

IN THE SUPREME COURT OF PAKISTAN

(Appellate/Original Jurisdiction)

Original Order

12

PRESENT:

MR. JUSTICE AMIR HANI MUSLIM

MR. JUSTICE SH. AZMAT SAEED

MR. JUSTICE KHILJI ARIF HUSSAIN

CRIMINAL MISC. APPLICATION NO.52-K OF 2015 IN
CRIMINAL PETITION NO.89-K OF 2014

(Compliance report as per order dated 27.2.2015 filed in this Court in Criminal Petition No.89-K of 2014 (SHO, Police Station Sachal, (Malir), Karachi v. The State filed by the AAIG Legal, Sindh)

AND

CRIMINAL MISC. APPLICATION NO.27-K OF 2015 IN
CRIMINAL PETITION NO.1-K OF 2015 & CRIMINAL REVIEW
PETITION NO.1-K OF 2016 IN CRIMINAL MISC.
APPLICATION NO.27-K OF 2015

(Compliance report as per order dated 03.2.2015 of this Court in Criminal Petition No.1-K of 2015 (Ghulam Abbas v. State), filed by SSP (Investigation) West-II, Karachi)

AND

HRC NO.16082-S OF 2015

(Regarding alleged corruption of billions in appointment in Sindh Police)

In Attendance:

Mr. Nisar A. Durrani, AG Sindh
Mr. Shahadat Awan, PG Sindh
Mr. Waqas Nazeer Dar,
Prosecutor General NAB
Mr. Mukesh Kumar Karara,
Addl. A.G. Sindh
Mr. Abid S. Zubairi, ASC
Mr. K. A. Wahab, AOR
Mr. Mazhar Ali B. Chohan, AOR
Mr. Ghulam Haider Jamali, IG Sindh
Mr. Sanaullah Abbasi, PSP
Mr. Sultan A. Khawaja, PSP
(Crl. Misc. A. No.52-K/2015)

✓

Mr. Nisar A. Durrani, AG Sindh
Mr. Shahadat Awan, PG Sindh
Mr. Mukesh Kumar Karara,
Addl. AG Sindh
Mr. Muhammad Siddique Memon,
Chief Secretary
Mr. Ghulam Ali, Addl. Secretary Services
Mr. Aftab Memon, Member L.U. BOR
Mr. G.N. Qureshi, Special Counsel, BOR
Mr. Tahir Shahbaz, Secretary Establishment
Syed Amjad Ali Shah, DPG, NAB
Mr. Waqas Nazeer Dar,
Prosecutor General, NAB
Mr. Siraj-un-Naeem, DG, NAB
Major Shabbir Ahmed, Director NAB
Mr. Ghulam Hyder Jamali, I.G. Police
Mr. Sultan A. Khawaja, PSP
Mr. Sanaullah Abbasi, PSP
Mr. Khadim Hussain Bhatti,
Addl. I.G. Traffic
Mr. Mazhar Ali Shah, AIG (Legal)
Mr. Mazhar Hussain Aliv, DPSP (Legal)
(In CrI. Misc. Application No.27-K/2015 etc)

Mr. Nisar A. Durrani, AG Sindh
Mr. Mukesh Kumar Karara,
Addl. AG, Sindh
Mr. Ghulam Haider Jamali, IG Sindh
Mr. Sanaullah Abbasi, PSP
Mr. Sultan A. Khawaja, PSP
(In HRC No.16082-S of 2015)

Date of hearing : 10th March 2016

ORDER

Criminal Misc. Application No.52-K of 2015 in Criminal Petition No.89-K of 2014:

The issue in this application i.e. Cr.M.A. No.52-K of 2015 in Cr.P. No.89-K of 2014 relates to patchy service record of the police officers. The matter was fixed in Court on 21.09.2015, on which date the report submitted on behalf of

