

S.No.	Date of order/ proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	10.02.2015	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Service Appeal No. 1559/2013 Abdul Ayaan, Versus The Secretary, Govt. of KPK, Home & T.As Department, Civil Secretary, Peshawar etc.</p> <p style="text-align: center;"><u>ABDUL LATIF, MEMBER</u> Appellant with counsel and Mr. Muhammad Jan, GP with Sheryar, Assistant Superintendent Jail for the respondents present. Arguments already heard. Record perused.</p> <p>2. The appellant Abdul Ayaan, filed the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 19.09.2013 whereby he was awarded the major penalty of reduction to lowest stage in his present time pay scale. The charge against the appellant was that on 07.09.2013, when he was posted at the most sensitive Cell, he left the place of duty. His departmental appeal dated 25.09.2013 was dismissed by the appellate authority on 05.11.2013, hence the present appeal before this Tribunal. It has been prayed that on acceptance of the appeal, the impugned orders may be set aside and the appellant may be restored to his original stage in pay & scale.</p> <p>3. It was submitted by the learned counsel for the appellant that major penalty of to lowest stage in his present time pay scale has been awarded to the appellant but no proper</p>

enquiry had been conducted, no statement of witnesses were recorded in presence of the appellant to cross examine them; that no chance of personal hearing was afforded to the appellant and he was condemned unheard; that the appellant was awarded the penalty of reduction to lowest stage, which is nowhere mentioned in the Government Servants (E&D) Rules, 2011; that no period was specified for the impugned punishment as per Rule 29 of Fundamental Rules and that no reason was given by the appellate authority while rejecting departmental appeal of the appellant. He stated that for the above reasons, the impugned order is liable to be set aside.

A.F.I.

4. Conversely, the learned Government Pleader submitted that the appellant is the employee of a disciplined force, who committed a gross negligence in performance of his duties by leaving his most sensitive place of duty and left the door of the Cell open. He further submitted that proper enquiry was conducted into the matter and the appellant was given full opportunity of defence but he failed to prove his innocence and was rightly punished. He requested that the appeal may be dismissed.

5. After hearing the parties at length and after perusal of the record, the Tribunal observes that enquiry has been conducted in question-answer form, which is against the procedure. It is also observed that imposition of major penalty of reduction to lower rank without mentioning specific period is violation of Rule 29 of Fundamental Rules.

Moreover, there is no provision in the Government Servants (E&D) Rules, 2011 for imposition of major penalty of reduction to the lowest stage. The relevant rule however, provide for major penalty of reduction to lower post or lower pay scale or to lower stage in pay scale. The imposition of penalty is therefore, in deviation of Government Servants (E&D) Rules, hence not maintainable in the eyes of law.

6. For the said reasons, we are of the considered view to set aside the impugned order, the appellant is restored to his original position for the purpose of enquiry and the case is remanded back to the respondent No. 2 with the direction to initiate fresh disciplinary proceedings into the matter and if the charges are established, penalty commensurate to the charges duly in accordance with the law be imposed on the delinquent officials. Back benefits etc. will be subject to the outcome of fresh disciplinary proceedings. Parties are left to bear their own costs. File be consigned to the record.

7. This order will also dispose of connected appeal No. 1560/2013 titled "Matiur Rahman Versus the Secretary, Government of Khyber Pakhtunkhwa, Home & T.As department, Civil Secretariat, Peshawar etc." having common questions of law and fact, in the same manner.

ANNOUNCED
10.2.2015


(PIR BAKHSHAH SHAH)
MEMBER


(ABDUL LATIF)
MEMBER

11.7.2014.

Counsel for the appellant and Mr. Muhammad Jan, GP with Sheryar, ASJ for the respondents present. Counsel for the appellant needs time to file rejoinder. To come up for rejoinder on 2.10.2014.

MEMBER 

MEMBER 

02.10.2014

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG with Sheryar, ASJ for the respondents present. Rejoinder received and placed on file. Copy handed over to the learned AAG. To come up for arguments on 29.1.2015.

29.1.2015

Appellant with counsel and Mr. Muhammad Jan, GP with Sheryar, ASJ for the respondents present. Arguments heard. To come up for order on 10.2.2015.

