

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 892/2019

Date of Institution ... 09.07.2019
Date of Decision ... 30.05.2022

Nizar Ali Ex-Warder R/O Village Adeena, Mohallah Tibat Khel,
Tehsil Razar, District Swabi.

... (Appellant)

VERSUS

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

... (Respondents)

Aslam Khan Khattak,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

Rozina Rehman
Fareeha Paul

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

JUDGMENT

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

**“On acceptance of appeal, both the impugned
orders may be set aside and the appellant shall be
reinstated in service with all back benefits.”**

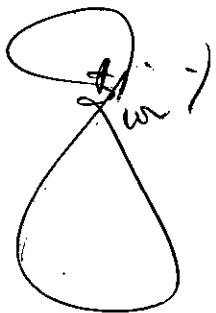
2. Brief facts of the case are that appellant was appointed as
Warder on 09.05.2012. He performed his duty with honesty and
dedication. Due to enmity, appellant and his family shifted to a safe
place but during this time, appellant was removed from service vide

impugned order dated 25.06.2014. He filed departmental appeal which was rejected, hence, the present service appeal.

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

4. Aslam Khan Khattak Advocate learned counsel appearing on behalf of appellant inter-alia submitted that the both the impugned orders are illegal against law, rules and natural justice, therefore not tenable; that the appellant's removal from service was given retrospective effect which is patently illegal and void order; that he was unable to perform his duty due to his enemies because there was danger to the life of appellant but now the situation has become smooth and peaceful, therefore, he filed departmental appeal to be reinstated. It was contended that removal of appellant was without holding any inquiry and that no opportunity of personal hearing was ever afforded to the appellant to clear his position in the prescribed manner which amount to denial of natural justice. Lastly, he submitted that proper procedure according to law was not adopted by the competent authority, therefore, requested for reinstatement of appellant with all back benefits.

5. Conversely, learned AAG submitted that appellant willfully absented himself as he was not interested in his duty. Consequently, he was proceeded against departmentally according to law and after completion of all codal formalities, he was awarded major penalty of removal from service.

A handwritten signature or set of initials, possibly 'S. Khan', written in dark ink. The signature is stylized and somewhat circular, with a loop at the top and a larger loop at the bottom. There are some small marks and a dash to the right of the main signature.

6. From the record it is evident that Nizar Ali Jail Warder was proceeded against departmentally on the allegations of absentia. There are two different eventualities provided under the scope of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 relating to the absence. For the first eventuality, Rule-3 of said rules enumerating the grounds for proceedings include among them one in Clause (b) of Rule-3 as being guilty of habitually absenting himself from duty without approval of leave; while the other eventuality comes under Rule-9 of rules ibid regarding willful absence. Procedure as provided in rules ibid is totally different from each of said eventualities. Coming to the facts of this case, the appellant has been removed from service by the impugned order dated 25.06.2014, wherein, there is no reference as to the conduct of proceedings of Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 while the said order has been passed on purported proof of charge of willful absence from duty. Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides procedure in case of willful absence which is hereby reproduced for ready reference:

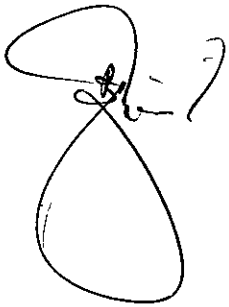
"9. Procedure in case of willful absence. –

Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as

undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant".

7. As per law, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued through registered acknowledgement by the competent authority. In the instant case, show cause notice is available on file but the respondents badly failed to prove that the appellant had properly been informed to resume duty which means that the procedure in case of willful absence prescribed by the law was not properly followed by the competent authority.


8. So far as objection of the learned AAG in respect of limitation is concerned that impugned order was passed on 25.06.2014, whereas, the departmental appeal was filed on 15.05.2019. As discussed earlier that the competent authority failed to follow the proper procedure provided under the law in case of willful absence, therefore, the principles of limitation for invoking remedy provided by law would not apply as the impugned act was void ab-initio and nullity in the eye of law. Reliance is placed on *Zakriya Khan Babar Vs. Government of Pakistan* reported in 1993 PLC (CS) 14. It has also been held by the superior fora in plethora of judgments that decision of cases on merits

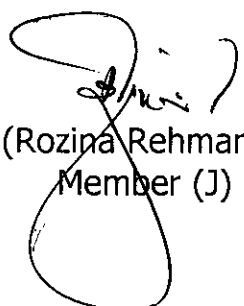


always to be encouraged instead of non-suiting of litigants for technical reasons including limitation.

9. For what has been discussed above, the impugned order is set aside. Appellant is reinstated in service for the purpose of de-novo inquiry to be conducted within 60 days of the receipt of copy of this judgment with direction to respondents to decide the case through a speaking order. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
30.05.2022


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Appeal No. 892/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 939

Dated 09/7/2019

Nizar Ali, Ex Warder R/o Village Adeena, Mohallah Tibat
Khel, Tehsil Razar, District Swabi.

.....Appellant

VERSUS

1. Inspector General of Prisons, KPK Peshawar.
2. Superintendant Circle HQ, Prison, Haripur.
3. Superintendant District Jail Mansehra.

.....Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST THE IMPUGNED ORDER
DATED 25/06/2014 VIDE ANNEXURE "B"
WHEREBY THE APPELLANT HAS BEEN
REMOVED FROM SERVICE FROM
10/01/2014 AND ALSO AGAINST THE FINAL
IMPUGNED ORDER DATED 28/06/2019
VIDE ANNEXURE "D" WHEREBY THE
APPELLANT'S DEPARTMENTAL APPEAL
HAS BEEN REJECTED.**

Filed to-day

ew.
Registrar

9/7/19

PRAYER:

**ON ACCEPTANCE OF APPEAL, BOTH THE
IMPUGNED ORDERS AT ANNEXURE "B + D"**

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6. From the record it is evident that Nizar Ali Jail Warder was proceeded against departmentally on the allegations of absentia. There are two different eventualities provided under the scope of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 relating to the absence. For the first eventuality, Rule-3 of said rules enumerating the grounds for proceedings include among them one in Clause (b) of Rule-3 as being guilty of habitually absenting himself from duty without approval of leave; while the other eventuality comes under Rule-9 of rules ibid regarding willful absence. Procedure as provided in rules ibid is totally different from each of said eventualities. Coming to the facts of this case, the appellant has been removed from service by the impugned order dated 25.06.2014, wherein, there is no reference as to the conduct of proceedings of Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 while the said order has been passed on purported proof of charge of willful absence from duty. Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides procedure in case of willful absence which is hereby reproduced for ready reference:

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7. As per law, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued through registered acknowledgement by the competent authority. In the instant case, show cause notice is available on file but the respondents badly failed to prove that the appellant had properly been informed to resume duty which means that the procedure in case of willful absence prescribed by the law was not properly followed by the competent authority.

