

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mrs. Justice Ayesha A. Malik

Mr. Justice Malik Shahzad Ahmad Khan

CIVIL PETITION NO.1354 OF 2023

[Against judgment dated 30.01.2023 passed by the Punjab Service Tribunal, Lahore in Appeal No.4271 of 2020]

Muzammal Khan

...Petitioner

Versus

Inspector General of Police, Lahore and others

...Respondents

For the Petitioner

: Mr. Mudassar Khalid Abbasi, ASC with
Petitioner

For the Respondents

: Mr. Sanaullah Zahid,
Additional Advocate General, Punjab

Date of Hearing

: 04.02.2025

JUDGMENT

Ayesha A. Malik, J.- This Civil Petition is directed against judgment dated 30.01.2023 passed by the Punjab Service Tribunal, Lahore (**Tribunal**) whereby the appeal filed by the Petitioner was dismissed.

2. The basic grievance of the Petitioner is that even though he was absent from duty from 07.10.2017 to 28.03.2018, it was neither willful nor intentional given that he had lost his passport while travelling abroad, therefore, could not return in time to report for duty. Consequently, it is the case of the Petitioner that the punishment of *dismissal from service* is harsh and further that it was awarded without a regular inquiry.

3. The basic facts are that the Petitioner was issued a show cause notice on 09.11.2017 for being absent from duty from 07.10.2017 without any leave or permission from the competent authority. The Petitioner did not file any reply to the show cause notice nor did he appear in person despite issuance of notices for 17.02.2018, 17.03.2018, 20.03.2018 and 22.03.2018. Ultimately, the Petitioner was dismissed from service on 28.03.2018. Against this order, the Petitioner filed an appeal before the Regional Police Officer, Gujranwala Region on 27.04.2018 challenging his dismissal from service. Notices

were issued in the appeal but again he did not appear on 28.12.2018 and ultimately, the appeal was dismissed on 31.12.2018. The Petitioner then filed a revision petition before the Inspector General of Police, Punjab, Lahore on 25.03.2019 in which again notices were issued for 04.12.2019, 19.12.2019, 26.02.2020, 04.03.2020, 17.03.2020, 05.08.2020, 11.08.2020 and 18.08.2020 and again he did not appear on any of the dates, hence, his revision petition was dismissed on 19.08.2020.

4. On behalf of the counsel for the Petitioner, a lot of emphasis was placed on the fact that absence from duty was neither willful nor intentional and therefore did not merit dismissal from service. The basic plea of the Petitioner before the Court is that his punishment of *dismissal from service* should be reduced given his service record, his conduct and the fact that the loss of his passport was neither intentional nor something he had any control over. On behalf of the Respondents, it is argued that the Petitioner works for a disciplinary force being the police force and is expected to follow the rules and regulations. He was granted leave from 05.08.2017 to 25.08.2017 along with ex-Pakistan leave which was then extended from 28.08.2017 to 06.10.2017. However, he neither returned in October 2017 nor informed the department of his whereabouts. Thereafter, notices were issued at his home address, not only in the disciplinary proceedings but also in the appeal and the revision petition yet he never appeared to present his defence. He states that as per the service report, show cause notice was handed over to the father of the Petitioner who informed the process server Muhammad Arshad 1336/C that his son had proceeded to Greece.

5. We have heard the counsel for the Petitioner and the Additional Advocate General, Punjab at great length and have gone through the record. The basic issue before us is one that has been settled by this Court time and again that is the issue of disciplinary proceedings in cases of willful absence from duty. This Court has held in the case of *Tahira Waheed*¹ that in case of absence from duty where leave has not been sanctioned, a government officer is absent from duty at his own risk knowing that his absence will have consequences. This Court has repeatedly upheld the punishment of dismissal from

¹ *Tahira Waheed v. Director, Federal Government Educational Institutions* (2003 SCMR 1090) (**Tahira Waheed**).

service in such cases where due process has been followed and where discretion has been exercised as per law. Furthermore, in the case of *Zakir Ali*², this Court has clearly stated that a regular inquiry is not required in cases where absence from duty is an admitted fact and is evident from the record.³ In this case, the Petitioner does not deny his absence from duty and admits that he returned to Pakistan in April 2018, meaning thereby, that from 07.10.2017 to April 2018 he was absent from his duty without sanction of any leave and further without any permission for being abroad.

6. Based on the aforesaid, the Petitioner's contention that a regular inquiry was necessary is without basis given that he admits his absence from duty. Further, having been absent from duty from 07.10.2017 to 28.03.2018, the Petitioner was aware of the potential consequences of his actions. Importantly, we find that the Petitioner's conduct in itself suggests his lack of interest and lack of regard not only for his own job but also for the police force as he did not join the departmental proceedings (as he claims that he was not in Pakistan). He also admitted that he never informed the police force of the loss of his passport. Subsequently, despite the fact that he filed an appeal and revision, he did not appear in the proceedings to offer his defence. This shows a total disregard to the process and procedure and further by not appearing he has forgone his right to defend himself. Consequently, he cannot, at this stage, before this Court try to justify his conduct of non-appearance or his absence.

7. With respect to the issue of absence from duty, it goes without saying that any responsible member of any disciplinary force or any other government officer in the service of the government should be conscious of the rules and regulations particularly with respect to leave and absence from duty. They are required to follow the procedure and the rules for obtaining leave failing which they are responsible for the consequences.⁴ Willful absence is when a person intentionally fails to show up for duty and does not attempt to even inform the department/competent authority of the reasons for the absence. There may be different eventualities due to which a person is compelled to be

² Secretary to Government of the Punjab v. Zakir Ali (2022 SCMR 951) (**Zakir Ali**).

³ Fayyaz Hussain v. Executive District Officer (Education) (2023 PLC (CS) 422) and Tasawar Hussain v. Deputy Commissioner (2023 PLC (CS) 69).

⁴ Muhammad Ali S. Bukhari v. Federation of Pakistan through Establishment Secretary, Islamabad and 2 others (2008 PLC (CS) 428).

absent from duty, being circumstances beyond his control like illness, accident, hospitalization, but even in such circumstances, they are required to inform the department and seek permission for their continued absence. One can't disappear from work without any information or contact and then suddenly re-appear and suggest that this act was not deliberate. A legitimate absence is one where the reasons are known and duly communicated, whereas willful absence is when the absence lacks a reasonable explanation and cannot be justified. In this case, the alleged absence cannot be justified, as the Petitioner never contacted the police force to inform them of his issue, there is no documentary evidence to support his stance and most importantly, he never raised this stance before the relevant forum, even while filing the appeal and revision.

8. The Petitioner states that the punishment so awarded to him was harsh and it should be reduced. Even this contention cannot be entertained by this Court as awarding of punishment is a factual issue based on the record which jurisdiction is exercised by the Tribunal. This Court has held repeatedly that the Tribunal is the final forum for the purposes of determination of facts as this Court cannot go into the appraisal of the evidence or the facts.⁵ Hence, the Petitioner's contention that this Court should reduce his punishment is misconceived as the same is not possible without appraisal of the evidence. This power of modification vests with the Tribunal, and such power is required to be exercised carefully, judiciously and after recording cogent reasons for the same in appropriate cases keeping in view and considering the specific facts and circumstances of each case.⁶ The award of punishment under the law is primarily the function of the competent authority and the role of the Tribunal or Court is secondary unless the punishment imposed on the delinquent is found to be unreasonable and contrary to law.⁷ The Tribunal or the Court intervenes due to the severity or nature of the penalty imposed by the competent authority by considering it unreasonable, perverse, excessively harsh, or by exercising leniency, then such interference is based on the conclusion that the penalty is disproportionate to the proven misconduct as determined through the test of proportionality.

⁵ Divisional Superintendent, Postal Services v. Nadeem Raza (2023 SCMR 803) and Secretary Revenue Division v. Iftikhar Ahmed Tabassum (PLD 2019 SC 563).

⁶ Divisional Superintendent, Postal Services Faisalabad v. Muhammad Zafarullah (2021 SCMR 400).

⁷ Government of Khyber Pakhtunkhwa v. Nargis Jamal (2022 SCMR 2114).

However, interference with the penalty imposed by the department must be approached with caution and careful consideration, reserved for cases where the order is entirely perverse or so clearly disproportionate and excessive to the misconduct that allowing it to stand would be unfair, unjust, and inequitable. In any event, this Court has also given due regard to the discretion exercised by the departments in disciplinary proceedings where due process has been followed. In this case, the Petitioner has been repeatedly served and called to present his defence yet he chose not to, particularly in the appeal and the revision which he himself filed yet failed to appear in or tender his defence. Cases of willful absence from duty are fairly straightforward as government officers who deliberately are absent from duty without permission are aware of the fact that they will be proceeded against for being absent from duty. In the same way if government officers leave the country without permission, without the required NOC or they stay on without sanction then they are aware of the fact that they will be proceeded against. Therefore, in the very least, they should fulfill the requirement of keeping the competent authority informed of the issue with relevant documentation justifying the reason of absence. The prevailing practice, as is evident from this case is to develop a line of defence after disciplinary action has been taken.

9. Finally, this Court under Article 212(3) of the Constitution⁸ is to consider a substantial question of law of public importance which the counsel for the Petitioner has failed to point out. The test for determining whether a matter attracts the Article 212(3) jurisdiction of this Court is whether such matter qualifies as one of public importance. This means that it must extend beyond a private dispute or a purely factual controversy and have significant implications for the wider community or a class of civil servants. A legal issue may, therefore, qualify as a substantial question of law of public importance if it; (i) requires the interpretation of the law, rules, instructions, notifications or governmental policy; (ii) remains unresolved by this Court or is subject to ambiguity, conflicting interpretations, or requires a discussion of alternative perspectives; (iii) exposes a lack of clarity in the law, particularly where contradictory judicial precedents exist; or (iv) reveals a serious

⁸ Constitution of the Islamic Republic of Pakistan, 1973 (Constitution).

violation of due process that affects fundamental rights or procedural fairness under the Constitution.⁹

10. Under the circumstances and in view of the aforementioned, no substantial question of law of public importance arises in this Petition. The impugned judgment passed by the Tribunal warrants no interference. This Petition is, therefore, dismissed and leave refused.

JUDGE

Islamabad
04.02.2025
'APPROVED FOR REPORTING'
Azmat/Nurayn Qasim L.C.*

JUDGE

⁹ Secretary Revenue Division v. Iftikhar Ahmed Tabassam (PLD 2019 SC 563).