

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

ICA No.292/2017  
In  
W.P. No.3537-2016

Syed Muhammad Sajid Iqbal  
Vs.  
The Secretary, Ministry of Overseas Pakistanis & HRD, Islamabad  
& Another

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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31.10.2017	Mr. Rashid Mahmood Ansari, Advocate for appellant.
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**AAMER FAROOQ J.** This appeal is  
directed against judgment dated  
31.07.2017 passed by the learned Judge-  
in-Chambers, whereby W.P. No.3537/2016  
filed by the appellant, was dismissed.

2. The facts, in brief, are that appellant  
was an employee at Overseas Pakistanis  
Foundation. Disciplinary proceedings were  
initiated against him in two different sets;  
firstly, charge sheet was served on him on  
18.10.2013 and secondly, on 08.07.2015.  
Based on the recommendation in the  
second charge sheet, penalty of removal  
from service was imposed upon him vide  
order dated 09.05.2016. He filed

departmental appeal against Office Orders dated 09.05.2016, which was rejected by the appellate authority vide order dated 12.08.2016. The petition under Article 199 of the Constitution (W.P. No.3537-2016), filed by the appellant, was also dismissed by the learned Judge-in-Chambers vide the impugned judgment.

3. Learned counsel for the appellant, *inter alia*, contended that sole reason, which prevailed with learned Judge-in-Chambers while dismissing petition under Article 199 of the Constitution, was that rules of service of employees of Overseas Pakistanis Foundation, are non-statutory. It was contended that it has been held by the august Apex Court in cases reported as 'Muhammad Rafi and another Vs. Federation of Pakistan and others' (2016 SCMR 2146) and 'Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed' (2013 SCMR 1707), that even where, rules of service are non-statutory, a petition under Article 199 of the Constitution, is maintainable. In response to the query of the Court

regarding the status of service regulations of Overseas Pakistanis Foundation, it was submitted that admittedly, the same are non-statutory.

4. There is no cavil with the proposition that even where rules of service are non-statutory, a petition under Article 199 of the Constitution, is maintainable under certain facts and circumstances. In this regard, the august Apex Court in a case reported as 'Pakistan Defence Officers' Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed' (2013 SCMR 1707), laid down following principles of law on the subject matter. In this behalf, it was observed as follows:-

- i) *Violation of Service Rules or Regulations framed by the Statutory bodies under the powers derived from Statutes in absence of any adequate or efficacious can be enforced through writ jurisdiction.*
- ii) *Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'*
- iii) *In all the public employments created by the Statutory bodies and governed by the Statutory Rules/Regulations and unless those appointments are*

- purely contractual, the principles of natural justice cannot be dispensed with in disciplinary proceedings.*
- iv) *Where the action of a statutory authority in a service matter is in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction.*
  - v) *That the Removal from Service (Special Powers) Ordinance, 2000 has an overriding effect and after its promulgation (27<sup>th</sup> of May, 2000), all the disciplinary proceedings which had been initiated under the said Ordinance and any order passed or action taken in disregard to the said law would be amenable to writ jurisdiction of the High Court under Article 199 of the Constitution”*

The referred judgment was also followed by the august Apex Court in case reported as Muhammad Rafi and another Vs. Federation of Pakistan and others’ (2016 SCMR 2146).

5. The bare perusal of the principles, enunciated by the Hon’ble Supreme Court of Pakistan in case reported as ‘Pakistan Defence Officers’ Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed’ (2013 SCMR 1707), is that where the rules of service are non-statutory, any violation thereof, cannot be enforced through writ petition, as there is relationship of ‘Master and Servant’; where action of a statutory authority in a service matter, is in disregard

of procedural requirements and is violative of principle of natural justice, it can be enforced in writ jurisdiction.

6. The sole contention, raised by learned counsel for the appellant on merits, was that after inquiry had been held in the first charge sheet, the issuance of second charge sheet was unwarranted. When enquired, whether the appellant participated in the disciplinary proceedings, the answer was in affirmative. Mere issuance of second charge sheet and conduct of second disciplinary proceedings cannot be termed as a procedural irregularity/impropriety or violation of law. As per admission by learned counsel for the appellant, the appellant duly participated in the disciplinary proceedings and the procedure in this behalf was duly followed. Thus, it cannot be said that the principles of natural justice were not complied with or the procedural requirements were not fulfilled. In such like facts and circumstances, since the relationship between appellant and respondent No.2 is of 'Master and Servant'

and there is no violation of law, a petition under Article 199 of the Constitution, was not maintainable. Since the impugned judgment does not suffer from any infirmity, interference is not warranted.

7. For the above mentioned reasons, instant appeal is without merit and is accordingly dismissed in limine.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

Zawar