

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.PESHAWAR.

Appeal No. 599/2016

Date of Institution ... 20.05.2016

Date of Decision ... 13.03 .2019

Qudratulah S/O Ataullah Warder High Security Jail, Mardan.

... (Appellant)

VERSUS

Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar and other.

... (Respondents).

MR. NASIR MAHMOOD,
Advocate

--- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER(Executive)
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that he was serving as Warder in the Khyber Pakhtunkhwa Prisons Department since 14.05.2012. Vide order dated 17.11.2015, he was transferred from Lakki Marwat to High Security Jail, Mardan and relieved on 01.12.2015. That the appellant fell ill and was advised bed rest by the doctor as per medical prescription annexed with the memo of appeal. He was declared fit for duty on 11.02.2016 and went to the place of his new posting for assumption of charge on 12.02.2016. The respondents without following the

prescribed procedure imposed major penalty of reduction to lower stage in time scale vide impugned order dated 15.02.2016. He preferred an undated departmental appeal which was rejected on 20.04.2016, hence, the present service appeal. Punishment awarded to the appellant does not commensurate with the charge relveled against him. Punishment awarded in violation of rules is illegal and unlawful.

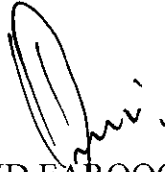
3. On the other hand learned Assistant Advocate General argued that the appellant was transferred from Lakki Marwat to High Security Jail, Mardan in routine. In case of illness, he was required to submit application for grant of medical leave duly supported by medical certificate. He reported for duty after a lapse of two months without any justification. The respondents rightly took action and awarded penalty contained in E&D Rules 2011.

CONCLUSION


4. The appellant has admitted his willful absence from duty. Being a govt: servant, he was under obligation to act according to the law/rules governing his appointment. Justification for absence from duty is against the established procedure. As his act of willful absence fell in the ambit of misconduct, so he was proceeded departmentally and thereafter major penalty mentioned in the impugned order was awarded to him. Procedure contained in E&D Rules 2011 was followed by the respondents. There is only ~~one~~ ^{is} flaw in the impugned order ~~that~~ ^{is} that time limit contained in F.R 29 was not indicated, while imposing major penalty of reduction to a lower stage in a time scale. As ample powers are available to this Tribunal under Section-7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 confirm,

set aside, vary or modify the order appealed against. Hence, the discrepancy is referred to above is curable.

5. Foregoing inview, the appeal is partially allowed and the penalty awarded is modified and would be effective for a period of one year from the date of issuance of the impugned order. The appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.



(HAMID FAROOQ DURRANI)
CHAIRMAN



(AHMAD HASSAN)
MEMBER

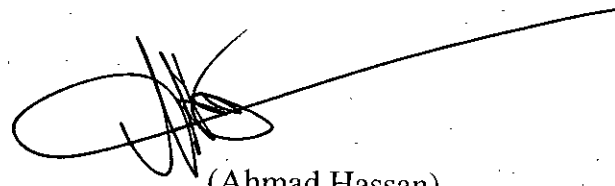
ANNOUNCED
13.03.2019

Order


13.03.2019 Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Sukhrab Khan, Junior Clerk for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is partially allowed and the penalty awarded is modified and would be effective for a period of one year from the date of issuance of the impugned order. The appeal is disposed off accordingly. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
13.03.2019



(Ahmad Hassan)
Member



(Hamid Parooq Durrani)
Chairman

599/2016

19.01.2017

Counsel for appellant and Mr. Ziaullah, GP for respondents present. Learned counsel for appellant submitted rejoinder and copy handed over to GP. To come up for arguments on 01.06.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

01.06.2017

Counsel for the appellant present. Mr. Sohrab Khan, Junior Clerk alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 27.09.2017 before D.B.


(GUL ZEB KHAN)
MEMBER

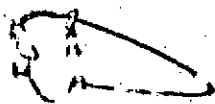

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

27.09.2017

Counsel for the appellant and Asst: AG for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 29.12.2017 before D.B.


Member


Chairman



29.12.2017

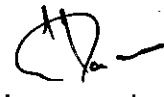
Clerk to counsel for the appellant and Usman Ghani, District Attorney alongwith Mr. Suhrab, Junior Clerk for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 27.02.2018 before D.B.


Member

27.02.2018

Junior to counsel for the appellant and Mr. Riaz Pinda Kheil, learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available. Adjourned. To come up for arguments on 27.04.2018 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Hamid Mughal)
Member

27.04.2018 Junior counsel for the appellant and Mr. Kabir Ullah Khattak, Addl. AG for the respondents present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 12.07.2018 before D.B.


Reader

599/2016

19.01.2017

Counsel for appellant and Mr. Ziaullah, GP for respondents present. Learned counsel for appellant submitted rejoinder and copy handed over to GP. To come up for arguments on 01.06.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

01.06.2017

Counsel for the appellant present. Mr. Sohrab Khan, Junior Clerk alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 27.09.2017 before D.B.



