BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

SERVICE APPEAL NO: 1178/2023

Tehsil balakot, District Mansehra, Ex-Warder (BPS-07) at District Jail Mansehra
APPELLAN

VERSUS

- 1. The Inspector General of Prisons, Khyber Pakhtunkhwa, PTC Colony, Peshawar.
- 2. Additional Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
- 3. Deputy Inspector General of Prisons, Regional Prisons Office Hazara at Haripur.
- 4. Superintendent Circle HQ Prison Haripur.
- 5. Superintendent District Jail Mansehra.

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DEPONENT

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA. **PESHAWAR**

In the matter of Service Appeal No.1178/2023 DARY No. 10365

Nazak Khan S/O Haleem Ullah, resident of Baber Colony, Garhi Habibullah, Tehsil balakot, District Mansehra, Ex-Warder (BPS-07) at District Jail Mansehra.

.....(Appellant)

----VERSUS----

- 1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
- 2. Additional Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
- 3. Deputy Inspector General of Prisons, Regional Prisons Office Hazara at Haripur.
- 4. Superintendent Circle HQ Prison Haripur.
- 5. Superintendent District Jail Mansehra.

..... (Respondents)

SUBJECT: JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO 01 TO 05

Respectfully Sheweth,

Preliminary Objections:

- That the appellant has got no cause of action/locus standi.
- That the instant appeal is badly time barred. ii.
- That the appellant has concealed the material facts from this iii. honorable tribunal, hence liable to be dismissed.
- That the appellant has not come to this honorable court with clean iv. hands.
- That the appellant has filed the instant appeal just to pressurize the v. respondents.
- That the appellant has filed the instant appeal on malafide motives. vi.
- That the instant appeal is against the prevailing law and rules. vii.
- That the appellant is estopped by his own conduct to file this instant viii. appeal.
- That the present appeal is not maintainable in its present form and ix. also in the present circumstances of the case.

OBJECTION ON FACTS:

- This Para needs no comments. 1.
- This Para pertains to record, hence need no comments. 2.
- This Para needs no comments. 3.
- Incorrect and not admitted. The appellant left the jail premises without prior 4. approval of the competent authority and remained absent from official

duty. The appellant being a sensitive force service such alike willful absence and avoiding the official duty from his point is a violation of the KPK Prison Rules 2018. The appellant neither submitted any application nor any request had been made to the Superintendent concerned and whereas no application for leave has been annexed with his own appeal in order to bring into the notice of this Honurable Tribunal about his leave.

- 5. This Para did not relates to the answering respondents. hence needs no comments.
- 6. Incorrect and not admitted. That the appellant did not follow the Khyber Pakhtunkhwa Prison Rule 1082 and 1083, for the grant of leave. Copy attached as (Annex-A). Moreover, writing of application for leave does not confer right, unless and until sanctioned by the competent authority.
- 7. Incorrect and not admitted. That the impugned order dated 30-01-2023 was issued by the competent authority after exhausting of all codal formalities. The appellant had willfully absented himself from official duty with effect from 01-12-2022 without prior permission of the competent authority as reported by Superintendent District Jail Mansehra vide letter dated 27-12-2022. Copy attached as (Annex-B). A notice was served at his home address of the appellant vide letter dated 08-12-2022. Copy attached as (Annex-C), with the direction to the appellant to resume duties immediately failing which disciplinary action would be initiated against him under the Khyber Pakhtunkhwa Government Servant (E&D) Rules-2011.
- 8. Correct to the extent that the appellant submitted an application before the respondent No. 03 while the respondent No. 03 letter dated 28-03-2023 address to the appellant endorsed the decision of the competent authority. Copy attached as (Annex-D).
- 9. Correct and admitted.
- Correct and admitted. The competent authority in exercise of power 10. conferred Under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules-2011, amended in 2021 awarded major penalty of (Removal from Service) to the appellant. Impugned order is attached as (Annex-E). Feeling aggrieved the appellant preferred departmental appeal before the appellant authority; the appellant authority afforded the opportunity of personal hearing to the appellant on 11-04-2023. (Copy attached as Annex-F). His appeal was examined in the light of available record, and observing all the codal formalities as required under Government Servants (Efficiency and Discipline) Rules-2011. The appellate authority in exercise of powers conferred Under Rule-17 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 read with Rule-05 of Khyber Pakhtunkhwa Service Appeal Rules 1986, upheld the decision of the competent authority and rejected the appeal of the appellant being without any substance (Copy attached as Annex-G).
- 11. The answer has been given in para above.
- 12. This Para needs no comments.

OBJECTION ON GROUNDS:

- a. Incorrect and not admitted. That the appellant namely Nazak Khan absented/deserted himself from duty with effect from 01-12-2023 till his Removal from service order dated 30-01-2023 without prior permission of the competent authority, subsequently a notice was served on his home address vide letter dated 08-12-2023 (Copy already attached), with the direction to resume his duties immediately after expiry of more than 15 days period, the said warder neither resumed duties nor any intimation was received from him. Therefore as required Under Rule-9 of Khyber Pakhtunkhwa Government Servant (E&D) Rules, 2011 as amended in 2021, a notice was published in a daily newspaper i.e "Mashriq Peshawar" dated 09-01-2023(Copy attached as Annex-H), by directing him to resume duties within 15 days of publication of notice. But the appellant after lapse of stipulated period given in the notice neither resume his duty nor any response was received from his end as confirmed by the Superintendent District Jail Mansehra vide letter No. 429 dated 26-01-2023. Therefore in exercise of power conferred under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules-2011, the competent authority awards major penalty of "Removal from Service" to the appellant, from the date of his willful absence i.e 01-12-2022.
- b. Incorrect and not admitted, complete codal formalities has been exercised before passing of Major penalty i-e Removal from Service.
- c. Incorrect and not admitted. That the appellant was called for personal hearing on 11-04-2023 (Copy already attached).
- d. Incorrect and not admitted. That the appellant was removed from service after exhausting of all codal formalities. The detail reply has been given in Para-A above.
- e. This Para pertains to record hence needs no comments.
- f. Incorrect and not admitted. The detail answer has been given in para 10 of the facts above.
- g. That the respondents seek permission to raise additional grounds at the time of argument.

PRAYER:

It is therefore most humbly prayed that upon acceptance of the above submission of joint parawise comments on behalf of respondents No. 1 to 5, the appeal of the appellant may graciously be dismissed with cost being devoid of merit and against the law.

Inspector General of Prisons Khyber Pakhtunkhwa Peshawar Respondent No. 1

M.Naeem Khan
Deputy Inspector General Of Prisons
Hazara Region at Haripur
Respondent No. 3

Hamaod ur Rehman Additional Inspector General of Prisons Khyber Pakhtunkhwa Peshawar Respondent No. 2

mair Khan

Superintendent Circle Headquarter Prisons Haripur Respondent No. 4

Najam Abbasi Superintendent District Jail Mansehra Respondent No. 5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In the matter of Service Appeal No.1178/2023

Nazak Khan S/O Haleem Ullah, resident of Baber Colony, Garhi Habibullah, Tehsil balakot, District Mansehra, Ex-Warder (BPS-07) at District Jail Mansehra.

.....(Appellant)

----VERSUS----

- 1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
- 2. Additional Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
- 3. Deputy Inspector General of Prisons, Regional Prisons Office Hazara at Haripur.
- 4. Superintendent Circle HQ Prison Haripur.
- 5. Superintendent District Jail Mansehra.

..... (Respondents)

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENTS

No. 1 to 5.

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 for oath that in the instant service appeal the answering respondents have not been placed exparte nor their defence has been struck off.

Usman Mehsud
Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar
Respondent No. 1

