

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

W.P No. 424 of 2022

Haroon Rashid

VS

M/o Railway, etc.

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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10.02.2022.	Mr. M. Umair Baloch, Advocate for petitioner.
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Through the instant petition, the Petitioner has assailed Show Cause Notice dated 21.12.2021 ("**Impugned Notice**") issued by Secretary/Chairman Railways, Ministry of Railways.

2. Facts in brief, as per the Memo of Petition, are that Petitioner is working as Chief Terminal Manager at Dry Ports of Pakistan Railways; that Respondents initiated proceedings against the Petitioner on the basis of report prepared by his junior officer on the verbal direction of CEO; that Impugned Notice along with Charge Sheet has been issued which was replied to by the Petitioner vide defence reply dated 04.01.2022; that prior to issuance of Impugned Notice, a Statement of Allegations was issued, in response to which the Petitioner submitted detailed reply and denied the allegations but it was not considered and ex-parte proceedings were initiated against the Petitioner; that earlier the Petitioner approached Federal Service Tribunal ("FST") through Appeal No. 16(P)CS/2022, which was disposed of vide order dated 01.02.2022 directing the Respondents to, *inter alia*, release the salary of the Petitioner but no action on such direction has been taken by the Respondents; that till final order is passed by

the Respondents under E&D Rules, the Petitioner cannot approach the FST; hence the instant petition.

3. Learned counsel for the Petitioner has, inter-alia, contended that the impugned proceedings against the Petitioner are illegal and unlawful; that the single report, prepared by a junior has no validity and sanctity in the eyes of law, which appears to be foul play; that no loss to the Government Exchequer has been caused and no benefit has been obtained by the Petitioner; hence the Impugned Notice and impugned proceedings are liable to be set aside. Learned counsel has relied on the case titled *“Muhammad Farooque Memon Vs. Province of Sindh through Chief Secretary to Government of Sindh and 4 others”*, 2004 PLC (CS) 1293, *The Secretary, Government of Punjab, and others Vs. Riaz Ul Haq*, 1997 SCMR 1552, *Zahoor Ahmed Vs. WAPDA and others*, 2001 SCMR 1566, *Aleem Jaffar, Ex-line Superintendent, WAPDA Lahore Vs. WAPDA through its Chairman and 2 others*, 1998 SCMR 1445, *Muhammad Ikram Vs. BISE etc*, PLJ 2008 Lahore 723, *the Federation of Pakistan Vs. Saeed Ahmed Khan and others*, PLD 1974 Supreme Court 151 and *Justice Qazi Faez Isa and others Vs. The President of Pakistan and others* PLD 2021 Supreme Court 1” and an unreported interim order passed by a learned Single Bench of this Court in the case *Zulfiqar Ali versus Federation of Pakistan through its Secretary, Ministry of Overseas Pakistanis and Human Resource Development, Islamabad*, W.P.No. 3757/2021.

4. Arguments heard and record perused.

5. It is noted first and foremost, that issuance of Show Cause Notice is neither a final order nor an adverse action. It is merely a step

towards passing a final order. The Impugned Notice in the instant case has been issued pursuant to the Government Servants (Efficiency & Disciplinary) Rules, 1973 and as such pertains to the terms and conditions of service. In view of the foregoing, this Court cannot entertain this writ petition by a civil servant due to the bar contained under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.

6. The Petitioner contends that the inquiry initiated against him and the Impugned Notice issued to him are based on malafide intentions and therefore, are liable to be set aside. However, perusal of the Impugned Notice shows that the said notice allows the Petitioner to submit a reply to put forward his contentions. It has also been confirmed that such reply has already been submitted to the Respondents and copy of the same is attached with the instant petition. Learned counsel for the Petitioner has also confirmed that no further action has been taken in pursuance of the Impugned Notice and no final order is in the field as of now, therefore, the apprehensions expressed by the Petitioner are speculative hence, the instant Petition is premature and interference by this Court at this stage is unwarranted. In case of any final or adverse order, the Petitioner will have recourse available before the Federal Service Tribunal.

7. Case laws cited by the Petitioner are distinguishable due to the facts and circumstances involved in such cases. In the case of *Zahoor Ahmed (supra)*, fair opportunity to defend was not given to the concerned employee prior to dismissal of his employment on account

of misconduct. Whereas, in the instant case, there is no dismissal order to date.

8. The cases of *The Secretary, Government of Punjab* and *Aleem Jaffar, Ex-Line Superintendent, WAPDA, Lahore (supra)* do not support the Petitioner as they were appeals against orders passed by service tribunal. Whereas, the case of *Muhammad Ikram (Supra)* pertains to pensionary benefits. Similarly, the case of *Justice Qazi Faez Isa (Supra)* is altogether different in terms of facts and circumstances.

9. In the unreported case of *Zulfiqar Ali, (supra)*, termination under Show Cause Notice itself stated that the competent authority has decided not to initiate regular inquiry as well as the punishment of dismissal from service has also been announced, which is not the case in the instant petition.

10. Whereas, in the case titled *the Federation of Pakistan (Supra)*, also referred by the Petitioner, the Honorable Supreme Court has stated that mala fides must be pleaded with particularity; no one should be allowed to adduce proof of any kind nor should enquiry be launched merely on the basis of vague and indefinite allegations nor should a person alleging mala fides be allowed a roving enquiry into the files of the Government for the purposes of fishing out some kind of case; to make out a case of mala fides, some specific allegation is necessary and it must be supported by some prima facie proof to justify the Court to call upon the other side to produce evidence in its possession. All the said ingredients are missing in the instant Petition. As stated above, the Petitioner has been given a chance to file its response to the show cause notice and it is

expected that he will be given an opportunity of hearing. In the event of any adverse order against him, he has an alternate remedy available at law.

11. For what has been discussed above, titled petition, being devoid of any merit, is hereby ***dismissed in limine.***

(SAMAN RAFAT IMTIAZ)
JUDGE

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