

24/23

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Yahya Afridi
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Athar Minallah

D.J-AFR
Civil Petitions No. 3041 and 3105 of 2020

(Against the judgment dated 30.09.2020 of the Punjab Service Tribunal, Lahore passed in Appeals No. 2340 and 2341 of 2020)

Manzar Abbas
Farhan Nazar

(in CP 3041 of 2020)
(in CP 3105 of 2020)

...Petitioners

Versus

District Police Officer, Sargodha, etc.

(in both cases)

...Respondents

For the Petitioner:

Mr. Muhammad Shoaib Shaheen, ASC
with both petitioners
(in both cases)

For the Respondents:

Barrister Muhammad Mumtaz Ali,
Additional A.G. Punjab with Rauf Ahmad
DSP
(in both cases)

Date of Hearing:

15.06.2023

ORDER

Yahya Afridi, J.- Through this common order, we shall dispose of Civil Petitions No. 3041 and 3105 of 2020, which emanate from a single judgment dated 23.09.2020 passed by the Punjab Service Tribunal, Lahore in Service Appeals No. 2340 and 2341 of 2020.

2. The present petitions at hand arise out of a complaint filed by Abdul Khaliq, which led to both, initiation of a criminal and

departmental disciplinary proceeding against the petitioners, Manzar Abbas, ASI (CPLA No. 3041/2020) and Farhan Nazar, Driver Constable (CPLA No. 3105/2020). The complainant, Abdul Khaliq, had alleged that whilst travelling in his motorcar from Peshawar to Lahore on the motorway, he was intercepted near Marth Kanda, within the jurisdiction of Police Station Neela, District Chakwal, by a private car. The petitioner, Farhan Nazar, on searching Abdul Khaliq's car, confiscated a sum of Rs. 200,000/- from the dashboard of the motorcar of the complainant, Abdul Khaliq, who reported the incident to the Motorway Police, leading to a case registered against the petitioners under sections 382 and 341 of the Pakistan Penal Code 1860, and articles 155(c) and 156(c) of the Police Order 2002. Resultantly, the police located the private vehicle of the petitioners and the Rs. 200,000/- taken from the complainant Abdul Raziq was returned to him. After facing trial, the petitioners were acquitted under section 249-A of the Code of Criminal Procedure 1898. However, in the disciplinary proceedings the petitioners were charge-sheeted for travelling to Islamabad in a private car without appropriate permission, abusing their official position for the purpose of extortion, tarnishing the reputation of the Police Department, and fabricating information to conceal their misconduct. Following a suspension and subsequent inquiry, the petitioners were found guilty and dismissed from service under the provisions of Punjab Police (E&D) Rules 1975. Despite departmental appeals, the Punjab Service Tribunal upheld the dismissal, order of the petitioners.

3. The petitioners presently seek leave of this Court under Article 212(3) of the Constitution of the Islamic Republic of Pakistan 1973 to appeal against the decision of the Punjab Service Tribunal.

4. The main thrust of the learned counsel for the petitioners was that acquittal in the criminal case precludes departmental/disciplinary proceedings on the same charges. We are afraid, the case of **Muhammad Iqbal vs. District Police Officer, Sahiwal and another (2011 SCMR 534)** does not support the stance of the learned counsel for the petitioners. It was held that acquittal in a criminal trial does not serve as an embargo against disciplinary proceedings, and that departmental and criminal proceedings may proceed concurrently, and the result of one does not impinge upon the other. Nonetheless, an acquittal in a criminal case may be considered during disciplinary proceedings but cannot be the sole determining factor in deciding the fate of the disciplinary proceedings.

5. On merits, we have noted that there is convincing material on the record that on 25.05.2019, the petitioners (whilst in police uniform) were travelling on Islamabad-Sargodha Motorway in a private car (No. BBZ-6012 (Sindh)), without either informing or seeking permission from the appropriate authority—a fact they deny. The petitioners consistently assert that they were stopped by the Motorway Police near Kot Momin, District Sargodha. However, material indicates that their vehicle was intercepted by the Motorway Police within the territorial jurisdiction of Police Station Neela, District Chakwal, leading to their immediate arrest at the spot. They were subsequently handed over to the District Chakwal

Police. The information within case FIR No. 44 of 2019, under Sections 341 and 382 PPC, Section 155-C Police Order 2002 at Police Station Neela, along with the version presented by the District Chakwal Police, firmly refutes the stance taken by the petitioners. The petitioners' insistent claim—that the Motorway and Chakwal police were misled by the complainant—is belied by the material on the record. This is not only incongruent with the documented facts but is also in contradiction with their false account of the incident to DPO Sargodha. It is pertinent to note that the petitioners were arrested pursuant to the call of the complainant by the Motorway Police, indicating a premeditated and deliberate violation of procedure on their part.

