

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

W.P No.1173 of 2020

Muhammad Fahad Imran
Versus
Federation of Pakistan and others.

Petitioner By: Mr. Muhammad Bashir Khan, Advocate
Respondents No.1&2 by: Mr. Nazar Hussain Shah, Assistant
Attorney General.
Respondent No.3 by: Barrister Iqbal Khan Nasar, Advocate.
Date of Hearing: 15.05.2020

GHULAM AZAM QAMBRANI, J. Through this petition, the petitioner has invoked the Constitutional jurisdiction of this Court, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking a direction to the respondents to remove the name of petitioner from Exit Control List (hereinafter be referred as "E.C.L") and return his passport, National Identity Card, laptop and headphone.

2. Brief fact of the case as narrated by the petitioner are that he was appointed as Junior Assistant on contract basis in the Strategic Planning Division (hereinafter be referred as "S.P.D") on 06.09.2013, for a period of five (05) years which was further extended for two years. It is further stated that his father is dual national and residing in United Kingdom (in short as "U.K"). His mother and sisters are also residing there and they have been granted permanent resident card. It is further stated that a surety bond for Rs.20,000/- was executed in which it was mentioned that the petitioner had to serve for five years compulsorily and in case of default, he will pay surety amount. The said period of five years, was elapsed on 05.09.2018 but the contract of the petitioner was further extended for two years till 05.09.2020 but no further surety bond was executed between the S.P.D and the petitioner and no other condition was imposed upon the petitioner; that due to some personal and family issues, the petitioner tendered his resignation on 20.07.2019 and

deposited one month basic salary through crossed cheque of Rs.24,000/- in the name of CO FD Det 72 alongwith certain documents in order to discontinue his service contract. Thereafter, on 24.07.2019, the petitioner proceeded to U.K and on 24.01.2020 the petitioner came back to Pakistan alongwith his family members with return tickets and at Islamabad Airport, the petitioner came to know that his name has been placed on E.C.L by the S.P.D and F.I.A officials arrested the petitioner at the spot and kept abovementioned belongings with them and handed over the petitioner to the Departmental Authority. that after interrogation on the same day the petitioner was released after getting affidavit of two responsible persons but his belongings are still with the S.P.D Department. Further petitioner's return was scheduled for 29.03.2020 but due to impounding of his passport and placing his name in the E.C.L, he could not go back to U.K and now his return ticket is confirmed for 07.07.2020 and if he is not allowed, his tickets will be cancelled. The petitioner has to go back to U.K to join his disabled and bed ridden father and to study further for brightening his future.

3. Learned counsel for the petitioner has submitted that petitioner's contract was liable to termination on one month notice or payment of one month's basic salary and the petitioner deposited the said salary and all official cards with the respondent and nothing is outstanding against the petitioner. Further that it was not mentioned in the second extended period of contract that the petitioner will not leave the country after resignation; that fundamental rights of the petitioner as envisaged in Articles 14 & 15 are being infringed by the respondents and no grounds have been communicated to the petitioner for placing his name in the E.C.L; that the petitioner is not involved in any noticeable activity and the S.P.D department has not suffered on account of resignation of the petitioner. Further submitted that no material is available against the petitioner affecting the State or prejudicial to the interest of the country. Lastly, prayed for removal his name from E.C.L and return of his above said belongings.

4. On the other hand, learned counsel for respondent No.3 assisted by the learned Assistant Attorney General; submits that National Command Authority Act, 2010 (hereafter referred to as "**N.C.A Act**") is the apex authority that oversees the employment, policy formulation,

exercises, deployment, research and development, and the operational command and control of Pakistan's nuclear program and as per Section 7 of the N.C.A Act, the powers and function of the N.C.A include, but are not limited to, command and control of all nuclear and space related matters pertaining to the administration management of the Strategic Organizations, of matters pertaining to the employment of individuals in the service of the N.C.A, and securing and safeguarding all nuclear and nuclear related assets, including those of the Strategic Organization, etc. Further submitted that as per Section 5 of the N.C.A Act, the S.P.D serves as the Secretariat to the N.C.A and the S.P.D is headed by a Director General who serves as the Secretary to the N.C.A. Next submitted that Section 7 of the N.C.A Act, sets out the powers and functions of the N.C.A and Sections 7(d) to 7(p) deals with the employees. He also submitted that in respect of the employees, Section 11 of the N.C.A Act also provides a remedy of appeal to the appellate authority against any order, action or inaction in respect of the employees, terms and conditions of service. Next argued that clause-12 of the terms and conditions of petitioner's service agreement dated 06.09.2018 unambiguously provided that his conduct and discipline would be governed by the N.C.A's Employee Efficiency and Discipline Rules, 2010 but the petitioner did not resign from the service, instead he absconded abroad without obtaining Ex-Pakistan leave with the relevant departmental NOCs. Thus the petitioner was removed from service on 25.07.2019 on account of unauthorized absence and his failure to resume his duties. Further contended that according to Rule 4 (g) of the E& D Rules "wilful unauthorized absence" is one of the grounds for imposing the major penalty of "removal from service". The petitioner was aware of the fact that the work he was undertaking was of an intrinsically sensitive nature since it involved the handling of highly classified information and involved exposure to sensitive sites. He further argued that the petitioner was removed from service, and without waiting for the former acceptance of the resignation the petitioner proceeded to U.K on 24.07.2019, as such, there was cogent legal justification for the inclusion of petitioner's name on the E.C.L because the petitioner's wilful defiance of the aforementioned rules was tantamount to "*threatening national security*" as envisaged by Rule 2 (1) (c) of the E.C.L Rules and consequently necessitated the curtailment of his fundamental rights. It was also contended that the petitioner was derelict in his duty as he failed to comply with the requisite formalities before proceeding abroad and that

the petitioner, after serving in the respondent organization for five years, was well acquainted with its special *modus operandi*, hence, his sheer disregard for the codal formalities impelled respondent No.3 to recommend placement of his name on the ECL, as such, respondent No.1, while complying with such request, placed the petitioner's name on the ECL vide office Memorandum dated 26.12.2019. Further argued that albeit the petitioner was removed from service, it is crucial to note that he also failed to wait for the formal acceptance of his resignation thereby circumventing Rule 10 (b) (2) of the ESR, which unequivocally provides that the employee shall continue to perform his duties till such time as his resignation is formally accepted. It is worth noting that the petitioner proceeded to the United Kingdom on 24.07.2019, whereas his resignation letter was supposed to be delivered after 25.07.2019, therefore, there was cogent legal justification for the inclusion of the petitioner's name on the ECL. Lastly, submitted that if the petitioner approaches the department his grievance shall be considered sympathetically.

5. Arguments heard. Record perused.

6. Perusal of the record reveals that the petitioner had been serving the S.P.D department since 06.09.2013 on contractual basis as Junior Assistant. After tendering his resignation 20.07.2019 and depositing one month basic salary and without waiting for the acceptance of his resignation and without undergoing necessary debriefing, he went abroad on 24.07.2019, due to which his name was placed on the E.C.L in view of the National Command Authority Act, 2012 because under S.O.P Ruling on E.C.L dated 10.09.2008, any individual who remained exposed to the sensitive information, his name can be placed on E.C.L and under Clause-2 of the same SOP, his name will not be removed before the period of two years commencing from his arrival in Pakistan. Fundamental rights of the petitioner as envisaged in Articles 14 & 15 are not absolute but have been made subject to reasonable restriction imposed by the law in the public interest. The petitioner remained involved in an activity destined to safeguard the security of State and the Rules made by such organization to avoid proliferation of sensitive information, cannot be considered in contravention of the public interest. Any action taken by the authority under Section 7 of the N.C.A Act, 2010 cannot be challenged before any judicial forum.

7. In the instant case, the petitioner who had been serving the S.P.D department for about six (06) years failed to attend debriefing and absconded abroad without waiting for the result of his resignation, and thus, is not entitled to the extraordinary discretionary relief under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. However, in view of the statement of the learned counsel for respondent No.3 that if the petitioner approaches the respondent, his grievance shall be considered sympathetically.

8. In view of the above situation, petitioner is directed to appear before respondent No.3 i.e. Director General, S.P.D Rawalpindi Cantt on 20.05.2020, alongwith a copy of this petition which shall be considered as his appeal before respondent No.3, who shall look into the matter of the petitioner sympathetically and pass an appropriate orders strictly in accordance with law, within a period of one month after receiving certified copy of this order.

9. With the above observation, this petition is **disposed of**.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on this 18th Day of May, 2020.

Judge

Rana. M. Ift