

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

SERVICE APPEAL NO. 1554 OF 2019

Muhammad Zahid Deputy Superintendent Jail, Central Prison Bannu..... (Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa and Others.

.....(RESPONDENTS).

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DEPONENT

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

In the matter of

Service Appeal No.1554/2019

Muhammad Zahid Deputy Superintendent Jail, Central Prison Bannu

.....(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar

2. Secretary to Govt. of Khyber Pakhtunkhwa Home and T.As Department Peshawar.

3. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar

.....(Respondents)

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 TO 3

Respectfully Sheweth

PRELIMINARY OBJECTIONS.

- i. That the appellant has got no cause of action against the Respondents.
- ii. That the present appeal of the appellant is incompetent in its present form.
- iii. That the appellant has got no locus standi to file against the respondent before this Honourable Service Tribunal.
- iv. That the appellant is estopped by his own conduct to file the instant appeal.
- v. That the appellant has not come to this Honourable Service Tribunal with clean hands..

Factual Objection.

- 1) Para I is related^s to the Service record of the appellant, ^{hence} no comments.
- 2) In response to Para No. 2 of the appeal, the appellant has served in various Jails and, was duty bound to manage proper Security arrangement so as to make the occurrence unsuccessful and to save the honour and dignity of the Prison but at that unfortunate night the appellant showed cowardice and negligence with regards to his duties, due to such conduct and negligence a number of militants attacked Jail who were equipped with weapons resultantly in escape of condemned prisoners from Jail. The appellant was duty bound to have had contact with high up's and to show resistance but the same was not done which is in efficiency on the part of the appellant which he could not deny.
- 3) Pertains to record, hence needs no comments.

- 4) Not admitted correct, the allegations levelled against the appellant were fully proved. He failed to provide leadership and ensure proper defense of Jail by his armed personnel's. He also failed to have contingency plan for Jail and could not ensure presence of night duty officer in Jail during attack in the light of above reasons the appellant deemed to be guilty of inefficiency & misconduct and is held responsible for the fateful incident. Proper show cause notice and charge sheet were also served upon him but he failed to defend his stance all the assertions levelled by the appellant are baseless and fruitless. (Show Cause and charge sheet is **Annex "A"**)
- 5) In response to para No. 5 of the appeal it is correct that he has been awarded major penalty of dismissal from service after thorough probe of the incident and his misconduct and negligence and after proper inquiry of the matter. (Dismissal order is attached **Annex-"B"**)
- 6) Pertains to record, hence no comments.
- 7) Correct & admitted to the extent that the appellant appeal No. 587 /2013 was partially excepted and remanded back to the concerned respondents to initiate fresh departmental proceedings and the back benefit were subject to the outcome of departmental proceedings.
- 8) In response to para No. 8 of the appeal the department initiated fresh departmental proceeding by the order of Hounrable Service Tribunal and the appellant was served upon proper charge sheet but he could not defend his stance through his reply and could not prove himself innocent, resultantly in proceedings against the appellant he was recommended for the said punishment (**Annex "C"**).
- 9) As elaborated in Para-4
- 10) In response to para No. 10 of the appeal, full opportunity of defense was given to the appellant and all the proceeding which was initiated against him was according to Law and after following all codal formalities.(Notice of personal hearing is **Annex "D"**)
- 11) In response to para No. 11 of the appeal, the punishment awarded to the appellant is lawful and based on facts and circumstances of the case.

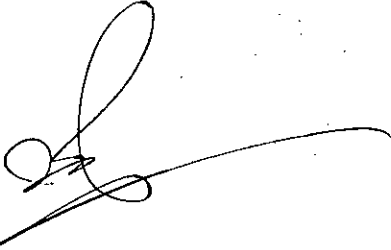
OBJECTIONS ON GROUNDS


- A) That the appellant was dealt with in accordance with Law and no discrimination with the appellant is made by respondents..
- B) Incorrect and not admitted as all codal formalities are completely followed during the whole proceedings.
- C) As elaborated in Para No.4 & 9.
- D) Appellant admitted himself that he has been served with proper show cause notice but the allegations which are levelled against him could not be defended by him and was proved against him.
- E) Not admitted Correct. The assertions levelled by the appellant are totally baseless. The appellant was duty bound to be vigilant while performing duties in such like high security prison, but he was remained inefficient and found negligent towards his duties and to handle such fatefull incident.
- F) As elaborate in Para No.2.
- G) Not admitted Correct. Answer is given in para No. "D" of the objection on ground.
- H) The appellant was awarded major penalty due to misconduct and inefficiency / gross negligence in the performance of his duties, resultantly the militants took full advantage and succeeded in Bannu Jail break on the night 14/15-04-2012 resultantly 381 prisoners including high profile prisoners were illegally released besides other damage to Jail building.
- I) In response to Para No. "I" of the grounds. It is correct that during dismissal period he was neither entitled for any remuneration and consideration and the punishment which was awarded to him was fully justified by Law, as evident from the departmental appeal order dated 11-04-2019 wherein it is clearly mentioned that the intervening period i.e form the dated of dismissal from service on the basis of early inquiry to the date of re-instatement in Service from (10.12.2016) in respect of appellant is treated as extra ordinary leave (Leave without pay).
- J) As a Superintendent Jail it was the main responsibility of the appellant to have vigilant eye's over the security measures and to make contingency plan as the same occurred due to lack of his leadership qualities and gross negligence and inefficiency in the performance of his duties which could not be denied by the appellant.
- K) In response to para No. "K" the same occurrence cannot be linked with the incidence took place at other place which was different and not of similar nature.
- L) Not admitted correct answer is given in Para NO. "D".
- M) In response to para No. "M" of the grounds of appeal the respondents did not committed any discrimination to the appellant. His punishment it is

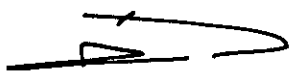
- only to the extent of his gross negligence & inefficiency as the appellant shown in the performance of his sensitive & responsible nature of duties.
- N) Answer is elaborated in Para No. "M" of the objection on grounds.
- O) In response to para No. "O" of the grounds of appeal is subject to the discretion of this Honourable Tribunal keeping in view all circumstance and all sort of allegations levelled against him.
- P) Answer is given in para No. "O" of the objections on grounds.
- Q) In response to Para No. "Q" all sort of initiative which was taken against the appellant was completely according to Law and no discrimination has been committed by respondents.
- R) No Comments.
- S) Not admitted Correct. Answer of this para is elaborated in Para No. "M" of the objection on grounds.
- T) No Comments.
- U) No Comments.

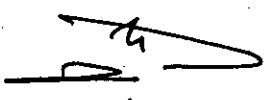
PRAYERS

It is most humbly prayed that on the acceptance of this instant reply in the above service appeal on behalf of respondents the instant service appeal in hand may graciously be dismissed being devoid of Law and merit.


INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa Peshawar
(Respondent No.3)


24.02.2020


SECRETARY TO GOVERNMENT.
of Khyber Pakhtunkhwa
Home & T.As Department Peshawar.
(Respondents No.2))


GOVT OF KHYBER PAKHTUNKHWA
THROUGH CHIEF SECRETARY
Khyber Pakhtunkhwa Peshawar.
(Respondents No.1)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

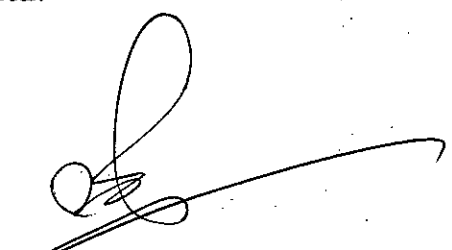
In the matter of
Service Appeal No.1554/2019
Muhammad Zahid Deputy Superintendent Jail, Central Prison Bannu
.....(Appellant)


VERSUS


1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar
2. Secretary to Govt. of Khyber Pakhtunkhwa Home and T.As Department Peshawar.
3. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar
.....(Respondents)


COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS NO. 1 TO 4.

We the undersigned respondents do hereby the solemnly affirm and declare that the contents of the Para-wise comments on the above cited Service Appeal are true and correct to the best of our knowledge and belief and that no material facts has been kept secret from this Honourable Tribunal.


INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa Peshawar
(Respondent No.3)


24.02.2020


SECRETARY TO GOVERNMENT.
of Khyber Pakhtunkhwa
Home & T.As Department Peshawar.
(Respondents No.2)


**GOVT OF KHYBER PAKHTUNKHWA
THROUGH CHIEF SECRETARY**
Khyber Pakhtunkhwa Peshawar.
(Respondents No.1)

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Ann. - A

SHOW CAUSE NOTICE

I, Ghulam Dastgir Akhtar, Chief Secretary Khyber Pakhtunkhwa, as Competent Authority under the Khyber Pakhtunkhwa Government Servants (E&D), Rules, 2011 do hereby serve you, Mr. Muhammad Zahid, the then Deputy Superintendent-cum-Superintendent (BPS-17) Central Prison Bannu as follows:-

1. That consequent upon the findings of the Inquiry Report regarding militants attack on Bannu Jail, you have committed the following acts of commission/omission specified in Rule-3 of above mentioned Rules:-

- a. Failed to properly deploy FRP, leaving front exposed.
- b. Failed to provide leadership and ensure proper defence of jail by his armed personnel.
- c. Failed to have Contingency Plan for Jail.
- d. Failed to ensure presence of Night Duty Officer in Jail during attack.
- e. Failed to ensure the presence of deployed staff in jail during the fateful night.