8. So far as objection of the learned AAG in respect of limitation is concerned that impugned order was passed on 25.06.2014, whereas, the departmental appeal was filed on 15.05.2019. As discussed earlier that the competent authority failed to follow the proper procedure provided under the law in case of willful absence, therefore, the principles of limitation for invoking remedy provided by law would not apply as the impugned act was void ab-initio and nullity in the eye of law. Reliance is placed on *Zakriya Khan Babar Vs. Government of Pakistan* reported in 1993 PLC (CS) 14. It has also been held by the superior fora in plethora of judgments that decision of cases on merits

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ANNOUNCED.
30.05.2022


(Fareena Paul)
Member (E)


(Rozina Rehman)
Member (J)

10.05.2022

Learned counsel for the appellant present. Mr. Riaz Khan Paindakheil, Asstt. AG for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not gone through the record. Last opportunity is granted. To come up for arguments before the D.B on 30.05.2022.



(Fareeha Paul)
Member (E)



Chairman

ORDER

30.05.2022

Appellant present through counsel.

Kabir Ullah Khattak, learned Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our judgment of today of this Tribunal placed on file, the impugned order is set aside. Appellant is reinstated in service for the purpose of de-novo inquiry to be conducted within 60 days of the receipt of copy of this judgment with direction to respondents to decide the case through a speaking order. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

30.05.2022



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

Stipulated period passed reply not submitted.

16.08.2021


Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

11.11.2021

Mr. Aslam Khan Khattak, Advocate, for the appellant present. Mr. Suleman, Senior Instructor alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Reply/comments on behalf of respondents submitted, which is placed on file and copy of the same is handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments on 02.02.2022 before the D.B.

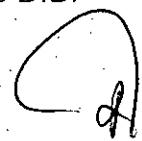

(Atiq-Ur-Rehman Wazir)
Member (E)


(Salah-Ud-Din)
Member (J)

02.02.2022

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Learned counsel for the appellant submitted rejoinder, copy of the same is handed over to the learned AAG. Adjourned. To come up for arguments on 10.05.2022 before the D.B.


(Rozina Rehman)
Member (J)


(Salah-Ud-Din)
Member (J)

892/19

29.06.2021

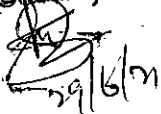
Counsel for the appellant present. Preliminary arguments heard.

The question of voidness of an order of penalty read with retrospective of the punishment cannot be viewed in isolation in ignorance of the respective factual position of the case. There are two different eventualities provided under the scope Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 relating to the absence. For the first eventuality, Rule 3 of said rules enumerating the grounds for proceedings include among them one in clause-(b) of Rule 3 as being guilty of habitually absenting himself from duty without prior approval of leave; while the other eventuality comes under Rule 9 of rules ibid regarding willful absence. Procedure as provided in rules ibid is totally different from the each of said eventualities. The first eventuality is to be dealt under discretion of the competent authority within the meaning of Rule 5 and Rule 7 of the rules ibid. While in case of willful absence, there is self-contained procedure in Rule 9 of the ibid rules. Accordingly, willful absence from duty by a government servant for seven or more days is to be followed by a notice issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days

of issuance of the notice. If the same is received back as undelivered or no response is received from absentee within the stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within 15 days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of stipulated time given in the notice, major penalty of removal from service may be imposed upon such government servant. Within the given scope of Rule 9, the government servant become liable for disciplinary action after seven days of his willful absence. If he in pursuance to the lawful process provided under the said rules does not come up to explain the reasons of his absence, the ex-parte decision against him is the requirement of law irrespective of any factual position under which he absented himself from attendance of the duty. If an ex-parte decision within the meaning of rule 9 after compliance with the required procedure become due, the removal of the Government servant from service shall take effect from the date of first day of his report absence notwithstanding the fact that the disciplinary action under Rule 9 stood concluded later on. Therefore, the question of retrospective punishment cannot arise in case of willful absence. What the Tribunal has to see in such a case is that whether the penalty had followed the procedure provided under Rule 9 of the Government Servants E&D Rules or not.

Coming to the facts of this case, the appellant has been removed from service by the impugned order dated 25.06.2014, wherein there is no reference as to the conduct of proceedings within the meaning of Rule 9 of the E&D Rules 2011 while the said order has been passed on purported proof of charge of willful absence from duty. Let the respondents come with comments/written reply to disclose their case in respect of the validity of proceedings conducted against the appellant. Subject to all just and legal objections, this appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11.11.2021 before the D.B.

**Appellant Deposited
Security & Process Fee**


29/6/21

Before parting, it is directed that the office shall place the copy of this order before Worthy Members of this Tribunal for their perusal.


Chairman

02.12.2020

Counsel for appellant is present.

Learned counsel requests for adjournment to a date after the decision of proposition regarding retrospective punishment by a Larger Bench of this Tribunal.

Adjourned to 17.02.2021 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

17.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 29.06.2021.


Reader

16.07.2020

Counsel for the appellant present. Preliminary arguments to some extent heard. The appellant was appointed as Warder(BPS-05) in Prison Department vide office order dated 09.05.2014. That vide impugned order dated 25.06.2014, the appellant was "removed from service" by Respondent No.2 against which he preferred departmental appeal on 15.05.2019 (almost after five years) which was rejected on 28.06.2019 on the ground of badly time barred. Learned counsel for the appellant when confronted on the point regarding delay in preferring departmental appeal, stated that it is a settled law by Supreme Court of Pakistan that the cases be decided on merits and not on technicalities such as limitation. The learned counsel for the appellant contended that both the impugned orders dated 25.06.2014 and 28.06.2015 are liable to be set aside and the appellant be reinstated in service with all back benefits. Let pre-admission notice be given to the learned AAG to assist the Tribunal regarding limitation.

Adjourned to 22.09.2020 before S.B.


(Mian Muhammad)
Member(E)

22.09.2020

Counsel for the appellant present.

Many cases involving retrospective punishment have been adjourned at Preliminary hearing stage to dates after the Larger Bench on the point is scheduled. Learned counsel, therefore, requests for similar treatment of instant matter as well.

Adjourned to 02.12.2020 before S.B.


Chairman

892/2019

22.01.2020

Appellant present in person.

Requests for adjournment due to general strike of the Bar. Adjourned to 05.03.2020 before S.B.


Chairman

05.03.2020

Counsel for the appellant present and seeks adjournment. Adjourned to 20.04.2020 in order to avail the outcome of case(s) pending before the Larger Bench regarding retrospective punishment.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

20.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 16.07.2020 for the same. To come up for the same as before S.B.


Reader



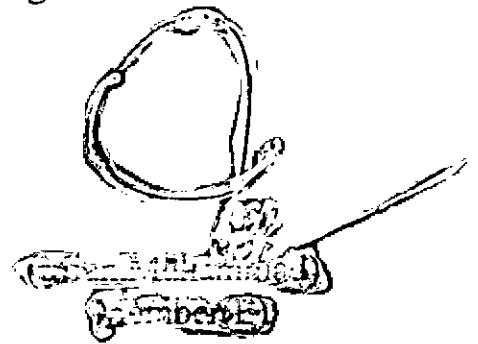
KS072020

Appellant with counsel present

Although the case was fixed for preliminary
 hearing on 03/03/2020 before (S), yet the learned
 counsel for the appellant submitted withdrawal
 application with the effect that the appeal requires
 adjudication before the proper forum i.e. Peshwar
 High Court, Peshwar. The application is allowed
 and the instant appeal is hereby allowed as
 withdrawn. The appellant may approach proper
 forum, if so advised. FHC be. consigned to the record.

Done.

Amir Farid
 15.07.2020



Handwritten signature and official stamp of a judge, likely a member of the Peshwar High Court, with the name 'Amir Farid' visible in the stamp.

12.09.2019

Counsel for the appellant present.

Learned counsel requests for adjournment as he could not prepare the brief due to indisposition.


Adjourned to 29.10.2019 before S.B.


Chairman

29.10.2019

Appellant present in person.

Requests for adjournment due to non-availability of his learned counsel as the Provincial Bar Council has declared general strike today. Adjourned to 10.12.2019 before S.B.


Chairman

10.12.2019

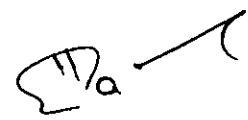
Appellant present in person.

Requests for adjournment is made due to general strike of the Bar today. Adjourned to 26.12.2019 for preliminary hearing before S.B.


Chairman

26.12.2019

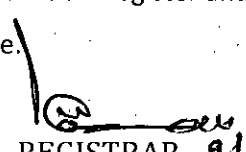
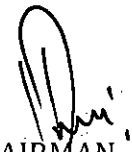

Learned counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary arguments including arguments on the issue of limitation/competency on 22.01.2020 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- _____ 892/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/07/2019	<p>The appeal of Mr. Nizar Ali presented today by Mr. Aslam Khan Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 9/7/19</p>
2-	09/07/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>15/08/19</u>.</p> <p> CHAIRMAN</p>
	16.08.2019	<p>Since 15.08.2019 has been declared as public holiday on account of Eid-ul-Azha, therefore, case to come up for the same on 12.09.2019 before S.B.</p> <p> Reader</p>

PS
relay

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

Appeal No. 892/2019

Nizar Ali

VERSUS

Inspector General of Prisons, KPK Peshawar & Other

I N D E X

S#	Description of Documents	Annexure	Page#
1.	Memo of Appeal	-	1-4
2.	Application for Condonation of Delay if any with affidavit	-	5-6
3.	Copy of Appointment order of appellant	"A"	7
4.	Copy of impugned order dated 25/06/2014	"B"	8
5.	Copy of Departmental Appeal dated 15/05/2019	"C"	9
6.	Copy of Final Impugned Order dated 28/06/2019	"D"	10
7.	Wakalat Nama	-	-

Dated: 9/7/2019

Nizar Ali

Appellant

Through

Aslam Khan Khattak

**Aslam Khan Khattak
Advocate, Peshawar.**

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Filed to-day
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Registrar
9/7/19

PRAYER:

**ON ACCEPTANCE OF APPEAL, BOTH THE
IMPUGNED ORDERS AT ANNEXURE "B + D"**

**MAY BE SET ASIDE AND THE APPELLANT
SHALL BE REINSTATED IN SERVICE WITH
ALL BACK BENEFITS.**

Respectfully Sheweth:

Brief facts leading to the instant appeal are as under:

- 1) That the appellant having been inducted in service on 09/05/2012 vide annexure "A".*
- 2) That the appellant throughout his whole service has performed the duty with utmost of his capabilities and to the entire satisfaction of his superiors.*
- 3) That the enemies of appellant were residing near to appellant's home and were trying to kill the appellant and for that reason, the appellant and his whole family has been shifted to a safe place for safety purposes which was not known to his enemies and so the appellant has been removed from service vide impugned order dated 25/06/2014 at annexure "B". Now due to agreement with his enemies and the circumstances has become peaceful and the appellant is now in a position to perform his duty regularly.*
- 4) That the appellant has filed his departmental appeal dated 15/05/2019 vide annexure "C" and which has been rejected vide impugned order dated*

28/06/2019 at annexure "D" and hence this appeal interalia on the following grounds:-

GROUNDS:

- A. *That the appellant's removal from his service has been given retrospective effect which is patently an illegal and void order which is not permissible under the law and to this effect both the impugned orders at annexure "B" & "D" are illegal and are liable to be set aside and the appellant deserves reinstatement in service with all back benefits.*

- B. *That the appellant's enemies were very cruel and due to their harsh behavior, the appellant was unable to perform his duty because there was a danger to the life of appellant and now due to agreement with them, the whole situation has become smooth/ peaceful and the appellant is now able to perform his duty.*

- C. *That the removal of appellant from service without holding any enquiry and without holding him an opportunity to clear his position in prescribed manner, would amount to denial of natural justice to appellant. So to this effect both the impugned orders are illegal and are liable to be set aside.*

- D. *That the appellant has been removed from service from mere unauthorized absence from duty which*

is an extreme harsh punishment and not commensurate with the petty misconduct born out of the absence of appellant. So both the impugned orders are illegal and are liable to be set aside.

E. That the appellant's departmental appeal has been dismissed as time barred is appealable before this Hon'ble Tribunal as per judgment of August Supreme Court of Pakistan. So the instant appeal before this Hon'ble Tribunal would not lie on condonation or refusal to condone the delay but with regard to appellate order on merit.


F. That both the impugned orders at annexure "B & D" are illegal, malafide, without jurisdiction and without lawful authority and are liable to be set aside.

G. That the appellant seeks leave to rely on additional grounds at the time of argument.

It is, therefore, most humbly prayed that on acceptance of appeal, the two impugned orders dated 25/06/2014 and 28/06/2019 at annexure "B & D" may be set aside and the appellant shall be reinstated in service with all back benefits.

Dated: 9/07/2019


Appellant

Through 
Aslam Khan Khattak
Advocate, Peshawar.

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

Appeal No. _____/2019

Nizar Ali

VERSUS

Inspector General of Prisons, KPK Peshawar & Other

APPLICATON FOR CONDONATION
OF DELAY IF ANY ON THE
FOLLOWING GROUNDS

GROUND:

- A. That the impugned order dated 25/06/2014 at annexure "B" has been given retrospective effect which is void order and limitation does not against it.
- B. That the departmental appeal has been rejected by the authority as time barred. Such appeal would lie before this Hon'ble Tribunal on merit and not on condonation of delay if any in the matter.
- C. That it is settled law of Supreme Court of Pakistan that the cases be decided on merits and not on technicalities such as limitation.
- D. That the petitioner has not committed any misconduct and if the delay, if any, is not condoned, the petitioner's whole life shall be destroyed.

It is, therefore, prayed that on acceptance of this application, the delay if any shall be condoned to meet the ends of justice.

Dated: 4/7/2019

As
Petitioner

Through

Aslam Khan Khattak
Aslam Khan Khattak
Advocate, Peshawar.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Appeal No. _____/2019

Nizar Ali

VERSUS

Inspector General of Prisons, KPK Peshawar & Other

AFFIDAVIT

I, **Nizar Ali, Ex Warder, District Jail Mansehra**, do hereby solemnly affirm and state on oath that all contents of the application or condonation of delay if any are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.

Ali

DEPONENT

Identified by

Aslam

Aslam Khan Khattak
Advocate, Peshawar.





To

Annexure A
OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No. 999 /P.B dt: 9/15/2012

Mr. Nizar Ali s/o Muhammad Israr
Mohallah Shaibat Khel, Adeena, Tehsil & District Swabi.