14

Police was found unsatisfactory. The learned Advocate General, Sindh stated that Sindh Government intends to formulate another Committee headed by the Additional I.G. Police, Mr. A.D. Khawaja with DIGs M/s. Sanaullah Abbasi and Sultan A. Khawaja as its Members in compliance with the Orders of this Court passed on 27.02.2015 and 23.07.2015. The matter was adjourned to 22.09.2015 as the I.G. Police was out of town. Notices were also issued to the proposed Members of the Committee. On 22.09.2015, the Advocate General Sindh, Chief Secretary Sindh, Home Secretary Sindh and the three Members of the Committee were present and with their consent the Committee comprising of the aforesaid Senior Police Officers headed by Mr. A.D. Khawaja, Additional I.G. Police was formed. The Committee was directed to screen out the police officials, who have patchy service record. The Committee was further given the task of ensuring that the service books and/or service record of all the police officers is computerized for its safe custody along with their character roll. At the request of the Committee, six months' time was granted, as the task assigned to them was time consuming. The Committee submitted interim reports dated 12.02.2016, which are numbered as Criminal Miscellaneous Applications

✓

Nos. 16-K and 17-K of 2016, which contained the recommendations against the officers with patchy service record. The conclusion of the Committee is on case to cases basis.

Criminal Misc. Application No.27-K of 2015 in Criminal Petition No.1-K of 2015 & Criminal Review Petition No.1-K of 2016 in Criminal Misc. Application No.27-K of 2015:

2. Criminal Miscellaneous Application No. 27-K of 2015 pertains to the issue of distribution of costs of investigation for the years 2014-2015. On 22.09.2015, this Application was also fixed in Court along with Criminal Miscellaneous Application No. 52-K of 2015 in Court and on suggestion of the Advocate General, Sindh in presence of I.G. Police, Home Secretary and Chief Secretary, the same Committee comprising of Mr. A.D. Khawaja, as its head was assigned the task of examining the record pertaining to the disbursement of amounts towards costs of investigation to the police officials and ascertaining whether the authority has disproportionately distributed the amount towards costs of investigation to the various Districts in Sindh. The Committee was also assigned the task of proposing procedure for improving the mode of payments of the costs of investigation so as to ensure transparency. The Committee submitted its

16

report, in this Court, which is numbered as Criminal Miscellaneous Application No.7-K of 2016.

3. We have perused the report, which is supported by documents running into 238 pages and are bounded separately in part-II. The Committee unanimously held that allocation of funds lacked transparency, rationality and justification. The Committee subdivided the allocation into (a) Pre-budget demands, (b) Budgetary allocations (c) Allocation of funds from I.G. Police reserved fund, (d) Revised estimate and (e) Re-appropriation of funds. The Committee was of the view that amounts referred to in the aforesaid categories were neither transparently issued nor properly utilized. The second term of reference was whether the amounts reached the hands of the concerned Officers and were properly accounted for. The Committee concluded that amount has not been properly distributed. The payments were made in cash. Serious allegations were made against the then AIG (Finance), Mr. Fida Hussain Shah, besides the DDOs. The Committee highlighted the irregularities and illegalities made in the disbursement of costs of investigation and suggested a procedure which may be followed in the future. The conclusion reached by the Committee was that pre-budget

d

17

allocation and expenditure of funds were unjustified, irrational and non-transparent. The Committee concluded that funds under the Head of "costs of investigation" were distributed disproportionately by C.P.O. and Finance Department. What is most disturbing is para (c) of the conclusion, in which serious allegations have been leveled against I.G. Police and the other police officers, the relevant para is reproduced as under,

"(c) Disproportionate allocation combined with discrepancies/ in record of Central Police including over writing, fidgeting, non-availability of approvals of competent authority just proves that AIG Finance Mr. Fida Hussain Shah with consent of IGP owes responsibility for such disproportionate distribution to chosen few Units - Financial record keeping creates serious doubts on transparency. As discussed earlier committee received another serious complaint from Mr. Wahid Bux Khoso owner of Quick Filling Station Sukkur regarding withdrawal of amount on fake bills of his station through a fake account maintained at Karachi. As the matter was out of purview of committee so committee did not go into details. However, on initial verifications was found to be correct.

