

JUDGMENT SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No. 1407 of 2022

Samra Gul

V/S

Chairperson TEVTA etc.

JUDGMENT

Date of hearing	25.05.2023
Petitioner by	Raja Saif-ur-Rehman, ASC. Mr. Muhammad Kamal Hassan, Advocate.
Respondent by	M/S Umair Shahid and Abdul Waheed, Legal Advisors. Syed Mudassar Nazir Naqvi, AAG.

JAWAD HASSAN, J. The Petitioner has filed this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “Constitution”) seeking setting aside of order dated 04.03.2021 whereby her dismissal from service was recommended and the Appeal filed there-against also met the same fate vide order dated 28.03.2022, passed by the respondent Authority. Petitioner has claimed that impugned orders have been passed in violation of the Punjab Employees Efficiency, Discipline and Accountability Act 2006 (“PEEDA Act”) and the law settled by the Apex Courts that no one can be vexed twice against one and the same charge.

2. Briefly stated facts of the case are that Ms. Samra Gul/the Petitioner being an Accounts Clerk (BS-11), GVTI(W), Chakwal along with her some other colleagues namely Ms. Shazia Fazal, Principal, Mr. Muhammad Rizwan, Assistant Manager (Finance) and Ms. Sumaira Shiraz, Instructor were charged with the following allegations:-

1. *Embezzlement of fund amounting Rs. 4,305,219/- from different bank accounts of GVTI (W) Chakwal during the period from 2017-2018 and 2018-2019;*

2. *Unauthorized/Unofficial withdrawal of funds from the bank;*
3. *Tempering of official record of GVTI (W), Chakwal;*
4. *Misplacement of official record, Cash Books, Vouchers, Registers and other Accounting Record;*
5. *Hiding and tempering the original Bank Statement and production of fake bank statement with fake signature of DDO and Co-Signatory and stamp of institute.*
6. *Issuance and receiving of cheque book (25 leaves serial No. 2004987341 to 2004987365) of GTTI Chakwal and encashment of cheque with fake signature.*
7. *Poor management of financial record of GVTI (W) Chakwal manual (Cash Books, Cheque Registers) as well as accounting software.*
8. *Non reconciliation of Cash Book and Bank.*
9. *Fake payments to the spouse and other relatives by Principal, GVTI (W) Chakwal (Husband, Sister-in-Law, Mother-in-law and others) in shape of salaries, stipend, on account of purchase of training material and others heads from the official bank accounts at GVTI (W) Chakwal and Dhudiyal.*
10. *Mis-Procurement by violating PPRA rules in purchase of training material and other items at GVTI(W) Chakwal and GTTC(F) Noorpur/GVTI(W) Dhudiyal.*

3. An inquiry under the PEEDA Act was initiated and conducted against the above-named officers on the charge of misconduct, financial misappropriation and inefficiency by the Inquiry Committee constituted under the orders of General Manager (Ops-II)/Competent Authority. Consequently, charge of financial misappropriation stood proved against the Petitioner and Ms. Shazia Fazal while that of misconduct and

inefficiency were proved against Ms. Sumaira Shiraz, Instructor, whereas Muhammad Rizwan, Assistant Manager (Finance) was declared innocent. The Inquiry Committee recommended that recovery of an amount of Rs.415,275/- be made from Ms. Shazia Fazal and five years of her past service be forfeited; recommended withholding of two increments for a period of two years and fine of one basic pay against Ms. Sumaira Shiraz; further the Petitioner was not only recommended to be removed from her service, but recovery of Rs.3,669,000/- was also recommended to be made from her, out of which she deposited an amount of Rs.1,80,000/-. Resultantly, show cause cum personal hearing notice dated 12.01.2021 was issued to all the accused officers, however, except Petitioner all the remaining three officials had appeared and were heard. Thereafter, petitioner was sent show cause notice dated 26.01.2021 and lastly final show cause notice dated 04.02.2021, but she did not appear. Vide order dated 04.03.2021, the General Manager (OPS-II)/the Competent Authority, after having gone through the record, modified the recommended imposition of penalties, wherein penalty of petitioner's dismissal from service was ordered. The Petitioner preferred an appeal challenging the aforementioned order dated 04.03.2021 and, for having its pending appeal decided, she filed Writ Petition No.3268 of 2021 as well. Later, in compliance of direction by the this Court, the Petitioner was afforded an opportunity of hearing and eventually her Appeal was disposed of vide order dated 28.03.2022 by the Senior Director General, TEVTA/Appellate Authority further directing District Director TEVTA Jhelum and Chakwal for initiating criminal proceedings against her for recovery of stolen amount of Rs.3,669,000/-. Hence this Petition.

