

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

I.C.A No. 94/2014

Tahir Mahmood

Versus

Federation of Pakistan and others.

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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	01.10.2020	Appellant in person.
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MOHSIN AKHTAR KAYANI, J.- Through the instant appeal, the appellant has assailed the judgment dated 17.02.2014, passed in W.P No.140/2014, whereby the said petition against the order dated 09.01.2014, issued by Secretary, Commerce Division/Authorized Officer, has been dismissed.

2. Appellant in person contends that learned Judge in Chambers has not appreciated the legal position while passing the impugned judgment as he has assailed the forced leave order dated 09.01.2014, passed by Secretary, Commerce Division, Government of Pakistan, whereby the appellant being Accountant General of Pakistan Revenues (AGPR) has been proceeded to force leave for period of three (03) months. He further contends that the respondents have no jurisdiction to issue such order and the appellant could not be vexed twice for the same matters in terms of Article 13(a) of the

Constitution of Islamic Republic of Pakistan, 1973, even in terms of Rule 5(1)(i) of the Government Servants (Efficiency and Discipline) Rules, 1973, the government servant can either be suspended or required to proceed on leave, however, when suspension order has already been passed, the order had forced leave could not be passed. It has lastly been contended that the order of forced leave is based upon malafide, especially when the appellant was retired on 05.04.2014. As such period of forced leave is less than four months.

3. Appellant has been confronted qua his final status as to whether he has been retired from the said position on 05.04.2014 or he has been removed from service on the charges of misconduct as mentioned in the order dated 09.01.2014, whereby he contends that he has been retired from service.

4. In view of the above conceding statement, the question regarding forced leave is no more an alive issue. Even otherwise the record reveals that the order assailed before learned Judge in Chambers has been passed in terms of Rule 2(3) of the Government Servants (Efficiency and Discipline) Rules, 1973, whereby the appellant has been proceeded on leave under Rule 5(1)(i) of the said rules, as such the said rule deals with the terms and conditions of the service of the appellant and alternate remedy of appeal/ representation/review to the Departmental Authority in terms of Rule 3 of Civil Servants (Appeal)

Rules, 1977 was available to him, therefore, instant appeal is not competent in terms of Section 3(2) of Law Reforms Ordinance, 1972. Reliance is placed upon case law reported as **2019 SCMR 939 (SME Bank Limited through President Islamabad and others Vs. Izhar Ul Haq), PLD 1985 Supreme Court 107 (Muhammad Abdullah Vs. Deputy Settlement Commissioner, Centre-I, Lahore).**

5. For what has been discussed above, instant appeal is not competent and same is hereby **DISMISSED IN LIMINE.**

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN