

24.2.22

Due to retirement of worthy chairman, the case is adjourned to 26.5.22 for service.

[Signature]
Chairman

26th May, 2022

None present for the appellant. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Today the appeal was called time and again but neither appellant nor his counsel is available. In view of the above, the appeal is dismissed in default.

Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 26th day of May, 2022.

[Signature]
(Fareeha Paul)
Member(E)



[Signature]
(Kalam Arshad Khan)
Chairman

01.04.2021

Due to non availability of the concerned D.B, the case is adjourned to 05.07.2021 for the same.


Reader

05.07.2021

Appellant present through counsel.

Muhammad Rasheed learned Deputy District Attorney alongwith Suleman Instructor for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 25.10.2021 before D.B0.


(Rozina Rehman)
Member(J)


Chairman

25.10.2021

Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Salman, Assistant for respondents present.

Arguments could not be heard due to learned judicial member (Salah-ud-Din) is on leave. Adjourned. To come up for arguments before the D.B on 24.02.2022.


(MIAN MUHAMMAD)
MEMBER (E)

29.04.2020.

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 06.08.2020 before D.B.


Reader

06.08.2020

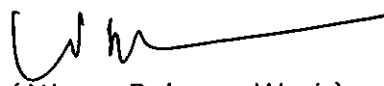
Due to summer vacation case to come up for the same on 26.10.2020 before D.B.


Reader

26.10.2020

Junior to counsel for the petitioner and Addl. AG alongwith Suleman Law Officer for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 30.12.2020 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member


Chairman

30.12.2020

Due to summer vacation, case is adjourned to 01.04.2021 for the same as before.


Reader

04.11.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment for arguments. To come up for arguments on 09.01.2020 before D.B, on the request of learned counsel for the appellant.


Member


Member

09.01.2020

Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 11.03.2020 before D.B.


Member


Member

11.03.2020

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney, alongwith Sulaiman Instructor and Sajid Superintendent present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 29.04.2020 before D.B.


Member


Member

18.06.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date by way of last chance. Adjourned to 11.07.2019 for written reply/comments before S.B.


(Muhammad Amin Khan Kundi)
Member

11.07.2019

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


Representative of the respondents submitted written comments which are placed on file. The appeal is assigned to D.B for arguments on 12.09.2019. The appellant may submit rejoinder, within a fortnight, if so advised.


Chairman

12.09.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment for arguments. Adjourned to 04.11.2019 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

Service Appeal No. 1095/2018

30.01.2019

Counsel for the appellant present and requested for time to deposit security and process fee. Request is accepted. Learned counsel for the appellant is directed to deposit security and process fee within 3 days, thereafter, notice be issued to the respondents for written reply/comments for 26.03.2019 before S.B.

Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member

26.03.2019

Learned counsel for the appellant present. Written reply not submitted. M/S Atta ur Rehman SI legal Rehmat Khan Superintendent representatives of the respondent department present and requested for time to furnish written reply/comments. Granted. To come up for written reply/comments on 25.04.2019 before S.B.


Member

25.04.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment for filing of written reply. Adjourned to 18.06.2019 for written reply/comments before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

18.09.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that this is the 2nd round of litigation. As per judgment of this Tribunal dated 15.12.2017 de-novo enquiry was conducted and minor penalty of stoppage of one increment for one year was imposed on him vide order dated 12.03.2018. He filed departmental appeal copy of which is not annexed with the present service appeal but was rejected on 01.06.2018, hence, the instant service appeal. Leave on medical ground could not be refused by the respondents. Action taken by the respondents is not supported by law and rules.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 08.11.2018 before S.B.


(AHMAD HASSAN)
MEMBER

08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 26.12.2018. Written reply not received.


READER

26.12.2018

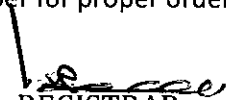

Learned counsel for the appellant present. Junaid Assistant representative of the respondent department present and seeks time to furnish written reply. Granted. To come up for written reply/comments on 30.01.2019 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1095/2018

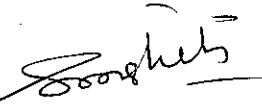
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/09/2018 5-9-18	<p>The appeal of Mr. Mukammil Gul presented today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 4/9/18</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>18-9-18</u>.</p> <p style="text-align: right;"> MEMBER</p>
2-		

The appeal of Mr. Mukamil Gul son of Zameer Gul Central Prison Mardan received today i.e. on 27.08.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 1733/S.T.

Dt. 27-8 /2018.

for

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Noman Ali Bukhari Adv.

Sir

The Departmental appeal is not available with the Appellant - may be requisite from the Respondent; Rejection of DA about due on file - work is extent of Departmental Appeal.
file - resubmitted.

for

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1095/2018

Mukamil Gul

V/S

Police Deptt:

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S.No.	Documents	Annexure	Page No.
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2.	Copy of Judgment	-A-	4-06
3.	Copy of charge sheet & statement of allegation	-B-	07-08
4.	Copy of inquiry report	-C-	09-10
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APPELLANT

THROUGH:

(Signature)
(SYED NOMAN ALI BUKHARI)

(Signature)
(UZMA SYED)

ADVOCATES, HIGH COURT

(1)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 1095/2018

Mukamil Gul S/o Zameer Gul,
Central Prisoner Mardan.

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1336

Dated 27-8-2018

(APPELLANT)

VERSUS

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

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 12.03.2018, WHEREBY THE PENALTY OF DISMISSAL WAS CONVERTED IN TO MINOR PENALTY OF STOPPAGE OF ONE INCREMENT FOR ONE YEAR AND PERIOD W.E.FROM 06.05.2016 TO 28.06.2016 WAS TREATED AS LEAVE WITHOUT PAY AND AGAINST THE REJECTION ORDER DATED 01.06.2018 RECEIVED BY APPELLANT ON 01.08.2018 WHEREBY THE APPEAL OF THE APPELLANT WAS REJECTED WITHOUT SHOWING ANY COGENT REASON.

PRAYER:

Filed by
27/8/18
Registrar

THAT ON THE ACCEPTANCE OF THIS APPEAL, IMPUGNED ORDER DATED 12.03.2018 AND 01.06.2018 RECEIVED BY APPELLANT ON 01.08.2018 MAY KINDLY BE SET-ASIDE AND RESTORE THE ONE ANNUAL INCREMENT OF THE APPELLANT AND THE PERIOD W.E.FROM 06.05.2016 TO 28.06.2016 TREATED AS FULL PAY WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, IS AWARDED IN FAVOR OF APPELLANT.

Re-submitted to -day
and filed.

Registrar
4/9/18

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is working on the post of warder in central prisoner Mardan.
2. That the appellant was removed from service vide order dated 28.06.2016 against which appellant filed departmental appeal which was not responded.
3. That the appellant being aggrieved from the said orders filed service appeal no. 198/2017 in the Hona'ble Service Tribunal Peshawar, the said appeal was accepted and the direction was given to respondent department to hold denovo inquiry within period of 90 days. **Copy of judgment is attached as Annexure-A.**
4. That the appellant was re-instated in to service for the purpose of denovo inquiry. Thereafter the charges sheet and statement of allegation was issued to the appellant which was properly replied by the appellant, thereafter denovo inquiry was conducted the illness and plea of the appellant was admitted by the inquiry officer but despite that the minor penalty of one annual increment for one year and absence period is treated as leave without pay vide order dated 12.03.2018. **Copy of charge sheet, statement of allegation, inquiry report, show cause notice, reply and impugned order is attached as Annexure-B, C, D, E & F.**
5. That appellant filed departmental appeal against the order dated 12.03.2018 but the same was not available with the appellant, may be requisite from the department, which was rejected vide order dated 01.06.2018 received on 01.08.2018. Hence the instant service appeal on the following grounds. **Copy of rejection order is attached as Annexure-G.**

GROUND:



- A) That the impugned order dated 12.03.2108 and 01.06.2018 are against the law, rules and material on record, therefore liable to be modified.
- B) That denovo inquiry was conducted against the appellant in which denovo inquiry was conducted the illness and plea of the appellant was admitted by the inquiry officer. So according to R-13 of the leave rules 1981. Medical leave shall not be refused, so the appellant is entitled for the absence period because he was serious ill.

- C) That the department references the rule 19 of the leave rules 1981 in impugned order which was not applicable to the appellant. Further it is added that in rule 19 of the leave rules 1981 use exception means it is applicable to those who remains absent not beyond his control and not applicable to those where circumstances beyond his control. So the appellant is entitled for the salary of period during which remains absent due to illness beyond his control.
- D) That the period appellant remained out of service, it is fault of the department not of the appellant, so the any irregularities committed by the department not held the appellant responsible according to superior courts judgment.
- E) That if the grievance of the appellant is not resolved then the appellant will face huge financial loss even it will affect the pension of the appellant.
- F) That the appellant cannot be held responsible for the lapse/irregularities committed by the department and in such case the Hon'able Supreme Court of Pakistan has held the department responsible not the appellants.
- G) That the appellant is legally entitled for pay as not a again full employee during that period. Hence the impugned order is liable to be modified and the absence period treated as on full pay.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT
 Mukamil Gul

THROUGH:


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

Annexure - A 4

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 198/2017

Date of Institution ... 24.02.2017

Date of Decision ... 15.12.2017



Mukamil Gul, Ex-Warder Central Jail, Mardan R/O Village Mandozi, Tehsil and District Charsadda. .. (Appellant)

VERSUS

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

MR. ASLAM KHAN KHATTAK,
Advocate

For appellant

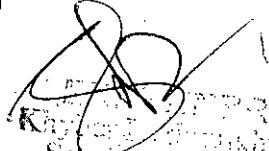
MR. RIAZ AHMAD PAINDA KHEL,
Asstt. Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN, ...
MR. MUHAMMAD AMIN KHAN KUNDI, ...

CHAIRMAN
MEMBER

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

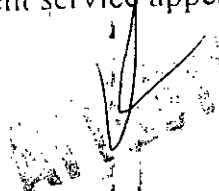
NIAZ MUIHAMMAD KHAN, CHAIRMAN.

Arguments of the learned

counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 28.06.2016 on the charge of absence against which he filed departmental appeal on 17.01.2017 which was not responded to and thereafter, he filed the present service appeal on 24.2.2017.


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant had submitted application for condonation of delay alongwith memorandum of appeal. That the reason had been fully incorporated in the said application. That the reason has not been controverted by the respondents. That in view of judgment reported as 1993-PLC(C.S) 496, such condonation shall have to be granted. He further argued that the impugned order was passed from retrospective date which was nullity in the eyes of law. In this regard he relied upon a judgment reported as 1985-SCMR-1178. The learned counsel for the appellant further argued that the appellant was ill and he had applied for medical leave which could not be declined under the relevant medical rules as well as judgment of the superior courts in this regard.


4. On the other hand the learned Assistant A.G argued that the present appeal was hopelessly time barred as the grounds of condonation of delay were not convincing. That the procedural requirements of the disciplinary proceedings were fully complied with.


CONCLUSION.

5. Without advertng to the merit of the case, this Tribunal in so many judgments has decided that retrospective order is a void order. In this regard the judgment reported as 1985-SCMR-1178 is also clear. It is also a settled law that no limitation runs against void order. Since the impugned order is a void order, it cannot be sustained in the eyes of law.

