

25/20

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

6 D-TAFR
CIVIL PETITION NO.669-L OF 2018.

(Against the judgment dated 06.03.2018 passed by the Federal Service Tribunal, Lahore Bench in Appeal No.158(L)CS/2015).

Government of Pakistan, Revenue Division,
Federal Board of Revenue through its Chairman,
Islamabad and another.

...Petitioner(s)

Versus

Nawaz Ali Sheikh.

...Respondent(s)

For the Petitioner(s): Mr. Ibrar Ahmed, ASC

For the Respondent(s): In person.

Date of Hearing: 03.03.2020.

JUDGMENT

IJAZ UL AHSAN, J.- The Petitioner seeks leave to appeal against a judgment of the Federal Service Tribunal, Lahore dated 06.03.2018. Through the impugned judgment the Service Tribunal has accepted an appeal filed by the Respondent against major penalty of dismissal from service to reduction to lower stage in his current scale equal to three increments for a period of five years and has also reinstated the Respondent in service. The intervening period has been directed to be treated according to relevant Leave Rules.

2. The brief facts necessary for disposal of this lis are that the Respondent Nawaz Ali Sheikh, in his capacity as

Superintendent, Regional Tax Office, Karachi processed bogus refund claims filed by different parties by ignoring red alerts issued by the Directorate of Intelligence & Investigation (IR), Karachi. Consequently, on the recommendation of the Chief Commissioner, IR, RTO, Karachi disciplinary proceedings were initiated against him through charge sheet dated 19.04.2013. Initially Mr. Taqueer Irtiza, Additional Commissioner, IR, RTO, Karachi was appointed as Inquiry Officer, however, he expressed his inability to conduct the inquiry. Subsequently, the authorized officer deputed Dr. Shamsul Hadi, Commissioner, IR, RTO, Karachi as Inquiry Officer. The Inquiry Officer conducted a regular inquiry and concluded that the Respondent had processed bogus refund claims by ignoring the red alerts issued by the Directorate of Intelligence & Investigation (IR), Karachi. His actions were deliberate and with *mala fide* intent which fell inter alia under the definition of misconduct. Consequently, he found the Respondent guilty of inefficiency, misconduct and Corruption within the meaning of Rules 3 (a) (b) & (c) of the Government Servants (E&D) Rules, 1973. A show cause notice was accordingly issued to the Respondent on the basis of the inquiry report. He filed a reply and was granted an opportunity of personal hearing by the authorized officer. After considering the verbal and written arguments submitted by the Respondent and going through the relevant record the authorized officer came to the conclusion that the charges against the Respondent stood established. He accordingly recommended to the authority for imposition of major penalty

of dismissal from service under sub-clause (iv) of clause (b) of sub-rule (1) of Rule 4 of the Government Servants (E&D) Rules, 1973.

3. The Respondent preferred a departmental appeal against the order dated 06.01.2015 passed by the competent authority. Such appeal was rejected. The Respondent thereafter preferred an appeal before the Federal Service Tribunal. The same was allowed vide judgment dated 21.04.2017. The judgment of the Service Tribunal was assailed before this Court through CP. No.1520-L of 2017 in which leave to appeal was granted. Subsequently, Civil Appeal No. 1498 of 2017 was accepted vide order dated 10.01.2018. The case was remanded to the Federal Service Tribunal for decision afresh. The impugned judgment dated 06.03.2018 has been rendered in post remand proceedings of which the Petitioner is aggrieved. Hence this petition.

4. The learned counsel for the Petitioner has argued that the Service Tribunal was not justified in modifying major penalty of dismissal from service imposed upon the Respondent, to reduction to a lower stage in his current scale equal to three increments for a period of five years and his reinstatement into service. He maintains that reduction in penalty runs contrary to clear and unambiguous observations made and findings recorded by the Service Tribunal in paragraphs 6, 8, 9 and 10 of the impugned judgment. He further maintains that the Service Tribunal has ignored the fact that charges against the Respondent stood fully proved in

disciplinary proceedings. The learned counsel adds that it is established from the record that the Respondent had processed bogus refund claims by ignoring red alerts issued by the Directorate of Intelligence & Investigation, IR, RTO, Karachi. He has emphasized the fact that after recording findings that charges stood established against the Respondent, the Service Tribunal could not have arbitrarily reduced the penalty imposed on the Respondent without assigning valid reasons. The learned counsel further submits that the Service Tribunal was not justified in reducing the penalty imposed by the departmental authorities who had done so after adopting due process of law inasmuch as the charge sheet was issued, regular inquiry was conducted, the accused was afforded adequate opportunity of defence, a show cause notice was issued and personal hearing was provided by the competent authority before imposition of major penalty. He has finally argued that the Service Tribunal had exceeded its jurisdiction and maintained its earlier judgment in pith and substance without considering the relevant facts.

5. The Respondent has appeared in person and argued his case. He has emphasized the fact that imposition of major penalty of dismissal from service and rejection of his departmental appeal are illegal and without justification because it is evident from the inquiry report that no loss was suffered by the Government exchequer in this case. He further maintains that there was no lapse or negligence on

his part and the charge sheet in question was issued *mala fide* with a prejudiced mind. He has further argued that the information of red alerts was communicated to the Chief Commissioner by the relevant quarters and the same was also in the knowledge of Deputy Commissioner concerned who sanctioned the refund payment orders but the said officer has not been visited with the same penalty. He has therefore defended the judgment of the Service Tribunal.

6. We have heard the learned counsel for the Petitioner as well as the Respondent in person and gone through the record appended with the file. It is clear and obvious to us from the record that the Respondent processed bogus refund claims by ignoring red alerts issued by the Directorate of Intelligence & Investigation, IR, RTO, Karachi. This fact was not denied by the Respondent either. The Petitioner was therefore quite justified in initiating disciplinary proceedings against the Respondent. The record also indicates that the Inquiry Officer conducted the inquiry thoroughly, all due process rights available to the Respondent under the law were provided to him. A charge sheet was issued to him, he was given an opportunity to respond, regular inquiry was conducted in accordance with the law, the Respondent was afforded adequate opportunity of defence, subsequently a show cause notice was issued by the competent authority and personal hearing was afforded to him before imposition of major penalty. We have therefore not found any procedural defect in the proceedings undertaken

by the Petitioner against the Respondent which was initiated and conducted strictly in accordance with law.

7. We have specifically asked the Respondent whether he was aware of the red alerts and if so why were the refund claims processed despite knowledge of the said red alerts. The Respondent has conceded that the red alerts were duly communicated to him, were in his knowledge but on account of rush of work, the same were over looked. He has however taken the position that such red alerts were in the knowledge of the Deputy Commissioner as well as others who had sanctioned the refund payment orders. The response of the Respondent has been found by us to be totally unsatisfactory in view of the fact that in our opinion he has made an effort to shift the blame on others despite the fact that admittedly he had knowledge of the red alerts yet failed to pay heed to the same.

8. Therefore, the findings recorded by the Inquiry Officer and affirmed by the competent authority that the Respondent was guilty of inefficiency, misconduct and corruption within the meaning of Rules 3 (a) (b) & (c) of the Government Servants (E&D) Rules, 1973 are supported by the record and quite justified. The Respondent has not been able to show any legal, procedural or jurisdictional defect, error or flaw in the same.

9. The main question requiring determination in this petition is whether the Service Tribunal was justified in

converting the major penalty of dismissal from service to reduction to a lower stage in current scale equal to three increments for a period of five years and reinstatement into service.

10. In this context, we would like to reproduce a few paragraphs from the impugned judgment to highlight the findings recorded by the Service Tribunal:

"6. In the light of the facts and the arguments as advanced by both the parties, the instant matter is thrashed out. First of all a point to be noted that the appellant has tried to show his ignorance about the question of Red Alerts. But in this regard, he has tried to conceal the real facts. Ms. Seema Shakeel, Director vide letter dated 24.05.2012 pointed out the matter of Red Alerts in respect of four business units and the said letter was marked to SO-IV, Nawaz Ali Sheikh, the appellant and with the signatures on the very next day viz. 25.05.2012, a letter was issued to Ms. Seema Shakeel, for providing the documented information/details about the illegal in put tax claims. From the contents of the Charge Sheet, dated 19.04.2013, it is also evident that the appellant, at that time was holding the additional charge of E&C Unit-02 and E&C Unit-04 of Zone-I, RTO, Karachi. It means that from the very first day the matter of Red Alerts was in his knowledge.

8. In respect of question of CREST (Computerized Risk-based Evaluation of Sales Tax), the appellant has taken the plea that there was nothing loaded in the system regarding the disputed matters or had been shown by the data that there was some restriction on the input tax claims. The appellant has tried to shift the burden on the system, data or entry as must be, in routine, already loaded in the relevant computer but here a point to be noted that he has avoided to point out the spirit of Rule 29(4) which provides that "where the processing officer or the officer-in-charge is of the opinion that any further inquiry or audit is required in respect of amount not cleared by the CREST or for

any other reason to establish genuineness and admissibility of the claim, he may make or cause to be made such inquiry or audit as deemed appropriate, after seeking approval from the concerned Additional Collector and inform the refund claimant accordingly." Undoubtedly and admitted in the instant cases Red Alerts by the Directorate of Intelligence and Investigation (IR) Karachi was issued, well before the processing of these claims and also pointed out various discrepancies of serious nature, but the appellant ignored the said information while processing the refund claims in respect of the registered persons. As mentioned in this case, SMART/CREST refund processing system is based on FIFO method whereby the refund claims appeared in folders of processing officer in the order of submission date and needs to be processed in that very order and the appellant processed these claims in indecent haste and order was altered to facilitate the instant refund claims despite the fact that Red Alerts from the Directorate of Intelligence and Investigation (IR), Karachi were already issued and available at the time of processing. The said facts are also evident from the respective documents submitted by the appellant and the respondents. So in this case, the appellant may not be exonerated."

11. In the penultimate paragraph the Service Tribunal recorded its finding in the following terms:

"For the foregoing discussion, we are of the view that the appellant is found guilty as he was aware of Red Alerts and bogus refund claims were processed intentionally, without any compulsion, hence, accepting the instant appeal, major penalty of dismissal from service is modified to reduction to lower stage in his current scale equal to three increments for a period of five years. The appellant is reinstated in service. The intervening period will be treated according to the relevant Leave Rules."

12. Having come to the conclusion that the charges against the Respondent stood fully proved, he had been unable to substantiate the defence taken by him, having

noticed that despite various discrepancies of serious nature pointed out to the Respondent he ignored the said information while processing the refund claims in respect of the registered persons and that the appellant processed these claims in indecent haste and the order (of processing claims) was altered to facilitate the refund claims (of some of the parties) despite the fact that red alerts from the Directorate of Intelligence & Investigation, IR, Karachi were already issued and available at the time of such processing and having found the appellant guilty of processing bogus refund claims despite being aware of red alerts, intentionally and without compulsion and having observed that the Respondent could not be exonerated, we are at a complete loss to understand how and on what basis the Respondent's appeal was allowed by the Service Tribunal and the major penalty of dismissal from service imposed by the competent authority on the basis of a validly conducted regular inquiry, could be modified in the afore-noted terms without finding any flaw legal or procedural in the inquiry. We find it quite surprising that despite the aforesaid findings the Service Tribunal proceeded to arrogate to itself the jurisdiction to modify the penalty of dismissal from service to reduction to lower stage in his current scale equal to three increments for a period of five years, without recording any reason whatsoever, let alone valid, cogent or legally sustainable.

13. No doubt, under Section 5 of the Service Tribunals Act, the Service Tribunal enjoys powers to modify any

Appellate order but such power is to be exercised carefully judiciously and with great circumspection by assigning cogent, valid and legally sustainable reasons justifying such modification. We fail to understand how and from where the Service Tribunal derived the authority and jurisdiction to arbitrarily and whimsically grant the relief that it has ended up granting to the Respondent.

14. All Courts and Tribunals are required to act strictly in accordance with law and all orders and judgments passed by them must be entrenched and grounded on the Constitution, the law and the rules. No Court, Authority or Tribunal has any jurisdiction to grant any relief in favour of any person which is not based upon the foundation of the Constitution, the law and the rules. We notice that the Service Tribunal has not assigned any reason whatsoever in accepting the appeal of the Respondent in the manner noted above, which it was required to do to justify the reduction in penalty. In this regard, reference may usefully be made to the case of "Chairman Dr. A.Q. Khan, Research Laboratories and another. v. Malik Muhammad Hamid Ullah Khan" (2010 SCMR 302) as well as a judgment of this Court passed in Civil Appeal No.1343 of 2017 in the case of Secretary, Revenue, Division, Federal Board of Revenue, Islamabad and another. v. Asif Yousaf and another.

15. We are, therefore, of the opinion that the impugned order is illegal, without lawful authority and in excess of jurisdiction available to the Service Tribunal under

the law and is therefore unsustainable. As a result, this petition is converted into appeal and is allowed. The impugned judgment of the Service Tribunal is set aside and the order of dismissal of the Respondent is maintained.

16. Above are the reasons of our short order dated 03.03.2020. For ease of reference, the short order is reproduced below:

"We have heard the learned ASC for the Petitioners so also the Respondent, who has appeared in person. For reasons to be recorded separately, this petition is converted into an appeal and allowed. The impugned judgment dated 06.03.2018, passed by the Federal Service Tribunal, Lahore is set aside."

ISLAMABAD.

03.03.2020.

Zubair/*

'Not Approved For Reporting'

Ans/
9/3/20

