SA 524/2017

18th July, 2023

01. Mr.Inayat Ullah Khan, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages in connected Service Appeal No. 516/2017, titled "Muhammad Jilani Versus Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", the appeal in hand is dismissed with cost. Consign. .

03. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of July, 2023.

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

Fazal Subhan PS

24th May, 2023

1. Learned counsel for appellant present. Mr. Muhammad Jan, District Attorney for respondents present.

2. One of us (Chairman) has already recused in almost similar matters i.e. pertaining to Bannu Jail Incident 2012, therefore, office is directed to place the same before a Bench of which the Chairman is not a Member. To come up for arguments on 21.06.2023 before D.B. P.P given to the parties.

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

*Mutazem Shah *

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 18.07.2023 before the D.B. Parcha Peshi given to the parties.

(Salah-ud-Din)
Member (J)

Naeem Amin

3rd Feb, 2023 Clerk of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

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

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman

22.03.2023 Learned counsel for the appellant present.

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

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

(Muhammad Akbar Khan)
Member (E)

11th Oct., 2022

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

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

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

10.11.2022

Counsel for the appellant present.

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

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

(Fareeha Paul)
Member (E)

(Rozina Rehman)
Member (J)

01.12.2022

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

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

(Fareeha Paul)
Member(E)

(Rozina Rehman)
Member(J)

24.01.2022 Learned counsel for appellant present. Mr. Suleman Khan Senior Instructor alongwith Mr. Kabir Ullah Khattak Additional Advocate General for the respondents present.

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

(Salah-Ud-Din)
Member (J)

17.02.2022 Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 10.06.2022 for the same as before.

Reader

10.06.2022 Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

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

(Fareeha Paul)
Member (E)

(Salah-ud-Din)
Member (J)

01.09.2022 Bench is incomplete, therefore, case is adjourned to 11.10.2022 for the same as before.

Reader

20.01.2021 Due to COVID-19, the case is adjourned for the same on 29.03.2021 before D.B.

READER

29.03.2021 The concerned D.B is not available today, therefore, the appeal is adjourned to 21.05.2021 for the same.

Reader

21.5.21 Due to covid-19, the case is adjourned to 9.9.21 for the same.

Reader

09.09.2021 Clerk to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for repsondetns present.

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

(Rozina Rehman)
Member (J)

Chairman

29.09.2020 Learned counsel for appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents is also present.

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

(Mian Muhammad)
Member (Executive)

(Muhammad Jamal Khan)
Member (Judicial)

18.11.2020 Appellant present in person.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

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

(Atiq ur Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

9.4.2020 Due to COVID19, the case is adjourned to 10/7/2020 for the same as before.

Reader

10.07.2020 Due to COVID-19, the case is adjourned to 03.09.2020 for the same.

Reader

03.09.2020 Mr. Inayatullah Khan, Advocate for the appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith representative of the department Mr. Suleman, Senior Instructor for the respondents are also present. Arguments heard. File to come up for order on 17.09.2020 before D.B.

(Mian Muhammad)
Member (Executive)

(Muhammad Jamal Khan)
Member (Judicial)

17.09.2020 The Bench which heard the arguments, is not available being on tour at Camp Court Abbottabad. Therefore, the case is adjourned to 29.09.2020 for the same, before proper D.B.

Reader

10.02.2020 Clerk to counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Sheharyar, Assistant Superintendent Jail, for the respondents present. Clerk to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the Hon'ble Peshawar High Court, Peshawar and cannot attend the Tribunal today. Adjourned to 13.03.2020 for arguments before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

13.03.2020 Counsel for the appellant present. Mr. Muhammad Jan, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 09.04.2020 before D.B.

Member

Member

01.08.2019 Counsel for the appellant and Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. Case to come up for arguments on 25.10.2019 before D.B.

Member Member

25.10.2019 Due to tour of the Hon'ble Members to Camp Court Abbottabad, To come up for the same on 10.12.2019 before D.B.