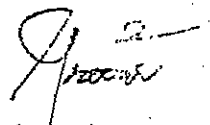
2. By virtues of the above, you appear to be guilty of inefficiency and misconduct and have made yourself liable to penalties specified in Rule-4 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011.

3. And whereas in exercise of powers Rule-5(1)(a) of the same Rules, I am satisfied that sufficient evidence is available in the aforementioned inquiry report warranting to dispense with further inquiry.

4. Now, therefore, I Ghulam Dastgir Akhtar Chief secretary Khyber Pakhtunkhwa, Competent Authority, call upon you through this Notice to explain why the major penalty of dismissal from service should not be imposed upon you.

5. Your reply must be received within seven days of receipt of this Notice, failing which it will be presumed that you have no defence and in that case ex-parte action shall be taken against you.

6. A copy of the relevant extract of the inquiry report is enclosed.


(GHULAM DASTGIR AKHTAR)
CHIEF SECRETARY,
KHYBER PAKHTUNKHWA

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✓ Approved 9

CHARGE SHEET

I, Abid Saeed, Chief Secretary Khyber Pakhtunkhwa, as competent authority, hereby charge you Mr. Muhammad Zahid, as follows:

That you, while posted as Deputy Superintendent-cum-Superintendent Central Prison Bannu and according to findings of the Inquiry Commission regarding militants attack incident on Central Prison Bannu the night between 14/15-4-2012, you have committed the following irregularities/omissions:

- i. To act on prior intelligence conveyed by DCO.
 - ii. To inform police and civil administration.
 - iii. To have Contingency Plan for Jail.
 - iv. Due to your inefficiency /gross negligence in the performance of duties, the militant took full advantage and succeeded in Bannu Jail break on the above night and resultantly 381 prisoners including high profile prisoners were got released, beside other damages.
2. By reason of the above, you appear to be guilty of inefficiency/misconduct under rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule-4 of the rules ibid.
3. You are, therefore required to submit your written defence within seven days of the receipt of this Charge Sheet to the Inquiry Officer, as the case may be.
4. Your written defence, if any, should reach 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.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.

Abid Saeed
12/11/2017

(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA

DISCIPLINARY ACTION

I, Abid Saced, Chief Secretary Khyber Pakhtunkhwa, as the competent authority, am of the opinion that Mr. Muhammad Zahid Deputy Superintendent Jail (BPS-17) presently attached to Sub Jail Dassu Kohistan has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

While he was attached to Central Prison Bannu as Deputy Superintendent -cum- Superintendent and according to findings of the Inquiry Commission regarding militants attack incident on Central Prison Bannu on the night between 14/15-4-2012 he failed:-

- i. To act on prior intelligence conveyed by DCO.
- ii. To inform police and civil administration.
- iii. To have Contingency Plan for jail.
- iv. Due to his inefficiency /gross negligence in the performance of duties, the militants took full advantage and succeeded in Bannu Jail break on the above night and resultantly 381 prisoners including high profile prisoners were got released, beside other damages.

2. For the purpose of inquiry against the said accused with reference to the above allegations, an Inquiry Officer/Inquiry Committee, consisting of the following is constituted under Rule-10(1)(a) of the ibid rules:-

- i. Mr. Tasleem Khan
- ii. _____

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to the punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Inquiry officer/Inquiry Committee.

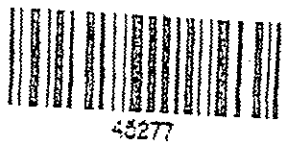
Abid Saced
12/1/2017

(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

Annex C
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Dated Peshawar the December 10, 2012

ORDER

SO(Com/Eng)/HD/1-40/2011 WHEREAS, The following officers of the Inspectorate of Prisons, Khyber Pakhtunkhwa; now under suspension, were proceeded against under rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the charges mentioned in the show cause notices dated 14/06/2012, served upon them individually.

AND WHEREAS, the competent authority i.e the Chief Secretary, Government of Khyber Pakhtunkhwa granted them an opportunity of personal hearing as provided for under Rules ibid.

NOW THEREFORE, the competent authority (The Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, the explanation of the accused officers and affording an opportunity of personal hearing to the accused, findings of the enquiry committee and exercising his power under rule-3 read with Rule-14 (5) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 has been pleased to pass the following orders noted against the name of each officer with immediate effect;

S.No	Name & Designation	Orders
1.	Mr. Usman Ali (BPS-17), The then Deputy Supdt-cum-Superintendent, Central Prison Bannu.	Exonerated
2.	Mr. Muhammad Zahid (BPS-17), The then Deputy Supdt-cum-Superintendent, Central Prison Bannu.	Dismissal from Service.
3.	Mr. Shah Salman (BPS-17), The then A.I.G Prison, Khyber Pakhtunkhwa.	He is counselled to be a little more careful in processing cases.

SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA HOME DEPARTMENT

Endst. No. SO(Com/Eng)/HD/1-40/2011, Dated Peshawar the December 10, 2012

Copy of the above is forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Inspector General of Prisons, Inspectorate of Prisons, Khyber Pakhtunkhwa Peshawar.
4. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
5. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
6. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
7. Officers concerned.

[Handwritten signatures and stamps]

SECTION OFFICER (Com/Eng)

10/12/12

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Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department.

ORDER

No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I: WHEREAS, Muhammad Zahid Deputy Superintendent Jail (BPS-17) of the Prisons Department, Khyber Pakhtunkhwa, was proceeded against under Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet served upon him.

AND WHEREAS, the competent authority i.e the Chief Secretary, Khyber Pakhtunkhwa appointed Mr. Tasleem Khan (PMS-BS18) Deputy Commissioner Haripur vide order No.SO (Com/Enq)/HD/1-40/2012 dated 23.01.2017 for conducting denovo formal proceedings against the above named accused.

AND WHEREAS, the inquiry officer furnished his findings according to which the charges leveled against the above named accused officer stand proved.

AND WHEREAS, the competent authority granted opportunity of personal hearing to the accused under the rules.

NOW THEREFORE, the competent authority (the Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, the explanation of the accused officer, findings of the inquiry officer exercising his powers under rule-3 read with Rule-14 (5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to award major penalty of "Reduction to a lower stage in a time scale for a maximum period of three (03) years" to the above named accused officer.

The Competent Authority has further been pleased to order that the intervening period i.e from the date of dismissal from service on the basis of an earlier enquiry to the date of reinstatement in service (from 10-12-2012 to 20-01-2016) in respect of the officer is hereby treated as extra ordinary leave (leave without pay).

Secretary to Government of Khyber Pakhtunkhwa
Home & Tribal affairs Department

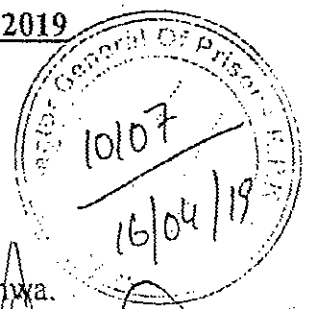
Endst No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I:

Dated 11.04.2019

C.c: -

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar
3. PSO, to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
4. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
5. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
6. District Account Officer concerned.
7. Officer concerned.

(Maqsood Hassan)
Section Officer (P&R)



17/4/19

1

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 1554/2019

Muhammad Zahid, Deputy Superintendent Jail, Central Prison
Bannu.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.
2. Secretary Home and Tribal Affairs Department, Khyber
Pakhtunkhwa, Peshawar.
3. Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Submitted:

The appellant submit his rejoinder as under:

Preliminary Objections:

1. That the appellant has got cause of action against the respondents.
2. That the present appeal of the appellant is competent in its present form.
3. That the appellant has locus standi and got cause of action to file the instant appeal.
4. That the rights of the appellant is illegally being infringed by the respondents and he has rightly filed the instant appeal.
5. That the appellant has not conceal any material facts from this honourable and approached this honourable tribunal with clean hands.

ON FACTS:

1. Contents of Para No 1, needs no reply.
2. Contents of Para 2 of the rejoinder is incorrect, a very comprehensive detailed according to the facts and circumstances was given in para 2 of the facts of the appeal.
3. Contents of Para 3 need no reply.
4. Contents of Para 4 of the comments is incorrect hence denied, a false and fabricated case was sum up against the appellant and on the basis of which the so called inquiry and then show cause notice was issued which was duly replied and denied by the appellant.
5. Contents of Para No 5, of the comments admitted the stance of the appellant whereby after the dismissal/final order inquiry was initiated.
6. Content of Para No 6, of the comments was also admitting the stance of the appellant whereby the departmental appeal was not responded despite the laps of the statutory period.
7. Contents of Para 7 of the comments admitted the stance of the petitioner whereas the petitioner was reinstated by the honourable Service Tribunal kpk Peshawar whereby to conduct the fresh proceedings i.e. regular inquiry but unfortunately due to Malafide intention nor regular inquiry was conducted and illegally the appellant was dismissed from service.
8. Contents of Para 8, of the comments is incorrect and misleading the illegality and Malafide intention was very much clear from the acts and omission of the respondents whereby taking final order of the dismissal and then ordering for the inquiry proceeding.
9. Contents of Para 9 is incorrect and misleading, As clearly explained in the main appeal.
10. Contents of the Para 10 of the comments is incorrect and misleading nor proper and legal formalities was taken by the

respondents while awarding the major penalty to the appellant

11. Contents of the para 11 of the comments is incorrect and misleading the impugned order is illegal, unlawful and without lawful authority.

