BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Service Appeal No. 585/2016

Date of Institution... 25.03.2016

Date of decision... 22.12.2017

Muhammad Haroon son of Muhammad Israr, R/O village Katta Khat, Shereen Banda, Tehsil and District Mardan. ... (Appellant)

Versus

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

Mr. Hashmat Afridi, Advocate. ... For appellant.

MR. Mr. Muhammad Jan, Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD HAMID MUGHAL, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 15.01.2016 due to his absence from a retrospective date, against which he filed departmental appeal on 21.2.2016 which was rejected on 29.03.2016 and thereafter he filed the present service appeal on 25.5.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the order was passed with retrospective effect which is a void order. That no proper enquiry was conducted. That no personal hearing was afforded. That no charge sheet alongwith statement of allegations was given.

4. On the other hand the learned Deputy District Attorney argued that the departmental appellate authority while rejecting the departmental appeal on 29.03.2016 maintained the original order dated 15.1.2016 and the appellate order is a valid order and not void. That the appellant has challenged this appellate order. That the codal formalities were fulfilled.

CONCLUSION

5. Without adverting to the merits of the appeal, this Tribunal in number of cases has decided that retrospective penalty is void order. The judgments were based on a judgment of the august Supreme Court of Pakistan reported as 1985-SCMR-1178. The arguments of the learned Deputy District Attorney are not convincing that with the rejection of appeal, the effect of original order is vitiated. The appellate order has maintained the original order and original order which is a void order, therefore, the appellate order is also a void order. No limitation shall run in such situation nor void order can be sustained in the eyes of law.

6. As a sequel to the above discussion, this appeal is accepted and the appellant is reinstated in service. However, the department is at liberty to hold denovo proceedings in accordance with law within a period of 90 days from the date of receipt of this judgment. The issue of back benefits etc. shall be subject to denovo proceedings and also subject to rules on the subject. Parties are left to bear their own costs. File be consigned to the record room.

(Niaz Muhammad Khan)
Chairman

(Muhammad Hamid Mughal)
Member

ANNOUNCED
22.12.2017

23.05.2017 Appellant in person present. Mr. Sohrab Khan, Junior Clerk alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Appellant submitted rejoinder and requested for adjournment. Adjourned. To come up for arguments on 18.09.2017 before D.B.

(GUL ZEB KHAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

18.09.2017 None present on behalf of appellant. Learned Deputy District Attorney alongwith Sohrab Khan, Assistant for the respondent present. Notice be issued to the appellant and his counsel for attendance. To come up for arguments on 22.12.2017 before D.B.

Member
(Executive)

Member
(Judicial)

22.12.2017 Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Sohrab Khan, Senior Clerk for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

Member

Chairman

ANNOUNCED
22.12.2017

15.02.2017 Counsel for the appellant and Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 20.03.2017 before S.B.

(AHMAD HASSAN)
MEMBER

20.03.2017 Appellant in person and Mr. Shehryar Khan Assistant alongwith Add: AG for the respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 18.04.2017 before S.B.

Chairman

18.04.2017 Clerk to counsel for the appellant and Mr. Sohrab Khan, Junior Clerk alongwith Addl. AG for the respondents present. Written reply submitted. To come up for rejoinder and final hearing on 23.05.2017.

(Muhammad Amin Khan Kundi)
Member

27.12.2016 Appellant in person present and submitted Fresh Wakalat Nama. He requested for adjournment which is granted. To come up for preliminary hearing on 12.01.217 before S.B.

Chairman

12.01.2017 Mr. Hashmat Afridi, Advocate for appellant present. Wakalatnama submitted. Learned counsel for the appellant argued that the appellant the appellant was serving as Warden when removed from service vide impugned order dated 15.02.2016 on the allegations of wilful absence where-against his departmental appeal was also rejected on 29.03.2016 communicated to the appellant lateron where-against he preferred the instant service appeal on 25.05.2016.

That the absence of the appellant was not fitful and, moreover, the enquiry was not conducted in the mode and manners prescribed by rules.

Appellant Deposited Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days notices be issued to the respondents. To come up for written reply/comments on 15.02.2017 before S.B.

Chairman

26.09.2016 Appellant in person present and requested for adjournment. Adjournment granted. To come up for preliminary hearing on 18.10.2016 before S.B.

Member

18.10.2016 Counsel for the appellant present. Learned counsel for the appellant requested for adjournment. Adjourned for preliminary hearing to 02.11.2016 before S.B.

(ABDUL LATIF)
MEMBER

02.11.2016 Counsel for the appellant present. Counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 21.11.2016 before S.B.

Member

21.11.2016 None present for appellant. Notice be issued to appellant and his counsel for preliminary hearing for 27.12.2016 before S.B.

