

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1252 of 2019

Munawar Ali Jalbani

Versus

Chairman, Higher Education Commission and another

Date of Hearing: 03.02.2020

Petitioner by: M/s Abdul Rahim Bhatti, Yasser Rahim Bhatti and Qaisar Rahim Bhatti, Advocates

Respondents by: Hafiz Noor Muhammad and Mr. Shahid Habib, Advocates

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Munawar Ali Jalbani, impugns the order dated 01.03.2019 passed by the Higher Education Commission ("H.E.C."), whereby his departmental appeal against the order dated 14.03.2016 was dismissed. Vide the said order dated 14.03.2016, major penalty of "removal from service" was imposed on the petitioner under the Government Servants (Efficiency and Discipline) Rules, 1973 ("E&D Rules") as adopted by the H.E.C.

2. The record shows that on 22.01.2007, the petitioner was appointed as Steno Typist (BPS-12) in the H.E.C. On 27.11.2014, while the petitioner was on medical leave, he was served with the charge sheet wherein it was alleged that he had been involved in the issuance of a fake appointment letter and joining report to Ms. Sanam Sheikh (complainant) for the post of Assistant Private Secretary (BS-16) in the H.E.C. He was also alleged to have disgraced the H.E.C. by engaging in fraudulent activities and misusing his official position. Mr. Muhammad Arshad Kamran, Director General (Acting) (Services) was appointed as the Inquiry Officer under Section 5(1)(ii) of the E&D Rules with the mandate to conduct an inquiry into the allegations levelled against the petitioner.

3. On 12.11.2015, a notice was issued to the petitioner to show cause as to why major penalty of "removal from service" may not be imposed on him. The said show cause notice reveals that as per the Inquiry Officer's report dated 09.10.2015, the charges levelled against the petitioner had been fully proved. The Inquiry Officer had also

recommended the imposition of major penalty of "removal from service" on the petitioner under Rule 4(1)(b)(iii) of the E&D Rules.

4. On 18.11.2015, the petitioner submitted his reply to the said show cause notice. In the reply, the position taken by the petitioner was that a copy of the inquiry report had not been given to him as required by Rule 6 of the E&D Rules. He also took the position that the Inquiry Officer was biased and that he was not given the right to cross-examine the witnesses.

5. Vide office order dated 14.03.2016, major penalty of "removal from service" was imposed on the petitioner. The petitioner preferred a departmental appeal against the said order before the Chairman, H.E.C. The said appeal was dismissed vide order dated 01.03.2019. The petitioner has assailed the said concurrent orders in the instant writ petition.

6. Learned counsel for the petitioner submitted that the inquiry proceedings against the petitioner culminating in the order for the imposition of major penalty of "removal from service" were not in conformity with the requirements of the E&D Rules; that the inquiry against the petitioner was conducted in a slipshod manner; that on 11.09.2015, the petitioner requested for the Inquiry Officer to be changed; that the petitioner's said request was turned down vide order dated 28.09.2015; that under Rule 6(1) of the E&D Rules, the framing of a charge is the responsibility of the Authorized Officer; that the charge sheet dated 27.11.2014 was not signed or issued by the Authorized Officer; that the said charge sheet had been issued by the Assistant Director (HRM) whereas under the H.E.C.'s notification dated 22.06.2010, for employees in BPS-11 to 16 the Authorized Officer is Member (O&P); that Rule 6(1) of the E&D Rules also requires the charge sheet to be accompanied by the statement of allegations; that the charge sheet dated 27.11.2014 was admittedly not accompanied by the statement of allegations; that office order dated 27.11.2014 shows that the Inquiry Officer had not been appointed by the Authorized Officer but by the Authority; that the show cause notice dated 12.11.2015 shows that the Inquiry Officer had recommended the imposition of major penalty of "removal from service" on the petitioner; that under the E&D Rules, the Inquiry Officer has no power

to impose a penalty; that although the petitioner was associated in the inquiry, he was not provided with the statements of the witnesses recorded by the Inquiry Officer; that the complainant had not been examined by the Inquiry Officer in the petitioner's presence; that since the inquiry against the petitioner was not in accordance with the law, the office order dated 14.03.2016 whereby the said penalty was imposed on the petitioner is liable to be set-aside; that the petitioner had taken several grounds in his departmental appeal before the Chairman, H.E.C.; that none of the grounds agitated by the petitioner in his departmental appeal were addressed by the appellate authority; and that the appellate order dated 01.03.2019, being devoid of reasons, is liable to be set-aside. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

7. On the other hand, learned counsel for the H.E.C. submitted that the H.E.C. was established under the provisions of the Higher Education Commission Ordinance, 2002 (**"the 2002 Ordinance"**); that the H.E.C. is the successor body of the University Grants Commission which was established in 1974 through statute; that the Removal from Service (Special Powers) Ordinance, 2000 (**"R.S.O."**) was in the field when the 2002 Ordinance was promulgated; that after the R.S.O. was repealed in 2010, the H.E.C. issued notification dated 22.06.2010, which shows that all disciplinary matters relating to the employees of the H.E.C. were to be governed under the E&D Rules; that under the said notification, the Authorized Officer for disciplinary matters relating to employees of the H.E.C. in BPS-11 to 16 was Member (O&P); that the charge sheet dated 27.11.2014 had been issued by order of the Authorized Officer; that the inquiry against the petitioner was conducted in accordance with the law; that the allegations of bias made by the petitioner against the Inquiry Officer did not have any substance and therefore the former's application for the removal of the Inquiry Officer was correctly turned down; that the allegation of misconduct levelled against the petitioner in the charge sheet had been proven in the inquiry proceedings; that the petitioner chose not to examine any witness in the inquiry proceedings; that during the period when the petitioner served in the Ministry of Commerce, he was

accused of issuing fake export permits and had remained absent from duty from 26.12.2009 to 20.04.2010; that the petitioner was repatriated by the Ministry of Commerce due to his nefarious activities; that the Ministry of Commerce had also requested for the initiation of inquiry proceedings against the petitioner; that the inquiry committee had recommended the imposition of a major penalty on the petitioner but the competent authority took a lenient view and imposed a minor penalty of withholding of promotion for two years on the petitioner; that the imposition of such a penalty did not cause the petitioner to mend his ways; that the petitioner had issued a fake appointment letter for the post of Assistant Private Secretary to Ms. Sanam Sheikh; that a complaint against the petitioner had been filed by Ms. Sanam Sheikh; that even though Ms. Sanam Sheikh/complainant had not appeared before the Inquiry Officer, there was overwhelming evidence against the petitioner; and that the mere fact that a copy of the inquiry report was not given to the petitioner along with the show cause notice does not in any manner result in the imposition of the major penalty on the petitioner being illegal. Learned counsel for the H.E.C. prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 5 above and need not be recapitulated.

9. Although the complaint against the petitioner regarding the issuance of a fake appointment letter had been submitted by Ms. Sanam Sheikh, the latter did not appear in the inquiry proceedings.

10. Admittedly all disciplinary matters relating to the employees of the H.E.C. are to be governed under the E&D Rules. This is by virtue of a notification dated 22.06.2010 issued by the H.E.C.

11. Learned counsel for the H.E.C. was fair and honest in his submission that a copy of the inquiry report was not given to the petitioner along with the show cause notice dated 12.11.2015.

12. The checklist of the requirements to be noted while taking action under the E&D Rules was issued by the Establishment Division vide

letter dated 26.03.1985 which is at serial No.26.3 of the ESTA Code.

Paragraph 14 of the said checklist is reproduced herein below:-

“13. On receipt of the report of the Inquiry Officer or Inquiry Committee or on receipt of explanation of the accused officer under rule 5(1)(iii), the Authorized Officer has determined whether the charge or charges against the accused officer has been proved or not [Rule 5(1)(iv)].

14. After the authorized officer has considered the inquiry report and arrived at a provisional conclusion as to the penalty to be imposed, the accused shall be supplied with a copy of the inquiry report and asked to show cause, within a specified time, which should not be less than 7 days and more than 14 days for the date of receipt of inquiry report, against the particular penalty to be imposed and any representation submitted by the accused in this behalf shall be taken into consideration before final orders are passed.

15. In case the Authorized Officer has proposed imposition of a major penalty on the accused officer, he has referred the case to the Authority with his recommendation and with all the documents mentioned in the rule [Rule 5(1)(iv)].”

13. In the case of Syed Mir Muhammad Vs. N.-W.F.P. (PLD 1981 SC 186), it was held *inter alia* that in a case where a formal inquiry is held, it seems to be an implicit requirement of the relevant rules that a copy of the inquiry report should be furnished to the accused/official so as to enable him to offer his explanation with regard to the adverse findings, if any, recorded against him by the Inquiry Officer or the Inquiry Committee, as the case may be. Furthermore, it was held that such a requirement cannot be brushed aside by saying that it would amount to a second show cause notice. This was held by the Hon'ble Supreme Court while interpreting Rules 5 and 6 of the E&D Rules. Law to the said effect has also been laid down in the cases of Syed Sharafat Ali Nadeem Vs. Federal Service Tribunal (1987 SCMR 1774), and Dr. Mrs. Khalida Razi Vs. Federation of Pakistan (1993 PLC (C.S.) 10). In the last two cases, the imposition of the penalty of an officer was set-aside on the ground that he had not been provided a copy of the inquiry report along with the show cause notice.

14. As regards the charge sheet dated 27.11.2014, the same is not in conformity with Rules 6(1) of the E&D Rules. I say so because there is nothing on the record to show that the charge sheet was accompanied by the statement of allegations against the petitioner whereas the said rule requires the charge sheet to be accompanied by the statement of allegations explaining the charge against the employee. Additionally, under the H.E.C.'s notification dated

22.06.2010, the Authorized Officer for disciplinary matters relating to the H.E.C.'s employees in BPS-11 to 16 is Member (O&P). There is nothing on the record to show that the charge sheet dated 27.11.2014 was issued by the order of Member (O&P). The said charge sheet was issued by Assistant Director (HRM) and not by Member (O&P). The office order dated 14.03.2016 whereby major penalty was imposed on the petitioner was also not issued by the Authorized Officer, i.e. Member (O&P). These violations of the requirements of E&D Rules rendered the imposition of the major penalty on the petitioner liable to be set-aside.

15. The petitioner, in his departmental appeal, had taken the ground that a copy of the inquiry report had not been provided to him as required by Rule 6 of the E&D Rules. The appellate order dated 01.03.2019 does not address this ground taken by the petitioner. In fact, the appellate order does not address any of the grounds taken by the petitioner in his departmental appeal.

16. In view of the above, it is held that the proceedings against the petitioner were not just in violation of the above referred E&D Rules but also the law laid down by the Superior Courts in the cases of Syed Mir Muhammad Vs. N.-W.F.P. (PLD 1981 SC 186) (supra), Syed Sharafat Ali Nadeem Vs. Federal Service Tribunal (1987 SCMR 1774) (supra), and Dr. Mrs. Khalida Razi Vs. Federation of Pakistan (1993 PLC (C.S.) 10) (supra) and paragraph 14 of serial No.26.3 of the ESTA Code. Consequently, the instant petition is allowed and as a result the impugned orders are set-aside. The H.E.C shall be at liberty to re-initiate departmental/disciplinary proceedings against the petitioner strictly in accordance with the E&D Rules read with the H.E.C.'s notification dated 22.06.2010.

(MIANGUL HASSAN AURANGZEB)
JUDGE

APPROVED FOR REPORTING

Qamar Khan*