

IN THE AUGUST PESHAWAR HIGH COURT MINGORA BENCH
DAR UL QAZA SWAT.

In the matter of
Service Appeal No. 1449/2023.
Muhammad Rasool (Ex-Sweeper) S/O Muhammad Ayub attached at District Jail
Timergara Dir Lower.

.....Appellant.

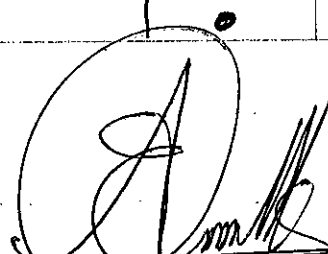
VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Director (E) Prisons, Khyber Pakhtunkhwa, Peshawar.
4. The Superintendent, District Jail Timergara, Dir (Lower).

.....Respondents.

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SUPERINTENDENT
DISTRICT JAIL TIMERGARA

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

In the matter of

Service Appeal No.1449/2023.

Muhammad Rasool (Ex-Sweeper) S/O Muhammad Ayub attached at District Jail Timergara Dir Lower.

.....Appellant.

VERSUS

- Khyber Pakhtunkhwa
Service Tribunal
Diary No. 9445
Dated 24/12/22
1. The Government of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Peshawar.
 2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
 3. The Deputy Director (E) Prisons, Khyber Pakhtunkhwa, Peshawar.
 4. The Superintendent, District Jail Timergara, Dir (Lower).

.....Respondents.

SUBJECT: JOINT PARA WISE COMMENTS OF RESPONDENTS No.01 TO 04

Respectfully Sheweth:-

PRELIMINARY OBJECTION:

- i. That the present service appeal is incompetent in its present form.
- ii. That the appellant has got no locus standi to file the instant appeal.
- iii. That the appellant has estopped by his own conduct to file appeal.
- iv. That the appellant has not come to this Honorable Service Tribunal with clean hands.
- v. That the present appeal is bad for mis-joinder and non-joinder of necessary parties.
- vi. That the present appeal is badly Time-barred.
- vii. That the present appeal is not based on solid ground liable to be dismissed with cost.

Objection on Facts:

1. Pertain to record.

2. Admitted to the extent that an **Explanation Notice dated 04/10/2022**

(Annex-A) was served upon the appellant for refusing to obey the lawful order of the authority, as per report of the Chief Chakkar dated 13/12/2022 **(Annex-B)** of the District Jail Timergara. Pipeline of flush system of few cells of High Security Zone were blocked and he was directed to remove the blockage but he refused to obey the lawful order and perform his duty. Hence, he violated Rule 804 of the KP Prison

Rules 2018 as well as Rule 1109-B of the ibid rules wherein, it is stated that;

“every member of Prison Staff must act in conformity with these rules and obey any lawful instructions of the Superintendent and inform the Superintendent promptly of any breach of these rules and any abuses or impropriety” (Copy of Relevant rule as Annex-C).

The appellant also violated Section-02 of Sub clause (i) of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011

“Inefficiency means failure to efficiently performs functions assigned to a government servant in the discharge of his duties” (Copy of rules attached as

Annexure-D) and the appellant was guilty of misconduct as provided under

Section 03 sub clause(b) **(Relevant rule Annex-E).** Hence, the appellant

has violated the mandatory provision of the rules ibid and committed gross misconduct. Moreover, the appellant was also proceeded against

under the Khyber Pakhtunkhwa, Government Servants (Efficiency &

Discipline) Rules 2011 and awarded him **Minor punishment in the**

shape of Stoppage of two (02) annual increments without future

effect in a departmental case **(Copies of Charge Sheet, Show Cause**

Notice and office order are enclosed as Annex-F, Annex-G and

Annex-H).

3. Admitted to the extent that the appellant was proceeded through

statement of allegations **(Copy enclosed as Annex-I)** and a proper

inquiry **(Copy enclosed as Annex-J)** was also conducted into the matter.

The inquiry officer submitted his findings to the Competent authority on

04/02/2023 wherein the inquiry officer proved the allegation leveled

against the appellant. It is up to the competent authority to agree or

disagree with the recommendation of the inquiry officer and impose a

lesser punishment in the shape of compulsory retirement was awarded to

him vide order of the Competent authority dated 22/03/2023 **(Copy**

enclosed as Annex-K).

4. Incorrect and not admitted that after submission of inquiry report to the competent authority, a proper Show Cause Notice dated 22/02/2023 was served upon him in order to prove himself innocent but the reply which is submitted by the appellant was found unsatisfactory. Resultantly, he was rightly awarded Major Penalty of **Compulsory Retirement from Service with immediate effect.**
5. Incorrect and not admitted. Detail reply is elaborated in Para-03 and 04 above.
6. Admitted to the extent that his departmental appeal was dismissed accordingly (**Copy of Departmental appeal as well as office order is enclosed as Annex-L.**)
7. As elaborated in Para-06 above.

GROUND.

- A. Incorrect, misleading as order of the competent authority dated 22.03.2023 and order of the Appellate authority dated 29.05.2023 are correct, judicious, in accordance with the law and Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011 and the respondent has committed no discrimination with the appellant.
- B. Incorrect, misleading as the appellant was provided an ample opportunity of hearing, defense and cross examination by the Inquiry Officer during the inquiry proceedings as evident from the Inquiry Report, personally heard by the competent authority as well as by the Appellate authority as required under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 and the final order was passed by the competent authority is according to law and rules.
- C. Incorrect, misleading as the office orders issued by the competent authority and appellate authority are in accordance with the law, rules and has been passed after observing the codal formalities as laid down in

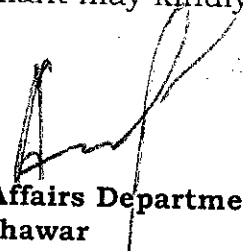
The Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline)

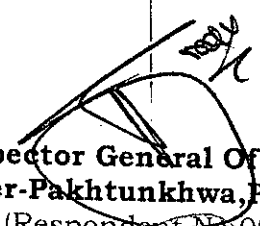
Rules 2011. An opportunity of fair trial was provided to the appellant and the competent authority associated him in whole proceeding, hence no violation of the Constitution has been committed by the respondents.


- D. Incorrect, misleading as the appellant was proceeded against for refusal to perform his duties under the rules and he instigated other newly appointed sweepers to refuse cleaning of toilets of the barracks. The appellant was bent upon to prove that cleaning of toilets is not his responsibility rather it is responsibility of a Christian Sweeper. **(Copies of written statements are attached as Annexure-M)**. This very contention is not only violation of Article 25 of the Constitution of Islamic Republic of Pakistan 1973 but also contradictory to the orders of the Supreme Court of Pakistan dated 18.11.2022 in Civil Petition No. 2045 of 2019 **(Copy of Judgment attached as Annexure-N)**.
- E. Incorrect and not admitted. Detail of this Para is elaborated in Para-02,03 and 04 of factual objections above.
- F. The respondent would also seek permission of the Honorable Service Tribunal to raise additional objection at the time of arguments.

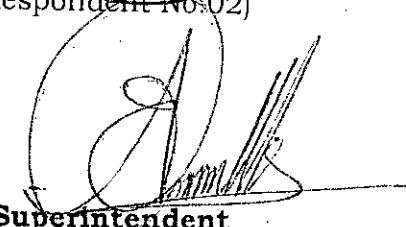
PRAYER :

It is, therefore, most humbly prayed that on acceptance of this instant reply/joint para wise comments of the respondent No.01 to 04, the appeal of the appellant may kindly be dismissed with cost.


Secretary Home & Tribal Affairs Department
Khyber Pakhtunkhwa, Peshawar
(Respondent No.01)


Inspector General Of Prisons
Khyber-Pakhtunkhwa, Peshawar
(Respondent No.02)


Deputy Director (E)
Prisons Khyber Pakhtunkhwa Peshawar
(Respondent No.03)


Superintendent
District Jail Timergara Dir Lower
(Respondent No.04)

(5)

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

In the matter of
Service Appeal No. 1449/2023.
Muhammad Rasool (Ex-Sweeper) S/O Muhammad Ayub attached at District
Jail Timergara Dir Lower.

.....Appellant.

VERSUS


1. The Government of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Director (E) Prisons, Khyber Pakhtunkhwa, Peshawar.
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.....Respondents.

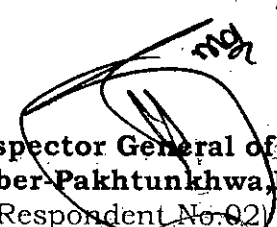
COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENTS No. 1 to 4.

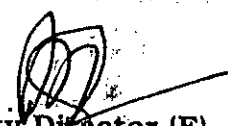
We, the following undersigned respondents do hereby solemnly affirm and declare that the contents of the Para-wise comments in the above cited appeal are true and correct to the best of our knowledge and belief and that no material/ facts have been kept concealed from this Honorable Service Tribunal.

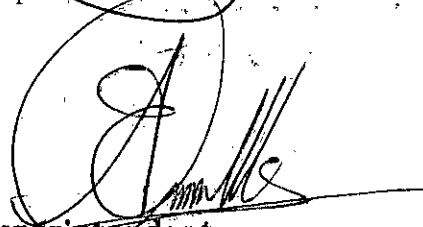
It is further stated on oath that in this appeal, the answering respondents have neither been placed ex parte nor their defense have been struck off.

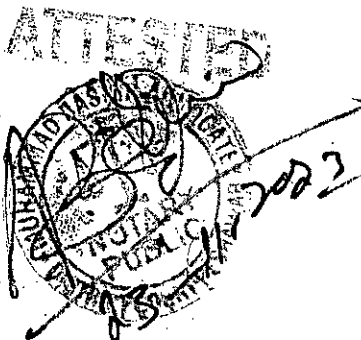

**Secretary Home & Tribal Affairs Department
Khyber Pakhtunkhwa, Peshawar
(Respondent No.01)**

**Home Secretary,
Khyber Pakhtunkhwa**


**Inspector General of Prisons
Khyber Pakhtunkhwa, Peshawar
(Respondent No.02)**


**Deputy Director (E)
Prisons Khyber Pakhtunkhwa Peshawar
(Respondent No.03)**


**Superintendent
District Jail Timergara Dir Lower
(Respondent No.04)
Superintendent
District Jail Timergara.**



از دفتر سپرنٹنڈنٹ ڈسٹرکٹ جیل تیرگرہ

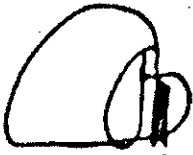
نمبر 859 تاریخ 04-10-22

- نوٹس نام: 1- محمد رسول خان خاکروب ڈسٹرکٹ جیل تیرگرہ
2- احسان اللہ خاکروب ڈسٹرکٹ جیل تیرگرہ
3- سلیمان خاکروب ڈسٹرکٹ جیل تیرگرہ

عنوان: طلب وضاحت / نوٹس

حسب اہم وزارت انسانی حقوق حکومت پاکستان اور انسپکٹری جنرل جیل خانہ جات خیبر پختونخوا پشاور چھٹی نمبر KC-31358-409/WE مورخہ 16-09-2022 تمہیں مورخہ 03.10.2022 کو لائسنس آفسر محمد اسماعیل، حضرت عمر اسٹنٹ سپرنٹنڈنٹ، اور لعل رحمان بیڈ وارڈرنے ہدایت کی کہ جیل کے اندر قیدیوں کے احوالات جان کے بارکوں کے غسل خانوں اور بیت الخلاء کے صفائی کرولیکن تم نے غسل خانوں اور بیت الخلاء کے صفائی کرنے سے انکار کر دیا اور مؤقف اختیار کیا کہ یہ مسابزون کا کام ہے۔ اپنے فریضہ منصبی آدا کرنے سے انکار سنگین بد کرداری کے زمرے میں آتا ہے۔

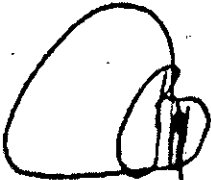
لہذا تمہیں ہدایت کی جاتی ہے کہ تین دن کے اندر اپنی پوزیشن کی وضاحت کریں کہ کیوں نہ تمہارے خلاف خیبر پختونخوا حکومت کے تادیبی قوانین / قواعد مجریہ 2011 کے تحت کارروائی کی جاتی۔ جس میں تمہیں نوکری سے برخواست کیا جاسکتا ہے۔ بصورت دیگر تمہارے خلاف یکطرفہ کارروائی عمل میں لائی جاسکتی ہے۔



سپرنٹنڈنٹ

ڈسٹرکٹ جیل تیرگرہ

نمبر تاریخ



سپرنٹنڈنٹ

ڈسٹرکٹ جیل تیرگرہ

کافی برائے اطلاع یابی:

جناب انسپکٹری جنرل آف جیل خانہ جات خیبر پختونخوا پشاور

Attested


Superintendent
District Jail Tergara.

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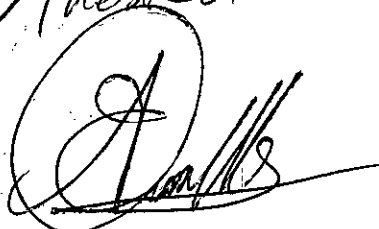
جناب عالی! خود بانہ گزارش کی جاتی ہے کہ قرنطینہ کے نکالنے سے اب اور
 کموڈ سٹیٹم خراب ہے۔ اور عملی طور پر بند ہے۔ اور گنڈگی
 باہر فرسٹ لہر لایا جاتا ہے۔ اور اُن گنڈگی سے
 بہت زیادہ بلو آتے ہیں۔ اور قرنطینہ والوں کو
 بہت تکلیف ہے۔ میں صفائی والوں کو بیمار بار کھ دینا ہوں
 کہ اُن کے صفائی کرے۔ سلیس اسیان اللہ، حبیب
 اور محمد رسول خاکروب اُن کے صفائی کرنے سے انکار دیتے
 ہیں۔ لہذا آپ صاحبان سے یہ بھی کہنے کے خلاف قانونی
 کارروائی کرے

رپورٹ ویران ہے

Q. To
 call ~~the~~ complaint
 from the concerned
 that why they

الو اللہ
 محمد رسول
 خاکروب

ایمان دگر

Attested


Superintendent
District Jail Timergara.



8

OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL TIMERGARA
Phone/Fax: 0945-9250095
Email: districtjailtimergara@gmail.com

No. 1641 / Dated: 13/12/2022.

To

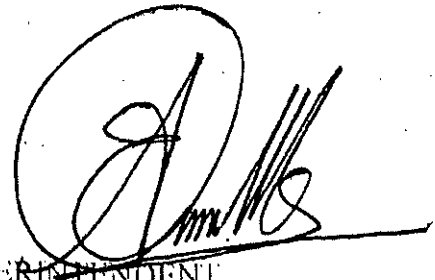
1. Muhammad Rasool Sweeper
2. Ihsanullah Sweeper
- ✓ 3. Habib Khan Sweeper,
Attached to District Jail Timergara.

Subject: **EXPLANATION NOTICE.**

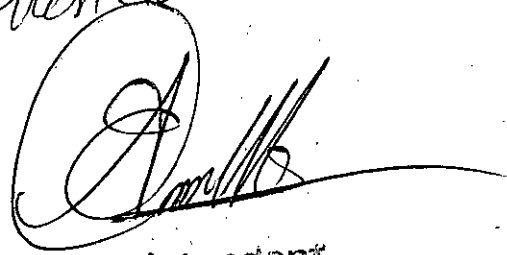
Memo:

As per report of the Chief Chakkar and sector Incharge, pipelines of flush system of few cells of high Security zone were blocked and you were directed by the chief chakkar, Ilyas Khan, Chief warden on 13-12-2022 to remove the blockage but you refused to obey the lawful orders and perform your duties. This act on your part is gross misconduct.

You are therefore, directed to explain your position within 03 days of receipt of this notice why you should not be proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.


SUPERINTENDENT
DISTRICT JAIL TIMERGARA

Attested


Superintendent
District Jail Timergara.

**Chapter-45
Warder Establishment**

1109.A Prison work as a public service.---(1) Prisons shall be managed within an ethical context which recognizes the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person.

(2) Staff shall operate to high professional standards and shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect. Management shall provide effective leadership for this purpose.

(3) The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed, through a programme of positive care and assistance.


(4) Prison authorities shall give high priority to observance of these rules concerning staff and shall pay particular attention to the management of the relationship between first line prison staff and the prisoners under their care.

1109.B General duty of prison staff.---Every member of prison staff must act in conformity with these rules and obey any lawful instructions of the Superintendent and inform the Superintendent promptly of any breach of these rules and any abuse or impropriety.

1109.C Code of ethics and conduct.--- Government shall approve a code regulating the conduct and discipline of prison staff. The code shall include procedures which may be invoked where it is suspected that the acts or omissions of a member of prison staff may constitute misconduct and the rights to fair hearing and of appeal of any such member of prison staff.

1109.D Specific prohibitions.---Prison staff are prohibited from,-

- (i) taking part in any contract, business or financial transaction with, or on behalf of, a prisoner;
- (ii) bringing in or taking out, or attempting to bring in or take out, or knowingly allowing to be brought in or taken out, to or for any prisoner any item whatsoever, except with the authority

Checked


Superintendent
Jail Timergara

- (v) maintaining a standard of living beyond known sources of income; or
- (vi) having a reputation of being corrupt;
- (h) "Governor" means the Governor of the Khyber Pakhtunkhwa;
- (i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;
- (j) "inquiry committee" means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;
- (k) "inquiry officer" means an officer appointed by the competent authority under these rules;
- (l) "*misconduct*" includes-
- (i) conduct prejudicial to good order or service discipline; or
- (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
- (iii) conduct unbecoming of Government servant and a gentleman; or
- (iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
- (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or
- (vi) making appointment or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
- (vii) conviction for a moral offence by a court of law.

