

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

ICA No.766/2013

Pakistan Telecommunication Company Limited

Versus

Mumtaz Kalwar, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	29-01-2020	Mr Nauman Munir Paracha, Advocate for petitioner. Hafiz Arfat Ahmed Ch, Advocate for respondent. Mr Raheel Zafar, Manager (Legal), PTCL.

This appeal is directed against judgment, dated 27-05-2013, passed by the learned Single Judge in Writ Petition No.181/2012.

2. The facts, in brief, are that respondent no.3, namely, Syed Mazhar Hussain was a transferred employee of Pakistan Telecommunication Company Limited (*hereinafter referred to as the 'Company'*). He was allotted an official accommodation and he had exchanged the same with another employee of the appellant Company. Departmental proceedings were initiated against respondent no.3 which led to imposition of major penalty of dismissal from service. The said

penalty was later converted to compulsory retirement vide order, dated 16-12-2011. Respondent no.3 challenged the order, dated 16-12-2011, and the constitutional petition was allowed vide order, dated 27-05-2013.

3. The learned counsel for respondent no.3 at the very outset has raised a preliminary objection regarding maintainability of this appeal. He has argued that an appeal was preferred by respondent no.3 and it was duly adjudicated by the competent forum. He has, therefore, objected to the maintainability of the appeal in the light of the proviso to sub-section (2) of Section 3 of the Law Reforms Ordinance, 1972 (*hereinafter referred to as the 'Ordinance of 1972'*).

4. The learned counsel for the appellant Company has stated that the appeal preferred by the petitioner and decided by the competent authority was not a remedy provided under any law. The learned counsel has placed reliance on order, dated 13-02-2019, passed by the august Supreme Court of Pakistan in Civil Appeal No.1310 of 2015 titled 'Pakistan Telecommunication Company Ltd, Islamabad & another v. Muhammad Safdar &

another in support of his contention that an Intra Court Appeal is competent before this Court under the Ordinance of 1972.

5. The learned counsels have been heard and record perused with their able assistance.

6. It is an admitted position that a right of appeal was provided under the Service Regulations of the appellant Company. Respondent no.3 had availed this remedy and the competent appellate authority had decided his appeal. It is, therefore, an admitted position that a right of appeal was provided under the relevant Service Regulations of the appellant Company, which was decided by the competent appellate forum. The argument of the learned counsel that Service Regulations cannot be treated as law is misconceived.

7. The proviso to sub-section (2) of Section 3 of the Ordinance of 1972 is unambiguous and places a bar on the maintainability of an Intra Court Appeal, if the matter assailed, by invoking the jurisdiction under Article 199 of the Constitution, arises out of any 'proceedings' in which the law applicable provides for atleast one appeal to any

court, tribunal or authority against the original order. In the instant case a right of appeal is provided under the relevant law. The law relating to maintainability of an Intra Court Appeal is settled and, therefore, the proviso will be attracted in such cases in which the law provides for a remedy of appeal, revision or review.

8. The august Supreme Court in the case of '*Karim Bibi and others v. Hussain Bukhsh and others*' [PLD 1984 SC 344] has held that the test laid down by the legislature in the proviso is that "if the law applicable to the proceedings from which the Constitutional Petition arises provides for at least one appeal against the original order, then no appeal would be competent from the order of a Single Judge in the constitutional jurisdiction to a Bench of two or more Judges of the High Court". The expression 'original order' has also been interpreted in the same judgment. The august Supreme Court while interpreting the proviso has further held that the requirement of the availability of an appeal in the law applicable is not in relation to the impugned order in the constitutional petition, which may be the order passed by the lowest officer or authority in the hierarchy or any order passed by higher authorities in appeal, revision or review. Reliance is

also placed on the cases of '*Muhammad Aslam Sukhera and others v. Collector Land Acquisition, Lahore, Improvement Trust, Lahore and others*' [PLD 2005 SC 45] and '*Muhammad Abdullah v. Deputy Settlement Commissioner, Center-I, Lahore*' [PLD 1985 SC 107].

9. We have carefully perused the order of the august Supreme Court, dated 13-02-2019, referred to by the learned counsel for the appellant Company. The said order is distinguishable in the facts and circumstances of the appeal in hand. In case of respondent no.3 the appeal was not only preferred but also decided by the competent appellate authority. Keeping in view the principles and law highlighted above, we are satisfied that his appeal is not competent.

10. For the above reasons, this appeal is not maintainable and, therefore, accordingly **dismissed.**

(CHIEF JUSTICE)

(GHULAM AZAM QAMBRANI)
JUDGE