

3rd Feb, 2023

Clerk of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Lawyers are on strike, therefore, case is adjourned. To come up for arguments on 22.03.2023 before D.B. Office is directed to notify the next date on the notice board as well as on the website of the Tribunal.

SCANNED
KPST
Peshawar

(Muhammad Akbar Khan)
Member (E).

(Kalim Arshad Khan)
Chairman

22.03.2023

Learned counsel for the appellant present.

Mr. Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Learned Member Judicial (Mrs. Rozina Rehman) is on leave, therefore, case is adjourned to 24.05.2023 for arguments before D.B. Parcha Peshi given to the parties.


SCANNED
KPST
Peshawar

(Muhammad Akbar Khan)
Member (E)

11th Oct., 2022.

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Muhammad Suleman, Law Officer for the respondents present.

Learned counsel for the appellant requests for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 10.11.2022 before the D.B.


(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman


10.11.2022

Counsel for the appellant present.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Suleman Khan Law Officer for respondents present.

File to come up alongwith connected Service Appeal No. 516/2017 titled "Muhammad Jilani Vs Prison Department" on 01.12.2022 before D.B.



(Fareeha Paul)
Member (E)

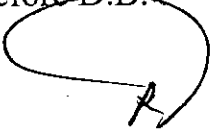

(Rozina Rehman)
Member (J)

01.12.2022

Junior to counsel for the appellant present. Kabir Ullah Khattak learned Additional Advocate General alongwith Suleman Khan Law Officer for respondents present.

File to come up alongwith connected Service Appeal No. 516/17 titled "Muhammad Jilani Vs Prison Department" on 03.02.2023 before D.B.


(Fareeha Paul)
Member(E)


(Rozina Rehman)
Member(J)

SCANNED
KPST
Peshawar

SCANNED
KPST
Peshawar

24.01.2022

Learned counsel for appellant present. Mr. Suleman Khan Senior Instructor alongwith Mr. Kabir Ullah Khattak Additional Advocate General for the respondents present.

Mrs. Rozina Rehman learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 17.02.2022 before D.B.



(Salah-Ud-Din)
Member (J)

17-2-22

*Due to retirement of the Honorable
Chairman the case is adjourned
on 10-6-22*

Reader

10.06.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 01.09.2022 before the D.B.



(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

01.09.2022

Bench is incomplete, therefore, case is adjourned to 11.10.2022 for the same as before.



Reader

20.01.2021

Due to COVID-19, the case is adjourned for the same on 29.03.2021 before D.B.



READER


29.03.2021

The concerned D.B is not available today, therefore, the appeal is adjourned to 21.05.2021 for the same.

21.5.21

Due to COVID-19, the case is adjourned to 9.9.2021 for the same.


Reader



Reader

09.09.2021

Clerk to counsel for appellant present.

Kabir Ullah Khattak learned Additional A.G for respondents present.

Lawyers are on general strike. Therefore, case is adjourned. To come up for arguments on 24.01.2022 before D.B.



(Rozina Rehman)
Member (J)

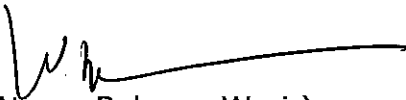

Chairman


18.11.2020

Appellant present in person.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

File to come up for further proceedings, on 20.01.2021 before D.B-II.


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

17.09.2020

The Bench which heard the arguments, is not available being on tour at Camp Court Abbottabad. Therefore, the case is adjourned to 29.09.2020 for the same, before proper D.B.

Reader

29.09.2020

Learned counsel for appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents is also present.

We have already heard arguments of learned counsel for the appellant as well as Learned Assistant Advocate General representing the respondents and gone through the record available on file and in this regard it would be appropriate to make reference to the order dated 26.01.2017 vide annexure-A page no. 4 wherein the last part of the referred to order a note (ii) has been given to the following effect " Government of Khyber Pakhtunkhwa has already filed CPLA in the august Supreme Court of Pakistan, against the judgment of learned Service Tribunal dated 18.12.2015, therefore, officers/officials mentioned above shall not be granted pre-mature retirement till the final decision by the august Supreme Court of Pakistan". The bench queried about the current position of the referred to CPLA, in response thereof learned Assistant Advocate General representing the respondents submitted that it is still pending therefore, no judgment in the instant appeal could be passed unless and until the referred to CPLA is decided. Therefore, file to come up for further proceedings on 18.11.2020 before D.B.

(Mian Muhammad)
Member (Executive)

(Muhammad Jamal Khan)
Member (Judicial)

03.09.2020

Mr. Inayatullah Khan, Advocate for the appellant, is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith representative of the department Mr. Suleman, Senior Instructor for the respondents are also present.

2. Learned counsel for the appellant invited the attention of the bench to the application for restoration of the titled Service Appeal which was dismissed in default and submitted that besides the instant appeal he has been engaged in four other service appeals of similar nature involving common question of law and facts in which he has been marked present however, strangely enough the instant appeal was having a dissimilar fate, as proceedings continued in those appeals accordingly. He further argued that he has not been marked present in the instant appeal, therefore, he submitted that on the stated grounds this appeal is restorable.

3. On the other hand, the learned Assistant Advocate General raised no objection on the acceptance of the restoration application.

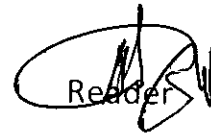
4. It is evident on record that the present service appeal was called on for hearing on 15.05.2018 but no one appeared on behalf of the appellant resulting into its dismissal in default. The application for restoration of appeal was submitted on 25.10.2019 beyond the prescribed period of limitation nevertheless, while keeping in view the arguments of the learned counsel for petitioner/appellant and the law and precedent on the subject which prefer decision on merits rather than looking at technicalities and since valuable rights are involved, therefore, the appeal is restored to the file but for admonition a costs of Rs. 2000/- is imposed to be paid to the respondents. On payment of costs receipt in this regard has to be obtained from the duly authorized representative of the respondents to be deposited in the government exchequer and by placing the receipt on file. File to come up for arguments on

(Mian Muhammad)
Member (Executive)

(Muhammad Jamal Khan)
Member (Judicial)

9/6.2020

Due to COVID19, the case is adjourned to
10/7/2020 for the same as before.


Reader


10/3.07.2020


Due to COVID-19, the case is adjourned to 03.09.2020
for the same.


Reader

10.02.2020

Clerk to counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Sheharyar, Assistant Superintendent Jail, for the respondents present. Reply on restoration application on behalf of respondents not submitted. Representative of the department requested for adjournment. Adjourned to 13.03.2020 for reply and arguments on restoration application before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

13.03.2020

Counsel for the petitioner present. Mr. Muhammad Jan, DDA alongwith Mr. Suleman, Law Officer for respondents present. Reply on application for restoration of appeal not submitted. Representative of the respondents seeks time to submit the same. Adjourned. To come up for reply and arguments on 09.04.2020 before D.B.


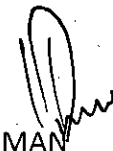

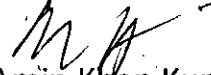

Member


Member

Form-A
FORM OF ORDER SHEET

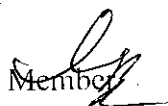
Court of _____

Appeal's Restoration Application No. 3952019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.10.2019	<p>The application for restoration of appeal No. 683/2017 submitted by Inayatullah Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 25/10/19</p>
2		<p>This restoration application is entrusted to D. Bench to be put up there on <u>10-12-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>
10.12.2019		<p>Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the petitioner is not available today. Adjourned to 10.02.2020 for further proceeding before D.B.</p> <p style="display: flex; justify-content: space-between;"> <div data-bbox="522 1470 771 1632" style="text-align: center;">  (Ahmad Hassan) Member </div> <div data-bbox="1071 1470 1404 1632" style="text-align: center;">  (M. Amin Khan Kundi) Member </div> </p>

22.01.2018

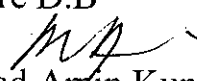
Counsel for the appellant present. Mr. Riaz Painsa Khel, Assistant AG alongwith Mr. Sohrab Khan, Assistant for the respondents present. Rejoinder submitted. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 15.03.2018 before D.B.


Member


Chairman

15.03.2018

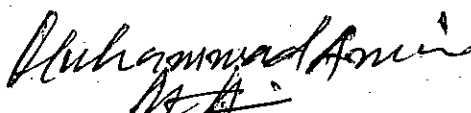
Appellant in person present. Learned District Attorney for the respondents present. Appellant seeks adjournment as his counsel is not available. Adjourn. To come up for arguments on 15.05.2018 before D.B



(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

15.05.2018

None present on behalf of appellant. Mr. Muhammad Jan, Learned Deputy District Attorney present. Case called for several times but no one appeared on behalf of appellant. Consequently the present service appeal is dismissed in default. File be considegned to record room.


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

Service Appeal No. 683/2017


02.10.2017

Counsel for the appellant present. Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Representative of the respondent-department is not in attendance therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. To come up for written reply/comments on 02.11.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member

02.11.2017

Counsel for the appellant and Additional Advocate General alongwith Sheryar Khan Assistant for the respondents present. Written reply not submitted. Requested for further adjournment. Adjourned. To come up for written reply/comments on 29.11.2017 before S.B.


Chairman

29.11.2017

Learned counsel for the appellant present. MR. Kabir Ullah Khattak learned Additional AG Muhammad Rauf, Senior Clerk for the respondents present. Reply submitted on behalf of the respondents. To come up for arguments/rejoinder on 22.01.2018 before D.B


(Muhammad Hamid Mughal)
MEMBER

01.08.2017

SCANNED
K. I
Peshawar

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was dismissed from service by the competent authority, however, the Service Tribunal accepted his appeal and reinstated him in service and converted his dismissal from service into reduction to the lower post of Senior Clerk for a period of three year. It was further contended that the respondent-department has reinstated him in service vide order dated 19.01.2017 but without back benefits. It was further contended that since the Tribunal has not withheld the back benefits of the appellant in the judgment, therefore, the impugned order is illegal and liable to be set-aside.