6. Resultantly, this appeal is accepted and the appellant is reinstated in service, however, the department is at liberty to hold denovo enquiry within a period of

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


ATTESTED

ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the final outcome of the denovo proceedings. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- Niqaz Muhammad Khan
Chairman

Sd/- M. Amin Khan Kundli,
Member

Certified to be true copy

Signature
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

Date of Presentation of Petition	27-3-18
Number of Petitions	1600
Copying Fee	10/-
Urgent	2/-
Total	12/-
Name of Counsel	M.A.
Date of Cause	27-3-18
Date of Delivery of Judgment	27-3-18

Signature
M. Amin Khan Kundli

B
7

CHARGE SHEET

I, Fazal Hameed Khan Khel, Superintendent Headquarter Prison Mardan, as competent authority, hereby charge you Warder (BPS-05) Mukamil Gul s/o Zameer Gul attached to Central Prison Mardan as under.

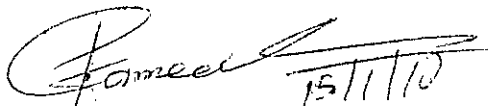
As per report of Superintendent Central Prison Mardan:-


You were relieved on 06-05-2016 on completion of Elite Training Course at Nowshera to High Security/ Central Prison Mardan but you failed to report for duty at High Security Prison and remained absent from duties up to 28-06-2016, without sanction of leave from the competent authority which constitute gross misconduct on your part.

By reasons of the above, you appear to be guilty of misconduct under rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

You are, therefore required to submit your written defence within seven (07) days of the receipt of this Charge Sheet to the inquiry officer.

- 1- Your written defence, if any, should reach to the inquiry officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case Ex-Parte action shall be taken against you.
- 2- Intimate whether you desire to be heard in person.
- 3- Statement of allegations is enclosed.


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


ATTESTED



8

CIRCLE HQS. PRISON MARDAN

No. _____ /PB Dated: 11/01/2018, E-Mail: mardanjail@gmail.com, 0037.843114

DISCIPLINARY ACTION.

I, Fazal Hameed Khan Khel, Superintendent Headquarter Prison Mardan, as competent authority, am of the opinion that Warder (BPS-05) Mukamil Gul s/o Zameer Gul attached to Central Prison Mardan has rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of rule 3 of the of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.

STATEMENT OF ALLEGATIONS.

As per report of Superintendent Central Prison Mardan, Warder (BPS-05) Mukamil Gul s/o Zamcer Gul, was relieved on 06-05-2016 on completion of Elite Training Course Nowshera to High Security/ Central Prison Mardan but he failed to report for duty at High Security Prison and remained absent from duties up to 28-06-2016, without sanction of leave from the competent authority which constitute gross misconduct on his part.

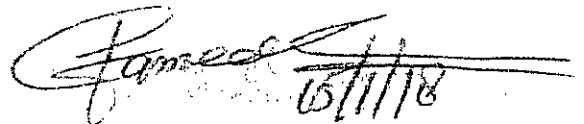
2. **Mr. Hashmat Ullah, Senior Assistant Superintendent, Central Prison Mardan** is hereby appointed as Inquiry Officer against the said accused warder with reference to the above allegations, under rule 10(1)(a) of the ibid rules.
3. The Inquiry Officer shall in accordance with the provision of the ibid rules, provide a reasonable opportunity of hearing to the accused, record its findings and make within **thirty days** of the receipt of this order, recommendation as to punishment or other appropriate action against the accused official.
4. The accused official shall join the proceedings on the date, time and place fixed by the inquiry Officer.

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

Endst No. 137-40/WE-1-

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information and with reference to letter No.1360/WE dated 10.01.2018 please.
2. The Superintendent Central Prison Mardan for information and necessary action and with the request to provide relevant record of the case to the Inquiry officer please.
3. Mr. Hashmat Ullah, Senior Assistant Superintendent, Central Prison Mardan (Inquiry Officer) for initiating proceedings against the above named warder under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.
4. The above named warder C/O Superintendent Central Prison Mardan with the direction to appear before the Inquiry Officer for the purpose of Inquiry proceedings on the date, time and place fixed by the Inquiry Officer.


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


ATTESTED

C 9

**Inquiry report in removal from service case in respect of warder
Mukamil Gul s/o Zameer Gul attached to Central Prison Mardan.**

Sir,

Reference superintendent headquarter prison Mardan letter no. 137-40/WE dated 15.01.2018 on the subject.

I conducted inquiry in the absence case of Warder Mukamil Gul. Brief history of the case is given below.


The warder Mukamil Gul s/o Zamir Gul was relieved on 06.05.2016 from Elite Training Course Nowshera to High Security Prison Mardan but he failed to report for duty and remained absent till his removal from service order. He was served with absent notice vide HSP Mardan No.3167 dated 16.05.2016 on his home address with no response, after lapse of 15 days time period.

Notice in newspaper daily Mashriq was published in on 13.06.2016 but failed to resume duty nor submitted reply within stipulated time period.

Consequently he was removed from service on 28.06.2016 by superintendent headquarter prison Mardan and the order was to take effect from date of absence i.e 6.05.2016.

The accused official preferred in appeal before service tribunal KPK Peshawar. Consequent upon appeal the warder concern was reinstated to the service. A DNOVO inquiry was conducted by the order of IG Prisons KPK Peshawar vide his order no. 1360/WE dated 10.01.2018.

During inquiry the record was examined and the accused official was directed to explain his position. The accused official submitted is written reply where he stated that after relieving from Elite center nowshehra he felt ill and got medical rest certificate from district headquarter Mardan. He further stated that the medical rest certificates were sent to superintendent central prison Mardan by his brother but then line muharrar told his brother to bring the medical certificate when he resumes duty. The accused official also produced medical risk certificate from the period 16-05-2016 to 29-6-16 the total period of absence becomes (SS) days.


