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**IN THE SUPREME COURT OF PAKISTAN**  
(APPELLATE JURISDICTION)

**PRESENT:**

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

AFR D.J  
3 **CIVIL APPEAL NO.2063 OF 2019.**

(Against the judgment dated 28.02.2019  
passed by the Federal Service Tribunal, Lahore  
in Appeal No.549(L)/2016).

Chief Postmaster Faisalabad, GPO & another.

...Appellant(s)

**Versus**

Muhammad Afzal.

...Respondent(s)

For the Appellant(s):

Mian Asghar Ali, DAG.  
Raja Abdul Ghafoor, AOR.  
M. Zahid, A.S.

For the Respondent(s):

Hafiz S. A. Rehman, Sr. ASC.  
Hafiz Hifz-ur-Rehman, ASC.

Date of Hearing:

27.04.2020.

**ORDER**

**IJAZ UL AHSAN, J.-** This appeal with the leave of the Court arises out of a judgment of the Federal Service Tribunal, Lahore dated 28.02.2019. Through the impugned judgment the penalty of dismissal from service awarded to the Respondent by the departmental authorities was converted into compulsory retirement from the date of his dismissal, with all pensionary benefits which were directed to be paid within six months.

2. Briefly stated the facts necessary for disposal of this appeal are that the Respondent who was working as a Postal Clerk was proceeded against under the Government



Servants (E&D) Rules, 1973. The allegations mentioned in the show cause notice were as follows:

- "a. Pocketed/Misappropriated a sum of Rs.1071170/- under head MVT, Income Tax and Professional Tax, as reported by verification committee vide his reports dated 07.09.2015, 02.10.2015, 21.10.2015, 02.12.2015, 27.01.2016 and 10.02.2016.*
- b. Responsible for causing difference of Rs.1278420/- in consumption of Arms license stamps, which leads to use of bogus/fake stamps, amounting to said extent.*
- c. Failed to maintain the PT records and PT statement as per procedure of the department.*
- d. He remained indulged in fraudulent activities and committed serious irregularities during the said period and in connivance with Postmaster Mr. Asad Qayyum and in bilateral partnership with him misappropriated Govt. money with tentamounted towards heavy corruption by you.*
- e. Failed to perform his legitimate duties.*
- f. Cheating the Department.*
- g. Dishonesty."*

3. The Respondent submitted his reply/defence statement which was found unsatisfactory, by the competent authority. The requirement of regular inquiry was dispensed with on the ground that all evidence against the Respondent was in the form of record and documents and it was found that during the period with effect from 01.08.2012 to 31.07.2015 a sum of Rs.107,170/- had been misappropriated in the Head of



MVT and there was a difference of Rs.1278420/- in consumption of Arms License Stamps. A Committee of senior officials of the Postal Department was constituted to conduct a fact finding inquiry which on the basis of official records and documents found Mr. Asad Qayyum, the then Postmaster Katchehry Post Office and the Respondent responsible for commission of acts of misappropriation and embezzlement. Consequently, a regular inquiry was dispensed with and Mr. Asad Qayyum, Postmaster and the Respondent were visited with the penalty of dismissal from service. Their departmental appeals were rejected. They approached the Service Tribunal by way of appeals. We have been informed that the appeal filed by Mr. Asad Qayyum was rejected, his CPLA was also dismissed by this Court and a review petition filed by him met the same fate. However, in the case of the Respondent although the Tribunal came to the conclusion that regular inquiry had correctly been dispensed with, the charge of misappropriation and embezzlement stood proved and the objection of non provision of relevant records enabling the Respondent to prepare his defence had no substance and that the fact that the investigation report of Federal Investigation Agency (FIA) did not find enough evidence of commission of fraud to warrant a criminal prosecution the same had no bearing on the outcome of the departmental inquiries, yet the Tribunal proceeded to observe as follows:

*"Undoubtedly, the allegations, as above, have blemished his career, but there is no justification to save him from carrying stigma of "Dismissal from*



*Service". Hence, considering the length of service, the penalty of Dismissal from Service is hereby converted into "Compulsory Retirement" from the date of his dismissal, with all the pensionary benefits, which may be paid within six months definitely."*

4. Aggrieved of the aforementioned judgment the department sought leave to appeal which was granted vide order dated 10.12.2019 in the following terms:

*"Learned DAG contends that respondent was employed as Postmaster, Ghulam Muhammad Abad, Faisalabad GPO. A charge-sheet was issued to him alleging that he has committed misappropriation amounting to Rs.1,385,590/-. The regular enquiry was dispensed with for the reason that whole case of misappropriation against the respondent was based on documentary evidence. The respondent though denied the allegation in his reply to the charge sheet but sufficient material connecting him with the misappropriation, was available in the shape of evidence and having been granted personal hearing, he was dismissed from service. The respondent challenged the order of dismissal by filing of a service appeal before the Federal Service Tribunal, Lahore (the Tribunal), the Tribunal also found that the respondent had committed misappropriation but merely on the ground that he has 36 years service in the department, converted his penalty of dismissal into that of compulsory retirement. Learned DAG contends that Government employee, who is proved to have committed misappropriation of the Government fund, could not be dealt with leniently and maximum penalty has to be imposed upon him, which was done and the Tribunal without there being justifiable reason available, converted the penalty into compulsory retirement, which was not legally justified.*

2. *The contentions raised by the learned DAG require consideration. Leave to appeal is granted to consider, inter alia the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same preferably after three months."*