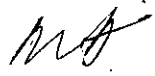
The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 28.08.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member

28.08.2017



Appellant Deposited
Security & Process Fee

Counsel for the appellant present. Security and process fee not deposited. Learned counsel for the appellant requested for further time for depositing of security and process. Directed to deposit the same within seven days, thereafter, notices be issued to the respondents for written reply/comments for 02.10.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 683/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/06/2017	<p style="text-align: center;">The appeal of Mr. Muhammad Rauf received today by post through Mr. Rustam Khan Kundi 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 23/6/17</p>
2-	10-7-17	<p style="text-align: center;">This case is entrusted to Touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>23-8-17</u></p> <p style="text-align: right;"> CHAIRMAN</p>


The appeal of Mr. Muhammad Rauf Assistant Superintendent Jail D.I.Khan received today on 12.06.2017 is incomplete on the following score which is returned to the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 2- Annexures of the appeal may be attested.
- 3- Annexure-III of the appeal is incomplete which may be completed.
- 4- One copy/set of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

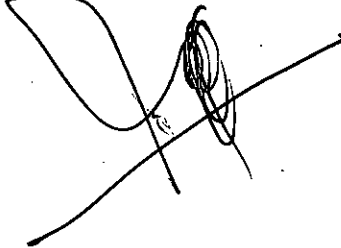
No. 1528/S.T,

Dt. 13/6/2017

Mr. Muhammad Rauf Assistant Sudt.
Jail Dera Ismail Khan.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

تا 20 جون 2017 کو وصول شد



Registrar :: Service Tribunal

1. The requisite has been done and
Compliance ~~done~~

2. Vakalatnama : enclosed

Khyber Pakhtukhwa
Service Tribunal

Diary No. 738

Dated 23/6/2017 22.06.17


H. Rauf

Member
Copy

Before...

The K.P.K Service Tribunal- Peshawar

683/2017

S.T.A No: 2017

2017

Muhammad Rauf

Versus

Govt Of K.P.K

INDEX

Serial #	Particulars Of Documents	Annexure	Pages
1.	Memo Of Appeal		1—2
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3	Impugned Order Dated 19-01-2017	I	4—6
4	Order Of Dismissal 12-01-2011	II	7—8
5	Seniority List Dated 08-03-2017	III	9—15
6	Copy Of Judgement Of S.T Dated 18-12-2015	IV	16—26
7	Memo Of Departmental Appeal Dated 24-2-2017	V	27—29
8	Wakalat Nama		

Appellant Deposited
Security & Process Fee

28-8-17

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Before...

The Hon'ble K.P.K Service Tribunal, Peshawar

Service Tribunal Appeal No.....2017

Muhammad Rauf

Assistant Superitendant(BPS-14) Presently Attached To Central
Prison, Dera ismail khan

Appellant

VERSUS

1: The Government Of K.P.K Province Through Secretary Home &
Tribal Affairs Department,, Peshawar

2: The Inspector General Of Prison,, Khyber PakhtunKhwa, Peshawar

Respondents

[Further] Representation under Section 4 of the ST, Act, against order bearing # 2/3-SO (Prison) HD-/10 dated 19.01.2017 passed by the Respondents # 1 and or Respondent # 2 severally and/or jointly who have declined to modify impugned order dated 19.1.2017 on Departmental Appeal dated 24.02.2017 of the Appellant, thereby maintaining the impugned order dated 19.01.2017 intact and operative to the manifest detriment of the Appellant. Qua Financial benefits from 12.01.2011 to 18.12.2015..

PRAYER:-On acceptance of the instant Representation/Appeal, to delete the sentence "however the period from 12th January, 2011 to 18th December, 2015 in respect of these official, are treated as leave without pay"(herein the Appellant) and as consequence thereto the Appellant may be allowed the due Emoluments for the stated period[1802 days]

The Appellant; Amongst other grounds; respectfully submits as follows:-

1: The Appellant initially was appointed as Junior Clerk wef 05.7.1981 and was promoted to the the rank of Assistant Superintendent (BPS-14) Jail wef 30.09.2005 and seniority too was affected. Seniority list dated 8.03.2017 is enclosed as Annexure 1. There occurred escape of two prisoners from Bannu Jail on the night between 21-22 of September, 2009 and after the inquiry the Appellant was removed from service wef 12.01.2011 and against such penalty STA 584/2011 was instituted and the Appellate proceedings ended in reduction to the rank of Senior Clerk(BPS-9) for three years and thenceafter the Appellant was restored in his incumbency of ASJ(BPS-14) but the period of severance from service (12.01.2011 to 10.12.2015) was treated as leave without pay vide order of 19.01.2017. Copy enclosed, as Annexure

2: The copy of STA judgement of 18 12.2015 along with impugned order of 19.01.2017 are enclosed as Annexure

3: The Appellant prefers to state that

enclosed. There is no information qua the disposal of the Appeal which is well within time.

4: The Appellant so far has not received verdict on the Appeal dated 24.02.2017 and the Appellant is obliged to institute the present Tribunal Appeal under section 4 of the STA Act(I) 1974, since no further adequate remedy is available.

Grounds Of The Appeal:-

1: The impugned order dated 19.01.2017 is harsh when the long continuous service wef 05.7.1981 entitles the Appellant for earned leave under Fundamental Rules and the Leave Rules, 1980 which are beneficial and remedial enactments.

2: The impugned order has disrupted the service tenure as well causing financial disadvantage on the eve of superannuation on 01.01.2022 which is a substantial irreparable loss.

3: The service profile of the Appellant has been jeopardised and the Appellant would be bereft of promotion to the rank of Senior Assistant Superintendent BPS-16.

4: The Provision of Rule 693 of Prison Rules as amended till 1985 have been unduly enlarged against the Appellant.

5: There was no regular/notified Duty Roster from Superintendent Jail Bannu.

6: While inflicting the penalty, Rule 1004(1) has been side-tracked and the Appellant has been made vicariously liable for the Defaults or Lapses of Deputy Superintendent or Superintendent when the Head wards or Sector Incharge did not make any timely report of the mishaps and the Appellant has been unfairly targeted by the inquiry committee when the accusing witnesses were not made available for Cross-Examination on oath.

It is therefore humbly PRAYED that the instant Appeal may graciously be accepted..

Verification

It is solemnly affirmed that the contents of the Appeal are true and correct to the best of my knowledge and belief..

[Handwritten signature]

Your's Humbly Appellant
Muhammad Rauf

ASJ-670
Presently attached
to Central Jail
D. I. Khan

Before...

The Hon'ble K.P.K Service Tribunal, Peshawar

Service Tribunal Appeal No.....2017

Muhammad Rauf

Assistant Superitendant(BPS-14) Presently Attached To Central
Prison, Dera ismail khan

Appellant

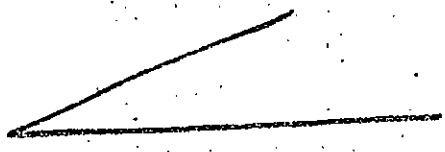
VERSUS

1:- The Government Of K.P.K Province Through Secretary Home &
Tribal Affairs Department,, Peshawar

2:- The Inspector General Of Prison,, Khyber PakhtunKhwa, Peshawar

Respondents

فردیتہ جات ولقمتین



محمد روف

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Annexure-I

4

Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

CORRIGENDUM

Peshawar, dated the 19th January, 2017

No. 2730 (Prisons) HD/10 In continuation of this Department's Notification of even number dated 7th November, 2016, the officials from serial No. 03 to 20 are hereby reinstated in service with effect from 12th January, 2011 and the modified penalties may also be read with effect from 1st January, 2011 however, the period from 01st January, 2011 to 18th December, 2015 in respect of these officials are treated as leave without pay.

Secretary to Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

CC

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Law Parliamentary & Human Rights Department w/r to their letter No. SO (OP-1)/LD/5-2/20-2/Vol-III/28031-32, dated 15th December, 2016.
3. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department w/r to their letter No. SO(R-III) (E&A D)/4-30/2014, dated 04th January, 2017.
4. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar for information and necessary action w/r to his letter No. 26429, dated 14th November, 2016.
5. The Superintendent Central Prison, Bam. G.
6. PS to Secretary Home, Khyber Pakhtunkhwa, Peshawar.
7. PS to Special Secretary Home, Khyber Pakhtunkhwa, Peshawar.

H. S. H. H.C. [Signature]
[Signature]

[Signature]
Section Officer (Prisons)

Sd/-
31-1-17

NO. 212
31/1/17

2
4
1

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5

FORM NO. 10919213445

25 Jan. 2017 12:33PM

IS PRISONS



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 091-9210334, 9210406 ☎ 091-9213445

No.Estb/Ward-/Orders/ 1711

Dated 26-01-2017

ORDER

Consequent upon conditional re-instatement in service /restoration in the cadre concerned vide Government of Khyber Pakhtunkhwa Home and T.A. Department Notification No.23 (SO/Prisons)HD/10 dated 02-11-2016 and corrigendum of even number dated 19-01-2017, the following postings/transfers are hereby ordered in the public interest:-

S. No	Name and designation	From	To
1	Abdul Hakim Deputy Superintendent Jail	CP D.I.Khan as Asstt. Supdt; Jail (BPS-14).	CP D.I.Khan as Deputy Supdt; Jail against the vacant post.
2	Muhammad Rauf Assistant Supdt;Jail (BPS-14)	CP Bannu.	CP D.I.Khan vice No.1 above
3	Ghulam Shabir Shah Head Warder (BPS-07)	CP Bannu.	CP Haripur against the vacant post.
4	Tej Ali Khan, Head-Warder (BPS-07).	CP Bannu.	CP Haripur against the vacant post.
5	Muhammad Jilani, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
6	Shahidullah, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
7	Manzoor No.2, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
8	Gul Sheh Wali, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
9	Saadullah, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
10	Samiullah No. 03, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
11	Hamidullah No.1. Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
12	Abdul Naeem, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
13	Halizullah No.2, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
14	Muhammad Shakool, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
15	Asmatullah, Warder (BPS-05)	CP Bannu.	CP Haripur against the vacant post.
16	Barkat Ali, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
17	Iftikharullah, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
18	Yaseenullah, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.
	Sher Ahmad, Warder (BPS-05).	CP Bannu.	CP Haripur against the vacant post.

Handwritten notes on the left margin: 'No. 176', '26/01/2017', 'ASK/LO', 'For int. m. d. 20/1/2017', and a signature.

Note

- All the officers/officials shall immediately join their new place of posting and compliance report be submitted accordingly
- Government of Khyber Pakhtunkhwa has already filed CPLA in the Supreme Court of Pakistan against the judgement of learned Section 11, dated 18-12-2015, therefore, officers/officials mentioned above shall not be granted pre-mature retirement till the final decision by the Appellate Tribunal of Pakistan.

INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

6

G PRISONS

FAX NO. : 0919213445

26 Jan. 2017 12:33PM '17



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

No. Estb/Ward-Orders/ /-

Dated / /-

NDST. NO. 1712-17.1.16

Copy of the above is forwarded to :-

1. The Secretary to Government of Khyber Pakhtunkhwa Home & T.As Department Peshawar, for information with reference to Home Department Notification /Corrigendum referred to above.
2. The Superintendents Circle HQ Prison D.I.Khan & Haripur.
3. The Superintendents Central Prison Bannu , D.I.Khan & Haripur.

For information, and necessary action. A copy of Home Deptt; Notification/ Corrigendum referred to above is enclosed herewith.

4. The District Accounts Officers concerned for information.
5. Officers/officials concerned.
6. Incharge Court Cases Prisons Inspectorate for information and with the direction to persece the case of early hearing with the quarter concerned.

(FAZYAZAAL SHAH) 26.1.2017
ADDL: INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

Handwritten notes on the left margin, including "18.11.17" and "17.1.16".

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

Dated Peshawar, the 12th January, 2011.

ORDER.

NO.243-SO(PRS)HD/10. WHEREAS the following officers/officials attached to Central Prison Bannu were proceeded against under NWFP Removal from Service (Special Powers) Ordinance, 2000:

- 1- Usman Ali, Superintendent Jail (BPS-18)
- 2- Abdul Hakim, Deputy Superintendent Jail (BPS-16)
- 3- Muhammad Rauf, Assistant Superintendent Jail (BPS-14)
- 4- Said Ayaz, Chief Warder (BPS-9)
- 5- Ghulam Shabir Shah, Head Warder (BPS-7)
- 6- Taj Ali Khan, Head Warder (BPS-7)
- 7- Muhammad Jilani, Warder (BPS-5)
- 8- Shahidullah, Warder (BPS-5)
- 9- Manzoor No.2 Warder (BPS-5)
- 10- Gul Shah Wali Warder (BPS-5)
- 11- Saadullah, Warder (BPS-5)
- 12- Samiullah No.3 Warder (BPS-5)
- 13- Hamidullah No.1 Warder (BPS-5)
- 14- Abdul Nacem, Warder (BPS-5)
- 15- Hafizullah No.2 Warder (BPS-5)
- 16- Muhammad Shakeel Warder (BPS-5)
- 17- Asmatullah Warder (BPS-5)
- 18- Barkat Ali Warder (BPS-5)
- 19- Irfanullah Warder (BPS-5)
- 20- Sabz Ali Warder (BPS-5)
- 21- Yasceenullah Warder (BPS-5)
- 22- Sher Ahmad Warder (BPS-5)

AND WHEREAS Syed Kamran Shah the then OSD Establishment Department and Asmatullah Khan Gandapur, the then Additional Secretary Industries Department were appointed as Enquiry Committee, who submitted its report;

AND WHEREAS the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) after having considered the charges, material on record and report of the Enquiry Committee, reached the conclusion that the charges levelled against the accused officers/officials mentioned above have been proved;

And in view of the above, the Competent Authority (Chief Minister) has been pleased to impose the penalties on the accused officers/officials as noted against each below, with immediate effect

13. NO. 243 SO (PRS) HD/10

7

Discontinued

From
26/1/11
26/1/11
From
26/1/11

No.	Name	Rank	Service	From
1	Abdul Hakim	Deputy Superintendent Jail (BS-16)	Dismissal service	from
2	Muhammad Rauf	Assistant Superintendent Jail (BS-14)	Compulsorily retirement service	from
3	Saud Ayaz	Chief Warden (BS-9)	Dismissal service	from
4	Ghulam Shabir Shah	Head Warden (BS-7)	-do-	
5	Taj Ali Khan	Head Warden (BS-7)	-do-	
6	Muhammad Jilani	Warder (BS-5)	-do-	
7	Shahidullah	Warder (BPS-5)	-do-	
8	Manzoor No.2	Warder (BS-5)	-do-	
9	Gul Shah Wali	Warder (BS-5)	-do-	
10	Saadullah	Warder (BS-5)	-do-	
11	Samiullah No.3	Warder (BS-5)	-do-	
12	Hamidullah No.1	Warder (BS-5)	-do-	
13	Abdul Nacem	Warder (BS-5)	-do-	
14	Hafizullah No.2	Warder (BS-5)	-do-	
15	Muhammad Shakeel	Warder (BS-5)	-do-	
16	Asmatullah	Warder (BS-5)	-do-	
17	Barkat Ali	Warder (BS-5)	-do-	
18	Irfanullah	Warder (BS-5)	Exonerated	from
19	Sabz Ali	Warder (BS-5)	Dismissal service	from
20	Yaseenullah	Warder (BS-5)	-do-	
21				
22	Sher Ahmad	Warder (BS-5)		

HOME SECRETARY
KHYBER PAKHTUNKHWA

Encl: of even No/date.

- Copy forwarded to-
- 1- Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar for information and n/action.
 - 2- PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
 - 3- District Accounts Officer Bannu.
 - 4- PS to Home Secretary, Khyber Pakhtunkhwa.
 - 5- All accused officers/officials concerned.

Muhammad Ghulam Marwat
12-01-2011
(MUHAMMAD GHULAM MARWAT)
SECTION OFFICER (PRISONS)

8

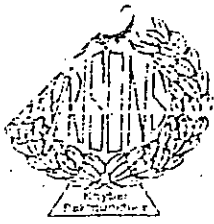
PESHAWAR

	Mr. Bahkht Karwan	(M.A)	15-11-1978	(Abbottabad)	12-1-2004	1-8-2010	16	-do-	-do-	Annexure-III
	Syed Akhtar Hussain Shah	(M.A)								
13.	Mr. Zafarullah Jan	(M.A)	21-3-1976	(Lakki Marwat)	12-1-2004	30-8-2010	16	-do-	-do-	
14.	Mr. Noorul Basar	(B.A)	11-11-1957	(Malakand Agency)	17-02-1977	20-8-2010	16	-do-	-do-	
15.	Mr. Muhamunad Jamil	(B.A)	02-04-1960	(Bannu)	11-04-1978	1-8-2010	16	-do-	-do-	
16.	Mr. Gul Aiam,	(Matric)	16-1-1960	(Bannu)	1-1-1978	6-9-2010	16	-do-	-do-	
	Mr. Murad Khan									
17.	Mr. Murad Khan	(B.A)	09-06-1965	(Charsadda)	01-04-1985	3-1-2012	16	-do-	-do-	
18.	Miss. Nagina Masood	(B.A)	20-6c-1982	(S.W. Agency)	18-12-2005	01-6-2013	16	-do-	-do-	
19.	Mr. Sikandar Khan	(F.A)	20-02-1964	(Peshawar)	07-09-1983	21-5-2013	16	-do-	-do-	
20.	Mr. Sabz Ali	(B.A)	23-03-1963	(Bannu)	06-10-1983	22-5-2013	16	-do-	-do-	
21.	Mr. Ayub Bacha	(M.A)	17-01-1975	(Dir)	8-2-2008	15-7-2015	16	-do-	-do-	
22.	Syed Mohy-ud-Din Shah	(B.A)	15-3-1978	(Mansehra)	11-2-2008	10-7-2015	16	-do-	-do-	
23.	Mr. Amjad Ali Khan.	(M.B.A)	13-3-1979	(Dir)	20-2-2008	09-7-2015	16	-do-	-do-	
24.	Mr. Riaz Muhammad Khan.	(M.A)	16-3-1978	(Karak)	20-2-2008	01-7-2015	16	-do-	-do-	
25.	Mr. Abdul Nasir Khan.	(M.A)	25-11-1978	(Karak)	14-2-2008	02-7-2015	16	-do-	-do-	
26.	Mr. Shamroze Khan.	(Matric)	4-10-1963	(Charsadda)	14-6-1979	05-8-2015	16	-do-	-do-	
27.	Mr. Shehr Yar.	(MSc)	22-5-1984	Battagram.	22-10-2009	09-7-2015	16	-do-	-do-	
28.	Syed Zain ul Arifeen Shah.	(M.A)	5-4-1984	Mansehra.	22-10-2009	01-7-2015	16	-do-	-do-	
29.	Mr. Yousaf Gul.	(Matric)	5-4-1966	Charsadda.	30-7-1983	07-7-2015	16	-do-	-do-	
30.	Syed Rizwan Shah.	(Matric)	12-3-1965	Charsadda.	13-11-1983	01-7-2015	16	-do-	-do-	

1st list 14 Nos
 2nd list 19 Nos
 Total = 26 Nos

From 17 to 30 = 14
 From 3 to 14 = 12
 S. No
 Total = 26 Nos

Sd/-
 INSPECTOR GENERAL OF PRISONS,
 KHYBER PAKHTUNKHWA PESHAWAR.



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 091-9240334, 9240406 ☎ 091-9243445

No. 16/24-7-2017 5227 1.

Dated 08-03-2017 1.

DS/PPC
PPC/PPC
14/37

11

NOTIFICATION

In pursuance of Section-8(1) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, Final Seniority list of Assistant Superintendents Jail (BPS-14) as it stood on 01-3-2017 is notified/circulated:-

Sanctioned strength of Assistant Superintendents Jail (BPS-14).....		56						
S.No	Name of official with academic qualification	D/O of Birth with domicile.	Date of first entry into service.	Regular appointment/promotion			Present appointment.	Remarks.
				Date	BPS	Method of recruitment.		
1.	Mr. Jangrez Khan (F.A)	01-05-1960 (Mardan)	12-10-1978	13-2-2004	14	By promotion.	Asstt; Supdt; Jail.	Reverted from BPS-16 to BPS-14 in a departmental proceeding vide I.G.Prisons office Order No. 8/2-J-1981/3685 dated 16-2-2015
2.	Mr. Muhammad Naeem (B.Sc)	28-2-1968 (Abbottabad)	19-3-1995	19-3-1995	14	Direct.	-do-	Reverted from BPS-16 to BPS-14 in a departmental proceeding vide I.G.Prisons office Order No. 2/14-J-2010-P-2/32056 dated 20-12-2012
3.	Mr. Ihsan-ud-Din. (MA)	1-5-1986 Dir.	1-10-2010	01-10-2010	14	Direct	Senior Asstt; Supdt; Jail (BPS-16) on acting charge basis w.e.f 23-7-2015	Seniority maintained according to lower post.