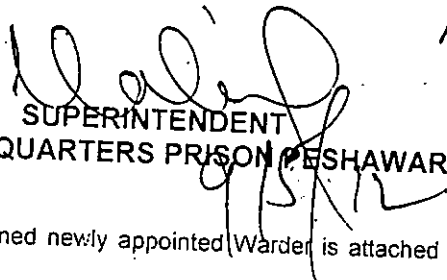
Subject: **APPOINTMENT AS WARDER (BPS-05)**

Memo:

Reference your test/ interview for the subject post.

You are hereby offered the post of temporary Warder in (BPS-05) (5400-260-13200) and other usual allowances as admissible under the rules subject to the following conditions: -

- 1- You are liable to serve anywhere in the jails of Khyber Pukhtunkhwa.
- 2- Your appointment is purely temporary and your services can be terminated at any time without assigning any reason during probationary period.
- 3- For all other purposes such as pay, T.A & Medical attendance etc, you will be governed by the rules applicable to the government servants of your category.
- 4- The terms and conditions of your appointment as Warder will be those as laid down in the NWFP Prisons Rules 1985, Prisons Department (Recruitment, Promotions & transfer) rules 1980 and all other rules and regulations prescribed to Government Servants or the rules which may be promulgated by the Government from time to time in this behalf.
- 5- Your appointment will be subject to your Medical fitness.
- 6- No TAV DA will be admissible to you on joining your first appointment.
- 7- You cannot resign from the service immediately, but will have to put in writing at least one month prior notice or in lieu thereof, one month pay shall be forfeited from you.
- 8- Your appointment is subject to fulfillment of all the conditions laid down in the services rules.
- 9- You will be on probation for a period of two years extendable to one more year.
- 10- On your report for duty, it will be taken for granted that you have accepted all the above terms and conditions and if you failed to report within 10 days of the receipt of this appointment order, it will be presumed that you have declined to accept this offer, hence this order of appointment shall stand cancelled.
- 11- You are directed to attend this office immediately for your Medical Examinations at Police & Services Hospital Peshawar.

Attested as

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Endorsement No: _____

- 1- Copy of the above is forwarded to the: -
Superintendent District Jail Mansehra. The above named newly appointed Warder is attached with his Jail for all purposes.
- 2- District Accounts Officer Mansehra.


SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Musawer/-



OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQs PRISON HARIPUR

No. 1688
Dated 25-06-2014

Annexure B

OFFICE ORDER

Upon completion of disciplinary proceedings under the Khyber Pakhtunkhwa Government Servants (*Efficiency & Disciplinary*) Rules-2011, Warders (EPS-05) Nizar Ali attached to District Jail Mansehra is hereby awarded the penalty of Removal from Service from the date of desertion and on the charges contained in show cause notice served upon him vide this Headquarter P.B No. 143-45 dated 10-01-2014.


SUPERINTENDENT
CIRCLE H.Q. PRISON HARIPUR

Endst: No: 1688-91

Copy of the above is forwarded to:-

1. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent District Jail Mansehra for information and necessary action w/r to this Headquarter P.B No. quoted above.
3. Ex-Warder Nizar Ali R/O Shaibat Khel, Adeena, Tehsil & District Swabi.


SUPERINTENDENT
CIRCLE H.Q. PRISON HARIPUR

25/6/14
Attested
asl

ایک طرف سے اس کے بدل میں دیا گیا ہے

تاریخ 15/5/19

حکمانہ پریس صاحب محلہ 1

انعام بنیادی ہے۔ اس میں سالانہ کو ذاتی دستخطی

بنیادی ڈیوٹی سے غیر جانبدار ہے۔ اور بعد میں پرنٹنگ میں

کوئی اور چیز نہیں تو نوری سے برضا و کیا گیا۔ یہ سالانہ

کا واقعہ ہے۔ جو کہ سالانہ کے فیصلے کے بعد دستخط
کوئی سے روکوش ہے۔ اس وقت سالانہ ڈیوٹی کے بعد ماہانہ فیضان

کے اندر آپ کے لئے اس کی کاپی ہے۔
بہت فوری سالانہ کا دستخط ہے۔ اور اس کے بعد

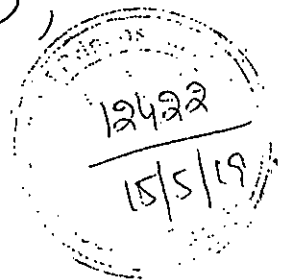
نہیں دوبارہ تو نوری کے بحال کرنے کے لئے
کام ہے۔

Attested
ast

التاریخ 15/5/19

العرفان

یہ سب کو فرماں سالانہ اور نظام علی



Annexure D

(10)

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406

091-9213445

www.facebook.com/kpkprisons/

Gmail: prisonsig@gmail.com

No. S/17-J-2019-20387/1

Dated 28-06-2019/1

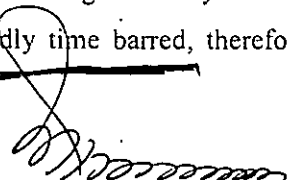


To,

Ex- Warder, Nizar Ali,
District Swabi C/O,
Superintendent Judicial Lockup Swabi.

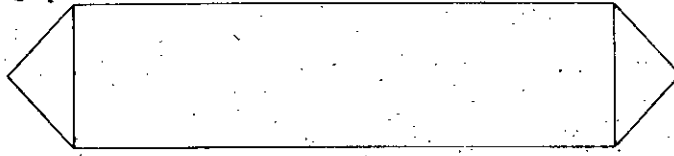
Subject:- DEPARTMENTAL APPEAL FOR REINSTATEMENT IN SERVICE.
Memo;

I am directed to refer to your appeal dated 15-05-2019 on the subject and to convey that you were removed from service in the year 2014 and according to rules you were required to prefer appeal within 30 days, hence your appeal being badly time barred, therefore, cannot be entertained at this stage.


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

Attested
ast

بعدالت جناب KPK سرور نے اسجیل پٹ



9 جولائی 2019ء جناب اسجیل پٹ

لنڈا رعلی بنام انسپیکٹر صلیب خان پٹ
- 990

سرور اسجیل

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لیسادم کیلئے مسلم خان صدک اسجیل
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق
زر این پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Attested &
accepted
as per

9 جولائی 2019ء

ماہ

المرقوم

العبد گواہ العبد

کے لئے منظور ہے۔

پٹ

مقام

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

In the matter of Service appeal No. 892/2019

Nizar Ali Ex-warder (Appellant)

VERSUS

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar
2. The Superintendent Central Headquarter Prison, Haripur
3. The Superintendent District Jail Mansehra

..... (Respondents)

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4.	Show cause notice dated 10.01.2014	B	6
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Deponent

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

SERVICE APPEAL NO: 892/2019

Nizar Ali, EX-WARDER R/o Village Adeena, Mohalla Tibat Khel, Tehsil Razar, District Swabi.

.....APPELLANT

VERSUS

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar
2. The Superintendent Circle H.QS, Prison, Haripur.
3. The Superintendent District Jail Mansehra.

