17.05.2018

Neither petitioner nor his counsel is present. Mr: Kabirullah Khattak, Addl. AG for the respondents present. Learned Addl. AG requested for adjournment as no representative of the respondents is present. To come up for implementation report on 02.08.2018 before S.B.

Chairman

#### 02.08.2018

Neither appellant nor his counsel present. Mr. Shehryar Khan, Senior Asst: Supdt Jail alongwith alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. the above name representative produced the implementation report whereby the petitioner has been reinstated in service subject to the decision of august Supreme Court of Pakistan. Report is placed on file.

In view of the above stated circumstances, there is no need further to proceed with the current execution petitioner, hence the same is filed being executed. No order as to costs. File be consigned to the record room.

Announced: 02.08.2018

Chairman 2/8/20/R

#### FORM OF ORDER SHEET

Execution Petition No.

S.No.

1

1 <sup>.</sup>

2-

Date of order Order or other proceedings with signature of Judge Proceedings 2 3 The Execution Petition of Mr. Zahoor Elahi submitted to-day by 16.02.2018 Nalia Jan Advocate may be entered in the relevant Register and put up to the Court for proper order please. This Execution Petition be put up before S. Bench on-26/02/18 oslozije. Counsel for the petitioner and Assistant AG present. 05.03.2018 Notice be issued to the respondent department for submission of the submission of th implementation report on 18.04.2018 before S.B.

50/2018

(Gul Zeb Khan) Member

8.04.2018

Petitioner with counsel present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Representative of the department is not in attendance despite issuance of notice therefore, again notice be issued to the respondents with the direction to direct the representative to attend the court and submit implementation report. Adjourned. To come up for implementation report on 17.05.2018 before S.B.

> (Muhammad Amin Khan Kundi) Member

Execution petition No. <u>9</u>/2018 In Service Appeal No: 895/2013

Zahoor Elahi

### **VERSUS**

# GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS

## <u>INDEX</u>

S#	Description of Documents	Annex	Pages
1.	Execution Petition with Affidavit.		1-3
2.	Addresses of Parties	·	4
3.	Copy of Judgment		5-12
4.	Wakalat Nama.		

Dated: 16-02-2018

Through

Naila Jan Advocate, High Court Peshawar

Petitioner

Execution petition No. <u>5</u>/2018

In

Kbyber Pakhtukhwa Servico Tribunal

Service Appeal No: 895/2013

192 16/02/2018

Petitioner

Zahoor Elahi, Ex Senior Assistant Superintendent (BPS-16) Central Prison Haripur.

# $V_{ersus}$

1. Government of Khyber Pakhtunkhwa Through Chief Secretary Khyber Pakhtunkhwa Peshawar.

- 2. Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
- 3. The Inspector General of Prison, Khyber Pakhtunkhwa Peshawar.

## .....Respondents

EXECUTION PETITION FOR IMPLEMENTATION OF THE JUDGMENT OF THIS HON'BLE TRIBUNAL IN APPEAL No. 895/2013 DECIDED ON 15-12-2017

Noiley-

Respectfully Sheweth,

- 1. That the above mention title case was decided by this Hon'ble Tribunal vide Judgment dated 15-12-2017 and the relevant portion of the judgment is reproduced as 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 three present appeals, the orders made impugned in the present appeals are set aside. Zahoor Elahi Appellants 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.
- 2. That the Petitioner after getting of the attested copy of same approached the Respondent several time for implementation of the above mention judgment. However they are using

delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal.

3. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.

It is, therefore, requested that the above mention judgment may kindly be implemented in its true Litter and spirit by directing the Respondents to re-instate the Petitioner with all back benefits.

Dated: 16/02/2018

Through

Petitioner

Naila Jan Advocate, High Court Peshawar

Deponent

<u>AFFIDAVIT:-</u>



I. Zahoor Elahi. Ex Senior Assistant Superintendent (BPS-16) Central Prison Haripur, do hereby solemnly affirm and declare on oath that all the contents of above application are true and correct to the best of my knowledge and belief and nothing has or concealed from this been misstated Hon'ble Court.

Execution petition No. \_\_\_\_/2018 In Service Appeal No: 895/2013

Zahoor Elahi

#### <u>VERSUS</u>

# GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS

# ADDRESSES OF PARTIES

PETITIONER

Zahoor Elahi, Ex Senior Assistant Superintendent (BPS-16) Central Prison Haripur.

#### **RESPONDENTS**

- 1. Government of Khyber Pakhtunkhwa Through Chief Secretary Khyber Pakhtunkhwa Peshawar.
- 2. Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
- 3. The Inspector General of Prison, Khyber Pakhtunkhwa Peshawar.