Reader

10.12.2019 Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Ziaullah, Deputy District Attorney for the respondents present. Adjourned to 10.02.2020 for arguments before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

29.04.2019 Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Clerk to counsel for the appellant seeks adjournment as counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 30.04.2019 before D.B.

Member Member

30.04.2019 Clerk of counsel for the appellant and Mr. Kabir Ullah Khattak, Additional AG for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned to 20.06.2019 for arguments before D.B.

(AHMAD HASSAN)
MEMBER

(M. AMIN KHAN KUNDI)
MEMBER

20.06.2019 Appellant absent. Learned counsel for the appellant absent. Mr. Kabirullah Khattak learned Additional Advocate General present. Adjourn. To come up for arguments on 01.08.2019 before D.B.

Member Member

30.10.2018 Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 04.12.2018.

Reader

04.12.2018 Clerk to counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment. Granted. To come up for arguments on 24.01.2019 before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

24.01.2019 Clerk to counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 08.03.2019 before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

08.03.2019 Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Clerk of counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available today. Adjourn. To come up for arguments on 29.04.2019 before D.B.

(M. AMIN KHAN KUNDI)
MEMBER

(M. HAMID MUGHAL)
MEMBER

15.05.2018 Appellant absent. Counsel for the appellant is also absent. However, clerk of the counsel for appellant present and seeks adjournment. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Adjourned. To come up for arguments on 01.08.2018 before D.B.

(Muhammad Amin Khan Kundi)
Member

(Muhammad Hamid Mughal)
Member

01.08.2018 Appellant absent. Learned counsel for the appellant is also absent. However, clerk of the counsel for appellant present and requested for adjournment. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Junaid Khan, Assistant for the respondents present. Adjourned. To come up for arguments on 24.09.2018 before D.B.

(Ahmad Hassan)
Member (E)

(Muhammad Hamid Mughal)
Member (J)

24.09.2018 Clerk to counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present. Clerk to counsel for the appellant made a request for adjournment. Granted. Case to come up for arguments on 30.10.2018 before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

16.11.2017 Counsel for the appellant and Addl. AG for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment for arguments. Granted. To come up for arguments on 12.12.2017 before the D.B.

Member Chairman

12.01.2018 Clerk of the counsel for appellant present and Mr. Zia Ullah, DDA alongwith Sohrab Khan, Assistant for the respondents present. Clerk of the counsel for appellant seeks adjournment as his counsel is not attendance today. Granted. To come up for arguments on 15.03.2018 before D.B.

Member Chairman

15.03.2018 Clerk to counsel for the appellant present. Mr. Muhammad Jan, learned Deputy District Attorney alongwith Mr. Suhrab H.C on behalf of respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not available. Adjourn. To come up for arguments on 15.05.2018 before D.B

(Muhammad Amin Kundi)
Member

(Muhammad Hamid Mughal)
Member

13.06.2017

Learned counsel for the appellant present. He argued that similar appeal No. 548/2017 titled "Ghulam Shabir Shah Versus Secretary Department and others" has already been admitted for regular hearing on 06.06.2017. He requested that the instant appeal may also be admitted for regular hearing.

In view of the orders in the above mentioned service appeal this appeal is also admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents. To come up for written reply/comments on 20.07.2017 before S.B alongwith service appeal No. 548/2017.

Chairman

04. 20 .07.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 28.08.2017 before S.B.

(Muhammad Hamid Mughal)
Member

28.08.2017

Counsel for the appellant present. Mr. Sohrab Khan, Junior Clerk alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Written reply on behalf of respondents submitted. Copy of the same also handed over to learned counsel for the appellant for rejoinder. Adjourned. To come up for rejoinder and arguments on 16.11.2017 before D.B.

(Muhammad Amin Khan Kundi)
Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 524/**2017**

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge or Magistrate
1	2	3
1	24/05/2017	The appeal of Mr. Taj ali presented today by Mr. Inayatuyllah Khan Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR 24/5/17
2-	25-5-17	This case is entrusted to S. Bench for preliminary hearing to be put up there on 13-6-17. CHAIRMAN

BEFORE THE PROVINCIAL SERVICES TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal no. 524/2017

Taj Ali (Head Warder BPS-7) .....Appellant

Versus

Secretary Homes and Tribal Affairs Department Khyber Pakhtunkhwa Peshawar & others.....Respondents

INDEX

S. #	Description of documents.	Annexure	Pages
1.	Ground of Appeal		1-2
2.	Affidavit		3
3.	Copy of reinstatement order	A	4-5
4.	Copy of judgment	B	6-15
5.	Copy of Department Appeal.	C	16
6.	Wakalatnama		17

Petitioner

Through

INAYATULLAH KHAN
Advocate, High Court
Peshawar
L.L.M (U.K)
Cell: 0333-9227736

Dated: 23.05.2017

BEFORE THE PROVINCIAL SERVICES TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal no. 524/2017

Taj Ali (Head Warder BPS-7) .....Appellant

Presently working at Dist Jail Haripur.

Versus

1. Secretary Homes and Tribal Affairs Department Khyber Pakhtunkhwa Peshawar.
2. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
3. Superintendent Head Quarters Prison Peshawar.

.....Respondents

APPEAL U/S 4 OF THE NWFP SERVICES TRIBUNAL ACT 1974 FOR GRANT OF BACK BENEFITS/ARREARS OF PAY IN THE LIGHT OF A CONSOLIDATED JUDGMENT DATED 18.12.2015 WHEREBY THE APPELLANT WAS REINSTATED INTO SERVICE BY THE RESPONDENT NO.2 WITHOUT GRANTING BACK BENEFITS/ ARREARS OF PAY.

Respectfully Sheweth:

1. That the appellant was reinstated in service vide order No.Estb/Ward-/Orders/1711/- Dated 26.01.2017, by the respondent No.2 in the light of a consolidated judgment dated 18.05.2015 passed by this Hon'ble Services Tribunal.. (Copy of reinstatement order is attached as annexure-A).

2. That the appellant preferred service appeal No.503/2011before the PST which was allowed vide judgment dated 18.12.2015 and the punishment of dismissal was set aside which was converted into stoppage of 3 increments for 2 years. (Copy of judgment is attached as annexure-B).

Filedto-day
Registrar
24/5/17

3. That the appellant was reinstated in service by the department vide order No.Estb/Ward/Orders/1711/- dated 26.01.2017, without grant of back benefits/ arrears of pay from the date of dismissal i.e. 12.01.2011 to 18.12.2015 which is 4 years, 11 months 6 days.

1. That the appellant preferred his Department Appeal dated 22.02.2017 for grant of back benefits/ arrears of pay to the respondent No.1 but the same had not been responded despite lapse of statutory period of 90 days hence files this appeal before this Hon'ble Tribunal on the following amongst other grounds. (Copy of Department Appeal is attached as annexure-C).

GROUNDS

A. That the Impugned order dated 12.01.2011 was set aside by the Tribunal, therefore, the appellant is entitled to full back benefits/ arrears of pay from 12.01.2011 to 18.12.2015.

B. That the appellant during the period of dismissal from service did not join any profitable service anywhere, therefore, the ***intervening period from the date of dismissal from service i.e. 12.01.2011 to the date of reinstatement i.e. 18.12.2015 shall be treated as leave of the kind due.***

C. That the appellant was reinstated in service by respondent No.2 ***without grant of back benefit*** which is a violation of various rulings of the August Supreme Court of Pakistan.

D. That it is pertinent to mention that the Hon'ble provincial Services Tribunal did not withheld the back benefits/ arrears of pay vide judgment dated 18.12.2015 therefore, withholding of back benefits by the department is against the spirit of law.

Keeping in view what has been stated above the appellant may kindly be granted back benefits from 12.01.2011 to 18.12.2015 & the intervening period may kindly be treated as leave of its kind due.

Any other relief not specifically asked for and to whom the appellant found entitled may also be granted.