Attested



Superintendent
District Jail Timergara.

(3) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber

Pakhtunkhwa Act No XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. **Grounds for proceedings.**—A Government servant shall be liable to be proceeded against under these rules, if he is-

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any unauthorized person, and his retention in service is prejudicial to national security; or
- (f) entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

4. **Penalties.**—(1) The following are the minor and the major penalties, namely:

(a) Minor penalties:

- (i) censure;
- (ii) withholding, for a specific period, promotion or increment subject to a maximum of three years, otherwise than for unfitness for promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post:

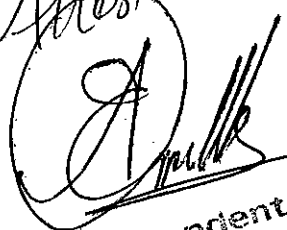
Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

- (iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;

(b) Major penalties:

- [(i) reduction to a lower post or pay scale or to a lower stage in a time scale for a maximum period of five years:

Provided that on a restoration to original pay scale or post, the penalized Government servant will be placed below his erstwhile juniors promoted to higher posts during subsistence of the period of penalty;]

Attested

 Superintendent
 District Jail Timergara.

Annexure F
CHARGE SHEET

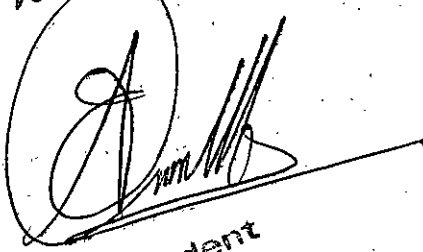
12

I, Muhammad Shuaib, Superintendent District Jail Timergara, as competent authority, hereby charge your Muhammad Rasool Khan Sweeper (BPS-30) as follows:

That you, while posted at District Jail Timergara as Sweeper committed the following irregularities:

تم کو جیل کے اندر صفائی کے کام پر معمور کیا گیا تھا۔ دوران ڈیوٹی تم کو چکر چیف لعل رحمان ہیڈ وارڈرنے نالے کی صفائی کرنے کو کہا تو تم نے کام کرنے سے انکار کیا۔ اس دوران تم نے چکر چیف سے بدکلامی کی اور بات ہاتھ پائی تک پہنچی۔ اس کے علاوہ 25.07.2022 کو تم بغیر اجازت کے ڈیوٹی سے غیر حاضر ہوئے۔ اس اقدام کے بنا پر تم نے حکومت خیبر پختون خواہ کے سول سرونٹ رول 2011 کی خلاف ورزی کی ہے۔

2. By reason of the above, you appear to be guilty of Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to any of the penalties specified in rule 4 of the rule ibid.
3. You are, therefore, required to submit your written defence within ten days of the receipt of this Charge Sheet to the inquiry officer/inquiry committee, as the case may be.
4. Your written defence, if any, should reach the inquiry officer/inquiry committee 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. Statement of allegation is enclosed.

Alleshaal


Superintendent
District Jail Timergara


SUPERINTENDENT
DISTRICT JAIL TIMERGARA

SHOW CAUSE NOTICE

I, Amin Shuaib, Superintendent District Jail Timergara, as competent authority, under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules, 2011, do hereby serve you, Mr. **Muhammad Rasool Khan** Sweeper (BPS-3) attached to District Jail Timergara as follows:

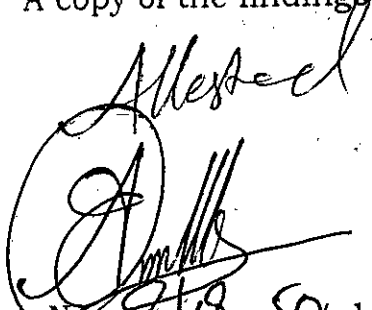
1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer/inquiry committee for which you were given opportunity of hearing vide communication No.781 dated 15.09.2022.

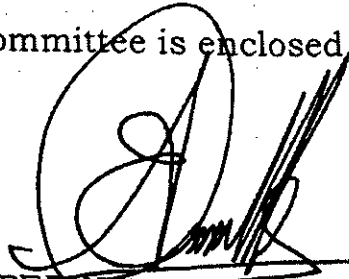
(ii) On going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer/inquiry committee,-

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

تم کو جنیل کے اندر صفائی کے کام پر مقرر کیا گیا تھا۔ دوران ڈیوٹی تم کو چکر چیف اعلیٰ رحمان ہیڈ وارڈ نے نالے کی صفائی کرنے کو کہا تو تم نے کام کرنے سے انکار کیا۔ اس دوران تم نے چکر چیف سے بدگلائی کی اور بات ہاتھ پائی تک پہنچی۔ اس کے علاوہ 25.07.2022 کو تم بغیر اجازت کے ڈیوٹی سے غیر حاضر ہوئے۔ اس اقدام کے بنا پر تم نے حکومت خیر پختون خواہ کے سول سروٹ رول 2011 کی خلاف ورزی کی ہے۔

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the Major penalty of "**Compulsory Retirement from Service**" under rule 4 of the said rules.
3. You are, thereof, required to show cause as to why the aforesaid penalty should 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 the findings of the inquiry officer/inquiry committee is enclosed,

Amin Shuaib



 SUPERINTENDENT
 DISTRICT JAIL TIMERGARA

Endst. No. 849-50 dated 28/09/2022

Superintendent
 District Jail Timergara

Copy of the above is forwarded to:-

1. The Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information, please.
2. Muhammad Rasool Khan Sweeper (BPS-3) District Jail Timergara.

229
 SUPERINTENDENT
 DISTRICT JAIL TIMERGARA



OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL TIMERGARA
Phone/Fax: 0945-9250095
Email: districtjailtimergara@gmail.com

No. _____ / dated: 20 / 10 / 2022.

DISTRICT JAIL TIMERGARA DIR LOWER, DISTRICT JAIL TIMERGARA DIR LOWER, DISTRICT JAIL TIMERGARA DIR LOWER, DISTRICT JAIL TIMERGARA DIR LOWER, DISTRICT JAIL TIME

OFFICE ORDER

WHEREAS, accused official/ Sweeper (BPS-03) **Muhammad Rasool Khan S/o Muhammad Ayub** attached to District Jail Timergara was charged within the meaning of Rule-3 of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules, 2011 for the charge of the misconduct contained in statement of Allegations/Charge Sheet served upon him vide this office endorsement No. vide No.781 dated 15.09.2022 wherein Mr. Bakht Rawan Deputy Superintendent Jail Timergara was appointed as inquiry Officer.

AND WHEREAS, he appeared before the inquiry committee, who inquired his case, went through the available record and provide him reasonable opportunity of hearing to defend his case.

AND WHEREAS, the accused official was proceeded against under Rule-14 (4) for the Charge of misconduct/as mentioned in the Show Cause Notice No.849-50 dated 28.09.2022.

AND WHEREAS, he furnished his written reply/defence to the Show Cause Notice which was found un-satisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 18.10.2022 as provided for under rules ibid. the accused official failed to defend his case with documentary proof/evidence.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules, 2011, having considered the Inquiry report, charge levelled against him and evidence on record, the undersigned being competent Authority, orders that he is hereby awarded **minor penalty** of stoppage of **two annual increment** with immediate effect.

Endst. No. 892-95 /

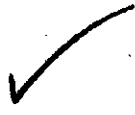
Allesed
[Signature]
Superintendent
District Jail Timergara.

← sd →
SUPERINTENDENT
DISTRICT JAIL TIMERGARA

Copy of the above is forwarded to:-

1. The Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information, please.
2. Mr. Bakht Rawan Deputy Superintendent (Convener Officer) and Mr. Muhammad Ilyas Computer Operator (Member) District Jail Timergara for information please.
3. The District Account Officer, Dir Lower at Timergara for information and necessary action please.
4. Muhammad Rasool Khan Sweeper BPS-03 (accused) District Jail Timergara.

[Signature]
SUPERINTENDENT
DISTRICT JAIL TIMERGARA



OFFICE OF THE SUPERINTENDENT
SUB JAIL DIR UPPER

Email: subjaildir@gmail.com

0944-881062

No. 241 / WE Dated 04 / 02 / 2023

To,

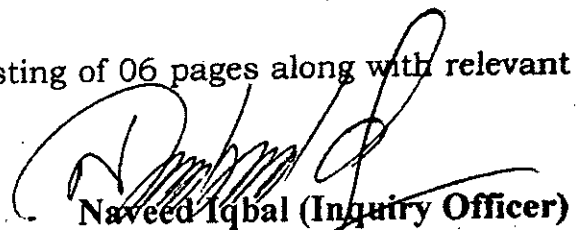
The Superintendent,
District Jail Timergara.