(GUL ZEB KHAN)
MEMBER

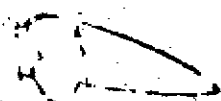

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

27.09.2017

Counsel for the appellant and Asst: AG for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 29.12.2017 before D.B.


Member


Chairman



21.07.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was appointed as Warder on 14.05.2012. He was transferred from District Jail Lakki Marwat on 17.11.2015 to High Security Jail Mardan and was relieved from District Jail Lakki Marwat on 01.12.2015. He could not make arrival in High Security Jail Mardan due to his illness and to that effect made a request to the High Security Jail Mardan for grant of medical leave on the basis of medical description of the authorized medical officer. On regaining health, he made his arrival at the new station dated 12.03.2016 but meanwhile he was proceeded against on account of his absence from duty and impugned order imposing on him major penalty of reduction to lowest stage in the pay scale and treating his absence from duty with effect from 01.12.2015 to 13.02.2016 as leave without pay was imposed. The appellant submitted appeal against the said impugned order which was rejected on 20.04.2016 and hence the instant appeal on 20.05.2016. The learned counsel for the appellant argued that the appellant was not associated with the inquiry proceedings as no charge sheet/statement of allegations was served on him nor any show cause notice was served on him before passing the impugned order. He requested for admitting the appeal for regular hearing.

Point urged at the Bar needs further consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days where-after notices be issued to the respondents for written reply/comments for 22.09.2016 before S.B.

Member

22.09.2016

Appellant in person and Mr. Sohrab Khan, Junior Clerk alongwith Additional AG for respondents present. Written reply on behalf of respondents No. 1 & 2 submitted. The appeal may be placed before the worthy Chairman for assigning the appeal to appropriate D.B for rejoinder and arguments for 19.01.2017.

Member

Appellant Deposited
Security & Process Fee.

11-2-0

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 599/2016

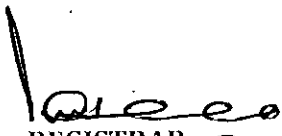
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	07/06/2016	<p>The appeal of Mr. Qudratullah resubmitted today by Mr. Nasir Mehmood Advocate, may be entered in the Institution register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	9-6-16	<p>This case is entrusted to Learned Member/ S. Bench for preliminary hearing to be put up there on <u>10-6-2016</u></p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>
	10.06.2016	<p>None present for appellant. Notice be issued to appellant and his counsel for preliminary hearing for 21.07.2016 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>

The appeal of Mr. Qudratullah son of Attaullah Warder High Security Jail Mardan received to-day i.e. on 20.05.2016 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 may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Memorandum of appeal may be got signed by the appellant.
- ③ Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 5- Annexures of the appeal may be attested.
- 6- Annexures of the may be flagged.
- 7- Four more copies/sets of the appeal along with annexes i.e. complete in all respect may also be submitted with the appeal.

No. 844 /S.T,

Dt. 23/5 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Nasir Mehmood Adv, Pesh.

Sir,
resubmitted after
the needful

*Note: No charge sheet, statement of
allegation and show cause
notice issued to the
Appellant*

Pr -
7/6/16

7/6/16

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

IN RE; Service Appeal NO.... 599.....2016

QudratullahAppellant

Versus

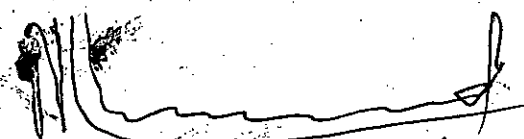
Inspector General of Prisons and another.....Respondents

INDEX

S.NO	Description of Documents	Annexure	Pages
1.	Appeal with affidavit		1-4
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3.	Order dated 15.02.2016	B	9
4.	Departmental Appeal	C	10-11
5.	Order dated 20.04.2016	D	12

Appellant

Through


Nasir Mahmood Advocate,
Supreme Court of Pakistan
13-D Haroon Mansion Peshawar.
Mob No.0333-9176275

7/6/16

1

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

IN RE; Service Appeal NO.....\2016

A.W.F. Province
Service Tribunal
Slary No. 507
dated 20/5/2016

Qudratullah S/O Atullah Wardar High Security Jail
Mardan.....Appellant

Versus

1. Inspector General of Prisons KPK, Peshawar.
2. Superintendent, High Security Jail Mardan.....Respondents

Appeal under section 4 of the NWFP Service Tribunal Act, 1974 against the Order dated 20.04.2016 passed by Respondent No.1 whereby the Departmental appeal of the appellant against the order dated 15.02.2016 passed by respondent No. 2 was dismissed and penalty upon the appellant by reducing his pay to lower stage in his present time scale and 74 days period of absence were treated as leave without pay was upheld.

Prayer in appeal:

On acceptance of this appeal the impugned orders dated 20.04.2016 & 15.02.2016 passed by respondent No. 1 & 2 respectively, may be set-aside and the appellant may please be given all the emoluments for the said period.

Respectfully Sheweth:

1. That the appellant is serving as wardar in Khyber Pakhtunkhwa Prison Dept. since 14.05.2012.

Re-submitted to -day
and filed.

