

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1136/2016

Date of Institution ... 26.10.2016

Date of Decision ... 04.01.2018

Asmat Ullah S/O Khan Wazir, Ex-Warder, High Security Prison Mardan.
 (Appellant)

VERSUS

1. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar
 and 2 other. (Respondents)

MR. YASIR SALEEM,
 Advocate

 --- For appellant.

MR. MUHAMMAD JAN,
 Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
 MR. MUHAMMAD AMIN KHAN KUNDI

... MEMBER(Executive)
 ... MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for
 the parties heard and record perused.

FACTS

2. The brief facts are that the appellant was serving as Warder in the Prison Department. Disciplinary proceedings were initiated against him on account of willful absence from duty. Upon culmination he was awarded major penalty of compulsory retirement from service vide impugned order dated 09.08.2016. Against the impugned he preferred departmental appeal on 16.08.2016 which was rejected vide order dated 28.09.2016, hence, the instant service appeal on 26.10.2016.

ARGUMENTS

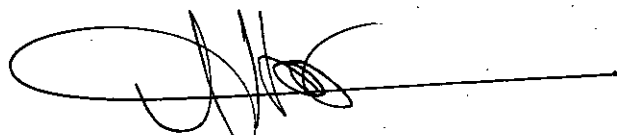
2. Learned counsel for the appellant argued that appellant submitted an application on 23.05.2016 for grant of 50 days leave for performance of Umra. It was recommended but leave was not granted to the appellant. He proceeded for Umra on 30.05.2016. On return from Umra he came to know that on account of absence from duty major penalty of compulsory retirement from service was imposed on him w.e.f 27.05.2016 vide order dated 09.08.2016. He filed departmental appeal on 09.08.2016 which was rejected on 28.09.2016, hence, the instant service appeal. Proper enquiry was not conducted against the appellant and as such procedure laid down in Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules 2011 was violated. Though show cause notice was served on him but reasons for dispensing with regular enquiry were not recorded. Impugned order is void ab-initio, as it was passed with retrospective effect. He relied on judgment of this Tribunal dated 17.10.2017 passed in service appeal 478/2016 as in this appeal it was held that retrospective punishment is void ab-initio and illegal.

4. On the other hand learned Deputy District Attorney General argued that all codal formalities were observed before passing the impugned order. He was treated according to law and rules, hence, there is no illegality in the said order. The appeal is not maintainable and be dismissed.

CONCLUSION.

5. Without adverting to the merit of the case the impugned order was passed with retrospective effect, hence, the same is illegal, void ab-initio and not sustainable in the eyes of law.

6. As a sequel to above, the appeal is accepted and the impugned order is set aside. Respondents are directed to conduct de-novo enquiry within a period of 90 days after receipt of this Judgment. The issue of back benefits shall be subject to outcome of the de-novo proceedings. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER


Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
04.01.2018

19.09.2017

Appellant absent. Learned Deputy District Attorney for the respondents present. Notice be issued to the appellant and his counsel for attendance. To come up for arguments on 15.12.2017 before D.B.


Member
(Executive)


Member
(Judicial)

15.12.2017

Appellant in person present. Mr. Riaz Painsa Kheil, learned Assistant Advocate General for the respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 04.01.2018 before D.B


(Gul Zeb Khan)
MEMBER


(Muhammad Hamid Mughal)
MEMBER

Order

04.01.2018

Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted and the impugned order is set aside. Respondents are directed to conduct de-novo enquiry within a period of 90 days after receipt of this Judgment. The issue of back benefits shall be subject to outcome of the de-novo proceedings. Parties are left to bear their own costs. File be consigned to the record room.

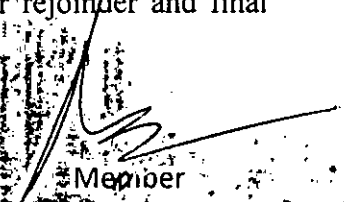
Announced:
04.01.2018


(MUHAMMAD AMIN KHAN KUNDI)
Member

(AHMAD HASSAN)
Member

27.10.2016

Counsel for the appellant and Mr. Shehreyar, ASJ
alongwith Addl. AG for respondents present. Written reply
submitted. The appeal is assigned to D.B for rejoinder and final
hearing on 10.01.2017.