(BBA) 00-12-1989 (Abbottabad) 25-11-2015
13
27 Nos
20-10-2015

	Shamim Khan (B.A.)	1-7-1987	Swat	1-10-2010	01-10-2010	14	Direct	Senior Asstt; Supdt; Jail (BPS-16) on acting charge basis w.e.f 2-7-2015	
	Syed Muhammad Salman (BSc)	16-4-1987	Bajour Agency	7-10-2010	07-10-2010	14	-do-	Senior Asstt; Supdt; Jail (BPS-16) on acting charge basis w.e.f 28-9-2015.	-do-
6.	Mr. Aftab Ahmad (MSc)	20-4-1984	Mardan.	4-10-2010	04-10-2010	14	-do-	Senior Asstt; Supdt; Jail (BPS-16) on acting charge basis w.e.f 02-7-2015.	-do-
7.	Mr. Riaz Ahmad (MA)	3-3-1978	Chitral.	30-9-2010	30-9-2010	14	-do-	Asstt; Supdt; Jail	-do-
8.	Mr. Rashad Ahmad (MA)	10-3-1984	Mansehra.	1-10-2010	1-10-2010	14	-do-	-do-	-do-
9.	Mr. Abdur Raziq (M.A)	22-06-1968	(Mardan)	06-03-1988	3-5-2012	14	By promotion	-do-	Promoted from ministerial staff and seniority maintained as in lower post ..
10.	Mr. Fazle Rahim (F.A)	01-09-1967	(Mardan)	26-03-1986	1-5-2012	14	-do-	-do-	-do-
11.	Mr. Muhammad Irshad (Matric)	10-2-1963	(Peshawar)	04-4-1984	12-1-2013	14	-do-	-do-	Promoted from W&W Staff and seniority maintained as in lower post ..
12.	Mr. Badshah Said (Matric)	4-3-1967	(Swabi)	17-7-1984	13-12-2013	14	-do-	-do-	-do- The said official promoted to BPS-14 on later date then S.No.14 but in earlier DPC meeting held in April 2014 he was deferred, thus his seniority remained intact as in lower post i.e Chief warden.
13.	Mr. Malik Aman (Matric)	5-4-1967	(Swabi)	07-2-1984	17-4-2013	14	-do-	-do-	Promoted from W&W staff.
14.	Mr. Shaher Yar (B.A)	30-01-1971	(Molmand Agency)	22-05-1990	04-12-2013	14	-do-	-do-	Promoted from ministerial staff and seniority maintained as in lower post.

14
13
Total 27 Nos

1988 (BBA)	08-12-1989 (Swat)	03-4-1991 (Abbottabad)	25-11-2015	01-10-2015	-do-	-do-	-do-
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Sl. No.	Name	Qualification	Date of Birth	Place of Birth	05-07-1981	20-9-2005	14	By promotion	-do-	
6.	Mr. Kashif	(MBA)	9-1-1987	(Peshawar)	06-5-2014	06-5-2014	14			
7.	Mr. Rafaqat Zahoor.	(BA/LLB)	20-4-1988	(Karak)	06-5-2014	06-5-2014	14	Direct	-do-	Seniority maintained according to PSC merit order
8.	Mr. Muhammad Faizan Zeb.	(MA)	25-12-1986	(Abbottabad)	06-5-2014	06-5-2014	14	-do-	-do-	-do-
9.	Fazal Salam	(Matric)	15-09-1961	(Charsadda)	03/08/1977	07-10-2015	14	By promotion	-do-	-do-
	Mr. Menaz Gul.	(Matric)	01-10-1958	Bannu	31-10-1977	21-9-2015	14	-do-	-do-	Promoted from W&W Staff and seniority maintained as in lower post.
	Hazrat Muhammad	(Matric)	30-03-1966	(Malakand)	08/08/1984	23-9-2015	14	-do-	-do-	-do-
	Muhammad Ishaq	(Matric)	06-02-1964	(Swabi)	13/05/1985	26-9-2015	14	-do-	-do-	-do-
	Shabir Ahmad	(BA)	15-04-1960	(Haripur)	23/01/1986	28-9-2015	14	-do-	-do-	-do-
	Mr. Akhtar Shah	(F.A)	11-04-1967	(Peshawar)	03-05-1986	29-9-2015	14	-do-	-do-	-do-
	Mr. Jawad Gill.	(MA)	02-2-1988	(Peshawar)	01-10-2015	01-10-2015	14	Direct	-do-	Promoted from Ministerial Staff and seniority maintained as in lower post.
	Miss. Rabia Amin.	(MBA)	01-5-1988	(Swat)	25-11-2015	25-11-2015	14	-do-	-do-	Seniority maintained according to PSC merit order
	Mr. Muqaddas Khan.	(M.A)	08-12-1989	(Abbottabad)	04-10-2016	04-10-2016	14	-do-	-do-	-do-
	Mr. Ijaz Ahmad.	(BBA)	03-4-1991	(S.W. Agency)	04-10-2016	04-10-2016	14	-do-	-do-	-do-

The said official was dismissed from service on 12-1-2011 and remained out of service till 03-2-2017. Upon appeal, his penalty was modified by the learned Service Tribunal judgement dated 18-12-2015 and converted into major penalty of reduction to lower post of Senior Clerk for three years since 12-1-2011, on his restoration on the original post of ASJ after three years period his seniority was placed below his erstwhile juniors promoted/appointed to the said post during subsistence of the period of penalty.

(1)

		(M.A.)	10-6-1991	(Lakki Marwat)	08-11-2016	08-11-2016	14	-do-	-do-	-do-
	Mr. Hameed	(M.Sc)	15-2-1986	(Lakki Marwat)	18-11-2016	16-11-2016	14	-do-	-do-	-do-
	Mr. Saeed Ahmad Khan.	(BSc)	31-8-1992	(Manshra)	08-11-2016	08-11-2016	14	-do-	-do-	-do-
	Mr. Amjad Masood.	(B.A) (Hons)	14-8-1989	(S.W.Agency)	14-11-2016	14-11-2016	14	-do-	-do-	-do-
33.	Mr. Aurang Zeb Khan.	(MBA)	09-8-1985	(Bannu)	08-11-2016	08-11-2016	14	-do-	-do-	-do-
34.	Mr. Waqas Ali.	(MBA)	22-3-1988	(Mansehra)	08-11-2016	08-11-2016	14	-do-	-do-	-do-
35.	Mr. Amir Iqbal.	(B.A)	10-7-1988	(Manshra)	15-11-2016	15-11-2016	14	-do-	-do-	-do-
36.	Mian Manzoor Ahmad.	(MBA)	11-10-1986	(Dir Upper)	07-11-2016	07-11-2016	14	-do-	-do-	-do-
37.	Mr. Numan Sanaullah.	(BS)	01-4-1990	(Swat)	11-11-2016	11-11-2016	14	-do-	-do-	-do-
38.	Mr. Irfan Ullah.	(M.A)	06-7-1984	(Malakand)	05-11-2016	05-11-2016	14	-do-	-do-	-do-
39.	Mr. Abdul Haseeb.	(B.S)	07-1-1986	(Peshawar)	05-11-2016	05-11-2016	14	-do-	-do-	-do-
40.	Mr. Waqas Hassan.	(MBA)	14-8-1988	(Mardan)	05-11-2016	05-11-2016	14	-do-	-do-	-do-
41.	Mr. Abdul Faheem.	(M.Sc)	20-8-1987	(N.W.Agency)	18-11-2016	18-11-2016	14	-do-	-do-	-do-

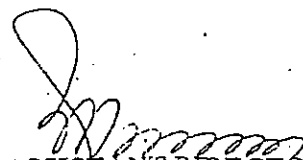
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

ENDST/NO. 5228-256/1.

Copy of the above is forwarded to :-

1. All Superintendents of Jails /Lockups/Internment Centres in the Khyber Pakhtunkhwa .
2. Office Accountant Inspectorate of Prisons Peshawar.

For information of the officials concerned.


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



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210405
No. 5193

Dated 03-03-2017

NOTIFICATION

In pursuance of Section-8(1) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, Final Seniority list of Senior Assistant Superintendents Jail (BPS-16) as it stood on 01-03-2017 is notified/circulated:-

Sanctioned strength of Senior Assistant Superintendents Jail (BPS-16).....	48
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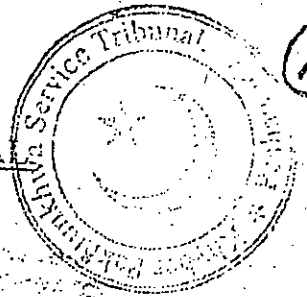
S.No	Name of official with academic qualification	D/O of Birth with domicile.	Date of first entry into service.	Regular appointment/promotion.			Present appointment.	Remarks.
				Date	BPS	Method of recruitment.		
1.	Mr.Mujeebur Rehman (B.A/LLB)	28-5-1961 (Peshawar)	28-9-1987	3-1-2012	16	By promotion.	Deputy Supdt; Jail (BPS-17) on acting charge basis w.e.from 22-2-2016	Note: - As per rules inter-se seniority maintained as in lower scale the officer concerned, however Officers shown at S.No.1,2 were promoted to BPS-16 later date than others but in the DPC meeting they were deferred for promotion due to leave/pending inquiry against them, thus their seniority remained intact as in lower cadre over officers from S.No.3 to 07. Similarly Officer at S.No.8 also promoted to BPS-16 in date than others but according to DPC decision 03-10-2012 he was granted his due seniority over junior colleagues promoted earlier DPC meeting in the light of judgement of Service Tribunal Khyber Pakhtunkhwa.
2.	Mr.Muhammad Ayub (B.A)	16-5-1965 (Swabi)	18-2-1992	3-1-2012	16	-do-	Deputy Supdt; Jail (BPS-17) on acting charge basis w.e.from 16-6-2015	
3.	Mr.Asif Ali Shah (B.A)	1-12-1960 (Charsadda)	25-2-1992	28-10-2013	16	-do-	Senior Asstt; Supdt; Jail (BPS-16)	
4.	Mr.Muhammad Arif, (B.A/LLB)	6-7-1969 (Swabi)	22-3-1993	1-8-2010	16	-do-	-do-	
5.	Mr.Hashmatullah (MSc/M.A/LLB)	2-5-1969 (Dir Lower)	2-2-1995	1-8-2010	16	-do-	-do-	
6.	Mr.Sayyar Ahmad (B.Com)	6-1-1963 (Mardan)	18-6-1990	1-8-2010	16	-do-	-do-	
7.	Mr.Aminul Haq (Matic)	15-2-1960 (Swabi)	12-1-1977	1-8-2010	16	-do-	-do-	
8.	Mr.Muhammad Hamid (M.Sc)	15-4-1972 (Swabi)	4-5-2001	12-4-2012	16	-do-	-do-	

27/3/17

Annexure-IV

16

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Appeal No. 574/2011

574
8/4/11

Muhammad Rauf, Ex- Assistant Superintendent, Central Prison
Bannu R/O Village & P.O Bharat Khas District Bannu.
(Appellant)

Versus

1. Province of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Secretary Home and Tribal Affairs Department Khyber Pakhtunkhwa Peshawar.
3. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
4. Superintendent Headquarters Prison Peshawar.

(Respondents)

Appeal under section 4 of the NWFP Service Tribunal Act, 1974 read with section 10 of the NWFP Removal from Service (Special Powers) Ordinance 2000 against the office order dated 12.1.2011 communicated to the appellant on 24.01.2011 whereby the appellant is awarded major penalty of dismissal from service with immediate effect, against which the departmental appeal dated 29.1.2011 has not been responded.

18.12.2015

In case of the appellant and Sr.GP with Sheryar, ASJ for the respondents present. Arguments heard and record perused. Vide our detailed judgment of today placed in connected appeal No. 691/2011 titled "Abdul Hakeem Versus the Provincial Government Peshawar & Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar & others", this appeal is also decided as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

Announced
18.12.2015

Sd/-
Member

Sd/-
Member

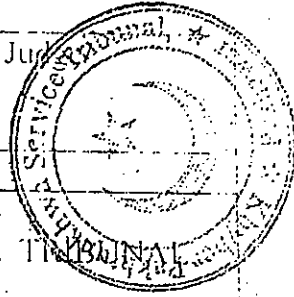
Certified true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Sr. No. Date of order/proceedings

2

Order or other proceedings with signature of Judge Magistrate

3



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No 691/2011.
Abdul Hakeem Khan & 19 others Vs. the Provincial Govt.
through Chief Secretary, Peshawar etc.

JUDGMENT

PIR BAKHSH SHAH, MEMBER.- Counsels for


18.12.2015

the appellants (M/S Muhammad Asif Yousafzai: Saadullah Khan Marwat and Ijaz Anwar, Advocates) for the respective appellants and Sr. Government Pleader (Mr. Usman Ghani) with Sheryar, ASJ for the respondents present.

2. Appellants, 20 in number, are employees of the Prison Department. On account of escape of two condemned prisoners from the Central Prison, Bannu, they were proceeded against departmentally and punished. Their departmental appeals were also rejected. The instant separate service appeals bearing No. 495 to 506, 584 to 589, 631 and 691 of 2011 under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

3. The incident of escape took-place on the night between 21st and 22nd September, 2009. The time according to the enquiry report was between 12.00 p.m. to 12.30 p.m. The matter was preliminary enquired into.


ATTESTED


Judge Magistrate
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

D.I.Khan (Mr. Khalid Abbas) and Superintendent District Jail Timergara (Sahibzada Shah Jehan) who submitted their comprehensive report. On receipt of this report, the competent authority issued charge sheet and statement of allegations to the appellants, charging them for negligence/inefficiency and failure in the performance of the assigned duty. The task of departmental regular enquiry was assigned to a two members enquiry committee comprising of Mr. Asmatullah Khan Gandapur (then Addl. Secretary Industries Department) and Syed Karam Shah (then Project Director Tanzcem Lissaaail-c-Walmehroom KPK, Peshawar). They submitted their enquiry report with their findings and recommendations. Thereafter, a show cause notice was issued to the appellants. At the end of the day penalty was imposed against the appellants and for facility of reference, the Tribunal would like to reproduce relevant data of appellants in tabulated form as follows:-

S.No.	Appcal No.	Name of appellant	Designation	Punishment
1.	495/2011,	Muhammad Shakeel,	Ex-Warder	Dismissed.
2.	496/2011,	Muhammad Jelani	Ex-Warder	"
3.	497/2011,	Hafizullah	Ex-Warder	"
4.	498/2011,	Gul Shah Wali Shah	Ex-Warder	"
5.	499/2011,	Barkat Ali	Ex-Warder	"
6.	500/2011,	Ghulam Shabir Shah	Ex-H/Warder	"
7.	501/2011,	Asmatullah	Ex-Warder	"
8.	502/2011,	Yaseen Ullah	Ex-Warder	"
9.	503/2011,	Taj Ali Khan	Ex-H/Warder	"
10.	504/2011,	Irfanullah Khan	Ex-Warder	"
11.	505/2011,	Samiullah	Ex-Warder	"
12.	506/2011,	Sher Ahmad	Ex-Warder	"
13.	584/2011,	Muhammad Rauf,	Asstt/Suodt	"

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Secretary
Peshawar

15. 586/2011, Hamidullah	Ex-Warder	"
16. 587/2011, Abdul Naeem	Ex-Warder	"
17. 588/2011, Shahidullah	Ex-Warder	"
18. 589/2011, Manzoor Khan	Ex-Warder	"
19. 631/2011, Usman Ali,	Supdt.	Reduction in scale
20. 691/2011, Abdul Hakeem Khan	Dy.Supt.	"

4. Relevant facts in brief are reproduced as follows from the report of the fact findings enquiry report:-

- (i) Condemned prisoner Safiullah son of Noor Shah Gul resident of Mataki Bizankhel was sentenced to death under Section 7(a) ATA read with section 302(b)-PPC on two counts in case FIR No. 74 dated 21.01.2004 Police Station City District Bannu by the order of Judge ATC, Bannu on 15.07.2009. Condemned prisoner Muhammad Shoaib son of Gul Muhammad resident of Ghazni Khel District Lakki was sentenced to suffer death with two counts for the murder of Mst. Gole Jana and Hassan Khan by Sessions Judge, Lakki on 14.12.2005 in case FIR No. 176 dated 19.9.2004 under Section 302/324-PP Police Station Ghazni Khel. There are two sections where condemned prisoners are kept confined in Central Prison Bannu. The escaped prisoners were confined in B-Sector which is situated towards the gallows. Prisoner Safiullah was confined in cell No. 2 while Shoaib was confined in cell No. 3. These prisoners picked up the bricks between the walls of the two cells and made a hole in it for measuring of 01 feet in length and 01 feet 4 inches in height, while

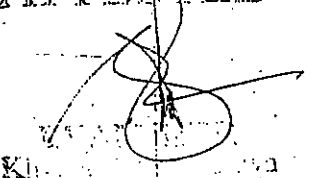
ATTESTED

MANAGER
Khyber Pakhtunkhwa
Services Board,
Peshawar

prisoner Muhammad Shoaib succeeded in making another hole from his cell towards the gallows. These two holes during the course of enquiry were observed to be made quite earlier, before the night of occurrence. These holes were again constructed and repaired by using the same bricks with mud which they obtained from the graveyard in front of the condemned prisoners cells and thus they pasted the walls with lime. They prepared the road map for their escape by making holes in their cells and to get their plan practical shape, these prisoners selected beautiful night when it was eid holiday and most of the prison staff was dis-appeared from their duties.

(ii) On 21-22.09.2009 when it was the day of Eid-ul-Fitr, these two priseners were busy in worship when they were noted by warder Mumta Baz from 9:00 P.M to 12:00 mid night convict Shoaib exchanged harsh words with another convict named Qismat Khan on the issue of listening type recorder because Shoaib wanted to sleep convict Qismat because in case of awake of anyone they could not start work on their plan of escape. Warder Mumta Baz also felt the presence of mobile telephone with these prisoners but he could not see with his own eyes. After 12:00 P.M warder Muhammad Jilani replaced warder Mumtaz Baz and according to the statement of convict Qismatullah warder Muhammad Jilani was seen sitting near the


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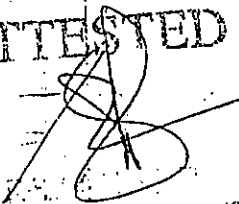
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gratings of the cells where convict Muhammad Shoaib was confined. The said warder was served with chicken slice and a cup of tea. Perhaps some intoxicants mixed in it due to which warder Muhammad Jilani hardly reached the lawn of condemned prisoners cells, fell down and deeply slept. Now there was no one to observe or obstruct the plans and steps of these two prisoners. Holes which were already made and just a slow kick was sufficient enough to make these two prisoners together. They were gathered in the cell of Muhammad Shoaib and came out from another hole, which they made towards the wall of gallows. It is interesting to mention that both these prisoners had thin, slim and light weighted bodies which were another advantage to them. According to the statement of staff members coupled with the statement of convict Malik Nazeef power supply in the whole jail was made disconnected from 2:10 AM to 4:30 AM and it was during these hours that the escape took place. When the prisoners came out of the cell, they easily crossed the 13 feet boundary wall between these cells and gallows by climbing with the help of water pipe fixed on the back of cells. Next stage of their plan was very easy because they were roaming and operating in the premises of gallows without hindrance or fear of capture or observance by any human sight comfortably they removed water pipe of about (02 inches Dia) and 20 feet

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 Khyber Pakhtunkhwa
 Secretariat
 Peshawar

in length. On the covered thick pipe with certain pieces of clothes to make it course so that they had no difficulty on climbing over it. From gallows they reached parameter wall near beat No. 03 where no staff member was present. With the help of this 20 feet long steel water pipe, absence of light and danger of 440 volt live wire over the parameter wall made their work easy. One was standing on ground while the other climbed with the help of pipe to the top of parameter wall and then another one. As the wire had no flow of electricity therefore they fastened/banded a rope which they prepared from cotton threads inside their cell and this rope was used as the main source of their escape from top of the parameter wall to the ground, and as there was no one present on duties at the external beats where the prisoners were landed and were conveniently disappeared in the darkness by crossing the jail boundary wall. The incident took place between 12:00 mid night to 3.00 A.M."

