

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.2845 /2016**

Muhammad Aslam Hayat

Vs

Government of Pakistan etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
---------------------------------------------	-------------------------------------------	----------------------------------------------------------------------------------------------

21.07.2016

Ms. Asma Jahangir, Advocate  
for the petitioner.

Through the instant petition the petitioner seeks direction to respondents to conduct fair trial as guaranteed under Article 10 A of the Constitution of the Islamic Republic of Pakistan, 1973 by providing all the necessary documents and reasonable opportunity to prepare his defence as well as opportunity to cross-examine the Department's witnesses and leading his evidence.

2. The facts, in brief, are that the petitioner is a civil servant in BPS-20. He has been in service since 05.04.1980. The petitioner received an order of inquiry on 03.04.2016 dated 29.04.2016 from respondent No.2 alongwith charge sheet wherein respondent No.3 has been appointed to inquire into the charges levelled in the charge sheet against the petitioner as Ex-Chairman KPT. The charges in the charge sheet pertain to the period from 13.12.2011 to 30.07.2012. The petitioner filed a constitutional petition in this Court (W.P. No.1746/2016) wherein direction was sought to Ministry of

Port and Shipping to provide relevant documents to the petitioner to prepare defence. The referred petition was disposed of by this court vide order dated 13.05.2016 directing the respondents to fulfill all the codal and legal formalities. The petitioner received notice dated 18.07.2016 from respondent No.3 i.e. Inquiry Officer whereby he was asked to appear in person on 22.07.2016 to file written defence/reply otherwise the matter shall be decided on the basis of available record and evidence produced by the Department.

3. Learned counsel for the petitioner *inter alia* submitted that the proceedings conducted by respondent No.3 are in violation of Government Servants (Efficiency and Discipline) Rules, 1973; that despite direction of this Court the requisite documents have not been provided to the petitioner; that without the documents the petitioner is unable to submit reply and put forward his defence; that list of witnesses was provided by the petitioner which are required to be summoned by respondent No.3 but the same has not been done and the proceedings are being conducted in an arbitrary manner; that the proceedings are being conducted by respondent No.3 in violation of Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973. In support of her contentions learned counsel placed reliance on the case titled *Aneesur Rehman vs. Federation of Pakistan and others* (2010 PLC (C.S.)812), *Javed Iqbal Awan v. Zarari Taraqiati Bank Ltd. and 2 others* (2006 PLC (C.S.) 661), *G. Asghar Malik v. Federation of Pakistan and others* (2002 SCMR 433),

*Shakeel Ahmed v. Commandant 502 Central Workshop EME Rawalpindi and another* (1998 SCMR 1970) and *Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another* (1993 SCMR 1440).

4. In response to the query of the Court regarding maintainability of the petition, the learned counsel submitted that where there is violation of law and/or the question is for enforcement of fundamental rights the bar under Article 212 is not applicable. In this behalf reliance was placed on case titled *Tahir Mahmud v. Qasim M. Niazi and others* (2014 PCS (C.S.)1199), *Muhammad Adnan Moin v. Federation of Pakistan and others* (2016 PLC (C.S.)549) and *Secretary Establishment Division, Federation of Pakistan, Islamabad v. Aftab Ahmed Manika and others* (2015 SCMR 1006).

5. The petitioner, in the instant petition, has assailed the inquiry proceedings against him pending before respondent No.3 under Government Servants (Efficiency and Discipline) Rules, 1973. The disciplinary matters pertain to the terms and conditions of service of a civil servant and in such like cases the jurisdiction vests with Service Tribunal constituted under the Service Tribunal Act, 1973 to adjudicate upon the matters as provided in section 4 of the referred Act. Under Article 212 of the Constitution a bar is provided whereby the jurisdiction of the courts including this Court under Article 199 is ousted and all the matters pertaining to the terms and conditions of service

of persons who are in service of Pakistan fall within the jurisdiction of the courts established for the said purpose i.e. Service Tribunal. In this behalf for the sake of brevity Article 212 is reproduced below and is as follows:

***“212. Administrative Courts and Tribunals.— (1) Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of-***

*(a) matters relating to the terms and conditions of persons who are or have been] in the service of Pakistan, including disciplinary matters;*

*(b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or*

*(c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.*

*(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal other than an appeal pending before the Supreme Court,] shall abate on such establishment:*

*Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-eShoora (Parliament) by law extends the provisions to such a Court or Tribunal.*

*(3) An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal”*

6. The bare reading of the above Article of the Constitution shows that the disciplinary matters are included in matters related to the terms and conditions of service of civil servants. In such like cases where the inquiry proceedings are challenged under the Constitutional jurisdiction of this Court it has been consistently held by the august Apex Court that the same is not maintainable in light of the bar provided in Article 212 of the Constitution. In this behalf in case titled *Syed Mazhar Hussain Bukhari v. Secretary, Government of Punjab Local Government and Rural Development, Department, Lahore and others* (1998 SCMR 1948) the august Apex Court observed that the constitutional petition under Article 199 of the Constitution is not maintainable by civil servant in relation to any matter concerning with the terms and conditions of his service and in respect whereof the Service Tribunal has the jurisdiction. It was also observed that even the orders challenged on the ground of *mala fide* being appealable before Federal Service Tribunal are barred by Article 212 of the constitution. Similarly, in case titled *Tahir Jamil Butt v. Mian Jehangir Pervz and another* (1999 SCMR 2779) it was held that where before a High Court the proceedings before the Inquiry Officer were challenged the High Court dismissed the petition

and the said order was maintained by the Hon'ble Supreme Court of Pakistan with the following observations:

*"We have heard the learned counsel at length and we are of the view that it was rightly held by the learned Judge of the Lahore High Court that it was beyond his jurisdiction to interfere in the matter on account of bar of jurisdiction contained in Article 212 of the Constitution because the matter related to the enforcement of the terms and conditions of service. The learned Judge also rightly opined that an appeal was maintainable before the Subordinate Judiciary Services Tribunal, and therefore, these points could be urged in appeal. The learned Judge also correctly placed reliance upon a Full Bench judgment of the Lahore High Court in Writ Petition No.3963 of 1992 whereby the High Court had declined to interfere with the interim order passed by the Inquiry Officer in inquiry proceedings."*

7. Similarly, the Hon'ble Supreme Court of Pakistan in case titled *I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others* (1991 SCMR 1041) observed that the civil servant cannot bypass Service Tribunal by adding the ground of violation of the fundamental rights. It was also observed that Service Tribunal will have the jurisdiction in a case which is founded on the terms and conditions of service even if it involves the question of violation of fundamental rights. It was also observed by the august Apex Court that the civil servant when is aggrieved by a final order, whether original or appellate, passed by a departmental authority in respect of his terms and conditions, his remedy, if any, is by way of an appeal before Service Tribunal, even where the case involves vires of a particular service rule or a notification or the

question, whether an accused civil servant can claim the right to be represented by a counsel before the Inquiry Officer. It was also held that if statutory rules or a notification adversely affects the terms and conditions of a civil servant the same can be treated as an order in terms of section 4(1) of the Service Tribunal Act, 1973 in order to file an appeal before Service Tribunal.

8. Learned counsel for the petitioner in support of her contention that in such like cases where there is a violation of fundamental rights or the procedure prescribed under Government Servants (Efficiency and Discipline) Rules, 1973 is not followed the Constitutional petition under Article 199 of the Constitution is maintainable, has placed reliance on three judgements i.e. 2014 PLC (C.S.)1199, 2015 SCMR 1006 and 2016 PLC (C.S.) 549. Insofar as 2014 PLC (C.S.) 1199 *Supra* is concerned, the judgement was passed by this Court when the Service Tribunal was not functional and the august Apex Court had held that Constitutional petition is maintainable; even otherwise in the referred judgement the earlier judgements of the august apex Court, as mentioned above, were not considered. In Aftab Manika's case the august Apex Court observed that the Constitutional jurisdiction of High Court is not ousted in matters pertaining to appointment of civil servant to a particular post or to be promoted to a higher post, therefore, the referred judgement is not relevant in the facts and circumstances, of the case. Similarly, the decision of this Court reported as 2016 PLC (C.S.) 549 is not relevant inasmuch as therein the

question of maintainability of the petition in light of bar provided in Article 212 of the Constitution was not considered. Even otherwise, the matter, in the referred case, pertained to employees of NTC who are not civil servants but only the Board of Directors of the referred Corporation had adopted the Government Servants (Efficiency and Discipline) Rules, 1973 for taking disciplinary action against its employees.

9. Learned counsel for the petitioner also placed reliance on various judgements by the august Apex Court, mentioned above, wherein the inquiry proceedings for violating Efficiency and Discipline Rules *ibid* were set aside. In all the judgements it was held that the employees/civil servants are entitled to a fair defence; to cross-examine the witnesses of the Departmental and to summon witnesses. There is no cavil with the principles laid down in the judgements relied by the petitioner, however, all the judgements of the august Apex Court had arisen out of the decision of Service Tribunal and in the same question of maintainability of petition under Article 199 of the constitution in light of bar under Article 212 *ibid* was not considered.

10. In view of above position of law, since the matter relates to the terms and conditions of service of the petitioner, therefore, due to bar provided in Article 212 this Court has no jurisdiction in the matter.



11. For the foregoing reasons, the instant petition is dismissed *in limine*.

(AAMER FAROOQ)  
JUDGE

\*M.Naveed\*

Approved For Reporting