

Stereo. H C J D A-38.
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.09 of 2022

Faisal Rehman Raheem

Versus

The Competent Authority of Lahore High Court, Lahore

J U D G M E N T

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| Date of hearing: | 07.03.2025. |
| Appellant by: | Qazi Muhammad Arshad Bhatti, Advocate. |
| Respondent by: | Mr. Muhammad Momin Malik, Advocate. |

MUHAMMAD SAJID MEHMOOD SETHI, J./- Through instant appeal, appellant has assailed order dated 21.04.2022, passed by respondent, whereby minor penalty of ‘censure’ was imposed upon him.

2. The allegations against the appellant were that (i) he did not obey the order of Deputy Registrar (Writ) / Senior Supervisory Officer to work at the seat of IC-II, Writ-I, (ii) that he threatened the Senior Supervisory Officer of dire consequences in presence of all the officials of the Writ Branch; (iii) that even a clear direction of the Additional Registrar (Judicial) in this regard was also flouted; and (iv) that he availed special casual leave along with 56 casual/medical/earned leave during the year. A fact finding probe reached conclusions unfavorable to the appellant. Consequently, a charge sheet [containing aforementioned allegations No.(i) to (iii)] was issued to which the appellant furnished reply and a regular inquiry was conducted in the matter. The Inquiry Officer recommended the imposition of a minor penalty of ‘censure’ against the appellant. Consequently, the competent authority, vide order dated 21.04.2022, imposed minor penalty of ‘censure’ on the appellant. Hence, instant appeal.

3. Learned counsel for appellant submits that the complainant, Deputy Registrar (Writ), did not appear in the witness box to prove the allegation of extending threats of dire consequences to him and to justify the exigency involved to change the appellant's place of duty, and the appellant was also deprived of opportunity to cross-examine the complainant. He adds that no final show cause notice, pursuant to the findings of the Inquiry Officer, was served upon the appellant before passing the impugned order. He further submits that the charge of insubordination was not proved against the appellant inasmuch as no element of misconduct or inefficiency exists against the appellant. He argues that it has been proved during the course of inquiry that the complainant had intimidated, humiliated and extended threats of dire consequences to the appellant. He maintains that the inquiry proceedings have been conducted and impugned order has been passed in violation of principles of natural justice and applicable provisions of law / rules, hence, the same are unsustainable in the eye of law.

4. Contrarily, learned Legal Advisor of respondent defends the impugned order by contending that impugned penalty order has been passed after following due process of law with the aim to maintain discipline and decorum. He adds that the Courts are not obliged to interfere with disciplinary action of competent authority unless a clear violation of the law or *mala fide* intent is proved.

5. Arguments heard. Available record perused.

6. Perusal of record shows that a regular inquiry was conducted in the matter; however, the complainant did not appear in the witness box. Non-appearance of the complainant is not the only lacuna in this case, as where PW-1 denied witnessing any verbal clash between the appellant and the complainant, PW-3 further undermined the allegation against the appellant by claiming his absence on the day when alleged incident had taken place. The complaint is bereft of important details like the date and time when the appellant was verbally directed to join his new place of posting.

The evidence produced during the enquiry proceedings is also silent on these points. Admittedly, no written order was issued by the competent authority directing the appellant to work at the seat of IC-II Writ-I, which the appellant is alleged to have violated. Instead, there were only verbal instructions from the complainant to shuffle the staff. It has not been shown to us under what legal authority the complainant was authorized to issue such verbal instructions, the violation of which could lead to the initiation of disciplinary proceedings. Furthermore, the complainant's failure to testify left the exigency that necessitated the issuance of verbal orders regarding posting or transfer of the appellant unexplained. The other allegations against the appellant contained in the complaint have also remained unsubstantiated. Even if, it is believed that during the reported incident, the appellant had behaved angrily towards the complainant, it may not be appropriate to punish him for an isolated instance of harsh behavior, as such a conduct could stem from external stress, personal issues, or momentary frustration. Instead, a fair assessment requires considering his overall conduct and performance to ensure a balanced and just approach. The PW-1, during cross-examination, supported the overall conduct and performance of the appellant by stating that he had been working satisfactorily. The inquiry against the appellant was premised on the complaint by Deputy Registrar (Writ), wherein he accused the appellant of extending him threats of dire consequences. So, he was the star witness of the stated incident. But he, without any plausible justification, did not appear before the enquiry officer to substantiate the allegations that he had leveled against the appellant. Certainly, without corroboration from the complainant, the allegations made in the complaint cannot be proved.

