



20.03.2023

Appellant present through counsel.

Fazal Shah Mohmand, learned Additional Advocate General
for respondents present.

Former made a request for adjournment in order to prepare
the brief. Adjourned. To come up for arguments on 25.05.2023
before D.B. Pacha Peshi given to the parties.


(Muhammad Akbar Khan)
Member (E)



(Rozina Rehman)
Member (J)

28th Nov. 2022

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl. Advocate General for the respondents present.

This case be fixed before a bench of which one of us
(learned Chairman) is not a member. To come up for arguments
on 01.02.2023 before the D.B.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

01.02.2023

Learned counsel for the appellant present. Mr. Muhammad
Riaz Khan Painsakhel, Assistant Advocate General for the
respondents present.

Since connected Service Appeal No. 1554/2019 titled
“Muhammad Zahid Vs. Government of Khyber Pakhtunkhwa
through Chief Secretary Khyber Pakhtunkhwa, Peshawar and two
others” has been adjourned to 20.03.2023, therefore, this appeal is
also adjourned to the said date. To come up for arguments on
20.03.2023 before the D.B.

SCANNED
KPST
Peshawar

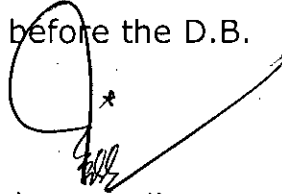

(FAREEHA PAUL)
Member(E)


(SALAH-UD-DIN)
Member (J)

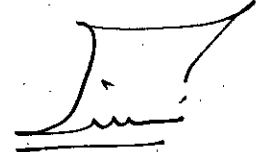
13.09.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 02.11.2022 before the D.B.



(Mian Muhammad)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

2nd Nov., 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. Last opportunity is granted. To come up for arguments on 28.11.2022 before the D.B.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

28.12.2021

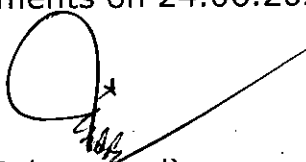
Due to Winter Vacations, the case is adjourned to 12.04.2022 for the same as before.

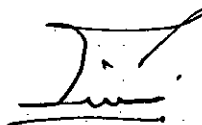

READER

12.04.2022

Nemo for the appellant. Mr. Suleman, Senior Instructor alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present and submitted para-wise comments on behalf of the respondents, which are placed on file.

Previous date was changed on Reader Note, therefore, notice for prosecution of the appeal be issued to the appellant as well as his counsel and to come up for rejoinder, if any, as well as arguments on 24.06.2022 before the D.B.

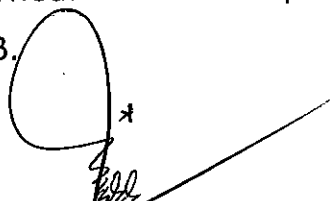

(Mian Muhammad)
Member (E)


(Salah-ud-Din)
Member (J)

24.06.2022

Appellant in person present. Mr. Atta Muhammad, Law Officer alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, Bannu Bench. Adjourned. To come up for arguments on 13.09.2022 before the D.B.


(Mian Muhammad)
Member (E)


(Salah-ud-Din)
Member (J)

03.08.2021 Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted for hearing subject to all legal objections including that of limitation to be determined during full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 28.12.2021 before the D.B.

Appellant Deposited
Security & Process Fee

63/8/21

Chairman

29.10.2020

Appellant present in person.

Lawyers are on general strike, therefore, case is adjourned to 14.01.2021 for preliminary hearing, before S.B.

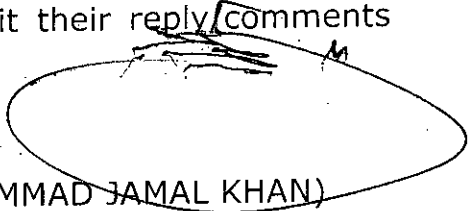


(Rozina Rehman)
Member (J)

14.01.2021

Mr. Ibrar Alam, Advocate, for appellant is present.

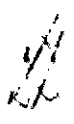
In view of the arguments addressed at the bar by the learned counsel representing appellant, it is deemed appropriate to issue pre-admission notice to respondents for 14.04.2021, simultaneously, directing them to submit their reply/comments before S.B.



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

14.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 03.08.2021 for the same as before.



Reader

18.02.2020

Appellant in person present and seeks adjournment as his counsel is not available being indisposed. Adjourn. To come up for preliminary hearing on 01.04.2020 before S.B.



Member

01.04.2020

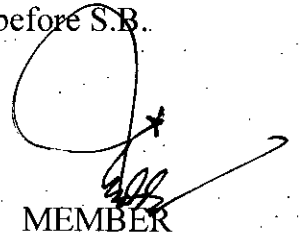
Due to public holiday on account of COVID-19, the case is adjourned to 24.06.2020 for the same. To come up for the same as before S.B.



Reader

24.06.2020

Appellant in person present and seeks adjournment as his learned counsel is not available today. Adjourned. To come up for preliminary hearing on 20.08.2020 before S.B.



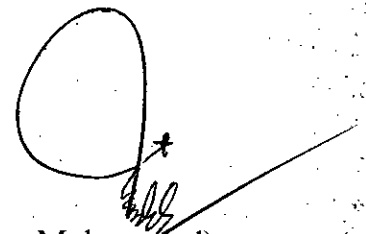
MEMBER

20.08.2020

Counsel for the appellant present.

Former requests for adjournment as he has not prepared the brief.

Adjourned to 29.10.2020 before S.B.



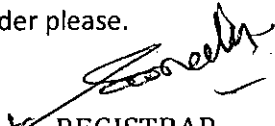



(Mian Muhammad)
Member(E)

FORM OF ORDER SHEET

Court of _____

Case No.- _____

1226/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/10/2019	<p>The appeal of Mr. Muhammad Saqib resubmitted today by Mr. Ibrar Ahmad Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	14/11/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28/11/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Nemo for appellant.</p> <p>Notice be issued to appellant/counsel for preliminary hearing before S.B on 07.01.2020.</p> <p style="text-align: right;"> Chairman</p>
	07.01.2020	<p>Mr. Qamar Zaman, Advocate has submitted Wakalatnama executed by the appellant in his favour. The same is placed on record.</p> <p>Requests for time to further document the appeal by placing on record the copy of rejection order of departmental appeal.</p> <p>Adjourned to 18.02.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>

SCANNED
KPST
Peshawar
28.11.2019


A-17

The appeal of Mr. Muhammad Saqib son of Niaz Badshah Warder attached to District Jail Kohat received today i.e. on 30.09.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.

No. 1680 /S.T;

Dt. 1-10-2019.

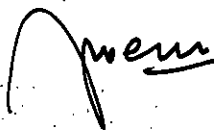

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ibrar Ahmad Adv. Kohat.

Respected Sir,

The instant appeal has been
hereby returned with corrections
as directed by your good self.

