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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO.3-K OF 2021

Against the judgment dated 16.12.2019
passed by the Federal Service Tribunal,
Islamabad (Karachi Bench) in Appeal
No.63(K)CS/2019

Federation of Pakistan and others

...Appellant(s)

VERSUS

Muhammad Farhan

...Respondent(s)

For the Appellant(s): Mr. Nishat Warsi, DAG.

For the Respondent(s) Syed Shoa-un-Nabi, ASC

Date of Hearing: 28.12.2021

JUDGMENT

Muhammad Ali Mazhar, J.- This Civil Appeal is directed against the judgment dated 16.12.2019, passed by learned Federal Service Tribunal, Islamabad (Karachi Bench), in Appeal No.63(K)CS/2019, whereby the Service Appeal was accepted and the impugned Original Order and Appellate Order both were set aside.

2. The short and snappy facts of the case are that while the respondent was performing his duties as Pension Clerk at Karachi GPO, he failed to perform his duties diligently and found guilty of serious irregularities in receipt and payment of Rs.27,88,475/- on account of pension disbursement during the period commencing from September 2013 to July 2014, September 2014 to April 2015 and June 2015, which allegedly considered the inefficiency, misconduct and corruption on the part of respondent, hence he was issued a Charge Sheet on 16.01.2018 and in response, he denied all the allegations. After inquiry, an opportunity of personal hearing was afforded and the respondent was awarded penalty of one step reduction to a lower stage in his time scale for a period of one year

without future effect, including recovery of government loss amounting to Rs.241,807/-. The respondent submitted his departmental appeal, which was rejected. Hence, he approached to the Federal Service Tribunal against both the orders.

3. The learned Deputy Attorney General argued that despite the fact that guilt of the respondent was proved during the inquiry proceedings, the learned Tribunal set aside the original as well as the appellate orders. It was further argued that the respondent had received cash from the treasury but instead of disbursement of the pension amount, handed over the same to Amin Khan and due to his negligence, Amin Khan had succeeded to commit fraud and embezzled the huge funds.

4. The learned counsel for the respondent supported the impugned judgment and argued that the guilt of the respondent was never proved during the inquiry proceedings; hence the learned Tribunal has rightly set aside the impugned orders.


5. Heard the arguments. It is clearly manifesting from the record that the inquiry officer recorded the statements of Muhammad Ilyas, the then Assistant Chief Postmaster, Pension Branch, Mrs. Tanveer Jahan and Kashif Rafiq but none of them deposed that the respondent was responsible for any variation of account, fraud or embezzlement. Even in the findings recorded in the inquiry report with regard to allegation No.2, the report communicates that approximately 95% loss shown by Past Work Verification Committee has been settled down on receipt of original paid vouchers i.e. Rs.2,474,301/-. It was further mentioned in the inquiry report that Past Work Verification Committee made calculation mistakes and the accurate loss should be authenticated by the Past Work Verification Committee. The lapse or calculation mistakes if any committed by Past Work Verification Committee could not be attributed to the respondent, especially when the inquiry officer observed that the accurate loss should be authenticated by Past Work Verification Committee by itself. The findings of inquiry further depict that all work after closing of counter was performed by Amin Khan, Ex-Clerk Pension Branch, neither staff clerks PPO Pension branch nor Branch In charge checked and reconciled the cash disbursement and its entries in daily/monthly schedules which were prepared by Amin Khan and signed by the then Chief Postmaster Karachi GPO. In fact,

Amin Khan was the main culprit, who also admitted his guilt and deposited the amount in the Government Treasury.

6. We have repeatedly asked the learned Deputy Attorney General to demonstrate us from the inquiry report whether any person, who appeared in the inquiry proceedings deposed against the respondent or implicated him in the scam or held him responsible for any act of embezzlement or misappropriation of funds but he could not point out anything against the respondent from the statements of the witnesses recorded during inquiry. More or less, the learned Tribunal's findings are also based on same footing that no person who recorded his statement in inquiry uttered a single word against the respondent and the department before the learned Tribunal also failed to place any documentary evidence on record.

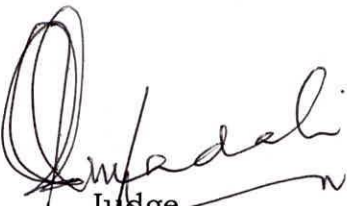
7. Leave to appeal was essentially granted on the articulation of learned DAG, that the inquiry officer had given his report in which accurate loss was to be authenticated by the Past Work Verification Committee, which exercise has been completed to ascertain accurate loss and on the actual quantum of loss, personal hearing was also afforded to the respondent but the learned Federal Service Tribunal did not advert to this very material aspect of the matter and committed mistake while passing the impugned judgment.

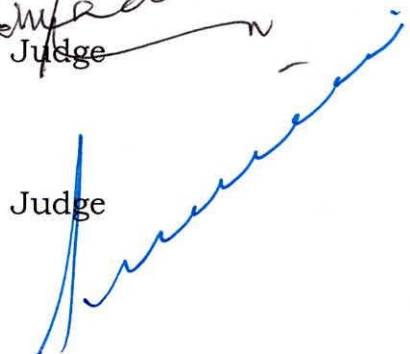
8. The learned DAG made much emphasis that Past Work Verification Committee re-examined and determined the accurate loss but the fact remains, that the primary issue involved herein is whether the guilt of the respondent was proved or not and so far as the verification or reexamination of actual loss is concerned it is secondary issue at least to the case of respondent. The Court decisions are to be based on truth founded on evidence which is an indispensable obligation. The purpose of producing all material evidence is to assist the Court or Tribunal for reaching just conclusion in the matter, hence it is crucial for the parties to put forward all relevant and convincing evidence in support of case for meeting the standards of proof. The Court or Tribunal has to examine whether the evidence led in the matter was confidence inspiring or not. No trustworthy evidence was produced against the respondent to prove his guilt. The best evidence is the evidence which is necessary to prove existence of the circumstances coming into being or a question of fact or documents as the case may





be. Even in the departmental inquiry the general principle of burden of proof is quite significant and whenever the matter is reached to the Tribunal arising out of the case of misconduct in which major penalty has been imposed, the Court or Tribunal has to see in depth whether the charges against the delinquent has been proved in the inquiry or the inquiry was conducted in cursory or slipshod manner or in violation of principles of natural justice as in all fairness, due process of law is to be followed and respected. In the instant case, the learned Tribunal has properly appreciated the evidence available in the departmental inquiry and concluded that the guilt of respondent was not proved, therefore rightly set aside the impugned orders.

9. As a result of above discussion, we do not find any illegality or perversity in the impugned judgment. The appeal is dismissed.


Judge


Judge

 Karachi
28th December, 2021
Khalid.
 Not approved for reporting.