

## JUDGMENT

**MOHSIN AKHTAR KAYANI, J.**----Through this Writ Petition, the petitioner has prayed for the following relief:-

- 1) Respondents be directed to release pay and allowances/back benefits of the petitioner from 19.7.2012 till 1.1.2016 as the petitioner has not received any pensionary benefits.
- 2) The respondents be directed to release salary to the petitioner of his suspended period i.e. from 13.4.2016 to 27.6.2016.
- 3) The impugned orders dated 28.6.2016 and 3.10.2016 may be declared as illegal, without lawful authority, based upon mala fide, in violation of judgment of this Honourable Court and that of the Honourable Supreme Court of Pakistan and same be set aside.
- 4) The petitioner may be reinstated in service with back benefits and respondents be directed to release back benefits and salary of suspended period to the petitioner.

2. Learned counsel for the petitioner contends that petitioner was employee of Airport Security Force (ASF) and was inducted as Inspector on 03.05.1983, however, he was dismissed from service by the respondents vide impugned order dated 28.06.2016 and his appeal was also dismissed vide order dated 03.10.2016 by the Secretary Aviation Division; that in the previous round of proceedings petitioner was removed from service being civil servant and matter was contested till Apex Court, whereby Apex Court set aside the order of departmental authorities and directed the respondents to reinstate the petitioner, however, de-novo proceedings were allowed; that petitioner being civil servant was proceeded under Pakistan Army Act which is not applicable in this case; that petitioner was engaged in ASF in the year 1983 and Sections 7A to 7G were included through amendment in the ASF (Amendment) Ordinance, 1984 on 07.08.1984 and as such the service of the petitioner was declared to be regulated under Pakistan Army Act; that Pakistan Army Act is not applicable by way of amendment as petitioner was engaged in the ASF prior to the said amendment and his rights have been protected; that respondents' authority has not given due opportunity of hearing to the petitioner, even Court of Inquiry has not recommended any action against the petitioner but despite the fact he was dismissed from service.

3. Conversely, learned AAG along with Dy. Director (Legal) ASF contend that petitioner is governed under ASF Act, 1975 and by virtue of Sections 7A to 7G of the ASF (Amendment) Ordinance, 1984 he has been governed under Pakistan Army Act, therefore, instant writ petition is not maintainable; that the allegation with which petitioner has been charged stands proved where petitioner has facilitated one of his colleague Ex Dy. Director Muhammad Ahmed (Deserter) to travel on PK-781 flight to Toronto on the basis of fake documents; that conduct of the petitioner is unbecoming officer who is not entitled to have any benefit of his misconduct; that petitioner has already received his salary and other benefits and Court of Inquiry was properly conducted in accordance with law and no illegality has been pointed out by the petitioner's side; that this Court in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has no jurisdiction to re-appreciate the factual side even Article 199(3) does not provide remedy of writ in relation to person who is person of armed forces of Pakistan or who is subject to any law relating to those forces.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner was inducted in ASF on 03.05.1983 as Inspector, who has been charged with an allegation to facilitate a person namely Muhammad Ahmed, Dy. AD (deserter) through PK-781 Islamabad - Toronto flight on 26.06.2012 outside briefing area at Islamabad Airport. The petitioner retired from service under the provision of Section 13 of Civil Servant Act, 1973 while considering the same punishment, however, petitioner filed Writ Petition No.2528/2012, which was allowed vide judgment dated 29.10.2013. In response to said judgment ASF filed I.C.A. No.1089/2013, which was dismissed by the learned Division Bench of this Court on 12.02.2015, resultantly ASF filed C.P. No.453/2015 before the Apex Court, which was allowed vide order dated 07.05.2015 and Apex Court also allowed the C.A. No.390/2015 vide judgment dated 08.10.2015 and remanded

the matter to this Court for decision afresh. Petitioner was again reinstated in service with back benefits as a result whereof ASF again filed C.P. No.419/2016 before the Apex Court but the same was dismissed vide judgment dated 18.03.2016 with the observation that the department, would be at liberty to initiate de-novo proceedings, if so advised.

6. The petitioner was directed to report at Islamabad Airport and was again suspended vide O.M dated 14.04.2016 under section 7C of ASF Act, 1975 and he was directed not to leave ASF camp during the Court of Inquiry proceedings.

7. The petitioner made certain requests for grant of his arrears of pay and allowances, however, all such claims have been raised through instant writ petition.

8. The petitioner was dismissed from service through impugned order dated 28.06.2016 in terms of Section 17 of Pakistan Army Act by the Director General ASF as competent authority. The petitioner filed appeal under section 13 of ASF (Discipline) Rules, 1977, however, his appeal was dismissed vide order dated 03.10.2016.

