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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION NO _____

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Gul NER DALI vs Prison Department

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10/07/24

Muharrir Compilation

10/7/24

Incharge Judicial Branch

commercial as well as government buildings are in its surroundings. That the price /compensation as awarded by the respondents is not only inadequate but rather injustice has been done to the petitioners hence, the compensation may be enhanced up to the tune coping with the prevailing price of the adjacent lands.



16. It may be noted that in support of their reference, the petitioners/landowners produced various mutations through PW-01 entered from 2006 to 2011, which carries price much higher than the one, which has been fixed by the respondents for the acquired land. The prime location of the acquired land is evident from the Aks Shajar Kishtwar ExPw-1/19. This witness had been subjected to a lengthy cross examination but nothing in derogation of the contention of the petitioners could have been brought to light and rather it has further been explained and proved that the acquired land has got high potential value for its situation and kind. PW-2 has also supported version of the petitioners. PW-3 Waheed Murad, who is owner of land situated opposite the acquired land contended that building of Technical College is under construction just opposite side of the road splitting the acquired land. Pw-04 is the Record Clerk District Collector Shangla, who produced the official record of the acquisition process. The petitioners succeeded to establish that the market value near and around the acquired land was

Farzina Shaid
10/12/20
Farzina Shaid
District Judge/Zilla Qazi
Shangla.

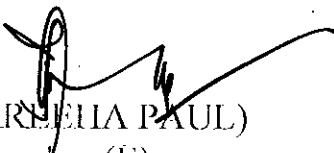
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SA 1326/2019

31st 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, in
connected Service Appeal No. 1324/2019, titled "Raqibaz
Versus Government of Khyber Pakhtunkhwa through Secretary
Home & Tribal Affairs Department, Peshawar and others",
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 31st day of May,
2024.*


(FAREEHA PAUL)
Member (F)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS

SCANNED
KPST
Peshawar


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SA 1326/2019

14.05.2024 01. Junior to counsel for the appellant present. Mr. Arshad Azam, Assistant A.G alongwith Ghulam Mustafa Law Officer for the respondents present.

02. Former requested for adjournment on the ground that learned senior counsel for the appellant was busy before the Hon'ble Peshawar High Court today. Absolute last opportunity is granted for arguments on payment of cost of Rs. 2000/-. In case of failure, no other opportunity will be granted and the case will be decided without the arguments. To come up for arguments on 27.05.2024 alongwith connected service appeal No. 1324/2019 before the D.B . PP given to the parties.

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K.A.S.T
Peshawar



(Fareeha Paul)
Member(E)


(Rashida Bano)
Member(J)

Fazle Subhan, P.S

27.05.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Ghulam Mustafa, Law Officer for the respondents present.


2. Miss Fareeha Paul, learned Member (Executive) is on leave, therefore, the case is adjourned. To come up for arguments on 31.05.2024 before D.B. P.P given to parties.



(Rashida Bano)
Member (J)

20.12.2023 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Suleman Khan, Law Officer for the respondents present.

2. Learned counsel for the appellant as well as representative of respondent are directed to produce job description of the appellant on the next date. Adjourned. To come up for arguments on 22.01.2024 before D.B. P.P given to the parties.

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(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)


KaleemUllah

22nd Jan. 2024 1. Junior to counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. File to come up alongwith connected Service Appeal No.1324/2019 titled "Raqibaz Vs. Government of Khyber Pakhtunkhwa" on 14.05.2024 before D.B. P.P given to the parties.

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Peshawar


(Salah Ud Din)
Member (J)


(Kalim Arshad Khan)
Chairman

Mutazem Shah

09th Oct. 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan. Assistant Advocate General for the respondents present.

2. Learned counsel for the appellant requested that the main Service Appeal No. 1226/2019 titled "Muhammad Saqib Versus Government of Khyber Pakhtunkhwa through Secretary Home, and Tribal Affairs Department" is fixed for arguments before D.B-I, therefore, the appeal in hand may also be fixed before the D.B-I. Parties are directed to appear before the D.B-I for today.

(Muhammad Akbar Khan)
Member (I)

(Rashida Bano),
Member (J)

09.10.2023

Learned counsel for the appellant present. Mr. Amir Hayat, Law Officer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant requested that connected nature appeals have been adjourned to 20.12.2023, therefore, the same may also be fixed on the said date. Adjourned. To come up for arguments on 20.12.2023 before the D.B. Parcha Peshi given to the parties.

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(Fareeha Paul)
Member (E)

(Salah-ud-Din)
Member (J)

5


25th May, 2023

1. Learned counsel for appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for respondents present.
2. This case is adjourned in view of order sheet dated 28.11.2022. To come up for arguments on 21.06.2023 before D.B. P.P given to the parties.

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Peshawar

Mutazem Shah


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman


21.06.2023

Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

Learned Member (Executive) Ms. Fareeha Paul is on leave, therefore, bench is incomplete. To come up for arguments on 09.10.2023 before the D.B. Parcha Peshi given to the parties.

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Peshawar

Naeem Amin


(Salah-ud-Din)
Member (J)

6

28th Nov. 2022

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl. Advocate General for the respondents present.

This case be fixed before a bench of which one of us
(learned Chairman) is not a member. To come up for arguments
on 01.02.2023 before the D.B.

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KPST
Peshawar



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

17th April, 2023 1. Learned counsel for the appellant present. Mr. Fazal
Shah, Addl: AG for the respondents present.

2. This matter was lastly fixed for 01.02.2022 but that
was not brought on the cause list nor placed before the
Tribunal on the said date. Alongwith this matter some
more than twenty other matters were also kept by the
office for which an explanation has already been called
for. It was directed on 14.04.2023 on a note placed before
me, regarding non-fixation of some more than twenty
cases that all these cases be fixed before me on
17.04.2023 with further direction to inform the parties and
learned counsel on telephone. Learned counsel for the
appellant seeks adjournment as he has not prepared the
case. Last chance is given to the appellant to argue the
case on the next date. To come up for arguments on
25.05.2023 before D.B. P.P given to the parties.

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Peshawar



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

13.09.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 02.11.2022 before the D.B.

(Mian Muhammad)
Member (Executive)

(Salah-Ud-Din)
Member (Judicial)

2nd Nov., 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. Last opportunity is granted. To come up for arguments on 28.11.2022 before the D.B.

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

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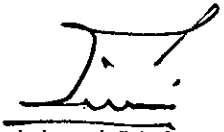
01.06.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Miss Lubna, Law Officer for the respondents present.

Representative of the respondents stated at the Bar that connected service appeal No. 1226/2019 titled "Muhammad Saqib Versus Government of Khyber through Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar and others" is fixed for arguments on 24.06.2022, therefore, the appeal in hand may also be fixed for the said date. Learned counsel for the appellant is having no objection on the adjournment. Adjourned. To come up for arguments on 24.06.2022 before D.B.



(Mian Muhammad)
Member (E)




(Salah-ud-Din)
Member (J)

24.06.2022

Appellant in person present. Mr. Atta Muhammad, Law Officer alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, Bannu Bench. Adjourned. To come up for arguments on 13.09.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

9

1-10-2021 Due to non Availability of the
Concerned DB The case is adjourned
to 8-2-2022

Render

8-2-2022

Due to Retirement of The honorable
Chairman The case is adjourned to
Come up for the same as before
1-6-2022

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29.03.2021

Appellant present through counsel.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Suleman Instructor for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 21/06/2021 before D.B.


(Atiq ur Rehman Wazir)
Member (E).



(Rozina Rehman)
Member (J)

21.06.2021

Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

File to come up alongwith connected appeal No.1324/2019 titled Raqibaz Vs. Prisons Department, on 03.08.2021 before D.B


(Rozina Rehman)
Member(J)



Chairman


03.08.2021

Counsel for the appellant present.

Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

File to come up alongwith connected appeal No.1324/2019 titled Raqibas Vs. Prisons Department, on 01.10.2021 before D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

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06.08.2020

Junior counsel for the appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Suleman, Senior Law Instructor for the respondents are also present.

Representative of the department submitted para-wise reply on behalf of respondents No. 1 to 4 which is placed on file. To come up for arguments on 26.10.2020 before D.B. The appellant may submit rejoinder within a fortnight, if so advised.

06.08.2020

(MUHAMMAD JAMAL KHAN)
MEMBER

26.10.2020

Junior to counsel for the appellant and Addl. AG alongwith Raqi Baz, Law Officer for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 24.12.2020 for hearing before the D.B.

(Atiq-ur-Rehman Wazir)
Member

Chairman

24.12.2020

Due to summer vacation, case is adjourned to 29.03.2021 for the same as before.

Reader

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25.02.2020

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Suleman Law Officer for the respondents present.

Representative of the respondent department seeks time to furnish written reply/comments on the next date of hearing. Adjourned. To come up for written reply/comments on 31.03.2020 before S.B.


(Hussain Shah)
Member

31.03.2020

Due to public holiday on account of COVID-19, the case is adjourned to 23.06.2020 for the same. To come up for the same as before S.B.


Reader

23.06.2020

Junior to counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Learned AAG requested for adjournment in order to submit written reply/comments. Last chance is given. To come up for written reply/comments on 06.08.2020 before S.B.


Member

26.11.2019

Counsel for the appellant present.

