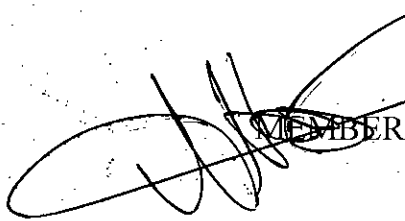


A. No. 819/2014  
M. Arif vs Govt

01.03.2018

Counsel for the appellant and Mr. Ziaullah, DDA  
alongwith Sher Yar, Asstt. Supdt. Jail for the respondents  
present. Arguments heard and record perused.

This appeal is disposed of as per our detailed judgment  
of today in connected appeal No. 880/2014 entitled "Manzoor  
Khan Vs. Government of Khyber Pakhtunkhwa through Chief  
Secretary and others". Parties are left to bear their own costs.  
File be consigned to the record room.

  
MEMBER

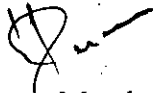
  
CHAIRMAN

ANNOUNCED  
01.03.2018

11.09.2017

Counsel for the appellant and Addl: AG alongwith Mr. Sohrab Khan, H.C for the respondents present. Learned AAG requested for adjournment. Adjourned. To come up for arguments on 25.10.2017 before D.B.

  
Member  
(Executive)

  
Member  
(Judicial)

25.10.2017


Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Sheryar, ASJ for the respondents present. Counsel for the appellant is not in attendance. Requested for adjournment. Granted. To come up for arguments on 05.01.2018 before the D.B.


  
Member

  
Chairman

05.01.2018

Counsel for the appellant present. Asst: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 01.03.2018 before D.B.

  
(Ahmad Hassan)  
Member(E)

  
(M.Amin Khan Kundi)  
Member (J)

28.12.2016

Clerk to counsel for the appellant and Assistant AG for respondents present. Arguments could not be heard due to incomplete bench. Case adjourned to 30.03.2017 for arguments before D.B.

  
Chairman

30.03.2017


Counsel for appellant present. Mr. Sohrab Khan, Assistant alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Learned Additional AG requested for adjournment for producing inquiry record. Last chance is given. To come up for arguments on 12.06.2017 before D.B.

  
(Amjad Hassan)  
Member

  
(Muhammad Amin Khan)  
Member

12.06.2017

Clerk of the counsel for appellant and Mr. Shehryar Khan, Supdt alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 11.09.2017 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member

  
(Gul Zeb Khan)  
Member

28.03.2016


Appellant with counsel and Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to non-availability of D.B. Therefore, the case is adjourned to 18.05.2016 for arguments.

  
Chairman

18.5.2016

Counsel for the appellant and Shehryar Khan, ASI alongwith AAG for respondents present. Additional AG requested for produce of record. Last opportunity granted. To come up for arguments on 5.10.2016.

Member 

  
Member

05.10.2016

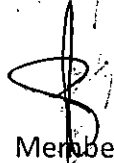
Counsel for the appellant and Mr. M. Jan, GP for respondents present. Counsel for the appellant requested for adjournment as his co-counsel in the connected appeal was busy in Supreme Court of Pakistan, Islamabad. Adjournment granted. To come up for arguments on 28.12.2016.

  
(M. AAMIR NAZIR)  
(MEMBER)

  
(PIR BAKHASH SHAH)  
MEMBER

20.02.2015

Appellant in person and Mr. Sheharyar Khan, ASJ for respondents alongwith Mr. Muhammad Jan, G.P present. Witten reply submitted. Copy whereof is handed over to the appellant for rejoinder. To come up for rejoinder on 14.05.2015.



Member

14.05.2015

Agent of counsel for the appellant and Assistant A.G for respondents present. Rejoinder submitted. The appeal is assigned to D.B for final hearing for 29.10.2015.



Chairman

29.10.2015

Appellant in persona and Mr. Muhammad Jan, GP for respondents present. Appellant requested for adjournment due to non-availability of counsel for the appellant. To come up for arguments on 17-2-16



Member



Member

17.02.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. The learned Member (Executive) is on official tour to Abbottabad, therefore, Bench is incomplete. To come up for arguments alongwith connected appeals on 28.3.2016



Member

23.10.2014

Appellant deposited  
Process fee & Security  
Rs. 1000/- Basic Security  
attached with file.

Appeal No. 819/2014  
Mr. Muhammad Aijaz

Counsel for the appellant present. Preliminary arguments

heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 17.03.2014, vide which the major penalty of Removal from service has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 25.03.2014 which was not responded within the statutory period of 90 days, hence the instant appeal on 09.06.2014.

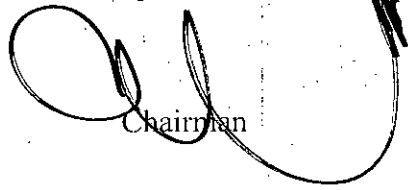
Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 06.01.2015.



Member

23.10.2014

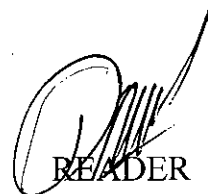
This case be put before the Final Bench II for further proceedings.



Chairman

6.1.2015

Clerk to counsel for the appellant and Mr. Ziaullah, GP with Shahzar, Supdt. and Sheryar, ASJ for respondents present. The Tribunal is incomplete. To come up for the same on 20.2.2015.

  
READER

3,  
Reader Note:

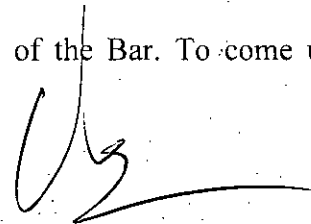
19-08-2014

Clerk of counsel for the appellant present. The Hon'able Bench is on tour to Abbottabad, therefore, case to come up for preliminary hearing on 01.9.2014.

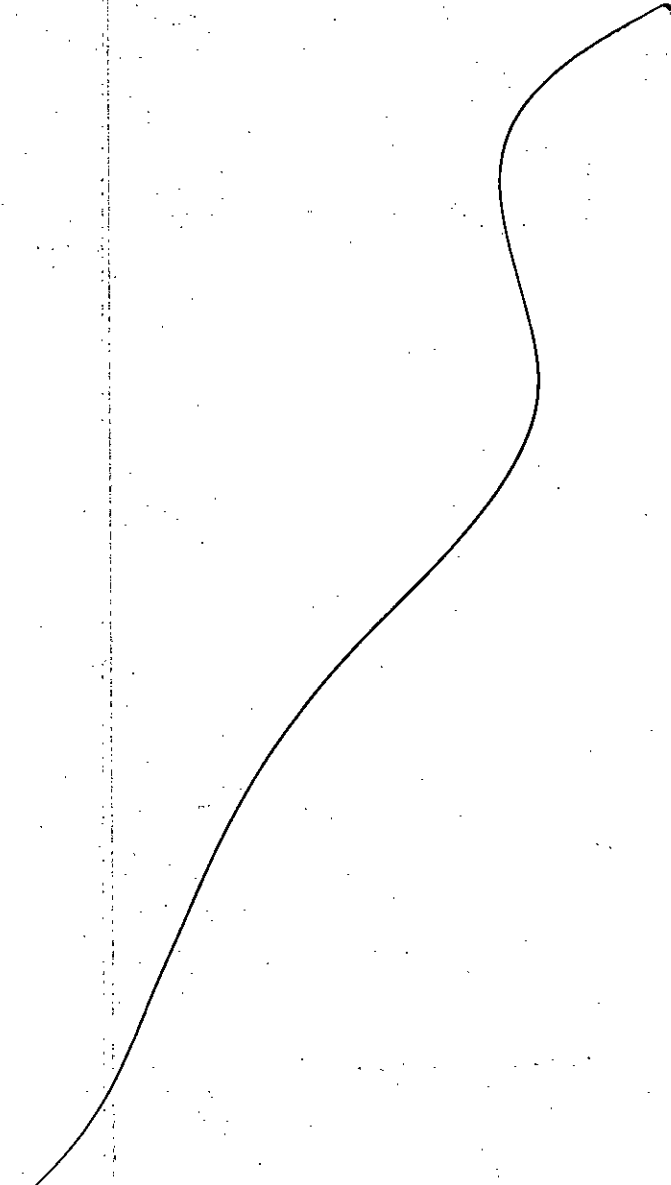
  
Reader

4,  
01.09.2014

Clerk of counsel for the appellant present, and requested for adjournment due to General Strike of the Bar. To come up for preliminary hearing on 23.10.2014.




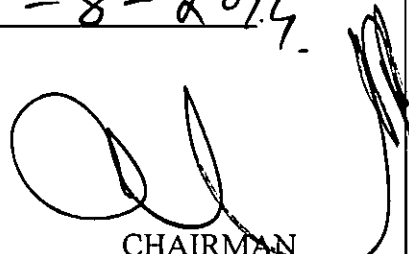
Member



Form - A  
Form of Order Sheet

Court of \_\_\_\_\_

Case No. 819/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09/06/2014	<p>The appeal of Mr. Muhammad Arif presented today by Mr. Ashraf Ali Khattak 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	11-8-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>19-8-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>



## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 819 /2014

Muhammad Arif Ex Warder  
Lakki Jail District Lakki  
.....Appellant

Versus

The Govt: of Khyber  
Pakhtunkhwa, through Chief  
Secretary Civil Secretariat  
Peshawar and others.  
.....Respondents

## INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal with Affidavit			
2.	Copy of Charge Sheet, Statement of allegation		A	6-7
3.	Copy of reply to charge sheet		B	8
4.	Copy of inquiry Report		C	9-15
5.	Copy of final Show Cause		D	16
6.	Copy of reply to final show cause		E	17-18
7.	Copy of Order of respondent No.2	17-01-2014	F	19-20
8.	Copy of departmental appeal		G	21-23
9.	Wakalat Nama			24

M. Arif  
Appellant

Through

  
Ashraf Ali Khattak

and

Nawaz Khan Khattak  
Advocates, Peshawar

Dated:      / 06/ 2014

IN THE PESHAWAR HIGH COURT PESHAWAR

WRIT PETITION No. 819 /2014

854  
9/6/2014

Muhammad Arif Ex Warder Lakki Jail District Lakki .....Appellant.

Versus

1. The Govt: of Khyber Pakhtunkhwa, through Chief Secretary Civil Secretariat Peshawar.
2. The Secretary to Govt: of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
3. The Inspector General of Prision Govt of Khyber Pakhtunkhwa, Peshawar.
4. The Superintendent Headquarter Prision D.I.Khan.
5. The Superintendent District Jail Lakki Marwat.....Respondents.

Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 against the impugned original order of respondent No.2 dated 17-03-2014 (Annexure-F) and against which appellant filed departmental appeal (Annexure-G) dated 25-03-2014, which is still pending without disposal.

