

**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**W.P. No.1333/2018**

Muhammad Atif Saleem

*versus*

National Commanding Authority, etc.

Petitioner by: Mr. Rehan-ud-Din Khan Golra, Advocate.

Respondents by: Barrister Amna Abbas, Advocate.

Date of Hearing: 19.12.2018.

**MOHSIN AKHTAR KAYANI, J:** Through this writ petition, the petitioner has prayed for the following relief:

*"In view of the above mentioned, facts and circumstances, it is respectfully prayed that the writ may kindly be issued against the respondents, directing the respondents to reinstate the petitioner into service along with all back benefits by setting aside Office Order dated 30.10.2017, imposing the major penalty for removal from service of the petitioner. Further, the period from the date of removal from service of the petitioner may kindly be treated as period on duty.*

*It is further humbly prayed that the whole proceedings of the authorized officer which is one sided against the petitioner may kindly be declared null and void and of no legal effect upon the right of the petitioner.*

*Any other relief to which the petitioner is found entitled may also be granted."*

2. Brief facts referred in the instant writ petition are that petitioner was serving as Senior Chargeman (Electronics) and since the year 2016, he had been through psychiatric treatment as he was suffering from acute depression, due to which he was unable to attend his office and remained absent from the duties w.e.f. 31.07.2017 to 29.10.2017, whereupon the respondent department initiated disciplinary proceedings against the petitioner, which ended on imposition of major penalty upon the petitioner for removal from service vide office order dated 30.10.2017. Hence, the instant writ petition.

3. Learned counsel for petitioner, *inter alia*, contended that the major penalty of removal from service has been imposed upon the petitioner without holding a proper inquiry under the rules as neither any charge sheet has been framed against the petitioner nor statement of allegations was served upon the petitioner; that the respondents being public authority is violative of service regulation and impugned action is based on malafide; that no show cause notice was ever served upon the petitioner and it is settled law that nobody should be condemned unheard, therefore, the impugned office order dated 30.10.2017 may kindly be set-aside with the direction to the respondent department to reinstate the petitioner into service.

4. Conversely, the learned counsel for respondents while questioning the maintainability of instant writ petition contended that NCA (Amendment) Act, 2016 determined the relationship between the NCA and its employees to be that of master and servant, therefore, the rules promulgated by the NCA are non-statutory whereby the Parliament conferred complete autonomy to the NCA to determine all matters pertaining to its employees and such other matters ancillary thereto; that disputes relating to master and servant relations cannot be adjudicated upon by exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

5. Arguments heard, record perused.

6. From the perusal of record it reveals that petitioner was initially appointed on contract basis as Chargeman (Electronics) SPS-5 in NESCOM on 30.06.2004, however his services were regularized and later on he was promoted to Senior Chargeman (Electronics) on 05.06.2012. The petitioner is a patient of depressive illness and was under psychiatrist treatment from March, 2016 and he was treated by the NESCOM Complex and he was

removed from service by imposing major penalty vide office order dated 30.10.2017 due to unauthorized absence.

7. The thrust of the arguments advanced by the petitioner is that he was treated by Islamabad Medical Complex NESCOM, whereby the doctors have declared him a patient of depressive illness and he has placed a number of OPD tickets, which reflect that he needs regulatory treatment, but he has not informed the NESCOM authorities despite the fact that he was given several warning letters/explanation, which ultimately resulted into removal from service. At this juncture, the wife of petitioner filed an application, which was also acknowledged by the respondent department, but the same was filed after removal of petitioner from service.

8. The NESCOM authorities with respect to petitioner absence submitted the following details for the period of 2009 to 2017.