Dated: 16/02/2018

Through

PETITIONER le e

*Náila Jan* Advocate High Court Peshawar

# Appeal No. <u>895</u>/2013

B.W.F Provide General Action 13-5-14

Zahoor Elahi, Ex-Senior Assistant Superintendent (BPS-16) Central Prison Haripur.

#### (Appellant)

#### VERSUS

- 1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar,
- 2. Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.

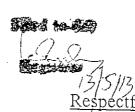
3. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.

#### (Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, read with Section 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, against the Order dated 28.12.2012, whereby the appellant has been awarded the major penalty of "*Dismissal from Service*" against which his Departmental Appeal dated 04.01.2013 was partially allowed vide Order dated 22.04.2013 by converting his dismissal from service in to Removal from Service communicated on 24.4/ .2013.

Praver in Appeal: -

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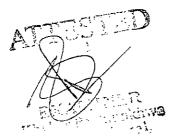


On acceptance of this appeal the impugned order dated 28.12.2012 & 22.04.2013, may please be set-aside and the appellant be <u>re-instated in service with all back</u> <u>benefits of service</u>.

espectfully Submitted:

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1. That the appellant was appointed as Senior Assistant Superintendent Jail, after topping the selection process Khyber Pakhtunkhwa Public Service commission in the year 2004. He remained posted at different jails and has performed his duties quite diligently, vigilantly, honestly and with his utmost loyalty. Ever since the appointment of the appellant, there was no complaint whatsoever regarding his performance.



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•	Sr. No	Date of order/` proceeding	Order or other proceedings with signature of Judge or Magistrate
	1	s2	3 Pesharr
			BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
	-		Service Appeal No. 858/2013
			Date of Institution08.05.2013 Date of Decision15.12.2017
			The second s
			Muhammad Naeem, Assistant Superintendent Jail, Presently Posted at District Jail Mardan. VERSUS
			<ol> <li>Province of Khyber Pakhtunkhwa, through Secretary Home &amp; Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.</li> <li>Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar</li> <li>Superintendent Central Prison, Haripur.</li> <li>Inquiry Officer through Inspector General of Prisons, Khyber Pakhtunkhwa.</li> </ol>
		15.12.2017	
		S	JUDGMENT
	aw."		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
	AT	TESTED	nature, having arisen out from the same law, facts and circumstances.
	X	AX.	2. Appellant Muhammad Naeem has made impugned the original
	Kink Ser	A HIVER tehtunkhwi tee Tribusal, Peshawar	order dated 20.12.2012 whereby his rank was reduced to lower
	-		post/grade of Assistant Superintendent Jail (BPS-14) and he also
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challenged order dated 22.04.2013 whereby his departmental appeal was rejected.

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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

Learned counse! for the appellants argued that departmental 5. 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 20<sup>th</sup> and 21<sup>st</sup> 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 escapées by their brother Irshad in interview room on 25.09.2012 rather stated that the iron bar(جننگر) 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 ERSUS 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 Nacem 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

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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 the 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 20<sup>th</sup> and 21<sup>st</sup> 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 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 duities 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 as cells as well/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.

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.

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Date of Presentation of Application 15-12-201 Number of Words - 6 D .... Copying Fee Urgent\_ Total. Name of Copyies Date of Complection of Cong. p2-0/-20/ 

27333 aila fou ايژوكيث. ا باركوسل اايسوى ايشن نمبر پث اور بارایسوسی ایسشن، خسیب پخستونخواه دابط نبر: <u>19215472 292</u> et in fish بعدالت جناب مصمم محصو كمور م منجاب: مصمحت مخال fervice Appeal دعویٰ: 2 anoros Elami Execution Petition No. 59/18 بنام جرم: Gavit of up to ث تحرير آنک مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیر دی وجواب دہی کار دائی متعلقہ تر الرج رف اجر على فار الريل مقرر آن مقام <u>المتُساو مر</u>كيك کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدہ کی کل کاروائی کا کامل اختیار ہوگا ، نیز وکیل صاحب کو 200000- Glahi ر راضی نامه کرنے و تقر رثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قتم کی تقدر یق Sup er mouder ، زریں پر دستخط کرنے کا اختیار ہوگا ، نیز بصورت عدم ہیروی یا ڈگری یکطرفہ یا اپیل کی برآ مدگی اور منسوخی ، نیز دائر کرنے ایپل نگرانی ونظرتانی و پیروی کرنے کا مختار ہو گا اور بصورت ضرورت مقدہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقر رکا اختیار ہو گا اور صاحب مقرر شده کو وہی جملہ مذکورہ با اختیارات حاصل ہو ں گے اور اس کا ساختہ پر داختہ منظور و قبول ہو گا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہوتو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں ،الہذا وکالت نامہ لکھ دیا تا کہ سند رہے 16/02/2010 المرقوم: Austea Amepied :اس د کالت نامه کې نو نو کا بې نا قابل قبول ہو گې.

