

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Maqbool Baqar
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Petition No.1839 of 2018

*(Against judgment dated 3.4.2018
passed by Peshawar High Court
Peshawar in W.P. No.2614-P of 2016)*

Fayaz Khan

...Petitioner(s)

Versus

***Govt. of Pakistan through Secretary Aviation Cabinet
Secretariat, Aviation Division, Islamabad & another***

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Bashir Khan, ASC
Mr. Arshad Ali Chaudhry, AOR

For the Respondent(s): N.R.

Date of hearing: 14.1.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.-Fayyaz Khan, petitioner, Corporal/Guard in Airport Security Force, posted at Bacha Khan International Airport Peshawar, was proceeded against by virtue of Section 7-A of the Airport Security Force Act, 1975 (Act No.LXXVII of 1975); he had come all the way to Benazir International Airport Islamabad on 19.12.2015 to facilitate one Zishan to get on board Flight TK-711, enroute to Bahrain; with the assistance of Corporal Asad Abbas Khan, the passenger was extended special protocol, including exemption from body search, however, in the passengers' lounge, few paces away, he was intercepted by the staffers at Anti Narcotic Force Counter; found in possession of heroin concealed in capsules, he was taken into custody. As investigation progressed, petitioner along with Asad Abbas Khan was taken on board, in consequence whereof, he was dismissed from service on 4.4.2016 by a Summary Court Martial; departmental appeal met with no better fate and it is in this background that the petitioner attempted before the Peshawar High Court Peshawar through a Constitutional petition, dismissed on 13.4.2018, *vires* whereof are being assailed through the present petition.

2. Learned counsel for the petitioner contends that the petitioner unsuspectingly extended traditional courtesy to a family acquaintant and as such was not actuated by any *mens rea* calling for his dismissal from service; it is next argued that there is no evidence to legally drive home the charge against the petitioner inasmuch as the statement of Asad Abbas Khan, meted out same fate, could not have been relied upon without placing him in an extremely disadvantageous position. Being a civilian, decision of his fate by a Summary Court Martial was absolutely unwarranted, concluded the learned counsel.

3. Heard. Record perused.

4. Argument that the petitioner was not subject to the Pakistan Army Act, 1952 (Act No.XXXIX of 1952) is entirely beside the mark, as it is admitted at all hands that he was a corporal/guard, employed in the Airport Security Force. By virtue of Section 7-A of the Airport Security Force Act, every officer/member of the force, is subject to the Pakistan Army Act and, therefore, was competently proceeded against by a duly constituted tribunal, findings whereof cannot be upset unless shown to have been carried out *without jurisdiction, coram non-judice* or *mala fide*, situations, conceivably out of the realm of possibility; view taken by the learned High Court is inconsonance with the law declared by this Court in the case of District Bar Association, Rawalpindi & others Vs. Federation of Pakistan & others (PLD 2015 SC 401). Argument on lack of evidence does not hold water either; each step the petitioner had taken while escorting Zishan, the drug-pusher whom he had facilitated to get on board a Bahrain bound international flight was captured, by the close circuit TV cameras, installed at the airport; the latter was caught red-handed with the contraband as well as boarding card/air ticket; he cannot escape the preponderance of evidence pointing inexorably upon his culpability by merely clamouring a loud denial. Petition fails. Leave declined.

Judge

Judge

Islamabad

14th January, 2020

Not approved for reporting

Azmat/-