREFORE, in exercise of powers conferred under Rule-14 of Khyber Pakhtunkhwa Government Servants(Efficiency & Discipline) Rules 2011, having considered the charges, evidence on record , the explanation of the accused official as well as the recommendations of the Inquiry Officer and after affording the opportunity of personal hearing, the undersigned being competent authority is pleased to award the minor penalty of **withholding of increment for one year** to the accused **Mr.Aftab Hussain Technician**. In addition,his absence period i.e from **01-07-2010 to 25-11-2010** is treated as leave without pay and his intervening period i.e from the date of dismissal from service (**23-07-2011**) to the date of re-instatement in service (**19-06-2017**) is also hereby treated as leave without pay.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA , PESHAWAR.

ENDST:NO. 60168-1701

Copy of the above is forwarded to:-

1. Mr.Samiullah, Deputy Superintendent-cum-Superintendent Central Prison Bannu(Inquiry Officer) for information with reference to his letter No.7158-WE dated 02-11-2020.
2. The Superintendent, District Jail Timergara for information and necessary action. Necessary entry may be made in his Service Book after proper attestation.
3. The District Accounts Officer Timergara for information.

17/12
ASSISTANT DIRECTOR

INSPECTORATE GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR .



INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406

09

No.Estb/Ward-/Orders/

13078

Dated

8-6-2017

ORDER

WHEREAS, Mr. Aftab Hussain Dispenser /JTP while attached to District Jail Manshara was awarded major penalty of Dismissal from Service for his willful absence from duty with effect from 01-7-2010 to 25-11-2010 as well as submission of fake medical certificate for the period of his absence vide this office order No.14728 dated 23-7-2011 .

AND WHEREAS, upon rejecting of his departmental appeal he preferred service appeal No.1941 /2011 for set-asideing the penalty awarded to him. On 12-3-2014 the learned Service Tribunal has decided his appeal and remanded the case to the department for afresh inquiry proceedings against him. The learned Tribunal further ordered that the grant of back benefits to the above named appellant shall be subject to outcome of fresh inquiry proceeding. Accordingly, the case was referred to Law Department for placing the same to the Scrutiny Committee to decide as to whether the case is fit for filing CPLA in the August Supreme Court of Pakistan or otherwise. The Scrutiny Committee concerned declared fit case for filing CPLA which accordingly filed by the department and the case is pending in the August Supreme Court of Pakistan.

AND WHEREAS, the appellant filed execution Petition No.37/2017 for implementation of the judgement dated 12-3-2014 and the learned Service Tribunal has asked for implementation of their judgement referred to above .

NOW THEREFORE, keeping in view the facts on record, as per orders of the learned Service Tribunal Mr.Aftab Hussain Dispenser/JTP is hereby re-instated into service with immediate effect and his intervening period i.e from the date of dismissal to the date of re-instatement in service will be decided on the basis of final outcome of CPLA/denovo inquiry.

On his re-instatement in service he is hereby posted to Central Prison Mardan against the vacant post of Junior Technician Pharmacy.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA , PESHAWAR.

ENDST;NO. 13079-83-1ME

Copy of the above is forwarded to :-

1. The Secretary to Government of Khyber Pakhtunkhwa Home and T.As Department Peshawar, for information with reference to Home Department letter No.SO(Courts)/HA/4-313/2016 dated 13-4-2017.
2. The Superintendent Central Prison Mardan for information and further necessary action. A copy of judgement dated 12-3-2014 of the learned Service Tribunal enclosed herewith.
3. The Superintendents District Jail Bunir & Manshara for information and necessary action.
4. The District Accounts Officers Manshara , Bunir and Mardan for information.
5. The Registrar, Service Tribunal Khyber Pakhtunkhwa Peshawar for information .

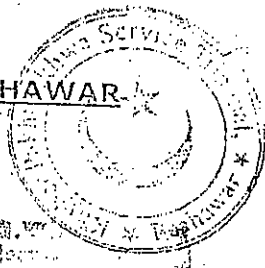
ASSISTANT DIRECTOR (ADMIN)
FOR INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

7/6/17

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BEFORE THE SERVICE TRIBUNAL K.P.K., PESHAWAR.



Service Appeal No. 1941 /2011

1823
30.11.2011

Aftab Hussain S/o Fazal Khaliq (Ex-Dispenser)
Sub Jail Daggar Buner.....Appellant

Versus

1. Secretary Home & Tribal Affairs Department Govt. of K.P.K., Peshawar.
2. Inspector General (Prisons) Govt. of K.P.K., Peshawar.

.....Respondents

Appeal u/s 4 of NWFP Service Tribunal Act 1974 against the order of respondent No. 2 23.07.2011 whereby the appellant has been dismissed with immediate effect from his service.

30/11/11

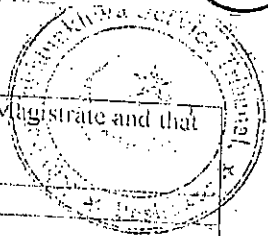
Prayer in Appeal:

On acceptance of this appeal the order of dismissal passed by respondent No. 2 dated 23.07.2011 may please be set-aside and the appellant be reinstated back to his service with all his back benefits

17/12/11

ATTESTED
[Signature]

