

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4190 of 2017

Ghulam Nabi

Versus

Oil & Gas Development Company Limited and others

Date of Hearing: 21.01.2020 and 06.05.2020

Petitioner by: M/s Saliheen Mughal and Jameel Hussain
Qureshi, Advocates.

Respondents by: Mr. Kashif Ali Malik, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Ghulam Nabi, impugns the office memorandum dated 12.06.2017 issued by the Oil and Gas Development Company Limited (“O.G.D.C.L.”), whereby the proposal for the imposition of a major penalty of dismissal from service on him was approved with effect from 24.10.2013. The said penalty was imposed on the petitioner for illegally obtaining three advance increments exclusively permissible to staff members possessing matric qualification and submitting an army discharge certificate which allegedly contained interpolations.

2. Learned counsel for the petitioner submitted that the petitioner had 21 years of meritorious service in the Pakistan Army prior to his appointment in O.G.D.C.L.; that in April, 1995, the petitioner was appointed in O.G.D.C.L. as a Security Guard on work charge basis; that the petitioner’s services were regularized with effect from 02.01.1999; that on 24.10.2014, the petitioner retired upon attaining the age of superannuation; that the petitioner had been paid a salary payable to employees who were not matriculates; that after his retirement, the petitioner received the show cause notice dated 21.10.2014, wherein it was alleged that he had committed misconduct by submitting a bogus army discharge certificate at the time of his appointment and by claiming to be a matriculate; that the authorized officer exonerated the petitioner from the allegations levelled against him in the charge sheet and a final report in this regard was submitted; that since the petitioner had not been paid his retirement and pensionary benefits, he filed writ petition No.3649/2016 before

this Court; that the said writ petition was disposed of vide order dated 20.02.2017 with the direction to O.G.D.C.L. to afford an opportunity of a hearing to the petitioner and to decide his grievances in accordance with the law; that on 06.04.2017, the petitioner was afforded an opportunity of a hearing by the acting General Manager (Human Resource), O.G.D.C.L.; and that vide impugned memorandum dated 12.06.2017, major penalty of dismissal from service was imposed on the petitioner.

3. Learned counsel for the petitioner further submitted that neither could disciplinary proceedings have been taken against the petitioner nor could he be punished after his retirement; that the disciplinary proceedings initiated against the petitioner would abate upon his retirement; that the impugned office memorandum dated 12.06.2017 is not in conformity with the direction given by this Court in its order dated 20.02.2017 passed in writ petition No.3649/2016; that the petitioner's correct date of birth is 27.12.1954 and not 25.10.1953; and that the petitioner's passport and CNIC also bear 1954 as his year of birth. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as Muhammad Zaheer Khan Vs. Government of Pakistan through Secretary Establishment (2010 SCMR 1554), Deputy Director Food Vs. Akhtar Ali (1997 SCMR 343), Roshan Dani Vs. Wapda (2015 PLC (C.S.) 263), and Director-General, Military Land and Cantonment Department Vs. Dr. Capt. Nazeer Ahmed Baloch 2011 PLC (C.S.) 1527.

4. On the other hand, learned counsel for the respondents/O.G.D.C.L. submitted that in the year 1995, the petitioner was appointed as a Security Guard on daily wage basis; that his services were regularized on 02.05.2003 but subsequently that date was amended to 02.01.1999; that the armed forces discharge certificate submitted by the petitioner at the time of his appointment shows his date of birth as 25.10.1954; that the Record Wing of the Artillery Centre, Attock through its officer in charge confirmed vide letter dated 26.05.2014 that the petitioner's date of birth was 25.10.1953; that the petitioner represented himself to be matriculate