(ABDUL LATIF)
MEMBER

585/16

29.08.2016 Clerk of counsel for the appellant present. Seeks adjournment as counsel for the appellant is not in attendance. Adjourned for preliminary hearing to 26.09.2016 before S.B.

Chairman

11.07.2016 Agent 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 25-7-16.

Member

25.7.2016 Appellant present in person. Seeks adjournment as his counsel is not in attendance. To come up for preliminary hearing on 01.08.2016 before S.B.

Chairman

01.08.2016 No one present on behalf of the appellant. Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 11.8.2016 before S.B.

Member

11.08.2016 Appellant in person present. Preliminary arguments could not be heard due to general strike of the bar. To come up for preliminary hearing on 29.8.2016.

Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 585 /2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	01/06/2016	The appeal of Mr. Muhammad Haroon resubmitted today by Mr. Umar Ali Shah Utmankhel Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order please. REGISTRAR
2	2.6.16	This case is entrusted to S. Bench for preliminary hearing to be put up there on 06/6/16. CHAIRMAN
	6.6.2016	Counsel for the appellant present and requested for adjournment to file an application for condonation of delay. Request accepted. To come up for further proceedings on 11.7.2016. Member

The appeal of Mr. Muhammad Haroon son of Muhammad Israr r/o village Khatta Khat Shereen Banda Tehsil and District Mardan received to-day i.e. on 25.05.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Index of the appeal is unsigned.
2- Annexures of the appeal may be attested.
3- Annexurs of the appeal may be flagged.
4- Annexure-E of the appeal is illegible which may be replaced by legible/better one.
5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 894 /S.T,

Dt. 26/5/2016

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Umar Ali Shah Utmankhel Adv. Pesh.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

S.A.No. 585 2016

Muhammad Haroon ..... Appellant

Versus

Inspector General Prisons KPK and others ..... Respondents

INDEX

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2.	Copies of appointment order dated 18.05.2013 and the medical fitness certificate.	A-B	5-6
3	Copies of show cause notice, reply and the order dt.15.01.2016	C,D,E	7-8-9
4	Copies of the representation and order dated 29.03.2016	F-G	10-11
5	Wakalatnama.		

Appellant

Through

Umar Ali Shah Utmankhel

&

Waqar Ahmad
Advocates High Court
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No 585 /2016

Muhammad Haroon S/O Muhammad Israr,
R/O Village Katta Khat, Shereen banda,
Tehsil and District Mardan.
.....Appellant

VERSUS

1. Inspector General of Prisons, Khyber, Pakhtunkhwa, Peshawar.

2. Superintendent, Headquarters prisons Mardan.

3. Superintendent High Security Prison Mardan.
.....Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 29.03.2016 OF THE RESPONDENT NO. 1 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT DATED 21.02.2016 AGAINST THE ORDER OF REMOVAL FROM SERVICE PASSED BY RESPONDENT NO.2 WAS REJECTED.

PRAYER:

On acceptance of this appeal this Hon'able Tribunal may be pleased to set aside the impugned order of the Respondent No. 1 dated 29.03.2016 and the appellant may kindly be reinstated in his service from the date of his removal from service and his absence may be considered as leave without pay.

Respectfully Sheweth:

1. That the appellant is a bonafide and law abiding citizen of Pakistan and a permanent resident of District Mardan.

2. That the appellant was appointed as Warder BPS-05 by the Superintendent Circle Headquarters Prisons Peshawar vide his order dated 18.05.2013 after going through all the legal formalities and the medical checkups. (Copies of the appointment order dated 18.05.2013 and the medical fitness certificate is attached as Annexure A and B).

3. That after the initial appointment of the appellant he was posted at Central Jail Peshawar where he served for 18 months and after that he was transferred to Central Jail Mardan where he served for 3 months.

4. That on 30.09.2015 the brother of the appellant entices a girl from the village for marriage which resulted in enmity between the two families and the appellant along with his family had to leave the village and go to Bajaur Agency in order to avoid further confrontation and therefore the appellant couldn't be able to attend to his official duties.

5. That the appellant was issued with a show cause notice dated 17.11.2015 as to why he has been absent from his duties, which was duly replied by the appellant stating a genuine reason of the family enmity for his absence from the service which was not considered and the appellant was awarded a major penalty of removal from service. (Copies of the show-cause notice, reply, and the order dated 15.01.2016 is attached as Annexure C, D and E).

6. That the appellant filed a departmental appeal against his removal order which was also rejected vide order dated 29.03.2016. (Copies of the Representation and order dated 29.03.2016 is attached as Annexure F and G).

7. That now the appellant approached this Hon'able Tribunal for setting aside the removal order dated 15.01.2016 as also the order dated 29.03.2016 passed by the respondent No. 1 rejecting the departmental appeal of the appellant on the following grounds amongst others.

GROUNDS:

A. That the order of the respondent No. 1 dated 29.03 2016 whereby the departmental appeal of the appellant was rejected and that of awarding the punishment of removal from service is against law, facts and material on record and hence liable to be set aside.

B. That the impugned order suffers from patent illegalities and material procedural irregularities in as much as the impugned order is a non speaking order and the facts and other materials on record has not been considered therefore the same is not tenable.

C. That the impugned order has been passed in utter violation of the procedure laid down in the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 and therefore, the impugned order is a nullity in the eyes of law.

D. That the explanation given by the appellant for his absence from duties was not considered in its true perspective. In fact the appellant was confronted with a situation which genuinely prevented him from performing his duties and there is no element of willful and intentional negligence on his part, therefore any major penalty awarded to the appellant has caused grave miscarriage of justice.

E. That the impugned order has not given any cogent reason for not considering the explanation given by the appellant for being absent from the duties.

F. That the impugned order is a mechanical order without application of the mind and therefore is against the mandatory provisions of the Civil Servants Act 1973 as also the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011.

G. That the appellant has put in meritorious services without any previous adverse report and major penalty of removal from service is un-warranted by law.

It is, therefore humbly requested that on acceptance of this appeal the impugned order dated 29.03.2016 by respondent No. 1 rejecting the representation/departmental appeal filed against the removal from service order dated 15.01.2016 may be set aside and the appellant may graciously be reinstated and his absence may be considered as leave without pay.

Appellant

Through
Umar Ali Shah Utmankhel
&
Waqar Ahmad
Advocates Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No _____/2016

Muhammad Haroon S/O Muhammad Israr,
R/O Village Katta Khat, Shereen banda,
Tehsil and District Mardan.
.....Appellant

VERSUS

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

Affidavit

I, Muhammad Haroon S/O Muhammad Israr,R/O Village Katta Khat, Shereen banda, Tehsil and District Mardan do hereby solemnly affirmed and declare on oath that the contents of this **Appeal** are true and correct to the best of knowledge and belief and nothing has been concealed from this hon'ble court.

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT

Deponent

5

Anex A

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQs. PRISON PESHAWAR
No. 602 /P.B/ Dt: 8/5/20

To

MR. MUHAMMAD HAROON S/O MUHAMMAD ISRAR KHAN
Shireen Khan Banda, Kata Khat, Tehsil & District Mardan

Subject: **APPOINTMENT AS WARDER (BPS-05)**

Memo:

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

1- You are liable to serve anywhere in the jails of Khyber Pakhtunkhwa.
2- Your appointment is purely temporary and your services can be terminated at any time w assigning any reason during probationary period.
3- For all other purposes such as Pay, T.A & Medical Attendance etc, you will be governed b rules applicable to the government servants of your category.
4- The terms and conditions of your appointment as Warder will be those as laid down in the N Prison Rules 1985, Prisons Department (Recruitment, Promotions and transfers) rules 198C all other rules and regulations prescribed to the Government Servants or the rules which mc promulgated by the Government from time to time in this behalf.
5- Your appointment will be subject to your Medical fitness.
6- No TA/ DA will be admissible to you on joining your first appointment.
7- You cannot resign from service immediately but will have to put in writing at least one month 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- On your report for duty, it will be taken for granted that you have accepted all the above tc and conditions and if you failed to report within 10 days of the receipt of this appointment ord will be presumed that you have declined to accept this offer, hence this order of appointment s stand cancelled.
11- **You are directed to attend this office immediately for your medical examination at Polic Services Hospital Peshawar.**

Attested

SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR

Endorsement No: 603-04

Copy of the above is forwarded to the: -

1- Superintendent Central Prison Haripur. The above named newly appointed warder is attach with his jail for all purposes against the vacant post.
2- District Accounts Officer Haripur.

SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR

6

ANEX B

MEDICAL CERTIFICATE

Name of official: Muhammad Haroon

Caste or race: Pathan

Father's name: Muhammad Sirar Khan

Residence: Sherin Khan Banda Kala Hat Teh & Distt. Mardan

Date of birth: 06/03/1990

Exact height by measurement: 5'-8"

Personal mark of identification: NIL

Signature of the official: [signature]

Signature of head of office

Seal of office

I do hereby certify that I have examined Mr. Muhammad Haroon a candidate for employment in the Office of the Prison Deptt. and cannot discover that he had any disease communicable or other constitutional affection or bodily Infirmity except NIL.

I do no consider this as disqualification for employment in the office of the

His age according to his own statement 23 year and by appearance about year. Twenty three.

Attested

W. Ahmad

Medical Superintendent
Welfare/Services, Hospital
Peshawar

MEDICAL SUPERINTENDENT,

CIVIL HOSPITAL

17/5/13

LEFT HAND THUMB AND FINGER IMPRESSIONS

7 ANEX C

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

You, Warder Muhammad Haroon s/o Muhammad Israr 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 30-09-2015, which constitutes gross conduct on your part.

I, Sahibzada Shah Jehan, Superintendent high security 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 07 days of the receipt of this notice as to why you should not be dismissed from service for your above stated act of misconduct.

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

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endorsement No: 76-78 /- dated: 17/11/2015.

Copy of the above is forwarded to the: -

1- Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar please.
2- Superintendent High Security Prison Mardan with reference to memo No.1293-94 Dated:13-11-2015.
3- Above named Warder R/O Shereen Khan Bandah Kata Khat, Tehsil and District Mardan.

Attested
Ahmad

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

8 ANNEX D

بخدمت جناب سپرنٹنڈنٹ صاحب سینٹرل جیل مردان

جناب عالی! سوسی 78 - 2015-9-30 ایک عرض گزاری کی جاتی ہے کہ سائل مورخہ 30-9-2015 سے دوچار ہوئے تھے سائل کے بھائی نے لڑکی کیس کیا تھا سب پر سائل کا سارا گھرانہ گھر بار چھوڑ دیا تھا سائل کا اور جس طور پر ماجوڑ چلے گئے تھے اسی وقت سے میں غیر حاضر ہوا تھا اس لئے گاؤں آ گئے ہیں اور ہم سب مجھے ڈاک کے ذریعے مل گئے اب میں نے جوابات لکھ کر دیئے ہیں حاضری دی۔

لہٰذا درخواست ہائے ہے کہ سائل کو معاف کر دیں سائل کا سارا خاندان آ چکے ہے لئے دعا کرتے رہیں گے

17/12/15

سائل

آپ کا فرمانبردار

محمد ہارون سنٹرل جیل مردان

ATTESTED

9 ANNEX E

D-No 641 / 25-1 / 2016

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN
No. _____ P.B Dt: 15-01-2016

OFFICE ORDER

In exercise of powers under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary)Rules 2011, Warder Muhammad Haroon S/O Muhammad Israr attached to High Security Prison Mardan and now attached to District Jail Chitral absented himself from his allotted duties as well as jail premises without prior permission of the Competent Authority w.e.f 30-09-2013. He was served with absent notice vide Superintendent High Security Prison Mardan memo No. 1293 dated 13-11-2015 followed by show cause notice on his home address under Rule-5 of the ibid rules Vide this Headquarter endorsement No.76-78 date 17-11-2015 and was directed to submit his reply with stipulated period, but he failed and remained at large.

Subsequently a notice was published in the daily Aaj and daily Mashriq date 10-12-2015 wherein he was directed to appear before the undersigned and show cause of his long absence.

In pursuance of this advertisement, he submitted reply to show cause notice and after considering his reply unsatisfactory, he was afforded an opportunity of personal hearing, which was also found unsatisfactory.

Hence after going through all the legal formalities, the under signed is pleased to impose upon him the major penalty of "Removal from Service" with effect from the date of absence i.e. 30-09-2015.

Attested
Ahmad

SUPERINTEDENT
CIRCLE HQS PRISON MARDAN

Endorsement No: 673-78 /-

Copy of the above is forwarded to the: -

1- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar please.
2- Superintendent High Security Prison Mardan for information with reference to his Endst: No.1294 dated 13-11-2015.
3- Superintendent District Jail Chitral for information please.
4- District Accounts Officer, Mardan/ Chitral.
5- Official concerned R/O Shereen Khan Bandah, Kata Khat Tehsil & District Mardan.

SUPERINTENDENT 15/1/2016
CIRCLE HQS PRISON MARDAN

Better Copy

BETTER COPY

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS PRISON MARDAN
No._____ PB Dt.15.01.2016

OFFICE ORDER

In exercise of powers under Rule 9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules and Mr. Muhammad Haroon s/o Muhammad Israr attached to High Security Prison Mardan and now attached to District Jail Chitral absented himself from his allotted duties as well as jail premises without prior permission of the Competent Authority w.e.f. 30.09.2013. He was served with absent notice vide Superintendent High Security Prison Mardan memo No.1293 dated 1.11.2015 followed by show cause notice on his home address under Rules of the ibid rules vide this headquarter endorsement No.7678 dated 17.11.2015 and was directed to submit his reply with stipulated period but he failed and remained at large.

Subsequently a notice was published in the daily Aaj and daily Mashriq dated 10.12.2013 wherein he was directed to appear before the undersigned and show cause of his long absence.

In pursuance of this advertisement, he submitted reply to show cause notice and after considering his reply unsatisfactory he was afforded an opportunity of personal hearing, which was also found unsatisfactory.

Hence after going through all the legal formalities the undersigned is pleased to impose upon him the major penalty of "removal from service" with effect from the date of absence i.e. 30.09.2015.

SUPERINTENDENT
CIRCLE HQs PRISON MARDAN

Endorsement No.673-78/

Copy of the above is forwarded to the:-

1) Inspector General of Prisons Khyber Pakhtunkhwa Peshawar please.
2) Superintendent High Security Prison Mardan for information with reference to his Endst No.1294 dated 13.11.2015.
3) Superintendent District Jail Chitral for information please.
4) District Accounts Officer, Mardan/ Chitral.
5) Official concerned R/o Shereen Khan Bandah Kata Khat, Tehsil and District Mardan.

Before the IG Police Khyber Pakhtunkhwa Peshawar

ANNEX F

"Application/Appeal for the restoration of Service"

Respectfully Sheweth:

1. That the Appellant Joined the Police at Hangu on dated 18-5-2013.

2. That on Hangu Jail I Joined and after 9 month Punishment I transfered at Peshawar Jail.

3. That at Peshawar Jail I passed 18 months.

4. That after 18 months I transferred to Mardan and passed about 3 months.

5. That after passing 3 months at Mardan Jail I was transferred Central Jail and duty about 2 days. I received the removal order.

6. That my Removal I have Present on dated 30-9-2015 and Absent About 2 months. And thus way the Superintendent dismiss me.

(Order attached)

Attested

Ahmad

(7) That on 17-2-2015 I Present b/c Superintedat Jail Sahib and Explain my Absentee due Some Unkain happing at my Home.
(Letter of explanation attached)

(8) That my Absentee is no willfully but due to Some instability at my Home.

(9) That The Petitioner is F.A Pass and young and full of Spirit to Engage him and to Restore time in the duty.

(10) That The Appealant is only Single Person of The Entire family who earn livelihood for the family.

So it is therefore most humbly Prayed an acceptance of this Restoration Application The Appellant may kindly be Restored to their Jobs.

Dated=01-02-2016

Petitioner = M. Haroon.

11

ANNEX G

OFFICE OF THE INSPECTOR GENERAL OF PRISONS KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

No.Estb/Ward-/Orders/ 8318 /-

Dated 29-03-2016 /-

ORDER

WHEREAS, Mr. Muhammad Haroon S/O Muhammad Israr warder attached to HSP Mardan, was removed from service by Superintendent Headquarters Prison Mardan vide office order No.672 dated 15-1-2016 due to willful absence from duty with effect from 13-9-2015 to 15-1-2016.

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 22-03-2016. 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.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.

ENDST.NO. 8319 -21

Attested

Copy of the above is forwarded to :-

1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No.562-WE dated 27-2-2016.
2. 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.
3. Appellant concerned for information.

261
1-4-16

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

بعدالت سروس ٹریبونل پشاور

مورخہ 25/05/2016

مقدمہ اپیل

دعویٰ

جرم

محمد ہارون

بنام آئی جی پی
جیل خانہ جات
پشاور

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے عمر علی شاہ ایڈووکیٹ

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 وتقرر ثالث وفیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک وروپیہ ارعرضی دعوی اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا اختیار 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 بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ وہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔ کہ آنا یہ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 25 ماہ 05 سنہ 2016ء

العبد

گواہ العبد

بمقام

کے لئے منظور ہے۔

محمد ہارون ولد محمد اسرار خان

16101-9994117-1

قیمت 10 روپے

PESHAWAR BAR ASSOCIATION PBA

72065

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ/دستخط: Hasil Ali

بار کونسل/بار ایسوسی ایشن نمبر: BC-09-2409

رابطہ نمبر: 0333-9346173

بعدالت جناب: کے۔ پی۔ کے سروس ٹریبونل

دعویٰ:	منجانب:
علت نمبر:	محمد ہارون
مورخہ:	بنام
جرم:	آئی۔ جی۔
تھانہ:	

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے حشمت آفریدی ایڈوکیٹ کو وکیل 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 وتقرر ثالث وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وصول کرنے کا حقدار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم: 27.12-2016

گواہ شد

العبد — العبد

مقام پشاور کے لئے منظور ہے۔

محمد ہارون ولد محمد اسرار

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of

Service appeal No. 585 of 2016

Ex-Warder Muhammad Haroon attached to High Security Prison Mardan,

R/O Village Katta Khat, Shereen Banda, Tehsil & District Mardan.

.....Appellant.

----VERSUS----

(1) The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar,
(2) The Superintendent Headquarter Prison Mardan.
(3) The Superintendent High Security/Central 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 estopped by his own conduct to bring the present appeal.
3. That the appellant has got no cause of action.
4. That the appellant has no locus standi.
5. That the appellant is bad for mis-joinder and non-joinder of necessary party.
6. That the appeal is hit by laches.

