

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

**Service Appeal No. 1324/2019**

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

Raqibaz S/O Amir Qabaz Khan, Warder, Central Jail Bannu, R/O Fariq Ismail Khani Post Office Ismail Khani Bannu. ....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Peshawar.
2. Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Circle Headquarters Prison, Peshawar.
4. Superintendent, Central Prison, Bannu. ....(Respondents)

Mr. Yasir Saleem,  
Advocate

... For appellant

Mr. Muhammad Jan,  
District Attorney

... For respondents

Date of Institution..... 26.09.2019

Date of Hearing..... 31.05.2024

Date of Decision..... 31.05.2024

**CONOLIDATED JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** Through this single judgment, we intend to dispose of instant service appeal as well as the following connected service appeals, as in all the appeals, common questions of law and facts are involved:-

1. Service Appeal No. 1226/2019, Muhammad Saqib,
2. Service Appeal No. 1325/2019, Aminullah,
3. Service Appeal No. 1326/2019, Gul Mir Dali,
4. Service Appeal No. 1327/2019, Muhammad Ibrar,
5. Service Appeal No. 1328/2019, Abid Ullah,



6. Service Appeal No. 1329/2019, Saved Khan,
7. Service Appeal No. 1330/2019, Hafiz Mir Hussain Shah,
8. Service Appeal No. 1367/2019, Asif Ali Shah,
9. Service Appeal No. 1368/2019, Mir Liaq and
10. Service Appeal No. 1554/2019, Muhammad Zahid,

Vs. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department Peshawar and others.

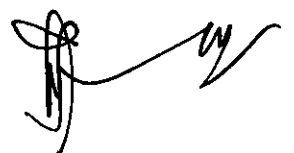
2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 11.04.2019, communicated to the appellant on 25.05.2019, whereby he was awarded major penalty of reduction to a lower stage in time scale for a maximum period of three years, against which his departmental appeal dated 28.05.2019 was not responded within the stipulated period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order dated 11.04.2019 might be set aside and pay of the appellant might be restored to his original position with all back benefits.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Warder in the Prison Department. He was performing his duties in Bannu Jail when in the mid night of 14/15 April, 2012, a huge number of militants attacked the jail with heavy weapons. The appellant, alongwith other jail officials, started firing at them, however the militants managed in helping the escape of certain condemned prisoners from the jail and also damaged some parts of the jail premises with their heavy weapons. The appellant also got wounded in cross firing. The Provincial



Government conducted a fact finding inquiry after which the appellant was served with a show cause notice containing the allegations that during the attack on Bannu Jail, he failed to fire and confront the militants effectively. The appellant duly replied the show cause notice and refuted the allegations leveled against him. Without conducting regular inquiry, he was awarded major penalty of dismissal from service vide order dated 12.12.2012, against which he filed departmental appeal which was rejected. The appellant filed Service Appeal No. 492/2013 before the Service Tribunal which was partially allowed vide judgment dated 01.09.2015, and the case of the appellant, alongwith other connected cases, was remanded back to the respondent department to conduct denovo inquiry and the issue of back benefits was subject to the outcome of that inquiry. The appellant was served with charge sheet and statement of allegations which were duly replied by him and he refuted the allegations leveled against him. An inquiry was conducted and the Inquiry Officer recommended the appellant for major penalty. The appellant was served with show cause notice dated 06.12.2017, which was duly replied by him, but without considering his reply, he was awarded major penalty of reduction to a lower stage in time scale for a maximum period of three years vide impugned order dated 11.04.2019, communicated to him on 25.05.2019. Feeling aggrieved, he filed departmental appeal dated 28.05.2019, which was not responded within the statutory period of ninety days; hence the instant service appeal.

4. Respondents were put on notice who submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the



learned 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 the appellant was not treated in accordance with law. He argued that the charges leveled against him were totally false and baseless and that he duly fired at the militants and confronted them as long as he could. Moreover, he was not provided with sufficient bullets and he also got wounded during cross firing. He argued that no proper procedure was followed before awarding major penalty to the appellant. Neither he was associated with the inquiry proceedings nor any witness was examined during the inquiry and thus the whole proceedings were nullity in the eyes of law. He argued that the appellant was not given proper opportunity to defend himself nor allowed any opportunity of personal hearing and was condemned unheard. He requested that the appeal might be accepted as prayed for.

6. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant showed cowardice during militants attack on Jail and as a result, a number of condemned/convicted prisoners, escaped from the Jail. He argued that in the light of order of the Tribunal, denovo enquiry was conducted and charge sheet and statement of allegations were served upon the appellant, and the allegations leveled against him were proved. He was given proper opportunity of hearing but he failed to prove his innocence. The learned District Attorney requested that the appeal might be dismissed.



7. Arguments and record presented before us show that all the appellants were on duty at the Bannu Central Prison, when on the night between 14-15 April 2012, a group of militants attacked the Prison and got 381 prisoners released, including high profile prisoners also. The departmental authorities conducted a fact finding inquiry and resultantly imposed penalties on them which were impugned before the Service Tribunal. The Tribunal vide its judgment dated 01.09.2015 remanded the case back to the respondent department to conduct denovo inquiry. The matter of back benefits was subject to the outcome of that inquiry. In pursuance of that order, denovo inquiry was conducted and penalty was imposed on the appellants as follows:-

*“Reduction to a lower stage in a time scale for a maximum period of three (03) years”*

In the present service appeals, the appellants have impugned the order of departmental authority issued after the denovo inquiry. There is no second opinion on the fact that Prison is a highly sensitive place and requires extremely carefully drafted rules and standard procedures. Keeping in view the charge sheet of every appellant, the learned District Attorney was asked to clarify certain points about Bannu Prison, being a Central Prison, where high profile prisoners were kept. He was asked that it must be having more than one layer or cordon of security and at every level/cordon, the deployment of officials must be according to the requirement and sensitivity of that layer or cordon and based on that what were the SOPs for every layer of security and what were the job description of every official deployed at each layer/cordon? He was further asked to clarify the weapons and ammunition provided to them



under the rules and SOPs. The learned District Attorney as well as the departmental representative confirmed that there were different layers/cordons of security but could not respond to other queries. They relied on the reply submitted by the respondents.


8. In their reply, the respondents themselves stated that the militants, who attacked the prison, were equipped with heavy weapons. Question here is, how did such a big number of militants, armed so heavily, reached the Central Prison? Another question is whether the staff deployed for security of prison, specially at the watch towers, were equipped to the extent where they could repel the attack which was made with heavy weapons? According to the inquiry report presented before us, it was not so. The Inquiry Officer took into consideration the type of weapon, which was AK 47 in almost all the cases, except for Abidullah who had 303 Rifle with 10 cartridges and Muhammad Zahid, who was the Deputy Superintendent-cum-Superintendent of Central Prison, Bannu. The amount of ammunition provided to all of them was extremely limited. He also took into consideration the power outage and darkness but concluded that the charges stood proved. One fails to understand that when it was dark, and the jail was attacked by militants having heavy weapons, how could the jail staff deployed for security with an ineffective weaponry, having limited ammunition, without any arrangement to see in the dark and without any communication system with the person in-charge of ammunition to get more from him, perform effectively and efficiently? In the absence of any effective security from outside, upto date weapons, and back up for electricity, how could the authorities expect from the appellants to perform



well in such a situation? It should be an eye opener for the competent authorities and the provincial government and they should review their existing systems and make them fool-proof against such attacks.

9. For what has been discussed above, impugned order in every appeal is set aside and all the appeals are allowed 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 31<sup>st</sup> day of May, 2024.*

  
(FAREEHA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member(J)


*\*FazleSubhan P.S\**

SA 1324/2019

31<sup>st</sup> May, 2024 01. Mr. Yasir Saleem Advocate for the appellant present.  
Mr. Muhammad Jan, District Attorney for the respondents  
present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages,  
impugned order is set aside and the appeal is allowed as prayed  
for. 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 31<sup>st</sup> day of May,  
2024.*

  
(FARNIHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*