

**JUDGMENT SHEET
IN THE PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE
JUDICIAL DEPARTMENT**

Service Appeal No.01 of 2018

Akhtar Ali, Civil Judge Ist Class, Lahore

Versus

The Registrar, Lahore High Court, Lahore

JUDGMENT

Date of hearing: 08.11.2024.

Appellant by: Appellant in person.

Respondent by: Mr. Jawwad Tariq Nasim, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J./CHAIRMAN:-

Through instant appeal, appellant has assailed Notification dated 21.04.2017 and order dated 11.10.2017, passed by respondent, whereby in pursuance to disciplinary proceedings appellant was awarded minor penalties of withholding of one increment & withholding of promotion in next grade and post for a period of six months from due date and his review / representation was also declined.

2. Brief facts are that vide Charge Sheet dated 15.11.2016, appellant was confronted with the following charges:-

1. That you while being posted as Civil Judge, Class-II, at Jaranwala, District Faisalabad, committed following irregularities / illegalities:-

- (i) While dealing with execution petition under the title "*Inayat Ali and other versus Muhammad Iqbal*" you for the purpose of giving illegal monetary benefits to Inayat Ali and Muqqadas Rani, the execution petitioners, dismissed the petition u/s 151 CPC by Muhammad Zahid (brother of husband of present complainant) with the prayer that warrant of possession, not to be issued upon the request of Inayat Ali and Muqqadas Rani, as property No.1 consist upon shops, was decreed in his favour while wrongly considering the said petition by Muhammad Zahid to be the petitioner, filed by Muhammad Iqbal.
- (ii) While dealing with the above said execution petition, you issued warrant of possession upon the request of Inayat Ali

and Muqqadas Rani, for next date in execution petition 15.02.2014 and in warrant of possession, the description of property was mentioned, a house in *Khewat* No.1291, *Khatuni* No.1777, but inn warrant of possession in said execution petition, dated 28.03.2015, contrary to first warrant of possession, to benefit monetary, execution petitioners, wrongly mentioned the description of property, a house and shops without the strength of decree and pray in execution petition or any valid court order and the warrant of possession dated 28.03.2015 was partly enforced / complied with through Bailiff and occupant was partially dispossessed.

2. By reasons of the above you appear to be:

(a) inefficient within the meaning of rule 3(a) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 and/or

(b) guilty of misconduct within the meaning of rule 2(1)(c) and 3(b) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999

and as such, is of one or more of the penalties prescribed by rule 4 of the liable to disciplinary action under the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999, which may include imposition said rules."

Appellant filed reply to the charge sheet by denying the allegations. After recording of evidence, Inquiry Officer submitted its report recommending minor penalties of withholding one increment and withholding of promotion in next grade and post for a period of six months under sub-Rule (1) Part (a) of Rule 4 of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999. Inquiry Officer issued show cause notice along with copy of the report requiring explanation from appellant as to why recommended penalty may not be imposed against him. Appellant tendered reply, however the same was found unsatisfactory. Resultantly, aforesaid penalties were imposed vide Notification dated 21.04.2017. Feeling aggrieved, appellant filed review / departmental representation, which was also dismissed vide order dated 11.10.2017. Hence, this appeal.

3. Appellant in person, with permission of this Tribunal, submits that wrong exercise of jurisdiction by a Judicial Officer cannot always become basis for initiation of disciplinary proceedings, which even otherwise does not cast doubt on the integrity of a Judicial Officer. Further submits that no

extraneous consideration on the part of appellant has been established during inquiry proceedings. Argues that as per Rule 4(1)(a)(ii) of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999, promotion & increment could not have been withheld simultaneously. He has relied upon Sardar Muhammad Zaman Khan, Director of Military Lands and Contonments, G.H.Q. Rawalpindi and others v. M.B. Nishat and others (PLD 1962 Supreme Court 22), Mrs. Anisa Rehman v. P.I.A.C. and another (1994 SCMR 2232) and Muhammad Sharif and others v. MCB Bank Limited and others (2021 SCMR 1158).