Member

10.01.2017

Counsel for the appellant and Mr. Shehreyar Khan, ASJ
alongwith Assistant AG for respondents present. Rejoinder submitted
which is placed on file. To come up for arguments on 30.05.2017.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

30.05.2017

Clerk of the counsel for appellant present. Mr. Muhammad
Jan, Deputy District Attorney for the respondents also present. Due to
strike of the bar learned counsel for the appellant is not in attendance.
Adjourned. To come up for arguments on 19.09.2017 before D.B.


(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

29.11.2016

Learned counsel for the appellant argued that the appellant was serving as Warder when subjected to enquiry on the allegations of wilful absence and compulsorily retired from service vide impugned order dated 09.08.2016 where-against he preferred departmental appeal on 16.08.2016 which was also rejected on 28.09.2016 and hence the instant service appeal on 26.10.2016.

That the appellant was not treated in accordance with law and the enquiry was not conducted in the mode and manners prescribed by rules.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 11.1.2017 before S.B.


Chairman

11.01.2017

Agent to counsel for the appellant present. Security and process fee not deposited. The same be deposited within in a week where-after notices be issued to the respondents for written reply/comments for 15.02.2017 before S.B.



Appellant Deposited
Security & Process Fee


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1136/2016


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10/11/2016	<p>The appeal of Mr. Asmat Ullah resubmitted today by Mr. Sajid Amin Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29-11-16</u></p> <p style="text-align: right;"> MEMBER</p>

The appeal of Mr. Asmatullah son of Khan Wazir Ex-Warder High Security Prisons Mardan received today i.e. on 26.10.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.

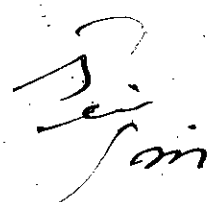
No. 1772 /S.T,

Dt. 27/10 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Sajid Amin Adv. Pesh.

11- RESUBMITTED WITH DECLARATION
THAT AS PER OBJECTION # 2, THE
SIN REQUIRED COPIES ARE NOT
PROVIDE BY THE CLIENT RATHER APP-
ELLANT TO HIS COUNSEL. THUS THE
SAME REQUISITION CAN NOT BE COMPLY-
WITH, HENCE RE-SUBMISSION OF CASE
IN HAND


SAJID AMIN
Adv.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1136 /2016

Asmat ullah S/O Khan Wazir, Warder, High Security Prison Mardan,
(Appellant)

VERSUS

The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar
and others.

(Respondents)

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S. No	Description of Documents	Annexure	Page No
1	Memo of Appeal & Affidavit		1-4
2	Copy of leave application dated 23/05.2016	A	5
3	Copy of the order dated 09.08.2016	B	6
4	Copies of the Departmental Appeal & Rejection Order dated 28.09.2016	C & D	7-9
5	Vakalatnama		10

Asmat ullah Wazir
Appellant

Through

Sajid Amin
SAJID AMIN

Advocate High Court,
Peshawar.

(FR-3-4 Fourth Floor Bilour Plaza
Saddar road, Peshawar Cantt:
Ph: #, 03334584986, 091-5272054)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1136/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1131

Dated 26-10-2016

Asmat ullah S/O Khan Wazir, Ex-Warder, High Security Prison
Mardan.

(Appellant)

VERSUS

1. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent Circle Head Quarters Prison, Mardan.
3. The Superintendent High Security Prison, Mardan

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 09.08.2016, whereby the appellant has been awarded the major penalty of "Compulsory Retirement from service", and against which the departmental appeal dated 16.08.2016 has also been rejected vide order dated 28.09.2016.

Prayer in Appeal: -

~~Filed to-day~~

~~Registrar~~

~~26/10/16~~

On acceptance of this appeal the orders dated 09.08.2016 and 28.09.2016 may please be set-aside and the Appellant may kindly be reinstated into service with all back benefits.

Re-submitted to -day
and filed.

~~Registrar~~

~~10/11/16~~

Respectfully Submitted:

1. That the appellant was appointed as Warder in the Prison Department and was lastly posted at High Security Prison Mardan.
2. That ever since his appointment, the appellant is performing his duties as assigned to him with zeal and devotion and without giving any chance of complaint whatsoever regarding his performance to his superiors.
3. That while serving in the said capacity, the appellant applied for fifty days leave for the performance of Umra vide application dated 23.05.2016, which was duly recommended by the concern officer and the appellant was verbally told that his leave is sanctioned. Thereafter the appellant alongwith family members included female members proceeded to Saudi Arabia for Umra on 30.05.2016. *(Copy of leave application dated 23.05.2016 is attached as Annexure A)*
4. That the appellant after the performance of Umra, returned back on 22.07.2016 and reported for duty, however it was alleged to him that the appellant remained absent from duty from 27.05.2016. Thereafter the appellant was served with a show cause notice dated 25.07.2016.
5. That thereafter the appellant was awarded the major penalty of *“Compulsory retirement from service”* from 27.05.2016 vide order dated 09.08.2016. *(Copy of the order dated 09.08.2016 is attached as annexure B).*
6. That against the order dated 09.08.2016, the appellant filed his departmental appeal however it was also rejected vide order dated 28.09.2016, copy of which was, however, communicated to the appellant on 04.10.2016. *(Copies of the Departmental Appeal & Rejection Order dated 28.09.2016 are attached as Annexure C & D).*
7. That the impugned orders are illegal unlawful without lawful authority and are thus liable to be set aside inter alia on the following grounds:

GROUND OF APPEAL.

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before awarding the major penalty to the appellant, the appellant has not been served with any absent notice or charge sheet, nor he has been provided any opportunity of hearing before the issuance of the impugned order thus the orders so made are liable to be set aside.
- C. That the appellant has not been provided opportunity of personal hearing thus he has been condemned unheard.
- D. That no absence notice or show cause has ever been served upon the appellant nor has any publication been made in the news paper regarding absence of the appellant. The impugned order is thus passed in violation of express provisions of the Government Servants Efficiency & Discipline Rules, 2011.
- E. That the appellant has not committed any act or omission which can be termed as misconduct. The appellant duly applied for leave which was recommended and he was verbally assured that his leave would be sanctioned. However without informing him about the rejection of his leave application, quite illegally he was proceeded against allegedly on account of absence from duty.
- F. That the impugned order dated 09.08.2016 cannot be termed as speaking order as is provided under section 24-A of the General Clauses Act.
- G. That the appellant has at more than 09 years service career at his credit, the penalty imposed upon him is too harsh and is liable to be set aside.
- H. That the appellant is jobless since his illegal removal from service.

- I. That the appellant seeks permission of this honorable tribunal to rely on additional grounds at the time of hearing of appeal.

It is therefore, humbly prayed that on acceptance of this appeal the orders dated 09.08.2016 and 28.09.2016 may please be set-aside the appellant may kindly be reinstated into service with all other back benefits.

Asmat Ullah Shahr
Appellant

Through

Sajid Amin
SAJID AMIN

Advocate, High Court.

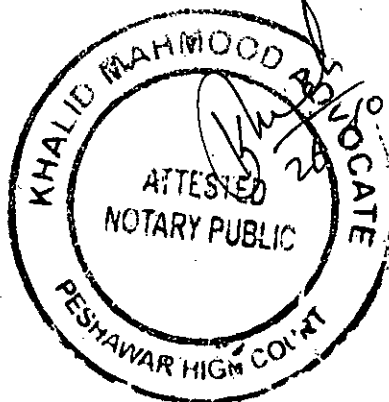
&

Yasir Saleem
YASIR SALEEM

Advocate, High Court.

AFFIDAVIT

I, **Asmat ullah S/O Khan Wazir, Warder, High Security Prison Mardan**, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.



Asmat Ullah Shahr
DEPONENT

محضو جناب صاحب بہادر صاحب کٹرل جہاں مسز
⑤ عنوان: بہادر عمرہ بیت اللہ شیخ
ANNSAU "A"
جناب عالی

بنایت انگلستان کے ساتھ النجاء لیکاری ہے کہ سائل کو عمرہ شریف
جانے کا جنون حد تک عاشق ہے اور اللہ تعالیٰ کی عہد پائی
ہے کہ سائل کو دولت سعودیہ نے عمرہ ادا کرنے کا اجازت
بھی دیا گیا اور سائل نے فوراً 30/5/16 کو جہاز ٹائٹ
بھی لٹوایا ہے اسلئے آپ صاحبان سے گزارش لیکاری
ہے کہ سائل کو عمرہ کی سعادت کرنے کیلئے 50 یو ایم کی
اصلی بنائیت فرما کر مشکور و ماموں

خانہ بعد میں آپ صاحبان کیلئے دعا اور سونگا
المرقوم
23/05/16

نوٹ: ویزہ عمرہ شریف اور جہاز ٹائٹ معہ لف ہے

ایک ایسے وطن وارڈر عیلت اللہ شاہ ضلع بنوں

Annatulus
Recommended as requested please

8 May
2015/16

ANNSAU



OFFICE ORDER

Annex "B"

WHEREAS, the accused official Mr. Asmat Ullah Shah S/O Khan Zarin Shah attached to High Security Prison Mardan was proceeded against under Rule-3 read with Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of this misconduct as mentioned in the Show Cause Notice No.2117-79 dated 25-07-2016 served upon him on his absence.