Contends that the allegations, as noted in the statements, were of a nature which required proper and confidence inspiring evidence for their proof. Such evidence was not resorted to by the respondents even in the de-novo proceedings against the appellant. Besides, the appellant was not extended ample opportunity to defend his cause.

In view of arguments of learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 20.01.2020 before S.B.

Appellant Deposited
Security & Process Fee
7/12/19

Chairman

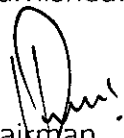


20.01.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG requests for time to contact the respondents and furnish reply/comments on the next date of hearing. Adjourned to 25.02.2020 on which date the requisite reply/comments shall positively be furnished.

Chairman




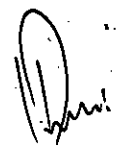
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Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1326/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/10/2019	<p>The appeal of Mr. Gul Mir Dali resubmitted today by Mr. Yasir Saleem Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/11/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

SCANNED
KPST
Peshawar


16

The appeal of Mr. Gul Mir Dali son of Taj Muhammad Warder attached to central Jail Bannu received today i.e. on 17.09.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal and wakalat nama may be got signed by the appellant.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Annexures of the appeal may be flagged.
- 4- Annexures of the appeal may be attested.
- 5- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 6- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.



No. 1590 /S.T.

Dt. 18-9- /2019.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yasir Saleem Adv. Pesh.

Sir,

Resubmitted with clear objection


9/10/19

(17) 5

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1326/2019

SCANNED
KPST
Peshawar

Gul Mir Dali S/O Taj Muhammad, Warder, attached to Central Jail Bannu, R/O Mawah Khel Ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil & District Bannu.

(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar and others.

(Respondents)

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4	Copies of the charge sheet	C	11-12
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6.	Copies of show cause notice and reply	F & G	17-19
7.	Copy of the Office Order dated 11.04.2019	H	20
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Gul Mir Dali
Appellant

Through

Yasir Saleem
YASIR SALEEM
Advocate, High Court

Jawad Ur Rehman
JAWAD UR REHMAN
Advocate Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1266

Dated 17-9-2019

Appeal No 1326/2019

Gul Mir Dali S/O Taj Muhammad, Warder, attached to Central Jail Bannu, R/O Mawah Khel Ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil & District Bannu.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Circle Headquarters, Prison Peshawar.
4. The Superintendent Central Prison, Bannu.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, read with Section 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, against the Order dated 11.04.2019, communicated to the appellant on 13.05.2019 whereby the appellant has been awarded the major penalty of "reduction to a lower stage in a time scale for a maximum period of three years" against which his Departmental Appeal dated 15.05.2019 (through post) conveyed to the Respondent on 17.05.2019 has not been responded within the stipulated period of ninety days.

Filed to-day

Registrar

17/9/19

Prayer in Appeal: -

Re-submitted to-day
and filed.

Registrar

On acceptance of this appeal the impugned order dated 11.04.2019, may please be set-aside and the pay of the appellant may please be restored to his original position with all back benefits.

Respectfully Submitted:

1. That the appellant was appointed as Warder in the Prison Department and was posted at the relevant time in Bannu Prison. Ever since his appointment the appellant was performing his duties as assigned to him with full devotion and there was no complaint whatsoever regarding his performance.
2. That the appellant while performing his duties in Bannu Jail, in the mid night of 14/15 April, 2012, a good number of militants (more

then 300) attacked the jail with heavy weapons, the appellant along with other jail officials started firing at them, however they out numbered the security staff of the jail and managed in helping the escape of certain condemned prisoners from the jail. They also damaged part of the jail premises with their heavy weaponry. The appellant also got wounded in cross firing.

3. That the Provincial Government conducted a fact finding inquiry, however it report was not made public.

4. That thereafter the appellant was served with Show Cause Notice containing the false and baseless allegations that during the attack on Bannu Jail, he failed to fire and confront militants effectively, the appellant duly replied the Show Cause Notice and refuted the allegations leveled against him.

5. That without conducting regular inquiry quite illegally the appellant was awarded the major penalty of Dismissal from Service vide general order dated 12.12.2012. (Copy of the Dismissal Order dated 12.12.2012 is attached as Annexure A).

6. That against the order dated 12.12.2012, the appellant filed his departmental appeal, however it was also rejected.

7. That the appellant also filed Service Appeal No. 493/2013 before this Honorable Tribunal which was partially allowed and the case of the appellant along-with other connected cases were remanded back to the Respondent department vide order and judgment dated 01.09.2015 to conduct de-novo inquiry and the issue of back benefits were subjected to the out come of the de-novo inquiry. (Copy of the Order and Judgment dated 01.09.2015 is attached as Annexure B)

8. That thereafter the appellant was served with charge sheet and statement of allegations which was duly replied by the appellant and refuted the allegations leveled against him, reply copy has not been retained by the appellant. (Copy of the charge sheets attached as Annexure C)

9. That a partial inquiry was also conducted wherein statement of the appellant was also recorded and after de-novo inquiry, the inquiry officer recommended the appellant for major penalty. (Copies of the statement of appellant and inquiry report are attached as Annexure D & E)

10. That the appellant was also served with show cause notice dated 06.12.2017 containing the same allegations to which the appellant duly replied vide his reply and again refuted the allegations

levelled against him. (Copies of show cause notice and reply are attached as Annexure F & G)

11. That without considering his reply, the appellant has been awarded the major penalty of reduction to a lower stage in a time scale for a maximum period of three years vide order dated 11.04.2019 communicated to the appellant on 13.05.2019. (Copy of the Office Order dated 11.04.2019 is attached as Annexure H)

12. That feeling aggrieved from the penalty order dated 11.04.2019, the appellant filled his departmental appeal dated 15.05.2019, conveyed to the respondent (through post) on 17.05.2019, however the same has not been responded within the statutory period of ninety days. (Copy of the departmental appeal dated 15.05.2019 along-with post receipt is attached as Annexure I)

13. That the impugned order is illegal unlawful against law and facts therefore, liable to be set aside inter alia on the following grounds:-

GROUND OF APPEAL:

A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.

B. That no proper procedure has been followed before awarding the major penalty to the appellant, neither the appellant has been associated with the inquiry proceedings nor any witness has been examined against him during the inquiry, thus the whole proceedings are nullity in the eye of law.

C. That the appellant has not been given proper opportunity to defend himself nor he has been allowed opportunity of personal hearing, thus he has been condemned unheard.

D. That during the inquiry proceedings no witness has been examined against the appellant or if so examined their statements have not been taken in the presence of appellant nor was he allowed the opportunity to cross examine them.

E. That the allegations that during the attack on Bannu Jail by the militants the appellant failed to fire and confront militants effectively is totally false and baseless, he duly fired at them and confronted as long as he could, however due to complete dark he could not fire at them pointedly, moreover, he was not provided with sufficient bullets, however whatever the quantity of bullets available that was utilized by him. Moreover the appellant also got wounded during cross firing.



Deponent

It is solemnly affirm and declare on oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

AFFIDAVIT

JAWAD UR REHMAN
Advocate Peshawar
JAWAD UR REHMAN

YASIR SALEEM
Advocate, High Court
Yasir Saleem

Through

Appellant

It is, therefore, humbly prayed that On acceptance of this appeal the impugned order dated 11.04.2019, may please be set-aside and the pay of the appellant may please be restored to his original position with all back benefits

H. That the appellant has a spotless service career, however, his unblemished service career has never been considered while awarding the penalty.

G. That the appellant has never committed any act or omission which could be termed as misconduct albeit he has illegally been awarded the major penalty.

F. That the charges leveled against the appellant were never proved during the inquiry proceedings the inquiry officer gave his findings on surmises and conjectures.

(Handwritten initials)



Registered

(22)

Annex-A

(5)

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR.
No. 4120 P.B/DI: 12/12/2012

OFFICE ORDER

In exercise of powers conferred under rule-14 of the E&D (Efficiency & Discipline) rule 2011, after reply to show-cause notice and affording the opportunity of personal hearing, the undersigned is pleased to award the major penalties to the below noted officials as mentioned against their names on account of their involvement/ gross misconduct in Central Prison Bannu incident:

S.#	NAME OF ACCUSED OFFICIAL	AWARDED PENALTY
1 ✓	Warder Mir Laiq Khan	Dismissed from Service
2 ✓	Warder Saved Khan	-do-
3	Warder Hafiz Mir Hassan Shah	-do-
4	Warder Abidullah	-do-
5	Warder Asif Ali Shah	-do-
6 ✓	Muhammad Ibrar No. 1	-do-
7	Warder Gul Mir Dali	-do-
8 ✓	Warder Ameenullah	-do-
9	Warder Saqib	-do-
10 ✓	Warder Naseeb Gul	Reduction to lowest stage in his present time pay scale
11	Warder Raqibaz Khan	-do-

[Signature]
SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR

Endorsement No: 4121-231

Copy of the above is forwarded to the:-

- 1- Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information with reference to his letter No. 31208-WE dated 12-12-2012 please.
 - 2- Superintendent Central Prison Bannu.
 - 3- District Accounts Officer Bannu.
- For information & further necessary action.