GROUND:

All the grounds taken are legal and will be argue at the time of hearing

It is, therefore, Most humbly prayed that the *Service Appeal*, of the appellant may please be accepted as prayed for.

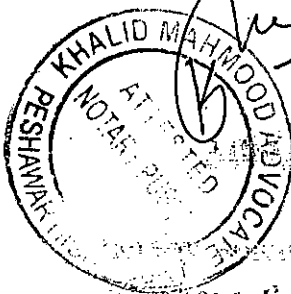
Appellant

Through

[Signature]
ZARAJANWAR
Advocate Peshawar

Affidavit

I, do hereby solemnly affirm and declare that the contents of the *above Rejoinder* are true and correct and that nothing has been kept back or concealed from this Honourable Court.



Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M. No. _____/2019

In

Service Appeal No. 4554 /2019

Muhammad Zahid.....Appellant

V E R S U S

Govt. of KPK through Chief Secretary & others.....Respondents

I N D E X

S#	Description of Documents	Annex	Pages
1.	Application for placement of record		1-2
2.	Copy of relevant documents		3-27

Through

Applicant/Appellant

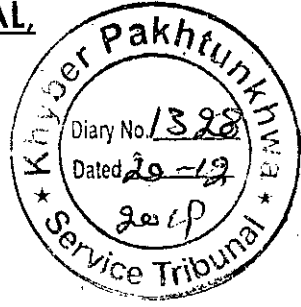

Zartaj Anwar

Advocate High Court

Cell No.0331-9399185

Dated 20.12.2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



C.M. No. _____/2019

In

Service Appeal No. 1554 /2019

Muhammad Zahid.....Appellant

V E R S U S

Govt. of KPK through Chief Secretary & others.....Respondents

APPLICATION FOR PERMISSION TO PLACE ON FILE
CERTAIN IMPORTANT DOCUMENTS


Respectfully Sheweth:

1. That the titled service Appeal is pending before this Hon'ble Court which is now fixed for today i.e. 20.12.2019.
2. That the applicant/ Appellant wants to place on file certain important documents which are necessary for a just and fair decision of the titled Appeal.

It is, therefore prayed that by accepting this application, applicant may please be allowed to place on file those annexed important documents which are necessary for a just & fair decision of instant Appeal.

Through

Applicant/Appellant


Zartaj Anwar

Advocate High Court

Dated 20.12.2019

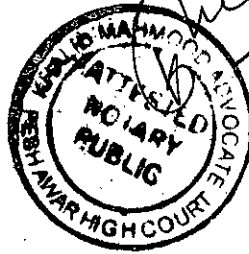
Put up to the court with relevant appeal.

Reedus

20/12/19

AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



[Signature]
DEPONENT

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دے ڈیوٹی سپرٹنڈنٹ انوائزی رپورٹ

DEPARTMENTAL / INQUIRY PROCEEDINGS AGAINST MR. MUHAMMAD ZAHID, THE THEN DEPUTY SUPERINTENDENT-CUM-SUPERINTENDENT, CENTRAL PRISON, BANNU PRESENTLY SUPERINTENDENT, SUB-JAIL KOHISTAN.

Background:

The Competent Authority i.e. Hon'able Chief Secretary, Khyber Pakhtunkhwa was pleased to appoint the undersigned as Inquiry Officer under Rule-10 (1) (a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, which was conveyed vide Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Peshawar order No. SO (Com/Enq)/HD/1-40/2012 dated 23.01.2017 with the mandate to inquire into the following allegations levelled against Mr. Muhammad Zahid, the then Deputy Superintendent-cum-Superintendent, Central Prison, Bannu presently Superintendent, Sub-Jail Kohistan as reflected in Charge Sheet / Statement of Allegations: -

- i. To act on prior intelligence conveyed by DCO.
- ii. To inform Police and Civil Administration.
- iii. To have Contingency Plan for jail.
- iv. Due to his inefficiency/gross negligence in the performance of duty, militants took full advantage and succeeded in Bannu Jail break on the above night and resultantly, 381 prisoners including High Profile Prisoners were got released, besides other damages.

Proceedings:

In pursuance of the direction contained in Para-4 of the Charge Sheet, the accused Officer Mr. Muhammad Zahid submitted his written defense vide letter No. 90/WE dated 10.02.2017 (Copy attached as Annexure-A). The accused Officer was also summoned to appear before the undersigned on 25.02.2017 at 09:30 AM for inquiry proceedings. Mr. Abdul Raziq, Assistant Superintendent, Central Prison Bannu also attended the proceedings as departmental representative as authorized by Superintendent, Central Prison Bannu vide letter No. 996 dated 24.02.2017 under the directive of the Inspector General of Prisons, Khyber Pakhtunkhwa. The accused Officer attended the office of the undersigned on 25.02.2017.

Statement of the accused Officer recorded who stated on oath that he has 30 service at his credit and was promoted as Deputy Superintendent in 2009 and was posted at Central Prison Bannu however he was given the charge of Superintendent, Central Prison Bannu on 20.02.2012 and continued till fateful night of occurrence, while responding the questions asked as under (Original questions & answers are attached as Annexure-B): -

Q.1: On mid-night of 14/15 April, 2012, the terrorists / militants invaded on Central Prison, Bannu at 01:15 AM, he being the Superintendent Jail should highlight his obligations which the law vested in him? To what extent he discharged his assigned duties / obligations / responsibilities?

Ans: The attackers attacked on Central Prison, Bannu at 01:15 AM, at that time there was no light due to load shedding. He was present at his official residence and was asleep. Whereas, Mr. Jalat Khan, Assistant Superintendent Jail was performing the duty as Night Duty Officer (NDO) in the Jail as per provisions of Pakistan Prison Rules. The nature of duty of NDO is to round the jail to keep surveillance over staff and prisoners. The Jail Superintendent / accused Officer had no load-shedding schedule, there was no facility of generator available in the jail. In dark, they either use mobile light or torch to run the affairs. When Talibans attacked on Jail, he was sleeping at his residence and awoke up after hearing the intense sounds of explosion / firings. There is a distance of about 300 meters between the jail and his official residence. On hearing the sound of explosion / firings, he immediately left the house and proceeded towards residential colony instead of jail and within 10 minutes he established contact at gate through his mobile phone. He does not remember the name of official to whom he talked at gate, howbeit, there was duty of two Sentries. He inquired about the incident. At that time, firing was in progress. He does not recall PTCL phone number now. The telephone became out of order when attempted second time to establish contact. He tried to contact with Police Station and Police Control but their phones were found engaged. The NDO had already informed the Police. The attackers attacked the jail at 01:15 AM and remained continued till 03:00 AM. He came out

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of his official residence within 10 minutes after hearing the unprovoked firing / hand grenade sounds. He met the NDO at Jail Residential Colony. The NDO was accompanied by two Assistants Superintendent Jail, Mr. Amin-ul-Haq and Mr. Riaz Khan. He was living there along with his son having age 15/16 years and his Sentry namely Jamshaid was performing duty at his bungalow without arm. As soon as, he reached the Main Gate when the terrorist attack was over, after a few minutes, Police and Army also came.

Q.2: You have been charged that DCO Bannu sent you an Intelligence Report regarding the attack on Bannu Jail as there was a heinous crimier Mr. Adnan Rasheed, a high profile terrorist who attacked on President Musharaf besides others was confined but you did not comply with the contents of the threat conveyed by DCO Bannu nor took any special precautions, what is your stance in this regard?

Ans: Jail Management had been receiving general threat letters from different agencies but regarding a threat letter endorsed by DCO Bannu containing jail threats, he does not know about that very reference. He had already informed / told about this to five members committee headed by Dr. Ehsan-ul-Haq which conducted preliminary inquiry into the incident. He is not yet clear as to where was that particular reference. It is correct that there is close liaison between Superintendent and Deputy Superintendent Jail in various matters of coordination and consultation. The instructions either written / verbal duly received by Superintendent Jail are marked to Deputy Superintendent Jail who prepares the reply or takes wanted action under the information / signature of the Superintendent Jail. It is correct that Adnan Rasheed, a high profile convict was confined in the jail, due to his confinement, internal situation in the jail was tensed. They were facing internal disturbance and external dangers due to his availability in the jail. For his shifting from the jail, they took up case with the Government of Khyber Pakhtunkhwa through Inspector General of Prisons, Khyber Pakhtunkhwa.

Q.3: On 06.01.2012, vide Diary No. 411-17, National Crisis Management, Interior Ministry of Pakistan emphasized that Bannu Jail is under attack by a group of terrorists/militants for getting flee the terrorists confined in Bannu Jail for which they have planned. Vide Diary No. 963-74/NC dated 13.01.2012, it was informed that about 300 duly armed terrorists / warriors have entered in the limit of Police Station Bannu from Saman Khel area Bannu who have been viewed / witnessed on receiving the these two important confidential reports as referred above, what remedial measures were undertaken by the Jail Management? To whom they corresponded with to overcome the expected threat / attack and what steps the Jail Management took?

Ans: He is not cognizant about the specific date and threat reports. However, there have been general letters of such nature which were received time to time. He does not know about the referred letters and the Superintendent Jail of that time Mr. Usman Ali Khan did not disclose the same. No meeting with regard to the reported diaries was held. It is correct that such diaries are also referred in the report of 5 members committee on Page-6. It is correct that based on these referred confidential reports, he was removed from service, which was challenged before the Service Tribunal. He still does not know about the dairy number and date of said references which have also not been mentioned in his show cause notice.

