#### REFORF SERVICE T RIBUNAL PESHAWAR

Service Appeal No.459/2016

Date of Institution 29.04.2016 Date of Decision

21.11.2017

Fakhr-e-Alam, Ex-Warder, High Security Prison Mardan.

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#### (Appellant)

#### VERSUS

The Inspector General of Prison KP, Peshawar. The Superintendent Circle, HQ, Prison, Mardan

Mr. Aslam Khan Khattak, Advocate

Mr. Ziaullah, Deputy District Attorney

#### MR. GUL ZEB KHAN MR. MUHAMMAD HAMID MUGHAL

(Respondents) ·

(For respondents).

(for appellant).

MEMBER MEMBER

#### JUDGMENT

GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 29/04/2016 has been lodged by Fakh-e-Alam, Ex-Warder, hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Ag: 1974, wherein the appellant has impugned the office order dated 22.01.2016 vide which he was dismissed from service. Appellant preferred departmental appeal against the impugned dismissal order, which was rejected vide order dated 20.04.2016.

Learned counsel for the appellant argued that the appellant was working as 2. Warder in the High Security Prison Mardan. That brother of the appellant was kidnapped by some unidentified people and that later on it revealed through some reliable sources that his brother was in the custody of some kidnappers in the Interior Sindh. That the appellant, all of a sudden, went to interior Sindh in his search and that during this period another brother of the appellant submitted leave application on his behalf, which was followed by another one, for leave extension. That later on the department dismissed him from service for absence vides

impugned order dated 22.01.2016. For reinstatement, the appellant filed a departmental appeal which was rejected on 20.4.2016. That both the dismissal order and rejection of the departmental appeal are against the law and rules. That neither regular inquiry has been conducted by the respondents nor any statement of allegations and charge sheet has been issued. That the appellant has been removed from service in slip shot manner without any sort of detailed investigation or opportunity of self defense. Learned counsel further argued before the court that the department has acted against the law; therefore the appellant may be reinstated in service with all back benefits.

3. On the other side learned Deputy District Attorney argued that the appellant has been removed from service in accordance with law and procedure in light of Rule-9 of E&D Rules, because he remained absent and no leave application was ever received by the department. Further stated that since the appellant has absented himself from the lawful duty as the well as Jail premises without any prior permission and sanction of leave from the competent authority, therefore his appeal may be rejected being not covered under the law and rules.

4. We have heard arguments of the learned counsel for the appellant and learned District Attorney for the respondents and have also gone through the record available on file.

5. It is not disputed that the appellant remained absent without permission, however the stance of the appellant is that the cause for his absence was not willful, as throughout this period he remained in extra mental torture and busy in travelling and searching of the real brother who was suddenly kidnapped by some unknown people who is still in the custody till to date. In these circumstances the impugned orders appears to be very harsh and not commensurate with the lapse/guilt on the part of the appellant. As such the impugned order of removal

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from service of the appellant is converted into withholding of two increments for two years. Absence period and the intervening period shall be treated as leave of the kind due. The present appeal is partially accepted in the above terms. Parties are left to bear their own costs. File be consigned to record room.

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ANNOUNCED

2111.2017

(Gul Zeb Kháň) MEMBER

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(Muhammad Hamid Mughal) MEMBER

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20,11:2017

Learned counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 21.11.2017 before D.B.

Khan) (Gul Member

(Muhammad Hamid Mughal) Member

THE FRE PERMIT

21.11.2017

Learned counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Vide separate judgment of today of this Tribunal placed on file, the impugned order impugned of removal from service of the appellant is converted into withholding of two increments for two years: Absence period and the intervening period shall be treated as leave of the kind due. The present appeal is partially accepted in the above term. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 21.11.2017

(Muhammad Hamid Mughal) Member

(Gul Zeb K Member

25.01.2017

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 20.03.2017.

20.03.2017

Counsel for the appellant and Mr. Shehryar Khan alongwith Mr. Ziaullah, GP for the respondents present. Counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 19.07.2017 before D.B

19.07.2017

15-12-2016

Appellant in person present. Mr. Sohrab Khan, Junior Clerk alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Due to strike of the bar learned counsel for the appellant is not available today. Adjourned To come up for arguments on 20.11.2017 before D.B.

(Gul Zeb Khan) Meinber

(Muhammad Amin Khan Kundi) Member

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(MUHAMMAD AADIR NAZIR) MEMBER

#### 30.08.2016



Counsel for the appellant present. Security and process fee not deposited. The same be deposited within a week where-after notices be issued to the respondents for written reply/comments for 25.10.2016 before S.B.



