

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 377/2019

Date of Institution ... 19.03.2019

Date of Decision ... 22.11.2021

Muhammad Amjad S/o Muhammad Aslam, Ex-Warder, Central Prison Haripur R/o
Kandar Phulra, Tehsil & District Mansehra. ... (Appellant)

VERSUS

Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar and two others.
... (Respondents)

Mr. Aslam Khan Khattak,
Advocate

... For Appellant

Mr. Noor Zaman Khattak,
District Attorney

... For Respondents

ROZINA REHMAN

...

MEMBER (JUDICIAL)

ATIQ-UR-REHMAN WAZIR

...

MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant was appointed as Warder in Prison department vide order dated 22-01-2015. During the course, the appellant was proceeded against on the charges of misconduct and was ultimately removed from service vide order dated 28-09-2016. Feeling aggrieved, the appellant filed departmental appeal dated 25-10-2016, which was rejected vide order dated 13-01-2017. The appellant filed the instant service appeal on 19-03-2019 with prayers that the impugned orders dated 28-09-2016 and 13-01-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that vide impugned order dated 28-09-2016, absence period of the appellant has been treated as leave without pay, hence there remains no ground for the respondents to penalize the appellant, therefore the impugned orders could not be treated as valid orders under the law, hence needs to be set aside; that charges of unauthorized absence from duty would not justify imposition of major penalty under the law; that guilt of the appellant does not commensurate with the penalty so imposed, which is harsh, whereas absence does not constitute a major misconduct entailing major penalty of removal from service.

03. Learned District Attorney for the respondents has contended that the appellant was appointed as warder on 22-01-2015 and during probation period, he was awarded with major punishment of removal from service vide order dated 02-10-2015 on the eve of desertion from duty; that major penalty however, was converted into minor penalty of stoppage of annual increments for three years vide order dated 03-11-2015; that during his short service tenure and being probationer, he was awarded many punishment for absenting himself from lawful duty; that the appellant being probationer was again found absent from lawful duty for more than two months, for which he was proceeded against under the law and was again removed from service vide order dated 28-09-2019; that departmental appeal of the appellant was rejected vide order dated 13-01-2017, but the appellant filed the instant service appeal on 19-03-2019 with delay of more than two years without any justification, which is barred by time; that as per law the appellant was required to file the instant service appeal within 30 days of rejection of his departmental appeal, but the appellant failed to file such appeal well in time, hence the instant appeal is hit by limitation and on this score alone, the instant service appeal is liable to be dismissed.

04. We have heard learned counsel for the parties and have perused the record.

05. We have noticed that the appellant has filed the instant service appeal with delay of more than two years without any justification for such delay. Placed on record is an application for condonation of delay, but we did not find any plausible reason for condonation of such inordinate delay, hence the instant appeal is not competent before this Tribunal in view of limitation. Needless to mention that the appellant was yet under probation and during probation, he was awarded major punishment twice. The appellant was treated in accordance with law and we did not notice any irregularity, hence warrants no interference.

06. In view of the foregoing discussion, the instant appeal is dismissed. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
22.11.2021



(ROZINA REHMAN)
MEMBER (J)



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER

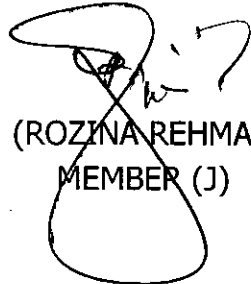
22.11.2021

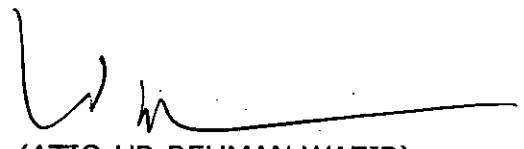
Mr. Aslam Khattak, Advocate for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is dismissed. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

22.11.2021


(ROZINA REHMAN)
MEMBER (J)


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

13.08.2021

Appellant with counsel present.

Javid Ullah learned A.A.G for respondents present.

Partial arguments heard. It has transpired during the arguments that record of the disciplinary proceedings culminating into issuing of the impugned order has not been annexed with reply of the respondents. Let the same be produced on the next date complete in all respects including the material collected during the proceedings if any. To come up for further arguments on 13.08.2021 before D.B.



