01.09.2015 Counsel for the appellant (Mr. Ijaz Anwar, Advocate) and Mr. Ziaullah, Government Pleader with Sheryar, ASJ for the respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day in connected appeal No. 484/2013, titled "Aminullah Versus Government of Khyber Pakhtunkhwa through Secretary Home & T.As Department, Peshawar etc.", this appeal is also disposed of as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
01.09.2015

MEMBER MEMBER

09.02.2015 Appellant with counsel and Mr. Sheharyar khan, ASJ for respondents alongwith Addl: AG present. Due to incomplete Bench arguments not heard. The case is assigned to D.B for final hearing alongwith connected appeals for 30.03.2015.

Chairman

30.3.2015 Counsel for the appellant and Ziaullah, GP with Sheryar, ASJ for the respondents present. The learned Member (Judicial) is on official tour to D.I.Khan, therefore, case to come up for arguments on 22.7.2015.

MEMBER

22.07.2015 Counsel for the appellant (Mr. Ijaz Anwar, Advocate) and Government Pleader (Mr. Ziaullah) with Sheryar, ASJ for the respondents present. Arguments heard. To come up for order on 01-09-2015

MEMBER MEMBER

31.10.2013 Vide order sheet dated 31.10.2013 in connected appeal No. 484/2013, this appeal is adjourned to 4.3.2014.

READER

04-03-2014 Vide order sheet dated 31.10.2013 in connected appeal No. 484/2013, this appeal is adjourned to 21-4-14.

READER

21-04-2014 Vide order sheet dated 31.10.2013 in connected appeal No. 484/2013, this appeal is adjourned to 14-7-14.

READER

14-07-2014 Vide order sheet dated 31.10.2013 in connected appeal No. 484/2013, this appeal is adjourned to 14-10-14.

READER

Vide order sheet dated 31.10.2013 in connected appeal No. 484/2013, this appeal is adjourned to _____.

READER

Vide order sheet dated 31.10.2013 in connected appeal No. 484/2013, this appeal is adjourned to _____.

READER

Vide order sheet dated 31.10.2013 in connected appeal No. 484/2013, this appeal is adjourned to _____.

READER

11.6.2013 Junior to counsel for the appellant and Mr. Muhammad Jan, GP with Irshadullah, Deputy Director for the respondents present. In pursuance of promolgation of Khyber Pakhtunkhwa Service Tribunal (Amendment) Ordinance 2013, the Tribunal is incomplete. To come up for the same on 8.7.2013.

READER

8.7.2013 Counsel for the appellant and Mr. Muhammad Jan GP for the respondents present. In pursusance of Khyber Pakhtunkhwa Service Tribunal (Amendment) Act 2013, the Tribunal is incomplete, therefore, case to come up for the same on 28.8.2013.

READER

28.8.2013 Counsel for the appellant and Mr. Muhammad Jan, GP with Sheryar, Assistant for the respondents present and reply filed. To come up for rejoinder on 31.10.2013.

MEMBER MEMBER

Appeal No. 498/2013
Mr. Saeed Khan

3. 11.4.2013 Counsel for the appellant present and heard. Contended that the appellant was appointed as Warder in the respondent department and was performing his duty in Bannu Jail. While performing his duties, in the mid night of 14/15 April 2012, the jail was attacked by the militants who succeeded in escape of certain condemned prisoners from the jail. The appellant was served with a show cause notice on 24.5.2012 and denied all the allegations. The appellant was awarded the major penalty of dismissal from service vide the impugned order dated 12.12.2012 against which he preferred a departmental appeal but the same was rejected on 23.1.2013. Counsel for the appellant further contended that no charge sheet/statement of allegations has been issued to the appellant. No proper inquiry was conducted and the appellant has been condemned unheard. Even in case of dispensation of inquiry, solid reasons had to be given. Points raised need consideration. The appeal is admitted to regular hearing, subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notices be issued to the respondents. Case adjourned to 11.6.2013 for submission of written reply.

Member.

4. 11.4.2013 This case be put before the Final Bench for further proceedings.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 493/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27/02/2013	The appeal of Mr.Gul Mir Dali resubmitted today by Mr. Ijaz Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	1-3-2013	This case is entrusted to Primary Bench for preliminary hearing to be put up there on 11-4-2013. CHAIRMAN

The appeal of Mr. Gul Mir Dali Ex-Warder Central Jail Bannu received today i.e. on 18/02/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 day.

1- Annexure-B of the appeal (enquiry report) is incomplete which may be completed.
2- Affidavit may be got attested by the Oath Commissioner.

No. 316 /S.T,

Dt. 18/2/2013.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR.IJAZ ANWAR ADV. PESH.