Attested

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In the light of above findings and owing to his illness it is recommended that his period may be treated as leave without pay and appropriate orders for intervening period may also be made. For his negligence in non attendance to resumption notice his one increment may be stopped without future effect.

Hashmat ulah

SR Assistant Superintendent

Central Prison Mardan

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ATTESTED

D (11)

SHOW CAUSE NOTICE

I, Fazal Hameed Khan Khel, Superintendent Headquarter Prison Mardan, as competent authority, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, do hereby serve you, Warder (BPS-05) Mukamil Gul s/o Zameer Gul attached to Central Prison Mardan as follows:-

1- (i) That consequent upon the completion of inquiry conducted against you by the Inquiry Officer for which you were given opportunity of hearing vide this office communication No. 137-40 dated. 15-01-2018.

(ii) On going through the findings and recommendations and other connected papers including your defence before the said Inquiry Officer, I am satisfied that you have committed the following act/ omission specified in section 3 of the said rules:-

You were relieved on 06-05-2016 on completion of Elite Training Course at Nowshera to High Security/ Central Prison Mardan but you failed to report for duty at High Security Prison and remained absent from duties up to 28-06-2016, without sanction of leave from the competent authority, which constitute gross misconduct on your part.

2- As a result thereof, I as competent Authority have tentatively decided to impose upon you the Major Penalty of **Removal from Service** under section 43 of the said rules.

3- You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

4- If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5- A copy of the findings of the inquiry officer is enclosed.

Endorsement No. 443-45 / Dated: 19/02/2018

Copy of the above is forwarded to:

1. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Central Prison Mardan for information and with the request that one copy of the Show Cause Notice duly signed and dated by the accused official as a token of its receipt may be returned to this office for record please.
3. Above name Warder c/o Superintendent Central Prison Mardan.

(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT
CIRCLE HQS PRISON MARDAN

ATTESTED

(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT
CIRCLE HQS PRISON MARDAN

To,

The Superintendent,
Headquarters Prison Mardan.

Subject:- **REPLY TO SHOW CAUSE NOTICE.**

I have the honour to refer to Show Cause Notice No.443-45 dated 19-02-2018 issued from your kind office regarding allegations as mentioned therein.

In this connection it is submitted that i proceeded to the training course at Nowshera in during the course of training i fell seriously ill and visited hospital i.e. DHQ Hospital Mardan for specialized treatment wherein after going through various medical test the Typhoid fever was diagnosed for which the Doctor advised me 15 days medical rest on 06/05/2016. I furnished said medical rest to Line Muharar (Mr. Saidul Zaman) of Central Prison Mardan through my brother to which the Line Muharar refused to receive the same and told my brother that I after recovery may furnish the same to him by self.

Due to non recovery from illness I visited the Doctor on 21/05/2016 who again advised my 15 days medical rest and there-after again for 15 days by Medical Officer.

During the course of illness your kind authority ordered my removal from service while I was seriously ill and quite unable to perform my duties OR to continue my training course.

Feeling aggrieved, I preferred an appeal in the learned Provincial Service Tribunal who ordered for a denovo inquiry with conditionally reinstatement subject to out coming of denovo proceeding.

It is worth mention that during my service tenure for more than 09 years I have not been awarded even any minor penalty which shows my dedication towards my official duties.

It is therefore most humbly prayed that the instant Show Cause Notice with recommendation of inquiry officer may kindly be set aside and I may be reinstated into service with all back benefits of intervening period and I assure your kind authority that such practice will not be repeated by me in future.

Thanking in anticipation.

Yours obediently

Mukamil Gul

Mukamil Gul S/O Zamir Gul
Resident of Shabqadar.
Warder Central Prison Mardan

Mukamil Gul
ATTESTED



F

13

OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

No. _____ /PB Dated: **12/03/2018**, E-Mail: mardanjail@gmail.com, 0937-843114

OFFICE ORDER

WHEREAS, accused official/ Warder Mukamil Gul s/o Zameer Gul was charged within the meaning of Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of his misconduct contained in statement of Allegations/ Disciplinary Action served upon him vide this Headquarter endorsement No. 137-40 dated. 15-01-2018 wherein Mr. Hashmat Ullah, Senior Assistant Superintendent Jail, Central Prison Mardan was appointed as Inquiry Officer.

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

AND WHEREAS, the accused official was proceeded against under Rule-14(4) for the charges of his misconduct/ negligence in the performance of duty, as mentioned in the Show cause Notice vide No. 443-45 dated 19.02.2018.

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

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 02-03-2018 as provided for under rules ibid.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the Inquiry report, charges levelled against him and evidence on record, the undersigned being Competent Authority, after observing all legal procedural formalities, hereby award the Minor penalty of **“One increment stopped for one (01) year”** with immediate effect to Mr. Mukamil Gul s/o Zameer Gul attached to Central Prison Mardan for his misconduct, violating rule 1083 of the Khyber Pakhtunkhwa Prison Rules 1985 and also violating rule 13 of Khyber Pakhtunkhwa Government Servants Revised Leave Rules 1981. He is not entitled for any remuneration for the absence period w.e.f 06-05-2016 AN to 28-06-2016 fifty three (53) days under rule 19 of the Khyber Pakhtunkhwa Government Servant Revised Leave Rules 1981 and the intervening period between Removal from Service and reinstatement in to service is hereby treated as leave without pay.