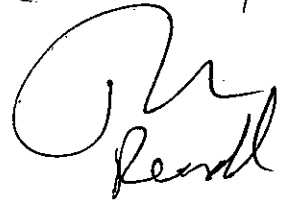
(Rozina Rehman)
Member (J)



Chairman

13-8-21

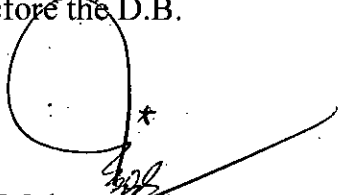
Due to non availability of
DB, to come up for the same on 22/11/21



09.11.2020

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

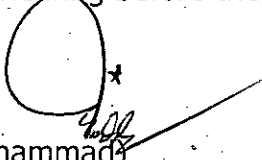
The Bar is observing general strike, therefore, the matter is adjourned to 19.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member (E)

19.01.2021

Counsel for the appellant and Mr. Muhammad Rashid, DDA for the respondents present.

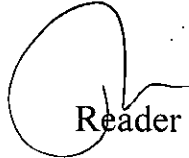
Former requests for adjournment as he could not prepare the brief due to injury in his hand. Adjourned to 22.04.2021 for hearing before the D.B.


(Mian Muhammad)
Member(E)


Chairman

22.04.2021

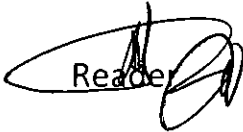
Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 13.08.2021 for the same as before.


Reader

28-4 .2020


Due to COVID19, the case is adjourned to

7/7/2020 for the same as before.

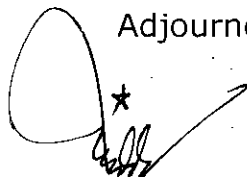
Reader 

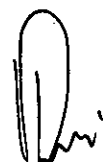
07.07.2020

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for the respondents present.

Former requests for adjournment as he ^{has} is not prepared the brief due to indisposition. 

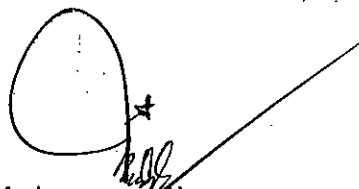
Adjourned to 01.09.2020 before D.B.

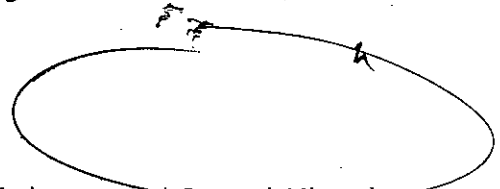

Member


Chairman

01.09.2020

Learned counsel for the appellant is present. Mr. Muhammad Jan, Deputy District Attorney for the respondents is also present. According to the learned counsel he is not feeling well, therefore, has not prepared the present appeal. Seeking adjournment. Adjourned to 09.11.2020. File to come up for arguments before D.B.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

02.03.2020

Counsel for the appellant present. Mr. Ziaullah,
DDA for respondents present. Learned counsel for the
appellant submitted rejoinder which is placed on file
and seeks adjournment. Adjourned. To come up for
arguments on 28.04.2020 before D.B.



Member



Member

28.10.2019

Appellant present in person and Addl. AG alongwith Arif Saleem, Stenographer for the respondents present.

Learned AAG requests for time to contact the respondents and furnish reply/comments. Adjourned to 22.11.2019 on which date the requisite reply/comments shall positively be furnished.

Chairman 

22.11.2019

Counsel for the appellant and Addl. AG alongwith Abdul Malik, Law Officer for the respondents present.

Representative of the respondents seeks time to furnish the requisite reply/comments. Adjourned to 07.01.2020 on which date reply/comments shall positively be furnished.

Chairman 

07.01.2020

Junior to counsel for the appellant and Addl. AG alongwith Suleman, Litigation Officer for the respondents present.

Parawise comments on behalf of respondents have been furnished. Placed on record. The appeal is assigned to D.B for arguments on 02.03.2020. The appellant may furnish rejoinder, within one month, if so advised.

Chairman 

377/2019

28.08.2019


Counsel for the appellant present.

Contends that the appellant was removed from service on account of absence without leave through order dated 28.09.2016, however, the period of his absence was treated as extraordinary leave without pay. The order of removal, therefore, was not sustainable also in view of judgments reported as 2007-PLC(C.S) 1318 and 1995-PLC(C.S) 1161. Explaining the delay in submission of instant appeal, it was contended that the departmental appellate order was though passed on 13.01.2017 but was conveyed to the appellant on 2.3.2019. Thereafter, the appeal in hand was submitted on 19.03.2019. He relied on 2001-PLC (C.S) 990 in that regard and stated that the present appeal was well within time provided for the purpose.

