

09th Oct. 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. Learned counsel for the appellant requested that the main Service Appeal No. 1226/2019 titled "Muhammad Saqib Versus Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department" is fixed for arguments before D.B-I, therefore, the appeal in hand may also be fixed before the D.B-I. Parties are directed to appear before the D.B-I for today.



(Muhammad Akbar Khan)
Member (I)



(Rashida Bano)
Member (I)

09.10.2023

Learned counsel for the appellant present. Mr. Amir Hayat, Law Officer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant requested that connected nature appeals have been adjourned to 20.12.2023, therefore, the same may also be fixed on the said date. Adjourned. To come up for arguments on 20.12.2023 before the D.B. Parcha Peshi given to the parties.



(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

SCANNED
PK-3T
Peshawari

25th May, 2023

1. Learned counsel for appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for respondents present.

2. This case is adjourned in view of order sheet dated 28.11.2022.

To come up for arguments on 21.06.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

Mutazem Shah



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

21.06.2023

Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

Learned Member (Executive) Ms. Fareeha Paul is on leave, therefore, bench is incomplete. To come up for arguments on 09.10.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

Naeem Amin




(Salah-ud-Din)
Member (J)

28th Nov. 2022

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

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

SCANNED
KPST
Peshawar



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

17th April, 2023 1. Learned counsel for the appellant present. Mr. Fazal
Shah, Addl: AG for the respondents present.

2. This matter was lastly fixed for 01.02.2022 but that
was not brought on the cause list nor placed before the
Tribunal on the said date. Alongwith this matter some
more than twenty other matters were also kept by the
office for which an explanation has already been called
for. It was directed on 14.04.2023 on a note placed before
me, regarding non-fixation of some more than twenty
cases that all these cases be fixed before me on
17.04.2023 with further direction to inform the parties and
learned counsel on telephone. Learned counsel for the
appellant seeks adjournment as he has not prepared the
case. Last chance is given to the appellant to argue the
case on the next date. To come up for arguments on
25.05.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

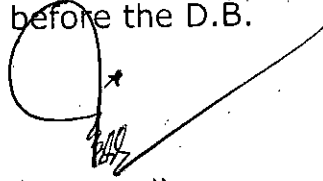

(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

13.09.2022

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

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



(Mian Muhammad)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

2nd Nov., 2022

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

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



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

01.06.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Miss Lubna, Law Officer for the respondents present.

Representative of the respondents stated at the Bar that connected service appeal No. 1226/2019 titled "Muhammad Saqib Versus Government of Khyber through Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar and others" is fixed for arguments on 24.06.2022, therefore, the appeal in hand may also be fixed for the said date. Learned counsel for the appellant is having no objection on the adjournment. Adjourned. To come up for arguments on 24.06.2022 before D.B.



(Mian Muhammad)
Member (E)

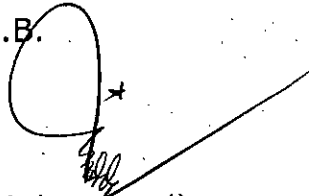


(Salah-ud-Din)
Member (J)

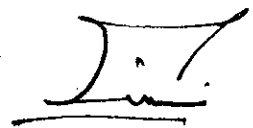
24.06.2022

Clerk of learned counsel for the appellant present. Mr. Atta Muhammad, Law Officer alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

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



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

1-10-2021

Due to non Availability of the
concerned DB The case is adjourned
to 8-2-2022

Q
Reader

8-02-22

Due to retervenment of the honorable
Chairman the case is adjourned
to come up for the same as before
1-6-2022

Q
Reader

Q


Q


29.03.2021

Appellant present through counsel.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Suleman Instructor for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 21/06/2021 before D.B.


(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

21.06.2021

Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

File to come up alongwith connected appeal No.1324/2019 titled Raqibaz Vs. Prisons Department, on 03.08.2021 before D.B


(Rozina Rehman)
Member(J)



Chairman


03.08.2021

Counsel for the appellant present.

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

File to come up alongwith connected appeal No.1324/2019 titled Raqibas Vs. Prisons Department, on 01.10.2021 before D.B.


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


(Rozina Rehman)
Member (J)

06.08.2020

Junior counsel for the appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Suleman, Senior Law Instructor for the respondents are also present.

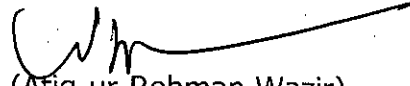
Representative of the department submitted para-wise reply on behalf of respondents No. 1 to 4 which is placed on file. To come up for arguments on 26.10.2020 before D.B. The appellant may submit rejoinder within a fortnight, if so advised.


(MUHAMMAD JAMAL KHAN)
MEMBER

26.10.2020

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


The Bar is observing general strike, therefore, the matter is adjourned to 24.12.2020 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member


Chairman

24.12.2020

Due to summer vacation, case is adjourned to 29.03.2021 for the same as before.


Reader

25.02.2020

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Suleman Law Officer for the respondents present.

Representative of the respondent department seeks time to furnish written reply/comments on the next date of hearing. Adjourned. To come up for written reply/comments on 31.03.2020 before S.B.


(Hussain Shah)
Member

31.03.2020

Due to public holiday on account of COVID-19, the case is adjourned to 23.06.2020 for the same. To come up for the same as before S.B.



Reader

23.06.2020

Junior to counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Learned AAG requested for adjournment in order to submit written reply/comments. Last chance is given. To come up for written reply/comments on 06.08.2020 before S.B.


Member

26.11.2019

Counsel for the appellant present.

Contends that the allegations, as noted in the statements, were of a nature which required proper and confidence inspiring evidence for their proof. Such evidence was not resorted to by the respondents even in the de-novo proceedings against the appellant. Besides, the appellant was not extended ample opportunity to defend his cause.

In view of arguments of learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 20.01.2020 before S.B.

Appellant Deposited
Security and Process Fee
10/12/19

Chairman

20.01.2020

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

Learned AAG requests for time to contact the respondents and furnish reply/comments on the next date of hearing. Adjourned to 25.02.2020 on which date the requisite reply/comments shall positively be furnished.



Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1325/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/10/2019	<p>The appeal of Mr. Amin Ullah resubmitted today by Mr. Yasir Saleem Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/11/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		


SCANNED
Peshawar

The appeal of Mr. Aminullah son of Khan Sardar Warder attached to central Jail Bannu received today i.e. on 17.09.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Annexures of the appeal may be flagged.
- 4- Annexures of the appeal may be attested.
- 5- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 6- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.


No. 1589 /S.T,

Dt. 18-9- /2019.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yasir Saleem Adv. Pesh.

Sir,

Resubmitted with clear objection

9/10/19

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1325/2019

Aminullah S/O Khan Sardar, Warder, attached to Central Jail Bannu,.

(Appellant)

VERSUS

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

(Respondents)

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4	Copies of the charge sheet and reply	C & D	22-24
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6.	Copies of show cause notice and replyx	G & H	23-25
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Through

Appellant

YASIR SALEEM
Advocate, High Court

JAWAD UR REHMAN
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

**Khyber Pakhtunkhwa
Service Tribunal**

Appeal No. _____/2019

Diary No. 1268

Dated 17/9/2019

**Aminullah S/O Khan Sardar, Warder, attached to Central Jail
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 11.04.2019, communicated to the appellant on 13.05.2019 whereby the appellant has been awarded the major penalty of “reduction to a lower stage in a time scale for a maximum period of three years” against which his Departmental Appeal dated 15.05.2019 (through post) conveyed to the Respondent on 17.05.2019 has not been responded within the stipulated period of ninety days.

Prayer in Appeal: -

Filed to-day

Registrar

17/9/19

On acceptance of this appeal the impugned order dated 11.04.2019, may please be set-aside and the pay of the appellant may please be restored to his original position with all back benefits.

Respectfully Submitted:

1. That the appellant was appointed as Warder in the Prison Department and was posted at the relevant time in Bannu Prison. Ever since his appointment the appellant was performing his duties as assigned to him with full devotion and there was no complaint whatsoever regarding his performance.
2. That the appellant while performing his duties in Bannu Jail, in the mid night of 14/15 April, 2012, a good number of militants (more than 300) attacked the Jail with heavy weapons, the appellant along with other jail officials started firing at them, however they

out numbered the security staff of the jail and managed in helping the escape of certain condemned prisoners from the jail. They also damaged part of the jail premises with their heavy weaponry. The appellant also got wounded in cross firing.

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.

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. *(Copy of the Dismissal Order dated 12.12.2012 is attached as Annexure A).*

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.