Sir

Re. Submission of
Compliance.
Efm

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 493/2013

Gul Mir Dali S/O Taj Muhammad, Ex-Warder, attached to Central Jail Bannu, R/O Mawah Khel Ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil & District Bannu..... **(Appellant)**

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar and others.

(Respondents)

INDEX

Appellant

Through

IJAZ ANWAR
Advocate Peshawar
&

SAJID AMIN
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 493/2013

Gul Mir Dali S/O Taj Muhammad, Ex-Warder, attached to Central Jail Bannu, R/O Mawah Khel Ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil & District Bannu..... **(Appellant)**

VERSUS

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

(Respondents)

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

Prayer in Appeal: -

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

Respectfully Submitted:

1. That the appellant was appointed as Warder in the Prison Department in the year 2004, and was posted in Bannu Prison. Ever since his appointment the appellant was performing his duties as assigned to him with full devotion and there was no complaint whatsoever regarding his performance.

2. That the appellant while performing his duties in Bannu Jail, in the mid night of 14/15 April, 2012, a good number of militants (more then 300) attacked the Jail with heavy weapons, the appellant along with other jail officials started firing at them, however they out numbered the security staff of the jail and managed in helping the escape of certain condemned prisoners from the Jail. They also damaged part of the Jail premises with their heavy weaponry.

3. That the Provincial Government conducted a fact finding inquiry, however it report was not made public.

4. That thereafter the appellant was served with Show Cause Notice dated 24.05.2012, containing the false and baseless allegations that during the attack on Bannu Jail, he failed to fire and confront militants effectively, the appellant duly replied the Show Cause Notice and refuted the allegations leveled against him. (Copies of the Show Cause Notice, Inquiry report and reply to Show Cause Notice are attached as Annexure A, B & C).

5. That without conducting regular inquiry quite illegally the appellant was awarded the major penalty of **Dismissal from Service** vide general order dated 12.12.2012, however copy of the said order was conveyed to the appellant on 21.12.2012. (Copy of the Dismissal Order dated 12.12.2012 is attached as Annexure D).

6. That against the order dated 12.12.2012, the appellant filed his departmental appeal dated 27.12.2012, however it was also rejected on 23.01.2013. (Copies of the Departmental Appeal, and Rejection Order dated 23.01.2013 are attached as Annexure E & F).

7. That the impugned orders are illegal unlawful against law and facts therefore, liable to be set aside inter alia on the following grounds:-

GROUNDS OF APPEAL:

A. That the appellant have not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.

B. That no proper procedure has been followed before awarding the penalty of dismissal from service to the appellant, neither regular inquiry has been conducted, nor the appellant has been associated with the inquiry nor any witness has been examined against him during the inquiry, thus the whole proceedings are nullity in the eye of law.

C. That the appellant has not been given proper opportunity to defend himself nor he has been allowed opportunity of personal hearing, thus he has been condemned unheard.

D. That during the inquiry proceedings no witness has been examined against the appellant or if so examined their statements have not been taken in the presence of the appellant nor was he allowed the opportunity to cross examine them.

E. That the allegations that during the attack on Bannu Jail by the militants the appellant failed to fire and confront militants effectively is totally false and baseless, he duly fired at them and confronted as long as he could, however due to complete dark he could not fire at them pointedly, moreover, he was not provided with sufficient bullets, however whatever the quantity of bullets available that was utilized by him.

F. That the charges leveled against the appellant were never proved during the inquiry proceedings the inquiry officer gave his findings on surmises and conjunctures.

G. That adopting shorter procedure in the instant case was uncalled for and illegal the charges were never admitted by the appellant hence the issuance of show cause notice has prejudice his case and infact he was condemned unheard.

H. That the matter in hand required a full fledge regular inquiry, for the proof or other wise of the charges, in the absence of regular inquiry major penalty can not be imposed.

I. That the appellant has never committed any act or omission which could be termed as misconduct albeit he has illegally been dismissed from service.

J. That the appellant has more than 09 years spotless service career, however, his unblemished service career has never been considered while dismissing him from service.

K. That the appellant is jobless since his illegal dismissal from service. The penalty imposed upon him is too harsh and liable to be set aside.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned orders dated 12-12-2012 and 23-01-2013, may please be set-aside and the appellant be re-instated in service *with all back benefits of service*.