.....RESPONDENTS

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO:1 to 3

Respectfully Sheweth,

Preliminary Objections:

- That the appellant has got no cause of action/locus standi.
- That the instant appeal is badly time barred.
- That the appellant has concealed the material facts from this honorable Tribunal, hence liable to be dismissed.
- That the appellant has not come to this honorable Tribunal with clean hands.
- That the appellant has filed the instant appeal just to pressurize the respondents.
- That the appellant has filed the instant appeal on malafide motives.
- That the instant appeal is against the prevailing law and rules.
- That the appellant is stopped by his own conduct to file this instant appeal.
- That the present appeal is not maintainable in the present form and also in the present circumstances of the case.

OBJECTION ON FACTS:

1. Related to the record hence need no comments.
2. This para needs no comments.
3. Incorrect and not admitted. That the appellant willfully absented himself and is not interested to his duty and violating the law and rules as elaborated in rule No. 1082 and 1083 of Khyber Pakhtunkhwa Prison Rules 2018 (**Annex-A**).
4. Correct and admitted to the extent that the appellant has preferred departmental appeal, which was badly time barred and duly rejected by the competent authority (**Annex-B**).

GROUNDS:

A. Incorrect and not admitted. That the appellant willfully absented himself from lawful duty, the penalty awarded to Ex-Warder Nizar Ali attached to District Jail Mansehra has been according to Law and Rules and upon completion of disciplinary proceedings under Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules 2011 has been awarded major penalty of removal from service (Copy of the order is attached as **ANNEX-C**). Moreover, departmental appeal preferred by appellant is badly timebarred and therefore cannot be entertained (Copy of departmental appeal is attached as **ANNEX-B**).

B. Incorrect and not admitted. That the appellant Nizar Ali deserted himself from line and duty on 07-01-2014 without the permission of the competent authority and violated rule No. 1082 and 1083 of Khyber Pakhtunkhwa Prison Rules 2018, Proper Show Cause notice under rule 5 (i) readwith rule 7 of the Khyber Pakhtunkhwa Government servants (Efficiency and Disciplinary) Rules 2011. Moreover, Appellant Nizar Ali avoided personal hearing and did not turn up on the date and time fixed for personal hearing (Copy of the Show Cause notice is attached as **ANNEX-D**).

C. Incorrect and not admitted. That the appellant willfully absented himself from lawful duty and a proper show cause notice and date of personal hearing has been intimated according to law and rule but the accused warder did not turn-up for personal hearing and avoided the lawful procedure and upon completion disciplinary proceedings under Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules 2011 has been awarded the penalty of removal from service. (Copy of the order is attached as **Annex-C**).

D. Incorrect and not admitted. That the penalty of removal from service has been according to law and rule as elaborated in above para.

E. Admitted and correct to the extent that the appellant preferred departmental appeal which was rejected by the competent authority because of badly time barred.

F. Incorrect and not admitted. That the penalty of removal from service has been according to law and rule as elaborated in Para-C.

G. Need no comments.

PRAYER:

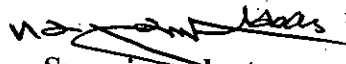
It is prayed that on acceptance of the above submission of joint parawise comments on behalf of respondents No. 1 to 3, the appeal of the appellant may graciously be dismissed being devoid of merit and against the law.



**Inspector General of Prisons
Khyber Pakhtunkhwa, Peshawar
Respondant No. 1**



**Superintendent
Circle HQ Prison Haripur
Respondant No. 2**



**Superintendent
District Jail Mansehra
Respondant No. 3**



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

In the matter of Service Appeal No. 892/2019

Filed by Ex-Warder Nizar Ali

..... Appellant


1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar
2. The Superintendent Circle H.QS, Prison, Haripur.
3. The Superintendent District Jail Mansehra.

.....RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1 TO 3

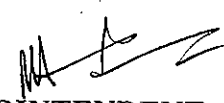
We, the undersigned respondents do hereby solemnly affirm that the contents of the Para wise comments on the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts have been kept secret/concealed from his honourable court.

1.


INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
(RESPONDENT # 1)



2.


SUPERINTENDENT
CIRCLE HEADQUARTER PRISON
HARIPUR
(RESPONDENT # 2)

3.


SUPERINTENDENT
DISTRICT JAIL MANSEHRA
(RESPONDANT # 3)

Amnesia "A"

OFFICE OF THE SUPERINTENDENT
DISTRICT JAIL MANSEHRA

No _____ Dated ____ / ____ / 2014
Phone & Fax.....0997-440084

To,

The District Police Officer,
Swabi .

Subject: DESERTION OF JAIL WARDER NIZAR ALI FROM DUTIES.
Sir,

It is intimated that as your good self is aware that over all law and order situation at present is adverse and all government institution are on target of militants, recent incident of Dera Ismail Khan Jail shows that the jails are on the target of these miscreants, in these condition additional staff is required for the security of the jail, in this scenario desertion on part of a Jail Staff member is a crime.

Jail Warder Nizar Ali S/O Muhammad Israr R/O Shaibat Khel Adeena Tehsil and District Swabi, deserted himself from lines and duties without the permission of the competent authority on 07-01-2014 and still at large, thus committing a gross negligence and misconduct.

It is therefore requested that he may be arrested and be handed over to jail authorities on earliest please.

sed
SUPERINTENDENT
DISTRICT JAIL MANSEHRA

No. 83 / Dated 08/01/2014

Copy of the above is forwarded to:-

- ✓ 1) The Superintendent Headquarter Prison Haripur for information please.
- 2) The Station House Officer of Police Station Kalo Khan Swabi for similar necessary action.

164
SUPERINTENDENT
DISTRICT JAIL MANSEHRA
to

PB
10/01/14
Supdr
10-1-14

164
10-1-14

Amirul "B"

SHOW CAUSE NOTICE UNDER RULE-5 (i) READ WITH RULE-7 OF THE KHYBER PUKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES. 2011.

You below noted Warders (BPS-05) attached to District Jail Mansehra deserted from lines & duties on the dates as noted against your names as under:-

S#	Name of Warder	Date of Desertion
1.	Tahir Abbas	03-01-2014
2.	Mubashir Saeed	07-01-2014
3.	Zahoor Ahmed	07-01-2014
4.	Nizar Ali	07-01-2014

I, Masud-ur-Rahman Superintendent Headquarter Prison, Haripur as competent authority, am satisfied by the report submitted by the Superintendent District Jail Mansehra and there is no need of holding any further inquiry.

Now therefore, you above named Warders are hereby called upon to show cause within 07-days as to why punishment of "Removal from Service" may not be awarded to you for your above stated act.

In case your reply does not reach this office within stipulated period ex-parte action shall be against you.

[Signature]
SUPERINTENDENT
CIRCLE H/Q PRISON HARIPUR

Endst No. 143-45 / Dated: 10/01/2014.

Copy of the above is forwarded to:-

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent District Jail Mansehra for information w/r to his memoranda No. 54 dated 06-01-2014, Nos. 73, 74 & 75 dated 08-01-2014. A copy of show cause notice duly signed by the accused Warders may please be returned to this Headquarter as a token of receipt and office record.
3. Warders (BPS-05) concerned c/o Superintendent District Jail Mansehra.