7. That the appellant also filed Service Appeal No. 484/2013 before this Honorable Tribunal which was partially allowed and the case of the appellant along-with other connected cases were remanded back to the Respondent department vide order and judgment dated 01.09.2015 to conduct de-novo inquiry and the issue of back benefits were subjected to the out come of the de-novo inquiry. *(Copy of the Order and Judgment dated 01.09.2015 is attached as Annexure B)*

8. That thereafter the appellant was served with charge sheet and statement of allegations which was duly replied by the appellant and refuted the allegations leveled against him. *(Copies of the charge sheet and reply are attached as Annexure C & D)*

9. That a partial inquiry was also conducted wherein statement of the appellant was also recorded and after de-novo inquiry, the inquiry officer recommended the appellant for major penalty. *(Copies of the statement of appellant and inquiry report are attached as Annexure E & F)*

10. That the appellant was also served with show cause notice dated 06.12.2017 containing the same allegations to which the appellant duly replied vide his reply and again refuted the allegations leveled against him. *(Copies of show cause notice and reply are attached as Annexure G & H)*

11. That without considering his reply, the appellant has been awarded the major penalty of reduction to a lower stage in a time scale for a maximum period of three years vide order dated 11.04.2019 communicated to the appellant on 13.05.2019. *(Copy of the Office Order dated 11.04.2019 is attached as Annexure I)*
12. That feeling aggrieved from the penalty order dated 11.04.2019, the appellant filled his departmental appeal dated 15.05.2019 conveyed to the respondent (through post) on 17.05.2019, however the same has not been responded within the statutory period of ninety days. *(Copy of the departmental appeal dated 15.05.2019 along-with post receipt is attached as Annexure J)*
13. That the impugned order is illegal unlawful against law and facts therefore, liable to be set aside inter alia on the following grounds:-

GROUND OF APPEAL:

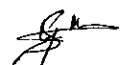
- A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before awarding the major penalty to the appellant, neither the appellant has been associated with the inquiry proceedings 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 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. Moreover the appellant also got wounded during cross firing.
- F. That the charges leveled against the appellant were never proved during the inquiry proceedings the inquiry officer gave his findings on surmises and conjectures.


- G. That the appellant has never committed any act or omission which could be termed as misconduct albeit he has illegally been awarded the major penalty.
- H. That the appellant has a spotless service career, however, his unblemished service career has never been considered while awarding the penalty.

It is, therefore, humbly prayed that On acceptance of this appeal the impugned order dated 11.04.2019, may please be set-aside and the pay of the appellant may please be restored to his original position with all back benefits


Appellant

Through


YASIR SALEEM
Advocate, High Court


JAWAD UR REHMAN
Advocate Peshawar

AFFIDAVIT

It is solemnly affirm and declare on oath 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



Registered

Annex ^{12/12/12} "A" ^{13/12/12} ^{12/12/12}
OFFICE OF THE **S**
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 Raqib Khan	-do-

SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR

Under No. 121-231

Copy of the above is forwarded to the
Worthy Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar for
information with reference to his letter No. 21208-WE dated 12-12-2012, to
Superintendent Central Prison Bannu
District Accounts Officer, Bannu.
For information & further necessary action.

Lo/B/Ao/Hc

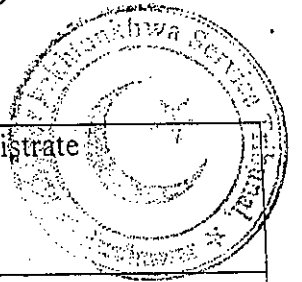
Attested

Ullah
SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR
12/12/12

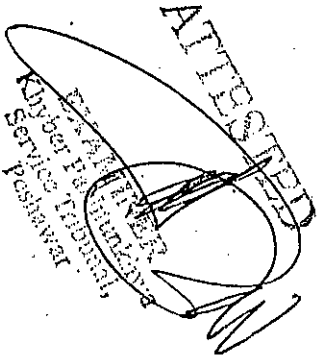
15/12/12

Annex-'B'

6



Sr. No.	Date of order/proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	01.09.2015	<p><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</u></p> <p>Service Appeal No. 4842013</p> <p>Aminullah Versus Government of Khyber Pakhtunkhwa through Secretary Hom & T.A Deptt. Peshawar etc.</p> <p><u>JUDGMENT</u></p> <p><u>PIR BAKHSH SHAH, MEMBER.</u>- Counsel for the appellants (Mr. Ijaz Anwar, Advocate) and Government Pleader (Mr. Ziaullah) with Sheryar, ASJ for the respondents present.</p> <p>2. On the night between 14th and 15th April, 2012 at about 1.30 AM militants reached in about 25 vehicles of different types and attacked the Bannu Central Jail. The militants were armed with automatic weapons. They broke open the main outer and inner gates using RPG and fired at boundary wall watchtower. Having secured entrance, they attacked barracks, broke open locks by firing and asked 382 prisoners to flee and move towards the nearby ping hills in the Frontier Region area. In this incident, the Government of Khyber Pakhtunkhwa vide notification No.SO(Com/Eng)/HD/1-40/2012 dated 16.4.2012 constituted a five numbers enquiry committee headed by Dr. Ehsan-ul-Haq, then Director, Reform Management & Monitoring Unit, Chief Secretary's Office, Khyber Pakhtunkhwa, The committee submitted its elaborate report comprising of about 19 pages. To make the findings of this enquiry report as basis for departmental proceedings</p>



Attested

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

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


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

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

Attested

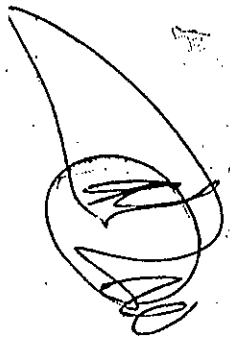
were punished. It was further submitted that the fact finding enquiry was general in nature and not specific against the appellants to find their faults, which never fixed responsibility on the appellants. However, the high ups of the departments concerned in order to save their faces, by adopting method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

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


Attested

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

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



Attested

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

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

ANNOUNCED
01.09.2015

Edy Pir Bahadur Shahi,
Member
Edy Abdul Latif,
Member

Certified to be a true and correct copy
of the original
[Signature]

Attested

Date

2000 9.9.2015
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9-9-2015
4.9.2015

Amir Saeed
12/1/2017
11

Amir Saeed, Chief Secretary Khyber Pakhtunkhwa, as competent authority, hereby charge you with the following as follows:

1. That you, while posted as warden at Central Prison Bannu committed the following irregularities:

1. You were assigned the duties of Outer Round Officer on the night between 14/15-4-2012 duty round but you showed cowardice and failed to fire and confront militants effectively with the result that there was no enemy loss and the militants took full advantage and succeeded in Bannu Jail break on the above night. Resultantly, 381 prisoners including high profile prisoners were got released, beside other damages.

2. By reason of the above, you appear to be guilty of inefficiency/misconduct under rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable for all or any of the penalties specified in rule-4 of the rules ibid.

3. You are therefore required to submit your written defence within seven days of the receipt of this charge sheet to the Inquiry Officer, as the case may be.

4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

Amir Saeed
12/1/2017
(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA

Attested
A. 11
2/2/2017

Abid Saeed, Chief Secretary Khyber Pakhtunkhwa, as the competent authority, and in the opinion that guarder Aminullah presently attached to High Security Prison, Mardan has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, with the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants(Efficiency & Discipline) Rules 2011.

STATEMENT OF ALLEGATIONS

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

2. For the purpose of inquiry against the said accused with reference to the above allegations an inquiry Officer/Inquiry Committee, consisting of the following is constituted under Rule-10(1) of the ibid rules:-

M. Tasleem Khan

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to the punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Inquiry officer/Inquiry Committee.

M. Saeed
2017

(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA

ATM
2/2/2017
Attested

Handwritten notes: "19/02/17" and "Annex 'D'"

Handwritten number "13" in a circle

Subject: REPLY OF CHARGE SHEET NOTICE.

Respected Sir,

With due respect, it is submitted that I have received a Charge Sheet Notice, dated 02/02/2017, accusing the undersigned of the following charge:

1. Failed to fire on the militants;
2. Failed to confront militants effectively; and
3. No enemy loss, besides having armed.

2. Sir, I very humbly want to bring the facts about the incident of Bannu Jail into your kind notice and would try to defend myself from the above-quoted charges, level against me, on the following grounds:

- (1) That on 15.4.2012, being warder (outer Round Officer), I was present on my duties and continuously keeping strict watch on the four watch Towers of the Bannu Jail to ensure the presence and alertness of the security personnel deputed there. Suddenly, at about 1:30 AM, I heard the sounds of heavy firing. I, immediately rushed towards the Watch Tower No. 1, there, I saw one of the security personal namely, Mr. Asif Ali Shah, firing on the attackers who were present outside the jail premises. The security personnel deployed in the other three Watch Towers were also firing on the attackers. I also got a position and started firing on the attackers.
- (2) That despite of the fact, the attackers were in large numbers and equipped with heavy arms and ammunition, i.e. mortars, hand-grenades and LMG etc. we showed every possible resistance to the attackers and engaged them in cross-firing with our light weapons and tried our best to create a real deterrence for the attackers, in order to retreat them. Meanwhile, the jail administration, immediately, informed the local police and Army about the incident and requested them for immediate help, but unfortunately, they reached the spot too late i.e. after passing of 1 1/2 hours, at about 3:00 AM. Till that time we have fired all the ammunitions available with us and were remained empty handed. Although we tried our best to confront the militants effectively according to our capabilities and we never turned our backs to the attackers.
- (3) Sir at the time of attack and fighting, the electricity supply of the Central Prison Bannu was completely off and no one can say that the attackers didn't get any injuries or loss, but I can confidently say that they must have suffered loss. Although, the attackers have got the benefit of darkness, so they succeeded to take their wounded companions with themselves.

Attested

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about anything good of security personnel of jail.

Sir, they are criminals and are showing their criminal intimidation against the jail security staff.

4. Furthermore, I am ready to affirm on oath that we are patriot Pakistanis and after getting the additional responsibilities of the Government servants, we also became the defenders of the interests of Pakistan, so we would never turned our backs to the enemies of Pakistan. We have totally submitted our lives for the protection, benefit and services of Pakistan.

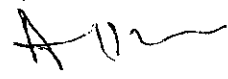
5. In the light of the all above, it is once again requested to kindly exonerate the undersigned from the above-quoted charges by filing the same and oblige, please.

Thanking in anticipation!

Yours Obediently,


(Amin Ullah)

Warder (Outer Round Officer),
Central Prison, Bannu.


