

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Shahid Waheed
Mr. Justice Naeem Akhter Afghan
Mr. Justice Salahuddin Panhwar

Civil Petition No.3121-L/2022

*(On appeal against Judgment dated
15.03.2022 passed in S.A. No.1251 of 2019)*

Fazal Hussain

...Petitioner(s)

Versus

Commissioner Dera Ghazi Khan, Division
Dera Ghazi Khan etc

...Respondent(s)

For the Petitioner(s) : Mr. Abdul Rehman Khan Lashari, ASC

For the Respondent(s) : Mr. Khalid Masood Ghani, AAG, Punjab.

Assistance : Muhammad Subhan Malik
(Judicial Law Clerk)

Date of Hearing : 15.10.2025

JUDGMENT

Salahuddin Panhwar, J. – The petitioner seeks leave to appeal against the judgment dated 15.03.2022 of the Punjab Service Tribunal, Lahore. That judgment upheld the Deputy Commissioner, Muzaffargarh's order dated 01.10.2018 withdrawing the petitioner's promotion as Assistant and Selection Grade granted on 26.10.2005 with effect from 28.12.1998, directing recovery under section 4(1)(c) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006, (PEEDA) and treating him as retired in the cadre of Senior Clerk.

2. We have heard learned counsel and examined the record. The primary concerns of this court are that, whether proceedings were competently initiated and conducted under the PEEDA, secondly, whether the show cause notice dated 13.09.2018 satisfied the minimum legal requirements of notice and hearing; and thirdly, whether, after long implementation of the 2005 promotion and

selection grade, the administration could withdraw the same in view of applicable law and the doctrine of locus poenitentiae.

3. In so far in regards to the show cause notice dated 13.09.2018 issued by the Deputy Commissioner, Muzaffargarh under section 13(4) of the PEEDA, this court in ***Sana Ullah Sani vs Secretary Education Schools (2024 SCMR 80)*** has laid down basic requirements of a show cause notice, in the following words:

"As such, the law intends that a show cause notice must conform to at least seven essential elements, and these include: (a) it should be in writing and should be worded appropriately; (b) it should clearly state the nature of the charge(s), date, and place of the commission or omission of acts, along with apportionment of responsibility; (c) it should clearly quote the clause of the PEEDA under which the delinquent is liable to be punished; (d) it should also indicate the proposed penalty in case the charge is proved; (e) it should specify the time and date within which the employee should submit his explanation in writing. It is also preferable to add in the show cause notice that if no written explanation is received from the accused within the prescribed date, the enquiry will be conducted ex-parte; (f) it should be issued under the signature of the competent authority and (g) it should contain the time, date and place of the inquiry and the name of the inquiry officer."

Additionally in ***Muhammad Arshad vs Deputy District Food, Multan (2025 SCP 227)***, this court has provided the procedural necessities enshrined in Section 13 of the the PEEDA in the following words:

"To fully understand this grievance, it is crucial to scrutinise the process that the Competent Authority is obligated to follow upon receipt of the inquiry report, as provided in section 13 of the PEEDA. A detailed analysis of this provision, together with the Guidebook for conducting inquiry, issued

by the Government of the Punjab in its Services and General Administration Department (Regulation Wing) vide Notification No.SORI (S&GAD) I-30/2003(P-II) dated 17th of August, 2015, particularly, the model draft showcause notice attached thereto, reveals that upon receiving the inquiry report, the Competent Authority must ascertain whether the inquiry has been conducted in accordance with the prescribed provisions of the PEEDA. If it determines that the inquiry has been conducted properly, the next step is to evaluate whether the charges have been proved. If the charges are found not to be proved, the Competent Authority is required to exonerate the accused as per section 13(3) of the PEEDA. Quite the opposite, if the Competent Authority believes that the charges against an accused have been proved, it is obliged to issue a show-cause notice under section 13(4) of the PEEDA. This notice must include a copy of the inquiry report, and should contain: (a) the Competent Authority's statement that it has found no reason to differ or it has reason to differ with the recommendations of the Inquiry Officer; in case of dissent, the reasons thereof, alongwith the specifics of the charges that have been proved against the accused; (b) the details of the proposed penalties; and (c) the recommendations made by the Inquiry Officer regarding the penalties, and allowing the accused a period of seven days to respond or file additional defence in writing. After providing the opportunity for a personal hearing, the Competent Authority is to pass final orders under sub-section (5) of section 13 of the PEEDA. As regards the scenarios where the inquiry is deemed not to have been conducted per the legal framework, the Competent Authority, under section 13(6), has the responsibility to remand the inquiry back to the Inquiry Officer or Inquiry Committee."

