

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITIONS NO.3604 AND 3605 OF 2018

(On appeal against the judgment dated 27.07.2018 of the Federal Service Tribunal, Islamabad passed in Appeals No.2198(R)CS/2015 and 2199(R)CS/2015)

Saboor Khan

Kifiat Ullah

In CP 3604/2018

In CP 3605/2018

...Petitioner(s)

VERSUS

Chairman WAPDA, WAPDA House, Lahore and others

...Respondent(s)

(In both cases)

For the Petitioner(s):

Mr. Muhammad Aftab Alam Rana, ASC

Syed Rifaqat Hussain Shah, AOR

(In both cases)

For the Respondent(s):

Not represented

(In both cases)

Date of Hearing:

27.01.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- *These petitions under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, have been filed calling in question the consolidated judgment dated 27.07.2018 passed by the Federal Service Tribunal, Islamabad whereby the Service Appeals filed by the petitioners were disposed of while converting the imposed penalty of 'dismissal from service' into 'removal from service'.*

2. Briefly stated the facts of the matter are that the petitioners were working as regular Security Guards in the respondent Department at Dasu Hydropower Project. On 03.07.2015, they while armed with sticks and rods, beaten the Security Inspector namely Arban Ali and caused several injuries to him. This led to issuance of explanation dated 07.07.2015 on the allegation of attempt to murder, which was replied by the petitioners and they denied the allegation leveled against them. Thereafter, a show cause

notice was issued on 09.07.2015. An inquiry was also conducted wherein the petitioners were found guilty of the charge. Finally, the departmental authority imposed a major penalty of dismissal from service upon the petitioners on 27.08.2015. The petitioners preferred departmental appeals dated 29.08.2015 but even prior to final adjudication, they filed Service Appeals No. 2198(R)CS & 2199(R)CS of 2015 before the Federal Service Tribunal, Islamabad, which have been disposed of vide impugned judgment dated 27.07.2018 and the penalty of 'dismissal from service' has been converted into 'removal from service'. Hence, these petitions seeking leave to appeal.

3. *Learned counsel for the petitioners inter alia contended that no regular inquiry was conducted by the Department before imposing major penalty of dismissal from service, which is against the settled principle of law; that instead of regular inquiry, only a fact finding/informal inquiry was conducted on the basis of which major penalty could not be awarded; that neither the injured appeared before the Inquiry Committee nor his medical report was produced before the Committee; that without recording of cogent and concrete evidence, the learned Tribunal could not pass the impugned judgment and the same being not tenable in law, may be set aside.*

4. *We have heard learned counsel for the petitioners and have perused the available record.*

5. *During the departmental proceedings, both the petitioners had submitted an affidavit on 27.07.2015 wherein they have admitted the incident. However, they took the stance that it was Arban Ali, who hurled abuses to them and pointed a rifle towards them, upon which they gave a punch to him. This story of the petitioners appears to be an afterthought, because, if this was the position, why they did not make a complaint against the said Arban Ali and kept mum for four days until the explanation was sought from them. During the course of arguments, the main emphasis of the learned counsel was that no regular inquiry was conducted and the inquiry which was conducted was the informal one. However, we do not agree with the learned counsel. The inquiry committee was duly constituted under Section 6 of the WAPDA (Efficiency & Discipline) Rules, 1978, whereby a procedure has been prescribed when an inquiry officer or an inquiry committee is to be appointed. It would be*

in fitness of things to reproduce the said Section, which reads as under:-

"6. Procedure to be observed when an Inquiry Officer or an Inquiry Committee is to be appointed

Where an Inquiry Officer or an Inquiry Committee is to be appointed, the competent authority shall:-

(1) Frame a charge and communicate it to the accused together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration.

(2) Require the accused within a reasonable time, which shall not be less than seven days or more than fourteen days from the day of charge has been communicated to him, to put in a written defence and to state at the same time whether he desires to be heard in person.

(3) The Inquiry Officer or the Committee, as the case may be, shall inquire into the charge/or circumstances and may examine such oral or documentary evidence in support of the charge/plea or in defence of the accused, as may be considered necessary, and the accused shall be entitled to cross-examine the witness evidence against him.

(4) The Inquiry Officer or the Committee, as the case may be, shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded in writing. However, every adjournment with reasons therefore shall be reported forthwith to the competent authority. Normally, no adjournment shall be for more than a week.

(5) Where the Inquiry Officer or the Committee, as the case may be, is satisfied that the accused is hampering, or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if thereafter he or it is satisfied that the accused is acting in disregard of the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as he or it thinks best suited to do substantial justice.

(6) The Inquiry Officer or the Committee, as the case may be, shall within ten days of the conclusion of the proceedings or such longer period as may be allowed by the competent authority submit his or its findings and the grounds thereof to the competent authority."

6. The inquiry was conducted by the Deputy Director Security of Dasu Hydropower Project wherein two Junior Engineers were also members. The report categorically shows that four witnesses appeared against the petitioners and while recording the statement of each witness, ample opportunity was given to the petitioners to cross-examine them but they declined to cross-examine

the witnesses. The perusal of the record clearly reflects that following the procedure laid down in Section 6 of the aforesaid Rules, all the legal requirements were fulfilled. The petitioners were issued explanation on 07.07.2015 and thereafter show cause notice/charge sheet on 09.07.2015 to which they replied. During the inquiry proceedings, the requisite material was considered and the petitioners were given full opportunity to cross-examine the witnesses deposing against them. Even otherwise, if the Competent Authority feels that there is no need of inquiry in a case, it is fully competent to dispense with the inquiry in terms of Rule 5(iv)(b) of the WAPDA (Efficiency & Discipline) Rules, 1978. Besides, there is another aspect of the matter. Admittedly, the petitioners had filed Service Appeals before the Federal Service Tribunal without awaiting for the prescribed period of 90 days period after filing of departmental appeals, which even without touching the merits of the case rendered their Service Appeals incompetent in view of the specific bar contained in Section 4(1)(a) of the Service Tribunal Act, 1973. The said Section reads as under:-

"4(1)(a) where an appeal, review or representation to a departmental authority is provided under the Civil Servants Ordinance, 1973, or any rule against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was so preferred."

7. *This Court in an unreported judgment dated 06.02.2017 passed in Civil Petition Nos. 3311 to 3313 of 2016 etc has held as under:-*

"...But what exposes the impugned judgments to serious comment is entertainment of the appeals by the Service Tribunal in violation of the proviso (a) to Section 4 of the Service Tribunals Act, 1973, which clearly and unambiguously provides that no appeal would lie to the Tribunal unless the aggrieved civil servant has preferred an appeal, application for review or representation to the departmental authority. The respondents according to the available record preferred representations to the departmental authority and then appeal before the Tribunal, but without waiting for an order on their representations or expiration of 90 days. Appeals in the circumstances being incompetent were liable to be dismissed on this score alone notwithstanding their merits if any.

8. *In view of the above, when the learned Tribunal itself had taken note of the afore-referred judgment of this Court in paragraph 11 of the impugned judgment, it ought not to have entertained the amended appeals. So far as the argument of learned counsel for the petitioners that neither the injured appeared before the Inquiry Committee nor his medical report was produced before the Committee is concerned, it is suffice to state that it is only in the criminal proceedings that the injured has to appear whereas in the present case disciplinary proceedings were being carried out against the petitioners which go side by side, therefore, there was no need to join the injured with the proceedings. The petitioners being security guards were supposed to perform duties in a disciplined manner. Due to their conduct, the trust and faith showed by the employer is shattered resulting in loss of confidence. The manner in which the petitioners, on whom confidence was reposed to give protection and to perform duty in a disciplined manner, attacked on their Supervisor repels any consideration of treating them leniently. Article 212(3) of the Constitution of Islamic Republic of Pakistan specifically mandates that "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." No such question of law of public importance within the meaning of aforesaid Article 212(3) of the Constitution has been raised by the learned counsel for the petitioners, calling for interference by this Court.*

9. *For what has been discussed above, these petitions having no merit are accordingly dismissed and leave to appeal is refused.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
27th of January, 2021
Approved For Reporting
Khurram