Registrar

20/5/16

2. That the appellant is having unblemished record of service and during his entire service he has never been proceeded for any misconduct.
3. That the appellant served the department with zeal and devotion and all the high ups under whom the appellant has served are happy with his performance.
4. That the appellant was serving in Lakki Marwat in the said capacity when he was transferred on 17.11.2015 to High Security Jail Mardan and the appellant was relieved on 01.12.2015.
5. That as high injustice was done with the appellant due to which he fell ill and was under constant treatment of the Doctor. Copies of all the prescription are attached with the appeal as annexure-A.
6. That when Doctor declared the appellant to be fit for duty on 11.02.2016 then he appeared for duty on the next very day i.e. 12.02.2016 and produced all the medical prescription to the authority concerned.
7. That respondent no.2 without adopting the codal formalities imposed the penalty upon the appellant by reducing his pay to lower stage in his present time scale and 74 days period of absence were treated as leave without pay. Copy of the order is attached as annexure-B.
8. That thereafter, appellant preferred departmental appeal^(annex-C) to respondent No.1 which was rejected vide order dated 20.04.2016 (Copy attached as annexure-D) hence the present appeal against the orders dated 20.04.2016 & 15.02.2016 passed by respondent No. 1 & 2 respectively, inter alia on the following grounds:

Grounds

- A. That the appellant has not been treated in accordance with law, rules and his rights secured and guaranteed under the law and Constitution have been violated.
- B. That the whole proceeding starting from the transfer of the appellant from Lakki Marwat up to the imposition of penalty is illegal, at the behest of some one, politically motivated, without lawful authority,

without jurisdiction, malafide, unreasonable, void ab-initio and of no legal effect, therefore, the same is liable to be struck down.

- C. That in the entire career of the appellant service he has unblemished record but in the instant case he has been dragged just to satisfy the ego of some one which resulted in gross miscarriage of justice which warrants interference by this honorable tribunal.
- D. That the whole proceeding resulting into imposition of penalty upon the appellant offends article 25 of the constitution of Islamic republic of Pakistan, 1973.
- E. That even if the charges leveled against the appellant are presumed to be proved then punishment awarded does not commensurate with the offence thus the same offends constitutional norms and transgresses the limit prescribed by it; therefore, the same is ultra vires.
- F. That the object of law is to protect rights, undo wrong and foster justice, but the impugned penalty has not only eroded right of the appellant, but also resulted in gross miscarriage of justice, warrants interference.
- G. That the appellant has been proceeded against without affording him an opportunity of personal hearing or providing a chance for defense and even the medical prescription were ignored out rightly by the respondents which is violative of the principles of natural justice as well as law laid down by the superior courts.
- H. That the respondents have imposed two penalties upon the appellant which is totally illegal because under the rules two punishments cannot be imposed upon a civil servant at one time.
- I. That the impugned order dated 20.04.2016 & 15.02.2016 passed by respondent No. 1 & 2 respectively, are highly arbitrary, malafide, discriminatory, whimsical and thus untenable.
- J. That the appellant seek permission of this honorable tribunal to rely additional grounds at the time of hearing.

It is, therefore prayed that on acceptance of this appeal the impugned orders dated 20.04.2016 & 15.02.2016 passed by respondent

4

No. 1 & 2 respectively, may be set-aside and the appellant may please be given all the emoluments with all back benefits.

Any other remedy deemed proper may also be allowed.

Note: No charge sheet, statement of Quadratullah
allegation and show cause Notice
issued to Appellant.

Through

Alid

Appellant

[Signature]
Nasir Mehmood Advocate
Supreme Court of Pakistan
13-D Haroon Mansion Peshawar.

AFFIDAVIT

I, Quadratullah S/O Atullah Wardar High Security Jail Mardan do hereby solemnly affirm and declare on oath that contents of the accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honourable tribunal

Quadratullah

Deponent

Attested
FIDA MOHAMMAD BANGASH
Advocate
Notary Public
Date 20/5/16
Dist. Court Peshawar

[Signature]

5

Annex-A

DHQ TEACHING HOSPITAL BANNU

Out patient Department

Name: 221-2

OPD No: 65735

Date: 1/12/15

C/o
Fornu
TMS: M. B. Khan
6-2-7

P
Bady
TMS: Fawad
6-2-7

MS
SPT: Faltan
6-2-7

Medical Superintendent
D.H.Q. Teaching Hosp
Bannu
SPT: Inam
6-2-7

Ad
Complete Home
had 1st 7 for two
weeks

Medical Officer
D.H.Q. Teaching Hosp
Bannu

Certified to be
True Copy

16

Certified to be
True Copy

8

DHQ TEACHING HOSPITAL BANNU

Out patient Department

Name: M. Z. P.

