

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Aqeel Ahmed Abbasi

Civil Petition No.516-K of 2022

[Against the Judgment dated 09.02.2022 passed by Federal Service Tribunal
Islamabad (Karachi Bench) in Appeal No.75(K)(CS)2020]

Mumtaz Uddin Shaikh

...Petitioner(s)

Versus

***Chief Post Master GPO Hyderabad &
Others.***

...Respondent(s)

For the Petitioner(s) : In-person

For Respondent No. 1-2 : Asif Sahito,
Assistant Superintendent
GPO Hyderabad

Date of Hearing : 19.07.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through this petition,
the petitioner has assailed the Judgment dated 09.02.2022 (**“the
impugned judgment”**), passed by Federal Service Tribunal
Islamabad (Karachi Bench) (**“FST”**) whereby Appeal
No.75(K)(CS)2020 filed by him has been dismissed.

2. Facts in brief are that petitioner was appointed as a
Clerk on 01.01.1990 in the General Post Office (GPO), Hyderabad.
He was suspended vide order dated 08.09.2006 on the grounds of
inefficiency, misconduct, and corruption. A show cause notice
dated 27.02.2007 pertaining to misappropriation of Rs. 565,730/-
was served on the petitioner, in response to which, petitioner

vehemently denied the allegations. Being dissatisfied with the explanation, an inquiry was ordered to be conducted wherein the petitioner was directed to appear in person *vide* order dated 14.03.2007. Based on inquiry report, major penalty of dismissal from service under Removal from Government Service Ordinance (RSO), 2000 on the charges of misappropriation of government money in military pension payment of Rs.820,876/- was imposed upon him *vide* order dated 20.03.2007. Petitioner challenged this order by preferring Departmental Appeal on 02.04.2007, which was rejected *vide* order dated 10.08.2007. Being aggrieved, the petitioner approached FST by filing Service Appeal No. 1372(R)(CS) of 2009 which was dismissed *in limine* as hopelessly being barred by time *vide* judgment dated 16.06.2010.

After dismissal from service, the department referred the matter to the FIA, Hyderabad for lodging of FIR against the petitioner which was accordingly registered (FIR No. 08 of 2012) under sections 409, 468, and 471 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947. The criminal case pursuant to said FIR was tried by the Special Court of Anti-Corruption (Central), Hyderabad and after a full-fledged trial the petitioner was acquitted of the charges *vide* judgment dated 16.12.2019.

Upon acquittal, the petitioner preferred three departmental appeals on 23.01.2020, 21.02.2020 and 03.03.2020 respectively, for reinstatement into service with all back benefits, which remained un-responded, therefore, petitioner approached Federal Service Tribunal (Karachi Bench) by filing Appeal No.75(K)(CS) 2020, which was also dismissed *vide* impugned judgment. Hence, this petition.

3. The petitioner submits that since he has been acquitted of all the charges levelled against him in the criminal case and that the acquittal serves as a complete exoneration clearing him of all charges of misconduct and misappropriation therefore he may be reinstated in service.

4. We have heard the petitioner and perused the material available on record.

5. The argument of the petitioner that he has been acquitted from the criminal case therefore he should be reinstated into service is not tenable in eye of law. The petitioner's acquittal does not automatically eliminate any departmental liability, as criminal and departmental proceedings are distinct and operate independently as ruled in the case of Dawood Ali v. Superintendent of Police and others¹, wherein it was held that:-

“The departmental penalty was imposed on the petitioner, not on account of criminal proceedings but, as a consequence of departmental inquiry having been conducted in which the petitioner was found guilty of the charge. It is now well-settled that the departmental and criminal proceedings can be taken simultaneously and independently of each other.”

6. Criminal proceedings address allegations of criminal conduct and determine legal culpability, while departmental proceedings are connected with matters of service discipline and conduct. Thus, the results of a criminal case do not necessarily impact issues related to departmental responsibilities and discipline.