Appellant

Through

IJAZ ANWAR
Advocate Peshawar
&
SAJID AMIN
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No._____/2013

Gul Mir Dali S/O Taj Muhammad, Ex-Warder, attached to Central Jail Bannu, R/O Mawah Khel Ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil & District Bannu..... **(Appellant)**

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar and others.
(Respondents)

AFFIDAVIT

I, ***Gul Mir Dali S/O Taj Muhammad, Ex-Warder, attached to Central Jail Bannu, R/O Mawah Khel Ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil & District Bannu,*** do hereby solemnly affirm and declare that the contents of the above appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

ATTESTED
SUBHANULLAH ADVOCATE
NOTARY PUBLIC
DISTRICT COURT PESHAWAR

(5)

Annex-A

SHOW CAUSE NOTICE

I, Khalid Abbas, Superintendent Headquarters Prison Peshawar as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (E&D) Rules,2011, do hereby serve you. warder(BPS-5) Gul Mir Dali (Compound Sentry), as follows that consequent upon the findings of the Inquiry Report regarding militants attack on Bannu Jail, you have committed the following acts of Commission /Omission specified in Rule-3 of above mentioned Rules:

Failed to fire and confront militants effectively with the result that there was no enemy loss beside having armed.

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

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

Now , therefore, I, Khalid Abbas, **Superintendent Headquarters Prison Peshawar** Competent Authority, call upon you through this Notice to explain why the major penalty of dismissal from service should not be imposed upon you.

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

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

(KHALID ABBAS)
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
2/9/15

(6)

Annexure-B

Jail staff response

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

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

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

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

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

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

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

(7)

ANNEX:- C

بخدمت جناب سپرنٹنڈنٹ صاحب H.Q جیل پشاور

جواب شوکاز نوٹس مواصلہ 25 S/2012

گزارش ہے۔ کہ مورخہ 15/4/2012 کو رات 12 بجے سے لے کر 3 بجے صبح تک میری ڈیوٹی کمپاؤنڈ یعنی دیوار شمالی کی طرف پر تھی۔ رات کے تقریباً 1-30 بجے میں اندری گیٹ کی جانب سے بھاری مارٹرنگ اور دھماکوں کی آوازیں سنائی دی۔ اور جب معلوم ہوا۔ کہ جیل پر طالبان نے حملہ کیا۔ تو میں اپنی پوزیشن پر الرٹ تھا۔ اور کمپاؤنڈ پر چکر لگاتا رہا۔ چونکہ بجلی نہ ہونے کی وجہ سے رات بالکل تاریک تھی۔ اور کچھ دکھائی نہیں دے رہا تھا۔ میں حالات کا جائزہ لے رہا تھا۔ اور باؤنڈری وال کے باہر کی جانب سے طالبان کے بتبناہٹ اور لہجہ تکبیر کے آوازیں آرہی تھی۔ جس کی وجہ سے میں اپنا ایریا نہیں چھوڑ سکتا تھا۔ اور سر جہاں تک فائر نہ کرنے کا تعلق ہے۔ جناب عالی۔ میری جانب یعنی کمپاؤنڈ کے علاقے کی طرف نہ ہی کوئی حملہ آور آیا۔ اور نہ ہی کسی نے ہم پر فائر کیا۔ بغیر بھی سائل آپنی ڈیوٹی کی جگہ پر موجود رہا۔ تاکہ اگر کوئی حملہ آور بیرونی کی طرف آئے۔ تو ان کا مقابلہ کر سکوں۔

جناب عالی۔

میں نے دل بحق 1154d کی پاسداری کرتے ہوئے اپنی ڈیوٹی کی جگہ پر چوکس کھڑا رہا۔ اور اپنی جان بچانے کیلئے کہیں پناہ نہیں لی۔ اور نہ ہی اپنی ڈیوٹی کی جگہ چھوڑا ہے۔ اور جناب عالی میری ڈیوٹی کی جگہ یعنی کمپاؤنڈ کا فاصلہ عملہ کی جگہ سے تقریباً 800 گز بنتا ہے۔ لہذا مندرجہ بالا حقائق کو مدنظر رکھتے ہوئے آپ صاحبان سے التماس ہے۔ کہ سائل کو اس شوکاز سے بری کی جائے۔

سائل آپ صاحبان سے انصاف کی بھرپور توقع رکھتا ہے۔

العرض

آپ کا تابعدار وارڈر۔ گل سید علی خان بقلم خود

Registered (8) Annexure D

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR.
No. 4120 /P.B/ Dt: 12/12/2012

OFFICE ORDER

In exercise of powers conferred under rule-14 of the E&D (Efficiency & Discipline) rule 2011, after reply to show-cause notice and affording the opportunity of personal hearing, the undersigned is pleased to award the major penalties to the below noted officials as mentioned against their names on account of their involvement/ gross misconduct in Central Prison Bannu incident:

S.#	NAME OF ACCUSED OFFICIAL	AWARDED PENALTY
1	Warder Mir Laiq Khan	Dismissed from Service
2	Warder Saved Khan	-do-
3	Warder Hafiz Mir Hassan Shah	-do-
4	Warder Abidullah	-do-
5	Warder Asif Ali Shah	-do-
6	Muhammad Ibrar No. 1	-do-
7	Warder Gul Mir Dali	-do-
8	Warder Ameenullah	-do-
9	Warder Saqib	-do-
10	Warder Naseeb Gul	Reduction to lowest stage in his present time pay scale
11	Warder Raqibaz Khan	-do-

SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR

Endorsement No: 4121-23/-

Copy of the above is forwarded to the:-

1- Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information with reference to his letter No. 31208-WE dated 12-12-2012 please.
2- Superintendent Central Prison Bannu.
3- District Accounts Officer Bannu.

For information & further necessary action.

Lo/BAO/HC

15/12/12

SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR
12/12/12

(9)

ANNEX: E

To,

The Inspector General of Prisons,
Khyber Pakhtunkhwa,
Peshawar

Subject: **DEPARTMENTAL APPEAL / REPRESENTATION AGAINST THE ORDER DATED 12-12-2012, CONVEYED TO ME ON 21.12.2012, WHEREBY I HAVE BEEN AWARDED THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE.**

Prayer in Appeal:

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 12.12.2012 MAY PLEASE BE SET ASIDE AND I MAY BE REINSTATED IN TO SERVICE WITH ALL BACK BENEFITS.

Respect Sir,

I humbly submit my departmental appeal as under;

1. That I was initially appointed as Warder in Prison Department in the year 2004, I was posted in Bannu Prison. Ever since my appointment I have performed my duties as assignment to me with full devotion and there was no complained whatsoever regarding my performance.

2. That I while performing my duties in Bannu Jail, in the mid night of 14/15 April, 2012, a good number of militants (more then 300) attacked the Jail with heavy weapons, I along with other jail officials started firing at them, however they out numbered the security staff of the jail and managed in helping the escape of certain condemned prisoners from the Jail. They also damaged part of the Jail premises with their heavy weaponry.

3. That the Provincial Government conducted a fact finding inquiry, however it report was not made public.

4. That thereafter I was served with Show Cause notice dated 24.05.2012, containing the false and baseless allegations that during the attack on Bannu Jail, I failed to fire and confront militants effectively, I duly replied the Show Cause Notice and refuted the allegations leveled against me.

(10)

5. That without conducting regular inquiry quite illegally I was awarded the major penalty of **Dismissal from Service** vide general order dated 12.12.2012, conveyed to me on 21.12.2012.

6. That the penalty so imposed on is illegal unlawful against law and facts and liable to be set aside inter alia on the following:

GROUNDS OF APPEAL

A. That I have not been treated in accordance with law hence my rights secured and guaranteed under the law are badly violated.

B. That no proper procedure has been followed before awarding me the penalty of dismissal from service, neither I have been associated with the inquiry nor any witness has been examined against me during the inquiry, thus the whole proceedings are nullity in the eye of law.

C. That I have not been given proper opportunity to defend myself nor I have been allowed opportunity of personal hearing, thus I have been condemned unheard.

D. That during the inquiry proceedings no witness has been examined against me and if so examined I have not been given the opportunity to cross examine them.

E. That the allegations that during the attack on Bannu Jail by the militants I failed to fire and confront militants effectively is totally false and baseless, I duly fired at them and confronted as long as I could, however due to complete dark I could not fire at them pointedly, moreover, I was not provided with sufficient bullets, however whatever the quantity of bullets available that was utilized.

F. That the charges leveled against me were never proved during the inquiry proceedings the inquiry officer gave his findings on surmises and conjunctures.

G. That adopting shorter procedure in the instant case was uncalled for and illegal the charges were never admitted by the undersigned hence the issuance of shoe cause notice has prejudice my case and infact was condemned unheard.

H. That the matter in hand required a full fledge regular inquiry, for the proof or other wise of the charges, in the absence of regular inquiry major penalty can not be imposed.

(11)

I. That I never committed any act or omission which could be termed as misconduct albeit I have illegally been dismissed from service.

J. That I am jobless since my illegal dismissal from service. The penalty imposed upon me is too harsh and liable to be set aside.

It is, therefore, humbly requested that on acceptance of this Departmental Appeal the order dated 12-12-2012, may please be set aside and I may be reinstated in service with all back benefits.

Yours Obediently

گل میرداعلی جاں

Ex-Warder (BPS-5)

گل میرداعلی خان ولد تاج محمد خان سکنہ میواہ خیل علاقہ سوراانی ڈاکخانہ

Dated: 27/12/2012

فضل حق ملوانہ تحصیل وضلع بنوں۔

موبائل نمبر 0334-8803306

(12)

ANNEX:- F

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
No. 286 /P.B/ Dt: 23/01/2013

To

The Superintendent
Central Prison Bannu.