4. Conversely, learned counsel for respondent submits that appellant, in para 3 of the appeal, has admitted the irregularities committed by him, which amounts to inefficiency and gross negligence. He adds that the charges leveled against appellant were proved through inquiry, which was finalized after affording full opportunity to appellant to lead his defence and principles of natural justice coupled with other legal & procedural formalities were also observed. He argues that Rule 4 of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999, does not prohibit to award more than one minor penalties and narrow interpretation of the said provisions construed by learned counsel for appellant is against the intent of the legislature.

5. Arguments heard. Available record perused.

6. Brief factual background of the case which formed basis for initiation of inquiry proceedings against appellant was that during pendency of Execution Petition titled *Anayat Ali etc. v. Muhammad Iqbal*, an application was moved by one Muhammad Zahid, praying cancellation of warrant of possession in respect of one house and restoration of possession of two shops, however the said application was dismissed by appellant. Resultantly, the decree was satisfied and execution petition was consigned to record. The said order was assailed before learned Appellate Court, whereby the matter was

remanded for decision afresh after recording evidence of the parties vide judgment dated 08.06.2015. In post-remand proceedings, successor of appellant (Mr. Muhammad Afzal Hanjra, Civil Judge Ist Class, Jaranwala) dismissed the aforesaid application vide order dated 31.10.2019 (as was done by appellant). However, it is not presented before us that the order dated 31.10.2019 was further assailed by the aggrieved party.

7. It is needless to observe here that Judicial Officers enjoy a degree of immunity for actions taken in the course of their official duties under the Judicial Officers Protection Act, 1850. However, this immunity is not absolute, particularly in cases involving acts of mala fide intention or gross negligence. A Judicial Officer, while hearing a case, is at liberty to decide the matter by applying the law to the facts based on the available record. A decision passed by any Judge may ultimately turn out to be incorrect and be set aside by a higher judicial forum. However, the erroneous exercise of judicial power, resulting in an order based on an incorrect application of the law, cannot and should not cast doubt on the integrity of the Judicial Officer. The quality of a judgment or order passed by a Judicial Officer can only be properly assessed in appellate judicial proceedings and, ordinarily, not through disciplinary proceedings, unless extraneous factors that influenced the judgment or order are proven with cogent material presented before the inquiry officer. The inquiry officer or hearing officer conducting disciplinary proceedings cannot act as an appellate or revisional forum over the judgments or orders passed by the Judicial Officer. The judicial independence of the subordinate judiciary must be respected and safeguarded at all costs. The inquiry officer or hearing officer must proceed with extreme caution in such matters, as any overreach would have a chilling effect on the functioning of the subordinate judiciary, impeding its ability to perform judicial functions freely and fairly. Reference can be made to Hasnain Raza and another v.

Lahore High Court, Lahore and others” (PLD 2022 Supreme Court 7), Ishwar Chand Jain v. High Court of Punjab & Haryana (AIR 1988 SC 1395) and K.P. Tiwari v. State of Madhya Pradesh (AIR 1994 SC 1031). The observation of the Hon’ble Supreme Court in the case of Hasnain Raza, supra are reproduced hereunder:-

“4. The District Judiciary is the backbone of our judicial system, and the judges of the District Judiciary perform the onerous task of dispensing justice at the frontline by dealing with a large number of cases in a difficult and demanding environment. The judges of the higher courts must appreciate the stressful and challenging conditions in which these judges perform. Our judicial system acknowledges the fallibility of the judges, and hence provides for appeals and revisions. Higher courts everyday come across orders of the lower courts which are not justified either in law or in fact and modify or set them aside; that is the function of an appellate court. It is often said that a judge who has not committed an error is yet to be born. This applies to all judges, no matter how high or low in rank they may be....”

In a judgment reported as Rao Abdul Jabbar Khan v. Registrar, Lahore High Court, Lahore [2016 PLC (C.S.) 281], this Court held that in the absence of any evidence it will not be fair to suggest that bail cancellation order passed by the Judicial Officer was based on malice and that malice cannot be presumed on the basis of surmises and conjectures.