6. The overall conduct of the petitioners, including unauthorized travel in police uniform and the subsequent abuse of their official position, paints a clear picture of gross misconduct. These actions are not only in violation of the trust placed in them by virtue of their positions but also signal a disregard for the laws and procedures they were entrusted to uphold. Such conduct necessitates a thorough examination and underscores the importance of maintaining integrity within the police force.

7. The gravity of these actions stands independently of the outcome of the criminal proceedings and is sufficient to justify disciplinary action. The principles of accountability and the rule of law must be upheld to preserve the sanctity of the legal system, and in this particular case, the evidence points unequivocally towards a breach of these principles by the petitioners. Therefore, a robust

response in the form of disciplinary action is not only justified but essential to deter similar conduct in the future.

8. For what has been discussed above, we find the present petitions to be bereft of merit, and above our reasons for our short order dated 15.6.2023, which read:

“By a majority of 2 to 1 (Sayyed Mazahar Ali Akbar Naqvi, J. dissenting), these petitions are dismissed and leave to appeal is refused.

2. The detailed reasons for this short order shall be recorded separately.”

Islamabad
15.6.2023
Not approved for report
Arif

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- I have had the privilege of going through the judgment authored by my learned brother Yahya Afridi, J. with which my learned brother Athar Minallah, J. has concurred. However, with respect, I do not agree with the majority judgment, for which I record my own opinion. The facts of the case have already been mentioned in paragraph 02 of the majority judgment, therefore, the same need not to be stated again.

2. The petitioners were proceeded against departmentally pursuant to a complaint lodged by one Abdul Khaliq wherein he alleged that on 25.05.2019, he was chased and intercepted by the petitioners in a private car bearing registration No. BBZ-612 (Sindh) GLI within the local area of District Chakwal while he was traveling on motorway and they forcibly took an amount of Rs.200,000/- from him. The second allegation against the petitioners was that on the said day, they went to Islamabad on the afore-noted car without obtaining permission/informing the senior officers. A criminal case to this extent was also registered against the petitioners, which ended in their acquittal. I have noted that from the day one, it was the stance of the petitioners that the complainant Abdul Khaliq and the witness Asghar Khan are narcotics smugglers. They also placed on record the details of two FIRs bearing Nos. (i) 191 dated 27.07.2006 at Police Station Attock Khurd, District Attock, and (ii) 441 dated 08.05.2015 at Police Station Sadiqabad, District Rawalpindi, both registered under Section 9-C of the Control of Narcotic Substances Act, 1997, against the said persons, which ultimately ended in their conviction. In their replies to the show cause notices, the petitioners also stated that both the complainant Abdul Khaliq and the other witness Asghar Khan used to smuggle narcotics as a gang and on 30.05.2019, a car was intercepted within the local limits of Police Station Bhera, District Sargodha, from the secret cavities of which 20 kilograms of charas was recovered. During the search of the car, a document was also found, which showed that the car belongs to witness Asghar Khan. A criminal case bearing No. 216 dated 31.05.2019 under Section 9-C of the Control of Narcotic Substances Act, 1997, was also registered in this regard. They also stated that two days

before the above-said occurrence, they captured a car from which narcotics was recovered. The driver of the said car succeeded to run away but the other person sitting in the car namely Khan Gul was arrested and a criminal case bearing FIR No. 167 dated 23.05.2019 under Section 9-C of the CNSA was got registered against him at Police Station Laksian, District Sargodha. They categorically took a stance that the smugglers remain in touch with each other to complete their nefarious design and the action taken by them was in the knowledge of other accomplices. The complainant Abdul Khaliq and witness Asghar were using motorway for their illegal activities, hence, they hatched a conspiracy and by deceiving the Police, they got cleared their way and dispatched the narcotics. Hence, they pleaded that they have not committed any misconduct and were involved in the above said incident by the narcotics dealers with *mala fide* intention.

3. On merits, I have noted that an Inquiry Officer i.e. DSP/SDPO Saddar Circle, Sargodha, was appointed by the competent authority for conducting a regular inquiry into the matter. The petitioners joined the inquiry proceedings, taken the same stance before the Inquiry Officer and also placed on record the relevant documentary evidence. However, neither the Inquiry Officer made an attempt to probe into the allegations leveled by the petitioners nor the complainant Abdul Khaliq and the witness Asghar were associated with the inquiry proceedings. When the petitioners had taken a specific stance, the Inquiry Officer ought to have collected evidence either to accept or rebut the defence evidence of the petitioners. Quite surprisingly no prosecution evidence was presented to the petitioners nor they were afforded any opportunity of cross-examination. A bare perusal of the inquiry report shows that the inquiry was conducted in the shape of questionnaire. There is no denial to this fact that the departmental authorities may not be obliged to strictly follow the procedure of law in the manner as is observed by judicial forums but still they are under legal obligation to observe general principles of law and act independently to ensure free and fair treatment. Dismissal from service is a stigma and financial and reputational loss apart from mental

