

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Civil Petition No. 281-K/2022

Against the judgment dated 17.12.2021
passed by Federal Service Tribunal, Islamabad
(Karachi Bench) in Appeal No.151(K)CS/2020

The Director General, Intelligence BureauPetitioners
Government of Pakistan & others

Versus

Babar Ali Solangi ...Respondent

For the Petitioner(s): Mr. Khaleeq Ahmed, DAG
Mr. Ghulam Hussain, Inspector, I.B.

For the Respondent: Syed Shoa-un-Nabi, ASC
along with Respondent

Date of Hearing: 15.10.2024

JUDGMENT

Muhammad Ali Mazhar, J.- This Civil Petition for leave to appeal has been brought to challenge the judgment dated 17.12.2021 passed by the Federal Service Tribunal, Islamabad (Karachi Bench), in Appeal No.151(K)CS/2020, whereby the service appeal of the respondent was allowed with directions to reinstate him in service.

2. The brief facts of the case are that the respondent being an employee of the Intelligence Bureau, was at the Balochistan Provincial Headquarter at Quetta. On 11.06.2016, one Imran Ali lodged FIR No.336 of 2016 at Police Station, Shahrah-e-Faisal, Karachi, alleging therein that the respondent kidnapped his sister, Sennia Kanwal. The respondent was arrested and the case was sent to the learned District Judge, Karachi East. At the departmental level, the respondent was suspended, a charge sheet was issued on 30.06.2016, and a major penalty of removal from service was imposed upon him. The respondent preferred departmental appeal on 11.07.2017 requesting to set aside the order of his removal and

to keep the representation/appeal pending till the decision of his criminal case. In the criminal trial of the case, *vide* judgment dated 24.12.2019, the respondent was convicted and was sentenced to life imprisonment. Against the said conviction, the respondent filed Criminal Appeal No.76/2020 before the High Court of Sindh, Karachi. During the pendency of appeal before the Tribunal, the High Court, by means of compromise between the parties, acquitted the respondent of the charges arising out of the criminal case No.1708/2016 & 1709/2016 (FIR No.364/2016 & 336/2016). As far as his removal from service was concerned, the respondent filed an appeal under Section 4 of the Federal Service Tribunals Act, 1973, before the learned Federal Service Tribunal which was allowed *vide* impugned judgment.

3. The learned Deputy Attorney General, assisted by Mr. Ghulam Hussain, Inspector, Intelligence Bureau, Karachi ("I.B."), argued that the learned Tribunal has failed to consider that all the allegations were specifically mentioned in the Charge Sheet and no further statement of allegation was required. It was further argued that in the presence of the material available on record and the investigation conducted by the Police, no regular inquiry was necessary for awarding a major penalty of removal from service. He further contended that the respondent was acquitted on the basis of compromise and not on the basis of a fair acquittal. Thus, he cannot claim reinstatement in a disciplined force. It was further avowed that disciplinary and criminal proceedings are quite distinct, and can proceed simultaneously and independently.

4. The learned counsel for the respondent argued that when the show cause notice was issued, the respondent was incarcerated. Hence, he was not in a position to submit his reply. He further argued that the inquiry was conducted *ex parte*, and he reiterated that even at the time of *ex parte* inquiry the respondent was incarcerated, making it impossible for him to attend and participate in the inquiry proceedings to defend himself against the charges in the departmental proceedings, despite his acquittal in the criminal cases.

5. Heard the arguments. There is no doubt that that the impugned judgment of the Tribunal gives the impression that the respondent was accorded fair acquittal in appeal rather, he was acquitted by way of compromise after his conviction of life imprisonment with further directions to pay compensation to the legal heirs of the deceased was

recorded by the Trial Court. There are certain other observations also available in the judgment of the Trial Court regarding the recovery of the body and other evidence presented, which formed the basis for the conviction but we do not want to delve into the merits in order to avoid any prejudice to the respondent in the disciplinary proceeding. However, it was a ground reality that the inquiry was conducted *ex parte* and the respondent was behind bars, so he could not even tender a reply to the show cause notice. We are aware that the criminal trial and the disciplinary proceedings can be distinguished from one another, and it is the prerogative of the employer to conduct the disciplinary proceedings despite acquittal. The learned Deputy Attorney General rightly argued that the I.B. is a disciplinary force and if any of their employees are involved in a criminal case it is their right to conduct an inquiry to reach a logical conclusion on whether the employee was actually involved in the crime, ensuring no stigma on the employees of a disciplinary force and maintain public confidence.