In view of the arguments of learned counsel and available record instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 28.10.2019 before S.B.

Appellant Deposited
Security & Process Fee

28/8/19



Chairman

22.05.2019

Appellant with counsel present and seeks adjournment. Adjourn. To come up for preliminary hearing on 05.07.2019 before S.B.


Member

05.07.2019

Learned counsel for the appellant present. Heard.

The departmental appeal of the appellant against the order dated 28.09.2016 of his removal from service was rejected vide order dated 13.01.2017 and the appellant has instituted the present service appeal there against on 19.03.2019. Learned counsel for the appellant was confronted with the situation that the present service appeal is time barred. Learned counsel for the appellant seeks adjournment for further assistance. Adjourn. To come up for preliminary hearing including hearing on the issue of limitation on 08.08.2019 before S.B.

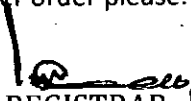



Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 377/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/03/2019	<p>The appeal of Mr. Muhammad Amjid presented today by Mr. Aslam Khan Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 19/3/19</p>
2-	20/03/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>15/04/2019</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>15.04.2019</p> <p>Learned counsel for the appellant present. Heard.</p> <p>In response to the plea of the learned counsel for the appellant that the punishment order of the appellant is void, learned counsel for the appellant when confronted with judgments reported in 1998 SCMR page 1890 and 2019 SCMR page 95, seeks adjournment. Adjourn. To come up for preliminary hearing on 22.05.2019 before S.B</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

Appeal No. 377 /2019

Muhammad Amjad S/o Muhammad Aslam, Ex Warder, Central
Prison Haripur

VERSUS

Inspector General of Prisons KPK & Others

INDEX

S#	Description of Documents	Annexure	Page No's
1	Memo of Appeal with affidavit	-	1-5
2	Application for Condonation of delay if any with affidavit	-	6-7
3	Appointment order of appellant	"A"	8
4	Impugned order dated 28/09/2016	"B"	9
5	Departmental Appeal	"C"	10
6	Final Impugned order dated 13/01/2017	"D"	11
7	Wakalat Nama	-	-

محمد امجد
Appellant

Through

Aslam
Aslam Khan Khattak
Advocate, Peshawar.

Dated: 19/03/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 377 /2019

Diary No. 350

Dated 19/3/2019

Muhammad Amjad S/o Muhammad Aslam, Ex-Warder,
Central Prison Haripur R/o Kandar Phulra, Tehsil & District
Mansehra.

Appellant

VERSUS

1. Inspector General of Prisons, KPK Peshawar.
2. Superintendent, Headquarters Prison, Haripur.
3. Superintendent, Central Prison, Haripur.

Respondents

**APPEAL UNDER SECTION 4 OF KPK SERVICE
TRIBUNAL ACT 1974 AGAINST THE IMPUGNED
ORDER DATED 28/09/2016 VIDE ANNEXURE 'B'
WHEREBY THE APPELLANT HAS BEEN REMOVED
FROM SERVICE AND ALSO AGAINST THE FINAL
IMPUGNED ORDER DATED 13/01/2017 VIDE
ANNEXURE 'D' WHEREBY THE APPELLANT'S
DEPARTMENTAL APPEAL DATED 25/10/2016
VIDE ANNEXURE "C" HAS BEEN REJECTED AND
COMMUNICATED TO THE APPELLANT ON
02/03/2019.**

Filed to-day
Registrar
19/3/2019

PRAYER

**ON ACCEPTANCE OF APPEAL, BOTH THE
IMPUGNED ORDERS AT ANNEXURE 'B' & 'D'
MAY BE SET ASIDE AND THE APPELLANT SHALL
BE REINSTATED IN SERVICE WITH ALL BACK
BENEFITS.**

Respectfully Sheweth:

Brief facts leading to the instant appeal are as under:-

1. That the appellant having been inducted in service vide order dated 22/01/2015 at annexure "A".
2. That the appellant throughout his whole service has performed his duties with utmost of his capabilities and to the entire satisfaction of his superiors.
3. That on 27, 28/02/2016 at mid night, the appellant was called for duty but he was unable to perform the duty because he was sick and the doctor has advised him to take rest.
4. That the appellant during the period from 15/03/2016 to 19/05/2016 was present in the jail but his superiors were not giving the duty to him and has removed him from service vide impugned order dated 28/09/2016 at annexure "B".
5. That the appellant has filed departmental appeal dated 25/10/2016 vide annexure "C" which has been rejected vide impugned order dated 13/01/2017 at annexure "D" communicated to the appellant on 02/03/2019.
6. That feeling aggrieved and is finding no other adequate remedy, the appellant is constrained to approach this Hon'ble Tribunal for the redressal of his grievances on the following grounds:-

GROUND:

A. That it is crystal clear from the impugned order dated 28/09/2016 at annexure "B", that the appellant's absence period w.e.f 15/03/2016 to 19/05/2016 and from 18/07/2016 to 20/07/2016 has been treated as extra-ordinary leave without pay, awarding penalty of removal from service to appellant was not permissible under any law. Therefore, the impugned orders could not be treated as valid orders under the law and may be set aside and the appellant shall be reinstated in service.

B. That the charges of unauthorized absence from duty against the appellant would not justify the imposition of major penalty of removal from service under the law. So the appellant's removal from service is not sustainable order and is liable to be set aside because it is a petty misconduct and it does not commensurate with the extreme harsh punishment born out of the absence of appellant. So to this effect both the impugned orders at annexure "B & D" are liable to be set aside and the appellant shall be reinstated in service with all back benefits.

C. That both the impugned orders at annexure "B & D" are illegal, malafide without jurisdiction and without lawful authority and are liable to be set aside.

D. That the appellant seeks leave to rely on additional grounds at the time of arguments.

It is, therefore, most respectfully prayed that on acceptance of appeal, both the impugned orders dated 20/09/2016 & 13/01/2017 at annexure "B & D" may be set aside and the appellant shall be reinstated in service with all back benefits.

محمد امیر خان
Appellant

Through

ad
Aslam Khan Khattak
Advocate, Peshawar.

Dated: 19/03/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

Appeal No. _____/2019

Muhammad Amjad S/o Muhammad Aslam, Ex Warder, Central
Prison Haripur

VERSUS

Inspector General of Prisons KPK & Others

AFFIDAVIT

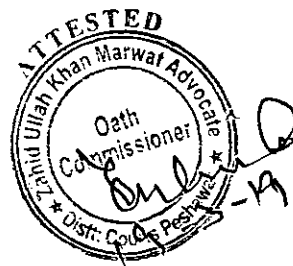
I, Muhammad Amjad S/o Muhammad Aslam, Ex
Warder, Central Prison Haripur, do hereby solemnly affirm
and state on oath that impugned order 13/01/2017 has
been communicated to me on 02/03/2019. My above
statement is true and correct to the best of my knowledge
and belief and nothing wrong has been stated by me in the
matter.

محمد امجد
DEPONENT

Identified by

aslm

Aslam Khan Khattak
Advocate, Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Appeal No. _____/2019

Muhammad Amjad S/o Muhammad Aslam, Ex Warder, Central
Prison Haripur

VERSUS

Inspector General of Prisons KPK & Others

APPLICATION FOR CONDONATION OF DELAY IF ANY


Respectfully Sheweth:

- A. That the grounds mentioned in appeal may be treated as the integral part of this application.
- B. That it is the settled law of Supreme Court of Pakistan that the cases be decided on merits and not technicalities such as limitation.
- C. That the petitioner has not committed any misconduct and if the delay, if any, is not condoned, his whole life shall be destroyed.

It is, therefore, prayed that on acceptance of this application, the delay if any shall be condoned to meet the ends of justice.


Appellant

Through


Aslam Khan Khattak
Advocate, Peshawar.

Dated: 19/03/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

Appeal No. _____/2019

Muhammad Amjad S/o Muhammad Aslam, Ex Warder, Central
Prison Haripur

VERSUS

Inspector General of Prisons KPK & Others

AFFIDAVIT

I, Muhammad Amjad S/o Muhammad Aslam, Ex Warder,
Central Prison Haripur, do hereby solemnly affirm and state on
oath that all contents of the application for condonation of
delay (if any) are true and correct to the best of my knowledge
and belief and nothing wrong has been stated by me in the
matter.