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

Endst: No. 608-12 /PB Dated: **12/03/2018**

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Central Prison Mardan for information and necessary action please.
3. Mr. Hashmat Ullah, Deputy Superintendent cum Superintendent District Jail Swat (Inquiry Officer) with reference to his inquiry report dated, 15-02-2018.
4. The District Accounts Officer, Mardan for information and necessary action please.
5. The Warder concerned c/o Superintendent, Central Prison Mardan.

ATTESTED

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



ORDER

WHEREAS, warder **Mukammil Gul S/O Zarin Gul,** was awarded the minor penalty of **“One increment Stopped for One year”** and absence period for 53 days and the intervening period between Removal from Service and to re-instatement into Service was treated as leave without pay by the Superintendent Headquarters Prison Mardan vide his office order No. 607 dated 12-03-2018 for his misconduct.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available record of the case and it was observed that the appellant for the charges of his misconduct as mentioned in show cause notice No. 443-45 dated 19-02-2018, served upon him and all legal/ procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 10-05-2018. During the course of hearing he failed to justify his innocence.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of power conferred under Rule-5 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986, the decision of the competent authority is upheld and appeal of the appellant is hereby rejected being without any substance.

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

ENDST;NO. 17138-42 /-

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No.849 -WE dated 10-04-2018.
2. The Superintendent, Central Prison Mardan for information and necessary action.
3. District Accounts Officer Mardan for information.
4. Official concerned.

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

01/6/18

*But
Received on 01/6/18*

[Signature]
ATTESTED

*3200
7-6-18*

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KoPolk Service Tribunal Peshawar

Mukamil Gul

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Prison Deptt

(Respondent)
(Defendant)

I/We, Mukamil Gul

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

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

Dated _____/20

Mul

(CLIENT)

ACCEPTED

Noman Ali Bukhari

SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.

Uzma Syed

UZMA SYED

Advocate High Court Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA PESHAWAR.

In the matter of
Service Appeal No.1095 /2018

Mukammil Gul (Warder) Central Prison Mardan.....Appellant.

VERSUS

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

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DEPONENT

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of

Service Appeal No. 1095/2018

Mukamil Gul Warder Central Prison Mardan.....**Appellant**

VERSUS

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

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

PRELIMINARY OBJECTIONS.

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

ON FACTS

- 1) No Comments.
- 2) Correct to the extent that the appellant was awarded major Penalty of "Removal from Service" vide order dated, 28-06-2016. However, the appeal filed by the appellant against the said order was time barred.
- 3) Correct to the extent that in Service Appeal No. 198/2017, the Honourable Service Tribunal Peshawar directed the respondent department to hold "Denovo Inquiry" within period of 90 days, under which the respondent No. 02 conducted the "Denovo Inquiry" on 15-01-2018 (**Annexure-A**).
- 4) Correct to the extent that the appellant was re-instated into service for the purpose of Denovo Inquiry, under which it was found that due to non-performing duties by appellant i.e. his absence period from 06-05-2016 to 28-06-2016 (total 53 days without sanction of leave from the competent authority) as well as intervening period from the date of his Removal from Service i.e. 28-06-2016 to the date of reinstatement into Service on 11-01-2018 was treated as leave without pay by the Superintendent Headquarters Prison Mardan vide Order No. 607-12 dated, 12-03-2018 for his mis-conduct (**Annexure-B**), on the grounds that

post Audit observations with regard to an employee who did not perform duties, the department could not pay remuneration for such period on the principle of **"No work No pay"**. The declaration of said period as leave without pay is the only remedy to thwart such valid post audit observation, as there was no speaking order regarding grant of back benefits to the appellant. In addition, as per Supreme Court verdicts the principle of **"no work having no pay"** will be applied in the under discussion case (copy of 2003-SCMR-228 is **Annexure-C**) in the absence of clear order by the Honorable Tribunal.

- 5) Correct to the extent that the appellant filed Departmental Appeal against the order dated, 12-03-2018 but the same, having no sound footing, was rejected being without any substance (**Annexure-D**).

The appeal of the appellant may be dismissed on the following grounds:-

GROUND:-

- A) The decision of the competent authority is tenable in the eyes of Law in consonance with the August Supreme Court of Pakistan Judgment referred in Para-4 above.
- B) The Judgment dated; 15-12-2017 of the learned Service Tribunal is silent about his reinstatement from retrospective effect i.e. from the date of Removal from Service, therefore the competent authority reinstated the appellant with immediate effect and the intervening period was treated as leave without pay for the reason that he has not been exonerated from the charges but found guilty of mis-conduct, as referred in Para-4 above.
- C) Same remarks as given against Para-4 above.
- D) As the charge of willful absence proved against him and the decision of the competent authority is strictly in accordance with rules.
- E) Same remarks as given against Para-A above.
- F) As mentioned in Para-A above.
- H) That the respondents also seek permission to raise additional grounds at the time of hearing.
- G) Para-G is denied to the extent that appellant is legally entitled for pay, as order is according to Law i.e. Rule-19 of Khyber Pakhtunkhwa Government Servant Revised Leave-1981 (**Annexure-E**).

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

SUPERINTENDENT

Circle Headquarters Prison Mardan
(Respondent No.02)

INSPECTOR GENERAL OF PRISONS

Khyber Pakhtunkhwa Peshawar
(Respondent No.01)

[Handwritten signature]
27/3/19

SECRETARY FINANCE DEPARTMENT

Khyber Pakhtunkhwa, Civil Secretariat Peshawar
(Respondent No.03)

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

In the matter of
Service Appeal No.1095 /2018

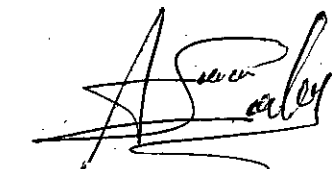
Mukammil Gul (Warder) Central Prison MardanAppellant.

