

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-II:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi

C.P.L.A. No. 2987-L/2019

(Against the order dated 09.07.2019 passed by the Punjab Service Tribunal, Lahore in Appeal No.872/2019)

District & Sessions Judge (Authority), Jhang, etc.

... ***Petitioner(s)***

Versus

Ghulam Shabbir

... ***Respondent***

For the petitioner(s): Mr. Khalid Masood Ghani, ASC.

For the respondent(s): Mr. Sher Aman, ASC.

Assisted by: Mr. Umer A. Ranjha, Judicial Law Clerk,
Supreme Court of Pakistan.

Date of hearing: 07.05.2025.

JUDGMENT

Syed Mansoor Ali Shah, J.- The current constitutional era has been termed as the age of *proportionality*.¹ Briefly stated, on allegations of misconduct and corruption, disciplinary proceedings were initiated against the respondent while he was serving as an *Ahlmad* (court record keeper) in the District Courts, Jhang under the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 ("Rules"). The Senior Civil Judge was appointed as an Inquiry Officer who served a charge-sheet upon the respondent alleging as follows:

"That on 4.6.2018 you accused/respondent received Rs: 100.000/- (one lac) Bank Al-Barka Cheque No.20437925 dated 7.7.2018 and Rs. 150,000/- (one lac fifty thousand) vide cheque No.20437926 which were deposited in your account and withdrawn by you as bribe for getting recruited the relatives of the complainant and on 16.7.2018 you also received an amount Rs. 130,000/- as such bribe in front of Mr. Ahmad Ali Shahzad Bhatti and Rana Dilbar Hussain Khan advocates"

2. The Inquiry Officer in his report dated 06.10.2018 found the respondent guilty of the charges and recommended the imposition

¹ See Vicki C Jackson, 'Constitutional Law in the Age of Proportionality' (2015) 124 Yale LJ 3094.

of a major penalty of dismissal from service. The competent authority, i.e., District & Sessions Judge, concurred with the findings of the Inquiry Officer and imposed the major penalty of dismissal from service upon the respondent *vide* order dated 17.10.2018. Aggrieved, the respondent filed a departmental appeal before the Lahore High Court, Lahore, on the administrative side, which was not decided within the statutory period and remained pending. Thereafter the respondent filed an appeal before the Punjab Service Tribunal, Lahore, ("Tribunal"), which was partially allowed *vide* order dated 09.07.2019 ("impugned order"). The Tribunal observed as follows:

"After going through the record, it has been noticed that the appellant was afforded opportunity of personal hearing by the inquiry officer and the Authority in a fair manner but the fact remains that the appellant failed to dislodge the charges leveled against him. It has also come on record that after receiving two cheques in the presence of Ahmad Ali Shahzad & Rana Dilbar Hussain, Advocates, appellant could not succeed in getting recruited his relatives and refused to return the bribe amount. Furthermore, during personal hearing before the Authority/D&SJ, Jhang appellant did not deny the allegations leveled against him and took the plea that he has not received the disputed amount as bribe rather he has borrowed the same from complainant and sought for a lenient view."

(emphasis supplied)

The Tribunal, after holding that the charges stood proved against the respondent, further observed that the punishment of dismissal from service did not appear to be proportionate to the gravity of the misconduct. Without assigning any reasons, it proceeded to convert the major penalty of dismissal from service into the lesser penalty of forfeiture of two years of service. It is pertinent to note that the respondent has not assailed the said order before this Court.

3. We have heard the learned counsel for the parties at length and have carefully examined the impugned order, the applicable law, and the record of the case.

4. The question that arises for determination is whether the Tribunal was justified in converting the major penalty of dismissal from service of the respondent into a lesser penalty of forfeiture of two years of service, in the circumstances of the case, and after having found that the charges of misconduct and corruption against the respondent stood proved.