3/2/2017


Attested

انٹرنیشنل ایئر لائنز کے ساتھ سوال و جواب
Annex = ۳

بیان امین اللہ ، وارڈر / پٹرولنگ آفیسر ، سنٹرل

بنوں حال وارڈ مردان جیل -

بر حلف بیان کیا کہ میں 28-2-2006 سے محکمہ جیل خانہ

جات میں بحیثیت سپاہی / وارڈر خدمات انجام دے رہا

ہوں۔ میں بنوں جیل میں 2007 تا 2012 (موجودہ)

تعمیرات رہا ہوں۔

سوال :- مورخہ 14 اور 15 اپریل 2012 کی درمیانی شب آپ

کی ڈیوٹی آؤٹر راؤنڈ آفیسر گائیڈنگ تھی آپ باصلاحیت

تھے جب دہشت گردوں نے بنوں جیل پر حملہ کیا اور 38

فہری جس میں انشیا کی ایف فہری بھی موجود تھے ایسے

ساتھ بھاگنے لگے، آپ نے اپنی ڈیوٹی میں

عقبات برتتے ہوئے بزدلی کا مظاہرہ کیا نہ تو آپ

نے کوئی فائرنگ کی اور نہ ہی دہشت گردوں کا

مقابلہ کیا جس سے جیل کو بھی نقصان پہنچا اور

فہری بھی بھاگنے لگے؟

جواب :- یہ درست ہے کہ وقوع کے وقت راؤنڈ آفیسر

کی ڈیوٹی پر مامور تھا اور میرے پاس کلڈ شیگوف

معدہ میگزین جس میں 30 راؤنڈ تھے، جو جڑھی

فہری ڈیوٹی رات 12 بجے سے 3 بجے تک تھی۔ 12 بجے

Attested

ڈیوٹی شروع ہوتے ہی میں نے اپنے تمام ڈیوٹی پر موجود
 سنٹروں کو یعنی مین گیٹ، گیمپاؤنڈ سنٹری اور ریالٹی ڈیوٹی
 سپر سنٹریٹ سنٹری اور ڈیوٹی کے مین فرنٹ سنٹری
 واج ٹاور ٹرچی (بنک) کے نیچے موجود سنٹری اور ٹاور میں موجود
 سنٹری کو چیک کیا۔ اسی طرح واج ٹاور ٹرچی (بنک) کے
 سنٹروں کو بھی چیک کیا جو کہ بائیس تھے۔ ان کے پاس ہتھیار
 مع ایک عدد میگنٹین مشعلہ 30 رائف موجود تھی۔ اس طرح
 میں واج ٹاور ٹرچی (فرنٹ مغرب) میں موجود سنٹری کو
 بھی چیک کیا جو بائیس ایک ہتھیاروں مع میگنٹین 30 رائف
 تھا۔ جب میں ٹاور ٹرچی (فرنٹ) پر پہنچ کر سنٹری کو چیک
 کر رہا تھا تو اس وقت اچانک 15 منٹ کا وقت تھا۔ اسی وقت
 مین گیٹ پر میں نے باہر کی طرف فائرنگ کی آواز سنیں
 جو کہ دستگردوں کی طرف سے بہت زیادہ تھی اور
 بھاری ہتھیار استعمال ہو رہے تھے۔ البتہ ٹاور ٹرچی میں موجود
 وارڈر اصف علی شاہ کو میں نے آواز دی کہ فائرنگ بند
 طرف سے ہو رہی ہے اور کسی پر ہتھیار نہیں ہے۔ اس نے مجھے
 کوئی جواب نہیں دیا اور اس نے مغرب کی طرف ہوائی فائرنگ
 شروع کر دیا جس سے مجھے اندازہ ہوا کہ باہر واقعی کوئی مسئلہ ہے

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Attested

صحیح رکھو نظر نہیں آ رہا ہے اور میں نے بھی پورا ہی مائٹنگ شروع کر
 اور 30 کے 30 کا انوسس ختم کر دیتے۔ اس کے ساتھ
 اللہ اکبر کے نعرے بلند کرتے ہوئے دہشت گرد بیرونی
 کو اڈا لے ہوئے ہیں کے اندر داخل ہوئے۔ چونکہ میرے پاس
 کا انوسس ختم ہو چکا ہے تو میں نے اپنے آپ کو اور سرکار
 افضل کو بچانے کے لیے ایک نالی میں پناہ لی۔ اور 10-15
 بعد کر الٹ کرتے ہوئے 10-15 فٹ کے ماحول پر ایک جھاڑی
 چھپ گیا۔ اور دہشت گردوں کی مارواہی کے خانے تک
 تکھی چھپا رہا۔ جب صحیح اندازہ ہوا کہ طالبان چلے گئے
 صحیح رکھو اپنے ساتھی نظر آئے تو میں بھی باہر آ گیا۔

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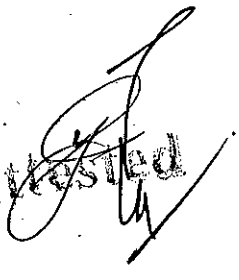
سوال:- کھیت اور ڈراؤنڈ آفسیر آپ کے فرائض
 کیا شامل تھا نیز آپ نے جب خطہ محسوس کیا
 آپ نے اپنے سینئر کو اطلاع دی کہ میں آج
 علاقہ سے سینئرینٹ میں اور ڈیپٹی سیرینٹ
 سے تلب اور کہاں ہوئی؟


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جواب:- کھیت اور ڈراؤنڈ آفسیر میری ذمہ داری تھا کہ میں
 سینئر یوں کو ڈیپٹی کے مقام پر چیل کر دوں کہ وہ

جو جو رہیں کہ نہیں، اگر ٹی بی کے ہیں۔ چونکہ میرے پاس
 اطلاع دینے کے لیے کوئی بندوبست نہیں اس لیے میں اس
 سٹیٹ کو اطلاع نہیں دے سکا۔ جب 3.15 بجے کا بجائی
 ہوئی تو میں اپنی کزن سٹی سے روانہ ہوا اور ڈیوٹی کے بارے
 میں ملحقہات محمد زاہد سپرنٹنڈنٹ جن کے ساتھ 3 بجے
 صبحے وارد رہی تھی، سے پہلے ہی ادمر سے کہا کہ
 فریڈی کی نہ بھاگیں تو اس دوران میں گیس پمپ اور اسٹیشن
 فورس کے لوگ آئے۔ میرے اور میرے ساتھ 2-3 سٹیٹوں
 کی زخمی سٹیٹوں کو ایسولیس میں ڈال کر سول سہیل ہون
 کے لیے جو کہ ہم نے ملگروں سے زخمی تھے۔

سوال:- آپ کے ساتھیوں کو کوئی ایسی اطلاع ملی تھی کہ
 جیل میں رہتے تھے جو آپ نے جیل سے؟
 جواب:- حکومت کی طرف سے ہمارے ساتھیوں کو بلڈ پیور
 جیل میں بھیجا گیا تھا۔ اور ہمارا کوئی ساتھی
 بلڈ پیور جیل میں نہیں تھا۔ میرے جیل کے
 دوران FRP کے آگے سے اعلیٰ ڈیوٹی پر حاضر
 تھے جن کے پاس بھی بلڈ پیور جیل میں نہیں تھے

Attested


Annex "F" (19)

DEPARTMENTAL / INQUIRY PROCEEDINGS AGAINST MR. AMINULLAH, THE THEN WARDER, CENTRAL PRISON, BANNU PRESENTLY POSTED AT CENTRAL PRISON, MARDAN.

Background:

The Competent Authority i.e. Hon'able Chief Secretary, Khyber Pakhtunkhwa was pleased to appoint the undersigned as Inquiry Officer under Rule-10 (1) (a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, which was conveyed vide Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Peshawar order No. SO (Com/Eng)/HD/140/2012 dated 23.01.2017 with the mandate to inquire into the following allegations levelled against Mr. Aminullah, the then Warder, Central Prison, Bannu presently posted at Central Prison, Mardan as reflected in Charge Sheet / Statement of Allegations:-

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

Proceedings:

In pursuance of the direction contained in Para-4 of the Charge Sheet, the accused Official Mr. Aminullah submitted his written defense dated 03.02.2017 (copy attached as Annexure-A). The accused Officer was also summoned to appear before the undersigned on 25.02.2017 at 09:30 AM for inquiry proceedings. Mr. Abdul Raziq, Assistant Superintendent, Central Prison Bannu also attended the proceedings as departmental representative as authorized by Superintendent, Central Prison Bannu vide letter No. 996 dated 24.02.2017 under the directive of the Inspector General of Prisons, Khyber Pakhtunkhwa. The accused Officer attended the office of the undersigned on 25.02.2017.

Statement of the accused Official recorded who stated on oath that he was serving in the Prisons Department since 28.02.2006 as Sepoy / Warder and remained posted at Bannu Jail since 2007 to 2012 (till the incident) while responding the questions asked as under (Original questions and answers are attached as Annexure-B): -

Q.1: He was deployed as duty Outer Round Officer duly armed between the night 14/15.04.2012 when terrorists attacked on Bannu Jail and succeeded in fleeing 381 prisoners of highly sensitive nature. He did not open fire on them and committed a coward act. His cowardice act provided an opportunity to attackers in escaping the high profile convicted prisoners. Explain your position with regard to this negligent/cowardice act?