in the proforma signed and submitted by him at the time of his induction in O.G.D.C.L.; that the petitioner was also granted three advance increments on the basis of his matriculation; that subsequently, it transpired that the petitioner had made a false declaration regarding his date of birth and academic credentials; that the petitioner defrauded O.G.D.C.L. by representing himself to be a matriculate; that the petitioner served for one extra year on the basis of his incorrect date of birth; that vide letters dated 14.04.2014 and 06.05.2014, the Human Recourse Department of O.G.D.C.L. called upon the petitioner to produce his matriculation certificate; that in his letter dated 16.05.2014, the petitioner took the position that he was not a matriculate; that the petitioner did not deny the receipt of increments given to him on the basis of his matriculation; that disciplinary proceedings were initiated against the petitioner for tampering with his date of birth in his army discharge certificate and for non-submission of his matriculation certificate; that in this regard, an authorized officer was appointed on 30.06.2014, but the initiation of the inquiry proceedings was delayed; that on 21.10.2014, the petitioner was served with a show cause notice; that the inquiry proceedings could not be concluded against the petitioner due to an injunctive order passed by the National Industrial Relations Commission ("N.I.R.C."); that the N.I.R.C. had ordered for the inquiry proceedings to continue but restrained O.G.D.C.L. from passing an adverse order regarding the petitioner's employment; that the inquiry proceedings were not concluded until the petitioner's retirement; that after the petitioner's retirement, the authorized officer returned the case file to the Discipline Section of O.G.D.C.L.; and that thereafter the N.I.R.C. dismissed the petitioner's grievance petition as having become infructuous. Learned counsel for the respondents prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The record shows that vide O.G.D.C.L.'s letter dated 04.05.1995, the petitioner was employed as a Security Guard on work charge basis with effect from 20.04.1995. O.G.D.C.L.'s office memorandum

dated 26.01.2010 shows that the petitioner's services were regularized with effect from 02.01.1999 pursuant to a decision taken by the N.I.R.C.

7. On 31.12.2003, the petitioner submitted a proforma to the Personnel Department Recruitment Section of O.G.D.C.L. In this proforma, the petitioner represented his educational qualification to be "Matric" and his date of birth as 27.12.1954. The petitioner had signed this proforma. Furthermore, the petitioner represented that he had passed his matriculation from the Board of Intermediate and Secondary Education Rawalpindi in the year 1979 having obtained 457 out of 850 marks. The petitioner had also submitted his Certificate of Service with the Pakistan Army which bears "25.10.54" against the entry of "date of birth" and "25.10.1953" on the opposite page.

8. On 03.12.2013, the management of O.G.D.C.L. issued the following circular, which was distributed to all the employees including the petitioner:-

*"Management has taken a serious note of cases where fake degrees/certificates have been submitted to acquire employment/benefits, etc. associated with service at a later stage.
02. To eliminate the practice, management has decided that irrespective of the fact that fake degree/educational certificates, etc. are submitted to the Company at the time of induction i.e., Joining the service of the Company or at a later stage to seek some other benefits, etc., the employee found guilty of submission of fake degrees/certificates should be terminated from the service of the Company."*

9. In pursuance to the abovementioned circular, the verification process of the educational certificates/degrees of O.G.D.C.L.'s employees was initiated. O.G.D.C.L., vide office letters dated 14.04.2014 and 06.05.2014, called upon the petitioner to furnish an attested copy of his matriculation certificate. It is an admitted position that the petitioner did not provide a copy of his matriculation certificate to O.G.D.C.L.

10. On 16.05.2014, O.G.D.C.L. also sent a copy of the petitioner's Certificate of Service with the Pakistan Army for the verification of his date of birth to the Officer Incharge, Record Wing, Artillery Centre, Attock. Vide letter dated 26.05.2014, the Record Wing of the Artillery Centre informed O.G.D.C.L. that as per the former's record, the petitioner's date of birth was 25.10.1953, and not 25.10.1954.

11. On 21.10.2014, the authorized officer issued a show cause notice to the petitioner alleging therein that (i) the petitioner had wrongly represented his date of birth to be 25.10.1954, and (ii) that the petitioner had wrongly represented that his educational qualification was matriculation and on the said basis he had received three advance increments. The authorized officer also decided to dispense with the inquiry. In his reply dated 08.12.2014 to the said show cause notice, the petitioner took the position that since he had attained the age of superannuation on 24.10.2014, no disciplinary proceedings could be initiated against him.

