08.05.2019 None present on behalf of the petitioner. Mr. Usman Ghani, District Attorney for the respondents present. Notice be issued to petitioner and his counsel for attendance for 25.06.2019 before S.B.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

25.06.2019 None present on behalf of the petitioner. Addl: AG for respondents present. Fresh notices be issued to the petitioner for appearance. Case to come up for further proceedings on 21.08.2019 before S.B.

(Ahmad Hassan)
Member

21.08.2019 None present for the petitioner. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. The court time is about to over but non-appeared on behalf of the petitioner nor the petitioner was present in person despite issuance of notices to petitioner for appearance, therefore, the instant Execution Petition is hereby dismissed in default. File be consigned to the record room.

ANNOUNCED
20.08.2019

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

22.01.2019 No one present on behalf of petitioner. Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Adjourn. To come up for further proceedings on 01.03.2019 before S.B.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Member

01.03.2019 DBA is on strike. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Adjourn. To come up for further proceedings on 04.04.2019 before S.B.

Member

04.04.2019 None for the petitioner present. Addl: AG for respondents present. Due to general strike of the bar, the case is adjourned. Case to come up for further proceedings on 08.05.2019 before S.B.

(Ahmad Hassan)
Member

19.07.2018 None for the petitioner present. Mr. Sardar Shoukat Hayat, Addl: AG for respondents present. Adjourned. To come up for further proceedings on 04.09.2018 before S.B.

(Ahmad Hassan)
Member

04.09.2018 Petitioner absent. Mr. Kabirullah Khattak, Additional AG for the respondents present. Notice be issued to petitioner for attendance for 22.10.2018 before S.B.

(Muhammad Amin Khan Kundi)
Member

22-10-18

Due to Retirement of Honorable Chairman, the Tribunal is non-functional Therefore the case is adjourned to come up for same on 6/12/2018

Reader

06.12.2018 Nemo for petitioner. Addl. AG for the respondents present.

Let the petitioner be served with fresh notice for 22.01.2019 before S.B.

Chairman

FORM OF ORDER SHEET

Execution Petition No. 72/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	09.03.2018	The Execution Petition of Mr. Muhammad Naeem submitted today by him, may be entered in the relevant Register and put up to the Court for proper order please. REGISTRAR 9/3/18
2-	12/03/18	This Execution Petition be put up before S. Bench on- 26/03/18. MEMBER
	26.03.2018	Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 05.06.2018 before S.B. (Muhammad Amin Khan Kundi) Member
	05.06.2018	Petitioner absent. Learned counsel for petitioner also absent. Mr. Kabir Ullah Khattak, Addl: AG for the respondents present. Implementation report not submitted. Learned Addl: AG seeks time for implementation report. Adjourned. To come up for implementation report on ***19.07.2018*** before S.B. Member

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Implementation No. 72 /2018
In
Appeal No. 858/2013

Muhammad Naeem ..... Appellant
presently attached for duty at Internment Centre Malakand

Versus

1. **Province of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar & others .....Respondents**

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Applicant in person

Muhammad Naeem,
Assistant Superintendent Jail
CNIC No. 17301-4931390-7
Mob. No. 0315-7575265

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Implementation No. 72 /2018
In
Appeal No. 858/2013

Muhammad Naeem ..... **Appellant**
presently attached for duty at Internment Centre Malakand

Versus

1. **Province of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar.**
2. **I.G Prisons KP Peshawar.**
3. **Superintendent Central Prison Haripur.**
4. **Inquiry Officer through I.G Prisons KP Peshawar**..... **Respondents**

Application for implementation of judgment passed in appeal cited above dated 15-12-2017.

Respectfully Sheweth,

1. That, previously the applicant filed an appeal bearing No.858/2013 before this Honorable Court, which was accepted vide the judgment dated 15-12-2017 (copy of the judgment is attached as Annexure-A)
2. That, Honorable Service Tribunal accepted the appeal of the appellant and directed the respondents in the following terms:
   "*In the light of the above discussion this tribunal is constrained to accept all the present three appeals. Consequently upon the acceptance of all the present three appeals, the orders made impugned in the present appeals are* ***set aside***.

3. That, after receipt of the judgment of the Tribunal the applicant communicated the same to the respondents and requested them to implement the same but his request remained without any tangible result.
4. That, a sufficient time has already been lapsed and the matter is still hanging fire without any fruitful result, the judgment passed by this tribunal is not implemented till date and the respondents are reluctant t proceed with the matter sincerely and fairly.

It is therefore, humbly requested that the respondents may kindly be directed to implement the judgment in letter and spirit without further delay.

