

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 2599/2019

Ahsan Ali

Versus.

Inspector General, National Highways and Motorways Police and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	11.07.2019	Dr. G.M. Chaudhry, Advocate for the petitioners.

Through the instant writ petition, the petitioner, Ahsan Ali, impugns the notification dated 04.07.2019, issued by the Office of the Inspector General of Police, National Highways and Motorways Police ("N.H.&M.P."), whereby the petitioner was transferred and posted to West Zone with immediate effect and until further orders *"on disciplinary grounds"*.

2. Learned counsel for the petitioner submitted that over the last 16 years, the petitioner has been transferred on 11 occasions; that the petitioner is an upright officer and was victimized for raising concerns through application dated 29.06.2019 about the excessive electric bill caused by the air conditioners in offices; that the petitioner has been falsely accused of having committed inefficiency and misconduct and in this regard, letter of explanation dated 16.06.2019 was issued to him by the office of the Deputy Inspector General of Police, N.H.& M.P.; that the petitioner is not shying away from any enquiry since he has neither been inefficient nor has committed any misconduct; that there is ample evidence to show that the petitioner was on leave when an accident occurred on the motorway at location-S-122 on 15.06.2019, in which a pedestrian was run over by a bus; that till date, the proceedings pursuant to the said letter of explanation have not been concluded; that prior to the conclusion of the said proceedings, the petitioner could not have been transferred to a far flung area; and that a transfer

can only be made in the exigency of service, but not on disciplinary grounds. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. I have the contentions of the learned counsel for the petitioner and perused the record with his able assistance.

4. As mentioned above, the petitioner has assailed the notification dated 04.07.2019, whereby he was transferred "*on disciplinary grounds*". It has been consistently held that a civil servant cannot be transferred as a punishment or on disciplinary grounds. If a civil servant is accused with inefficiency or having committed misconduct, there has to be an enquiry in accordance with the Government Servants (Efficiency and Discipline) Rules, 1973, and only after the allegations against such a civil servant are proved than he can be awarded a prescribed punishment.

5. There is nothing on the record to show that the letter of explanation dated 16.06.2019 issued to the petitioner culminated in any finding of misconduct or inefficiency against the petitioner. Be that as it may, it is an admitted fact that the petitioner is a civil servant, and the matter regarding his transfer is related to the terms and conditions of his service. Therefore, I am of the view that the instant petition is not maintainable due to the bar contained in Article 212(2) of the Constitution.

6. In the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456), it was *inter-alia* held as follows:-

"149. Article 212 of the Constitution ousts the jurisdiction of High Courts and civil Courts in respect of the matters pertaining to terms and conditions of civil servants. In other words, the provisions of Article 212 do not confer a concurrent jurisdiction to civil Courts, High Courts and Tribunals. The ouster contemplated under the said Article is a Constitutional command, and, therefore, of necessity restricts the jurisdiction of civil courts and High Courts on the subject, which squarely falls within the exclusive domain of Tribunals."

7. Furthermore, it was held that the exercise of jurisdiction by way of suit and Constitution petition filed by a civil servant with regard to his terms and conditions of service is violative of Articles 175, 212 and 240 and the law on the subject. The Hon'ble Supreme Court also observed that the admission of such suits and petitions by the learned Judges concerned *"obviously confront and defy Article 189, if not attract the provisions of Article 209 of the Constitution."*

8. Furthermore, in the case of National Assembly Secretariat Vs. Manzoor Ahmed (2015 SCMR 253), it has been held as follows:-

"8. We have heard the learned counsel for the parties and have perused the record. Admittedly, respondent No.1 is a Civil Servant and, therefore, he could not have approached the High Court under Article 199 of the Constitution for redressal of his grievance, which pertained to the terms and conditions of his Service in view of the Bar created under Article 212(2) of the Constitution. The High Court, therefore, was not competent to adjudicate the issue raised in the Writ Petition. The High Court has fallen in error while proceeding on the erroneous assumption that respondent No.1 had raised the issue of violation of the statutory Rules, therefore, it was competent to decide the issues. This was an incorrect approach of the learned High Court to entertain a Constitution Petition of a Civil Servant on the ground of the statutory violation. Such grievances of a Civil Servant fall within the domain of the Federal Service Tribunal as mandated by the Constitution."

Law to the said effect has also been laid down in the cases of Iqan Ahmad Khurram Vs. Government of Pakistan (PLD 1980 S.C. 153), Khalid Mahmood Wattoo Vs. Government of Punjab (1998 SCMR 2280), Government of the Punjab Vs. Muhammad Zafar Bhatti (PLD 2004 S.C. 317), Peer Muhammad Vs. Government of Balochistan (2007 SCMR 54) and Engineer Musharaf Shah Vs. Government of Khyber Pakhtunkhwa (2015 PLC (C.S.) 215).

9. In view of the above, the instant petition is dismissed as not maintainable. The petitioner is at liberty to raise his grievance against his transfer order before an appropriate forum.

(MIANGUL HASSAN AURANGZEB)
JUDGE