

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

**PRESENT:**

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

*AFR***CIVIL PETITION NO.874-L OF 2020**

*(Against the judgment dated 20.02.2020 passed by the Federal Service Tribunal, Lahore in Appeal No.109(L) of 2018)*

Director Postal Life Insurance, Lahore. .... *Petitioner(s)*

**Versus**

Shakeel Ahmad. .... *Respondent(s)*

For the Petitioner(s): Moulvi Ejaz ul Haq, DAG.  
 Ms. Anam Ayaz, A.D. PLI,  
 Islamabad (Pak. Post).

For the Respondent(s): N.R.

Date of Hearing: 05.03.2021.

**ORDER**

**IJAZ UL AHSAN, J.-** Leave to appeal is sought against a judgment of the Federal Service Tribunal, Lahore ("the Tribunal") dated 20.02.2020. Through the impugned judgment, a Service Appeal filed by the Respondent was allowed and the penalty of reduction in pay scale by four steps for five years was modified to minor penalty of 'Censure'.

2. The Respondent was employed with the petitioner-department as a Clerk. He was proceeded against departmentally and issued a charge sheet dated 01.08.2016 under the Government Servants (Efficiency & Discipline) Rules, 1973. The allegation against the Respondent was that

he had been negligent in maintaining the relevant official record which was his primary responsibility. Another charge against the Respondent was that he had made double payments on the basis of erroneous payment calculations. He filed a reply to the show cause notice and denied any wrongdoing on his part. An Inquiry Officer was appointed who conducted a regular inquiry and came to the conclusion that the charges against the Respondent were not fully established. Although there was negligence and lack of interest, there was no intentional omission or deliberate mishandling of official records for ulterior motives. He therefore recommended that a severe warning be issued to the Respondent. The competent authority however did not agree with the recommendations of the Inquiry Officer pursuant to which a show cause notice was issued to the Respondent calling upon him to explain why a major penalty may not be imposed upon him. The Respondent responded to the same pleading innocence. However, the competent authority imposed major penalty of reduction in pay scale by one step for two years. Aggrieved, the Respondent filed a departmental appeal. However, he did not get any relief and instead, the Appellate Authority enhanced his penalty from one step reduction in pay scale for two years to four steps reduction in pay scale for five years. Aggrieved of such orders, the Respondent approached the Tribunal by way of a Service Appeal which was allowed through the impugned judgment dated 20.02.2020 in the terms noted above.

3. The learned Deputy Attorney General submits that the competent authority is not bound by the recommendations and penalties recommended by the Inquiry Officer and the authorized officer can exercise his own judgment on the basis of record available to him. He maintains that a regular inquiry was conducted and the allegations of intentional negligence and lack of interest towards Respondent's official duties were established. He further maintains that the competent authority has the power under Rule 6(A) of E&D Rules, 1973 to enhance the penalty awarded by the authorized officer. He finally submits that the Tribunal has not correctly appreciated the facts and circumstances of the case and interference by it in the penalty lawfully awarded by the competent authority was not justified.

4. Having heard the learned DAG and going through the record, we find that the Inquiry Officer had not found any documentary evidence to prove the allegation against the Respondent of making double payments to M/s Sabir Ali and Qadir. Further, it was found that the alleged misconduct and negligence was not fully established. It was observed that although the Respondent was negligent and showed lack of interest, there was no element of intentional omission or deliberate mishandling of records or overpayment to two individuals. On said basis, the Inquiry Officer had recommended issuance of a severe warning to the Respondent. Although the competent authority has the power

to disagree with the recommendations of the Inquiry Officer, however, such power has to be exercised on the basis of record and for cogent and valid reasons duly recorded. The order passed by the competent authority is lacking in that respect. Further, the Appellate Authority also did not record any valid reasons or lawful justification for further enhancing the penalty imposed upon the Respondent.

5. A perusal of the impugned judgment of the Tribunal indicates that it has re-examined the entire record and come to the conclusion that there was insufficient evidence against the Respondent to establish charges of fraudulent double payments and negligence in handling official records and in discharge of his duties. Therefore, there were valid reasons for the Tribunal to come to the conclusion that the penalty imposed by the competent authority and further enhancement of the same by the Appellate Authority was disproportionately harsh to the allegations levelled and not fully proved against the Respondent, particularly, so where no documentary evidence was available to substantiate the charges against him.

6. On our query, the learned DAG has been unable to show that the mandatory show cause notice was issued by the Appellate Authority to the Respondent or he was given an opportunity to defend his position and to plead his case against further enhancement of the penalty imposed upon him. This material error/defect in the procedure adopted by

the Appellate Authority has violated the due process rights of the Respondent.

7. We find that the impugned judgment of the Tribunal dated 20.02.2020 is well reasoned, it deals with all legal, procedural and factual issues in their proper perspective and is based on the record which the orders of the competent and appellate authorities are not. The learned DAG has not been able to persuade us to arrive at a conclusion different from the one reached by the Tribunal. Even otherwise, no substantial question of law of public importance within the contemplation of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been raised in this petition.

8. For reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused.

Sd/- H CJ  
Sd/- U

ISLAMABAD.

05.03.2021.

ZR/\*

'Not Approved For Reporting'