[Signature]
SUPERINTENDENT
CIRCLE H/Q PRISON HARIPUR

OS / 40 for n/a plus
Suprct
Mubashir Saeed
Mub
29-1-2014

Annexure "C"

OFFICE OF THE SUPERINTENDENT
DISTRICT JAIL MANSEHRA
NO _____ DATED 30-01-2014

To,

The Warder Nizar Ali
Attached to District Jail Mansehra.
R/O Shaibat Khel, Adeena Tehsil & District Swabi.

Subject: - SHOW CAUSE NOTICE.

Memo:-

A show cause notice received through Superintendent Headquarter Prison Haripur, against you in a disciplinary case is sent herewith to you at your home address and you are directed to submit reply of the show cause notice with in 07 days of receipt of the said notice.

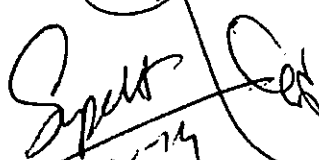

SUPERINTENDENT
DISTRICT JAIL MANSEHRA

Endst; No 261 Dated _____

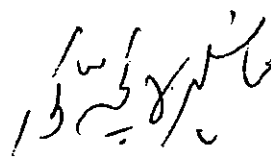
✓ Copy of the above is forwarded to the Superintendent Headquarter Prison Haripur for information with reference his memo: No. 143-45 dated 28-01-2014; the date of appointment of the above warder is 19-05-2012, please.


SUPERINTENDENT
DISTRICT JAIL MANSEHRA

DB 
06/2/14


06-2-14

488
06-02-14


13-2-14

Annexure "D."

OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL MANSEHRA
No ___ /Dated ___ / ___ / 2014

To,

The Warder Nizar Ali
Attached to District Jail Mansehra.
R/O Shaibat Khel, Adeena Tehsil & District Swabi.

Subject: - SHOW CAUSE NOTICE.

Memo:-

It is to inform you that due to your absence from duty a disciplinary action was initiated against you and you were called by Superintendent Headquarter Prison Haripur for your personal hearing on 10-04-2014 at 10:00 am but you failed to appear for the said personal hearing.

You are further directed to appear before the Superintendent Headquarter Prison Haripur for your second personal hearing on 24-06-2014 at 11:00 am positively other wise ex-party action will be initiated against you.

S.A.K.
SUPERINTENDENT
DISTRICT JAIL MANSEHRA

Endst; No 1418 Dated 18-06-2014

Copy of the above is forwarded to the Superintendent Headquarter Prison Haripur for information with reference his memo: No. 1618 dated 13-06-2014; the date of appointment of the above warder is 19-05-2012, please.

[Signature]
SUPERINTENDENT
DISTRICT JAIL MANSEHRA

*As the accused
warder did not
turn up for
personal hearing
done
Supdt
23-6-14*

*2338
23-6-14*

"Annexure E"

OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL MANSEHRA
No. / Dated / / 2014

To,

The Warden Nizar Ali
Attached to District Jail Mansehra.
R/O Shaibat Khel, Adena Tehsil & District Swabi.

Subject: - SHOW CAUSE NOTICE.

Memo:-

It is to inform you that due to your absence from duty a disciplinary action was initiated against you and you were called by Superintendent Headquarter Prison Haripur for your personal hearing on 10-04-2014 at 10:00 am but you failed to appear for the said personal hearing.

You are further directed to appear before the Superintendent Headquarter Prison Haripur for your second personal hearing on 24-06-2014 at 11:00 am positively other wise ex-party action will be initiated against you.

Sd/-
SUPERINTENDENT
DISTRICT JAIL MANSEHRA

Endst; No 1418 Dated 18-06-2014

Copy of the above is forwarded to the Superintendent Headquarter Prison Haripur for information with reference his memo: No, 1618 dated 13-06-2014; the date of appointment of the above warden is 19-05-2012, please.

SUPERINTENDENT
DISTRICT JAIL MANSEHRA

*As the accused
warden did not
turn up for
personal hearing
for
Supdt
23-6-14*

*2338
23-6-14*

Annexure F



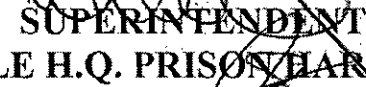
**OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQs PRISON HARIPUR**

No. 1688 / 1-

Dated 25-06-2014 / 1-

OFFICE ORDER

Upon completion of disciplinary proceedings under the Khyber Pakhtunkhwa Government Servants (*Efficiency & Disciplinary*) Rules-2011, Warders (BPS-05) Nizar Ali attached to District Jail Mansehra is hereby awarded the penalty of **Removal from Service** from the date of desertion and on the charges contained in show cause notice served upon him vide this Headquarter P.B No. 143-45 dated 10-01-2014.


SUPERINTENDENT
CIRCLE H.Q. PRISON HARIPUR

Endst: No: 1689-91 / 1

Copy of the above is forwarded to:-

1. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent District Jail Mansehra for information and necessary action w/r to this Headquarter P.B No. quoted above.
3. Ex-Warder Nizar Ali R/O Shaibat Khel, Adeena, Tehsil & District Swabi.


SUPERINTENDENT
CIRCLE H.Q. PRISON HARIPUR

ایضاً وہاں اس کے لئے ایک کاپی بھی لکھی ہے

حکمانہ پیرل جہاں - ۱۵

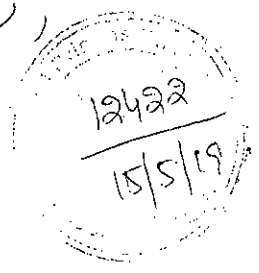
انعام بنیادی ہے۔ ان میں سے کچھ ذاتی دستوں کی بنا پر ڈیوٹی سے غیر حاضر رہے اور بعد میں پیرل میں سہولتوں کی فراہمی سے برطرف کیا گیا۔ یہ سال ۱۹۵۲ء کا واقعہ ہے۔ جو کہ سال کے فیصلے میں درج نہیں ہوئے۔ اس وقت سال کے فیصلے میں یہ واقعہ درج نہیں کیا گیا تھا۔

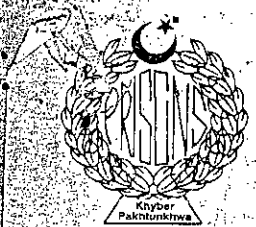
سید اب علی سے اس کا نام لیا گیا ہے۔ ان کے ہوتے سال کا دستہ فتح پور میں اور پھر فتح پور میں دوبارہ نوٹری کے بحال کر کے رکھے گئے۔

انٹرو سم: ۱۱/۵/۵۷

العربی

پیرل پور میں سالانہ رپورٹ کے مطابق





Annexure "H"

Annexure D

(10)

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 091-9210334, 9210406 📠 091-9213445

f www.facebook.com/kpkprisons/

✉ prisonsig@gmail.com

No. 5/17-J-2019-20387

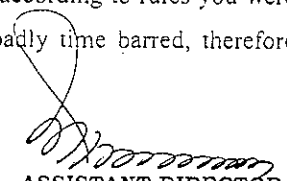
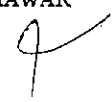
Dated 28-06-2019

To:

Ex- Warder, Nizar Ali,
District Swabi C/O,
Superintendent Judicial Lockup Swabi.