Appellant Deposited Security & ProcessFee

Counsel for the appellant and Addl. AG for respondents present. Security and process fee not deposited. Appellant is directed to deposit security and process fee within seven(7) days, thereafter notices be issued to the respondents for written reply/comments on  $1(\zeta - 1) - \zeta - 1_{0}$  before S.B.

15.12.2016

Appellant in person and Mr. Shehreyar, ASJ alongwith Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply on 25.01.2017 before S.B.

Chairman

Chairman

Chairman

13.07.2016

Appellant with counsel and Mr. Muhammad Jan, GP for respondents present. Preliminary arguments heard. Appointed as Warder in the Prison Department, in 2007 the appellant was removed from service vide order dated 22.01.2016 and his timely departmental appeal was rejected on 20.04.2016 and it is the contention of the learned counsel for the appellant that the appeal is within time. It was further argued that the appellant has been removed from service on the ground of absence from duty which the appellant duly explained to the competent authority. That the reason of absence was kidnapping of real brother of the appellant in the Province of Sindh and the appellant was constrained to go after search of his brother. It was further argued that without any opportunity of charge sheet, enquiry or show cause notice and without given any opportunity of hearing to the appellant, he has been unlawfully removed from service.

The points raised at the bar need further consideration and the appeal is well within time, therefore, admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 30.08.2016.

## Form- A

## FORM OF ORDER SHEET

Court of\_\_\_

	. *	450/2016			
	Case No	459/2016			
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate			
1	2	3			
	20.04.2016				
1	29.04.2016	The appeal of Mr. Fakhr-e-Alam presented today by Mr.			
	1	Muhammad Asif Yousafzai Advocate may be entered in the			
		Institution Register and put up to the Worthy Chairman for			
		proper order please.			
	a spall	REGISTRAR			
2	9-5-2016	This case is entrusted to S. Bench for preliminary			
		hearing to be put up thereon $9-5-16$ .			
		br			
	- -	CHARMAN			
	09.05.2016	None present for appellant. The appeal be relisted for			
		preliminary hearing for 24.06.2016 before S.B.			
	- · ·	Member			
	· ·				
	6				
24.	06,2016	Clerk to counsel for the appellant present.			
-	Preliminary arguments could not be heard due to strike				
	of	the bar. To come up for preliminary hearing on			
		.7.2016 before S.B.			
		Wember			
		۰ <u>۲</u>			
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## **BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

APPEAL NO. 459 /2016

Fakhr-e-Alam

V/S

PKIKON Police Deptt:

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APPELLANT

THROUGH:

(M. ASIF YOUSAEZAI)

(TAIMUR ALI KHAN) ADVOCATES, PESHAWAR

#### **BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

## APPEAL NO. 459 /2016

Mr. Fakhr-e- Alam, Ex-Warder,

Grvico Tribunal Diary No. 132 Dated 29-4-20/6

High Security Prison Mardan.

(Appellant)

VERSUS

1. The Inspector general of Prison KPK, Peshawar.

2. The Superintendent Circle, HQS, Prison, Mardan.

(Respondents)

APPEAL UNDER SEC- 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ODER DATED 20.4.2016, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 22.01.2016 WAS REJECTED FOR NO GOOD GROUND.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 20.04.2016 AND 22.01.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

**RESPECTFULLY SHEWETH:** 

FACTS:

STREED A

/k

 That the appellant was working as Warder in High Security Prison Mardan.

- That the brother of the appellant was kidnapped on 24.6.2009 against which he filed FIR No.679 US 342-347-PPC dated 24.6.2009 in PS Methra. (Copy of FIR is attached as Annexure-A)
- 3. That someone called on telephone to the appellant that his kidnapped's brother was present in Ubara Sadiq Abad Sind, therefore the appellant rushed to Sind on dated 15.5.2015 and told his brother to submit application for leave on his behalf on which the appellant brother's submitted an application for leave to the department on the behalf of the appellant.
- 4. That the appellant took about few months in search of his brother and during that period the appellant submitted anther application for his leave to the Deptt: on which the department issued removal order to the appellant on dated 22.1.2016 with effect from the date of absence i.e 15.06.2015. (Copy of order dated 22.1.2016 is attached as Annexure-B)
- 5. That the against the order dated 22.1.2016, the appellant filed departmental appeal which was also rejected on 20.4.2016 for no good ground. (Copies of departmental appeal and rejection order are attached as Annexure-C&D)
- 6. That now the appellant comes to this august Tribunal on the following grounds amongst the others.