5. The Tribunal without explicitly mentioning it, has relied upon the *principle of proportionality* to reduce the penalty imposed on the respondent. At its core, the *principle of proportionality* requires that when an administrative authority exercises discretionary power, it must strike a fair balance between the adverse effects of its decision on the rights, liberties, or interests of individuals and the legitimate aim or purpose the decision seeks to achieve.² A more refined version of the *principle of proportionality* analysis adopts a structured³, four-stage test⁴, requiring courts to address the following questions to determine whether an impugned measure is constitutionally or legally justifiable. It includes: (i) Legitimacy: Does the action pursue a legitimate objective recognized by law? (ii) Suitability (Rational Connection): Is the measure capable of achieving that objective, i.e., is there a rational nexus between the means employed and the aim pursued? (iii) Necessity: Could the same objective have been achieved through a less restrictive or less onerous alternative? and (iv) Proportionality stricto sensu (Balancing): Does the measure maintain a fair balance between the severity of its impact on the individual and the importance of the public interest it serves?

6. The *principle of proportionality* also finds firm footing within our constitutional framework, particularly in Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantees that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen; Article 14, which affirms the inviolable dignity of person; and Article 25 which safeguards against discrimination. These provisions collectively impose a duty upon the courts to ensure that executive or disciplinary measures not only pursue lawful objectives but do so in a manner that is just, fair, and proportionate.

² HP Wade, CR Forsyth and the Rt Hon Lord Woolf, De Smith's Judicial Review (8th edn, Sweet & Maxwell 2018). See Muhammad Nasir Ismail v. Government of Punjab 2025 SCP 67 (SCP citation); Shahida Siddiq v. Allied Bank Limited 2024 SCMR 92; Pervaiz Hussain Shah v. Government of Punjab 2024 SCMR 309; Ijaz Badshah v. Government of Pakistan 2023 SCMR 407; Divisional Superintendent, Postal Services v. Nadeem Raza 2023 SCMR 803; Muhammad Sharif v. Inspector General of Police, Lahore 2021 PLC (C.S.) 762; Muhammad Iqbal Khan Noori v. NAB PLD 2021 SC 916 and Sabir Iqbal v. Cantonment Board PLD 2019 SC 189.

³ De Freitas v. Permanent Secretary of Ministry of Agriculture [1999] AC 69; R(Daly) v. Secretary of State for the Home Department [2001] 2 AC 532; R v. Shayler [2003] 1 AC 247; Huang v. Secretary of State for the Home Department [2007] 2 AC 167.

⁴ Bank Mellat v. HM Treasury (No.2) [2013] UKSC 39 (per Lord Sumption). This test has been dealt with in D.G. Cement v. Federation of Pakistan PLD 2013 Lahore 693.

7. In disciplinary jurisprudence, *proportionality* maintains a delicate balance between public and private rights. While civil servants are entitled to procedural fairness and protection from arbitrary sanctions, these rights must be balanced against the compelling public interest in maintaining the integrity and accountability of public institutions.⁵ In our view, the *principle of proportionality* at its most functional level ultimately hinges on a singular, decisive question: *whether the interference with private rights is justified by a corresponding and weighty public interest*. This balancing offers a structured framework for assessing the sustainability of disciplinary penalties. The penalty imposed must be evaluated not in isolation, but in relation to the degree of harm caused to the public interest and the severity of intrusion upon the private rights of the officer. A constitutionally and administratively sustainable penalty is one that serves a legitimate public objective without inflicting excessive or unnecessary harm upon individual rights. The test is not merely whether discipline is warranted, but whether the measure adopted strikes a fair and reasonable equilibrium between the legitimate aims of the institution and the human dignity of the individual. Accordingly, the *principle of proportionality*, in its clearest form may be said to rest on the following standard: *The action taken achieves a necessary public goal without causing disproportionate harm to private interest*.

