

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Qazi Muhammad Amin Ahmed

**C.P.No.4683 of 2018**

[Against the judgment dated 22.10.2018, passed by the Federal Service Tribunal, Islamabad in Appeal No.64(R)CS/2017]

***Federation of Pakistan through its Secretary,  
Ministry of Law & Justice Division,  
Islamabad.***

*...Petitioner(s)*

***Versus***

***Mamoon Ahmed Malik.***

*...Respondent(s)*

For the Petitioner(s) : Mr. Sajid Ilyas Bhatti, Additional  
Attorney General  
Arshad Ali Siddique, S.O. Ministry  
of Law

For the Respondent (s) : Ms. Shireen Imran, ASC

Date of Hearing : 11.05.2020

**ORDER**

**Gulzar Ahmed, CJ.**— The respondent was employed as an Assistant (BPS-14) in the Law and Justice Division, Government of Pakistan on probation. During his probationary period, he remained absent from duty from 05.09.2011 to 02.04.2012, pursuant thereto, his service was terminated vide Office Order dated 02.04.2012. It is claimed by the respondent that against this order of termination, he filed a departmental appeal dated 13.04.2012, which he dispatched through courier service, receipt whereof is attached at Pages-35/36 of the record.

2. In the first place, we note that the very departmental appeal is addressed by the respondent directly to the Secretary,

Law and Justice Division and not through proper channel. We also note that the courier receipt attached with the memo of appeal at Pages-35, seems to be fake, for that, as per letter dated 29.03.2016 of Manager Operation, PIA SpeedEx, Rawalpindi/Islamabad (available at Pages-36), the said receipt has no nexus whatsoever with the sending of the departmental appeal, rather it deals with some consignment sent through PIA SpeedEx by the Federal Investigation Agency from its corporate account and was delivered in Islamabad to one, Naseer, PSO Project NTS. This, in itself, shows that the respondent has conducted himself in a manner, which amounts to deception and he could have been proceeded against by this Court on that account.

3. Learned counsel for the respondent has contended that in the impugned office order, the leave period have been treated as an Extra Ordinary Leave (**EOL**) and thus, having done so, no further punishment could have been imposed upon the respondent.

4. We note that such an argument is not tenable in view of two unreported judgments of this Court, one dated 06.02.2020, passed in the case of NAB through its Chairman vs. Muhammad Shafique (Civil Appeal No.1618 of 2019) and other dated 10.02.2020, passed in the case of Kafayat Ullah Khan vs. Inspector-General of Police, Islamabad and another (Civil Appeal No.1661/2019).

5. The fact that the respondent remained absent from duty from 05.09.2011 to 02.04.2012, is not disputed rather an admitted fact. It is also admitted fact that the respondent was

employed as a probationer. We have also looked at the office order of the termination of service of the respondent, which shows that it is a case of termination simplicitor, with no allegation whatsoever mentioned therein. The Federal Service Tribunal, Islamabad (**the Tribunal**) in the impugned judgment, has though found the respondent to have remained absent from duty, but merely on the point that his absence period has been treated as an EOL and further, no regular enquiry was conducted, set aside the office order dated 02.04.2012 and the respondent was directed to be reinstated in service.

6. So for the question of EOL is concerned, we have already noted two judgments of this Court and as regards the issue of regular enquiry, there being no dispute about the fact of respondent remaining absent from duty, no question arose for holding of a regular enquiry, for that, the enquiry is held only when there are disputed facts.

7. In view of the above, we find that the impugned judgment of the Tribunal suffers from legal infirmity and is not sustainable in law. The same is liable to be set aside. Consequently, this petition is converted into an appeal and allowed. The impugned judgment of the Tribunal dated 22.10.2018 is set aside and the Officer Order dated 02.04.2012, terminating the service of the respondent is restored.

**CHIEF JUSTICE**

**JUDGE**