Q.4: It was your moral / legal obligation to intimate Police, Civil Administration, IGP, Provincial Government and Security Agencies about the threat letters received vide Diary No. 411-17 and No. 963-74/NC dated 06.01.2012 and 13.01.2012 respectively, other threat alerts also received, did you inform and coordinate with these authorities?

Ans: He does not know the specific dates of the threat letters and even the same has not been mentioned in the show cause notice given to him.

Q.5: Did you prepare the Contingency Plan regarding Jail Security in the capacity of Superintendent Jail? Did you hold meetings with security agencies, Civil Administration and Police during your posting between 20.02.2012 to 15.04.2012? Any proof in this regard?

Ans: During this period as Superintendent Jail, he neither prepared Contingency Plan nor sought help from any department / agencies or held special meetings / showed concern over security issues.

Q.6: Give detail of security staff, arms and FRP personnel. Were they deployed at the night of incident? Explain his position with regard to this.

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There was 145 Jail Security personnel and they all were present at the time of incident. FRP provided 40 Sepoy, 4 Head Constables and 1 ASI at the ratio of 1:4:40 and at the time of incident, 20/22 personels were present on duty. The detail of jail weapons / arms is as under: -

S.No.	Type of Weapon	Numbers	Ammunition
1.	AK-47	19	2000 approx.
2.	Rifle-303	10	1000 approx.
3.	China Rifle	15	1000 approx.
4.	LMG Rifle	4	2000 approx.

Out of above mentioned weapons, 4 AK-47 Rifles were un-serviceable besides, the staff of FRP had their own weapons, however, at the time of incident only 22/23 personnel were on duty having their own arms. About rest of the FRP men, he cannot say where were they. This detail can be had from FRP management. My Jail Staff, who was on duty at the time of occurrence, are detailed below: -

1. Two Constable duly armed with AK-47 Rifles with 30 cartridges were deployed on Outer Phattak one was Mir Liaq while he does not remember the other one.
2. Two personnel were deployed on duery out of which one had 303 Rifle with 30 cartridges while the other was un-armed. One front Sentry was present outside main gate duly armed.
3. The Jail has 4 Watch Towers, 1 each on front 2 at the back corners having one warder each duly armed with LMG Rifle with 30 cartridges. The distance between each tower is around 300 meters. The distance between the Main Gate and each Watch Tower is around 150 meters. Likewise, there is no communication system between the Watch Towers and other deputed staff, however, in case of emergency, the NDO and the constables inside the jail orally contact with each other. Besides the Watch Towers, at every 100 meters distance, un-armed Jail Security Staff remain present and 6 personnel of FRP duly armed performed the duty at appropriate distance outside the jail wall. Their presence, vigilance and mental alertness is checked by a Round Officer and Patrolling Officer. He does not remember the names of the Security Staff who were on duty on the day of incident. Similarly, he does not remember the names of the constables who were on duty in Watch Towers. The duties of FRP Staff were assigned by their commander as per schedule about which he had no knowledge.

Q.8: According to your statement, you had 145 Security Staff whereas, as per deployment detail given above, only 11 warders were on duty. What do you say about remaining 137 officials?

Ans: He thinks 35/36 were on duty because as per law, their duties are assigned for specific period / shifts and he is unable to give details of staff on duty at every duty point in jail, however, the duty roaster of the staff was being issued under his approval for whole month.

Q.9: Did you make appointment of security staff deployed at Main Gate Picket as per provisions of Rule-1152/1153 of the Prison Rules whereby preference should have been given to ex-soldiers? Did you follow the said rules fully? At the night of incident, how much security personnel were performing duties at different positions? What was their skill/experience in light of the referred rules?

Ans: No ex-soldier was available, as regards the strength of deployed security staff is concerned, they were deployed as per Rules-1152/1153.

Q.10: Prison Rules-939/940 specify the duties of the Superintendent Jail in general, did you observe these two rules which have been framed under Prison Act-1894 for the discipline, security and betterment of the jail?

Ans: During the period from 20.02.2012 to 15.04.2012, he took charge of Superintendent Jail and assigned the duty of Deputy Superintendent Jail to one Mr. Amin-ul-Haq, Senior Assistant Superintendent Jail. He had given verbal instructions to staff / officers working under him but he did not hold any meeting specifically with regard to the Jail Security or issued written instructions or sought help.

Q.11: Under Prison Rules-1154 (d), duties of Sentry have been mentioned specifically in sub-provisions (d) not to leave his post without regular relief upon any pretext whatsoever, (e)

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not to allow any person to approach his post after dark, without challenging, (g) challenging on a dark night, on hearing voices or the approach of footsteps, if he receives no answer, or an unsatisfactory answer, to call the officer incharge of the picket, or, if necessary, give the alarm, (i) not to allow any person to crowd around him, (j) if he sees a person attempting to escape, to call on him to stand, and if he refuses to do so and there is no superior officer present, to fire on the prisoner, provided, he cannot otherwise prevent the escape, (k) if he is beyond call and has to raise the alarm, to fire a shot in the air as the signal for alarm and (l) if he sees any article in or near the jail likely to facilitate, escape, or if any unusual incident comes under his observation, at once report the matter to the officer incharge of the picket, did you ever follow these provisions for exercising vigilance / command over the duty staff being sole judge of sentry? Whereas the general duties of Warders are defined in Rule-1147 (a) render all assistance in his power in the management of the prison, the maintenance of order and discipline amongst warders and prisoners, the guarding and defending of the prison and all persons and property kept therein or belonging thereto against the use of criminal force by any person, (b) obey the orders of all officers superior to him in rank, (c) comply with all rules, regulations and orders regulating the duties which he is to perform and the manner in which he is to perform them, comment.

Ans: It is correct that the staff deployed on duty on the night between 14/15.04.2012 was properly ordered, if they did not perform their assigned duties as per their duty charter as mentioned in the respective code/rules, they themselves would be held responsible / liable.

X Q.12: Rule-512 (v) provides that the patrolling officers while patrolling the main wall should ensure that warders and convict officers are alert and watch towers sentries are vigilant. Whereas, Clause (vii) provides that the patrolling officer should raise alarm and send immediately information to the Assistant Superintendent on night duty and the Deputy Superintendent of any untoward occurrence requiring prompt action, such as an escape, riot, fire etc. Did they comply with these provisions?

Ans: At that very night, Mr. Aminullah was performing the duty of Round / Patrolling Officer, he was bound to inform the officers concerned, he did not know as to whether he intimate them or not, he himself can explain the position.

Q.13: How much sentries are required to be deployed on watch tower duly armed to cope with the alarming situation?

Ans: It is correct that under Rules-728, just one sentry performs duty on watch tower and they did not deploy more than one sentry to avoid unnecessary conversations with each other.

X Q.14: Did you ever visit to front picket to check the security staff posted there ensuring they are able to cope with the emergency at front tower and whether they are able to resist the attackers at a distance for avoiding any untoward incident/gravity situation?

Ans: During day light, they were able to watch to the limit of their visual angle and at the time of untoward incident, there was no light due to load-shedding and they could only see the limited area falling in their range.

X Q.15: Mr. Jalat Khan NDO met you in residential colony after 05/10 minutes as you stated earlier, if so is the situation, can you say that NDO was on duty in jail or came out from his house after hearing the firing etc?

X Ans: While, he (Superintendent Jail) came out from his house on hearing the firing sound, Mr. Jalat NDO and Riaz Khan Assistant Superintendent and Amin-ul-Haq Assistant Superintendent met him in front of the residential colony.

Q.16: According to his statement, 11 duly armed security personnel were performing duties at different positions, did they open fire upon 150 terrorists/militants, if so, did they find any empties from the site? Did any detail available with the Koath Jamadar / Armory which they deposited as per rule with him and made entries in stock register?

Ans: He was told by warders that they fired on attackers but despite that they took away 381 prisoners from the Bannu Jail and due to their firing no one including attackers, prisoners/jail

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staff got any injury. The Police collected the empties etc detail of which is not available with him.

Q.17: Did he ever carry out any mock exercise during his posting as Superintendent/Deputy Superintendent Jail? Is there any District Security Advisory Committee? Any meeting conducted by committee on monthly basis to highlight security lapses of Jail premises?

Ans: Neither mock exercise nor any meeting was held during the time of his posting in Central Prison, Bannu.

Q.18: In the light of the queries made above, it can be said that he did not perform his duty as per Pakistan Prison Rules/Act, resultantly, the attackers succeeded in getting escaped 381 prisoners which cast negative shadow / projection upon Government as well as all other concerned. Is it correct?

Ans: He stated in categorical terms that within the limited resources / means he tried his level best to run the jail affairs smoothly but the strength / equipment was insufficient to combat with the terrorists / militants, he has no flaw. He accepts the contents of the above recorded statement.

Heard and accepted.