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S.No. of order or proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	12.03.2014	<p style="text-align: center;">Appeal No. 19/1/2011 (Aftab Hussain-vs-Secretary Home Department, KPK and another)</p> <p>Appellant with counsel and Mr. Sheharyar Khan, Assistant Supdt. Jail on behalf of respondents with AAG present. Representative of the respondents produced copies of the requisite record, which are placed on file. He, however, stated that the second inquiry relating to absence from duty without intimation upto 8.6.2011 and non-compliance with lawful orders of the competent authority against the appellant is still pending because of dismissal from service of the appellant as a result of earlier departmental proceedings against him on the charges of absence from duty without intimation from 1.7.2010 to 25.11.2010 and production of bogus medical certificate. Arguments heard and record perused.</p> <p>Aftab Hussain (appellant) joined Prison Department as Dispenser on 4.11.2004, and on 8.6.2010, within two months of his transfer from Dasso, Kohistan to Sub Jail Daggar, Buner, on 19.4.2010, the transfer order was cancelled and the appellant was relieved from Sub Jail Daggar for joining duty at Dasso, Kohistan. According to the appellant, he could not join his duty at Sub Jail, Dasso because of some medical problem and other problems being faced by the residence of his home District Swat; and on 26.11.2010 a fresh transfer order from Sub Jail Dasso, Kohistan to Sub Jail, Daggar was issued. The appellant accordingly joined his service, but he was served with a show cause notice, followed by inquiry proceedings by the Jail Superintendent, Swat, who recommended stoppage of four increments as well as treating period of absence as extraordinary leave without pay. Though the Inquiry Officer did not recommend dismissal from service in his findings, the appellant was dismissed from service vide impugned order dated 23.7.2011. The appellant preferred departmental appeal against the impugned order but</p>

[Handwritten signature]

the same was also rejected by the appellate authority and, allegedly, received by the appellant on 3.11.2011, hence this appeal on 30.11.2011.

The appeal has been lodged on the grounds that the appellant was frequently transferred from one place to another without any cogent reasons, that no inquiry proceedings as prescribed by the law were conducted; that the Inquiry Officer recommended penalty of stoppage of four increments but the competent authority awarded major penalty of dismissal from service without mentioning any reasons for disagreeing with the recommendations of the Inquiry Officer; that the penalty awarded to the appellant was not commensurate with the gravity of the charge; that the authority did not take into consideration the fact that during the said period the entire family of the appellant migrated from Swat to Mardan as IDPs; that the immediate officer of the appellant was satisfied with his performance; that the appellant was not served with final show cause notice and that neither reasons for maximum penalty were furnished nor the charge was proved against the appellant.

The appeal was contested by the respondents who filed their joint written reply, wherein, the impugned action was defended on the grounds that the appellant did not join his duty at Sub Jail Dassu, Kohistan, and remained absent from duty for long period from 1.7.2010 to 25.11.2010; and also that fake/bogus medical certificate was furnished by the appellant which was proved as such on verification from the Medical Superintendent, DHQ Hospital, Mardan. The respondents claimed that proper inquiry proceedings were adopted and the appellant was duly served with a show cause notice. The respondents admitted that though the Inquiry Officer recommended stoppage of four annual increments but keeping in view nature of the charge/offence, the competent authority imposed major penalty upon the appellant strictly in accordance with the rules as the charge of bogus medical certificate stood proved against the appellant. They further claimed that the appellant has been provided

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ample opportunity of defence and hearing. The appellant also filed rejoinder to the written reply of the respondents therein reiterating his case.

The arguments of learned counsel for the appellant focused on the point that contrary to the recommendations of the Inquiry Officer for stoppage of four annual increments without future effect and treating the period of absence as extraordinary leave without pay, the competent authority i.e. Inspector General of Prisons, KPK, Peshawar (Respondent No.2) awarded the penalty of dismissal from service, that too, without serving the appellant with final show cause notice therein mentioning the reasons for his disagreement with the recommendations of the Inquiry Officer. Like-wise, according to the learned counsel for the appellant, no reason, let alone cogent reason, was furnished by the appellate authority while rejecting departmental appeal of the appellant vide order conveyed through memo dated 27.10.2011.

The record made available by the respondent-department during the course of arguments would reveal that though the appellant was served with a show cause notice after culmination of inquiry proceedings against him on the charges of wilful absence from duty from 01.7.2010 to 25.11.2010 and production of bogus medical certificate, conveyed to him through charge sheet and statement of allegations dated 22.3.2011; but the show cause notice does not reveal reason of the competent authority for dissenting/disagreeing with the recommendations of the Inquiry Officer. Moreover, through the show cause notice, the competent authority conveyed to the appellant that he has tentatively decided to impose the major penalty of *removal from service*, but in the impugned order dated 23.7.2011, the major penalty of *dismissal from service* was imposed upon the appellant. Needless to say that removal from service and dismissal from service are two different penalties provided for in the NWFP (KPK) Removal from Service (Special Powers) Ordinance, 2000, where-under

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the appellant was proceeded against.

In the absence of reasons furnished by the competent authority in the show cause notice for disagreement with the findings/recommendations of the Inquiry Officer, the impugned order dated 23.7.2011 of the competent authority has been rendered not sustainable on this score alone in the eyes of law and judgment of the august Supreme Court of Pakistan reported as 2011 PLC(C.S) 1094 (a) (Supreme Court of Pakistan). Likewise, the order of the appellate authority conveyed vide memo dated 27.10.2011 is also not sustainable because of absence of reasons in accordance with the provision of section 24-A(2) of the General Clauses Act, 1897.

Consequently, on the acceptance of the appeal, both the impugned orders of the competent authority dated 23.7.2011 and that of the appellate authority conveyed through memo dated 27.10.2011 are set aside, and the appellant is reinstated in service. The departmental proceedings are accordingly remanded to the competent authority for an order afresh strictly in accordance with law and the observations made above as early as possible within the period prescribed by the law. The grant or otherwise of back benefits to the appellant shall be subject to the outcome of departmental/inquiry proceedings. There shall, however, be no order as to costs.

Adv Member

Adv Advocate

ANNOUNCED
12.03.2014

Original copy
[Signature]

18.3.2014

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18.3.2014

18.3.2014