Yours truly,



Muddasser Iqbal
Advocate

05-10-2019

BEFORE SERVICE TRIBUNAL KPK PESHAWAR

Muhammad Saqib¹²²⁶..... Petitioner / Appellant

VERSUS

Govt. Khyber Pakhtun Khwa through Secretary Home and Tribal Department
KPK and others

..... Respondents

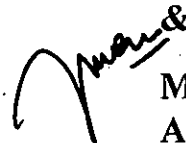
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S. No	Description of Documents	Annex	Pages
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Petitioner / Appellant

Through:

**Ibrar Alam Advocate
High Court**



**Muddaser Jalil
Advocate
District Courts Kohat**

①

BEFORE SERVICE TRIBUNAL KPK PESHWAR

Appeal No - 1226 /19

Muhammad Saqib S/o Niaz Badshah warder, attached to District Jail Kohat

.....Petitioner/Appellant

Khyber Pakhtunkhwa Service Tribunal

VS

Diary No. 1327

Dated 30/9/2019 and

1. Govt. Khyber Pakhtunkhwa through Secretary Home Tribal Department KPK
2. Inspector General Prisons KPK
3. Assistant Director for Inspector General prisons KPK
4. Superintendent Circle Headquarter Peshawar.
5. Superintendent Central Prison Bannu.

.....Respondents

APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT 1974 READ WITH SECTION 19 OF THE GOVT. SERVANTS (E&D) RULES 2011 AGAINST THE IMPUGNED ORDER OF THE RESPONDENTS DATED 11/04/2019 WHEREBY THE APPELLANTS HAVE BEEN AWARDED MAJOR PENALTY OF "REDUCTION TO A LOWER STAGE IN A TIME SCALE FOR A MINIMUM PERIOD OF 3 YEARS" AS WELL AS 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 (2-12-2012 TO 20-01-2016) OF THE APPELLANTS WAS

Filed to-day
 Registrar
 30/9/19

REGISTRAR
 30/9/19

2

**TREATED AS EXTRA ORDINARY LEAVE
(LEAVE WITHOUT PAY)**

PRAYER IN APPEAL:

On acceptance of this appeal the impugned order dated 11-04-2019 may please be set aside and the intervening period (12-12-2012 to 20-01-2016) treated as extra ordinary leave (leave without pay) of the appellants may kindly be counted as active service of appellants along with annual increment. Appellants also seek any other suitable remedy which the hon'ble Tribunal may deem fit.

Respectfully Sheweth:

The appellants submit as under:

1. That earlier the appellant was awarded major penalty of "Dismissal from service" vide order dated 12-12-2012 under KPK Govt. Servants (E&D) Rules 2011 in the backdrop of Bannu Jail break incident occurred on 14/15 April, 2012.
2. That later on, the appellant availed departmental appeal which maintained the penalty and rejected the appeal vide order dated 23-01-2013.
3. That aggrieved from the said order, the appellant approached this forum. The appeal of the appellant was accepted and the case was remanded back to respondents vide its judgment dated 01-09-2015 to initiate fresh departmental proceedings against the appellant and appellant was to be provided with meaningful and adequate opportunity of defence and personal hearing. (judgment of hon'ble Tribunal dated 01-09-2015

(3)

attached). The same judgment was upheld by Supreme Court vide its order dated 17-12-2015.

4. That in compliance of orders of this tribunal, the respondents conducted denovo formal proceedings against the appellants vide order dated 23-01-2017 after his reinstatement on 20-01-2016.
5. That after completion of proceeding against the appellant, the appellant was awarded major penalty of "Reduction to a lower stage in a time scale for a maximum period of 03 years". Further, the intervening period of appellant, i.e. from the date of dismissal from service of appellant on the basis of an earlier enquiry to the date of reinstatement of appellants in service (from 12-12-2012 to 20-01-2016), was treated as extra ordinary leave (leave without pay.
6. That being aggrieved from the impugned order of respondents dated 11-04-2019, the appellant has approached to this forum on the following grounds:

GROUND:

1. That the order of the respondents dated 11-04-2019 is baseless and illegal therefore not sustainable in the eyes of law.
2. That on one hand the appellant was awarded major penalty of reduction to a lower stage in a time scale of 03 years while on other hand the period during which the appellant was dismissed by the respondents was treated as leave without pay which is against the law.
3. That the period of dismissal (12-12-2012 to 20-01-2016) vide order of respondents dated 12-12-2012 was already impugned and set aside by this Tribunal vide its earlier judgment dated

01-09-2015 hence dismissal period cannot be treated as leave without pay


4. That this Tribunal vide its judgment dated 01-09-2015 had impugned the order of respondents dated 12-12-2012, which dismissed the appellant, as it had not afforded the appellants fair opportunity of defence and personal hearing. In such like situation, the period of dismissal is not a fault on part of appellant but only the respondents.
5. That impugned order of respondents dated 11-04-2019 is based on malafide hence liable to be set aside.
6. Any other grounds may be taken during the course of arguments with the permission of this tribunal.

THEREFORE, it is humbly submitted that the instant appeal may kindly be accepted and decided in favour of appellant as prayed for.



Through: **Petitioner**
Ibrar Alam Advocate
High Court

&



Muddaser Jalil
Advocate
District Courts Kohat

(5)

BEFORE SERVICE TRIBUNAL KPK PESHAWAR

Muhammad Saqib Petitioner / Appellant

VERSUS

Govt. Khyber Pakhtun Khwa through Secretary Home and Tribal Department
KPK and others

..... Respondents

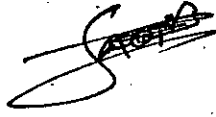
CORRECT ADDRESS

PETITIONER / APPELLANT:


Muhammad Saqib S/o Naiz Badshah warder, attached to
District Jail Kohat

RESPONDENTS:

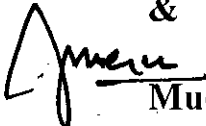
1. Govt. Khyber Pakhtun Khwa through Secretary Home and Tribal Department KPK
2. Inspector General Prisons KPK
3. Assistant Director for Inspector General prisons KPK
4. Superintendent Circle Headquarter Peshawar
5. Superintendent Central Prison Bannu.


Petitioner / Appellant

Through:


Ibrar Alam Advocate
High Court

&


Muddaser Jalil
Advocate
District Courts Kohat

8

BEFORE SERVICE TRIBUNAL KPK, PESHAWAR

Muhammad Saqib

.....Petitioner/Appellant

VS

Govt. Khyber Pakhtunkhwa through Secretary Home and Tribal
Department KPK & others

.....Respondents

AFFIDAVIT

I, Muhammad Saqib S/o Niaz Badshah R/o Kabir Kalay Sabir
Abad, Karak, do hereby solemnly affirm and declare on oath that
the contents of the instant appeal are true and correct the best of
my knowledge and belief and nothing has been concealed from this
Honourable Tribunal.

