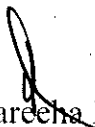



18th April, 2023 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. Adjourned. To come up on 21.06.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A

21st Nov, 2022

Lawyers on general strike today.

To come up for arguments on 12.01.2023 before D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.

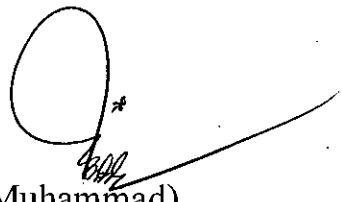

(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

12.01.2023

Learned counsel for the appellant present. Mr. Suleman, Senior Instructor alongwith Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not gone through the brief of the instant appeal. Adjourned. To come up for arguments on 18.04.2023 before the D.B.


(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

SCANNED
BY
ST
P
AWAR

04.07.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional 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 12.10.2022 before the D.B.



(Mian Muhammad)
Member (E)

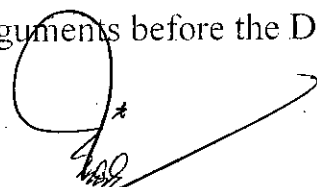


(Salah-ud-Din)
Member (J)

12.10.2022

Junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B on 21.11.2022.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

02.08.2021

Counsel for the appellant present.

Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Former requests for adjournment to further prepare the brief. Adjourned. To come up for arguments on 09.12.2021 before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)

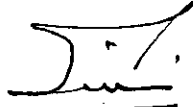


(Rozina Rehman)
Member (J)

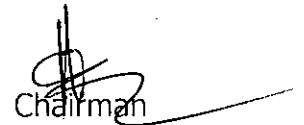
09.12.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Tariq Sheikh, Law Officer for the respondents present.

Learned senior counsel for the appellant is not in attendance to argue the appeal due to his engagement before the Hon'ble Peshawar High Court, Peshawar. Case to come up for arguments on 30.03.2022 before the D.B.



(Salah-ud-Din)
Member(J)



Chairman

30-3-2022

Proper DB not available the case is adjourned to come up for the same as before on 4-7-2022



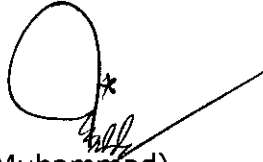
Reader

980/19

27.11.2020

Counsel for the appellant and Zara Tajwar, DDA alongwith Suleman Law Officer for the respondents present.

Learned counsel requests for time to provide copy of the brief for consumption of learned Member. Adjourned to 29.01.2021 for hearing before the D.B. The requisite copy shall positively be submitted before next date of hearing.



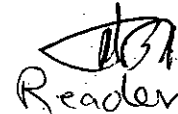
(Mian Muhammad)
Member(E)



Chairman

29.01.2021

Due to Pandemic of covid-19, the case is adjourned to 14.04.2021 for the same.



Reader

14.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 02.08.2021 for the same as before.



READER

13.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 07.07.2020 for the same. To come up for the same as before S.B.



Reader

07.07.2020

Counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Sulaiman Senior Instructor, for the respondents present.

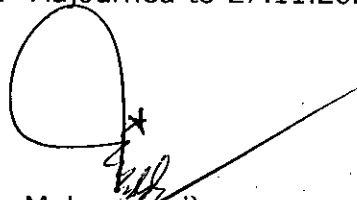
Representative of the respondents submitted written reply, which is placed on record. To come up for rejoinder, if any, and arguments on 02.10.2020 before D.B.


Member (J)

02.10.2020

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Suleman Law Officer for the respondents present.

Former requests for adjournment to further prepare the brief. Adjourned to 27.11.2020 for hearing before the D.B.


(Mian Muhammad)
Member (Executive)


Chairman

16.12.2019

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG requests for time to contact the respondents and procure the requisite reply/comments. Adjourned to 28.01.2020 on which date reply/comments shall positively be submitted.



Chairman

28.01.2020

Clerk to counsel for the appellant present. Written reply not submitted. Abdul Malik Law Officer and Sulaiman Litigation Officer representatives of the respondents present and requested for time to furnish reply. Granted. To come up for written reply/comments on 04.03.2020 before S.B.

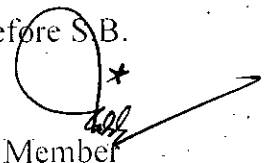


Member

04.03.2020

Junior to counsel for the appellant and Addl. AG alongwith Suleman, Law Officer for the respondents present

Representative of the respondents seeks further time to submit reply/comments. Last opportunity is granted. To come up for written reply/comments on 13.04.2020 before S.B.



Member

03.09.2019

Counsel for the appellant present.

Contends, that in the second round of departmental proceedings, the appellant was awarded major penalty of reduction to lower stage for a period of three years on account of absence from duty. In the impugned order dated 05.04.2019, the alleged period of absence was further treated as extraordinary leave without pay. The absence attributed to the appellant was thereby practically condoned, therefore, he could not be impose upon any punishment. It was further contended that despite remand by this Tribunal on the ground of non-observance of procedural requirements in the departmental proceeding, the appellant was not associated before passing the impugned order.

In view of the available record and arguments of learned counsel for the appellant, the instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be served to the respondents for written reply/comments.

Adjourned to 04.11.2019 before S.B.


CHAIRMAN

04.11.2019

Counsel for the appellant and Addl. AG for the respondents present.

Learned AAG seeks time to contact the respondents for furnishing comments. Adjourned to 16.12.2019 on which date the requisite reply/comments shall positively be submitted

Chairman 

Appellant Deposited
Security & Process Fee



13/9/19

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 980/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/07/2019 SCANNED KH. ST. PESHAWAR	<p>The appeal of Mr. Khaled Nasir presented today by Mr. Noor Muhammad Khattak 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 26/7/19</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03-9-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 980 /2019

KHALID NASIR

VS

I.G PRISON

INDEX

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4.	Departmental appeal	C	7.
5.	Service appeal	D	8- 11.
6.	Charge sheet	E	12- 13.
7.	Reply	F	14.
8.	Impugned order	G	15.
9.	Service appeal	H	16- 18.
10.	Judgment	I	19- 21.
11.	Re-instatement order	J	22.
12.	Inquiry	K	23- 25.
13.	Show-cause notice & reply	L & M	26- 27.
14.	Impugned order	N	28.
15.	Departmental appeal	O	29.
12.	Vakalat nama	30.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2019

Mr. Khalid Nasir, Ex: Warder (BPS-05),
Circle Headquarters Prison, Haripur..... **APPELLANT**

VERSUS

- 1- The Government Khyber Pakhtunkhwa through Secretary Home Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Prison's, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent, Circle Prison Headquarter Haripur, District Haripur.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 05-04-2019 WHEREBY MAJOR PENALTY OF REDUCTION TO LOWER STAGE FOR THREE YEARS HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE INACTION ON DEPARTMENTAL APPEAL BY THE RESPONDENTS WITHIN STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 05-04-2019 may very kindly be set aside and the respondents may be directed to restore the appellant on his original pay scale/rank with all back benefits and the respondents may further please be directed to allow back benefits of the intervening period i.e. w.e.f. 15.3.2017 to 25.2.2019. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was the employee of the respondent Department and was serving as Warder (BPS-5). That right from appointment the appellant was performing his duties quite efficiently and up to the entire satisfaction of his superiors.
- 2- That during service the appellant was pre-maturely transferred several times from one station to another but in spite of that the appellant performed his duty with

devotion and with all zeal and zest. That lastly the appellant was pre-maturely transferred from the High Security Prison Mardan to Central prison, Haripur vide order dated 11.03.2017 during banned period. Copies of the transfer order and Home Department letter are attached as annexure.....**A & B.**

3- That appellant feeling aggrieved assailed his transfer order through Departmental appeal followed by service appeal No. 844/2017 before this august Tribunal. Copies of the Departmental appeal and service appeal are attached as annexure.....**C & D.**

4- That during the pendency of the above mentioned service appeal the appellant was charge sheeted by the respondent No.3 which was properly replied by the appellant on 19.7.2017 but the respondents No.3 without entering into the matter straight away issued impugned order dated 07.08.2017 whereby major penalty of removal from service was imposed on the appellant. Copies of the charge sheet, reply and impugned order are attached as annexure.....**E, F & G.**

5- That appellant feeling aggrieved from the impugned order dated 07.08.2017 preferred Departmental appeal followed by service appeal No. 1219/2017 before this august Tribunal which was accepted in favor of the appellant vide judgment dated 16.01.2019 with the directions to the respondents to conduct de novo inquiry. Copies of the service appeal and judgment are attached as annexure.....**H & I.**

6- That after obtaining attested copy of the judgment dated 16.01.2019 the appellant submitted the same before the competent authority. That in implementation of the above mentioned judgment the respondent Department issued reinstatement order dated 25.02.2019. Copy of the reinstatement order is attached as annexure.....**J.**

7- That after re-instatement of the appellant the respondent Department started de novo proceedings and conducted inquiry into the matter but the same was not in accordance with the law and rules. That it is pertinent to mention that the inquiry officer has not recommended the appellant for any kind of punishment. Copy of the inquiry is attached as annexure as annexure.....**K.**

8- That after the de novo inquiry the respondent No.3 issued final show cause notice to the appellant vide dated 20.03.2019 which was properly replied by the appellant and denied all the allegations leveled against him. Copies of the

final show cause notice and reply are attached as annexure.....**L & M.**

9- That astonishingly the respondent No.3 issued the impugned order dated 05.04.2019 whereby major penalty of reduction to lower stage for period of three years was imposed on the appellant, furthermore the intervening period w.e.f 15.03.2017 to 25.02.2019 was treated as extra ordinary leave without pay. Copy of the impugned order is attached as annexure.....**N.**

10- That appellant feeling aggrieved from the impugned order dated 05.04.2019 filed Departmental appeal on 09.04.2019 but no reply has been received so far. Hence the appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst the others. Copy of Departmental appeal is attached as annexure.....**O.**

GROUND:

A- That the impugned order dated 05.04.2019 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the charges leveled against the appellant has not been proved but despite of that the appellant has been awarded major punishment of reduction to lower stage as well as the intervening period w.e.f 15.03.2017 to 25.02.2019 has been treated as extra ordinary leave with pay.