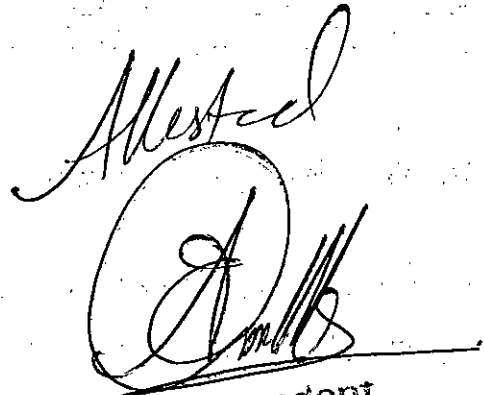
Subject: **INQUIRY REPORT AGAINST SWEEPER 1.HABIB KHAN 2.MUHAMMAD RASOOL KHAN 3.IHSAN ULLAH ATTACHED TO DISTRICT JAIL TIMERGARA.**

R/Sir,

Reference to your good-self office Endst: No.1089-93 dated 26-12-2022 on the subject noted above.

I enclosed herewith my inquiry report consisting of 06 pages along with relevant annex A to I for favour of further disposal please.


Naveed Iqbal (Inquiry Officer)
Assistant Superintendent
Sub Jail Dir Upper.


Superintendent
District Jail Timergara.

OFFICE OF THE SUPDT DIST JAIL TIMERGARA
No. 133
Date 16-02-2023

(17)

The Superintendent,
District Jail Timergara.

Subject: **DISCIPLINARY ACTION AGAINST ACCUSED SWEEPER**
1.HABIB KHAN 2.MUHAMMAD RASOOL 3.IHSAN ULLAH
ATTACHED TO DISTRICT JAIL TIMERGARA.

R/Sir,

Reference to your good-self office Endst: No.1089-93 dated 26-12-2022 on the subject noted above.

As per Charge sheet, Sweeper Habib Khan, Muhammad Rasool and Ihsan Ullah attached to District Jail Timergara have committed an act of misconduct, while performing their duties inside the jail on 13-12-2022. They refused to clean the toilets of high security zone. The accused sweepers were further directed to furnish their written reply in defence with in the stipulated period to the Inquiry officer.

The Superintendent District Jail Timergara, being competent authority, is pleased to appoint the undersigned as Inquiry officer in this case under rule No-03 of the KPK Government Servant E&D Rules. In the light of above-mentioned order, the undersigned proceeded to District Jail Timergara on 16-01-2023, being an Inquiry officer, to conduct proper inquiry. Inquiry of the said accused sweepers was conducted in District Jail Timergara on 16-01.2023. Findings and recommendations are as under.

Written Reply of Accused Habib Khan Sweeper (BPS-03)

As per his reply (Annex-A) accused sweeper stated, that on 13-12-2022, he was performing his duty inside the jail. The Chakkar Chief, Ilyas Khan, asked him to clean the blocked toilet of four cells of high security zone. And that he obeyed the order and started cleaning them, but he failed to open blocked toilets. He asked the Chakkar Chief, Ilyas Khan, and Sector Incharge, Taj Muahmmad, to arrange a plumber for it because these toilets/bathrooms are very old and they have no arrangements to repair it. Due to which a disciplinary proceeding was started against them. According to him he was ready to clean bathroom. But cleanliness of block pipes was not possible without plumber. And that he never neglected his duties. He apologised and requested for removal of all these allegations.

M. A. Saeed
Superintendent
District Jail Timergara

Cross Examination.

The questionnaire duly answered by the accused sweeper as (Annex-B). While responding to question No.1, He was appointed as sweeper on dated 25-01-2021 in District Jail Timergara. Responding to question No.02, Yes, He knows that the duties of a sweeper is cleanliness. Responding to question No.03 Cleanliness of toilets/bathroom is the responsibility of Christian. Responding to Question No.04, He never refused to clean toilets, He tried his best to clean the toilet but he failed to clear block flush system. When Chakkar Chief, Ilyas Khan, and sector Incharge, Taj Muhammad, reported him to the Superintendent Jail, he appeared and told him that these flush are totally out of order and they required reconstruction. Responding to question No.05, No on the incident day, He had not cleaned the toilet/bathroom.

Written Reply of Accused Muhammad Rasool Sweeper (BPS-03)

As per his reply (Annex-C) accused sweeper stated, that on 13-12-2022, he was performing his duty inside the jail. The Chakkar Chief, Ilyas Khan, asked him to clean the blocked toilets of four cells of high security zone. He obeyed the order and started cleaning of blocked toilets but he failed to clear the blocked toilets. He asked the Chakkar Chief, Ilyas Khan, and Sector Incharge, Taj Muahmmad, to arrange a plumber for it. Because these toilets/bathrooms are very old and that they had no arrangements to repair them. Due to which a disciplinary proceeding was started against them. And that he was ready to clean bathroom. But cleanliness of blocked-pipes was not possible without plumber. That he never neglected his duties. He apologised and requested for removal of all these allegations.

Cross Examination.

The questionnaire duly answered by the accused sweeper as (Annex-D).

While responding to question No.1, He was appointed as sweeper on dated 06-06-2006 in District Jail Timergara. Responding to question No.02, Yes, He knows that the duties of a sweeper is cleanliness. Responding to question No.03 Cleanliness of toilets/bathrooms is the responsibility of Christian. Responding to Question No.04, He never refused to clean toilets, He tried his best to clean the toilets but he was failed to clear blocked toilets. Responding to question No.05, yes it is.

Muhammad Rasool
[Signature]
Superintendent
District Jail Timergara

Written Reply of Accused Ihsan Ullah Sweeper (BPS-03)

As per his reply (Annex-E) accused sweeper stated, that on 13-12-2022, he was performing his duty inside the jail. That the Chakkar Chief, Ilyas Khan, asked

him to clean the blocked toilets of four cells of high security zone. He obeyed the order and started opening the blocked toilets but in vain. He, then, asked the Chakkar Chief, Ilyas Khan, and Sector Incharge, Taj Muahmmad, to arrange a plumber for it. Because these toilets/bathrooms are very old and that they have no arrangements to repair them. Due to which a disciplinary proceeding was started against them. He was ready to clean the bathrooms. But cleanliness of block pipes is not possible without plumber. That he never neglected his duties. He apologised and requested for removal of all these allegations.

Cross Examination.

The questionnaire duly answered by the accused sweeper as (Annex-F). While responding to question No.1, He was appointed as sweeper on dated 25-01-2021 in District Jail Timergara. Responding to question No.02, Yes, He knows that the duties of a sweeper are cleanliness. Responding to question No.03 Cleanliness of toilets/bathrooms is the responsibility of Christian. Responding to Question No.04, He never refused to clean toilet, that he tried his best to clean the toilet but all in vain. Then he told Chakkar Chief, Ilyas Khan, and sector Incharge, Taj Muahmmad, that assistance of plumber is needed for it. Responding to question No.05. No, on the incident day, I have not cleaned the toilet/bathroom because it's the responsibility of Christian.

Statement of Ilyas Khan Chakkar Chief

On 13-12-2022 washrooms of four cells of high security zone were completely out of order. The dirt and wastages were flowing on floor, due to which odour was spread in high security zone cells. At that time the total population of high security zone was 66 prisoners. We, on duty staff, asked sweepers, Habib Khan and Ihsan Ullah, to clean the dirty materials/wastages and clean the toilets. But they refused and told that this is not their responsibility, then we asked sweeper, Muhammad Rasool, to clean these dirty materials/wastages and clean washrooms, but he also refused and stated that if sweeper Habib Khan and sweeper Ihsan Ullah are not ready to clean these wastages then why he should do it.

Cross Examination.

Alister
[Signature]
Superintendent
District Jail Timergara.

The questionnaire duly answered by the Chakkar Chief as (Annex-G). Responding to question No.1, he was appointed on 04-11-1992. Responding to question No.02, he performed his duties at Central Prison D.I Khan, District Jail Timergara, Sub Jail Dir Upper, District Jail Swat and Internment Center Paitham. Responding to

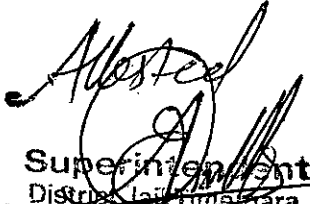
question No.03, Sector Incharge, Taj Muhammad, reported that toilets of four cells of high security zone were completely out of order. Responding to question No.04, he called sweepers Habib Khan, Muhammad Rasool, Ihsan Ullah and Suliman and asked them to clean the dirty materials/wastages and toilets. Sweeper Habib Khan replied that it is not our responsibility, it is the responsibility of Christian. Sweeper Ihsan Ullah also replied the same. Sweeper Muhammad Rasool also refused and stated that if the other sweepers are not ready to clean these wastages then why I should do it. Sweeper Suliman Khan said that he is a servant and poor and that he is ready to clean these wastages and started cleaning them. Responding to question No.05, sweeper Habib Khan and Ihsan Ullah refused to clean the wastages and toilets while sweeper Muhammad Rasool stated, that if these two sweepers are not ready to clean these wastages then I, too, am not ready.