9. The basic point raised by the petitioner is the question of jurisdiction as to whether the petitioner is a civil servant or he is governed under Pakistan Army Act, in response to said issue, I have gone through the provisions of the amendment of Sections 7A to 7G of the ASF (Amendment) Ordinance, 1984. By way of amendment in ASF Act Chapter IV has been included. The relevant provision of section 7A is as under:-

7-A. Officers and members to be subject to the Pakistan Army Act, 1952.--- (1) Every Officer and member of the Force shall, unless he is already so subject, be subject to the Pakistan Army Act, 1952 (XXXIX of 1952), hereafter in this Chapter referred to as the Act.

(2) The Force Commander shall, in respect of all officers and members of the Force, have all the powers conferred by or under the Act on an officer empowered to convene a general Court martial.

(3) Subject to subsection (2), the Federal Government may, by general or special order, direct by what authority any jurisdiction, powers or duties incidental to the operation of the provisions of the Act shall be exercised or performed in respect of the Force.

10. I have also gone through the ASF Act, 1975 wherein all the powers vests to the Federal Government which have further been delegated to Director General for the smooth functioning of the affairs and in this regard Section 11 provides the concept of powers and making rules in the official gazette as such there is no separate provision protecting the terms and conditions of petitioner being a civil servant whereas ASF (Amendment) Ordinance, 1984 came into existence on 07.08.1984 which amends the basic structure of ASF Act by way of incorporation of Chapter IV wherein Section 7 clearly provides that "officers and members to be subject to the Pakistan Army Act, 1952". This aspect clarify the entire proposition that the services of the petitioner governs under Pakistan Army Act, 1952.

11. I have gone through the 2005 SCMR 866 (Mrs. Mushtar Jahan v. Prime Minister of Pakistan and others):-

The above-mentioned question has been discussed at length in the preceding paragraphs repetition whereof would be of no use but suffice it to say that the learned Federal Service Tribunal had no jurisdiction to dilate upon such appeals after addition of section 7-A(4) of the Airports Security Force Act, 1975 whereby the appeals preferred on behalf of employees of the Airport Security Force could not be heard by the Federal Service Tribunal as a result of bar of jurisdiction imposed by means of newly-added section 7-A(4) of the Airports Security Force Act, 1975. It would not be out of place of mention here that various contentions agitated by him regarding implication of Efficiency and Disciplinary Rules, 1973 and status being a civil servant were never mentioned in the review petition. The above mentioned contentions that he could not have been proceeded under the Pakistan Army Act, 1952, the Airports Security Force Act, 1975 and the rules made thereunder were made in oblivion of clause "h" of the appointment letter whereby a complete answer for all such arguments is available which

is reproduced hereinbelow for ready reference:--

"(h) Governing Rules.--- After joining the A.S.F. you will be governed by the provisions of A.S.F. Act, 1975, A.S.F. Officers and Members (Service) Rules, 1978 and A.S.C. (Discipline) Rule, 1977 and of the Rules and Regulations in Force or as may be made from time to time by the Federal Government."

A bare perusal of clause (h) of the appointment letter issued in 1983 would show that it has been made abundant clear that after joining the Airport Security Force Mr. Wasiullah Khan was to be governed by the provisions of Airports Security Force Act, 1975, Airports Security Force Officers and Members (Service) Rules, 1978 and Airports Security Force (Discipline) Rules, 1977 and all other rules and regulations which may be made applicable from time to time. Mr. Wasiullah Khan was fully aware that he was subject to Airports Security Force Act, 1975 for all practical purposes and it is too late in the day to argue that he is a civil servant and the provisions as contained in the Airports Security Force Act, 1975, the Pakistan Army Act, 1952 and the rules made thereunder are not applicable to him. Mr. Wasiullah Khan remained mum for more than two decades regarding governing rules and accepted the terms and conditions as enumerated in the appointment letter.

12. On the other side another amendment came into limelight made in the ASF Act through section 7A(4) whereby "no other authority, tribunal or court shall have jurisdiction to vary, modify, alter, annul, set aside, revise or review any order passed by any officer of the force authorized under Pakistan Army Act, 1952."

13. After the amendment in the ASF Act, the instant writ petition filed by the petitioner is not competent in terms of Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973. Reliance is placed upon 2013 SCMR 596 (Rana Muhammad Naveed and others v. FOP), 2014 SCMR 1530 (Federal Government Ministry of Defence Rawalpindi v. Lt. Col. Munir Ahmed Gill). Although this Court can exercise jurisdiction in exceptional cases where authorities have acted without jurisdiction or order passed by the authorities are coram non judice as held in PLD 1975 SC 506 (Brig. (Rtd.) F.B. Ali and another v. The State), however, no such case is visible on record.