DEPONENT

Identified by



Aslam Khan Khattak
Advocate, Peshawar.





Annexure A
8

OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No. 8762 /P.B./Dt. 22/01/2015

To

Mr. MUHAMMAD AMJID S/O MUHAMMAD ASLAM
R/o Village & PO Pulra, Madsarian, Tehsil & Distt: Mansehra

Subject: APPOINTMENT AS WARDER (BPS-05)

Memo:

Reference your test/ interview for the subject post.

You are hereby offered the post of temporary Warder in BPS-05 (5400-260-13200) and all other usual allowances as admissible under the rules subject to the following conditions: -

- 1- You are liable to serve anywhere in the Jails/ Judicial Lockups/ Internment Centers of Khyber Pakhtunkhwa.
- 2- Your appointment is purely temporary and your services can be terminated at any time without assigning any reason during probationary period.
- 3- For all other purposes such as pay, T.A & medical attendance etc, you will be governed by the rules applicable to the government servants of your category.
- 4- The terms and conditions of your appointment as Warder (BPS-05) will be those as laid down in the Khyber Pakhtunkhwa Prison Rules 1985, Prisons Department (Recruitment, Promotion & Transfer) rules 1980 and all other rules and regulations prescribed for Government Servants or the rules which may be promulgated by the Government from time to time in this behalf.
- 5- Your appointment will be subject to your medical fitness and prescribed physical standard.
- 6- No TA/ DA will be admissible to you on joining your first appointment.
- 7- You cannot resign from the service immediately but will have to put in writing at least one month prior notice or in lieu thereof, one month pay shall be forfeited from you.
- 8- Your appointment is subject to fulfillment of all the conditions laid down in the service rules.
- 9- You will be on probation for a period of two years extendable to one more year.
- 10- Your appointment will be subject to verification of your antecedents/ character.
- 11- If you report for duty, it will be taken for granted that you have accepted all the above terms and conditions and if you failed to report within 10 days of the receipt of this appointment order, it will be presumed that you have declined to accept this offer, hence this order of appointment shall stand cancelled/ withdrawn.
- 12- You are directed to report to the Superintendent Central Prison Haripur for duties.

Attested
asl

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Endorsement No: 1-870364-1-

- Copy of the above is forwarded to the: -
- 1- Superintendent Central Prison Haripur. The above named newly appointed Warder is attached with his jail for all purposes. He may be got medically examined by the Medical Superintendent concerned and a copy of his Medical Examination Certificate may be sent to this office for record. His SSC certificate may also be verified from the concerned board within one month and the result be communicated to this Headquarters.
 - 2- District Accounts Officer, Haripur.

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Musawer/-



Annexure B
19

OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQ. PRISON HARIPUR
Ph/Fax: 0995-611196-612402

No. 2602 /

Dated 28/09/2016

ORDER.

WHEREAS, the accused official Warder (BPS-05) Muhammad Amjad No.2 attached to Central Prison Haripur was proceeded against under Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of his misconduct as mentioned in the Charge Sheets/Show cause Notices served upon him.


AND WHEREAS, he furnished his reply which was found un-satisfactory.

AND WHEREAS, the undersigned being the competent authority, granted him the opportunity of personal hearing on 28-09-2016 as provided for under rules ibid. The accused official completely failed to defend his case with any documentary proof/evidence.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule 2011, having considered the charges, evidence on record, the explanation of the accused official and after affording the opportunity of personal hearing as well as the recommendations of the Inquiry Officer/Inquiry committee, the undersigned being the competent authority, do hereby award the major penalty of "Removal from Service" to Warder (BPS-05) Muhammad Amjad No.2 attached to Central Prison Haripur with immediate effect.

Absence period w.e.f 15-03-2016 to 19-05-2016 & from 18-07-2016 to 20-07-2016 is hereby treated as extra-ordinary leave without pay.

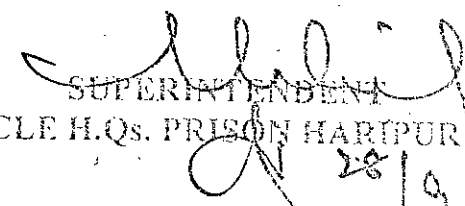
Attested
a/s


SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR

Encls: No. 2603-06 /

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent Central Prison Haripur. Necessary entry may please be made in the Service Book of official concerned under proper attestation.
3. The District Accounts Officer Haripur for information & necessary action.
4. Warder concerned C/O Superintendent Central Prison Haripur for information.


SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR
28/09/16



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406

091-9213445

No.Estb/Ward-/Orders/ 944 1-

Dated 13-01-2017 1-

Ammeurid
11

ORDER

WHEREAS, Ex-warder Muhammad Amjad S/O Muhammad Aslam attached to Central Prison Haripur, was awarded the major penalty of "Removal from Service" by the Superintendent Headquarters Prison Haripur vide his office order No.2602 dated 28-09-2016 due to his willful absence from duty on different dates as mentioned in above order.

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 the above period 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 10-01-2017 but he failed to appear before the Appellate Authority on the date and time fixed for the purpose. Second chance of personal hearing provided to him and was called on 11-01-2017 on phone and accordingly he appeared on that date. During the course of hearing he failed to justify his 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. 945-47 1.

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Haripur for information and necessary action with reference to his letter No.3445-WE dated 20-12-2016.
2. The Superintendent, Central Prison Haripur for information and necessary action with reference to the Superintendent HQ Prison Haripur 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. Ex-Warder Muhammad Amjad S/O Muhammad Aslam C/O Superintendent Central Prison Haripur for information.

Attested
as!

12/11
ASSISTANT DIRECTOR(ADMN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Appeal No. 377/2019

**MUHAMMAD AMJAD S/O MUHAMMAD ASLAM, EX-WARDER , CENTRAL
JAIL HARIPUR R/O KANDAR PHULRA, TEHSIL & DISTRICT**

.....Appellant

VERSUS

1. Inspector General of Prison Khyber Pakhtunkhwa Peshawar.
2. Superintendent, Circle Headquarter Prison Haripur.
3. Superintendent, Central Prison Haripur

.....Respondent

INDEX

S.NO.	DESCRIPTION OF DOCUMENTS	Annex	Page No.
1-	Comments	-	1-3
2-	Affidavit	-	4
3-	Departmental Appeal and Punishments awarded during entire services.	A	5-9

DEPONENT

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

SERVICE APPEAL NO: 377/2019

MUHAMMAD AMJAD S/O MUHAMMAD ASLAM, EX-WARDER,
CENTRAL JAIL HARIPUR R/O KANDAR PHULRA, TEHSIL &
DISTRICT MANSEHRA.

-----APPELLANT

VERSUS

1. The Inspector General of Prisons, Khyber Pakhtunkhwa,
Peshawar
2. The Superintendent Circle H.QS, Prison, Haripur.
3. The Superintendent, Central Prison, Haripur.

.....RESPONDENTS

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO:1-3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

- That the appellant has got no cause of action/locus standi.
- That the instant appeal is badly time barred.
- That the appellant has concealed the material facts from this honorable tribunal, hence liable to be dismissed.
- That the appellant has not come to this honorable Tribunal with clean hands.
- That the appellant has filed this instant appeal just to pressurize the respondents.
- That the appellant has filed the instant appeal on malafide motives.
- That the instant appeal is against the prevailing law and rules.
- That the appellant is stopped by his own conduct to file this instant appeal.

- That the present appeal is not maintainable in the present form and also in the present circumstances of the case.
- That the office orders dated 28-09-2016 passed by respondent No.2, Superintendent Circle H.Qs, Prison, Haripur and order dated 13-01-2017 passed by the respondent No.1 Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar are legally competent and liable to be maintained.

FACTS:

1. The first Para pertains to the service record of the petitioner, hence needs no comments.
2. Incorrect and not admitted. The performance of the appellant was not satisfactory throughout his service as almost 3 disciplinary actions had been taken place which is evident from the service record of the appellant and attached as "**Annexure A**"
3. Incorrect and not admitted. Whenever an officer in jail premises not feeling well he is examined the doctor in jail hospital and makes entry in the registered. But no such record is available in the register regarding his illness that night and as presumption of truth is attached to the register maintains in course of business.
4. This Para is denied. As he was absent during 15-03-2016 to 20-05-2016 which is evident from the daily dairy of the jail. Copy of the relevant pages are attached as **Annex B**.
5. This Para is correct to the extent that his appeal was rejected vide impugned order dated 13/01/2017.
6. This Para needs no comments.

