

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mrs. Justice Ayesha A. Malik
Mr. Justice Irfan Saadat Khan

**Civil Appeal No.2384 OF 2016 and
C.M.A.3858/2016 in C.A.2384/2016
and Civil Appeal No.2385 OF 2016 and
C.M.A.3859/2016 in C.A.2385/2016**

Against the judgment dated 21.03.2016 &
24.3.2016 passed by Federal Service Tribunal
Islamabad (Karachi Bench) in Appeal No.27 (K)
CS & 44 (K) CS/2011.

Postmaster General Balochistan

(In both cases)
...Appellant

Versus

Amanat Ali and others
Muhammad Azam and others

(In CA.2384/16)
(In CA.2385/16)
...Respondents

For the Appellant:

Ch. Aamir Rehman Addl. AGP
(In both cases) along with
Mr. Hamid-ul-Haseeb, AD (Legal

For Respondent No.1:

Mr. Zulfiqar Ahmed Bhutta, ASC
(In both cases)
a/w Amanat Ali & Muhammad Azam

Date of Hearing:

17.04.2024

JUDGMENT

Muhammad Ali Mazhar, J.- The Civil Appeals with leave of the Court are directed against the judgments dated 21.03.2016 and 24.03.2016 passed by the Federal Service Tribunal, Islamabad (Karachi Bench), in Appeal No. 27(K)CS and 44(K)CS/2011.

2. The short-lived facts of the case are that a huge fraud of Rs.11,49,43,900/- was detected at Dhadar Post Office. The respondent, Amanat Ali, in CA.No.2384/16 was issued a show cause notice on the ground that while he was working as Treasurer in Sibi GPO, he remitted heavy cash and supplied it without approval of the Senior Postmaster, Sibi GPO, as treasurer and facilitated the misappropriation of this huge amount by Mushtaq Hussain, Gulab Khan, and Muhammad Tariq, the Ex-Postmasters of Dhadar Post.

Hence, he was found guilty of corruption under Section 3 (c) of Removal from Service (Special Powers) Ordinance, 2000. It was further alleged that he failed to perform his official duties, as prescribed under the rules. It was the duty of the Treasurer to bring each and every matter relating to the Treasury to his Incharge Senior Postmaster but in certain cases, he supplied cash without the approval of the Senior Postmaster and also failed to obtain the signature of the Postmasters in the treasury cash book on certain dates, in token of having received cash by them. The respondent submitted a reply to the charge sheet and denied the charges. After inquiry, the major penalty of dismissal from service was imposed upon him and thereafter, he preferred departmental appeal which was rejected, hence an appeal was filed before the Tribunal. While Muhammad Azam, respondent in CA.No.2385/16 was also issued a show cause notice on the allegations that he was a Junior Accountant, Sibi GPO, from 01.05.2002 to 31.01.2004 and during this period Mushtaq Hussain, Gulab Khan and Muhammad Tariq, Ex-officiating Postmaster, Dhadar Post Office, misappropriated the Government money by alteration/pre-fixing figures in treasury vouchers sent to Sibi GPO which was pointed out in the past work verification carried out by the past work verification team. However, he did not point out suspicious treasury vouchers received in his office from Dhadar Post Office and joined hands with them and facilitated a huge fraud at Dhadar Post Office with preplanned collaboration, thus he was also found guilty of corruption under Rule 3(c)(i) of Government Servants (Efficiency and Discipline) Rules, 1973. It was further alleged against him that he remained Junior Accountant, Sibi GPO, from 01.05.2002 to 31.01.2004 and 01.06.2004 to 31.08.2005, and during this period, a heavy cash remittance was made to Dhadar and Sunni Post Offices from Sibi GPO, in violation of the rules. He submitted his reply and denied the allegations but after inquiry, he was also dismissed from service along with the order to make payment of misappropriated amount. Being aggrieved, he preferred departmental representation which was not responded; hence, he also filed an appeal before the service Tribunal. *Vide* impugned judgments, the learned Tribunal reinstated both the respondents and their major penalty of dismissal from service was converted into reduction in time scale by two stages for a period of two years in terms of Rule 4(1)(b)(i) of the Government Servants (Efficiency & Discipline) Rules, 1973.

3. On 28.10.2016, leave to appeal was granted by this Court in the following terms: -

"It is, inter alia, contended by the learned Deputy Attorney General that serious allegation of defalcation/embezzlement was made against the respondents. Inasmuch as in the enquiry, they were found guilty and even the learned Service Tribunal by means of the impugned judgment did not disagree with the enquiry report but only reduced the penalty of the respondents for which there is no justification.

2. Having considered the submission of the learned Deputy Attorney General and perusing the record of the case, we are of the view that the said submission requires consideration. Leave to appeal is, therefore, granted.

3. C.M.As.No.3858 & 3859 of 2016. Notice. In the meantime, operation of the impugned judgments shall remain suspended."

4. The Learned Additional Attorney General for Pakistan argued that the respondent, Amanat Ali (C.A.2384/2016), remitted heavy cash to Dhadar Post office without any written orders. He further contended that the respondent not only failed to point out any remittance of such heavy cash directly from Sibi GPO instead of through treasury District Bolan as required under Article 95 of IAC Volume-I, but also failed to check or detect altered/tempered ACG-13 vouchers, concealed the fraud and never raised any objection about remittances being made in millions to the Treasury Office, Dhadar. He also failed to reconcile the figures of the verified CTRs with those in the office of the Director of Accounts, Pakistan Post, Lahore, in violation of Article 80 of IAC Vol-1. It was further contended that it is clearly manifesting from the enquiry report that the allegations against the respondent were established. So far as the case of respondent Muhammad Azam (C.A. 2385 of 2016) is concerned, the learned Additional Attorney General argued that according to Appendix-27 of PO Manual Vol-IV, it was the duty of the respondent to examine the treasury vouchers minutely and submit the monthly CTR statement to the Senior Postmaster but he failed to perform his duty. He further argued that the respondent, as a Junior Accountant, concealed the fraud and never raised any objection about the remittances which were made in millions to the Treasury Office, Dhadar, hence he violated Article 97 (D) of IAC Vol-1, under which it was clearly prescribed that the monthly statement of CTRS be dispatched under registered cover, which he failed to do, and which is a violation of Article 80 of IAC Vol-I. It was further averred that all the allegations levelled against both the respondents were proved in the inquiry without any shadow of doubt and the competent authority

rightly imposed the punishments but the learned Federal Tribunal ignored the material facts that the order of dismissal was passed by the competent authority after considering all materials in accordance with law, and allowed the appeals. It was further contended that no lawful justification was shown in the impugned judgments as to why, despite proving the guilt of the respondents during enquiry, the order passed by the competent authority was not maintained and without considering the inquiry proceedings and the inquiry report, the learned Tribunal held that no evidence was brought on record to substantiate the involvement in the embezzlement and fraud but only inefficiency and negligence was established.

5. The learned counsel for the respondents in both appeals argued that no proper inquiry was conducted nor any evidence was produced. It was further contended that the required documents were not provided to the respondents for defending the charges. It was additionally contended that the charge sheets were also defective. It was also contended that the learned Tribunal, after taking into account all the facts and circumstances, considered it to be, at best, a case of inefficiency and negligence and rightly held that the punishments are too harsh, therefore, after reinstating in service, modified the penalty of dismissal from service into reduction in time scale by two stages for a period of two years.

6. Heard the arguments. We have gone through the inquiry report which shows that proper opportunity was afforded the respondents to defend the charges. The allegations were mostly based on documentary evidence and the performance of duties by the respondents in accordance with the relevant rules and circulars encompassing their nature of duties. The findings and recommendations jotted down in the enquiry reports were properly considered by the competent authority with the proper application of mind and since the charges were found to be proved, the punishment was imposed in accordance with law, keeping in mind all attending circumstances, including the gravity and severity of the proven charges. The learned Tribunal while converting the major punishment into minor punishment failed to evaluate both the inquiry reports wherein the allegations were proved, but without appreciating the reports, the learned Tribunal treated the cases of both the respondents in the appeal as a mere case of inefficiency

and negligence which was without any rationale. It also failed to highlight any serious defect in the inquiry reports or procedure which became the cause of modifying or setting aside the original punishment awarded by the competent authority.

7. Indubitably, Section 5 of the Service Tribunal Act, 1973, empowers the Tribunal to confirm, set aside, vary or modify the order appealed against and for the purpose of deciding any appeal, the Tribunal shall be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents; and (c) issuing Commission for the examination of witnesses and documents. The law authorizes the Tribunal to make a decision on the question of penalty awarded to a civil servant by the departmental authority and may substitute the quantum of punishment in an appropriate manner in a suitable case within the statutory command but it must follow the limitations and restrictions of law in its exercise of discretion in a manner which may not offend the spirit of law. The philosophy of punishment is based on the concept of retribution, which may be either through the method of deterrence or reformation. The purpose of deterrent punishment is not only to maintain balance with the gravity of the wrong done by a person, but also to make an example for others as a preventive measure for reformation of the society, whereas the concept of minor punishment in the law is to make an attempt to reform the individual wrongdoer. The award of appropriate punishment under the law is primarily the function of the concerned administrative authority and the role of the Tribunal/Court is secondary. The Court ordinarily would not substitute its own finding with that of the said authority unless the latter's opinion is unreasonable or is based on irrelevant or extraneous considerations or is against the law declared [Ref: Postmaster General Sindh Province, Karachi versus Syed Farhan (2022 SCMR 1154), Government of Khyber Pakhtunkhwa versus Nargis Jamal (2022 SCMR 2114) and Divisional Superintendent, Postal Services, D.G. Khan Vs. Nadeem Raza (2023 SCMR 803)].

8. In our view, where public money and its embezzlement is involved or at stake, the responsible persons cannot be let free or exonerated with only a minor penalty, so while converting the major penalty of removal from service into any minor penalty, it is an onerous obligation of the learned Service Tribunal to exercise its jurisdiction of conversion of punishment with proper application of mind which obviously connotes and necessitates that the quantum of punishment be proportionate and complementary to the charge of misconduct even for a minor act of negligence and inefficiency committed by the delinquent in his duties; so the punishment, even in the minor category as well, should also be of such kind that it may create at least some deterrence for the delinquent and other employees to be more vigilant and attentive to their duties in the future, rather than performing the tasks with callous attitude which is highly prejudicial and detrimental to the effective functioning and performance of the department.

9. Both the Civil Appeals were fixed for hearing on 17.04.2024 and for reasons to be recorded later, these were allowed and as a consequence thereof, the impugned judgments passed by the learned Federal Service Tribunal, Islamabad, dated 21.03.2016 and 24.03.2016 were set aside and the penalty awarded by the department to the respondent No.1 (in both Appeals) was restored. Above are the reasons assigned in support of our short order.

Judge

Judge

Judge

Islamabad
17.4.2024
Khalid
Approved for reporting