Ans: It is correct that at the time of incident, he was performing the duty of Outer Round Officer duly armed with Kalashnikov with magazine having 30 rounds. His duty started at 12:00 hours till 03:00 AM. Assumed his duty at 12:00 hours, his responsibility was to check the sentries i.e. Main Gate, Compound Sentry and Sentries at the residence of Deputy Superintendent, Sentry at Dehri in Main Gate, Watch Tower No. 1, 2, 3 & 4. He checked all the sentries performing duties at appointed places who were duly armed having Kalashnikov with one magazine and 30 rounds. When he was checking tower No. 1 (front) Sentry, it was time of 01:15 AM, he heard firing sound from the Main Gate, which was being made from the attackers who were using heavy equipment. He inquired Warder Asif Ali Shah about the firing direction but he did not respond. Mr. Asif Ali Shah started aerial firing towards west, he assessed that there was certain attack. he also started firing and exhausted 30 rounds there and then. Immediate to this, terrorists entered from the outer Phattak by shouting the slogans of Allah o Akbar in jail premises. Because the cartridges provided were used and to save the rifle/himself, he took refuge in a drain and after 10/15 minutes, while crawling camouflaged himself in a nearby bush

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located at a distance of 10-15 feet. Till the leaving of attackers remained camouflaged and came out after the incident.

Q.2: What were his duties as Outer Round Officer? When he realized that there was apprehension of attack, did he inform Superintendent/Deputy Superintendent and where he met them?

Ans: His duty was to check the sentries with reference to their duty points and to keep them alert. Since, he was not having any communication instrument therefore, he could not inform the seniors. At 03:15 AM after the attackers succeeded in their mission, he left the duty point. Out of Dehri/Main Gate, he met Superintendent Jail who was accompanied by 3 unarmed warders. In the meantime, the Pak Army and Elite Force personnels reached. He alongwith 2-3 sentries took 3 wounded sentries in ambulance to Civil Hospital, Bannu who got injuries due to bomb bashes.

Q.3: Did Government provide bullet proof jackets to the sentries? Did he ever check those?

Ans: No such facility was provided even the 5 number FRP armed personnel on duty were having no bullet proof jackets.

Q.4: Did he ever perform the duty as Outer Round Officer prior to this as skilled / expert personnel can perform this duty better? Was any other person performing this duty besides him?

Ans: He performed this specific duty first time and no one other was assigned this duty at the night of the incident.

Q.5: Did he see Jalat Khan NDO at that night, was he present on duty at the time of un-fortune incident and if he was on duty what was his duty?

Ans: Jalat Khan was the night duty officer whose duty was from closing of prisoners to opening of prisoners in the next morning. It was his duty to check the sentries and prisoners. His (Aminullah) duty was from 12:00 hours to 03:00 AM and during his duty he did not meet Jalat Khan. It is correct that when he and Superintendent met after the incident outside Dehri, he did not see Jalat Khan. It is also correct that he did not see Mr. Riaz Khan, Assistant Superintendent Jail.

Q.6: In his statement, he did not mention Watch Tower No. 4. Did he check security sentries?

Ans: As soon his duty started, he checked Watch Tower No. 4 where an armed constable who performs surveillance of residence of Deputy Superintendent and tower, was present.

Q.7: Did he return empties to Koath Jamadar and whether the ammunition issued in his name was omitted?

Ans: He deposited AK-47 Rifle and empty magazine with Koath Jamadar.

Q.8: In his opinion, how many security personnel duly armed were performing duty properly and what was their duty scenario at the time of occurrence of incident? How many others having no arm doing what order duty?

Ans: In his view 150/160 personnel would be on the strength and out of them 11 personnel were duly armed and remaining would be inside the Jail premises, their detail is not known to him.

Q.9: At the time of occurrence he was performing duty as Outer Round Officer, was he possessing any light? From 1200 hours till taking place of incident, how much patrolling and whistles he make / used?

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Ans: He completed one round and for second round he was intending to make, at Tower No. 1 the situation averted into panic. He was having no light system and Government has not provided any such type of facility torch, emergency light etc.

Q.10: Was there any communication linkage between the duty points of Warders? What was his duty / responsibility as Round Officer?

Ans: There was no communication facility between various Tower duties points and official to pass on any message / information. As per modus operandi, the Outer Round Officer through sound convey message to others.

Q.11: Was light available at the time of occurrence? Was there any search light available on Watch Tower and after how much time the load shedding started?

Ans: The light went off at 12:30 AM while he was on round duty. Till 12:30, all lights were on.

Q.12: Under Prison Rules-594/595, Warders when feel external threat they are bound to alert other companions to raise alarm. As Outer Round Officer, it was imperative for him to raise alarm and has whistle facility but he failed to perform his obligation as due to his negligence and slackness the attackers easily entered in Jail and succeeded in getting freed their highly wanted criminals from the Jail.

Ans: Since the Government did not provide any whistle, alarm / light facility, therefore, he did not make any such arrangement.

Heard and accepted.

Findings / Recommendations:

1. Under the Pakistan Prison Rules, he was responsible to run the affairs of the Central Prison, Bannu strictly in accordance with the laid down provisions but due to his cowardice approach, he failed to avert the Jail attack by confronting the militants.
2. His duty was to alert the others and to confront the attackers, he did not do so and saved his life by hiding himself in the bushes.
3. He could not defend his charge levelled against him as he was having no concrete evidence in support of his contention.
4. He was not eligible for the post of Outer Round Officer because he was not having the required skill / expertise to perform this responsible duty.
5. He could not share the information of attack in time with the seniors as per code.
6. He failed even to arrange a penny cost whistle / torch to handle the untoward situation in dark.
7. It is quite astonishing that 150 miscreants were coming for attack / break the Jail and allegedly he fired 30 rounds but no one was hit. Similarly, empty shells were not deposited with armory (Koath Jamadar). He stated that 3/4 officials were allegedly injured but no official documents from the Hospital side was produced by the accused official nor by the authorized Rep. of Bannu Jail Authority. The official violated the mandatory Rule-594 the gate-keeper shall, as soon as he hears the whistle blow continuously or receives information of any prisoner having escaped or attempting to escape or of an out-break or disturbance having taken place or being imminent, order the sentry to sound an alarm, and shall send immediate information to the Deputy Superintendent and the Superintendent, Rule-595 the Sentry at the Main Gate shall sound the alarm by loudly ringing the alarm bell when ordered to do so by the Gatekeeper or on his own initiative if he has reason to believe that an outbreak or disturbance, an escape or an attempt to escape is occurring or is about to occur and Rule-1154 sub clauses (d) not to leave

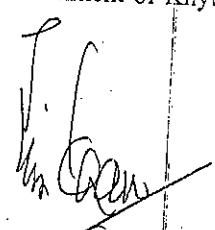
Attested

10/11/11

22

his post without regular relief upon any pretext whatsoever, (e) not to allow any person to approach his post after dark, without challenging, (g) challenging on a dark night, on hearing voices or the approach of footsteps, if he receives no answer, or an unsatisfactory answer, to call the officer incharge of the picket, or, if necessary, give the alarm, (i) not to allow any person to crowd around him, (j) if he sees a person attempting to escape, to call on him to stand, and if he refuses to do so and there is no superior officer present, to fire on the prisoner, provided, he cannot otherwise prevent the escape, (k) if he is beyond call and has to raise the alarm, to fire a shot in the air as the signal for alarm and (l) if he sees any article in or near the jail likely to facilitate, escape, or if any unusual incident comes under his observation, at once report the matter to the officer incharge of the picket of Rule 1154 of Pakistan Prison Rules and Rules-1147 (a) render all assistance in his power in the management of the prison, the maintenance of order and discipline amongst warders and prisoners, the guarding and defending of the prison and all persons and property kept therein or belonging thereto against the use of criminal force by any person, (b) obey the orders of all officers superior to him in rank, (c) comply with all rules, regulations and orders regulating the duties which he is to perform and the manner in which he is to perform them.

8. The charges levelled against the accused official Mr. Aminullah the then Warder, Central Prison, Bannu presently posted at Central Prison, Mardan have been proved beyond any shadow of a doubt. He therefore, deservers imposition of major penalty under Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules-2011.



(Tasleem Khan)
Deputy Commissioner,
Haripur/Inquiry Officer

[Signature]
Attested

سروس سٹریٹجی میں فیصلہ کے لئے انٹورم شوکارا
Annex "G"

امین اللہ
(21) (23)

SHOW CAUSE NOTICE

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

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

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

(b) Inefficiency / misconduct.

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

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

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

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

Attested

(Muhammad Azam Khan)
CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.

دو، لکھنؤ، جی ایچ ڈی ایف، 2017

انکوائری

2017

Annex="H"

To,

(24) (22)

CHIEF SECRETARY,

Khyber Pakhtunkhwa

Subject: Reply to Show Cause Notice.

Respected sir,

With due respect, it is submitted that I have received a show cause notice, dated 06.12.2017 accusing the undersigned of the following charges:

- I. That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing by the inquiry officer on 25.02.2017; and.
- II. On going through the findings and recommendations of the inquiry officer/ inquiry committee, the material on record and other connected papers including your defence before the inquiry officer;-

Sir, I humbly want to bring the facts about the incident of Bannu Jail into your kind notice and would try to defend myself from the above -quoted charges, level against me, on the following grounds;

1. That the inquiry conducted was totally partial as the undersigned was associated neither in the proceedings nor given the opportunity of cross examining any witness if produced against the undersigned. Moreover the issuance of the show cause notice on the basis of preliminary inquiry and in form questioner and not holding proper inquiry is against the law and rules.
2. That the inquiry in not competent in the present form under the Khyber Pakhtunkhwa government servant (Efficiency and discipline) rules 2011, where under section 11 procedure was lay down as to record the statements of the witnesses and departmental representative in the presence of accused and vice versa, the so called inquiry conducted is defective in nature.
3. That the show cause notice issued by incompetent authority as the undersigned Warder (BS-05).
4. That on 15.04.2012 being warder (outer round officer), I was present on my duties and continuously keeping strict watch on the four watch towers of the Bannu jail to ensure the presence and alertness of the security personnel deputed there. Suddenly, at about 1:30 AM, I heard the sound of heavy firing. I, immediately rushed towards the watch tower no. 1, there, I saw one of the security personal namely, Mr. Asif Ali Shah, firing on the attackers who were present outside the jail premises. The security personnel deployed in the other three watch towers were also firing on the attackers; I also got position and started firing on the attackers.