GROUND:

A. Incorrect and not admitted. The orders of the respondents are valid in the eyes of law as have been passed of fulfilling the required procedure in accordance with law and moreover no irregularity has been pointed out by the appellant in the procedure adopted by the appellant as evident from the grounds of appeal.

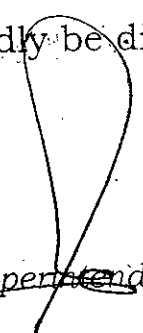
B. Incorrect and not admitted. the appellant is non serious and do not perform his duty with zeal and entuasim so he is not competent to be kept on his post for days ahead.

3

C. incorrect and not admitted. both the orders have been passed after adopting of legal formality so liable to be maintained.

D. this Para needs no comments.


It is therefore most humbly prayed that upon acceptance of the instant reply/comments for or on behalf of the respondents the above titled appeal may kindly be dismissed with costs.


~~Superintendent~~

Central Prison Haripur

(Respondent-2)

On behalf of Respondent No. 3


Inspector General of Prisons

Khyber Pakhtunkhwa Peshawar

(Respondent-1)

4

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

Subject :- SERVICE APPEAL NO: 377/2019

MUHAMMAD AMJAD S/O MUHAMMAD ASLAM

EX-WARDER, CENTRAL JAIL HARIPUR

.....APPELLANT


VERSUS

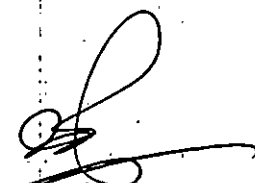
1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar
2. The Superintendent Circle H.QS, Prison, Haripur
3. The Superintendent, Central Prison, Haripur

.....RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.1 TO 3

We, the Undersigned respondents do hereby solemnly affirm and declare that the contents of the Parawise comments in the above cited appeal are correct to the best of our knowledge and belief and no material facts have been concealed from this honourable services tribunal.


Superintendent
Central Prison Haripur
(Respondent No.2
On behalf of respondent No. 3)


Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)

ANINBY = 'A' 2

5



OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQs PRISON HARIPUR

Ph/Fax: 0995-611196-612402

No. 3445 / 168

Dated 20 / 12 / 2016.

To,
The Inspector General of Prisons,
Khyber Pakhtunkhwa, Peshawar.

Subject: - DEPARTMENTAL APPEAL.
Memo.

Reference your memo: No.27879 dated 29-11-2016 on the subject.

The requisite information pertaining to the appeal of Ex-Warder Muhammad Amjad S/o Muhammad Aslam attached to Central Prison Haripur is furnished as under on the prescribed format for further necessary action please:-

S. No	Name & Parentage	Rank	D.O.B	Date of Appointment	Punishment awarded during his entire service with date & nature of offence
1	Muhammad Amjad S/o Muhammad Aslam	Warder	17-02-1994	30-01-2015	(i) Awarded the major penalty of Removal from Service, vide this H/Q P.B Order No. 1880 dated 02-10-2015 on eve of desertion from duties and lines/Jail premises on Eid-Ul Azha. (ii) Re-Instated into service by the Inspector General of Prisons Khyber Pakhtunkhwa Peshawar vide office Order No. 31716 dated 03-11-2015 with stoppage of Annual Increments for three (03) years. (iii) Deserted from duties and lines/Jail premises at his own accord/without prior permission of his superiors for 46 days and pay for willful absence from duty was re-trenched and deposited into Government treasury vide this H/Q P.B Order No. 681 dated 11-03-2016. (iv) Deserted from duty as well as from lines/Jail premises on various occasions i.e. w.e.f 15-03-2016 to 19-05-2016 for 02 mths and 04 days as well as from 18-20/07/2016 treated as E.O.L without pay and awarded the major penalty of Removal from Service vide this H/Q P.B Order No. 2602 dated 28-09-2016. PUNISHMENT: upon completion of the disciplinary proceedings and as per recommendations of the Inquiry Committee as well as during personal hearing of Ex-Warder Muhammad Amjad on 28-09-2016, he totally failed to prove & put any solid justification of his such long willful absence, hence he was awarded the major penalty of "Removal from Service" as well as the absence periods was treated as "Extra-Ordinary Leave without Pay" vide this H/Q Office order <i>ibid</i> .