VERSUS

Government of Khyber Pakhtunkhwa,Respondent

AFFIDAVIT

I, Ata Muhammad Senior Law Instructor / Law Officer, on behalf of respondent No. 1,2 &3, do hereby solemnly affirm and declare on oath that the contents of the Para-wise Comments / reply, are correct to the best of my knowledge and belief and nothing has been kept concealed from this Honorable Service Tribunal.



DEPONENT

0884-9056604

748/APP.
2/4/19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of
Service Appeal No. 1095/2018
Mukamil Gul Warder Central Prison Mardan.....**Appellant**

VERSUS

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


PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2

PRELIMINARY OBJECTIONS.

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

ON FACTS

- 1) No Comments.
- 2) Correct to the extent that the appellant was awarded major Penalty of "Removal from Service" vide order dated, 28-06-2016. However, the appeal filed by the appellant against the said order was time barred.
- 3) Correct to the extent that in Service Appeal No. 198/2017, the Honourable Service Tribunal Peshawar directed the respondent department to hold "Denovo Inquiry" within period of 90 days, under which the respondent No. 02 conducted the "Denovo Inquiry" on 15-01-2018 (**Annexure-A**).
- 4) Correct to the extent that the appellant was re-instated into service for the purpose of Denovo Inquiry, under which it was found that due to non-performing duties by appellant i.e. his absence period from 06-05-2016 to 28-06-2016 (total 53 days without sanction of leave from the competent authority) as well as intervening period from the date of his Removal from Service i.e. 28-06-2016 to the date of reinstatement into Service on 11-01-2018 was treated as leave without pay by the Superintendent Headquarters Prison Mardan vide Order No. 607-12 dated, 12-03-2018 for his mis-conduct (**Annexure-B**), on the grounds that


2/4/19
Additional Advocate General
Khyber Pakhtunkhwa
Service Tribunal Peshawar

post Audit observations with regard to an employee who did not perform duties, the department could not pay remuneration for such period on the principle of “**No work No pay**”. The declaration of said period as leave without pay is the only remedy to thwart such valid post audit observation, as there was no speaking order regarding grant of back benefits to the appellant. In addition, as per Supreme Court verdicts the principle of “**no work having no pay**” will be applied in the under discussion case (copy of 2003-SCMR-228 is **Annexure-C**) in the absence of clear order by the Honorable Tribunal.

- 5) Correct to the extent that the appellant filed Departmental Appeal against the order dated, 12-03-2018 but the same, having no sound footing, was rejected being without any substance (**Annexure-D**).

The appeal of the appellant may be dismissed on the following grounds:-

GROUND:-

- A) The decision of the competent authority is tenable in the eyes of Law in consonance with the August Supreme Court of Pakistan Judgment referred in Para-4 above.
- B) The Judgment dated; 15-12-2017 of the learned Service Tribunal is silent about his reinstatement from retrospective effect i.e. from the date of Removal from Service, therefore the competent authority reinstated the appellant with immediate effect and the intervening period was treated as leave without pay for the reason that he has not been exonerated from the charges but found guilty of mis-conduct, as referred in Para-4 above.
- C) Same remarks as given against Para-4 above.
- D) As the charge of willful absence proved against him and the decision of the competent authority is strictly in accordance with rules.
- E) Same remarks as given against Para-A above.
- F) As mentioned in Para-A above.
- H) That the respondents also seek permission to raise additional grounds at the time of hearing.
- G) Para-G is denied to the extent that appellant is legally entitled for pay, as order is according to Law i.e. Rule-19 of Khyber Pakhtunkhwa Government Servant Revised Leave-1981 (**Annexure-E**).

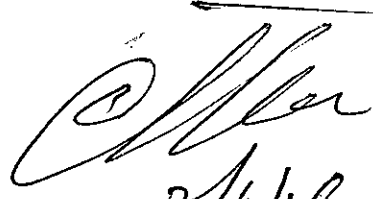
In view of the above Para-wise comments, appeal of the appellant may graciously be dismissed with cost throughout.

SUPERINTENDENT
Circle Headquarters Prison Mardan
(Respondent No.02)

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

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

Settled subject to correction
attachment of all Annexures ^{index} and
affidavit.


Additional Advocate General
Khyber Pakhtunkhwa
Service Tribunal Peshawar

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(A)

(10)

Inquiry report in removal from service case in respect of warder
Mukamil Gul s/o Zameer Gul attached to Central Prison Mardan.

Sir,

Reference superintendent headquarter prison Mardan letter no. 137-40/WE dated 15.01.2018 on the subject.

I conducted inquiry in the absence case of Warder Mukamil Gul. Brief history of the case is given below.

The warder Mukamil Gul s/o Zamir Gul was relieved on 06.05.2016 from Elite Training Course Nowshera to High Security Prison Mardan but he failed to report for duty and remained absent till his removal from service order. He was served with absent notice vide HSP Mardan No.3167 dated 16.05.2016 on his home address with no response, after lapse of 15 days time period.

Notice in newspaper daily Mashriq was published in on 13.06.2016 but failed to resume duty nor submitted reply within stipulated time period.

Consequently he was removed from service on 28.06.2016 by superintendent headquarter prison Mardan and the order was to take effect from date of absence i.e 06.05.2016.

The accused official preferred in appeal before service tribunal KPK Peshawar. Consequent upon appeal the warder concern was reinstated to the service. A DNOVO inquiry was conducted by the order of IG Prisons KPK Peshawar vide his order no. 1360/WE dated 10.01.2018.

During inquiry the record was examined and the accused official was directed to explain his position. The accused official submitted is written reply where he stated that after relieving from Elite center nowshehra he felt ill and got medical rest certificate from district headquarter Mardan. He further stated that the medical rest certificates were sent to superintendent central prison Mardan by his brother but then line muharrar told his brother to bring the medical certificate when he resumes duty. The accused official also produced medical risk certificate from the period 16-05-2016 to 29-6-16 the total period of absence becomes (55) days.