Needless to say, given the provision of Article 129 (g) of Qanun-e-Shahadat, 1984, an adverse presumption shall be drawn against the prosecution/authority that had the complainant appeared in the witness box, he would not have supported its

stance. Reliance could be placed upon Sher Ayaz Khan Alias Sheraz Khana, through L.Rs. and others Vs Gul Nakeeb Khan (2025 SCMR 380), Ahmed Ali and another Vs. The State (2023 SCMR 781), Jahangir Vs. Mst Shams Sultan & Others (2022 SCMR 309), The State through P.G. Sindhand others vs. Ahmed Omar Sheikh and others (2021 SCMR 873), Muhammad Sarwar Vs Mumtaz Bibi and Others (2020 SCMR 276), Naveed Akram and others vs Muhammad Anwar (2019 SCMR 1095), Manzoor Hussain and others Vs The State (2016 SCMR 1426) and Muhammad Zubair Vs The State (2007 SCMR 437).

7. Even otherwise, the order of Deputy Registrar (Writ) / Senior Supervisory Officer to work at the seat of IC-II, Writ-I, was a verbal order which has no sanctity of law as written form of an order is the only medium that identifies the reason behind the order and it is the written order that undergoes accountability of judicial review. An order in writing is integral to good governance and the rule of law. A verbal order of a public functionary has no legal existence and does not constitute an order. Reference can be made to District Education Officer (M), Elementary, Bahawalnagar and others v. Hafiz Muhammad Alam (PLD 2000 Supreme Court 50) and Messrs Hudabiya Paper Mills Ltd. and others v. National Accountability Bureau (PLD 2012 Lahore 515).

8. In this case, no show cause notice was issued to the appellant before the imposition of the impugned penalty. The principle of *audi alteram partem*—which mandates that no one should be condemned unheard—remains a fundamental safeguard against arbitrary decisions, ensuring that individuals can present their case, respond to allegations, and contest evidence. In all proceedings, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting the person or property or other right(s) of the parties concerned. This rule applies even though there may be no positive words in the statute or legal document; whereby the power is vested to take such proceedings, for, in such cases this

requirement is to be implied into it as the minimum requirement of fairness. We do not think the mere absence of a provision as to notice can override the principle of natural justice that an order affecting the rights of a party cannot be passed without an opportunity of bearing to that party. An order passed without notice of the hearing against a party would be without jurisdiction and *coram non judice*. Reference can be made to Messrs Faridsons Ltd., Karachi and another v. Government of Pakistan through its Secretary, Ministry of Commerce, Karachi and others (PLD 1961 SC 537), Commissioner of Income Tax, East Pakistan v. Fazlur Rahman (PLD 1964 SC 410), The University of Dacca through its Vice-Chancellor and another v. Zakir Ahmed (PLD 1965 SC 90), Abdus Saboor Khan v. Karachi University and another (PLD 1966 SC 536), Christian Educational, Endowment Trust, Lahore v. Deputy Commissioner, Lahore and others (PLJ 1987 SC 473), Lilaram v. Ghulam Ali alias Essa through Legal Heirs and others (1991 SCMR 932), Makerwal Collieries Ltd. and 2 others v. Government of N.W.F.P. and 11 others (1993 SCMR 1140), Ghulam Mustafa Jatoi v. ADSJ Noushero Feroze and Others (1994 SCMR 1299), Rees and others v. CRANE (1994 SCMR 1682), Pakistan International Airlines Corporation and others v. Nasir Jamal Malik and others (2001 SCMR 934) and Hazara (HILL TRACT) Improvement Trust through Chairman and others v. Mst. Qaisra Elahi and others (2005 SCMR 678).

In the case reported as Pakistan and Others v. Public at large and others (PLD 1987 SC 304), the Shariat Appellate Bench of the Supreme Court declared a number of provisions of service laws repugnant to the injunctions of Islam in so far as they do not provide for due notice of the action proposed to be taken and opportunity of showing cause against such action. In a recent pronouncement reported as Justice Qazi Faez Isa and others v. President of Pakistan and others (PLD 2022 SC 119), the Apex Court observed as under:-

“29. This Court has time and again reiterated that even in absence of any express provision in the statute, the principle of audi alteram partem is to be read into the relevant provision and applies in proceedings where adverse action is being considered to be taken against a person or if the contemplated action is going to affect any of his vested rights. The violation of this principle vitiates the proceedings and makes the action taken therein to be illegal, as the violation of this principle is considered as a violation of law”.

9. The doctrine of natural justice at present finds constitutional recognition in Article 10-A of the Constitution of the Islamic Republic of Pakistan, which guarantees the right to a fair trial and due process. Of course, the right to fair trial and due process reinforces the necessity of providing the affected party with a meaningful opportunity of hearing before any adverse action is taken. The UK House of Lords, in *Ridge v. Baldwin* [1964] AC 40, reaffirmed this principle, stating that *"the body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case"* (Lord Reid). Since a fair hearing was not merely a procedural formality but a cornerstone of justice—promoting transparency, accountability, and public confidence in the legal system—the failure to issue notice to the appellant constitutes a significant procedural flaw. Consequently, the benefit of this lapse must be given to him.

10. In view of the above, instant appeal is allowed. Consequently, impugned order is set aside.

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

APPROVED FOR REPORTING

Judge

Judge