Prayer:

On acceptance of the instant Service Appeal this Honorable Tribunal may graciously be pleased to declare the impugned dated 17-03-2014 as illegal, unlawful and without lawful authority and set aside the same and also re instate the appellant with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That appellant has been serving as warder in jail department. He has considerable service at his credit and has never been rated as inefficient and unqualified.
2. That on 24-05-2013, an unfortunate occurrence happened in the District Jail Lukki, wherein one notorious accused namely Umer Rauf alias (Amri) ran from the Jail and made his escape good and absconded. The occurrence happened allegedly in between 1.15 pm and 1.45 pm as per record.
3. That preliminary inquiry was held and FIR No.287 dated 24-05-2013 under section 222, 223 and 224 was registered against six persons, including the appellant. Appellant along with other allegedly Co accused were arrested on the same day, and later on were released on bail. The bail was assailed before the ADJ, Lakki but was dismissed and appellant bail was confirmed.
4. That it very humbly submitted Appellant was on duty during the so called alleged occurrence. It is an admitted fact that on the day of occurrence appellant performed his duty as Centry from 9.00 am to 12.00 am and then was deployed by authorities/Muharrar Jail to act as Centry at Burj No.1 in the place of Mr. Qayyum Nawaz, who was absent. It is pertinent to mention here that Burj No.1 is situated at Ihata No.1 and the escaped accused was in the lock up of Ihata No.2. Chakar Relief was very much present at Ihata No.2, more over a centry was also present at the gate of Ihata No.2. The ihata No.2 is surrounded by 20 feet high walls and that too with installation of iron Jall coupled with 24 hours continuous live electric iron wire. It is not possible to jump over such a high wall sounded by live electricity. There is no evidence that the escapee has either used any ladder etc for covering the walls and iron jall with live electricity. There is no evidence that appellant has extended any sort of help etc. Neither there is/are any iota of evidence that appellant neither has any sort of collusion with the escaped accused nor has received any sort of bribe or gratification etc or showed cowardice or irresponsibility during the course of his official duty.  
It is also humbly submitted that there are two Picks along the boundary wall where leave official are in active duty.  
  
In circumstances, how it is possible for the escaped accused to fly over and make his escape good.
5. That letter on fact finding departmental inquiry was conducted by Mr. Itizaz Jadoon Superintendent Jail Bannu. He heard the appellant verbally. He concluded his inquiry but appellant does not know regarding the fat of inquiry till the date.
6. That 2<sup>nd</sup> Inquiry was conducted through Kalim Ullab Balooch, who served the appellant with charge sheet and statement of allegation (Annexure-A), appellant submitted detailed reply (Annexure-B) and the inquiry officer conducted ex parte inquiry (Annexure-C) without the active participation of the appellant. The prosecution failed to establish any fault on his part. The same can be verified from the inquiry report. It is pertinent to mention here that no prosecution witness has been examined in the presence of appellant; the opportunity of cross examination does not arise.
7. That final show cause (Annexure-D) was served upon the appellant to which appellant also submitted detail reply (Annexure-E) and once again denied the charges leveled against him.
8. That Honourable Secretary to Government of Khyber Pakhtunkhwa Home Department (respondent No.2) without assigning any legal reason removed the appellant from his service vides order dated 17-03-2014 (Annexure-F).
9. That appellant being aggrieved of the harsh penalty preferred departmental appeal (Annexure- G), which is still pending without disposal, hence the statutory period has been

elapsed therefore, the instant service appeal inter alia on the following grounds.

## **GROUND**

- a. That appellant has not been treated in accordance with law, rules and policy and thus Article 4 of the Constitution has been violated. The prosecution has failed to establish the leveled accusation against the appellant and even the inquiry officer is not sure regarding the involvement of appellant. The impugned order is based on no evidence, therefore the same is void ab initio and nullity in the law and liable to be set aside.
- b. That section 16 of the civil servant Act, 1973 provide that every civil servant is liable for prescribed disciplinary actions and penalties only through prescribed procedure. In the instant case no prescribed procedure has been adopted by the inquiry officer. The inquiry officer has not recorded the statement of any prosecution witness in the presence of appellant, the defense plea has been discarded without assigning any legal reason, therefore, the impugned order is illegal, unlawful and without lawful authority and as such liable to be set aside.
- c. That the prescribed procedure as described in the Khyber Pakhtunkhwa (Efficiency and Disciplinary) Rule 2011 are not mere formalities and technicalities of law, but the mandatory provision of law and has been enacted in order to secure justice in practical shape.
- d. That it is very astonishing fact that charge sheet and statement of allegation has been served by one authority and impugned penalty by another authority, which not legally possible and on this score alone the impugned order is liable to be quashed out.
- e. That major penalty has been imposed without any sort of inquiry and appellant has been condemned unheard and no valid reason have been assigned with termination order constitute violation of Section 24A of the General Clauses Act, 1897, therefore, the impugned orders are not sustainable in the eyes of law and liable to be struck down.
- f. That the Honourable Supreme Court of Pakistan has laid down a permanent law that no major punishment could be imposed without regular inquiry, the subject impugned order based on no inquiry and therefore, no base in the light of the law laid down by the Apex Court, thus liable to be set aside.
- g. That the prosecution was under legal obligation either to wait for the outcome of the criminal case, which is pending adjudication before the competent court of law or to hold

regular enquiry as prescribed in the statute and statutory rules. In absence of conformity with statutory rules the penal order cannot be clothed with validity and is liable to be set aside.

- h. That factual controversy is involved in the subject case, therefore, regular inquiry was absolutely necessary as per law laid down by the Honourable Supreme Court of Pakistan, the same has been ignored in toto, therefore, on this score, the impugned order is also liable to be set aside.
- i. That the well-known principle of law "Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

- j. That appellant is jobless since his dismissal from service, therefore entitled to be re instated with all service benefits.

It is, therefore, humbly requested that on acceptance of this appeal this Honourable Court may graciously be pleased to set aside the impugned order of removal from service dated 17-03-2014 and re instate the appellant with all back benefits.

M. Arif  
Appellant

Through   
Ashraf Ali Khattak

And

Nawaz Khan Khattak  
Advocates, Peshawar.

Dated: \_\_\_\_\_ / 06/ 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. \_\_\_\_\_/2014

**Muhammad Arif Ex Warder Lakki Jail District Lakki .....Appellant.**

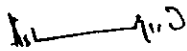
Versus

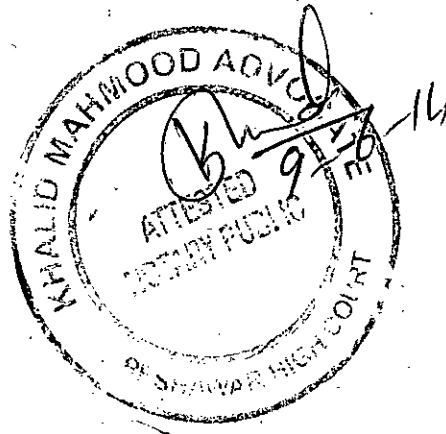
**The Govt: of Khyber Pakhtunkhwa, through Chief Secretary Civil Secretariat  
Peshawar and others .....Respondents.**

**Affidavit**

I, **Muhammad Arif Ex Warder Lakki Jail District Lakki** , 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 nothing has been concealed from this Hon'ble Court.

Identified by

  
**Ashraf Ali Khattak**  
Advocate, Peshawar



**M. Arif**  
Deponent

CHARGE SHEET

6

Annexure - A

Muhammad Shehzad Arbab, Chief Secretary Khyber Pakhtunkhwa, as competent authority, hereby charge you Muhammad Arif, as follows:

That you, while posted as warder (BPS-5) at District Jail Lakki Marwat committed the following irregularities:

On the day of occurrence of escape of undertrial prisoner Umar Rauf @ Amri S/O Pir Guulam escaped from jail on 24-5-2013, you performed your own allotted duties from 9.00 A.M to 12.00 noon as a main gate Sentry and thereafter you performed duties in watch tower No.1 upto 3.00 p.m in place of Warder Qayum Nawaz on your own accord but failed to keep alert yourself on duty. If you would have performed your duties efficiently then such ugly incident may not have occurred, thus you have violated Rule-1072 and 1095(f) of Khyber Pakhtunkhwa Prisons Rules 1985.

2. By reason of the above, you appear to be guilty of inefficiency/misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the rules ibid.
3. You are, therefore required to submit your written defence within seven days of the receipt of this Charge Sheet to the Inquiry Officer, as the case may be.
4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.

**Attested**

*Shehzad Arbab*  
To be true copy  
Advocate

*Muhammad Shehzad Arbab*  
(MUHAMMAD SHEHZAD ARBAB)  
CHIEF SECRETARY,  
KHYBER PAKHTUNKHWA

DISCIPLINARY ACTION

I, Muhammad Shehzad Arbab, Chief Secretary Khyber Pakhtunkhwa, as the competent authority, am of the opinion that Warder Muhammad Arif (BPS-5) attached to District Jail Lakki Marwat has rendered himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

On the day of occurrence of escape of undertrial prisoner Umar Rauf @ Amri S/O Pir Guulam escaped from jail on 24-5-2013, he performed his own allotted duties between 9:00 a.m to 12:00 noon as a main gate Sentry and thereafter he performed duties in water tower, No.1 upto 3:00 p.m in place of warder Qayum Nawaz on his own accord and failed to keep alert himself on duty. If he would performed his duties efficiently then such ugly incident may not have occurred, thus he has violated Rule-1072 and 1095(f) of Khyber Pakhtunkhwa Prisons Rules 1985.

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

- i. Mr. Kaleemullah  
 ii. \_\_\_\_\_

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

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

**Attested**

*[Signature]*  
 To be true copy  
 Advocate

*[Signature]*  
 (MUHAMMAD SHEHZAD ARBAB)  
 CHIEF SECRETARY,  
 KHYBER PAKHTUNKHWA



بخدمت جناب سیکرٹری صاحب خیبر پختونخواہ پشاور اتھارٹی

Charge Sheet عنوان:-

بحوالہ چارج شیٹ موصول سپرنٹنڈنٹ صاحب ڈسٹرکٹ جیل لکی مروت مورخہ 24-08-2013

جناب عالی!

مودبانہ التماس ہے کہ سائل کے خلاف چارج شیٹ میں جو الزامات لگائے گئے ہیں اسکے دفاع میں مندرجہ ذیل گزارشات پیش کرنے کی اجازت کر رہا ہے۔

(1) سائل کے خلاف الزام ہے کہ مورخہ 24-05-2013 کو آپ نے مین گیٹ کے سنتری کی ڈیوٹی انجام دی اور 12 بجے ڈیوٹی ختم ہونے کے بعد 12 بجے سے لیکر 3 بجے تک کا اندرونی پیکٹ نمبر 1 پر ڈیوٹی اپنی مرضی سے انجام دی۔ اس بابت سائل حسب ذیل عرض کرتا ہے۔

(۲) قیوم نواز وارڈر کی جگہ میری ڈیوٹی لگائی گئی چونکہ قوانین کے مطابق جو حکم دیا جاتا ہے اسکی بجاوری لازم ہے۔ لہذا بلاوے پر برج نمبر 1 کو سنتری ڈیوٹی کیلئے روانہ ہوا۔

(b) مورخہ 24-05-2013 کو من سائل اپنی مرضی سے ڈیوٹی پر برج نمبر 1 پر نہیں گیا بلکہ رجسٹرو کری ملازمان ملاحظہ کیجئے کہ مذکورہ جگہ پر میری ڈیوٹی لگائی گئی تھی۔

ڈیوٹی کے بغیر دربانجیل کوئی بھی وارڈر جیل کے اندر نہیں چھوڑتا۔ لہذا اس نے میری ڈیوٹی نوکری ملازمان رجسٹر سے چیک کر کے جیل کے اندر چھوڑا۔

(d) پیکٹ نمبر 1 میں داخل ہو کر گھڑی گشت نے باہر کی طرف سے من سائل کے پیچھے روٹین کے مطابق تالا لگایا اور سائل ڈیوٹی انجام دینا شروع کیا۔

جہاں تک پاکستان پریزن رولز 1985 کے دفعات 1072 اور (F) 1095 کا تعلق ہے۔ یہ کسی بھی جیل اہلکار کے مستعدی، قانونی کارروائی کسی بھی فرد کی فراری یا قیدیوں کے ہنگاموں کے دفاع کرنے کے بارے میں اور دفعہ (F) 1095 کسی بھی سرکاری اہلکار کے فرض سے وفاداری، تنظیم کو توڑنا اور ڈیوٹی کے کوتاہی کے بارے میں ہے۔