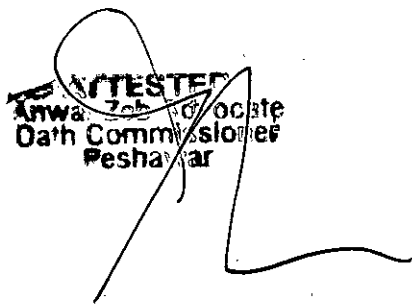


DEPONENT

Muhammad Saqib

S/o Niaz Badshah

CNIC:14202-3393373-3



TESTER
Anwar Zohri
Oath Commissioner
Peshawar

7

CHARGE SHEET

I, **Abid Saeed, Chief Secretary Khyber Pakhtunkhwa**, as competent authority, hereby charge you **Muhammad Saqib**, as follows:

That you, while posted as **warder at Central Prison Bannu** committed the following irregularities:

You were assigned the duties of Sentry Superintendent inside Main Gate on the night between 14/15-4-2012 duly armed but you showed cowardice and failed to fire and confront militants effectively with the result that there was no enemy loss and the militants took full advantage and succeeded in Bannu Jail break on the above night. 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
12/1/2017

**(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA**

(8)

DISCIPLINARY ACTION

I, Abid Saeed, Chief Secretary Khyber Pakhtunkhwa, as the competent authority, am of the opinion that warder Muhammad Saqib presently attached to High Security Prison, Mardan 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 attached to Central Prison Bannu, he was assigned the duties of Sentry Superintendent inside Main Gate on the night between 14/15-4-2012 duly armed but he showed cowardice and failed to fire and confront militants effectively, with the result that there was no enemy loss and the militants took full advantage and succeeded in Bannu Jail break on the above night. 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. Tasheem 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 Saeed
12/1/2017
(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA

(9)

689

SHOW CAUSE NOTICE

I, **Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa**, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, **Mr. Muhammad Saqib, Warder (BS-05), Central Prison Bannu**, as follows:

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing by the Inquiry officer on 25.02.2017; and.
- (ii) on going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer;-

I am satisfied that you have committed the following acts/omissions specified in **rule 3** of the said rules.


(d) Inefficiency / misconduct.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Removal from Service under rule 4 of the said rules.

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

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

5. A copy of findings of the inquiry officer/inquiry committee is enclosed.


(Muhammad Azam Khan)
CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.



(19)
Amc
41
Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department.

ORDER

No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I: WHEREAS, Muhammad Saqib Warder (BPS-05) 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 sheets 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 official 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 official, 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 official.

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 12-12-2012 to 20-01-2016) in respect of the official 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 Officers concerned.
7. Official concerned.

(Maqsood Hassain)
Section Officer (P&R)

کے حضور جناب چیف سیکرٹری صاحب صوبہ خدیتم کو توجہ خواہ

مخبرانہ جواب شوکا نرسٹس

جناب عالی

گزارش ہے کہ مورخہ 15/4/2012 کو صبح 12 بجے تک سپرنٹنڈنٹ صاحب
سٹرل جیل سٹون کے رہائشی کیمپ پر پھر سنتری مقرر تھی جب میں نے فائنل کی آواز سنی
تو میں کیمپ سے زیادہ پوچھا اور اسے اس دوران سپرنٹنڈنٹ صاحب بھی گورنمنٹ کے لئے جوڑے
اندھیرا اور لوڈ شیڈنگ کی وجہ سے کچھ نظر نہیں آ رہا تھا۔ سپرنٹنڈنٹ صاحب کی طرف
دوام ہوئے تو A/B صلات خان عظیم سیاحین سپرنٹنڈنٹ صاحب کو اپنے گورنمنٹ کی طرف لئے گئے
کیونکہ واقعہ 4 بجے انہوں نے اس کی اطلاع نہیں دی اور ان کو دیکھ لیا تھا

جہاں تک فائنل کرنے کا تعلق ہے جناب عالی! عدلیہ صاحب لکھی رہائشی علاقہ
کی طرف کوئی حملہ آور آیا اور نہ ہی فائر کیا۔ پھر سٹون اپنے گورنمنٹ کی طرف پہنچے
یہاں تک کہ اگر کوئی حملہ آور گاڑی کی طرف آئے تو ان کا مقابلہ کر سکیں

جناب عالی! میں حاصل 11540 کی ہمدردی کرتے ہوئے اپنے گورنمنٹ کی طرف
جو تکس کھڑا رہا کہ وہ اپنی جان ہی کے لئے نہیں بلکہ اپنی اور اپنے گورنمنٹ
کی فکر کو چھوڑا ہے۔

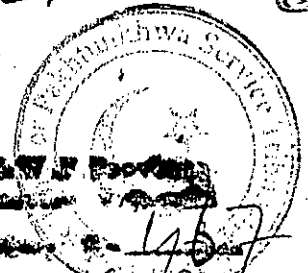
لہذا استدعا ہے کہ قانون کو مدد ملے تاکہ وہ اپنے جناب صاحب کے پاس سے
کو اس شوکا نرسٹس سے بری کیا جائے۔ سٹون اپنے لئے انصاف کی پھر پورے واقعہ

مورخہ 17-12-5

الکھن
وارڈر نمبر 17

(14)

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**



Appeal No. 486/2013

Muhammad Saqib S/O Niaz Bad Shah, Ex-Warder, Central Jail
Bannu, R/O Kabir Kaly P.O Sabir Abad Tehsil & District
Karak..... (Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Circle Headquarters, Prison Peshawar.
4. The Superintendent Central Prison, Bannu.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, read with Section 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, against the Order dated 12.12.2012, whereby the appellant has been awarded the major penalty of "Dismissal from Service" against which his Departmental Appeal dated 27-12-2012 has also been rejected vide order dated 23.01.2013.

Prayer in Appeal: -

On acceptance of this appeal the impugned orders dated 12-12-2012 and 23-01-2013, may please be set-aside and the appellant be re-instated in service with all back benefits of service.

Respectfully Submitted:

1. That the appellant was appointed as Warder in the Prison Department in the year 2010, and was posted in Bannu Prison. Ever since his appointment the appellant was performing his duties as assigned to him with full devotion and there was no complaint whatsoever regarding his performance.
2. That the appellant while performing his duties in Bannu Jail, in the mid night of 14/15 April, 2012, a good number of militants (more than 300) attacked the Jail with heavy weapons, the appellant along with other jail officials started firing at them, however they out numbered the security staff of the jail and managed in helping the escape of certain condemned prisoners from the Jail. They also damaged part of the Jail premises with their heavy weaponry.

As submitted to the
and filed

27/2/13

Attested

01.09.2015

Counsel for the appellant (Mr. Ijaz Anwar, Advocate)

and Mr. Ziullah, Government Pleader with Sheryar, ASI for the

respondents present. Arguments heard and record perused. Vide

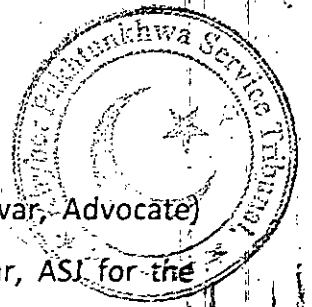
our detailed judgment of to-day in connected appeal No. 484/2013,

titled "Aminullah Versus Government of Khyber Pakhtunkhwa

through Secretary Home & T.As Department, Peshawar etc.", this

appeal is also disposed of as per detailed judgment. Parties are left

to bear their own costs. File be consigned to the record.



