

**FORM NO.HCJD/C**  
**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**CASE NO. : W.P. NO.1296 OF 2014**

**Tahir Mahmud**  
**Vs.**

**Qasim M. Niazi, Secretary, Commerce Division, Islamabad etc.**

**Petitioner by : In person.**  
**Respondents by : Hafiz S.A. Rehman, Mr. Anwar Mughal, Advocates**  
**Mr. Sana Ullah Zahid, DAG with Umer Saleem Bhatti, SO (Litigation), Ministry of Commerce.**  
**Date of hearing : 04.04.2014**

**NOOR-UL-HAQ N. QURESHI, J.**

At the very

outset, it is pertinent to mention here that today, only CM No.1750-2014 was fixed, but learned counsel for respondent Nos.2, 3 & 5 & as well as learned DAG in view of urgency wanted to argue the main case, hence main writ petition was also heard.

2. The petitioner has invoked the constitutional jurisdiction of this Court with the following prayer:-

*"In view of the foregoing facts and grounds of the petition, it is humbly prayed that the operation of this impugned Show Cause Notice N.F.No.PS.Secy/2014, Islamabad, dated 18<sup>th</sup> March, 2014 be stayed/stopped and the respondents may kindly be directed to make available the list of documents/record requested for by the petitioner for preparing his defense reply and the Inquiry Officer may also be directed to record the statement of defense witnesses to ensure the inquiry proceedings to be conducted in an impartial, fair and transparent manner as assured by the*

***respondents to this Honourable Court in Writ Petition No.140/2014”.***

3. Facts emerging from the instant writ petition are that the petitioner was serving as Accountant General Pakistan Revenues in BS-21. The Hon'ble Supreme Court of Pakistan took notice of release of PWP-II Funds. Subsequently, the release and diversion of these funds were declared unconstitutional and illegal by the Apex Court in C.P. No.20 of 2013. While implementing the judgment of Apex Court dated 05.12.2013, three corruption references were sent to NAB, one of which was against Secretary Finance. The petitioner had apprised the Hon'ble Apex Court with true facts in above case, therefore, few days after, a summary for initiation of disciplinary proceedings was moved against the petitioner on the instigation of above Officer against whom, a NAB reference was filed. First Charge Sheet dated 31.12.2013 was issued by appointing Mr. Shahid Ullah Baig, Secretary, Kashmir Affairs & Gilgit Baltistan Division, Islamabad as Inquiry Officer. In a short span of time, three Inquiry Officers were changed. On receipt of Charge Sheet, the petitioner appeared before the Inquiry Officer Raja Hassan Abbas, Secretary, Climate Change Division, Islamabad and requested that the record available in the Office of AGPR be made available to the petitioner enabling him to prepare his reply. The petitioner time and again had been requesting the respondent in this regard, but needful was not done. Even the Authorized Officer requested

Auditor General of Pakistan to nominate a Departmental Representative from the Office of AGPR for provision of record. The DR contacted the petitioner for the record required by him in response, the petitioner provided list of 32-documents to the DR. During appearance before the Inquiry Officer on different occasions, the petitioner requested to call the requisite record, but unfortunately, the Inquiry Officer did not wait for the availability of record and continued to proceed. Moreover, list of witnesses was also submitted to the Inquiry Officer with a request to call all those in the hierarchy who possessed the financial as well accounting procedural cases, but of no avail. The petitioner exhibited distrust on the Inquiry Officer and requested the Prime Minister of Pakistan to change the Inquiry Officer and appoint some impartial officer, but no action was taken in this regard. On the contrary, a show cause notice was issued to the petitioner without attaching inquiry report along with corroborating evidence therewith, hence this writ petition.

4. It has been contended by the petitioner appearing in person that he never objected to the initiation of inquiry as per law that's why he had been requesting the respondents to make available the requisite record and to record statements of defence witnesses, but same was not done despite his repeated requests. The show cause notice issued on 18.03.2014 candidly depicts malafides of the respondents to proceed with ex-parte without recording statements of defence witnesses to punish and victimize

the petitioner. The act of Authorized Officer not waiting for the record required by the petitioner and record statements of defence witnesses, tantamount to his biasness, unfairness and unjustness which is prejudicial to a fair and impartial inquiry proceedings, which was guaranteed by the respondents during hearing of W.P. No.140/2014 before this Court. It was against the clear assurance rendered by the respondents with regard to fair and impartial proceedings, which manifests their malafide. The issuance of show cause notice further reveals haste to conclude the proceedings with regard to inquiry against the petitioner without following the laid down procedure and other applicable laws. In the end, he has requested for acceptance of this writ petition as prayed above.