MEMBER 

MEMBER 

Appeal No. 1339/2013
Mr. Abdul Ajeem

03.02.2014

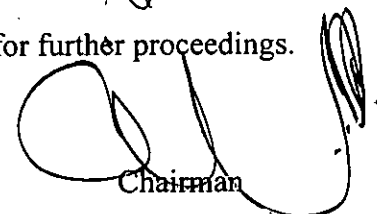
Appellant with counsel (Mr. Sajid Amin, Advocate) present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 19.09.2013, he filed departmental appeal on 25.09.2013 which has been rejected on 05.11.2013 communicated to the appellant on 07.11.2013. He further contended that the impugned order has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 20.03.2014.

*Appellant elected
of process of security
Rs. 1800/- process fee
attached with file*


Member


03.02.2014

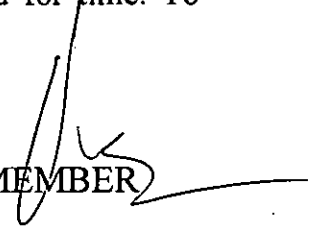
This case be put before the Final Bench II for further proceedings.


Chairman

20.3.2014


Counsel for the appellant and AAG with Sheryar, ASJ for the respondents present and requested for time. To come up for written reply on 22.5.2014.

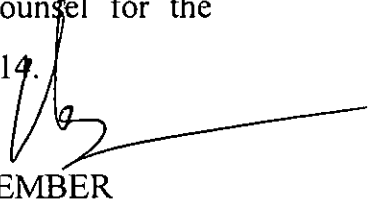

MEMBER


MEMBER

22.5.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Sheryar, ASJ for the respondents present. Written reply received and copy handed over to counsel for the appellant. To come up for rejoinder on 11.7.2014.


MEMBER


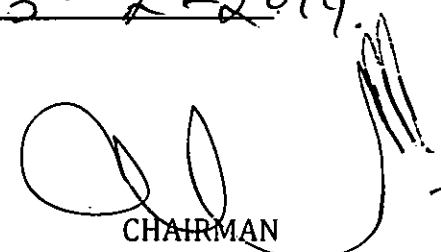

MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No 1559/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1		3
1	03/12/2013	<p>The appeal of Mr. Abdul Ayaan presented today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	5-12-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>3-2-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

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

Appeal No. 1559 /2013

MR. Abdul Ayaan

V/S


I.G. Prison, KPK Peshawar etc.

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S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of Show Cause Notice	- A -	04
3.	Copy of Reply	- B -	05
4.	Copy of Order dt.19.9.2013	- C -	06
5.	Copy of Appeal	- D -	07
6.	Copy of Rejection Order (5.11.2013)	-E-	08
7.	Copy of Communication letter (7.11.2013)	-F-	09
8.	Vakalat Nama	-----	10

APPELLANT
Abdul Ayaan

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

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

Appeal No. 1559 /2013

M. W. F. Prisons
No. 1067
03-12-13

Mr. Abdul Ayaan, Head Warder,
Headquarter Prisons, Peshawar.

APPELLANT

VERSUS

1. The Secretary, Government of Khyber Pakhtunkhwa, Home and Tribal Affair Department, Civil Secretariat, Peshawar.
2. The Inspector General, (Prisons), Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent Circle, HQ, Prison, Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 READ WITH RULE-19 OF THE KPK E&D RULES, 2011 AGAINST THE ORDER DATED 05.11.2013 COMMUNICATED TO THE APPELLANT ON 7.11.2013 WHEREBY THE APPEAL AGAINST THE PENALTY ORDER DATED 19.9.2013 (REDUCTION TO LOWEST STAGE) HAS BEEN REJECTED FOR NO GOOD GROUNDS.

.....

PRAYER:

.....