PARA-WISE COMMENTS ON BEHALF OF THE RESPONDENT FROM 1 TO 8

RESPECTFULLY SHEWETH.

1. Pertaining to the appellant, hence no comments.
2. Pertains to record, however, no comment.
3. Pertains to record, however, no comment.
4. Pertains to the family of the appellant. However, the appellant absented himself from his duties as well as Jail premises without permission and

sanction of leave from the competent authority on 30.09.2015 violating rule 1082(i) and 1083 of Pakistan Prison Rules **(Annexure-A)**.

5. Correct to the extent that the appellant was served absence Notice as well as Show cause Notice on his home address to which the appellant did not respond within the stipulated time. Absence Notice was also published in the leading Newspapers of the Province to which the appellant responded **(Annexure-B).** The appellant submitted his written reply which was found un-satisfactory, fabricated and planted one. However, the appellant was provided the opportunity of personal hearing by the competent authority but the appellant completely failed to defend his long willful absence with documentary proof/evidence.
6. Correct, pertains to record, however, no comments.
7. Correct to the extent that the appellant filed an appeal against the order of removal from service and the rejection of departmental appeal.

GROUNDS.

A. Incorrect, misleading, as the order of the competent authority of "Removal from Service" and of order of the appellate authority rejecting departmental appeal of the appellant, are in accordance with the law, facts, material on record, and procedure as laid down in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 and is not liable to be set aside.

B. In correct, misleading, elaborated in Para "A" above.

C. In correct, misleading, as the order of removal from service has been passed after completion of all legal and procedural formalities by sending an absence Notice to the appellant on his home address, served with Show Cause Notice and an absence Notice was also published in the leading Newspapers of the Province.

D. Incorrect, misleading, as the reply submitted by the appellant was duly considered and was found un-satisfactory, concocted, false and fabricated and the appellant was also provided an opportunity of

personal hearing by the competent authority but the appellant completely failed to defend his case with documentary proof/evidence.

E. Incorrect misleading, elaborated in Para "D" above.

F. Incorrect, misleading, as the punishment awarded to the appellant is just one, according to the provision and procedure as laid down in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, and has been awarded to the appellant after due process.

G. Incorrect, misleading, as the service period of the appellant is short one during which he has been awarded many penalties as evident from his service history **(Annexure-C).**

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

1. INSPECTOR GENERAL OF PRISONS
   KHYBER PAKHTUNKHWA PESHAWAR.

2. SUPERINTENDENT
   HEADQUARTER JAIL MARDAN

3. SUPERINTENDENT
   CENTRAL JAIL MARDAN.....

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of

Service appeal No. 585 of 2016

Ex-Warder Muhammad Haroon attached to High Security Prison Mardan,

R/O Village Katta Khat, Shereen Banda, Tehsil & District Mardan.

.....Appellant.

----VERSUS----

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

.....Respondents

AFFIDAVIT ON BEHALF OF THE RESPONDENTS No.1, 2 & 3 .

We, the respondents No.1, 2 and 3, do hereby solemnly affirm and declare on oath that the contents of the reply/Para wise comments are true and correct to the best of our knowledge and belief and nothing material fact has been concealed and kept secret from this Honorable Tribunal.

1. INSPECTOR GENERAL OF PRISONS
   KHYBER PAKHTUNKHWA PESHAWAR

2. SUPERINTENDENT
   HEADQUARTER JAIL MARDAN

3. SUPERINTENDENT
   CENTRAL JAIL MARDAN.....

Prohibition against business and pecuniary transactions

Rule 1080.-- (i) No prison officer shall directly or indirectly engage in any trade, business or employment other than his legitimate duties.

(ii) No prison officer shall lend money to, borrow money from, enter into any pecuniary transaction with, or incur any obligation in favor of any other or any prisoner.

Residential quarters

Rule 1081.-- (i) Rent free residential quarters shall ordinarily be provided at each prison for the Deputy Superintendent, Assistant Superintendents, Assistant Medical Officer, Dispensers, Assistant and Clerical Staff, Storekeepers, Instructors, Teachers and the warder establishment.

(ii) Every prison official for whom the residential quarters are not available a prison shall reside within such distance of the prison as the Superintendent may direct,

Leave to Subordinate Officers

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

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

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

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

(v) The Deputy Superintendent shall similarly record in his report book, all 1eave granted by the Superintendent and all reports made of return from leave.

Absence caused by illness or other unavoidable cause

Rule 1083.-- Whenever any subordinate officer is at any time prevented by sudden illness or other unavoidable cause, from attending the prison or performing his duties, be 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.

Acquaintance with rules and reguiations

Rule 1084.-- It shall be the duty of every officer to make himself thoroughly acquainted with the duties of his office and all rules and regulations. He shall discharge his duties with zeal efficiency, honesty, alacrity and regularity.