8. The *principle of proportionality*, now widely recognized across constitutional systems, offers significant benefits by promoting structured, transparent, and reasoned decision-making in rights adjudication. This structured approach disciplines judicial discretion, enhances accountability, and fosters a culture of justification, where power must be exercised with reasons. However, the principle is not without risks. When applied without rigor or adequate explanation, it can become a mask for judicial subjectivity, enabling courts to substitute their personal preferences under the guise of balancing. If detached from clear normative anchors or applied inconsistently, *proportionality* may erode legal certainty and allow disguised arbitrariness. Thus, while *proportionality* strengthens constitutional adjudication when properly employed, its

⁵ Council of Europe, The Administration and You: Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons: A Handbook (Council of Europe Publishing 1996) and Rajan Khanal, Anil Kumar Gupta and Prakash C Bhattarai, 'Civil Servants' Integrity in Public Sector: The Case of Nepal' (2022) 8(12) Heliyon.

misuse can undermine the very values it seeks to uphold. A disproportionate decision may also violate the rule of law.⁶

9. In the present case, the charge of corruption against the respondent, serving as an *Ahlmad* (court record keeper), a role central to preserving the integrity and fairness of the judicial process, has been unequivocally proven. Significantly, the respondent has not challenged the findings of the Tribunal before this Court. The importance of an *Ahlmad* to the functioning of a fair and just judicial system cannot be overstated. When court officials engage in misconduct, whether by accepting bribes or abusing their position, they do not merely tarnish individual cases; they strike at the very foundation of public confidence in the administration of justice. Judicial service is not merely a profession, it is a public trust.⁷ An *Ahlmad* proven to be involved in corruption can irreparably damage the administration of justice, undermining public confidence in the justice system and tainting the credibility of the decisions it delivers. In such a context, the imposition of the penalty of dismissal from service is not only legitimate but necessary to protect public trust and uphold the rule of law. However, the Tribunal has reduced the penalty of the respondent to forfeiture of two years of service describing the original penalty as “grave and harsh” without offering any cogent reasons or legal justification.

10. We note that the impugned order states:

The charges leveled against the appellant stand proved but at the same time, I have come to the conclusion that awarding punishment of dismissal from service does not seem to be palatable to the gravity of guilt he deserves a second chance.”⁸

While this conclusion may reflect a compassionate approach, the application of the *principle of proportionality* cannot rest on bare assertions or subjective impressions. Rather, it is a structured principle that demands cogent reasoning and a transparent, systematic evaluation of the nature, gravity, and context of the established misconduct, assessed against the penalty imposed.⁹ In the absence of a clear, structured, and transparent justification, the Tribunal cannot simply conclude that a penalty is excessive based

⁶ G Huscroft, B Miller and G Webber (eds), Proportionality and the Rule of Law (Cambridge University Press 2014).

⁷ Anne Wallace and Jane Goodman-Delahunty, ‘Measuring Trust and Confidence in Courts’ (2021) 12(3) International Journal for Court Administration.

⁸ Impugned order, paragraph 3.

⁹ *Sakhib Zar v. Messrs K Electric Limited* 2024 SCMR 1722.

on personal belief or an undefined sense of fairness. Instead, the Tribunal was duty-bound to evaluate how the penalty served the public interest in safeguarding judicial integrity, and whether it maintained a proportionate balance with the individual's rights. In this case, where the respondent's misconduct involved accepting substantial sums through multiple cheques in exchange for illegal favours, a fact support by credible evidence and unconvincingly rebutted by the respondent, the public interest in accountability is overriding. The respondent's defense that the payments were merely loans is unsupported by evidence and contradicted by his own admissions during the personal hearing. When assessed through the lens of the structured *proportionality* framework, the Tribunal's order does not withstand scrutiny. We, therefore, find that the Tribunal's decision to substitute the major penalty of dismissal with forfeiture of two years of service fails the *proportionality* test.

11. Accordingly, we set aside the impugned order passed by the Tribunal. The major penalty of dismissal from service, imposed by the competent authority *vide* order dated 17.10.2018, is hereby restored. Resultantly, this petition is converted into an appeal and allowed.

Judge

Islamabad,
07th May, 2025.

Approved for reporting
Iqbal

Judge