Statement of Mr. Taj Muhammad (Sector Incharge)

On 13-12-2022 washrooms of four cells of high security zone were completely out of order. The dirt and wastages were flowing on floor, due to which odour was spread in high security zone cells. At that time the total population of high security zone was 66 prisoners. We, on-duty staff, asked sweeper Habib Khan and Ihsan Ullah to clean the dirty materials/wastages and clean the toilets. But they refused and told that this is not their responsibility, then we asked sweeper Muhammad Rasool to clean these dirty materials/wastages and clean washroom, but he also refused and stated that if sweeper Habib Khan and sweeper Ihsan Ullah are not ready to clean these wastages then why I should do it.

Cross Examination.

The questionnaire duly answered by the sector Incharge as (Annex-H). Responding to question No.1, he was appointed on 08-03-2006. Responding to question No.02, he performed his duties at Central Prison Mardan, District Jail Timergara and Sub Jail Dir Upper. Responding to question No.03, Sector Incharge, Taj Muhammad, reported that four cells of high security zone were completely out of order. Responding to question No.04, he called sweepers Habib Khan, Muhammad Rasool, Ihsan Ullah and Suliman and asked them to clean the dirty materials/wastages and toilets. Sweeper Habib Khan replied that it is not their responsibility, it is the responsibility of Christian. Sweeper Ihsan Ullah also replied the same. Sweeper Muhammad Rasool also refused

Attested

 Superintendent
 District Jail Timergara

and stated that if sweeper Habib Khan and sweeper Ihsan Ullah are not ready to clean these wastages then he, too, is not ready. Sweeper Suliman Khan said that he is a servant and poor, and that he is ready to clean these wastages and he started cleanliness. Responding to question No.05, sweeper Habib Khan and Ihsan Ullah refused to clean the wastages and toilets while sweeper Muhammad Rasool stated that if these two sweepers are not ready to clean these wastages he too denied the same.

Statement of Mr. Asghar Ali (Warder)

On 13-12-2022 washrooms of four cells of high security zone were completely out of order. The dirt and wastages were flowing on floor, due to which odour was spread in high security zone cells. At that time the total population of high security zone was 66 prisoners. His duty was on high security zone from 08:00 AM to 12:00 PM. From last one week he continuously brought in the notice of sector incharge but no action was taken on it.

Asghar Ali
Superintendent
District Jail Timergara

Cross Examination

The questionnaire duly answered by the on duty Warder, Asghar Ali, is attached as (Annex-I). Responding to question No.1, he was appointed on 18-10-2021. Responding to question No.02, he performed his duties at Central Prison Mardan and District Jail Timergara. Responding to question No.03, he himself checked and saw that the toilets/Bathrooms were disordered then he immediately reported to Sector Incharge, Taj Muhammad, and Chakkar Chief, Ilyas Khan. Responding to question No.04, No, sweeper Habib Khan, Muhammad Rasool and Ihsan Ullah were not ready to clean the toilets/Bathrooms.

Statement of Mr. Muhammad Ismail (Line Officer)

The Chakkar Chief sent report that washrooms of four cells of high security zone were completely out of order. The dirt and wastages were flowing on floor, due to which odour was spread in high security zone cells. On duty staff asked sweepers Habib Khan, Muhammad Rasool and Ihsan Ullah to clean the dirt and wastages but they denied to clean the toilets, due to which the Chakkar Chief sent report to the Deputy Superintendent against these sweepers.

Muhammad Ismail

Record.

Relevant record produced before me which was physically examined.

Findings.

After going through the relevant record and statements of all concerned, it has been observed and found that:-

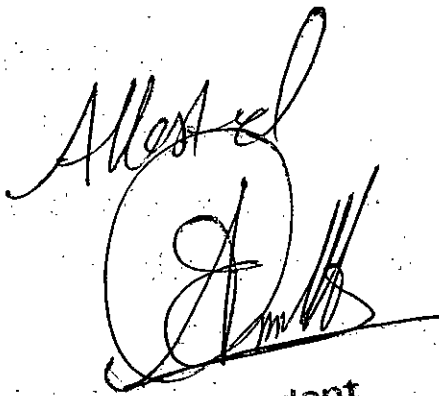
- I. The accused Sweepers Habib Khan, Muhammad Rasool and Ihsan Ullah were found guilty.
- II. Allegation levelled against them is correct and genuine/authentic.

The charge levelled against them, thus, **stands proved.**

Recommendations.

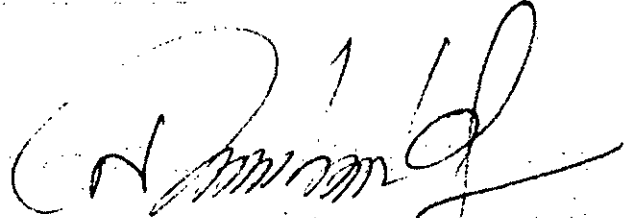
The allegation levelled against the accused officials is **PROVED** for which they are liable to be proceeded under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules 2011.

It is, therefore, recommended that the accused officials may be awarded the penalty of, "**Stoppage of 03 Annual increments without future effect**".



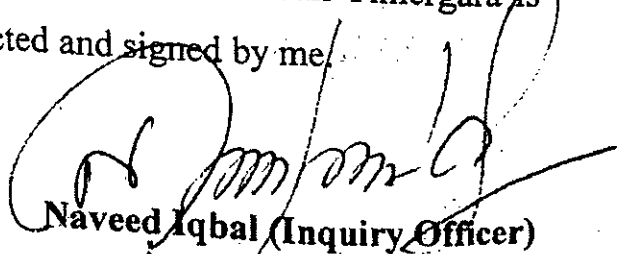
Superintendent
District Jail Timergara.

CERTIFICATE



Naveed Iqbal (Inquiry Officer)
Assistant Superintendent
Sub Jail Dir Upper

It is Certified that the report regarding the accused sweepers Habib Khan, Muhammad Rasool and Ihsan Ullah (BPS-03), attached to District Jail Timergara is consisting on six (06) number of pages duly corrected and signed by me.



Naveed Iqbal (Inquiry Officer)
Assistant Superintendent
Sub Jail Dir Upper.



OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL TIMERGARA
Phone/Fax: 0945-9250095
Email: districtjailtimergara@gmail.com

No. 369 / dated: 22/3/2023.

DISTRICT JAIL TIMERGARA DIR LOWER, DISTRICT JAIL TIMERGARA DIR LOWER, DISTRICT JAIL TIMERGARA DIR LOWER, DISTRICT JAIL TIMERGARA DIR LOWER, DISTRICT JAIL TIME

OFFICE ORDER

WHEREAS, accused official/ Sweeper (BPS-03) **Muhammad Rasool Khan S/o Muhammad Ayub** attached to District Jail Timergara was charged within the meaning of Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the charges of the misconduct contained in statement of Allegations/Charge Sheet served upon him vide this office endorsement No.1088 dated 26.12.2023 wherein Mr. Naveed Iqbal, Assistant Superintendent Sub Jail Dir Upper was appointed as Inquiry Officer.

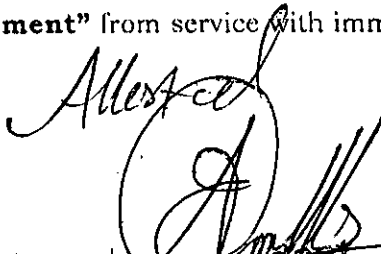
AND WHEREAS, he appeared before the Inquiry Officer, who inquired into his case, went through the available record and provided him reasonable opportunity of hearing to defend his case. Charges/allegations were proved and the Inquiry Officer recommended that he is liable to be proceeded against under the Rules ibid.

AND WHEREAS, the accused official was proceeded against under Rule-14 (4) for the Charge of misconduct/as mentioned in the Show Cause Notice No.238-39 dated 22.02.2023.

AND WHEREAS, he furnished his written reply/defence to the Show Cause Notice which was found un-satisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 09.03.2023 as provided for under the rules ibid. The accused official failed to defend his case with documentary proof/evidences rather indulged himself in irrelevant and malicious arguments showing his intention that he will continue in his habit of refusing to perform his duties honestly and with devotion.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, having considered the charge levelled against him, evidence on record, Inquiry report, findings/recommendations of the Inquiry Officer, his malicious arguments during personal hearing and the previous record of punishments, the undersigned being competent Authority, is hereby award him the **major penalty** of "**Compulsory Retirement**" from service with immediate effect.

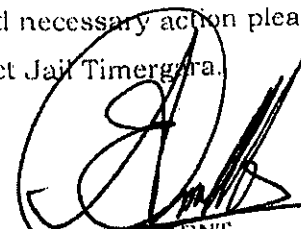
Attested

Superintendent
District Jail Timergara.


SUPERINTENDENT
DISTRICT JAIL TIMERGARA

Endst. No. _____ /

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information, please.
2. Mr. Naveed Iqbal Assistant Superintendent (IO) Sub Jail Dir Upper for information please.
3. The District Account Officer, Dir (Lower) for information and necessary action please.
4. Muhammad Rasool Khan Sweeper BPS-03 (accused) District Jail Timergara.