Note Book

Rule 1085 -- Every subordinate officer shall keep a notebook with him in which he shall record every order given to him by his superior officers.

(5)

OFFICE OF THE
SUPERINTENDENT HIGH SECURITY PRISON
MARDAN
NO: 1283 DATED: 13 / 11/ 2015

To,

Muhammad Haroon S/o Muhammad Israr
Resident of Shereen Khan Bandah Kata khat
Tehsil and District Mardan.

Subject: SHOW CAUSE NOTICE.

Memo;

It is hereby inform you that you are absented from duty as well as Jail premises since dated: 30 09 2015, without any information/ application from competent authority. Insure your presence immediately after receiving of this notice otherwise strict disciplinary action will be taken against you.

SUPERINTENDENT
HIGH SECURITY PRISON MARDAN

Endorsement No: 1283 - 84 /
Copy of the above is forwarded to:

1. The superintendent Circle Head Quarter Prison Mardan for information.

SUPERINTENDENT
HIGH SECURITY PRISON MARDAN

13/11/15

(6)

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

You, Warder Muhammad Haroon s/o Muhammad Israr 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 30-09-2015, which constitutes gross conduct on your part.

[illegible] Shah Jehan Superintendent High Security Prison Mardan submitted Report, and satisfied by the report received vide the Superintendent High Security Prison Mardan [illegible] [illegible].

Now therefore, your above named Warder are hereby called to show cause within 15 days of the receipt of this notice as to why you should not be dismissed from service for your above [illegible] misconduct.

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

SUPERINTENDENT
CIRCLE HQS PRISON MARDAN

Endorsement No: 76-78 /- dated 17 / 11 /2015.

Copy of the above is forwarded to the. -

1- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar please.
2- Superintendent High Security Prison Mardan with reference to memo No [illegible] 94 Dated:13-11-2015.
3- Above named Warder R/O Shereen Khan Bandah Kata Khat, Tehsil and Distt Mardan

SUPERINTENDENT
CIRCLE HQS PRISON MARDAN

(7)

روزنامہ مشرق - مورخہ 10 دسمبر 2015

شکایت برائے خاطر

رون ولد محمد اسرار سکنہ شیرین خان بانڈہ کلہ نمبر تحصیل و ضلع مردان

[illegible] جیل مردان [illegible]

1293 مورخہ 13/12/2015 دفتر کے پتے پر مطلع کیا گیا ہے۔

ہوئے [illegible] سرنس ہیڈکوارٹر مردان سے متوکا زلوس نمبر 76-

1 سے مطلع کیا گیا لیکن آپ نے پھر بھی کوئی جواب نہیں دیا۔ آپ

کیا جاتا ہے کہ [illegible] دن کے اندر اندر ڈپٹی کیلئے ہائی سیکورٹی جیل مردان

[illegible] کے خلاف یکطرفہ کارروائی کر

سپرنٹنڈنٹ ہیڈکوارٹر ہائی سیکورٹی جیل مردان

5489

SAY NO TO CORRUPTION

Inble on www.khyberpakhtunkhwa.gov.pk

(8)

روزنامہ آج ۔ مورخہ ۱۰ دسمبر 2015

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

(9)

SERVICE HISTORY OF MUHAMMAD HAROON EX-WARDER.

1.	Name with Parentage	Muhammad Haroon s/o Muhammad Israr
2	Rank	Warder (BPS-05)
3	Date of Birth	06-03-1990
4	Date of Appointment	18.05.2013
5	Punishment awarded during his entire service with date and nature of offence	1. Awarded the penalty of stoppage of one annual Increment for three years vide Superintendent Headquarter Jail Haripur order No. 2868 dated 14.10.2013.Period of absence WEF 25.09.2013 to 29.10.2013, thirty four (34) days was ordered to be treated as leave without pay.' 2. The absence period WEF 29.12.2013 to 06.01.2014 was ordered to be treated as leave without pay by the Superintendent Headquarter Jail Haripur vide No.275 dated 21.01.2014. 3. Placed under suspension on 22.10.2014 by the Superintendent Headquarter Jail Peshawar in a disciplinary case. 4. Awarded the minor penalty of "Censure" by the Superintendent Headquarter Jail Peshawar vide his order No. 336 dated 27.01.2015. 5. Awarded the major penalty of "Removal from Service" by the Superintendent Headquarter Jail Mardan vide order No. 671 dated 15.01.2016 for his long willful absence from duty.

SUPERINTENDENT
CENTRAL JAIL MARDAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

C.M. No. _____/2016

In

Service Appeal No. 585 /2016

Muhammad Haroon.....Appellant

VERSUS

I.G.P of Prisons KPK and others.....Respondents

APPLICATION FOR CONDONATION OF DELAY.

