

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

SERVICE APPEAL NO: 12453/2022

Muhammad Shoukat S/O Jan Nisar Ex Warder District Jail Abbottabad, (Home Address) R/O Mohallah Beerkund, Gondan P/O Beerkund Tarlan Tehsil and District Mansehra

.....PETITIONER

VERSUS

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent Circle HQ Prison Haripur.
3. Superintendent District Jail Abbottabad.

.....RESPONDENT

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3. Superintendent District Jail Abbottabad.

.....RESPONDENT

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT 1 to 3

Respectfully Sheweth,

Preliminary Objections:

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

OBJECTION ON FACTS:

1. Pertain to record hence needs no comments.
2. This para needs no comments.
3. Incorrect and not admitted. That the appellant has absented himself from duty without the prior approval of the competent authority, which is a gross violation being a uniform personal.

4. Incorrect and not admitted. That the appellant does not follow the Khyber Pakhtunkhwa Prison Rule 1082 and 1083, for the grant of leave. Moreover there is not rule for verbal leave. Copy of Rule 1082, 1083 is attached as **Annex-A**.
5. Incorrect and not admitted.
6. Incorrect and not admitted. That the appellant has willfully absented himself from duty and line without the permission of a competent authority. Under Rule 9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rule, 2011 a notice was issued to his home address letter No. 830 dated 27-04-2022, letter No. 919 dated 13-05-2020 and letter No. 1003 dated 29-05-2020 (Copy attached as **Annex B**) directing him to resume duty within the stipulated time. And after expiry of 15 days the appellant neither resume duty nor any intimation was received therefore, as required Under Rule 9 of ibid rule, a notice was published in two leading newspaper "Daily Aaj" dated 04-06-2020 and Daily Mashriq dated 23-06-2020. Copy attached as **Annex-C**. The appellant does not submit any oral and written defence/justificaion after publication of notice nor resume duty and in exercise of power conferred Under Rule 9 of ibid rule the competent authority award him major penalty of Removal from Service. Copy attached as **Annex-D**.
7. Incorrect and not admitted. That the appellant preferred his Departmental appeal before the competent authority, which was rejected by the competent authority being time barred and without any substance. Copy attached as **Annex-E**.
8. This para needs no comments.

OBJECTION ON GROUNDS:

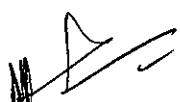
- I. Incorrect and not admitted. That the appelant was proceeded under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rule, 2011 after doing all the codal formalities under the rule.
- II. Incorrect and not admitted. That the appellant was proceeded Under Rule 9 for his willfull absence from duty and line. Detail reply has been given in para 6 of the facts above.
- III. Incorrect and not admitted. A notice was issued to his home address under the rule directing him to resume duties, but he failed to resume duties neither any intimation was received from the appellant.
- IV. Incorrect and not admitted. That the appellant was proceeded Under Rule 9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline)

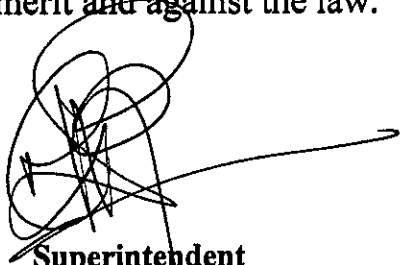
Rule, 2011 for his willfull absence from duty and line after doing all the codal formalities under the rules. Detail reply has been given in para 6 of facts above.

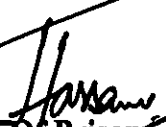
- V. Incorrect and not admitted.
- VI. Incorrect and not admitted. That the appellant does not fuollow the Rule 1082, 1083 of Khyber Pakhtunkhwa Prison Rule 2018. Copy attached.
- VII. Incorrect and not admitted. The answer has been given in para 6 of the facts above.
- VIII. Incorrect and not admitted. That the appellant himself admitted in para 6 of the facts of Service Appeal that he received the impugned order at his home address so how can he deny the notices to resume duties at his home address. Moreover, the publications in two leading newspapers "Daily Aaj" and Daily Mashriq is a clear justification that the appellant have the knowledge of departmental proceeding against him.
- IX. This para needs no comments.


PRAYER :

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


Superintendent
District Jail Abbottabad
 Respondant No. 3


Superintendent
Circle Headquarter Prison Haripur
 Respondant No. 2


Inspector General Of Prisons
Khyber Pakhtunkhwa, Peshawar
 Respondant No. 1


 06-01-2023

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

SERVICE APPEAL NO: 12453/2022

Muhammad Shoukat S/O Jan Nisar Ex Warder District Jail Abbottabad, (Home Address) R/O Mohallah Beerkund, Gondan P/O Beerkund Tarlan Tehsil and District Mansehra

.....PETITIONER

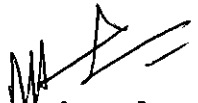
VERSUS

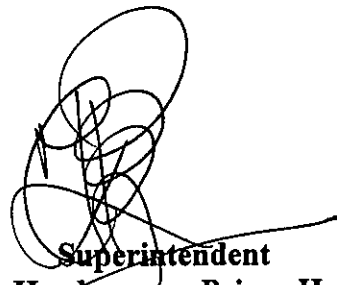
1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent Circle HQ Prison Haripur.
3. Superintendent District Jail Abbottabad.