Subject: DEPARTMENTAL APPEALS

Memo:

Kindly inform the following Ex-Warders remained attached to your jail that their appeals for setting aside the major penalties of Dismissal from Service have been considered and rejected by the competent authority i.e. Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar: -

1- Mr. Saqib Ex-Warder KT
2- Mr. Muhammad Ibrar Ex-Warder BN
3- Mr. Gul Mir Dali Ex-Warder DK
4- Mr. Abidulalh Ex-Warder KT
5- Mr. Hafiz Mir Hassan Shah Ex-Warder KT
6- Mr. Ameenulalh Ex-Warder BN
7- Mr. Asif Al Shah Ex-Warder KT
8- Mr. Mir Laiq Ex-Warder BN
9- Mr. Saved Khan Ex-Warder BN

SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR

Endorsement No: _____/

Copy of the above is forwarded to the worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information with reference to his office letter Nos. 2077, 2079, 2081, 2083, 2085, 2089, 2091, 2093 & No. 2095 dated 22-01-2013 please.

SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR

POWER OF ATTORNEY

In The COURT of KPK Service Tribunal Peshawar

Gul Mir Dali

For:
Plaintiff
Appellant
Petitioner
Complainant

VERSUS

Govt of KPK and others

Defendant
Respondent
Accused

Appeal/Revision/Suit/Application/Petition/Case No: _____ of _____

Fixed for _____

I/WE, the undersigned, do hereby nominate and appoint

MR.IJAZ ANWAR ADVOCATE, HIGH COURT, PESHAWAR

Sajid Amin Advocate my true and lawful attorney, for me in my name and on my behalf to appear at Del to appear, plead, act and answer in the above Court or any appellate Court on any Court to which the business is transferred in the above matter and is agreed to sign and file PETITIONS. An appeal, statements, accounts; exhibits, compromises or other documents whatsoever, in connection with the said matter or any matter arising there-from and also to apply for and receive all documents or copies of documents, depositions etc and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other execution, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to do all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may per proper and expedient.

AND I/We hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/We undertake at time of calling of the case by the court/ my authorized agent shall inform the Advocate and make him appear in court, if the case may dismissed in default, if it be proceeded ex-parte the said counsel shall not held responsible for the same. All cost awarded in favour shall the right of Counsel or his nominee, and if awarded against shall payable by me/us.

IN WITNESS whereof I/We have hereto signed at _____ the _____ day to _____ in the year _____

Executant/Executants _____

Accepted subject to the terms regarding fee _____

Sajid Amin
Advocate Peshawar

Ijaz Anwar
Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, 4th Floor, Bilour Plaza, Saddar Road, Peshawar Cantt.
Ph: 091-52772054 Mobile: 0333-9107225

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Service Appeal No.483/2013
Gul Mir Dali, Ex-Warder
attached to Central Prison Bannu.....**Appellant.**

VERSUS

1- Secretary to Government of Khyber Pakhtunkhwa,
Home and T.A Department.

2- Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar.

3- Superintendent
Circle Headquarters Prison Peshawar.

4- Superintendent
Central Prison Bannu.....**Respondents.**

PARAWISE REPLY ON BEHALF OF RESPONDENTS

Preliminary Objections.

i. That the appellant has got no cause of action.
ii. That the appeal is incompetent and is not maintainable in its present form.
iii. That the appellant is estopped by his own conduct to bring the present appeal.
iv. That the appellant has no locus standi.
v. That the appeal is bad for mis joinder and non-joinder of necessary parties.
vi. That the appeal is badly time barred.

ON FACTS

1- Pertains to record, however no comments.

2- Incorrect, the plea of the appellant with regard to firing upon the militants is totally baseless as according to Commission report submitted by a **team of Commission of high ranking officers** (copy attached as **"Annex-A"**) and its consequential reports is neither confirmed that even a single round fired from the Prisons security staff in retaliation of the militants attack. It is also worth mentioning here that since that very **very** ugly incident till that the utilization of any ammunition from the Prisons security staff side reported so far or the shortage of ammunition from the granted numbers to the then Prisons security staff reported by the weaponry incharge (koth incharge), hence the plea of the appellant is nothing but misleading of the court. Though the militants with their heavy sophisticated weaponry as damaged a part of the Jail building yet upto that extent one can easily imagine that at least the available ammunition with the Prisons security staff might have been exhausted till the arrival of that very point of breakup of Jail walls.

The plea of the appellant cannot be worth to be considered by extending all sympathies with them.

3- Correct being a state classified documents that is the reason that it has been kept as state secret.