Lo/B/O/Hc
[Signature]

15/12/12

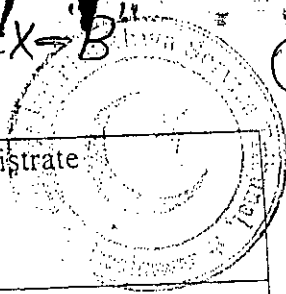
Attested

[Signature]
SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR
14/12/12

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Annex-B

6



Sr. No.	Date of order/proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	01.09.2015	<p><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</u></p> <p>Service Appeal No. 4842013</p> <p>Aminullah Versus Government of Khyber Pakhtunkhwa through Secretary Hom & T.A Deptt. Peshawar etc.</p> <p><u>JUDGMENT</u></p> <p><u>PIR BAKHSH SHAH, MEMBER.-</u> Counsel for the appellant (Mr. Ijaz Anwar, Advocate) and Government Pleader (Mr. Ziaullah) with Sheryar, ASJ for the respondents present.</p> <p>2. On the night between 14th and 15th April, 2012 at about 1.30 AM militants reached in about 25 vehicles of different types and attacked the Bannu Central Jail. The militants were armed with automatic weapons. They broke open the main outer and inner gates using RPG and fired at boundary wall watchtower. Having secured entrance, they attacked barracks, broke open locks by firing and asked 382 prisoners to flee and move towards the nearby ping hills in the Frontier Region area. In this incident, the Government of Khyber Pakhtunkhwa vide notification No.SO(Com/Eng)/HD/1-40/2012 dated 16.4.2012 constituted a five numbers enquiry committee headed by Dr. Ehsan-ul-Haq, then Director, Reform Management & Monitoring Unit, Chief Secretary's Office, Khyber Pakhtunkhwa. The committee submitted its elaborate report comprising of about 19 pages. To make the findings of this enquiry report as basis for departmental proceedings</p>

ATTESTED
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Attested

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against the appellants, the step of regular enquiry was dispensed with and the respective competent authorities straight-away issued show cause notices to the appellants. The appellants belong to various departments of the province. At the end of the day, the appellants were awarded punishment as follows:-

<u>S.No.</u>	<u>Appeal No.</u>	<u>Name</u>	<u>Designation</u>	<u>Department</u>	<u>Punishment</u>	<u>Date of Order</u>
1.	484/2013	Aminullah	Warder	Prisons	Dismissed	12.12.2012
2.	485/2013	Mir Liaq	Warder	"	"	"
3.	486/2013	M. Saqib	Warder	"	"	"
4.	487/2013	Raqibaz	Warder	"	Reduction	"
5.	488/2013	Saved Khan	Warder	"	Dismissed	"
6.	489/2013	M. Ibrar	Warder	"	"	"
7.	490/2013	Abid Ullah	Warder	"	"	"
8.	491/2013	Asif Ali Shah	Warder	"	"	"
9.	492/2013	Haliz Mir Hussan Shah	Warder	"	"	"
10.	493/2013	Gul Mir Dali	Warder	"	"	"
11.	587/2013	M. Zahid	Dy.Supt.	"	"	10.12.2012
12.	1261/2012	M. Ghulam	Section Officer	Establishment	"	5.11.2012
13.	1244/2012	Daftar Khan	A.P.A	"	Reduction	17.7.2012

3. The Departmental ^{appeals} also failed, hence these appeals. In view of common legal issues of these appeal, the Tribunal would like to decide all these appeals by way of this single judgment.

4. The learned counsel for the appellants contended that the appellants have been victimized, discriminated and made scape-goat for the reasons that the senior responsible officers like Commissioner etc. have been exonerated and the appellants at the lower rung of the ladder

ATTORNEY GENERAL

Attested

were punished. It was further submitted that the fact finding enquiry was general in nature and not specific against the appellants to find their faults, which never fixed responsibility on the appellants. However, the high ups of the departments concerned in order to save their faces, by adopting method of pick & choose targeting the appellants which is against the norms of justice, fair-play, equal treatment and treatment in accordance with law and rules. The learned counsel for the appellants further maintained that no opportunity of personal hearing was provided to the appellants and while confronting them with imposition of major penalty without any regular enquiry the appellants have been denied opportunity of defence and proper presentation. Lastly it was submitted that all the appeals may be accepted in the interest of justice and the appellants may be reinstated in service to their original position with back benefits.

5. The learned Government Pleader resisted these appeals on the ground that the competent authority was legally empowered to have dispensed with regular enquiry under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. It was next submitted that in the light of the fact finding enquiry, the competent authority was having sufficient materials in its hands which led to the decision to do away with the regular enquiry. It was finally submitted that all the appeals, being without merits, may be dismissed.

Attested

6. We have heard learned counsel for the appellants and learned Government Pleader for the respondents at length and have perused the record with their assistance.

7. Copy of the report of the enquiry committee was found in appeal No. 587/2013, titled "Muhammad Zahid Versus Government of Khyber Pakhtunkhwa and others" annexed by the respondents with its written comments/reply. Admittedly a short cut procedure of issuing show cause notice has been adopted against the appellants. The basis of departmental action against the appellants is the fact finding enquiry. We have gone through this enquiry report and unable to find that the enquiry committee had specifically fixed responsibility on the appellants. The enquiry committee while highlighting lapses on the part of various departments like Tribal Area Administration/FR Bannu, Police Department, Frontier Constabulary, Local Army Command, Civil Administration, Jail Administration, Frontier Reserve Police, Home & T.As Department, Inspector General of Prisons and Intelligence Agencies had put forth a number of recommendations. It is hardly to say that names of the appellants were specified to be responsible for the lapses and thus recommended for departmental action in this enquiry report. After a thorough perusal of the record, a big question mark that comes before the Tribunal would be that in the absence of regular enquiry against the appellants and other specific materials against them, how the alleged misconduct and inefficiency etc. of a particular appellant can be assessed? This observation of the Tribunal is relevant when we see that high and responsible officials of the appellants' departments have been let off and exonerated. This policy seems to be in conflict with findings and requirements of the enquiry report. Moreover, this pick & choose and discrimination on its face is also

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against Article 25 of the Constitution of the country. To skip over the procedure of regular departmental enquiry, the Tribunal is also of the considered view that adequate and proper opportunity of defence and representation has not been provided to the appellants.

8. In the light of the foregoing discussion, the procedure adopted and the penalties imposed against cannot be appreciated for which reason, the Tribunal is constrained to interfere in the case. Consequently, the impugned orders are set aside, the case is remanded back to the respective respondent/department to initiate fresh departmental proceedings against the appellants strictly in accordance with the law and rules. Needless to mention that adequate and meaningful opportunity of defence and personal hearing be provided to the appellants. The concerned appellants are reinstated into service for the purpose of fresh departmental proceedings. Back benefits etc. will be subject to outcome of fresh proceedings. All the aforementioned appeals are disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
01.09.2015.

Sd/- P. B. Bhatti Clerk,
Member
Sd/- M. S. Lal Member

Certified to be a true and correct copy
[Signature]

Attested

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12
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14
9-9-2015
A. O. ...

Date

(28)

Anex="C"

(11)

CHARGE SHEET

I, **Abid Saeed, Chief Secretary Khyber Pakhtunkhwa**, as competent authority, hereby charge you **Mr. Gul Mir Dali**, as follows :

That you, while posted as **warder at Central Prison Bannu** committed the following irregularities:

1. You were assigned the duties of Compound Sentry on the night between 14/15-4-2012 duly armed but you showed cowardice and failed to fire and confront militants effectively, with the result that there was no enemy loss and the militant took full advantage and succeeded in Bannu Jail break on the above night. Resultantly, 381 prisoners including high profile prisoners were got released, beside other damages.
2. By reason of the above, you appear to be guilty of inefficiency/misconduct under rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule-4 of the rules ibid.
3. You are, therefore required to submit your written defence within seven days of the receipt of this **Charge Sheet** to the Inquiry Officer, as the case may be.
4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person .
6. A statement of allegations is enclosed.

Attested

Abid Saeed
12/1/2017
(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA

(29)

~~SECRET~~

(12)

DISCIPLINARY ACTION

I, Abid Saeed, Chief Secretary Khyber Pakhtunkhwa, as the competent authority, am of the opinion that warder Gul Mir Dali presently attached to High Security Prison, Mardan has rendered himself liable to be proceeded against, as he committed the following acts/ omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants(Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

While attached to Central Prison Bannu, he was assigned the duties of Compound Sentry on the night between 14/15-4-2012 duly armed but he showed cowardice and failed to fire and confront militants effectively, with the result that there was no enemy loss and the militants took full advantage and succeeded in Bannu Jail break on the above night. Resultantly, 381 prisoners including high profile prisoners were got released, beside other damages.

2. For the purpose of inquiry against the said accused with reference to the above allegations, an Inquiry Officer/Inquiry Committee, consisting of the following is constituted under Rule-10(1)(a) of the ibid rules:-

- i. Mu. Tasleem Khan
- ii. _____

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to the punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Inquiry officer/Inquiry Committee.