Respectfully Sheweth:

1. That the above mentioned service appeal is being filed before this Hon'ble Tribunal in 01-08-16 date of hearing has yet been fixed.

2. That due to lake of knowledge the appellant submitted incomplete case file before this Hon'ble Tribunal.

3. That the delay occurred was neither intentional nor deliberate or negligent.

4. That law also favours decisions of the cases merits instead of technicalities.

5. That other grounds will be raised at the time of arguments with the permission of this Hon'ble Court.

It, is, therefore, respectfully prayed that on acceptance of this application, the delay occurred in the filling of the accompanying appeal may kindly be condoned.

Appellant

Through

Dated: 28/07/2016

Waqar Ahmad

&

Umar Ali Shah Utmankhel
Advocates High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

C.M. No. _____/2016

In

Service Appeal No. _____/2016

Muhammad Haroon.....Appellant

VERSUS

I.G.P of Prisons KPK and others.....Respondents

APPLICATION FOR CONDONATION OF DELAY.

Respectfully Sheweth:

1. That the above mentioned service appeal is being filed before this Hon'ble Tribunal in 01-08-016 date of hearing has yet been fixed.

2. That due to lake of knowledge the appellant submitted incomplete case file before this Hon'ble Tribunal.

3. That the delay occurred was neither intentional nor deliberate or negligent.

4. That law also favours decisions of the cases merits instead of technicalities.

5. That other grounds will be raised at the time of arguments with the permission of this Hon'ble Court.

It, is, therefore, respectfully prayed that on acceptance of this application, the delay occurred in the filling of the accompanying appeal may kindly be condoned.

M HAROON
Appellant

Through

Dated: 28/07/2016

Waqar Ahmad Ahmad

&
UMAR Ali Shah
Umar Ali Shah Utmankhel
Advocates High Court,
Peshawar.

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Muhammad Haroon .....**Appellant**

VERSUS

I.G.P of Prisons KPK and others.....**Respondents**

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth:

Reply on the preliminary objections:

All preliminary objection raised by the respondents are illegal, frivolous and without substance, therefore, not worth consideration. The appellant has got locus standi to file the appeal, got a valid cause of action to file an appeal, all the necessary parties have been impleaded as respondents, nothing has been kept concealed, there is no estoppel against them, the appeal is maintainable and this Honourable Tribunal has got jurisdiction to adjudicate upon the matter.

REPLY ON FACTS:

1. Para No.1 of the comments as drafted is incorrect, actually the appellant rendered dedicated services to the best of his superiors, therefore, the allegations levelled against the appellant is baseless and without any solid proof.

2. Reply to Para No.2, it is clear that the appellant serve as Warder BPS-5 in Pension Department. (Copies of the appointment order dated 1805.2013 and the Medical attached on the file as Annexure "A" and "B").

3. Reply to Para No. 3, the record shows that he served for 18 months in Central Jail Peshawar and after he was transferred to Central jail, Mardan where he served for 3 months.

4. Para No.4 of the Written Statement is incorrect as drafted. However, the appellant time and again raise the plea that a serious and unwelcome incident hit the Family of the appellant for which he immediately left his village and shifted to some other place in order to save his life.

5. Para No.5 of the Written Statement is correct to the extent that a show cause notice was issued from the complainant but it worth to mention here that as the appellant was not on his real home address due to above mentioned reason and when he come to know about such notice, he immediately reply to notice.

6. Para No.6 is already admitted in the Written Statement however departmental appeal was filed by the appellant. (copies are attached).

7. Para No.7 is already admitted hence no comments.

Reply on Grounds:

A to G. Grounds A to G of the comments are totally incorrect, baseless, without any justification and that of the main service appeal is correct and according to law, infact, the appellant is entitled to be reinstated in service with all back benefits and the appeal of the appellant may also be accepted in the light/ on the basis of grounds taken in the main appeal, moreover, the impugned order dated 29.03.2016 and all other proceedings initiated against the appellant may also be declared as illegal and held as set aside.

It is, therefore, most humbly prayed that on acceptance of this rejoinder, the contents of the comments being devoid of force, be ignored and appeal may be allowed as prayed for in the main appeal.

Appellant

Through

Hashmat Khan Afridi
Advocate. High Court

Date: 22/05/2017

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Muhammad Haroon .....**Appellant**

VERSUS

I.G.P of Prisons KPK and others.....**Respondents**

AFFIDAVIT

I, Muhammad Haroon S/O M. Israr R/O Sher Ulum Banda Distt Mardan, do hereby solemnly affirm and declare that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

CNIC # : 16101-9941781-1

ATTESTED
KHALIDA RAHMAN
ADVOCATE
OATH COMMISSIONER
PESHAWAR
23/8/2017