D- That the inquiry officer has not recommended the appellant for any kind of punishment in recommendations of the de novo inquiry but the respondent No.3 malafidely issued the impugned order dated 05.04.2019 which is not tenable in the eyes of law and the same is liable to be set aside.

E- That the inquiry officer did not brought on record any material evidence nor associated the concerned official to the inquiry proceeding for digging out the real facts.

F- That the respondent Department acted in arbitrary and malafide manner while issuing the impugned order dated 05-04-2019 against the appellant.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 25.07.2019

APPELLANT



KHALID NASIR

THROUGH:

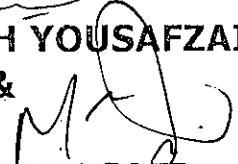


NOOR MOHAMMAD KHATTAK



SHAHZULLAH YOUSAFZAI

&



**MIR ZAMAN SAFI
ADVOCATES**



OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON MARDAN
Email: mardanjail@gmail.com
Phone: 0937-843114
NO: 1560 DATED: 17/03/2017

To


Warder Khalid Nasir s/o Muhammad Yaqoob
Attached to Central Prison Mardan

~~10~~ ~~10~~
A-5

Subject: RELIEVING DOCKET
Memo;

Under the instructions contained in the Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar Order No. KC-2967 dated 14/02/2017. You are hereby relieved of your duties at this jail today on 17/03/2017(A:N) and directed to report to the Superintendent Central Prison Haripur, for further duties there.

You are allowed 3 days of joining time.


SUPERINTENDENT
CENTRAL PRISON MARDAN

Endorsement No: _____

Copy of the above is forwarded to:-

- 1- The Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar.
- 2- The Superintendent Central Prison Haripur.
- 3- The District Accounts Officer, Haripur.

For information please.

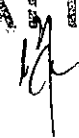
- 4- The Office Superintendent /In-charge pay Branch Central Prison Mardan for information and further necessary action please.

ATTESTED



SUPERINTENDENT
CENTRAL PRISON MARDAN

ATTESTED





GOVERNMENT OF KHYBER PAKHTUNKHWA,
HOME & TRIBAL AFFAIRS DEPARTMENT.

No. SO (Prisons)/HD/2017,

Peshawar Dated the 25th January, 2017.

B-6

To

The Inspector General of Prisons,
Khyber Pakhtunkhwa,
Peshawar.

Subject: - POSTING / TRANSFER.

Dear Sir

I am directed to refer to the subject noted above and to state that the Inspectorate of Prisons is frequently issuing postings / transfers of Jail Warders from their parents / domicile district as per Pakistan Prisons Rule, 1985.

2. Since Home Department has moved a case to Law Department for amendment in the said rules to retain the Warders in their respective district, therefore, I am further directed to convey that henceforth such postings / transfers amongst Jail Warders may be stopped till the case with regard to amendment in the relevant rules ibid is reached to its logical conclusion, please

Yours faithfully,

(ASADULLAH KHAN)
Section Officer (Prisons)

C.c.

1. The Secretary to Government of Khyber Pakhtunkhwa, Law Parliamentary Affairs & Human Rights Department, Peshawar.
2. The Principal Staff Officer to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
3. The PS to Home Secretary Khyber Pakhtunkhwa, Peshawar.
4. The PS to Special Secretary Home.

ATTESTED

ATTESTED

14

درج ذیل مسائل کو حل کرنے کے لیے اس پر عمل کریں

درج ذیل مسائل کو حل کرنے کے لیے اس پر عمل کریں

مذکورہ

120

7- گزشتہ سال میں 1000 روپے کی رقم جمع کی گئی تھی۔ اس سال میں اس رقم سے 1000 روپے خرچ کیے گئے۔ اس لیے اس سال میں 1000 روپے کی رقم جمع کرنے کی ضرورت ہے۔

اس سال میں 1000 روپے کی رقم جمع کرنے کی ضرورت ہے۔ اس لیے اس سال میں 1000 روپے کی رقم جمع کرنے کی ضرورت ہے۔

اس سال میں 1000 روپے کی رقم جمع کرنے کی ضرورت ہے۔ اس لیے اس سال میں 1000 روپے کی رقم جمع کرنے کی ضرورت ہے۔

اس سال میں 1000 روپے کی رقم جمع کرنے کی ضرورت ہے۔ اس لیے اس سال میں 1000 روپے کی رقم جمع کرنے کی ضرورت ہے۔

صرف 30-3-17

اس سال میں 1000 روپے کی رقم جمع کرنے کی ضرورت ہے۔ اس لیے اس سال میں 1000 روپے کی رقم جمع کرنے کی ضرورت ہے۔

ATTESTED

Daily Diary No 12165
dt 30/3/17

ATTESTED

(1) (2) (3) (4) (5) (6) (7) (8)

D

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 844 /2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 869

Dated 03/8/2017

Mr. Khalid Nasir Warder,
Central Jail, Haripur District Haripur.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa, through Home Secretary, Khyber Pakhtunkhwa, Secretariat, Peshawar.
- 2- The Inspector General Prisons, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent, Central Jail Mardan, District Mardan.
- 4- The Superintendent, Central Jail Haripur, District Haripur.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 11-03-2017 WHEREBY THE APPELLANT WAS TRANSFERRED FROM CENTRAL JAIL MARDAN TO CENTRAL JAIL HARIPUR PRE-MATURELY IN VIOLATION OF TRANSFER/POSTING POLICY AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYERS:

Filed to-day

Registrar
3/8/17

Re-submitted to -day
and filed.

Registrar

R/SHEWETH:

FACTS:

That on acceptance of this appeal the impugned order dated 11-03-2017 may very kindly be set aside and the respondents may please be directed not to transfer the appellant from Central Jail Mardan till completion of his normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of appellant.

appeal

Brief facts giving rise to the present ~~order~~ ~~petition~~
are as under:

1- That the appellant joined the respondent Department vide dated 11-10-2007 as warder and since then the petitioner is performing his duty quite efficiently and to the entire satisfaction of his superiors. Copies of CNIC, Service Card and appointment letter are attached as annexure.....**A, B & C.**

①
②
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2- That appellant during his service transferred/posted in different stations and performed his duty honestly. That at last the appellant posted from central jail Mardan to central Jail Haripur pre-maturely vide dated 11-03-2017 just after 06 months stay at Mardan. Copy of the posting order is attached as annexure.....**D.**

3- That it is very pertinent to mention that the appellant was always transferred/posted out from one station to another station pre-maturely where as the blue eyed persons were never transferred/posted out in the whole of the service from the date of appointment. Copies of the transfer/posting order of different stations are attached as annexure.....**E, F, G, H, & I.**

4- That as per Establishment Code Khyber Pakhtunkhwa (Revised) Addition, 2011 Posting/Transfer Policy of the provincial Government Para-IV tenure of posting/transfer is 2 years for settled area and 01 & 1/2 years for unattractive areas and 1 year for heard area. That as per rule 1117 of the NWFP PRISONS RULES 1985 No warder shall be ordinarily allowed to remain at a central prison for more than THREE Years or over Two Years at other prisons. That right from the appointment of appellant, he never completed his tenure and always posted out prematurely. That it very pertinent to mention that in violation of the above coated Policies number of warders/Head Warders and other staff of Prison Department belongs to District Peshawar are working at Peshawar since their appointments. That some of the staff namely with their stay are as under:

1. Office Superintendent	Zahid Nawaz	26 Years stay.
2. Head Warder	M. Ishaque	32 Years stay.
3. Head Warder	Shah Faisal	20 years stay.
4. Head Warder	Ahmed Saeed	30 years stay.
5. Head Warder	Hasbanullah	32 years stay.
6. Warder	Niaz Akbar	15 Years stay.
7. Warder	Sohail Anwar	15 years stay.
8. Warder	Ishfaq Hussain	15 Years stay.
9. Warder	Amjad Hussain	10 Years stay.
10. Warder	Zia-ur Rehman	10 Years stay

Copies of the Transfer/Posting Policy 2009 and NWFP PRISONS RULES 1985 are attached as

5-

That vide Home Department letter dated 25-01-2017 Transfere/Posting has been stopped where as respondent No.2 transferred/posted number of prison staff (Warders/Head Warders) despite of clear instructions issued by Home Department. That the petitioner was also posted out from Central Jail Mardan in violation of above quoted letter. Copies of the letter dated 25-01-2017 and transferred/posted letters dated 30-03-2017 and 11-04-2017 are attached as annexure.....L, M & N.

6- That feeling aggrieved and having no other remedy the appellant filed Departmental appeal to respondent No.2 but no reply has been received so far. That having no other remedy the appellant filled this appeal on the following grounds among the others. Copy of Departmental appeal is attached as annexure.....O.

GROUND:

- A- That the impugned order dated 11-03-2017 issued by the respondent No.2 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned order dated 11-03-2017 is premature under the law and prevailing rules.
- D- That the impugned order dated 11-03-2017 is against the clause I & IV of the transfer posting policy of the Government of Khyber Pakhtunkhwa.
- E- That the impugned order dated 11-03-2017 has not been issued by the respondents in the public interest nor exigencies of service.
- F- That the impugned order dated 11-03-2017 is against the Notification issued by Home Department dated 25-01-2017, therefore not tenable and liable to be set aside.
- G- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore humbly prayed that the appeal of the appellant may be accepted as prayed for.

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100

APPELLANT


KHALID NASIR

THROUGH:


**SYED IMDAD HUSSAIN SHAH
ADVOCATE**

Mobile No.03219012623)

CHARGE SHEET

H-10 E-12

I, Abdul Qayyum Khan, Superintendent Circle Headquarters Prison Haripur, as competent authority do hereby charge you Warder (BPS-05) Khalid Nasir attached to Central Jail Haripur as follow:-

As per report of the Line office furnished through the Superintendent Central Prison Haripur vide memo No 6120/WE dated 03-07-2017, you were relieved by Superintendent Central Jail Mardan on 11-03-2017 for Central Prison Haripur but you did not report for duty. As per rule notices were sent to your home address but you failed to report for duty. Finally a notice for joining duty was published in daily Mashriq Peshawar on 15-06-2017 with fifteen(15) days stipulated period and you reported on 21-06-2017 but again absented from line and duty as well as deserted from jail premises without the permission of the competent authority on 24-06-2017 and still at large

This misconduct of yours, tantamount to gross indiscipline/serious negligence on your part.

