

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 10009/2020

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

..... **Petitioner**

Versus

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

..... **Respondents**

INDEX

S#	Description of Documents	Annex	Pages
1.	Grounds of Execution Petition		1 to 2
2.	Affidavit		3
3.	Addresses of Parties		4
4.	Judgment dated 30-06-2022	"A"	5 to 10
5	Wakalat Nama		11

Appellant

Through

Naila Jan
Naila Jan
Advocate High Court
Peshawar.

Dated: 09/01/2023

①

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Execution petition No. _____/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2823
9-1-2023

In

Service Appeal No. 10009/2020

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

..... **Petitioner**

Versus

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

..... **Respondents**

**Execution Petition for direction to the Respondents to
implement judgment dated 30-06-2022 of the Hon'ble
Tribunal in its true letter & spirit.**

Respectfully Shewth,

1. That the appellant was appointed as Jail Warder (BPS-05) however, he was terminated from service vide order dated 14-05-2020.
2. That the appellant feeling aggrieved from the above order after availing departmental remedy filed Service Appeal No. 10009/2020 before the Hon'ble Tribunal.
3. That the Hon'ble Tribunal vide its judgment dated 30-06-2022 accepted the Service Appeal with the following orders:

"The punishment in the instant case in shape of termination for 45 days is harsh, therefore, we allow this appeal, reinstate the appellant and convert thea punishment into stoppage of one year increment without cumulative effect. The entire period of absence is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room". Copy of the order dated 30-06-2022 is Annex-A.

2

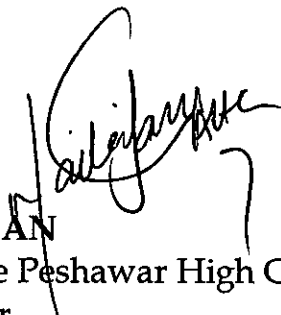
4. That the petitioner approached time and again for implementation of the judgment of this honourable Tribunal however, respondents till date has not honoured judgment of this honourable Tribunal.
5. That not implementing the judgment of this honourable Tribunal by not reinstating the petitioner is amount to contempt of court/defiance of the judgment of this Hon'ble Tribunal.

Prayers:

It is, therefore, requested that appropriate direction may be issued to the respondents for implementation of the judgment of this Hon'ble Tribunal in its true letter and spirits and to reinstate the petitioner with all back benefits.

Petitioner

Through


NAILA JAN
Advocate Peshawar High Court
Peshawar

3

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 10009/2020

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

..... **Petitioner**

Versus

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

..... **Respondents**

AFFIDAVIT

I, Atif Ullah S/o Mir Tawal Khan R/O R/o Mattaki Bizenkhel FR Bannu,
EX-Warder (BPS-05), do hereby solemnly affirm and declare that all the
contents of the **accompanied execution petition** are true and correct to the best
of my knowledge and belief and nothing has been concealed or withheld from
this Hon'ble Tribunal.

DEPONENT

CNIC:

Cell No:

[Handwritten signature]

Identified By;

[Handwritten signature]
NAILA JAN
Advocate High Court
Peshawar.



4

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 10009/2020

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

..... **Petitioner**

Versus

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

..... **Respondents**

ADDRESSES OF PARTIES

PETITIONER.

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

RESPONDENTS.

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

Appellant

Through

NAILA JAN
Advocate High Court
Peshawar.

Dated: 09/02/2022

5

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PUKHTOON

KHWA PESHAWAR

Service Appeal No. /2020

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

VERSUS

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

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

Naila Jan Advocate
Peshawar High Court

(b)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.10009/2020

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

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

(Appellant)

VERSUS

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

(Respondents)

Bashir Khan Wazir,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

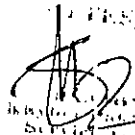
Salah-Ud-Din
Rozina Rehman

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

JUDGMENT

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

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


Rozina Rehman
Member (J)

Natta J
Peshawar High Court

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

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

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

Naila Jan Advocate
Peshawar High Court

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

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

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


Naila Jan Advocate
Peshawar High Court

(9)

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


Naila Jan Advocate
Peshawar High Court

No

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

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

ANNOUNCED
30.06.2022

Certified to be true copy

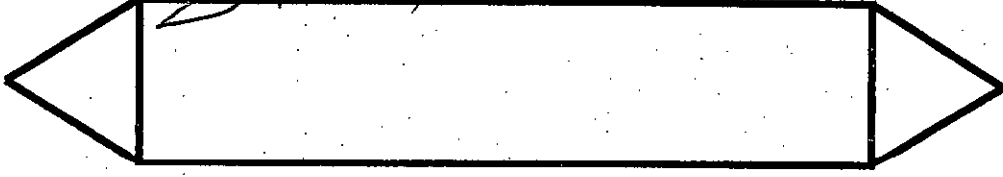
(Signature)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(Salah-ud-Din)
Member (J)

(Signature)
(Rozina Rehman)
Member (J)

Naila Jan Advocate
Peshawar High Court

بعدالت صاحب کورس ڈیجیٹل لٹیا اور



۲۰۲۳ء منجانب Petitioner

عاطف اللہ بنام قبیل

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لٹیا و کیلئے تامل جانے

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 ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں 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 محتاج 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 مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب 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 سند ہے۔

(Petitioner) عاطف اللہ

آپل

۲۰۲۳ء

ماہ جنوری

3

المرقوم

العبد د گ واہ العبد

کے لئے منظور ہے۔

Naila Jan Advocate لٹیا و
Peshawar High Court

Accepted by Naila Jan Advocate

مقام