

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.2362 of 2017

Dr. Aftab Hassan Minhas V/S *National Council for Homeopathy etc*

JUDGMENT

Date of hearing	14.09.2023
Petitioner(s) by	Mian Abdul Rauf, ASC with Tariq Mehmood, Barrister Shahid Rasul Ch., Saeed Afzal and Bilal Shahzad, Advocates.
Respondent(s) by	Mr. Amir Abdullah Abbasi, ASC. Mr. Arshad Mehmood Malik, Assistant Attorney General.

JAWAD HASSAN, J. The Petitioner namely Dr. Aftab Hassan Minhas filed this petition under Article 199 of the “Constitution of Islamic Republic of Pakistan, 1973 (the “**Constitution**”) with the prayer to set-aside impugned dismissal orders dated 08.04.2015 and 07.07.2017 and to reinstate him in service with all back benefits. He has also stated that the Respondents have not decided his appeal under Regulation 33 of the NCH (Staff) Regulations, 1987 (the “**Regulations**”).

A. BRIEF FACTS

2. Transitory facts as per petition are that Petitioner was appointed as Assistant on daily wages vide appointment letter dated 18.12.1994 and later on his services were regularized as such vide letter dated 22.01.1997. As per his version, he was subsequently promoted as Superintendent (BPS-14) vide letter dated 25.08.2000 w.e.f. 24.08.2000. He was granted BPS-16 to Superintendent w.e.f. 24.08.2000 vide letter dated 13.11.2009. Vide letter dated 31.07.2012, the Petitioner was sent on forced leave w.e.f. 01.08.2012 by the Respondent No.1 and the Competent Authority constituted an inquiry

committee to probe into the matter. The Petitioner was charge sheeted with statement of allegations on 09.10.2012 and was directed to file reply. Once again on 06.11.2012, he was directed to file reply within 14 days however, the Competent Authority, till completion of inquiry, suspended the Petitioner under Regulation 28 of the “*Regulations*”. The Petitioner, used to approach the Courts of law for redressal of his grievance however, impugned order dated 07.07.2017 was passed by the Respondents pursuant to directions of Supreme Court of Pakistan whereby his appeal was dismissed. Hence this petition.

B. PETITIONERS' SUBMISSIONS

3. Mian Abdul Rauf, ASC for the Petitioner *inter alia* contended that the impugned orders have been passed without taking into consideration true facts of the case; that the Respondents have neither provided copies of inquiry proceedings nor granted him opportunity of personal hearing; that neither any explanation was called nor show cause notice was given and the inquiry was not conducted as per the “*Regulations*”; that the Respondent No.3 was not authorized to issue charge sheet and statement of allegations therefore, all proceedings conducted against the petitioner are void *ab initio*; that the Respondents have not complied with the directions of Supreme Court of Pakistan while passing impugned order hence the Petitioner be reinstated in service by setting aside the same.

C. RESPONDENTS SUBMISSIONS

4. Mr. Amir Abdullah Abbasi, ASC for the Respondents, on the other hand, filed report and parawise comments, vehemently opposed the arguments advanced by the learned counsel for the Petitioners and prayed for dismissal of the petition on the ground that the Petitioner was rightly charge sheeted and a regular inquiry was conducted after affording full opportunity to defend his case. He further stated that the Petitioner has not filed departmental appeal within time and this petition has been filed just to cover the said lacuna.

5. I have heard the arguments of counsel for the parties and perused the record.

D. DETERMINATION BY THE COURT

6. The Court while deciding moot point, whether the appeal filed by the Petitioner was within the time frame of Regulation 33 of the “Regulations”, will interpret Regulation 33 of the “Regulations”.

i. Background of litigation between the parties

7. Before proceeding further, it would be advantageous to describe case history in brief. It was all started when the Petitioner was sent on forced leave vide letter dated 31.07.2012 for a period of three months w.e.f. 01.08.2012 and vide said order, a committee was constituted to probe the matter. The Petitioner was issued charge sheet alongwith statement of allegations on 09.10.2012 with direction to file reply however, due to failure to file the same, the Petitioner was placed under suspension in terms of Regulation 28 of the “Regulations” till completion of inquiry. Due to his suspension, the Petitioner’s salary was stopped by the Respondents which prompted him to file W.P.No.2500 of 2011 before Islamabad High Court, Islamabad and ultimately the said writ petition was disposed of as borne fruit vide order dated 12.10.2012. Thereafter, the Petitioner, challenged the authority of the Respondent No.4 through W.P.No.3774 of 2012 before Islamabad High Court, Islamabad which was dismissed vide order dated 12.11.2012. This order was assailed by him through I.C.A.No.735 of 2012 and vide order dated 05.12.2012, the Division Bench ordered that “*inquiry proceedings shall continue but no final order shall be passed*” and ultimately the said I.C.A. was dismissed vide judgment dated 04.03.2015. The Competent Authority vide order dated 08.04.2015, terminated the Petitioner’s services providing him the right of appeal before Appellate Authority within stipulated period provided under the “Regulations”. The Petitioner approached this Court through W.P.No.1296 of 2015 with the stance that he has not been provided the copies of inquiry with supporting documents, however, the Court, in terms of order dated 11.05.2015 directed the

concerned Respondent to provide him copies of inquiry which were provided to him on 12.05.2015 (Pages 200 to 240 of the writ petition). Afterwards, the Petitioner filed another W.P.No.2413 of 2015 challenging the dismissal order dated 08.04.2015 which was dismissed vide order dated 03.05.2016 with the observation that “*during pendency of appeal on the same issue, constitutional jurisdiction by pre-empting the appellate jurisdiction cannot be exercised*” and this order was assailed by him through Civil Petition No.2005 of 2016 which was disposed of on 18.05.2017 with direction to the concerned authority to decide Petitioner’s appeal.