- 1- By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline Rules) 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the rules ibid.
- 2- You are, therefore, required to submit your written defence/reply within seven (07) days of the receipt of this charge sheet to the inquiry officer.
- 3- Your written defence, if any, should reach the inquiry officer within specified period failing which it shall be presumed that you have no defence to put in & in that case, *strict action* shall be taken against you.
- 4- Intimate whether you desire to be heard in person.
- 5- A statement of allegations is enclosed.

SUPERINTENDENT
CIRCLE H/Qs PRISON HARIPUR

ATTESTED



13

DISCIPLINARY ACTION

I, Abdul Qayyum Khan, Superintendent Circle Headquarters Prison Haripur, as competent authority am of the opinion that Warder (BPS-05) Khalid Nasir attached to Central Jail Haripur has rendered himself liable to be proceeded against as he has committed the following act/omission within the meaning of Rule-3 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011:-

Statement of Allegations:-

As per report of the Line office furnished through the Superintendent Central Prison Haripur vide memo No 6120/WE dated 03-07-2017, He was relieved by Superintendent Central Jail Mardan on 11-03-2017 for Central Prison Haripur but he did not report for duty. As per rule notices were sent to his home address but he failed to report for duty. Finally a notice for joining duty was published in daily Mashriq Peshawar on 15-06-2017 with fifteen(15) days stipulated period and he reported on 21-06-2017 but again absented from line and duty as well as deserted from jail premises without the permission of the competent authority on 24-06-2017 and still at large.

His practice is a grave misconduct on his part & entails him for strict disciplinary action under the E & D Rules-2011 in addition to the breach of rule 1082(i) and 1083 of Khyber Pakhtunkhwa Prison Rules- 1985.

The misconduct tantamount to gross indiscipline/serious negligence on his part.

- 1- For the purpose of scrutinizing the conduct of the said accused Warder with reference to above allegation, an inquiry is ordered against him and Mr. Faizan Zeb Assistant Superintendent attached to Central Prison Haripur is hereby appointed as Inquiry officer under section 10 (1) (a) of the rules ibid.
- 2- The Inquiry Officer shall in accordance with the provision of ordinance provide reasonable opportunity of hearing to the accused official, record its findings and make within 07 days of receipt of this order, recommendations as to punishment or other appropriate action against the accused official.
- 3- The accused official and a well conversant official of the department shall join the proceedings at the date, time and place fixed by the inquiry officer.


SUPERINTENDENT
CIRCLE H/Qs PRISON HARIPUR

Endst: No.

2244-46

dated: 05/07/2017 ✓

Copy forwarded to-

1. Mr. Faizan Zeb Assistant Superintendent attached to Central Prison Haripur (Inquiry Officer) for initiating proceedings against the above noted accused official under the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules-2011 in addition to the breach of rule 1082(i) and 1083 of Khyber Pakhtunkhwa Prison Rules- 1985.
2. The Superintendent Central Prison Haripur for information and necessary action w/r to above.
3. **Warder concerned** C/O Superintendent Central Jail Haripur with the direction to appear before the inquiry officer for the purpose of inquiry proceedings. (Charge sheet is enclosed).


SUPERINTENDENT
CIRCLE H/Qs PRISON HARIPUR

ATTESTED



F-14
B

The Superintendent,
Circle Headquarters Prison,
Haripur.

Subject: REPLY TO THE CHARGE SHEET AND STATEMENT OF ALLEGATION

Respected Sir,

Reference to the charge sheet and statement of allegation No. 2244-46 dated 05-07-2017 communicated to the appellant on 18-07-2017.

- 1- That I was relieved from Central Jail Mardan on 11-03-2017 for central Jail Haripur but as I am a patient of Kidneys and Diabetes Mellitus I felt sick and started treatment from concerned Doctors and the Doctors advised me complete bed rest for more than 3 months time to time.
- 2- That when I fully recovered from my sickness I reported to Central Jail Haripur on 21-06-2017 for duty along with all medical certificates with photo states and handed it over to jail moharar Mr Ilyas who took photo states also by saying that all these certificates will be verified from the concern quarters.
- 3- That on 24-06-2017 my officers received on PTCL call from my house that my uncle was died. I put up 5 days leave w.e.f 24-06-2017 to 28-06-2017 which was recommended by my superior officers and they send me to my home town.
- 4- That on expiry of my said leave I reported for duty on 29-06-2017 at Central Jail Haripur but my arrival was not accepted by Moharar (Madad) Mr Zahid by saying that we don,t need your duty Go back. I visited the office of jail moharar time and again but in vain. Lastly I put up application to Jail Superintendent vide dated 03-07-2017 for acceptance of my arrival but in vain. That it is very pertinent to mention that before this letter I never received any kind of letters or News paper entry regarding my absence during my sickness period.
- 5- That I desire to be heard in person.

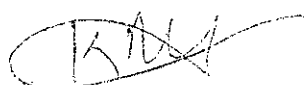
It is therefore most humbly requested that on acceptance of this reply to the charge sheet and statement of allegation I may kindly be exonerated from the charges.

Dated: 19th July, 2017 ✓

ATTESTED



Yours Sincerely



Khalid Nasir Warder,
Central Jail Haripur

CIRCLE (EASTERN) HQ's PRISON HARIPUR

Ph/Fax: 0995-611196-612402

No.2468

Dated 07/08/2017

ORDER:

WHEREAS, the accused official Warder (BPS-05) Khalid Nasir S/O Muhammad Yaqoob attached to Central Prison Haripur is hereby proceeded against under Rule-3 read with Rule-9 of Khyber Pakhtunkhwa Government Servants (Effeciency & Discipline) Rules-2011, for the charge of his long willful absence i.e. was relieved from Central Prison Mardan to Central Prison Haripur for duty on 11.03.2017 but he failed to report at later station owing to which a notice was sent to his home address for resuming duties but he failed to do so.

AND WHEREAS, due to non-response from him, another notice published in the daily newspaper i.e. Daily Mashriq Peshawar dated 15.06.2017 as provided for under Rule ibid.

AND WHEREAS, the accused official resumed duty at Central prison Haripur on 21-06-2017 but again deserted on 24-06-2017 and is still at large while his whereabouts are still not known. An inquiry was ordered against him but he failed to appear before the inquiry officer on the date, time and place fixed for the purpose.

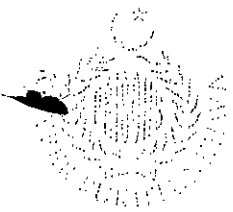
NOW THEREFORE, in exercise of powers conferred under Ruel-9 of Khyber Pakhtunkhwa Government Servants (Effeciency & Discipline) Rule-2011, the undersigned being competent authority after observing all legal procedural formalities afforded him the final opportunity of personal hearing before the undersigned on 07-08-2017 but he failed to appear as well as keeping in view the recommendation of the inquiry officer, do hereby award major penalty of "Removal from Service" to Warder (BPS-05) Khalid Nasir S/O Muhammad Yaqoob attached to Central Prison Haripur for his misconduct/willful absence.

The period of his absence is hereby treated as extra ordinary leave without pay.

SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR

Endst: No. 2469-72

Copy forwarded to all concerned.



CIRCULAR (G.O.S.D.) AND FRIENDLY MAILING
PHONE: 095-811100-012402

G-15
9-5
9-5

No. _____
D-160, _____/2017.

ORDER

WHEREAS, the accused official Warden (BPS-05) Khalid Nasir S/O Muhammad Yaqoob attached to Central Prison Haripur is hereby proceeded against under Rule-7 read with Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, for the charge of his being without absence i.e. he was relieved from Central Prison Mardan to Central Prison Haripur for duty on 11-05-2017 but he failed to report in later station owing to which a notice was sent to his home address for resuming duties but he failed to do so.

AND WHEREAS, due to non-response from him, another notice published in the daily newspaper i.e. Daily Mashriq Peshawar dated 15-06-2017 as provided for under Rule ibid.

AND WHEREAS, the accused official resumed duty at Central Prison Haripur on 21-06-2017 but again deserted on 24-06-2017 and is still at large while his whereabouts are still not known. An Inquiry was ordered against him but he failed to appear before the inquiry officer on the date, time and place fixed for the purpose.

NOW THEREFORE, in exercise of powers conferred under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, the undersigned being competent authority after observing all legal procedural formalities afforded him the final opportunity of personal hearing before the undersigned on 07-08-2017 but he failed to appear as well as keeping in view the recommendation of the inquiry officer, do hereby award major penalty of "Removal from Service" to Warden (BPS-05) Khalid Nasir S/O Muhammad Yaqoob attached to Central Prison Haripur for his misconduct/willful absence. The period of his absence is hereby treated as even-ordinary leave without pay.

DIRECTOR GENERAL
CENTRAL PRISON, HARIPUR

ATTESTED
[Signature]

Radst. No. 249/22

Copy of the above is forwarded to:-

- 1- The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
- 2- The Superintendent Central Prison Haripur, necessary entry may please be made in the Service Book of Official concerned under proper attestation.
- 3- The D.A.O Haripur for information & necessary action please.
- 4- Ex-Warden (BPS-05) Khalid Nasir S/o Muhammad Yaqoob R/O Patwar Bala Post Office Kalam Tehsil & District Peshawar for information.

کفتور کتاب الکترونیک جنرل ضابطہ ضابطہ ضابطہ

15/A

اپیل

بتاریخی حکم ورقہ 2017/18

بدین شمارہ کے سائل کی ورقہ 2017/18
 بتاریخی 28/6/2017 غیر حاضر رہی تھی بلکہ 24/6/2017 کو 7:30 بجے کے سائل کی صورت میں
 کہ چھاپا گیا تو سنا ہو گیا۔ چنانچہ ایبائی والہ اور نے سائل کو پانچ دن لیکچر اور ہی طور پر
 چھی دیکر نمونہ لیا۔ اور یہاں دیا تو معلوم ہوا کہ سائل کی غیر حاضری لگائی تھی۔
 جو کہ سائل کے ساتھ زیادتی لگتی ہے۔ چنانچہ سائل کو سنا کر میں۔ (دیکھی گئی ہے کہ
 سائل نے جواب دیا۔ (دیکھی گئی ہے) اسی وجہ سے سائل نے میں سپریشن
 پر پور کو ہی درخواست دی ہے۔ (دیکھی گئی ہے) سائل کو درجہ یکم دیا گیا ہے کہ
 سرورس حکم زد کی گئی ہے۔ جبکہ مکمل طور پر عین سرورس ریکورڈنگ ہے۔
 آفیسر نے لکھ کر تھوڑا لے چھی منظور کی ہے۔ بدین صورت سرورس سے درخواست
 جن میں لکھی ہے کہ غیر حاضری لکھ کر تھوڑا لے چھی عین شمارہ لگتی ہے کہ
 حکم کے مطابق اپیل خود سائل کی سرورس پر بحال کیا جاوے۔*

کتاب عالی! سائل حسب ذیل عرض کرنا ہے

1۔ بدین سائل کی ڈیوٹی سنٹر میں ہر روز میں لگائی گئی۔ اور سائل کے
 سائل کی صورت میں ہر روز اس وقت لگائی گئی ہے۔
 2۔ کہ کہ ورقہ 24/6/2017 کو سائل کو 7:30 بجے کے سائل سے سنا گیا کہ
 بنیوں والہ ایبائی نے 24/6/2017 یا 28/6/2017 چھی دیکر نمونہ لیا
 کیا کہ پانچ ماہوں میں خود لیکچر سے کر لیا گیا
 3۔ بدین سائل چھی مانا واپس کرنا۔ کو سنا گیا کہ سائل کو رعایت دیا گیا ہے کہ
 مکمل طور پر فارغ کیا گیا ہے۔ جبکہ مکمل طور پر عین سرورس لگائی گئی ہے کہ
 4۔ اور غیر حاضری کو لکھ کر تھوڑا لے چھی سے تبدیل لگتی ہے کہ اور اس صورت میں
 غیر حاضری اور یہ رعایت لگتی ہے کہ لکھی گئی ہے کہ (Economic) لگتی ہے
 (اردو دیکھی گئی ہے)
 استدعا ہے کہ منظور کی اپیل خود سائل کو درجہ یکم بحال
 کی جائے تاکہ اجازت دیکر صادر ہو یا جاوے۔*

ATTESTED

خانہ نامہ اولیہ جسٹس

8336568

0317

20/08/17



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406

091-9213445

No.Estb/Ward-/Orders/ 22472 1-15/B

Dated 27/9/2017 1-15/B

15/B

ORDER

WHEREAS, Ex-warder Khalid Nasir S/O Muhammad Yaqoob attached to Central Prison Haripur, was awarded the major penalty of "Removal from Service" by the Superintendent Headquarters Prison Haripur vide his office order No.2468 dated 07-8-2017 due to his willful absence with effect from 11-3-2017 upto 20-6-2017.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available record of the case and it was observed that the appellant remained absent for long period and legal/ procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 26-9-2017. During the course of hearing he failed to justify his willful absence. Moreover, the representative of Superintendent Headquarters Prison Haripur also highlighted his past adverse service record and stated that before this penalty, previously, he was twice removed from service on the similar charges, being habitual offender.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of power conferred under Rule-5 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986, the decision of the competent authority is upheld and appeal of the appellant is hereby rejected being without any substance.


INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.


ENDST;NO. 22473-75 1.,

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Haripur for information and necessary action with reference to his letter No.2807 -WE dated 11-9-2017.
2. The Superintendent, Central Prison Haripur for information and necessary action with reference to the Superintendent HQ Prison Haripur order referred to above. He is directed to inform the appellant accordingly and also to make necessary entry in his Service Book under proper attestation.
3. Mr.Khalid Nasir Ex-warder C/O Superintendent Central Prison Haripur for information.

ATTESTED




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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1219 /2017

H (16)

Mr. Khalid Nasir, Ex: Warder (BPS-05),
Circle Headquarters Prison, Haripur..... **APPELLANT**

VERSUS

- 1- The Government Khyber Pakhtunkhwa through Secretary Home & Tribal affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Prison's, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent, Circle Prison Headquarter Haripur, District Haripur.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 07-08-2017 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 27.09.2017 THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 07-08-2017 and 27.09.2017 may very kindly be set aside and the respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was the employee of the respondent Department and had served the respondent Department as Warder (BPS-5). That right from appointment the appellant had performed his duties quite efficiently and up to the entire satisfaction of his superiors. Copy of the service card is attached as annexure **A.**
- 2- That it is very pertinent to mention that within a short span of time the appellant was transferred from one station to

another station prematurely but inspite of that the appellant performed his duty with devotion and with all zeal and zest. Copies of the transfer orders are attached as annexure **B.**

3- That appellant while performing his duty at Judicial lockup Nowshehra an order dated 29.9.2016 was issued by the respondent No.2 whereby the appellant was transferred to High Security Prison, Mardan. Copy of the order dated 29.9.2016 is attached as annexure **C.**

4- That appellant in response to the said order took over the charge and started performing his duty but just after the lapse of three months the appellant was again transferred from the High Security Prison Mardan to Central Prison, Haripur vide order 11.03.2017 during banned period. Copies of the transfer order and Home Department letter are attached as annexure **D & E.**

5- That appellant feeling aggrieved the appellant assailed his transfer orders through Departmental appeal followed by service appeal No.844/2017 before this august Service Tribunal. Copies of the Departmental appeal and service appeal are attached as annexure **F & G.**

6- That during the pendency of the above mentioned service appeal the appellant was charge sheeted by the respondent No.3 which was properly replied by the appellant on 19.7.2017 but the respondent No.3 without entering into the matter straight away issued impugned order dated 07.08.2017 whereby major penalty of removal from service has been imposed on the appellant. Copies of the charge sheet, reply and impugned order are attached as annexure.....**H, I & J.**

7- That appellant feeling aggrieved from the impugned order dated 07.08.2017 preferred Departmental appeal before the respondent No.2 but the same has been rejected on no good grounds vide order dated 27.9.2017. Copies of the Departmental appeal and rejection order are attached as annexure.....**K & L.**

8- That appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst the others.

GROUNDS:

A- That the impugned orders dated 07-08-2017 and 27.9.2017 issued by the respondents are against the law, facts, norms

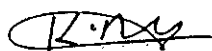
of natural justice and materials on the record hence not tenable and liable to be set aside. (18)

- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned order issued by the respondents is not based on facts, therefore, not tenable and liable to be set aside.
- D- That no show cause notice has been served on the appellant by the respondents before issuing the impugned order dated 07.08.2017.
- E- That no regular inquiry has been conducted in the matter before issuing the impugned order dated 07.08.2017 which is as per Supreme Court judgments is necessary in punitive actions against the civil servant.
- F- That no chance of personnel hearing/personnel defense has been given to the appellant before issuing the impugned order dated 07-08-2017.
- G- That no publication whatsoever has been made against the appellant and as such the impugned order dated 07-08-2017 is not tenable and liable to be set aside.
- H- That the respondent Department acted in arbitrary and malafide manner while issuing the impugned order dated 07-08-2017 against the appellant.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 20.10.2017

APPELLANT



KHALID NASIR

THROUGH:



NOOR MOHAMMAD KHATTAK

&



MUHAMMAD MAAZ MADNI
ADVOCATES

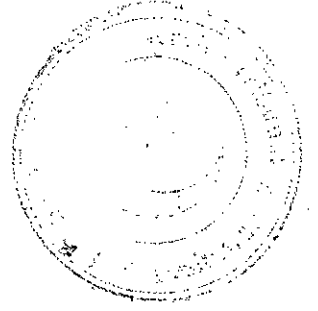
I - 19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1219/2017

Date of institution ... 24.10.2017

Date of judgment ... 16.01.2019



Mr. Khalid Nasir, Ex-Warder (BPS-05)
Circle Headquarters Prison, Haripur.

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Prison's, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent, Circle Prison Headquarter Haripur, District Haripur.
... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 07.08.2017 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 27.09.2017 THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

Mr. Noor Muhammad Khattak, Advocate

.. For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the

appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Juanid, Assistant for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Prison Department as Warder. He was imposed major penalty of removal from service on the allegation of absence from duty vide order dated

*Mr. Amin
16.1.2019*

*RECEIVED
16.1.2019*

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07.08.2017. The appellant filed departmental appeal on 20.08.2017 which was rejected on 27.09.2017 hence, the present service appeal on 24.10.2017.

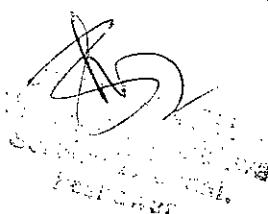
3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Prison Department but he was dismissed from service on the allegation of absence from duty. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor any inquiry report was handed over to the appellant before passing the impugned order nor any show-cause notice was issued to the appellant therefore, the impugned order is illegal and liable to be set-aside.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant remained absent from lawful duty. It was further contended that proper charge sheet, statement of allegation was served upon the appellant. It was further contended that proper inquiry was conducted and after fulfilling of all the codal formalities the appellant was rightly imposed major penalty of removal from service and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Prison Department as Warder. He was transferred from Central Prison Mardan to Central Prison Haripur on 11.03.2017 but he failed to report at Central Prison Haripur for duty therefore, departmental proceeding was initiated against the appellant. He was charge sheeted and statement of allegation was also served upon him to which he also replied. The record further reveals that inquiry was initiated against the appellant and inquiry report dated 01.08.2017 was not handed over to the appellant before passing the impugned order nor any show-cause notice was issued to the appellant before his removal from service. This Tribunal in Service Appeal No. 1014/2012 titled Saqib Gul Versus District

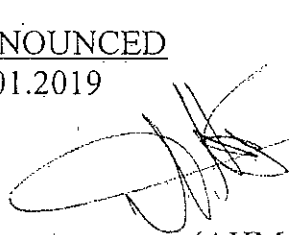
M. Amin
16.1.2019


Tribunal

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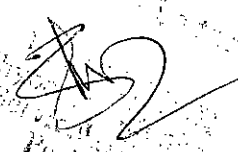
Police Officer decided on 23.11.2017 held that this Tribunal has already delivered a judgment in appeal bearing No. 1040/2014 titled Gulab Khan Versus Provincial Police Officer decided on 26.09.2017 where in it was held that issuance of final show-cause alongwith the inquiry report is must under the Police Rules, 1975 and the reliance was also placed on PLD 1981 Supreme Court page 176 therefore, non-issuance of show-cause notice alongwith copy of inquiry report has rendered the whole proceeding illegal and liable to be set-aside. As such, we accept the appeal, set-aside the impugned order and reinstate the appellatant in service. However, respondent-department is directed to conduct de-novo inquiry within a period of 90 days from the date of receipt of this judgment in accordance with law and rules. Parties are left to bear their own costs. File be cosigned to the record room.

