

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT: MR. JUSTICE GULZAR AHMED, CJ.
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

**Civil Petition Nos.4185 of 2019,
4209 of 2019 & 4504 of 2019**

*(Against the judgment dated 28.10.2019 of the
Punjab Service Tribunal passed in Appeal No.2872/2014)*

Dr. Sohail Hassan Khan

(in C.P. No.4185-2019)

Muhammad Javed Nayyer

(in C.P. No.4209-2019)

Dr. Shamas-ul-Hassan

(in C.P. No.4504-2019)

.....Petitioner(s)

VERSUS

**Director General (Research), Livestock & Dairy Development
Department, Punjab, Lahore & others**

(in all cases)

...Respondent(s)

For the petitioner(s)

Mrs. Shireen Imran, ASC

(in C.P. No.4185 & 4209/2019)

Mr. Abdul Rahim Bhatti, ASC

(in C.P. No.4504/2019)

For Respondents(s):

N.R.

Date of hearing:

20.08.2020.

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ORDER

Qazi Muhammad Amin Ahmed, J-. In a long drawn struggle, marred by consecutive failures, the petitioners are resigned in the last ditch to save their jobs; they were at the helm in various capacities in the Poultry Research Institute at Rawalpindi. The episode started in the wake of massive earthquake that devastated/ jolted Azad Jammu & Kashmir with adjoining parts of Khyber Pakhtunkhwa in the year 2005. With an unprecedented intensity, the seismic vibrations followed by aftershocks resulted into colossal loss of life and property. Rescue and rehabilitation efforts with the assistance of foreign donors started soon after the disaster. The Food & Agricultural Organization, a specialized agency of the United Nations Organization, joined the efforts by detaching substantial

assistance through the good offices of the Asian Development Bank to provide poultry package for, *“immediate support to poor and vulnerable households in inaccessible areas devastated by the 2005 earthquake”*. The Poultry Research Institute Rawalpindi was tasked to reach out the victims with aid package. Dr. Shamas-ul-Hassan, Dr. Sohail Hassan Khan and Muhammad Javed Nayyar were posted as Director, Assistant Director and Office Superintendent, respectively; they were required to procure 100,000 birds, standard/specification whereof, with mode of transportation, were settled by the donor through letter dated 13th of June, 2007. It appears that 51228 birds were purchased from designated government outlets while for the provision of the remainder, the petitioners ventured on their own; it is in this backdrop that a private supplier, namely, Abdul Saboor lodged complaint with the Director General Livestock Lahore alleging surreptitious unilateral modifications in the supply contract regarding 25000 birds; he blamed them for reduction in the settled price as well as withholding of income tax besides charging commission on each bird. The complaint was probed into and the department vide order dated 5.8.2011 decided to proceed against them on the following charges:

- i. *They engaged in private business of supplying poultry birds in earth quake hit areas in their official capacities, abusing their position.*
- ii. *They opened and operated fake departmental account/s for these fraudulent transactions.*
- iii. *They made an estimated profit of Rs.4.306 million by procuring poultry birds of questionable quality from private poultry farms at rock-bottom rates and supplying the same to various agencies including FAO at hefty rates, pocketing the differential.*
- iv. *They received a sum of Rs.0.295 Million as commission from a farmer Mr. Abdul Saboor R/o Mohallah Shah Jamal, Gakhar Mandi.*

Mr. Farhan Aziz Khawaja, a grade 20 officer of PAS, was appointed as inquiry officer. After a regular inquiry followed by personal hearing, the Chief Minister vide order dated 14.06.2012 compulsorily retired Dr. Shamas-ul-Hassan with a direction to recover Rs.4.601 million along with Rs.4.306 million and Rs.0.295 million, received by him through the impugned transactions. Dr. Sohail Hassan Khan petitioner was awarded major penalty of removal from service; Muhammad Javed Nayyar

petitioner was also dismissed from the service; they petitioned before the Chief Minister for a review; an elaborate exercise already undertaken and a considered decision notwithstanding, the Chief Minister, nonetheless, passed the following order:

“After due examination of the facts of the case, contents of the review petition and averments made by the review petitioners before the Hearing Officer, it is observed that the accused officers have very vehemently contended that neither they were given a fair opportunity of hearing nor fair trial was given to themselves. They also contended that the responsibility was not apportioned according to their job description/official role. Therefore, the order of penalty dated 14.06.2012 is set aside and a de novo proceeding is ordered against the accused officers namely Dr. Shamas-ul-Hassan, Ex-Director, PRI, Rawalpindi, Dr. Sohail Hassan Khan, Ex-Assistant Director, PRI and Mr. Javed Nayyar, Office Superintendent, PRI, Rawalpindi. The A.D. may put up a panel of suitable officers for appointment of an Inquiry Officer to conduct de novo proceedings in the case.”

Dr. Muhammad Shabbir Shahid, Director (HQR) Directorate General (Ext) L&DD Punjab conducted *de novo* inquiry. With nothing additional, the second inquiry officer came up with amazing conclusions, best described as self destructive; he benignly recommended forfeiture increments, albeit after holding them guilty of misconduct under the Punjab Employees Efficiency Discipline & Accountability Act, 2006, a best possible package under the circumstances. The competent authority/Secretary L&DD Department Lahore remitted the matter for reconsideration of proposed penalty whereupon the inquiry officer came up with a slightly higher wage; this time, he recommended compulsory retirement for Dr. Shams-ul-Hassan petitioner while suggested forfeiture of five increments for Dr. Sohail Hassan Khan with additional reduction to lower post for Muhammad Javed Nayyar, petitioner. The Secretary, however, restored penalties suggested by the first inquiry officer except for conversion of dismissal of Muhammad Javed Nayyar, petitioner, into removal from service. Appeal before the Chief Secretary failed on 13.08.2014 followed by failure before the Punjab Service Tribunal on 28.07.2015. The petitioners approached this Court and the matter was once again remanded on 4.3.2019 to the Service Tribunal for decision afresh. The Service Tribunal maintained its findings vide judgment dated 28.10.2019, *vires* whereof are being jointly assailed by the learned counsel; it is contended, in unison, that after petitioners' exoneration from the proceedings of Anti Corruption Department, their position stood vindicated and there was no occasion for

the authorities to departmentally proceed against them; that the penalties inflicted upon the petitioners are disproportionately harsh as in the absence of positive proof, forfeiture of increments as recommended by the second inquiry officer was a more conscionable treatment in circumstance; that in any case, enhancement of penalty required reasons in support thereof, according to the learned counsel, hopelessly lacking in the impugned order; that mere opening of accounts without any proof of wrongful gain would not warrant to seal a long career otherwise unblemished, concluded the learned counsel after relying on a number of cases structured in different factual backgrounds.

2. Heard. Record perused.

3. It is by now well settled that a civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. We would otherwise not comment upon the outcome of proceedings before the Anti Corruption Department as the matter is not before us nor the petitioners have picked up the courage to place details thereof before the authorities. Multiple transactions with grant package through privately held bank accounts inescapably established petitioners' culpability as official channels were available in the form of departmental accounts to effect payments to the vendors. Similarly without approval or authority purchase from outlets through private arrangements cannot be viewed as an innocent omission, that too, by officers with considerable standing/experience. Petitioners' emphatic stress on the principle of proportionately is entirely beside the mark. Public authority is a most sacred trust and a very high onus is cast upon a State functionary to uphold the highest degree of rectitude in financial matters; financial corruption or misappropriation of public money are wrongs of most repugnant depravity; once a public servant is found to have the capacity to betray the public trust, it would be most unwise as well as inexpedient to retain him on the job. Integrity of an individual cannot be quantified and, thus, in the circumstances of the present case,

the principle of proportionality has no application. Similarly argument that enhancement of penalty in the *de novo* inquiry required additional material and show cause does not hold much water. The entire material was collected by the first inquiry officer and was well within the notice of the petitioners; they were confronted with the available material during personal hearings and it was after compliance with all the procedural formalities that they were recommended penalties, they sought review whereof, apparently for no valid reasons. As pointed out above, observations recorded by the second officer are not only self destructive, these had no material basis as well; it appears a treacherous attempt to provide the petitioners a safe exit, rightly blocked by the Secretary, therefore, restoration of original penalties in an ongoing process cannot be viewed as enhancement as it entailed no additional consequences other than proposed in the first place. Petitions fail. Leave declined.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
20th August, 2020
Not approved for reporting
*Azmat/**