4- Incorrect, as elaborated in para-2 above. The appellant showed cowardice and did not face the situation with courage, bravely as expected from the security staff on such like situation. Moreover the sole responsibility of security personnel is to thwart the un-pleasant and aggressive mode from any corner and in any shape even it is expected that if the situation demands the security personnel just to obey the call of his duties even has to combat with his own family / tribe members. It is a historical facts and being a Muslim even on such occasion the sacrifices goes beyond the personal life of security personnel.

5- Incorrect. As discussed in para-2, a high ranking inquiry commission has conducted facts finding inquiry in this incident, hence, the authority concerned served Show Cause Notices on all the accused officials under rule-7 of Khyber Pakhtunkhwa Civil Servant Efficiency & Disciplinary Rules 2011 as sufficient material was available on record, thus the plea of the appellant is baseless and misleading.

6- Having no sound footing in the departmental presentation / appeal though it was processed but was not acceded to by the competent authority and accordingly rejected by the appellate authority.

7- Incorrect, the orders of imposition major penalty upon the appellant is within the parameters of the relevant law / rules and based on lawful authority.

GROUNDS: -

A. Incorrect, ample opportunity was provided to the appellant to defend his case but he failed to prove his innocence.

B. Incorrect, as elaborated in para-5 above hence needs no further details.

C. Incorrect, as elaborated in grounds para-A above.

D. Incorrect, all possible and lawful methodology adopted by the inquiry officers within the parameters of relevant laws / rules to the best of his satisfaction with regard to fulfill the norms of natural justice.

E. As elaborated in para-2 above.

F. Incorrect, as elaborated in para-A above.

G. Incorrect, baseless as elaborated in para-A above.

H. As elaborated in para-5 above.

I. Incorrect, it is the immature plea of the appellant that his dismissal from service is illegal and that he never committed any omission which falls within the ambit of misconduct. It is in the history of country that after partition such an ugly incident occur which clearly convey the message of cowardiceness of the appellant and other co-accused in the instant case.

J. The plea of the appellant is a paradox i.e admitting and refusing at the same time which clearly convey the immature mind setup of the appellant.

K. Incorrect, that it is a harsh penalty the fact can be rightly elaborated by re-producing a part of the judgment of the August Supreme Court f Pakistan announced in a similar nature case: -

That "in our consideration opinion such an officer did not deserve to continue to be in a such a service saddled with the high responsibility of ensuring safe detention of prisoners in custody". Moreover, it is to bring on record that in the said judgment of the August Supreme Court of Pakistan in the escape case of Ordinary Prisoners the punishment awarded of reduction to lowest stage in the present time scale of the concerned officer, the Court observed that we are of the opinion that the least that should have been done in the matter was to retire the Respondent from service. That is why that punishment of compulsory retirement was therefore awarded to the Respondent and the earlier awarded punishment i.e. reduction to lowest stage in the present time scale was substituted for the penalty imposed on him by the competent authority (Copy of Judgment of Supreme Court of Pakistan is Annexed-B).

In view of the above parawise comments the appeal of Gul Mir Dali Ex-Warder may be dismissed with cost please.

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

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

18/6/13

SUPERINTENDENT
Circle Headquarters Prison Peshawar
(Respondent NO.3)

SUPERINTENDENT
Central Prison Bannu
(Respondent NO.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Service Appeal No.483/2013
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attached to Central Prison Bannu.....**Appellant.**

VERSUS

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

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

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

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

18/6/13

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Circle Headquarters Prison Peshawar
(Respondent NO.3)

SUPERINTENDENT
Central Prison Bannu
(Respondent NO.4)

Annex - A

GOVERNMENT OF KHYBER PAKHTUNKHWA, HOME & TRIBAL AFFAIRS DEPARTMENT.

NOTIFICATION

No. SO (Com/Enq)/HD/1-40/2012 The Government of Khyber Pakhtunkhwa is pleased to commission an enquiry into the incident of attack on Central Prison Bannu by the militants and resultant escape of 384 prisoners on 15.04.2012.