12. Aggrieved by the issuance of the said show cause notice, the petitioner filed a grievance petition (Case No.4A(171)/2014) before the N.I.R.C. and was able to obtain an injunctive order on 31.10.2014. As an interim measure, the N.I.R.C. restrained O.G.D.C.L. from passing any adverse order against the petitioner. O.G.D.C.L., in its written comments, pleaded that the N.I.R.C. had also ordered that O.G.D.C.L. was at liberty to continue with the inquiry proceedings against the petitioner. Since the petitioner had superannuated during the pendency of the case before the N.I.R.C., vide order dated 31.12.2014, the said petition was dismissed as having become infructuous. In the said order dated 31.12.2014, it was stated that *“according to contents of the petition, the petitioner shall have to retire from service with effect from 27.12.2014, which period has been expired.”*

13. Since after the petitioner's retirement he had not been paid his pensionary benefits, he filed writ petition No.3649/2016 before this Court. The said writ petition was disposed of vide order dated 20.02.2017 with the direction to the Chief Executive of O.G.D.C.L. to depute an officer not below the rank of General Manager, who was to afford an opportunity of a hearing to the petitioner and decide the petitioner's grievances including his claim for pensionary benefits, strictly in accordance with the law. Vide letter dated 03.04.2017, the petitioner was advised to attend the personal hearing on 06.04.2017. After the petitioner's personal hearing, O.G.D.C.L., vide office memorandum dated 12.06.2017, imposed major penalty of dismissal from service on him. The said office memorandum has been assailed by the petitioner in the instant petition.

14. It is an admitted position that on 30.06.2014, Lt. Col. Javed Iqbal, Ex-Chief Security Officer, O.G.D.C.L., was appointed as the authorized officer to proceed against the petitioner. O.G.D.C.L., in its written comments, has pleaded that the said authorized officer delayed the initiation of the inquiry proceedings against the petitioner and that the authorized officer issued the show cause notice to him after he was reminded vide letter dated 16.10.2014.

15. Now, at page 33 of this petition, the petitioner has annexed a document which shows that the above-named authorized officer had recommended that the petitioner be exonerated from the charge of forgery by giving him the benefit of doubt. This fact was explicitly pleaded by the petitioner in paragraph 7 of his writ petition. This assertion has not been specifically denied by O.G.D.C.L. in its written comments. The authorized officer did however observe that the petitioner could be admonished for keeping silent on his increments. The authenticity of the said document was not disputed by O.G.D.C.L. in its written comments or during arguments. This case was fixed for rehearing and one of the questions posed by this Court was *“whether the authorized officer appointed by the O.G.D.C.L. had recommended that the petitioner be exonerated from the charges of forgery?”* Learned counsel for O.G.D.C.L., in his final arguments did not deny that such a recommendation had indeed been made by the authorized officer.

16. The recommendation to exonerate the petitioner had not been recalled by the authorized officer at any material stage. Nothing was brought on record by O.G.D.C.L. to show as to why the said recommendation was not accepted by O.G.D.C.L. The impugned memorandum dated 12.06.2017 also does not make any reference to the said recommendation of the authorized officer to exonerate the petitioner. It is also admitted that other than the proceedings in which the authorized officer had recommended to exonerate the petitioner, no other proceedings were conducted against him in which the authorized officer had recommended the imposition of a major penalty on the petitioner after due inquiry. Nothing was brought on the record to show that any reasons were recorded by the competent authority for not agreeing with the recommendation of the authorized officer.