ii. Interpretation of Regulation 33 of the “Regulations”

8. Pertinently, the Petitioner has impugned two orders i.e. order of his dismissal dated 08.04.2015 and the other dated 07.07.2017 which was passed pursuant to directions issued by the Supreme Court of Pakistan in C.P.No.2005 of 2016 dated 18.05.2017. The stance of the Respondents is that the appeal filed by the Petitioner against his dismissal order is time barred whereas the version of the Petitioner is that he could not file appeal as he was not provided copies of inquiry proceedings for which he had to approach this Court. There is no dispute regarding dismissal of the Petitioner in terms of order dated 08.04.2015. Under the “Regulations”, a right of appeal was provided against penalty imposed in terms of Regulation 33 of the “Regulations” which reads as under:

33. Appeal.—A staff member on whom a penalty has been imposed under these regulations may file an appeal before the officer/authority specified against the officer/authority imposing penalty as given below:

<i>Officer/Authority imposing the penalty</i>	<i>Officer/Authority to whom the appeal shall lie</i>
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<i>Superintendent</i>	<i>Secretary</i>
<i>Secretary</i>	<i>President</i>
<i>President</i>	<i>Council</i>
<i>Council</i>	<i>Federal Government</i>

(2) Every appeal shall be submitted within a period of 28 days of the communication of the order appeal against.

9. Above provision of law makes it quite clear that 28 days time is provided for filing appeal against the order from its communication. It is noted that the impugned dismissal order was passed by the President against which the Petitioner had to file appeal within 28 days however, he filed appeal before the Council on 11.05.2015 after expiry of limitation period. It is also evident that, for provision of inquiry proceedings/documents, the Petitioner filed W.P.No.1296 of 2015 on 11.05.2015 and on the said date, writ petition was disposed of with direction to the concerned Respondent to provide copies of the documents claimed and that too were provided to the Petitioner on 12.05.2015 (Page 200 to 240 of the petition). It is interesting to note that the Petitioner was fully aware of Regulation 33(2) of the “*Regulations*” which clearly provides exact period of limitation for filing the appeal before the concerned authority which he failed to do. If the stance taken by the Petitioner is admitted as correct that he was not provided the documents/inquiry proceedings which caused delay in filing the appeal before the Council on 11.05.2015, even then the said exercise could be done by him within the period of limitation rather he opted to approach the Court on 11.05.2015 for provision of documents/inquiry proceedings after expiry of limitation period. Hence this version of the Petitioner is not believable. Reliance is placed on “CIVIL AVIATION AUTHORITY through Director General and 3 others Versus Mir ZULFIQAR ALI and another” (**2016 SCMR 183**) and “STATE BANK OF PAKISTAN through Governor and another Versus IMTIAZ ALI KHAN and others” (**2012 SCMR 280**). Moreover, the law helps the vigilant and not the indolent. Reliance in this regard is placed on “AFTAB IQBAL KHAN KHICHI and another Versus Messrs UNITED DISTRIBUTORS PAKISTAN LTD. KARACHI” (**1999 SCMR 1326**). It is a settled principle of law that when a law describes or requires a thing to be done in a particular manner, it should be

done in that manner or not at all. Reliance in said regard may well be placed upon observation in “ATTAULLAH KHAN versus ALI AZAM AFRIDI and others” (**2023 PLC (C.S) 182**).

10. So far as impugned order dated 07.07.2017, is concerned, it was passed pursuant to directions of the Supreme Court of Pakistan which reads as under:

“In respect of the same grievance, the Petitioner has filed an appeal before Respondent No.1, which is pending adjudication. Such appeal is provided by the Regulations applicable. The Writ Petition filed by the Petitioner before the learned High Court was dismissed in view of the pendency of such appeal.

2. The learned counsel for the Petitioner states that the appeal has not been decided and Respondent No.1 is dragging its feet. He submits that at this stage, the Petitioner does not press this Civil Petition and would be satisfied, if a direction is given to Respondent No.1 to decide the appeal expeditiously. The request so made by the learned counsel appears to be reasonable.

3. Consequently, this Civil Petition is disposed of, as not pressed. However, Respondent No.1 is directed to decide the appeal within 30 days after the receipt of this order”.

11. It evinces from the impugned order dated 07.07.2017 that the Council being an Appellate Authority after ordering a fact-finding inquiry on formal inquiry already conducted on the basis of which the Petitioner was awarded major penalty of dismissal from service and on considering the inquiry reports, it came to the conclusion that the penalty imposed upon him by the Authority is well commensurate with proved charges. Moreover, all the grounds taken in this petition as well as in his appeal were dealt with by the Council and the Petitioner was afforded full opportunity of personal hearing as well as right of defence but he could not counter the charges/allegations through cogent, convincing and confidence inspiring evidence which otherwise had been proved. Reliance is placed on “INAM-UL-HAQ Versus ALLIED BANK LIMITED and 4 others” (**2018 PLC 215**).

12. In view of above discussion, I am not inclined to interfere with the impugned orders which otherwise have been passed aptly. Resultantly, the instant petition stands dismissed.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

*Usman**