4. It is contended by learned counsel for the Petitioner that the Petitioner was appointed as Accounts Clerk at Government Vocational Training Institute for Women (GVTIW) Chakwal on 20th of November, 2006 in BPS-5 and was subsequently

upgraded to BPS-11; that she along with three others were charged with allegation of embezzlement/misappropriation of money; that while probing into the matter, the Petitioner has been dismissed from service illegally and unlawfully under the orders of an incompetent authority i.e. General Manager (Operations) while this power was vested with the District Manager being appointing authority of the Petitioner; that Petitioner filed Writ Petitions No.571 of 2021 and 573 of 2021 for having complete record qua proceedings/inquiries conducted against her as well as challenging the show cause notice issued to her but, despite her hectic efforts and issuance of direction by this Court vide order dated 15.02.2021, the respondents did not provide her the demanded record rather she was intimated by sending an E-mail to visit respondents' office and peruse the record; that without providing the entire record to the Petitioner, she was dismissed from service; that not only the relevant record was not provided to the Petitioner, but regular inquiry was not conducted against her as well no opportunity of cross-examination was afforded to her, yet she was illegally dismissed from service; that first inquiry was constituted under Section 9 of the Punjab Employees Efficiency Discipline and Accountability Act, 2006 (PEEDA Act) against the charges that she deliberately misplaced, hide and tampered with official record; unauthorizedly withdraw money from the bank with fake signatures, thus not only caused financial loss but also damaged the worth and fame of the department; that on conducting first inquiry against the Petitioner no charge of embezzlement was proved except commission of certain irregularity, therefore, the Inquiry Committee rightly held that no penalty can be imposed upon her under the PEEA Act, 2006; that Sections 10(6) and 13(3) of the Act have been violated and in the first inquiry corruption charges could not be proved against the Petitioner, therefore, she should have been absolved from the charges and should have been exonerated, instead; a second inquiry was initiated against her including

three others (who were also held responsible for commission of alleged fraud in the first inquiry report) vide order dated 24.02.2020 by adding fresh charges; that second inquiry on the same charges was initiated against the Petitioner which is against the norms settled by the apex Court placing reliance on **JAN MUHAMMAD Versus THE GENERAL MANAGER, KARACHI TELECOMMUNICATION REGION, KARACHI and another (1993 SCMR 1440)**; that the appellate authority had no power to enhance the punishment in any manner and order dated 28.03.2022 is liable to be set aside and in this regard the learned counsel has leaned upon **SECRETARY, GOVERNMENT OF PUNJAB (C & W) Versus IKRAMULLAH and 5 others (2013 SCMR 572)**, gist whereof is that where a competent authority proposed to enhance the penalty, it had to give reasons germane to the charges levelled and the evidence collected during inquiry and that too with reference to the liability of each of the officials who were inquired into; that full-fledged inquiry proceedings had concluded with the observations that “inquiry committee” cannot impose penalty under Section 10(6) of the Act and it nowhere mentioned that de novo inquiry is required to be conducted against the Petitioner; that allegations against the Petitioner of her having put fake signatures on the cheques and that she might have used the withdrawn amount is totally based on presumptions of the respondent-authority; that at the initial stage of inquiry, exerting undue pressure upon her, five signed cheques of different amounts were obtained from her by the respondent authority despite the fact that she was charged against the amount of Rs.3,669,000/-. Lastly, petitioner’s learned counsel prayed for setting aside of orders dated 04.03.2021 and 28.03.2022.