#### **GROUNDS:**

- A) That the impugned order dated 20.4.2016 and 22.01.2016 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.
- C) That even no inquiry was not conducted against the appellant to dig out the real situation, but the department did not bother to conduct inquiry and removed the appellant from service in slip shod manner, which is against the law and law and rules.
- D) That no charge sheet and statement of allegation was served to the appellant which is the violation of law and rules.

- E) That no show cause notice was issued to the appellant before passing the impugned order which is violation of law and rules.
- F) That the impugned order was passed from retrospective which is not permissible under the law as reported in PLD 2007 (SC)-52.
- G) That the penalty of removal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- H) That the appellant did not intentionally absent from his duties but his brother was kidnapped due to which he went to Sind in search of his brother. As the issue of kidnapping is beyond the control of human, therefore the appellant was compel to remain absent from his duty.
- I) That the wife the appellant's brother (Nashat Amin) also wrote an application to the Honourable Chief Justice of Pakistan for taking action on the kidnapping of his husband on which the Assistant Registrar Human Rights Cell of the Supreme Court of Pakistan directed the IGP, Sind karachi and PPO, KPK to action on the issue and to submit report on the application of the applicant. (Copies of application and letter of Assistant Registrar HRC are attached as Annexure-E&F)
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

(M. ASIF YOUSAFZAI)

ADVOCATES, PESHAWAR

(HAN) 🛼

APPELLANT Fakhr-e-Alam

(TAIMUR À

THROUGH:

كور تمنت بسرين بي 11 بلب تبر 19/540 قادم منور تبدالله بزان متر تدمود 23 بار 3006 كي ب ل پولیس صوبه سرعدقارم نمبر ۲ ابتدان اطلاع نسبت جرم قامل دست اندازی پولیس ریور ف ۲۵، مجموعه خاطر و جداری ۲۹، ۲۰۰۰ ابتدان اطلاع نسبت جرم قامل دست اندازی پولیس ریور ف شده زیرد نعهٔ ۱۵۴ مجموعه خالط فوجداری ۲۹، ۲۰۰۰ <u> سلع کنت در</u> م مان المنابع المان المنافع الم <u>43</u>. 1020 AND HERE OF AUGUST 10 min لم ادف در ۲۱، جالال الم باريخ ودقت ريور نام وسكونت اطلار ادم عد ب ازجن دا بالرحول م 342-347 ppc مخفركغيت جرم (لمعدقله) طال اكر كحدايا كميا او 15 in Ji جائ وتوعدفا مسلقمانية كاروائى جوتيش متعلق كم مى اكراطلاع ورج كرف مر اوقف بواب ايديان كرو دردانلو شرك (د) مدا در مرد تعانيب ردائل باتار بالدودقة ار در الحال الطلاع سی منتصح درج کم ارد در صب ارد من سانیات ماد ج با سون ناد ان ما ۱ صنا کل عامی ا april 1 تری د ک ى لمراليتر رسطي المدر ٩ ارض ٦٦ اضان لمردي محسال المرا ١٩٠٠ ، درم ٢٠ معا شيار المرار الما تش كما تف ا بت بوش اللم كارمان تعذياً الم ا ف ف د ، انداری کا رقیم این کاما کا ایف لایور جانا بها ب سوتا به از えいた الكما فق مات جيت ترماما بي سال اري تن تنه من الدين المن قراب راي درم الا متدر ما م منطب ال ب مار المرا الم الم الم ى جا بىكى لىد دربات -٢٥ رسوية بي الما ست علاقت عب المار IN CIL2 STUART TESTEP-

OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN /P.B/Dt: 2 / 1/2016 No.

#### F ORDEF

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In exercise of powers under Rule-09 of Khyber Pakhtunkhwa Sovernment Servants (Efficiency & Disciplinary) Rules 2011, Warder Fakhr-e-Alam 5/O Habib Ur Rahman attached to High Security Prison Mardan was served with a direct show cause notice under Rule-05 of the ibid rules on account of willful absence w.e.f 15-06-2015 wherein he was clearly directed to submit his written defense / replywithin stipulated period, but he failed to comply and remained at large.