Applicant in person

Muhammad Naeem,
Assistant Superintendent Jail
CNIC No. 17301-4931390-7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Title **M. Naeem** **Versus**

1. **Province of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar.**
2. **I.G Prisons KP Peshwar.**
3. **Superintendent Central Prison Haripur.**
4. **Inquiry Officer through I.G Prisons KP Peshwar.**

AFFIDAVIT

I, Mr. Muhammad Naeem s/o Mr. Nasrullah Jan r/o Iqbal Colony Dalazak Road Peshawar City (Present Address), do hereby solemnly affirm and declare on oath that the contents of above application are true and correct to the best of my knowledge and belief that nothing has been concealed from the Honourable Court.

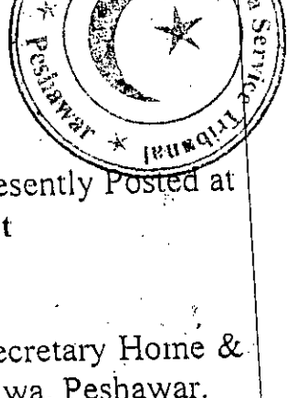
DEPONENT
Muhammad Naeem,
Assistant Superintendent Jail
CNIC No. 17301-4931390-7
Mob. No. 0315 7575265

Sr. No/	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. *858/2013*

Date of Institution ----08.05.2013
Date of Decision ----15.12.2017



Muhammad Naeem, Assistant Superintendent Jail, Presently Posted at District Jail Mardan. **Appellant**

VERSUS

1. Province of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar
3. Superintendent Central Prison, Haripur.
4. Inquiry Officer through Inspector General of Prisons, Khyber Pakhtunkhwa. **Respondents**

15.12.2017

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned counsel for the appellant Present. Mr. Zia Ullah, Deputy District Attorney, along with representative of officials respondents present.

2. This single/common judgment shall dispose of the above captioned appeal bearing No.858/2013 filed by Muhammad Naeem Assistant Superintendent Jail, appeal bearing No.895/2013 filed by Zahoor Elahi Ex-Senior Assistant Superintendent Central Prison Haripur and appeal bearing No.913/2013 filed by Siddique Muhammad Ex-Warder Central Prison Haripur being identical in nature, having arisen out from the same law, facts and circumstances.

2. Appellant Muhammad Naeem has made impugned the original order dated 20.12.2012 whereby his rank was reduced to lower post/grade of Assistant Superintendent Jail (BPS-14) and he also

ATTESTED

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challenged order dated 22.04.2013 whereby his departmental appeal was rejected.

3. Appellant Zahoor Elahi has made impugned the order dated 22.04.2013 of respondent No.1 whereby his departmental appeal was partially allowed and the original order dated 28.12.2012 of dismissal from service was set aside by converting it into removal from service.

4. Appellant Siddique Muhammad made impugned the order dated 20.12.2012 whereby he was compulsory retired form service and also challenged the order of appellate authority dated 22.04.2013 whereby his departmental appeal was rejected

5. Learned counsel for the appellants argued that departmental punishments were awarded to the appellants on the ground that due to their negligence/inefficiency four (04) prisoners escaped from Central Prison Haripur during the night between 20th and 21st October 2012. Further argued that charge against the appellants was erroneous and based on no evidence to suggest that the escapees prisoners kept on cutting the iron bar of window of Barrack for four/five days. Further argued that the recaptured prisoner did not make any assertion in his statement that the iron cutter and tranquilizers tablets were provided to escapees by their brother Irshad in interview room on 25.09.2012 rather stated that the iron bar(جنگلہ) was cut on 20.04.2012 during the day time. Further argued that the appellants are innocents and finding against them in the inquiry report was arbitrary and that no valid grounds exist for awarding them punishment. Learned counsel for the appellants while relying upon the judgment of august Supreme Court

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titled SAMIUDDIN QURESHI--Appellant VERSUS COLLECTOR OF CUSTOMS--Respondent (PLD 1989 Supreme Court 335) vehemently stressed that the impugned original and final/appellate orders are liable to be set aside. Learned counsel for the appellants Muhammad Naeem also argued that on 20.10.2012 Muhammad Naeem was on leave duly sanctioned by the competent authority and another senior Assistant Superintendent Noor Ul Basar was assigned the duties of the appellant till his arrival. Learned counsel for the appellant Zahoor Elahi further argued that Zahoor Elahi was assigned the duties to supervise Sector-I while the prisoners escaped from the Barrack of Sector-4. Learned counsel for the appellants Muhammad Naeem and Zahhoor Elahi argued that during the night of occurrence senior Assistant Superintendent Fazle Mehmood was the only night duty officer. Learned counsel for the appellant Zahoor Elahi further argued that on 20.10.2012 Senior Assistant Superintendent Noor Ul Basar absented himself from duties in the evening session and upon the permission of Deputy Superintendent Jail he put his initials on the Aamad Kharij Register. Learned counsel for the appellant Siddique Muhammad argued that Siddique Muhammad was assigned search duties on the main gate and he was not assigned search duties in the interview room as alleged in the charge sheet and statement of allegation and that the inquiry officer also exonerated him in his inquiry report but gave findings against him merely on the basis of assumption by mentioning that it was most likely that tranquilizers were passed through the main gate. Further argued that the inquiry officer in his report also reached to the conclusion that the iron cutter

was not passed through the main gate or interview room rather the same was stolen from the factory.

