

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 220/2023

BEFORE: **MRS. RASHIDA BANO** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Nawab Ali S/O Shamsheer Khan, R/O Bara Road Sangu Peshawar,
presently Chief Head Warder BPS- 11 Central Jail, Peshawar.
..... (*Appellant*)

Versus

1. **Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar.**
2. **Home Secretary Khyber Pakhtunkhwa, Peshawar.**
.....(*Respondents*)

Mr. Kifayatullah Shahabkhel, ... For appellant
Advocate

Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

Date of Institution.....	13.01.2023
Date of Hearing.....	14.02.2024
Date of Decision.....	14.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 221/2023 titled “Ali Akbar Versus IG Prison, Khyber Pakhtunkhwa Peshawar etc.”, service appeal No. 222/2023, titled “Nisar Ali Versus IG Prisons Khyber Pakhtunkhwa Peshawar etc.” and service appeal No. 273/2023, titled “Rooh Ullah Versus Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar etc.”, as in all the appeals, common questions of law and facts are involved.




2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 29.09.2022, whereby the appellant was compulsory retired from service. It has been prayed that on acceptance of the appeal, the impugned order 29.09.2022 might be set aside and he might be reinstated into service with back benefits.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant, while serving as Warder BPS-11 in the Central Prison, Peshawar, was deputed for the security of MPA Mr. Faisal Zaman, against whom there was allegation of murder, at Room No. 11 MPA Hostel Peshawar, which was declared Sub Jail. The prisoner escaped from the sub jail on 22.04.2022. As a result of that incident, the appellant was compulsory retired from service vide order dated 29.09.2022. Feeling aggrieved from the said order, he approached the Secretary to Government of Khyber Pakhtunkhwa, Home Department, through his departmental appeal but the same was not decided within the stipulated period; hence the instant service appeal.

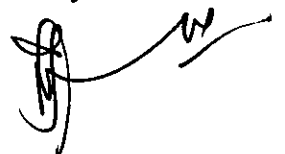
4. Respondents were put on notice who submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that on the relevant day, the appellant performed duty



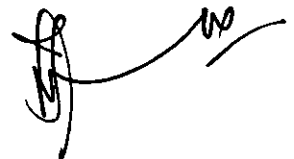
from 8.00 A.M to 1.00 PM, whereas the incident of escape took-place at about 04.31 P.M, the time on which he was not on duty. He further argued that there was no instruction from the high ups regarding the access of the driver and personal security guard of MPA Faisal Zaman to his room, the sub jail and they frequently visited him. He further argued that he was guarding the front side of the room whereas it had a door and a balcony at its back side and the security of the back side of the room was not in the domain of the appellant. There were no orders from the authority to have access of the security staff of prison inside the room of the MPA. He further argued that the said MPA, secretly and with the connivance of his driver and personal security guard, escaped from the sub jail through back door. Learned counsel argued that according to the Khyber Pakhtunkhwa Prison Rules 2018, the appellant was bound for the internal security only and the police, as per law, had the authority for external security and transfer of the said MPA from the sub jail to the Provincial Assembly or the court of law. According to him, the moment the escape of the MPA was noted, the matter was timely reported to other officials present in the MPA hostel. CCTV footage was seen whereby it was clearly noted that the MPA Faisal Zaman escaped with his personal security guard and his driver due to the negligence of the security on the main gate of MPA hostel. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that Government of Khyber



Pakhtunkhwa vide Home and Tribal Affairs Department declared Sub Jail at MPA Hostel Room No.11, Block-D, for confinement of the accused Faisal Zaman MPA, where he was shifted on 31.03.2022. For the purpose of duty, one Assistant Superintendent Jail Nisar Ali Khan Incharge Sub Jail, alongwith one Chief Head Warder namely Mr. Nawab Ali and 03 other warders namely Kashif, Rooh Ullah and Ali Akbar were deployed to perform further duty at the Sub Jail. He contended that due to the gross negligence and inefficiency in the performance of their duties on 22.04.2022, at about 04:31 PM, the accused MPA Faisal Zaman escaped from Sub Jail. The learned DDA argued that the appellant was on duty at the time of escape and he was required to monitor every act of the accused strictly and to have vigilant eye on his activities, but he failed to perform his assigned duties as per norms of the Khyber Pakhtunkhwa Prison Rules, 2018. According to him, the appellant also failed to inform the police staff timely for its prevention. He requested that the appeal might be dismissed.