Findings / Recommendations:


1. Under the Pakistan Prison Rules-939, 940, and 971 (special precautions for security) he was responsible to run the affairs of the Central Prison, Bannu strictly in accordance with the laid down provisions but due to his incompetence, inefficiency and slackness, shouldering the responsibilities to his subordinates instead of owning the same rather did exert control and check over sub-ordinate staff.
2. He did not take up case with the relevant authorities to take precautionary measures to avert any threat alert which reflects that he was / is potential-less Officer having no capability / vision to exercise control, vigilance and assigned responsibilities or forestall any threat.
3. He did not act upon the intelligence report conveyed to him by the authorities, established no contact with Police and Civil Administration, failed in preparing the Contingency Plane for Jail, due to his negligent / inefficient act / performance, the militants / terrorists succeeded in getting escape their wanted Prisoners from the Jail without any resistance.
4. He even did not arrange necessary equipment for Jail required to cope with the any eventuality / emergency situation.
5. All the accused Warders admitted that they were not provided with torches, whistles & bulletproof jackets. Being head of the Jail, he even did not bother to take up a case with the high ups. The warders in their statement disclosed that FRP personnel were not present on duty on fateful night, at the most would remain absent, being incharge he never bothered to inform the authorities concerned, despite high security risk. In this regard, statement of Aminullah, Outer Round Officer and Hafiz Mir Hussain Shah, Front Sentry are very much relevant, meaning thereby that Mr. Muhammad Zahid had never undertaken any surprise visit to check the security situation / deployment of forces at nights. The statement of Mr. Aminullah, Outer Round Officer that while performing his duties, he never saw night officer Mr. Jalat Khan. This was corroboratively confirmed by Hafiz Mir Hussain Shah. All this shows that every official was performing duties according to his own convenience whims and wishes, both the officials who were performing duties outside were without torches and whistles, which shows sheer negligence on the part of the Officials, Head Warden, Incharge of Armory as well as Superintendent who never bothered to arrange lights for Warders as envisaged in Rule-717 (iv) and Rules-1145 (g) (k) (c) Mr. Gul Mir Dali who was assigned the duties of compound Sentry was also without torch and whistle.

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Most importantly, no official watch tower / picket was available on main gate to view / observe any untoward situation, movement of vehicles, flow of traffic towards main gate but being a senior responsible Officer, Muhammad Zahid did not bother to have installed sand bags picket over main gate and properly manned could have been proved more effective as mentioned in Rule-1153. There was no proper mechanism of communication available between Tower Warders, Outer Round Officer, Main Gate Warders, Front Sentry, Compound Sentry etc.

7. This lack of communication made an easy access of terrorists to Jail who got escaped 381 Prisoners including high profiles besides damages to Jail. Despite the facts that high profile terrorist lodged in the Jail and he was fully aware of the security situation elsewhere in the country and specially in the surrounding area, he did not bother to have made any written request to any forum i.e. DPO, DCO, Commissioner, IG Prisons for help, equipments, manpower etc right from his assumption of charge till incident.
8. Regarding regulation of duties of Warder Guard, Rule-1135 provides that the general duties of watch and ward, the posting and duties of guards and sentries, the fixing of their periods of duty and heir strength, and all matters relating to the protection of prisoners and the prison and the duties of warders and like, shall be regulated by the Superintendent in accordance with the orders of the Inspector General. In emergent cases or matters about which no provision has been made in any such order, the Superintendent shall use his own discretion.
9. Rule-971 provides that the Superintendent shall use his discretion in ordering such special precautions as may be necessary for the security of any important or dangerous prisoner, whether he has received any warning from the Magistrate or not. As the Superintendent is the sole judge of the measures necessary for the safe custody of the prisoner, he shall be responsible for seeing that the precautions taken are reasonable sufficient for purpose. Rule-1153 deals with main gate picket which provides that (i) Three warders and one senior warder shall form the main gate picket. They should be specially selected and as far as possible be ex-soldiers. Their duties shall be changed after every four hours (ii) A check post shall be established at a reasonable distance from the main gate to check the Motor Vehicle and other traffic before they are allowed to approach the main gate of the Jail. In his statement, Muhammad Zahid admitted the 06 FRP personnel duly armed would remain deployed outside the wall of Jail but this mechanism was not in place on fateful night as disclosed in statements of Aminullah, Outer Round Officer and Hafiz Mir Hussain Shah, Front Sentry.
10. The charges levelled against the accused officer Mr. Muhammad Zahid the then Deputy Superintendent-cum-Superintendent, Central Prison, Bannu presently serving as Superintendent, Sub-Jail, Kohistan have been proved beyond any shadow of a doubt. He therefore, deserves imposition of major penalty under Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules-2011.


(Tasleem Khan)
Deputy Commissioner,
Haripur/Inquiry Officer

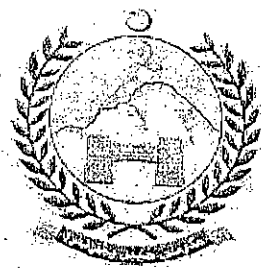
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FIVE members
FACT finding
Inquiry Report

Militants Attack on Central Jail Bannu

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The subject inquiry was entrusted to us by the provincial government in the Home and Tribal Affairs department (Annex-1).

Introduction

On 15th April 2012, about 150 militants came in about 25 vehicles of different types and stormed the Bannu Central Jail at about 1-15am. The militants were armed with automatic weapons including AK-47, RPG and hand grenades. They broke open the main outer and inner gates using RPG and fired at boundary wall watchtower. Having secured entrance, they attacked barracks, broke open locks by firing and asked 382 prisoners to flee and move towards nearby Peng hills in the FR area, mostly on foot. Some were given vehicular rides as well. Having reached FR area, the prisoners were set free.

The law enforcement agencies comprising Army, FC and Police reached the jail by 3-30am after the militants had escaped. FIR no. 41/2012 was registered at 8 am the same day by Police Station Township.

During the course of site inspection by the investigation team, 284 empties of 7.62 bore, 03 live hand grenades, 12 pieces of rocket shells, 05 empties of 222 bore, 02 covers of RPG-7, 04 small size covers of RPG-7, booster cover, 43 broken locks, a big hammer, an iron rod and saw were recovered from different places within the jail premises.

The news was first broken by Geo TV in the night and later Chinese news agency, Xinhua and subsequently picked by other news agencies and news papers. A sample of the same may be seen at Annexes 2-5. Most carried critical views of the government response and raised a number of questions. Senior cabinet members of the government of Khyber Pakhtunkhwa also condemned the incident and vowed government functionaries failing in duty will be held accountable.

Methodology

The Home department notified a 5-member Committee to inquire the subject matter and identified a number of TOR.

The Committee held a number of meetings at Peshawar and also visited Bannu. They established their camp office there for two days to inspect the scene of action and record evidence of local witnesses from civil administration, police and Frontier Constabulary. They interviewed a number of prisoners and returnees, both as recommended by jail staff and chosen by us randomly, who had returned voluntarily or arrested by local or adjoining areas police.

The Committee issued a Public Notice in the local newspapers requesting them to come forward and share any evidence in confidence (Annex-6). It also officially requested the local Army and ISI authorities to share their views (Annex-7). So far no response has been conveyed by them.

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During their meetings at Peshawar, ex Commissioner, Regional Police Officer and Inspector General Jails were examined. Former DPO and Jail Superintendent, who were transferred out some time before the incident, were also examined to gain perspective on the prevailing state of affairs. Secretary Home department Secretary Law and Order FATA secretariat sent their written statements during this time.

During Bannu stay some citizens offered oral evidence on condition of anonymity and a few anonymous letters dealing with the incident were also provided by the Home department.

The Committee obtained intelligence record of prior alerts from Special branch. We also requested the Regional Office of Intelligence Bureau in this regard. However they verbally conveyed that no prior warnings were given to the provincial government.

Secretary Home very kindly shared basic record of relevant papers during the first meeting of the Committee and provided continued support subsequently.

The report has discussed all TOR under relevant headings and also included a number of other headings, connected with the subject matter.

The Committee would like to thank many government agencies both at Peshawar and Bannu who extended support. Special thanks are due to Home department and District Coordination Officer for making logistic arrangements and ensuring coordination required for Committee's work.

Shifting of Adnan Rashid to Bannu jail

Mr. Rashid was condemned to death by the military court in Oct, 2005 for conspiring and abetting to kill ex-President Gen Musharraf. After dismissal of his appeal in military appellate court in Feb, 2006, he filed a writ petition in Lahore High Court which was dismissed in Mar 2006. He then filed a constitutional petition in Supreme Court which pending since June 2011.

His father applied in Mar 2009 for shifting of his son from Faisalabad jail to any jail in province without mentioning that his son was a **condemned** prisoner. This application though addressed to Secretary Home, was received in the Home department Prison section directly, without diarizing it in any office and directly sent to IG Prisons for comment same day it was received. That office did not check the nature of the case and issued after a week. Both the Section and the IG Prison offices did not check the prisoner's Warrant of Commitment. In this case, the warrant showed full details of offences committed by and the death penalty awarded to him.

Under Prison Rules, there is no provision for shifting of condemned prisoners from province to another. Under Rule 151, condemned prisoners can only be transferred within province. However, under Rule 149, other prisoners can be transferred between provinces in case of execution of sentence, release or production before a court. Also under Rule 148, prisoners can be transferred on reciprocal basis between provinces.

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While the case of Adnan only fell under condemned category, the Section staff and the IG Prison offices did not disclose this fact during processing of the case, nor in their communications.

Facts leading to the incident

Entry/Exit route

Reportedly militant commander Askari ex Tariq Geedar group planned the attack. About 150 of them entered Bannu jail and left the district in a convoy of about 25 vehicles of various types including tractor trollies, coaches and double cabs, and using mostly the Old Bannu Kohat Road. The witnesses also disclosed that on that night a sudden unscheduled power outage was observed just at the time, the militants entered the jail.