Appellant

Through

INAYATULLAH KHAN
Advocate, High Court
Peshawar
L.L.M (U.K)

Dated 23.05.2017

BEFORE THE PROVINCIAL SERVICES TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Taj Ali (Head Warder BPS-7) .....Appellant

Versus

Secretary Homes and Tribal Affairs Department Khyber Pakhtunkhwa Peshawar & others.....Respondents

AFFIDAVIT

I, Taj Ali (Head Warder BPS-7), do hereby solemnly affirm and declare on oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

تاج علی
Deponent

Identified by:

INAYATULLAH KHAN
Advocate, High Court
Peshawar.
L.L.M (U.K)

Khalid Mehmood Advocate Attested Oath Commissioner Peshawar High Court

Annex- "A" 4

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

No.Estb/Ward-/Orders/ 1711 /-
Dated 26-01-2017 /-

ORDER

Consequent upon conditional re-instatement in service /restoration in the cadre concerned vide Government of Khyber Pakhtunkhwa Home and T.As Department Notification No.2/3/ SO(Prisons)HD/10 dated 02-11-2016 and corrigendum of even number dated 19-01-2017 , the following postings/transfers are hereby ordered in the public interest:-

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

Note

i. All the officers/officials shall immediately join their new place of posting and compliance report be submitted accordingly.

ii. Government of Khyber Pakhtunkhwa has already filed CPLA in the August Supreme Court of Pakistan against the judgement of learned Service Tribunal dated 18-12-2015, therefore, officers/officials mentioned above shall not be granted pre-mature retirement till the final decision by the August Supreme Court of Pakistan.

-Sd-

INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

5

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406   091-9213445

No.Estb/Ward-/Orders/________________/-

Dated________________________/-

ENDST;NO. 1712-17 /,WB

Copy of the above is forwarded to :-

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

   For information and necessary action. A copy of Home Deptt; Notification/ Corrigendum referred to above is enclosed herewith.
4. The District Accounts Officers concerned for information.
5. Officers/officials concerned .
6. Incharge Court Cases Prisons Inspectorate for information and with the direction to persue the case of early hearing with the quarter concerned.

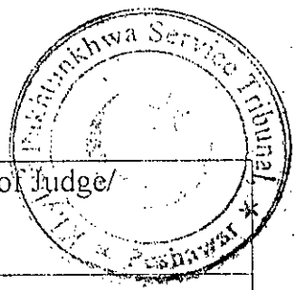
(FAYYAZ ALI SHAH) 26.1.2017.
ADDL; INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR .

CENTRAL PRISON SUPERINTENDENT 343 30/1/17

1708 /PB

30/1/17

Annex: "B" 6



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.		KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
		Service Appeal No 691/2011, Abdul Hakeem Khan & 19 others Vs. the Provincial Govt. through Chief Secretary, Peshawar etc.
		JUDGMENT
	18.12.2015	PIR BAKHSH SHAH, MEMBER.- Counsels for the appellants (M/S Muhammad Asif Yousafzai, Saadullah Khan Marwat and Ijaz Anwar, Advocates) for the respective appellants and Sr. Government Pleader (Mr. Usman Ghani) with Sheryar, ASJ for the respondents present.
		2. Appellants, 20 in number, are employees of the Prison Department. On account of escape of two condemned prisoners from the Central Prison, Bannu, they were proceeded against departmentally and punished. Their departmental appeals were also rejected. The instant separate service appeals bearing No. 495 to 506, 584 to 589, 631 and 691 of 2011 under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.
		3. The incident of escape took-place on the night between 21st and 22nd September, 2009. The time according to the enquiry report was between 12.00 night to 3.00 AM. The matter was preliminary enquired into by a two members committee comprising of Superintendent Central Prison.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