اس بابت سائل وضاحت کرتا ہے۔

کہ اندرونی برج احاطہ نمبر 1 میں ہے لہذا سائل کے پیکٹ سنتری کے علاوہ احاطہ نمبر 1 گھڑی گشت، پیکٹ نمبر 2 میں سنتری احاطہ نمبر 2 میں گھڑی گشت اور موقعہ جات اندرونی پر سنتری کھڑے تھے۔ اور گشت کرتے تھے۔ نیز بیرونی چاروں کونوں پر ٹاورز ہے جن میں سنتری موجود تھے ان تمام نے نہ کسی نا خوشگوار واقعہ کو دیکھا نہ اطلاع دی نیز سائل پیکٹ نمبر 1 میں چاق وچو بند مستعد کھڑا تھا اور ڈیوٹی سرانجام دے رہا تھا۔ نہ سائل کو کسی کو فرار ہوتے دیکھا اور نہ اندرونی ڈیوٹی پر ملازمین نے فراری کی اطلاع دی اور نہ سائل نے کسی کو جیل سے فرار ہوتے دیکھا ہے۔

مندرجہ بالا حقائق کی روشنی میں سائل عرض کرتا ہے کہ سائل کے خلاف لگائے گئے الزامات کو ختم کیا جائے اور سائل کو بری کیا جائے۔ نیز سائل کو ذاتی شنوائی کا موقع دیا جائے۔

Attested

For to be true copy  
Advocate

سائل دارڈر عارف خان (معطل) سنتری اندرونی ٹاور نمبر 1 ڈسٹرکٹ جیل لکی مروت



9

Annexure C

# INQUIRY REPORT

Subject: DEPARTMENTAL PROCEEDINGS INTO THE ESCAPE OF UNDERTRIAL PRISONER UMER RAUF @ AMRI S/O PIR GHULAM FROM DISTRICT JAIL LAKKI MARWAT.

## Background

One under trial prisoner named Umar Rauf @ Amri S/O Pir Ghulam Village Esak Khel, Distt. Lakki Marwat escaped from the District Jail Lakki Marwat on 24.05.2013. He was involved in case FIR No. 440 dated 02.09.2009, U/S 302, 324-34 PPC, Police Station Lakki District Lakki and case FIR No. 202 dated 29.11.2008 U/S 302,34 PPC Police Station Lakky, Distt. Lakky Marwat. Hence he was involved in two murder cases. He escaped from the Jail on 24/05/13 in broad day light, at the time in between 1:15 PM to 1:45 PM. No lock, no prison wall, no window, door or any gate was broken. No tunnel was dug; no instruments like hammer, spade, scissor, knife, rope or ladder have been used in this escape. And the prisoner involved in two murder cases escaped by throwing a dust in the eyes of all watch and ward staff of Distt. Jail Lakky in particular, and in the eyes of prison management system, in general.

2. Apparently it seems that whole system of watch and ward and prison security arrangements, and the overall frame work of prisons management have become ineffective, corrupt and irresponsible. It seems that a huge old structure is crumbling which may fall at any time. The frequent incidents of Jail break and escape of prisoners from the jails is just a tip of an ice-burg. It is an early warning sign of an impending colossal tragedy.

3. The prison authority of District Jail Lakki Marwat have been un-aware about the escape of prisoner for about half an hour and later on when they got wind of this incident they informed the I.G Prison and Police Department and got the case FIR No. 287 dated 24.05.2013 U/S 222, 223, 224, PPC PS Lakky, Distt. Lakky Marwat registered against the six subordinates officials on duty. They were suspended and a preliminary inquiry by Mr. Ehtesham Ahmad Jadoon, Superintend Jail Bannu was conducted. The inquiry officer involved 15 officers/officials in this inquiry, but astonishingly absolved one Abdullah Pervez (chakkar Relief) actual In charge of inner Jail staff and security from 12.00 to 1500 hours, from all charges. Abdullah Pervaz is an accused nominated in the FIR, and the Inquiry Officer didn't give any solid reason/proof for that, except the statement of Abdullah Pervez himself. Moreover The Inquiry officer didn't find any fault in the role played by sentries of Levy Force who were manning outer towers of Lakky Jail. In prima facie, men of Levy Force, doing duty at that particular time on the outer towers of Lakky Jail are equally guilty. Preliminary inquiry report is (Annex-A).

## Proceedings

All relevant record was thoroughly scrutinized, site of escape was inspected, and detailed discussions were held with the prison staff, local Police, IG Prison Office and the concerned prisoners still confined in Lakky Jail, before firming up the recommendations. Moreover, the relevant rules were deliberated upon (Annex-B) and the service record of the accused persons was minutely checked. All the

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accused were called along with their written defense. (Annex-C) They were examined and cross-examined (Annex-D) in presence of departmental representative Mr. Muhtarm Shah, Budget Officer, I.G Prison Office. Accused were personally heard and were given a free chance to put their oral, written or circumstantial evidence/ defense.

Site Inspection

District Jail Lakki Marwat was visited. The entry and exit ways were thoroughly inspected. The total area of Distt Jail Lakky Marwat is 14 kanals and 01 marla, and the total area of inner Jail would be hardly 08 kanals, which is guarded by 20 feet high wall and on the top of this wall, live and bare electric wires run across. It is the area where four barracks for the prisoners, a big kitchen, washrooms, two internal watch towers, a tuck-shop and a reasonable courtyard are situated. An internal wall separates the courtyard in two portions. An Iron gate, in this wall, connects two portions of courtyard. The prisoners of each portion freely come and go to other portion. As informed by Lakky Jail administration, there is no sentry on this gate to limit the movements of prisoners in their respective portions. The total strength of Officials/officer present at the time of occurrence was 48. There is cultivated agricultural land on the eastern, western and the southern side of Lakky Jail. It is an old jail. The newly built Jail in Distt Lakky Marwat is under the physical possession of Army. The outer wall and outer watch towers are guarded by Police and Levy Force. It is a very small Jail and the strength of 48 watch & ward staff, excluding police and Levy personals is more than enough for such a small area.

All the accused, prison staff, and other prisoners were examined and cross-examined but no one admitted to have seen the escape with his own eyes. All the accused denied the charges leveled against them in the charge sheet. All claim to be as pure dew.

Individual Responsibility.

1) Mr. Usman Ali, Dy: Supdt: cum Supdt: District Jail Lakki Marwat (BS-17).

He denies the charge No. 1 & 2 as mentioned in his charge sheet reply. The allegation on him is that on the day of incident there were 8 warders out of 10 on double duties and Supdt: Usman Ali didn't prevent this practice of double duties. He was charged with lack of interest in the affair of administration. His written reply is, "it is a common practice in jails that the warder perform double duties and substitute duty hours with their colleagues". It means that all jail warders were competent enough to make laws, rules for themselves and to decide how to run Jail and their boss Supdt: Jail gave a tacit approval to this practice. The reply of charge No. 4 by accused officer is an eye wash. He could not explain that why such huge staff could not prevent this incident. The reply of accused officer in response of charge No. 5 is not very convincing, keeping in view statement of other accused. The officer denies the charge but actually escapee prisoner Umar Rauf was an established Don of the jail being facilitated and treated by the jail staff as a VVIP. No solid defense was produced about charge No. 6 by Usman Ali.

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2) Noor Zaman, Head Warder (BPS-7).

As per his statement, he came into Jail at 08:00 morning performed his duty...

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11:00. He again entered into Jail at about 2.00pm, and came to know about the escape of prisoner Umar Rauf . He remained there in the Jail and made exit at 06.55 pm. His statement is correct as verified and confirmed from Register No. 16 of Distt: Jail Lakki. The escape occurred in between 01.15pm to 01.45pm when Abdullah Pervez (11.00 to 14.00) was actual In charge of the affairs in the inner Jail. So Noor Zaman Head Warder is innocent in this case. It is further added the said Abdullah Pervez has not been included in this Inquiry by the Inquiry Officer Mr. Ehtizaz Ahmad Jadoon, Suptt. Jail Bannu, without providing any solid reason or defense, except the statement of Abdullah Pervez himself is despite the fact that his name was included in the FIR by Mr .Usman Ali, Supdt Jail, in his earlier report.

3) Humayun Gul, Junior Clerk (BPS-7)

He is a junior clerk by designation. Due to granting three days casual leave from 24.05.2013 to 26.05.2013 to Mr. Muhammad Ibrahim Asst Suptt; Jail, he was entrusted with his duties. His nature of job is quite different. However his boss entrusted him with the duty of Asstt: Suptt; Jail. He couldn't refuse, and he shouldn't refuse. He is a junior Clerk whose job duty is to deal with files and papers. Dealing with hardened criminals requires particular training skills and strong nerves. It is a total different job. Here much fault lies with his boss who tried to make a lamb a lion by giving him the garb of a lion, and expecting him to act with a force of lion. Here the wrong man was doing the wrong job.

4) Sher Ali Baz, Warder (BPS-5)

He was patrolling officer in Ihatta No.1 (12:00 to 3:00). The escapee Umar Rauf was confined in Ihatta No. 2. But there is no gate, door or window in Ihatta No. 2. All entry exit ways are located in Ihatta No. 1. The escapee must have used Ihatta No. 1 to escape. Hence patrolling officer at that particular time is direct responsible. Moreover Umar Rauf prisoner was not an ordinary prisoner. He was well known Don of Jail. Being patrolling officer he must have kept a vigilant eye on him specially, but he badly failed. Either he was in connivance with Amri, the escapee, or have slept well during his duty hours 12:00 to 3:00.pm. In both cases he is delinquent character in this story. A witness, in his cross examination, pointed out that said Sher Ali Baz was most upset at 2.00 pm when he entered into jail and saw him.

5) Hamidullah Warder (BPS-5)

He was patrolling officer in Ihatta No.2 (12:00 to 3:00). The escapee Amri was confined in Ihatta No. 2 too. But there is no gate, door or window in Ihatta No. 2. The escapee must have walked through the area, where this warder was doing duty. Hence patrolling officer at that particular time is direct responsible. Moreover Amri prisoner was not an ordinary prisoner. He was well known Don of Jail. Being patrolling officer he must have kept a vigilant eye on him specially, but he badly failed. Either he was in connivance with Amri, the escapee, or has slept well during his duty hours 12:00 to 3:00.pm. In both cases he is delinquent character in this story. Moreover during his cross examination, he admitted that he cannot read his own statement written in Urdu and he is illiterate. He didn't know spelling of a word " English." He further added that he was appointed by ex- Minister Prison.

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6) Muhammad Arif Warder. (BPS-5)

He did double duty, first from 9:00 am to 12:00 noon as sentry main gate, and second from 12.00 pm 03.00 pm as Sentry Tower No.1 in place of warder Qayum Nawaz. In his reply he contended that he had simply obeyed the orders and didn't do double at his own will. Internal Tower No.1, where this warder was doing duty, is an alleged place of escape of escapee prisoner. During discussions, it is alleged by his fellow colleagues that he (M. Arif) was in collusion with the escapee, and he facilitated him safe exit through his place of duty i.e. Tower No.1. The accused could not defend the charge in a convincing way. He was either in collusion with the escapee or was full asleep at the tower.

7) Noor Islam Warder(BPS-5)

He also performed double duty, first from 9.00 am to 12.00 noon on a place near Tower No.2 and secondly he was sentry at Tower No.2 from 12:00 noon to 3:00 pm. From this tower the movements of all the prisoners are watched. Moreover all the movements of all the visitors at the main gate of the Jail are also watched from this tower. This warder has badly failed to do his duty in an efficient way. He was either in collusion with the escapee or was full asleep at the tower.