AND WHEREAS, he furnished reply but the same was found unsatisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 08-08-2016 as provided for under rules ibid. The accused official completely failed to defend his case with documentary proof/evidence. In addition to this concerned official is habitual of absenting himself from line and duties and indiscipline, lethargic duty attitude, which is crystal cleared from his service record.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the charges, evidence on record, the explanation of the accused official and after affording the opportunity of personal hearing, the undersigned being competent authority, hereby award major penalty of "Compulsory Retired from the Service" from the date of absence i.e. 27-05-2016 to Mr. Asmat Ullah Shah S/O Khan Zarin Shah attached to High Security Prison Mardan for his misconduct.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endorsement No: 2265-68 /-

Copy of the above is forwarded to the :-

- 1- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
- 2- Superintendent High Security Prison Mardan for information with reference to his endorsement No. 3596-97 dated 23-07-2016.
- 3- District Accounts Officer Mardan for information please.
- 4- Official concerned attached to High Security Prison Mardan.

Handwritten notes in Urdu script on the left margin.

Handwritten signature in Urdu script.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Admin. C

(7)

To,

The Inspector General of Prisons,
Khyber Pakhtunkhwa Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER
DATED 09/08/2016 WHEREBY I HAVE BEEN AWARDED MAJOR
PENALTY OF COMPULSORY RETIREMENT FROM SERVICE FROM
27/05/2016

Sir,

1. I have the honour to submit that I was inducted in service on 04/10/2007 and I performed my duties with utmost of my capability and to the entire satisfactions of my superiors.
2. That I proceeded to Saudi Arabia for Umrah and prior to proceeding to Umrah, I have submitted leave application to Superintendent Central Jail Mardan, which was recommended but no action was taken on it.
3. That thereafter, I submitted another application for leave without pay and also no action was taken on it.
4. That thereafter I approached the I.G.P. Peshawar, and who told to his subordinate officer to sanction him leave and thereafter his subordinates the permitted me to proceed to Umrah.

[Handwritten Signature]

8

5. That now I have been punished and have awarded me major penalty of compulsory retirement from service. Now I requested that the impugned order dated 09/08/2016 may be set aside in view of the following grounds:-

Grounds:

A. That the absence from duty is an extreme minor misconduct and major penalty cannot be imposed upon it.

B. That I went to Umrah and major penalty cannot be imposed upon me because my absence from duty was never intentional.

it is, therefore, prayed that on acceptance of this departmental appeal, the impugned order dated 09/08/2016 may be set aside and I may be reinstated in service with all back benefits.

Your most obedient servant

Dated: 16/08/2016

Asmat Ullah Shah

ASMAT ULLAH SHAH

S/o Khan Zarin Shah

Ex Warder High Secretary Prison
Mardan

R/o Kotka Sayedan Nizam Bazar
Bannu.

Cell# 0336-9681074

Asmat
①



(9) ANNEX D

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

☎ 091-9210334, 9210406

☎ 091-9213445

No.Estb/Ward-/Orders/ 23127 1-

Dated 28-09-2016 1-

ORDER

WHEREAS, Ex-warder Asmat Ullah Shah S/O Khan Zarin Shah attached to HSP Mardan, was awarded the major penalty of "Compulsory retired from Service" by the Superintendent Headquarters Prison Mardan vide his office order No.2264 dated 09-8-2016 due to his willful absence with effect from 27-5-2016 to 22-7-2016(56 days).

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available record of the case and it was observed that the appellant remained absent for long period as mentioned above and legal, procedural formalities as required under the E&D Rules -2011 have also been observed by the competent authority.

AND WHEREAS, he was afforded an opportunity of personal hearing on 28-9-2016. During the course of hearing he failed to defend / justify his long willful absence.

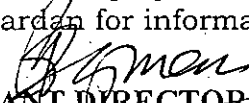
NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of power conferred under Rule-5 of Khyber Pakhtunkhwa Civil Servants Appeal Rules 1986, the decision of the competent authority is upheld and appeal of the appellant is hereby rejected being without any substance.




**INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA , PESHAWAR.**

ENDST;NO. 23128-301.

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No.2609-WE dated 01-9-2016.
2. The Superintendent, HSP Mardan for information and necessary action with reference to the Superintendent HQ Prison Mardan order referred to above. He is directed to inform the appellant accordingly and also to make necessary entry in his Service Book under proper attestation.
3. The appellant concerned C/O the Superintendent HSP Mardan for information.


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

POWER OF ATTORNEY

In the Court of Justice Raza Raza Khan
Asmat Ullah

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

IGP and others

} Defendant
} Respondent
} Accused

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

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

SAJID AMIN ADVOCATE, HIGH COURT

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

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year Asmat Ullah
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Asmat
Asmat Ullah
Asmat Ullah

Sajid Amin
SAJID AMIN
Advocate High Court

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of

Service appeal No. 1136 of 2016

EX-Warder Asmat Ullah s/o Khan Zarin.

R/O Kotka Saidan Pirdil Khel Illaqa Sorani P/O Nizam Bazar
Bannu.Appellant.

----VERSUS----

1. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar,
2. The Superintendent Headquarter Prison Mardan.
3. The Superintendent Central Prison Mardan.

.....Respondents

PRELIMINARY OBJECTIONS

- 1- That the appeal is incompetent and is not maintainable in its present form.
- 2- That the appellant is estopped by his own conduct to bring the present appeal.
- 3- That the appellant has got no cause of action.
- 4- That the appellant has no locus standi.
- 5- That the appellant is bad for mis-joinder and non-joinder of necessary party.
- 6- That the appeal is hit by laches.

PARA WISE COMMENTS/REPLY OF THE RESPONDENTS

RESPECTFULLY SHEWETH.

- 1- Pertains to record, hence no comments.
- 2- Incorrect, misleading as it was the violation of Prison Rules 1082(i) by the appellant which culminated in the imposition of the penalty of Removal from Service (**Annexure-A**).
- 3- Incorrect, misleading, as the appellant had neither been granted Ex-Pakistan leave nor he had been verbally informed that his leave has been sanctioned.

- 4- Correct, however, the appellant remained absent from duties without sanction of leave from the competent authority from 27.05.2016 to 22.07.2016 for fifty five(55) days for which he was served with a Show Cause Notice.
- 5- Correct, pertains to record, however no comment.
- 6- Correct, pertains to record, however, no comment.
- 7- Incorrect, misleading as the punishment awarded to the appellant is legal, lawful and with lawful authority and is not liable to be set aside.

GROUNDS

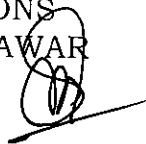
- A. Incorrect, misleading, as the appellant has been proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 and he has been treated in accordance with the law and rules and his rights, guaranteed under the law, has never been violated.
- B. In correct, misleading, as the appellant was served Absence Notice on his home address on 06.06.2016 and 24.06.2016 and a Notice was also published in the Newspapers directing the appellant to resume his duties. The appellant also submitted his written reply to the Show cause Notice and he was also personally heard by the competent authority on 08.08.2016 (**Annexure-B**).
- C. Incorrect, misleading, elaborated in Para "B" above.
- D. Incorrect, misleading, elaborated in Para "B" above.
- E. Incorrect, misleading, as leave had not been sanctioned by the competent authority and the appellant remained absent from duty without lawful orders for which he was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.
- F. Incorrect, misleading, as the punishment awarded to the appellant under the Khyber Pakhtunkhwa Government Servants(Efficiency & Discipline) Rules 2011 after a due process.
- G. Incorrect, misleading, elaborated in preceding Paras.
- H. Pertains to the appellant, hence no comment.

- I. Additional grounds of appeal will be replied at the time of hearing of appeal.

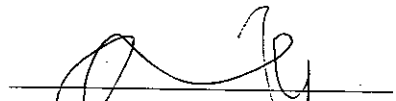
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It is, therefore, humbly prayed that the appeal filed by the Appellant may be rejected being not covered with law and rules please.

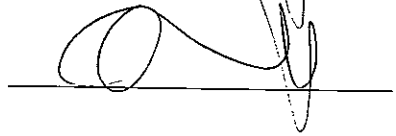
1. INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR



2. SUPERINTENDENT
HEADQUARTER JAIL MARDAN



3. SUPERINTENDENT
HIGH SECURITY JAIL MARDAN



BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of

Service appeal No. 1136 of 2016

Asmat Ullah s/o Khan Zarin, Ex-Warder High Security/Central Prison Mardan,
R/O Kotka Saidan Pirdil Khel Illaqa Sorani P/O Nizam Bazar Bannu..

