

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

In the matter of

Service Appeal No:1065/2023

Samar Khan, Ex-Warder Central Prison Peshawar

.....(APPELLANT)

VERSUS

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.

2. Superintendent, Headquarter Prison Peshawar

.....(RESPONDENTS)

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Deponent

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

In the matter of
Service Appeal No:1065/2023
Samar Khan, Ex-Warder Central Prison Peshawar

.....(APPELLANT)

.....
.....

VERSUS

- 1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar
- 2. Superintendent, Headquarter Prison Peshawar

7489
12-09-23

.....(RESPONDENTS)

**SUBJECT: JOINT PARAWISE COMMENTS ON BEHALF OF
RESPONDENT NO.1 & 2.**

Respondents submit as under:-

Preliminary Objections:

- i. *That the appellant has got no cause of action/locus standi.*
- ii. *That the instant appeal is badly time barred.*
- iii. *That the appellant has concealed the material facts from this honorable tribunal, hence liable to be dismissed.*
- iv. *That the appellant has not come to this honorable tribunal with clean hands.*
- v. *That the appellant has filed the instant appeal just to pressurize the respondents.*
- vi. *That the appellant has filed the instant appeal on malafide motives.*
- vii. *That the instant appeal is against the prevailing law and rules.*
- viii. *That the appellant is estopped by his own conduct to file this instant appeal.*
- ix. *That the present appeal is not maintainable in the present form and also in the present circumstances of the case.*
- x. *That the appeal is bad for misjoinder and non joinder of necessary parties.*

OBJECTION ON FACTS:

- 1. Admitted to extent that he was appointed as warder in Khyber Pakhtunkhwa Prison Department but soon after his induction as Warder in Prison Department he never took his job in serious manner by creating hurdles for the administration and also squalid the environment for the other staff.
- 2. The appellant has violated Rule-1082 & 1083 of Khyber Pakhtunkhwa Prison Rules 2018, which describes a clear mechanism for such employee who is unable to perform his duties, due to some unavoidable reasons then he shall report the matter to Superintendent Jail concerned by submitting an application, but the appellant did not fulfill the criteria as laid down in above mentioned rules **(Relevant Rule is Annex-A)**.
- 3. Incorrect and not admitted, the appellant has submitted two days of medical rest certificates for a period w.e.f 14-09-2021 to 15-09-2021 and

w.e.f 18-09-2021 to 19-09-2021 which was considered by the competent authority, but after expiry of the medical rest the appellant remained absent from duties without any intimation. Thus, after a long willful absence from duties, the appellant was proceeded under Rule-09 Khyber Pakhtunkhwa (Efficiency and Disciplinary Rules 2011). In this connection, an absence notice was served upon him to his home address (**Annex-B**) with the direction to appear before the competent authority and submit written reply within the stipulated period, but the appellant failed to do so.

- 4. As elaborated in para-02 above.
- 5. Incorrect and not admitted. After expiry of stipulated period as mentioned in absence notice (**Annex-C**), an absence notice was then published in daily newspaper i.e "Daily Aaj" dated 07-02-2023 (**Annex-D**) with the direction to appear in person before the competent authority i.e Superintendent Headquarter Prison Peshawar within fifteen days of the publication of absence notice, otherwise ex-parte action will be initiated against the appellant but again the appellant neither submitted written reply nor appeared for personnel hearing before the competent authority; such willful absence of appellant is undesirable, hence the competent authority after exhausting all the codal formalities as laid down in E&D Rules 2021, awarded him the major penalty of Removal from Service due to his unauthorized and willful absence from official duty, as per rules. Copy of removal order as (**Annex-E**).
- 6. Incorrect and not admitted. The appellant did not approach within statutory period for filing of departmental appeal against impugned order.
- 7. Incorrect and not admitted. The order dated 18/03/2022 is based on Law and facts and according to Rules in vague.

