

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

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

Civil Petitions No.3463 and 3464 of 2021

Against the judgment dated 07.04.2021 passed by
Federal Service Tribunal, Islamabad in Appeal
No.118(P)CS/2020 and 119(P)CS/2020

Tariq Khan
Aman Ullah

(in CP 3463/21)
(in CP 3464/21)
...Petitioners

Versus

Additional Director General (North), Federal
Investigation Agency, Islamabad and others

...Respondents

For the Petitioners:

Mr. Aftab Alam Yasir, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondents:

Raja Shafqat Mehmood Abbasi, DAG.
Mr. Anis M. Shahzad, AOR
a/w Sajjad, AD FIA

Date of Hearing:

07.11.2024

Judgment

Muhammad Ali Mazhar, J. These Civil Petitions for leave to appeal are directed against the consolidated judgment passed by the learned Federal Service Tribunal, Islamabad ("Tribunal") in Appeal No.118(P)CS/2020 and 119(P)CS/2020, whereby the imposition of punishment of compulsory retirement on the petitioners was maintained and service appeals were dismissed.

2. The transitory facts of the case are that both the petitioners were issued the charge sheet on 12.06.2019, on the allegations of misconduct and inefficiency within the meaning of Rule 2 (4) read with Rule 3 (a) & (b) of the Government Servants (Efficiency & Discipline)

Rules, 1973 ("E&D Rules") and in order to probe the allegations, an Inquiry Officer was appointed under Rule 5 & 6 of the E&D Rules. The gist of allegations against both the petitioners are as under:-

I. CP.3463/2021

The petitioner Tariq Khan was performing his duties as ASI FIA, posted at Bacha Khan International Airport ("BKIA"), Peshawar, who was issued a charge sheet by the competent authority that "a) on 08.06.2019, during Qatar Airline Immigration Clearance in International departure briefing area, you were performing your duties as Stamping Officer, during which you have cleared 04 passengers, namely Asim Saeed (Passport # BD5975843), Asma Saeed (Passport # HZ1851311), Warda Saeed (Passport # HP5978021) & Zabeeh Ullah Saeed (Passport # GZ5974011) having fake Schengen Visas of Sweden. The passengers were deported back on 09.06.2019 by Qatar Airline; b) That you have failed to identify the security features of the said Schengen Visas; c) That you have neither scanned nor saved the Schengen Visas in question; d) That you have failed to consult your Shift Incharge/ Group Incharge regarding authenticity of the visas".

II. CP.3467/2021

The petitioner Aman Ullah was performing his duties as head constable and posted at FIA Counter, BKIA. He was issued charge sheet on the allegations that "a) on 08.06.2019, during Qatar Airline Immigration Clearance in International departure briefing area, you were performing your duties as Counter Checking Officer, during which you have cleared 04 Passengers, namely Asim Saeed (Passport # BD5975843), Asma Saeed (Passport # HZ1851311), Warda Saeed (Passport # HP5978021) & Zabeeh Ullah Saeed (Passport #GZ5974011) having fake Schengen Visas of Sweden. The passengers were deported back on 09.06.2019 by Qatar Airline; b) That you have failed to identify the security features of the said Schengen Visas".

3. After the completion of departmental proceedings, the major penalty of compulsory retirement was imposed upon the petitioners on 07.10.2019. Consequently, they filed departmental appeals which were also rejected. Being aggrieved, the petitioners approached the learned Tribunal, but *vide* a consolidated judgment, the appeals were dismissed by means of the impugned judgment.

4. The learned counsel for the petitioners argued that the impugned judgment passed by the learned Tribunal is based on a misreading and non-reading of the available material. It was further contended that both the petitioners had spotless careers in the past; yet, despite this, the major penalty of compulsory retirement was imposed on account of mere negligence, which was too harsh for civil servants who served for a considerable period of time with unblemished service records. He further argued that there was no evidence of record to prove any corruption on part of the petitioners. Even the findings of the inquiry depict that, on analysis of the CDRs, there was no

involvement of the FIA Staff. He further averred that the petitioners processed more than 800 passengers going on different flights, but no complaint whatsoever was lodged against them. He further contended that neither any evidence against the petitioners were adduced nor were they afforded a fair opportunity of defence. He avowed that a total of five persons were indicted in the inquiry proceedings; out of which, two were punished with compulsory retirement; one was punished with reduction to a lower timescale; whereas two senior officers were exonerated from the charges. It was further contended that neither any allegation of misconduct was proved during the inquiry, nor any right of cross-examination was afforded to the petitioners. Therefore, he prayed for directions to be given to the department to conduct *de novo* inquiry to the extent of the present petitioners.

5. The learned Deputy Attorney General ("DAG") reiterated the allegations outlined in the charge sheet against the petitioners. He further contended that the petitioners failed to identify the security features, failed to consult the Shift Incharge, and due to grave misconduct in performance of their official duties, the departmental action was initiated in accordance with the law. The negligence and inefficiency of the petitioners was duly proved and admitted during the inquiry proceedings. Hence, both were rightly punished with compulsory retirement. However, the learned DAG could not deny that five officials were departmentally proceeded but only the present two petitioners were punished with compulsory retirement, while one was punished with reduction to a lower timescale, and two senior officers were exonerated. It was further contended that since the petitioners are ready to face a *de novo* inquiry, the management will conduct the same in accordance with law.