M. Nacem Khan

Deputy Inspector General Of Prisons

Hazara Region at Haripur

Respondent No. 3

Hamed ur Rehman

Additional Inspector General of Prisons Khyber Pakhtunkhwa Peshawar

Respondent No. 2

≱mair Khan

Superintendent

Circle Headquarter Prisons Haripur

Respondent No. 4

ESTE ASTRUMENT OF THE PROPERTY OF THE PROPERTY

Najam Abbasi Superintendent District Jail Mansehra Respondent No. 5

'0 3 JAN 2024

- (2) Every prison official for whom the residential quarters are not available in prison shall reside within such distance from the prison as the Superintendent may direct,
- 1082. Leave to Subordinate Officers.—(1) 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.
- (2) 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.
- (3) 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.
- (4) Every subordinate officer shall immediately on return from leave report the fact to the Deputy Superintendent, who shall forthwith record his arrival in his report book.
- (5) The Deputy Superintendent shall similarly record in his report book, all leave granted by the Superintendent and all reports made of return from leave.
- (6) Fifteen (15) days recreation leave shall be granted to every employee of Department once in a calendar year on rotation basis.
- 1083. Absence caused by illness or other unavoidable cause.—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.
- 1084. Acquaintance with these rules and directions.—It shall be the duty of every prison officer to make himself thoroughly acquainted with the duties of his office and these rules and directions. He shall discharge his duties with zeal, efficiency, honesty, alacrity and regularity.
- 1085. Note Book.---Every subordinate officer shall keep a notebook with him in which he shall record every order given to him by his superior officers.
- 1086. Subordinate Officer to render prompt obedience.---It shall be the duty of every subordinate officer at all times to render prompt and implicit obedience to every lawful order, given to him by superior officer, with proper courtesy and respect.
- 1087. Prohibition against communicating with prisoners, their-relatives and friends.---(1) No subordinate officer shall, otherwise than with the special permission of the Superintendent, at any time,-

A.

Afford

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OFFICE OF THE SUPERINTENDENT

Email:mansehrajali2002@gmail.com No. 2929/weDated 27/12/2022



The Superintendent, Head Quarters Prison Haripur.

Subject: -DISCIPLINARY ACTION AGAINST WARDER NAZAK KHAN. Sir,

It is submitted that Warder Nazak Khan S/o Haleem Ullah currently attached to this jail has been absented / deserted from his duties as well as jail lines since 01/12/2022 till date i.e., 27/12/2022 without permission of the competent authority. Furthermore, this office has issued resumption of duty notice at his home address vide this office letter No.2789-90 dated 08/12/2022 (copy attached), however the warder concerned has not paid heed to the notice issued to him and so far not resumed his duty till date i.e., 27/12/2022.

It is therefore, requested that strict disciplinary proceedings may please be initiated against the accused warder under the Government Servants Efficiency & Disciplinary Rules, 2011.

DISTRICTIAIL MANSEHRA

_ Dated ____/___/2022 Endst; No.__

Copy forwarded to the Worthy Inspector General of Prisons Khyber

Pakhtunkhwa Peshawar for information please.

DISTRICT JAIL MANSEHRA

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Ist Notice

Warder Nazak Khañ S/o Haleem Ullah, Babar Colony, Garhi HabibUllah. Mansehra.

Subject:

RESUMPTION OF DUTY.

Memo;

It is to inform you that you have deserted from your duties as well as jail premises from 01-12-2022 without permission of the competent authority till date i.e., today on 08.12.2022.

You are hereby directed to resume your duties without any further loss of time failing which strict disciplinary action under Government Servant Efficiency and Disciplinary Rules, 2011 will be initiated against you.

DISTRICT JAIL MANSEHRA

Endst; No. 2790 Dated. ___/____/2022

Copy of the above is forwarded to the Superintendent Headquarters Prison Haripur for information please.

OFFICE OF THE DEPUTY INSPECTOR GENERAL OF (PRISONS)

R.P.O. ABBOTTABAD AT HARIPUR PHONE#0995-920053

FAX# 0995-920054

To,

Mr. Nazik Khan S/O Haleem Khan, Babar Colony Garhi Habib Ullah, Mansehra.

Subject:

APPLICATION.

Memo,

Reference your application to this office.

You are intimated that in exercise of powers conferred under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule 2011, you were awarded major penalty of "Removal from Service" vide Superintendent Headquarter Prisons Haripur office order No.440 dated 30-01-2023 being competent authority after attaining all legal and codal formalities.

REGIONAL PRISONS OFFICE HAZARA AT HARIPUR

Endst No 393.

Copy of the above is forwarded to the Superintendent H.Q Prisons Haripur for information w/r to the No 1334-we dated 27-3-2023.

> TOR GENERAL OF PRISONS REGIONAL PRISONS OFFICE HAZARA AT HARIPUR

PUKHTUR

OFFICE OF THE SUPERINTENDENT CIRCLE HQs PRISON HARIPUR

No. 440.

Dated 38/01/2023.

ORDER

WHEREAS, Mr. Nazak Khan Warder (BPS-07) posted at District Jail Mansehra absented/deserted himself from duty with effect from 01-12-2022 till date without prior permission of the competent authority as reported by Superintendent District Jail Mansehra vide letter No. 2929/WE dated 27-12-2022. A notice was served on him at his home address direction to resume duties immediately falling which disciplinary action would be initiated against him under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011.

AND WHEREAS, after expiry of more than 15 days period, the said Warder neither resumed duty nor any intimation was received from him. Therefore, as required under 09-01-2023 by directing him to resume duty within 15 days of publication of the notice. But response was received from his end as confirmed by Superintendent District Jail Mansehra vide his letter No. 429 dated 26-01-2023.— 17/10.

NOW THEREFORE, in exercise of powers conferred under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, the undersigned being competent authority, hereby awards major penalty of "Removal from Service" to Mr. Nazak Khan Warder (BPS-07) posted at District Jail Mansehra from the date of his willful absence i.e 01-12-2022.

ENDST; NO. 441-44

CIRCLE H.Q. PRISON HARIPUR

Copy of the above is forwarded to:

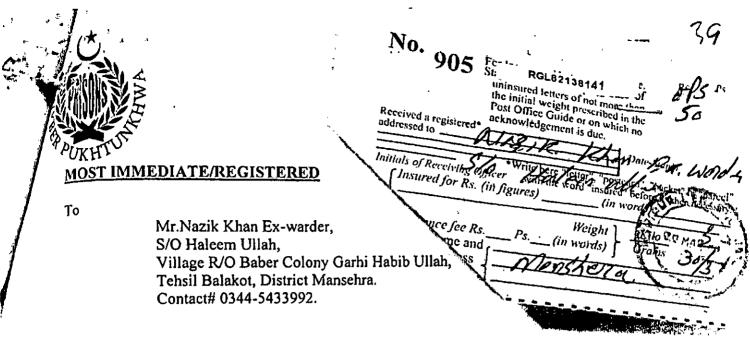
- 1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
- 2. The Superintendent, District Jail Mansehra for information and necessary action with reference to his letter No. 429 dated 26-01-2023.
- 3. The District Accounts Officer Mansehra for Information.

4. Mr. Nazak Khan S/O Sami Ullah, R/O Babar Colony Darhi Habib Ullah, Tehsil Balakot & District Mansehra for information.

Alles

CIRCLE H.Q. PRISON HABPUR

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Subject:-Memo:

DEPARTMENTAL APPEAL/ PERSONAL HEARING

You are directed to attend the office of the Addli; Inspector General of Prisons Khyber Pakhtunkhwa Peshawar on 11-04-2023(Tuesday) at 11.00 AM for personal hearing in connection to your departmental appeal.

Endst: No: 1404-06

Copy of the above is forwarded to:

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information w/r to his

letter No.13043 dated 28-03-2023 please.

2. Mr. Awais Rasheed Computer Operator attached to Central Prison Haripur for information. He is hereby nominated as a representative of this HQs to attend the office of Addl; Inspector General of Prisons Khyber Pakhtunkhwa Peshawar on the date and time mentioned above in the instant case and produced the relevant record as desired. 3. The Superintendent District Jail Mansehra for information and necessary action.

SUPERINTENDENT CIRCLE H.Q. PRISON HARIPUR

After



OFFICE OF THE INSPECTOR GENERAL OF PRISONS KHYBER PAKHTUNKHWA PESHAWAR **22** 091-9210334, 9210406 091-9213445

No.Estb/Ward-/Ordors/ Dated 20 -- 04 -

WHEREAS, Ex-Warder Nazik Khan S/o Haleem Ullah, attached to District Jail Mansehra was awarded the major penalty of "Removal from Service" by Superintendent HQs Prison Haripur vide order No. 440 dated 30-01-2023 due to his willful absence w.e.f. 01-12-2022 till the date of his removal from service on 30-01-2023.

AND WHEREAS, the said Ex-Warder preferred his departmental appeal for setting aside the penalty awarded to him and also requested for reinstatement in service.

AND WHEREAS, he was afforded an opportunity of personal hearing on 11-04-2023. His appeal was examined in light of the available record of the case and it was observed that the penalty was awarded to him by the competent authority on his willful absence after observing all legal and codal formalities as required under Government Servants (Efficiency & Discipline) Rules, 2011. During the course of hearing, the appellant failed to justify his innocence.

NOW THEREFORE, having considered the charges, evidences/facts on record, explanation of the accused official, 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 competent authority is upheld and appeal of the appellant is hereby rejected being without any substance.

ADDL: INSPECTOR GENERAL OF PRISONS, KHYBER PAKHTUNKHWA, PESHAWAR.

ENDST: NO. 15567 - 7/ /-

Copy of the above is forwarded to the:

1. Deputy Inspector General of Prisons Regional Prison Office Abbottabad at Haripur for information.

2 Superintendent, Headquarters Prison Haripur for information and necessary action with reference to his letter No. 1213/WE dated 17-03-2023.

3. Superintendent District Jail Mansehra for information and necessary action. He is directed to inform the appellant accordingly and to make necessary entry in his Service Book under proper attestation.

4. Mr. Nazik Khan S/o Haleem Ullah (Ex-Warder) C/o Superintendent District Jail Mansehra for information.

5. PS to Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information.

DEPUTY DIRECTOR

INSPECTORATE GENERAL OF PRISONS

KHYBER PAKHTUNKHWA PESHAWAR

D'ÚDRice Working/B-IIIAppeal of Warder/Annesi devisi





OFFICE OF THE SUPERINTENDENT CIRCLE HQs PRISON HARIPUR

Dated <u>02/61/2023</u> Phone/Fax: 0995-920066

Ί'n

The Director Information, Khyber Pakhtunkhwa, Peshawar.

Subject:-

DUTY NOTICE IN R/O WARDER NAZAK KHAN S/O SAMI ULLAH (BPS-07) ATTACHED TO DISTRICT JAIL

Memo:

It is submitted that Duty Assumption Notices in respect of Warder (BPS-07) Nazak Khan S/O Sami Ullah attached to District Jail Manschra are sent herewith in Urdu (Three Copies) for Publication in the leading Newspapers as per Government Policy.

It is further certified that the funds under Head "AO-3970" Advertisement Charges are available to meet the expenditure on this account.

O/L SUPERINTENDENT CIRCLE H.Q. PRISON HARIPUR

Endst: No. H- | WE

Copy of the above is forwarded to The Superintendent DJ Manschra w/r to the No. 2929/WE dated, 27-12-2022 for information please.

OL SUPERINTENDENT CIRCLE H.O. PRISON HARIPUR

Alter

نونس غير حاضرى

آپ نازک خان ولد سمیج الله وار ڈر (بی پی ایس 07) رہائٹی بابر کالونی، گھڑی حبیب الله، تحصیل بالا کوئ، طلع مانسپرہ، ڈسٹر کٹ جیل مانسپرہ سے مور خہ 2022-12-01 سے تاحال غیر حاضر ہیں۔ آپ کے گھر کے پتہ پر سپر نشاڈ نٹ ڈسٹر کٹ جیل مانسپرہ کی جانب سے غیر حاضری نوٹس بھی جاری کیا گیا ہے، جمکا آپ نے کوئی جواب نہیں دیا۔

آپ کواشتہار ہذا کے زریعہ مطلع کیا جاتا ہے۔ کہ اس اشتہار کی اشاعت کے پندرہ دن کے اندر سپر نٹنڈنٹ ڈسٹر کٹ جیل مانسہرہ کے دفتر میں حاضر ہو کر اپنی غیر حاضری کی معقول وجہ بیان کریں۔

بصورت دیگر آپ کے خلاف،

2021 گریم شره Khyber Pakhtunkhwa (Efficiency and Discipline) Rules 2011

کے تحت یکطرفہ کاروائی کی جائے گی۔

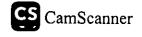
پرشندن برکل میدکوار جیل بری بور مرکل میدکوار جیل بری بور

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OFFICE OF THE INSPECTORATE GENERAL OF PRISONS KHYBER PAKHTUNKHWA PESHAWAR 2091-9210334,9210406 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