

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Justice Musarrat Hilali
Justice Aqeel Ahmed Abbasi
Justice Miangul Hassan Aurangzeb

Civil Petition No.2768-L of 2022

(Against the judgment dated 24.01.2022 passed by the Punjab Service Tribunal, Lahore in Appeal No.1698/2018)

Malik Muhammad Ramzan

...Petitioner

Versus

Commissioner Sargodha Division etc.

...Respondents

Petitioner: In Person

For the Respondents: Mr. Khalid Mehmood Ghani, AAG. Punjab

Assisted by: Ms. Zainab Bashir, Judicial Law Clerk,
Supreme Court of Pakistan.

Date of Hearing: 19.06.2025.

JUDGMENT

AQEEL AHMED ABBASI, J.- Above civil petition for leave to appeal has been filed under Article 212 (3) of the Constitution of Islamic Republic of Pakistan, 1973 against the impugned judgment dated 24.01.2022 passed in Appeal No. 1698/2018 by the learned Member-IV of Punjab Service Tribunal, Lahore whereby, the appeal filed by the petitioner against the order dated 02.03.2018 passed by departmental authority on revision before the Tribunal under Section 4 of the Punjab Service Tribunal Act, 1974 has been dismissed.

2. Briefly, the facts as recorded by the Punjab Service Tribunal, Lahore ("**Tribunal**") are that on 29.02.2016 the District Coordination Officer/District Collector Mianwali proceeded against the petitioner and awarded punishment of dismissal from service by invoking the provision of Punjab Employees Efficiency, Discipline and Accountability Act, 2006 ("**PEEDA Act, 2006**") on the charges of fraud and embezzlement of funds committed by the petitioner by increasing the amounts of cheques through forgery after getting them signed from the authorities. Being aggrieved by the order of dismissal the petitioner filed departmental appeal before departmental authorities, however, such appeal was rejected vide

order dated 11.11.2016. The petitioner feeling aggrieved by such decision filed revision petition, which was also rejected vide order dated 02.03.2018 and against such order the petitioner preferred an Appeal No. 1698/2018 before the Tribunal, however, such appeal has also been dismissed vide judgment dated 24.01.2022 which has been impugned by the petitioner through instant petition for leave to appeal.

3. Petitioner appearing in person has vehemently argued that all the allegations and charges against the him are false and frivolous as he was not provided with an opportunity of being heard. According to petitioner, he was never served with any show cause notice nor any regular inquiry was conducted while imposing major penalty of dismissal from service. It has been contended by the petitioner that respondents have not placed on record any material or evidence to show that petitioner was served with show cause notices or provided any opportunity of being heard by the inquiry officer in the instant matter, therefore, all the adverse actions against him, including the order of dismissal from service, are not sustainable in the eyes of law for being violative of Section 24-A of the General Clauses Act. The petitioner has further contended that the allegations by the respondents to the effect that he was deliberately avoiding service of Notices is incorrect as according to the petitioner, he remained present in Police Station (**"PS"**) ACE City w.e.f. 19.01.2016 to 30.06.2016, but no notice regarding departmental inquiry or any other proceedings was served upon him. The petitioner submits that the I.O of the case did not arrest him as he was granted protective bail from High Court however, petitioner joined the inquiry proceedings in the criminal case against him. It has been further submitted by the petitioner that during the period when purported inquiry was conducted by the respondents, the petitioner was present in PS ACE City however, no notice regarding departmental inquiry or any charge-sheet was ever served upon him, hence, he remained unheard throughout the departmental proceedings. The petitioner has further submitted that the inquiry officer was biased towards the petitioner who proceeded against the petitioner on presumptions, and did not confront him with the allegations and charges or any implicating material against the petitioner. According to the petitioner in addition to the departmental proceedings, criminal case was also registered against

the petitioner before the Anti-Corruption Department just to humiliate and to cause harassment to the petitioner, however, the petitioner has been acquitted in the criminal case which was registered on the same set of allegations. While concluding his submissions the petitioner has prayed that the impugned judgment and the decision passed by the forums below may be set aside and the respondents may be directed to re-instate the petitioner into service alongwith back benefits.

4. Conversely, the learned Additional Advocate General (“**AAG**”), Punjab has opposed the grant of relief as claimed by the petitioner through instant petition, and has submitted that impugned judgment does not suffer from any error or illegality whereas, there is sufficient material available with the respondents to prove the charges against the petitioner. It has been further contended by the learned AAG that petitioner was duly served with Show Cause Notice(s) and was given an opportunity of being heard in respect of allegations as detailed hereinabove. However, the petitioner failed to submit any reasonable explanation with regard to the allegations of embezzlement/misappropriation of funds. According to learned AAG all the requirements for conducting a lawful inquiry were met by the Investigating Officer (“**I.O.**”) whereas, acquittal from criminal case has no bearing on the departmental proceedings as standard of proof is more stringent while establishing *mens rea* in a criminal case. It has been prayed that the judgment passed by the Tribunal shall be maintained and instant civil petition for leave to appeal may be dismissed.