The officers/SSPs of districts i.e. Matiari, Kashmore, West Karachi and Mithi who received such amount also withdrew amount in shortest possible time. They distributed amount by way of cash in non-transparent manner. SSP Special Branch Sukkur who had withdrawn amount re-deposited the amount in exchequer. Other units had withdrawn amount in violation of financial rules on extract bills over and above the fixed ceilings. They spent amount on cases investigated over last five years. Whole exercise appears non transparent and smacks of corruption.

2

16

SSP Mithi @ Tharparkar Khalid Mustafa Korai was summoned by the committee. However, he did not appear before the committee which shows non-compliance and serious misconduct on part of the officer.

HRC No.16082-S of 2015

4. The issue raised in these proceedings relates to illegal appointments made in police force. On 23.12.2015, this matter was fixed in Court when the report of Addl. I.G. (Traffic Police) dated 24.08.2015 was produced and after perusal was found unsatisfactory. A detailed order was passed and a Committee comprising M/s. A.D Khawaja, Additional I.G. Police, Sanaullah Abbasi, Additional I.G. and Naeem Ahmed Shaikh, AIG (Finance) was constituted to probe into the issue of illegal appointments. The Committee submitted its interim report which was numbered as Criminal Misc. Application No.177-K of 2016, and covers 1st phase of the recruitments of 437 personnel, including 19 Junior Clerks. This recruitment was made by SP/SRP, Hyderabad, Ghulam Nabi Keerio, which the Committee has concluded was illegal. There are number of other conclusions/recommendations made by the Committee. Interim reports run into two volumes. The enquiry pertaining to the illegal appointment is yet to be completed. The Inspector General of Police, Sindh, refuted and

&

denied the allegations made before the Court. He stated that in fact the recruitments in the Police Force in the years 2013-2014 were tainted with the illegalities and corruption in which Members of the Committee, who have submitted the aforesaid Reports, are involved and they have attempted to falsely implicate him in order to protect themselves.

5. Pursuant to the Order of this Court, the Chairman, NAB and the learned Prosecutor General entered appearance. In response to a Court query, after obtaining the requisite information, it was confirmed on behalf of the NAB that the proceedings have been initiated under the National Accountability Ordinance including with regard to the allegations, which surfaced in the reports mentioned above. We are informed that three separate inquiries were initiated, out of which two are still pending, while the third has matured into an investigation. The copies of the Reports pertaining to illegal recruitments and cost of investigation shall be transmitted to the NAB by the Office. We expect that NAB will efficiently and expeditiously pursue the matter and complete the inquiries/investigations, in this behalf, fairly, justly and strictly in accordance with the law and submit progress report, in this behalf, to this Court after four weeks.

S

20

6. A perusal of the Reports referred to above reveal that the findings thereof *prima facie* provide sufficient justification for initiating departmental proceedings against officer/s indentified therein. The Secretary, Establishment Division, Government of Pakistan and the Chief Secretary, Government of Sindh, as the case may be, shall ensure that the Competent Authority fulfills its legal obligations in this behalf strictly in accordance with law. The Competent Authority obviously will also consider the desirability of such officers including the I.G Sindh, holding their offices during the pendency of such Departmental Proceedings at the risk of prejudice thereto in the context of the powers vested in such Authority under the law. The progress report, in this behalf, shall be filed in the Court after four weeks.