OPD No: _____


Date: 11-2-2016

FITNESS CERTIFICATE

It is certified that the
above person has today
Examination today and
Fit for duty



Medical Officer
D.H.Q. Teaching Hospital
Bannu

Certified to be

True Copy

Annex-B

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

9

No. _____ /P.B/Dt: /15/02/2016

OFFICE ORDER

Upon completion of proceedings under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 initiated vide this Headquarters endorsement No. 649-51 dated: 13-01-2016, Warden Qudrat Ullah Khan S/O Att. Ullah Khan is hereby awarded the major penalty of "Reduction to lowest stage" in his present time pay scale with further orders as under:-

2- His absence period was 01-12-2015 to 13-02-2016 (74 days) is hereby treated as extra ordinary leave without pay.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

Endorsement No: 487-91 / 1-

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 his memo No. 89-91 dated 12-01-2016.
- 3- District Accounts Officer, Mardan.
- 4- Office Superintendent/ I/C Pay Branch High Security Prison Mardan.
- 5- Official concerned C, O Superintendent High Security Prison Mardan.

**Certified to be
True Copy**

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

سودبان گزارش ہے کہ میں سائل قذرات اللہ جیل وارڈن پچھلے 5 سالوں سے اپنی ڈیوٹی الیٹاڈائی اور پابندی کے ساتھ مختلف جیلوں میں اپنے انفرم ہالا کے توقعات کے مطابق سرانجام دے رہا ہوں۔ درخواست کنندہ 17-11-2015 تک جیل سروس میں تعینات تھا۔ میرا تبادلہ بحکم جناب آپ عدالت بحوالہ نمبر 33006 بطور 17-11-2015 کو ڈسٹرکٹ جیل کئی سے سپرنٹنڈنٹ DSP سرطان تبادلہ ہوا۔ اور مجھے 1-12-2015 کو ڈیوٹی سے فاج کر دیا گیا۔

سہری تہہ ملی سیاسی بنیاد پر کی گئی تھی۔ اور جس اہلکار کو سہری جگہ پر تبادلہ ہوا وہ سرطان جیل میں چند مہینے پہلے ہی آئی تھی جیل سے تبدیل ہوا تھا۔ اور پھر سیاسی سفارش کر کے ایسا تبادلہ سپرنٹنڈنٹ جیل کو سہری سرایا۔ اور اس کے علاوہ میرے ساتھ سہری تہہ ملی سیاسی کی کئی کہ رسائل سے چند ہینڈ اہلکار کئی سروس جیل میں تعینات تھے۔ قافل کے مطابق ان ہینڈ اہلکاروں میں سہری جگہ پر تبادلہ ہو جانا چاہیے تھا۔ جو خاص مقدمہ کے تحت سپرنٹنڈنٹ جیل کئی سروس کے پاس ڈیوٹی دے رہے ہیں۔

مذکورہ بالا اہلکاروں سے مجھے بہت دکھ ہوا جسکی وجہ سے سہری بیمار ہو کر سہری سروس میں علاج کرنا پڑا۔ اور آخر کار 11-2-2016 کو ڈاکٹر نے چیک اپ کر کے ڈیوٹی کھینے فٹ قرار دیا اور 12-2-2016 کو پانی سیکورٹی جیل سردان میں جاہری کرادی اور اپنی بیماری کے کاغذات ساتھ 2 جگہ کرادیے۔ جناب سپرنٹنڈنٹ سروس کو سہری جیل نے مجھے بحوالہ نمبر 11-487 بطور 15-2-2016 کو پیر قانونی برخلاف اولز دو بڑی نوعیت کی سزائیں سنادی اور سہری بحوالہ lowest stage پر مقرر کر کے اور 74 دن کھینے

Extra ordinary leave بغیر تحوالہ کے سزا سنائی۔
یہ کہ دونوں سزائیں نا انصافی پر مبنی ہے کیونکہ بیماری کے دوران
علاج کرانا ضروری کامیابی حق ہے۔ اور اس کا ثبوت ڈاکٹر کے نسخوں
کے ساتھ جناب سپرنٹنڈنٹ جیل کے ساتھ پیش کیے تھے۔

31/12/2011
M. J. Khan
DCM

حضور والا

آپ کی خدمت میں سائل مثبت عارضی کے ساتھ اپیل برائے
معافی تمام سزائیں کرنا ہے اور اس پر اکتفا ہے کہ آپ صاحبان
میری اپیل پر رحم کے ساتھ تمام سزائیں ختم کر کے کالم صادر فرمائیں گے
سائل شکر ہے آپ کے بچوں کو دعا گو ہو گا۔

الوارث

آبگٹا بعدار اہلکار

قدرت اللہ والد عظمیٰ اللہ وارڈر موجود بحال ڈیوٹی

HSP جیل مردان

Certified to be
True Copy



Amended
12

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

091-9210334, 9210406 091-9213445

No.Estb/Ward-/Orders/ 10448 1-

Dated 20-04-2016

ORDER

WHEREAS, Mr. Quadratullah S/O Attaullah Khan warder attached to HSP Mardan, was awarded the major penalty of reduction to lowest stage in his present time pay scale and the period of his absence i.e from 01-12-2015 to 13-2-2016 (74 days) treated as leave without pay by Superintendent Headquarters Prison Mardan vide office order No.486 dated 15-2-2016 due to his willful absence from duty.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available record of the case and it was observed that the appellant remained absent/absconder for the period as mentioned above and legal procedural formalities as required under the 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.