Accepted



5. That despite of the fact, the attackers were in large numbers and equipped with heavy arms and ammunition, i.e mortars, hand grenades and LMG etc. we showed every possible resistance to the attackers and engaged them in cross-firing with our light weapons and tried our best to create a real deterrence for the attackers, in order to retreat them. Meanwhile, the jail administration, immediately, informed the local police and army about the incident and requested them for immediate help, but unfortunately, they reached the spot too late i.e after passing of 1 ½ hours, at about 3:00 AM. Till that time we have fired all the ammunitions available with us and were remained empty handed. Although we tried our best to confront the militants effectively according to our capabilities and we never turned our backs to the attackers till the end.
6. Sir at the time of attack and firing, the electricity supply of the central prison Bannu was completely off and no one can say that the attackers didn't get any injuries of loss, but I can confidently say that they must have suffered loss. Although, the attackers have got the benefit of darkness, so they succeeded to take their wounded companions with themselves.
7. That, the statement of prisoners that we didn't show any resistance is totally false, frivolous, baseless and not true. No prisoner of any jail would ever talk about anything good of security personnel of jail nor were such statements cross examined,

Sir, they are criminals and are showing their criminal intimidation against the jail security staff.

Furthermore, I am ready to affirm on oath that we are patriot Pakistanis and after getting the additional responsibilities of the Govt servants, we also became the defenders of the interests of Pakistan, so we would never turned our backs to the enemies of Pakistan. We have totally submitted our lives for the protection, benefit and services of Pakistan.

In the light of the all above, it is once again requested to kindly exonerate the undersigned from the above-quoted charges by filing the same and oblige, please.

Thinking for anticipation!

You're obediently,

Amin Ullah,
Warder, Central Prison, Bannu.



[Handwritten signature]

Annex "I"
Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department.

[Handwritten signature]
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ORDER

No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I: WHEREAS, Amin Ullah Warder (BPS-05) of the Prisons Department, Khyber Pakhtunkhwa, was proceeded against under Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet served upon him.

AND WHEREAS, the competent authority i.e the Chief Secretary, Khyber Pakhtunkhwa appointed Mr. Tasleem Khan (PMS-BS18) Deputy Commissioner Haripur vide order No.SO (Com/Enq)/HD/1-40/2012 dated 23.01.2017 for conducting denovo formal proceedings against the above named accused.

AND WHEREAS, the inquiry officer furnished his findings according to which the charges leveled against the above named accused official stand proved.

AND WHEREAS, the competent authority granted opportunity of personal hearing to the accused under the rules.

NOW THEREFORE, the competent authority (the Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, the explanation of the accused official, findings of the inquiry officer exercising his powers under rule-3 read with Rule-14 (5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to award major penalty of "**Reduction to a lower stage in a time scale for a maximum period of three (03) years**" to the above named accused official.

The Competent Authority has further been pleased to order that the intervening period i.e from the date of dismissal from service on the basis of an earlier enquiry to the date of reinstatement in service (from 12-12-2012 to 20-01-2016) in respect of the official is hereby treated as extra ordinary leave (leave without pay).

Secretary to Government of Khyber Pakhtunkhwa
Home & Tribal affairs Department

Endst No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I:

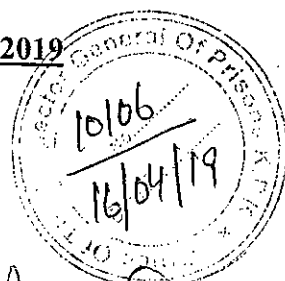
Dated 11.04.2019

C.c: -

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar
3. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
4. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
5. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
6. District Account Officer concerned.
7. Official concerned.

[Handwritten signature]
Attested

[Handwritten signature]
(Maqsood Hassan)
Section Officer (P&R)



[Handwritten signature]
17/4/19

Annex = "ج"

خدمت جناب عزت مآب وزیر اعلیٰ صاحب خیبر پختونخواہ پشاور

عنوان: نظر ثانی اپیل برخلاف فیصلہ مصدرہ 2019 جسکی رو سے سائل پٹنر کی میجر پنیلیٹی یعنی سروس سے تیزی برائے 3 سال دے گی (Lower Stage) نیز دوران برخاستگی تنخواہ و دیگر فوائد سے محروم رکھا گیا۔

پس منظر: یہ کہ وقوعہ کی رات (2012-4-14) اور (2012-4-15) کو میں سنٹرل جیل بنوں میں وارڈر (PBS-5) تعینات تھا اور اس رات میری ڈیوٹی جیل کے اندر بیرونی گشت کی تھی۔ کہ اچانک باہر سے سینکڑوں عسکریت پسند طالبان، آتشیں اسلحہ، ہینڈ گرنڈ و بموں سے مسلح حملہ آور ہوئے۔ میں نے جوابی فائرنگ شروع کی۔ اور عسکریت پسندوں کو نقصان پہنچانا کی بھرپور کوشش کی لیکن رات کی تاریکی کی وجہ سے اُس کے نقصان کا ہمیں علم نہ ہو۔ اور وجہ کی ایویوشن زیادہ دیر تک مقابلہ نہ کر سکا اور مجبوراً خود کو سرکاری اسلحہ کی حفاظت کے خاطر اپنے آپ کو محفوظ کیا۔ چونکہ رات کی تاریکی اور (بادوران لوڈ شیڈنگ) جیل پر حملہ آور ہوئے۔ اس حملے میں انہوں نے جدید ہتھیاروں / آتشیں اسلحہ، راکٹ لانچر سے شیلنگ کی، بم بلاسٹ کئے۔ جیل کے فرنٹ لائن بشمول (بیرونی گیٹ اور ڈیوٹی گیٹ) جیل کے دونوں گیٹوں کو اڑانے کے بعد تیزی سے جیل میں اندر داخل ہوئے۔ اور ساتھ ساتھ افسران بالا نے تمام ضلعی انتظامیہ، پولیس اور دیگر سیکورٹی اداروں سے مدد طلب کی۔ جو کہ جیل سے کچھ فاصلے پر کیمپ ہوئے۔ بار بار کال کرنے کے باوجود کوئی ہماری مدد کیلئے پیش قدمی نہ کر سکا۔ اور بالا آخر بیرونی قوت اپنے مقاصد میں کامیاب ہو کر (02) گھنٹے کاروائی کے بعد واپس ہوئے، جیل کو نقصان پہنچایا۔ اور دہشت گرد قیدی عدنان رشید سمیت دیگر خولا تیان و قیدیان کو بطور ڈھال اپنے ساتھ لے گئے۔

مذکورہ واقعہ سے متعلق حقائق جاننے اور ذمہ داری کیلئے صوبائی حکومت نے ایک پانچ رکنی کمیٹی تشکیل دی اور ہدایت دی کہ جلد از جلد اس معاملے میں وہ اپنی انکوائری رپورٹ پیش کریں۔ لہذا تشکیل شدہ کمیٹی نے مطلوبہ رپورٹ تیار کر کے صوبائی حکومت کو پیش کی۔ جس میں انہوں نے حملے میں نقصانات، ذمہ داران سے متعلق اپنی رپورٹ پیش کی۔

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

سروس ٹریبونل میں اپیل کرنے پر سائل کی ڈسمیسل آڈر کو ختم کر کے بحال کیا گیا تاہم اسپین از سر ریگولر انکوائری کا حکم صادر فرمایا

Attest

کیا۔ نقل فیصلہ سروسز عدالت مصدرہ 014 مسمولہ-1 لف ہے۔

26 28

یہ کہ عدالتی فیصلہ کی روشنی میں انکواری لی گئی جس میں سائل پشتر کو چارج شیٹ دیا گیا۔ اس چارج شیٹ کا مفصل جواب سائل نے دیا۔ انکواری آفیسر نے کسی جرم کو ثابت کئے بغیر سائل پشتر کے خلاف (Major Penalty) کی سفارش متعلقہ حکام کو پیش کی جس کی روشنی میں سائل کو آخری شوکا ز نوٹس دیا گیا اور ساتھ ہی انکواری کی کاپی بھی لف کی۔ یہ کہ مجاز اتھارٹی کو بہتر طریقے سے پوزیشن واضح کرنے کیلئے سائل نے (Annotated Form) میں جواب پیش کیا۔ اس ضمن میں چارج شیٹ اور شوکا ز نوٹس کا جواب علی الترتیب شامل بطور مسولہ 2, 3 ہیں۔ جو پشتر ہذا کا لازمی جواز کے طور پر لف ہے۔

یہ سائل پر کو الزام ثابت کئے بغیر ویسے ہی بڑی سزا یعنی (Major Penalty of reduction to lower stage for maximum the period of three Years.) دی گئی نیز عبوری عرصہ دوران ملازمت سے برخاستگی کے فوائد سے محروم رکھا گیا۔