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

I am directed to refer to your appeal dated 15-05-2019 on the subject and to convey that you were removed from service in the year 2014 and according to rules you were required to prefer appeal within 30 days, hence your appeal being badly time barred, therefore. cannot be entertained at this stage.


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


GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT.

Amendment
I

NOTIFICATION

Peshawar, dated the .2018.

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

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

**Chapter-1
General Provision**

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

(2) It shall come into force at once.

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

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

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

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

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

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

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

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

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

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

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

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

1083. Absence caused by illness or other unavoidable cause.---Whenever any subordinate officer is at any time prevented by sudden illness or other unavoidable cause, from attending the prison or performing his duties he shall 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.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No:892/2019

Nizar Ali, Ex- Warder, R/o Village Adeena, Mohallah Tibat Khel, Tehsil Razar, District Swabi.

.....Appellant

Versus

Inspector General of Prison, KPK, Peshawar & Others.

.....Respondents

APPELLANTS REJOINDER

Respectfully Sheweth:-

Preliminary Objections:-

That the 9 preliminary objections raised by the respondents in their written statement are wrong, illegal, incorrect and are denial in every detail. The Appellant has a genuine cause of action and his appeal does not suffer from any formal defect whatsoever.

Facts:

1+2: Needs No Comments

3+4: Incorrect. Para 3 & 4 of Appeal are correct and its replies are incorrect.

Grounds:

A to D: Incorrect. Grounds A to D of Appeal are correct and its replies are incorrect.

E. Incorrect. The Appellant's appeal has incorrectly been rejected by the Respondents.

F: Incorrect. Ground F of the Appeal is correct and its reply is incorrect.

G. Needs no Comments.

It is, therefore, most respectfully prayed that on acceptance of appeal and rejoinder, the two impugned orders dated 25/06/2014 and 28/06/2019 at annexure "B & D" may be set aside and the appellant shall reinstated in service with all back benefits.

Dated: 01 /02/2022

Appellant
Through Aslam
Aslam Khan Khattak
Advocate, High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No:892/2019

Nizar Ali, Ex- Warder, R/o Village Adeena, Mohallah Tibat Khel, Tehsil Razar, District Swabi.

.....Appellant

Versus

Inspector General of Prison, KPK, Peshawar & Others.

.....Respondents

AFFIDAVIT

I, Nizar Ali, Ex- Warder, R/o Village Adeena, Mohallah Tibat Khel, Tehsil Razar, District Swabi, do hereby solemnly affirm & state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.

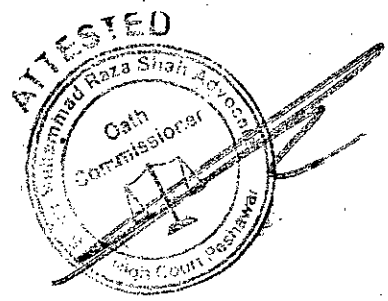
As

DEPONENT

Identified By

Aslam

Aslam Khan Khattak
Advocate, High Court,
Peshawar.



01 FEB 2021

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

Appeal No. 392/2019

Nizar Ali

VERSUS

Inspector General of Prisons, KPK Peshawar & Other

INDEX

S#	Description of Documents	Annexure	Page#
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3.	Copy of Appointment order of appellant	"A"	7
4.	Copy of impugned order dated 25/06/2014	"B"	8
5.	Copy of Departmental Appeal dated 15/05/2019	"C"	9
6.	Copy of Final Impugned Order dated 28/06/2019	"D"	10
7.	Wakalat Nama	-	-

Dated: 9/7/2019

Ali

Appellant

Through

Aslam

Aslam Khan Khattak
Advocate, Peshawar.

30/6

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

Appeal No. 292 /2019

Nizar Ali, Ex Warder R/o Village Adeena, Mohallah Tibat
Khel, Tehsil Razar, District Swabi.

.....Appellant

VERSUS

1. Inspector General of Prisons, KPK Peshawar.
2. Superintendent Circle HQ, Prison, Haripur.
3. Superintendent District Jail Mansehra.

.....Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST THE IMPUGNED ORDER
DATED 25/06/2014 VIDE ANNEXURE "B"
WHEREBY THE APPELLANT HAS BEEN
REMOVED FROM SERVICE FROM
10/01/2014 AND ALSO AGAINST THE FINAL
IMPUGNED ORDER DATED 28/06/2019
VIDE ANNEXURE "D" WHEREBY THE
APPELLANT'S DEPARTMENTAL APPEAL
HAS BEEN REJECTED.**

PRAYER:

**ON ACCEPTANCE OF APPEAL, BOTH THE
IMPUGNED ORDERS AT ANNEXURE "B + D"**

**MAY BE SET ASIDE AND THE APPELLANT
SHALL BE REINSTATED IN SERVICE WITH
ALL BACK BENEFITS.**

Respectfully Sheweth:

Brief facts leading to the instant appeal are as under:

- 1) That the appellant having been inducted in service on 09/05/2012 vide annexure "A".*
- 2) That the appellant throughout his whole service has performed the duty with utmost of his capabilities and to the entire satisfaction of his superiors.*
- 3) That the enemies of appellant were residing near to appellant's home and were trying to kill the appellant and for that reason, the appellant and his whole family has been shifted to a safe place for safety purposes which was not known to his enemies and so the appellant has been removed from service vide impugned order dated 25/06/2014 at annexure "B". Now due to agreement with his enemies and the circumstances has become peaceful and the appellant is now in a position to perform his duty regularly.*
- 4) That the appellant has filed his departmental appeal dated 15/05/2019 vide annexure "C" and which has been rejected vide impugned order dated*

28/06/2019 at annexure "D" and hence this appeal interalia on the following grounds:-

GROUND:

- A. That the appellant's removal from his service has been given retrospective effect which is patently an illegal and void order which is not permissible under the law and to this effect both the impugned orders at annexure "B" & "D" are illegal and are liable to be set aside and the appellant deserves reinstatement in service with all back benefits.
- B. That the appellant's enemies were very cruel and due to their harsh behavior, the appellant was unable to perform his duty because there was a danger to the life of appellant and now due to agreement with them, the whole situation has become smooth/ peaceful and the appellant is now able to perform his duty.
- C. That the removal of appellant from service without holding any enquiry and without holding him an opportunity to clear his position in prescribed manner, would amount to denial of natural justice to appellant. So to this effect both the impugned orders are illegal and are liable to be set aside.
- D. That the appellant has been removed from service from mere unauthorized absence from duty which

is an extreme harsh punishment and not commensurate with the petty misconduct born out of the absence of appellant. So both the impugned orders are illegal and are liable to be set aside.

E. That the appellant's departmental appeal has been dismissed as time barred is appealable before this Hon'ble Tribunal as per judgment of August Supreme Court of Pakistan. So the instant appeal before this Hon'ble Tribunal would not lie on condonation or refusal to condone the delay but with regard to appellate order on merit.

F. That both the impugned orders at annexure "B & D" are illegal, malafide, without jurisdiction and without lawful authority and are liable to be set aside.