S.No.	Appeal No. Name of appellant	Designation	Punishment
1.	495/2011, Muhammad Shakeel,	Ex-Warder	Dismissed.
2.	496/2011, Muhammad Jelani	Ex-Warder	"
3.	497/2011, Hafizullah	Ex-Warder	"
4.	498/2011, Gul Shah Wali Shah	Ex-Warder	"
5.	499/2011, Barkat Ali	Ex-Warder	"
6.	500/2011, Ghulam Shabir Shah	Ex-H/Warder	"
7.	501/2011, Asmatullah	Ex-Warder	"
8.	502/2011, Yaseen Ullah	Ex-Warder	"
9.	503/2011, Taj Ali Khan	Ex-H/Warder	"
10.	504/2011, Irfanullah Khan	Ex-Warder"	
11.	505/2011, Samiullah	Ex-Warder	"
12.	506/2011, Sher Ahmad	Ex-Warder	"
13.	584/2011, Muhammad Rauf,	Asstt/Supdt	"
14.	585/2011, Saadullah	Ex-Warder	"

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

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

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

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

6. Arguments heard and record perused.

7. After a careful perusal of the record, this cannot be denied that enquiry report of the fact finding enquiry committee is comprehensive and full of substance unlike the enquiry report of the departmental regular committee which was found deficient in some important aspects. For example.

i. This enquiry report has failed to specify and differentiate in the roles and magnitude of negligence of each official

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

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

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

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

ANNOUNCED
18.12.2018

Sd/- Pir Bakhsh Shah
Member

Sd/- Abdul Latif,
Member

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application
Number of Words
Copying Fee
Urgent
Total
Name of Copyist
Date of Completion of Copy
Date of Delivery of Copy

Annex = C 16

To

The Inspector General of prison
Khyber Pakhtunkhwa Peshawar

Subject: **DEPARTMENTAL APPEAL FOR GRANT OF BACK BENEFITS/CONSEQUENTIAL RELIEF.**

1. That the undersigned was dismissed from service vide the impugned order dated 12.01.2011.

2. That the appellant preferred service appeal No. 503 /2011 before the PST which was allowed vide judgment dated 18.12.2015 and the punishment of dismissal was set aside and converted into stoppage of 3 increments for 2 years.

3. That the appellant was reinstated in service by the department vide order No.Estb/Ward/Orders/1711/- dated 26.01.2017, without grant of back benefits from the date of dismissal i.e. 12.01.2011 to 18.12.2015. (4 years, 11 months 6 days)

GROUNDS

A. That the Impugned order dated 12.01.2011 was set aside by the Tribunal, therefore, the appellant is entitled to full back benefits from 12.01.2011 to 18.12.2015.

B. That the appellant during the period of dismissal from service did not join any profitable service anywhere, therefore, the ***intervening period from the date of dismissal from service i.e. 12.01.2011 to the date of reinstatement i.e. 18.12.2015 shall be treated as leave of its kind due.***

C. That the appellant was reinstated in service ***without grant of back benefit*** which is a violation of various rulings of the August Supreme Court of Pakistan.

D. That it is pertinent to mention that the Hon'ble provincial Services Tribunal did not withheld the back benefits vide judgment dated 18.12.2015 therefore, withholding of back benefits by the department is against the spirit of law.

Keeping in view what has been stated above the appellant may kindly be granted back benefits from 12.01.2011 to 18.12.2015 & the intervening period may kindly be treated as leave of its kind due.

Appellant

تاج علی

Taj Ali, Head Warder

BPS (07)

Dated 22.02.2017

WAKALATNAMA

(Power of Attorney)

BEFORE THE SERVICES TRIBUNAL KPK, PESHAWAR.

Taj Ali
.....(Petitioner)
(Plaintiff)
(Applicant)
(Appellant)
(Complainant)
(Decree Holder)

Secretary VERSUS Home & Others -
.....(Respondent)
Defendant)
(Accused)
(Judgment Debtor)

I/ ~~We~~, Taj Ali

_____ in the above noted Service Appeal, do hereby appoint and constitute ***Inayat Ullah Khan*** Advocate Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me/ us as my/ our Counsel in the above noted matter, without any liability for that default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

Attested & Accepted

CLIENT

Inayat Ullah Khan
Advocate High Court, Peshawar.
LL.M (UK)
House No.460 Street No.12,
E/4, Phase-VII, Hayatabad Peshawar.
Cell: 0333-9227736

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No. 524 /2017

Taj Ali Head warder
central Prison Haripur ..... Appellant

Versus

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

Rejoinder on behalf of appellant with regard to the Para-wise comments submitted by respondents No.1,2 and 3.

Respectfully Sheweth;

Reply Preliminary objections:

i to vii

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

REPLY ON FACTS:

1) Para-1 needs no reply.

2) Para-2 is incorrect, hence denied.

3) With regard to Para-3 it is stated that there are plethora of case law regarding back benefits whereby it was time and again held by the various judgments of Supreme Court of Pakistan that withholding of back benefits by Tribunal without giving any reason is not according to law. It is pertinent to mention that the Tribunal in the present case did not withheld the back benefit therefore, the appellant is entitled to back benefit for all intent and purposes once the order of dismissal/ termination/ removal was set aside by the Tribunal and converted the penalty into stoppage three increments for a period of

two years. Case law on the subject of back benefits for ready reference of this Hon'ble Tribunal are as follow:

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

4) Para-4 needs no reply

REPLY ON GROUNDS:

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

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

Appellant

Through

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

Dated: 16.11.2017

AFFIDAVIT

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

Deponent

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No. 524 /2017

Taj Ali Head warder
central Prison Haripur ..... Appellant

Versus

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

Rejoinder on behalf of appellant with regard to the Para-wise comments submitted by respondents No.1,2 and 3.

Respectfully Sheweth;

Reply Preliminary objections:

i to vii

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

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

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

Appellant

Through

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

Dated: 16.11.2017

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16-11-17

Deponent

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No. 524 /2017

Taj Ali Head warder
central Prison Haripur ..... Appellant

Versus

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

Rejoinder on behalf of appellant with regard to the Para-wise comments submitted by respondents No.1,2 and 3.

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

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

Appellant

Through

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

Dated: 16.11.2017

AFFIDAVIT

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

Deponent

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No. 524 /2017

Taj Ali Head warder
central Prison Haripur ..... Appellant

Versus

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

Rejoinder on behalf of appellant with regard to the Para-wise comments submitted by respondents No.1,2 and 3.

Respectfully Sheweth;

Reply Preliminary objections:

i to vii

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

REPLY ON FACTS:

1) Para-1 needs no reply.

2) Para-2 is incorrect, hence denied.

3) With regard to Para-3 it is stated that there are plethora of case law regarding back benefits whereby it was time and again held by the various judgments of Supreme Court of Pakistan that withholding of back benefits by Tribunal without giving any reason is not according to law. It is pertinent to mention that the Tribunal in the present case did not withheld the back benefit therefore, the appellant is entitled to back benefit for all intent and purposes once the order of dismissal/ termination/ removal was set aside by the Tribunal and converted the penalty into stoppage three increments for a period of

two years. Case law on the subject of back benefits for ready reference of this Hon'ble Tribunal are as follow:

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

4) Para-4 needs no reply

REPLY ON GROUNDS:

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

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

Appellant

Through

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

Dated: 16.11.2017

AFFIDAVIT

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

16-11-17

Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Service Appeal No. 524/2017
Taj Ali Head Warder Central Prison Haripur.....**Appellant**

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa
   Home and T.As Department Peshawar.

2. Inspector General of Prisons
   Khyber Pakhtunkhwa Peshawar

3. Superintendent
   Headquarters Prison Peshawar.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2&3

PRELIMINARY OBJECTIONS.

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

ON FACTS

1) Pertains to record, hence no Comments.

2) The Provincial Government has decided the litigation period of the said Appellant as extra ordinary leave and the Appellant was thus treated within the prescribed parameters of relevant law/rules.