حقائق:

- ۱۔ یہ کہ چارج شیٹ میں لگائے گئے تمام الزامات میں سے کوئی الزامات ثابت کئے بغیر سائل پشتر کو میجر پنلٹی دی گئی جو کہ ظلم و نا انصافی کے زمرے میں آتی ہے۔
- ۲۔ یہ کہ ہائی لیول تشکیل شدہ پانچ رکنی کمیٹی کی رپورٹ کی روشنی میں اصل ذمہ دران، پولیس، ضلعی انتظامیہ کمشنر بنوں ڈویژن و دیگر اعلیٰ حکام اور قانون نافذ کرنے والے اداروں کے ذمہ دران کو نہ صرف محکمانہ کاروائی میں بریت دی بلکہ انہیں ترقیاں بھی دی گئی جبکہ سائل پشتر کیساتھ بے گناہ ہونے کے باوجود نا انصافی کی گئی۔
- ۳۔ یہ کہ سائل پشتر کو امتیازی سلوک کا نشانہ بنایا گیا۔
- ۴۔ یہ کہ سنٹرل جیل بنوں پر عسکریت پسندوں کے یلغار کے بعد بالکل اس طرح کا حملہ سنٹرل جیل ڈیرہ اسماعیل خان پر ہوا جس میں حملہ جیل عملہ بشمول سپرنٹنڈنٹ جیل بری کیا گیا۔

استدعا اپیل:-

ہذا پشتر ہذا التماس ہے کہ سائل پشتر منظور فرماتے ہوئے سائل کو بری فرمایا جائے اور ساتھ ہی جملہ سروس فوائد بدوران سروس برخاستگی دینے کا حکم صادر فرمائیں۔

المعارض

سائل پشتر امین اللہ وارڈ سنٹرل جیل بنوں
Attested

No. 834

For Insu
Stamps RGL21551203
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Rs. Ps. 80 3

received a registered*
addressed to

Signature of Receiving Officer
Insured for Rs. (in figures)

Date Stamp

*Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary
(in words)

insured for Rs.

Ps.

Weight (in words)

Kilo Grams

Name and
address
of sender

ADVOCATES GENERAL ADVISORS
STUART & LAROCKE LAW ASSOCIATES
1811 Fourth Floor, 18000 Plaza, Suite 1800, Dallas, Texas 75241
Phone: 214.750.1111 Fax: 214.750.1112

Pirzada Muhammad Tayab Amin

M. Tayab

YASIR SALEEM
Advocate, High Court, Peshawar

Farhad Ur Rahman

Farhad

Accepted subject to the terms regarding fee

[Handwritten signature]

IN WITNESS whereof I have here to signed at _____ day to _____ the year _____
or his nominee, and if awarded against shall be payable by means
held responsible for the same. All costs awarded in favor shall be the right of the counsel
case may be dismissed in default. If it be proceeded ex-parte the said counsel shall not be
Court may authorized agent shall inform the Advocate and make him appear in Court. If the
PROVIDED always, that I/we undertake at time of calling of the case by the
under or by virtue of this power or of the usual practice in such matter.
AND I/we hereby agree to fully and confirm all lawful acts done on my/our behalf
respects, whether herein specified or not, as may be proper and expedient.
AND to all acts legally necessary to manage and conduct the said case in all
powers.

layer may be appointed by my said counsel to conduct the case who shall have the same
authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other
employee any other Legal Practitioner authorizing him to exercise the power and to
receive payment of any or all sums or submit for the above matter to arbitration, and to
or order and to conduct any proceeding that may arise there out and to apply for and to
penna and to apply for and get issued and arrest attachment or other writs or sub-
of documents, depositions etc. and to apply for and issue summons and other writs or copies
or any matter arising there from and also to apply for and receive all documents or exhibits
exhibits, (Compromises or other documents whatsoever, in connection with the said matter
and answer in the above Court or any Court to which the business is transferred in the
above matter and is agreed to sign and file petitions. An appeal, statements, accounts,
AS my true and lawful attorney, for me in my name and on my behalf to appear, plead, act

Farhad Ur Rahman & Pirzada Muhammad Tayab Amin Advocates

YASIR SALEEM

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

Appeal/Revision/Suit/Application/Petition/Case No. 1325 of 2019
Fixed for

For
Plaintiff
Appellant
Petitioner
Defendant
Respondent
Accused

VERSUS

Govt of KPK

Amir ul Uloom

POWER OF ATTORNEY
In the Court of *Judicial Magistrate*

30
28

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

In the matter of

Service Appeal No. 1325 of 2019

**Amin Ullah S/O Khna Sardar, Warder attached to Central Prisons Bannu
(APPELLANT)**

VERSUS

1. Secretary to Government of Khyber Pakhtunkhwa, Home & T.As
Department Peshawar
2. Inspector General of Prison Khyber Pakhtunkhwa Peshawar.
3. Superintendent Circle Headquarters Prison Peshawar.
4. Superintendent, Central Prison Bannu..... **Respondent**

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8-	Office Order NO. 1082 dated 16-04-2012	F	15

DEPONENT

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

In the matter of

Service Appeal No. 1325 of 2019

Amin Ullah S/O Khan Sardar, Warder attached to Central Prisons Bannu

(APPELLANT)

VERSUS

1. Secretary to Government of Khyber Pakhtunkhwa, Home & T.As Department Peshawar
2. Inspector General of Prison Khyber Pakhtunkhwa Peshawar.
3. Superintendent Circle Headquarters Prison Peshawar.
4. Superintendent, Central Prison Bannu..... **Respondent**

PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 1 to 5.

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 has not come to this Honourable Court with clean hands.
- iv. That the appellant is estopped by his own conduct to bring the present appeal.
- v. That the appellant has no locus standi.
- vi. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

ON FACTS

ON FACTS

- 1- No Comments.
- 2- In response to para No. 2 of the appeal, the appellant at that unfortunate night showed cowardice and lethargic with regards to his duties, due to his lethargic conduct, a number of militants attacked on Jail who were equipped with heavy weapons and the result of such attack's a number of condemned / convicted prisoners were escaped from Jail. He was duty bound to show resistance and to fire confront to the militants attacker's but the same was not done which is a serious misconduct on the part of his duties. During such attacks a numbers of watch and ward staff were sustained serious injuries and his name was not

included therein inspite of the fact that he was on duty in that night (**list of watch & ward staff who were on duty at that night are Annexed As-"A"**).

- 3- Pertains to record, hence needs no comments.
- 4- Incorrect and not admitted, the allegations which is levelled against the appellant was fully proved against him. He failed to perform his duties efficiently and showed cowardice and negligence to fire confrontly to the militants. He has been also served with proper show cause notice and charge sheet and he could not defend the allegations which is levelled against him. (**Show cause notice and charge sheet are Annexed "B"**)
- 5- In response to para No. 5 of the appeal it is correct that he has been awarded major penalty of dismissal from service after thoroughly probe of the incident and proper inquiry. (**Inquiry Report is Annexed "C"**)
- 6- Admitted & correct.
- 7- Admitted & correct.
- 8- Detail answer is given in para No. 4 of the factual objection.
- 9- In the light of de-novo inquiry by the order of honorable Tribunal proper opportunity of personal hearing was given to appellant. He failed to defend his own stance and awarded the major penalty as he was involved in such like heinous act of offence.
- 10- Detail answer is given in para No. 4 of the factual objection.
- 11- In response to para No. 11 full opportunity of defense was given to him and all proceedings which was initiated against him was according to law.
- 12- Pertains to record, hence needs no comments.
- 13- The punishment awarded to appellant is legal an was based o facts and circumstances of the case.

GROUND: -

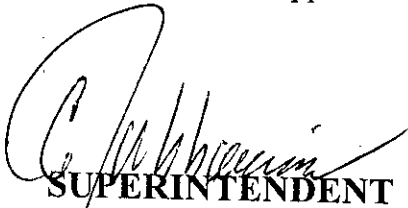
- a. That the appellant fully treated according to Law and no discrimination was committed by the respondents.
- b. incorrect and not admitted all codal formalities are completely followed during the whole proceedings.
- c. Incorrect and not admitted detail answer is given in para No.9 of the factual objections..
- d. incorrect and not admitted. Answer of this para is given in para "B" of the objections on grounds.
- e. incorrect and not admitted. The assertions levelled by the appellant is totally baseless. He was duty bound to be vigilant while performing duties in such like high security prisons, but he was


found indolent and negligent towards his duties and showed cowardice to fire actively and confrontly to the militants being equipped with heavy weapons. Due to his lethargic conduct the escape of numbers of Prisoners were possible so why could not he can be held responsible for the incident occurred at that night.

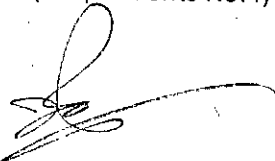
- f. incorrect and not admitted. Detail answer is given para No. 9 of the factual objections.
- G. incorrect and not admitted. Answer of this para is given in para No. "E" of objection on grounds.
- H. No Comments.

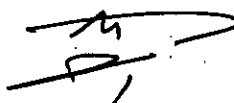
PRAYER

It is most humbly prayed that on the acceptance of this instant reply in the above service appeal on behalf of respondents the appeal may kindly be dismissed being devoid of law and merit.


