

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4566 of 2018

Rashid Abbas

Versus

Evacuee Trust Property Board through Chairman and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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27.01.2020	M/s Abdul Rahim Bhatti, Yasser Rahim Bhatti and Qaisar Rahim Bhatti, Advocates for the petitioner Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General Mr. Mudassar Ikram Ch., Advocate for respondents No.1 and 3.
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Through the instant writ petition, the petitioner, Rashid Abbas, impugns the order dated 23.11.2018 passed by respondent No.2 (Secretary, Ministry of Religious Affairs and Interfaith Harmony), in his capacity as appellate authority, dismissing the petitioner’s appeal against the order dated 05.12.2017, whereby major penalty of “*compulsory retirement from service*” was imposed on him under Rule 4(1)(b)(ii) of the Government Servants (Efficiency and Discipline) Rules, 1973 (“**the 1973 Rules**”) as adopted by the Evacuee Trust Property Board (“**E.T.P.B.**”)(respondent No.1).

2. Learned counsel for the petitioner submitted that the primary allegation against the petitioner was that he had remained absent from duty; that the respondents did not appreciate that the petitioner was performing field duties and was not required to be performed in the office; that the petitioner was not associated in the inquiry proceedings against him; and that the appellate order is a non-speaking order and does not address the grounds taken in the petitioner’s appeal.

3. Learned counsel for the petitioner further submitted that the petitioner was not confronted with any material that had gathered against him; that the

inquiry report does not contain any findings on each of the allegations against the petitioner; that the inquiry against the petitioner was not conducted in accordance with the 1973 Rules; that the statements of witnesses were not recorded; that the oral or documentary evidence was not annexed with the inquiry report; that no incriminating material was annexed to the charge sheet; and that the penalty imposed on the petitioner was very harsh and unwarranted. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned appellate order dated 23.11.2018 to be set-aside.

4. On the other hand, learned counsel for respondents No.1 and 3 submitted that the petitioner was most inefficient in the performance of his duties; that the petitioner lacked discipline and had not shown any improvement despite the fact that between 19.08.2010 and 17.08.2016, numerous letters of explanation were sent to the petitioner; that the petitioner did not respond to any of the said letters of explanation; that the petitioner choose not to cross-examine the departmental representative; that lame excuses had been given by the petitioner for absenting himself from his duties; that the petitioner had not even given any response to the show cause notice; and that absence from duty without prior permission is an act of misconduct which needs to be dealt strictly. Learned counsel prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The record shows that on 30.12.2000, the petitioner was appointed as a Sub-Engineer (Civil) on contract basis in E.T.P.B. On 03.05.2010, the

petitioner's services were regularized on *"humanitarian and sympathetic grounds"*. On 16.11.2016, a charge sheet and statement of allegations were issued to the petitioner. In the said charge sheet, it was alleged that the petitioner had failed to discharge his duties and responsibilities and had acted inefficiently. It was also alleged that he was absent from duty on 17.08.2016, and that his performance had been very poor. Between 06.08.2010 and 23.02.2016, several letters of explanation have been issued to the petitioner to which he had not responded.

7. On 19.07.2017, Mst. Uzma Shahzadi, Coordinator Meeting, Board Meeting Cell, E.T.P.B., Lahore was appointed as the inquiry officer with the mandate to hold an inquiry against the petitioner on the charges levelled against him. Mr. Muneer Khan Bhatti, Assistant Administrator, E.T.P.B., Lahore collected evidence against the petitioner and submitted the same before the inquiry officer. On 25.09.2017, the inquiry officer submitted the inquiry report wherein it was recommended that the charges levelled against the petitioner stood proved. On the basis of the said inquiry report, show cause notice dated 13.10.2017 was issued to the petitioner calling upon him to show cause as to why the major penalty of dismissal from service should not be imposed on him. The petitioner did not submit a reply to the said show cause notice. Vide order dated 05.12.2017, major penalty of compulsory retirement from service was imposed on the petitioner under Rule 4(1)(b)(ii) of the 1973 Rules as adopted by E.T.P.B.

8. The petitioner preferred an appeal against the said order dated 05.12.2017 before respondent No.2. Vide order dated 23.11.2018, the said appeal was dismissed.

9. The said order dated 05.12.2017 shows that it was passed on the basis of the inquiry report dated 25.09.2017. Even the appellate order dated 23.11.2018 was based on the said inquiry report. In the inquiry report, the inquiry officer had not given separate findings on the separate allegations levelled against him in the charge sheet and statement of allegations.

10. According to the statement of allegations, the petitioner had absented himself from duty without authorization only for one day, i.e. 17.08.2016. It was not explained as to how the petitioner's performance was gauged to be "*very poor*". Paragraph 4 of the inquiry report simply sets out the petitioner's stance. There are no findings on the specific allegations made against the petitioner. There is no reference in the inquiry report to any material that was produced during the inquiry against the petitioner. True, the petitioner had refused to cross-examine the departmental representative but this did not absolve the inquiry officer from making reference to the material against him. There is no finding whatsoever as regards allegation No.VI, i.e. the petitioner's alleged negligence regarding necessary repair work of camp office. Taking all these factors into consideration, I am of the view that the penalty imposed on the petitioner was disproportionate to the allegations that were levelled against him. However, this Court in exercise of the Constitutional jurisdiction cannot substitute its opinion with that of the Tribunal below.

11. The petitioner had raised several grounds in his appeal against the imposition of the major penalty. The impugned order dated 23.11.2018 does not make reference to any of grounds taken by the petitioner in his appeal. The order disposing of an appeal must

indicate that there has been a proper application of mind by the appellate authority to all the pleas raised and the reasons for the decision are also to be explicit in the order itself. On perusal of the appellate order, in the case at hand, one cannot but hold that the said order of the appellate authority is cryptic and devoid of reasons. The appellate order dated 23.11.2018 is perfunctory, non-speaking and is liable to be set-aside on this ground. In the case of Muhammad Majid Vs. Secretary, Ministry of Manpower and Overseas Employment, Islamabad (PLD 2017 Islamabad 19), this Court held *inter alia* as follows:-

“12. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. The giving of reasons is one of the fundamentals of good administration. The reasons for decisions make it possible to test the validity of these decisions by the machinery of appropriate writs. Since a statutory appellate authority acts as a quasi judicial authority, it is also required to apply its mind and give reasons. Except in cases where the requirement has been dispensed by the statute expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decisions.”

12. Furthermore, in the said judgment, this Court had enumerated the following principles deduced from the law laid down by the Superior Courts on the requirement to give reasons for decisions:-

“(i) Recording of reasons in support of a decision by a quasi-judicial authority ensures that the decision is reached in accordance with the law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency.

(ii) A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.

(iii) If the executive can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction.

(iv) The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness. It gives satisfaction to the party against whom the order is made. It also enables an appellate or supervisory court to keep the executive or a tribunal within bounds."

13. For the reasons mentioned above, this petition is allowed. The impugned appellate order dated 23.11.2018 is set-aside. The matter is remanded to the appellate authority with the direction to decide the petitioner's appeal within a period of two months through a reasoned order after affording him an opportunity of hearing. In deciding the petitioner's appeal, the appellate authority shall not be influenced by any observations contained herein.

Qamar Khan*

**(MIANGUL HASSAN AURANGZEB)
JUDGE**