

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 PETITION NO. 1033 OF 2020

*(On appeal against the judgment dated 08.01.2020
passed by the Federal Service Tribunal, Islamabad in
Appeal No. 878(R)CS/2019)*

Member (Administration), Federal Board of Revenue etc
...Petitioner(s)

VERSUS

Mian Khan
...Respondent(s)

For the Petitioner(s): Mr. M.D. Shahzad Feroz, ASC

For the Respondent: N.R.

Date of Hearing: 26.04.2021

...
JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the judgment dated 08.01.2020 passed by the Federal Service Tribunal, Islamabad, whereby the Service Appeal filed by the respondent was accepted, whereby the penalties of compulsory retirement and reduction to the lower rank awarded to him were set aside.

2. Briefly stated the facts of the matter are that the respondent being Havaladar, Customs Headquarter, Model Customs Collectorate was posted at New Islamabad International Airport and was assigned the duty of checking and diverting the passengers towards Customs Counters. On the basis of a CCTV footage showing that the respondent was allegedly receiving bribe from the two passengers, he was proceeded against departmentally. The authorized officer i.e. Additional Collector (HQ) after dispensing with the regular inquiry, issued him show cause notice on 15.10.2018. The respondent submitted his reply on 30.10.2018 and was also afforded an opportunity of personal hearing but being dissatisfied with the reply, the Authorized Officer recommended for imposition of major penalty of compulsory retirement against the

respondent, which was concurred by the Collector vide order dated 16.11.2018. The respondent filed appeal against the penalty imposed. The appellate authority on the appeal filed by the respondent vide order dated 16.04.2019 converted the major penalty of compulsory retirement into major penalty of reduction of lower rank as such he was demoted to the rank of Sepoy under Rule 4(1)(b)(ii) of Government Servants (E&D) Rules, 1973 for a period of three years, as such he was reinstated into service. The respondent challenged both the aforesaid orders i.e. dated 16.11.2018 & 16.04.2019 before the Federal Service Tribunal, Islamabad, and the same have been set aside by the Tribunal vide impugned judgment. Hence, this petition seeking leave to appeal.

3. Learned counsel for the petitioners inter alia contended that while passing the impugned judgment, the learned Federal Service Tribunal did not take into consideration that the CCTV footage clearly showed that the respondent was taking bribe from the passengers; that when the footage was clear, unambiguous and authentic then there was no need to hold regular inquiry but, even despite of clear evidence against him he was given personal hearing both by the Authorized Officer as well as by the Competent Authority but the respondent could not provide any plausible explanation to rebut the accusation leveled against him. He lastly prayed for setting aside of the impugned judgment.

4. We have heard learned counsel for the petitioners at some length and have perused the available record.

5. It is an admitted fact that no regular inquiry was conducted by the petitioner Department and the same was dispensed with on the ground that the other evidence in the shape of CCTV footage is so authentic that major penalty can be imposed upon the respondent in the absence of regular inquiry and while imposing the major penalty CCTV footage was made the sole criterion to proceed against the respondent. It is an apathy that the said CCTV footage was never sent to the office of Forensic Science Laboratory for its authenticity. In the absence of any forensic report qua the authenticity of the CCTV footage, the same cannot be considered a legal basis for proceeding against a person. In the case of Ishtiaq Ahmed Mirza Vs. Federation of Pakistan (PLD 2019 SC 675) this Court has held that with the advancement of science and technology, it is now possible to get a forensic examination, audit or test conducted through an appropriate laboratory so as to get it ascertained as to whether an audio tape or a video is genuine or not and as such

examination, audit or test can also reasonably establish if such audio tape or video has been edited, doctored or tampered with or not because advancement of science and technology has also made it very convenient and easy to edit, doctor, superimpose or photoshop a voice or picture in an audio tape or video, therefore, without a forensic examination, audit or test, it is becoming more and more unsafe to rely upon the same as a piece of evidence in a court of law. We have noticed that the CCTV footage was even not produced before the learned Federal Service Tribunal. Even otherwise, mere producing of CCTV footage as a piece of evidence without any forensic test is not sufficient to be relied upon unless and until corroborated and proved to be genuine. The passengers, who allegedly gave the bribe, had also not been associated with the departmental proceedings. No question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been raised either in this petition to warrant interference by this Court.

6. *For what has been discussed above, we are of the considered view that the learned Service Tribunal has passed a well reasoned judgment to which no exception can be taken. This petition having no merit is accordingly dismissed and leave to appeal is refused. Before parting with the judgment, we may observe that departmental proceeding in such a casual way by the departmental authority inviting a public servant into litigation for considerable time should be avoided because at the one side, it wastes time of the court of law and on the other it causes physical stress, loss of reputation in public eyes, which ultimately leads to mental agony for a public servant, which has no legal or moral justification.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
26th of April, 2021
Approved For Reporting
Khurram