The conclusion is supported by many witnesses who saw parked vehicles alongside the front jail boundary wall on main road, and their quick disappearance after completion of the mission. Two witnesses voluntarily deposed before the Committee that they were dealers in the business of non-custom paid vehicles (NCP) and had to settle some liabilities with clients. They were informed by a staff of Baganatu *khasadar* check post in the FR area that many NCP vehicles would pass the check post that night. When they reached there on 14th April, however, they were apprehended by Taliban, suspecting them *Khasadars* and taken to Bannu blindfolded in vehicular convoy during the night. At the jail site, they were alarmed by hearing sounds of firing. They were told that it was not enemy fire, and after completion of task, taken back to the same check post and released.

Press statement of Taliban spokesman, Mr. Ihsanullah Ihsan reveals that an amount of Rs. 20 million was spent on planning this attack

Prior warnings

It is generally thought that intelligence alerts and prior warnings are non specific and aim at giving evidence of performance in case of future mishaps. It is also noteworthy that alert level of these reports is never updated in view of changing situation and they stay live forever. Also there is no follow up on alerts to add value to the information and make it actionable.

The Committee, therefore, restricted itself to the perusal of reports of only the past quarter. We have noted that concrete intelligence alerts were issued by Special branch and endorsed to civil and police authorities a few months prior to this incident.

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They are detailed as follows:

Date	Diary no.	Nature of report
6 Jan 2012	411-17	This was a report of the National Crisis Management Cell of the Ministry of Interior dated 5 th Jan, warning about militants attack <i>inter alia</i> on Bannu Jail to release terrorist inmates
13 Jan 2012	963-74/NC	About 300 armed militants seen in FR mammon khel area linked with PS Bannu Cantt

Original report of the NCMC (Annex-8) was addressed to the following provincial authorities and civil armed forces headquartered in Khyber Pakhtunkhwa:

Home Secretary

PPO Khyber Pakhtunkhwa

ACS FATA

IGFC Khyber Pakhtunkhwa

Commandant Frontier Constabulary Khyber Pakhtunkhwa

Copy of the same also endorsed to PSO to CM Khyber Pakhtunkhwa

The information addressed to PPO was marked by his PSO to DIG DCT Special branch, CCPO, DIG Kohat and Bannu for necessary action. It was further endorsed by Special branch to RPO and DPO. The RPO endorsed this to the DPO with the specific direction to inspect the jail and review its security arrangements.

From the Home secretary office, the information was faxed to both the Commissioner and RPO who in turn endorsed it to DCO etc. the DCO further endorsed to all concerned including the Superintendent Jail.

The Commandant FC endorsed it to all DO FC for necessary action.

ACS FATA office endorsed the report to DCO Kohat only.

It may be noted from the foregoing that the only tangible action, beyond endorsement, was taken by the RPO Bannu only.

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The DPO staff has disowned the receipt of this letter, while there is entry of the same in the RPO's Peon Book (Annex-9). Currently the letter in question is missing from DPO office and an inquiry has been ordered by the present DPO. We conclude that given the endorsements from multiple sources, the DPO office claim of not having received the letter is hard to believe.

It is evident that the first report gave a concrete attack plan with a solid objective. The next report mentioned a large sighting of militants. It may be noted that a very high profile condemned prisoner, Adnan Rashid, convicted with death penalty for attack on ex president, Gen. Musharaf, was an intern in the jail already. Taken together, the intelligence should have raised high alarm for relevant agencies.

The Committee has noted that in the following Regional Law and Order meeting that was held on 20th Jan, militants' sightings in settled area of Bannu was noted with concern by the Commissioner and endorsed by other participants. It was agreed that a district Security Plan needed to be drawn. Unfortunately, however, the militants attack plan was not noticed at all, nor the Security Plan drawn.

We have noted that no follow up action was taken on these reports by police stations as the information was not endorsed to them. It was for this reason that SHO Township in whose area, the jail is located stated that he was not alerted to the information.

Jail staff response

The jail staff came to know about the firing at 1-35 am. At that time, the Night Duty Officer Mr. Jalat Khan, Assistant Superintendent, though being on duty, was not in the jail, but in the residential colony with a colleague. They informed the police control and police stations about the terrorist attack

At the time of attack, the four watchtowers had a jail staff each armed with LMG and 2-3 armed guards at each gate. Also there was an outer security cordon of FRP, consisting of 3 MC and 40 FC totaling 43 men. Out of these 11 were doing other duties outside jail. However, no replacements were provided for unknown reasons.

At the time of incident following weapons were available as per jail staff:

Type of weapon	No.
AK-47	19 (4 not in working order)
Rifle 0.303	10
Chinese Rifle	15
LMG	4

While armed guards claimed that they fired during attack, prisoner witnesses disclosed that only the western watchtower did fire some rounds, while no fire was heard elsewhere. While the jail staff claimed they could not spot the enemy due to complete dark and could not fire pointedly, they also said they were fired by the attackers.

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We are of the view that jail staff in the watchtowers, the gates and FRP platoon did not mount any significant fire and were simply overawed. A concerted fire of LMG from towers and fire from other staff and FRP platoon could have created a real deterrence and made a difference.

The firing claim is difficult to believe as there was no casualty from the enemy side. The Night Duty Officer was away from the scene of action, in the residential colony, and could not lead his watch and ward staff and devise a strategy for defence.

Compliance with prison rules on internal security

On the incident night, -- security staff was absent. Though there was adequate no. of weapons, these were not used to full extent. The middle tier of jail security was not deployed properly as FRP staff was mostly at the back and side of jail, leaving the front exposed. There was a security issue regarding FRP staff; 11 no. staff were deployed on duties outside jail and most of those deployed in jail used to remain absent from duty. Repeated complaints were sent to SP FRP but no remedial action was taken.

Joint Security Review

As required by the provincial government, the RPO Bannu ordered a joint security review of the jail through DPO Bannu in Sep 2011. The security arrangements were considered satisfactory. The review examined a three tiered security system; the inner cordon managed by jail staff, the layer outside perimeter manned by FRP while the outermost layer was managed through continuous patrolling by PS Township staff. Later on during the same month, as per demand of jail administration, the local police had provided 4 LMG for watchtower staff (Annex-10).

It may be noted that under Rule 610 of NWFP Prison Rules jail authorities are required to have security arrangement for internal disturbances i.e. prisoners escape or outbreak. However, even in these cases if they are overwhelmed, the district Police is bound to come their assistance when called up. The external security is primarily the responsibility of district police. This is for the obvious reason that jail administration has to look at unarmed interns and the level of security is aimed to respond to any internal law and or situation. It is not meant to match the capability of armed attackers from outside.

We asked the local police if they had a Security or Contingency Plan for the jail and answer was in the negative (Annex-10). The district police even did not have a Dis Security Plan. Jail being a vital government installation and a symbol of state authority was imperative to have a well thought out Security Plan. It was unfortunate to note that after the 2009 jailbreak incident and the 5th Jan 2012 intelligence, no Security Plan drawn.

Police, Army, FC and FR administration response

We have not received official view of the Army on the matter. The Police claimed they approached Township Police station, they were attacked by militants and were un-

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advance. They also claimed they exchanged fire when fired upon. However, finally all were able to reach the jail behind cover of the APC, after great delay at 3-30 am, at a time when the militants had already left.

We have noticed that there was complete break down of command and control structure at the scene. No one knew who was the authority to look up to for orders; the Army, the Commissioner or the RPO. There was no strategy at any level, both at the approach stage when a siege could have been laid at exit points where militants were likely to escape, or when the forces reached jail and realized that militants had already escaped, a siege operation could have been launched at the far end by enlisting the support of forces in the adjoining tribal areas.

There was a sizeable force available at the moment in the district consisting of police, FRP, elite force, FC and Army that could have effectively confronted the militants, if used timely and properly. However the only strategy in sight was first to reach the jail; there was no plan what to do if fired upon. When the forces reached jail after considerable delay, the police was told to arrest the escaped prisoners. Even the FR administration was not alerted to block the 3 check posts jointly manned by Army, FC and *Khasadars* to check escaping militants.

The jail/ police witnesses claimed that there was no visibility during that time. However the returnee witnesses told us that there was sufficient visibility to spot the vehicles parked on the road. We have also checked the local weather conditions prevailing at that time online at <http://www.worldweatheronline.com/v2/weather.aspx?q=BNP&day=21> and noted that it was a clear night with moon rising at 2-13am. It is possible that it may have been dark in the early hours of attack; however the visibility was clear after the moon rise (Annex-11)

We have noted that there was no follow up by the FR administration on the intelligence reports mentioned earlier. Even action under the FCR for territorial responsibility was initiated against concerned tribes after our pointation during hearing of the FR administration.

Effectiveness of Police response

At the time of occurrence, there was no DPO at Bannu. The former DPO was transferred and his replacement had not assumed charge yet. The record showed that instead of transferring officers in a single order, their orders were issued a day apart, with the result that the former left charge immediately while the latter assumed charge after some joining time. We were told that it was a routine that transferred out officers left charge without waiting for their replacement.

As discussed earlier, the police response was uncoordinated, delayed and without any strategy at all stages of the operation. The police was able to reach Basya Khel chowk, promptly but claimed to have been halted by enemy fire. Later on the Army also reached after great delay. At this moment, though, local police had the support of FRP, Elite Force, FC and Army and armed with light and heavy weapons and an APC, they could not confront

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the militants *en route*, lay siege while the militants were in action in jail, or afterwards when they escaped in a convoy of 25 vehicles towards FR.