SUPERINTENDENT
CENTRAL PRISON BANNU
(Respondents No.4)


SUPERINTENDENT
HEADQUARTER PRISON PESHAWAR
(Respondents No.3)


INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No.2)


SECRETARY TO GOVERNMENT
KHYBER PAKHTUNKHWA
HOME & T.A.S DEPARTMENT
PESHAWAR.
(Respondents No.1)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Appeal No. 1325/2019

Amin Ullah S/O Khan Sardar, Warder Attached to Central Prisons Bannu

(Appellant)

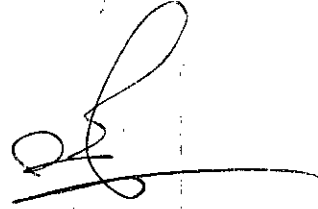
VERSUS

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

(Respondent)


AFFIDAVIT


We the 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 that no material facts have been kept secret from this honourable court.

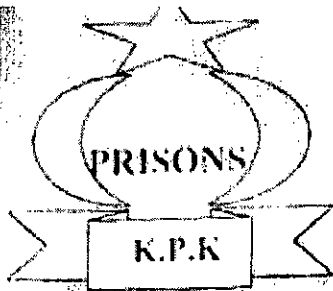


**SECRETARY
HOME & TAS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No.01)**

**INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No.02)**


**SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON PESHAWAR
(Respondent No.03)**


**SUPERINTENDENT
CENTRAL PRISON BANNU
(Respondent No.04)**



THE
SUPERINTENDENT
CENTRAL PRISON BANNU
NO. 1483 /
DATED. 17/05/2012

TELE/FAX: 0928-633327

To

The Inspector General of Prisons,
Khyber Pakhtun Khwa Province, Peshawar.

Subject:- INFORMATION.

Memo:

Reference telephonic talk of your goodself with the undersigned
on 16-5-2012.

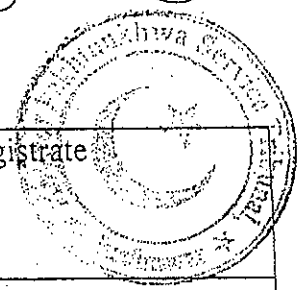
The following watch and ward staff duly equipped with arms
were performing duties during the night of attack on Jail on 14-15/4/2012, as
noted against their names as under:-

- | | | |
|-----|-------------------------------|------------------------------------|
| 1- | Warder Mir Laiq | Outer Phattak (from 12 to 3 night) |
| 2- | Warder Sayed Khan | -do- |
| 3- | Warder Hafiz Mir Hussain Shah | Front Sentry |
| 4- | Warder Abid Ullah | Sentry Inside Main Gate |
| 5- | Warder Asif Ali Shah | Watch Tower # 1 |
| 6- | Warder Naseeb Gul | Watch Tower # 2 |
| 7- | Warder Raqibaz | Watch Tower # 3 |
| 8- | Warder Muhammad Ibrar No.1 | Watch Tower # 4 |
| 9- | Warder Muhammad Saqib | Sentry Superintendent Bungalow |
| 10- | Warder Gul Mir Dali | Compound Sentry |
| 11- | Warder Amin Ullah | Outer Round Officer |

This is submitted for information and further necessary action
as desired please.

727
594-595
PPR
R-202
Ward Towers
duty's
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R-95
212
Chang
R-4154
PPR
728 HIT man
SUPERINTENDENT
CENTRAL PRISON BANNU
EID G

Annex 'B' 6



Sr. No.	Date of order/proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
	01.09.2015	<p><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</u></p> <p>Service Appeal No. 4842013</p> <p>Aminullah Versus Government of Khyber Pakhtunkhwa through Secretary Hom & T.A Deptt. Peshawar etc.</p> <p><u>JUDGMENT</u></p> <p><u>PIR BAKHSH SHAH, MEMBER.-</u> Counsel for the appellant (Mr. Ijaz Anwar, Advocate) and Government Pleader (Mr. Ziaullah) with Sheryar, ASJ for the respondents present.</p> <p>2. On the night between 14th and 15th April, 2012 at about 1.30 AM militants reached in about 25 vehicles of different types and attacked the Bannu Central Jail. The militants were armed with automatic weapons. They broke open the main outer and inner gates using RPG and fired at boundary wall watchtower. Having secured entrance, they attacked barracks, broke open locks by firing and asked 382 prisoners to flee and move towards the nearby ping hills in the Frontier Region area. In this incident, the Government of Khyber Pakhtunkhwa vide notification No.SO(Com/Eng)/HD/1-40/2012 dated 16.4.2012 constituted a five numbers enquiry committee headed by Dr. Ehsan-ul-Haq, then Director, Reform Management & Monitoring Unit, Chief Secretary's Office, Khyber Pakhtunkhwa, The committee submitted its elaborate report comprising of about 19 pages. To make the findings of this enquiry report as basis for departmental proceedings</p>

ATTACHED
Khyber Pakhtunkhwa Service Tribunal
Peshawar

Attested

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

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

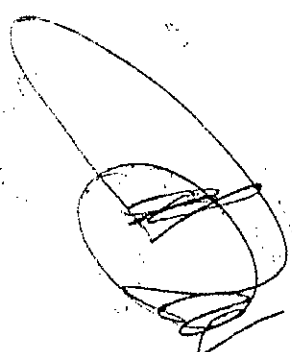
3. The Departmental ^{appeals} also failed, hence these appeals. In view of common legal issues of these appeal, the Tribunal would like to decide all these appeals by way of this single judgment.

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

Attested

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



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

Attested



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

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

[Signature]
Attested

Annex "F" (19)

DEPARTMENTAL / INQUIRY PROCEEDINGS AGAINST MR. AMINULLAH, THE THEN WARDER, CENTRAL PRISON, BANNU PRESENTLY POSTED AT CENTRAL PRISON, MARDAN.

Background:

The Competent Authority i.e. Hon'able Chief Secretary, Khyber Pakhtunkhwa was pleased to appoint the undersigned as Inquiry Officer under Rule-10 (1) (a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, which was conveyed vide Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Peshawar order No. SO (Com/Enq)/HD/1-10/2012 dated 23.01.2017 with the mandate to inquire into the following allegations levelled against Mr. Aminullah, the then Warder, Central Prison, Bannu presently posted at Central Prison, Mardan as reflected in Charge Sheet / Statement of Allegations:-

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

Proceedings:

In pursuance of the direction contained in Para-4 of the Charge Sheet, the accused Official Mr. Aminullah submitted his written defense dated 03.02.2017 (copy attached as Annexure-A). The accused Officer was also summoned to appear before the undersigned on 25.02.2017 at 09:30 AM for inquiry proceedings. Mr. Abdul Raziq, Assistant Superintendent, Central Prison Bannu also attended the proceedings as departmental representative as authorized by Superintendent, Central Prison Bannu vide letter No. 996 dated 24.02.2017 under the directive of the Inspector General of Prisons, Khyber Pakhtunkhwa. The accused Officer attended the office of the undersigned on 25.02.2017.

Statement of the accused Official recorded who stated on oath that he was serving in the Prisons Department since 28.02.2006 as Sepoy / Warder and remained posted at Bannu Jail since 2007 to 2012 (till the incident) while responding the questions asked as under (Original questions and answers are attached as Annexure-B):-

Q 1: He was deployed as duty Outer Round Officer duly armed between the night 14/15.04.2012 when terrorists attacked on Bannu Jail and succeeded in fleeing 381 prisoners of highly sensitive nature. He did not open fire on them and committed a coward act. His cowardice act provided an opportunity to attackers in escaping the high profile convicted prisoners. Explain your position with regard to this negligent/cowardice act?

Ans: It is correct that at the time of incident, he was performing the duty of Outer Round Officer duly armed with Kalashnikov with magazine having 30 rounds. His duty started at 12:00 hours till 03:00 AM. Assumed his duty at 12:00 hours, his responsibility was to check the sentries i.e. Main Gate, Compound Sentry and Sentries at the residence of Deputy Superintendent. Sentry at Dehri in Main Gate, Watch Tower No. 1, 2, 3 & 4. He checked all the sentries performing duties at appointed places who were duly armed having Kalashnikov with one magazine and 30 rounds. When he was checking tower No. 1 (front) Sentry, it was time of 01:15 AM, he heard firing sound from the Main Gate, which was being made from the attackers who were using heavy equipment. He inquired Warder Asif Ali Shah about the firing direction but he did not respond. Mr. Asif Ali Shah started aerial firing towards west, he assessed that there was certain attack. he also started firing and exhausted 30 rounds there and then. Immediate to this, terrorists entered from the outer Phattak by shouting the slogans of Allah o: Akbar in jail premises. Because the cartridges provided were used and to save the rifle/himself, he took refuge in a drain and after 10/15 minutes, while crawling camouflaged himself in a nearby bush.

Attested

(18) (20)

located at a distance of 10-15 feet. Till the leaving of attackers remained camouflaged and came out after the incident.

Q.2: What were his duties as Outer Round Officer? When he realized that there was apprehension of attack, did he inform Superintendent/Deputy Superintendent and where he met them?

Ans: His duty was to check the sentries with reference to their duty points and to keep them alert. Since, he was not having any communication instrument therefore, he could not inform the seniors. At 03:15 AM after the attackers succeeded in their mission, he left the duty point. Out of Dehri/Main Gate, he met Superintendent Jail who was accompanied by 3 unarmed warders. In the meantime, the Pak Army and Elite Force personnels reached. He alongwith 2-3 sentries, took 3 wounded sentries in ambulance to Civil Hospital, Bannu who got injuries due to bomb bashes.

Q.3: Did Government provide bullet proof jackets to the sentries? Did he ever check those?

Ans: No such facility was provided even the 5 number FRP armed personnel on duty were having no bullet proof jackets.

