

**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

**JUDICIAL DEPARTMENT**

**W.P. No.3612/2019**

Raja Mazhar Abbas

*versus*

Federation of Pakistan through M/o Defence, Rawalpindi & 03 others

Petitioner by: Syed Ali Abbas Kazmi, Advocate.

Respondents by: Barrister Muhammad Mumtaz Ali, AAG  
along with Omar, Flying Officer, PAF.

Date of Decision: 24.02.2021.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioner has assailed his termination order from Pakistan Air Force and prayed for issuance of direction to respondents to reinstate the petitioner in service with all back benefits or to disburse the pensionary benefits and gratuity.

2. Succinctly, the petitioner joined the Pakistan Air Force on 13.02.2004 as Airman and had lastly served as CPL Technician at PAF Base Mushaf Sargodha, when he has been dismissed from service along with imposition of sentence of six (06) months rigorous imprisonment on the allegation of desertion under Section 38(1) of the Pakistan Air Force Act, 1953 by Presiding Officer, District Court Martial (Respondent No.3), per se, the said sentence has been confirmed by Air Commodore, Officer Commanding Pakistan Air Force Base Mushaf, Sargodha. Hence, instant writ petition.

3. Learned counsel for petitioner contends that petitioner has been dismissed from service without providing certificate of termination from

service as per Section 22 of the Act, 1953 nor any order/judgment has been provided to the petitioner till date with respect to sentence passed against the petitioner, as such, pre-requisites of a fair trial as envisaged in Chapter-XI of the Act, 1953 have not been complied with; that the petitioner was on leave at home situated in Khushab city when he learnt about registration of a criminal case against him, per se, the petitioner being only male member of his family to support and earn their bread and butter constrained to hide himself due to apprehension of getting arrested, nevertheless, the petitioner was acquitted of the charges in terms of Section 265-k Cr.P.C. and soon thereafter the petitioner approached his unit at PAF Base Mushaf Sargodha and surrendered himself; that the absence of the petitioner from his duties was neither willful nor deliberate but due to irrepressible circumstances, but the respondent authorities have dismissed the petitioner along with further imposition of sentence of 06 months rigorous imprisonment.

4. Conversely, learned AAG contends that the petitioner having been posted at PAF Base, Mushaf, Sargodha absented himself without leave from his unit on 28.04.2018, whereas on eighth day of his absence, PAF Form-124 was forwarded to different agencies, including his home address as well as to concerned police station of his district, but to no avail; that in June, 2018, a Board of Inquiry was constituted regarding his absence without leave, whereby the Board declared that the petitioner has illegally absented himself without leave from his unit w.e.f. 28.04.2018, per se, the petitioner reported back after passing of more than 09 months, whereafter the trial of petitioner was held at PAF Base Mushaf Sargodha on the charge of desertion under Section 38(1) of the PAF Act, 1953, in which the

petitioner pleaded guilty and accordingly, he was awarded sentence of 06 months rigorous imprisonment along with dismissal from service; that the petitioner has been dismissed from service pursuant to proper conduct of trial in accordance with law; that in terms of Article 199(3) of the Constitution of the Islamic Republic of Pakistan, 1973 this Court lacks jurisdiction to adjudicate upon the matter.

5. Arguments heard, record perused.

6. Perusal of record reveals that Raja Mazhar Abbas / petitioner, Ex-Corporal Technician, was appointed on 13.02.2004 in Pakistan Air Force as Airman, and was lastly posted at PAF Base Mushaf, Sargodha when he remained on leave w.e.f. 28.04.2018. It is pertinent to mention here that the petitioner was nominated in a criminal case i.e. FIR No.120, dated 22.04.2018, under Sections 302, 324, 34/337-F(iii) PPC, Police Station Khatta Saghrul, Khushab (Punjab), whereafter he remained absconder, however the respondent authorities had initiated an inquiry with respect to petitioner's absentee, even the respondent authorities informed the local police of the petitioner's district. In June, 2018, Board of Inquiry was constituted regarding the petitioner's absence without leave, whereby the petitioner was declared on illegal leave w.e.f. 28.04.2018, as such, the petitioner reported back on 01.02.2019 after desertion for more than nine months, though he had taken the stance that he was involved in a criminal case without any justified reason, per se, as soon as he has been acquitted of the criminal case by the learned Additional Sessions Judge, Khushab, vide order dated 04.01.2019, he reported back to his unit. However, the Commanding Officer of the petitioner passed the order to record summary of evidence against the petitioner as per Pakistan Air

Force Act, 1953. During the summary of evidence, it was decided to try the petitioner by convening a Court Martial under the Air Force Laws, whereafter the trial was conducted on Pakistan Air Force Base Mushaf, Sargodha on charges of desertion under Section 38(1) of Pakistan Air Force Act, 1953. During the course of proceedings, the petitioner pleaded guilty to the charge, whereby he was awarded sentence of six (06) months rigorous imprisonment along with dismissal order from service. The proceedings of District Court Martial were confirmed on 11.04.2019 under the law, however the petitioner after completion of reduced sentence of three (03) months has been released from District Jail, Shahpur.

7. While considering this background, the petitioner has been confronted as to whether he had informed the Commanding Officer regarding his involvement in a criminal case, whereby it was conceded that no such information was transmitted to the respondent authority, hence the petitioner apparently admitted the charge of willful desertion, even the same was acknowledged by him during the Court Martial proceedings, as a result whereof he was convicted and dismissed from service, per se, the Pakistan Air Force authorities have conducted the entire proceedings in accordance with law and no illegality has been pointed out during the course arguments, even sufficient opportunity was granted to the petitioner to justify his position, but the conduct demonstrated by the petitioner requires no condemnation, especially when he had not informed the Pakistan Air Force authorities qua his involvement in a criminal case, rather remained on willful absence from his lawful duties.

8. While considering all these aspects, it has been settled by now that judicial review, though available in such type of cases but, with an

exception that if the order passed by the respondent authorities is patently illegal and based upon malafide or without any lawful authority, failing which the constitutional jurisdiction in terms of Article 199(3) of the Constitution of the Islamic Republic of Pakistan, 1973 could not be exercised.

9. Contrarily, the petitioner has relied upon 2012 SCMR 1229 (Federation of Pakistan through Secretary Ministry of Defence vs. Abdul Basit) and PLD 2015 Islamabad 180 (Muhammad Shariq vs. Federation of Pakistan), but the facts and circumstances referred in supra judgments are not applicable to the case in hand, even it is settled proposition of law that in case of dismissal from service, pensionary benefits could not be granted in favour of the sacked employee.

10. In view of above position, the instant writ petition is misconceived and the same is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.