

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.545 -K of 2021

(Against the order dated 18.02.2021 passed
by the learned Sindh Service Tribunal,
Karachi in Appeal No. 570/2019)

Raja Muhammad Shahid

...Petitioner(s)

Versus

The Inspector General of Police & others

...Respondent(s)

For the Petitioner(s)

: Mr. Irfan Mir Halepota, ASC
(thr. video-link)
Petitioner in person

For the Respondent(s)

: Mr. Saulat Rizvi, Addl. A.G.
Mr. Adeel H. Chandio, SSP Thatta
Mr. Ghaffar, DSP Legal

Date of Hearing

: 20.04.2023

JUDGMENT

Muhammad Ali Mazhar, J. The learned Sindh Service Tribunal, Karachi ("**Tribunal**") passed a consolidated judgment dated 18.2.2021 in six service Appeals. The petitioner before us has filed this Civil Petition for leave to appeal against the aforesaid judgment only to the extent of the fate of Appeal No.570/2019 filed by him before the Tribunal which was dismissed by the common judgment. According to the narrative of the petitioner, he was issued a show cause notice on 09.07.2018 with the allegations that Ex-PC/490 Abdul Razzaq was dismissed from Service in the year 2012 but he received salary till 2016 as the petitioner deliberately failed to stop the salary of above named Ex-PC, which shows that he was involved in malpractice and committed negligence in official work and hence was not fit for the post of Accountant. Another show cause was issued on 23.10.2018 with the allegations that SSP Thatta detected a scam regarding fake appointments and salary drawn in Thatta District Police, and an enquiry was also

conducted which transpires that the petitioner was found guilty of serious charges of being instrumental in fake appointments made in District Thatta Police and no Service record book or any other related material is available in the office of SSP Thatta.

2. The thrust and impetus of the arguments advanced by the learned counsel for the petitioner is that the major penalty of compulsory retirement was imposed upon the petitioner without any regular inquiry. He further argued that no reasonable chance of defence or right of fair trial was provided during departmental proceedings. On this limited question of law, notice was issued to the respondents. Today, the learned counsel for the petitioner re-agitated the issue of non-holding of regular inquiry and non-affording the right of cross-examination to the witness appearing before the inquiry officer. In support of his contentions, he relied on the dictum laid down by this Court in the cases of Usman Ghani v. Chief Post Master, GPO Karachi and others (2022 SCMR 745) and Federation of Pakistan thr. Chairman, Federal Board of Revenue, FBR House, Islamabad and others v. Zahid Malik (2023 SCMR 603).

3. The learned Additional Advocate General ("**AAG**") argued that the show cause notice was issued under the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 and regular inquiry was conducted. He further argued that even if the right of cross examination was not afforded it does not give any premium to exonerate the petitioner from the charges, rather a *de novo* inquiry may be ordered which will provide ample opportunity to the department to prove the petitioner's guilt, and a proper right of defence will also be provided to the petitioner to prove his innocence. He further added that the full and final settlement dues have been paid to the petitioner therefore he is not an aggrieved person.

4. Heard the arguments. We have flicked through the enquiry report and find that various witnesses were associated in the enquiry and their statements were also recorded but neither any opportunity was afforded to the petitioner to conduct cross examination, nor is it mentioned that an opportunity of cross examination was afforded, but it was declined by the petitioner. In

the abovementioned case of Usman Ghani Vs The Chief Post Master, GPO Karachi and others (2022 SCMR 745), it was held that the foremost aspiration of conducting departmental inquiry is to find out whether a prima facie case of misconduct is made out against the delinquent officer for proceeding further. The guilt or innocence can only be thrashed out from the outcome of inquiry and at the same time it is also required to be seen by the learned Service Tribunal as to whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution. A distinction also needs to be drawn between a regular inquiry and preliminary/fact finding inquiry. A regular inquiry is triggered after issuing show cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow an even-handed and fair opportunity to the accused to place his defence and if any witness is examined against him, then a fair opportunity should also be afforded to cross-examine the witnesses. The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and the delinquent civil servant should be provided a fair opportunity of being heard and if the order of the competent authority based on inquiry report is challenged before the Service Tribunal then it is the legal duty of the Service Tribunal to give some reasons and there should be some discussion of evidence on record which is necessary to deliberate the merits of the case in order to reach a just conclusion before confirming, reducing or setting aside the penalty. Whereas in the case of Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others Vs. Zahid Malik (2023 SCMR 603), it was held that the primary objective of conducting departmental inquiry is to grasp whether a clear-cut case of misconduct is made out against the accused or not. The guilt or innocence is founded on the end result of the inquiry. The learned Service Tribunal may observe whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution of the Islamic

Republic of Pakistan, 1973 ("Constitution"). The purpose of the cross-examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the statement of a witness is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross-examination, which is not a mere formality, but is a valuable right to bring the truth out. If the inquiry officer or inquiry committee is appointed for conducting inquiry in the disciplinary proceedings, it is an onerous duty of such Inquiry Officer or Inquiry Committee to explore every avenue so that the inquiry may be conducted in a fair and impartial manner and should avoid razing and annihilating the principle of natural justice which may ensue in the miscarriage of justice. The possibility cannot be ruled out in the inquiry that the witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. The whys and wherefores of cross-examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies. Not providing an ample opportunity of defence and depriving the accused officer from right of cross-examination to departmental representative who lead evidence and produced documents against the accused is also against Article 10-A of the Constitution in which the right to a fair trial is a fundamental right. What is more, the principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned.

5. At this juncture, the learned AAG on instructions of Mr. Adeel H. Chandio, SSP Thatta, submits that the petitioner has already received the gratuity amount and is also receiving monthly pension. In our view, mere acceptance of dues is no ground to nonsuit the petitioner when he had already challenged the imposition of major penalty in violation of the principles of natural justice and without due process of law. On the face of it, the inquiry was defective in which the vested right of cross

examination was withheld or denied and due to the perceptible shortcomings in the enquiry proceedings, the petitioner could not be held responsible or accountable. More so, the petitioner present in Court is willing to refund back the dues received by him to the department in lieu of reinstatement during *de novo* enquiry.

6. As a result of above discussion, this Civil Petition is converted into appeal and allowed. As a consequence thereof, the impugned judgment of the Tribunal to the extent of Service Appeal No.570/2019 is set aside with the directions to the department to conduct *de novo* inquiry. In the course of *de novo* inquiry, ample opportunity of hearing should be provided to the petitioner. The petitioner is reinstated in service subject to the refund of dues within a period of one month as received by him from the department. The *de novo* inquiry shall be concluded within a period of two months and the payment of back benefits, if any, shall also be subject to the final outcome of the inquiry.

Judge

Judge

Karachi
20.04.2023
Zahid/Khalid
Approved for Reporting.