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 5.11.2013 COMMUNICATED ON 7.11.2013 AND THE PENALTY ORDER DATED 19.9.2013 MAY BE SET ASIDE AND THE APPELLANT MAY BE RESTORED TO HIS ORIGINAL STAGE IN PAY AND SCALE.. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

1. That while performing duty as Head Warder in the Central Jail Peshawar, the appellant was issued show cause notice for negligence in his duty which was properly replied by the appellant and denied all allegations leveled in the show cause notice. Copies of Show Cause Notice and Reply are attached as Annexure-A and B.
2. That in the slipshod manner vide order dated 19.9.2013, the penalty of reduction to lowest stage in his present time pay scale was imposed without specifying any period. Copy of Order is attached as Annexure-C.
3. That on 25.9.2013, the appellant filed Departmental Appeal but the same was rejected on 5.11.2013 without showing any reasons. The order dated 5.11.2013 was communicated to the appellant on 7.11.2013. Copies of Appeal, Rejection Order and Communication letter are attached as Annexure-D, E and F.
4. That now the appellant comes to this Honourable Tribunal on the following grounds amongst the other.

GROUND:


- A) That the order dated 5.11.2013 communicated to the appellant on 7.11.2013 and order dated 19.9.2013 are against the law, rules, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) That the reduction order is not a speaking order which the violation of Section-24(A) of the General Clauses Act and also the Supreme Court Judgment reported as 1991 SCMR Page-2330.
- C) That the appellant has been condemned unheard and no chance of personal hearing was provided to the appellant.
- D) That the major penalty has been imposed upon appellant without conducting regular enquiry and recording statements of other witnesses & without opportunity of cross examination. Thus the appellant remained undefended through out.

- E) That no charge sheet or statement of allegation was served on appellant, thus basic law has been violated.
- F) That even no order in black and white with has been passed for dispensing with the enquiry proceedings and showing reasons, which is the violation of E&D Rules, 2011 and due to which whole proceedings are become null and void.
- G) That even the penalty of reduction to lowest stage is against the spirit of E&D Rules, 2011 because punishment of reduction to lowest stage is no where mentioned in the E&D Rules, rather penalty can be imposed of one stage reduction of lower stage. Thus, the penalty order is arbitrary order and is not sustainable in the eyes of law.
- H) That no period has been specified in the penalty order dated 19.9.2013 which the violation of FR-29 and as such the order is not sustainable.
- I) That major penalty has been imposed upon appellant without regular inquiry. Therefore, the verdicts of the superior Courts have been violated.
- J) That the punishment does not commensurate with the guilt of appellant, therefore, the impugned penalty is very harsh.
- K) That the appellant has not been dealt according to law and rules and has been penalized for no fault on his part.
- L) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT 
Abdul Ayaan

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

SHOW CAUSE NOTICE

4 A

I, Ahtazaz Ahmad Jadoon, Superintendent Headquarters Prison Peshawar as Competent Authority, under the Khyber Pakhtunkhwa, government servants (Efficiency & Discipline) Rules 2011, do hereby serve you Head Warder Abdul Ayan (Under suspension) attached to Central Prison Peshawar with this Show Cause Notice, on the basis of material on record, I am satisfied that you have committed the following acts/ omission specified in Rule-5 (1) (a) read with rule-7 of the said rules: -

1- As per report of the Supdt: Central Prison Peshawar dated 09-09-2013, that on 07-09-2013 at about 11:50, when checked by Mr. Muhammad Ayub Khan Senior Assistant Supdt: Central Prison Peshawar and also checked by the Supdt: Central Prison Peshawar the place of your duty allotted to you on the most sensitive cell i.e Cell No. 16, you left the place of duty and that carelessness could leave devastating effects/ repercussions on the smooth functioning of the administration. You came out from the cell yard and left the door open, inspite of the fact that the threats are being received about the prisoner in question and any sort of incident could happen if well in time you were not checked. Thus you committed the gross negligence and misconduct in the performance of your duty and also violated the prescribed rules of PPR.

2- And whereas in exercise of powers Rule-5 (1)(a) of the same Rules, I am satisfied that sufficient evidence is available in the materials collected against you that took the competent authority to dispense further inquiry in the case/ blunder committed by you.

3- As a result thereof, I, as competent authority, have reached to the conclusion that there is no need of holding any further inquiry in this case and have tentatively decided to impose upon you the major penalty of "**Removal from Service**" under rule-4 of the E&D Rules 2011.

4- 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.

5- If no reply to this notice is received within seven days of its delivery, it shall be presumed that you have no defense to put in and in that case, ex-parte action shall be taken against you.


SUPERINTENDENT
CIRCLE HQS. PRISON, PESHAWAR.