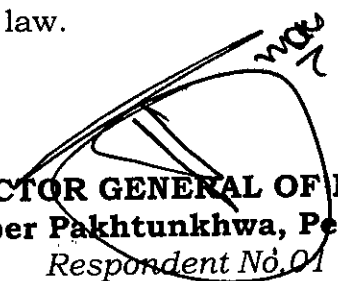
OBJECTION ON GROUNDS:

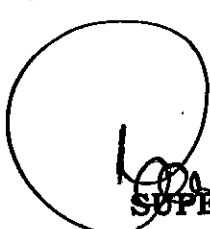
- A. As elaborated in para-7 above.
- B. Incorrect and not admitted. The Impugned order is according to law and no discrimination has been committed by the respondents concerned.
- C. Incorrect and not admitted. The appellant was served with proper absence notices for his long willful absence from duties. Therefore his plea carries no weight.
- D. Not admitted. As elaborated in para-7 above.
- E. Incorrect and not admitted, the appellant was served with absence notice on his home address and after its expiry an absence notice was also published in daily newspapers with the aim to afford the appellant an ample opportunity for personal hearing but the appellant could not responded to any of the above notices which shows that he was not serious about his job.
- F. Not admitted. As elaborated in para-3 above.

- G. Incorrect and not admitted, such long willful absence from duty is unjustified. Moreover, the appellant not responded to any of the above absence notices which show that he is not interested in his duties; resultantly the appellant was awarded the major penalty of **Removal from Service**.
- H. Not admitted, as elaborated in Para-2.
- I. Incorrect and not admitted, as elaborated in Para-03 above.
- J. Incorrect and not admitted. The appellant deliberately absented himself from official duty without clear permission from the competent authority hence violated rules 1082 & 1083, 1096 of Khyber Pakhtunkhwa Prisons Rules 2018.
- K. Incorrect and not admitted. The appellant from the very beginning his induction into Prison Department, he never took his job in serious manner and avoided duty regularly inside the Prison wherein condemned prisoner are behind the bar, in such like situation willful absence/disappearance from official duty amounts to a serious misconduct which required stern action by the respondents.
- L. That the respondent would also seek permission from the honorable Service Tribunal Peshawar to raise additional grounds of objection at the time of arguments.

PRAYER:-

In light of above, it is therefore most humbly prayed that on the acceptance of this instant reply /para-wise comments on behalf of respondent No. 1 & 2, the appeal of the appellant may kindly be dismissed be devoid of merit & law.


INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa, Peshawar
 Respondent No.01


SUPERINTENDENT
Headquarter Prison Peshawar
 Respondent No.02

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

In the matter of

Service Appeal No:1065/2023

Samar Khan, Ex-Warder Central Prison Peshawar

.....(APPELLANT)

VERSUS

The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar and others

.....(RESPONDENTS)

**SUBJECT: REPLY ON APPLICATION FOR CONDONATION OF DELAY ON
BEHALF OF RESPONDENTS.**

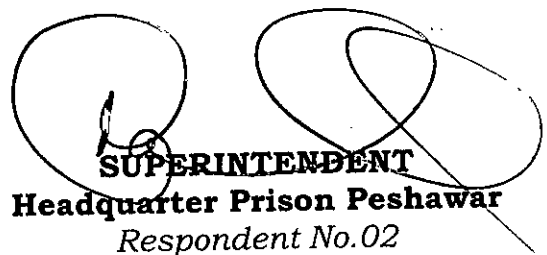
Respondents submit as under:-

1. No comment.
2. No comment.
3. Incorrect and not admitted. After expiry of stipulated period as mentioned in the absence notice, an absence notice was then published in daily newspaper "**Daily Aaj dated 07/02/2023**" with the direction to appear in person before the competent authority i.e Superintendent Headquarter Prison Peshawar within 15 days of the publication of absence notice. The appellant neither submitted any written reply nor appeared before the competent authority. The appellant belong to a sensitive force service in such like situation wilful absence is undesirable, unwarranted and without any justification. Therefore, the competent authority lightly penalized him according E &D Rules 2011 in the shape of **Removal from Service**.
4. No comments.

PRAYER:-

It is therefore most humbly prayed that on the acceptance of the instant reply on application for condonation of delay on behalf of respondents the appeal of the appellant may please be dismissed on the point of limitation being devoid of merit & law.


