

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 368/2019

Date of Institution ... 15.03.2019

Date of Decision ... 05.08.2019

Qasid Ali, Ex-Warder, High Security Prison, Mardan, Resident of Turlandi, Tehsil Rajar, District Charsadda. ... (Appellant).

VERSUS

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

Present.

Mr. Aslam Khan Khattak,  
Advocate.

... For appellant

MR. HAMID FAROOQ DURRANI,

... CHAIRMAN

JUDGMENT


HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of order dated 30.11.2015 passed by respondent No.3, whereby, he was awarded major penalty of dismissal from service on account of absence from duty.
2. Learned counsel for the appellant heard and available record gone through.
3. It was the argument of the learned counsel that in case the charge of unauthorized absence, even if proved against a civil servant, the imposition of major penalty was not justified. Further, that the departmental proceedings were not undertaken against the appellant in accordance with law. He relied on NLR 1991 TD 274 and PLD 2004 Supreme Court 385.

4. The record suggests that departmental proceedings were initiated against the appellant on account of willful absence from duty w.e.f 29.09.2015. Upon completion of proceedings the impugned order was passed on 30.11.2015. The contents of order suggest that proceedings against the appellant were taken under Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules 2011.

Against the impugned order, the appellant submitted departmental appeal on 10.12.2018 which remained un-responded and the appeal in hand was preferred on 15.03.2019. The appellant was obligated to have preferred the departmental appeal within thirty days of the communication of the impugned order which he did not. It is clearly mentioned in para-3 of the appeal that the order dated 30.11.2015 was not communicated to the appellant on the ground of absence.

5. In view of the above as well as judgments reported as 2006 SCMR 453 and 2012 SCMR 195, the appeal in hand is considered incompetent and is hereby dismissed in limine. Needless to note that the judgments cited by learned counsel are distinguishable in the facts and circumstances of the present appeal. File be consigned to the record room.

  
(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
05.08.2019

25.06.2019

Learned counsel for the appellant present and assailed the impugned order of dismissal from service due to absence from duty on the ground that the same was made effective from the date of absence.

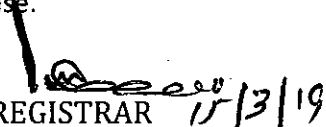



Learned counsel for the appellant when confronted with proposition laid down in the judgment of august Supreme Court of Pakistan reported in 1998 SCMR page 1890, seeks adjournment for further assistance. Adjourn. To come up for preliminary hearing on 05.08.2019 before S.B.

  
Member

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 368/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge  |
|-------|---------------------------|---|
| 1     | 2                         | 3   |
| 1-    | 15/03/2019                | <p>The appeal of Mr. Qasid Ali 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;"><br/>REGISTRAR 15/3/19</p> |
| 2-    | 18/03/19                  | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>05/04/19</u>.</p> <p style="text-align: right;"><br/>CHAIRMAN</p>  |
|       | 08.04.2019                | <p>Counsel for the appellant present and seeks adjournment as he has not prepared the case. Adjourned to 08.05.2019 for preliminary hearing before S.B.</p> <p style="text-align: right;"><br/>(Ahmad Hassan)<br/>Member</p>                       |
|       | 08.05.2019                | <p>Counsel for the appellant present and seeks adjournment. Adjourned to 25.06.2019 for preliminary hearing before S.B.</p> <p style="text-align: right;"><br/>(MUHAMMAD AMIN KHAN KUNDI)<br/>MEMBER</p>   |

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

Appeal No: 368/2019

Qasid Ali, Ex-Warder, High Security Prison, Mardan.

**VERSUS**


Inspector General of Prisons, KPK, Peshawar & Others

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Appellant

Through

  
1. Aslam Khan Khattak  
2. Muhammad Khurshid  
Advocates, Peshawar.

Dated: 12/03/2019

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

Appeal No: <sup>368</sup> /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 339

Dated 15/3/2019

Qasid Ali, Ex-Warder, High Security Prison,  
Mardan, Resident of Turlandi, Tehsil Rajar,  
District Swabi .....Appellant.

Versus

1. Inspector General of Prisons, KPK, Peshawar.
2. Superintendant Headquarter Prison, Peshawar.
3. Superintendant Circle Headquarter Prison,  
Mardan.

.....Respondents.

**APPEAL UNDER SECTION 4 OF KPK  
SERVICE TRIBUNAL ACT 1974 AGAINST  
THE IMPUGNED ORDER DATED 30/11/2015  
VIDE ANNEXURE "A" WHEREBY THE  
APPELLANT HAS BEEN DISMISSED  
FROM SERVICE WITH EFFECT FROM  
29/09/2015.**

**PRAYER,**

Filed to-day  
Registrar  
15/3/19

**ON ACCEPTANCE OF APPEAL, THE  
IMPUGNED ORDER DATED 30/11/2015 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 in March 2011.
2. That the appellant throughout his whole service has performed his duty with utmost of his capabilities and to the entire satisfaction of his superiors.

3. That the father of the appellant has died in accident and his superiors permitted the appellant to go to his home because there was no one to look after his family.
4. That during his absence period, the appellant has been dismissed from service and the impugned order has been communicated to him on 20/11/2018 and thereafter the appellant has filed his departmental appeal dated 10/12/2018 vide annexure "B" and no response has been received by him and 90 days have been elapse and hence this appeal inter-alia on the following grounds.

**GROUNDS:**

- A. That the impugned order dated 30/11/2015 vide annexure "A" has been given retrospective effect dated 29/09/2015 which is patently an illegal order which cannot be given any effect to under the law and is liable to be set aside.
- B. That the charges of absence from duty if even proved is a petty misconduct and dismissal from service is an extreme harsh punishment which cannot be given any effect to under the law and is liable to be set aside.
- C. That no show cause notice has been served upon the appellant which led to the fact that no regular enquiry in the matter has been conducted which was necessary under the law. So the impugned order dated 30/11/2015 at annexure "A" is illegal and may be set aside and the appellant shall be reinstated in service with all back benefits.

- D. That the last opportunity of personal hearing has not been given to the appellant. To this effect the impugned order dated 30/11/2015 is not sustainable under the law and may be set aside on this score alone.
- E. That that the impugned order dated 30/11/2015 at annexure "A" is illegal, malafide, without jurisdiction and without lawful authority and is liable to be set aside.
- F. That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

It is, therefore, prayed that on acceptance of appeal, the impugned order dated 30/11/2015 may be set aside and the appellant shall be reinstated in service with all back benefits.

Dated: 12/03/2019

*Aslam*

Appellant

Through

*Aslam*

1. Aslam Khan Khattak
  2. Muhammad Khurshid
- Advocates, Peshawar.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
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Appeal No: \_\_\_/2019

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**APPLICATION FOR CONDONATION**  
**OF DELAY IF ANY**

**RESPECTFULLY SHEWETH**

1. That the grounds mentioned in appeal may be treated as the integral part of this application.
2. That it is the settled law of the August Supreme Court of Pakistan that the cases shall be decided on merits and not on technicalities such as limitation.
3. 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.*

Dated: 12/03/2019



Petitioner

Through

-   

1. Aslam Khan Khattak
  2. Muhammad Khurshid
- Advocates, Peshawar.

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Appeal No: \_\_\_/2019

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Inspector General of Prisons, KPK, Peshawar & Others

**Affidavit**

I, *Qasid Ali, Ex-Warder, High Security Prison, Mardan, Resident of Turlandi, Tehsil Rajar, District Swabi*, do hereby solemnly affirm and state on oath that all contents of 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.

*Qasid*

Deponent

Identified By:

*Aslam*

Aslam Khan Khattak  
Advocate, Peshawar.