5. The learned counsel for the Appellant submits that the charge of misappropriation stood established in the departmental hierarchy and the Tribunal also came to the same conclusion. It stood established that the Postmaster Mr. Asad Qayyum and the Respondent had indulged in misappropriation and embezzlement of Government money and the Tribunal did not find any reason to alter any of the findings of the departmental inquiry, yet it converted the penalty of dismissal from service to compulsory retirement for no rhyme or reason and in an arbitrary manner without due application of mind to the facts and circumstances of the case. He has relied upon "Assistant Director (Admn.) National Savings Centre and others v. Muhammad Anwar" (1990 SCMR 1214), "Federation of Pakistan through Secretary Finance, Government of Pakistan and others. v. Khalid Javed" (2009 SCMR 720) and "Chairman Dr. A.Q. Khan, Research Laboratories and another. v. Malik Muhammad Hamid Ullah Khan" (2010 SCMR 302) to argue that where a charge of misappropriation has been established, the Tribunal lacks jurisdiction to alter the penalty in an arbitrary manner. He further maintains that the Tribunal has not assigned any cogent or legally sustainable reason to reduce the penalty of dismissal from service to that of compulsory retirement. He maintains that where the charge of misappropriation stood established in the departmental proceedings and the Tribunal upheld such findings, it had no choice but to award the penalty that was provided in law and imposed by the



competent authority, and the exercise of discretion by arbitrarily converting the penalty of dismissal from service into compulsory retirement for extraneous considerations constitutes excessive exercise of jurisdiction not vested in the Tribunal by law.

6. Learned counsel for the Respondent, on the other hand, has made an attempt to reopen the case and argued the same on merits. He has however frankly conceded that the Respondent has not challenged the judgment of the Tribunal to the extent that it upheld the findings of the departmental authorities relating to embezzlement and misappropriation. He has vehemently argued that the Respondent had been charged with serious offences which he had denied and in these circumstances the requirement of departmental inquiry could not have been dispensed with. In support of his contention the learned counsel for the Respondent has relied upon "Muhammad Javed Rashid. v. The Chief Engineer, O & M, WAPDA, Tarbela Dam Project, and others" (1990 SCMR 1543), "Saad Salam Ansari. v. Chief Justice of Sindh High Court, Karachi through Registrar" (2007 SCMR 1726) and "Farhad Ali. v. Director General, Pakistan Post Office and others" (2009 PLC (C.S.) 996).

7. We have heard the learned counsel for the parties at length, examined the record and gone through the case law cited at the bar. There is no denial of the fact that there were allegations of embezzlement and misappropriation against the Postmaster Mr. Asad Qayyum and the Respondent. Such



misappropriation was discovered during surprise inspection of the records which were being maintained by the Appellant under the supervision of the Postmaster. Such scrutiny led to discovery of misappropriation of Government funds in substantial sums. A thorough departmental inquiry found the Postmaster as well as the Respondent to have acted in connivance with each other in committing the said unlawful acts in consequence of which both were visited with the penalty of dismissal from service. Their departmental appeals failed which prompted them to approach the Federal Service Tribunal by way of appeals. The appeal filed by the Postmaster was dismissed and his penalty was upheld. His petition before this Court did not succeed and his review petition was also dismissed. In the appeal filed by the Appellant, the Tribunal went into the great detail in examining all legal procedural and factual aspects of the matter and came to the conclusion that there was no legal or procedural defect in the proceedings conducted by the department, the requirement of holding a regular inquiry was rightly dispensed with, the Respondent was provided all requisite documents and record to enable him to prepare his defence and that the failure of FIA investigation to find sufficient evidence to establish the charge of embezzlement and misappropriation in a criminal court to warrant a criminal conviction was of no consequence. Therefore, it found that the department was justified in finding the two officials guilty of misconduct, corruption, misappropriation, embezzlement, dishonesty and cheating etc.



Surprisingly, after having recorded all the above findings the Tribunal arrogated to itself the jurisdiction to modify the penalty of dismissal from service to compulsory retirement. There is no cavil with the proposition that under Section 5 of the Service Tribunals Act, the Tribunal enjoys powers to modify any order passed by the departmental authorities but such power is required to be exercised carefully, judiciously and after recording reasons for the same. In the present case, the penalty in question had been imposed by the departmental authority on the basis of established charges and the major penalty of dismissal from service was imposed upon him in accordance with the law and the 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 such an arbitrary unstructured and whimsical manner. 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 by the Tribunal.

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 lawfully 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 power and authority in granting relief to the Respondent.

9. We have carefully gone through the case law cited by the learned counsel for the Respondent and find that the same is distinguishable on law as well as facts. It is not a hard and fast rule that where there are serious allegations against an employee which are denied by him the department is under an obligation to conduct a regular inquiry in all circumstances. As stated above, in case the departmental authorities come to the conclusion that there is sufficient documentary evidence available on record which is enough to establish the charge, it can, after recording reasons, which are of course justiciable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings. Courts can always re-examine the reasons assigned by the departmental authority for dispensing with the requirement of regular inquiry and if such reasons are not found cogent and legally sustainable, the Court has all requisite powers and is not debarred from sending the matter back to the department to hold a regular inquiry. In the case in hand, the departmental authority gave cogent reasons for dispensing with the requirement of regular inquiry and the Tribunal did not find any fault with the same. Consequently, the judgments relied upon by the learned counsel for the Respondent do not in any manner advance his case. 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 judgment of the Federal Service Tribunal dated 28.02.2019 and restore the penalty imposed by the departmental authorities. There shall be no order as to costs.

11. Above are the reasons of our short order dated 27.04.2020. For ease of reference, the short order is reproduced below:

*"We have heard the learned counsel for the parties and have gone through the material available on record. For reasons to be recorded separately, this appeal is allowed and the impugned judgment dated 28.02.2019 is set aside."*

Sd/- HCS  
Sd/- J

**ISLAMABAD.**

27.04.2020.

Zubair/\*

~~Not~~ Approved For Reporting'

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30/4/20