14. Learned counsel for the petitioner has heavily relied upon 1996 SCMR 1614 (Force Commander, ASF, Karachi v. Haji Muhammad Rashid and another), PLD 1994 SC 562 (Syed Tarab Arif Fatimi v. President of Pakistan and others), whereby it was held that Section 7A(4) of the ASF Act, 1975 amended by ASF (Amendment) Ordinance, 1984 cannot operate retrospectively. There is no denial to the said law settled by the Apex Court, however, the facts and circumstances of the instant case are different. The question raised by the petitioner i.e. as to whether Section 7A(4) of the Act can operate retrospectively has been answered by the apex Court in the case of Force Commander, ASF, Karachi v. Haji Muhammad Rashid supra and has given the reasons after considering Pakistan Army Act as well as Airport Security Act in comparison to each other in the following manner:

21. We are inclined to hold that though the status of the persons working in A.S.F. or that of a civil servant has not ceased by the aforesaid amendments in the Act, but provisions of the Army Act and the Army Act Rules have been competently made applicable to them. Reference may be made to F.B. Ali's case (PLD 1975 SC 506). We have referred to hereinabove in para. 12 Rules, 9, 9-A and 9-B of the Army Act Rules relating to release, discharge, dismissal and removal from service, which evidently are applicable to Army personnel. In view of their contents, it will not be possible without appropriate amendments to apply the same to the employees of A.S.F. Additionally, the President of Pakistan through aforesaid SRO No.213(KE)/93, dated 9-12-1993 issued under sub-rule (2) of Rule 2 of the Government Servants (Efficiency and Discipline) Rules, 1973, made the above rules applicable to the persons employed in A.S.F. In this view of the matter, the Army Act Rules relating to the field covered by the aforesaid rules cannot be pressed into service against the persons working in A.S.F. In other words, the above Government Servants (Efficiency and Discipline) Rules, 1973, shall continue to apply to the employees of A.S.F. till the time above S.R.O. is rescinded or

special rules covering above subject are framed under the Act or the Army Act.

22. We may state that as regards criminal liability of the employees of A.S.F., the provisions of the Army Act and the Army Rules Act are applicable to them by virtue of the aforesaid subsection (1) of section 7-A of the Act. The same are very comprehensive which-we have already referred to hereinabove in detail. It may again be pointed out that award of sentence of imprisonment may also result into, dismissal from service as a consequence thereof. This dismissal cannot be equated with a dismissal from service imposed as a major penalty as a result of a departmental disciplinary proceedings.

23. A perusal of clauses (a) to (h) of subsection (1) of section 3 read with amended section 6 of the Act indicates that A.S.F. was established with the objects contained therein which inter alia include the duty to ensure security of all airports, aerodromes, aircrafts and installations and for safeguarding the same against the acts of unlawful interference or threats of such interference, to ensure security of aircraft, passengers, baggage, cargo and mail and to take effective measures for preventing hijacking, sabotage, letter bombs, dangerous articles and carriage of arms and ammunition into the restricted areas of the airports, aerodromes and the aircrafts and to detect any contraband on the person or in the baggage of any person checked by him. To achieve the above objective it is imperative that the persons entrusted with the above functions should be honest, men of integrity and well-disciplined. The latter objective cannot be attained unless there is an effective deterring mechanism for punishing the persons guilty of breach of the above duties, but, at the same time, the employees of A.S.F. are entitled to have a fair chance to defend themselves. The above amendments and additions in the Act by the aforesaid amending Ordinance, 1984, seem to be designed and directed to promote the above objective. The same have been reproduced hereinabove in extenso. It will suffice to observe that the words "Director-General" were substituted by the words "Force Commander" wherever they appear except in sections 2(2)(g), 5(2) and 9; whereas the words "Civil Aviation Department" appearing in section 2(e) have been substituted by the word "force". It may further be observed that a new subsection (1-A) has been added to section 6 empowering the force, with the approval of the Federal Government, to ask for help of the military in operation of anti-hiking. It may further be pointed out that newly-added sections 7-A, 7-B, 7-C, 7-D, 7-E, 7-F and 7-G have changed the complexion of the Act inasmuch as under subsection (1) - of section 7-A as pointed out hereinabove, the officers and members of A.S.F. have been made subject to the Army-Act. Whereas under subsection (2) thereof, it has been laid down that the Force Commander shall in respect of all officers and members of the force have all the power by or under the Act as an officer empowered to convene a general Court-martial. Subsection (3) of the same empowers the Federal Government by general or special order to direct by what authority-any jurisdiction, powers or duties incidental to the operation of the provisions of the Act shall be exercised or performed in respect of the force. It may further be noticed that subsection (4), which was added to the above section 7-A on 27-11-1993 and which has been referred to hereinabove in discussion provides that "Notwithstanding anything contained in any other law for the time being in force, except the authorities specified in subsections (1) and (2) of section 7-F, no other authority, Tribunal or Court shall have jurisdiction to vary, modify, alter, annul, set aside, revise or review any order passed by any officer of the Force, authorized under the Pakistan Army Act, 1952 (XXXIX of 1952)".