[Signature]
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.

ENDST: NO. 10449-5/1

Copy of the above is forwarded to :-\

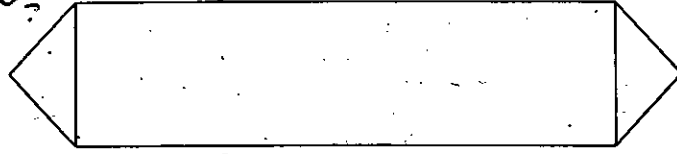
1. The Superintendent, Headquarters Prison Mardan for information and necessary action with reference to his letter No.746-WF dated 22-3-2016.
2. The Superintendent, HSP Mardan for information and necessary action with reference to the Superintendent HQ Prison Mardan order referred to above. Please inform the appellant accordingly and also make necessary entry in his Service Book under proper attestation.
3. Appellant concerned C/O HSP Mardan for information.

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

Appellant
Copy
M. Quadratullah
22/4/2016

**Certified to be
True Copy**

بعدالت سرورس ٹریبونل کے پی کے سٹاؤر



2 منجانب

بنام

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لہذا اور کیلئے ناصر محمود آید وکیل طے شد عبدالحق صیات اللہ

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

Accepted

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداخت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے و 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۔

Quadrantullah

2016

ماہ 05

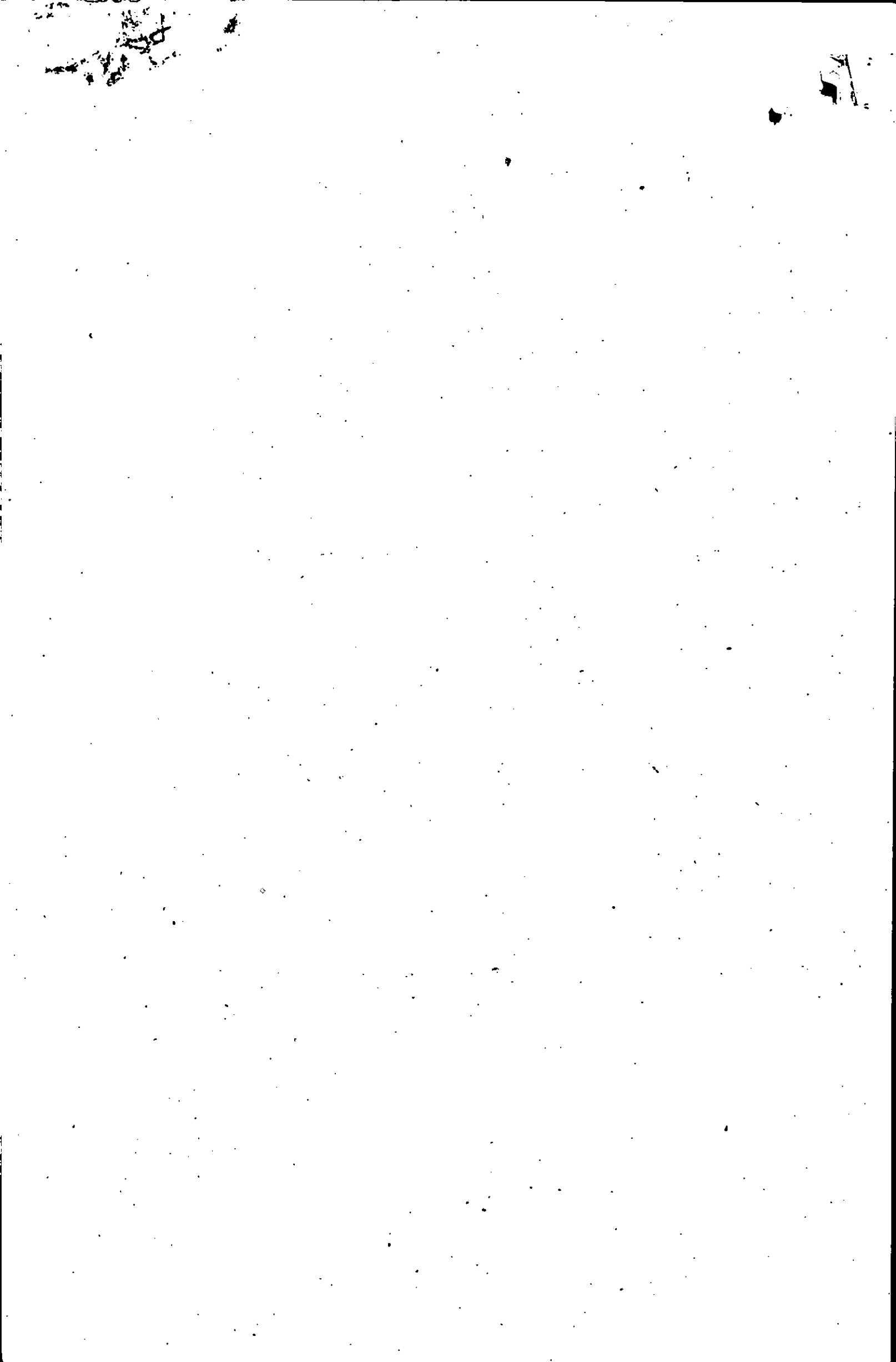
البرقوم 20

H. Ullah

العبد گواہ العبد

کے لئے منظور ہے۔

مقام



In the matter of

Service appeal No. 599 of 2016

Warder Qudratullah attached to High Security Prison Mardan,

R/O Mir Khani Khel, P/O Esak Khel Tehsil & District Lakki Marwat

.....Appellant.

----VERSUS----

(1) Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar,

(2) Superintendent 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 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 2

RESPECTFULLY SHEWETH.

- 1- Pertaining to the record, hence no comments.
- 2- Incorrect, misleading as it was the violation of Prison Rules by the appellant which culminated in the imposition of penalty.
- 3- Incorrect, as it is the misconduct of the appellant which brought him to the present situation.
- 4- Correct, Pertains to record. However no comments.
- 5- Incorrect, as transfer is a routine matter and the appellant is liable to serve anywhere in the province under Pakistan Prison Rule 1115. Under

Rule No. 1083 of the ibid rules, Medical rest certificate are required to be submitted at once along with a Notice to the Superintendent Jail not accumulatively. **(Annexure-A).**

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6- Incorrect, misleading as the appellant reported for duty on 13-02-2016 after two months and fourteen days absence with a medical rest certificates for two months (60 days) and fourteen (14) days absence.

7- Incorrect, as proper procedure has been adopted as required under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, by sending a notice for assuming duties to the appellant to which he did not respond. Notice for assumption of duties at High Security Prison Mardan was also published in the Newspaper, served show cause Notice and personally heard by the competent authority.