The following Committee is constituted for the purpose:

1.	Dr Ehsan-ul-Haq, Director, Reform Management & Monitoring Unit, Chief Secretary's Office, Khyber Pakhtunkhwa.	Chairman
2.	Muhammad Mushtaq Jadoon, Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department.	Member
3.	Syed Alamgir Shah, Special Secretary Home, Khyber Pakhtunkhwa.	Member
4.	Additional Inspector General (Investigation) Police Department Khyber Pakhtunkhwa.	Member
5.	Inspector General (Prisons) Khyber Pakhtunkhwa.	Member

Terms of Reference of the Enquiry Committee are as under:-

1. To unearth the facts leading to the incident and fix responsibility.
2. To ascertain as to whether any threat alert regarding this major incident was conveyed in advance or not?
3. Whether the Prisons Rules in terms of manpower, availability, deployment and response for the purpose of internal security in jail were followed?
4. Whether a joint security review of the prisons by the district police and jail administration was undertaken as directed by Home Department vide letter No.4/22-A-SO(Prisons) HD/11–Jail Reforms, dated 15th September 2011 and decisions if any to improve security were implemented?
5. Whether the police response to the SOS message from the prison was prompt and effective in terms of response time, equipment, manpower and weaponry availability and blocking of escape routes?
6. Whether the FRP Platoon present with the jail administration was deployed as per SOPs and with full manpower?

GOVERNMENT OF KHYBER PAKHTUNKHWA,
HOME & TRIBAL AFFAIRS DEPARTMENT.

7. Whether the channel of communication notified by the Provincial Government vide Notification No. SO(E-I)E&AD/9-162/2012 dated 31st March 2012 was followed?
8. Whether follow up action taken by the civil and police administration of the district and division was timely and upto the mark?
9. To fix responsibility(s) for each or all of the above in case of violation of any law/rules/SOPs/directives.
10. To fix responsibility for acts of omission and commission if any on part of officers/officials of civil administration, police and jail administration.
11. The Committee should come up with comprehensive and plausible recommendations to ensure that such like incidents do not occur in future.

The Committee shall complete the enquiry within 15 days and submit its report. Home and Tribal Affairs Department shall provide secretarial support to the Committee.

Secretary to Govt of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department.

No. SO (Com/Enq)/HD/1-40/2012 Dated Peshawar, 16th April, 2012

Copy forwarded to the:-

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional Chief Secretary (FATA), Khyber Pakhtunkhwa.
3. Secretary Establishment Department, Govt of Khyber Pakhtunkhwa.
4. Secretary to Governor, Khyber Pakhtunkhwa.
5. Commissioner Bannu Division.
6. Regional Police Officer, Bannu.
7. HQ 11 Corps, Peshawar Cantt.
8. Inspector General of Prisons, Khyber Pakhtunkhwa.
9. All Officers included in the Enquiry Committee.
10. District Coordination Officer Bannu.
11. District Police Officer Bannu.
12. Director Information, Khyber Pakhtunkhwa.
13. PSO to Chief Minister Khyber Pakhtunkhwa.
14. PSO to Chief Secretary, Khyber Pakhtunkhwa.
15. PS to Minister Prisons, Khyber Pakhtunkhwa.
16. PS to Home Secretary, Khyber Pakhtunkhwa.
17. PS to Special Secretary Home, Khyber Pakhtunkhwa.

SECTION OFFICER (Com/Enq)

Inquiry Report

Militants Attack on Central Jail Bannu

Contents

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

Introduction

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

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

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

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

Methodology

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

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

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

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

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

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

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

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

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

Shifting of Adnan Rashid to Bannu jail

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

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

Under Prison Rules, there is **no** provision for shifting of condemned prisoners from on province to another. Under Rule 151, condemned prisoners can only be transferred **within** province. However, under Rule 149, other prisoners can be transferred between provinces case of execution of sentence, release or production before a court. Also under Rule 15 prisoners can be transferred on reciprocal basis between provinces.

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

Facts leading to the incident

Entry/Exit route

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

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

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

Prior warnings

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

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

They are detailed as follows:

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

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

Home Secretary

PPO Khyber Pakhtunkhwa

ACS FATA

IGFC Khyber Pakhtunkhwa

Commandant Frontier Constabulary Khyber Pakhtunkhwa

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

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

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

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

ACS FATA office endorsed the report to DCO Kohat only.

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

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

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

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

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

Jail staff response

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

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

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

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

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

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

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

Compliance with prison rules on internal security

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

Joint Security Review

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

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

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

Police, Army, FC and FR administration response

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

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

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

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

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

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

Effectiveness of Police response

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

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

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

Communication system

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

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

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

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

Deployment of FRP platoon

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

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

Compliance with notified Channel of Communication

The provincial government had notified a revised Channel of Communication governing district and divisional authorities of civil and police administration in March 2012. This required a 2- channel system converging in the Home department. On the civil side, important incident reports were required to follow the DPO→ DCO→ Commissioner (copy to HD) → HD → Chief Secretary → Chief Minister route. Similarly on the police side, there was an alternate channel RPO → PPO → HD. The system also mandated establishment of district control rooms and matters related to absence of district and divisional officers.