Q.4: Did he ever perform the duty as Outer Round Officer prior to this as skilled / expert personnel can perform this duty better? Was any other person performing this duty besides him?

Ans: He performed this specific duty first time and no one other was assigned this duty at the night of the incident.

Q.5: Did he see Jalat Khan NDO at that night, was he present on duty at the time of unfortunate incident and if he was on duty what was his duty?

Ans: Jalat Khan was the night duty officer whose duty was from closing of prisoners to opening of prisoners in the next morning. It was his duty to check the sentries and prisoners. His (Aminullah) duty was from 12:00 hours to 03:00 AM and during his duty he did not meet Jalat Khan. It is correct that when he and Superintendent met after the incident outside Dehri, he did not see Jalat Khan. It is also correct that he did not see Mr. Riaz Khan, Assistant Superintendent Jail.

Q.6: In his statement, he did not mention Watch Tower No. 4. Did he check security sentries?

Ans: As soon his duty started, he checked Watch Tower No. 4 where an armed constable who performs surveillance of residence of Deputy Superintendent and tower, was present.

Q.7: Did he return empties to Koath Jamadar and whether the ammunition issued in his name was omitted?

Ans: He deposited AK-47 Rifle and empty magazine with Koath Jamadar.

Q.8: In his opinion, how many security personnel duly armed were performing duty properly and what was their duty scenario at the time of occurrence of incident? How many others having no arm doing what order duty?

Ans: In his view 150/160 personnel would be on the strength and out of them 11 personnel were duly armed and remaining would be inside the Jail premises, their detail is not known to him.

Q.9: At the time of occurrence he was performing duty as Outer Round Officer, was he possessing any light? From 1200 hours till taking place of incident, how much patrolling and whistles he make / used?

Attested

(21) (A)

Ans: He completed one round and for second round he was intending to make, at Tower No. 1 the situation averted into panic. He was having no light system and Government has not provided any such type of facility torch, emergency light etc.

Q.10: Was there any communication linkage between the duty points of Warders? What was his duty / responsibility as Round Officer?

Ans: There was no communication facility between various Tower duties points and official to pass on any message / information. As per modus operandi, the Outer Round Officer through sound convey message to others.

Q.11: Was light available at the time of occurrence? Was there any search light available on Watch Tower and after how much time the load shedding started?

Ans: The light went off at 12:30 AM while he was on round duty. Till 12:30, all lights were on.

Q.12: Under Prison Rules-594/595, Warders when feel external threat they are bound to alert other companions to raise alarm. As Outer Round Officer, it was imperative for him to raise alarm and has whistle facility but he failed to perform his obligation as due to his negligence and slackness the attackers easily entered in Jail and succeeded in getting freed their highly wanted criminals from the Jail.

Ans: Since the Government did not provide any whistle, alarm / light facility, therefore, he did not make any such arrangement.

Heard and accepted.

Findings / Recommendations:

1. Under the Pakistan Prison Rules, he was responsible to run the affairs of the Central Prison, Bannu strictly in accordance with the laid down provisions but due to his cowardice approach, he failed to avert the Jail attack by confronting the militants.
2. His duty was to alert the others and to confront the attackers, he did not do so and saved his life by hiding himself in the bushes.
3. He could not defend his charge levelled against him as he was having no concrete evidence in support of his contention.
4. He was not eligible for the post of Outer Round Officer because he was not having the required skill / expertise to perform this responsible duty.
5. He could not share the information of attack in time with the seniors as per code.
6. He failed even to arrange a penny cost whistle / torch to handle the untoward situation in dark.
7. It is quite astonishing that 150 miscreants were coming for attack / break the Jail and allegedly he fired 30 rounds but no one was hit. Similarly, empty shells were not deposited with armory (Koath Jamadar). He stated that 3/4 officials were allegedly injured but no official documents from the Hospital side was produced by the accused official nor by the authorized Rep. of Bannu Jail Authority. The official violated the mandatory Rule-594 the gate-keeper shall, as soon as he hears the whistle blow continuously or receives information of any prisoner having escaped or attempting to escape or of an out-break or disturbance having taken place or being imminent, order the sentry to sound an alarm, and shall send immediate information to the Deputy Superintendent and the Superintendent, Rule-595 the Sentry at the Main Gate shall sound the alarm by loudly ringing the alarm bell when ordered to do so by the gatekeeper or on his own initiative if he has reason to believe that an outbreak or disturbance, an escape or an attempt to escape is occurring or is about to occur and Rule-1154 sub clauses (d) not to leave

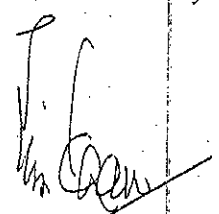
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his post without regular relief upon any pretext whatsoever, (e) not to allow any person to approach his post after dark, without challenging, (g) challenging on a dark night, on hearing voices or the approach of footsteps, if he receives no answer, or an unsatisfactory answer, to call the officer incharge of the picket, or, if necessary, give the alarm, (i) not to allow any person to crowd around him, (j) if he sees a person attempting to escape, to call on him to stand, and if he refuses to do so and there is no superior officer present, to fire on the prisoner, provided, he cannot otherwise prevent the escape, (k) if he is beyond call and has to raise the alarm, to fire a shot in the air as the signal for alarm and (l) if he sees any article in or near the jail likely to facilitate, escape, or if any unusual incident comes under his observation, at once report the matter to the officer incharge of the picket of Rule 1154 of Pakistan Prison Rules and Rules-1147 (a) render all assistance in his power in the management of the prison, the maintenance of order and discipline amongst warders and prisoners, the guarding and defending of the prison and all persons and property kept therein or belonging thereto against the use of criminal force by any person, (b) obey the orders of all officers superior to him in rank, (c) comply with all rules, regulations and orders regulating the duties which he is to perform and the manner in which he is to perform them.

8. The charges levelled against the accused official Mr. Aminullah the then Warder, Central Prison, Bannu presently posted at Central Prison, Mardan have been proved beyond any shadow of a doubt. He therefore, deservers imposition of major penalty under Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules-2011.



(Tasleem Khan)
Deputy Commissioner,
Haripur/Inquiry Officer

Attested

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سروس سٹریٹجی کے تحت
انٹرنل سروس کے لئے
Annex "G"

امین اللہ
(21)
(23)

SHOW CAUSE NOTICE

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

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

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

- (b) Inefficiency / misconduct.

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

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

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

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

Attested

(Muhammad Azam Khan)
CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.



[Handwritten signature]

Annex "I"

Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department.

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ORDER

No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I: WHEREAS, Amin Ullah Warder (BPS-05) of the Prisons Department, Khyber Pakhtunkhwa, was proceeded against under Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet served upon him.

AND WHEREAS, the competent authority i.e the Chief Secretary, Khyber Pakhtunkhwa appointed Mr. Tasleem Khan (PMS-BS18) Deputy Commissioner Haripur vide order No.SO (Com/Enq)/HD/1-40/2012 dated 23.01.2017 for conducting denovo formal proceedings against the above named accused.

AND WHEREAS, the inquiry officer furnished his findings according to which the charges leveled against the above named accused official stand proved.

AND WHEREAS, the competent authority granted opportunity of personal hearing to the accused under the rules.

NOW THEREFORE, the competent authority (the Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, the explanation of the accused official, findings of the inquiry officer exercising his powers under rule-3 read with Rule-14 (5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to award major penalty of "**Reduction to a lower stage in a time scale for a maximum period of three (03) years**" to the above named accused official.

The Competent Authority has further been pleased to order that the intervening period i.e from the date of dismissal from service on the basis of an earlier enquiry to the date of reinstatement in service (from 12-12-2012 to 20-01-2016) in respect of the official is hereby treated as extra ordinary leave (leave without pay).

Secretary to Government of Khyber Pakhtunkhwa
Home & Tribal affairs Department

Endst No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I:

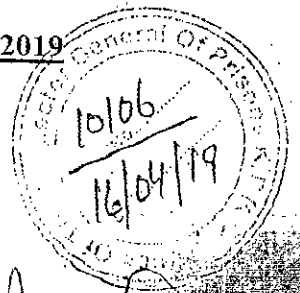
Dated 11.04.2019

C.c: -

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar
3. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
4. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
5. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
6. District Account Officer concerned.
7. Official concerned.

[Handwritten signature]
Attested

(Maqsood Hassan)



TELE: 0928: 633327

OFFICE OF THE SUPERINTENDENT
CENTRAL PRISON BANNU
No. 1082 /Dated 16/04/2012

To:

The Inspector General of Prisons,
Khyber Pakhtun Khwa Province Peshawar

PRISONS DEPARTMENT
Director General
I.G.
Officer

Subject:- **INFORMATION ABOUT WATCH AND WARD STAFF.**

Memo:

It is submitted that in the night between 14-15/4/2012, some unknown Taliban militants number in hundreds attacked this Jail at about 01:15 A.M and during the said attack, following watch and ward staff attached to this Jail sustained serious physical injuries as they were on their allotted duties on different duty points :-

1. Warder Sajid Khan
2. Warder Dost Wali (admitted in D.H.Q Hospital Bannu)
3. Warder Haneef Ullah -do-
4. Warder Hameed Khan -do-
5. Warder Abid-Ullah
6. F/Warder Mst: Gul Noor Zadi

A constable of F.R.P is also included in the injured guarding staff & he is also admitted in D.H.Q Hospital Bannu.

Submitted for information please.

16/4/2012
SUPERINTENDENT
CENTRAL PRISON BANNU



24/04/2012