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	1 W	OFFICE OF THE INSPECTOR GENERAL OF PRISONS
	<b>*</b> ()	KHYBER PAKHTUNKHWA PESHAWAR
	NAV 10.	8 091-9210334, 9210406 091-9213445
Rhyber	Br A	No.Estb/Ward-/Orders//-
	$\gamma^{\mu}$	$\sim$ Dated <u><math>3-64-18-1</math></u>

#### <u>ORDER</u>

WHEREAS, the following officers/official while attached to Central Prison Haripur were awarded major penalties as noted against their names in a case regarding escape of 04 prisoners from Central Prison Haripur in the night between 20/21-10-2012 vide this office order No.2/14-J-2010/32056 dated 20-12-2012 and No.32613 dated 28-12-2012:-

· +		
S.No.	Name of Officers/Officials	Penalty
	Superintendent Jail (BPS-16)	Reduction to lower post/grade of Assistan Superintendent Jail (BPS-14)
2.	Mr.Zahoor Elahi, Senior Assistant Superintendent Jail (BPS-16).	Dismissal from Service.
3.		Compulsory retirement from service.

ANDWHEREAS, the above named officers/official filed departmental appeals which was rejected vide Government of Khyber Pakhtunkhwa Home & T.As Department order No.SO(Com/Eng)HD/1-39-B/2012-13 dated 22-4-2013, however, the penalty of dismissal from service in respect of S.No.2 above converted into removal from service.

AND WHEREAS, upon rejection of their departmental appeals they preferred service appeals No.858/2013,895/2013 & 913/2013 for setting aside the penalties awarded to them. On 15-12-2017 the learned Service Tribunal decided their appeals and set-aside the penalties awarded to them. The learned Tribunal further ordered that they are reinstated in service and intervening period shall be treated as leave of the kind due. Accordingly, the case was referred to Law Department for placing the same to the Scrutiny Committee to decide as to whether the case is fit for filing CPLA in the August Supreme Court of Pakistan or otherwise. The Scrutiny Committee concerned declared the case fit for filing CPLA which is accordingly filed by the department and the case is pending in the August Supreme Court of Pakistan.

AND WHEREAS, the appellants filed execution petition for implementation of the Service Tribunal judgement dated 15-12-2017 and in the absence of stay, order the judgement inquestion is implemented conditionally in favour of the appellants concerned.

NOW THEREFORE, keeping in view the facts on record, as per orders of the learned Service Tribunal the officers/official at S.No.2, & 37 namely Zahoor, Elahi Senior Assistant Superintendent Jail and warder Siddique Muhammad are hereby re-instated conditionally into service with immediate effect subject to outcome/ decision from August Supreme Court of Pakistan. So far intervening, period is concerned, the same shall be treated as leave of kind due subject to outcome/decision from August Supreme Court of Pakistan.

On their re-instatement in service, officer at S.No.2 Zahoor Elahi Senior Assistant Superintendent Jail (BPS-16) is hereby posted to Central Prison D.I.Khan against the vacant post and S.No.3 (warder Siddique Muhammad) is hereby posted to Sub Jail Dassu Kohistan against the vacant post.

> **INSPECTOR GENERAL OF PRISONS,** KHYBER PAKHTUNKHWA, PESHAWAR.

13015-107, WE. ENDST;NO.

Copy of the above is forwarded to :-

- 1. The Secretary to Government of Khyber Pakhtunkhwa Home and T.As Department Peshawar, for information.
- 2. The Superintendent, Headquarters Prison Haripur
- 3. The Superintendent Central Prison, Haripur, Mardan & D.I.Khan
- 4. The Superintendent, Sub Jail Dassu Kohistan
- 5. The Superintendent, Judicial Lockup Malakand
  - for information and further inecessary action A copy of judgement dated
  - 5-12-2017 of the learned Service Tribunal is enclosed herewith
- 6. The District'Accounts Officers concerned for information
- 7. The Registrar, Service Tribunal Khyber Pakhtunkhwa Peshawar for information .
- 8. Officers/official concerned for compliance.

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