5. We have heard the petitioner appearing in person and the learned AAG, perused the record and the impugned judgment passed by the Tribunal in the instant case, and have also examined the relevant provisions of PEEDA Act, 2006. From perusal of hereinabove facts and examination of record, it appears that respondents failed to place on record any material or evidence to show that petitioner was ever served with the Show Cause Notice(s) or was associated by the I.O. for the purposes of conducting regular inquiry. It further appears that major penalty of dismissal from service has been imposed on the allegations of embezzlement/misappropriation of funds, however, without confronting the petitioner with any material or evidence, which may

support such allegations. On the contrary, the contention of the petitioner that he remained in jail during the period when the purported inquiry was conducted remained uncontroverted by the respondents which *prima facie* supports the contention of the petitioner that he was neither confronted with the allegations through a Show Cause Notice nor was associated with the alleged inquiry proceedings. It has further transpired that the I.O. namely Ghulam Mustafa Shaikh, who has also appeared as complainant before the Anti-Corruption Court, got his statement recorded on oath on 01.06.2024, wherein, he has categorically stated that he never held any inquiry against the accused Muhammad Ramzan nor he issued any notice to him prior to filing complaint against him before Anti-Corruption Department. During course of hearing, we inquired learned AAG to produce any document which may establish that the petitioner was served with the Show Cause Notice(s), however, nothing has been referred to or placed on record to establish that any Show Cause Notice was served upon the petitioner. On the contrary, there is sufficient material available on record to show that petitioner was never served with any Show Cause Notice(s) nor he was associated with the purported inquiry as the petitioner was reportedly in jail w.e.f. 19.01.2016 to 30.06.2016 whereas, the purported Notice was issued on 08.01.2016 wherein the date of hearing is mentioned as 20.01.2016 when the petitioner was in jail, therefore, could not possibly attend the enquiry proceedings. The petitioner was eventually awarded major penalty i.e. dismissal from service on 29.02.2016, however, the stance of the petitioner does not reflect in the order of dismissal from service. We are of the opinion that in the instant case the department, while proceeding against the petitioner, has not followed the procedure as provided under Sections 9 and 10 of PEEDA, Act 2006 for the purpose of conducting an inquiry, therefore, any order passed pursuant to such defective inquiry is not sustainable in the eyes of law and liable to be set-aside on this account.

6 It is settled position of law that major penalty of dismissal from service cannot be awarded without conducting regular inquiry, or providing opportunity of being heard to a civil servant as it amounts to violation of principles of Natural Justice. Reliance in this regard can be placed in the case of Naseeb Khan vs.

Divisional Superintendent, Pakistan Railways, Lahore and another (2008 SCMR 1369) wherein it has been held as under:

“5. In case of imposing a major penalty, the principle of natural justice requires that a regular enquiry is to be conducted in the matter and opportunity of defence and personal hearing is to be provided to the civil servant proceeded against as held by this Court in the case of *Pakistan International Airlines Corporation v. Ms. Shaista Naheed* 2004 SCMR 316 and *Inspector General of Police, Karachi and 2 others v. Shafqat Mehmood* 2003 SCMR 2007.”

Further reliance in this regard can be placed in the cases of *Raja Muhammad Shahid vs. Inspector General of Police and others* (2023 SCMR 1135) and in the case of *Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others vs. Zahid Malik* (2023 SCMR 603).

7. Now reverting to the merits of instant case, it may be observed that the allegations of embezzlement/misappropriation of funds by altering the amount in cheques, which were neither authored nor signed by the petitioner, were required to be proved with conclusive evidence by confronting the petitioner with specific details however, no such exercise appears to have been taken, nor the cheques, which were allegedly altered by the petitioner, were sent to any hand writing expert for the purposes of verification. It has also come on record that the I.O. and the complainant before the Anti-Corruption department is the same person i.e. Ghulam Mustafa Sheikh, who was also the author and signatory of the cheques, which were allegedly altered by the petitioner. However, it appears that no departmental action has been taken against him, therefore, the bias of the I.O, and the possibility of false implication of the petitioner in the instant matter cannot be ruled out. It may be observed, that in cases involving public funds extra caution and due care is required to be observed to prove the charge of embezzlement or misappropriation whereas, proper inquiry needs to be conducted in a fair and transparent manner to ensure that the public funds, so misappropriated, could be retrieved and the civil servant involved in such offence, shall be punished accordingly. It is however, regretted to note that such caution and due care has not been taken in the instant matter and the respondent department has failed to even place on record the enquiry proceedings, nor could refer to any concrete material or confidence inspiring evidence against the

petitioner. Moreover, the petitioner has not been provided any opportunity of being heard whereas, a major penalty of dismissal from service has been imposed upon the petitioner without conducting any regular inquiry.

8. In view of hereinabove facts and circumstances of the case, we are of the view that the impugned judgment passed by the Tribunal and the orders of the lower fora are contrary to law and violative of the principles of Natural Justice as no regular inquiry has been conducted while imposing major penalty of dismissal from service, whereas, no opportunity of being heard has been provided to the petitioner. Consequently, instant petition for leave to appeal is converted into appeal and allowed, the impugned judgment passed by the Tribunal is hereby set aside and the respondents are directed to re-instate the petitioner into service. The matter is however, remanded to the departmental authority to conduct *de novo* inquiry into the allegations levelled against the petitioner while providing him sufficient opportunity of being heard in terms of Sections 9 and 10 of the PEEDA Act, 2006. It is expected that such inquiry be concluded preferably within a period of three months from the date of receipt of this order.

Judge

Judge

Judge

Islamabad:
Approved for Reporting
Tanveer Ahmed

Announced in open Court on_____at_____

Judge