7. In order to avoid any risk of falsification or destruction of the relevant record, appropriate steps need to be taken for its protection and reservation. In the absence of such appropriate steps, the inquiries/investigations of the NAB as well as departmental proceedings may be reduced to an exercise of futility. Consequently, we direct the Chief Secretary, Government of Sindh to take over and ensure the safe custody and protection of the entire record of the Police

d

Department pertaining to alleged illegal appointments and cost of investigations, subject matter of the Reports of the Committee nominated by this Court in this behalf. The access of such record will only be permitted to the NAB and the Authority conducting departmental proceedings and if necessary the Committee appointed by this Court, in this behalf. The compliance report shall be filed with the Officer Incharge, Branch Registry of this Court, Karachi within one week from today.

Criminal Misc. Applications No.15-K, 23-K of 2016 in Criminal Misc. Application No.52-K of 2015 in Civil Petition No.89-K of 2014

8. Joint Applications i.e. Criminal Misc. Applications No.15-K and 23-K of 2016 have been made by the Committee seeking protection of this Court against the acts of the I.G. Police, *inter-alia*, on the ground that I.G. Police is attempting to influence the Inquiry Committee. Criminal Misc. Application No.23-K of 2016 has been filed by Mr. Aftab Ahmed Pathan, DIG, Motorway Police, wherein it has been stated that he had co-operated with the Committee appointed by this Court and made available the true facts, which may reflect adversely on the IGP, Sindh. He has expressed an apprehension that he may be victimized by the IGP, Sindh for bringing the true facts to

✓

27

the knowledge of this Court and his ACRs may be deliberately "Spoiled".

9. In this respect, the Applicants have cited specific instances. The I.G. Police on 11.1.2016, issued letter to Mr. A.D. Khawaja directing him to explain as to why report of the Committee has not been submitted on the costs of investigation to the Supreme Court and was further directed to furnish the proposed report to his office. This letter was replied to by Mr. A.D. Khawaja in which he has stated that report shall be submitted to the Supreme Court and if the I.G. Police desires the same can be shared with the I.G. Police but only after the Supreme Court has approved it. On 29.01.2016, the I.G. Police had addressed another letter to the Additional Chief Secretary (Home) on the subject of compliance of the orders of this Court. In the said letter he has stated that M/s A.D. Khawaja and Sanaullah Abbasi could not continue in the Police Department in view of the judgment of this Court reported as Contempt proceedings against Chief Secretary Sindh and others (2013 SCMR 1752). The I.G. Police, in the letter, has stated that after going through the service record of the Police Officers he has noticed that they are serving in Police after changing their cadre, therefore, the matter be

✍


referred immediately to the Establishment Division for repatriation to their parent department from police cadre. Copy of this letter was sent to the Chief Secretary as well as Secretary Establishment. In January 2016, another letter was written by the I.G. Police to the Chief Secretary (Sindh), for posting out Mr. Sultan Khawaja, a PSP officer, a member of the Committee which was probing into the costs of investigation. On 20.01.2016, the I.G. Police constituted a Committee comprising Addl. I. G (Traffic) Mr. Khadim Hussain Bhatti and two other police officers with the direction to fix responsibility of loss of revenue on supervisory officer especially the role of Dr.Aftab Ahmed Pathan DIG (License and Traffic). Dr. Aftab Ahmed Pathan was the officer, who appeared in Court on 23.12.2015 and has stated that I.G. Police has not taken action against the Police Officers who had made illegal appointments. The Committee was reconstituted by the I.G. Police on 23.01.2016, to hold an enquiry.

10. On 9th March 2016, a copy of the letter dated 08.03.2016, was placed by Mr. Sanaullah Abbasi, Member of the Committee against whom the I.G. has directed initiation of inquiry for alleged illegal appointments. Notice of this Application was issued to the Chief Secretary Sindh, I.G.

Police and all other stakeholders. No reply has been filed by any one of them.