[Signature]
Attested

[Signature]
12/11/2017
(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA

Annex - "B"

بیان گل محمدی خان وارڈ سائبر کمانڈ سنٹر کے عملے کے بارے میں

پروفیشنل کمانڈ میں 12 عملے سے تھیں۔ عملے خان 3 سے تھیں۔ عملے میں سے ایک
موجودہ ہے۔ عملے میں تھیں۔ واقعہ کی حالت میں ایک کمانڈ سنٹر
میں سے ملے ہوئے فہرستوں اور موجودگی اور عملے کی رازداری سے
میں سے ملے ہوئے

سوال۔ مورخہ 15/14 اپریل 2012ء کی درج ذیل شب 12 سے 3 بجے تک ایسا کیوں کیا گیا
تھی اور اسے مسلح بھیجے گئے رات سوائے ایک دھندے گروہ کی کڑے سے عملے کے جو اس وقت
نے اس وقت کا بہتر اور ناراضی ہونے کے ساتھ ساتھ اس کے استعمال کے دوران
دھندے گروہ کو عملے کے ذریعے ہتھیاروں کے استعمال کے ساتھ ساتھ
میں سے ایک کمانڈ سنٹر کے ساتھ ساتھ ایک کمانڈ سنٹر کے ساتھ ساتھ
تھیں اور اس کے ساتھ ساتھ ایک کمانڈ سنٹر کے ساتھ ساتھ
میں سے ایک کمانڈ سنٹر کے ساتھ ساتھ ایک کمانڈ سنٹر کے ساتھ ساتھ

پروٹوکول۔ مورخہ 15/14 اپریل 2012ء کی درج ذیل شب 12 سے 3 بجے تک ایسا کیوں کیا گیا
تھی اور اسے مسلح بھیجے گئے رات سوائے ایک دھندے گروہ کی کڑے سے عملے کے جو اس وقت
نے اس وقت کا بہتر اور ناراضی ہونے کے ساتھ ساتھ اس کے استعمال کے دوران
دھندے گروہ کو عملے کے ذریعے ہتھیاروں کے استعمال کے ساتھ ساتھ
میں سے ایک کمانڈ سنٹر کے ساتھ ساتھ ایک کمانڈ سنٹر کے ساتھ ساتھ
تھیں اور اس کے ساتھ ساتھ ایک کمانڈ سنٹر کے ساتھ ساتھ
میں سے ایک کمانڈ سنٹر کے ساتھ ساتھ ایک کمانڈ سنٹر کے ساتھ ساتھ

جواب۔
موجودہ

ACCEPTED

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جو عمارتیں اصلاح کروں۔ جو باغیچے میں سے کہ سب سے نفع مند ہے اور اس پر جان بچاؤ کی صورت
168 باغیچے - و درستی ہے چلتا ہوتا ہے اور اس کے گوشے میں جہاں کہیں سے اور کھدائی
ہو سکتا۔

سوال 1154 Prison Act کے تحت اس کے لئے ایک کمیٹی کا نام لیا جائے اور اس
کے تحت اس کے لئے ایک کمیٹی کو تشکیل دیا جائے اور اس کے لئے ایک
اور اس کے لئے ایک کمیٹی کو تشکیل دیا جائے اور اس کے لئے ایک
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اور اس کے لئے ایک کمیٹی کو تشکیل دیا جائے اور اس کے لئے ایک

جواب :- در درستی ہے اور اس کے لئے ایک کمیٹی کو تشکیل دیا جائے اور اس
کے لئے ایک کمیٹی کو تشکیل دیا جائے اور اس کے لئے ایک
اور اس کے لئے ایک کمیٹی کو تشکیل دیا جائے اور اس کے لئے ایک
اور اس کے لئے ایک کمیٹی کو تشکیل دیا جائے اور اس کے لئے ایک
اور اس کے لئے ایک کمیٹی کو تشکیل دیا جائے اور اس کے لئے ایک

DEPUTY COMMISSIONER
HARIKUR 25/2/17

گل محمد خان وارڈر کھانا و غذا منڈی
سابقہ منوبہ علیہ حال مردان

Attested

97X ①
16/17

DEPARTMENTAL / INQUIRY PROCEEDINGS AGAINST MR. GUL MIR DALI, THE THEN
WARDER, CENTRAL PRISON, BANNU PRESENTLY POSTED AT HIGH SECURITY JAIL,
MARDAN.

Background:

The Competent Authority i.e. Hon'able Chief Secretary, Khyber Pakhtunkhwa was pleased to appoint the undersigned as Inquiry Officer under Rule-10 (1) (a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, which was conveyed vide Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Peshawar order No. SO (Com/Enq)/HD/1-40/2012 dated 23.01.2017 with the mandate to inquire into the following allegations levelled against Mr. Gul Mir Dali, the then Warder, Central Prison, Bannu presently posted at High Security Jail, Mardan as reflected in Charge Sheet / Statement of Allegations:-

While attached to Central Prison, Bannu, he was assigned the duties of Compound Sentry on the night between 14/15-4-2012 duly armed but he showed cowardice and failed to fire and confront militants effectively, with the result that there was no enemy loss and the militants took full advantage and succeeded in Bannu Jail break on the above night. Resultantly, 381 prisoners including high profile prisoners were got released, beside other damages.

Proceedings:

In pursuance of the direction contained in Para-4 of the Charge Sheet, the accused Official in his defense vide No. 467/WE dated 03.02.2017 (Copy attached as Annexure-A). The accused Officer was also summoned to appear before the undersigned on 25.02.2017 at 09:30 AM for inquiry proceedings. Mr. Abdul Raziq, Assistant Superintendent, Central Prison Bannu also attended the proceedings as departmental representative as authorized by Superintendent, Central Prison Bannu vide letter No. 996 dated 24.02.2017 under the directive of the Inspector General of Prisons, Khyber Pakhtunkhwa. The accused Officer attended the office of the undersigned on 25.02.2017.

Statement of the accused Official recorded who stated on oath that he was serving in the Prisons Department for the last 12 years, posted at Bannu Jail since his appointment, on the night of occurrence his duty was compound Sentry from 12:00 to 03:00 AM having AK-47 Rifle with 30 Rounds while responding the questions asked as under (Original questions and answers are attached as Annexure-B):

Q.1: During the attack on 14/15 midnight April, 2012, he was deployed as Compound Sentry from 12:00 AM to 03:00 AM for duty with AK-47 and 30 cartridges but he showed cowardice as he did not fire on terrorists and even not tried to prevent them outside the Jail as a result the attackers took away 381 prisoners including high profile from the Jail. Due to his cowardice, the State writ could not be established? What is your stance about it?

Ans: It is correct that he was on duty from 12:00 to 03:00 AM as Compound Sentry duly armed with AK-47, with 30 cartridges. Since he was performing duty in the middle of residential colony, which was not attacked by the terrorists, therefore, he did not open fire. He was having no source of communication and could not contact with the seniors. He was having no torch and Bullet Proof Jacket. No light was available, there was complete darkness, the distance of Superintendent residence was about 5/6 quarters. He could not feel the need to inform seniors. He does not know when Superintendent came out of his residence.

Q.2: Did he perform his duty according to provisions contained in sub clauses (d) not to leave his post without regular relief upon any pretext whatsoever, (e) not to allow any person to approach his post after dark, without challenging, (g) challenging on a dark night, on hearing voices or the approach of footsteps, if he receives no answer, or an unsatisfactory answer, to call the officer incharge of the picket, or, if necessary, give the alarm, (i) not to allow any person to crowd around him, (j) if he sees a person attempting to escape, to call on him to stand, and if he

Attested

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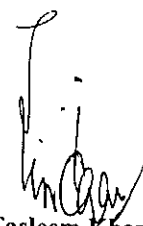
refuses to do so and there is no superior officer present, to fire on the prisoner, provided, he cannot otherwise prevent the escape, (k) if he is beyond call and has to raise the alarm, to fire a shot in the air as the signal for alarm and (l) if he sees any article in or near the jail likely to facilitate, escape, or if any unusual incident comes under his observation, at once report the matter to the officer incharge of the picket of Rule 1154 of Pakistan Prison Rules?

Ans: It is correct that he tried to establish contact with seniors but due to unprovoked firing, he could not do so. He did not initiate any firing as he was not in knowledge that they people take away the convicts.

Heard and accepted.

Findings / Recommendations:

1. Under the Pakistan Prison Rules, he was responsible to run the security affairs of the Central Prison, Bannu strictly in accordance with the laid down provisions but due to his cowardice approach, he failed to confront the militants.
2. His duty was to remain alert and to confront the attackers.
3. He could not defend the charge levelled against him as he was having no concrete evidence in support of his contention.
4. He was not having the required skill / expertise to perform this responsible duty.
5. He admitted that, he did not bother to inform any seniors or colleagues. It was too dark and he did not have any torch, bullet jacket etc. He also admitted that his duty was patrolling in nature right from Residential Colony to the Watch Tower No. 4, the wall joining the residence of Superintendent but he could not go to that point. He also did not fire as no one was coming towards him. It is a strange notion, the Jail was being attacked and he was waiting at his point sticking to cause (d) of Rule-1154. narrated in his written reply to the Show Cause Notice. Importantly, the official acted upon only clause (d) but ignored other clauses of the said rules e.g. Rule-1154 and 1147 (a) render all assistance in his power in the management of the prison, the maintenance of order and discipline amongst warders and prisoners, the guarding and defending of the prison and all persons and property kept therein or belonging thereto against the use of criminal force by any person, (b) obey the orders of all officers superior to him in rank, (c) comply with all rules, regulations and orders regulating the duties which he is to perform and the manner in which he is to perform them.
6. The charges levelled against the accused official Mr. Gul Mir Dali, the then Warder, Central Prison, Bannu presently posted at High Security Jail, Mardan have been proved beyond any shadow of a doubt. He therefore, deserves imposition of major penalty under Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules-2011.



