

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3798 of 2019

Sohail Ahmed

Versus

Federation of Pakistan through Secretary, Ministry of Interior 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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15.11.2019

Mr. Ahsan Hameed Dogar, Advocate for the petitioner.

Mr. Qaiser Masood, Additional Director (Law), F.I.A.

Through the instant writ petition, the petitioner, Sohail Ahmed, impugns office order No.830/2019, whereby he was relieved from his duties as A.S.I. (BPS-09), and the salaries received by him after his repatriation order dated 03.01.2018 were ordered to be recovered from him.

2. Learned counsel for the petitioner submitted that the repatriation order dated 03.01.2018 was not in the petitioner's knowledge; that vide office order No.285/2012, dated 12.12.2012, the petitioner was permanently absorbed in F.I.A.: and that no opportunity of hearing was afforded to the petitioner before he was repatriated to his parent department i.e. Special Branch, Khyber Pakhtunkhwa ("K.P.K.") Police.

3. Mr. Qaiser Masood, Additional Director (Law), Federal Investigation Agency ("F.I.A.") tendered appearance on behalf of the F.I.A. and confirmed that an opportunity of hearing was not afforded to the petitioner before he was repatriated to his parent department. He also confirmed that the petitioner had been permanently absorbed in the F.I.A. vide office order dated 12.12.2012 but the said absorption

was not in consonance with the law laid down in the judgments reported as 2013 SCMR 1752 and 2015 SCMR 456. He very fairly submitted that the petitioner had made a representation to the Director General, F.I.A. against his repatriation order dated 24.10.2019, and that the said representation would be decided after affording the petitioner an opportunity of a hearing.

4. Heard.

5. In the year 2010, the petitioner was serving as Assistant Sub Inspector (BPS-09), Special Branch, K.P.K. Vide office order dated 15.04.2010, the petitioner was sent on deputation as Assistant Sub Inspector, F.I.A. Islamabad Zone. Vide office order dated 12.12.2012, the petitioner was permanently absorbed in the F.I.A. After the Hon'ble Supreme Court passed judgments reported as 2013 SCMR 1752 and 2015 SCMR 456, the petitioner's absorption in F.I.A. was examined in order to determine whether it was in consonance with the law laid down in the said judgments. After this exercise, it was found that the petitioner was not a civil servant when he was sent on deputation from the Special Branch, K.P.K. It was also found that the petitioner had not been recommended for absorption in the F.I.A. by the Departmental Selection Committee. Consequently, vide order dated 03.01.2018, the petitioner was repatriated to his parent department. The said order had the effect of recalling his absorption in the F.I.A.

6. On 25.10.2019, the petitioner submitted a representation to the Director General, F.I.A. against his repatriation. Till date, the said representation has not been decided. It is an admitted position that no opportunity of a hearing was afforded to the petitioner before repatriating

him to his parent department. As mentioned above, the said repatriation had the effect of recalling the petitioner's absorption in the F.I.A.

7. Recently, this Court has allowed writ petitions filed by the petitioners who had been repatriated to their parent departments after they had been absorbed in the borrowing departments. This Court, vide order dated 03.06.2019 passed in writ petition No.1294/2019 titled "*Sheikh Fazal ur Raheem Vs. Capital Development Authority through its Chairman*" held as follows:-

"4. In all cases in hand, the impugned repatriation orders have been passed in violation of Article 10-A of the Constitution which guarantees due process as one of the fundamental rights. Each petitioner was required to be proceeded against under the applicable service rules or regulations, as the case may be. The respondents were required to examine each case independently having regard to the law where under the absorption was ordered and the principles and law enunciated by the august Supreme Court in case titled "Contempt proceedings against the Chief Secretary, Sindh and others" reported as [2013 SCMR 1752] and in case titled "Ali Azhar Khan Baloch Vs. Province of Sindh" [2015 SCMR 456]. Each case was therefore to be dealt with individually ensuring compliance with the mandatory requirements of due process. The learned counsels for the petitioners have stated that the impugned orders have been passed without lawful authority and jurisdiction and in violation of the principles and law expounded by the august Supreme Court in the aforementioned judgments. The learned counsels have further stated that the petitioners at this stage would be satisfied if the petitions are disposed of by directing the respondents to proceed in accordance with the law.

5. When confronted with the above, the learned counsel for the Authority could not satisfy this Court that the mandatory requirements of due process were complied with before passing the impugned orders. However, she has stated that all these cases could be remanded to the department for fresh proceedings.

6. In view of the above, all these petitions are allowed and the impugned orders are set

aside. The competent authority will proceed under the relevant service regulations/rules and ensure that the principles of due process are complied with. If the competent authority concludes that the absorption was illegal in the light of the law laid down in the aforementioned judgments then it will record reasons.”

8. In view of the above, this petition is disposed of with the direction to the Director General, F.I.A. to decide the petitioner's representation dated 25.10.2019 against his repatriation within a period of one month from the date of the receipt of this order. The petitioner shall be afforded an opportunity of hearing before a decision on the said representation. Until the decision on the said representation, the petitioner's repatriation orders shall be held in abeyance.

9. Disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*