It may also be pointed out that section 7-B provides the consequence of sentence of imprisonment by laying down that if an officer or a member of the force who is sentenced to imprisonment for a term which is not less than 90 days shall be deemed to have been dismissed from the force. It may further be stated that section 7-C confers ,the power of suspension in the prescribed manner for any misconduct, reminiscence or negligence in the discharge of his duties. Section 7-D deals with the place of imprisonment. Furthermore, section 7-E provides the power/procedure for capture of deserted. It may also be pointed out that subsection (1) of section 7-F confers the right

of appeal to an aggrieved person to be exercised within 90 days of the order in all cases decided by the Deputy Director, a Chief Security Officer or any other officer to the officer higher than the one awarding the punishment. Whereas subsection (thereof) provides right of revision by laying down that a person aggrieved by an order of the Force Commander awarding any punishment may, within 30 days of the order, apply to the Federal Government for revision. The above provisions are to be read in conjunction with newly-added enacted section 133-B of the Army Act, which provides right of an appeal referred to hereinabove in para 11.

It may further be stated that section 7-G deals with the appointment of the personnel in the force and for providing rank structure of the officers and other members of the force vis-a-vis the Pakistan Army. It will not be out of context to mention that the aforesaid SRO No.1022(I)/84, dated 27-11-1984 was issued pursuant to subsection (3) of above section 7-G providing schedule of the ranks of the force vis-a-vis Pakistan Army quoted hereinabove in para 10.

24. We may, observe that the above provisions cannot be ignored merely on the ground that the status of the personnel of A.S.F. remains that of civil servants. The provisions the Act and the Army Act, and the rules framed thereunder, if contrary to the provisions of the Civil Servants Act and the rules framed thereunder, being special, shall prevail over the latter, being general."

The above referred detailed view of the apex Court has clarified the entire proposition, whereby personnel of ASF are governed under the Pakistan Army Act, even otherwise, the Federal Government can amend or change the terms and conditions of service under the law. Similarly, the Pakistan Army Act applies to any such force, where Federal Government may, by notification, direct such force to be regulated and cover under the said Act, by issuance of such notification, the existing officials of ASF are deemed to be covered and regulated under the Pakistan Army Act, therefore, while again relying upon case of Force Commander, ASF Karachi v. Haji Muhammad Rashid supra, it has been held as under:

"26. We may observe that above newly-added subsection (4) to section 7-A of the Act, which was enacted on 27-11-1993 ousting the jurisdiction of other authority, Tribunal or Court other than those specified in subsections (1) and (2) of section 7-F, has no application to the present case as the convictions and sentences were awarded and Constitutional petitions were filed prior to the above amendments keeping in view the judgment of this Court in the case of Syed Turab Arif Fatimi (supra), in which it has been held that the above provision is not retrospective in operation."

15. Even otherwise, the Court of Inquiry has given proper hearing to the petitioner while considering the statements and record as well as role of the petitioner who being Incharge of ASF at Islamabad Airport is proved to be facilitator to Ex. Dy. AD Muhammad Ahmed (Deserter) for his illegal exit from Pakistan, whose statement was recorded by the Court of Inquiry on 10.07.2012 in which he has refused to answer the major questions of the inquiry.

16. The record reflects that petitioner entered into restricted area of international departure briefing area at about 0830 hours after his duty to meet with FIA staff and Ex. Dy. AD Muhammad Ahmed (Deserter) without permission of duty company commander and as such the facilitation is apparent on record to a person who boarded on flight PK-781 (ICT - Toronto) through the boarding card of some other passenger. All these facts brought on record in Court of Inquiry are against the petitioner who has been given show-cause notice before dismissal order but petitioner has not submitted reply to the show-cause notice within prescribed time rather took plea that he has filed an application seeking the details of documents, charge sheet and statement of witnesses, whereas all such statements and record were placed before him during the proceedings of Court of Inquiry, therefore, his request through application is just an effort to further prolong the proceedings.

17. Keeping in view the above background, petitioner has failed to justify his case on any count despite the fact that he was given full opportunity to defend himself, all the requirements were followed and no illegality has been observed. Even otherwise, petitioner's services are

governed under the Pakistan Army Act, 1952 in terms of Section 7A of the ASF (Amendment) Ordinance, 1984, therefore, instant writ petition is not maintainable and the same is hereby DISMISSED.

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