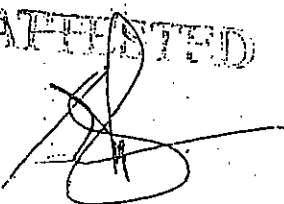
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- 6. Arguments heard and record perused.
- 7. After a careful perusal of the record, this cannot be denied that enquiry report of the fact finding enquiry committee is comprehensive and full of substance unlike the enquiry report of the departmental regular committee which was found deficient in some important aspects. For example,
 - i. This enquiry report has failed to specify and differentiate

so that an equitable amount of punishment may have been possible to be awarded. For instance the duty of appellant Warder Muhammad Shakeel was on Tower No. 1 who exchanged his duty with appellant Warder Hafeezullah. Evidently, Muhammad Shakeel cannot be held responsible for the charge of escape of prisoners because he had exchanged his duty with Hafeezullah who failed on that night in discharging of his duty. More importantly, according to enquiry report, the distance between gallows and outer wall was near beat No. 3 on which Warder Shahidullah was absent from duty. Though Muhammad Shakeel and Hafeezullah both can be proceeded for misconduct on the ground of unauthorized exchange of duties but Muhammad Shakeel cannot be held responsible for escape through his negligence as he was not present at the relevant time. Same is the case of Warder Gul Shah Wali who had exchanged duty with Warder Muhammad Jilani. So the case of Shahidullah may be further different who was absent from duty.

- ii. It is evident that planning of escape was not a one day exercise. In the process, hole in between the two cells and one hole in the rear of the cell of Muhammad Shoaib various officials would have performed duties but they are not specified. Similarly, water pipe has been used in the escape which water pipe according to report was loosely fitted for this purpose.

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committee has not gone into the depth of this aspect of the case.

iii. Supervisory staff except Muhammad Rauf, Assistant Superintendent Jail have been treated leniently. Since they were recommended so in the fact finding enquiry, therefore, the regular enquiry also adopted the same course.

8. In the light of the stated situation, the Tribunal is lead to conclude that the regular enquiry committee has not applied its independent mind and seems to have relied mostly upon the report of the fact finding enquiry. This aspect of the case has crept into vitals of proceedings as inequitable treatment has been meted out to the officials. While the Tribunal is fully convinced that it is a proved case of negligence beyond any doubt but still it cannot overlook disparity and discrimination in the award of punishment to the appellants. For instance, an appellant who remained away from duty on account of exchanging of his duty with his colleague though without permission of his officers, could not be held equally responsible for the escape of the condemned prisoners on the fateful night of commission of misconduct on ground of illegal exchange of duties. Similarly, the senior supervisory staff cannot be shown leniency merely on the ground that the escape happened because of negligence and inefficiency of the formation staff

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 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar



jail and a slight indifference or negligence on their part would render the entire lower formation ineffective. The aspects of the case have not been duly taken notice of by the regular enquiry committee and thus things have been mixed up, resulting into award of unequal punishment to the appellants. The lower formation comprising of the warders tiers have been dismissed from service. The Superintendent and Deputy Superintendent being the pivot of the management have been reduced into scales which does not seem commensurate ^{to} the responsibilities. In such a scenario, it is the considered opinion of the Tribunal that while it cannot enhance the penalties imposed on the Superintendent and Deputy Superintendent to make them equal with other dismissed appellants, principles of consistency of treatment demands that quantum of harsh punishment of dismissal meted out to lower tiers of management is brought at par with the penalties imposed on the Superintendent and Deputy Superintendents. Consequently, penalty of dismissal from service is converted into stoppage of three increments for 2 years in case of the warders appellants whereas appellant Abdur Rauf Assistant Superintendent Jail is reduced to the lower post of Senior Clerk for three years. Since no period as prescribed under F.R 29 has been specified in case of appellants Usman Ali, Superintendent and Abdul Hakeem, Deputy Superintendent, therefore, they be deemed to have been penalized for reduction in scale for a

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

accordingly in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.12.2015

sd/-
(PIR BAKHSH SHAIKH)
MEMBER

sd/-
ABDUL LATIF
MEMBER

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 30-12-2015
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 Total 24
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 Date of Completion 30-12-2015
 Date of Delivery of Copy 30-12-2015



Revised

OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON D.I.KHAN
No. 1234+1/E / Dt: 24/2/2017
PH&FAX NO. 0966-9280299
Centraljail_dikhan@yahoo.com

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Annexure - V

To,

The Inspector General Of Prisons
Khyber Pakhtunkhwa Peshawar ,

Subject: - REVIEW PETITION UNDER APPEAL RULES, 1986
AGAINST THE ORDER/CORRIGENDUM NO.2/3
SO(PRISONS) HD /10 DATED: 19.01.2017 VIDE WHICH
THE PERIOD OF FORCED ABSENCE W.E .F 12.01.2011
TILL 18.12.2015 HAS BEEN TREATED AS " LEAVE
WITHOUT PAY"

Memo:

Enclosed please find herewith review petition (self explanatory)
presented by Mohammad Rauf Assistant Superintendent jail attached to this
jail for onward submission to the Secretary Home and Tribal Affairs
Department Khyber Pakhtunkhwa Peshawar.

o/c
SUPERINTENDENT
CENTRAL PRISON DIKHAN
Md. Rauf
24-2-2017

BEFORE

THE GOVT: OF KHYBER PAKHTUNKHWA
PESHAWAR SECRETARY TO GOVERNMENT
HOME AND TRIBAL AFFAIRS DEPARTMENT
PESHAWAR.

SUBJECT:- REVIEW PETITION UNDER APPEAL
RULES, 1986 AGAINST THE ORDER/CORRIGENDUM
NO.2/3 SO(PRISONS) JD /10 DATED 19.01.2017 VIDE
WHICH THE PERIOD OF FORCED ABSENCE W.E.F
12.01.2011 TILL 18.12.2015 HAS BEEN TREATED AS
LEAVE WITHOUT PAY

The Review Petitioner amongst other grounds,
respectfully submit as follows:-

In the wake of judgement/order dated 18.12.2015
passed by Service Tribunal in Service ~~Review~~ Appeal
No.584/2011, the Applicant has been reinstated w.e.f
18.12.2015 and the order of the competent authority was
modified.

The fate of forced absence w.e.f 12.01.2011 due to
severance from performance of duties has been later on
treated as "leave without pay" for the period from 12.01.2011
to 18.12.2015. copy of the order dated 18.12.2015 and
order/corrigendum of 19.01.2017 followed by order
No.1711-17/we dated 26.01.2017 are enclosed as annexure
A,B &C.

The said orders were acknowledged on
30.01.2017 at Bannu.

The treatment of the aforesaid period as Leave
without Pay is not in line with the "Leave Profile" of the
Applicant and the rules of earned leave which is permissible

to a permanent civil servant under Fundamental Rules, and Leave rules, 1981 red. with Estt. code.

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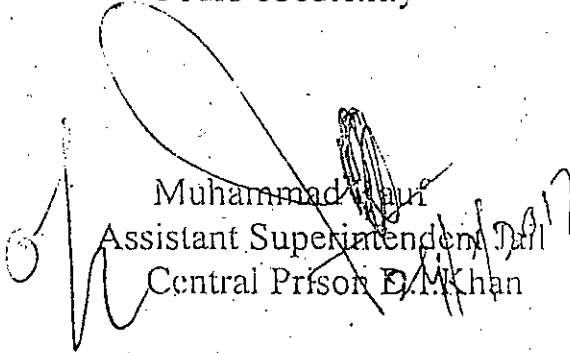
The deprivation from legitimate dues is a harsh fiat of the hierarchy of the Prison Department when there is no bar in the exercise of jurisdiction of the competent authority for giving allowance /latitude of the due earned leave.

The orders dated 19.01.2017 has been passed without personnel hearing of the Applicant and without consultation of the Service Book entries of the Applicant.

The Applicant also wishes to be heard in person by the Reviewing Authorities.

With Regards: -

Yours obediently


Muhammad Ashraf
Assistant Superintendent Jail
Central Prison D.M. Khan

RUSTAM KHAN KUNDI
Advocate High Court
bc-09-0903
Date of Issue: 07-06-2014
Valid upto: 07-06-2017



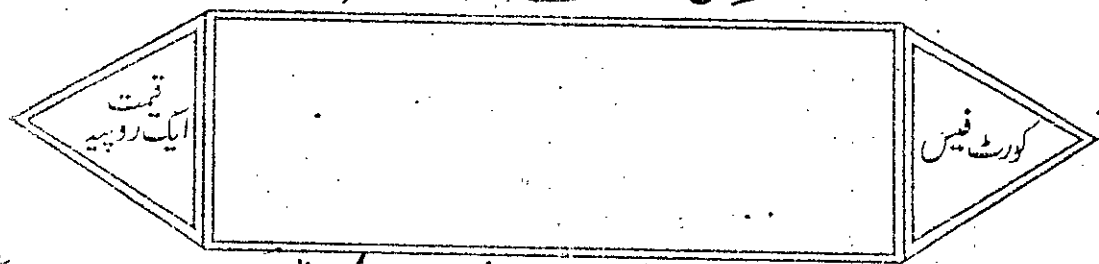
ZILL E HUMA

Advocate
bc-16-8307
Date of Issue: October 2016
Valid upto: October 2019



Secretary
KP Bar Council

دعوت نامہ



بعدالت جناب صاحب الاقترام کے پی کے کے عدول کے لئے - لندن
جناب محمد اویس - ایڈووکیٹ
محمد اویس بنام گورنمنٹ کے لئے - لندن
دعویٰ یا جرم S.T.A - سال 2017
تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عدالت میں اپنی طرف واسطے بیرونی وجوہات پر اس کے پیشوا یا تہذیبیہ مقدمہ بمقام جس میں مقدمہ درج بالا مندرجہ
کے حسب ذیل شرائط پر تسلیم مقرر کیا ہے، کہ کسی ہوشی پر خود یا بذریعہ اختیار خاص عدالت حاضر ہونا، دل کا اور ہر وقت پہنچنے کے مقدمہ میں صاحب
موصوف کا اطلاع دیکر معاہدہ عدالت کروں گا، اگر ہوشی پر منظر حاضر نہ ہوں اور مقدمہ میں غیر حاضر کی وجہ سے کسی طور پر میرے برخلاف ہو گیا ہے تو صاحب موصوف
اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وہیں صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا کچہری یا ہر وقت پیش ہونے کے
ذمہ دار نہ ہوں گے۔ نیز وہیں صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا کچہری یا ہر وقت پیش ہونے کے ذمہ دار نہ
ہوں گے اور مقدمہ صدر کچہری کے علاوہ اور جگہ سماعت ہونے یا ہر وقت پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ
دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا فحش واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کس ساختہ پر ذمہ دار صاحب موصوف میں کرو
ذات خود منظور و قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ یا جواب دعویٰ یا درخواست اجراء کے ذمہ دار نظر ثانی اپنی گمانی، جرم و درخواست پر مستحق و قبول کرنے کا
بھی اختیار ہوگا اور کسی قسم یا ذمہ داری کے لئے اور جرم کا رویہ وصول کرنے اور سزا دینے اور سزا دینے کے بیان دینے اور اس پر پابندی یا سزا دینے اور
حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا اور بصورت مقررہ دسے تاریخ یا مقدمہ مذکورہ میں ان از کچہری صدر بیرونی مقدمہ مذکورہ نظر ثانی اپنی گمانی و گمانی اور اس کی
مقدمہ یا منسوخی یا ذمہ داری کا طرف، یا درخواست یا قریبی یا اگر ذمہ داری قبل از اہل جائزے ذمہ داری بھی صاحب موصوف کو بشرط ادائیگی طالعہ بخاند ہری کا اختیار ہوگا
اور تمام ساختہ پر ذمہ دار صاحب موصوف میں کرو ذمہ دار منظور و قبول ہوگا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اس کے لئے
کی کارروائی یا بصورت درخواست نظر ثانی اپنی گمانی یا دیگر معاملہ مقدمہ مذکورہ کی دوسرے دیکھیں یا سزا دینے یا سزا دینے کے لئے ہر وقت مقرر کریں اور اس کے لئے شہر قانون کو
بھی ہر امر میں وقتی اور ایسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور دوران مقدمہ میں جو کچھ ہر جائزہ التزام ہوگا، وہ صاحب
موصوف کا حق ہوگا مگر صاحب موصوف کو پوری فیس تاریخ ہوشی سے پہلے ادا کرنا ہوگا۔ صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی ہی و ذمہ داری اور اس کی
صورت میں سزا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا ذمہ داری نامہ لکھ دیا ہے تاکہ سند ہے
مورخہ 22 جون 2017ء بدھ صبح