3) The Honorable, Provincial Service Tribunal though granted relief to the Appellant by reducing the imposed penalties against him. However, the judgment of the Honorable, Provincial Service Tribunal is silent about the status of the litigation period / back benefits to the Appellant. The department has complied with the judgment of the Honorable, Provincial Service Tribunal in true spirit. However, due to non performing duties his intervening period from 12-01-2011 to 18-12-2015 was treated as leave without pay by the Provincial Home Department vide their order **(Annexure-A)** on the grounds that post Audit observations with regard to an employee who did not perform duties, the department could not pay remuneration for such period on the principle of no work no pay. The declaration of said period as leave without pay is the only remedy to thwart such valid post audit observation, as there was no speaking order regarding grant of back benefits to the Appellant. In addition, as per Supreme Court verdicts the principle of **"no work having no pay"** will be

applied in the under discussion case (copy of 2003-SCMR-228 is **Annexure-B**) in the absence of clear order by the Honorable Tribunal.

4) Correct to the extent that departmental presentation was processed to Home Department being competent forum and the same was filed in accordance with relevant law / rules.

GROUNDS:-

A) Incorrect, misleading. The Honorable Provincial Service Tribunal upheld the stance of the department by making a little bit modification i.e reducing the imposed penalties thus the plea of the appellant is not based on facts.

B) There is no provision in the relevant law/ rules that an official put under suspension is given salary but he cannot do any part time job as required under the rules, reply has already been elaborated in Para-A above.

C) Incorrect, misleading. There is no fault on the part of department with regard to implementation of judgment of the Honorable, Provincial Service Tribunal. The competent authority has declared the intervening period as extra ordinary leave in accordance to the prescribed rules.

D) Incorrect, misleading. The judgment dated 18-12-2015 of the Provincial Service Tribunal is quite silent about the back benefits of the intervening period and that is the reason the department declared the same period as extra ordinary leave.

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

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

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

25/7/17

SUPERINTENDENT
Headquarters Prison Peshawar
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of
Service Appeal No. 548/2017
Ghulam Shabbir Shah Head Warder Central Prison Haripur.....**Appellant**

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa
   Home and T.As Department Peshawar.

2. Inspector General of Prisons
   Khyber Pakhtunkhwa Peshawar

3. Superintendent
   Headquarters Prison Peshawar.....**Respondents.**

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS NO. 1 TO 3.

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

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

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

28/7/17

SUPERINTENDENT
Headquarters Prison Peshawar
(Respondent No.3)

"Annex-A"

Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

CORRIGENDUM

Peshawar, dated the 19th January, 2017

No.2(3)SO (Prisons) HD/10 In continuation of this Department's Notification of even number dated 2nd November, 2016, the officials from serial No. 03 to 20 are hereby reinstated in service with effect from 12th January, 2011 and the modified penalties may also be read with effect from 12th January, 2011. however, the period from 12th January, 2011 to 18th December, 2015 in respect of these officials are treated as leave without pay.

Secretary to Government of Khyber Pakhtunkhwa
Home & Triabal Affairs Depatment.

C.C.

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkwa, Law, Parliamentary & Human Rights Department w/r to their letter No. SO (OP-II)/LD/5-2/2012/Vol-III/28031-32, dated 15th December, 2016.
3. The Secretary to Government of Khyber Pakhtunkwa, Establishment Department w/r to their letter No. SO(R-III) (E&AD)/4-30/2014, dated 04th January, 2017.
4. The Inspector General of Prisons, Khyber Pakhtunkwa, Peshawar for information and necessary action w/r to his letter No. 26429, dated 14th November, 2016.
5. The Superintendent Central Prison, Bannu.
6. PS to Secretary Home, Khyber Pakhtunkhwa, Peshawar.
7. PS to Special Secretary Home, Khyber Pakhtunkhwa, Peshawar.

Section Officer (Prisons)

"Annex-B"

Federal Service Tribunal,, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No. 1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

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

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

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

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

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

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

> "(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-199 (PR244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal O Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, aft getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neith claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharg due to his non-performance of any duty.
>
> "(71) In view of above, if approved by Manager (Personnel), his request may be regretted in t light of earlier decision as per para. 141-A, please."

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

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

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

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

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

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

S.A.K./N-100/S.

Petition dismissed.

4/10/2014