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In the light of above findings and owing to is illness its recommended that his period may be treated as leave without pay and appropriate orders for intervening period may also be made. For his negligence in non attendance to resumption notice his one increment may be stopped without future effect.

Hashmat ulla

SR Assistant Superintendent

Central Prison Mardan



7

B

B

OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

/PB Dated: 12/03/2018, E-Mail: mardanjail@gmail.com,

0937-843114

OFFICE ORDER

WHEREAS, accused official/ Warder Mukamil Gul s/o Zameer Gul was charged within the meaning of Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of his misconduct contained in statement of Allegations/ Disciplinary Action served upon him vide this Headquarter endorsement No. 137-40 dated. 15-01-2018 wherein Mr. Hashmat Ullah, Senior Assistant Superintendent Jail, Central Prison Mardan was appointed as Inquiry Officer.

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

AND WHEREAS, the accused official was proceeded against under Rule-14(4) for the charges of his misconduct/ negligence in the performance of duty, as mentioned in the Show cause Notice vide No. 443-45 dated 19.02.2018.

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

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 02-03-2018 as provided for under rules ibid.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the Inquiry report, charges levelled against him and evidence on record, the undersigned being Competent Authority, after observing all legal procedural formalities, hereby award the Minor penalty of **"One increment stopped for one (01) year"** with immediate effect to Mr. Mukamil Gul s/o Zameer Gul attached to Central Prison Mardan for his misconduct, violating rule 1083 of the Khyber Pakhtunkhwa Prison Rules 1985 and also violating rule 13 of Khyber Pakhtunkhwa Government Servants Revised Leave Rules 1981. He is not entitled for any remuneration for the absence period w.e.f 06-05-2016 AN to 28-06-2016 fifty three (53) days under rule 19 of the Khyber Pakhtunkhwa Government Servant Revised Leave Rules 1981 and the intervening period between Removal from Service and reinstatement in to service is hereby treated as leave without pay.

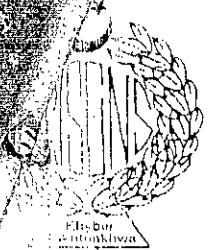
(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endst: No. 608-12 /PB Dated: 12/03/2018

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Central Prison Mardan for information and necessary action please.
3. Mr. Hashmat Ullah, Deputy Superintendent cum Superintendent District Jail Swat (Inquiry Officer) with reference to his inquiry report dated, 15-02-2018.
4. The District Accounts Officer, Mardan for information and necessary action please.
5. The Warder concerned c/o Superintendent Central Prison Mardan.

(FAZAL HAMEED KHAN KHEL)
SUPERINTENDENT



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

No.Estb/Ward-/Orders/ 17138 1-

Dated 01-06-18 1-

ORDER

WHEREAS, warder Mukammil Gul S/O Zarin Gul, was awarded the minor penalty of "one increment Stopped for One year" and absence period for 53 days and the intervening period between Removal from Service and to re-instatement into Service was treated as leave without pay by the Superintendent Headquarters Prison Mardan vide his office order No. 607 dated 12-03-2018 for his misconduct.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available record of the case and it was observed that the appellant for the charges of his misconduct as mentioned in show cause notice No. 443-45 dated 19-02-2018, served upon him and all legal/ procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 10-05-2018. During the course of hearing he failed to justify his innocence.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of power conferred under Rule-5 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986, the decision of the competent authority is upheld and appeal of the appellant is hereby rejected being without any substance.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.

ENDST:NO. 17138-42 1.

Copy of the above is forwarded to :-

- The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No.849 -WE dated 10-04-2018.
- The Superintendent, Central Prison Mardan for information and necessary action.
- District Accounts Officer Mardan for information.
- Official concerned.

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

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Received on 01/06/18

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D

¹[Khyber Pakhtunkhwa] Civil Servants Revised Leave Rules, 1981

No. FD. SO (SR-IV) 5-54 / 80 (Vol:II) dated 17-12-1981.---In exercise of the powers conferred by section 26 of the ²[Khyber Pakhtunkhwa] Civil Servants Act, 1973 (³[Khyber Pakhtunkhwa] Act XVIII of 1973) and in supersession of this Department's Notification No. FD.SO(SR-IV) 1-17/78, dated the 20th November, 1979, the Governor of the ⁴[Khyber Pakhtunkhwa] is pleased to make the following rules namely:--

1. Short title, commencement and application.---(1) These rules may be called the ⁵[Khyber Pakhtunkhwa] Civil Servants Revised Leave Rules, 1981.

(2) They shall come into force at once.

(3) They shall apply to all Civil Servants under the rule making authority of the Governor except those who opted not to be governed by the ⁶[Khyber Pakhtunkhwa] Civil Servants Leave Rules, 1979.

2. Admissibility of Leave of Civil Servant.---Leave shall be applied for, expressed and sanctioned in terms of days and shall be admissible to a civil servant at the following rate and scale:--

(i) A civil servant shall earn leave only on full pay. It shall be calculated at the rate of four days for every calendar months of the period of duty rendered and credited to the leave account as "leave on fully pay" duty period of 15 days or less in a calendar month being ignored and those of more than 15 days being treated as a full calendar month, for the purpose. If a civil servant proceeds on leave during a calendar month and returns from it during another calendar month and the period of duty in either month is more than 15 days, the leave to be credited for both the incomplete months will be restricted to that admissible for one full calendar month only.