5. On the other hand, learned counsel for the respondents has raised preliminary objections with regard to maintainability of instant writ petition. He has argued that no writ lies against disciplinary proceedings and against issuance of show cause notice in view of judgments of Hon'ble Apex Court like 1999 PLC (CS) 409, 2003 UC 60, 1991 SCMR 1041 & 2012 PLC (CS) 1366 etc. It has been further argued that interim order passed on 21.03.2014 is violative of law laid down in reported cases 1997 SCMR 1508 & PLD 2014 SC 1, as main case has been decided. The petitioner has filed this petition just to prolong the departmental proceedings. Earlier, the petitioner had filed W.P. No.4627/2013 & 140/2014, which were dismissed. He has further contended that the

petitioner deliberately avoided to appear before the Inquiry Officer and avoided to receive the record, notices and documents either at his residence or otherwise. He appeared before the Inquiry Officer for one time only, there-after he deliberately did not submit his written defence. He has contended that charge sheet/statement of allegations was framed in the light of documentary evidence as well as in accordance with Government Servants (E&D) Rules, 1973 and was sent to him. As non-submission of written statement to the charge sheet sufficiently proves that he had no proper defence, therefore, the Authorized Officer was constrained to issue impugned show cause notice. Moreover, factual controversies cannot be adjudicated upon in writ jurisdiction. The story narrated by the petitioner through the instant writ petition has already been turned down by this Court while deciding writ petitions earlier filed by him. The learned counsel has contended that inspite of filing this writ petition the petitioner should have filed reply to the impugned show cause notice. In view of his arguments, learned counsel has requested for dismissal of instant writ petition.

6. I have heard the arguments, perused the record as well as relevant provisions of law and the authorities referred.

7. From the controversies raised by the parties through the instant writ petition, following legal and factual issues arise: -

- a) ***Whether proper opportunity of hearing as provided by law has been given to the petitioner?***

- b) Whether the record required by the petitioner was provided to him?*
- c) Whether the Authorized Officer or the Inquiry Officer acted in accordance with the procedure prescribed under E&D Rules?*
- d) Whether the writ filed impugning show cause notice is maintainable?*
- e) Whether the matter involves preferring of appeal before the learned Federal Service Tribunal and in case of non-functioning of learned Federal Service Tribunal, this Court has the jurisdiction to entertain the same or not?*
- f) Whether factual controversies are involved in this matter, which cannot be resolved through writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan?*
- g) Whether the assurance rendered by the respondents at the time of disposal of W.P. No.140/2014 was honoured by them or not?*

8. From the record, it appears that petitioner approached the respondents through an application dated 14.02.2014 requiring the Secretary, Climate Change Division (Inquiry Officer) for providing him the record before submission of reply to the impugned show cause notice. He coupled with that request also required to expedite the process in this regard by nominating a Departmental Representative (DR) from the Office of Auditor General to provide the requisite record to the petitioner. Again, through another application dated 20.02.2014, he approached the Auditor General of Pakistan requesting to provide the record to the Inquiry Officer enabling the petitioner to consult the same for preparation of defense reply with regard to inquiry proceedings. Simultaneously, he also submitted an application dated 20.02.2014 requiring the Inquiry Officer for calling the defense witnesses. In the said application, names of DWs were

also mentioned. Again, vide application dated 26.02.2014 moved to the Inquiry Officer requiring him to arrange certain documents with the opinion of Auditor General of Pakistan with regard to applying pre-audit checks applied by the Officers/Officials of AGPR and opportunity for defence witnesses may also be afforded. In this way, the petitioner moved numerous applications dated 03.03.2014, 07.03.2014, 10.03.2014, 11.03.2014 & 11.03.2014 to the Inquiry Officer as well as Authorized Officer. The Authorized Officer vide Diary No.256 dated 19.02.2014 responded through letter dated 18.02.2014 with its No.F.No.PS/Secy/2014 communicated to the Auditor General of Pakistan requesting him to nominate any officer of AGPR for providing the necessary record to the petitioner under intimation. However, it contained the directions for nominated person to contact the Inquiry Officer and the Authorized Officer.

9. The petitioner vide letter dated 06.03.2014 again approached the Auditor General of Pakistan appended thereto list of those essential documents which were 32 in number, but no response was given.

10. Since the assurance was rendered by the respondents during hearing of W.P. No.140/2014 for an impartial inquiry by adopting the legal procedure, therefore, this Court observed that the petitioner can approach this Court when steps provided by law are not followed by the competent authority or by Authorized Officer or if any malafide intention comes to light. Since it was

not the case at the relevant time therefore, with such observations taking into consideration the assurance rendered by the respondents for fair and impartial proceedings, the matter was disposed of.

11. Unfortunately, the respondents by submitting their comments have stated that they have followed the procedure with regard to inquiry proceedings, but nowhere, the stance taken by them has been substantiated by any documentary evidence.

12. The procedure prescribed under Rules 5 to 7 of E & D Rules manifest some rights accrued in favour of the petitioner, which have also been guaranteed by law itself and are mandatory in nature, including provision of record, cross examination of witnesses and production of defence witnesses, but unfortunately, such rights/opportunity have not been provided to the petitioner by the respondents, despite hue and cry made on behalf of petitioner in shape of submitting many applications referred to above thereby, he was thrown from pillar to post.

13. When specific queries were raised with regard to documentary evidence, both learned counsel for the respondents as well as learned DAG even the representative of Ministry of Commerce exhibited their ignorance about availability of record.

14. So far the stance taken by the respondents regarding hampering of inquiry proceedings on behalf of petitioner, again a query was put to them that no observation has been made by the



Inquiry Officer in this regard nor any warning has been issued to the petitioner, no satisfactory reply was given. In this regard, Rule 6(5) of E&D Rules depicts administration of warning disregard thereto that the finding shall be recorded to that effect and shall proceed to complete the inquiry in such manner to substantiate justice.

15. Again, it is very astonishing to note that except oral version for availability of record, neither such warning seems to have been communicated to the petitioner nor the respondents are able to show any material with regard to such allegation.

16. With regard to allegation levelled against the petitioner that he avoided to appear before the Inquiry Officer and even avoided service of notice, the petitioner submitted before the Court envelopes containing notices received by him through special messenger were duly replied through T.C.S., the same have also been examined carefully by this Court. When learned counsel for respondents as well as learned DAG were confronted with such record, no rebuttal was extended on their behalf. Hence, in my view, this allegation seems to be merely an allegation to create a substance against the petitioner.

17. So far the question raised with regard to maintainability of this writ petition in view of jurisdiction vested to a High Court is concerned, I am fortified with a recent judgment communicated to his Court while deciding CP No.2052 of 2013 titled Sarfraz Saleem Vs. Federation of Pakistan etc & CP. No.2081 of 2013

titled **Zafar Abbas Vs. Federation of Pakistan etc.** dated 16.01.2014, the Hon'ble Supreme Court of Pakistan has observed that until the establishment and functioning of the FST, the bar of Article 212(2) of the Constitution will not be applicable. However, the Federal Government was directed to expedite appointment of the Chairman, FST in terms of Section 3 of the Act of 1973.

18. In this regard, it is further alleged that whether this matter pertains to the jurisdiction of learned Federal Service Tribunal, in this respect, it is observed that when relief claimed does not come within Section 4 of the Tribunal Act, 1973. it is not hit by Article 212 of the Constitution of the Islamic Republic of Pakistan. Admittedly, issuance of impugned show cause notice has not been challenged through the instant writ petition, rather the proceedings initiated by the Inquiry Officer being contrary to law (E&D Rules) have been challenged. In my humble view, when such is the matter before the High Court, jurisdiction lies with the High Court, when other remedial ways are seized for the petitioner, despite the guidelines provided in a reported case **2002 PLC (C.S.) 442 titled Muzaffar Hussain Vs. The Superintendent of Police, District Sialkot** referred by the learned counsel for the respondent Mr. Hafiz S.A. Rehman, Advocate. The High Courts have issued directions to the concerned functionaries to act in accordance with law and not contrary to law regarding inquiry proceedings.

19. In the instant case, when the Inquiry Officer has totally acted contrary to law as apparent from record therefore neither it is a case involving factual controversies nor it is matter pertaining to the jurisdiction of learned Federal Service Tribunal as such, it is not hit by Article 212 of the Constitution.

20. It is observed that in case of violation of statutes or rules, the only way remains with an aggrieved person to resort to the Constitutional Jurisdiction of a High Court. This view is supported by **PLD 1976 Lah. 630**. In furtherance whereof, if any functionary transgresses the limit of law while exercising the powers not vested in him/it, he/it can be restrained by issuing a writ exercising constitutional jurisdiction to protect the rights of any individual regarding fair trial guaranteed under Articles 4, 10-A, 11 of the Constitution of Islamic Republic of Pakistan as well as Section 24-A of General Clauses Act. Therefore, while observing such material illegality on the surface of record which was not rebutted by the respondents through documentary evidence in support whereof, the only way remains with the petitioner is to seek constitutional jurisdiction. Hence, in my humble view, the present writ petition is maintainable to the extent of relief claimed by the petitioner.

21. With regard to the allegation reflecting in para-2 of impugned show cause notice, it is made clear that merely because

of retirement of a delinquent officer under the charge, cannot be made basis for depriving such officer from his rights otherwise guaranteed by law, rules and the Constitution.

22. As regards the authorities referred by the learned counsel for the respondents Mr. Hafiz S.A. Rehman, Advocate, in my view, same are irrelevant and do not apply in the facts and circumstances of this case.

23. Under the circumstances narrated above, instant writ petition is allowed. Consequently, all the inquiry proceedings initiated by the Inquiry Officer before issuance of impugned show cause notice are declared to be illegal, ultra vires, without lawful authority, hence the same are set aside. The authorities concerned may proceed from the stage where such proceedings were pending before the Inquiry Officer, if law permits them.

24. Likewise, it is further observed in view of assurance rendered by the respondents at the time of disposal of earlier W.P. No.140/2014 filed by the present petitioner, I am of the view that same has not been regarded by the Inquiry Officer, therefore inquiry proceedings seems to have been tainted with malafides. Therefore, it is further directed that if the inquiry proceedings are initiated afresh, the Inquiry Officer who earlier conducted inquiry proceedings, shall not continue, rather inquiry

W.P. No.1296-2014

proceedings would be conducted by appointing a new Inquiry Officer.

(~~NOOR-UL-HAQ~~ N. QURESHI)  
JUDGE

Approved for Reporting

Zawar

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