torture, agony and distress are logical consequences. An employee/civil servant is not just an individual but his entire family is connected with him, whose needs depend on his job and the salary he earns. Throwing out a civil servant without following due process and fulfilling the requirements of justice & fair play and especially in a slipshod manner does not only affect him but his entire family. "When a civil servant is dismissed from service, it becomes difficult for him to be employed again owing to the fact that a dismissal from service on his record has the effect of either barring him from further employment or making it considerably more difficult for him to be employed again. Such blot on his service permanently marks the civil servant for the rest of his life and is only washed away when he dies." Reliance is placed on Habib Bank Limited Vs. Mehboob Rabbani (2023 SCMR 1189). I would like to refer to the case of Zahoor Ahmed Vs. Wapda (2001 SCMR 1566) wherein it was held that when an employee has to be removed on the basis of misconduct allegedly committed by him, he deserves fair opportunity to defend himself, for if on ground of misconduct he is dismissed from service then for all the times to come he would carry a stigma of misconduct with him. In the case of D.G. Emergency Rescue Service 1122 KPK Vs. Nizakat Ullah (2019 SCMR 640), this Court candidly held that where an employee is to be removed from service, which action obviously carries a stigma with it, he is entitled to due process which includes fair opportunity to defend himself, cross-examine the witness and produce evidence in his defence. Further, he must be confronted with the material on the basis of which he is going to be penalized. However, admittedly the same has not been done in the instant case and no reason whatsoever was given for doing so. So far as the second allegation against the petitioners that on 25.05.2019, they went to Islamabad on a private car without obtaining permission/informing the senior officers is concerned, I have noted that the same was categorically denied by the petitioners. They stated that on the said day, they went to Sial Mor Interchange early in the morning for checking the attendance of police personnel posted there and informed the same to the operator of concerned DPO. Similarly, they went to Kot Momin Interchange, Salim Interchange and Bhera Interchange for the said purpose and duly

informed the operator of DPO about the attendance of the police contingents posted there. In reply to a specific question by the Inquiry Officer as to whether even if they had checked the police pickets at the stated points they were not justified in going away from Bhera, the petitioners specifically stated that they were apprehended within the local limits of Bhera. To my surprise, the Inquiry Officer did not bother to collect evidence in this regard and he just denied their stance by saying that they could not give a satisfactory answer. Even if this allegation is believed to be true then the award of major penalty of dismissal from service was not warranted.

4. A criminal case bearing FIR No. 44 dated 28.05.2019 under Sections 155-C/156-C of Police Order, 2002 and Sections 382/341 PPC at Police Station Neela, District on the same charges had been registered against the petitioners but the same ended in their acquittal. Although in a number of judgments, this Court held that the outcome of the disciplinary proceedings is not dependent upon the outcome of criminal proceedings but still there persists a view that "where the criminal charges are not established before a competent court of law and the accused is acquitted on those specific charges, the departmental proceedings exactly on the same charges, would be wholly irrelevant and unjustified." Reliance is placed on Attaullah Sheikh Vs. Wapda (2001 PLC (CS) 316). In these circumstances, the Courts had to exercise more and more caution before awarding major penalty of dismissal from service to the petitioners.

5. Before parting with the order, I must say that it is an apathy to point out that the learned Service Tribunal has not taken into consideration with justiciable reasoning the afore-noted aspects of the matter and the conduct of the complainant and the witness who deposed against the petitioners before us. The petitioners have unblemished service record whereas there is no denial to this fact that they booked drug peddlers in criminal cases, who were eventually convicted by the courts. In this scenario, if a complaint was lodged, the same had to be gauged with utmost abandoned caution especially keeping in view the prevailing circumstances in this country. The dynamics of the discipline

and character of the society is at the verge of decline wherein the contribution made by the drug peddlers is very huge. They are well connected and they want to turn the things according to their own nefarious designs, which includes the winning of sympathies of superior officers of the disciplined forces. In such like circumstances, it is incumbent upon the courts to evaluate the totality of the facts as a joint venture to arrive at a just conclusion otherwise the leverage already taken by such evils of the society might infiltrate to ruin the whole fabric of the society any moment. This is an alarming situation, which has to be curbed with iron hands and such like people should not be allowed to fulfill their dreams of immoral motivation under the contours of justice.

6. For what has been discussed above, I convert these petitions into appeals, allow them and set aside the impugned judgment.

JUDGE

Approved For Reporting