Subsequently a notice was published in the Daily News Paper Daily, Mashriq Dated: 06-01-2016, wherein he was directed to appear before the undersigned within 15 days and show cause of his long absence, but after expiry of the given period in the News Paper neither he appeared before the undersigned nor any response was received from him which paved a clear way to the conclusion that. he is not interested in his job anymore, hence the undersigned is pleasant to impose upon himthe major penalty of " Removal from Service " with effect from the date of absonce e. 15-06-2015 as Ex-parte action under the rules ibid.

#### SUPERINTENDENT CIRCLE HQS. PRISON MARDAN

Endorsement No: 726-30

Copy of the above is forwarded to the: -

- spector General of Prisons Khyber Pakhtunkhwa Peshawar please.
- Superintendent High Security Prison Mardan please. 2
- District Accounts Officer, Mardan. 3- 3
  - Head Clerk (Pay Branch) High Security Prison Mardan.
- 5- Official Concerned R/O Warsak Road, Babu Ghari, Khushal Bagh Colony District Peshawar.

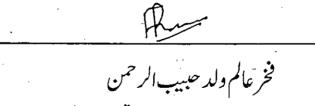
SUPERINTENDEN PRISON MARDAN CIRCLE

C C بخدمت جناب انسپکٹر جنرل آف جیل خانہ جات صوبہ خیبر پختو نخواہ پیناور اپیل بر خلاف آرڈر محررہ 201.2016 بابت بر خاشگی نو کری ساکل سائل حسب ذیل عرض رسال ہے۔ جناب عالي! بيه كه سائل فخر عالم ولد حبيب الرحمن سكنه بابو كرُّ هي، خو شجال ماغ، ورسك رودْ، تخصيل وضلع (1يثاور بحيثيت جيل واردر (High Security Prison Mardan) ميں سال 2010ء سے مرانجام دے 14.06.2015ء سے مرانجام دے رماتھا۔ . یہ کہ چند نامعلوم افراد نے سائل کے بھائی مسمی روح الامین کو مور خہ 24.06.2009 کو اغواء (2)کرلیا تھا جو کہ تاحال مغویوں کے قبضہ میں ہے جس کی بابت ایک عد دانف آئی آر نمبر 1020 زیر د فعهه 342-347 PPC تقانه متصرا، يشاور مين بھى درج كرائي گئى تقى۔ ( نقل اپنے آئي آرلف ایل ږاہے) بيه كه مور خه 2015.06.2015 كو من سائل كوبذريعه فون اطلاع ملى كه من سائل كااغواء شده (3بھائی سندھ کے علاقے اوباڑو صادق آباد میں مقید ہے جس پر من سائل اچانک مور خہ 15.06.2015 كوبى سندھ رواند ہوا۔ ہہ کہ من سائل نے اپنے دیگر برادر حقیقی کواپنی رخصتی کی درخواست دی تھی کہ متعلقہ حکام کو (4 میری رفتصتی کی درخواست دی جائے جس پر برادرام نے سائل کی درخواست محکمہ متعلقہ کے ہمراہ وتمع كبابه یہ کہ من سائل بھائی کو تلاش کرتے کرتے گئی مہینے گزر گئے لیکن اُس کا کوئی اندینہ نہ چلا۔ (5 یہ کہ اس دوران من سائل نے ایک دوسری درخواست بابت رخصتی بھی با قاعدہ طور پر محکمہ ہذا کو (6 تبجوانی تھی جس پر بعد ازاں من سائل کو مور خہ 22.01.2016 کو محکمہ ہذا کی جانب سے نو کر ڈ) سے ہر خاشتگی کالیٹر موصول ہوا۔ حالا نکہ اس سے پہلے محکمہ ہذا کی جانب سے من سائل کو مسى فتسم كاكو كى نوٹس غير حاضري نہيں بھجوا پاگيا۔ یہ کہ سائل چونکہ اپنے بھائی کی بازیابی کے سلسلے میں صوبہ سندھ میں سر گرداں تھا جس کی بناء پر سائل ملازمت يرحاضر ہونے سے قاصر تھا۔