This omission on the part of O.G.D.C.L., in my view, renders the impugned memorandum dated 12.06.2017 liable to be set aside. In holding so, reliance is placed on the following case law:-

- (i) In the case of Asif Yousaf Vs. Secretary Revenue Division, CBR, Islamabad (2014 SCMR 147), the competent authority, while disagreeing with the minor penalty, recommended by the inquiry officer to be imposed on the appellant, awarded a major penalty of the dismissal from service. A reasoned order had not been passed by the competent authority while imposing the major penalty on the appellant. The Hon'ble Supreme Court set-aside the order of the competent authority and directed the competent authority to pass afresh order. Paragraphs 6 and 7 of the said report are reproduced herein below:-

“6. There is no cavil to the proposition that the Competent Authority is not bound by the recommendation of Inquiry Officer qua the award of penalty to the accused officer. However, while disagreeing and awarding higher penalty than recommended by the Inquiry Officer, he has to firstly provide opportunity of hearing to the accused officer and secondly, he has to pass a reasoned order with conscious application of mind. The tenor of the order passed to which reference has been made above indicates that although the Inquiry Officer had found the appellant to be negligent in his conduct and the charge of ‘mal-administration’ was not proved yet the Competent Authority while awarding him major penalty of dismissal from service found that “there was substantial evidence on record to prove the charges”. There is no reference to the evidence or material which found favour with the Competent Authority to award major penalty of dismissal from service. Admittedly there was no allegation that the accused officer was guilty of corruption or of financial gain.

7. In the afore-referred circumstances, this appeal is partly allowed and the order of the Competent Authority dated 20-7-2006 is set aside. The case shall be deemed to be pending before the Competent Authority or his successor, whoever he may be, to pass a fresh order after hearing the appellant and within 30 days of the receipt of this order.”

(Emphasis added)

- (ii) In the case of Province of Punjab Vs. Farooq Ahmad Rehman (2007 PLC (C.S.) 781), the competent authority awarded punishment to a civil servant while disagreeing with the report of the inquiry officer endorsed by the authorized officer exonerating the civil servant from the charge. The Hon'ble Supreme Court held that if the competent authority was not satisfied with the report of the inquiry officer and the

recommendation of the authorized officer, it could direct a fresh inquiry after assigning reasons therefor.

- (iii) In the case of Chief Director, Central Directorate of National Savings, Islamabad Vs. Rahat Ali Sherwani (1996 PLC (C.S.) 383), the authorized officer, on the recommendations of the inquiry officer, exonerated the respondent of the charges levelled against him. However, the competent authority disagreed with the findings of the inquiry officer and the authorized officer and imposed a minor penalty on the respondent after issuing him a notice. The competent authority had not recorded any reasons as to why it was not inclined to agree with findings of fact recorded by two competent officers to the effect that charges against civil servant were not proved. The imposition of the penalty was set-aside by the Service Tribunal and the said decision was upheld by the Hon'ble Supreme Court. It was held that the least that was expected from the competent authority was to mention the grounds on the basis of which it was inclined to take a contrary view so that the respondent could have a reasonable opportunity to explain his point of view.
- (iv) In the case of Nazir Ahmad Langah Vs. Registrar, Lahore High Court (2017 PLC (C.S.) Note 50), the inquiry officer made recommendations for imposition of a minor penalty of withholding promotion of the appellant for a period of four years whereas the competent authority imposed a major penalty of compulsory retirement on the appellant after issuing him a show cause notice. The authority, while disagreeing with the findings of the inquiry officer, had not recorded any reason for doing so. The Punjab Subordinate Judiciary Tribunal comprising of the Hon'ble Judges of the Hon'ble Lahore High Court held *inter alia* that the said omission "*injuriously affected the rights of the appellant.*" This was one of the reasons for setting-aside the penalty imposed on the appellant.

17. It may also be mentioned that this Court, while disposing of writ petition No.3649/2016 titled "Ghulam Nabi Vs. OGDCL, etc." vide order dated 20.02.2017, had directed O.G.D.C.L. to decide the

petitioner's grievances including his claim for pensionary benefits. Instead of deciding the matter in terms of the remand order, O.G.D.C.L. imposed a major penalty of dismissal from service on the petitioner.

18. In view of the above, the instant writ petition is allowed; and the impugned memorandum dated 12.06.2017 whereby the major penalty of dismissal from service was imposed on the petitioner more than two years after his retirement upon attaining the age of superannuation is set aside. O.G.D.C.L. shall be under a continuing obligation to decide the petitioner's grievance regarding the non-payment of his pension and retirement benefits. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2020

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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