It is worth mentioning that Ex-Warder Muhammad Amjad proved himself as a non-serious official during his meager service career as evident from above mentioned punishments awarded to him time to time by this Headquarter but instead of reforming himself, he deserted from his assigned duties as well as lines/Jail premises on his own accord/without prior permission of his superiors and left the Jail administration in *LURCH* during Eid-Ul Azha 2015.

تاریخ: 15-03-16

ردیف: 399, 27, 866, 6, 6, 5, 2, 1, 1, 7, 7, 7, 7

موضوع: ...

توضیحات: ...

ملاحظات: ...

ملاحظات: ...

ملاحظات: ...

توضیحات: ...

ملاحظات: ...

Annex-376

7	2	1	1	3	شهداء قتلوا في معركة بدر
7	4	3			ظهور آية الكرسي بعد الصلاة
7	7				شهادته من قبل النبي صلى الله عليه وآله وسلم
7	7				مات في يوم الجمعة
7	7				شهادته من قبل النبي صلى الله عليه وآله وسلم
5	5				شهادته من قبل النبي صلى الله عليه وآله وسلم

82 - 2 69 - 7 1 3
 1846 - 156 2 18 - 2
 266 6 2 225 - 2 25 1 5

Handwritten notes and signatures in the bottom left corner.

Handwritten signature in the bottom middle-left area.

Handwritten signature in the bottom middle-right area.

Handwritten signature in the bottom right corner.

7	2	-	2	1	2	بسم الله الرحمن الرحيم الحمد لله رب العالمين والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين	بسم الله الرحمن الرحيم الحمد لله رب العالمين والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين
7	7	.	.	.	.	وغيره من الامور التي هي في حكم الاشياء	وغيره من الامور التي هي في حكم الاشياء
7	7	.	.	.	.	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين
6	6	.	.	.	.	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين
7	7	.	.	.	.	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين
6	6	.	.	.	.	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين
2	2	.	.	.	.	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين	والصلاة والسلام على سيدنا محمد وآله الطيبين الطاهرين

8781 - 270 - 6 1 2
 190 b - 100 2 19 - 2
 8716 2291 2 25 1 4

Handwritten signatures and notes at the bottom of the page, including a large circular scribble.

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

Appeal No: 377/2019

Muhammad Amjad S/o Muhammad Aslam, Ex-
warden Central Prison Haripur

Appellant

Versus

Inspector General of Prisons, Khyber Pakhtunkhwa
and Others

Respondents

APPELLANT'S REJOINDER

Respectfully Sheweth,

Preliminary objections:-

That the 10 Preliminary objections raised by the respondents in their written Comments are illegal, wrong, incorrect and are denied in every detail. The appellant has a genuine cause of action and his appeal dose not suffer from any formal defect whatsoever.

Facts:-

1. Needs no comments.
- 2 to 4- Incorrect. Paras 2 to 4 of appeal are correct and its replies are incorrect.
- 5 to 6 needs no comments.

Grounds:-

A to C-Incorrect. Grounds A to C of appeal are correct and its replies are incorrect.

D-Needs no comments.

It is, therefore, most respectfully Prayed that an acceptance of appeal and rejoinder, both the impugned orders Dated 20-09-2016 and 13-01-2017 at annexures B and D may be sataside and the appellant shall be reinstated in service with all back benefits.

Dated: 23/02/2020

Through

تعمیر
Appellant

Aslam
Aslam Khan Khattak
Advocate, High Court,
Peshawar.

Q.

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

Appeal No: 377/2019

Muhammad Amjad S/o Muhammad Aslam, Ex-warder
Central Prison Haripur

Appellant

Versus

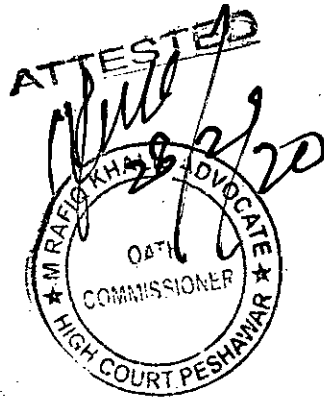
Inspector General of Prisons, Khyber Pakhtunkhwa and
Others

Respondents

AFFIDAVIT

I, Muhammad Amjad S/o Muhammad Aslam, Ex-warder Central Prison Haripur, do hereby solemnly affirm and state an oth that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by one in the matter.

محمد امجد
Deponent



Identified By:-

Aslam
Aslam Khan Khattak
Advocate High Court
Peshawar