ANNOUNCED

01.09.2015

Certified to be true copy



Sd/-
M. Anwar

Sd/-
M. Anwar

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8-9-2015

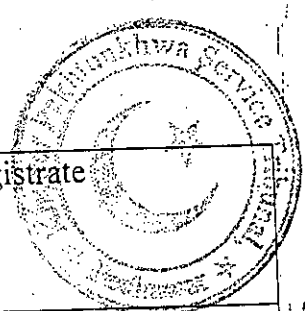
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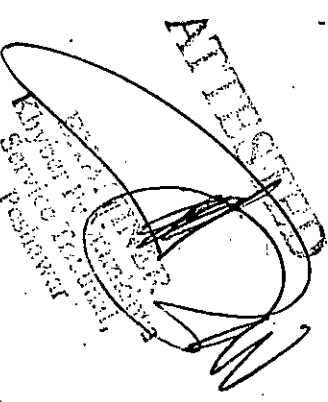
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Annea - 13



Sr. No.	Date of order/proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	01.09.2015	<p><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</u></p> <p>Service Appeal No. 4842013</p> <p>Aminullah Versus Government of Khyber Pakhtunkhwa through Secetary Hom & T.A Deptt. Peshawar etc.</p> <p><u>JUDGMENT</u></p> <p><u>PIR BAKHSH SHAH, MEMBER.</u>- Counsel for the appellatant (Mr. Ijaz Anwar, Advocate) and Government Pleader (Mr. Ziaullah) with Sheryar, ASJ for the respondents present.</p> <p>2. On the night between 14th and 15th April, 2012 at about 1.30 AM militants reached in about 25 vehicles of different types and attacked the Bannu Central Jail.. The militants were armed with automatic weapons. 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 the nearby ping hills in the Frontier Region area. In this incident, the Government of Khyber Pakhtunkhwa vide notification No.SO(Com/Eng)/HD/1-40/2012 dated 16.4.2012 constituted a five numbers enquiry committee headed by Dr. Ehsan-ul-Haq, then Director, Reform Management & Monitoring Unit, Chief Secretary's Office, Khyber Pakhtunkhwa. The committee submitted its elaborate report comprising of about 19 pages. To make the findings of this enquiry report as basis for departmental proceedings</p>



Attended
[Signature]

against the appellants, the step of regular enquiry was dispensed with and the respective competent authorities straight-away issued show cause notices to the appellants. The appellants belong to various departments of the province. At the end of the day, the appellants were awarded punishment as follows:-

<u>S.No.</u>	<u>Appeal No.</u>	<u>Name</u>	<u>Designation</u>	<u>Department</u>	<u>Punishment</u>	<u>Date of Order</u>
1.	484/2013	Aminullah	Warder	Prisons	Dismissed	12.12.2012
2.	485/2013	Mir Liaq	Warder	"	"	"
3.	486/2013	M. Saqib	Warder	"	"	"
4.	487/2013	Raqibaz	Warder	"	Reduction	"
5.	488/2013	Saved Khan	Warder	"	Dismissed	"
6.	489/2013	M. Ibrar	Warder	"	"	"
7.	490/2013	Abid Ullah	Warder	"	"	"
8.	491/2013	Asif Ali Shah	Warder	"	"	"
9.	492/2013	Hafiz Mir Hussan Shah	Warder	"	"	"
10.	493/2013	Gul Mir Dali	Warder	"	"	"
11.	587/2013	M. Zahid	Dy.Supt.	"	"	10.12.2012
12.	1261/2012	M. Ghulam	Section Officer	Establishment	"	5.11.2012
13.	1244/2012	Daftar Khan	A.P.A	"	Reduction	17.7.2012

3. The Departmental ^{appeals} also failed, hence these appeals. In view of common legal issues of these appeal, the Tribunal would like to decide all these appeals by way of this single judgment.

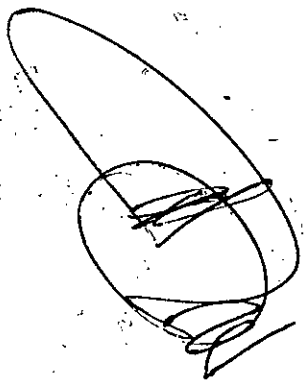
4. The learned counsel for the appellants contended that the appellants have been victimized, discriminated and made scape-goat for the reasons that the senior responsible officers like Commissioner etc. have been exonerated and the appellants at the lower rung of the ladder



3 (14)

15

were punished. It was further submitted that the fact finding enquiry was general in nature and not specific against the appellants to find their faults, which never fixed responsibility on the appellants. However, the high ups of the departments concerned in order to save their faces, by adopting method of pick & choose targeting the appellants which is against the norms of justice, fair-play, equal treatment and treatment in accordance with law and rules. The learned counsel for the appellants further maintained that no opportunity of personal hearing was provided to the appellants and while confronting them with imposition of major penalty without any regular enquiry the appellants have been denied opportunity of defence and proper presentation. Lastly it was submitted that all the appeals may be accepted in the interest of justice and the appellants may be reinstated in service to their original position with back benefits.



5. The learned Government Pleader resisted these appeals on the ground that the competent authority was legally empowered to have dispensed with regular enquiry under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. It was next submitted that in the light of the fact finding enquiry, the competent authority was having sufficient materials in its hands which led to the decision to do away with the regular enquiry. It was finally submitted that all the appeals, being without merits, may be dismissed.


Attested
J. M. M.

6. We have heard learned counsel for the appellants and learned Government Pleader for the respondents at length and have perused the record with their assistance.

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7. Copy of the report of the enquiry committee was found in appeal No. 587/2013, titled "Muhammad Zahid Versus Government of Khyber Pakhtunkhwa and others" annexed by the respondents with its written comments/reply. Admittedly a short cut procedure of issuing show cause notice has been adopted against the appellants. The basis of departmental action against the appellants is the fact finding enquiry. We have gone through this enquiry report and unable to find that the enquiry committee had specifically fixed responsibility on the appellants. The enquiry committee while highlighting lapses on the part of various departments like Tribal Area Administration/FR Bannu, Police Department, Frontier Constabulary, Local Army Command, Civil Administration, Jail Administration, Frontier Reserve Police, Home & T.As Department, Inspector General of Prisons and Intelligence Agencies had put forth a number of recommendations. It is hardly to say that names of the appellants were specified to be responsible for the lapses and thus recommended for departmental action in this enquiry report. After a thorough perusal of the record, a big question mark that comes before the Tribunal would be that in the absence of regular enquiry against the appellants and other specific materials against them, how the alleged misconduct and inefficiency etc. of a particular appellant can be assessed? This observation of the Tribunal is relevant when we see that high and responsible officials of the appellants' departments have been let off and exonerated. This policy seems to be in conflict with findings and requirements of the enquiry report. Moreover, this pick & choose and discrimination on its face is also

Attested



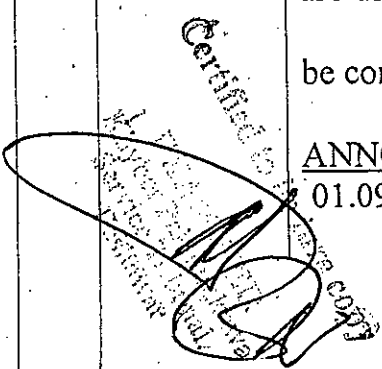


against Article 25 of the Constitution of the country. To skip over the procedure of regular departmental enquiry, the Tribunal is also of the considered view that adequate and proper opportunity of defence and representation has not been provided to the appellants.

8. In the light of the foregoing discussion, the procedure adopted and the penalties imposed against cannot be appreciated for which reason, the Tribunal is constrained to interfere in the case. Consequently, the impugned orders are set aside, the case is remanded back to the respective respondent/department to initiate fresh departmental proceedings against the appellants strictly in accordance with the law and rules. Needless to mention that adequate and meaningful opportunity of defence and personal hearing be provided to the appellants. The concerned appellants are reinstated into service for the purpose of fresh departmental proceedings. Back benefits etc. will be subject to outcome of fresh proceedings. All the aforementioned appeals are disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
01.09.2015.