Now testing the show cause notice on the above criterion laid by this court, the show cause notice dated 13.09.2018 under section 13(4) of the PEEDA, it depicts that neither the detail of the commission of act

or omission is provided, nor the proposed penalty or detail of recommendations is provided in the said notice. Additionally, it is to be noted that no provision of the PEEDA is provided under which the petitioner was liable to be penalized upon proving of charges. The strict compliance of the above requirements is vital to avoid the violation of principles of natural justice. It will not only frustrate the requirement of giving him a reasonable opportunity to put up a defence but also amount to a violation of his fundamental right to a fair trial. The maxim ***audi alteram partem*** applies with full vigour to administrative action affecting rights; this principle applies to judicial, quasi-judicial and administrative bodies as held in ***Mall Syare Residents Association vs Mall Developers (PLD 1997 Karachi 1)***. Even where a statute is silent, the justice of the common law supplies the omission of the legislature and the right of hearing has to be read in that statute. This Court has likewise insisted that the statutory ingredients must appear on the face of the notice. Absent the requisite allegations, the notice is void for vagueness. *Reliance in this regard is placed on plethora of precedents, reported as (Noor Ahmed v. Province of East Pakistan (PLD 1962 Dacca 533), Faridsons Ltd. v. Government of Pakistan (PLD 1961 SC 537) and Chief Commissioner, Karachi v. Mrs. Dina Sohrab Katrik (PLD 1959 SC (Pak.) 45), Cooper v. Wandsworth Board of Works (143 ER 414) and Russel v. Russel (14 Ch D 471). (Noor Ahmed v. Province of East Pakistan (PLD 1964 Dacca 546, Lakhu Sarkar v. Government of East Pakistan (PLD 1964 Dacca 217) and Muhammad Abdus Salam v. District Council, Rajshahi (PLD 1964 Dacca 554). (Assistant Collector Customs v. Khyber Electric Lamp (2001 SCMR 838).*

4. Even if the notice had survived scrutiny, the attempted withdrawal fails on the doctrine of locus poenitentiae. Once an administrative decision has taken legal effect, conferred benefits, and been acted upon for years, it cannot ordinarily be withdrawn to the detriment of the beneficiary unless illegality or want of competence in the original grant is shown. This Court has consistently protected such vested rights in ***(Mst. Basharat Jehan v. Director-General, FGEI (C/Q) (2015 SCMR 1418); Government of the Punjab v. Aamir***

Junaid (2015 SCMR 74); Federation of Pakistan v. Flt Lt Farrukh Rashid (R) (2008 SCMR 544). The caveat is that the doctrine does not perpetuate illegality (***Engineer-in-Chief v. Jalaluddin (PLD 1992 SC 207)***). On the present record no illegality or incompetence in the making of the 2005 promotion and selection grade has been demonstrated. The department implemented the orders, paid consequential benefits and treated the petitioner accordingly for years. The protective ambit of locus poenitentiae therefore applies.

5. At this juncture, it is worth mentioning that, even if the misconduct was proved under the PEEDA, the competent authority is not empowered to award a punishment different to which is prescribed under the law, specifically the section 4 of the PEEDA, which provides for penalties. It is a grave concern as to how the outcome was the withdrawal of the order of promotion and selection grade, whereas such is not prescribed in section 4 of PEEDA. Additionally, the punishment to lower scale awarded to the petitioner is for serving employees and not retired employees under PEEDA. The direction for the recovery of money also cannot stand, being penal, it required a finding that the petitioner's act or omission caused a quantified loss to the exchequer after due inquiry and fair opportunity. No such finding exists. In similar circumstances this Court disallowed retrospective deprivation and recovery of benefits long enjoyed on a higher post or grade (***Shams-ur-Rahman v. Military Accountant General (2020 SCMR 188)***).

6. Additionally, it is to our surprise that, neither the inquiry officer inquired the signing authority of the order which granted the promotion and the selection grade in 2005, nor the members of the DPC were inquired, it depicts how the proceedings were solely revolving against petitioner only and not in any other direction, this to our belief is a blatant violation of fair trial and ultimately the principles of Natural Justice.

7. For these reasons, the petition for leave to appeal is converted into appeal and allowed. The judgment dated 15.03.2022 of

the Punjab Service Tribunal, Lahore, is set aside. The proceedings leading up to the order dated 01.10.2018, including the withdrawal of promotion and selection grade and the recovery direction purportedly under section 4(1)(c) of the PEEDA, are declared without lawful authority and of no legal effect. The petitioner's promotion as Assistant and the selection grade earlier granted shall stand restored. Petitioner's retirement and consequential pecuniary benefits shall be aligned accordingly, with arrears, within sixty days, strictly in accordance with law.

Judge

Judge

Judge

Islamabad,
15.10.2025
Muhammad Subhan Malik (JLC)-
Approved for reporting