5. Respondents No. 1 to 3 submitted Report and Parawise comments on behalf of the TEVTA while Respondent No.4 on behalf of Anti-corruption office Chakwal.

6. It is argued and narrated in the Parawise comments that against the aforementioned ten allegations, the inquiry proceedings were initiated against the Petitioner and three accomplices and following penalties were imposed against each mentioned below:-

(1)	<i>Ms. Shazia Fazil Mihas, Principal, GVTIW</i>	<i>Recovery of an amount of Rs.415,275 and forfeiture of past service for period of five years.</i>
(2)	<i>Mr. Muhammad Ramzan, Assistant Manager Finance/DDO Chakwal</i>	<i>Exonerated</i>
(3)	<i>Ms. Sumaira Shiraz, Instructor, Co-signatory, GVTIW.</i>	<i>Withholding of two increments for a period of two years and a fine of one basic pay</i>
(4)	<i>Mr. Samra Gull, Accounts Clerk, GVTIW</i>	<i>Removal from service; Recovery of an amount of Rs.3,669,000/- out of which she deposited an amount of Rs.1,80,000/- in lieu of recovery.</i>

Contentions of respondents are that the Petitioner filed departmental appeal before the Senior Director General/the Appellate Authority and thereafter filed Writ Petition No.3268 of 2021, which was disposed of with a direction to Respondent No.3 to decide appeal of the Petitioner who, after giving personal hearing to the Petitioner, dismissed her appeal vide order dated 28.03.2022. The inquiry committee submitted report holding that the Petitioner is responsible for the loss to Government Exchequer. This report was probed into by the DG (Ops-II) and he submitted his report on 03.12.2019, thereupon; vide order dated 24.02.2020, a regular inquiry was conducted against the said accused officers and they were imposed the penalties, as mentioned above.

7. Heard. Record perused.

8. As this Petition has been filed by the Petitioner though in the scenario there are three others said to be her accomplices at this juncture, yet this Court would like to confine itself to the Writ Petitioner. Main grievance of the Petitioner is that she had not been provided with the necessary relevant record enabling her to rebut the false allegations and the role attributed to her

regarding alleged embezzlement; that no charge of embezzlement was proved against her except the irregularity; that once an inquiry conducted had been completed, then second inquiry initiated against her on the same charges was not warranted by law; that the Appellate Authority had not been vested with powers to enhance the penalty after it's having been imposed once and the second inquiry could not have been conducted.

9. Perusal of the record reveals that, following the events of constitution of Fact-Finding Committee by the order dated 04.04.2019 of the Principal, Government Vocational Training Institute (W), Chakwal as well as constitution of Probe Committee by the orders of District Manager, TEVTA, Jhelum/Chakwal to probe the matter, District Manager TEVTA, Jhelum and Chakwal with his order dated 20.08.2019 constituted an Inquiry Committee to probe into the matter. Petitioner submitted her written defence on 18.09.2019. The Inquiry Committee visited the GVTI (W) Chakwal and, after having minutely examining Accounts record, bank statements and vouchers pertaining to the year 2017 to 2019, issued a notice dated 14.10.2019 to the Petitioner for her appearance before the Inquiry Committee. During her hearing proceedings, on 22.10.2019 to 26.10.2019, she got her oral and written statement recorded and signed, but stated that the same had been obtained from her under coercion/pressure of the Respondents. However, question qua affixing fake signatures of the DDO on vouchers, she admitted that some of the vouchers though had her signatures but she denied having prepared them. The stance of the Petitioner that she had not been shown and provided with the record entirely stands negated in outcome of her above participation in inquiry proceedings.

10. One of the stances of the Petitioner is that none of charges leveled against her has been proved except the

irregularity and thus major penalty could not be imposed on her in view of Section 10(6) of the Act especially in view of the observations made by the Inquiry Committee on 15.11.2019, that as three others mentioned above i.e. Co-signatory and signing authorities of vouchers and cheques were involved in this alleged commission of crime, therefore, a regular inquiry should have been conducted. It is also notable that while appearing before the Inquiry Committee she stated that such confession was made by her under pressure and coercion. But the fact remains that, despite a number of times she was summoned by the respondents for submission of her defence and stance, on one or the other pretext she did not join the proceedings, so her dismissal order was passed.

11. The conclusion of aforementioned inquiry report dated 15.11.2019 submitted by the Inquiry Committee before the competent authority reads as follows:

“(1). On the basis of available record and documentary evidence, Mrs. Samra Gul, Accounts Clerk, Govt. Vocational Training Institute (W), Chakwal is responsible for the loss of Govt. Exchequer, which took place due to her negligence, carelessness, deviation of duly prescribed, non compliance of prescribed rules, regulations, system and procedure. But her share to the loss can only be bifurcated after holding an independent inquiry against other concerned officials i.e. DDO, Co-signatory & Assistant Manager (Finance) District Manager Office, Jhelum& Chakwal because in our opinion, they are equally responsible as their negligence, carelessness and deviation from their basic/principal responsibilities which caused heavy financial loss to Govt. Exchequer. Being competent authority at the concerned/relevant position even they failed to take up/claim the loss from the concerned bank rather the kept mum over the issue with lethargic/irresponsible attitude. Moreover, no body inclusive Mst. Samra Gul, Accounts Clerk (GVTI(W), Chakwal did not play the role of whistle blower.

(2). Bank Higher Authorities of BOP be approached with regards to fake signatures through TEVTA Higher Authorities.”

12. Script of the above reproduced conclusion may easily be split in the following heads:

(i). *Petitioner was allegedly found responsible for loss of Government Exchequer occurring due to her negligence, carelessness, non-compliance of rules and regulations,*

(ii). *Imposition of major penalty against sole Petitioner under Section 10 (6) of the Act was not recommended, rather Petitioner's share to the loss was found bifurcate-able only after holding of an independent inquiry against other concerned officials i.e. DDO, Co-Signatory & Assistant Manager (Finance), as they were alleged to be equally responsible for financial loss/embezzlement.*

13. Afterwards, General Manager (Operations-II)/Competent Authority passed order dated 24.02.2020 directing initiation of disciplinary proceedings/joint inquiry against petitioner and three other officials/officers, which inquiry was conducted and report thereof was submitted, on the basis whereof, impugned order dated 04.03.2021 was passed by Competent Authority. Significantly enough, said order dated 04.03.2021 transpires that:

(i). *One of the other accused official Ms. Shazia Fazil had admitted the amounts had been transferred from Institute Account to her family members as well as she admitted that she did remain negligent and did not follow proper procedure in administrative matters and Inquiry Committee recommended imposing penalties of recovery of amount Rs.415, 275/- from her and forfeiture of her past 05 years service. But Competent Authority, vide order dated 04.03.2021, ordered for above said recovery and her removal from service. It would be quite relevant to mention here that eventually she was reinstated in service as per order dated 07.04.2022 of appellate authority.*

(ii). *Two other accused officials Mr. Muhammad Rizwan and Mst. Sumaira*

Shiraz rebutted the charges of financial misappropriation and stated that they had no knowledge about the corruption in the institute. Again, it is quite important to mention here that above mentioned Mst. Sumaira Shiraz was appointed as departmental representative in order dated 20.08.2019 aimed at initiation of earlier inquiry against the Petitioner

(iii). The Petitioner did not appear for personal hearing, as such, had been proceeded against under Section 10 (2) of PEEDA Act, 2006 and, though having been recommended to be removed from service, Competent Authority directed her dismissal from service.

