

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

CIVIL APPEAL NO.420 OF 2020.

(Against the judgment dated 23.10.2018 passed
by the Federal Service Tribunal, Lahore in Appeal
No.679(L) of 2016).

Divisional Superintendent, Postal Services,
Faisalabad and others.

...Appellant(s)

Versus

Muhammad Zafarullah.

...Respondent(s)

For the Appellant(s):

Moulvi Ejaz-ul-Haq, DAG
Raja Abdul Ghafoor, AOR.

For the Respondent(s):

Ch. Munir Sadiq, ASC.
Syed Rafaqat H. Shah, AOR.

Date of Hearing:

10.11.2020.

JUDGMENT

IJAZ UL AHSAN, J.- This appeal with leave of the Court arises out of a judgment dated 23.10.2018 passed by the Federal Service Tribunal, Lahore (*"the Tribunal"*). Through the impugned judgment, penalty of dismissal from service imposed upon the Respondent by the departmental authorities was converted into compulsory retirement with all due benefits.

2. The Respondent was serving as a Postman at Tandlianwala Post Office, District Faisalabad. A complaint was lodged against him by Mst. Rehana Bibi on the allegation that he had misappropriated money orders amounting to Rs.110,000/-. A departmental inquiry was initiated against

him in which he was found guilty. Subsequently, disciplinary proceedings were initiated against him and he was served with a charge sheet alongwith statement of allegations. He was given an opportunity to defend himself. The Inquiry Officer conducted a proper inquiry and submitted his report to the authorized officer stating that all charges had been proved against the Respondent. Thereafter, the competent authority issued a show cause notice to the Respondent on 27.02.2016 calling upon him to show cause why one of the major penalties may not be imposed upon him. A reply to the same was submitted by the Respondent. However, it was found unsatisfactory. Consequently, the penalty of dismissal from service was imposed upon the Respondent.

3. Feeling aggrieved, the Respondent preferred a departmental appeal which was rejected vide order dated 13.10.2016. He thereafter approached the Tribunal with an appeal (*Appeal No.679(L) of 2016*) which was allowed through the impugned judgment in the manner noted above. Hence, this appeal by leave of the Court.

4. The learned Deputy Attorney General submits that the Respondent had been found guilty of misappropriation all along. The Tribunal observed that all legal, procedural and codal formalities were followed. All material witnesses were examined by the Inquiry Officer, the Respondent was given an opportunity to cross-examine them and he had ample opportunity to defend himself and produce any defence evidence that he wished to produce. He failed to do. He points

out that the Tribunal after examining the entire record concluded that charges against the Respondent had been proved. He further submits that having recorded a finding that the charge of misappropriation had been proved against the Respondent, the Tribunal had neither reason nor justification to convert the penalty of dismissal from service imposed upon him by the departmental authority to compulsory retirement. He maintains that the impugned judgment is not based upon any legal principle, is arbitrary and devoid of any reason.

5. The learned counsel for the Respondent on the other hand has defended the impugned judgment. He has tried to argue the matter on merits. We have, however, pointed out to him that the findings of the Tribunal holding the Respondent guilty have not been challenged by him. Therefore, the only question that arises for determination before us is whether exercise of powers by the Tribunal under Section 5 of the Service Tribunals Act, 1974 was within the parameters of law. We have asked him to justify the action of the Tribunal insofar as it has converted the penalty of dismissal from service to compulsory retirement without recording any reasons. He has not been able to do so.

6. Having heard the learned counsel for the parties and going through the record, we find that after having recorded findings against the Respondent and going so far as to hold that all legal, procedural and codal formalities had been followed, the Respondent had been given ample

opportunity to defend himself and that charges against him had been proved, the Tribunal arrogated to itself the jurisdiction to modify the penalty of dismissal from service to compulsory retirement. It may be noted that in exercising such jurisdiction for reasons best known to it the Tribunal did not record any reason whatsoever.

7. There is no cavil with the proposition that under Section 5 of the Service Tribunals Act, 1974 the Tribunal enjoys powers to modify any order passed by the departmental authorities. However, 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. In the instant case, the penalty in question had been imposed upon by the Respondent by the departmental authorities on the basis of established charges, in accordance with law and the relevant rules. In these circumstances, we are at a loss to understand how and from where the Tribunal derived the authority to exercise a power in favour of the Respondent in an arbitrary, unstructured and whimsical manner without recording any reasons. We have found the exercise of jurisdiction by the Tribunal to be wholly without any lawful authority whatsoever specially so where no reasons let alone cogent have been assigned for exercise of jurisdiction in this manner. Reference in this regard may be made to a recent judgment of this Court involving identical questions of law

reported as Chief Postmaster, Faisalabad v. Muhammad Afzal [2020 SCMR 1029].

8. All Courts/Tribunals seized of matters before them are required to pass orders strictly in accordance with the parameters of the Constitution, the law and the rules and regulations framed under the law. No Court has any jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law. This basic and fundamental principle of jurisprudence appears to have eluded the attention of the Tribunal which has clearly exceeded its jurisdiction in granting relief to the Respondent.

9. Even otherwise, as noted above, the Respondent never challenged the findings of the Tribunal in so far as it upheld the findings of the departmental authorities. He cannot therefore be heard at this stage to reopen the entire case and argue it afresh once having accepted the verdict of the Tribunal.

10. For the afore-noted reasons, we find that the impugned judgment of the Federal Service Tribunal is unsustainable. Accordingly, we allow this appeal, set aside the impugned judgment of the Tribunal dated 23.10.2018 and restore the penalty imposed by the departmental authorities. There shall be no order as to costs.

11. We have recently noticed various judgments rendered by the Tribunal in which we have found arbitrary and whimsical exercise of jurisdiction in terms of reducing

penalties imposed by the departmental authorities in a slipshod and whimsical manner without recording any cogent reasons that may furnish basis and justification for the same. In view of regularity with which such judgments are appearing before us, we consider it appropriate to send a copy of this judgment to the Chairman of the Tribunal with directions to circulate it amongst its members for their perusal.

ISLAMABAD.

10.11.2020.

ZR/*

'Not Approved For Reporting'