مضمون و کالت نامہ سن لیا ہے اور انجمنی طرح سمجھ لیا ہے اور منظور ہے۔

Accepted
Zill-e-Huma
Advocate
22.6.17

ایڈووکیٹ
محمد اویس

Accepted
Rustam Khan Kundi

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of
Service Appeal No. 683/2017
Muhammad Rauf
Assistant Superintendent Jail (BPS-14) Central Prison D.I.Khán.....**Appellant**

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa
Home and T.As Department Peshawar.
2. Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2

PRELIMINARY OBJECTIONS.

- i. That the Appellant has got no cause of action.
- ii. That the Appellant is incompetent and is not maintainable in its present form.
- iii. That the Appellant is stopped by his own conduct to bring the present appeal.
- iv. That the Appellant has no locus standi.
- v. That the Appellant is bad for mis-joinder and non-joinder of necessary parties.
- vi. That the Appellant is time barred.
- vii. That the appeal is hit by R-23 of Khyber Pakhtunkhwa Service Tribunal Rules.

ON FACTS

- 1) Pertains to record. However, the Honorable, Provincial Service Tribunal though reduced the imposed penalties against the appellant from Assistant Superintendent Jail to the lower Post of Senior Clerk for 03 years. The judgment of the Honorable, Provincial Service Tribunal has been implemented in toto, as there is no mention about the status of the litigation period/back benefits to the Appellant. Therefore to avoid future/post audit observations, the intervening period has been declared as leave without pay. The declaration of said period as leave without pay is the only available remedy to thwart post audit observations. In addition, as per Supreme Court verdicts the principle of **"no work having no pay"** will be applied in the under discussion case (copy of 2003-SCMR-228 is **(Annexure-4)** in the absence of clear order by the Honorable Tribunal.
- 2) Pertains to record, hence no Comments.
- 3) Correct to the extent that departmental presentation preferred by the appellant, accordingly sent to Home Department being competent forum and the same was filed in accordance with relevant law/rules, being devoid of substantial footing.
- 4) Same remarks as explained in Para-3 above.

GROUNDS:-

- 1) Incorrect, misleading the Revised Leave Rules-1980 thus admissible but in the usual circumstances whereas in the instant case, the circumstance prima facia is not usual circumstance. There is no violation of any fundamental rights.
- 2) Incorrect, misleading. As elaborated in Para-1 of the grounds.
- 3) Incorrect, misleading. The Judgment of the Honorable, Provincial Service Tribunal accordingly implemented irrespective of its good or bad impacts as it is obligatory to comply with all Courts Order.
- 4) Incorrect and misleading. The appellant violated the Prison Rules which clearly depicts the negligence/slackness on the part of appellant. Prisons Rule-693 is reproduced below for ready reference:-

Duty Officer

Rule 693.-- One Assistant Superintendent of Jail shall be on duty in the jail at every hour of duty/ day and night. Such Assistant Superintendent shall be called, "Duty Officer".

- 5) As elaborated in Para-4 above.
- 6) Incorrect. The allegations accordingly proved even in the preliminary inquiry and had been supported by departmental inquiry. It is a common phenomenon that almost all accused having no other options except just to deny/negate the allegations and the same has been done in the instant case. That is the reasons that the allegations proved and the appellant was accordingly penalize on imposition of major penalty of "Dismissal from Service".

In addition, the plea of the appellant thoroughly examined, cross examined and thereafter major penalty of "**Dismissal from Service**" has been imposed, keeping in view the great concern of the August Supreme Court of Pakistan in a identical nature case whereby is general directions that the accused in such cases should be severely punished by making him an example for others as per following citation: -

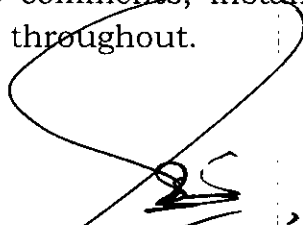
That "in our considered opinion such an officer did not deserve to continue to be in such a service saddled with the high responsibility of ensuring safe detention of prisoners in custody". Moreover, it is to bring on record that in the said judgment of the August Supreme Court of Pakistan in the escape case of Ordinary Prisoners the punishment awarded of reduction to lowest stage in the present time scale of the concerned officer, the Court observed that we are of the opinion that the least that should have been done in the matter was to retire the Respondent from service. That is why that punishment of compulsory retirement was therefore

awarded to the Respondent and the earlier awarded punishment i.e. reduction to lowest stage in the present time scale was substituted for the penalty imposed on him by the competent authority (Copy of Judgment of Supreme Court of Pakistan is Annexed-8).

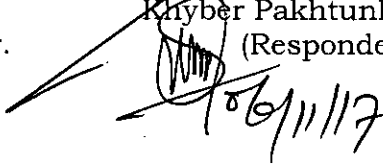
In view of the above Para-wise comments, instant appeal of the appellant may please be dismissed with cost throughout.



SECRETARY TO GOVERNMENT.
Of Khyber Pakhtunkhwa
Home & T.As Department Peshawar.
(Respondents No.1)



INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa Peshawar
(Respondent No.2)



06/11/17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

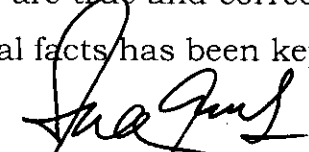
In the matter of
Service Appeal No. 683/2017
Muhammad Rauf
Assistant Superintendent Jail (BPS-14) Central Prison D.I.Khan.....**Appellant**

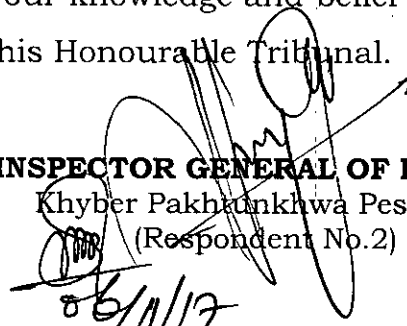
VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa
Home and T.As Department Peshawar.
2. Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar.....**Respondents.**

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS NO. 1 TO 2.

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.


SECRETARY TO GOVERNMENT.
Of Khyber Pakhtunkhwa
Home & T.As Department Peshawar.
(Respondents No.1)


INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa Peshawar
(Respondent No.2)

86/11/17

Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No. 076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

1. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations, 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

2. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed hence, this petition.

We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 12-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

3. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay, ordered by the Court as E.O.L is injustice with me."

On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-19 (PR244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty.

"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in light of earlier decision as per para. 141-A, please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

5. Sardar Muhammad Aslam, learned Dy.A.G. further pointed out that recovery was already b

dictated from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted, to his Managerial post. ,

We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

In view of the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

W.K.N-100/S.

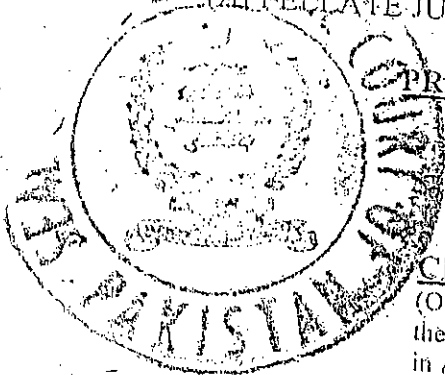
Petition dismissed.

Law Department

4/10/2014

Annex-B

THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)



PRESENT:

MR. JUSTICE KHALIL UR-REHMAN RAMDAY
MR. JUSTICE RAJA FAYYAZ AHMED

CIVIL PETITION NO. 741-P OF 2004
(On appeal from the judgment dated 8.7.2004 of
the NWFP Service Tribunal, Peshawar, passed
in Appeal No.487 of 2002)

I.G. (Prisons) NWFP, Peshawar etc.

Petitioners.

VERSUS

Mr. Muhammad Israil, Assit. Superintendent Jail Haripur

Respondent.

For the petitioners:

Mr. Shakeel Ahmed, ASC with
Mr. M. A. Qayyum Mazhar, AOR.

For the respondent:

Mr. Nasir Hussain, ASC with
Syed Safdar Hussain, AOR and the
Respondent in person.

Date of hearing:

19.6.2006.

JUDGMENT

KHALIL UR-REHMAN RAMDAY, J.-

Five under trial prisoners escaped from Manshera Sub-Jail at about 1.30 a.m. on the night between the 10th and the 11th of July, 2001. The Incharge of the said Jail, namely, Muhammad Israil; the Duty Round Officer, namely, Warder Dolat Khan; the Duty Patrolling Officer, namely, Warder Taj Mali Khan; the Duty Sentry at the front main gate of the said Jail, namely, Warder Sultan Afsar and Warder Hazrat Hussain on duty at the TALASHI GATE were charge-sheeted in the said connection. The Superintendent of Central Prison, Peshawar, namely, Muhammad Muzaffar was appointed as the Inquiry Officer who found all the above-named persons guilty of the charges levelled against them as a consequence whereof the Inspector General of Prisons, in exercise of the powers conferred on him under section 3 of the NWFP Removal from Service (Special Powers) Ordinance, 2000, dismissed the said four Warders from service but punished the Incharge of the said Jail, namely, Muhammad Israil, Assistant Superintendent, with reduction to the lowest stage in his present time scale.