.....Appellant.

----VERSUS----

1. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar,
2. The Superintendent Headquarter Prison Mardan.
3. The Superintendent Central Prison Mardan.

.....Respondents

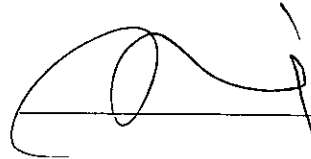
AFFIDAVIT ON BEHALF OF THE RESPONDENTS.

We, the respondents, do hereby solemnly affirm and declare on oath that the contents of the reply/Para wise comments are true and correct to the best of our knowledge and belief and nothing material fact has been concealed and kept secret from this Honorable Tribunal.

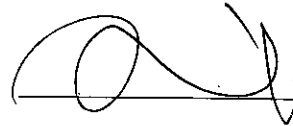
1. INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR.



2. SUPERINTENDENT
HEADQUARTER JAIL MARDAN



3. SUPERINTENDENT
CENTRAL JAIL MARDAN.....



Leave to Subordinate Officers

Rule 1082.-- (i) No subordinate officer shall, at any time, without the permission of the Deputy Superintendent, if such officer is subordinate to him, and, in any other case, of the Superintendent, be absent from the prison premises, whether by day or night.

(ii) The Deputy Superintendent shall not, without the sanction of the Superintendent, grant leave of absence to any subordinate officer, or permit any such officer to remain absent, for any period exceeding four hours at any one time.

(iii) Whenever any leave is granted by the Deputy Superintendent to any subordinate officer he shall, at the time the leave is granted, record the fact, and the period of leave in his report book.

(iv) Every subordinate officer shall immediately on return from save report the fact to the Deputy Superintendent, who shall forthwith record his arrival in his report book,

(v) The Deputy Superintendent shall similarly record in his report book, all leave granted by the Superintendent and all reports made of return from leave..

Absence caused by illness or other unavoidable cause

Rule 1083.-- Whenever any subordinate officer is at any time prevented by sudden illness or other unavoidable cause, from attending the prison or performing his duties, he shall forth-with give notice to the Superintendent along with his reasons for absence. The Superintendent shall then make suitable arrangements for the due performance of his duties.



OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN
E mail. mardanjail@gmail.com
Phone. 0937-843114

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SERVICE HISTORY/ PUNISHMENT AWARDED TO EX- WARDER ASMAT ULLAH S/O KHAN ZARIN SHAH.

1.	Name with Parentage	Asmat Ullah s/o Khan Zarin
2	Rank	Warder (BPS-05)
3	Date of Birth	10-10-1981
4	Date of Appointment	04-10-2007
5	Punishment awarded during his entire service with date and nature of offence	<ol style="list-style-type: none">1- Place under suspension with immediate effect in a disciplinary case vide Superintendent Prison Bannu No. 806 09-04-2008.2- The inquiry committee has decided to impose the penalty of “ Two increment stopped without future effect” vide Superintendent HQS. Prison D.I.Khan Endst No.384-86 dated 18-07-2008.3- Due to unsatisfactory conduct during of probation the service are hereby Terminated vide Superintendent HQS. Prison Peshawar order No.1448 dated 25-06-2009.4- “Censured” Vide Superintendent HQS. Prison Peshawar order No. 819 dated. 31-01-2011.5- Upon Completion of proceeding under KPK Government Servant (E&D) Rules 2011, initiated vide Superintendent HQS. Prison Mardan Order No. 832 dated. 04-02-2016, the warder concerned awarded the major penalty of “Reduction to lowest stage” and the period of absence WEF 01-10-2015 to 22-01-2015 (three (03) months and twenty two (22) days) is hereby treated without pay.6- Absent period WEF 22-03-2016 AN to 24-03-2016 AN (two (02) days) is hereby treated without pay, vide Superintendent HQS. Prison Mardan Order No. 2054-55 dated. 09-04-20167- Absent period WEF 10-04-2016 AN to 12-04-2016 FN (one (01) day) is hereby treated without pay, vide Superintendent HQS. Prison Mardan Order No. 1901-06 dated. 21-06-20168- Upon Completion of proceeding under KPK Government Servant (E&D) Rules 2011, initiated vide Superintendent HQS. Prison Mardan Order No. 2264 dated. 09-08-2016, the warder concerned awarded the major penalty of “Compulsory Retired from Service” from the date of absence i.e. 27-05-2016.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

(Annexure - B)

⑥

To,

Warder Asmat Ullah Shah S/O Khan Zarin Shah,
C/O Kotka Saidan Pirdil Khel Illaqa Sorani P/O Nizam Bazar
Bannu.