(Tasleem Khan)
Deputy Commissioner,
Haripur/Inquiry Officer

Attested

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Annex="F"

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گل میر دلی

SHOW CAUSE NOTICE

I, Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Gul Mir Dali, Warder (BS-05), Central Prison Bannu, as follows:

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing by the Inquiry officer on 25.02.2017; and
- (ii) on going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer;-

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules.

(k) Inefficiency / misconduct.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Removal from service under rule 4 of the said rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of findings of the inquiry officer/inquiry committee is enclosed.

(Muhammad Azam Khan)
CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.

Attested

Annex="G"

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Subj: 13/19

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To,

CHIEF SECRETARY

Khyber Pakhtunkhwa

SUBJECT: REPLY TO SHOW CAUSE NOTICE.

Respected Sir,

With due respect, it is submitted that I have received show cause notice, dated 06/12/2017 accusing the undersigned of the following charges:

- I. That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing by the inquiry officer on 25/02/2017: and.
- II. On going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defense before the inquiry officer:-

Sir, I humbly want to bring the facts about the incident of Bannu Jail into your kind notice and would try to defend myself from the above-quoted charges, level against me, on the following ground;

1. That the inquiry conducted was totally partial as the undersigned was associated neither in the proceedings nor given the opportunity of cross examining any witness if produced against the undersigned. Moreover the issuance of the show cause of notice on the basis of preliminary inquiry and in form questioner and not holding proper inquiry is against the law and rules.
2. That the inquiry is not competent in the present form under the Pakhtunkhwa government servant (Efficiency and discipline) rules 2011, where under section 11 procedure was lay down as to record the statements of the witnesses and departmental representative in the presence of accused and vice versa, the so called inquiry conducted is defective in nature.
3. That the shoe cause notice issued by incompetent authority as the undersigned warder (BS05).
4. That on 15/05/2012 being warder as (Compound-sentry), I was present on my duty suddenly, at about 01:30 am, toward the Compound, I don't saw the attackers and no enemy, I was standing alert and round the compound time for time but no enemy com my on my side therefore I am not firing and stand alert.
5. That despite of the fact, the attackers were in large numbers and equipped with heavy arms and ammunition, i.e mortars, hand grenades and LMG etc. we shoed every possible resistance to the attackers and engaged them in cross-firing with our light weapons and tried our best to create a real

Attested

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(19)

deterrence for the attackers, in order to retreat them. Meanwhile, jail administration, immediately, informed the local police and army about the incident and requested them for immediate help, but unfortunately, they reached the spot too late i.e after passing of 1 ½ hours, at about 3:00 am. Till that time we have fired all the ammunitions available with us and were remained empty handed. Although we tried our best to confront the militants effectively according to our capabilities and we never turned our backs to the attackers till the end.

6. Sir at the time of attack and firing, the electricity supply of the central prison Bannu was completely off and no one can say that the attackers didn't get any injuries or loss, but I can confidently say that they must have suffered loss. Although, the attackers have got benefit of darkness, so they succeeded to take their wounded companions with themselves.
7. That, the statement of prisoners that we didn't show any resistance is totally false, frivolous, baseless and not true. No prisoner of any Jail would ever talk about anything good security personnel of Jail nor were such statement cross examined,

Sir, they are criminals and are showing their criminal intimidations against the Jail security staff.

Furthermore, I am ready to affirm on oath that are patriot Pakistanis and after getting the additional responsibilities of the Govt servants, we also became the defenders of the interests of Pakistan, so we would never turned our backs to the enemies of Pakistan. We have totally submitted our lives for the protection, benefit and services of Pakistan.

In the light of the all above, it is once again requested to kindly exonerate the undersigned from the above-quoted charges by filing the same and oblige, please.

Thinking for anticipations!

You'er obediently.

Gul Mir Dali,
Warder, Central Prison, Bannu.


Attested

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Aheex-H

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Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department.

ORDER

No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I: WHEREAS, Gul Mir Dahi Warder (BPS-05) of the Prisons Department, Khyber Pakhtunkhwa, was proceeded against under Rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet served upon him.

AND WHEREAS, the competent authority i.e the Chief Secretary, Khyber Pakhtunkhwa appointed Mr. Tasleem Khan (PMS-BS18) Deputy Commissioner Haripur vide order No.SO (Com/Enq)/HD/1-43/2012 dated 23.01.2017 for conducting denovo formal proceedings against the above named accused.

AND WHEREAS, the inquiry officer furnished his findings according to which the charges leveled against the above named accused official stand proved.

AND WHEREAS, the competent authority granted opportunity of personal hearing to the accused under the rules.

NOW THEREFORE, the competent authority (the Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, the explanation of the accused official, findings of the inquiry officer exercising his powers under rule-3 read with Rule-14 (5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to award major penalty of "Reduction to a lower stage in a time scale for a maximum period of three (03) years" to the above named accused official.

The Competent Authority has further been pleased to order that the intervening period i.e from the date of dismissal from service on the basis of an earlier enquiry to the date of reinstatement in service, (from 12-12-2012 to 20-01-2016) in respect of the official is hereby treated as extra ordinary leave (leave without pay).

Secretary to Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Endst No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I:

Dated 11.04.2019

- C.c.:-
1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
 2. Accountant General, Khyber Pakhtunkhwa, Peshawar
 3. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
 4. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
 5. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
 6. District Account Officer concerned.
 7. Official concerned.

[Handwritten signature]
Attested

(Maqsood Hassan)
Section Officer (P&R)

خدمت جناب عزت مآب وزیر اعلیٰ صاحب خیبر پختونخواہ پشاور

عنوان: نظر ثانی اپیل برخلاف فیصلہ صدرہ 2019 جسکی رو سے سائل پٹیشنر کی میجر پیلیٹی یعنی سروں سے تنزیلی برائے 3

سال دے گی (Lower Stage) نیز دوران برخاستگی تنخواہ و دیگر فوائد سے محروم رکھا گیا۔

پس منظر: یہ کہ وقوعہ کی رات (2012-4-14) اور (2012-4-15) کو میں سنٹرل جیل بنوں میں وارڈر (PBS-5) تعینات تھا اور اس رات میری ڈیوٹی رہائشی کالونی پر یعنی کپاونڈ پر تھی چونکہ کپاونڈ جیل کے ایک کونے میں واقعہ ہے اور اس سائڈ پر کسی قسم کی حملہ آور نہ آئے اور نہ میں نے اس پر فائرنگ کی مگر خطرہ تھا کہ کسی بھی وقت وہ کپاونڈ پر حملہ آور ہو سکتے ہیں اور میں بدستور اپنی ڈیوٹی پر پہلے سے زیادہ الرٹ تھا تا کہ اگر کوئی حملہ آور آئے اور میں ان کا مقابلہ کر سکوں۔ کہ اچانک باہر سے سینکڑوں عسکریت پسند طالبان، آتش اسلحہ، ہینڈ گرنیڈ بموں سے مسلح حملہ آور ہوئے۔ چونکہ رات کی تاریکی اور (بادوران لوڈ شیڈنگ) جیل پر حملہ آؤ ہوئے۔ اس حملے میں انہوں نے جدید ہتھیاروں / آتش اسلحہ، راکٹ لانچر سے شیلنگ کی، بم بلاسٹ کئے۔ جیل کے فرنٹ لائن بشمول (بیرونی گیٹ اور ڈیوڑھی گیٹ) جیل کے دونوں گیٹوں کو اڑانے کے بعد تیزی سے جیل میں اندر داخل ہوئے۔ اور ساتھ ساتھ افسران بالا نے تمام ضلعی انتظامیہ، پولیس اور دیگر سیکورٹی اداروں سے مدد طلب کی۔ جو کہ جیل سے کچھ فاصلے پر کیمپ ہوئے۔ بار بار کال کرنے کے باوجود کوئی ہماری مدد کیلئے پیش قدمی نہ کر سکا۔ اور بالا آخر بیرونی قوت اپنے مقاصد میں کامیاب ہو کر (02) گھنٹے کاروائی کے بعد واپس ہوئے، جیل کو نقصان پہنچایا۔ اور دہشت گرد قیدی عدنان رشید سمیت دیگر خولا تیان و قیدیان کو بطور ڈھال اپنے ساتھ لے گئے۔

مذکورہ واقعہ سے متعلق حقائق جاننے اور ذمہ داری کیلئے صوبائی حکومت نے ایک پانچ رکنی کمیٹی تشکیل دی اور ہدایت دی کہ جلد از جلد اس معاملے میں وہ اپنی انکوائری رپورٹ پیش کریں۔ لہذا تشکیل شدہ کمیٹی نے مطلوبہ رپورٹ تیار کر کے صوبائی حکومت کو پیش کی۔ جس میں انہوں نے حملے میں نقصانات، ذمہ داران سے متعلق اپنی رپورٹ پیش کی۔