(Annexure-B).

8- Pertains to record, however no comments.

GROUND

A. Incorrect, misleading, as the appellant has been proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 and Khyber Pakhtunkhwa Revised Leave Rule 1981, and he has been treated in accordance with the law and rules.

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

C. In correct, misleading, as the appellant has been treated in accordance with the law and laid down procedure and it is the misconduct and violation of Pakistan Prison Rule by the appellant which resulted into the imposition of the penalty.

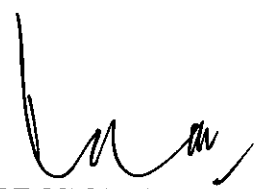
D. In correct, misleading, as the whole proceeding against the appellant are in accordance with the law/rules and does not offend any article of the constitution of the Islamic Republic of Pakistan 1973.

E. Pertaining to the record, however the appellant failed to perform his duties efficiently, violated Prison rules which resulted into the

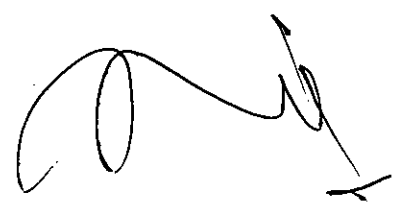
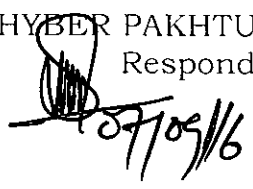
imposition of penalty which is a lenient one as the service record of the appellant is short one.

- F. Incorrect, misleading, as the punishment awarded to the appellant is just one, according to law and has been imposed after due process.
- G. Incorrect, misleading, as proper procedure and due process has been adopted as required under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, by sending a notice for assumption of duties to the appellant to which he did not respond. Notice for assumption of duties at High Security Prison Mardan was also published in the Newspaper, served show cause Notice and personally heard by the competent authority.
- H. In correct, misleading, as one penalty of "*reduction to lower stage in his present time pay scale*" has been awarded to the appellant. Leave without pay is not a punishment under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.
- I. Incorrect, the orders passed by the competent authority and appellate authority are fair, just, in accordance with the law.
- J. No comments.

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
Respondent No.1



(2) SUPERINTENDENT
HEADQUARTER JAIL MARDAN
Respondent No.2

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

In the matter of

Service appeal No.599 of 2016

Warder Qudratullah attached to High Security Prison Mardan,

R/O Mir Khani Khel, Esak Khel P/O Esak Khel Tehsil & District Lakki Marwat

.....Appellant.

---VERSUS---

(1) Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar,

(2) Superintendent Headquarter Prison Mardan

.....Respondents

AFFIDAVIT

We, the respondents No.1 & 2, do hereby solemnly declare on oath that the contents of the reply are true and correct to the best of our knowledge and nothing has been concealed and kept secret from this Honorable Court.