SUPERINTENDENT
DISTRICT JAIL TIMERGARA

✓ ①

مخدمت جناب انسپکٹر جنرل جیل خانہ جات ہومیہ خیبر پختونخواہ سیٹ اوپ

ایسٹریٹ جیٹا جیٹا جیٹا

عنوان :-

رقعی نمبر 369 مورخہ 22.03.2023

جہاں عالی

Handwritten signature/initials

گزارش حسب ذیل :-

- 1- یہ کہ میں تاریخ تقرری یعنی 2006.06.05 سے تا حال ڈسٹرکٹ جیل
تیمرگڑھ میں اپنے فرائض نہایت دیانت داری اور فوشن اسلوبی سے انجام دے
رہا ہوں اور کسی کو کسی قسم کی شکایت کا موقع نہیں دیا۔
- 2- یہ کہ مورخہ 13.12.2022 کو دوران ڈیوٹی چکر چیف ~~محمد حسین~~ ^{احسن رضا}
اور انسپکٹر ایچ آر جیٹا محمد عثمان نے بند فلتس سسٹم کھولنے کا کہا جس پر
جواب میں کہا کہ چونکہ ہائیب سسٹم بوسیدہ ہو چکا ہے اور یہ پلمبر اور عیسائی
کا کام ہے جس پر مجھے مالکیان دی گئی اور کمرہ کے اندر کے جاکر بلا اسٹنڈ
ہائیب سے مجھے فوراً عازا اس کے بعد مجھے چارج سنبھال لیا اور الزام
دکھایا کہ تم نے محمد الیاس اور تاج محمد سے بدگواہی اور باغی پالیسی سے
میں نے جواب دیا کہ اگر میں نے واقعی ایسی حرکت کی ہے تو ہر طرف CCTV کمرے
نگے ہوئے ہیں اس میں ایچ آر ڈیو موجود ہوگی اس کو چیک کیا جائے لیکن ایسا
نہیں کیا گیا۔
- 3- یہ کہ اس کے بعد میرے خلاف انکوائری مقرر کی گئی جو کہ خود انکوائری
آفسر جیٹا نے نہیں کی بلکہ جیل سے ایک ملٹری جو کہ ریٹائرڈ پولیس
آفسر جیٹا سے کی گئی جس نے جیل میں من پسند افراد سے اپنی طرف سے
لکھی گئی بیانات پر دستخط کیے اور مجھے قصور وار ٹیپ انکوائری رپورٹ
دست کی گئی جس پر جیل سپرنٹنڈنٹ نے مجھے دو سالہ انکوائری
سے فریج کرنے کا آرڈر جاری کیا جس پر میں نے انسپکٹر جنرل جیل خانہ جات کے دفتر
میں اسکا جواب دیا۔

Attested
Handwritten signature


Superintendent
District Jail Timergara

Handwritten date: 22/3/23
Circular stamp: District Jail Timergara, 7585, 2023-3-23

4۔ یہ کہ مورخہ 24-01-2023 کو میری پیشی ہوئی جہاں ڈسٹرکٹ جیل تیرگڑھ کا ٹائٹل بھی موجود تھا۔ یہاں ایک بار پھر مجھے لوٹنے کا موقع نہیں ملا کیونکہ جس افسر صاحب کے ساتھ میری پیشی تھی وہ لٹو نہیں سمجھ سکتا تھا اور میں اُردو بولنے سے کافر تھا اس لیے مجھے اہٹائی کا موقع نہیں ملا۔

5۔ یہ کہ اسکے بعد مجھے ایک دو اور شوکار نوٹس دے گئے اور مورخہ 08/03/2023 کو جیل سپرنٹنڈنٹ صاحب نے اپنی دفتر میں پیش ہونے کا حکم دیا۔ جس حکم میں وہاں پیش ہوا لیکن وہاں بھی سپرنٹنڈنٹ صاحب نے مجھے خود نہیں سنا بلکہ ڈپٹی سپرنٹنڈنٹ صاحب سے کہا کہ اس میں ملوث۔

6۔ یہ کہ اسکے بعد مجھے 369 عرصہ 22.03.2023 مجھے جبری ریٹائرمنٹ کا آرڈر دیا گیا۔ چونکہ مجھے اسی سبب میں اس سے پہلے 2011 رولز کے تحت Minor Penalty کے ذریعے دو سالانہ انٹریمنٹ کاٹنے کی سزا دی گئی تھی اور پھر اسی سبب اور رولز میں مجھے دوسری سزا Major Penalty جبری ریٹائرمنٹ کے طور پر دی گئی جو کہ میرے ساتھ انتہائی زیادتی اور رولز کی خلاف ورزی ہے۔

Attested


Superintendent
 District Jail Tirmegara.

جہاں والا
 جیل نڈیا میں ظلم و ستم کے بہت سے امثال ہیں لیکن دو تین بندوں سے سارے جیل کی صفائی کرنا قرین انصاف نہیں ہے وگرنہ باقی کو اپنی من پسند ڈیوٹیوں پر مامور کیا گیا ہے یا میرے سے ڈیوٹیاں نہیں کرکے اس سے پہلے جیل نڈیا میں دو عیسائی بھی بفری تھے لیکن انکو اتنا تنگ کیا گیا تھا کہ وہ نوٹری کلر ٹھکانے پر مجبور ہوئے۔ ایک ظالمانہ فیاضی اور ظلم کو انکڑیشن بنا یا گیا ہے۔

3

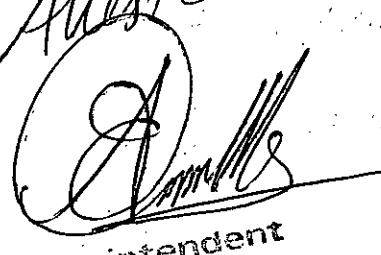


اسیے آرہ ہمارا کی خدمت میں عاجزانہ اپیل ہے کہ آج اور
 بڑھی ہوئی سہنگائی اور دوسری طرف سے روزگاری میرے بچوں
 کو فاقوں پر مجبور کریں گے۔ لہذا میرے بچوں کو مراج فرما کر
 میرے جبری ریٹائرمنٹ کا فیصلہ واپس لیا جائے۔ میں اور
 میرے بچے تاحسبہاد عاجز ہیں گے۔

الحارثی -
 27.03.2023

آپ کا تاحسبہاد محمد رسول خان ظاہر اور ڈسٹرکٹ جیل ٹیمرگارا۔

دوہاتس - 0342-9390735
 0344-6276895

Attested

 Superintendent
 District Jail Timergara.



**OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**

☎ 091-9210334, 9210406 📠 091-9213445

No.Estb/Ward-/Orders/ 20105 /-

Dated 29-05-2023 /-

ORDER:

WHEREAS, Muhammad Rasool S/O Muhammad Ayub, Sweeper (BPS-03) posted at District Jail Timergara was awarded the major penalty of **"Compulsory Retirement"** by the Superintendent District Jail Timergara vide his office order No. 369 dated 22-03-2023 due to his misconduct.

AND WHEREAS, the said official preferred his departmental appeal for setting-aside the penalty awarded to him.

AND WHEREAS, he was afforded an opportunity of personal hearing on 23-05-2023. The appeal was examined in light of the available record of the case and it was observed that the charges leveled against the appellant were proved and all legal and codal formalities were fulfilled by the competent authority. During the course of hearing, he explained his position but failed to prove and justify his innocence.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of powers conferred under Rule-17 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 read with Rule-05 of Khyber Pakhtunkhwa Service Appeal Rules 1986, the decision of the Superintendent District Jail Timergara, being competent authority, is upheld and appeal of the appellant is hereby dismissed being without any substance /facts.

**INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**

Endst; No. 20106 - 08 /-

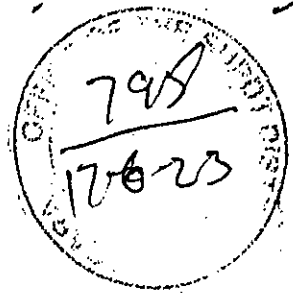
Copy of the above is forwarded to:

1. The Superintendent District Jail Timergara for information and necessary action with reference to his letter No. 502/WE dated 17-04-2023. He is requested to inform the appellant accordingly and make necessary entry in his Service Book under proper attestation.
2. The District Accounts officer concerned for information and necessary action.
3. Appellant concerned C/O Superintendent District Jail Timergara for information.

ایس ایچ آر کے لئے
21 مارچ 2023
کوٹہ میں جی آر کے

DS/L.O/HK

**DEPUTY DIRECTOR
INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**



17/6/23

Allosted
Superintendent
District Jail Timergara

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Shahid Waheed

Civil Petition No.2045 of 2019.

(Against the judgment of Lahore High Court, Lahore dated
08.03.2019, passed in W.P No.20429 of 2016)

Mubarik Ali Babar

..... **Petitioner**

Versus

Punjab Public Service Commission through its Secretary & others

...**Respondent(s)**

Petitioners: In person.

Respondents: N.R.

Date of hearing: 18.11.2022

ORDER

Syed Mansoor Ali Shah, J. – The petitioner has challenged the seats reserved for minorities and persons with disabilities (“PwDs”) in the Combined Competitive Examination, 2015 (“CCE”) conducted by the Punjab Public Service Commission, Lahore (“PPSC”). In the advertisement issued by the PPSC for the post in the Provincial Management Service (BS-17) (“PMS”) under the Services and General Administration Department, Government of the Punjab (“S&GAD”), out of 62 posts, 53 posts were on open merit, 06 posts for PwDs and 03 posts for minorities. The petitioner challenges the legality of the allocation and reservation of seats for the above two classes of persons and also prays that if this quota remains unfilled in a particular year, the seats reserved against this special quota be made available to other deserving candidates applying under the general quota on open merit. The said claim of the petitioner was dismissed by the High Court through the impugned judgment dated 08.03.2019. Hence this petition.

We have heard the petitioner and have gone through the record of the case. It is important to begin with the constitutional scheme. The preamble of our Constitution¹ provides that it is the “will of

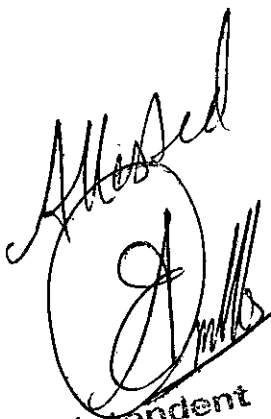
¹ The Constitution of the Islamic Republic of Pakistan, 1973.

Mansoor
[Signature]
Superintendent
District Jail Timergara

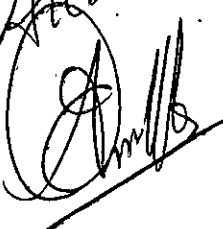
the people” of Pakistan to establish an “Order”. The term “will of the people of Pakistan” is an inclusive term signifying all citizens irrespective of religion, caste, creed, race, sex, place of birth or personal abilities. Therefore, such a “will” is incomplete without including the will of the minorities and PWDs. The “Order” is a result of our collective vision and aspirations. The “Order” established by the “will of the people” is pillared on principles which form our constitutional values, providing for freedom, equality, tolerance, social justice and democracy; adequate provision for the minorities to freely profess and practice their religions and develop their cultures; safeguards to protect the legitimate interests of minorities, backward and depressed classes; fundamental rights including equality of status and opportunity, social, economic and political justice; freedom of thought, expression, belief, faith, worship and association, subject to law and public morality. Tolerance, freedom, equality, social justice and democracy are central to our constitutional values which promote inclusion and abhor apartheid, exclusion, apartness, racism, bias and bigotry. These constitutional principles and values form an integral part of the Objectives Resolution which is a substantive part of the Constitution under Article 2-A and is to be given effect accordingly. The Constitution is, therefore, a shared voice of its citizenry.

3. The Constitutional values specifically provide for “equality of status, of opportunity,” which means that every person in Pakistan has equal human status and worth and enjoys equal access to opportunities without discrimination based on caste, creed, race, sex, place of birth, etc. Undeniably, equality of status and opportunity includes access to employment to earn a decent livelihood.

4. Fundamental rights under the Constitution actualize these constitutional values; Article 9 provides that every person shall have a right to life and liberty subject to law. “Life” includes all the attributes of a healthy and a meaningful life, while the right to “liberty” provides freedom, agency and choice to a person to be able to design his or her life in any manner he or she wants. Life and liberty of any person in Pakistan is protected and there is no distinction between persons on the basis of religion, sex or creed; Article 14 provides that the dignity of a person is inviolable; Article 18 provides that everyone has a right to a lawful profession or occupation. Articles 20, 22, 26 and 27 of the Constitution provide further safeguards for minorities. Amongst

Attested

 Superintendent
 District Jail Timergara

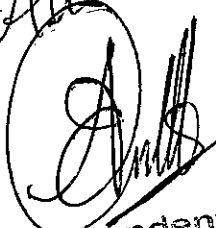
fundamental rights, the right to dignity stands at the top, like a jewel in the crown of fundamental rights. This unique place is because the right to dignity is an absolute right, is non-negotiable and is not subject to any law. Therefore, the minimum right to dignity of the minorities and PWDs is that they ought to be considered equally with the rest of the majority of Muslims and the majority of persons with fuller abilities. Under the Constitution there is no distinction and therefore, these fundamental rights are fully available to the minorities and PWDs in the country as they are available to all other citizens of Pakistan. Article 36 of the Principles of Policy under the Constitution provides that the State shall safeguard the legitimate rights and interests of minorities including their due representation in the Federal and Provincial services. Article 37(a) proves that the State shall promote with special care the educational and economic interest of backward classes. Article 38(b) of the Constitution provides that all citizens (which undoubtedly includes minorities and PWDs) to be provided within the available resources of the country, facilities for work and adequate livelihood. Article 38(d) provides that the State shall provide basic necessities of life to all citizens (which once again undoubtedly includes PWDs) who are unable to earn their livelihood on account of infirmity or sickness. Review of the above constitutional scheme unfolds that the Constitution uplifts PWDs, gives them additional protection so that every effort (reasonable accommodation) is made to bring differently-abled persons at par with fully-abled persons. Similarly, it mandates that minorities are equal citizens of Pakistan and must be protected from all kinds and forms of discrimination. The Constitution, therefore, not only caters to minorities and PWDs as equal citizens of Pakistan, having equal rights and safeguards, it also provides extra protection to them.

Attested


Superintendent
 District Jail Timergara

5. "Backward" and "depressed" classes are not defined in the Constitution, therefore going by their simple meaning, they include any class of people who are marginalized, underprivileged, disadvantaged, lacking choice, agency, autonomy, level-playing field and opportunity. The marginalization and discrimination experienced by PWDs is arguably considered to be similar to the apartheid system in terms of segregation and discrimination based on a particular characteristic, leading to limited access to education, employment, and other opportunities, as well as social and economic marginalization, thereby, marginalizing individuals and communities. People with disabilities are segregated from community life and face discrimination due to

pervasive attitudinal and systemic barriers that the law, policy and practice frameworks have failed to remove, such as inaccessible or unequal facilities of housing, transport and education, segregated settings, barriers in accessing justice and legal systems, and employment and health discrimination.² The effects of such discrimination are further expounded when intersecting with sexism, ageism, racism and other forms of inequality.³ Albie Sachs, the celebrated South African Judge writes: "If there is one thing that the struggle against apartheid has taught us, it is how important it is to manage difference in society. Difference was used as the basis for apartheid. Difference became an instrument of domination and control. What if we can turn difference around to become a source of vitality, of variability, of richness?"⁴ The United Nations, Department of Economic and Social Affairs's flagship "Disability and Development Report"⁵ highlights that the professional potential of PWDs is often misunderstood and remains untapped due to misconceptions, negative societal attitudes and inaccessibility of workplaces, training and vocational skills centers. Lower rates of employment are persistently observed for PWDs. Lower education levels coupled with discrimination, stigma, negative attitudes, inaccessible transport and workplaces, and limited availability of accommodations for PWDs, play a significant role in limiting job opportunities.⁶ Due to these reasons, PWDs are pushed backwards and depressed at the hands of an unfriendly and unaccommodating ecosystem, making them fall under the rubric of the backward and depressed classes, as recognized by the Constitution. Under the Constitution, it is the obligation of the State to attend to the legitimate interests⁷ of these classes. Legitimate interests are all those interests which can help PWDs actualize their fundamental rights

Alfred

Superintendent
 District Jail Timergara.

² Disabled People's Organization Australia, Segregation of People with Disability is Discrimination and Must End, Position Paper (September, 2020). https://dpoa.org.au/wp-content/uploads/2020/11/Segregation-of-People-with-Disability_Position-Paper.pdf.

³ Ibid.

⁴ Albie Sachs, We, the People – Insights of an Activist Judge, Page-250, Wits University Press (2016).

⁵ UN Department of Economic and Social Affairs, Disability and Development Report – Realizing the Sustainable Development Goals by, for and with persons with disabilities (2018). <https://social.un.org/publications/UN-Flagship-Report-Disability-Final.pdf>.


⁶ Ibid.