8) Muhammad Sajid Warder(BPS-5)

He was doing his search duty in the main gate from 12.00 noon to 03.00 pm. In case the prisoner escaped from the main gate he is directly responsible in his escape.

9) Zeb Nawaz Warder(BPS-5)

He was doing his duty as Madagir (Helper) from 12.00 noon to 03.00 pm in the main gate. In case the prisoner escaped from the main gate he is directly responsible in his escape.

10) Nasir Mahmood Warder(BPS-5)

He was doing his duty as sentry at main gate. In case the prisoner escaped from the main gate he is directly responsible in his escape.


11) Manzoor Khan Warder(BPS-5)


He was doing his duty as gate keeper at main gate from 12.00 noon to 03.00 pm. In case the prisoner escaped from the main gate he is directly responsible in his escape.

12) Amir Baseer Khan Warder (BPS-5)

He was assigned duties at Beat No. 2 from 12.00 noon to 03.00 pm. In case he kept a vigilant eye on that prisoner who was Don of Lakky Jail and his movements he would not had escaped. Either this warder was in collusion with the escapee or was full asleep during his duty hours. He is directly responsible for the escape.

13) Aseel Janan Warder(BPS-5)

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He has wrongly been involved in this case. As mentioned earlier the actual time of escape is in between 01.15 pm to 01.45 pm. When the prisoner has escaped and the Supdt. Jail was busy in registering a case against the accused officials, this warder was called in to perform duty in place of warder Wali Ayaz, and to avert any untoward situation. He came performed his duty and made exit at 06.50 pm. This fact is duly supported by Register No. 16. So he is innocent.

14) Amir Faraz Warder (Line Muharar) (BPS-5)

There are two charges on this accused. Being Line Muharar, he continued the illegal practice of assigning double duties and he was in collusion with the escapee. From the statements of accused and discussions it transpired that he was the de facto Suptt; of Lakky Jail. He used to assign duties to warders, recommend leaves for the staff, order opening and closing of prisoners barracks, supervise the management of tuck-shop and prisoners kitchen (langer- khawana), keep custody of keys and locks of jail barracks, manage meeting of prisoners with their visitors etc.

Moreover he belonged to the same village from which the escapee Amri belonged. All witnesses, accused and prisoners confirmed that escapee Amri was very close to Amir Faraz Muharar Line. The accused couldn't defend either charge. The charge of assigning double duties has been proved against him, and the charge of collusion has not been defended by him.

15) Aftab Malik Warder (BPS-5)

This warder was assigned the duty to run a tuck shop inside the Jail. He has been charged for having close relations with the accused. He admitted in his cross examination that prisoners have cell phones inside the Jail but he never snatched or recovered any cell phone from any prisoner. Having cell phones inside the Jail is impossible without the collusion of Jail Staff. In his written reply he claims to have been out of Jail at the time of occurrence. It is correct as verified from the record. But he could not defend the charge of having close relation and collusion with the escapee. At the time of occurrence his absence from the Jail is an evidence of his collusion with the escapee prisoner. Moreover during discussions with accused and prisoners it came to light that escapee Amri was often seen sitting and having hours long discussions with this warder. The accused badly failed to defend the charge.

Findings of Inquiry

- i) Usman Ali Dy: Supdt: cum Supdt: is very poor administrator, and a very weak commander to perform his duties in very effective manner. He badly lacks initiatives and quite incapable of shouldering his responsibilities. He didn't know a bitter reality that subordinates often sell their boss, if and when they get a chance to do so. Unfortunately he let himself to be auctioned at the hands of his subordinates.
- ii) Usman Ali gave tacit approval to the warders to perform double duties and to substitute duty hours with mutual consent of each other. Hence he threw away the whole responsibility to run the Jail to his subordinate staff and afforded them an opportunity to make rules / laws for themselves. It seems, he never exerted himself nor invoked any positive action under the rules against the defaulter subordinates.
- iii) Owing to this slack attitude the prisoner Umar Rauf involved in two murder cases, was first encouraged to become a Don of Distt: Jail Lakki Marwat and than managed to win some warders and other officials and planned a

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- iv) It is quite evident from the statements, examination and cross-examination of all witnesses and accused that the escapee prisoner was a well known figure and a prominent Don of the prison. He was treated as a VVIP. After lock up time, the lock of Barrack was opened if he (Amri) desired so. It speaks volumes of mismanagement and poor Jail Administration. Jail lower staff deduced that by doing help of Umar Rauf in his escape, they would surely get scot-free and this collusion would not hurt them, because the beneficiary was an influential person, an established Don and VVIP.
  - v) The Jail warders were mostly political appointees. During cross-examination it came to surface that one warder namely Hameed Ullah was quite illiterate. He could not even read his own statement written in Urdu. He did not know the spelling of the word "English". Such appointments, with no regard to merit and qualification, lead to poor administration and ultimate collapse of a system. The loyalties of such appointees can easily be won either through bribes or through their mentors. They are commodities open for sale in an open market. Besides this, such appointment is a big injustice to the deserving, dedicated and committed youth.
  - vi) The Jail staff, specially the lower formation, is poorly equipped, poorly paid, politically abused, poorly managed and badly treated. The overall morale of the force is low. The high ups have an empathic attitude towards its genuine problems and issues.
  - vii) Many warders were on double duty at the time of occurrence. There existed a tacit agreement between the constables/warders and Jail Authorities to substitute duty hours among themselves. The warders benefited from this agreement by enjoying more leisure/leaves and Jail Authorities felt relaxed by not assigning frequent duties, frequent checking and frequent patrolling. Hence there became a mess which resulted in this way.
  - viii) The culture of double duties is still prevalent in all the Jails of Khyber Pakhtunkhwa. It urgently needs to be discouraged and prevented. During visit to Lakki Jail it transpired that most of warders were doing double duties. Double duty devours the energy, initiative and degree of alertness of warders. Hence the quality of vigilance and resultant security level is compromised. This fact has also been admitted by Supt: Usman Ali in his cross examination.
  - ix) Two outer towers were manned by sentries of Levy force which is under Administrative control of Deputy Commissioner Lakki Marwat. It is a matter of common sense that this force must have been placed under the executive command of Supdt: Lakki Marwat Jail. But unfortunately Supt: Jail was not their immediate boss. Their boss i.e. Deputy Commissioner was sitting on the other side of river. So the sentries of such a force were their own bosses. Here the fault lies with high level managers of Prison System. As a result these sentries badly failed to prevent this escape due to two reasons.
    - I) Either the sentries on duty on the two outer towers were not present at the time of escape.
    - II) OR the sentries on the outer two towers were also in collusion with the escapee prisoner.
- In both cases they are equally responsible and have played a major role in the escape of this prisoner.
- x) Superintendent Jail could not manage to inform the I.G. Prison well in time. No

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224 PPC Police Station Lakki Marwat it transpired that, the written report of escape was delivered to local police station very late; as the FIR was registered at 21:30, while the distance between Lakki Jail and Police Station Lakki is only three furlong. If the time of occurrence is 14:00 hours, it might have been registered at 14:30. But it was registered at 21:30. There is a delay of about full seven hours, which cannot be defended by any way.

xi) Most of prisoners have mobile phones with themselves in Lakky Jail. It is impossible without the connivance of Jail staff.

**Recommendations:**

- 1) Major penalty of compulsory retirement may be imposed on Deputy Supdt./Cum Supdt: Mr. Usman Ali (BPS-17).
- 2) Noor Zaman Head warder (BPS-7) and, Aseel Janan Warder (BPS-5) may be exonerated from the charges.
- 3) Amir Faraz Line Muharir, (BPS-5) may be compulsory retired from service.
- 4) Hamayun Gul, Junior Clerk (BPS-7), may be given minor punishment of stoppage of three annual increments.
- 5) Minor penalty of stoppage of three increments may be imposed on Nasir Mehmud. Warder (BPS-5)
- 6) Major penalty of removal from service may be imposed on following:-
  - i) Muhammad Arif Warder BS-5.
  - ii) Aftab Malik, Warder BS-5.
  - iii) Shar Alibaz, Warder BS-5.
  - iv) Noor Islam, Warder BS-5.
  - v) Hamidullah, Warder BS-5
  - vi) Amir Baseer, Warder BS-5.
  - vii) Manzoor Khan, Warder BS-5.
  - viii) Zab Nawaz, Warder BS-5.
  - ix) Muhammad Sajid, Warder BS-5.
- 7) Formal departmental proceedings may be initiated against Abdullah Pervez Warder BS-5.(Chakker relief).
- 8) Formal Departmental Proceedings may be initiated against those men of Levy Force and Police who were on duty at that particular time on 24.05.2013. in Lakky Jail.

*(Signature)*  
KALIMULLAH KHAN BALOCH (PMS BS -18)  
CONTROLLER/INQUIRY OFFICER  
Govt: Printing & Stationery Deptt  
Khyber Pakhtunkhwa, Peshawar.

**Attested**

*(Signature)*  
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Advocate

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Advocate



(16)

Annexure D 361

**SHOW CAUSE NOTICE**

I, Muhammad Shehzad Arbab, Chief Secretary, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Muhammad Arif, Warder (BPS-5) attached to District Jail Lakki Marwat, as follows:

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer / inquiry committee for which you were given opportunity of hearing vide communication No.193-207/CP&S, date:20-08-2013; and.
- (ii) on going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer/inquiry committee;-

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

- (a)  Inefficiency / Negligence.


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

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

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

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

  
(MUHAMMAD SHEHZAD ARBAB)  
CHIEF SECRETARY,  
KHYBER PAKHTUNKHWA.

**Attested**  
  
To be true copy  
Advocate -



۱۲ بجے تا ۳ بجے کی ڈیوٹی سٹری ہونے کے لئے گیا تھا کیونکہ سپاہی میٹروپولس  
غیر حاضر تھا یا انکو ڈیوٹی پر چھوڑا گیا تھا۔ چونکہ سائل حکم عدوی نہیں  
کر سکتا تھا۔

(۲) یہ کہ ہنزہ علاقہ اندرونی احاطہ میں ہے اور معروف شرہ حوالہ دی احاطہ  
میں مقید تھا۔

(۳) لکھا یہ ہو نہیں سکتا کہ اقلہ میں چکر بلیف موجود تھا نیز وہاں  
اندرونی سیکٹ پر سٹری موجود تھا جہاں اقلہ کے گاگٹ گھاتا ہے  
نیز اقلہ کے میں گوڑی گٹت موجود تھا اور اندرون موصوفات  
پر بھی ڈیوٹی پر وارڈن موجود تھے۔

(۴) اندرون سیکٹ کے ساتھ اسٹیٹ پیر امیٹروال ۵۰ فٹ جس پر الیکٹریک  
وائر موجود ہے لہذا اگر سائل کے پوائنٹ اس نے escape کیا ہوتا  
تو کس طرح ان اسٹری موجودگی میں وہاں پہنچا۔ نیز سیکٹ  
کے باہر کھیلے طرف ۵۰ فٹ کے درمیان دو سیکٹ موجود ہیں جہاں  
پر لیوی کے سٹری موجود ہوتے ہیں اور ڈیوٹی پر کھڑے ہوتے ہیں

(۵) جہاں تک سائل کے معروف شرہ حوالہ کے ساتھ تعلقات کے بارے  
میں رپورٹ کیا گیا ہے۔ تو پیر ایک وارڈ اپنی ذمہ داری کا  
ملفوظ دوسرے کے سر دیکھتا ہے۔ جو کہ مبنی پر چھوٹ ہے۔

لہذا سڈیز، بیل نقاطہ کو مد نظر رکھ کر  
سائل کے حریف شراکتوں میں لگائے گئے الزامات کو ختم کیا  
جائے اور سائل کو بری کیا جائے۔ نیز سائل کو ذاتی مستوائی کا موقع  
دیا جائے۔

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Advocate

ال وار قن

وارڈ عارف مان (موظف) سٹری اندرونی سیکٹ کے ڈیوٹی پر موجود



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT



**ORDER**

SQ(Com/Eng)/HD/Lakki Jail/2013, WHEREAS, The following officer / officials of the Inspectorate of Prisons, Khyber Pakhtunkhwa, were proceeded against under rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the charges mentioned in the show cause notices dated 17/12/2013, served upon them individually.