INSPECTOR GENERAL OF PRISONS
Khyber Pakhtunkhwa, Peshawar
Respondent No.01


SUPERINTENDENT
Headquarter Prison Peshawar
Respondent No.02

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

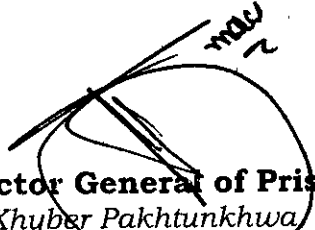
In the matter of
Service Appeal No. 1065/ 2023
Samar Khan S/o Said Wazir Khan Ex Warder,
attached to Central Prison Peshawar----- Appellant

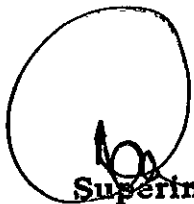
VERSUS

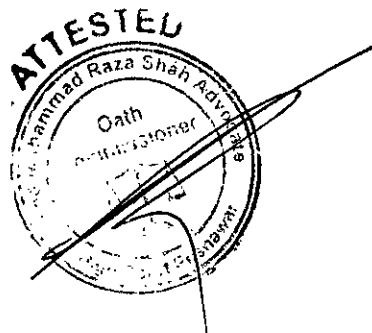
- 1- **Inspector General of Prisons,**
Khyber Pakhtunkhwa, Peshawar.
- 2- **Superintendent,**
Circle Headquarters Prison Peshawar-----Respondents

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENTS No. 1 & 2.

We, the undersigned respondents do hereby solemnly affirm and declare that the contents of the para-wise comments in the above cited appeal are true and correct to the best of our knowledge and belief that no material/facts have been kept concealed from this Honorable Service Tribunal. *It is further stated on oath that in this appeal, the answering respondents have neither been pleaded at fault nor their defense has been struck off/cost.*

now

Inspector General of Prisons
 Khyber Pakhtunkhwa
 Peshawar
(Respondent No. 1)


Superintendent,
 Headquarters Prison
 Peshawar
(Respondent No. 2)



SEP 2023

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

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

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

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

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

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

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

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

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

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

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


SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

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

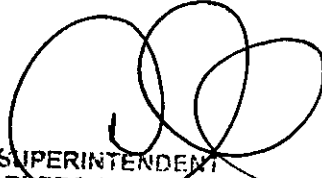
9. Procedure in case of wilful absence.---Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing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

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

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

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

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


 SUPERINTENDENT
 HEADQUARTERS PRISON PESHAWAR

اردس پرسدت

ہیڈ کوارٹرز جیل پشاور

نمبر: 5519 مورخہ: 30/12/2021

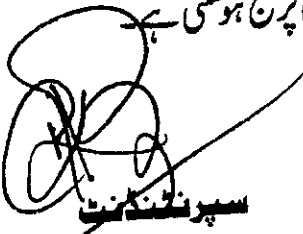
نام: شمر خان ولد سیدوزیر خان

پتہ: نالہ کجوری، ہاڑہ، ڈسٹرکٹ خیبر (0342-2525826)

عنوان: نوٹس برائے غیر حاضری

آپ کو بذریعہ نوٹس ہذا مطلع کیا جاتا ہے کہ آپ مورخہ 20-09-2021 سے نوکری سے غیر حاضری ہوئے اور تا حال غیر حاضر ہیں۔ آپ کے لئے آپ کو شوکانوٹس مورخہ 16-11-2021 کو جاری کیا گیا لیکن آپ نے ناتواں جواب دفتر ہذا میں جمع کرایا اور ناہی ابھی تک نوکری رپورٹ کیا۔

اس لئے آپ کو مطلع کیا جاتا ہے کہ مذکورہ نوٹس کے ملنے کے 15 دن کے اندر اندر زبردستی کے سامنے حاضر ہو کر اپنی غیر حاضری کی وجوہات بیان کریں۔ بصورت دیگر آپ کے خلاف یکطرفہ کارروائی عمل میں لائی جائیگی جو کہ نوکری سے برخاستگی پر منتج ہو سکتی ہے۔



سپرٹنڈنٹ
ہیڈ کوارٹرز جیل پشاور

تظہیری نمبری: 5520-21

کاپی برائے اطلاع و ضروری کارروائی:

- ۱- سپرنٹنڈنٹ سنٹرل جیل پشاور بحوالہ چھٹی نمبر 15303/WE مورخہ 15-11-2021
- ۲- ہیڈ کلرک (پے برانچ) سنٹرل جیل پشاور۔