ATESTED

یہ کہ سائل نے محکمہ ہذامیں تقریباً6سال تک ملازمت کی اوران تمام عرصہ میں سائل نے محکمہ (8) متعلقہ کو کسی قشم کی شکایت کامو قع نہیں دیااور سائل نے اپنی ڈیوٹی نہایت ایمانداری سے سرانجام دى۔ یہ کہ چونکہ سائل نے محکمہ ہذامیں اتناطویل عرصہ اپنی خدمات سرانجام دی ہیں اور سائل کی غیر (9 حاضري جر گز قصد أوعمد أنه تقى بلكه بوجو مات بالاتقى۔ یه که سائل ایک غریب بنده ہے اور اہل وعیال کی دیکھ بھال وغیر ہ بھی سائل کی ذمہ داری تھی اور (10)سائل کا کوئی د دسراآ سرائھی نہیں ہے۔ یہ کہ سائل removal from service بوجہ غیر حاضر کی major penalty کے (11)ذمر ہ میں آتا ہے اور سائل کی برخاشگی کا قانون وانصاف دینیادی حقوق سائل کے خلاف ہونے کے قابل تصحیح بھی ہے۔ دینبز سائل کی غیر حاضری قصداً عمداً نہیں بلکہ سہواًادر قانون دانصاف کے تقاضوں کے مطابق ہے۔ لہذاات ماہے کہ بمنظوری درخواست ہذاremoval from service کو تبدیل کر کے سائل کو نو کری پر بحالی کے احکامات صادر فرمائے جائیں سائل آپ کا تاحیات دعا گورہے گا۔ عین نوازش ہو گ

15-2-2016 



سکنه بابو گر همی، خو شحال باغ، در سک رود، تخصیل و صلع پیثاور بحیثیت جیل داردر (High Security Prison Mardan)

ATESTED



OFFICE OF T INSPECTOR GENERAL OF PRISON KHYBER PAKHTUNKHWA PESHAŴAR 091-9210334, 9210406 133 91-9213445 No.Estb/Ward-/Orders/ Dated

#### <u>ORDER</u>

WHEREAS, Mr. Fakhr-c-Alam S/O Habib-ur-Rehman warder attached to HSP Mardan, was removed from service by Superintendent Headquarters Prison Mardan vide office order No.725 dated <u>22-1-2016</u> due to willful absence from duty with effect from 15-6-2015 till removal from service date.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside his removal from service order, which was examined in light of the available record of the case and it was observed that the appellant remained absent/absconder for the period as mentioned above and legal procedural formalities as required under Rule-9 of E&D Rules -2011 have been observed by the competent authority.

**AND WHEREAS,** he was afforded an opportunity of personal hearing on 19-04-2016. During the course of hearing he failed to defend / 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.

ENDST;NO. 10 445

INSPECTOR GENERAL OF PRISONS, KHYBER PAKHTUNKHWA , PESHAWAR.

Copy of the above is forwarded to :-\

- The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his office order referred to above.
- The Superintendent, HSP Mardan for information and necessary action with reference to the Superintendent HQ Prison Mardan order referred to above. Please inform the appellant accordingly and also make necessary entry in his Service Book under proper attestation.
- Mr. Fakhr-e-Alam S/O Habib-ur-Rehman R/O Babu Ghari Khushal Bagh Warsak Road Teh;
  & Distt; Peshawar for information.

ASSIST HECTOR(ADMN) FOR INSPECTOR GENERAL OF PRISCI KHYBER PAKHTUNKHWA PESHAWAR

ست المناصية جيف جسيس آف يا كستان جناب افتخار محمد جو مدرى صاحب اسلام آباد ب بين المخطق المسلم المسلم بي لي مرضط المسلم من مسرم كوريم الأوابطي المسلم المراجع الملكين ترارش تجمير بيانله مع شادر من ازار بادكر هي درسته دوذيتاورى دبائن موں اور سائلہ تح جاريح ہے جن بے کوان ديل ہے۔ MAREN المطبنيزة عمر 12 سال المحتيد ورمر 9 سال الله منيز عمر 6 سال الملاجنور عمر 4 سال-