8. In the present case, there is no supporting material to establish any extraneous considerations on the part of the appellant in passing the order that is the subject matter of the inquiry. The impugned order was passed on allegations of inefficiency and misconduct, but in our view, these allegations were not substantiated during the inquiry, especially considering the similar order passed by the appellant's successor, which has attained finality.

9. The next pivotal question is *whether minor penalties i.e. withholding of increment and withholding of promotion, provided in Rule 4(1)(a)(ii) of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999, could have been imposed against appellant simultaneously*. Rule 3 of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999 provides details

of the grounds for imposing penalty against a civil servant and states that *one or more of the penalties hereinafter mentioned may be imposed on him*. Rule 4 mentions the kinds of penalties, which reads as under:-

4. Penalties. (1) The following are the penalties namely –

(a) Minor Penalties:--

- (i) censure;
- (ii) withholding, for a specific period, promotion or increment, otherwise than for unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post;

(b) Major Penalties:--

- (i) reduction to a lower post or pay-scale or to a lower stage in a pay-scale;
- (ii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of orders;
- (iii) compulsory retirement;
- (iv) removal from service; and
- (v) dismissal from service.

From the combined reading of Rules 3 & 4 it is clear without any doubt that more than one penalties, mentioned supra, can be imposed against a civil servant. We are also fortified from a judgment of Hon'ble Apex Court reported as The Secretary to Government of the Punjab v. Shaukat Jameel (1990 SCMR 193), wherein the respondent was proceeded against the Punjab Civil Servants (Efficiency and Discipline) Rules, 1975 [*prevalent at that time and its Rules 3 & 4 were analogous to Rules 3 & 4 of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999*] and awarded two minor penalties of '**censure**' and '**stoppage of two increments without cumulative effect**' on account of his unauthorized absence from duty. However, the decision of the department was turned down by the Punjab Service Tribunal, Lahore, but the Hon'ble Apex Court restored the decision of awarding two minor penalties, referred supra. From Indian jurisdiction, we have also found Rule 8 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 to be alike to

Rule 3 of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999 to extent of permitting imposition of more than one penalty.¹

10. However, we are mindful of the fact that interpretation of the word ‘or’ is context sensitive and can fluctuate between a disjunctive and conjunctive meaning, depending on the legislative or legal context and intent. Generally, ‘or’ serves as a disjunctive term, offering alternatives such as ‘either one or the other but not both’. However, it can sometimes be construed as conjunctive (similar to ‘and’) to prevent absurd, unintended consequences in legal interpretation and where the disjunctive reading would disrupt legislative objectives. We are fortified from the dicta laid down by the Hon’ble superior Courts in Pakistan in a number of cases.²

In Messrs Pakistan Services Ltd., Karachi v. Commissioner of Income-Tax, Central Zone 'C' (COS-1), Karachi (1999 PTD 2901), the Singh High Court while interpreting the word ‘or’ appearing between the terms ‘bonus’ and ‘commission’ appearing in Explanation (i) to Section 24(i) of the Repealed Income Tax Ordinance, 1979, termed the same as disjunctive. In the case reported as Dr. Anjum Syed v. Federal Public Service Commission through Chairman, Islamabad and 3 others [2005 PLC (C.S.) 138], this Court held that ‘or’ used in various qualifications appearing in the advertisement for recruitment of various posts is disjunctive,

¹ 8. Nature of penalties.- One or more of the following penalties for good and sufficient reasons and as hereinafter provided, may be imposed on Government servants, namely.-

- (i) Fine in the case of Government servants belonging to State Civil Services, Group-D; 1. Omitted by Notification No. GAD 50 SSR 74 (GSR No. 265) dated 2-9-1975 w.e.f. 18-9- 1975.
- (ii) Censure;
- (iii) "Withholding of increments;
- (iii-a) Withholding of promotion"
- (iv)
- (iv-a)
- (v)
- (vi)
- (vii)