**AND WHEREAS**, the competent authority i.e the Chief Secretary, Government of Khyber Pakhtunkhwa, granted them an opportunity of personal hearing as provided for under Rules ibid.

**NOW THEREFORE**, the competent authority (The Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidences on record, the explanation of the accused officer / officials and affording an opportunity of personal hearing to the accused, findings of the enquiry committee and exercising his power under rule-3 read with Rule-14 (5) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 has been pleased to pass the following orders noted against the name of each officer / officials with immediate effect;

S.No	Name & Designation	Orders
1.	Mr. Usman Ali (BPS-17), Deputy Superintendent Jail, District Jail Lakki Marwat.	Compulsory retirement
2.	Mr. Amir Faraz, Warder (BPS-05), District Jail Lakki Marwat.	Compulsory retirement
3.	Mr. Hamayun Gul, Junior Clerk (BPS-07), District Jail Lakki Marwat.	Stoppage of three (03) annual increments.
4.	Mr. Nasir Mehmood, Warder (BPS-05), District Jail Lakki Marwat.	Stoppage of three (03) annual increments.
5.	Mr. Sher Ali Baz, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
6.	Mr. Hamidullah, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service

Attested

To be true copy  
Advocate

Attested

To be true copy  
Advocate



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4/3



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT

7.	Mr. Muhammad Arif, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
8.	Mr. Noor Islam, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
9.	Mr. Muhammad Sajid, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
10.	Mr. Zaib Nawaz, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
11.	Mr. Manzoor Khan, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
12.	Mr. Amir Baseer, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service
13.	Mr. Aftab Malik, Warder (BPS-5) District Jail Lakki Marwat.	Removal from service

SECRETARY TO GOVERNMENT OF  
KHYBER PAKHTUNKHWA HOME DEPARTMENT

Endst. No. SO(Com/Eng)/HD/Lakki Jail/2013, dated Peshawar the March 17, 2014

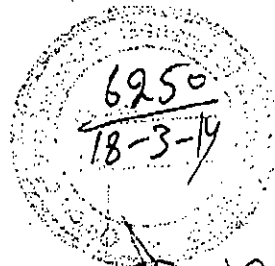
Copy of the above is forwarded to the -

1. ✓ Inspector General of Prisons, Inspectorate of Prisons, Khyber Pakhtunkhwa Peshawar.
2. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
4. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
5. Officer/officials concerned.

Attested

To be true copy  
Advocate

SECTION OFFICER (Com/Eng)



Attested

To be true copy  
Advocate

Handwritten signature/initials

(2)

"Annexure G"

To

The Honourable Chief Minister Govt; of  
Khyber Pakhtunkhwa, C M Secretariat,  
Peshawar

**Subject: Departmental appeal**

Respected Sir,

With due respect I have the honour to submit this departmental appeal/representation for your kind consideration and favourable action on the following facts and grounds:

1. That appellant has been serving as warden in jail department. He has considerable service at his credit and has never been rated as inefficient and unqualified.
2. That on 24-05-2013, an unfortunate occurrence happened in the District Jail Lukki, wherein one notorious accused namely Umer Rauf alias (Amri) ran from the Jail and made his escape good and absconded. The occurrence happened allegedly in between 1.15 pm and 1.45 pm as per record.
3. That preliminary inquiry was held and FIR No.287 dated 24-05-2013 under section 222, 223 and 224 was registered against six persons, including the appellant. Appellant along with other allegedly Co accused were arrested on the same day, and later on were released on bail. The bail was assailed before the ADJ, Lakki but was dismissed and appellant bail was confirmed.
4. That it very humbly submitted that appellant has performed double duty on the relevant day, the 1<sup>st</sup> one 9:00 am to 12:00 noon as sentry main gate and then he was ordered by the line Muharrar to perform duty in place of Warden Qayyum Nawaz and as such he obeyed the order and perform duty from 12:00 am to 3:00 am. Appellant is neither involved in any sort of collision with the escaped accused nor played any irresponsibility in his official duty.
5. That letter on fact finding departmental inquiry was conducted by Mr. Itizaz Jadoon Superintendent Jail Bannu. He heard the appellant verbally. He concluded his inquiry but appellant does not know regarding the fat of inquiry till the date.

**Attested**

*[Signature]*  
To be true copy  
Advocate

6. That 2<sup>nd</sup> Inquiry was conducted through Kalim Ullab Balooch, who served the appellant with charge sheet and statement of allegation, appellant submitted detailed reply and the inquiry officer conducted ex parte inquiry without the active participation of the appellant. The prosecution failed to establish fault on his part. The same can be verified from the inquiry report. It is pertinent to mention here that no prosecution witness has been examined in the presence of appellant; the opportunity of cross examination does not arise.
7. That final show cause was served upon the appellant to which appellant also submitted detail reply and once again denied the charges leveled against him.
8. That Honourable Secretary to Government of Khyber Pakhtunkhwa Home Department without assigning any legal reason removed the appellant from his service vide order dated 17-03-2014.
9. That being aggrieved from the harsh penalty prefers the instant departmental representation inter alia on the following grounds.

#### GROUND

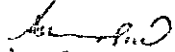
- a. That appellant has not been treated in accordance with law, rules and policy and thus Article 4 of the Constitution has been violated. The prosecution has failed to establish the leveled accusation against the appellant and even the inquiry officer is not sure regarding the involvement of appellant. The impugned order is based on no evidence, therefore the same is void ab initio and nullity in the law and liable to set back.
- b. That section 16 of the civil servant Act, 1973 provide that every civil servant is liable for prescribed disciplinary actions and penalties only through prescribed procedure. In the instant case no prescribed procedure has been adopted by the inquiry officer. The inquiry officer has not recorded the statement of any prosecution witness in the presence of appellant, the defense plea has been discarded without assigning any legal reason, therefore, the impugned order is illegal, unlawful and

**Attested**

*[Signature]*  
 To be true copy  
 Advocate

without lawful authority and as such liable to be set aside.

- c. That the prescribed procedure as described in the Khyber Pakhtunkhwa (Efficiency and Disciplinary) Rule 2011 are not mere formalities and technicalities of law, but the mandatory provision of law and has been enacted in order to secure justice in practical shape.
- d. That it is very astonished fact that charge sheet and statement of allegation has been served by one authority and impugned penalty by another authority, which not legally possible and on this score alone the impugned order is liable to be quashed out.
- e. That major penalty has been imposed without any sort of inquiry and appellant has been contemned unheard and no valid reason have been assigned with termination order constitute violation of Section 24A of the General Clauses Act, 1897, therefore, the impugned orders are not sustainable in the eyes of law and liable to be struck down.
- f. That the Honourable Supreme Court of Pakistan has laid down a permanent law that no major punishment could be imposed without regular inquiry, the subject impugned order based on no inquiry and therefore, no base in the light of the law laid down by the Apex Court, thus liable to be set aside.
- g. That the prosecution was under legal obligation either to wait for the outcome of the criminal case, which is pending adjudication before the competent court of law or to hold regular enquiry as prescribed in the statute and statutory rules. In absence of conformity with statutory rules the penal order cannot be clothed with validity and is liable to be set aside.

**Attested**  
  
 To be true copy  
 Advocate



- h. That factual controversy is involved in the subject case, therefore, regular inquiry was absolutely necessary as per law laid down by the Honourable Supreme Court of Pakistan, the same has been ignored in toto, therefore, on this score, the impugned order is also liable to be set aside.
- i. That the well-known principle of law "Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.  
....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.
- j. That appellant is jobless since his dismissal from service, therefore entitled to be re instated with all service benefits.

It is, therefore, humbly requested that on acceptance of this departmental appeal Your Honourable may graciously be pleased to set aside the impugned order of removal from service dated 17-03-2014 and re instate the appellant with all back benefits.

M. A. J  
Yours faithfully

Muhammad Arif Warder BPS-5

S/o Sabaz Ali Khan R/o Sabir Abad Tehsil and District  
Karak

Dated: 25/03/2014

Attested  
To be true copy  
Advoc



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

In the matter of

Service Appeal No.819/2014

Muhammad Arif Ex-Warder

Attached to District Jail Lakki Marwat.....**Appellant.**

**VERSUS**

1. Chief Secretary,  
Govt: of Khyber Pakhtunkhwa,

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

3. Inspector General of Prisons,  
Khyber Pakhtunkhwa Peshawar

4. Superintendent  
Headquarters Prison D.I Khan

5. Superintendent  
District Jail Lakki Marwat.....**Respondents.**

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

**Preliminary Objections**

- i. That the appellant has got no cause of action.
- ii. That the appeal is incompetent and is not maintainable in its present form.
- iii. That the appellant 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 barred by law.

**ON FACTS**

- 1- Pertains to record, hence no comments.
- 2- Correct further stated that the appellant, in this particular paragraph of his appeal has made confession of a very important point regarding his Removal from Service. The statement of appellant as well as the inquiry report support each other's stance which ultimately concludes that the appellant, then performing duty as main gate Sentry and at watch tower # 01, has failed to discharge his assigned duties in accordance with the Pakistan Prison Rules. The slackness on his part has been encashed by the escapee which also strengthens the fact that the escape has been made with the connivance of the appellant (the then Patrolling Officer).
- 3- Correct to the extent of F.I.R.
- 4- Not admitted. As evident from the Charge Sheet (**Annex-A**) the appellant performed his duties on the day of occurrence as Main-gate Sentry from 09:00 am to 12:00 noon and thereafter he performed in Watch Tower No.1 up-to 03:00 pm in place of Warder Qayum Nawaz on his own accord as a double duty but failed to keep alert himself on duty, due to

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his gross negligence, the escapee made his escape from the Jail hence he violated Rule-1072 and 1095 (f) of Khyber Pakhtunkhwa Prisons Rules-1985.

- 5- Incorrect and misleading. The departmental inquiry has been made through a competent officer. The plea of the appellant is incorrect. The inquiry officer conducted impartial inquiry and fulfilled all the codal formalities and on the recommendation of the inquiry officer, the competent authority has imposed the major penalty of Removal from Service. A copy of the inquiry report is **Annexed-B**.
- 6- Incorrect, misleading. The inquiry officer has followed the due course of Law required for such departmental inquiry as well as provided ample opportunities to the accused official in the instant case and has fulfilled all codal formalities as well as obeyed the call of natural Justice.
- 7- Pertains to record.
- 8- Incorrect, misleading. As elaborated in the preceding Paras, the competent authority has taken lenient view and has just imposed upon him major penalty of Removal from Services without any further sentence.
- 9- Incorrect, misleading. The departmental appeal having no sound footing, the competent authority filed it because in the instant case the appellant already got the leniency regarding imposition of penalties.