ANNOUNCED
16.01.2019

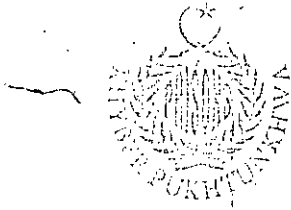


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Copy to

 Peshawar

Date: 21-2-19
 No: 1260
 Copy: 800
 Us: 800
 Tel: 800
 Next: 22-2-19
 For: 22-2-18
 Date:



OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQs PRISON HARIPUR
Ph/Fax: 0995-611196-612402

No. _____

J-22

Dated 25/02/2019

ORDER.

In Partial Modification of this office order No. 232 dated. 12-02-2019 & in compliance of the Inspector General of Prisons Khyber Pakhtunkhwa Peshawar No. 6408 dated. 22-02-2018 Mr. Khalid Nasir S/o Muhammad Yaqoob recently re-instated into service is hereby transferred and posted to Central Prison Mardan from Central Prison Haripur.

Further all terms & Conditions of above referred office Order of this office will remained the constant.

Sd/

SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR

Endst: No. 361-671

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information w/r to No. as quoted above please.
2. The Superintendent Central Prison Mardan/Haripur for Information please.
3. Mr. Muhammad Hamid Deputy Superintendent Jail/ Inquiry Officer attached to District Jail Abbottabad for information and necessary action as deemed appropriate in completion of disciplinary proceeding against said warder w/r to this office No. 238-42 dated. 12-02-2019.
4. The District Accounts Officer Haripur/Mardan for information & necessary action.
5. Warder (BPS-05) Khalid Nasir S/o Muhammad Yaqoob under-transferred to Central Prison Mardan for information and compliance.

27/02/19 reported arrival for duty

SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR

at this Jail today after Noon 27/02/19

ATTESTED

[Signature]

District Jail Haripur

[Signature]

INQUIRY REPORT- ABSENCE CASE OF WARDER KHALID NASIR.

K - (23)

In compliance to Superintendent Circle Headquarter Prison Haripur order No. 238-42 dated 12-02-2019, the undersigned has conducted de-novo inquiry into the above cited case. The inquiry report follows as:

STATEMENT OF ALLEGATIONS:

"As per written report of the Line Officer furnished through the Superintendent Central Prison Haripur, vide memo No. 612/ WE dated.03-07-2017, you were relieved by Superintendent Central Jail Mardan on 11-03-2017 for Central Prison Haripur but you did not report for duty. As per rule notices were sent at your home address but you failed to report for duty. Finally a notice for joining duty was published in daily The Mashriq Peshawar on 15-06-2017 (15) days stipulated period and you reported on 21-06-2017 but again absented from line and duty as you deserted from Jail premises without permission of competent authority on 24-06-2017 and at large."

This practice is a grave misconduct on his part & entails him for strict disciplinary action under the E&D Rule-2011.

1. For the purpose of scrutinizing the conduct of the said accused warder with reference to above allegations, Denovo Inquiry is ordered against him and Mr. Muhammad Hamid Deputy Superintendent Jail attached to District Jail Abbottabad (Inquiry officer) is hereby appointed as Inquiry officer under 10(1)(a) of the rules ibid.
2. The inquiry officer shall in accordance with the provision of ordinance provide reasonable opportunity of hearing to the accused, record its findings and make within 07 days of receipt of this order, recommendations as to punishment or other appropriate action against him.
3. Accused Warder and a well conversant official of the department (if required) shall join the proceedings at the date, time and place fixed by the inquiry officer.

BRIEF BACKGROUND SUMMARY:

1. Consequent upon the allegations charge sheet was served upon the Warder "Khalid Nasir" initially by the Superintendent Circle Prison Haripur No. 2244-46 Dated 05-07-2017 Mr. Faizan Zeb Assistant Superintendent attached to Central Prison Haripur was appointed as inquiry officer for initiating proceedings against the Warder accused.
2. The inquiry officer submitted his inquiry report on 01-08-2017 and recommended to "treat the accused as deserter from 24-06-2017 and to award major penalty which may be in the form of culmination of his service; on the following grounds:
3. Accused was served 03 no. of notices on his home address to attend inquiry proceedings as:
on i- 12-07-2017. ii- 18-07-2017. iii- 21-07-2017
4. On 21-07-2017 the written reply of the said Warder was received by the inquiry officer via postal service but the warder accused himself did not appear before the inquiry officer.
5. The Warder stated his illness to be the cause of his absence but did not provide any medical document as proof for it.
6. The inquiry officer noticed further distortion of facts by the Warder in his statement that on 24-06-2017 some officer received telephone call about the death of his uncle and that upon that call he went on leave for five days through application. No such telephone call or application was confirmed by the inquiry officer after the inquiry.
7. The accused further stated that he reported his arrival to the lines office on 29-06-2017 but according to the Lines Office he was continuously absent since 24-06-2017. The death of his uncle could not be verified due to non-production of any death certificate.
8. The accused did not appear before the inquiry officer despite of three notices summoning him and despite of his own desire to be heard in person as stated by him in his written statement.

The inquiry officer found that the Warder Khalid Nasir was not serious about his duty or inquiry and made up facts to justify his irresponsible behavior. (24)

If the accused would had provided the relevant medical proof to the inquiry officer, the case might be recommended to be transferred to the relevant medical board to determine fitness of the accused to continue his service in the department but the accused neither provided the relevant documents nor appeared personally before the inquiry officer.

Upon submission of inquiry report, the Superintendent Circle Headquarter Prison Haripur afforded him the final opportunity of personal hearing before his office on 07-08-2017 but again he did not appear. After observing all legal procedural formalities the accused was awarded major penalty of "Removal from Service" via Superintendent Circle Headquarter Prison Haripur order no. 2469-72 after which an appeal was placed by the Warder with the Worthy Inspector General of Prisons. The worthy I.G. Prisons upheld the earlier punishment and rejected the appeal after affording the opportunity of personal hearing on 20-09-2017.

The Warder then made appeal before the Khyber Pakhtunkhwa Service Tribunal Peshawar on 24-10-2017 which reinstated the appellant by setting aside the punishment on the grounds of non-issuance of show-cause notice along with the copy of inquiry report; and directed the department to conduct de-novo inquiry within a period of 90 days from the date of receipt of judgment.

The department decided to make an appeal against the judgment of the provincial service Tribunal, Peshawar on the grounds that the court has ignored the material facts placed before it. The case was put with the Law Department and discussed in scrutiny committee to determine the fitness of the subject case for filing of appeal CPLA in the Supreme Court of Pakistan. The meeting was held on 13-02-2019 and the department was advised to conduct de-novo inquiry as per direction of the Service Tribunal.

INQUIRY PROCEEDINGS:

Under the instructions contained in the Superintendent Circle Headquarter Prison Haripur order No. 236-42 dated 12-02-2019, Warder Khalid Nasir was directed vide to appear before the inquiry officer along with relevant records on 6th March 2019 at 10:00 AM at District Jail Abbottabad vide memo No. 341 dated 27-02-2019. The Superintendent Headquarter Prison Haripur was requested via same endorsement to depute a well conversant official along with relevant record on the date and time mentioned above.

The accused Warder Mr. Khalid Nasir appeared before the inquiry officer on the set date and venue and presented his written statement. Assistant Superintendent Mr. Muqaddas Khan of District Jail Abbottabad also joined the inquiry proceedings. Mr. Khalid Nasir was heard, questioned and given the opportunity to defend his case and present material evidence.

Mr. Zeshan, Computer Operator attached to Central Prison Haripur also joined the inquiry proceedings along with the relevant record. The case record and the service book of the warder were thoroughly examined and analyzed.

FINDINGS:

After the thorough analysis of case record, the statement submitted by the Warder and the queries replied by the warder were found with a vast contrast as noted by the earlier inquiry officer who recommended his removal from service.

1. From the perusal of record, the accused warder in his previous statement submitted to the first inquiry officer that he had submitted the photo copies of medical certificates to Mr. Ilyas, Line Moharrar of Central Prison Haripur on 21-06-2017 but in his later statement which he has submitted to the undersigned, stated that he had handed over medical certificates along with photocopies to the superintendent Central Prison Haripur on

25

2. The warder during question answer session stated that he did not receive any show cause/ inquiry notice which is false as he himself in his written statement of 19-07-2017 referred to the charge sheet and statement of allegation No. 2244-46 dated 05-07-2017 under which the enquiry was initiated.
3. On the question, why you did not appear before the inquiry officer? The warder again replied that he did not receive any notice. It is worth mentioning here that the warder did not appear before the inquiry officer despite of his self-statement of the desire to be heard in-person. (Attached as Annex-B).
4. In his appeal to the Inspector General of Prisons Peshawar, he stated that upon his return from his leave he had been terminated from his service but in reality he had been awarded punishment only after proper inquiry.
5. From the perusal of his service book it was found that the warder was removed from service on couple of times earlier.
6. The warder was awarded penalty of "Removal from Service" by the Superintendent Circle Headquarter Prison Halipur after affording him the opportunity of personal hearing on 07-08-2017.
7. Upon his appeal the Worthy I.G. Prisons Peshawar upheld the decision of the competent authority after affording him opportunity of personal hearing on 26-09-2017.
8. His previous service record reflects his non serious attitudes towards job and he is beyond repair to perform duties in the current critical security and challenging environment.

Recommendations:

Keeping in view the above mentioned findings, it is established that he remained absent unlawfully from jail for the period mentioned above and failed to produce any genuine or lawful reason for his absentee. His previous service record also reflects his non seriousness towards his job being uniform personnel in the current critical security situation in the country in general and threats to the jails in particular. Hence charge against him fully proved.

M. H. 11/3/2019
(MUHAMMAD HAMID)
INQUIRY OFFICER
DEPUTY SUPERINTENDENT
DISTRICT JAIL BOTTABAD

L-26

FINAL SHOW CAUSE NOTICE UNDER RULE-5 (i) (a) READ WITH RULE-7 OF THE KHYBER PUKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES, 2011.

