

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 1868 OF 2021.

JAVED NAWAZ KHAN.

Vs.

**THE SECRETARY, MINISTRY OF INFORMATION &
BROADCASTING, ISLAMABAD, ETC.**

Petitioner by : Hazrat Younis, State Counsel.

Respondents by : Nemo.

Date of Decision : 02.08.2022.

SAMAN RAFAT IMTIAZ, J. Through the instant writ petition, the Petitioner has assailed order dated 14.09.2020 ("**Impugned Order**") passed by the Respondents, whereby he has been awarded major penalty of dismissal from service on account of misconduct.

2. The brief facts as per the Memo of Petition are that the Petitioner was appointed as Assistant Accounts Officer (PBC Pay Scale-7) in August 2006 and subsequently he was promoted to the post of Accounts Manager (PBC Scale-7). The Petitioner worked as Account Officer in Pension Branch of PBC Headquarters from 2013 to 2018. A complaint was made by the PBC authorities before the FIA regarding embezzlement allegedly committed by the Petitioner. The Petitioner was booked in FIR No.44/2020 dated 08.09.2020 u/s 420/468/471/109/409 PPC read with sections 5(ii)/47 PCA at PS FIA/CCC, Islamabad and departmental proceedings were also initiated against him.

3. As per FIR, the allegation against the Petitioner was that he committed embezzlement in the pension account to the tune of Rs.4,615,565/-. During proceedings of the Petitioner's bail application, said amount was deposited by the Petitioner under protest and in good faith as per direction of the Honorable High Court. An inquiry was conducted by

the Respondents wherein statement of allegation and charge sheet was also issued to the Petitioner on 10.07.2020 by the Director Administration/Authorized Officer (Respondent No.3). The Petitioner appeared before the Inquiry Officer and submitted his contention with regard to his alleged involvement and innocence but Respondent No.3 finally issued a show cause notice to Petitioner on 11.08.2020. The Petitioner duly submitted reply of show cause notice and denied all the allegations leveled against him. The Inquiry Committee was also informed that actual beneficiary of alleged embezzlement was another employee of the department namely Muhammad Rehan who illegally and unlawfully used to sign his signatures on advices/memos and defrauded pensioners as well as the department. The Petitioner also appeared before the Inquiry Committee and informed the true facts of the matter, but respondents awarded major penalty of "dismissal from service" vide the Impugned Order. Being aggrieved, the Petitioner filed departmental appeal which has also not been replied either way till date. Hence, finding no other efficacious remedy against the Impugned Order Petitioner preferred instant this writ petition.

4. The learned counsel for the Petitioner argued that the Petitioner was not given a personal hearing before passing dismissal order against him and as such the Impugned Order is not sustainable. He also submitted that the Respondents have statutory rules of service while relying upon an unreported judgment of this Court passed on 14.12.2016 in W.P.No. 1873/2015 and as such argued that the instant petition is maintainable. Learned counsel in support of his contentions placed reliance on *Member (Administration), Federal Board of Revenue and others versus Mian Khan, 2022 PLC (C.S.) 474*, *Chief Secretary, Government of Punjab, Lahore versus Muhammad Ali Saqib, 2020 PLC (C.S.) 1291*, *Prof. Dr. Abdul Waheed versus Rector, COMSATS Institute of Information Technology, Islamabad and others, 2019 PLC (C.S.) 672*, *Syed Maqbool Hussain Zaidi*

versus Federation of Pakistan through its Secretary (IT and Telecom) and others, 2019 PLC (C.S.) Note 14, Director General Emergency Rescue Service 1122 KPK, Peshawar versus Nizakat Ullah, 2019 SCMR 640, Muhammad Rafi and others versus Federation fo Pakistan and others, 2016 SCMR 2146, and Pakistan Defence Officers' Housing Authority and others versus Lt. Col. Syed Jawaid Ahmed, 2013 SCMR 1707.

5. None was in attendance on behalf of the Respondents, however, the comments have been filed on their behalf whereby it has been denied that the Respondents have statutory rules and all other allegations made in the petition are also refuted except filing of departmental appeal by the Petitioner which has been acknowledged.

6. I have heard the arguments and gone through the record.

7. As per the Impugned Order a personal hearing was conducted on 08-09-2020. The learned counsel for the Petitioner was confronted with paragraphs 7 and 9 of the Memo of Petition, wherein it has been specifically stated that the Petitioner appeared before the Inquiry Officer and Inquiry Committee which shows that personal hearing was conducted as indicated in the Impugned Order. In response the learned counsel contended that the Petitioner appeared before the Inquiry Committee by way of filing written submissions but no personal hearing was conducted.

8. I am not satisfied with such explanation. A bare perusal of the relevant paragraphs of the Memo of Petition shows that submission of reply to show cause notice by the Petitioner has been mentioned in a separate paragraph in addition to which the Petitioner has categorically stated in the next paragraph that he “...also appeared before the inquiry committee and informed the true facts of the matter...” The foregoing makes it clear and apparent that as per the Petitioner’s own contention apart

from submitting written reply, he also appeared before the Inquiry Committee.

9. The learned counsel for the Petitioner relied upon an Application for physical remand dated 09.09.2020 made by the police before the learned Judicial Magistrate, Islamabad wherein it has been stated that the Petitioner was arrested on 08.09.2020. As such, he argued that the date of personal hearing given in the Impugned Order as 08.09.2020 is false as the Petitioner could not have attended any hearing when in fact he was under arrest. It is firstly noted that such application was neither appended with the Memo of Petition nor was it included in the additional documents that were placed on record by way of C.M. No. 2613/2022. It has been produced in Court for the first time today. The learned counsel contended that he may be allowed to rely upon additional documents as he has invoked the Constitutional jurisdiction of this Court. That may be so, however, the Petitioner cannot be allowed to resile from his earlier statement and change the case put forward by him in the first place. As noted above as per the facts narrated in the Memo of the Petition, the Petitioner has categorically stated that he appeared before the Inquiry Committee. Nowhere has it been stated that the date of personal hearing as given in the Impugned Order is false and incorrect or that the Petitioner was in fact under arrest on such date.

10. Even otherwise the date of personal hearing given in the Impugned Order is 08.09.2020 but no time when such hearing took place has been given. Similarly no time of arrest is given in the application for physical remand being relied upon by the learned counsel for the Petitioner. Therefore, simply because he was arrested on the same date as the purported date of personal hearing does not by itself negate the factum of personal hearing especially given the absence of such stance in the Memo of Petition.

11. According to the reply submitted by the Respondents personal hearing was conducted and the Impugned Order was issued after due adherence to all legal requirements. In such circumstances a factual controversy has arisen as to whether or not an opportunity of personal hearing was given to the Petitioner or not which cannot be adjudicated upon in exercise of Constitutional jurisdiction of this Court.

12. Be that as it may, admittedly the Petitioner has filed a departmental appeal which according to the Respondents' reply is pending decision before the Federal Secretary for Information and Broadcasting which shall be conveyed to the Petitioner soon. Thus the instant petition is clearly not maintainable in view of alternate adequate remedy.

13. In light of the above, the instant petition stands disposed of with direction to the Respondents to decide the Petitioner's departmental appeal within four weeks' time.

(SAMAN RAFAT IMTIAZ)
JUDGE

R.Anjam.