7. This controversy has been resolved by this Court in various cases, reference may be made to the case of Khaliq Dad v. Inspector General of Police and others,² wherein it was held that:-

“4. After having gone through the entire record and perusing the judgment impugned we are not at all

¹ [2005 SCMR 948]

² [2004 SCMR 192]

impressed by the above mentioned contentions which appear to be meritless and fallacious. The initiation of disciplinary action and criminal proceedings are not inter-dependent which could have been initiated simultaneously and brought to their logical end separately with different conclusions. The acquittal in a criminal case would have no bearing on disciplinary action which was initiated on account of inefficiency and grave misconduct by invoking the provisions as contemplated in rule 3(a) and (b) of the Punjab Police (E&D) Rules, 1975. The learned Advocate Supreme Court when asked as to whether the petitioner could have been absolved from charges of "misconduct and inefficiency" as a result of acquittal in the criminal case, no satisfactory answer could be given. This is well-entrenched legal position that criminal proceeding does not constitute a bar for initiation of disciplinary proceedings under the relevant (E&D) Rules...

(Emphasis supplied)

Moreover, in the case of Muhammad Ashraf Khan v. Director

Food, Punjab Lahore and another,³ it was ruled that:-

"5. ... It is well-settled by now that "objects of prosecution on criminal charge and departmental proceedings are entirely different; one relates to the enforcement of criminal liability and the other is concerned with service discipline. Acquittal on criminal charge had no bearing on disciplinary proceedings. This Court in the case of, Inspector-General of Police Punjab, Lahore and others v. Muhammad Tariq 2001 SCMR 789 has held that acquittal in criminal case is no bar for imposing any penalty in departmental proceedings under Government Servants (Efficiency and Discipline) Rules, 1973."

8. Above view is also fortified by this court in various decisions reference may be made to the case of Dr. Sohail Hassan Khan v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others,⁴ wherein it has been ruled that:-

"3. It is by now well settled that a civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer..."

³ [2004 SCMR 1472]

⁴ [2020 SCMR 1708]

9. Similarly, this view has been reaffirmed in the case of The District Police Officer, Mianwali and others v. Amir Abdul Majid,⁵

wherein it has been held that:-

“3. It is by now well settled that a civil servant facing expulsive proceedings on departmental side on account of his indictment on criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires an higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances whereunder he had succeeded to vindicate his position. Reference may be made to the cases of Dr. Sohail Hassan Khan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), Liaqat Ali v. Government of N.W.F.P. through Secretary Health, Peshawar and others (2011 PLC(C.S.) 990), Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695), Government of Pakistan through Secretary Ministry of Finance and others v. Asif Ali and others (2007 PLC (C.S.) 271), Superintendent of Police, D.I. Khan and others v. Ihsanullah (2007 SCMR 562), Sami Ullah v. Inspector-General of Police and others (2006 SCMR 554), Ractor Comsats v. Ghulam Umar Kazi (2006 SCMR 1894), Executive Engineer and others v. Zahid Sharif (2005 SCMR 824), Khaliq Dad v. Inspector-General of Police and 2 others (2004 SCMR 192), Arif Ghafoor v. Managing Director, H.M.C., Texila and others (PLD 2002 SC 13), Mir Nawaz Khan v. Federal Government through Secretary, Ministry of Finance, Islamabad and 2 others (1996 SCMR 315), Talib Hussain v. Anar Gul Khan and 4 others (1993 SCMR 2177), Mud Izharul Ahsan Qureshi v. Messrs P.I.A.C. (1994 SCMR 1608), Muhammad Nazir v. The Superintendent of Police, Toba Tek Singh and others (1990 SCMR 1556) Muhammad Tufail v. Assistant Commissioner/Collector (1989 SCMR 316), Muhammad Saleem v. Superintendent of Police, Sialkot and another (PLD 1992 SC369), Muhammad Ayub v. The Chairman, Electricity Board, WAPDA, Peshawar and another (PLD 1987 SC 195), The Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan (PLD 1985 SC 134) and Begum Shams-un-Nisa v. Said Akbar Abbasi and another (PLD 1982 SC 413). However, while reaffirming the declaration of law referred to above, nonetheless, after

⁵ [2021 SCMR 420]

hearing the learned Additional Advocate General and examining the record, having regard to the peculiarity of circumstances, we do not feel persuaded to non-suit the respondent, present in person, merely on account of flawed handling of his plea by the Tribunal.”

10. The decision of disciplinary proceedings would have no bearing to the decision of criminal case or *vice versa*. In Muhammad Iqbal v. District Police Officer, Sahiwal and another,⁶ it has been held as follows:-

“8. This Court has already laid down in the case of Arif Ghafoor, that disciplinary proceedings and criminal proceedings are quite distinct to each other having altogether different characteristics and there is nothing common between the adjudicative forums by whom separate prescribed procedure and mechanism is followed for adjudication and both the forums have their own domain of jurisdiction. The decision of one forum would have no bearing on the decision of other forum in any manner whatsoever. In the said background, it would be a misconceived notion to consider the acquittal in a criminal trial as an embargo against disciplinary proceedings”.

(Emphasis supplied)

Thus, there is no cavil to the proposition that departmental proceedings and criminal proceedings operate independently and are not mutually exclusive. Departmental proceedings are governed by distinct laws, procedures, and evidentiary standards, which differ from those in criminal cases. Because of these differences, a criminal acquittal does not automatically influence the results of departmental proceedings provided that all legal and procedural requirements have been duly complied with.⁷

11. In the case at hand, petitioner during service misappropriated a huge amount and after conducting an inquiry and following all legal and procedural requirements he was dismissed from service. Record further reveals that based on the inquiry report, available evidence, and self-admission of the petitioner that specified amount was misappropriated, department directed the petitioner to credit the misappropriated amount, in

⁶ (2011 SCMR 534) paragraph No.8

⁷ Province of Punjab v. Khadim Hussain Abbasi (2021 SCMR 1419)

lieu thereof, petitioner deposited Rs.228,206/- under head of unclassified receipt. However, petitioner failed to deposit remaining amount therefore the department was bound under the rules to report the matter to the Law Enforcement agency for the purpose of lodging FIR which was accordingly registered.

12. The fact that petitioner was acquitted of the criminal charges does not absolve him of the penalty imposed under disciplinary proceedings because standard of proof in criminal case i.e. to prove guilt of accused beyond any shadow of reasonable doubt, is entirely different and more stringent and difficult to prove than the standard of proof in disciplinary proceedings i.e. Balance of probabilities or preponderance of evidence. In this regard reference may be made to the case of Usman Ghani v. The Chief Post Master, GPO Karachi and other⁸, wherein it has been held that:-

“9. The standard of proof looked-for in a departmental inquiry deviates from the standard of proof required in a criminal trial. In the departmental inquiry conducted on the charges of misconduct, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not a "proof beyond reasonable doubt", which strict proof is required in criminal trial. The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and delinquent civil servant should be provided 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 just conclusion before confirming, reducing or setting aside the penalty.”

[Emphasis Added]

13. The service appeal of the petitioner was also dismissed on the point of limitation. Suffice is to state that appeal of petitioner was hit by principle of "*delay or laches*", which is based on maxim "*Vigilantibus non dormientibus jura subveniunt*" which

⁸ [2022 SCMR 745]

means the law aids and assists those who are vigilant but not those who are sleeping over their rights. Delay in invoking a lawful remedy by a person or entity that was sleeping over their rights may be denied. Under Section 3 of the Limitation Act, 1908 it is the inherent duty of the Court to delve into the question of limitation, regardless of whether it is raised or not.

14. It is a well settled principle of law that Question of *laches* in invoking any right is always considered in the light of the conduct of the person. In the case at hand, record reveals that petitioner has always demonstrated a lack of seriousness in pursuing his rights. This is evident from the fact that petitioner was dismissed from service on 20.03.2007, however, he preferred service appeal after a delay of 2 years in 2009. Thereafter, he did not avail remedy of appeal rather kept sleeping over his rights. When confronted that why his service appeal before the Service Tribunal was barred by time, the petitioner responded that since FIR in the same case was registered therefore he had apprehension of being arrested. However, this response wholly contradicts the available record. Moreover, petitioner's service appeal after his acquittal in the criminal case was also barred by time and he failed to justify such delay. Thus, conduct of petitioner throughout proceedings has been questionable, therefore, learned Service Tribunal was correct in dismissing his appeal on both grounds of limitation as well as merits.

15. In view thereof, we find that impugned judgment is well-reasoned and has considered all the legal and factual aspects of the matter. The petitioner has failed to make out a case warranting any interference.

16. Consequently, this petition, being devoid of merit, is dismissed and leave refused.

17. Above are the reasons of our short order pronounced on even date.

Judge

Judge

Karachi,

19th July, 2024

APPROVED FOR REPORTING

*Paras Zafar, LC**