

HCJD/C-121
JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No.920/2015

MUHAMMAD ADNAN MOIN.
VERSUS
FEDERATION OF PAKISTAN, ETC.

Petitioners by : **Mr.Ashraf Ali Awan, Advocate.**
Respondents by : **M/s Muhammad Akram Shaheen & Hasnain Ibrahim Kazmi, Advocates.**
Date of Hearing : **07-12-2015.**

ATHAR MINALLAH J: Through this consolidated judgment, I shall decide the instant petition alongwith W.P.No.4254/2014 & W.P.No.4485/2014.

2. The facts, in brief, are that Muhammad Adnan Moin, the petitioner in the instant petition, and Arshad Ali, petitioner in W.P.No.4485/2014, were employees of the *National Telecommunication Corporation* (hereinafter referred to as the “*NTC*”). Another employee, namely Abdul Sattar Sheikh, was proceeded against on the allegations of having generated derogatory text messages against the Management and officers of the NTC. A major penalty of removal from service was awarded. It was alleged that the derogatory text messages were sent through Cell No.0304-1339448. The SIM was registered in the name of Abdul Sattar Sheikh. However, in his reply to the *Show Cause Notice*, he had alleged that the SIM in his name had been used by the petitioners. A fact finding inquiry Committee, consisting of three officers of the NTC, was constituted vide letter dated 16-06-2014. The petitioners were examined by way of questionnaires, and in their respective replies they denied any involvement regarding sending the alleged text messages from the SIM registered in the name

of Abdul Sattar Sheikh. The fact finding inquiry Committee recorded the answers of Abdul Sattar Sheikh in response to questions put to him. Based on the replies of the petitioners, the fact-finding Committee recommended disciplinary action to be initiated against the petitioners. The fact-finding report placed on record shows that the questionnaires, as answered by the petitioners and Abdul Sattar Sheikh, have been reproduced therein. The fact-finding report is based on the answers to the questionnaires of seven persons, who are referred to as “witnesses”. Pursuant to the recommendation made by the fact finding inquiry Committee, respective Show Cause Notices, dated 18-07-2014, were served on the petitioners. Abdul Sattar Sheikh, however, was reinstated into service on acceptance of his appeal, as is evident from the Internal Memorandum dated 23-10-2014. The allegations mentioned in the respective Show Cause Notices served on the petitioners are the same and are reproduced as follows:-

- i. *“You have been found involved in activation of SIM No.0304-1339448 in the name of Mr. Abdul Sattar Shaikh Ex-ES in collaboration with Mr. Arshad Ali, Junior Technician NTC Hyderabad.*
- ii. *WHEREAS, you have been found involved in generation of SMS messages containing derogatory remarks against NTC Management and officers from SIM No.0304-1339448 while using mobile set bearing IMEI No. 35601805043807 which was in your use for SIM No.0333-2626928 registered in your name.”*

3. The authorized officer recommended imposing of a major penalty on both the petitioners. The petitioners were, therefore, dismissed vide respective orders dated 13-08-2014, and the same were communicated vide letter dated 15-08-2014. The appeals of Arshad Ali and Muhammad Adnan Moin were dismissed

vide orders dated 17-09-2014 and 11-09-2014 respectively. The latter preferred a further appeal, and the same was dismissed vide order dated 12-02-2015. Hence, the petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution.

4. The learned counsel for the petitioners has contended that; the proceedings against the petitioners had been initiated on false and frivolous grounds, and based merely on the statement of Abdul Sattar Sheikh; Abdul Sattar Sheikh had differences with the petitioners and, therefore, on the basis of his sole statement disciplinary proceedings were initiated; the nature of the charges was such that the petitioners could not have been proceeded against under Rule 5 of the Government Servants (Efficiency & Discipline) Rules 1973 (hereinafter referred to as "*E & D Rules*"); the petitioners had denied any involvement, and the disputed questions of fact were of a nature that essentially required to be proceeded under Rule 6 of the E & D Rules; the fact-finding Committee could not have come to a conclusion that the allegations against the petitioners had been established merely on the basis of questionnaires; the petitioners were not afforded an opportunity to cross-examine Abdul Sattar Sheikh; the petitioners were also not afforded an opportunity to properly defend the allegations; the authorized officer exercised his discretion arbitrarily by resorting to the summary procedure provided under Rule 5 of the E & D Rules.

5. The learned counsel appearing on behalf of the NTC has argued that; the authorized officer was justified in proceeding under Rule 5 rather than adopting the procedure under Rule 6 because the charges against the petitioners were established, as is evident from the findings of the fact finding Committee; the petitioners were involved in the generation the derogatory text messages, and they had used the SIM registered in the name of Abdul Sattar Sheikh to send text messages to other employees; the petitioners had committed misconduct within the meaning of E & D Rules; the fact finding inquiry Committee had thoroughly

probed into the matter and its findings do not suffer from any illegality; the petitioners have been proceeded against on proven charges.

6. The learned counsels have been heard and the record perused with their able assistance.

7. The National Telecommunication Corporation is defined in the Pakistan Telecommunication (Re-organization) Act 1996 (hereinafter referred to as the "*Act of 1996*") as meaning the Corporation to be established under Section 41. The NTC was, therefore, established under Section 41 of the Act of 1996. Pursuant to the powers conferred under subsections 5 and 17 of section 41 of the Act of 1996, the NTC, with the approval of the Federal Government, made the National Telecommunication Corporation Service Regulations, 2008 (hereinafter referred to as "*Regulations of 2008*"). Chapter-V of the Regulations of 2008, inter-alia, provides for the manner in which disciplinary proceedings are to be initiated against an employee. Initially Regulation 5.3 provided that an employee shall be liable to disciplinary action and penalties in accordance with the procedure prescribed in the Removal from Services (Special Powers) Ordinance, 2000. After the repeal of the said Ordinance, the NTC Management Board, in its 69th meeting held on 22-04-2010 and 07-05- 2010, adopted the E & D Rules in totality with effect from 5th March 2010. A copy of the notification dated 17-05-2010 in this regard was submitted by the learned counsel for the NTC during the arguments. The petitioners were, therefore, proceeded against under the E & D Rules. The authorized officer in the case of both the petitioners opted for the proceedings as prescribed under Rule 5 (1) (iii) of the E & D Rules. The authorized officer, therefore, decided that it was not necessary to constitute an inquiry committee for holding an inquiry by resorting to the procedure laid down in Rule 6. The question before this Court is whether any prejudice was caused to the petitioners in the facts and circumstances of the case, and whether the authorized officer had exercised his discretion in accordance with the law.

8. The fact-finding inquiry conducted by a Committee consisting of three officers was admittedly based on questionnaires relating to seven employees, referred to as “witnesses” in the inquiry report. It is evident from the replies to the questionnaire submitted by Abdul Sattar Sheikh that the alleged text messages had been sent through a SIM, which was admittedly registered in his name. He also unambiguously acknowledged that he had serious differences with the two petitioners. The fact finding inquiry Committee was not constituted pursuant to powers vested under Rule 6 of the E & D Rules. The fact finding inquiry was based on the replies of seven persons, including the two petitioners. The petitioners had denied the charges. However, the fact finding inquiry Committee came to the conclusion that the SIM registered in the name of Abdul Sattar Sheikh had been used to send text messages from a cell phone allegedly owned by Muhammad Adnan Moin. This was also denied by the latter. Pursuant to its findings, the Committee recommended initiating disciplinary proceedings against the two petitioners.

9. Based on the report of the fact finding Committee, the authorized officer formed an opinion that a regular inquiry was not required in the case and, therefore, he opted to proceed against the petitioners under Rule 5 (1) (iii) of the E & D Rules. Rule 5 (1) (ii) leaves it to the authorized officer to decide whether in the light of the facts of the case or in the interest of justice an inquiry should be conducted through an inquiry Committee, and if he so decides, then the procedure indicated in Rule 6 is to be followed. The authorized officer is, therefore, vested with the discretion to either opt for the procedure prescribed in Rule 5 or to resort to the one in Rule 6. The exercise of the said discretion is subject to forming an opinion in the light of the facts of the case or in the interest of justice. After the authorized officer decides that it is not necessary to have an inquiry conducted through an inquiry committee, then by an order in writing he or she informs the employee against whom action is proposed to be taken regarding the grounds and

the proposed action. The employee is then given a reasonable opportunity of showing cause against that action. Like any other discretion, the authorized officer is under an obligation to take a decision under Rule 5(1) (ii) in a just and reasonable manner, particularly after applying an independent mind to the facts of the case. In the context of exercising a discretion, the august Supreme Court in “M.A. Rahman vs. Federation of Pakistan and others”, 1988 SCMR 691 has held that a discretion must be exercised only by the authority to which it is committed, and that in exercising the discretion the authority must genuinely address itself to the matter before it, must act in good faith and have regard to all relevant considerations. It has been further held that in exercising discretion, the authority must not be swayed by irrelevant considerations, nor must it seek to promote purposes alien to the letter or to the spirit of the legislation that gives it the power to act and, therefore, must not act arbitrarily or capriciously.

10. In the case of “Salman Faruqi vs. Javed Burki, authorized officer, Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and another”, 2007 SCMR 693 the august Supreme Court has held as follows:-

“It has been a consistent view of this Court that where the charges are serious, pertaining to intricate question of fact and where the penalty of dismissal from service is likely to be imposed, a regular inquiry shall be conducted to prove such disputed and denied questions of fact. By resorting to the provisions of rule 5(1)(iii) of Government Servants (Efficiency and Discipline) Rules, 1973, the authorized officer happened to condemn the appellant unheard. The only remedy is to have a recourse to the principles of natural justice and to hold an inquiry under rule 5(1)(ii) of the Rules of 1973, wrongly dispensed with under rule 5(1)(iii).”

11. In “Ghulam Muhammad Khan vs. Prime Minister of Pakistan and others”, 1996 SCMR 802 it is held as follows:-

“It has been consistently held by this Court that there is a marked distinction between Rule 5 and Rule 6 of the Rules, inasmuch as under the former Rule, a regular inquiry can be dispensed with, whereas the latter Rule envisages conducting of regular inquiry which will necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact could not be recorded without examining the witnesses in support of the charge or charges, the regular inquiry cannot be dispensed with. Reference may be made in this behalf of the case of Nawab Khan and another vs. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222).”

12. Likewise, the august Supreme Court in the case of “Jan Muhammad vs. The General Manager, Karachi Telecommunication Region, Karachi and another” 1993 SCMR 1440 elaborately examined the provisions of the E & D Rules and held that even in the case of an inquiry conducted under Rule 6, the proceedings conducted by way of questionnaire without examination of witnesses in support of a charge or defence cannot be approved, as it is not consistent with the requirements of Rule 6 of the E & D Rules.

13. In the light of the above principles and law as enunciated by the august Supreme Court, dispensing of the regular inquiry and resorting to Rule 5 (1)(iii) rather than adopting the procedure prescribed under Rule 6 of the E & D Rules was not in consonance with exercising discretion in a lawful manner in the case of the two petitioners. Firstly, the fact finding Committee had merely formed an opinion on the basis of questionnaires relating to seven “witnesses” and, thereafter, obtaining information without associating the petitioners. The petitioners were not even treated as accused, as the report itself refers to them as witnesses. The petitioners had denied any involvement and the SIM alleged to have been used for sending text messages was also admittedly registered in the name of Abdul Sattar Sheikh. The latter had admitted differences with the petitioners. Abdul Sattar Sheikh had been dismissed from service on the same allegations but subsequently reinstated. The allegations against the petitioners were not only of a serious nature but involved intricate and disputed questions of fact. The allegations had been strongly denied by them.

14. In the circumstances, the fact finding Committee could also not have formed a conclusive opinion regarding the guilt of the petitioners. The most interesting aspect of the case against the petitioners is that there is no document on record which would show what text messages had been sent, and even if such messages had been generated, then admittedly a SIM registered in the name of Abdul Sattar Sheikh had been used. There is also nothing on record to show that even if text messages had been sent through a SIM registered in the name of Abdul Sattar Sheikh, then whether in the first place they could be termed as ‘derogatory’ or not. It was inquired from the learned counsel for the respondents as to whether the petitioners at any stage had been confronted with the text messages claimed to be derogatory? The learned counsel was not able to show any document in this regard. However, he produced an unsigned and unverified document consisting of two pages, claiming that it contained the alleged text

messages. This Court would refrain from making any observation in this regard. It is, however, obvious that neither the text messages claimed to have been derogatory were brought on record nor were they made part of the Show Cause Notice.

15. It is also settled law that the allegation or charge must not be vague. In the instant case, by merely alleging that some derogatory text messages had been sent is not sufficient. It is obvious from the above that the procedure adopted definitely caused prejudice to the petitioners. As noted above, the august Supreme Court has held that conducting proceedings under Rule 6 by way of questionnaires is not tenable in law. In the instant case no proceedings were held under Rule 6, and the fact finding Committee had undertaken proceedings by way of questionnaires. The order dated 12-02-2015, whereby the appeal of the petitioner namely Muhammad Adnan Moin was dismissed, also reflects non-application of an independent mind and failing to take the relevant matters into consideration. One of the grounds, which had prevailed in dismissing the appeal, was that one SIM number had been concealed by the petitioner from the fact finding inquiry Committee. Perusal of the inquiry Committee report reveals that the petitioner had not concealed having a third SIM number. While he gave his two SIM numbers, he unequivocally stated that although he had a third SIM he did not remember its number.

16. In view of the above, the proceedings against the petitioners were not in accordance with the E & D Rules and, therefore, as a consequence the petitions are allowed. The impugned orders are hereby *set-aside*. The petitioners, therefore, shall stand *reinstated with all back benefits*. It would however, be open to the competent authority to proceed against the petitioners if there is any material available for initiating disciplinary proceedings. This Court expects that while proceeding against the petitioners, the competent authority shall take into

consideration and act in accordance with the principles and law as highlighted above.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on _____.

JUDGE

Approved for reporting.

***Asif Mughal/**