1- **Head Warder Abdul Ayan**
Attached to Central Prison Peshawar

ATTESTED




OFFICE OF THE
SUPERINTENDENT
HEADQUARTER PRISON PESHAWAR
No: _____ /PB Dt: 19/9/2013

21

6

OFFICE ORDER

Consequent upon completion of proceedings under Government of Khyber Pakhtunkhwa efficiency & discipline (E&D) rules 2011, after issuing show-cause notices, affording the opportunity of personal hearing, and cross examination as well in case of gross negligence from their duties, the following Head Warders attached to Central Prison Peshawar are hereby re-instated into service with immediate effect with further orders as under: -

2- They are hereby awarded the major penalty of "Reduction to lowest stage in their present time pay scale."

- i) Head Warder Abdul Ayan
- ii) Head Warder Matiur Rahman

SUPERINTENDENT
CIRCLE HQS. PRISONS PESHAWAR

Endst: No. 2385-87/-

Copy of the above is forward to the: -

- 1- Superintendent Central Prison Peshawar for information. The above named Head Warders may be taken on duty and proper entry at this effect may be made in this Service Books.
- 2- Accountant General, Khyber Pakhtunkhwa Peshawar.
- 3- Head Clerk (Pay Branch) Central Prison Peshawar.

For information & further necessary action.

SUPERINTENDENT
CIRCLE HQS. PRISONS PESHAWAR

ATTESTED

Handwritten notes in margin

Handwritten notes in margin

To

The Inspector General of Prisons,
Khyber Pakhtunkhwa, Peshawar.

D
7

Subject:- Departmental appeal against the impugned order
dated 19.09.2013.

Through:- PROPER CHANNEL.

Sir,

I have the honour to submit that the major penalty
has been imposed upon me for which I request that the same may be set aside
in view of the following grounds:-

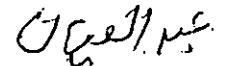
GROUNDS.

- A. That I have not committed any misconduct therefore, the
imposed penalty upon me is ~~IKKAY~~ illegal and is liable
to be set aside.
- B. That no opportunity of self defence has been given to
me and only one sided action has been taken against me.
- C. That my whole service record of 27 years ^{Service} ~~years~~ is clear
which is sufficient reason to set aside the impugned
order dated 19.9.2013.
- D. That no loss has been occurred to the Government.

It is, therefore, prayed that on acceptance of
this Departmental appeal, the impugned order dated 19.09.2013 may
kindly be set aside, with all back benefits to meet the ends of natural
Justice.

I beg to remain sir.

Yours most Obedient servant,



(Abdul Ayab),

Head Warder,

Headquarter,

Prisons, Peshawar.

Dated 25.09.2013.

ATTESTED





*D No - 4563
25-11-2013*

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

E

NO. 31924

DATED 25-11-2013

8

To

The Superintendent,
Headquarters Prison Peshawar.

Subject:- DEPARTMENTAL APPEAL
Memo:

I am directed to refer to your letter No.2533 dated 07-10-2013 on the subject and to convey that appeal of Head warder Abdul Ayan for set asiding the penalty of reduction to lowest stage in his present time pay scale has been considered and dismissed by the competent authority(I.G).

Please inform him accordingly.

[Signature]
ASSISTANT DIRECTOR(ADMN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR

[Signature]

DS/c B

for ready ps

SACM-S/11

ATTESTED

[Signature]



OFFICE OF THE
SUPERINTENDENT

CIRCLE HQs. PRISON PESHAWAR
No. 2813 /P.B. dt: 07/11/2013

F

To

The Superintendent
Central Prison, Peshawar.

9

Subject: DEPARTMENTAL APPEAL

Memo:

Appeals regarding setting aside the penalty of reduction to lowest stage in their present time pay scale in respect of the following Head Warders attached to your jail have been considered and dismissed by the competent authority i.e Worthy I.C Prisons Khyber Pakhtunkhwa Peshawar vide his letter No. 31924 & 31972 dated 05-11-2013 respectively: -

- 1- Head Warder Abdul Ayan
- 2- Head Warder Matiur Rahman

They may be informed accordingly.

02
SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
7/11/13

Endorsement No: 2814 /-

Copy of the above is forwarded to the Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information with reference to above please.

02
SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
7/11/13

ATTESTED
A

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Abdul Ayan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Prisons Deptt. (Respondent)
(Defendant)

I/We Abdul Ayan (Appellant)

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 3-12-2013

(Signature)
(CLIENT)

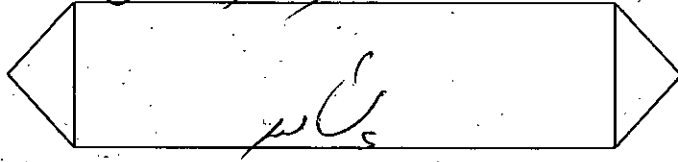
ACCEPTED

(Signature)
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

بعدالت مسروس سرگرمیوں میں



2۔ منجانب
عبدالحمید بنام حکومت

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کےسارے کیلئے آصف لوستنزی اور مسٹر امین نامہ کیس
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے
اور اس کا ساختہ پر داختمنظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

20

ماہ

المرقوم

العبد گواہ

کے لئے منظور ہے۔

مقام

SADIA AMIN
Admin

Accepted

For

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of

Service Appeal No.1559/2013

Abdul Ayaan Head Warder

Attached to Headquarters Prison Peshawar.....**Appellant.**

VERSUS

- 1- The Secretary to Government of Khyber Pakhtunkhwa Home and Tribal Affairs Department, Peshawar.
- 2- The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
- 3- Superintendent Circle, Headquarters Prison Peshawar.....**Respondents**

PARAWISE REPLY ON BEHALF OF RESPONDENTS

PRELIMINARY OBJECTIONS.

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

ON FACTS:

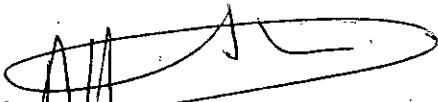
- 1- Correct to the extent that keeping in view the material on record and as per Rule-7 of the E&D Rules 2011 he was issued Show Cause Notice due to his gross negligence in the performance of his duties by leaving his most sensitive place of duty i.e. Cell No. 16 and also left the door open of the said cell, where High Profile Prisoner namely Dr. Shakeel Afridi is confined when checked by Mr. Muhammad Ayub Khan Senior Assistant Superintendent Jail, Central Peshawar and by the Superintendent Central Prison Peshawar himself, so just a little bit lapse/ fault could pave the way for a critical untoward incident, but it is incorrect that he denied all allegations leveled in the show cause notice during personal which is clearly evident from the "**Sawalnama**" enclosed as **Annex-A** wherein he has admitted his fault which is also duly signed by him on the spot.
- 2- Not admitted. The Competent Authority awarded the major penalty of reduction to lowest stage in his present time pay scale in accordance with the rules to be a lesson for others.
- 3- Pertains to the record, hence no comments.

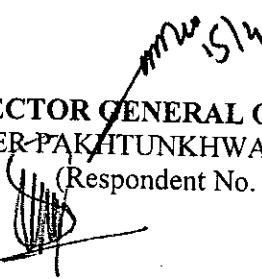
4- His service appeal may please be dismissed on the below noted grounds:


GROUND:

- A- Not admitted. That the penalty of reduction to lowest stage in his present time pay scale awarded to him is strictly in accordance with prescribed rules on account of his gross negligence/misconduct in the performance of his duties.
- B- Not admitted. As elaborated in Para (A) above.
- C- Not admitted. The appellant was afforded full opportunity of personal hearing by the Competent Authority as well as by the Appellate Authority.
- D- Not admitted. As explained in the preceding Paras.
- E- Not admitted. As narrated in Para-I above, there is no need to serve Charge Sheet/ Statement of allegations as under Rule-7 the Competent Authority can serve direct Show Cause Notice to the accused official.
- F- Not admitted. All legal formalities were observed in the proceedings.
- G- Not admitted. As explained in the preceding Paras.
- H- Not admitted. According to E&D Rules 2011, maximum period for such like penalty is five years.
- I- As explained above, provision under Rule-7 of the E&D Rules 2011, direct show-cause notice can be served upon the accused official if the material on record is available.
- J- Not admitted. The penalty awarded to him is strictly in accordance with prescribed rules in the light of his gross negligence in the performance of his duties.
- K- Not admitted. As elaborated in Para (J) above.
- L- Not admitted. As elaborated in Para (J) & (K) above.

In view of above comments on behalf of the respondents, it is humbly prayed that the appeal submitted by appellant may be dismissed with cost please.


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


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


SUPERINTENDENT
CIRCLE HQ. PRISON PESHAWAR
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR


In the matter of
Service Appeal No.1559/2013
Abdul Ayaan Head Warder
Attached to Headquarters Prison Peshawar.....**Appellant.**

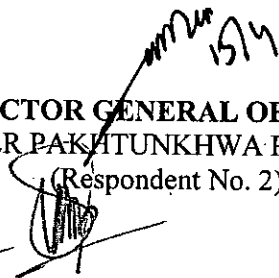
VERSUS

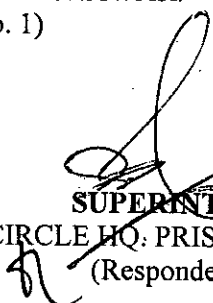
- 4- The Secretary to Government of Khyber Pakhtunkhwa
Home and Tribal Affairs Department, Peshawar.
- 5- The Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar.
- 6- Superintendent
Circle, Headquarters Prison Peshawar.....**Respondents**

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS.

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


SECRETARY TO GOVERNMENT
KHYBER PAKHTUNKHWA
HOME & T.AS DEPARTMENT PESHAWAR.
(Respondent No. 1)


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


SUPERINTENDENT
CIRCLE HQ: PRISON PESHAWAR
(Respondent No. 3)

« Annex-A »

ملفوظات مولانا محمد رفیع

کے

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سوال نمبر ۱۔ روز ۱۷/۱۷ مطبوعہ اربعان

۱۔ کئی باتیں براہِ حق سے کہلائی تھیں؟

۲۔ بی۔ جانج کئی باتیں باوجود کج نیتی سے

۳۔ آپ کے ساتھ باوجود کئی باتوں کے؟

۴۔ بی۔ جانج سے کئی باتیں کہلائی تھیں؟

۵۔ کئی باتیں باوجود کئی باتوں کے؟

۶۔ میں تو کئی باتیں باوجود کئی باتوں کے؟

۷۔ کئی باتیں باوجود کئی باتوں کے؟

۸۔ کئی باتیں باوجود کئی باتوں کے؟

۹۔ کئی باتیں باوجود کئی باتوں کے؟

۱۰۔ کئی باتیں باوجود کئی باتوں کے؟

۱۱۔ کئی باتیں باوجود کئی باتوں کے؟

۱۲۔ کئی باتیں باوجود کئی باتوں کے؟

۱۳۔ کئی باتیں باوجود کئی باتوں کے؟

عبد العزیز
مکرمہ علیہ السلام
نورانیہ

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SHOW CAUSE NOTICE

I, Ahtazaz Ahmad Jadoon, Superintendent Headquarters Prison Peshawar as Competent Authority, under the Khyber Pakhtunkhwa, government servants (Efficiency & Discipline) Rules 2011, do hereby serve you Head Warder Abdul Ayan (Under suspension) attached to Central Prison Peshawar with this Show Cause Notice, on the basis of material on record. I am satisfied that you have committed the following acts/ omission specified in Rule-5 (1) (a) read with rule-7 of the said rules: -

1- As per report of the Supdt: Central Prison Peshawar dated 09-09-2013, "that on 07-09-2013 at about 11:50, when checked by Mr. Muhammad Ayub Khan Senior Assistant Supdt: Central Prison Peshawar and also checked by the Supdt: Central Prison Peshawar the place of your duty allotted to you on the most sensitive cell i.e Cell No. 16, you left the place of duty and that carelessness could leave devastating effects/ repercussions on the smooth functioning of the administration. You came out from the cell yard and left the door open, inspite of the fact that the threats are being received about the prisoner in question and any sort of incident could happen if well in time you were not checked. Thus you committed the gross negligence and misconduct in the performance of your duty and also violated the prescribed rules of PPR.

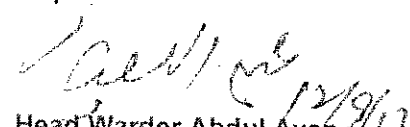
2- And whereas in exercise of powers Rule-5 (1)(a) of the same Rules, I am satisfied that sufficient evidence is available in the materials collected against you that took the competent authority to dispense further inquiry in the case/ blunder committed by you.

3- As a result thereof, I, as competent authority, have reached to the conclusion that there is no need of holding any further inquiry in this case and have tentatively decided to impose upon you the major penalty of "**Removal from Service**" under rule-4 of the E&D Rules 2011.

4- 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.

5- If no reply to this notice is received within seven days of its delivery, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.


SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR.


1- **Head Warder Abdul Ayan**
Attached to Central Prison Peshawar




OFFICE OF THE
SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
No. 2379 /P.B./ Dt: 09/09/2013

OFFICE ORDER

The following Head Warders attached to Central Prison Peshawar is hereby placed under suspension with immediate effect on account of their grave negligence from duty while they were allotted duties upon Dr. Shakeel Afridi Cells.


- 1- Head Warder Abdul Ayan
- 2- Head Warder Matiur Rahman


SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
09/09/13

Endorsement No: 2380-821

Copy of the above is forwarded to the: -

- 1- Superintendent Central Prison Peshawar for information with reference to his report dated 06-09-2013. You are strictly directed that they may not be allowed inside the jail premises till further orders.
- 2- Accountant General, Khyber Pakhtunkhwa Peshawar.
- 3- Head Clerk (Pay Branch) Central Prison Peshawar.


SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
09/09/13




OFFICE OF THE
SUPERINTENDENT
HEADQUARTER PRISON PESHAWAR.
No: _____ /PB Dt: 13/09/2013

OFFICE ORDER

Consequent upon completion of proceedings under Government of Khyber Pakhtunkhwa efficiency & discipline (E&D) rules 2011, after issuing show-cause notices, affording the opportunity of personal hearing and cross examination as well in case of gross negligence from their duties, the following Head Warders attached to Central Prison Peshawar are hereby re-instated into service with immediate effect with further orders as under: -

2- They are hereby awarded the major penalty of "Reduction to lowest stage in their present time pay scale."


- i) Head Warder Abdul Ayan
- ii) Head Warder Matiur Rahman


SUPERINTENDENT
CIRCLE HQS. PRISONS PESHAWAR

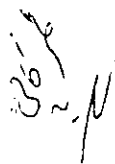
Endst: No. 385-871-

Copy of the above is forward to the: -

- 1- Superintendent Central Prison Peshawar for information. The above named Head Warders may be taken on duty and proper entry at this effect may be made in this Service Books.
 - 2- Accountant General, Khyber Pakhtunkhwa Peshawar.
 - 3- Head Clerk (Pay Branch) Central Prison Peshawar.
- For information & further necessary action.


SUPERINTENDENT
CIRCLE HQS. PRISONS PESHAWAR

19/9/13



To

Abul
25/9

The Inspector General of Prisons,
Khyber Pakhtunkhwa, Peshawar.

Subject:- Departmental appeal against the impugned order
dated 19.09.2013.

Through:- PROPER CHANNEL.

Sir,

I have the honour to submit that the major penalty
has been imposed upon me for which I request that the same may be set aside
in view of the following grounds:-

GROUNDS.

- A. That I have not committed any misconduct therefore, the
imposed penalty upon me is ~~XXXX~~ illegal and is liable
to be set aside.
- B. That no opportunity of self defence has been given to
me and only one sided action has been taken against me
- C. That my whole service record of 27 years years is clear
which is sufficient reason to set aside the impugned
order dated 19.9.2013.
- D. That no loss has been occurred to the Government.

It is, therefore, prayed that on acceptance of
this Departmental appeal, the impugned order dated 19.09.2013 may
kindly be set aside, with all back benefits to meet the ends of natural
Justice.

I beg to remain sir.

Yours most Obedient servant,

Dated 25.09.2013.

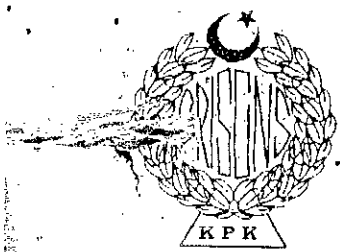
عبد العزیز
(Abdul Ayab),

Head Warder,

Headquarter,

Prisons, Peshawar.

16091
25-9-13
27/9/13



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

NO. 28704-WE

DATED 01-10-2013

To

D no. 4038ue
Dt 1-10-13

The Superintendent,
Headquarters Prison Peshawar.

Subject:- DEPARTMENTAL APPEAL
Memo:

I am directed to refer to the subject and to forward herewith a copy of appeal submitted by Head warder Abdul Ayan, on the captioned subject (self explanatory) for information.

Please look into the matter and furnish your necessary comments on annotated form alongwith history of his service on the below noted format within two days positively for further necessary action by this office:-

S.No.	Name & Parentage	Rank	Date of Birth	Date of appointment.	Punishment awarded during his entire service with date and nature of offence.

BB
For my attention
1/10/13
1/11

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



OFFICE OF THE
SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
No. 2533/12 /P.B. dt: 07/10/2013

To

The Inspector General of Prisons
Khyber Pakhtunkhwa, Peshawar.

Subject: DEPARTMENTAL APPEAL

R/Sir,

Please refer to your letter No. 28704-WE dated 01-10-2013 on the subject noted above.

The requisite information/ comments on behalf of the undersigned in respect of Head
Warder Abudl Ayan attached to Central Prison Peshawar are submitted herewith on the tabulated form
for further necessary action as desired please:-

S.No	Name & Parentage	Rank	Date of Birth	Date of appointment	Punishment awarded during his entire service with date & nature of offence.
1	Abdul Ayan s/o Ali Jan	H/ Warder BPS-07	01-04-1967	03-04-1986 (As Warder)	(i) 9-9-1986, Absentee from daily parade was treated as Censure. (ii) 5-9-89, placed under suspension in escape case of 06 u/ trial prisoners and then was re-instated and 01 A/increment was stopped. (iii) 30-5-95, Was found asleep during duty and was warned. (iv) On 9-9-13, he was placed u/ suspension in disciplinary case and on 19-9-13 was re-instated by reverting to lowest stage.

The above Head Warder was allotted duties at the most sensitive point of this jail (Shakeel Afridi's Cells) which requires extreme vigilance round the clock, but the said Head Warder took the entire situation too trouble-free, open lock of the cell and came out to have some gossips with another Head Warder Matiur Rahman, at the spur of moment any action against him from outside or inside the jail by the miscreants cannot be avoided, keeping in view the nature of his duty, he has shown gross negligence and have committed gross misconduct on his part, hence the penalty of "Reduction to lowest stage" awarded to him on this account is totally in accordance with rules and legal, therefore requested that his appeal may be rejected in the best interest of this department as well as public interest, please.


SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
29/10/13
7/10/13



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

*D.No- 4563
05-11-2013*

NO. 31924

DATED 05-11-2013

E 19
(8)

To

The Superintendent,
Headquarters Prison Peshawar.

Subject:- DEPARTMENTAL APPEAL
Memo:

I am directed to refer to your letter No.2533 dated 07-10-2013 on the subject and to convey that appeal of Head warden Abdul Ayan for set asiding the penalty of reduction to lowest stage in his present time pay scale has been considered and dismissed by the competent authority(I.G).
Please inform him accordingly.

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

DS/c.B
for review
SACW-5/11



OFFICE OF THE
SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
No. 283 /P.B. dt: 07/11/2013

FD

9

To

The Superintendent
Central Prison, Peshawar.

Subject: DEPARTMENTAL APPEAL

Memo:

Appeals regarding setting aside the penalty of reduction to lowest stage in their present time pay scale in respect of the following Head Warders attached to your jail have been considered and dismissed by the competent authority i.e Worthy I.C. Prisons Khyber Pakhtunkhwa Peshawar vide his letter No. 31924 & 31972 dated 05-11-2013 respectively: -

- 1- Head Warder Abdul Ayan
- 2- Head Warder Matiur Rahman

They may be informed accordingly.

02
SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
7/11/13

Endorsement No: 284 / -

Copy of the above is forwarded to the Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information with reference to above please.

7
SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
7/11/13