6. As against that Learned Deputy District Attorney while opposing the present appeals argued that the original impugned orders were issued after observing all legal requirements. Further argued that in the inquiry report the inquiry officer reached to the conclusion that the appellants had not performed their duties properly, otherwise the incident might not have happened. Further argued that due to negligence and inefficiency of appellants three convict prisoners made their escape good hence the appellants were rightly awarded punishment. In support of his arguments the Learned DDA referred to judgment of august Supreme Court titled I.G (Prisons) N.W.F.P, Peshawar etc petitioners versus Mr. Muhammad Israeel Assistant Superintendent Jail Haripur--Respondent (Civil Petition No.741-P of 2004).

7. Arguments heard. File perused.

8. In the night between 20th and 21st October, 2012 three convicts and one under trial prisoner confined in Barrack No.5 of Sector No.4 in Central Prison Haripur escaped. The under trial prisoner Muhammad Safdar was recaptured. After fact finding inquiry, disciplinary action was initiated against some of the officers and officials of Central Prison Haripur. Charge sheet and statement of allegation was served upon the appellants and inquiry officer was appointed. Upon completion of inquiry, show cause notices were issued which the appellants also responded. The competent authority vide original impugned order awarded punishments to the appellants

and other officials. After exhausting the remedy of departmental appeal, the appellants approached the Khyber Pakhtunkhwa Service Tribunal by filing the present service appeals.

9. It is not disputed that appellant Muhammad Naeem was incharge of Sector-4, however on 20.12.2012 he was on leave and his duties were assigned to another Senior Superintendent Jail Noor Ul Basar, which fact is also evident from the copy of application of Muhammad Naeem for the grant of station leave. Astonishingly no disciplinary action was taken against Mr. Noor Ul Basar. There is also no dispute that on the night of occurrence Senior Assistant Superintendent Jail Fazli Mehmood was the night duty officer, responsible for the whole jail. It may be mentioned that disciplinary action was also taken against Senior Assistant Superintendent Jail Fazle Mehmood and resultantly he was compulsory retired from service.

10. No evidence was brought on record to substantiate the charge that the prohibited articles were provided to the escapees on 25.09.2012 or the escapees were kept cutting iron bars of window of barrack for four/five days. Recaptured prisoner in his statement, available on file has not disclosed as to when the prohibited articles were procured by/provided to the escapees and in which manner.

11. It may also be mentioned that the inquiry officer in his report gave finding in favor of appellant Muhammad Naeem that the charge of negligence on his part while performing duty in interview room is not proved as he was not supposed to check and search the articles brought by the visitors.

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12. It is also not disputed that appellant Siddique Muhammad was assigned search duties on the main gate and in the inquiry report the inquiry officer has not given findings against him except that the inquiry officer observed/presumed that it was most likely that the tranquilizers were passed through main gate under pretext of medicines.

13. It is also an admitted fact that appellant Zahoor Elahi was not assigned the duties to supervise Sector-4, similarly on the night of occurrence he was also not entrusted with the duties of night duty officer, rather Senior Assistant Superintendent Fazle Mehmood was the night duty officer when the occurrence took place.

14. Appellants Muhammad Naeem, Zahoor Elahi and Siddique Muhammad were not assigned duty on the night of occurrence and the Superintendent Central Prison Haripur clearly stated in his statement, available on file that all the staff on duty was present and it is the negligence or inefficiency on the part of staff on duty that the incident of escape took place.

15. It may be observed that the appellant Zahoor Elahi in his report, available on file, mentioned that the iron gratings of the condemned cells as well as barracks in every sector were densely covered with the thick clothes thus there was no visibility for the patrolling officers.

16. It is also worth mentioning that the inquiry officer in his report has also observed that there were 20 beats in Haripur Jail since its very inception but then their number was reduced to 8 and at some time some of these are also without any watch and ward staff and discussion with the staff members revealed that warders were

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deployed at the Bungalow of the Superintendent.

7. In the light of the above discussion this Tribunal is constrained to accept all the present three appeals. Consequently upon the acceptance of all the present three appeals, the orders made impugned in the present appeals are set aside. Appellants Zahoor Elahi and Siddique Muhammad are reinstated in service and intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

Announced
15.12.2017

SD/- M. Hamid Mughal
Member

SD/- Gul Zeb Khan
Member

Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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