² Salehon and others v. The State (PLD 1969 Supreme Court 267), Khadim Hussain and another v. The Additional District Judge, Faisalabad and others (PLD 1990 Supreme Court 632), Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 Supreme Court 1054), Farooq Ahmad Khan Leghari and 37 others v. Sh. Muhammad Rashid, Chairman, Federal Land Commission and another (PLD 1981 Lahore 159), Ch. Zulfiqar ali v. Chairman, NAB and others (PLD 2003 Lahore 593) and Dr. Anjum Syed vs Federal Public Service Commission through Chairman, Islamabad and 3 others (2007 P L C (C.S.) 1035 Lahore).

meaning that each qualification would stand alone rather than requiring all criteria simultaneously. In case reported as *Commissioner Inland Revenue, Legal Zone, LTO, Multan Vs. Messrs Usman Trader Linkers, Multan (2023 PTD 679)*, this Court has observed as under:-

"8..... It is cardinal principle of interpretation that in legislative instruments / provisions, the word "or" is employed in the disjunctive sense (means it separates things) and word "and" in, conjunctive sense (means it combines things). Though in certain cases, the words "and" and "or" may be interchangeable, however course of action is only permissible in order to give effect to the clear and obvious intention of the legislature or to avoid s absurdity, unreasonableness or redundancy. It is also established that while construing a statute / legal provision, no part of same or word used therein shall be superfluous. Every word has to be taken into account and meaning is to be given to the same. The Courts always presume that every word and expression used by legislature has a purpose and intent. No provision of an enactment can be treated as redundant or surplus and has to be given its meaning and effect. It is well-settled that while interpreting taxing statutes, if there is any doubt or ambiguity in the language used in the statute which rendered same capable of several interpretations, then the interpretation favourable to the assessee is to be adopted."

The above interpretation is quite recognized by the Indian³ and British Courts.⁴

11. Having discussed the matter above, we are of the candid opinion that the word '**or**' appearing in Rule 4(1)(a)(ii) of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999, particularly regarding the penalties of **withholding an increment or promotion**, be termed as disjunctive. This means that only one minor penalty (either withholding of increment or withholding of promotion) should be awarded at a time, rather than combining both penalties. Needless to add that in Indian jurisdiction, The Central Civil Services (Classification, Control and Appeal) Rules, 1965,⁵ U.P. Government Servant (Discipline and Appeal) Rules, 1999,⁶ The Maharashtra Civil

³ Sukhnandan v. Suraj Bali (AIR 1951 All. 119), American Home Products Corp. v. Mac Laboratories (P) Ltd. (AIR 1986 SC 137), Kamal Kumar Agarwal v. Union of India (2004 (171) ELT301(CAL) and Durrani Abdullah Khan v. The State Of Maharashtra and Others (AIR 2017 BOMBAY 150).

⁴ Brown & Co v T & J Harrison (1927) All ER 195 at 203 and Royal Devon & Exeter NHS Foundation Trust v Atos IT Services UK Ltd [2017] EWCA Civ 2196.

⁵ See Rule 11, clauses (ii) & (iv).

⁶ See Rule 3, clauses (ii-withholding of increments for a specified period) & (iii- stoppage at an efficiency bar, however withholding of promotion is not provided).

Services (Discipline and Appeal) Rules, 1979⁷ and Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957,⁸ provide penalties of ‘withholding of increments’ and ‘withholding of promotion’ separately under different clauses.

12. For the foregoing reasons, the instant appeal is **allowed** and the orders imposing the minor penalties of withholding one increment and withholding promotion to the next grade and post for a period of six months from the due date, as well as the order dismissing the review/representation, are hereby set aside.

(Muhammad Sajid Mehmood Sethi)
Chairman

(Abid Husain Chattha)
Member

(Rasaal Hasan Syed)
Member

APPROVED FOR REPORTING

Chairman

Member

Member

Sultan

⁷ See Rule 5, clauses (ii) & (iv).

⁸ See Rule 8, sub-rule (iii) & (iii-a).