(1) INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

Respondent No.1

07/19/16

(2) SUPERINTENDENT
HEADQUARTER PRISON MARDAN

Respondent No.2

Occurrence of a permanent vacancy

Rule 1114.-- (i) When a permanent vacancy occurs in any prison the Superintendent shall report the fact at once to the Superintendent of the Headquarters Prison, who will arrange to fill the vacancy.

(ii) Selection of permanent warders shall be made by a Committee consisting of the Superintendent of the Headquarters Prison and a senior Superintendent of the same circle. The Superintendent of the Headquarter Prison shall call for a Committee once in a quarter and oftener, if necessary.

(iii) Every newly appointed warder shall be placed on probation of two years from the date of appointment. On completion of satisfactory probationary period, he will confirmed in his appointment by the Superintendent of the Headquarters Prison.

Warder liability to serve outside the Circle

~~*Rule 1115.--* At the time of appointment every warder shall be informed that he is liable to serve at any prison in the Province.~~

Headquarters Prison to maintain list of approved candidates

Rule 1116.-- (i) The Headquarters Prison shall maintain a list or approved candidate suitable in every respect for appointment as warders. A descriptive roll of each candidate showing his name, father's name, caste, age, height, chest measurement, physical fitness, identification marks, thumb impression, residence, education and Military service, etc., shall be kept by the Headquarters Prison. The applicant shall be intimated the fact of his acceptance and pending his being called on to fill a permanent vacancy, should be employed in any temporary vacancy which may occur in the affiliated prisons. Ordinarily the affiliated prisons shall not employ any temporary warders themselves. These temporary warders will be considered for selection for permanent posts if their work and conduct has been satisfactory.

(ii) The character and antecedents of candidates shall be verified through the Police Department before employment.

Conditions as to the prison to which posted.

Rule 1117.-- No warder shall be posted to a prison in his home district or in a district in which he has been long resident. Warder shall not ordinarily be allowed to remain at a central Prison for more than three years or over two years at other prisons.

Warders to be vaccinated

Rule 1118.-- All warders shall be vaccinated immediately on appointment and revaccinated whenever considered necessary.

Gradation list

Rule 1119.-- At each Headquarters Prison, a gradation lists showing the seniority and other particulars, etc., of all the warders in the circle, shall be maintained. All permanent warders will be shown in this list according to their categories. Each warder will be allotted a serial number on permanent appointment, which shall be his personal number. Seniority will count from the date of appointment in a permanent vacancy.

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 per. mission 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 leave 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 leave 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, he shall forthwith 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 regulations

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.

Annexure "B"

OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL LAKKI MARWAT
NO: _____
Dated: _____

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1261
8-12-15

[Handwritten signature and initials]
18/11/15

To,

Warder Qudrat Ullah

Attached to District Jail Lakki Marwat.

Subject: - RELIVING DOCKET

Memo

Under the instructions contained in the Inspector General of Prisons Khyber Pakhtunkhwa Peshawar order No.33006 dated 17-11-2015, you are hereby relieved of your duties at this jail today on 01-12-2015 (AN) and directed to report to the Superintendent HSP Mardan for further duty there.

You are allowed *[Signature]* joining time.

SUPERINTENDENT
DISTRICT JAIL LAKKI MARWAT

Endst: No 2162-63 dated 01/12/2015

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The Superintendent H.S.P Mardan for information please.
3. The District Account Officer Lakki Marwat for information Please.

[Signature]
SUPERINTENDENT
DISTRICT JAIL LAKKI MARWAT

mention information Khwa ess: da ing may be on of a upon pe of oring be Bid ing
کی ڈاکخانہ
اپ مورخہ
غیر حاضر
نمبر 57-455
کوئی جواب
تاریخہ نوٹس
پر مطلع کیا
رہے اشتہار بتا
ٹیوشی کے لئے
بنائیں اور اپنی
تونی کاروائی کی
بیل پاپ
"SAY NO TO
CURRUPTION"
وی

OFFICE OF THE
SUPERINTENDENT HIGH SECURITY PRISON
MARDAN

NO: _____ DATED: 12 / 01 / 2016

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To,

Warder Qudrat Ullah
C/O Superintendent District Jail Lakki Marwat.

Subject: Absent Notice

Memo;

You were relieved on 01-12-2015 (A.N) from District Jail Lakki Marwat upon transfer to High Security Prison Mardan vide Inspector General of Prisons, Khyber Pakhtunkhwa order No.33006 dated 17-11-2015, but you failed to report for duty and is still at large. You are directed to resume your duties immediately after receiving of this notice otherwise strict disciplinary action will be taken against you.

SUPERINTENDENT
HIGH SECURITY PRISON MARDAN

Endorsement No: 89-91

Copy of the above is forwarded to:

1. The Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar for information please.
2. Superintendent Circle Head Quarter Prison Mardan for information.
3. Superintendent District Jail Lakki Marwat for information please.