.....RESPONDENT

COUNTER AFFIDAVIT ON BEHALF OF RESPONDANT NO. 1 TO 3


We the undersigned respondents do hereby solemnly affirm and declare that the contents of the Joint para-wise Comments in the above cited service appeal are true and correct to the best of our knowledge and belief and that no material facts have been concealed from this Honourable Service Tribunal.


Superintendent
District Jail Abbottabad
 Respondant No. 3


Superintendent
Circle Headquarter Prison Haripur
 Respondant No. 2


Inspector General Of Prisons
Khyber Pakhtunkhwa, Peshawar
 Respondant No. 1




 06-01-2023

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**GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT.**

NOTIFICATION

Peshawar, dated the .2018.

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

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

**Chapter-1
General Provision**

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

(2) It shall come into force at once.

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

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

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

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

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

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

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

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

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

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

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

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

1083. Absence caused by illness or other unavoidable cause.--- Whenever any subordinate officer is at any time prevented by sudden illness or other unavoidable cause, from attending the prison or performing his duties he shall forth-with give notice to the Superintendent along with his reasons for absence. The Superintendent shall then make suitable arrangements for the due performance of his duties.

7

Notice No 12

OFFICE OF THE SUPERINTENDENT
DISTRICT JAIL ABBOTTABAD
Ph/fax: 092-9310213
districtjailabbottabad@gmail.com

No. 9/9 Dated 13-05-2020

Warder Muhammad Shoukat S/ Janiser
Attached to District Jail Abbottabad
R/O Banda Ganga, Teshil and District Mansehra


Subject: NOTICE TO REPORT FOR DUTY

Memo.

In continuation to this office notice no 830 dated 27-04-2020

Your Warder Shoukat Ali has been deserted from duty and line from 07-04-2020. Furthermore this office is unaware about your whereabouts. This practice is gross negligence and you are strictly directed to report this office without further loss of time. Otherwise strict disciplinary action should be taken.

7/c


SUPERINTENDENT
DISTRICT JAIL ABBOTTABAD

OFFICE OF THE S/O
DISTRICT MILITARY ADJUTANT
Jalalpur Jalia
District Jalla-Abbottabad

No. _____ Date _____

Mr. Mubashir Ahmad Siddiqui S/O Jai Singh
residing in District Jalla-Abbottabad
Taluk Dherkund, Mandana
District Jalla-Abbottabad

FINAL NOTICE TO REPORT FOR DUTY

Reference is made to office letter No. 919 dated 5/10/2007
dated 20/10/2007.

It is noted that Mr. Mubashir Ahmad Siddiqui has been deserted
from the service of the Government of Punjab since 10/10/2007.
You are hereby notified that you are strictly directed to report
for duty on or before 10/10/2007. Otherwise strict disciplinary
action will be taken against you.

SUPPLEMENTARY
DISTRICT MILITARY ADJUTANT

9



OFFICE OF THE SUPERINTENDENT
CIRCLE HQs PRISON HARIPUR
No. 1685-Wet Dated 17/06/2020
Ph/Fax: 0995-920066-920055
E-Mail: centralprisonhr@gmail.com

To,

The Director Information,
Khyber Pakhtunkhwa, Peshawar.

Subject: DUTY NOTICE IN RESPECT OF WARDER MUHAMMAD
SHAUKAT S/O JANSAR ATTACHED TO DISTRICT JAIL
ABBOTTABAD.

Memo,

Enclosed please find herewith seven copies of duty assumption notices in URDU in respect of Warder Muhammad Shaukat attached to District Jail Abbottabad for publication in leading newspapers as per Government policy.

It is further certified that funds under head of Account (AO-39070 Advertisement Charges) are available to meet the expenditure on this account.

g/c
SUPERINTENDENT
CIRCLE HQs PRISON HARIPUR

Endst: No. 1696-97 1

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent District Jail Abbottabad for information with reference to the No. 1109 dated 16-06-2020.

g/c
SUPERINTENDENT
CIRCLE HQs PRISON HARIPUR

نوٹس غیر حاضری

آپ وارڈر محمد شوکت ولد رجان ناررہاٹی محلہ بھیرکنڈ گندان ڈاکخانہ
بیرکنڈ ترلان تحصیل ضلع مانسہرہ 07-04-2020 سے ڈسٹرکٹ جیل ایبٹ
آباد سے غیر حاضر ہیں اور تین نوٹس ہونے کے باوجود آپ ابھی تک ڈیوٹی پر
حاضر نہیں ہوئے۔