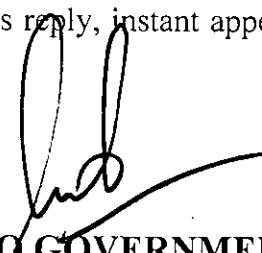
**GROUND:** -

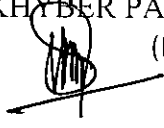
- a. Incorrect, misleading. No violation of Article-4 of the Constitution because all the proceedings were made in a very transparent manner. All requisite formalities were fulfilled and then formal and lawful orders were issued and implemented.
- b. Incorrect, all the codal formalities were adopted during enquiry.
- c. As explained in Para-B above.
- d. Incorrect, misleading. The charge sheet and statement of allegations have been issued and approved by the competent authority as per law and served upon the accused same through proper channel.
- e. Incorrect, all the legal formalities were adopted during enquiry as elaborated in the preceding paras.
- f. Not admitted. As in first stage preliminary Inquiry was conducted upon establishing of charge, proper formal inquiry was also conducted by the Provincial Government through Mr. Kaleem Ullah (PMS BPS-18) Controller Government Printing and Stationery Department Khyber Pakhtunkhwa Peshawar, as evident from the inquiry report as (**Annex-B**).
- G. Incorrect, misleading. It is a common phenomena that in such cases where criminal cases as well as departmental proceedings has to be conducted, both proceedings will go on its way without affecting the status and pace of each other. As per laid down procedures both proceedings will go side by side.

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- H. Incorrect, misleading. Formal departmental inquiry was conducted and its findings were accordingly examined by the competent authority that resulted in his Removal from Service.
- I. Incorrect, misleading. In the instant case, all codal formalities have been fulfilled in accordance with the natural justice and no violation of principle of law occurred. The plea of appellant is nothing but to mislead the Honorable Tribunal. The approach of the appellant is nothing except to elongate and engage the Honorable Tribunal in useless course. The competent authority accordingly heard in person all the co-accuseds and then reached to the conclusion. Thus the orders passed are within the parameters of relevant law / rules.
- J. The misconduct on the part of appellant is crystal clear and beyond any reason of doubt.

It is therefore, humbly prayed that on acceptance of this reply, instant appeal may kindly be dismissed with cost throughout.

  
**CHIEF SECRETARY**  
GOVT: OF KHYBER PAKHTUNKHWA  
(Respondent No.1)

  
**SECRETARY TO GOVERNMENT**  
KHYBER PAKHTUNKHWA  
HOME & T.A.S DEPARTMENT  
PESHAWAR.  
(Respondents No.2)

*mmw 22/11*  
  
**INSPECTOR GENERAL OF PRISONS**  
KHYBER PAKHTUNKHWA PESHAWAR  
(Respondent No.3)

  
**SUPERINTENDENT**  
HEADQUARTER PRISON D.I KHAN  
(Respondents No.4)  
*29/11/15*

  
**SUPERINTENDENT**  
DISTRICT JAIL LAKKI MARWAT  
(Respondents No.5)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

In the matter of

Service Appeal No.819/2014

Muhammad Arif Ex-Warder

Attached to District Jail Lakki Marwat.....**Appellant.**

**VERSUS**

1. Chief Secretary,  
Govt: of Khyber Pakhtunkhwa,

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

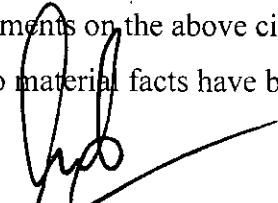
3. Inspector General of Prisons,  
Khyber Pakhtunkhwa Peshawar

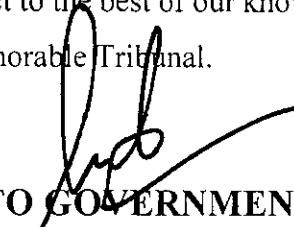
4. Superintendent  
Headquarters Prison D.I Khan

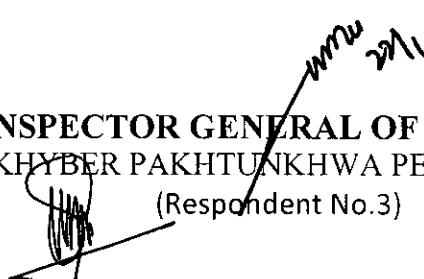
5. Superintendent  
District Jail Lakki Marwat.....**Respondents.**

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS No. 1 to 5**


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

  
**CHIEF SECRETARY**  
GOVT: OF KHYBER PAKHTUNKHWA  
(Respondent No.1)

  
**SECRETARY TO GOVERNMENT**  
KHYBER PAKHTUNKHWA  
HOME & T.AS DEPARTMENT  
PESHAWAR.  
(Respondents No.2)

  
**INSPECTOR GENERAL OF PRISONS**  
KHYBER PAKHTUNKHWA PESHAWAR  
(Respondent No.3)

  
**SUPERINTENDENT**  
HEADQUARTER PRISON D.I KHAN  
(Respondent No.4)

  
**SUPERINTENDENT**  
DISTRICT JAIL LAKKI MARWAT  
(Respondents No.5)

⑥ Annexure - A  
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CHARGE SHEET

Muhammad Shehzad Arbab, Chief Secretary Khyber Pakhtunkhwa, as competent authority, hereby charge you Muhammad Arif, as follows:

That you, while posted as warder (BPS-5) at District Jail Lakki Marwat committed the following irregularities:

On the day of occurrence of escape of undertrial prisoner Umar Rauf @ Amri S/O Pir Guulam escaped from jail on 24-5-2013, you performed your own allotted duties from 9.00 A.M to 12.00 noon as a main gate Sentry and thereafter you performed duties in watch tower No.1 upto 3.00 p.m in place of Warder Qayum Nawaz on your own accord but failed to keep alert yourself on duty. If you would have performed your duties efficiently then such ugly incident may not have occurred, thus you have violated Rule-1072 and 1095(f) of Khyber Pakhtunkhwa Prisons Rules 1985.

2. By reason of the above, you appear to be guilty of inefficiency/misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the rules ibid.
3. You are, therefore required to submit your written defence within seven days of the receipt of this Charge Sheet to the Inquiry Officer, as the case may be.
4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.

**Attested**

*Arbab*  
to be true copy  
Advocate

*M. Shehzad*  
(MUHAMMAD SHEHZAD ARBAB)  
CHIEF SECRETARY,  
KHYBER PAKHTUNKHWA

DISCIPLINARY ACTION

I, Muhammad Shehzad Arbab, Chief Secretary Khyber Pakhtunkhwa, as the competent authority, am of the opinion that Warder Muhammad Arif (BPS-5) attached to District Jail Lakki Marwat has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

On the day of occurrence of escape of undertrial prisoner Umar Rauf @ Amri S/O Pir Guliam escaped from jail on 24-5-2013, he performed his own allotted duties between 9.00 a.m to 12.00 noon as a main gate Sentry and thereafter he performed duties in water tower No.1 upto 3.00 p.m in place of warder Qayum Nawaz on his own accord and failed to keep alert himself on duty. If he would performed his duties efficiently then such ugly incident may not has occurred, thus he has violated Rule-1072 and 1095(f) of Khyber Pakhtunkhwa Prisons Rules 1985.

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

i. Mr. Kaleemullah

ii. \_\_\_\_\_

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

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

**Attested**

*Signature*  
To be true copy  
Advocate

*Signature*  
(MUHAMMAD SHEHZAD-ARBAB)  
CHIEF SECRETARY,  
KHYBER PAKHTUNKHWA



بخدمت جناب سیکرٹری صاحب خیبر پختونخواہ پشاور اتھارٹی

Charge Sheet عنوان:-

بحوالہ چارج شیٹ موصول سپرنٹنڈنٹ صاحب ڈسٹرکٹ جیل لکی مروت مورخہ 24-08-2013

جناب عالی!

مودبانہ التماس ہے کہ سائل کے خلاف چارج شیٹ میں جو الزامات لگائے گئے ہیں اسکے دفاع میں مندرجہ ذیل گزارشات پیش کرنے کی

تصارت کر رہا ہے۔

(1) سائل کے خلاف الزام ہے کہ مورخہ 24-05-2013 کو آپ نے مین گیٹ کے سنتری کی ڈیوٹی انجام دی اور 12 بجے ڈیوٹی ختم ہونے

کے بعد 12 بجے سے لیکر 3 بجے تک کا اندرونی پیکٹ نمبر 1 پر ڈیوٹی اپنی مرضی سے انجام دی۔

اس بابت سائل حسب ذیل عرض کرتا ہے۔

(2) قیوم نواز دارڈر کی جگہ میری ڈیوٹی لگائی گئی چونکہ قوانین کے مطابق جو حکم دیا جاتا ہے اسکی بجاوری لازم ہے۔ لہذا بلاوے پر برج نمبر 1 کو

سنتری ڈیوٹی کیلئے روانہ ہوا۔

(b) مورخہ 24-05-2013 کو سن سائل اپنی مرضی سے ڈیوٹی پر برج نمبر 1 پر نہیں گیا بلکہ رجسٹرو کری ملازمان ملاحظہ کیجئے کہ مذکورہ جگہ پر

میری ڈیوٹی لگائی گئی تھی۔

ڈیوٹی کے بغیر دربانجیل کوئی بھی وارڈر جیل کے اندر نہیں چھوڑتا۔ لہذا اس نے میری ڈیوٹی نوکری ملازمان رجسٹر سے چیک کر کے جیل کے اندر

چھوڑا۔

(d) پیکٹ نمبر 1 میں داخل ہو کر گھڑی گشت نے باہر کی طرف سے من سائل کے پیچھے روٹین کے مطابق تالا لگایا اور سائل ڈیوٹی انجام دینا شروع

کیا۔

جہاں تک پاکستان پرین رولز 1985 کے دفعات 1072 اور (F) 1095 کا تعلق ہے۔ یہ کسی بھی جیل اہلکار کے مستعدی، قانونی کارروائی

کسی بھی فرد کی فراری یا قیدیوں کے ہنگاموں کے دفاع کرنے کے بارے میں اور دفعہ (F) 1095 کسی بھی سرکاری اہلکار کے فرض سے وفاداری،

تعمیر کو توڑنا اور ڈیوٹی کے کوتاہی کے بارے میں ہے۔

اس بابت سائل وضاحت کرتا ہے۔

کہ اندرونی برج احاطہ نمبر 1 میں ہے لہذا سائل کے پیکٹ سنتری کے علاوہ احاطہ نمبر 1 گھڑی گشت، پیکٹ نمبر 2 میں سنتری احاطہ نمبر 2 میں

گھڑی گشت اور موقعہ جات اندرونی پر سنتری کھڑے تھے۔ اور گشت کرتے تھے۔ نیز بیرونی چاروں کونوں پر ٹاورز ہے جن میں سنتری موجود تھے ان تمام

نے نہ کسی ناخوشگوار واقعہ کو دیکھا نہ اطلاع دی نیز سائل پیکٹ نمبر 1 میں چاق و چوبند مستعد کھڑا تھا اور ڈیوٹی سرانجام دے رہا تھا۔ نہ سائل کو کسی کو فرار

ہوتے دیکھا اور نہ اندرونی ڈیوٹی پر ملازمین نے فراری کی اطلاع دی اور نہ سائل نے کسی کو جیل سے فرار ہوتے دیکھا ہے۔

مندرجہ بالا حقائق کی روشنی میں سائل عرض کرتا ہے کہ سائل کے خلاف لگائے گئے الزامات کو ختم کیا جائے اور سائل کو بری کیا جائے۔ نیز سائل

کو ذاتی شنوائی کا موقع دیا جائے۔

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Advocate

سائل دارڈر عارف خان (معطل) سنتری اندرونی ٹاور نمبر 1 ڈسٹرکٹ جیل لکی مروت

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Annexure C

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# INQUIRY REPORT

Subject: DEPARTMENTAL PROCEEDINGS INTO THE ESCAPE OF UNDERTRIAL PRISONER UMER RAUF @ AMRI S/O PIR GHULAM FROM DISTRICT JAIL LAKKI MARWAT.

## Background

One under trial prisoner named Umar Rauf @ Amri S/O Pir Ghulam Village Esak Khel, Distt. Lakki Marwat escaped from the District Jail Lakki Marwat on 24.05.2013. He was involved in case FIR No. 440 dated 02.09.2009, U/S 302, 324-34 PPC, Police Station Lakki District Lakki and case FIR No. 202 dated 29.11.2008 U/S 302,34 PPC Police Station Lakky, Distt. Lakky Marwat. Hence he was involved in two murder cases. He escaped from the Jail on 24/05/13 in broad day light, at the time in between 1:15 PM to 1:45 PM. No lock, no prison wall, no window, door or any gate was broken. No tunnel was dug; no instruments like hammer, spade, scissor, knife, rope or ladder have been used in this escape. And the prisoner involved in two murder cases escaped by throwing a dust in the eyes of all watch and ward staff of Distt. Jail Lakky in particular, and in the eyes of prison management system, in general.

2. Apparently it seems that whole system of watch and ward and prison security arrangements, and the overall frame work of prisons management have become ineffective, corrupt and irresponsive. It seems that a huge old-structure is crumbling which may fall at any time. The frequent incidents of Jail break and escape of prisoners from the jails is just a tip of an ice-burg. It is an early warning sign of an impending colossal tragedy.

3. The prison authority of District Jail Lakki Marwat have been un-aware about the escape of prisoner for about half an hour and later on when they got wind of this incident they informed the I.G Prison and Police Department and got the case FIR No. 287 dated 24.05.2013 U/S 222, 223, 224, PPC PS Lakky, Distt. Lakky Marwat registered against the six subordinates officials on duty. They were suspended and a preliminary inquiry by Mr. Ehtesham Ahmad Jadoon, Superintend Jail Bannu was conducted. The inquiry officer involved 15 officers/officials in this inquiry, but astonishingly absolved one Abdullah Pervez (chakkar Relief) actual In charge of inner Jail staff and security from 12.00 to 1500 hours, from all charges. Abdullah Pervaz is an accused nominated in the FIR, and the Inquiry Officer didn't give any solid reason/proof for that, except the statement of Abdullah Pervez himself. Moreover The Inquiry officer didn't find any fault in the role played by sentries of Levy Force who were manning outer towers of Lakky Jail. In prima facie, men of Levy Force, doing duty at that particular time on the outer towers of Lakky Jail are equally guilty. Preliminary inquiry report is (Annex-A).

## Proceedings

All relevant record was thoroughly scrutinized, site of escape was inspected, and detailed discussions were held with the prison staff, local Police, IG Prison Office and the concerned prisoners still confined in Lakky Jail, before firming up the recommendations. Moreover, the relevant rules were deliberated upon (Annex-B) and the service record of the accused persons was minutely checked. All the

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accused were called along with their written defense. (Annex-C) They were examined and cross-examined (Annex-D) in presence of departmental representative Mr. Muhtarm Shah, Budget Officer, I.G Prison Office. Accused were personally heard and were given a free chance to put their oral, written or circumstantial evidence/defense.

Site Inspection

District Jail Lakki Marwat was visited. The entry and exit ways were thoroughly inspected. The total area of Distt Jail Lakky Marwat is 14 kanals and 01 marla, and the total area of inner Jail would be hardly 08 kanals, which is guarded by 20 feet high wall and on the top of this wall, live and bare electric wires run across. It is the area where four barracks for the prisoners, a big kitchen, washrooms, two internal watch towers, a tuck-shop and a reasonable courtyard are situated. An internal wall separates the courtyard in two portions. An Iron gate, in this wall, connects two portions of courtyard. The prisoners of each portion freely come and go to other portion. As informed by Lakky Jail administration, there is no sentry on this gate to limit the movements of prisoners in their respective portions. The total strength of Officials/officer present at the time of occurrence was 48. There is cultivated agricultural land on the eastern, western and the southern side of Lakky Jail. It is an old jail. The newly built Jail in Distt Lakky Marwat is under the physical possession of Army. The outer wall and outer watch towers are guarded by Police and Levy Force. It is a very small Jail and the strength of 48 watch & ward staff, excluding police and Levy personals is more than enough for such a small area.

All the accused, prison staff, and other prisoners were examined and cross-examined but no one admitted to have seen the escape with his own eyes. All the accused denied the charges leveled against them in the charge sheet. All claim to be as pure dew.

Individual Responsibility.

1) Mr. Usman Ali, Dy: Supdt: cum Supdt: District Jail Lakki Marwat (BS-17).

He denies the charge No. 1 & 2 as mentioned in his charge sheet reply. The allegation on him is that on the day of incident there were 8 warders out of 10 on double duties and Supdt: Usman Ali didn't prevent this practice of double duties. He was charged with lack of interest in the affair of administration. His written reply is, "it is a common practice in jails that the warder perform double duties and substitute duty hours with their colleagues". It means that all jail warders were competent enough to make laws, rules for themselves and to decide how to run Jail and their boss Supdt: Jail gave a tacit approval to this practice. The reply of charge No. 4 by accused officer is an eye wash. He could not explain that why such huge staff could not prevent this incident. The reply of accused officer in response of charge No. 5 is not very convincing, keeping in view statement of other accused. The officer denies the charge but actually escapee prisoner Umar Rauf was an established Don of the jail being facilitated and treated by the jail staff as a VVIP. No solid defense was produced about charge No. 6 by Usman Ali.

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2) Noor Zaman, Head Warder (BPS-7).

As per his statement, he came into Jail at 08:00 morning performed his duty

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11:00. He again entered into Jail at about 2.00pm, and came to know about the escape of prisoner Umar Rauf . He remained there in the Jail and made exit at 06.55 pm. His statement is correct as verified and confirmed from Register No. 16 of Distt: Jail Lakki. The escape occurred in between 01.15pm to 01.45pm when Abdullah Pervez (11.00 to 14.00) was actual In charge of the affairs in the inner Jail. So Noor Zaman Head Warder is innocent in this case. It is further added the said Abdullah Pervez has not been included in this Inquiry by the Inquiry Officer Mr. Ehtizaz Ahmad Jadoon, Suptt. Jail Bannu, without providing any solid reason or defense, except the statement of Abdullah Pervez himself is despite the fact that his name was included in the FIR by Mr .Usman Ali, Supdt Jail, in his earlier report.

3) Humayun Gul, Junior Clerk (BPS-7)

He is a junior clerk by designation. Due to granting three days casual leave from 24.05.2013 to 26.05.2013 to Mr. Muhammad Ibrahim Asst Suptt; Jail, he was entrusted with his duties. His nature of job is quite different. However his boss entrusted him with the duty of Asstt: Suptt; Jail. He couldn't refuse, and he shouldn't refuse. He is a junior Clerk whose job duty is to deal with files and papers. Dealing with hardened criminals requires particular training skills and strong nerves. It is a total different job. Here much fault lies with his boss who tried to make a lamb a lion by giving him the garb of a lion, and expecting him to act with a force of lion. Here the wrong man was doing the wrong job.

4) Sher Ali Baz, Warder (BPS-5)

He was patrolling officer in Ihatta No.1 (12:00 to 3:00). The escapee Umar Rauf was confined in Ihatta No. 2. But there is no gate, door or window in Ihatta No. 2. All entry exit ways are located in Ihatta No. 1. The escapee must have used Ihatta No. 1 to escape. Hence patrolling officer at that particular time is direct responsible. Moreover Umar Rauf prisoner was not an ordinary prisoner. He was well known Don of Jail. Being patrolling officer he must have kept a vigilant eye on him specially, but he badly failed. Either he was in connivance with Amri, the escapee, or have slept well during his duty hours 12:00 to 3:00.pm. In both cases he is delinquent character in this story. A witness, in his cross examination, pointed out that said Sher Ali Baz was most upset at 2.00 pm when he entered into jail and saw him.

5) Hamidullah Warder (BPS-5)

He was patrolling officer in Ihatta No.2 (12:00 to 3:00). The escapee Amri was confined in Ihatta No. 2 too. But there is no gate, door or window in Ihatta No. 2. The escapee must have walked through the area, where this warder was doing duty. Hence patrolling officer at that particular time is direct responsible. Moreover Amri prisoner was not an ordinary prisoner. He was well known Don of Jail. Being patrolling officer he must have kept a vigilant eye on him specially, but he badly failed. Either he was in connivance with Amri, the escapee, or has slept well during his duty hours 12:00 to 3:00.pm. In both cases he is delinquent character in this story. Moreover during his cross examination, he admitted that he cannot read his own statement written in Urdu and he is illiterate. He didn't know spelling of a word "English." He further added that he was appointed by ex- Minister Prison.

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6) Muhammad Arif Warder. (BPS-5)

He did double duty, first from 9:00 am to 12:00 noon as sentry main gate, and second from 12.00 pm 03.00 pm as Sentry Tower No.1 in place of warder Qayum Nawaz. In his reply he contended that he had simply obeyed the orders and didn't do double at his own will. Internal Tower No.1, where this warder was doing duty, is an alleged place of escape of escapee prisoner. During discussions, it is alleged by his fellow colleagues that he (M. Arif) was in collusion with the escapee, and he facilitated him safe exit through his place of duty i.e. Tower No.1. The accused could not defend the charge in a convincing way. He was either in collusion with the escapee or was full asleep at the tower.

7) Noor Islam Warder(BPS-5)

He also performed double duty, first from 9.00 am to 12.00 noon on a place near Tower No.2 and secondly he was sentry at Tower No.2 from 12:00 noon to 3:00 pm. From this tower the movements of all the prisoners are watched. Moreover all the movements of all the visitors at the main gate of the Jail are also watched from this tower. This warder has badly failed to do his duty in an efficient way. He was either in collusion with the escapee or was full asleep at the tower.

8) Muhammad Sajid Warder(BPS-5)

He was doing his search duty in the main gate from 12.00 noon to 03.00 pm. In case the prisoner escaped from the main gate he is directly responsible in his escape.

9) Zeb Nawaz Warder(BPS-5)

He was doing his duty as Madadgir (Helper) from 12.00 noon to 03.00 pm in the main gate. In case the prisoner escaped from the main gate he is directly responsible in his escape.

10) Nasir Mahmood Warder(BPS-5)

He was doing his duty as sentry at main gate. In case the prisoner escaped from the main gate he is directly responsible in his escape.

11) Manzoor Khan Warder(BPS-5)

He was doing his duty as gate keeper at main gate from 12.00 noon to 03.00 pm. In case the prisoner escaped from the main gate he is directly responsible in his escape.

12) Amir Baseer Khan Warder (BPS-5)

He was assigned duties at Beat No. 2 from 12.00 noon to 03.00 pm. In case he kept a vigilant eye on that prisoner who was Don of Lakky Jail and his movements he would not had escaped. Either this warder was in collusion with the escapee or was full asleep during his duty hours. He is directly responsible for the escape.

13) Aseel Janan Warder(BPS-5)

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He has wrongly been involved in this case. As mentioned earlier the actual time of escape is in between 01.15 pm to 01.45 pm. When the prisoner has escaped and the Supdt. Jail was busy in registering a case against the accused officials, this warder was called in to perform duty in place of warder Wali Ayaz, and to avert any untoward situation. He came performed his duty and made exit at 06.50 pm. This fact is duly supported by Register No. 16. So he is innocent.