*Edy Pir Bahadur Shah,
Member*
*Edy Abdul Latif,
Member*



2000
12
14
9-9-2015
9-9-2015

Attested as
verified
[Signature]



IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

18

PRESENT: MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE UMAR ATA BANDIAL

CIVIL PETITIONS NO.584-P, 585-P AND 591-P TO 601-P OF 2015

(Against the judgment dated 1.9.2015 of the KPK Service Tribunal, Peshawar passed in S.As. No.1244, 1261/2012, 484 to 493 & 587 of 2013)

1. Government of KPK through Chief Secretary, Peshawar etc.
(in C.Ps.584-P, 591-P to 601-P/2015)
2. Chief Minister through Chief Secretary, Govt. of KPK Peshawar etc.
(in C.P.585-P/2015)

...Petitioner(s)

VERSUS

- | | |
|----------------------------|----------------------|
| 1. Daftar Khan | ...in C.P.584-P/2015 |
| 2. Muhammad Ghulam | ...in C.P.585-P/2015 |
| 3. Aminullah | ...in C.P.591-P/2015 |
| 4. Mir Laiq | ...in C.P.592-P/2015 |
| 5. Muhammad Saqib | ...in C.P.593-P/2015 |
| 6. Raqibaz | ...in C.P.594-P/2015 |
| 7. Saved Khan | ...in C.P.595-P/2015 |
| 8. Muhammad Ibrar | ...in C.P.596-P/2015 |
| 9. Abidullah | ...in C.P.597-P/2015 |
| 10. Asif Ali Shah | ...in C.P.598-P/2015 |
| 11. Hafiz Mir Hussain Shah | ...in C.P.599-P/2015 |
| 12. Gul Mir Dali | ...in C.P.600-P/2015 |
| 13. Muhammad Zahid | ...in C.P.601-P/2015 |

...Respondent(s)

For the petitioner(s): Mr. Waqar Ahmed Khan, Addl. A.G. KPK
(in all petitions) Mr. Shahryar Khan, Asstt. Supdt. Jail

For the respondent(s): Not represented
(in all petitions)

Date of hearing: 17.12.2015

ORDER

MIAN SAQIB NISAR, J.- By virtue of the impugned judgment of the learned Service Tribunal a *de novo* inquiry was directed to be conducted against the respondents. From the facts and circumstances, we find it to be a justified order, as no substantial question of law of public importance in terms of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 has been raised. Dismissed accordingly.

Sd- Mian Saqib Nisar, J
Sd/- Umar Ata Bandial, J

Attested & verified.
[Signature]

Certified to be true copy
[Signature]
28/12/2015
Deputy Clerk
Supreme Court of Pakistan,
Peshawar.

Peshawar, the
17th December, 2015
Not Approved For Reporting
Ghulam Raza/*

[Signature]
17/12

خدمت جناب عزت مآب وزیر اعلیٰ صاحب خیبر پختونخوا ایشیا اور

عنوان: نظر ثانی اپیل برخلاف فیصلہ صدرہ 11-04-2019 جس کی رو سے سائل پیٹیشنر کی میجر پینالٹی یعنی سروس سے تفریق کے لئے 3

سال دے گئی (Lower Stage) نیز دوران برخواستگی تنخواہ اور دیگر فوائد سے محروم رکھا گیا

پس منظر:

یہ کہ وقوعہ کی رات (14-04-2012) اور (15-04-2012) کو میرٹھ ٹرینل نیوں میں وارڈ (BPS-5) تعینات تھا۔ اور اسی رات میرٹھ ڈیوٹی سپرنٹنڈنٹ صاحب کے بنگلہ پر اہلور سنتری تھی۔ بنگلہ چیل کے ایک کونے میں واقع ہے۔ اور اس سائینڈ پر کسی قسم کے حملہ آور نہ آئے۔ اور نہ میں نے اس پر فائرنگ کی۔ مگر خطرہ تھا کہ کسی بھی وقت وہ بنگلہ پر حملہ آور ہو سکتے ہیں۔ اور میں بدستور اپنی ڈیوٹی پر پہلے سے زیادہ الرٹ تھا۔ تاکہ اگر کوئی حملہ آور آئے تو میں ان کا مقابلہ کر سکوں۔ اچانک باہر سے سینکڑوں عسکریت پسند طالبان آتشی اسلحہ، ہینڈ گرنیڈ، بموں سے مسلح حملہ آور ہوئے۔ پورے رات کی تاریکی اور (بدوران اوڈ شیڈنگ) چیل پر حملہ آور ہوئے۔ اس حملے میں انہوں نے جدید ہتھیاروں، آتشی اسلحہ، راکٹ لانچر سے شیلنگ کی۔ ہم بلاسٹ کیے۔ چیل کے فرنٹ لائن بشمول (بیرونی گیٹ اور ڈیوڑھی گیٹ) نیل کے دونوں کیوں کو اڑانے کے بعد تیزی سے نیل میں اندر واپس ہوئے۔ اور ساتھ ساتھ افسران بالانے تمام ضلعی انتظامیہ، پولیس اور دیگر سیکورٹی اداروں سے مدد طلب کی۔ جو کہ نیل سے کچھ فاصلے پر کیمپ ہوئے۔ بالآخر بیرونی قوت اپنے مقاصد میں کامیاب ہو کر 02 گھنٹے کا رروائی کے بعد واپس ہوئے نیل کو نقصان پہنچایا۔ اور دہشت گرد قیدی عدنان رشید سمیت دیگر حوالاتیان و قیدیان کو اہلور ڈھال اپنے ساتھ لے گئے۔

Attested Man

مذکورہ واقعہ سے متعلق حقائق جاننے اور ذمہ داری کے لیے صوبائی حکومت نے ایک پانچ رکنی کمیٹی تشکیل دی۔ اور ہر اسٹریجی کے جلد از جلد اس معاملہ میں وہ اپنی انکوائری رپورٹ پیش کریں۔ لہذا تشکیل شدہ کمیٹی نے مطالبہ پر رپورٹ تیار کر کے صوبائی حکومت کو پیش کی۔ جس میں انہوں نے نسلے میں نقصانات، ذمہ داران سے متعلق اپنی رپورٹ پیش کی۔

مذکورہ رپورٹ میں کمیٹی نے ذمہ داری کا تعین کرتے ہوئے اور ایکٹ چیل خانہ جات کی رو سے چیل رول نمبر 610 کا مکمل متن و تشریح پیش کیا۔ اور واضح طور پر لکھا کہ چیل کو نہ تو اندر سے توڑا گیا تھا۔ بلکہ چیل پر بیرونی قوم، عسکریت پسندوں نے باہر سے حملہ کیا تھا۔ اور مذکورہ چیل رول نمبر 610 کے مطابق پولیس، قانون نافذ کرنے والوں کی ذمہ داری بنتی تھی۔ یہ کہ وہ نیل سیکورٹی سے متعلق ضروری اقدام کرتے نہ جس میں پولیس، قانون نافذ کرنے والے ادارے مکمل ناکام رہے۔ اس انکوائری رپورٹ کی روشنی میں پولیس، ضلعی انتظامیہ و دیگر اداروں اور چیل عملے کے خلاف کارروائی ہو گئی۔ تاہم حکمانہ کارروائی میں بالآخر تمام پولیس ذمہ داران اور ضلعی انتظامیہ بشمول کمشنر بنوں ڈویژن نہ صرف بری ہوئے۔ بلکہ انہیں ترقیاں بھی دی گئیں۔ جبکہ سائل دو دیگر چند چیل سپاہیوں کو (Fact Finding) انکوائری کی بنیاد پر ڈائریکٹ شوکاژ نوٹس دیا گیا۔ اور نوکری سے برخاستہ کیا گیا۔