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

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

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

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

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

Adequacy of follow up actions of civil/ police administration

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

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

Conclusions

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

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

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

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

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

The situation seems to have been worsened due to postings of LEA officers on grounds other than merit, posting of local officers and allowing long tenures in some cases. This happened both in police and jail. It is interesting to note that the 2009 inquiry into the jailbreak had recommended transfer of all staff except class IV. However, the Superintendent was only transferred in 2012!

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

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

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

Responsibility for lapses

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

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

Tribal area administration of North Waziristan/FR Bannu

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

Police

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

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

Frontier Constabulary

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

Local Army Command

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

Civil Administration

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

Jail administration

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

35. Staff of Admi Pul check post (3)
36. Staff of Township check post (6)
37. Staff of Basya khel check post (3)
38. Staff of Domel check post (2)

FC

39. Sharbat Khan, DOFC Bannu
40. Haji Raza Khan, DOFC, Daryoba

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

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

FRP

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

Home department

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

IG Prisons

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

Intelligence agencies (federal, Provincial)

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

Recommendations

Unity of command at the district level

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

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

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

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

Early dispensation of justice

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

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

Continuity of charge of sensitive appointments

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

Merit based recruitments

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

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

Transfer of staff

Jail staff

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

Police staff

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

Home department

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

Review of district control rooms (civil)

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

Construction of new Bannu police lines adjacent to jail

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

Return of condemned prisoners to other provinces

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

Specialized prisons

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

Provision of security equipment

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

List of witnesses examined

Jail

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

Prisoners/Returnees

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

Civil administration/FR

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

Police

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

Annex-B

THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

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

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

...

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

VERSUS

Mr. Muhammad Israil, Asstt. Superintendent Jail Haripur. ...Respondent.

...

For the petitioners: Mr. Shakeel Ahmed, ASC with
Mr. M. A. Qayyum Mazhar, AOR.

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

Date of hearing: 19.6.2006.

...

JUDGMENT

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

ATTESTED
Court of Pakistan

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

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

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

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

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

ATTESTED

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

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

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

ATTESTED

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

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

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

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

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

TESTED

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

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

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

Sd/- Khalilur Rehman Khan, J
Sd/- Raja Fayyaz Ahmed, J.

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

28/6

Certified to be true copy

28/7/06

Assistant Registrar
Supreme Court of Pakistan
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. ***483*** / 2013

Gul Mir Dali S/O Taj Muhammad, Ex-Warder, attached to Central Jail Bannu, R/O Mawah Khel Ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil & District Bannu.

(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar and others.

(Respondents)

Replication on behalf of the appellant

Preliminary Objections:

1. Contents misconceived, the appellant has illegally been awarded the penalty has thus got necessary cause of action.
2. Contents misconceived, the appeal being filed well in accordance with the prescribed Rules and procedure, hence competent and maintainable in its present form.
3. Contents incorrect, no rule of estoppel is applicable in the instant case.
4. Contents misconceived, the appellant has illegally been awarded the penalty of dismissal from service thus has got locus standi and cause of action to file the instant appeal.
5. Contents incorrect and false all parties necessary for the disposal of this appeal are arrayed as parties.

6. Contents incorrect and false, the appeal in hand has been filed well with in the prescribed period of limitation.

Facts of the case:

1. Contents need no reply, however, contents of para 1 of the appeal are correct.

2. Contents of Para 2 of the appeal are correct. The reply submitted to the Para incorrect and false.

3. Contents being admitted need no reply.

4. Contents Para 4 of the appeal is correct. The reply submitted to the para is incorrect and false.

5. Contents of Para 5 of appeal are correct. The reply submitted to the Para incorrect and false.

6. Contents of Para 6 of the appeal is correct. The reply submitted to the Para is incorrect and false.

7. Contents of Para 7 of the appeal is correct. The reply submitted to the Para is incorrect and false

Grounds of Appeal:

Contents A to K taken in the Memo of Appeal are legal will be substantiated at the hearing of this appeal. Moreover, the Judgment referred in Para K was given in the case having totally different facts and circumstances as in that cases the accused personnel were charge sheeted and proper inquiry was conducted wherein the charges were fully established against them while in the instant case no properly inquiry was conducted against the appellant nor he was allowed opportunity to defend himself against the charges. The August Superior Courts have in a number of judgments held that major penalty cannot be imposed without conducting regular inquiry.

It is therefore prayed that on acceptance of this replication the service appeal of the appellant be accepted as prayed for.

Appellant

Through

IJAZ ANWAR
Advocate Peshawar

&

SAJID AMIN
Advocate Peshawar

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that the contents of the above replication as well as appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honorable Tribunal.

Deponent

KHALID MAHMOOD ADVOCATE
OATH COMMISSIONER PESHAWAR HIGH COURT
ATTESTED
2013