Subject: Absent Notice.
Memo;

It is hereby inform you that you are absented from duty as we
Jail premises since dated: 27-05-2016, without any information/ application
competent authority. Ensure your presence immediately after receiving of this n
otherwise strict disciplinary action will be taken against you.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endorsement No: 1930-31

Copy of the above is forwarded to the:-

- 1- Inspector General of Prisons Khyber Pakhtunkhwa for information please.
- 2- Superintendent High Security Prison Mardan for information with referenc
his memo No.3596-97 dated 06-06-2016.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

OFFICE OF THE
SUPERINTENDENT HIGH SECURITY PRISON
MARDAN

NO: _____ DATED: 6/06/2016

(7)

To,

Warder Asmat Ullah Shah S/O Khan Zarin Shah,
C/O Kotka Saidan Pirdil Khel Illaqa Sorani P/O Nizam Bazar
Bannu.

Subject: Absent Notice.

Memo;

It is hereby inform you that you are absented from duty as well as Jail premises since dated: 27-05-2016, without any information/ application from competent authority. Ensure your presence within 15 days after receiving of this notice otherwise strict disciplinary action will be taken against you.

SUPERINTENDENT,
HIGH SECURITY PRISON MARDAN

Endorsement No: 3996-92 /

Copy of the above is forwarded to:

1. The superintendent Circle Head Quarter Prison Mardan for information.
2. Office Superintendent/ I/C Pay branch for information as his pay may be stopped immediately.

SUPERINTENDENT,
HIGH SECURITY PRISON MARDAN

6/6/2016

You, Warder Asmat Ullah Shah S/O Khan Zarin Shah attached to High Security Prison Mardan have willfully absented yourself from your allotted duties as well as jail premises without prior permission of the competent authority w.e.f 27-05-2016 to 22-07-2016 for 55 days willful absence, which constitutes gross misconduct on your part. (8)

I, Sahibzada Shah Jehan, Superintendent Headquarter Prison Mardan Competent Authority, am satisfied by the report received vide the Superintendent High Security Prison Mardan and there is no need of holding any further inquiry,

Now therefore, you above named Warder are hereby called to show cause within 07 days of the receipt of this notice as to why you should not be dismissed from service for your above stated act of misconduct. You desire to be heard in person.

In case your reply does not reach this office within stipulated period, ex-parte action shall be taken against you.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endorsement No: 2117-18 / - dated: 25/07/2016.

Copy of the above is forwarded to the: -

- 1- Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar please.
- 2- Superintendent High Security Prison for information with reference to memo 3596-97 dated 23-07-2016 please.
- 3- Above named Warder C/O Superintendent High Security Prison Mardan.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

OFFICE ORDER

(9)

WHEREAS, the accused official Mr. Asmat Ullah Shah S/O Khan Zarin Shah attached to High Security Prison Mardan was proceeded against under Rule-5 read with Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of this misconduct as mentioned in the Show Cause Notice No.2117-79 dated 25-07-2016 served upon him on his absence.

AND WHEREAS, he furnished reply but the same was found unsatisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 08-08-2016 as provided for under rules ibid. The accused official completely failed to defend his case with documentary proof/evidence. In addition to this concerned official is habitual of absenting himself from line and duties and indiscipline, lethargic duty attitude, which is crystal clear from his service record.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 having considered the charges, evidence on record, the explanation of the accused official and after affording the opportunity of personal hearing, the undersigned being competent authority, hereby award major penalty of "Compulsory Retirement from the Service" ^{subject to title} from the date of absence i.e. 27-05-2016 to Mr. Asmat Ullah Shah S/O Khan Zarin Shah attached to High Security Prison Mardan for his misconduct.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endorsement No: 2265-68 /-

Copy of the above is forwarded to the: -

- 1- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
- 2- Superintendent High Security Prison Mardan for information with reference to his endorsement No. 3596-97 dated 23-07-2016.
- 3- District Accounts Officer Mardan for information please.
- 4- Official concerned attached to High Security Prison Mardan.