I, **Maqsd Ur Rehman, Superintendent Circle Headquarters Prison Haripur** as competent authority do hereby charge you **Warder (BPS-05) Khalid Nasir S/o Muhammad Yaqoob** attached to **Central Prison Mardan** as follows:-

“As per written report of the Superintendent Central Prison Haripur, you remained absent “As per written report of the Line Officer furnished through the Superintendent Central Prison Haripur, vide memo No. 612/WE dated. 03-07-2017, you were relieved by Superintendent Central Jail Mardan on 11-03-2017 for Central Prison Haripur but you did not report for duty. As per rule notices were sent to your home address but you failed to report for duty. Finally a notice for joining duty was published in daily Mashriq Peshawar on 15-06-2017 with fifteen (15) days stipulated period and you reported on 21-06-2017 but again absented from line and duty as well as deserted from Jail premises without the permission of the competent authority on 24-06-2017 and at large (09-08-2017)”

Your this practice is a grave misconduct on your part & entails you for strict disciplinary action under the E & D Rules-2011.

I, **Maqsd Ur Rehman, Superintendent Circle Headquarters Prison Haripur** as competent authority, am satisfied by the report submitted by Inquiry Officer & there is no need of holding any further inquiry.

Now therefore, you above named accused **Warder** are hereby called upon to show cause within **seven (07) days** as to why **Major Punishment of “Rmoval From Service”** may not be awarded to you for your above stated act of misconduct.

Handwritten notes and signatures on the left side of the page, including a large signature and some illegible scribbles.

Signature
**SUPERINTENDENT
CIRCLE H/Qs PRISON HARIPUR**

Endst: No. 522-26 / Dated: 20/03/2019.

1. The Honorable Khyber Pakhtunkhwa Services Tribunal Peshawar (camped at Abbottabad) for information in compliance of No. (Even) dated. 16-01-2019 for information please.
2. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar w/r to Endst No.4022 dated 06-02-2019.
3. The Superintendent Central Prison Haripur / Mardan for information please.
4. **Accused Warder (BPS-05) Khalid Nasir S/o Muhammad Yaqoob** attached to **Central Prison Mardan** (*copy of Inquiry Report t is enclosed*).

1131
25/3/19

Signature
**SUPERINTENDENT
CIRCLE H/Qs PRISON HARIPUR**

To

M-27

The Superintendent,
Circle Head Quarters Prison, Haripur.

Subject: **REPLY TO THE FINAL SHOW CAUSE NOTICE ISSUED BY
YOUR GOOD SELF ON 20.3.2019 WHICH WAS RECEIVED
TO ME ON 25.3.2019.**

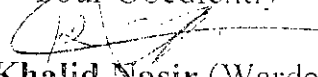
Respected Sir,

It is most humbly stated that I am serving as Warder (BPS-5) in the Central Prison Mardan. During service I was performed my duties in different prisons of Khyber Pakhtunkhwa quite efficiently and upto the entire satisfaction of the my superiors. From the year 2015 till 2017 I was pre-maturely transferred several times to different prisons for duty and lastly I was transferred to Central Prison Haripur from central prison Mardan just after six months vide order dated 11.03.2017 during the banned period on the transfer/posting of Jail Warders. When I was transferred from Central Prison Mardan I was seriously ill and I sent my medical prescriptions to the Central Prison Haripur. Due to the said illness I was not able to perform my duties in far area. So, feeling aggrieved I was filed Departmental appeal before the Worthy Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar but no response was given on the said Departmental appeal. Then after I was filed service appeal before the august Service Tribunal Peshawar with the hope that the august Service Tribunal will grant status quo in favor of me but un-fortunately your good self issued my removal order dated 07.08.2017. I was challenged my removal order dated 07.08.2017 before the august Service Tribunal and the august Service Tribunal allowed my appeal vide judgment dated 16.01.2019. **Respected Sir**, I served your good self Department for more than 12 years with devotion and during my entire service no any complaint has been filed against the me.

It is therefore, most humbly stated that on acceptance of this reply I may very kindly be exonerated from the charge leveled against me.

Dated: 28.03.2019.

Your Obediently


Khalid Nasir (Warder)
Central Prison, Mardan



N-28

**OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQs PRISON HARIPUR**
Ph/Eax: 0995-611196-612402

No. _____ /

Dated 05 / 04 / 2019.

ORDER

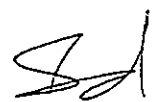
WHEREAS, the accused of Warder (BPS-05) Khalid Nasir S/o Muhammad Yaqoob attached to Central Prison Haripur for all purpose was awarded the Major Punishment of "Removal from Service" vide this office No. 2469-72 dated 07-08-2017, later on acceptance of his appeal by Khyber Pakhtunkhwa Services Tribunal vide Service Appeal No.1219/2017 was proceeded against under Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 & a Denovo Inquiry as ordered by Honorable Tribunal vide No. even dated 04-02-2019 was initiated against him for the charges of his misconduct as mentioned in the Charge Sheets/Show cause Notice served upon him.

AND WHEREAS, Mr. Muhammad Hamid Deputy Superintendent Jail attached to District Jail Abbottabad was appointed as inquiry officer in subsequent case. Wherein he furnished his reply, which was found unsatisfactory and Inquiry officer recommended/ conveyed "charges hence against him fully proved".

AND WHEREAS, the undersigned being the competent authority granted him the opportunity of personal hearing on 04-05-2019 as provided for under rules ibid.

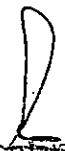
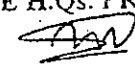
NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule 2011, having considered the charges, evidence on record & Denovo Inquiry Report submitted by the Inquiry Officer & previous service history, the explanation of the accused official and after affording the opportunity of personal hearing, undersigned being the competent authority, do hereby award Major penalty of "**REDUCTION TO LOWER STAGE FOR A PERIOD OF THREE YEARS**" to Warder (BPS-05) Khalid Nasir S/o Muhammad Yaqoob attached to Central Prison Haripur for all purpose with immediate effect.

Absence period/ intervening (from 15-03-2017 to 25-02-2019) period will be considered as Extra ordinary Leave without Pay.


**SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR**

Endst. No. 632-37/WE

- Copy of the above is forwarded to:-
1. The Honorable Registrar Khyber Pakhtunkhwa Services Tribunal Peshawar for information w/r to Service Appeal No. 1219/2017.
 2. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar w/r to No. 6408 dated 22-02-2019 for information please.
 3. The Superintendent Central Prison Haripur for Information please.
 4. The Superintendent Central Prison Mardan, that necessary entry may please be made in the Service Book of official concerned under proper attestation, moreover his service (two volumes) is also attached for salary activation purpose please.
 5. The District Accounts Officer Mardan for information & necessary action.
 6. Warder (BPS-05) Khalid Nasir S/o Muhammad Yaqoob then attached to Central Prison Haripur, now attached to Central Prison Mardan for information.


**SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR**


خدمت جناح
جناح عالی

(29) - 0

السید حسن علی خان

درخواست براد داد سی / عطا شہر
و آئی سی جناح عالی انٹرنیشنل فار ٹوریسم

اسی میں کیا جائے۔ اس میں سائنس کے تحت میں جا رہا ہوں اور پیناڈوٹی لبریری
اس میں میرا کام دیا جائے۔ یہ کہ میں سائنس کا گریجویٹ سائنس کی پوری کورس
کلیئر کرنے ڈیوٹی سرانجام دینے سے کام لے رہا ہوں۔ اس میں میرا پیناڈوٹی لبریری
کوری پورے ٹوریسم سے اپنی فہمیت (Removal from) کیا گیا ہے۔ لیڈ میں عدالت میں
ٹریبونل کے طور پر سائنس کو ٹوریسم پر بحال کیا اور دوبارہ انٹرنیشنل کورس
(فصل نقل و حرکت) کوئی پوری نہیں ہے اس کے علاوہ انٹرنیشنل کورس پورے
انٹرنیشنل کورس پر پورے میں پیناڈوٹی لبریری کو انٹرنیشنل کورس
میں نے دوبارہ سزا دیکر سائنس (Lowest stage for 03 yrs) کر دیا ہے اور
ساتھ (Interim Period) کو (Interim Pay) کیا ہے۔

لکھنا اب یہاں سے انٹرنیشنل کورس میں لکھنا ہے۔ اس میں انٹرنیشنل
کورس عرب خاندان سے تعلق رکھتا ہے اور ٹوریسم کے علاوہ کچھ اور فہمیت
میں ہے۔ اس میں سائنس اور سائنس کے ساتھ ساتھ انٹرنیشنل کورس کے ساتھ ساتھ
درجہ اول میں اور تمام خواہشیں پوری ہوں گی۔ اس میں کورس کے ساتھ ساتھ
سائنس کے ساتھ ساتھ انٹرنیشنل کورس کے ساتھ ساتھ
انٹرنیشنل کورس کے ساتھ ساتھ انٹرنیشنل کورس کے ساتھ ساتھ

9505
9-4-2019

العرفضا

فوقہ
9/4/019

العرفضا
9/4/019

انٹرنیشنل کورس کے ساتھ ساتھ

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

_____ OF 2019

Khalid Nasir

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

I. G. Wilson & Others

(RESPONDENT)
(DEFENDANT)

I/We Khalid Nasir

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2019


CLIENT


ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

&
MIR ZAMAN SAFI
ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Mobile No.0345-9383141

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

SERVICE APPEAL NO. 980/2019

MR. KHALID NASIR EX: WARDER (BPS-05) CIRCLE HEAD QUARTERS PRISON,
HARIPUR.APPELLANT.

VERSUS

1. Govt of Khyber Pakhtunkhwa through Home Secretary, Govt of K.P.K Peshawar.
2. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Circle H.Qs, Prison, Haripur.

.....RESPONDENTS.

INDEX

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4-	Photocopy of the Inquiry Report	B	9-11
5-	Photocopy of Order dated 05-04-2019	C	12

DEPONENT

①
BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO: 980/2019

MR. KHALID NASIR EX: WARDER (BPS-05) CIRCLE HEAD QUARTERS
PRISONS, HARIPUR.

.....APPELLANT

VERSUS

1. Govt of Khyber Pakhtunkhwa through Home Secretary, Govt of K.P.K Peshawar.
2. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar
3. Superintendent Circle H.QS, Prison, Haripur.