[Handwritten signature]
General of Prisons
Peshawar

[Handwritten signature]

2. The said four Warders finally reached the learned Service Tribunal, through Appeals No.416, 460, 461 and 602 of 2002, impugning the above-noticed punishments awarded to them. Through a judgment of the learned Tribunal dated 9.1.2004 passed in the said appeals, the findings of guilt recorded against them by the competent authority were maintained but the punishments of dismissal from service were converted into the punishment of stoppage of three months without cumulative effect. These Warders then approached this Court through Civil Petitions No.220-P to 223-P of 2004 which were dismissed vide a judgment dated 11.5.2005, thus affirming the said findings of guilt recorded against them.

3. In the matter of Muhammad Israil respondent, the learned Tribunal, however, chose to take a different view of the matter through the impugned judgment dated 8.7.2004; accepted the appeal filed by him; exonerated him of the said charges and consequently set aside the punishment recorded against him.

4. Hence this petition by the Inspector General of Prisons and the Home Secretary of the NWFP.

5. Muhammad Israil respondent, who is present under notice, has been heard in some detail through his learned counsel. The learned ASC for the petitioners has also been heard and we have also perused the record in the light of the submissions made before us.

6. It had been found by the above-mentioned Inquiry Officer that Warder Sultan Afsar was not present at the place of his duty i.e. at the front main gate of the Jail at the time of the incident and if he had not left his place of duty, the incident in question may not have taken place. It had also been found by him that the place of duty Warder Hazrat Hussain at the relevant time was at the TALASHI Gate which was adjacent to the room where the escapees were confined and only iron bars separated the said two places and further that if the said Warder was present at his place of duty at the time in question then the steps taken by the escapees to break open the room could not have gone un-noticed by him. Similar was the findings of the Inquiry Officer with respect to Warders Dolat Khan and Taj Mali who were the Round Officer and the Patrolling Officer respectively at the relevant time.

ATTESTED
WITNESSED BY



7. Muhammad Israil respondent was the Incharge of the Sub-Jail in question. As per rule 1002 of Pakistan Prison Rules, 1978, the expression "Deputy Superintendent" for the purpose of duty included an "Assistant Superintendent" of Jail and every other person who was performing duties of a Deputy Superintendent for the time being. According to the provisions contained in Chapter 41 of the said Rules, such an officer was the Chief Executive of the Prison; was not allowed to be absent from the Prison during night without permission in writing of the Superintendent; was required to take every action necessary and expedient, inter alia, for the safe custody of the prisoners; was required to visit every cell and barrack etc. at least once a day and was required to remain always present within the Prison or its premises. He was also charged with the responsibility of maintaining and enforcing discipline amongst the sub-ordinate officers.

8. The Inquiry Officer had found that Muhammad Israil had been grossly negligent in the discharge of his obligations; that he had failed to maintain and enforce discipline amongst his sub-ordinates and that the breach of his obligations had gone to the extent that none of the Warders who were required to be on duty at the relevant time, were so present or available. According to Rule 724 of the said Prison Rules, the respondent was required to make at least two, surprise night visits every week which had not been done by him as according to Jail record, he had made such a visit to the Jail only twice during the month preceding the night of the incident i.e. on 11.6.2001 and on 9.7.2001. This was then the level and the quality of performance of the respondent and the manner in which he was discharging his highly sensitive obligation of securing the prisoners.

9. The learned Tribunal set aside the punishment awarded to the respondent on the ground that the Jail in question was over-crowded with 280 prisoners instead of the sanctioned capacity of 148; that due to some hurricane, there was a breakdown of electricity in Jail which had helped the escape of the prisoners; that the said incident had taken place on account of the negligence of the staff on duty and not on account of any negligence or involvement of the respondent and finally that the respondent was not on duty in the Jail when the said incident had taken place.

TESTED

10. The case was one where the escapees had broken open the room by cutting the iron wires and was not a case where the hurricane was said to have blown the under-trial prisoners out of the Jail. Neither the respondent nor the accused Warders had brought any thing in evidence from the record of the electricity department about the duration for which the supply of electricity had remained interrupted on the night of the incident. Nevertheless, even if it be presumed, that the electricity had gone off at the relevant time then the same should have put the concerned staff on additional caution and had the relevant officials been present on duty then at least the sound produced by the cutting of wires by the escapees could not have gone un-noticed. The learned Tribunal while shifting the entire burden on to the shoulders of accused Warders, omitted to realize that the respondent was the one who was responsible for the efficient and proper discharge of obligations by his sub-ordinates and any negligence of the staff meant an aggravated negligence on the part of the respondent. He had brought nothing on record to establish that he was not on duty on the night of the occurrence.

11. In the circumstance, the impugned judgment of the learned Service Tribunal absolving the respondent of his liability towards the incident in question, could not be sustained. Needless to add that higher the post, higher are the responsibilities and graver are the implications and consequences of their neglect. Consequently, we hold that the impugned findings of the Tribunal exonerating the respondent of the charges levelled against him was the result of an apparent error emanating from a gross mis-reading and mis-appreciation of the material available on record.

12. Resultantly, this petition is converted into an appeal which is allowed as a result whereof the impugned judgment of the NWFP Service Tribunal dated 8.7.2001 passed in Appeal No.487 of 2002, is set aside.

13. This brings us to the question of punishment deserved by the respondent for his above-noticed misconduct.

14. We are conscious of the fact that the competent authority had selected only a punishment of "reduction to lowest stage in his present time scale" for the respondent which

TESTED

[Signature]

[Signature]

punishment should have been ordinarily restored after setting aside the intervening judgment of the learned Tribunal but then we are also conscious of the Constitutional obligations cast on this Court to do complete justice in any case or matter pending before it in terms of Article 187 of the Constitution. As has been discussed above in detail, the respondent being Incharge of the Jail in question had suffered escape of five under trial prisoners from the custody of the State which was a serious matter. We are surprised that despite findings of guilt recorded against the said officer, the competent authority still found him good enough to man the prisons. In our considered opinion, such an officer did not deserve to continue to be in such a service saddled with the high responsibility of ensuring safe detention of prisoners in custody.

15. We, therefore, issued a further notice to the respondent to show cause why the above noticed punishment awarded to him by the competent authority be not enhanced. Having heard the respondent on the said issue; having considered all aspects of the matter and for the reasons discussed above, we are of the opinion that the least that should have been done in the matter was to retire the respondent from service. A punishment of compulsory retirement from service is, therefore, awarded to the respondent which punishment shall now stand substituted for the penalty imposed on him by the competent authority. It is ordered accordingly.

16. Copies of this judgment shall be sent to the Home Secretary and the Inspector General of Prisons of the NWFP, for information and compliance.

Sd/- Khalid Rehman Lomday, J
Sd/- Raja Fayyaz Ahmed, J.

Peshawar, the
19th June, 2006.
APPROVED FOR REPORTING.
M. Faridun

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28/6
Certified to be true copy
of the original
by the Registrar
of the Court
Peshawar

Certified to be true copy
[Handwritten signature]
28/7/06
Assistant Registrar
Peshawar Court of Pakistan
Peshawar.

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No.683/2017

Muhammad Rauf..... Appellant

Versus

Secretary to Govt. of KP Home and
TAs Deptt: & others..... Respondents

**Rejoinder on behalf of appellant with regard to
the Para-wise comments submitted by
respondents No.1 & 2.**

Respectfully Sheweth;

Reply Preliminary objections:

i to vii

All the preliminary objections are incorrect, hence denied. With regard to objection No.vii it is submitted that Rule No.23 of K.P. Service Tribunal Rules has been misconstrued, therefore, the appeal is competent in its present form and can be decided because the substantial issue of back benefit was not decided by the Hon'ble Tribunal.

With regard to objection No.vi it is submitted that matter relating to back benefit is a recurring cause of action hence question of limitation is not applicable.

REPLY ON FACTS:

- 1) With regard to Para-1 it is stated that there are plethora of case law regarding back benefits whereby it was time and again held by the various judgments of Supreme Court of Pakistan that withholding of back benefits by Tribunal without giving any reason is not in accordance with law. It is pertinent to mention that the Tribunal in the present case did not withheld the back benefit, therefore, the appellant is entitled to back benefit for all intent and purposes once the order of dismissal/ termination/ removal was set aside by the

Tribunal and converted into reduction to lower post of Senior Clerk for three years. Case law on the subject of back benefits for ready reference of this Hon'ble Tribunal are as follow:

**1994 SCMR 1801, 2007 PLC CS 184, 2002 SCMR 1034,
2012 TD Service 181, 1999 SCMR 1873**

It is pertinent to mention that the appellant has rendered more than 36 years service with the respondent-department and as such had earned 48 days leave each year, which total becomes 1728 days at his credit during 36 years service.

- 2) Para-2 needs no reply.
- 3) Para-3 is incorrect hence denied. The authority was required to decide the departmental appeal in accordance with law but since failed to do so, hence presents this appeal
- 4) Para-4 needs no reply.

REPLY ON GROUNDS:

- 1-6) Grounds "1 to 6" are incorrect, wrongly set up, hence denied while the grounds raised in the appeal are correct and applicable to the claim of appellant in the light of the judgments referred above.

With regard to ground No.4 it is submitted that Rule 693 is not applicable to the controversy at this stage as the matter is relating to the back benefit while on merit this hon'ble Tribunal vide judgment dated 18.12.2015 has reinstate the appellant, therefore, legally speaking, he is entitled to back benefit if the appellant has not gained any monetary consideration elsewhere.

With regard to ground No.6 it is submitted that the same cannot be agitated as ground-1, 4 sufficiently explained the legal position of the appellant viz-a-viz his entitlement to consequential back benefits from the date of dismissal to the date of reinstatement.

In view of the above submissions, it is, most humbly prayed that the legal points raised in the rejoinder are to be considered in its true perspective and the appeal of the appellant may please be accepted.

Appellant

Through

Inayat Ullah Khan
Advocate High Court
LL.M (U.K)

Dated: 09/01/2018

AFFIDAVIT

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

مہر افون

Deponent

