

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SH. AZMAT SAEED

MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 935 OF 2015

(On appeal against the judgment dated 24.03.2015
passed by the Federal Service Tribunal, Islamabad in
Appeal No. 745(P)CS-2013)

Federation of Pakistan through Secretary Ministry of Defence and
another

... Petitioners

VERSUS

Bashir Ahmed, SBA in MES, Ministry of Defence, GE(Army), Nowshera

... Respondent

For the Petitioners: Syed Nayyab Hassan Gardezi, Assistant
Attorney General
Qari Abdul Rasheed, AOR (Absent)

For the Respondent: Mr. Muhammad Shoaib Shaheen, ASC
Mr. Ahmed Nawaz Ch, AOR

Date of Hearing: 18.04.2017

JUDGMENT

FAISAL ARAB, J.- The respondent was appointed as SBA in MES, Ministry of Defence in the year 1990. On 20.06.2010 he was nominated as an accused in a murder case registered vide FIR No. 335/2010 under Sections 302/34 PPC at Police Station Azakhel, District Nowshera. He remained absent without any authorization from the day the FIR was registered against him. Between 27.06.2010 to 01.09.2010, he was issued five letters calling upon him to resume duty but he failed to do so. On account of his absence, disciplinary proceedings were initiated against him on 26.10.2010. He was then served with show cause notice on 25.04.2011, to which he failed to respond. Ultimately, major penalty of compulsory retirement was recommended on 15.09.2011. The respondent was then given an opportunity of personal hearing but he failed to appear, hence the

Authorized Officer imposed major penalty vide order dated 31.01.2012 on account of his continuous absence from duty. The respondent belatedly filed departmental appeal on 03.07.2012 which was considered to be barred by time. The respondent then filed appeal before the Service Tribunal on the ground that he was not given the opportunity of hearing. The Tribunal while disposing of the appeal vide order dated 02.07.2013 directed the petitioner to hear the respondent's departmental appeal afresh and decide within 30 days. After hearing the respondent, the departmental appeal was rejected on 11.10.2013, whereafter he again preferred appeal before the Service Tribunal on 08.11.2013. Before the Tribunal, it was admitted by respondent's Advocate that after the registration, the respondent went underground as he could not live a normal life on account of his involvement in a criminal case and thus remained absent from duty. With regard to the disciplinary proceedings, the Service Tribunal held that on account of murder charges and the enmity with the complainant party, his absence was justified. The Service Tribunal thus converted the major penalty of compulsory retirement into minor penalty of withholding of three increments and reinstated him back in service. Against such decision, present petition for leave to appeal has been preferred. Notice was issued to the respondent.

2. Learned counsel for the petitioners contended that it is an admitted position that the respondent absented himself from 20.06.2010 onwards without seeking leave of absence from the department. The letters calling upon him to resume duty as well as show cause notice delivered at his known address were also not responded to, hence, the department was left with no other option but

to initiate disciplinary proceedings. Learned counsel further submitted that the Authorized Officer in fact showed leniency by not dismissing the respondent from service and only imposed a penalty of compulsory retirement, which would still entitle him to receive pensionary benefits for the term that he served from 1990 until he was compulsorily retired on 31.01.2012.

3. Learned counsel for the respondent, on the other hand, contended that the respondent was involved in a murder case on 20.06.2010 and was finally acquitted on 20.09.2012, hence, his absence was not willful, therefore, imposition of major penalty was too harsh. He submitted that at best a minor penalty could have been imposed and the Service Tribunal after taking into consideration all this rightly converted major penalty into minor penalty. In support of his contention he relied upon the case of Central Board of Revenue Vs. Shafiq Muhammad (2008 SCMR 1666). He also submitted that even otherwise no case of public importance as envisaged under Article 212(3) of the Constitution is made out and this petition may be dismissed on this score alone.

4. It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent's counsel himself stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012. Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise

reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members. To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconsion or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion amounts to showing mistrust in the judicial system. Learned counsel for the respondent was asked to show as to whether in any case, this Court has condoned the absconsion and the departmental action was set aside, he was unable to satisfy this Court on this point. In the circumstances, the case relied upon by the respondent's counsel is of no help to the case of the respondent as it has no relevance in the facts and circumstances of this case.

5. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned judgment and restore the departmental action of imposition of major penalty of compulsory retirement.

JUDGE

JUDGE

Islamabad, the
18th of April, 2017
Approved For Reporting
Khurram