IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Amin-ud-Din Khan
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Civil Petition No. 3109-L of 2016
Appeal against the judgment dated 03.06.2016 passed by the Punjab Service Tribunal, Lahore in Appeal No.2236/2015

Faisal Ali .....Petitioner

Versus

District Police Officer, Gujrat and another ...Respondents

For the Petitioner:	Ch. M. Lehrasib Khan Gondal, ASC
For the Respondents:	Baleegh-uz Zaman Ch. Addl. A.G. Punjab a/w Akhtar Ali Mehmood, DSC (Legal)
Date of Hearing:	23.09.2024

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition for leave to appeal is directed against the Judgment dated 03.06.2016 passed by the Punjab Service Tribunal, Lahore, in Appeal No.2236/2015, whereby the appeal filed by the petitioner was dismissed.

2. The transitory facts of the case are that on 27.10.2014, a show cause notice was issued to the petitioner by the Deputy Superintendent of Police, Legal-II, Gujrat, on the allegations that as per the report of the Moharir, Police Lines, Gujrat, he was found absent from duty *vide* DD Report No.37, dated 28.08.2014, without any leave or permission by the competent authority, and reported back *vide* DD Report No.10 dated 31.08.2014 after an absence of 2 days, 20 hours and 25 minutes, therefore, being a member of the disciplined force, the conduct of the

petitioner was found objectionable and warranted stern disciplinary action. Besides that, a further allegation was that the petitioner proved to be an inefficient, incompetent, and lethargic police official. Hence, he was also found guilty of inefficiency, misconduct, and corruption, and engaged in subversive activities and/or disclosure of official secrets, actions that constitute misconduct within the meaning of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006. The petitioner was called upon to submit a reply within 7 days and was also directed to inform, if he desires to be heard in the Orderly Room. On a similar allegation, another show cause notice was issued to the petitioner by Rai Ijaz Ahmad, PSP, District Police Officer, Gujrat, on 04.11.2014, in which also the petitioner was found guilty of a glaring case of misconduct, and *vide* Office Order dated 21.11.2014, the DPO dismissed the services of the petitioner on the ground that he was convicted in FIR No.206/11, lodged at Police Station, Saddar, Lalamusa, under Sections 324, 148, and 149 of the Pakistan Penal Code, 1860, and was awarded a punishment of 4 years rigorous imprisonment and was confined in the District Jail, Gujrat. Therefore, being a member of the disciplined force, the petitioner brought a bad name to the department which is an act of misconduct.

3. The learned counsel for the petitioner contended that the absence of the petitioner was neither intentional nor deliberate, but was due to unavoidable circumstances. According to him, the petitioner was arrested on 14.10.2014 and released on bail after about 2 months, but during his confinement, the departmental proceedings were concluded without providing any opportunity of hearing which is a clear violation of all norms of justice and the due process of law. He further argued that in the show cause notice, the allegation of absence without leave was raised, while the premise of the inquiry according to the dismissal order was different. He further argued that the petitioner was declared guilty on the basis of his conviction, which was set aside by the Appellate Court *vide* judgment dated 29.11.2014.

4. The learned Additional Advocate General, Punjab, contended that the petitioner was properly dealt with, departmentally, by the DPO, Gujrat, who issued him a charge sheet and a statement of allegations on 27.10.2014. He further argued that the DSP, Gujrat, was directed to hold a regular departmental enquiry into the matter, and after enquiry, he reported that the petitioner was convicted in FIR No.206/11, and

was confined in the District Jail since 14.10.2014. It was further argued that the enquiry officer recommended a disciplinary action, hence the petitioner was dismissed from service *vide* Office Order dated 21.11.2014, and upon filing the departmental appeal, the petitioner was called in the Orderly Room on 07.03.2015 and was heard at length, but his appeal was rejected *vide* Order dated 08.03.2015. It was further contended that acquittal in criminal case would not be an embargo against disciplinary proceedings.