14) Amir Faraz Warder (Line Muharar) (BPS-5)

There are two charges on this accused. Being Line Muharar, he continued the illegal practice of assigning double duties and he was in collusion with the escapee. From the statements of accused and discussions it transpired that he was the de facto Supdt; of Lakky Jail. He used to assign duties to warders, recommend leaves for the staff, order opening and closing of prisoners barracks, supervise the management of tuck-shop and prisoners kitchen (langer- khawana), keep custody of keys and locks of jail barracks, manage meeting of prisoners with their visitors etc.

Moreover he belonged to the same village from which the escapee Amri belonged. All witnesses, accused and prisoners confirmed that escapee Amri was very close to Amir Faraz Muharar Line. The accused couldn't defend either charge. The charge of assigning double duties has been proved against him, and the charge of collusion has not been defended by him.

15) Aftab Malik Warder (BPS-5)

This warder was assigned the duty to run a tuck shop inside the Jail. He has been charged for having close relations with the accused. He admitted in his cross examination that prisoners have cell phones inside the Jail but he never snatched or recovered any cell phone from any prisoner. Having cell phones inside the Jail is impossible without the collusion of Jail Staff. In his written reply he claims to have been out of Jail at the time of occurrence. It is correct as verified from the record. But he could not defend the charge of having close relation and collusion with the escapee. At the time of occurrence his absence from the Jail is an evidence of his collusion with the escapee prisoner. Moreover during discussions with accused and prisoners it came to light that escapee Amri was often seen sitting and having hours long discussions with this warder. The accused badly failed to defend the charge.

Findings of Inquiry

- i) Usman Ali Dy: Supdt: cum Supdt: is very poor administrator, and a very weak commander to perform his duties in very effective manner. He badly lacks initiatives and quite incapable of shouldering his responsibilities. He didn't know a bitter reality that subordinates often sell their boss, if and when they get a chance to do so. Unfortunately he let himself to be auctioned at the hands of his subordinates.
- ii) Usman Ali gave tacit approval to the warders to perform double duties and to substitute duty hours with mutual consent of each other. Hence he threw away the whole responsibility to run the Jail to his subordinate staff and afforded them an opportunity to make rules / laws for themselves. It seems, he never exerted himself nor invoked any positive action under the rules against the defaulter subordinates.
- iii) Owing to this slack attitude the prisoner Umar Rauf involved in two murder cases, was first encouraged to become a Don of Distt: Jail Lakki Marwat and than managed to win some warders and other officials and planned a...

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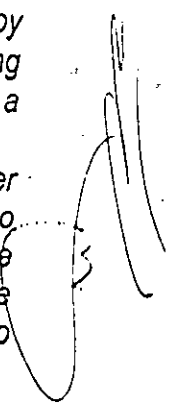
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- iv) It is quite evident from the statements, examination and cross-examination of all witnesses and accused that the escapee prisoner was a well known figure and a prominent Don of the prison. He was treated as a VVIP. After lock up time, the lock of Barrack was opened if he (Amri) desired so. It speaks volumes of mismanagement and poor Jail Administration. Jail lower staff deduced that by doing help of Umar Rauf in his escape, they would surely get scot-free and this collusion would not hurt them, because the beneficiary was an influential person, an established Don and VVIP.
- v) The Jail warders were mostly political appointees. During cross-examination it came to surface that one warder namely Hameed Ullah was quite illiterate. He could not even read his own statement written in Urdu. He did not know the spelling of the word "English". Such appointments, with no regard to merit and qualification, lead to poor administration and ultimate collapse of a system. The loyalties of such appointees can easily be won either through bribes or through their mentors. They are commodities open for sale in an open market. Besides this, such appointment is a big injustice to the deserving, dedicated and committed youth.
- vi) The Jail staff, specially the lower formation, is poorly equipped, poorly paid, politically abused, poorly managed and badly treated. The overall morale of the force is low. The high ups have an empathic attitude towards its genuine problems and issues.
- vii) Many warders were on double duty at the time of occurrence. There existed a tacit agreement between the constables/warders and Jail Authorities to substitute duty hours among themselves. The warders benefited from this agreement by enjoying more leisure/leaves and Jail Authorities felt relaxed by not assigning frequent duties, frequent checking and frequent patrolling. Hence there became a mess which resulted in this way.
- viii) The culture of double duties is still prevalent in all the Jails of Khyber Pakhtunkhwa. It urgently needs to be discouraged and prevented. During visit to Lakki Jail it transpired that most of warders were doing double duties. Double duty devours the energy, initiative and degree of alertness of warders. Hence the quality of vigilance and resultant security level is compromised. This fact has also been admitted by Supt: Usman Ali in his cross examination.
- ix) Two outer towers were manned by sentries of Levy force which is under Administrative control of Deputy Commissioner Lakki Marwat. It is a matter of common sense that this force must have been placed under the executive command of Supdt: Lakki Marwat Jail. But unfortunately Supt; Jail was not their immediate boss. Their boss i.e. Deputy Commissioner was sitting on the other side of river. So the sentries of such a force were their own bosses. Here the fault lies with high level managers of Prison System. As a result these sentries badly failed to prevent this escape due to two reasons.
  - I) Either the sentries on duty on the two outer towers were not present at the time of escape.
  - II) OR the sentries on the outer two towers were also in collusion with the escapee prisoner.

In both cases they are equally responsible and have played a major role in the escape of this prisoner.

- x) Superintendent Jail could not manage to inform the I.G. Prison well in time. No



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224 PPC Police Station Lakki Marwat it transpired that, the written report of escape was delivered to local police station very late; as the FIR was registered at 21:30, while the distance between Lakki Jail and Police Station Lakki is only three furlong. If the time of occurrence is 14:00 hours, it might have been registered at 14:30. But it was registered at 21:30. There is a delay of about full seven hours, which cannot be defended by any way.

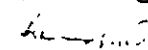
xi) Most of prisoners have mobile phones with themselves in Lakky Jail. It is impossible without the connivance of Jail staff.

**Recommendations:**

- 1) Major penalty of compulsory retirement may be imposed on Deputy Supdt./Cum Supdt: Mr. Usman Ali (BPS-17).
- 2) Noor Zaman Head warder (BPS-7) and, Aseel Janan Warder (BPS-5) may be exonerated from the charges.
- 3) Amir Faraz Line Muharir, (BPS-5) may be compulsory retired from service.
- 4) Hamayun Gul, Junior Clerk (BPS-7), may be given minor punishment of stoppage of three annual increments.
- 5) Minor penalty of stoppage of three increments may be imposed on Nasir Mehmud. Warder (BPS-5)
- 6) Major penalty of removal from service may be imposed on following:-
  - i) Muhammad Arif Warder BS-5.
  - ii) Aftab Malik, Warder BS-5.
  - iii) Shar Alibaz, Warder BS-5.
  - iv) Noor Islam, Warder BS-5.
  - v) Hamidullah, Warder BS-5.
  - vi) Amir Baseer, Warder BS-5.
  - vii) Manzoor Khan, Warder BS-5.
  - viii) Zab Nawaz, Warder BS-5.
  - ix) Muhammad Sajid, Warder BS-5.
- 7) Formal departmental proceedings may be initiated against Abdullah Pervez Warder BS-5. (Chakker relief).
- 8) Formal Departmental Proceedings may be initiated against those men of Levy Force and Police who were on duty at that particular time on 24.05.2013. in Lakky Jail.

  
KALIMULLAH KHAN BALOCH (PMS BS -18)  
CONTROLLER/INQUIRY OFFICER  
Govt: Printing & Stationery Deptt  
Khyber Pakhtunkhwa, Peshawar.

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Advocate



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Annexure D<sup>35</sup>  
(35)

SHOW CAUSE NOTICE

I, Muhammad Shehzad Arbab, Chief Secretary, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Muhammad Arif, Warder (BPS-5) attached to District Jail Lakki Marwat, as follows:

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer / inquiry committee for which you were given opportunity of hearing vide communication No.193-207/CP&S, date:20-08-2013; and.
- (ii) on going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer/inquiry committee;-

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

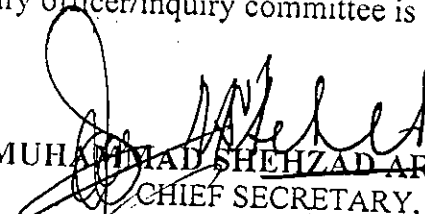
- (a)  Inefficiency / Negligence.


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

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

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

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

  
(MUHAMMAD SHEHZAD ARBAB)  
CHIEF SECRETARY,  
KHYBER PAKHTUNKHWA.

**Attested**  
  
To be true copy  
Advocate

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

**Service Appeal No.819/2014**

Muhammad Arif.....Appellant.

Versus

The Chief Secretary Govt of Khyber Pakhtunkhwa and  
others.....Respondents.

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**REJOINDER ON BEHALF OF APPELLANT IN  
RESPONSE TO REPLY FILED BY  
RESPONDENTS.**

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Respectfully Sheweth,

**Preliminary Objections:**

Preliminary objections raised by answering respondents are erroneous and frivolous as having no factual and legal backing. The answering respondents have failed to explain as why appellant has got no cause of action and locus standi; how the appeal suffers from limitation and laches; how appellant is estopped by his conduct, how the appellant is not an aggrieved person within the meaning of section 4 of the Service Tribunal Act, 1974 and how the appeal is not maintainable; what material facts have been concealed by the appellant and why the appeal is not maintainable; why the appeal liable to be dismissed in limini. No plausible explanation have been provided/submitted by the answering respondents? No specific and due objection regarding the controversial question of fact involved in the instant service appeal has

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14/05/15

been raised therefore, appellant is unable to submit proper rejoinder to the preliminary objection raised by the answering respondents.

**Facts:**

1. That Para No.1 of the appeal has been admitted by the answering respondents as correct.
2. That reply to Para No.2 of the appeal by the answering respondents is incorrect, hence denied. Whether there is any evidence that appellant has any illegal engagement with escapee or has any role in the escape of the offender. The escapee has made his escape with convenience of the high ups, and now petty employees have been put on stack.
3. That Para No.3 of the appeal has been admitted by the answering respondents as correct.
4. That reply to Para No.4 of the appeal by the answering respondents is incorrect, hence denied. The escapee has made his escape good with convenience of the high ups, but now petty employees have been made escape goat. There is no evidence that appellant has ever extended any undue benefits to the escape.
5. That reply to Para No.5 and 6 of the appeal by the answering respondents is incorrect, hence denied. No proper inquiry has been conducted. No witness has been examined in the presence of appellant and what to talk about cross examination. The

mandatory provision of prescribed procedure and law has totally been ignored, therefore in the absence of conformity with mandatory provision of law; the impugned penal order cannot be clothed with validity and is liable to be set aside.

6. That Para No.7 of the appeal has been admitted by the answering respondents.
7. That reply to para No.8 of the appeal by the answering respondents is incorrect, hence denied. The respondents have not properly replied the contention of the appellant vide his Para No.8 of the appeal.
8. That reply to Para No.9 of the appeal by the answering respondents is incorrect, hence denied. The departmental appeal of the appellant has been decided in violation of section 5 of the appeal Rules, 1986.

**Grounds:**

A-J: The replies to grounds A-J of the appeal are mere repetition of the facts, hence no need of further elucidation. Appellant rely on his grounds already submitted in his memo of appeal. Appellant would like to seek the permission of the Tribunal to advance grounds in rebuttle.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and

the appeal as prayed for may graciously be accepted with costs.

Through

محمد عارف

Appellant

محمد عارف

Ashraf Ali Khattak

Advocate, Peshawar.

Dated: \_\_\_\_\_ / 05/ 2015

Affidavit

I, Muhammad Arif ex warden prison department, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

محمد عارف  
Deponent

