

32/21

IN THE SUPREME COURT OF PAKISTAN

(APPELLATE JURISDICTION)

PRESENT:

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

D.J) AFOR

Civil Appeal No.1385 of 2019

Against judgment dated 12.12.2018 of Federal Service Tribunal, Lahore, passed in Appeal No.2(L)CS of 2017.

Divisional Superintendent, Postal Services,
Gujranwala and another

...*Appellant(s)*

Versus

Muhammad Arif Butt

...*Respondent(s)*

For the Appellant(s): Mr. Sohail Mehmood, Addl. AGP.

For the Respondent(s): Mr. Zulfiqar Khalid Maluka, ASC.

Date of Hearing: 31.03.2021.

JUDGMENT

IJAZ UL AHSAN, J.- This appeal by leave of the Court arises out of a judgment of Federal Service Tribunal, Lahore ("the Tribunal") dated 12.12.2018. Through the impugned judgment, a Service Appeal bearing No.2(L)CS of 2017 filed by the Respondent (*Muhammad Arif Butt*) was allowed and orders dated 09.08.2016 and 16.11.2016 passed by the competent departmental authorities were set aside and the major penalty of dismissal from service imposed upon him was converted into stoppage of two increments for a period of two years without future effect. The Respondent was also

reinstated in service from the date of his dismissal with all back benefits.

2. Briefly stated the facts necessary for disposal of this Appeal are that the Respondent, who was working as a Postman at Jalil Town Post Office, Gujranwala Division was served with a charge sheet alongwith statement of allegations alleging that he had received an amount of Rs.36,400/- for Value Payable Posts (VPPs) from the addressees and misappropriated the same. He submitted his response. An inquiry was conducted and on conclusion of the same, the Respondent was dismissed from service vide order dated 09.08.2016. His departmental appeal did not succeed and was rejected vide order dated 16.11.2016. This prompted him to file a Service Appeal before the Tribunal which vide impugned judgment dated 12.12.2018 was allowed in the terms noted above.

3. Feeling aggrieved of the impugned judgment, the Appellants approached this Court by way of filing a Civil Petition in which Leave to Appeal was granted vide order dated 01.07.2019 in the following terms:

"We have heard the learned Deputy Attorney General. He contends that the Respondent has committed misappropriation of a sum of Rs.36,400/- and such misappropriation was also admitted by him. He further contends that after holding of proper inquiry and allowing opportunity of hearing to the Respondent,

he was dismissed from service. He submits that the Service Tribunal has without any lawful consideration interfered in the matter of punishment and holding it to be harsh converted the same into stoppage of two increments for a period of two years without future effect. The learned Law Officer further submits that a person who has admittedly committed misappropriation cannot be retained in service dealing with public funds.

2. *Leave to appeal is granted to consider inter alia the above questions.”*

4. The learned Additional Attorney General for Pakistan appearing for the Appellants has reiterated the stance taken by him at the leave granting stage. He maintains that the Tribunal did not examine the case in its true perspective and lost sight of the fact that the Respondent had admitted his guilt and stated that he had utilized the amount of Rs.36,400/- for his personal requirements. He further maintains that impugned judgment of the Tribunal is not based upon sound principles of law as no valid reason has been recorded by the Tribunal for exercise of its jurisdiction. He submits that the major penalty of dismissal from service has arbitrarily been reduced which is in excess of powers available to the Tribunal under Section 5 of the Service Tribunals Act, 1973 (“Act of 1973”).

5. The learned counsel for the Respondent on the other hand has defended the impugned judgment and submitted that the Respondent had 27 years of service to

his credit. He maintains that the Respondent is entitled to lenient treatment and the penalty of dismissal from service being too harsh, the Tribunal had valid reasons and lawful justification to modify the same to minor penalty of stoppage of two increments for a period of two years. He further maintains that the reduced penalty is more commensurate with the gravity of the offence committed by the Respondent.

6. We have heard the learned Additional Attorney General for Pakistan as well as learned ASC for the Respondent and have gone through the record. We are surprised to note that despite recording a finding to the effect that the allegations of inefficiency and misconduct stood proved against the Respondent, who in his defence had failed to contest or disprove the same, the Tribunal proceeded to take a lenient view in the matter. Further, the Tribunal noted that the Respondent had admitted in paragraph 3 of his departmental appeal that he needed the money to meet urgent personal requirements, therefore, he was unable to deposit the amount as per Rules and Regulations of the department and had utilized the same. The impugned judgment further notes that the departmental appeal filed by the Respondent itself is an admission/confession on his part. Having recorded such findings, the Tribunal proceeded to take a lenient view on the ground that the amount in question had been recovered

and there was no monetary loss to the Department. Therefore, the penalty of dismissal from service was too harsh and the same needed to be modified. In this regard, the Tribunal placed reliance on a judgment of this Court reported as Secretary, Government of Punjab and others v. Khalid Hussain Hamdani and 2 others (2013 SCMR 817).