5. Heard the arguments. The track record of the case shows that on 27.10.2014, a show cause notice was issued by the Deputy Superintendent of Police to the petitioner on the allegations of absence from duty, while on a similar allegation, one more show cause notice was issued to him on 04.11.2014 by the DPO. In the end, the petitioner was dismissed from service *vide* Office Order dated 21.11.2014 on the ground that he has been convicted in a criminal case and as a member of the disciplined force, his actions tarnished the reputation of the department. If we dwell into the impugned judgment of the learned Tribunal, it recapitulated the same show cause notice dated 27.10.2014, but the allegations reproduced in the impugned judgment pursuant to the same show cause are altogether different and poles apart. The show cause notice was said to have been issued on the conviction of the petitioner in a criminal case. It is quite attention-grabbing that the dismissal order brings to light that the DSP/IAD, Gujrat, was appointed as the enquiry officer for holding a regular departmental enquiry into the matter, who, after enquiry, reported that Faisal Ali, Constable No.3570, has been convicted and is now confined in the District Jail; therefore, the alleged enquiry officer, after the regular departmental enquiry, recommended severe disciplinary action, and in agreement to the recommendations, the petitioner was dismissed from service on the basis of *ex-parte* proceedings with immediate effect under the Punjab Police (Efficiency and Discipline) Rules, 1975. Though the department claims to have initiated disciplinary proceedings in accordance with law which culminated after the regular enquiry, but the ground reality is that the petitioner was never associated with the so-called regular inquiry.

6. It is somewhat difficult to assimilate, how the learned Tribunal reproduced the contents of the show cause notice and noted certain allegations in the judgment which were never expressed in the show

cause notice dated 27.10.2014. Indeed, it is a matter of record that in the show cause notice dated 27.10.2014, the allegation of absence from duty for 2 days, 20 hours and 25 minutes was raised, but based on the same show cause notice, the learned Tribunal reproduced some other allegations regarding the petitioner's conviction in a criminal case, which allegation is alien to the show cause notice, and no other show cause notice was presented by the parties that indicated any allegation of conviction in a criminal case or requested the petitioner to submit a reply. Even the holding of the enquiry was claimed to be a regular one, but it was actually conducted *ex-parte* without involving the petitioner or providing him any opportunity to defend. The crux of the impugned judgment is that the petitioner was awarded the major penalty of dismissal from service by the departmental authorities on the ground that he was convicted and fined. However, in appeal, the Appellate Court remanded the matter to the Trial Court *vide* judgment dated 29.11.2014, which means that he was not acquitted and the charges leveled against him were of serious nature. To substantiate the charges, a regular inquiry was held and the charges stood proved; therefore, his appeal before the learned Tribunal was dismissed. Now, according to the latest position, the petitioner, post remand, has been acquitted while being extended the benefit of doubt by the learned Additional Sessions Judge, Kharian, *vide* judgment dated 20.11.2019 in Criminal Appeal No.03/2019.

7. No doubt, the employer, on any allegation of misconduct, can hold a departmental inquiry/proceedings against the delinquent and even on some concrete grounds or reasons may dispense with the enquiry while recording reasons to do so and communicating the reasons to the accused person. The foremost step that triggers the enquiry is the show cause notice and statement of allegations sent to the accused person to respond for further proceedings and consideration. The departmental proceedings may be initiated on the basis of allegations contained in the show cause notice and not on the allegations which were never part of the show cause notice. The purpose of a show cause notice is to solicit a response explaining, with reasonable cause, why a specific action on a particular act of misconduct should not be taken against the employee. By and large, it is a well-defined and well-structured process designed to provide the alleged defaulter with a fair chance to respond to the allegations raised against him and explain

his position within a reasonable timeframe, ensuring that he is not taken by surprise upon the culmination of the proceedings or subjected to any adverse action based on allegations which were never presented to him or where he was not allowed any opportunity to respond and defend himself. Therefore, in all fairness, the departmental action on account of any misconduct should be confined to the allegations mentioned in the show cause notice/statement of allegations, and should not travel beyond its precinct because the accused of misconduct who is petitioner in this case was only liable to answer the allegations communicated to him in the show cause and had no supernatural knowledge to respond to the allegations not known to him. If this tendency or practice is appreciated and illegal departmental actions are reinforced or fortified by the Courts and Tribunal, then there will be a ludicrous state of affairs, and in a nutshell, the whole purpose of the provisions provided for disciplinary proceedings under the Civil Servants and Labour Laws will not only be redundant and superfluous, but will also be deemed to be a sham; a feigned and *mala fide* exercise of power to victimize and get rid of the employee, by hook or by crook, without the due process of law and without observing the universal norms of natural justice.