سروس ٹریبونل میں اپیل کرنے پر سائل کی Dismissal آرڈر کو ختم کرنے کے بحال کیا گیا۔ تاہم اس میں از سر نو ریکورڈ انکوائری کا حکم صادر فرمایا گیا۔
نقل فیصلہ سروس ٹریبونل صدرہ 01-09-2015۔ نوٹہ-الف ہے۔

یہ کہ عدالتی فیصلہ کی روشنی میں انکوائری لی گئی۔ جس میں سائل پیٹیشنر کو چارج شیٹ دیا گیا۔ اس چارج شیٹ کا مفصل جواب سائل نے دیا۔ انکوائری آفیسر نے کسی جرم کو ثابت کیے بغیر سائل پیٹیشنر کے خلاف (Major Penalty) کی سفارش متعلقہ حکام کو پیش کی۔ جس کا آرڈر شہید سائل کو

وکالت نامہ
KPK Service Tribunal Peshawar

(21)

Case No. _____ Dated: ___/___/200___ Police Station _____

Offence U/S/Case title. تحریر

In Re: _____

Muhammad Saqib S/o Niaz Batcher Petitioner/Appellant/Plaintiff(s)

VERSES

KPK Govt. etc Defendant (s)

Respondent(s)

KNOW ALL to which these present shall come that I/we, the undersigned, appoint Mr. Ayyaz Alam and Mr. Muddasar Jilani Abid Ali Advoca (Thereinafter called the

Advocate) to be the Advocate for the petitioner / Appellant in the above

mentioned case, to do all the following acts, deeds and things or any of them that is to say.

- 1: To act, appear and plead in the above mentioned case in this court or any other court in which the same may be tried in the first instance or in L.P. Appeal or review or revision or execution or any other stage of its progress until its final decision.
- 2: To present pleadings, appeals, cross-objections or petition for execution, revision, review, withdrawal, compromise or other petitions affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- 3: To withdraw or compromise the said case or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said case.
- 4: To receive money and grant receipts there for and do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- 5: To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on Advocate wherever he may think fit to do so.

AND I/WE, hereby agree to ratify whatever the Advocate or his substitute shall do in the said case.
AND I/WE, hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in the consequence of his absence from the court when the said case is called up for hearing.
AND I/WE, hereby agree that in the event of whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid.

IN WITNESS WHERE OF I/WE, hereunto set my/our hand to these presents the contents of which have been explained to and understood by me/us, this the 12 30 day 09 200 19

Man.

(Signature or thumb impression)
Petitioner/Plaintiff/Appellant(s)
Defendant/Respondent(s)

وکالت نامہ
KPK Service Tribunal Peshawar

(21)

Case No. _____ Dated: ___ / ___ / 200___ Police Station _____

Offence U/S/Case title. breach

In Re: _____

Muhammad Sagib s/o Niaz Badshah Petitioner/Appellant/Plaintiff(s)

VERSES

KPK Govt. etc Defendant (s)

Respondent(s)

KNOW ALL to which these present shall come that I/we, the undersigned, appoint Mr. Ayyaz Alam and Mr. Muddasar Inayat Abid Ali Adhoke (Thereinafter called the

Advocate) to be the Advocate for the petitioner / appellant in the above mentioned case, to do all the following acts, deeds and things or any of them that is to say.




- 1: To act, appear and plead in the above mentioned case in this court or any other court in which the same may be tried in the first instance or in L.P. Appeal or review or revision or execution or any other stage of its progress until its final decision.
- 2: To present pleadings, appeals, cross-objections or petition for execution, revision, review, withdrawal, compromise or other petitions affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- 3: To withdraw or compromise the said case or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said case.
- 4: To receive money and grant receipts there for and do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- 5: To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on Advocate wherever he may think fit to do so.

AND I/WE, hereby agree to ratify whatever the Advocate or his substitute shall do in the said case.
AND I/WE, hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in the consequence of his absence from the court when the said case is called up for hearing.
AND I/WE, hereby agree that in the event of whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid.

IN WITNESS WHERE OF I/WE, hereunto set my/our hand to these presents the contents of which have been explained to and understood by me/us, this the 12 30 day 09 200 19

man.

(Signature or thumb impression)
Petitioner/Plaintiff/Appellant(s)
Defendant/Respondent(s)

50 روپے	27069	  
ایڈوکیٹ:		پشاور بار ایسوسی ایشن، خیبر پختونخواہ
بار کونسل/ ایسوسی ایشن نمبر:		
رابطہ نمبر:		

بعدالت جناب: سروس ٹریبونل خیبر پختونخواہ لیٹامہ

منجانب: <u>بیتنا</u>	دعویٰ: <u>سروس لیٹامہ</u>
محمد نقیب	علت نمبر:
بنام	مورخہ: <u>07/01/2020</u>
گورنمنٹ آف خیبر پختونخواہ و غیرہ	جرم:
	تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام لشاور کیلئے عمر زمان خٹک کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: _____
 العبد _____
 مقام _____

Attested
 Accepted

گواہ شد العبد _____
 کے لیے منظور ہے۔

محمد نقیب (ایمپلائٹ)

BEFORE THE HONORABLE SERVICE TRIBUNAL
PESHAWAR.

In the matter of
Service Appeal No. 1226 of 2019
Muhammad Saqib (Warder)

.....Appellant.

VERSUS

Government of KP and Others

.....Respondents.

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DEPONENT

**BEFORE THE HONORABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

In the matter of
Appeal No. 1226 of 2019
Muhammad Saqib

APPELLANT/ PETITIONER

Versus

1. Govt. of Khyber Pakhtunkhwa through Secretary Home and Tribal Department KPK.
2. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
3. Assistant Director for I.G of Prisons KP Peshawar.
4. Superintendent Circle Headquarter Peshawar.
5. Superintendent Central Prison Bannu.....**Respondents**

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS

Joint Para-wise Comments on behalf of Respondent No. 01 to 05 are as under:-

RELIMINARY OBJECTIONS.

- i. That the appellant has got no cause of action to file the Appeal.
- ii. That the appeal is not maintainable in its present form.
- iii. That the appellant is estopped by his own conduct.
- iv. That the appellant has got no locus standi to file present petition.
- v. That the present appeal is not sustainable by law and rules and also barred by limitation.
- vi. That the appellant has not come to the court with clean hands.
- vii. That the appeal is bad for mis- joinder and non-joinder of necessary and proper parties.

Respectfully Sheweth:

REPLY ON FACT:-

- 1) Admitted and correct. Due to his gross misconduct and negligence, major penalty was imposed on him.
- 2) Admitted and correct as his appeal was examined in the light of available record and rejected in accordance with Law/ Rules.
- 3) Admitted and correct. A fresh denovo inquiry was conducted and in the light of that very inquiry, major penalty of reduction to a lower stage in a time scale for a period of three year was imposed upon him.
- 4) As explained in Para NO.3 above.
- 5) Admitted as correct.
- 6) The appellant has no locus standi and cause of action to file the subject appeal.