6. Without a doubt, the I.B. could hold a departmental inquiry against the respondent on the charges of misconduct, but what is essential to ensure is the due process of law and application of the universal norms of natural justice. In a departmental inquiry, the standard of proof for establishing guilt/misconduct must be based on the balance of probabilities or the preponderance of evidence, rather than the “beyond any reasonable doubt” standard required in criminal cases in which the respondent was indicted and convicted but later acquitted due to a compromise and compounding of the offences on appeal. In the case of Faraz Naveed Vs. District Police Officer Gujrat (2022 SCMR 1770), authored by one of us, it was held that the prosecution in criminal cases and departmental inquiries on the same allegations can proceed concurrently at both venues without having any overriding or overlapping effect. The objective of a criminal trial is to penalize offences committed by the accused while a departmental inquiry is inaugurated to enquire into the allegations of misconduct in order to preserve the discipline and decorum in the institution and ensuring efficiency of the department to strengthen and preserve public confidence. Departmental jurisdiction, moreover, allows assessment of the suitability of a civil servant, who is confronted with a charge through a fact-finding method; somewhat inquisitorial in nature, without the heavier procedural riders, as acquittal in a criminal case is not conclusive of the suitability of the employee for the concerned post. Therefore, any person who wants to be part of the

disciplined force should be a person of utmost integrity and uprightness with an unimpeachable and spotless character, with clean antecedents.

7. However, it is not disputed that not only at the time of issuing show cause notice but even at the time of the alleged inquiry, the respondent was incarcerated. Obviously, then, it was not within his control or domain to face and defend the charges of misconduct or his involvement in a criminal case as a free man. It is a most valuable and instinctive human right of every Under Trial Prisoner (UTP) and a convicted person to defend or challenge his indictment and conviction in accordance with the law. The right of proper defence is a vested right and not providing ample opportunity of defence is also against Article 10-A of the Constitution of the Islamic Republic of Pakistan. In court proceedings, either criminal or civil, an incarcerated person may defend the proceedings by appointing an advocate, and even through an attorney in civil cases, but in the departmental regular inquiry instituted on the charges of misconduct under the civil servant or labour laws, there is no provision, or any custom or practice, on the basis of which the accused employee may be represented through advocate or attorney. In fact, in order to answer and defend the allegations of misconduct, the personal appearance of the delinquent ought to be ensured and he should be afforded not only a right to adduce evidence and call witnesses to support his innocence, but he should also be given a fair opportunity to cross-examine the witnesses who deposed against him. What happened in this case? In the *ex parte* departmental proceedings, indeed, the inquiry officer predominantly believed the police reports and challan of criminal cases and conducted the inquiry when the respondent was behind bars and his request for deferring the inquiry proceedings till the outcome of the criminal case was not accommodated and a major penalty of removal from service was recommended and imposed.

8. It was not a case of discreet inquiry or fact-finding inquiry. It was a case of regular inquiry in which it was *de rigueur* for the inquiry officer to allow a fair and evenhanded opportunity to the respondent which could not be possible during his incarceration. Therefore, conducting an *ex parte* proceeding, knowing that the respondent is unable to defend the charges of misconduct was nothing but a sheer violation of due process and the principles of natural justice, thus, rendering the entire exercise ineffectual and inconsequential.

9. As a result of the above discussion, this Civil Petition is converted into an appeal and partly allowed. As a consequence thereof, the order of reinstatement with back benefits, passed by the learned Service Tribunal, shall be subject to the outcome of *de novo* inquiry and in this regard, we direct the competent authority of the petitioner's department to appoint an inquiry officer who should conduct an impartial regular inquiry, and during the inquiry proceedings, the respondent should be afforded ample opportunity of defence. The inquiry officer shall conduct and complete the regular inquiry within a period of three months from the receipt of this judgment. Thereafter, the competent authority shall pass a speaking order and communicate it to the respondent.

Judge

Judge

Karachi
15.10.2024
Arshad
Approved for reporting