8. The benchmark of establishing innocence or guilt in the departmental proceedings initiated on account of some acts of misconduct under the relevant laws, meant for civil servants and workmen under Industrial Relations Laws, is not the same as required to be proved in a criminal trial. In departmental inquiries, the standard of proof is based on the balance of probabilities or preponderance of evidence and not a strict proof beyond any reasonable doubt. Let us also discuss the genre of inquiries to distinguish its primary purposefulness. The primary objective of conducting a discreet inquiry is to gather information without alerting the alleged delinquent, allowing for an understanding of whether the allegations lodged in a complaint or report of misconduct establish a prima facie case for proceeding with disciplinary action. Obviously, while forming such opinion on the basis of information and data collected during the course of the discreet inquiry, the accused does not need to be involved in his defence. Likewise, a fact-finding enquiry is more or less the same. The purpose of it is also to investigate, establish facts, and compile a report for the management so that disciplinary proceedings may be initiated if the competent authority chooses to do so

in accordance with law. The purpose of the fact-finding inquiry is not to declare the delinquent innocent or guilty, which is the function of the inquiry officer/inquiry committee, as the case may be. Whereas, a regular inquiry is triggered after issuing a show cause notice with a statement of allegations, and if the reply is not found suitable, then the inquiry officer is appointed and a regular inquiry is commenced (unless dispensed with for some reasons, in writing) in which it is obligatory for the inquiry officer to allow an evenhanded and fair opportunity to the accused to place his defense, and if any witness is examined against him then a fair opportunity should also be given to him to cross-examine the witnesses.

9. This is a unique case in which the allegation of misconduct was something entirely different, but the petitioner was dismissed on some other ground. Neither the department considered this crucial question, nor did the learned Tribunal advert to this lacuna or blunder. All the more so, the learned Tribunal sustained the dismissal order and declared it valid without focusing on the actual case. No doubt, the award of punishment is the dominion of the competent authority and the role of the Tribunal or Court is secondary unless the punishment imposed upon the delinquent employee is found to be unreasonable, disproportionate, or against the law. In order to appreciate the line of reasoning of awarding punishment *vis-à-vis* the act of misconduct, the learned Tribunal could consider the ground of proportionality and reasonableness of the quantum of punishment with proper application of mind. The acid test of judging unreasonableness of any departmental decision or action in the Civil Servant Laws and/or the Industrial Relations Laws is that the said decision or action is so unreasonable or irrational that no reasonable person could have arrived at it, whereas the sane criteria to judge proportionality is that the punishments imposed on any delinquent is unequivocally out of proportion or illogical to the act of misconduct alleged against the employee. The proportionality test, in some jurisdictions, is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved the correct balance or equilibrium. The Court, entrusted with the task of judicial review, has to examine whether the decision taken by the authority is

proportionate i.e. well balanced and harmonious. To this extent, the Court may indulge in a merit review, and if the Court finds that the decision is proportionate, it seldom interferes with the decision taken, and if it finds that the decision is disproportionate i.e. if it feels that it is not well balanced or harmonious and does not stand to reason, it may tend to interfere [Ref: Judgment authored by one of us i.e. Ijaz Badshah versus Secretary, Establishment Division, Govt. of Pakistan **(2023 SCMR 407= 2023 PLC (C.S) 694)**]

10. As a result of the above discussion, this Civil Petition is converted into an appeal and allowed. Consequently, the impugned judgment is set aside and the matter is remanded to the learned Service Tribunal to decide the appeal afresh in accordance with law.

Judge

Judge

Judge

Islamabad
23rd September, 2024
Khalid
Approved for reporting