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**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

**(Special Bench for Hearing of Service Appeals of the
Members of Establishment of Lahore High Court)**

Service Appeal No.21 of 2022

Riaz Ahmad

Versus

Registrar, Lahore High Court, Lahore & another

JUDGMENT

Date of hearing:	21.03.2025.
Appellant by:	M/s. Muhammad Safdar Shaheen Pirzada, Nasir Mehmood Ch., Sania Tariq and Ahsan Saeed, Advocates.
Respondents by:	Mr. Zubda-tul-Hussain, Advocate (for respondents in S.A. No.21 of 2022). Mr. Zawar Ahmad Sheikh, Advocate (for respondent in S.A. No.24 of 2023).

MUHAMMAD SAJID MEHMOOD SETHI, J./CHAIRMAN:-

This consolidated judgment shall decide instant Service Appeal along with connected case i.e. **Service Appeal No.24 of 2023** as common questions of law and facts are involved in these cases.

2. Through the instant appeal, the appellant has assailed inquiry report dated 16.08.2022, submitted by respondent No.2 / Inquiry Officer, whereby minor penalty of withholding of 02 increments was proposed to be imposed upon him along with 03 other officers / official. Besides the appellant has also challenged notification dated 06.09.2022, issued by respondent No.1, whereby while agreeing with the recommendations of the Inquiry Officer, the aforesaid minor penalty of “withholding of two annual increments” was imposed upon the appellant along with others.

In brief, the allegation against the appellant (while being posted as Deputy Registrar (Procurement) and 03 other officers / official, namely Mian Ashfaq Ahmad, Additional Registrar (Procurement), Muhammad Razzaq, Assistant Registrar (Procurement) and Saeed Ahmad, Office Coordinator / Dealing Assistant (P-II) was that they did not discharge their duties efficiently qua Framework Contract for hiring services of private firm for preparing photocopies of judicial documents and clubbing the application of the firm for merger of photocopier machines. Regular inquiry proceedings were initiated against the appellant and others, whereafter, it was proposed that minor penalty of withholding of 02 increments be imposed upon them. Consequently, respondent No.1 while agreeing with the recommendations of the Inquiry Officer, imposed aforesaid minor penalty of “withholding of two annual increments” upon appellant along with others vide notification dated 06.09.2022. Hence, instant appeal.

3. Through connected appeal i.e. **Service Appeal No.24 of 2023**, appellant has called in question the validity of notification dated 28.08.2023, issued by the respondent, whereby appellant’s case for promotion was deferred on account of imposition of minor penalty of stoppage / withholding of two annual increments.

4. Learned counsel for appellant submits that no provision of law whatsoever, which has been alleged to be violated, finds mention in the charge sheet. He argues that it is also unclear from the statute or rules as to what was the mandatory or permissible period for the transaction involved in this case. He clarifies that the file in question remained in custody of one Ms. Shama Akhtar, Office Coordinator for 17 days and then with co-accused Muhammad Saeed, Office Coordinator for 04 days, which was then put up before the appellant on 10.12.2021, but the same was processed on the very next day without any delay or

procrastination. He maintains that appellant has been subjected to gross discrimination in the matter as one of the co-accused, namely Mian Ashfaq Ahmad, Additional Registrar (Procurement), against whom same set of charges has been leveled, was not awarded any penalty by the authority. In the end, he submits that impugned inquiry report as well as notifications are unsustainable in the eyes of law and appellant is entitled to be promoted from BS-20 to BS-21 along with all back benefits with retrospective effect.

5. On the other hand, learned Legal Advisor of respondents defends the impugned inquiry report as well as order by contending that impugned penalty order has been passed after following due process of law. He adds that the delay caused in the discharge of duties by the appellant has been explained with reference to dates.

6. Arguments heard. Available record perused.

7. Perusal of record shows that upon *prima facie* finding the appellant along with others guilty of service indiscipline, inefficiency and negligence, charge sheet containing same set of charges, was issued to the appellant along with Mian Ashfaq Ahmad, Additional Registrar (Procurement), Muhammad Razzaq, Assistant Registrar (Procurement) and Saeed Ahmad, Office Coordinator / Dealing Assistant (P-II), leading to initiation of regular inquiry.

8. In his reply to the charge sheet, the appellant categorically stated that, as Deputy Registrar, he was not responsible for initiating the process of the Framework Contract for hiring services for the preparation of judicial copies. He asserted that this duty fell upon the Dealing Assistant and the immediate supervisory officer of the Procurement Branch, i.e., the Assistant Registrar, who was responsible for managing the Branch's affairs in accordance with correspondence bearing Ends No. 1766 Gaz. 1/V.Z. Misc. dated 08.02.2000. The appellant

further contended that the file in question was placed before him on 13.12.2021, and he promptly forwarded it to the Additional Registrar (Procurement) without any undue delay. However, the respondent-authority failed to rebut the appellant's version of events. According to the legal principle *ei incumbit probatio qui dicit, non qui negat* (the burden of proof lies upon the one who asserts, not the one who denies), it was incumbent upon the respondent-authority to substantiate its claim that the appellant was guilty of dereliction of duty. The respondent's failure to counter the appellant's categorical assertion—that he promptly forwarded the file upon receipt on 13.12.2021 and that the responsibility for initiating the Framework Contract process lay with subordinate officials as per organizational directive No. 1766 Gaz. 1/V.Z. Misc. dated 08.02.2000—renders their case fundamentally unsustainable. This failure is not merely a procedural lapse but a substantive deficiency that undermines the very foundation of the disciplinary action.