11. We are surprised by the manner in which I.G. Police is harassing the Members of the Committee after their appointment in terms of the orders passed on 22.09.2015 and 23.12.2015. Furthermore, we have been provided a copy of the letter dated 08.03.2016, by which the I.G. Police has constituted Committee to initiate action against the said officers based on the report of the Additional I.G. (Traffic) Mr. Khadim Hussain Bhatti, which report was discarded by this Court. Even the officers like Dr. Aftab Ahmed Pathan, the then DIG (Traffic) has been subjected to an enquiry by the I.G. Police.

The aforesaid actions appear to be tainted with malice and designed to punish and victimize the Police Officers, who complied with the Orders of this Court. Consequently, call further action, in this behalf, against the said Officers, who were Members of the Committee constituted by this Court or who appeared before the same and provided requisite information for onward transmission to this Court is stayed till further orders and no future action disciplinary or otherwise shall be taken against such Officers without prior approval of this Court.



24

12. Furthermore, the members of the two Committees shall not be posted out from Sindh either by the Federal Government or by the Provincial Government without prior approval of this Court.

13. There appears to be a serious possibility that a serious prejudice may be caused to the officers, who, in compliance of the Orders of this Court conducted the exercise and facilitated this Court. It would be unreasonable and counterproductive that the ACRs of such officers be scribed or countersigned by a person against whom material has been discovered and reported by the said Officers.

14. The Secretary, Establishment Division, Government of Pakistan, on a Court query stated that in order to avoid prejudice to Civil Servants in such like situations, there is a consistent Departmental Practice to the effect that the task of reporting and countersigning authority of such Officers may be assigned to another more senior Officer. In the instant case, in his opinion, the Chief Secretary, Sindh would be the appropriate Officer to be assigned this role. In the circumstances, it is directed that for the purpose of scribing of ACRs of the Police Officers, who were the Applicants in the instant Criminal Misc. Applications, the reporting and countersigning

✓

authority shall be exercised by the Chief Secretary, Government of Sindh till further Orders of this Court.

CrI.R.Ps. No.1-K/2016 and 3-K/2016

15. The I.G. Police has filed two Review Petitions Nos.1-K/2016 and 3-K/2016, seeking review of the orders passed by this Court on 22.09.2015 and 23.12.2015, respectively. These review petitions are barred by time. Although applications for condonation of delay are filed but the same are without any substance. Even otherwise, the orders which are sought to be reviewed have been acted upon as the enquiry reports have already been submitted by the Committee, therefore, these Review Petitions have become infructuous and are accordingly dismissed.

Adjournment application made by Mr. A.D.Khawaja. Addl. IGP (SB)

16. Mr. A.D.Khawaja Additional I.G. Police has sent an application stating therein that he has been summoned to Islamabad, therefore, he would not be in a position to appear in the Court. The request is accepted and his personal appearance is condoned.

Criminal Misc. Applications Nos. 127-K and 128-K of 2015 & Criminal Misc. Application No. 14-K of 2016 in Criminal Review Petition NO.5-K of 2015

17. These are three applications filed by Petitioners namely Muhammad Farooq Ahmed, Sajid Amir Sadozai and Amjad Hayat seeking withdrawal of their Review Petition. Review Petition No.5-K of 2015 is dismissed as withdrawn to their extent.

Criminal Review Petition No. 5-K of 2015

18. Review Petition is barred by 22 days and even otherwise, there is application for withdrawal of this petition, which is on record. Mr. Farooq H. Naik, ASC, when confronted to this, states that he is not in knowledge of the application for withdrawal. Let fresh instructions be sought by him and now in view of the changed circumstances, the petitioner shall also be present in Court during hearing of his matter.

19. A copy of this Order be sent to the learned Attorney General for Pakistan, learned Advocate General Sindh, Chairman, NAB Secretary Establishment Division, Government of Pakistan, Chief Secretary Sindh, Home Secretary, Sind and Members of the Committee,

20. Adjourned to the next session.

Sd/-J
Sd/-J
Sd/-J

Karachi, the

10.03.2016

'NOT APPROVED FOR REPORTING'

G.11/3