6. Heard the arguments. Under Rule 6 of the E&D Rules, a certain procedure is provided which ought to have been followed and observed by the Inquiry Officer and the Inquiry Committee, which *inter alia* includes framing of charge and communicating it to the accused, together with the statement of allegations; requiring him to submit the written defence within a reasonable time (not less than seven days or more than fourteen days) and to state at the same time whether he desires to be heard in person; examining the oral or documentary evidence in support of the charge or in defence of the accused as may

be considered necessary; and the accused shall be entitled to cross-examine the witnesses against him and submit the report within ten days of the conclusion of the proceedings or such longer period as may be allowed by the authorized officer. The powers of the Inquiry Officer and Inquiry Committee are accentuated under Rule 7 of the E&D Rules. For the purpose of an inquiry, the Inquiry Officer and the Inquiry Committee both have been conferred the powers of a Civil Court trying a lawsuit under the Code of Civil Procedure, 1908, in respect of (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) issuing commissions for the examination of witnesses or documents and the proceedings under the E&D Rules are deemed to be judicial proceeding within the meaning of Sections 193 and 228 of the Pakistan Penal Code, 1860.

7. The findings in the Departmental Inquiry report submitted by the Assistant Director, FIA CBC, on 13.09.2019, depicts that the analysis of the CDRs shows no connection or link of the accused with the FIA Officials, and in conclusion, the Inquiry Officer, reported that there was no involvement of the accused FIA Staff with the deportees or their facilitators/abettors for that matter; and based on the available evidence, any *mens rea*, *mala fide*, or element of corruption on part of the Immigration Staff could not be established; however, the FIA Immigration Staff's gross negligence and mismanagement cannot be ruled out. It is quite strange to note that even to prove or defend the charge of gross negligence and mismanagement, no opportunity was provided to the petitioners during the inquiry proceedings to conduct cross-examination of such witnesses who deposed against them which is a sheer violation of the principles of natural justice and due process of law. The main object of affording a fair opportunity of cross-examination in the defense is to obliterate the testimony of witness or witnesses to disprove the charge or allegations, both in civil and criminal matters, including domestic/departmental inquiries conducted under the labour laws or civil servant laws. A mere statement of any witness has no legal value unless he is subjected to cross-examination which cannot be envisaged as a concession. On the contrary, in fact, it is a vested right and a fundamental limb of the

dogma of fair trial. During a regular inquiry, it is an unavoidable obligation of the inquiry officer to provide a fair opportunity of cross-examining the witnesses, without which it was not possible to fix responsibility for the charges of misconduct. Such violation of an elementary principle of law sabotages the fabric and substratum of the entirety of the disciplinary proceedings and the worth and credibility of the inquiry. In this case, on the basis of a defective inquiry, the major punishment of compulsory retirement was imposed upon the petitioners. Another important aspect which cannot be lost sight of is that a total of five persons were indicted in the inquiry, and on the strength of the same inquiry report, only the two petitioners were punished with compulsory retirement, while one accused was punished with reduction to a lower timescale, and two senior officers were exonerated from the inquiry proceedings.

8. Indeed, "*de novo*" is a Latin expression which means "afresh, from the beginning or anew". In a *de novo* trial or *de novo* disciplinary proceedings, the Court or the competent authority is not required to refer to or rely on any conclusion or outcomes of previous decisions or adjudications of courts or authorities that had earlier seized the matter referred for the *de novo* trial or inquiry. Why are *de novo* proceedings or trials ordered? These are directed in matters where, on the face of it, there are some serious procedural lapses and irregularities floating on the surface of the record in the trial of cases by the Courts or Tribunals or in the disciplinary proceedings/inquiries or the inquiries conducted under different laws, in which the well-enshrined principles of natural justice seem to have been violated, the findings are inappropriate or misdirected or based on surmises or conjectures, due to which it is not discernable whether the charges of misconduct are proved against the delinquent in the disciplinary proceedings triggered against him. In all such contingencies, the *de novo* trial or enquiry may be ordered or directed in order to meet the ends of justice and due process of law and further to ensure strict observance of the conditionality envisioned for fair trial under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

9. In view of what has been discussed above, these petitions are converted into appeals and allowed, the impugned judgment is set aside and the matter is remanded back to the department concerned

to conduct a *de novo* inquiry on the allegations leveled against the petitioners in the charge sheet dated 12.06.2019. The *de novo* inquiry shall be conducted and completed within a period of three months from the receipt of the copy of this judgment. The inquiry officer shall afford ample opportunity of defence to the petitioners and after submitting the inquiry report, the competent authority shall pass a speaking order and communicate it to the petitioners. However, the fate of the punishment of compulsory retirement awarded to the petitioners shall be subject to the final outcome of the *de novo* inquiry by the department.

Judge

Judge

Islamabad
7th November, 2024
Mudassar
Approved for reporting