(ii) The provisions of clause (i) will not apply to vacation departments. A civil servant of a vacation department may earn leave on full pay as under:--

(a) When he avails himself of vacation in a calendar year. At the rate of one day of every calendar month of duty rendered;

(b) When during any year he is prevented from availing himself of the full vacation. As for a civil servant in non-vacation Department for that year; and

(c) When he avails himself of only a part of the vacation. As in (a) above plus such proportion of thirty days as the number of days of vacation not taken bears to the full vacation.

¹ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

² Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

³ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁴ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁵ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁶ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

The leave pay shall be payable in sterling, if such leave is spent in Asia other than Pakistan and India.

(4) Such leave pay shall be payable for the actual period of leave spent abroad subject to maximum of one hundred and twenty days at a time.

(5) The civil servants appointed after 17th May, 1958, shall draw their leave salary in rupees in Pakistan irrespective of the country where they spent their leave.

(6) Leave Ex-Pakistan will be regulated and be subject to the same limits and conditions as prescribed in rule 4,5 and 12.

17. Assigning reasons for leave.---It shall not be necessary to specify the reasons for which leave has been applied, so long as that leave is due and admissible to a civil servant.

18. Commencement and end of leave.---Instead of indicating whether leave starts / ends in the forenoon or after-noon, leave shall commence from the day following that on which a civil servant hands over the charge of his post. It shall end on the day preceding that on which he resumes duty.

19. Absence after the expiry of leave.---*Unless his leave is extended by the leave sanctioning authority, a civil servant who remains absent (except for circumstances beyond his control) after the end of his leave shall not be entitled to any remuneration for the period of such absence and double period of such absence shall be debited against his leave account. Such debit shall if there is insufficient credit in the leave account, be adjusted against future accumulations. Such double debit shall not preclude any disciplinary action that may be considered necessary under any rule for the time being in force after affording a reasonable opportunity to the civil servant concerned to indicate his position.*

20. Encashment of Leave Preparatory to Retirement.--- 11[(1)] Where a civil servant opts not to avail the leave preparatory to retirement admissible to him under rule 14, he shall be allowed leave salary for the period for which leave preparatory to retirement is admissible, subject to a maximum of

12[three hundred and sixty-five] days. For the purpose of lump sum payment in lieu of leave preparatory to

retirement only the senior post allowance will be included in the leave pay so admissible:-The payment of leave pay in lieu of leave preparatory to retirement may be made to the civil servant either in lump sum at the time of retirement or may at his option, be drawn by him monthwise, in arrears, for and during the period of leave preparatory to retirement. This amendment shall take effect from 01.07.1983.]

13[(2) Encashment of leave preparatory to retirement (LPR) not exceeding three hundred and sixty five days shall be effective from the first day of July, 2012 and shall, for the entire period of leave refused or opted for encashment, be applicable to a civil servant retired or, as the case may be, retiring on or, after the first day of July 2012, provided such leave is available at his credit subject to a maximum of three hundred and sixty five days.

(3) If at any time during such period, leave is granted on account of ill health supposed by medical certificate or for performance of Hajj, the amount of cash compensation on account of leave pay shall be reduced by an amount equal to the leave pay for the period of leave so granted]

(4) Leave pay for the purpose of encashment of LPR shall be computed on the basis of pay and allowances reckonable towards pension as shown in the last pay certificate of a civil servant.]

21. In Service Death, etc.---(1) In case a civil servant dies, or is declared permanently incapacitated for further service by a Medical Board, while in service, a lump sum payment equal to leave

¹⁰ . Rule 20 substituted by Notification No. FD.SO(SR-IV)5-54(Vol:II), dated 24th August, 1983.

¹¹ . Renumbered as sub-rule (1) by Notification No. (FR)FD-5-92/2005/Vol-V, DATED 13-12-2012

¹² . Substituted for the words "one hundred and eighty" by Notification No. (FR)FD-5-92/2005/Vol-V, DATED 13-12-2012.

¹³ . Substituted for the words "one hundred and eighty" by Notification No. (FR)FD-5-92/2005/Vol-V, DATED 13-12-2012.

¹⁴ . Rule 21 substituted by Notification No.FD.SO(SR-IV)5-54/80(Vol:III), dated 03.05.1988

So (courtesy)

By Home
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BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1095/2018

Mukamil Gul

VS

Police Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(i-vii) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 No comments endorsed by the respondent which means that the respondent deptt: admitted para-1 of the appeal is correct as mentioned in the main appeal of the appellant as correct.
- 2 The contention of respondent deptt is incorrect. while para-2 of the appeal is correct as mentioned in the main appeal of the appeal is correct. Moreover. It is past and close transaction.
- 3 Admitted correct by the respondent.

- 4 The contention of respondent deptt is incorrect. while para-4 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover. In case of medical leave the period must be treated on full pay according to leave rules the illness of the appellant was also admitted by the inquiry officer. The principle of "no work no pay" is not applicable in this case.
- 5 The contention of respondent deptt is incorrect. while para-5 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the appeal of the appellant is well founded but denied without showing cogent reason.

GROUNDS:

- A) Incorrect. The orders of the respondents are against the law, rules and norms of justice therefore not tenable and liable to be set aside.
- B) Incorrect. While para-B of the appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect. Incorrect. While para-C of the appeal is correct as mentioned in the main appeal of the appellant.
- D) Incorrect. Incorrect. While para-D of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the inquiry admitted he illness of the appellant so the appellant is not willfully absent.
- E) Incorrect. Incorrect. While para-E of the appeal is correct as mentioned in the main appeal of the appellant.
- F) Incorrect. Incorrect. While para-F of the appeal is correct as mentioned in the main appeal of the appellant.

- G) Incorrect. Incorrect. While para-G of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the appellant was ill so the rule -19 is not application but rule 13 is applicable.
- H) Legal.

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

APPELLANT

Through:



SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



DEPONENT

ATTESTED