REPLY ON GROUNDS:-

1. Not admitted correct. The order of Competent Authority dated 11-04-2019 is not illegal and unlawful because the appellant was found guilty of inefficiency/ misconduct because he was assigned the duty of sentry inside main gate in the night of 14/15-04-2012 during Jail Break. He failed to

fire and confront militants effectively as the appellant was loaded with weapon. Hence the order of respondents is sustainable, having strong grounds.

2. As stated is incorrect. The petitioner was previously awarded major penalty of dismissal from service on 12-12-2012 upon completion of inquiry constituted vide Govt. of Khyber Pakhtunkhwa Notification No.SO(Com/Eng)HD/1-40/2012 dated 16-04-2012 comprising 05 members from different Departments. The committee members submitted its facts finding report and appellant was awarded major penalty i.e. removal from service including thirteen (13) No's government servants of different department on the ground that due to his misconduct along with others, the militants took full advantages and succeeded in Bannu Jail break and state sustained loss and 381 prisoners were made their good escape. But later on the appellant approached to honorable Tribunal against his penalty which was decided on 01-09-2015 and the appellant was reinstated into service and also further ordered to initiate fresh departmental proceeding against the appellant. Therefore in compliance to honorable Tribunal Judgment/ order (Statement of allegations with charge sheet **(Annex-A)**) was given on 12-01-2017, denovo inquiry was initiated against the appellant on 25-02-2017 **(Annex-B)** and a fair chance of hearing was given to the appellant and the inquiry officer furnished his findings according to which the charges leveled against the appellant stood proved. Hence, (Show cause Notice **(Annex-C)**) was issued and appellant submitted reply to show cause Notice **(Annex-D)** which was not satisfactory. Hence, major penalty of "Reduction to a lower stage in a time for a maximum period of three (03) years and the intervening period i.e. from the date of dismissal from service on the basis of an earlier inquiry to the date of reinstatement in service (from 12-12-2012 to 20-01-2016) was treated as extra ordinary leave (leave without pay) imposed vide Govt. of Khyber Pakhtunkhwa H&TA department order No.SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I dated 11-04-2019 **(Annex-E)**. During the said intervening tenure the appellant had not performed his duties on account of his own misconduct, therefore, this does not come under purview of article 13 of Constitution of Islamic Republic of Pakistan i.e. Double Jeopardy. Hence the punishment awarded to the appellant was purely legal and according to law under E& D Rules 2011 as he proved himself guilty and did not satisfy the inquiry officer twice.


3. Not admitted correct as in the light of fact finding inquiry, having sufficient material evidence on record, the competent authority was legally empowered under the KPK Government Servants (E&D) Rules 2011 to

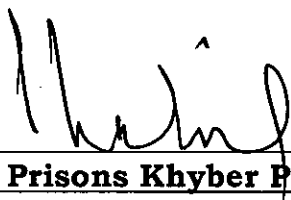
impose major penalty of "Removal from Service" upon the appellant along with other government servants which were set aside by this August Tribunal vide its Judgment dated 01-09-2015 and reinstated the appellant and inquiry denova was ordered and back benefits etc were placed subject to the outcome of fresh proceedings.

4. Detail reply have been given in Para-2 ibid.
5. The order on dated 11-04-2019 of the competent authority is according to KPK Government Servants (E&D) Rules 2011 for the charges mentioned in the charge sheet served upon him and he was dealt and proceeded according to said rules and all legal and codal formalities were dully fulfilled during inquiry.
6. Further Grounds may be taken during the arguments with permission of Honorable Tribunal.

PRAYER:


It is humbly prayed that on acceptance of these comments / reply the appeal filed by the appellant may graciously be dismissed with cost being devoid of merit.

1. (Respondent No.01) 
Govt. of Khyber Pakhtunkhwa through Secretary Home and Tribal Department KPK

(Respondent No.02) 
Inspector General of Prisons Khyber Pakhtunkhwa.

(Respondent No.03) 
Assistant Director for I.G of Prisons KP Peshawar.

(Respondent No.04) 
Superintendent Circle Headquarter Peshawar.

(Respondent No.05) 
Superintendent Central Prison Bannu.

BEFORE THE HONORABLE SERVICE TRIBUNAL
PESHAWAR

In the matter of
Service Appeal No. 1226 of 2019
Muhammad Saqib (Warder)..... **(Petitioner)**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department, Peshawar
2. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
3. Assistant Director for I.G Prisons Khyber Pakhtunkhwa Peshawar.
4. Superintendent Circle Headquarter Peshawar.
5. Superintendent Central Prison Bannu.

..... **(Respondents)**

AFFIDAVIT

I Sulaiman, Senior Instructor/Law Officer, Office of the I.G Prisons Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath on behalf of Respondents No. 1 to 5 that the contents of the Joint Para-wise comments submitted by respective Respondents concerned is correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal Peshawar.

DEPONENT


SULAIMAN

Senior Instructor/Law Officer
Office of Inspectorate General of Prisons
Khyber Pakhtunkhwa, Peshawar

C

DISCIPLINARY ACTION

1. Abid Sneed, Chief Secretary Khyber Pakhtunkhwa, as the competent authority, in an opinion that warder Muhammad Saqib presently attached to High Security Prison, Mardan 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 attached to Central Prison Bannu, he was assigned the duties of Sentry Superintendent inside Main Gate on the night between 14/15-4-2012 duly armed but he showed cowardice and failed to fire and confront militants effectively, with the result that there was no enemy loss and the militants took full advantage and succeeded in Bannu Jail break on the above night. 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. Tasheem 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.

Ali Meen
12/1/2017

(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA

CHARGE SHEET

7

I, **Abid Saeed, Chief Secretary Khyber Pakhtunkhwa**, as competent authority, hereby charge you **Muhammad Saqib**, as follows:

That you, while posted as **warder at Central Prison Bannu** committed the following irregularities:

You were assigned the duties of Sentry Superintendent inside Main Gate on the night between 14/15-4-2012 duly armed but you showed cowardice and failed to fire and confront militants effectively with the result that there was no enemy loss and the militants took full advantage and succeeded in Bannu Jail break on the above night. 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.

(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA

(9)

SHOW CAUSE NOTICE

I, **Muhammad Azam Khan**, Chief Secretary, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, **Mr. Muhammad Saqib**, Warder (BS-05), Central Prison Bannu, as follows:

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing by the Inquiry officer on 25.02.2017; and
- (ii) on going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer;-

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules.

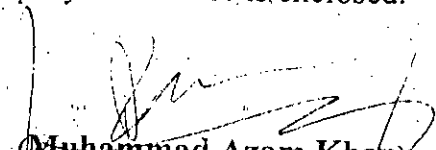
(d) Inefficiency / misconduct.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Removal from Service under rule 4 of the said rules.

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

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

5. A copy of findings of the inquiry officer/inquiry committee is enclosed.


(Muhammad Azam Khan)
CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.