SUPERINTENDENT
HIGH SECURITY PRISON MARDAN

21/1/16

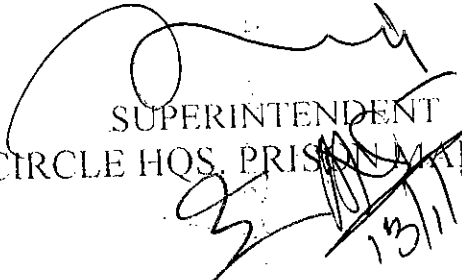
SHOW-CAUSE NOTICE UNDER RULE-5 (1) READ WITH RULE-7 OF THE KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES 2011.

You, Warder Qudrat Ullah were relieved on 01-12-2015 (A.N) from District Jail Lakki Marwat upon transfer to High Security Prison Mardan but you failed to report for duty and is still at large which constitutes gross conduct on your part.

I, 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 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. You desire to be heard in person.

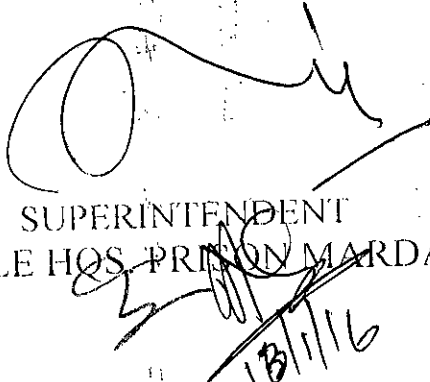
In case your reply does not reach this office within stipulated period, ex-parte action shall be taken against you.


SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN
13/1/16

Endorsement No: 649-51 /- dated: 13/01/2016.

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 endorsement No.89-91 Dated:12-01-2016.
- 3- Above named Warder C/O Superintendent District Jail Lakki Marwat.


SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN
13/1/16

- 11/01/3119

Relieved from D.T. U
on 1-12-15, absence
notice / S.C Notice / Ad
in Daily Express.

R/Sir,

Wardens concerned
absented for 74 Day

Submitted reply
along with Medical
Certificates for 60
Days. Remained
absent (withul absence
for further 14 Days

He may be

AWARDED MINOR
Punishment for 14
Days and MLC for
60 Days to be necessary
if agreed pl.

Personnel had
punishment
lower staff
period shall be kept
as leave with on

AS - M
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BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

IN RE; Service Appeal NO.5992\2016

Quadratullah.....Appellant

Versus

Inspector General of Prisons and others.....Respondents

Rejoinder on behalf of appellant to the reply of the respondents

Respectfully Sheweth:

Preliminary objections;

All the preliminary objections have taken in routine. The appeal is very much competent and maintainable in present form. It has not been shown how the appellant is estopped by his conduct to file the appeal besides the appellant has got cause of action and locus standi. The appeal is not bad for mis-joinder and non-joinder of necessary parties and is not hit by laches.

On Facts;

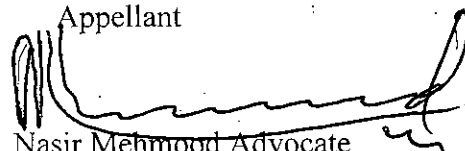
1. Para-1 of the reply needs no rejoinder.
2. Para-2 of the reply is wrong and incorrect. It is further submitted that no rules have been violated which would have required imposition of such harsh penalty.
3. Para-3 of the reply is wrong and incorrect. It is further submitted that no misconduct has been committed by the appellant.
4. Para-4 of the reply needs no rejoinder.
5. Para-5 of the reply is wrong and incorrect. It is further submitted that appellant was precluded by his illness to have given notice to Superintendent however proper medical prescription have been presented to him.
6. Para-6 of the reply is wrong and incorrect. It is further submitted that detail reply has been given in the foregoing paras.
7. Para-7 of the reply is wrong and incorrect. It is further submitted that procedure was violated by the respondents and appellant was not served in accordance with law.
8. Para-8 of the reply needs no rejoinder.

Grounds;

- A. Ground-A of the reply is incorrect and that of the appeal is correct. The rules on the subject have been violated.
- B. Ground-B of the reply is incorrect and that of the appeal is correct.
- C. Ground-C of the reply is incorrect and that of the appeal is correct. The appellant was not treated in accordance with law and rules on the subject.
- D. Ground-D of the reply is incorrect and that of the appeal is correct. The appellant was not treated in accordance with law and rules on the subject.
- E&F. Ground-E&F of the reply is incorrect and that of the petition is correct.
- G. Ground-G of the reply is incorrect and that of the appeal is correct. The appellant was not served in accordance with law.
- H. Ground-H of the reply is incorrect and that of the appeal is correct.
- I. Ground-I of the reply is incorrect and that of the appeal is correct.
- J. Needs no rejoinder.

It is therefore respectfully prayed that while considering the above rejoinder the appeal may kindly be accepted.

Through

Appellant

Nasir Mehmood Advocate
Supreme Court of Pakistan
13-D Haroon Mansion Peshawar.

Affidavit

I do hereby declare and affirm on oath that the contents of above rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.

Attested Deponent