.....RESPONDENTS

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO:1-3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

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

- That the office orders dated 05-04-2019 passed by respondent No.3, Superintendent Circle H.Qs, Prison, and Haripur is legally competent and liable to be maintained.

FACTS:

1. Incorrect and not admitted. His performance was not satisfactory during the entire service as evident from his service record. Copy of the service record is attached as **ANNEX A.**
2. This Para is irrelevant so needs no comments.
3. This Para needs no comments.
4. Denied. The respondent No.3 on the basis of unsatisfactory reply of the present appellant removed him from service.
5. Correct and Admitted.
6. Correct and admitted.
7. Incorrect and not admitted. The punishment is according to law as charges were proved against him in the inquiry as evident from the recommendation of the inquiry report. **COPY OF THE INQUIRY REPORT IS ATTACHED AS ANNEX B.**
8. This Para needs no comments.
9. Correct and admitted.
10. Incorrect and not admitted. No departmental appeal has been filed so far.

GROUND:

- A. Incorrect and not admitted. He was dealt with according to law and order was issued after fulfilling all the requirements as set forth by law.
- B. Incorrect and not admitted.
- C. Incorrect and not admitted. In exercise of power conferred under Rule-14(5) of KP Government servant E&D Rule 2011 having considered the charges, evidence on record and de novo inquiry submitted by inquiry officer. The competent authority awarded major penalty Reduction to lower stage for a period of three years. Copy of order 05/04/2019 attached as **ANNEX C**

D. Incorrect and not admitted. His service record shows that he was removed from service couple of time earlier. The Inquiry officer clearly stated that charge against him fully proved.

E. Incorrect and not admitted. proper inquiry was conducted by Mr. Muhammad Hamid Deputy superintendent jail District jail Abbottabad said inquiry officer conducted inquiry and submitted report on the basis of said inquiry impugned order of 05/04/2019 was issued by respondent no 3.

F. Incorrect and not admitted.

G. Need no comments

PRAYERS

It is therefore most humbly prayed that upon acceptance of the instant reply/comments for or on behalf of the respondents the above titled appeal may kindly be dismissed with costs.



SUPERINTENDENT

Circle Headquarter prison, Haripur

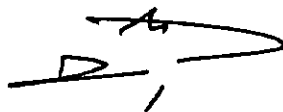
(RESPONDENT # 3)



INSPECTOR GENERAL OF PRISONS

KHYBER PAKHTUNKHWA PESHAWAR

(Respondent # 2)



**SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT PESHAWAR**

(RESPONDENT # 1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

in the matter of Service Appeal No. 980/2019

Filed by Ex-Warder Khalid Nasir

----- Appellant

1. The Government Khyber Pakhtunkhwa through Secretary Home & TAs Department Khyber Pakhtunkhwa Peshawar.
2. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar
3. The Superintendent Circle Headquarter Prison Haripur.

----- Respondent

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1 TO 3

We, the undersigned respondents to hereby solemnly affirm that the contents of the Para wise comments on the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts have been kept secret/concealed from his honourable court.

1. **SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT PESHAWAR**

(RESPONDENT # 1)

2. **INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**

(Respondent # 2)

3. **SUPERINTENDENT
CIRCLE HEADQUARTER PRISON
HARIPUR**

(RESPONDENT # 3)



CIRCLE (EASTERN) HQs PRISON I

Ph/Fax: 0995-611196-612402

No. 2807 /

Dated 11 / 08 / 2017.

To,

The Inspector General of Prisons,
Khyber Pakhtunkhwa, Peshawar.

Subject: - DEPARTMENTAL APPEAL.

Menu:

Reference your memo: No.19852-WE dated 25-08-2017.

The requisite information pertaining to appeal of Ex-Warder Khalid Nasir attached to Central Prison Haripur is furnished as under on the prescribed format for further necessary action please:-

S #	Name & Parentage	Rank	D.O.B	Date of Appointment	Punishment awarded during his entire service with date & nature of offence
1	Khalid Nasir S/o Muhammad Yaqoob	Warder	11-03-1982	24-11-2007	1) 15 days absented period from 05-08-2008 to 20-08-2008 is treated as "Leave without pay" & WARNED by the order of the Superintendent District Jail Mardan. 2) Remained willfully absent from duties w.e.f 04-09-2008 to 11-09-2008. WARNED by the Superintendent District Jail Mardan. 3) Placed under-suspension from 23-04-2009 by the Superintendent Central Prison Peshawar due to recovery of mobile phone concealed in socks. After completion of Disciplinary Proceedings he was awarded the major punishment of "Removal from Service" on 12-05-2009. Then re-instated into service vide Superintendent HeadQuarter Jail Peshawar Order No. 2746/PB dated 08-10-2009. And period from Removal of service to re-instatement into service was treated as Extra Ordinary Leave without pay. 4) Due to willful absence from duties and lines/Jail premises w.e.f 20-10-2011 to 25-10-2011 absence period was treated as "Extra Ordinary Leave Without Pay" vide Superintendent Central Jail Peshawar Order No. 154 dated 28-11-2011. 5) Placed Under Suspension in



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					<p>a disciplinary case vide Superintendent Head Quarter Jail Peshawar No. 771-73 dated 04-07-2014. On completion of disciplinary proceedings he was awarded major Punishment of "Removal from Service" on 03-09-2014 as per above quoted order.</p> <p>6) Upon acceptance of departmental appeal he was reinstated into service vide Superintendent Head Quarter Jail Peshawar No. 2132 dated 03-09-2014 and was posted and transferred to District Jail Buner Daggar and absence period as well as the intervening period was treated as leave without pay.</p> <p>7) Remained willfully absent from duties w.e.f 16-02-2015 to 25-02-2015. WARNED at District Jail Daggar at Buner and said period treated as leave without pay.</p> <p>8) Placed Under Suspension in a disciplinary case vide Superintendent Central Jail Peshawar No. 255 dated 15-01-2016. On completion of disciplinary proceedings he was re-instated into service vide Superintendent Headquarter Jail Peshawar Order No. 545 dated 19-02-2016 and absence period w.e.f 11-01-2016 to 15-01-2016 was treated as leave on medical grounds with full average pay.</p> <p>8) Awarded minor penalty of stoppage of one annual increment vide Superintendent Headquarter Jail Peshawar Order No. 3161-65 dated 04-10-2016 during his attachment at High Security Prison Mardan.</p> <p>9) stoppage of one annual increment vide Superintendent Headquarter Jail Peshawar Order No. 3161-65 dated 04-10-2016 during his attachment at High Security Prison Mardan.</p> <p>10) Awarded minor penalty of stoppage of one annual increment vide Superintendent Headquarter</p>
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					Jail Mardan Order No. 31-34 dated 06-01-2017 during his attachment at High Security Prison Mardan. 11) CENSURE on 16-03-2017 during his attachment at High Security Prison Mardan. 12) Awarded minor penalty of stoppage of one annual increment vide Superintendent Headquarter Jail Mardan Order No. 908-11 dated 06-03-2017 absence period w.e.f 30-9-2016 to 03-12-2016 (64 days) treated as leave without pay during his attachment at High Security Prison Mardan. 13) Absence period w.e.f 31-01-2017 to 27-02-2017 (27 days) treated as leave without pay during his attachment at High Security Prison Mardan, vide Superintendent Headquarter Jail Mardan Order No. 913-16 dated 06-03-2017. 14) Absence period w.e.f 02-03-2017 to 08-03-2017 (06 days) treated as leave without pay during his attachment at High Security Prison Mardan, vide Superintendent Headquarter Jail Mardan Order No. 1816-17 dated 22-03-2017.
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The above named Ex-Warder Khalid Nasir was relieved from Central Prison Mardan to Central Prison Haripur for further duties on 11-03-2017 but he failed to report within stipulated joining time period and absented at his own accord.

A notice was sent to his home address for resuming duties but he failed to do so and the said notice was received back in this office due not received by him deliberately. Lastly a final notice was published in Daily Mashriq Peshawar dated 15-06-2017 as per rules within (15 days) joining time but he reported on 20-06-2017 and again deserted from duties and lines/Jail premises on 24-06-2017. An inquiry was ordered against him and he was also afforded the opportunity of personal hearing before the undersigned on 07-08-2017 but he badly failed to appear for the purpose, hence he was awarded the major penalty of "Removal from Service" with immediate effect on the same day/date and absence period was ordered as E.O.L without pay.

He is habitual of absentees at his own accord & he always left the assigned duties and lines/Jail premises without any permission of the competent authority/solely at his own will and wish as per detailed description in the above table mentioning more than a dozen times



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violation of rules and regulations.

He absented from duties and lines/Jail premises on various occasions as stated in above table. Accordingly, disciplinary actions were initiated against him by various authorities during his attachment to various Jails but he kicked out all the principles of discipline prescribed within the orbit of settled rules and regulations.

Owing to the nature of willful absence from duties and unsatisfactory work and conduct during his entire service career with a lot of punishments, he considered the Prisons service as a part of refreshment in life and he presumed the Jail as a public park to go and left purely at his own accord.

Moreover, the aforementioned accused Ex-warder, being a malingerer and a non-serious official is now found very undesirable for further retention in Government service/sensitive nature Prisons Department as he showed a non-serious and non-professional attitude and also proved himself as a liability over the Department and the Public Exchequer, therefore he was awarded the major Penalty of "Removal from Service" both in the Public interest and in the best interest of the Department.

Last but not least he also proved himself as a stigma rather a persona non grata and his re-instatement into Prison service may also lead to severe complications in future as evident from his filthy service track stated above.

Keeping in view the above explanations, his appeal for re-instatement into service may be rejected for the safety, security of this Department and for our future generation.

It is therefore requested that his appeal may be dismissed without zero consideration please.


SUPERINTENDENT
CIRCLE H.Q. PRISON HARIPUR

Copy of order dated 05-04-2019

Annex-C

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INQUIRY REPORT- ABSENCE CASE OF WARDER KHALID NASIR.

In compliance to Superintendent Circle Headquarter Prison Haripur order No. 238-42 dated 12-02-2019, the undersigned has conducted de-novo inquiry into the above cited case. The inquiry report follows as:

STATEMENT OF ALLEGATIONS:

"As per written report of the Line Officer furnished through the Superintendent Central Prison Haripur, vide memo No. 612/WE dated.03-07-2017, you were relieved by Superintendent Central Jail Mardan on 11-03-2017 for Central Prison Haripur but you did not report for duty. As per rule notices were sent at your home address but you failed to report for duty. Finally a notice for joining duty was published in daily The Mashriq Peshawar on 15-06-2017 (15) days stipulated period and you reported on 21-06-2017 but again absented from line and duty as you deserted from Jail premises without permission of competent authority on 24-06-2017 and at large."