Sr.#	Period of absence		No. of days	Regularization of absence period
	From	To		
1	07.10.2009	03.12.2009	58	Period of absence regularized as LFP.
2	11.12.2010	06.02.2011	58	Period of absence regularized as EOL.
3	27.04.2011	06.05.2011	10	Period of absence regularized as LFP
4	09.05.2011	01.06.2011	24	Period of absence regularized as LFP
5	15.07.2011	12.09.2011	60	Period of absence regularized as LFP
6	26.03.2012	30.03.2012	05	Period of absence regularized as LFP (Medical)
	03.04.2012	13.04.2012	11	
7	18.07.2013	06.08.2013	20	Period of absence regularized as LFP
8	05.08.2014	20.10.2014	77	Period of absence regularized as LFP (Medical)
9	04.01.2016	27.03.2016	84	Period of absence regularized as 36 days LFP & 48 days as LND.
10	16.01.2017	26.01.2017	11	Period of absence regularized as EOL.
11	31.01.2017	28.04.2017	88	Period of absence regularized as EOL.
12	31.07.2017	-	-	Removed from service.

9. The NESCOM authorities also acknowledged in their pleadings as well as in the attached record that petitioner has psychological issues and he was advised for treatment and called for regular follow up at NESCOM Complex and even the record pertaining to Islamabad Medical Complex NESCOM appended with this writ petition has duly been acknowledged by the

respondent department. Even Dr. Shahid Ali Khan/Psychiatrist gave his medical opinion vide letter dated 23.05.2017 which shows that the petitioner has been diagnosed with acute depression, but after his treatment, he was declared fit to perform his duties.

10. The respondent department issued warning letter dated 03.07.2017 to the petitioner for his unauthorized absence from duty on several occasions, but petitioner remained absent from duty w.e.f. 31.07.2017. Furthermore, notices in writing dated 08.08.2017 and 29.08.2017 are on record, which culminated into a show cause notice dated 26.09.2017 under the National Command Authority Employees Efficiency and Discipline Rules, 2010, the same was dispatched to the petitioner through TCS and finally on 30.10.2017, order of imposition of major penalty of removal from service was passed. However, due to a clerical mistake in Para-4 of the said office order, a corrigendum was issued on 30.10.2017.

11. On receiving the said office order, Mrs. Madiha Atif, wife of petitioner, moved an application to the Chairman NESCOM on 29.11.2017 along with OPD tickets of Islamabad Medical Complex NESCOM, in which details of the petitioner regarding his illness were explained, and finally, an appeal for reinstatement of petitioner was filed. The petitioner has further taken a stance that no notice, warning or show cause notice was ever served upon him. In this regard, the perusal of record reveals that all the notices have similar address as provided by the petitioner's wife Mrs. Madiha Atif, even the landline number is same, therefore, it could not be considered as a valid ground that no notice was served upon the petitioner.

12. The petitioner served the respondent department for 13 years and his illness is evidently reflected from record, which seems to be not curable at this stage, and he requires continuous treatment, although on some occasions, the doctor has given fitness certificate but the same was temporary in nature,

even the NESCOM authorities acknowledged the illness of the petitioner and petitioner case requires a sympathetic consideration, but at this stage, when the appellate authority has already rejected the appeal and petition is against the concurrent findings which is under judicial review in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, this Court is bound to consider the law on subject i.e. NCA Act, 2010, which elucidates the respondent organization as a strategic organization in terms of Section 8 of the Act and the authority defined under the Act shall regulate all the matters relating to terms and conditions of the service of employees, including appointment, removal, promotion, transfer, etc., even otherwise, the nature of services of the employees is sensitive due to their specific functions and security issues, and as such, Section 22 bars the jurisdiction of any court to call in question any order or authority, if passed under any powers conferred by or under the Act. At last, the NCA (Amendment) Act, 2016 further declares the terms and conditions of the employees based upon non statutory rules and the wisdom behind said amendment is the sensitivity of the respondent organization in order to give them a complete autonomy under the NCA Act, 2010 to determine all matters pertaining to its employees.

13. Considering the entire background of the case and law on the subject, the instant writ petition is not competent and the same is hereby **DISMISSED**.

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

Announced in Open Court on: \_\_\_\_\_ December, 2018.

**JUDGE**

Khalid Z.