سپرٹنڈنٹ
ہیڈ کوارٹرز جیل پشاور

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

پتھریٹ اور اہل آباء سے ایک وقت تمام ہونے والا ہے اور اس وقت ہی روزنامہ

روزنامہ کی قیمت ہر ماہ 10 روپے

کوئٹہ شاہین

روزنامہ



پشاور

پاکستان

بانی
عبدالواحد یوسفی

جلد 12

جلد 33 | 5 روپے فی کپی | 74443 نمبر | 25-2022 | 31

اشتہار برائے حاضری

آپ کی شہادتیں ملنے سے وزیر خزانہ نیشنل اور دار الحکومت نیشنل پشاور حکومت کے قوت زور کرنا اور
 تعمیل و طبع پشاور پندرہ اشتہار بنا مطلع کیا جاتا ہے کہ آپ 20-09-2021 سے لاہور
 سے غیر حاضر ہوئے اور تاحال لاہور میں پر حاضر نہیں ہوئے آپ کو برطانیہ سپرٹنڈنٹ ہیڈ
 کوہارڈ نیشنل پشاور قلمی نمبر 5519 مورخہ 30-12-2021 کو آپ کے گھر کے پتے
 پر نوٹس بھیجا گیا اور آپ کو اجازت کی گئی کہ تکن دن کے اندر اندر لاہور میں حاضر ہو کر اپنی غیر
 حاضری کی وجہ بتائیں گھر آپ ابھی تک اتوار لاہور میں حاضر ہوئے اور نہ ہی اپنی غیر حاضری کی
 وجہ بتائی کے دفتر میں منع کر دی۔ اس لئے آپ کو پندرہ اشتہار بنا آخری بار مطلع کیا جاتا
 ہے کہ اشتہار بنا کے شائع ہونے کے 15 دن کے اندر اندر سپرٹنڈنٹ ہیڈ کوہارڈ نیشنل
 پشاور کے سامنے پیش ہو کر اپنی غیر حاضری کی وجہ بتائیں بصورت و غیر آپ کے خلاف
 بکثرت کارروائی عمل میں لائی جائے گی جو آپ کی ملازمت سے برخواستگی پر منتج ہو سکتی ہے۔

SUPERINTENDENT
 QUARTERS PRISON PESHAWAR

پشاور
 کوئٹہ شاہین

سپرٹنڈنٹ ہیڈ کوہارڈ نیشنل پشاور



OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No: 1372 P/B Dt: 18/03/2022

OFFICE ORDER

WHEREAS, the accused Warder (BPS-07) **Samar Khan s/o Syed Wazir Khan** attached to Central Prison Peshawar has willfully absented w.e.f 20-09-2021. Show Cause notice was served upon him vide this Headquarters Prison No. 5094-95 dated 16-11-2021 but till date, he did not resume his duty and remained absented from duty, without permission of the competent authority, which constitute gross misconduct.

AND WHEREAS, the accused warder was served absence notice on his home address through registered post vide this Headquarters Prison 5519 dated 30-12-2021 and was directed to submit his reply within 15 days of the receipt of the letter but he fails to do so.

AND WHEREAS, absence notice in respect of the accused Warder was also published in two daily newspapers i.e Express and Aaj dated 07-02-2022 with the direction to report to the Superintendent Headquarters Prison Peshawar and explained his position within 15 days of the publication of notice.

AND WHEREAS, the accused Warder has neither submitted his reply nor appeared before the competent authority for personal hearing.

NOW THEREFORE, in exercise of powers conferred under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 having considered the charges leveled against him in light of available record and the undersigned being Competent Authority is pleased to initiate ex-parte action against him and award him major penalty of "**Removal From Service**".

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Endorsement No: 1373-771-

Copy of the above is forwarded to the: -

1. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. Superintendent Central Prison Peshawar. Proper entry to this effect may be made in his service book under proper attestation.
4. Head Clerk (Pay Branch) Central Prison Peshawar.
5. Warder **Samar Khan** s/o Syed Wazir Khan, c/o Superintendent Central Prison Peshawar.

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR



OFFICE OF THE
INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
☎ 091-9210334, 9210406 ☎ 091-9213445

No. 20141

Dated 22-6-2022

AUTHORITY LETTER

Mr.Sulaiman, Law Officer(BPS-17) attached to the office of Inspector General of Prisons Khyber Pakhtunkhwa Peshawar is hereby authorized to make affidavit, to file comments/reply and to attend the Lower Courts, Ombudsperson, Khyber Pakhtunkhwa Service Tribunal, Peshawar High Court Peshawar, Supreme Court of Pakistan Islamabad, Federal Shariat Court, meeting of scrutiny committee at Law Department and also to attend the office of Additional Advocate General Khyber Pakhtunkhwa at Peshawar on each and every date of hearing, on behalf of the Inspector General of Prisons Khyber Pakhtunkhwa .

Hassan
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
mf