7. From the arguments and record presented before us, it transpires that the appellants were deputed by the Superintendent Central Prison, Peshawar to perform duties at Room No. 11 of the MPA Hostel at Peshawar, which was declared as sub-jail for detention of an MPA, Mr Faisal Zaman, who was an under trial prisoner. On 22.04.2022, the prisoner escaped, as a result of which an inquiry was conducted and five officials of the Prison Department were proceeded against and penalties were imposed vide an order dated 29.09.2022 as follows:-



S#	Name of officer/officials	Penalty awarded
1.	Mr. Nisar Ali, Assistant Superintendent Jail (BPS-16)	Compulsory retirement from service with immediate effect
2.	Mr. Nawab Ali, Chief Head Warder (BPS-11)	Compulsory retirement from service with immediate effect
3.	Muhammad Kashif S/O Fazal Mir, Warder (BPS-07)	Reduction to lower stages in time pay scale for a period of 03 years without cumulative effect.
4.	Roohullah S/O Shakirullah, Warder (BPS-07)	Reduction to lower stages in time pay scale for a period of 03 years without cumulative effect.
5.	Ali Akbar S/O Bakht Muhammad Khan Warder (BPS-07)	Removal from service with immediate effect

8. Out of the above five officials, service appeal of four officials namely Nawab Ali, Ali Akbar, Nisar Ali and Rooh Ullah are before us. After going through the record in all the appeals and the documents presented by the respondents, it appears that five officials of the Prison Department were deputed to perform duty at the sub-jail but no specific job description and duty rota was there in order to determine the nature of duty to be performed by every official, along with the time and duty hours. This point has been highlighted by the learned Judicial Magistrate-IV Peshawar also in his judgment dated 30.01.2023 wherein he has raised the point as follows:-

“.....here the point of consideration is that whether the accused facing trial being public servants were deputed to hold the custody of absconding accused or otherwise, thus, after deep scrutiny of the record, this court holds that



there is nothing available on file in written form which may show that the accused facing trial being public servants were deputed to hold the lawful custody of absconding co-accused at the time of his escape. No order etc regarding the deployment of accused facing trial issued by Superintendent Jail or any competent authority is there on record-----."

The inquiry officer, in his report, has identified numerous loopholes in the security of facility that was declared as sub-jail. The question is whether it was the responsibility of the officials of the Prison Department deputed there or it was a task to have been looked into by the provincial government before declaring Room No. 11 of the MPA Hostel as sub-jail? Moreover as far as the security of the prison is concerned there are more than one tier/cordon and ultimately at the outermost level, there is the Police. The Inquiry Officer, in his report has indentified that there was District Police Squad under the charge of Sub-Inspector Haroon deployed for providing the security to the sub-jail. He has also identified that there were no CCTV cameras in the corridors, rooms and around the building of the MPA Hostel to fully monitor the movement of the prisoner. Negligence of police deployed for security has also been highlighted by him. In the light of all the shortcomings indentified by the Inquiry Officer in his report, one fails to understand that how the competent authority held the appellants responsible for escape of the Prisoner?




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14th Feb. 2024 01. Mr. Kifayatullah, Advocate for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, the
appeal in hand is allowed. Order dated 29.09.2022 is set aside
and appellant is reinstated into service with all back benefits.
Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under
our hands and seal of the Tribunal on this 14th day of
February, 2024.*


(FAREEHA PAUL)
Member (F)



(RASHIDA BANO)
Member(J)

Fazal Subhan PS

9. In view of the above discussion, the service appeal in hand, as well as all the connected appeals, is allowed. Order dated 29.09.2022 is set aside. Appellants Mr. Nawab Ali, Mr. Nisar Ali and Mr. Ali Akbar are reinstated into service with all back benefits. In case of Mr. Rooh Ullah, the impugned orders are set aside and the appellant's service position is restored as prayed for. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 14th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S