9. Even otherwise, the allegations against the appellant were no more severe than those leveled against his colleague, Mian Ashfaq Ahmad, Additional Registrar (Procurement), for whom the Inquiry Officer had recommended the same penalty. However, while issuing the impugned order, Mian Ashfaq Ahmad's name was conspicuously omitted. No plausible explanation for this omission was offered either in the impugned order or during the proceedings before us. In accordance with Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973—which enshrines the fundamental right to equality before law and equal protection of law—persons similarly situated must be treated equally in legal and administrative proceedings. This constitutional guarantee prohibits arbitrary discrimination and demands consistency in the application of laws and rules. When two individuals face departmental inquiries on the basis of same set of allegations, disparate treatment becomes legally untenable.

Therefore, if one person is acquitted following a thorough investigation of certain allegations, it creates a compelling precedent that logically extends to others facing the same charges. To find one individual guilty while exonerating another on identical evidence would undermine the very fabric of administrative justice and violate the constitutional promise of equality. Such inconsistency not only contradicts established legal principles but also renders the proceedings vulnerable to judicial scrutiny for being discriminatory, capricious, and contrary to the spirit of Article 25 *ibid*, which serves as a bulwark against differential treatment of similarly circumstanced individuals. In Mehar Muhammad Nawaz v. Managing Director, Small Business Finance Corporation and 2 others (2009 SCMR 187), the Apex Court, while dealing with a similar case of departmental injustice and discrimination, highlighted the importance of equality and fairness in following words:

“Learned counsel for the appellant contended with justification that appellant has been discriminated and treated unfairly qua his successor Sadaqat Hussain, who was also dismissed from service vide order, dated 29-6-2000 on the basis of the same case, since he was Manager of respondent-Corporation, Multan branch, during the period when the loan in question was processed, sanctioned and disbursed. Nevertheless, Sadaqat Hussain's penalty was afterwards converted into compulsory retirement and the penalty of recovery was also set aside. Hassan Jamil and Khalid Masood, colleagues of the appellant, involved in the case were also treated in the like manner. There appears to be no marked difference between the case of the appellant and those of Hassan Jamil, Khalid Masood and Sadaqat Hussain. Needless to emphasize that while dealing with the case where the aggrieved party alleges discrimination, the Court cannot overlook the implication thereof. **Equal treatment of all similarly situated is the basic principle on which rests justice under the law. If evenhanded justice is not administered, it can have many adverse and negative effects on a society. It can cause discontentment and frustration in the social set-up. There can be no denial that social justice is an objective and enshrined in our Constitution**”.

(emphasis supplied)

Reliance in this regard can also be placed on *Engineer Naraindas and another v. Federation of Pakistan and others* (**2002 SCMR 82**), *Ejaz Akbar Kasi and others v. Ministry of Information and Broadcasting and others* (**PLD 2011 Supreme Court 22**), *Shafique Ahmad Chaudhry v. Chief Secretary, Government of the Punjab, Lahore and another* (**2012 PLC (C.S.) 68**), *Quetta Development Authority through Director General v. Abdul Basit and others* (**2021 SCMR 1313**), *Messrs Instaclear (Pvt.) Ltd. through Head, Karachi and another v. Malik Jumma Tariq and others* (**2024 PLC 292**) and *Mst. Sughra v. Governor of Punjab, through Deputy Secretary and 5 others* [**2024 PLC (C.S.) 796**].

10. The principles of fairness, non-discrimination, and equal treatment of similarly placed individuals are universally applicable as they form the foundation of justice and the rule of law. The Supreme Court of India in its landmark judgment reported as *E.P. Royappa v. State of Tamil Nadu* [**1974 SCR (2) 348**], extensively deliberated on the principles of equality, arbitrariness, and equal treatment of individuals in similar circumstances. The Court emphasized that equality and arbitrariness are fundamentally incompatible and reaffirmed that State actions must always be fair, consistent, and uniformly applicable to all similarly situated individuals:

"Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art.14, and if it affects any matter relating to public employment, it is also violative of Art.16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous

or irrelevant considerations because that would be denial of equality".

Similarly, in the case cited as *R (on the application of Gallaher Group Ltd and others) v. The Competition and Markets Authority [2018] UKSC 25*, the Supreme Court of United Kingdom held that the OFT (Office of Fair Trading) had a duty to treat all parties in the Tobacco investigation equally during negotiations in 2008 and since the OFT had explicitly promised equal treatment to these parties, it had created in them a legitimate expectation that they would be treated fairly.

11. Resultantly, this appeal is **allowed** and the impugned notification dated 06.09.2022 is held to be illegal and is hereby set aside. Consequently, the connected appeal i.e. **Service Appeal No.24 of 2023** is also **allowed** and impugned notification dated 28.08.2023, issued by the respondent, is also set aside.

(Muhammad Amjad Rafiq) (Muhammad Sajid Mehmood Sethi)
Judge Judge

APPROVED FOR REPORTING

Judge

Judge

Sultan/ A.H.S.