- تر الدوم اليومب ني كما كتم راشر مريس من مدين من 2000،000 دو (شي المكروب) دو تركي كروة متم بهار شور كوته وردي ك تركي الدومار دور حد 10<u>20-10-20 كرايات 8:30 يح</u>تم عابد دلد تديايان مو الن نسر 10<u>20 60510 من كال آل</u> الدومار دور حد 10<u>20-10-20 كرايات 8:30 يح</u>تم عابد دلد تديايان مو الن نسر 10<u>20 60510 من كال آل</u> الدوم عابل ني كما كتم باراشو بريير من قبض من - **/15,00,000** دو (شير دولا كماروب ) دولا المحدود من ال در من كما بدر ني كما كتم باراشو بريير من قبض من - **/15,00,000** دو (شير دولا كماروب ) دولا المحدوم كال آل در من كما بدر ني كما كتم باراشو بريير من قبض من - **/15,00,000** دو (شير دولا كماروب ) دولا المحدوم المحدود الم در من كما بدر في كما كتم باراشو بريير من قبض من - **/10,000** دو (شير دولا كماروب ) دولا المحدوم المحدوم
  - الله مسیکه آخرین میر ب دیورد غیره جب میر ب شوم کودا گزار کردا بط طویکی گئت و دمان ایک امام محد حافظ صبر الحصاوی کوش ولد مخمد عثمان نے بتایا کند و ت الاعین دوقبیوں کی دشتن کی بھینٹ بڑ حادیا گیا ہے اور اس کو میں نے نماز د جنازہ پڑ حاکر ذین کردیا ہے ادرا یک مدد تصویر دکھائی جس کو بم نے شناخت کیا کہ دور و ت الا مین نہ ب یک کی اور محض کی تصویر ہے۔
    - میں سے کہ است اور جاتے ہوئی ہیں بچ کو متعد بارد دخواست دی کہ لاش کا DNA کردانے کی اجازت دی جائے باروح الا میں کو واگز از مرد بابا ہے میں کوئی ہی دیہ کہ بات دینے کو تیار نہ ہے اور جمیں دھتکار دیتا ہے۔
    - الله المدائلة كونية بي بي كدما كمد كانت بي المراغب موف جانو ولد خد على مانت ولد قاسم، زابد دلد خير مند بكل ، مرتضى ولد صد اق ذات كوش المطوركوش 6309418-0300 حنيف كوش 0305-3254504 دانت مانت مانت مانت مانت كوش 63078255534 من مانت مانت مانت
  - ہدکہ سائلہ کی خدادر خدا کے رسول کے علادہ کوئی سفارش نہ ہے سائلہ آپ یوخدااورر سول کا واسط دیے کر گزارش کرتی ہے کہ سومونو ایکشن کے اسر سائلہ کے شوہ کودا گزار کر دایا جائے اور خدانحوا ۔ علہ سائلہ کے شوہ رکی نوئٹکی کی صورت میں لاش سائلہ کے نوالے کی جائے تا کہ سائلہ اور سائلہ سے معصوم بجون کو پیمین دسکون مل سکتے ہوا ۔ وفت اپنی آس دامید آپ ہے لگا کر میں ضورت میں اور اغوا ، کاروں کے اسے کاروائی کی جائے ۔ اسائلہ دسائلہ کے کی معصوم بیچ جناب کے لئے تکر کھرڈ عالکور میں اس کہ

1. 📩 \ نشاط آمین دخت<sup>ش</sup>نا در زوجه **روح الامین** ضلع پن<sup>د</sup> رمین بازار بابوگزهی درسک رود پن<sup>ه</sup> در رابط نمبر :0321-9064529 ليكل نمبر 0320-091

TESTED

# THE SUPREME COURT OF PAKISTAN, ISLAMABAD (Original Jurisdiction) Regd. A.D.

## HRC No.14172-K/2013

Application by

Τo,

Nashat Amin D/O Nadir Main Bazar, Babu Ghari Warsak Road, District Peshawar

1. The Inspect General of Police, Sindh, Karachi, C/o O.I. Karachi, 2. The Provincial Police Officer,

Khyber Pakhtunkhwa, C/o dR(P).

Take notice that in pursuance of order of the Honbie Chief Justice of Pakistan you are required to submit report on the above application so as to reach this Court on/or before May 08. 2013.

April 18, 2013 Islamabad:

Assistant Registrar-Human Rights Cell Phone # 051-9220581/319

Fax # 051-9219516

Encl: Copy of application

د ۳

2.0/4

PEREZE: 100 MH রা:এল গালেল ਿਸਤ ਕੁਣ

VAKALAT NAMA

· · · · · · · · · · · · · · · · · · ·	NO	·	_/20	
IN THE COURT OF	Securce	Tribus	al 1	Reshawar
Fa	Khe-e-A	lan	•	(Appellant) (Petitioner) (Plaintiff)
ļ.	lison	/ERSUS Def.H	•	(Respondent)

(Defendant)

#### I/We

Do hereby appoint and constitute *M.Asif Yousafzai, Advocate, Peshawar*, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/ Counsel on my/our costs.