مذکورہ رپورٹ میں کمیٹی نے ذمہ داری کا تعین کرتے ہوئے اور ایکٹ جیل خانہ جات کی رو سے جیل رول نمبر 610 کا مکمل متن و تشریح پیش کی اور واضح طور پر لکھا کہ جیل کونہ تو انداز سے توڑا گیا تھا۔ بلکہ جیل پر بیرونی قوم، عسکریت پسندوں نے باہر سے حملہ کیا تھا اور مذکورہ جیل رول نمبر 610 کے مطابق پولیس، قانون نافذ کرنے والوں کی ذمہ داری بنتی تھی یہ کہ وہ جیل سیکورٹی سے متعلق ضروری اقدام کرتے جس میں پولیس، قانون نافذ کرنے والے ادارے مکمل ناکام رہے۔ اس انکوائری رپورٹ کی روشنی میں پولیس، ضلعی انتظامیہ و دیگر اداروں اور جیل عملے کے خلاف کاروائی ہوگی، تاہم محکمہ کاروائی میں بالا آخر تمام پولیس ذمہ داران اور ضلعی انتظامیہ بشمول کمشنر بنوں ڈویژن نہ صرف بری ہوئے بلکہ انھیں ترقیاں بھی دی گئی۔ جبکہ سائل و دیگر چند جیل سپاہیوں کو (Fact Finding) انکوائری کی بنیاد پر ڈائریکٹ شوکانوٹس دیا گیا اور نوکری سے برخاست کیا گیا۔

سروں ٹریبونل میں اپیل کرنے پر سائل کی ڈسمیسل آڈر کو ختم کر کے بجا لیا گیا تاہم اسمیں از سر ریگولر انکوائری کا حکم صادر فرمادیا گیا۔ نقل فیصلہ سروں عدالت صدرہ 014 مسولہ -1 لف ہے۔

Attested

یہ کہ عدالتی فیصلہ کی روشنی میں انکوائری لی گئی جس میں سائل پنشنز کو چارج شیٹ دیا گیا۔ اس چارج شیٹ کا مفصل جواب سائل نے دیے۔ انکوائری آفیسر نے کسی جرم کو ثابت کئے بغیر سائل پنشنز کے خلاف (Major Penalty) کی سفارش متعلقہ حکام کو پیش کی جس کی روشنی میں سائل کو آخری شوکا ز نوٹس دیا گیا اور ساتھ ہی انکوائری کی کاپی بھی لف کی۔ یہ کہ مجاز اتھارٹی کو بہتر طریقے سے پوزیشن واضح کرنے کیلئے سائل نے (Annotated Form) میں جواب پیش کیا۔ اس ضمن میں چارج شیٹ اور شوکا ز نوٹس کا جواب علی الترتیب شامل بطور مسولہ 2, 3 ہیں۔ جو پنشن ہذا کا لازمی جواز کے طور پر لف ہے۔

یہ سائل پر کو الزام ثابت کئے بغیر ویسے ہی بڑی سزا یعنی (Major Penalty of reduction to lower stage for maxiamium the period of three Years.) دی گئی نیز عبوری عرصہ دوران ملازمت سے برخاستگی کے فوائد سے محروم رکھا گیا۔

حقائق:

- ۱۔ یہ کہ چارج شیٹ میں لگائے گئے تمام الزامات میں سے کوئی الزامات ثابت کئے بغیر سائل پنشنز کو میجر پینلٹی دی گئی جو کہ ظلم و نا انصافی کے زمرے میں آتی ہے۔
- ۲۔ یہ کہ ہائی لیول تشکیل شدہ پانچ رکنی کمیٹی کی رپورٹ کی روشنی میں اصل ذمہ داران، پولیس، ضلعی انتظامیہ کمشنر، بنوں ڈویژن و دیگر اعلیٰ حکام اور قانون نافذ کرنے والے اداروں کے ذمہ داران کو نہ صرف محکمانہ کارروائی میں بریت دی بلکہ انہیں ترقیان بھی دی گئی جبکہ سائل پنشنز کیساتھ بے گناہ ہونے کے باوجود نا انصافی کی گئی۔
- ۳۔ یہ کہ سائل پنشنز کو امتیازی سلوک کا نشانہ بنایا گیا۔
- ۴۔ یہ کہ سنٹرل جیل بنوں پر عسکریت پسندوں کے یلغار کے بعد بالکل اس طرح کا حملہ سنٹرل جیل ڈیرہ اسماعیل خان پر ہوا جس میں حملہ جیل عملہ بشمول سپرنٹنڈنٹ جیل بری کیا گیا۔

استدعا اپیل:-

ہذا پنشن ہذا التماس ہے کہ سائل پنشن منظور فرماتے ہوئے سائل کو بری فرمایا جائے اور ساتھ ہی جملہ سروس فوائد بدوران سروس برخاستگی دینے کا حکم صادر فرمائیں۔

العارض

سائل پنشن گل میردالی خان وارڈ سنٹرل جیل بنوں

Attested

No. 830

For Insurance Notices
Stamps affixed
uninsured
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgment is due.

RGL21551199

Received a registered*
addressed to _____

Initials of receiving Officer _____
*Write here "letter", "postage", "packet" or "parcel"
with the word "insured" before it when necessary

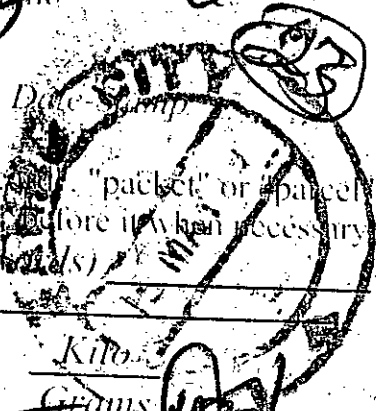
Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ Ps. _____
Weight _____ Kilo. _____
(in words) Grams _____

Name and address of sender _____

Attested

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POWER OF ATTORNEY

The Court of Service Tribunal Peshawar

Coul Mir Dadi

Plaintiff
Appellant
Petitioner

SCANNED
KPK
Peshawar

VERSUS

Govt of KPK

Defending
Respondent
Accused

Appeal/Revision/Suit/Application/Petition/Case No. 1326 of 2019
Fixed for

I/We, the undersigned, do hereby nominate and appoint

YASIR SALEEM,

Jawad Ur Rahman & Pirzada Muhammad Tayab Amin Advocates

AS my true and lawful attorney, for me in my name and on my behalf to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions, An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by merits

IN WITNESS whereof I/we have hereto signed at _____ the year _____
the _____ day to _____

Executant/Executants _____
Accepted subject to the terms regarding fee _____

JAWAD
Jawad Ur Rehman
& **PTA**
Pirzada Muhammad Tayab Amin

YASIR SALEEM
Advocate, High Court, Peshawar

ADVOCATES, LEGAL ADVISORS,
SERVICE & LABOUR LAW CONSULTANTS
4th Floor, Bilal Plaza, Saddar Road, Peshawar, Pakistan
Contact No: 03118925891 and yasir.saleem@advocates@gmail.com

42

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

In the matter of

Service Appeal No. 1326 of 2019

**Gul Mir Dali S/O Taj Muhammad, Warder attached Central Prison Bannu,
r/o Mawash Khel ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil and Distirct
Bannu.**

(APPELLANT)

VERSUS

1. Secretary to Government of Khyber Pakhtunkhwa, Home & T.As
Department Peshawar
2. Inspector General of Prison Khyber Pakhtunkhwa Peshawar.
3. Superintendent Circle Headquarters Prison Peshawar.
4. Superintendent, Central Prison Bannu..... **Respondent**

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2-	Affidavit	-	3
3-	Office Order No. 1483 dated 17-05-2012	A	4
4-	Office Order No. 4120 dated 12-12-2012	B	5
5-	Charge Sheet	C	6
6-	Disciplinary action	D	7
7-	Inquiry Proceedings	E	8-9
8-	Showcause Notice	F	10
9-	Order of the Competant Authority	G	11
10-	Office Order NO. 1082 dated 16-04-2012	H	12

DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of

Service Appeal No. 1326 of 2019

Gul Mir Dali S/O Taj Muhammad, Warder attached Central Prison Bannu, r/o
Mawash Khel ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil and Distirct Bannu.

VERSUS

1. Secretary to Government of Khyber Pakhtunkhwa, Home & T.As Department Peshawar
2. Inspector General of Prison Khyber Pakhtunkhwa Peshawar.
3. Superintendent Circle Headquarters Prison Peshawar.
4. Superintendent, Central Prison Bannu..... **Respondent**

PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 1 to 5.

Preliminary Objections

- i. That the appellant has got no cause of action.
- ii. That the appeal is incompetent and is not maintainable in its present form.
- iii. That the appellant has not come to this Honourable Court with clean hands.
- iv. That the appellant is estopped by his own conduct to bring the present appeal.
- v. That the appellant has no locus standi.
- vi. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

ON FACTS

ON FACTS

- 1- No Comments.
- 2- In response to para No. 2 of the appeal, the appellant at that unfortunate night showed cowardice and lethargic with regards to his duties, due to his lethargic conduct, a number of militants attacked on Jail who were equipped with heavy weapons and the result of such attack's a number of condemned / convicted prisoners were escaped from Jail. He was duty bound to show resistance and to fire confront to the militants attacker's but the same was not done which is a serious misconduct on the part of his duties. During such attacks a numbers of watch and ward staff were sustained serious injuries and his name was not

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included therein inspite of the fact that he was on duty in that night **(list of watch & ward staff who were on duty at that night are Annexed As-"A")**.

- 3- Pertains to record, hence needs no comments.
- 4- Incorrect and not admitted, the allegations which is levelled against the appellant was fully proved against him. He failed to perform his duties efficiently and showed cowardice and negligence to fire confrontly to the militants. He has been also served with proper show cause notice and charge sheet and he could not defend the allegations which is levelled against him. **(Show cause notice and charge sheet are Annexed "B")**
- 5- In response to para No. 5 of the appeal it is correct that he has been awarded major penalty of dismissal from service after thoroughly probe of the incident and proper inquiry. **(Inquiry Report is Annexed "C")**
- 6- Admitted & correct.
- 7- Admitted & correct.
- 8- Detail answer is given in para No. 4 of the factual objection.
- 9- In the light of de-novo inquiry by the order of honorable Tribunal proper opportunity of personal hearing was given to appellant. He failed to defend his own stance and awarded the major penalty as he was involved in such like heinous act of offence.
- 10- Detail answer is given in para No. 4 of the factual objection.
- 11- In response to para No. 11 full opportunity of defense was given to him and all proceedings which was initiated against him was according to law.
- 12- Pertains to record, hence needs no comments.
- 13- The punishment awarded to appellant is legal an was based o facts and circumstances of the case.

GROUND: -

- a. That the appellant fully treated according to Law and no discrimination was committed by the respondents.
- b. incorrect and not admitted all codal formalities are completely followed during the whole proceedings.
- c. Incorrect and not admitted detail answer is given in para No.9 of the factual objections..
- d. incorrect and not admitted. Answer of this para is given in para "B" of the objections on grounds.
- e. incorrect and not admitted. The assertions levelled by the appellant is totally baseless. He was duty bound to be vigilant while performing duties in such like high security prisons, but he was


ns


found indolent and negligent towards his duties and showed cowardice to fire actively and confrontly to the militants being equipped with heavy weapons. Due to his lethargic conduct the escape of numbers of Prisoners were possible so why could not he can be held responsible for the incident occurred at that night.


- f. incorrect and not admitted. Detail answer is given para No. 9 of the factual objections:
- G. incorrect and not admitted. Answer of this para is given in para No. "E" of objection on grounds.
- H. No Comments.


PRAYER

It is most humbly prayed that on the acceptance of this instant reply in the above service appeal on behalf of respondents the appeal may kindly be dismissed being devoid of law and merit.


SUPERINTENDENT
 CENTRAL PRISON BANNU
 (Respondents No.4)


SUPERINTENDENT
 HEADQUARTER PRISON PESHAWAR
 (Respondents No.3)


INSPECTOR GENERAL OF PRISONS
 KHYBER PAKHTUNKHWA PESHAWAR
 (Respondent No.2)


SECRETARY TO GOVERNMENT
 KHYBER PAKHTUNKHWA
 HOME & T.AS DEPARTMENT
 PESHAWAR.
 (Respondents No.1)

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BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 1326/2019

**Gul Mir Dali S/O Taj Muhammad, Warder, attached Central Prisons Bannu, r/o
Mawash Khel Ilaqa Soorani P.O Fazl-e-Haq Malwana Tehsil and District Bannu**
(Appellant)

VERSUS

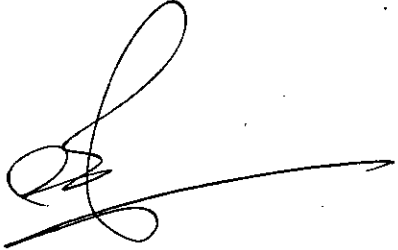
1. Govt: of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs
Department Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
3. Superintendent Circle Headquarters Prison Peshawar.
4. The Superintendent Central Prison Bannu.


(Respondents)


AFFIDAVIT

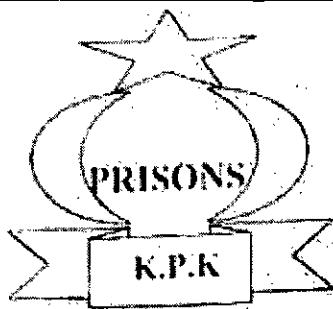
We the respondents do hereby solemnly affirm and declare that the contents of the
Parawise comments on the above cited appeal are true and correct to the best of our knowledge
and belief that no material facts have been kept secret from this honourable court.

**SECRETARY
HOME & TAS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No.01)**


**INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No.02)**


**SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON PESHAWAR
(Respondent No.03)**


**SUPERINTENDENT
CENTRAL PRISON BANNU
(Respondent No.04)**



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OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON BANNU
NO. 1483 /
DATED. 17/05/2012

Ametuo "A"

TELE/FAX: 0928-633327

To

The Inspector General of Prisons,
Khyber Pakhtun Khwa Province, Peshawar.

Subject:- INFORMATION.

Memo:

Reference telephonic talk of your goodself with the undersigned on 16-5-2012.

The following watch and ward staff duly equipped with arms were performing duties during the night of attack on Jail on 14-15/4/2012, as noted against their names as under:-

- | | | |
|-----|-------------------------------|------------------------------------|
| 1- | Warder Mir Laiq | Outer Phattak (from 12 to 3 night) |
| 2- | Warder Saved Khan | -do- |
| 3- | Warder Hafiz Mir Hussain Shah | Front Sentry |
| 4- | Warder Abid Ullah | Sentry Inside Main Gate |
| 5- | Warder Asif Ali Shah | Watch Tower # 1 |
| 6- | Warder Naseeb Gul | Watch Tower # 2 |
| 7- | Warder Raqibaz | Watch Tower # 3 |
| 8- | Warder Muhammad Ibrar No.1 | Watch Tower # 4 |
| 9- | Warder Muhammad Saqib | Sentry Superintendent Bungalow |
| 10- | Warder Gul Mir Dali | Compound Sentry |
| 11- | Warder Amin Ullah | Outer Round Officer |

This is submitted for information and further necessary action as desired please.

Handwritten notes and signatures:

727
594-595
PPR

R-722
Ward Towers
duty
1034

R-95
712
Champs

R-1153-53
R-1154-1155
PPR

728 HIT man

SUPERINTENDENT
CENTRAL PRISON BANNU



Registered

Annex-B

(5)

OFFICE ORDER

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR
No. 4120 P.B./Dl: 12/12/2012

In exercise of powers conferred under rule-14 of the E&D (Efficiency & Discipline) rule 2011, after reply to show-cause notice and affording the opportunity of personal hearing, the undersigned is pleased to award the major penalties to the below noted officials as mentioned against their names on account of their involvement/gross misconduct in Central Prison Bannu incident.

S.#	NAME OF ACCUSED OFFICIAL	AWARDED PENALTY
1 ✓	Warder Mir Laiq Khan	Dismissed from Service
2 ✓	Warder SAVED Khan	-do-
3	Warder Hafiz Mir Hassan Shah	-do-
4	Warder Abidullah	-do-
5	Warder Asif Ali Shah	-do-
6 ✓	Muhammad Ibrar No. 1	-do-
7	Warder Gul Mir Dali	-do-
8 ✓	Warder Ameenullah	-do-
9	Warder Saqib	-do-
10 ✓	Warder Naseeb Gul	-do-
11	Warder Raqibaz Khan	Reduction to lowest stage in his present time pay scale
		-do-

SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR

Endorsement No: 4121-213

- 1-
- 2-
- 3-

Copy of the above is forwarded to the Worthy Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar for information with reference to his letter No. 31208 WE dated 12-12-2012 please.
Superintendent Central Prison Bannu.
District Accounts Officer Bannu.
For information & further necessary action.

L0/B/O/Hc

15/12/12

Attested

SUPERINTENDENT
CIRCLE HQS. PRISON PESHAWAR

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CHARGE SHEET

I, Abid Saeed, Chief Secretary Khyber Pakhtunkhwa, as competent authority, hereby charge you Mr. Gul Mir Dali, as follows :

That you, while posted as warder at Central Prison Bannu committed the following irregularities:

You were assigned the duties of Compound Sentry on the night between 14/15-4-2012 duly armed but you showed cowardice and failed to fire and confront militants effectively, with the result that there was no enemy loss and the militant took full advantage and succeeded in Bannu Jail break on the above night. Resultantly, 381 prisoners including high profile prisoners were got released, beside other damages.

2. By reason of the above, you appear to be guilty of inefficiency/misconduct under rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule-4 of the rules ibid.

3. You are, therefore required to submit your written defence within seven days of the receipt of this Charge Sheet to the Inquiry Officer, as the case may be.

4. Your written defence, if any, should reach the Inquiry Officer within the specified period failing which, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

Ali Mirza

12/1/2017

(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA

Attested

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DISCIPLINARY ACTION

I, Abid Saeed, Chief Secretary Khyber Pakhtunkhwa, as the competent authority, am of the opinion that warder Gul Mir Dali presently attached to High Security Prison, Mardan has rendered himself liable to be proceeded against, as he committed the following acts/ omissions within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants(Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

While attached to Central Prison Bannu, he was assigned the duties of Compound Sentry on the night between 14/15-4-2012 duly armed but he showed cowardice and failed to fire and confront militants effectively, with the result that there was no enemy loss and the militants took full advantage and succeeded in Bannu Jail break on the above night. Resultantly, 381 prisoners including high profile prisoners were got released, beside other damages.

2. For the purpose of inquiry against the said accused with reference to the above allegations, an Inquiry Officer/Inquiry Committee, consisting of the following is constituted under Rule-10(1)(a) of the ibid rules:-

- i. Mr. Tasleem Khan
- ii. _____

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to the punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceeding on the date, time and place fixed by the Inquiry officer/Inquiry Committee.