کھنڈر جناب چیف سکریٹری میں صورتہ حدیثہ کھنڈر کھنڈر

عنوان: خواجہ شوکانہ نوشہرہ

جناب عالی

گزشتہ دنوں کے کھنڈر کے بارے میں 15/12/2012 کو میری ڈیوٹی رات 12 بجے سے لیکر 3 بجے تک سپرنٹنڈنٹ کھنڈر جناب
سینئر جیل سٹور کے رہائشی بنگلے پر بطور سکریٹری تقریر تھی جب میرے فائٹنگ آواز سے
تو میں بیدار ہو گیا اور وہاں سپرنٹنڈنٹ کھنڈر جناب کو لے کر وہاں پہنچ گیا اور وہاں
انڈیسیا اور لوڈ شیڈنگ کی وجہ سے کچھ نظر نہیں آ رہا تھا سپرنٹنڈنٹ کھنڈر جناب کو پوچھا کہ
رواں ہوئے تو آپ صحت میں کیا ہیں سپرنٹنڈنٹ کھنڈر جناب کو اپنے کواٹر کی طرف لے گیا
کیونکہ واقعہ غلط ہے اور یہاں سے اس کے لئے نہیں چلے اور اس کو دیکھ لیا گیا
جہاں تک فائٹنگ کرنے کا تعلق ہے جناب عالی، میرا صاحب بعض رہائشی عمارت

کی طرف نہ کوئی حملہ آور آیا اور نہ ہی فائٹنگ ہوئی۔ پھر اس کی اپنے کواٹر کی طرف چلے گئے
یہاں تک اگر کوئی حملہ آور کالونی کی طرف آئے تو ان کا وقت ہم کو معلوم

جناب عالی! میں اس بارے میں 11540 کی باسڈاری کرتے ہوئے اپنے کواٹر کی طرف
جو کس کے کھنڈر کے بارے میں کہہ رہی ہیں ان کے بارے میں پتہ نہیں چلا گیا اور نہ ہی کوئی
کی حکم کو چھوڑا ہے۔

لہذا مندرجہ بالا واقعات کو مدلل و دلالت سے آپ کو عرض کیا ہے اور اس کے بارے میں
کو اس شوکار سے پتہ چلا ہے۔ اس لئے آپ سے اللہ تعالیٰ کو پورا موقع دیا گیا
ہے۔

5-12-17
اکتوبر
وارڈر کھنڈر جناب

843-781 ①

121

DEPARTMENTAL / INQUIRY PROCEEDINGS AGAINST MR. MUHAMMAD SAQIB, THE THEN WARDER, CENTRAL PRISON, BANNU PRESENTLY POSTED AT DISTRICT JAIL, KOHAT.

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/1-2012 dated 23.01.2017 with the mandate to inquire into the following allegations levelled against Mr. Muhammad Saqib, the then Warder, Central Prison, Bannu presently posted at District Jail, Kohat collected in Charge Sheet / Statement of Allegations:-

While attached to Central Prison, Bannu, he was assigned the duties of Sentry Superintendent inside Main Gate on the night between 14/15-4-2012 duly armed but he showed cowardice and failed to fire and confront militants effectively, with the result that there was no enemy and the militants took full advantage and succeeded in Bannu Jail break on the above night. Instantly 381 prisoners including high profile prisoners were got released, beside other damages.

Proceedings:

In pursuance of the direction contained in Para-4 of the Charge Sheet, the accused Official Mr. Muhammad Saqib his written defense vide No. 1026/W dated 17.02.2017 (Copy attached as Annexure-A). The accused Officer was also summoned to appear before the undersigned on 24.02.2017 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 Official recorded who stated on oath that he was serving in Prisons Department since 2010, was posted at Bannu Jail 02 months before the occurrence, he was posted as Sentry at the residence of Superintendent Jail, since the residence of Superintendent Jail was under Watch Tower No. 4 that's why he was posted under Watch Tower No. 4 as Sentry whose responsibility was Watch Tower No. 4 & residence of Superintendent Jail while responding the questions asked as under (Original questions and answers are attached as Annexure-B): -

During the attack on 14/15 midnight April, 2012 he was deployed as Sentry Superintendent under Tower No. 4 from 12:00 AM to 03:00 AM for duty with AK-47 and cartridges but he showed cowardice as he did not fire on terrorists and even not tried to prevent them outside the Jail as a result the attackers took away high profile convicted Prisoners from the Jail. Due to his cowardice, the State writ could not be established? What is your stance about it?

It is correct that he was on duty from 12:00 to 03:00 AM duly armed with AK-47 with cartridges. At about 01:15 AM, the Jail was attacked by the terrorists. He stood at his point. Neither any attacker came to him nor he fired. It is correct that on the night of occurrence Jail Superintendent Mr. Muhammad Zahid was at his residence. He does not know exactly as to when Jail Superintendent, Mr. Muhammad Zahid came out of his residence after start of firing. He however remembered that Jail Superintendent came out of his house after firing alone and went towards Main Gate of the Jail. As far as he knows Assistant Superintendent, Jalat Khan went towards his quarter and during his duty till 03:00 AM he did not come back. He also remembered that Jail Superintendent was alone at that time. It is correct that no official informed Superintendent Jail about the attack and after hearing the firing everybody came to know that Jail has been attacked.

Could the main gate be seen from the place of his duty, did Warder Ibrar present in picket No. 04 fire? Whether during the emergency one should wait for the attacker to come to him to do something? Should not armed guards or constables wherever deployed try to stop the attackers?

845-203 (2)

Ans: From the place of his duty main gate or outer side was invisible. He couldn't say whether Ibrar fired from Watch Tower or not. Since his duty was on the Bungalow, therefore, he did not fire.

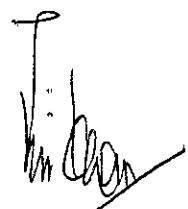
Q3: Did he perform his duty according to provisions contained in sub clauses (d) not to leave his post without regular relief upon any pretext whatsoever, (e) not to allow any person to approach his post after dark, without challenging, (g) challenging on a dark night, on hearing voices or the approach 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 of Rule 1154 of Pakistan Prison Rules? 122

Ans: It is correct that he did not leave his place of duty. Neither he saw any attacker nor fired because he could not asses that the Jail has been attacked therefore, he did not fire.

Heard and accepted.

Findings / Recommendations:

1. Under the Pakistan Prison Rules, he was responsible to run the security affairs of the Central Prison, Bannu strictly in accordance with the laid down provisions but due to his cowardice approach, he failed to confront the militants.
2. His duty was to remain alert and to confront the attackers.
3. He could not defend the charge levelled against him as he was having no concrete evidence in support of his contention.
4. He was not having the required skill / expertise to perform this responsible duty.
5. Despite duly armed, he did not dare to fire a single shot on the crowd of 150 miscreants. As per his version, no miscreants come towards him. Despite of severe firing with heavy machine guns, the accused official took the plea that he was not sure that the Jail had been attacked, fact remains there was hardly 150 meter distance between his place of duty and main gate. The official, in his written reply to the Show Cause Notice admitted that he acted upon sub clause (d) of Rule-1154 but ignore the other sub clauses (e), (g), (i), (j), (k), (l) and Rules-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.
6. The charges levelled against the accused official Mr. Muhammad Saqib, the then Warder, Central Prison, Bannu presently posted at District Jail, Kohat 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

(8) (10)
Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department.

ORDER

No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I: WHEREAS, Muhammad Saqib Warder (BPS-05) 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 sheets 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 official 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 official, 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 official.

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 12-12-2012 to 20-01-2016) in respect of the official 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 Officers concerned.
7. Official concerned.

(Maqsood Hassain)
Section Officer (P&R)