This practice is a grave misconduct on his part & entails him for strict disciplinary action under the E&D Rule-2011.

1. For the purpose of scrutinizing the conduct of the said accused warder with reference to above allegations, Denovo Inquiry is ordered against him and Mr. Muhammad Hamid Deputy Superintendent Jail attached to District Jail Abbottabad (Inquiry officer) is hereby appointed as Inquiry officer under 10(1)(a) of the rules ibid.
2. The inquiry officer shall in accordance with the provision of ordinance provide reasonable opportunity of hearing to the accused, record its findings and make within 07 days of receipt of this order, recommendations as to punishment or other appropriate action against him.
3. Accused Warder and a well conversant official of the department (if required) shall join the proceedings at the date, time and place fixed by the inquiry officer.

BRIEF BACKGROUND SUMMARY:

1. Consequent upon the allegations charge sheet was served upon the Warder "Khalid Nasir" initially by the Superintendent Circle Prison Haripur No. 2244-46 Dated 05-07-2017 Mr. Faizan Zeb Assistant Superintendent attached to Central Prison Haripur was appointed as inquiry officer for initiating proceedings against the Warder accused.
2. The inquiry officer submitted his inquiry report on 01-08-2017 and recommended to "treat the accused as deserter from 24-06-2017 and to award major penalty which may be in the form of culmination of his service; on the following grounds:
3. Accused was served 03 no. of notices on his home address to attend inquiry proceedings as i- 12-07-2017 ii- 18-07-2017. iii- 21-07-2017
4. On 21-07-2017 the written reply of the said Warder was received by the inquiry officer via postal service but the warder accused himself did not appear before the inquiry officer.
5. The Warder stated his illness to be the cause of his absence but did not provide any medical document as proof for it.
6. The inquiry officer noticed further distortion of facts by the Warder in his statement that on 24-06-2017 some officer received telephonic call about the death of his uncle and that upon that call he went on leave for five days through application. No such telephone call or application was confirmed by the inquiry officer after the inquiry.
7. The accused further stated that he reported his arrival to the lines office on 29-06-2017 but according to the Lines Office he was continuously absent since 24-06-2017. The death of his uncle could not be verified due to non-presentation of any death certificate.
8. The accused did not appear before the inquiry officer despite of three notices summoning him and despite of his own desire to be heard in person as stated by him in his written statement.

WARDER-2

9-11

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The inquiry officer found that the Warder Khalid Nasir was not serious about his duty or equity and made up facts to justify his irresponsible behavior.

The accused would have provided the relevant medical proof to the inquiry officer, the case might be recommended to be transferred to the relevant medical board to determine fitness of the accused to continue his service in the department but the accused neither provided the relevant documents nor appeared personally before the inquiry officer.

Upon submission of inquiry report, the Superintendent Circle Headquarter Prison Haripur afforded him the final opportunity of personal hearing before his office on 07-08-2017 but again he did not appear. After observing all legal procedural formalities the accused was awarded major penalty of "Removal from Service" via Superintendent Circle Headquarter Prison Haripur order no. 2469-72 after which an appeal was placed by the Warder with the Worthy Inspector General of Prisons. The worthy I.G. Prisons upheld the earlier punishment and rejected the appeal after affording the opportunity of personal hearing on 20-09-2017.

The Warder then made appeal before the Khyber Pakhtunkhwa Service Tribunal Peshawar on 24-10-2017 which reinstated the appellant by setting aside the punishment on the grounds of non-issuance of show-cause notice along with the copy of inquiry report; and directed the department to conduct de-novo inquiry within a period of 90 days from the date of receipt of judgment.

The department decided to make an appeal against the judgment of the provincial service Tribunal, Peshawar on the grounds that the court has ignored the material facts placed before it. The case was put with the Law Department and discussed in scrutiny committee to determine the fitness of the subject case for filing of appeal CPA in the Supreme Court of Pakistan. The meeting was held on 13-02-2019 and the department was advised to conduct de-novo inquiry as per direction of the Service Tribunal.

INQUIRY PROCEEDINGS:

Under the instructions contained in the Superintendent Circle Headquarter Prison Haripur order No. 236-42 dated 12-02-2019, Warder Khalid Nasir was directed vide to appear before the inquiry officer along with relevant records on 6th March 2019 at 10:00 AM at District Jail Abbottabad vide memo No. 341 dated 27-02-2019. The Superintendent Headquarter Prison Haripur was requested via same endorsement to depute a well conversant official along with relevant record on the date and time mentioned above.

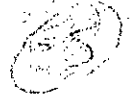
The accused Warder Mr. Khalid Nasir appeared before the inquiry officer on the set date and venue and presented his written statement. Assistant Superintendent Mr. Muqaddas Khan of District Jail Abbottabad also joined the inquiry proceedings. Mr. Khalid Nasir was heard, questioned and given the opportunity to defend his case and present material evidence.

Mr. Zeshin, Computer Operator attached to Central Prison Haripur also joined the inquiry proceedings along with the relevant record. The case record and the service book of the warder were thoroughly examined and analyzed.

FINDINGS:

After the thorough analysis of case record, the statement submitted by the Warder and the queries replied by the warder were found with a vast contrast as noted by the earlier inquiry officer who recommended his removal from service.

1. From the perusal of record, the accused warder in his previous statement submitted to the first inquiry officer that he had submitted the photo copies of medical certificates to Mr. Ilyas, Line Moharrar of Central Prison Haripur on 21-06-2017 but in his later statement which he has submitted to the undersigned, stated that he had handed over medical certificates along with photocopies to the superintendent Central Prison Haripur on



2. The warder during question answer session stated that he did not receive any show cause/ inquiry notice which is false as he himself in his written statement of 19-07-2017 referred to the charge sheet and statement of allegation No. 224-I-46 dated 05-07-2017 under which the enquiry was initiated.
3. On the question, why you did not appear before the inquiry officer? The warder again replied that he did not receive any notice. It is worth mentioning here that the warder did not appear before the inquiry officer despite of his self-statement of the desire to be heard in person. (Attached as Annex-B).
4. In his appeal to the Inspector General of Prisons Peshawar, he stated that upon his return from his leave he had been terminated from his service but in reality he had been awarded punishment only after proper inquiry.
5. From the perusal of his service book it was found that the warder was removed from service on couple of times earlier.
6. The warder was awarded penalty of "Removal from Service" by the Superintendent Circle Headquarter Prison Hattapur after affording him the opportunity of personal hearing on 07-08-2017.
7. Upon his appeal the Worthy I.G. Prisons Peshawar upheld the decision of the competent authority after affording him opportunity of personal hearing on 26-09-2017.
8. His previous service record reflects his non serious attitudes towards job and he is beyond repair to perform duties in the current critical security and challenging environment.

Recommendations:

Keeping in view the above mentioned findings, it is established that he remained absent unlawfully from jail for the period mentioned above and failed to produce any genuine or lawful reason for his absentee. His previous service record also reflects his non seriousness towards his job being uniform personnel in the current critical security situation in the country in general and threats to the jails in particular. Hence charge against him fully proved.

M. H. 11/3/2019

(MUHAMMAD HAMID)
INQUIRY OFFICER
DEPUTY SUPERINTENDENT
DISTRICT JAIL BOTTABAD

Annex-B

9-11

05-01-2019

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Annex = "C"

OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQs PRISON HARIPUR
Ph/Fax: 0995-611196-612402

No. _____ /

Dated 05/04/2019.



ORDER

WHEREAS, the accused of Warder (BPS-05) Khalid Nasir S/o Muhammad Yaqoob attached to Central Prison Haripur for all purpose was awarded the Major Punishment of "Removal from Service" vide this office No. 2459-72 dated 07-08-2017, later on acceptance of his appeal by Khyber Pakhtunkhwa Services Tribunal vide Service Appeal No.1219/2017 was proceeded against under Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 & a Denovo Inquiry as ordered by Honorable Tribunal vide No. even dated 04-02-2019 was initiated against him for the charges of his misconduct as mentioned in the Charge Sheets/Show cause Notice served upon him.

AND WHEREAS, Mr. Muhammad Hamid Deputy Superintendent Jail attached to District Jail Abbottabad was appointed as inquiry officer in subsequent case. Wherein, he furnished his reply, which was found unsatisfactory and Inquiry officer recommended/ conveyed "charges hence against him fully proved".

AND WHEREAS, the undersigned being the competent authority granted him the opportunity of personal hearing on 04-05-2019 as provided for under rules ibid.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule 2011, having considered the charges, evidence on record & Denovo Inquiry Report submitted by the Inquiry Officer & previous service history, the explanation of the accused official and after affording the opportunity of personal hearing, undersigned being the competent authority, do hereby award Major penalty of "REDUCTION TO LOWER STAGE FOR A PERIOD OF THREE YEARS" to Warder (BPS-05) Khalid Nasir S/o Muhammad Yaqoob attached to Central Prison Haripur, for all purpose with immediate effect.

Absence period/ intervening (from 15-03-2017 to 25-02-2019) period will be considered as Extra ordinary Leave without Pay.

Sd/
SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR

Encls: No. 132-37/evEj

- Copy of the above is forwarded to:-
1. The Honorable Registrar Khyber Pakhtunkhwa Services Tribunal Peshawar for information w/r to Service Appeal No.1219/2017.
 2. the Inspector General of Prisons Khyber Pakhtunkhwa Peshawar w/r to No. 6408 dated. 22-02-2019 for information please.
 3. The Superintendent Central Prison Haripur for Information please.
 4. The Superintendent Central Prison Mardan, that necessary entry may please be made in the Service Book of official concerned under proper attestation, moreover his service (two volumes) is also attached for salary activation purpose please.
 5. The District Accounts Officer Mardan for information & necessary action.
 6. Warder (BPS-05) Khalid Nasir S/o Muhammad Yaqoob then attached to Central Prison Haripur, now attached to Central Prison Mardan for information.

Sd/
SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR

copy of order dated 05-04-2019

Annex-C

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