[Signature]
Attested

[Signature]
12/1/2017
**(CHIEF SECRETARY)
KHYBER PAKHTUNKHWA**

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Annex = ~~B~~

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DEPARTMENTAL / INQUIRY PROCEEDINGS AGAINST MR. GUL MIR DALI, THE THEN WARDER, CENTRAL PRISON, BANNU PRESENTLY POSTED AT HIGH SECURITY JAIL, MARDAN.

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Background:

The Competent Authority i.e. Hon'able Chief Secretary, Khyber Pakhtunkhwa was pleased to appoint the undersigned as Inquiry Officer under Rule-10 (1) (a) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, which was conveyed vide Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Peshawar order No. SO (Com/Enq)/HD/1-40/2012 dated 23.01.2017 with the mandate to inquire into the following allegations levelled against Mr. Gul Mir Dali, the then Warder, Central Prison, Bannu presently posted at High Security Jail, Mardan as reflected in Charge Sheet / Statement of Allegations:-

While attached to Central Prison, Bannu, he was assigned the duties of Compound Sentry on the night between 14/15-4-2012 duly armed but he showed cowardice and failed to fire and confront militants effectively, with the result that there was no enemy loss and the militants took full advantage and succeeded in Bannu Jail break on the above night. Resultantly, 381 prisoners including high profile prisoners were got released, beside other damages.

Proceedings:

In pursuance of the direction contained in Para-4 of the Charge Sheet, the accused Official in his defense vide No. 467/WE dated 03.02.2017 (Copy attached as Annexure-A). The accused Officer was also summoned to appear before the undersigned on 25.02.2017 at 09:30 AM for inquiry proceedings. Mr. Abdul Raziq, Assistant Superintendent, Central Prison Bannu also attended the proceedings as departmental representative as authorized by Superintendent, Central Prison Bannu vide letter No. 996 dated 24.02.2017 under the directive of the Inspector General of Prisons, Khyber Pakhtunkhwa. The accused Officer attended the office of the undersigned on 25.02.2017.

Statement of the accused Official recorded who stated on oath that he was serving in the Prisons Department for the last 12 years, posted at Bannu Jail since his appointment, on the night of occurrence his duty was compound Sentry from 12:00 to 03:00 AM having AK-47 Rifle with 30 Rounds while responding the questions asked as under (Original questions and answers are attached as Annexure-B):

Q.1: During the attack on 14/15 midnight April, 2012, he was deployed as Compound Sentry from 12:00 AM to 03:00 AM for duty with AK-47 and 30 cartridges but he showed cowardice as he did not fire on terrorists and even not tried to prevent them outside the Jail as a result the attackers took away 381 prisoners including high profile from the Jail. Due to his cowardice, the State writ could not be established? What is your stance about it?

Ans: It is correct that he was on duty from 12:00 to 03:00 AM as Compound Sentry duly armed with AK-47 with 30 cartridges. Since he was performing duty in the middle of residential colony, which was not attacked by the terrorists, therefore, he did not open fire. He was having no source of communication and could not contact with the seniors. He was having no torch and Bullet Proof Jacket. No light was available, there was complete darkness, the distance of Superintendent residence was about 5/6 quarters. He could not feel the need to inform seniors. He does not know when Superintendent came out of his residence.

Q.2: Did he perform his duty according to provisions contained in sub clauses (d) not to leave his post without regular relief upon any pretext whatsoever, (e) not to allow any person to approach his post after dark, without challenging, (g) challenging on a dark night, on hearing voices or the approach of footsteps, if he receives no answer, or an unsatisfactory answer, to call the officer incharge of the picket, or, if necessary, give the alarm, (i) not to allow any person to crowd around him, (j) if he sees a person attempting to escape, to call on him to stand, and if he

Attested

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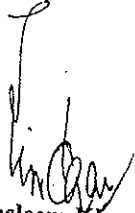
Q77 ② / 16
refuses to do so and there is no superior officer present, to fire on the prisoner, provided, he cannot otherwise prevent the escape, (k) if he is beyond call and has to raise the alarm, to fire a shot in the air as the signal for alarm and (l) if he sees any article in or near the jail likely to facilitate, escape, or if any unusual incident comes under his observation, at once report the matter to the officer incharge of the picket of Rule 1154 of Pakistan Prison Rules?

Ans: It is correct that he tried to establish contact with seniors but due to unprovoked firing, he could not do so. He did not initiate any firing as he was not in knowledge that they people take away the convicts.

Heard and accepted.

Findings / Recommendations:

1. Under the Pakistan Prison Rules, he was responsible to run the security affairs of the Central Prison, Bannu strictly in accordance with the laid down provisions but due to his cowardice approach, he failed to confront the militants.
2. His duty was to remain alert and to confront the attackers.
3. He could not defend the charge levelled against him as he was having no concrete evidence in support of his contention.
4. He was not having the required skill / expertise to perform this responsible duty.
5. He admitted that, he did not bother to inform any seniors or colleagues. It was too dark and he did not have any torch, bullet jacket etc. He also admitted that his duty was patrolling in nature right from Residential Colony to the Watch Tower No. 4, the wall joining the residence of Superintendent but he could not go to that point. He also did not fire as no one was coming towards him is a strange notion, the Jail was being attacked and he was waiting at his point sticking to cause (d) of Rule-1154 narrated in his written reply to the Show Cause Notice. Importantly, the official acted upon only clause (d) but ignored other clauses of the said rules, e.g. Rule-1154 and 1147 (a) render all assistance in his power in the management of the prison, the maintenance of order and discipline amongst warders and prisoners, the guarding and defending of the prison and all persons and property kept therein or belonging thereto against the use of criminal force by any person, (b) obey the orders of all officers superior to him in rank, (c) comply with all rules, regulations and orders regulating the duties which he is to perform and the manner in which he is to perform them.
6. The charges levelled against the accused official Mr. Gul Mir Dali, the then Warder, Central Prison, Bannu presently posted at High Security Jail, Mardan have been proved beyond any shadow of a doubt. He therefore, deserves imposition of major penalty under Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules-2011.


(Tasleem Khan)
Deputy Commissioner,
Haripur/Inquiry Officer

Attested

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گل میر دلی

SHOW CAUSE NOTICE

I, Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Gul Mir Dali, Warder (BS-05), Central Prison Bannu, as follows:

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing by the Inquiry officer on 25.02.2017; and
- (ii) on going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer;-

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules.

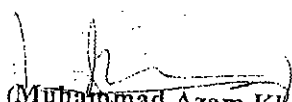
- (k) Inefficiency / misconduct.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Removal from service under rule 4 of the said rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of findings of the inquiry officer/inquiry committee is enclosed.


(Muhammad Azam Khan)
CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.


Attested

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Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department.

ORDER

No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I: WHEREAS, Gul Mir Dali Warden (BPS-95) of the Prisons Department, Khyber Pakhtunkhwa, was proceeded against under Rule 3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet served upon him.

AND WHEREAS, the competent authority i.e the Chief Secretary, Khyber Pakhtunkhwa appointed Mr. Tasleem Khan (PMS-BS18) Deputy Commissioner Haripur vide order No.SO (Com/Enq)/HD/1-4/2012 dated 23.01.2017 for conducting denovo formal proceedings against the above named accused.

AND WHEREAS, the inquiry officer furnished his findings according to which the charges leveled against the above named accused official stand proved.

AND WHEREAS, the competent authority granted opportunity of personal hearing to the accused under the rules.

NOW THEREFORE, the competent authority (the Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, the explanation of the accused official, findings of the inquiry officer exercising his powers under rule-3 read with Rule-14 (5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to award major penalty of "**Reduction to a lower stage in a time scale for a maximum period of three (03) years**" to the above named accused official.

The Competent Authority has further been pleased to order that the intervening period i.e from the date of dismissal from service on the basis of an earlier enquiry to the date of reinstatement in service, (from 12-12-2012 to 20-01-2016) in respect of the official is hereby treated as extra ordinary leave (leave without pay).

Secretary to Government of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department

Endst No. SO(P&R)/HD/8-4/Bannu Jail Break/2018/Vol-I Dated 11.04.2019

- C.c.:-
1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
 2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
 3. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
 4. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
 5. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
 6. District Account Officer concerned.
 7. Official concerned.

[Handwritten signature]
Attested

(Maqsood Hassan)
Section Officer (P&R)

FAX/TELE: 0928: 633327

OFFICE OF THE SUPERINTENDENT
CENTRAL PRISON BANNU

No. 1082 /Dated 16/04/2012

Amme

SS-
[Signature]

PRISONS DEPARTMENT
Inspector General
I.G.
Prison Officer

To,
The Inspector General of Prisons,
Khyber Pakhtun Khwa Province Peshawar,

Subject:- **INFORMATION ABOUT WATCH AND WARD STAFF.**

Memo:

It is submitted that in the night between 14-15/4/2012, some unknown Taliban militants number in hundreds attacked this Jail at about 01:15 A.M and during the said attack, following watch and ward staff attached to this Jail sustained serious physical injuries as they were on their allotted duties on different duty points :-

1. Warder Sajid Khan
2. Warder Dost Wali (admitted in D.H.Q Hospital Bannu)
3. Warder Haneef Ullah -do-
4. Warder Hameed Khan -do-
5. Warder Abid-Ullah
6. F/Warder Mst: Gul Noor Zadi

A constable of F.R.P is also included in the injured guarding staff & he is also admitted in D.H.Q Hospital Bannu.

Submitted for information please.

[Signature]
16/4/2012
SUPERINTENDENT
CENTRAL PRISON BANNU



24/04/2012