⁷ Indra Sawhney v. Union of India, AIR 1993 SC 477; Muhammad Yousaf v. Chairman, FPSC, PLD 2017 Lahore 406.

under the Constitution and enable them to become effective members of the society.⁸

6. The word "minorities" on the other hand, signifies merely a statistical number, representing a class of people in the country who are Non-Muslims and in no manner does it imply that they are lesser citizens or in any manner less entitled to the fundamental rights under the Constitution. 96.5 % of Pakistan's population is Muslim. Minorities make up approximately 3% of the population.⁹ Our national flag, our badge of honour and national unity, shows the minorities in the white alongwith the green signifying the majority Muslim population. The majority (Muslims) and the minority (Non-Muslims) of Pakistanis together constitute the paradigm of Pakistan. Our national flag stands higher because it represents both the Muslims and the Non-Muslims. Moving towards an inclusive society is getting closer to realizing our constitutional values. "If society is intolerant, embarrassed, exclusionary, its own imaginative heart is being restricted. Its capacity for human empathy is being denied. Exclusion damages the way we understand and characterize the world we live in. Inclusion enhances our humanity."¹⁰

7. Quaid-e-Azam, Muhammad Ali Jinnah repeatedly affirmed that as a foundational principle of Pakistan, rights of all minorities shall be safeguarded and all citizens of Pakistan are equal and have equal rights irrespective of their religion, colour, caste or creed. He assured and asserted that "minorities to whichever community they may belong, will be safeguarded. Their religion or faith or belief will be secure. There will be no interference of any kind with their freedom of worship. They will have their protection with regard to their religion, faith, their life, their culture. They will be, in all respects, the citizens of Pakistan without any distinction of caste or creed".¹¹ At the time of the inception of Pakistan, while asserting the above said principle as the first President of the Constituent Assembly of Pakistan, Quaid-e-Azam

Attended


Superintendent
District Jail Timergara.

⁸ As per the available disability statistics provided by the Pakistan Bureau of Statistics, the population of PWDs in Pakistan is 3,71,833 (data available up till 28.02.2021).

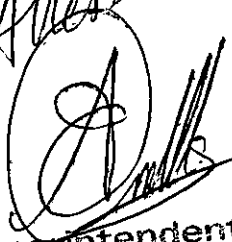
⁹ Census, 2017, Pakistan Bureau of Statistics. Minorities in Pakistan include Christians, Hindus, Ahmadis, Sikhs, Baha'is, Parsis, Buddhists, Judaists, Kalasha etc.

¹⁰ Albie Sachs, We, the People - Insights of an Activist Judge, Page-250, Wits University Press (2016).

¹¹ Quaid-e-Azam, Muhammad Ali Jinnah, as Governor General designate of Pakistan, at a press conference in New Delhi on 14th July, 1947. (S.M. Burke, Jinnah Speeches and Statements 1947-48, Page-12, Oxford University Press (Fifth Impression, 2009))

unequivocally stated that “you are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed – that has nothing to do with the business of the State ... we are starting with this fundamental principle that we are all citizens and equal citizens of one State”.¹² He was conscious of the fact that equal treatment of minorities was not only important for the prosperity and growth of Pakistan, it was a duty cast upon all Muslims by Islam as “the tenets of Islam enjoin on every Musalman to give protection to his neighbours and to the minorities regardless of caste and creed¹³ ... in Islam there is no difference between man and man. The qualities of equality, liberty and fraternity are the fundamental principles of Islam.”¹⁴

8. In order to actualize the constitutional mandate and the vision of our founding father, we have the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 (“Ordinance”) which, post 18th amendment, has translated into provincial laws.¹⁵ Provisions of the Ordinance are *pari materia* to the Punjab Law. Section 10 of the Ordinance, as applicable in Punjab, provides that not less than three percent (3%) of the total number of persons employed by an establishment at any time shall be PWDs in the manner and procedure provided under the said Ordinance. Similarly, notification dated 27.3.2010, issued under section 23 of the Punjab Civil Servants Act, 1974 by the S&GAD (Regulations Wing), 5% quota has to be reserved for minorities (Non-Muslims) against the total number of posts advertised in the future, including posts to be filled on the basis of competitive examination to be conducted by the PPSC. Later on through an amendment¹⁶ brought about in the said notification, the vacancies reserved for minorities for which qualified candidates are not available at the time of a particular recruitment process, shall be carried forward

Attested

Superintendent
 District Jail Timergara.

¹² Presidential Address to the Constituent Assembly of Pakistan at Karachi on 11th August, 1947 (ibid, Page-25).


¹³ Speech at a rally at the University Stadium, Lahore on 30th October, 1947 (ibid, Page-70).

¹⁴ Address to the Bar Association, Karachi, on the occasion of the Holy Prophet’s (PBUH) birthday on 25th January, 1948 (ibid, Page-97).

¹⁵ In Punjab: the Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2012; In Khyber Pakhtunkhwa: the Khyber Pakhtunkhwa Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2012. Recent legislation on PWDs in other provinces include the Sindh Empowerment of Persons with Disabilities Act, 2018; the Balochistan Persons with Disabilities Act, 2017; in the ICT, the ICT Rights of Persons with Disability Act, 2020 and in Gilgit-Baltistan, the Gilgit-Baltistan Persons with Disabilities Act, 2019.

¹⁶ Through notification dated 09.2.2015.

and filled through appointment of persons belonging to minorities (Non-Muslims). We have noted with concern that according to the fact finding report titled "Unequal Citizens, Ending Systemic Discrimination against Minorities" ("**Report**")¹⁷ published in May, 2022 by the National Commission of Human Rights ("**NCHR**") established under the National Commission for Human Rights Act, 2012 with the mandate to promote and protect human rights as provided for in the Constitution and the various international instruments to which Pakistan is a State party or shall become a State party, advertisements published in major newspapers all over the country show that religious minorities have been recruited exclusively for sanitary work. The Report shows that in the advertisements, under eligibility requirements, there is often a clause that states 'Only Non-Muslims Apply.' Such discriminatory advertisements and employment selection process limiting the job quota only for low level posts is offensive to the constitutional values, the fundamental rights of the minorities and the notification mentioned above. The Report recommends ending discrimination against minorities in the employment quota, ending the practice of publishing discriminatory advertisements and ensuring public transparency in the number of minority posts filled across each level of the government.¹⁸ We fully support the said recommendations of the NCHR in the Report and accordingly direct that the respective governments shall ensure that the employment quota of the minorities is maintained at all levels and to strictly avoid discriminatory and demeaning advertisements flouting the dignity and self-respect of the minorities.

Mehrez


Superintendent
 District Jail Timergara.

9. In order to safeguard the rights of the minorities and PWDs and to provide equality of status and opportunities, the State has to endeavor to bridge the gap and ensure that the differently-abled persons and the Non-Muslim minority in our country get to enjoy their fundamental rights under the Constitution with the same fervour and force as enjoyed by the Muslim majority and majority of persons with fuller abilities. Hence other than the general seats, the additional provision of quota for the PWDs and the minorities reaffirms the constitutional commitment.

10. The argument of the petitioner that in case the said seats are not filled by PWDs and the Non-Muslim minority in a particular

¹⁷ Unequal Citizens – Ending Systemic Discrimination against Minorities. NCHR Fact Finding Report. May, 2022.

¹⁸ Ibid.

year, the said seats should be opened and made available to general quota. This is not permissible as it would offend constitutional values, fundamental rights and the Principles of Policy as discussed above. The seats earmarked for minorities or PWDs must be retained and carried forward. This quota is their constitutional right and cannot be reversed or made available to other citizens.

11. For the above reasons we agree with the final conclusion arrived at by the High Court in the impugned judgment and for the reasons given above, this petition is accordingly dismissed and leave is refused.

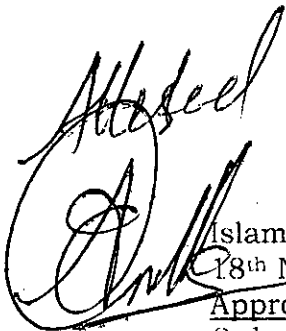
12. It is also pointed out that the word "disabled" has already been put to disuse in *Malik Ubaidullah*¹⁹ and, therefore, the PPSC is directed to ensure that the word "disabled" is not used and instead, persons with disabilities or persons with different abilities is put to use. We are hopeful that in the future these terms will be incorporated in the official correspondence as well as relevant notifications, including public advertisements, issued by the Government. A copy of this order shall be dispatched to the Chief Secretary, Government of the Punjab as well as the Chief Secretaries of other provinces to ensure that this order is complied with in letter and spirit at the national level.

13. Before parting with this order, we would like to appreciate and commend the valuable assistance provided to us by Muhammad Hassan Ali, Law Clerk in rendering this order.

Judge

Judge

Judge



Islamabad,
18th November, 2022.
Approved for reporting
Sadaqat

Superintendent
District Jail Timergara

¹⁹ PLD 2020 SC 599.



OFFICE OF THE
INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
☎ 091-9210334, 9210406 📠 091-9213445

No. _____

Dated _____

AUTHORITY LETTER

Mr.Sulaiman, Law Officer(BPS-17) attached to the office of Inspector General of Prisons Khyber Pakhtunkhwa Peshawar is hereby authorized to make affidavit, to file comments/reply/report and to attend the Lower Courts, Ombudsperson, Khyber Pakhtunkhwa Service Tribunal, Peshawar High Court Peshawar, Supreme Court of Pakistan Islamabad, Federal Shariat Court, meeting of scrutiny committee at Law Department and also to attend the office of Advocate General Khyber Pakhtunkhwa at Peshawar on each and every date of hearing, on behalf of the Inspector General of Prisons Khyber Pakhtunkhwa .


**INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**