لہذا آپ کو اطلاع دی جاتی ہے کہ اس اشتہار کی اشاعت کے
پندرہ (15) دن کے اندر ڈسٹرکٹ جیل ایبٹ آباد میں حاضر ہو کر رپورٹ
کریں اور اپنی غیر حاضری کی منقول وجہ بتائیں۔ بصورت دیگر آپ
کے خلاف (E&D Rules 2011) کے تحت یکطرفہ کارروائی
(Ex-Parte Action) عمل میں لائی جائے گی جو کہ آپ کی ملازمت سے
برخاستگی پر منتج ہو سکتی ہے۔


سپرٹنڈنٹ

ہیڈ کوارٹر جیل ہری پور

12



FAX

OFFICE OF THE SUPERINTENDENT
DISTRICT JAIL ABBOTTABAD
Ph/fax-092-9310213
districtjailabbottbad@gmail.com

No 1109 Dated 16-6-2020

To,
The Superintendent
Headquarter Prison Haripur

Subject; REPORT IN RESPECT OF WARDER MUHAMMAD SHOUCAT S/O JANSAR ATTACHED TO DISTRICT JAIL ABBOTTABAD ABOUT HIS DISSERTATION.

Sir,
It is reported that warder Muhammad Shouqat S/O Jansar R/O Mohallah Beer Kund, Gondaan, P/O Beer Kund Tarlaan Tehsil and District Mansehra, has been deserted from line and duty w.e.f 07-04-2020.

This office has sent three notices on the home address (as mentioned on appointment letter) of concerned warder vide this office Notice No, 1003 dated 29-05-2020, Notice No 919 dated 13-05-2020 and notice No 830 dated 27-4-2020, but he failed to respond to above mentioned notices till date.

It is further added that this office is still unaware regarding his whereabouts.

Report is submitted for kind information and necessary action please

PP

MA 16/6
SUPERINTENDENT
DISTRICT JAIL ABBOTTABAD

Supdt
17/06/2020

1856
18/06/2020

13



OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQs PRISON HARIPUR

No. 2296- /-
Dated 22/07/2020 /-
Phone/Fax: 0995-920066

OFFICE ORDER:

WHEREAS, following accused Warders (BPS-07) attached to District Jail Abbottabad, were proceeded against, under Rules-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

S#	Name & Parentage	Date of Appointment	Absence Period	Report of Supdt Vide No & Date	Punishment
01	Nazir Ahmed S/o Gul Ahmed	07-10-2020	From 09-11-2019 to till date	No.986 dated 21-05-2020	Removal From Service
02	Muhammad Shaukat S/o Jansar	07-10-2019	From 07-04-2020 to till date	No.1109 dated.16-06-2020	Removal From Service

AND WHEREAS, after expiry of 15 days (Fifteen) the above mentioned warders neither resume duty nor any intimation was received from them, therefore, as required under Rule#09 of ibid rules, a notice was published in daily newspapers "Daily Aaj" dated.04-06-2020 & "Daily Mashriq" Dated. 23-06-2020 respectively, by directing them to resume duty within fifteen (15) days of publication of the notices. in response of published notices they did not resumed their duties as per directions nor submit any oral or written defense/justification of their misconduct.

AND WHEREAS, the accused warders failed to offer any plausible defense against their willful absence as mentioned above and since their conduct has been highly unsatisfactory which is willful absence from duty, their willful absence from duty for the above mentioned period stands established.

NOW THEREFORE, in exercise of powers conferred under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, the undersigned being Competent authority, hereby awards major penalty as mentioned above.

FURTHER, their absence period from duty will be treated as "extraordinary leave without pay."

SUPERINTENDENT
CIRCLE H.O. PRISON HARIPUR

Endst: No: 2297-2302 /

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Headquarter Prison Peshawar for information please.
3. The Superintendent District Jail Abbottabad for information with reference to the No. 986 Dated 21-05-2020. & No. 1109 dated. 16-06-2020.
4. DAO Abbottabad for information and necessary action please.
5. Warders Concerned at their home addresses C/O Superintendent District Jail Abbottabad.

SUPERINTENDENT
CIRCLE H.O. PRISON HARIPUR

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OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

91-9210334, 9210406 081-9213445

No. Estb/Ward-/Orders/ KE 32265

Dated 10-09-2020

ORDER

WHEREAS, Warder Muhammad Shaukat S/O Jan Nisar while attached to District Jail Abbotabad, was awarded the major penalty of "Removal from service" by Superintendent HQ Prison Haripur vide his order No. 2296 dated 22-07-2020 due to his willful absence from duty w.e.f 07-04-2020 to 22-07-2020.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the record of the case and it was observed that his appeal is badly time-barred and without any substance and penalty awarded to him by the competent authority due his willful absence from duty as referred to above after observing all legal and codal formalities as required under the E & D Rules 2011.

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 time barred and without any substance.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.

ENDST/NO. 32266-581.

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Haripur for information and necessary action with reference to his Order referred to above.
2. The Superintendent District Jail Abbotabad for information and necessary action. He is directed to inform the appellant accordingly and to make necessary entry in his Service Book under proper attestation.
3. Appellant, Ex-Warder Muhammad Shaukat S/O Jan Nisar C/O Superintendent District Jail Abbotabad for information.

ASSISTANT DIRECTOR
INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR