

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Salahuddin Panhwar

C.P.L.A No.579-K/2021

Muhammad Ali Wassan

...Petitioner

Versus

The Prime Minister of Pakistan & another

...Respondents

For the Petitioner:

Malik Naeem Iqbal, ASC
Mr. Muhammad Iqbal Chaudhry, AOR.

For the Respondents:

Mr. Khaleeq Ahmed, DAG.

Date of Hearing:

04.06.2025

ORDER

Salahuddin Panwhar, J -This Civil Petition for Leave to Appeal arises from the judgment dated 09.03.2021, passed by the Federal Service Tribunal Islamabad (Karachi Bench), in Appeal No. 73(K) CS/2019, whereby Petitioner's appeal was dismissed. The Petitioner has challenged the Tribunal's findings by asserting that the Petitioner was denied the opportunity to cross-examine the witnesses.

2. Succinctly, the relevant facts of the case are that the petitioner was serving as Superintendent Police (PSP/BS-18), he was issued a charge sheet and the statement of allegations for committing acts of omission, thereby constituting inefficiency, misconduct and corruption in terms of Rule 3(a)(b) & (c) of Government Servants (E&D) Rules, 1973. The proceedings against the Petitioner were initiated pursuant to an order dated 23.12.2015, passed by this Court and the Government of Sindh

forwarded the names of other PSP Officers including the petitioner for initiation of disciplinary proceedings against them. The Secretary Establishment designated Dr. Mujeeb-ur-Rehman Khan (PSP/BS-21), Inspector General Pakistan Railways Police, Lahore to act as "Authorized Officer" to initiate disciplinary proceedings against 07 PSP Officers including the Petitioner, and against 01 officer of Secretariat Group, on 08.08.2018. The petitioner was served with a charge sheet on 17.08.2018 together with the Statement of allegations by appointing Mr. Muhammad Saleem, PSP DIG (BS-20), National Highways & Motorways Police, N-5, South, Karachi as Inquiry Officer.

3. However, during the inquiry proceedings, the petitioner was summoned, heard in person, and the statement/ reply was recorded against the said charge sheet. The statements of 138 witnesses were recorded but he was not allowed to cross-examine any witness. After completion of inquiry, inquiry report was submitted on 12.11.2018 to Authorized Officer, who forwarded the inquiry report to Secretary (Establishment) with the recommendation to impose major penalty of "Reduction to Lower Stage in Time Scale for Three Years" under Rule-4(b)(ii) of the Government Servants (Efficiency & Discipline) Rules, 1973. Against which, the petitioner preferred a departmental appeal before the Respondent No.1, Prime Minister of Pakistan, but no order was passed. Thereafter, the Petitioner preferred an appeal before the Federal Service Tribunal at Karachi, which was heard and dismissed by the Tribunal vide judgment dated 09.03.2021. Hence the petitioner has approached this Court.

4. At the very outset, learned counsel bitterly criticized the impugned judgment and contended with vehemence that nothing incriminating was available on record to substantiate the allegations of misconduct leveled against the petitioner; that petitioner was also afforded no opportunity to cross-examine the witnesses, which fact is not refuted by learned DAG. Learned counsel for the petitioner while concluding his arguments submitted that a fair opportunity of cross-examination by the other side leads a possibility to highlight the flaws in the testimony of such witness, which is a most effective tool to shatter the testimony of witness or witnesses to disprove the charge or

allegations both in civil and criminal matters including the domestic/departmental inquiries conducted under the labour laws or civil servant laws.

5. Heard and perused the record.

6. The aim of conducting inquiries is not only to determine the responsibility of the individual in question with regard to the charges outlined in the show cause notice or statement of allegations, but also to help identify and uncover the true culprit or delinquent. In the present case, it is quite strange that admittedly 138 witnesses were examined but the inquiry officer failed to provide any opportunity to the petitioner to cross-examine them. It would not be out of place to mention here that under the civil and criminal law, the examination-in-chief or mere statement of any witness has no legal value or sanctity unless he appears for cross-examination by the other side, which is a most effective device invented to unearth the truth. It is a vested right, which should be safeguarded and made available being fundamental limb of natural justice. This Court in the case reported as *Federation of Pakistan through Chairman FBR v. Zahid Malik* (2023 SCMR 603), held that the right of proper defence and cross-examination of witnesses by the accused is a vested right.

7. Cross-examination is the highest and most indispensable test known to the law for the discovery of truth. Indeed, the reliability of evidence can only be judged through cross-examination, which is essential to reveal the truth and test the credibility of allegations, especially when possibility cannot be ruled out in the inquiry that a witness may raise untrue and dishonest allegations due to some animosity against the accused, which cannot be accepted unless he undergoes the test of cross-examination, which indeed helps to expose the truth and veracity of allegations. Denying the opportunity of cross-examination of witness is violation of Article 10-A of the Constitution of Pakistan, which guarantees the right to a fair trial. The main objective of cross-examination is to rigorously scrutinize the witness's testimony, reveal any inconsistencies, uncover potential biases, and critically assess the reliability of the evidence presented.

8. The primary purpose of conducting a departmental inquiry is to thoroughly investigate alleged misconduct, ensure accountability, uphold organizational standards, and protect the integrity of the institution. It aims to gather relevant facts, assess the situation fairly, and determine appropriate actions based on the findings. In the case of *Usman Ghani v. The Chief Post Master, GPO, Karachi* (2022 SCMR 745), it was held that the primary purpose of a departmental inquiry is to determine whether there is a preliminary case of misconduct against the delinquent officer to justify further action. The question of guilt or innocence depends on the inquiry's findings. Additionally, the Service Tribunal must assess whether the inquiry was conducted in accordance with due process and the right to a fair trial, which is a fundamental right. The relevant portion is reproduced as under:

"The foremost aspiration of conducting departmental inquiry is to find out whether a prima facie case of misconduct is made out against the delinquent officer for proceeding further. The guilt or innocence can only be thrashed out from the outcome of inquiry and at the same time it is also required to be seen by the learned Service Tribunal as to whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution. A distinction also needs to be drawn between a regular inquiry or preliminary/fact finding inquiry. A regular inquiry is triggered after issuing show cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow evenhanded and fair opportunity to the accused to place his defense and if any witness is examined against him then a fair opportunity should also be afforded to cross-examine the witnesses, whereas a discrete or fact finding inquiry is conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct is made out to initiate disciplinary proceedings."

9. It is pertinent to mention here that the establishment of the Service Tribunal under Article 212 of the Constitution serves the purpose of adjudicating matters related to the terms and conditions of civil servants. In deciding appeals, the Tribunal functions as a civil court with equivalent powers and bears the responsibility to deliver fair and substantial justice through sound fact-finding. All judicial, quasi-judicial, and administrative bodies must exercise their authority impartially and in accordance with the law, respecting the principles of natural justice. Denial of the right to cross-examine during an inquiry is

not a minor procedural flaw but a serious error that undermines the foundation of the misconduct case. It was the Tribunal's legal obligation to thoroughly examine the inquiry report, including the consequences of denying cross-examination, to fairly decide the appeals on their merits.

10. For the foregoing reasons, this Civil Petition for Leave to Appeal is allowed, and the judgment of the Federal Service Tribunal is hereby set aside. The case is remanded to the Secretary Establishment to conduct a de-novo inquiry within two months from the date of this order, ensuring that all requirements of a fair trial are met, including providing the Petitioner a fair opportunity to cross-examine the witnesses.

11. This Civil Petition for Leave to Appeal is disposed of in the above terms.

04.06.25

Karachi Bench

M. Subhan Malik (JLC)/Faisal Mumtaz PS