14. In petitioner's appeal, the Appellate Authority maintained penalties imposed by Competent Authority and went even a leap ahead to direct the District Director, TEVTA Jhelum & Chakwal to initiate criminal proceedings against the Petitioner at the Regional Anti-Corruption Establishment, Jhelum & Chakwal for recovery of amount Rs.3, 669, 000/- from her.

15. From all what has been enumerated above, it reveals that matter in hand involved certain factual questions including nature & extent of allocated/entrusted official duties of officials exposed in controversy, rules & regulations governing discharge of their duties, practice & procedure said officials were obliged to follow in discharge of their official obligations. In addition thereto, roles of accused officials involved in questioned transactions were required to be made distinctly identifiable & separable for fixing up their liabilities ahead. As has been mentioned above that the Petitioner and the other accused official Ms. Shazia Fazil have been attributed some of the admissions, but when it came question of recommendation of penalties in inquiry report and impugned order dated 04.03.2021 based there upon as well as orders of Appellate Authority referred above, there is seen glaring and broad daylight like disparity in case of the Petitioner & said Ms.

Shazia Fazil. Even notwithstanding case of Ms. Shazia Fazil, execution of certain agreement, affidavit, receipts of amounts allegedly deposited back by the Petitioner on account of misappropriated/embezzled amount is attributed to her, again requiring a regular inquiry for the purpose of said record being confronted to the Petitioner to determine veracity & genuineness of said record, particularly in response to the Petitioner's allegations of coercion & harassment etc. The other two accused officials have been given way out in quite a queer manner without bringing on record sound basis & justifications in said regard.

16. Summing up the matter, this Court is of the view that despite the fact that some of the charges levelled against the Petitioner were partially proved and despite recommendations of the Inquiry Committee a regular inquiry was not conducted against all the alleged accused officials/officers. *Prima facie*, it does not seem possible that the Petitioner alone managed such a fraud by making forgery, hiding record and making false and bogus entries in the computerized ledgers and this all escaped from the high ups especially the DDO. As on going through Drawing and Disbursing Officers (Rules 140 to 144) 6.46 of the same reads as under:-

"6.46--No payment can be made on a bill or order signed by clerk instead of the Head of office or where the signature of the drawing officer are with rubber stamps. In all cases where signature on a bill is given by a mark or seal or thumb impression it should be attested by some known person....."

17. No regular inquiry was conducted for bringing on record relevant reliable evidence for fixing up extent of liability of culprit officials in subject issue as well as for onward determination of quantum of penalties. Necessity of conducting a regular inquiry in certain cases is stressed in case titled Muhammad Waris Vs. Director General, Punjab Emergency

Services Rescue 1122 , Lahore and 3 others [2022 P L C (C.S.) 367] reading that:

“7. ... The spirit of law i.e. PEEDA Act is that such major punitive action against an employee should be taken after an inquiry within contemplation of law. The competent authority may, in exercise of the powers under PEEDA Act, 2006, by dispensing with the requirement of regular inquiry, follow the summary procedure, but this power must be exercised in exceptional cases, in which either there is no factual controversy or the facts are admitted. The competent authority may, without holding a regular inquiry, pass the final order, if the charge is not based on disputed questions of facts, otherwise dispensation of regular inquiry would amount to depriving of a person from right of defence and fair opportunity of hearing.

8. Needless to say that it is against the principle of natural justice to draw a conclusion adverse to the interest of a person on the basis of disputed facts without recording the evidence and providing him proper opportunity of cross-examining the witnesses and to make his defence. ...”

18. Further, It is held in case titled Dr. Rana Zeeshan Vs. Government of Punjab and others [2022 PLC (C.S) 1300] reading that:

“8. It is settled law that when an employee is to be terminated on the ground of misconduct, which in itself is a stigma, it is mandatory for the department to hold regular inquiry enabling the employees to defend the allegations levelled against him before an unbiased and independent forum.”