7. Having considered the arguments of learned counsel for the parties and the reasoning adopted by the Tribunal for taking a lenient view in converting the penalty of dismissal from service into stoppage of two increments for a period of two years without future effect and reinstating him in service with all back benefits, the Tribunal totally failed to take notice and follow judgments of this Court and the law laid down therein. It has categorically and repeatedly been held by this Court that a Government servant who is found to have misappropriated public money, notwithstanding its amount, breaches the trust and confidence reposed in a Government servant who is charged with the responsibility of handling public money. Misappropriation of the same, whether temporary or permanent and irrespective of the amount constitutes dishonesty and misconduct. Such an employee/individual has no place in Government Service

because he breaks the trust and proves himself to be unworthy of the confidence that the State reposes in him. It is a fundamentally important requirement of his job that Rules and regulations are followed and violations be dealt with strictly. Reliance of the Tribunal on *Secretary, Government of Punjab and others (ibid)* is inapt. The principles of law laid down in the said judgment are not attracted to the facts and circumstances of the present case. Further, we have repeatedly held that jurisdiction of the Tribunal under Section 5 of the Act of 1973 is to be exercised cautiously, carefully and with circumspection and where such jurisdiction is exercised, the Tribunal must record cogent, legally sustainable and sound reasons for the same.

8. In the instant case having not found any legal or procedural error in the proceedings conducted by the Department and the admission/confession of the Respondent being in the field and having concluded that the charge of misappropriation stood established against the Respondent, the Tribunal fell into grave error by deciding to take a lenient view in converting the major penalty of dismissal from service into minor penalty of stoppage of two increments for a period of two years without future effect. Besides, the Respondent was reinstated into service from the date of his dismissal with

all back benefits. Such order amounts to granting a premium to an employee who has admittedly and blatantly violated the laws and rules applicable to his service and has been proven guilty of misconduct and misappropriation. This would undoubtedly send a message to the employees of the Department that misconduct and misappropriation is condoned by Courts and would therefore encourage others to try their luck.

9. Further, the impugned judgment of the Tribunal is conspicuous by the absence of any reasoning for the impugned modification let alone cogent or legally sustainable one. In this context, reference may be made to Government of Pakistan v. Nawaz Ali Sheikh (2020 SCMR 656), Chief Postmaster Faisalabad v. Muhammad Afzal (2020 SCMR 1029), Government of the Punjab through Chief Secretary. v. Muhammad Arshad and 2 others (2020 SCMR 1962) and District Police Officer v. Muhammad Hanif (2020 SCMR 1610). We therefore find that the Tribunal has not only exceeded its jurisdiction but exercised the same in a manner which clearly violates the settled principles of law on the subject. Further, in converting the major penalty of dismissal from service into minor penalty of stoppage of two increments for a period of two years without future effect and reinstating the Respondent from the date of his

dismissal with all back benefits, the Tribunal has exercised its jurisdiction capriciously and in a manner which is unsustainable in law.

10. As noted in the judgments of this Court mentioned above although the Tribunal has the discretion to interfere in the questions of quantum of punishments, such discretion can neither be exercised arbitrarily nor are the powers of the Tribunal under Section 5 of the Act of 1973 unqualified or unlimited. Where the penalties awarded by the competent departmental authorities after following due process of law are to be interfered with in exercise of the discretionary powers of the Tribunal under Section 5 of the Act of 1973, such discretion has to be exercised in a circumscribed, restricted and structured manner duly supported by the legally sustainable reasoning which justifies the conclusions reached by it. On the touchstone of the principles of law mentioned above, we find the impugned judgment of the Tribunal to be utterly lacking. The same is therefore not sustainable and is liable to be set aside.

11. For reasons recorded above, we allow this Appeal and set aside the impugned judgment of the Tribunal dated 12.12.2018. The penalty of dismissal from

service imposed upon the Respondent by the departmental authorities is affirmed and restored.

$\text{Sd} / = \text{H.C.J}$
 $\text{Sd} / = \text{J}$

ISLAMABAD.

31.03.2021.

ZR/*

'Not Approved For Reporting'