Communication system

The main pivot of communication during the fateful night remained the police wireless control. It started calling all concerned from 1-45 am onwards and was able to inform the offices of Commissioner, RPO, DPO, DCO and Army besides coordinating with various police mobiles etc. The control made repeated calls to Army to dispatch Quick Response Force and noted that the force was out with great difficulty by 2-55 am. RPO also stated that he himself called the BM and Brigade Commander at about 2-00 am requesting for quick response.

We noted that the operator at Commissioner Office, though contacted in time, did not inform the Commissioner till 6am in the morning, while the DCO's office disputed that any message was given saying that the operator mentioned by police control was not on duty and another operator was on duty instead. That staff said he did not receive any message.

The Committee does not believe why the police staff should have made a wrong entry that messages were conveyed to these offices.

The Commissioner's operator said it was his mistake as he had not understood the gravity of the situation and that it was their routine to inform the bosses in the morning.

Deployment of FRP platoon

According to the details provided by local police there was a 0-3-40 strength platoon deployed to guard the outer perimeter of jail. This was supposed to operate in 8 hour system; about 13 men in a shift. However as mentioned earlier, 11 staffers were detailed elsewhere on miscellaneous duties not connected with jail duty and their replacement had been provided for unknown reasons.

We have noted that on many occasions, the jail administration have reported to the SP that even the deployed strength does not perform duty properly and remains absent. However no action was taken on these reports.

Compliance with notified Channel of Communication

The provincial government had notified a revised Channel of Communication for district and divisional authorities of civil and police administration in March 2011 which required a 2-channel system converging in the Home department. On the important incident reports were required to follow the DPO → DCO → Commissioner (to HD) → HD → Chief Secretary → Chief Minister route. Similarly on the police side was an alternate channel RPO → PPO → HD. The system also mandated establishment of district control rooms and matters related to absence of district and divisional offices.

The new system was notified just two weeks before this incident and was in a fledgling

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The Commissioner had granted three days station leave to the DCO from 12 April on account of some official meetings at Peshawar. However as required under the revised system, information regarding DCO's absence had not been given to the Home department.

It was noted that the DCO received the incident information from his control room in the morning of 15th April. However, the Police control log book did have an entry of information of occurrence given to the district control room operator around 1-45am, which both the operators denied. They also admitted that no log book system existed to record messages.

In our opinion, therefore, there was no reason to doubt the police control room record and we hold that the district control room was not functioning properly as required.

As far the police is concerned, there was a compliance with the new system, as all concerned were informed through their Control in time.

Adequacy of follow up actions of civil/ police administration

As discussed before, after escape of militants, the police only restricted to matters of arrest of prisoners made to escape by militants, and some arrests did take place by the staff of police stations deployed in the field. Beyond this, there was no effort to lay down siege of the escaping militants at the far end by enlisting support of forces deployed in the adjoining tribal areas. We have no information if any follow up action was taken by the Army to intercept militants.

Similarly the DCO as Political Agent FR did not take any follow up action promptly. Though he instructed his staff to alert check posts, he did not issue immediate FCR proclamation against the tribes whose territory might have been used for entry/exit by militants. DOFC Bannu and Daryoba arrived very late, though the former was informed by the RPO personally in time.

Conclusions

At the outset, we would like to clarify that the incident was not a case of jailbreak as widely portrayed in the national and international media. According to the dictionary, jailbreak means prisoners' escape. In this case the prisoners were forced to leave the jail under duress. Actually It was a case of external armed attack by militants carried out professionally in a swift way.

Secondly it is also incorrect that the attack resulted in large scale escape of militants. The actual situation is that the attack seems to be focused only on release of Adnan Rashid, as subsequently shown in videos widely circulated on the internet. We have noted that in the list of escaped prisoners only 3, including Adnan, were militants and charged under ATA.

According to intelligence assessment, Bannu has been among the first districts to have been affected by militancy due to its proximity with NWA and settlement of same tribes on both side of the settled-tribal divide.

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Before this incident it has transpired that the influence of militants in settled area of Bannu, FR and North Waziristan remained fluctuating. During 2008-9, local police and other LEA had taken a number of effective steps and successfully launched a number of operations, killing a number of militants and a number of police staff was also martyred. Resultantly Jani Khel operation culminated in establishment of Jani Khel PS and Takhti Khel PS, and Bakka Khel operation led to shifting of PS a kilometer ahead of its previous position. About 5 new check posts, including Baran Pul, Marwat Canal Check post, being very important, were also established on self help basis. During this time, writ of the government was largely restored.

However subsequently, intelligence agencies had been reporting rising terror incidents and frequent sightings of militants in settled areas and FR Bannu and that they were having solid linkages with their comrades in North Waziristan Agency. Informal background discussions with witnesses have shown that in some adjoining areas, police had stopped night patrolling.

The situation seems to have been worsened due to postings of LEA officers on grounds other than merit, posting of local officers and allowing long tenures in some cases. This happened both in police and jail. It is interesting to note that the 2009 inquiry into the jailbreak had recommended transfer of all staff except class IV. However, the Superintendent was not transferred in 2012!

It is clear that employees of this kind are likely to have developed undesirable relationships with local actors and malleable to their pressure to ignore the call of duty.

The existing of this situation, in our opinion, therefore, has led to the loss of morale and willingness of all LEAs to tackle militants effectively. We, however, could not lay hand on any evidence showing collusion of government functionaries.

We think that all LEAs presently stand demoralized after the Bannu jail incident and serious questions have been raised by general public and media, both local and international, regarding state's ability to confront militancy. We believe that there is a moment of opportunity now to be seized if we want to restore the writ of government again.

Responsibility for lapses

In our opinion there was a collective failure of all IEA, civil administration and local command of Army to act on prior intelligence about militants attack and to tackle them that night. Though police reached the area quickly, they could not advance, claiming enemy fire from militants' piquets. However there was no strategy to confront them, though adequate force was available. No follow up action was taken to intercept militants later. The intelligence agencies also failed by not providing follow up updates to fill the mosaic and make the picture clearer.

Secondly the principle of operational level and supervisory level accountability should be kept in view. Viewed from this perspective, we hold the following responsible for the observed failure:

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Tribal area administration of North Waziristan/FR Bannu

The entire political administration, is held responsible for neglect of duty regarding proper follow up on prior intelligence conveyed through Commissioner Bannu, preventing entry/exist of militants and not issuing FCR proclamation against concerned tribes immediately afterwards. We hold all officers, and staff on check posts accountable.

Police

The district police is held responsible for neglect of duty for not acting on prior intelligence, for not having a Jail Security Plan and not having strategy to intercept attacking militants while they were in jail, and when they escaped. The Check posts deployed in the surrounding areas failed to perform their duty to intercept militants' convoy. Regional police is also held negligent for not having strategy to confront militants.

We hold the RPO (failing to have appropriate strategy to confront militants), DPO (failing to act on prior intelligence, having no security plan), SDPO concerned and SHOs Town, Basya Khel and Domel (failing to confront militants and check their entry/exit movement), DSP HQ (failing to have appropriate strategy to confront militants) and staff of check post (failing to confront militants) accountable.

Frontier Constabulary

DOFC Bannu is held responsible for failing to reach on time though he was personally informed in time by the RPO. DOFC Daryoba is held responsible for negligence; he should have held his fort and strengthened his positions at Daryoba to intercept fleeing militants, instead of coming to jail.

Local Army Command

Witnesses have deposed that local Army dispatched force very late despite repeated calls from Police Control and personal calls to BM and Brigade Commander by the RPO. They reached jail when the militants had already escaped. As we did not receive their point of view, despite written request, we are unable to fix responsibility and recommend that government should refer this matter to federal government for the required action.

Civil Administration

Both Commissioner and DCO are held negligent for not having proper Control Rooms having sound working procedures (no duty roster and no log books) with the result that they were not informed in time. The Commissioner also failed to provide leadership at the scene of occurrence with the result that no steps were taken to confront militants when they escaped.

Jail administration

The superintendent failed to act on prior intelligence and also claimed no intimation was received in this regard. This was not true as the information was conveyed to him through

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DCO. He failed to alert senior officers of police and civil administration about a ve dangerous inmate, Adnan Rashid, as detailed in his Commitment Warrant. He failed to ensu the presence of deployed staff in jail during the fateful night. The NDO neglected to present in jail and remained in residential area at that time, despite being on duty. He failed provide leadership and ensure that available weapons were used effectively.

The Superintendent failed to properly get the FRP platoon deployed at strategic points most were deployed at the back and sides, without any presence on front. He failed to hav Contingency Plan for jail despite having knowledge that the jail was insecure due to prese of high profile inmates.

FRP

Concerned SP FRP failed to provide replacement for 11 no. staffers deployed on out duties. He failed to take notice of jail administration repeated complaints regarding freq unauthorized absence from duty by FRP staff.

Home department

Home department Prison section failed to properly process the application of father of A Rashid for his transfer. They directly received it without diarizing it and did not obtai approval for asking comments of IG Prisons the same day, though the letter they ser states ' I am directed to..'. They did not apply any checks about credentials of the conde prisoner. We hold the concerned SO accountable.