Fakhire - Alam

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 29-4 /20/6

( CLIENT )

ACCEPTED

M. ASIF YOUSAFZAI Advocate

X. HAM TAIMUR ALI KHANI Advocate

M. ASIF YOUSAFZAI

Advocate High Court, Peshawar.

#### **OFFICE:**

Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar Peshawar. Ph.091-2211391-0333-9103240

بعدالت جناب يرح كر مرض شريعول ليبادر 25 حيورى 17 201 متجاب الملات مورخه فخر عالم مالقة واردر بنام النبية عنه ل جبلخان مرمزن عيل عاتب في ورويزه مقدمه دعوكي روى رول جرم باعث تحرير آنكه مقدمه مندرجه عنوان بالامیں اپن طرف ہے داسطے پیروی د جواب دہی دکل کا روائی متعلقہ · أن مقام السّلور علي والم فان طل المردكيط مقررکر کے اقر ارکیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کا روائی کا کانل اختیار ہوگا۔ نیز وکیل صاحب کوراضی نامہ کرنے دتقر رثالث و فیصلہ برحلف دیئے جواب دہی اورا قبال دعویٰ اور بصورت د گری کرنے اجراءاور دصولی چیک وروپیدار عرضی دعویٰ اور درخواست ہرشم کی تصدیق زرایں پرد سخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ذگری یکطرفہ یا پیل کی برامدگ اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا۔از بصورت ضرورت مقدمہ مذکور کے کل یاجزوی کاروائی کے واسطے اور دکیل یا مختار قانونی کواپنے ہمراہ یا آپنے بجائے تقر رکااختیار ہوگا۔اورصاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اوراس کاساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر چہ ہرجانہ التوائے مقدمہ کے Accepted سب ہوہوگا۔کوئی تاریخ بیشی مقام دورہ پر ہو یا حد ہے باہر ہوتو دکیل صاحب پابند ہوں گے۔ کہ بیرو**ی ن**دکور کریں۔لہذا وکالت نامہ کھھ یا کہ سندر ہے۔ ash 2017 61225 المرقوم ليتمادر کے لئے منظور ہے۔ مقام حِوَكِ مُسْتَنَكَّر يَ بِينَا وَرَتْ فُونَ 2220193 Mob: 0345-9223239

## BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of .

Service appeal No. 459 of 2016

Mr. FaKhr-e-Alam, Ex-Warder, High Security Prison Mardan

R/O Babo Garhi, Warsak Road District Peshawar. .....Appellant.

#### ----VERSUS-----

- (1) The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar,
- (2) The Superintendent Circle Headquarter Prison Mardan

.....Respondents

## WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS

#### PRELIMINARY OBJECTIONS

- 1. That the appeal is incompetent and is not maintainable in its present form.
- 2. That the appellant is stopped by her 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 ON BEHALF OF THE RESPONDENTS.

#### RESPECTFULLY SHEWETH.

#### FACTS.

- 1. Correct, however no comments.
- 2. Pertains to the brother of the appellant, hence no comments.
- 3. Incorrect, misleading as brother of the appellant had not submitted any kind of application for leave to the competent authority.
- 4. Incorrect, misleading as the appellant had not submitted any kind of application for leave to the competent authority.
- 5. Correct, pertains to record, however no comments.
- 6. Pertains to the appeal, however no comments.

#### GROUNDS

A. Incorrect, misleading, as the appellant has been treated in accordance with the law and laid down procedure and the penalty, awarded to the appellant, is under the law, rules, facts and material on record and therefore not liable to be set aside.

- B. 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 he has been provided a reasonable opportunity of hearing and defense by the competent authority as well as by the appellate authority.
- C. Incorrect, misleading, as the appellant was proceeded against under rule 09 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 for willful absence WEF 15.06.2015 to 22.01.2016 and a proper procedure had been adopted before awarding the penalty of *"Removal from Service"* by sending an absence Notice to the appellant at his home address and publication of absence Notice in the leading newspapers of the province to which the appellant did not respond. (Annexure - A).
- D. Incorrect, misleading, elaborated in Para, "C" above.
- E. Incorrect, misleading, elaborated in Para, "C" above.
- F. In correct, misleading, as proper procedure and due process has been adopted as required under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.
- G. Incorrect, misleading, as the penalty awarded to the appellant is in accordance with the law, rules and laid down procedure.
- H. In correct, misleading, as the appellant absented himself from duty as well as Jail premises without permission and sanction of leave from the competent authority.
- I. Pertains to the appellant's brother, hence no comment.
- J. Additional grounds of appeal will be replied / argued at the hearing of the appeal.