G. That the appellant seeks leave to rely on additional grounds at the time of argument.

It is, therefore, most humbly prayed that on acceptance of appeal, the two impugned orders dated 25/06/2014 and 28/06/2019 at annexure "B. & D" may be set aside and the appellant shall be reinstated in service with all back benefits.

Dated: 9/07/2019

Aslam
Appellant

Through

Aslam
Aslam Khan Khattak
Advocate, Peshawar.

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

Appeal No. _____/2019

Nizar Ali

Ilyas Ahmad

VERSUS

Inspector General of Prisons, KPK Peshawar & Other

**APPLICATION FOR CONDONATION
OF DELAY IF ANY ON THE
FOLLOWING GROUNDS**

GROUND:

- A. That the impugned order dated 25/06/2014 at annexure "B" has been given retrospective effect which is void order and limitation does not against it.
- A- B. That the departmental appeal has been rejected by the authority as time barred. Such appeal would lie before this Hon'ble Tribunal on merit and not on condonation of delay if any in the matter.
- B- C. That it is settled law of Supreme Court of Pakistan that the cases be decided on merits and not on technicalities such as limitation.
- C D. That the petitioner has not committed any misconduct and if the delay, if any, is not condoned, the petitioner's whole life shall be destroyed.

It is, therefore, prayed that on acceptance of this application, the delay if any shall be condoned to meet the ends of justice.

Dated: 9/7/2019

As
Petitioner

11/7/2019

Through

Aslam
Aslam Khan Khattak
Advocate, Peshawar.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Appeal No. _____/2019

Nizar Ali

Glyas Ahmed

VERSUS

Inspector General of Prisons, KPK Peshawar & Other

AFFIDAVIT

Glyas Ahmed

Peshawar

I, Nizar Ali, Ex Warder, District Jail Mansehra, do hereby solemnly affirm and state on oath that all contents of the application or condonation of delay if any are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.

Ali

DEPONENT

Identified by

Aslam

Aslam Khan Khattak
Advocate, Peshawar.





To

Annexure A
9

OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No. 222 /P.B dt: 9/5/2012

Mr. Nizar Ali s/o Muhammad Israr ✓
Mohallah Shaibat Khel, Adeena, Tehsil & District Swabi.

Subject: **APPOINTMENT AS WARDER (BPS-05)**

Memo:

Reference your test/ interview for the subject post.

You are hereby offered the post of temporary Warder in (BPS-05) (5400-260-13200) and other usual allowances as admissible under the rules subject to the following conditions: -

- 1- You are liable to serve anywhere in the jails of Khyber Pukhtunkhwa.
- 2- Your appointment is purely temporary and your services can be terminated at any time without assigning any reason during probationary period.
- 3- For all other purposes such as pay, T.A & Medical attendance etc, you will be governed by the rules applicable to the government servants of your category.
- 4- The terms and conditions of your appointment as Warder will be those as laid down in the NWFP Prisons Rules 1985, Prisons Department (Recruitment, Promotions & transfer) rules 1980 and all other rules and regulations prescribed to Government Servants or the rules which may be promulgated by the Government from time to time in this behalf.
- 5- Your appointment will be subject to your Medical fitness.
- 6- No TA/ DA will be admissible to you on joining your first appointment.
- 7- You cannot resign from the service immediately, but will have to put in writing at least one month prior notice or in lieu thereof, one month pay shall be forfeited from you.
- 8- Your appointment is subject to fulfillment of all the conditions laid down in the services rules.
- 9- You will be on probation for a period of two years extendable to one more year.
- 10- On your report for duty, it will be taken for granted that you have accepted all the above terms and conditions and if you failed to report within 10 days of the receipt of this appointment order, It will be presumed that you have declined to accept this offer, hence this order of appointment shall stand cancelled.
- 11- You are directed to attend this office immediately for your Medical Examinations at Police & Services Hospital Peshawar.

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Endorsement No: _____/-

- Copy of the above is forwarded to the: -
- 1- Superintendent District Jail Mansehra. The above named newly appointed Warder is attached with his Jail for all purposes.
 - 2- District Accounts Officer Mansehra.

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Musawer/-



Annexure B
8

**OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQs PRISON HARIPUR**

No. 1688 / 1-
Dated 25-06-2014

OFFICE ORDER

Upon completion of disciplinary proceedings under the Khyber Pakhtunkhwa Government Servants (*Efficiency & Disciplinary*) Rules-2011, Warders (EPS-05) Nizar Ali attached to District Jail Mansehra is hereby awarded the penalty of **Removal from Service** from the date of desertion and on the charges contained in show cause notice served upon him vide this Headquarter P.B No. 143-45 dated 10-01-2014.


**SUPERINTENDENT
CIRCLE H.Q. PRISON HARIPUR**

Endst: No: 1688-91 / 1

Copy of the above is forwarded to:-

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2. The Superintendent District Jail Mansehra for information and necessary action w/r to this Headquarter P.B No. quoted above.
3. Ex-Warder Nizar Ali R/O Shaibat Khel, Adeena, Tehsil & District Swabi.


**SUPERINTENDENT
CIRCLE H.Q. PRISON HARIPUR**

25/6/14

اجتورہد انستروہ ہندوستان ہندوستان ہندوستان

حکمانہ ریل صواب حکام

انعامس اچانک ع۔ نہ من سامع کچھ ذاتی دستس
بنار ڈیوٹی سے غیر جانہ ریل۔ اور بعد میں سرکار میں
سوی اور میں نے نوٹری سے برقاست کیا گیا۔ یہ سال 2014
کا واقعہ ہے۔ جو کہ سامع کے فیملی میں دستس
کروم سے روٹس کے۔ اس وقت سامع ڈیوٹی میں جانہ میں تھے

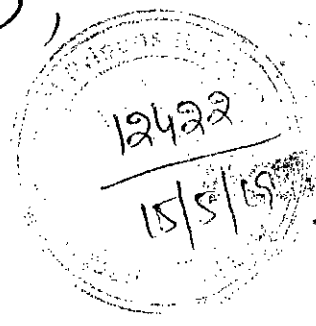
کندرا اب علی سے اس کا نام ہے۔
بھوتہ سامع کا دستس فتح پور ہے اور اس کے
سندھ دوبارہ نوٹری کے بحال کر کے اور دوبارہ
کام ہے۔

الموقع = 15/5/19

العرفا

مقرر

یہ سب لوگ زمانہ سابقہ اور ان کا تقار علی ہے





OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406

091-9213445

www.facebook.com/kpkprisons/

Email: prisonsig@gmail.com

No. 5/17-J-2019-20387

Dated 28-06-2019

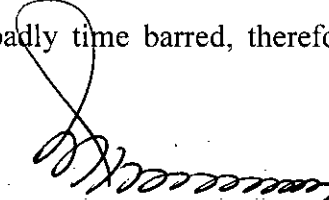
To,

Ex- Warder, Nizar Ali,
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Superintendent Judicial Lockup Swabi.

Subject:-
Memo;

DEPARTMENTAL APPEAL FOR REINSTATEMENT IN SERVICE.

I am directed to refer to your appeal dated 15-05-2019 on the subject and to convey that you were removed from service in the year 2014 and according to rules you were required to prefer appeal within 30 days, hence your appeal being badly time barred, therefore, cannot be entertained at this stage.


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