19. Necessity of regular inquiry particular prevailing circumstances aiming at affording employee with opportunity of fair trial has exhaustively been elaborated in It is held in case titled “Muhammad Riaz Vs. Medical Superintendent, Service Hospital, Lahore and 2 others” [2016 PLC (C.S) 296] reading as follows:

"8. authority has been vested with a right to dispense with regular inquiry against an employee, but one must not lose sight of the fact that whenever any discretion is given to an authority, it has to be exercised not arbitrarily but honestly, justly, and fairly right in consonance with the spirit of law, after application of judicious mind and for substantial reasons. For this purpose, the nature of allegations against the accused has to be considered. In a case when it is clear to the authority that the allegations could be decided with reference to admitted record or he forms an opinion that un-rebuttable evidence on the touchstone of QANUN-E-SHAHADAT, to prove the charge against the accused/employee is available on the record, the procedure for regular inquiry (Section 5 of the PEEDA Act), may be dispensed with, otherwise, the ends justice demand an inquiry through an Inquiry Officer or Inquiry Committee. ... Thus, as a matter of fact this discretion has been made in the nature of judicial decision, which has to be exercised with due care and caution keeping in mind the principles of natural justice, fair trial and transparency, so that no prejudice should be caused to the accused/employee. There can be a situation where real fate of allegations can only be adjudged by a regular inquiry and not by mere textual proof. The legislatures further emphasized that if the authority after considering the nature of charge or charges and the material before him, concludes that regular inquiry is to be dispensed with, then the authority shall record reasons in that respect. The sole object behind careful drafting of said provision is indicative of the fact that legislature intended that the discretion which was being left up to the authority, must be exercised judiciously and not arbitrarily. ..."

10. It is by now well settled that right to a fair trial means right to a proper hearing by an unbiased competent forum. Right to a fair trial has been associated with the fundamental right of access to justice, which should be read in every statute even if not expressly provided for unless specifically excluded. While incorporating Article 10A in the Constitution and making the right, to

a fair trial a fundamental right, the legislature did not define or describe the requisites of a fair trial, which showed that perhaps the intention was to give it the same meaning as is broadly universally recognized and embedded in jurisprudence in Pakistan. ...”

20. Record reveals that Inquiry Committee had recommended petitioner's removal from service, whereas Competent Authority substituted said penalty with petitioner's dismissal from service, that too, without assigning justifiable reasons and a speaking order. In said regard, this court has held in case titled Allah Ditta Vs. Province of Punjab and 2 others [2017 PLC (C.S) 437] reading as follows:

“18. Moreover, the impugned order dated 22.12.2014 does not reflect that the Competent Authority has shown his disagreement specifically with the recommendations of the Inquiry Officer. Even otherwise if it is presumed that the dismissal order has been passed while disagreeing with the recommendations of the Inquiry Officer, the Competent Authority must have recorded specific reasons of his disbelieving the recommendations of the Inquiry Officer by elaborating the defences noted in paragraph 5 of the impugned order. Furthermore, the Competent Authority has recorded all the submissions of the Petitioner in paragraph 5 but while passing the dismissal order has not given specific findings for enhancing the penalty from forfeiture of past service for two years to dismissal from service and has also ignored the facts of defectiveness of the inquiry”.

21. It is also worth mentioning that it is inalienable right of every citizen to be treated in accordance with law as envisaged by Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Hence, it is the duty and obligation of every public functionary to act within the four corners of the mandate of the Constitution and the 2006 Act, and pass a speaking order.

22. In view of the above, allowing this writ petition, the impugned order dated 04.03.2021 is set aside. This case is remitted back to the Director General TEVTA, Lahore with a direction to conduct a regular inquiry in the matter against all the alleged accused officials/officers including the Petitioner revealing duty/role/responsibility/wrong doing of each individual emerging from the inquiry calling for imposition of minor/major penalty against each one and submit outcome/report thereof within one month from the date of receipt of certified copy of this order. The Petitioner shall join the proceedings as and when so summoned by the Inquiry Officer.

**(JAWAD HASSAN)
JUDGE**

Approved for Reporting

JUDGE

Manzoor