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

General of Prisons vber Pakhtunkhwa Province 12/16 Peshawar

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

In the matter of Service Appeal No.459/2016 Fakhr-e-Alam Ex-Warder Attached to High Security Prison Mardan.....**Appellant.** 

#### VERSUS

- 1. Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
- 2. Superintendent Circle Headquarters Prison Mardan ......**Respondents.**

#### **COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS No. 1 to 2**

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

**INSPECTOR GENERAL OF PRISONS** Khyber Pakhtunkhwa Peshawar (Respondent No.1)

Circle Headquarters Prison Mardan (Respondent No.2)

Warder Fakhr-e-Alam S/O Habib U rahman, R/O Warsak Road, Babu Ghari, Khushal Bagh Colony District Peshawar.

OFFICE OF THE SUPERINTENDENT HIGH SECURITY PRISON MARDAN

DATED:

16/12/2015

Subject:

## ABSENT NOTICE.

NO:

Memo;

To.

It is hereby inform you that you are absented from duty as Jail premises since dated: 15-06-2015, without any as well information/ application from competent authority. Insure your presence immediately after receiving of this notice otherwise strict disciplinary action will be taken against you.

> SUPERINTENDENT IGH SECURITY PRISON MARDAN

Endorsement No: 2092 Copy of the above is forwarded to The Superintendent Circle Head Quarter Prison Mardan for information please.

> SUPERINTENDENT HIG ECURINY (R)SON MARDAN

## SHOW-CAUSE NOTICE UNDER RULE-5 (1) READ WITH RULE-7 OF THE KHYBER AKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES 2011

You, Warder Fakhr-e-Alam S/O Habib Urahman 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 15-06-2015, which constitutes gross conduct on your part:

L. Sahibzada Shah Jehan, Superintendent Headquarter Prison Mardan as 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 UP days of the receipt of this notice as to why you should not be dismissed from service to your above stated act of misconduct.

In case your reply does not reach this office within stipulated period, ex-parte

SUPERINTENDENT CIRCLE HQS ARISON MARDAN

Fadorsement No: 462-64 /- dated: 18/12-/2015.

Copy of the above is forwarded to the: - | Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar please.

- Inspector General of Prisons Knyber Laking and the content of P
  Superintendent High Security Prison Mardan with reference to memo No.2092
- Dated:16-12-2015.
  3- Above named Warder R/O Warsak Road, Babu Ghari, Khushal Bagh Colony.
  District Peshawar.

SUPERINTENDENT CIRCLE HON PRISON MARDAN



OFFICE OF THE SUPERINTENDENT CIRCLE HQS. PRISON MARDAN 725 /P.B/Dt: 22/01/2016 No.

#### OFFICE ORDER

In exercise of powers under Rule-09 of Khyber Pakhtunkhy Government Servants (Efficiency & Disciplinary) Rules 2011, Warder Fakhr-e-Ala S/O Habib Ur Rahman attached to High Security Prison Mardan was served with direct show cause notice under Rule-05 of the ibid rules on account of willful abser w.e.f 15-06-2015 wherein he was clearly directed to submit his written defense replywithin stipulated period, but he failed to comply and remained at large.

Subsequently a notice was published in the Daily News Pa Daily Mashriq Dated: 06-01-2016, wherein he was directed to appear before undersigned within 15 days and show cause of his long absence, but after expiry the given period in the News Paper neither he appeared before the undersigned any response was received from him which paved a clear way to the conclusion I he is not interested in his job anymore, hence the undersigned is pleasant to imp upon himthe major penalty of "Removal from Service "with effect from the dat absence i.e. 15-06-2015 as Ex-parte action under the rules/ibid.

Endorsement No: 726-30

Copy of the above is forwarded to the: Inspector General of Prisons Khyber Pakhtunkhwa Peshawar please.

- 1-Superintendent High Security Prison Mardan please.
- 2-
- District Accounts Officer, Mardan Head Clerk (Pay Branch) High Security Prison Mardan. 3-
- Official Concerned R/O Warsak Road, Babu Ghari, Khushal Bagh Co 4-5-District Peshawar.

SUPERINTENDE HOS PRISON MARDAN

SUPERINTENDE SUPERITVENDENII CIRCINE HO8. PRISON MARDAN