IG Prisons

The staff did not check credential of condemned prisoner and recommended NOC mechanical fashion. We hold Superintendent judicial branch, Assistant Director (a AIG (for processing the case in violation of Prison Rule 151) and the concerned IG I (failing to exercise supervisory oversight) accountable.

Intelligence agencies (federal, Provincial)

While meaningful alerts were issued, we hold them accountable for failure to provide s follow up intelligence to make it actionable. We hold IB accountable for not providing alert to the provincial government.

Recommendations

Unity of command at the district level

There can be no two opinions that maintenance of law and order is a func requirement for the existence of a stable and prosperous society. From a management view, complex urban and rural societies require effective style of leadership ca responding quickly to a deteriorating law and order situations. This requires command to ensure focus, synergy of action and accountability

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The system of devolution introduced in 2001 was promoted to bring governance at the doorstep of common man and thereby improve service delivery. While much can be said if the system has delivered as intended; from the administrative point of view, a discernible change has been the **absence** of any authority capable of organizing and putting to use effectively new authorities, created under the Local Government Ordinance 2001 and Police Order 2002, tasked with maintenance of public order. The abject chaos witnessed on the fateful night is a case in point.

Under the LGO, on the one hand, the mandate of district government has narrowly been defined under S.16 and restricted to matters of **decentralized** (devolved) departments only. It may be noted that the list of decentralized departments given in Schedule First do not include Police department and, therefore, no function related to law and order as such appears under functions of the DCO under S. 26. These functions have been assigned to the Police department under S. 4 of the Police Order. However the police has been made responsible to the Zilla Nazim under S.33 of the Order. This has caused political ramifications on the one hand and weakening of unity of command in matters of law and order in the district.

We recommend that as the provincial government is about to pass a new LGO, the matter should be tackled from a holistic perspective and all allied laws like Police Order, CrPC, etc should be reviewed to ensure unity of law and order command at the district. The designated central authority should be empowered to direct all offices, whether district, provincial and federal located in the district, so that all should act with only the **state interest** in focus.

Early dispensation of justice

Delayed disposal of criminal cases leads to higher risk of jailbreak. We, therefore, recommend that government should amend Cr.PC and other relevant laws to lay down a statutory limit of disposal time of cases of trial, appeals and mercy petitions of convicted prisoners.

There is also a need to review the entire administration of criminal justice system. Government may consider constitution of a Commission comprising of criminologists, police officers, lawyers, prison officers, judges, prosecutors and civil administrators to study the issue in the post devolution scenario and suggest workable recommendation.

Continuity of charge of sensitive appointments

Position like DCO and DPO should not remain vacant for a single moment and posting/transfer orders should be issued in a single order and charge relinquished and assumed simultaneously.

Merit based recruitments

We observed that physical features of many employees of police and jail departments were not up to the standards laid down. For this reason, they are not capable to meet the requirement of duty. For example some of the watchtower staff tasked to operate LMG were below height and weight requirement. We, therefore, recommend that recruitments in these

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departments should be absolutely based on merit and there should no relaxation in physical requirements.

Transfer of staff

Jail staff

All locals, other than class 1V, in jail department, should be posted out immediately. For non-locals, maximum tenure of 3 year must be followed. Head of department shall furnish certificate of compliance in this regard every year.

Police staff

No police constable should be posted in police station of his domicile. Similarly ASI and Head Constables be posted out of Police Sub Division of his domicile and Inspector and S.I should be posted in districts other than their domicile.

Home department

All staff other than class IV, in Prison Section and other sensitive Sections having tenure in excess of 3 years, should be posted out immediately.

Review of district control rooms (civil)

Contrary to the requirement of government in this regard as notified under Channel of Communication, we think most of the control rooms are not functioning properly. The control rooms of DCO and Commissioner Bannu are cases in point. We recommend that provincial government should commission a review of control rooms of all districts to be completed in a month time, so that their effectiveness is evaluated.

Construction of new Bannu police lines adjacent to jail

Land for the same has already been acquired. To strength jail security, this may be taken in hand as high priority agenda.

Return of condemned prisoners to other provinces

In view of no provision in the rules about inter-provincial transfer, all such prisoners should be returned to the prisons they came from. This will reduce the existing risk due to their presence.

Specialized prisons

Existing prisons were not designed for high risk inmates. At least one high security prison may be constructed in the province.

Provision of security equipment

Jails, being vital institutions, should be provided essential security equipment and weapons to be determined through special consultancy.

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Rationalization of jail staff requirement

As the existing prisoner to staff ratio is higher in this province as compared to other provinces it should be immediately reviewed and rationalized

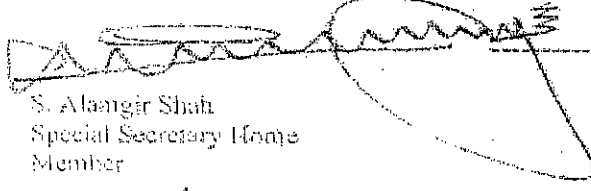
Risk allowance to jail staff

To boost morale and loyalty to duty, jail staff should be granted risk allowance like other provinces.

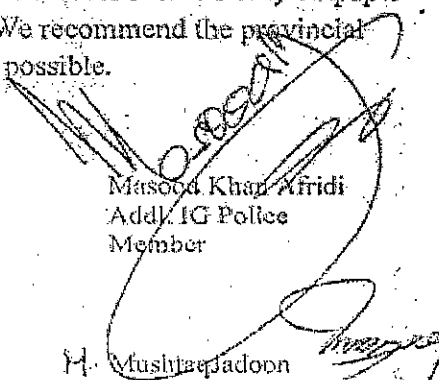
Training of jail staff

This province does not have a training academy of its own to train staff with the result that about 47% staff has had only basic training received from National Academy of Prison Administration Lahore.

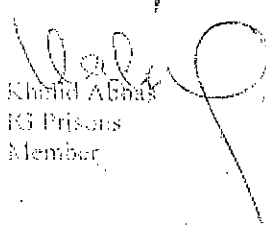
At the moment there is a Training Institute at Haripur jail. However it exists only on paper and requisite infrastructure has not been provided so far. We recommend the provincial government should reactivate the institution as quickly as possible.



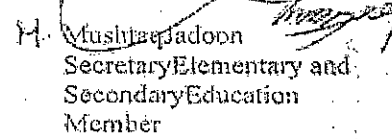
S. Alamgir Shah
Special Secretary Home
Member



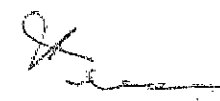
Masood Khan Afridi
Addl. IG Police
Member



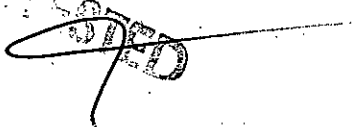
Khairul Abbas
IG Prisons
Member



M. Mushfiq Jadoon
Secretary Elementary and
Secondary Education
Member



Dr. Ihsanul Haq
Director Reforms
Chief Secretary's Office
Chairman
Tuesday, 08 May, 2012

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List of witnesses examined

Jail

1. Arshad Majeed Mohmand, former IG Prisons
2. Zahid Khan, SJ
3. Usman Ali, former SJ
4. Jalat Khan, ASJ
5. Aminul Haq, ASJ
6. Riaz Mohd Khan, ASJ
7. Mohd. Ali, ASJ

Prisoners/Returnees

8. Khizar Hayat
9. Mohd. Ajmal s/o Mohd Shah
10. Ahmad Gul s/o Mewa Gul
11. Saif u Rahman s/o Mohd Din
12. Siddique s/o Mousam Khan
13. Matha Khan
14. Din Babrai s/o Hamed Khan
15. Dilfaraz s/o Gul Maroof

Civil administration/FR

16. Mohammad Azam Khan, Secretary Home
17. Abdullah Khan Mahsood, former Commissioner
18. Zahir Shah, DCO
19. Daftar Khan, APA
20. Sameeullah Khan, PT
21. Fazal e Wadood, PT, Shawa, NWA
22. Nigar Noushad, Operator Commissioner's Office
23. Fahim and Samiullah, Operators, DCO control Room

Police

24. Iftikhar Khan, former RPO
25. Feroze Shah, former RPO
26. Waqar Ahmad, current DPO
27. Gul said, former DPO
28. Mohd Shafique, DSP HQ
29. Mohd Jalil, SHO Basya khel
30. Mir Sahib Khan, SHO Township
31. Shabbier Hussain Shah, SHO Domel
32. Kifayatullah Khan, SP FRP
33. Mohd Ghulam, W/Operator Wireless Control
34. Staff of FRP post jail (4)

- (b) proceed against the Government servant under rule 5, where he has been convicted of charges other than corruption or moral turpitude.

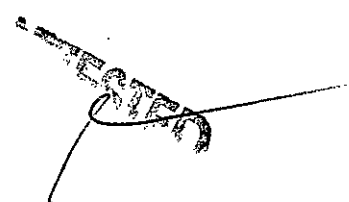
9. **Procedure in case of wilful absence.**---Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

10. **Procedure to be followed by competent authority where inquiry is necessary.**---(1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include-

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with apportionment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted, and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary inquiry.



11. Procedure to be followed by inquiry officer or inquiry committee.---(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee, as the case may be, shall submit his or its report, to the competent authority within thirty days of the initiation of inquiry:

Provided that the inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for completion of the inquiry.

12. Powers of the inquiry officer or inquiry committee.---(1) For the purpose of an inquiry under these rules, the inquiry officer or the inquiry committee, as the case may be, shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act No.V of 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;

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