آپ وارڈران جو کہ ہائی سکیورٹی جیل مردان سے مندرجہ ذیل تاریخوں سے غیر حاضر ہیں کو بذریعہ نوٹس ہذا اطلاع دی جاتی ہے کہ پندرہ دن کے اندر اندر دفتر ہذا میں حاضری کی رپورٹ کریں اور اپنی غیر حاضری کی معقول وجہ بتائیں بصورت دیگر آپ کے خلاف یکطرفہ قانونی کارروائی عمل میں لائی جائے گی جو کہ آپ کے ملازمت سے برخاستگی پر منتج ہو سکتی ہے۔

تفصیل	نام وارڈ بمعہ ولدیت
بظور جیل وارڈ آپ مورخہ 3/6/16 سے ہائی سکیورٹی جیل مردان سے غیر حاضر ہے آپ کو بذریعہ رجسٹری نوٹس نمبر 89-3688 مورخہ 9/6/16 کو گھر کے پتہ پر مطلع کیا گیا لیکن آپ نے کوئی جواب نہیں دیا اور نہ ہی ڈیوٹی کے لئے حاضر ہوئے آپ کو دوبارہ سرکل ہیڈ کوارٹر مردان سے بذریعہ رجسٹری نوٹس نمبر 1926 مورخہ 24/6/16 کو گھر کے پتہ پر مطلع کیا گیا لیکن آپ نے کوئی جواب نہیں دیا اور نہ ہی ڈیوٹی کیلئے حاضر ہوئے۔	1۔ وارڈر سرفراز خان ولد حیا خان سکنہ گلپا خیل ڈاکخانہ جمرو خیبر ایجنسی
بظور جیل وارڈ آپ مورخہ 27/5/16 سے ہائی سکیورٹی جیل مردان سے غیر حاضر ہے آپ کو بذریعہ رجسٹری نوٹس نمبر 97-3596 مورخہ 6/6/16 کو گھر کے پتہ پر مطلع کیا گیا لیکن آپ نے کوئی جواب نہیں دیا اور نہ ہی ڈیوٹی کے لئے حاضر ہوئے آپ کو دوبارہ سرکل ہیڈ کوارٹر مردان سے بذریعہ رجسٹری نوٹس نمبر 1929 مورخہ 24/6/16 کو گھر کے پتہ پر مطلع کیا گیا لیکن آپ نے کوئی جواب نہیں دیا اور نہ ہی ڈیوٹی کیلئے حاضر ہوئے۔	2۔ وارڈر نعمت اللہ شاہ ولد خان زرین شاہ سکنہ کوٹلہ سیدان پیر دل خیل علاقہ سورانی ڈاکخانہ نظام بازار تحصیل ضلع بنوں
بظور جیل وارڈ آپ مورخہ 26/5/16 سے ہائی سکیورٹی جیل مردان سے غیر حاضر ہے آپ کو بذریعہ رجسٹری نوٹس نمبر 3593 مورخہ 6/6/16 کو گھر کے پتہ پر مطلع کیا گیا لیکن آپ نے کوئی جواب نہیں دیا اور نہ ہی ڈیوٹی کے لئے حاضر ہوئے آپ کو دوبارہ سرکل ہیڈ کوارٹر مردان سے بذریعہ رجسٹری نوٹس نمبر 1932 مورخہ 24/6/16 کو گھر کے پتہ پر مطلع کیا گیا لیکن آپ نے کوئی جواب نہیں دیا اور نہ ہی ڈیوٹی کیلئے حاضر ہوئے۔	3۔ وارڈر اعجاز ولد شاہ جی سکنہ کوٹلہ سیدان پیر دل خیل علاقہ سورانی ڈاکخانہ نظام بازار تحصیل ضلع بنوں
بظور جیل وارڈ آپ مورخہ 3/6/16 سے ہائی سکیورٹی جیل مردان سے غیر حاضر ہے آپ کو بذریعہ رجسٹری نوٹس نمبر 2-3701 مورخہ 10/6/16 کو گھر کے پتہ پر مطلع کیا گیا لیکن آپ نے کوئی جواب نہیں دیا اور نہ ہی ڈیوٹی کیلئے حاضر ہوئے۔	4۔ وارڈر حضرت بلال ولد محمد اسماعیل سکنہ محلہ کنڈی افغانان ڈاکخانہ تاروجہ تحصیل ضلع نوشہرہ

صاحبزادہ شاہ جہان

سرٹیفکٹ سرکل ہیڈ کوارٹر ہائی سکیورٹی جیل مردان