Annexure A

(6)

OFFICE OF THE  
SUPERINTENDENT  
CIRCLE HQS. PRISON MARDAN  
No. 248 /Dt: 30/11/2015

OFFICE ORDER

Upon completion of proceedings under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 initiated vide this Headquarters endorsement No:66-69 dated:17-11-2015 Warder (BPS-05) Qasid Ali S/O Abdur Rahman attached to High Security Prison Mardan is hereby awarded the major penalty of "Dismissal from Service" with effect from the date of his absence i.e 29-09-2015.

*30/11/2015*  
SUPERINTENDENT  
CIRCLE HQS. PRISON MARDAN  
*[Signature]*

Endorsement No: 248-52 /-

Copy of the above is forwarded to the: -

- 1- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar please.
- 2- Superintendent High Security Prison Mardan.
- 3- District Accounts Officer, Mardan.
- 4- Head Clerk (Pay Branch) High Security Prison Mardan.

*30/11/2015*  
SUPERINTENDENT  
CIRCLE HQS. PRISON MARDAN  
*[Signature]*

30.11.2015  
29.9.2015

Attested  
*[Signature]*

To,

The Inspector General Prison Khyber  
Pakhtoonkhwa Peshawar

Subject: DEPARTMENTAL APPEAL AGAINST THE DISMISSAL ORDER NO. 248 DATED 30/11/2015 FOR RESTORATION IN SERVICE OR ANY OTHER RELIEF IN SHAPE OF PROVIDING SERVICE TO PETITIONER.

Sir,

Applicant humbly submits as under:-

1. That Petitioner was appointed as worker (BPS-5) in the year 2012.
2. That Petitioner performed his duties to the entire satisfaction of superior and having unblemished service record.
3. That Petitioner was dismissed from service vide order no. 248 dated 30/11/2015 which is not communicated to the Petitioner on the ground of absence.
4. That time Petitioner was the only member of his family and that time he was not in position to leave his family at mercy of anyone.
5. That the impugned order dated 30/11/2015 was not communicated to the Petitioner neither any show cause notice was issued to the Petitioner.
6. That Petitioner was not provided the opportunity of personal hearing neither any documents were provided to the appellant for defense nor any inquiry was conducted.
7. That Petitioner no compromised all his entire and will be careful on further if restored in service.

Attested  
[Signature]

- (2)
8. That the Petitioner is sole bread earner of his family and facing problems/ troubles to maintain his family.
  9. That Petitioner being experienced, skill full capacity suffering from unemployment and with the passage of time becoming overage for any other job etc.

It is therefore humbly requested that keeping in view the above mentioned fact and circumstances, the applicant departmental appeal may kindly be accepted, and the appellant may kindly be restore in service for which I shall pray for your long and successful life of you and your family.

Yours Sincerely

*Qasid*

Qasid Ali S/o Abdur Rahman  
Ex Worker High Security Prison  
Mardan.

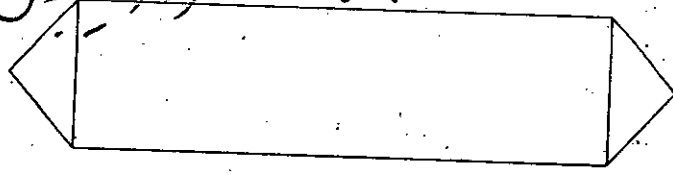
Cell No: 03116191777

Date: 10-12-2018

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*Attested  
est*

بعدالت جناب KPN سرگز نرائی پٹ



12 مارچ 2019ء پنجاب  
ناصر علی سابقہ بنام سیکرٹری عدالت  
11 مارچ 2019ء دروغ پتہ

سرگز نرائی

مورخہ  
مقدمہ  
دعوی  
جرم

### باعث تحریر آنکد

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ /  
آن مقام سرگز نرائی کیلئے مسلم خان صاحب محض و سرگز نرائی  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے  
سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Attested & accepted

1. Ashu

12 مارچ 2019ء

ماہ

المرقوم

Q. Ashu

2. M. Khushal

العبد العبد العبد

کے لئے منظور ہے۔

نرائی

مقام