

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

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

Civil Petition Nos. 646-K to 647-K of 2021

Appeal against the judgment dated 30.03.2021 passed
by the Sindh Service Tribunal at Karachi in Appeal
Nos.867 & 823/2018

Ghulam Murtaza Sheikh
Faheem Anwar Memon

(In CP.646-K/2021)
(In CP.647-K/2021)
.....Petitioner

Versus

The Chief Minister, Sindh and others

(In both cases)
...Respondents

For the Petitioner:

Mr. M. M. Aqil Awan, Sr. ASC
Assisted by Mr. Muhammad Arshad Khan
Tanoli, ASC & Mr. Danish Rashid Khan
(in both cases)

For the Respondents:

Mr. Hakim Ali Shaikh, Addl. A.G., Sindh
Mr. Sagheer Ahmed Abbasi, Addl. A.G.,
Sindh
Ms. Shazia Qazi, Special Secretary
Prisons, Sindh
Muhammad Nasir Khan, DIG, Prisons,
Sindh
Mir Muhammad Channa, S.O., Prison-I

Date of Hearing:

21.06.2024

JUDGMENT

Muhammad Ali Mazhar, J:- These two Civil Petitions for leave to
appeals are directed against the consolidated judgment dated
30.03.2021, passed by the Sindh Service Tribunal at Karachi, in
Appeal Nos.867 & 823/2018, whereby the appeal filed by the

petitioner Ghulam Murtaza Sheikh, Ex-Senior Superintendent, was dismissed; however, the penalty awarded to him for reduction to a lower post, from BS-19 to BS-18, was enhanced from 3 years to 5 years and the appeal filed by Faheem Anwar Memon, Deputy Superintendent Jail, was also dismissed, but his compulsory retirement was converted into dismissal from service.

2. The ephemeral chronicles of the cases are as under:-

I. Civil Petition No.646-K of 2021 (Ghulam Murtaza Sheikh)

The petitioner was posted as Senior Superintendent Prison in Central Prison Karachi on 11.05.2017. Two hardcore criminals, Shiekh Mumtaz and Muhammad Ahmed were produced with some other under-trial prisoners in the Anti-Terrorism Court ("ATC") without any date of hearing from where they managed to escape on 13.06.2017. Their production orders were tempered and Rafique Channa ordered their production on the pretext that the accused persons had to give instructions to their Advocates. After inquiry, three FIRs were lodged; one at New Town Police Station and two at CTD, Police Station. In addition thereto, departmental proceedings were also initiated and a charge sheet was issued to the petitioner on 10.08.2017. The D.I.G (Prison) was appointed as inquiry officer. The inquiry officer recorded the statements of 20 witnesses, but not in the presence of the petitioner, nor was the petitioner allowed any opportunity of cross-examination. As a result of such inquiry, the inquiry officer found the petitioner guilty and recommended the imposition of major punishment. The petitioner was dismissed from service. He filed Departmental Appeal, thereafter; he filed appeal in the Service Tribunal. During the pendency of Appeal, the Appellate Authority decided the Departmental Appeal and converted the major penalty of dismissal from service into reduction into lower post from BS-19 to BS- 18 for a period of 3 years. Though the learned Tribunal dismissed the service appeal but enhanced and modified the punishment awarded to Ghulam Murtaza Sheikh whereby his reduction to a lower post, from BS-19 to BS-18, was changed from 3 years to 5 years.

II. C.P.No.647-K of 2021 (Faheem Anwar Memon)

The petitioner was posted as Deputy Superintendent Jail in Central Prison, Karachi, on 14.01.2017. Against this petitioner, the allegations were almost identical that two hardcore criminals escaped from the ATC. The reference of FIRs is also the same. The charge sheet was also issued to this petitioner and the same DIG (Prison) was the inquiry officer. This petitioner also asserted that in the joint inquiry of different allegations, the inquiry officer recorded the statements of 20 witnesses but not in his presence, nor was he allowed any opportunity of cross-examination. The inquiry officer found the petitioner guilty and recommended the imposition of major punishment. The petitioner was dismissed from service against which he filed Departmental Appeal and after the lapse of statutory period of 90 days, he filed the Appeal to the Service Tribunal. During the pendency of Appeal, the Appellate Authority decided the Departmental Appeal and converted the dismissal from service to compulsory retirement. The learned Tribunal maintained the departmental order of dismissal and set aside the appellate order of converting dismissal into compulsory retirement.

3. The learned counsel for the petitioner argued that similar charges were leveled against both the petitioners and even the inquiry report is the same. It was further averred that on the basis of the said allegations, the petitioners were proceeded departmentally as well as in criminal proceedings under the FIR No.149 of 2017. Not only were

they punished departmentally but also convicted by the Anti-Terrorism Court No. XIX, Karachi in Special Case No. 121/2017 with other 15 accused persons *vide* judgment dated 12.10.2019. He further argued that the conviction was challenged before the Sindh High Court but appeals were dismissed in respect of 8 accused persons with the modification that conviction recorded under the provisions of the Anti-Terrorism Act, 1997, was set aside, whereas the remaining 6 accused persons were acquitted *vide* judgment dated 25.03.2022. It was further averred that the 8 convicted persons, including the present petitioners, challenged the conviction in this Court and *vide* judgment dated 21.05.2024, their appeals were allowed and the petitioners were acquitted. So far as the fate of disciplinary proceedings conducted by the department is concerned, the learned counsel argued that the inquiry officer failed to maintain a diary sheet. Neither is it shown from the inquiry report or proceedings how the inquiry was conducted, nor is it mentioned what proceedings were taken at any particular dates along with attendance of the accused persons or prosecution witnesses or the departmental representatives. It was further contended that at least 20 witnesses were examined but the accused officers were not allowed any opportunity to cross-examine such witnesses. It was further averred that this crucial defect in the inquiry was not considered by the Service Tribunal and even the alleged evidence of 20 witnesses were not scrutinized to determine whether any case of misconduct against the petitioners was made out or not, but the judgment was passed by the Tribunal in a slipshod manner without even considering the case law cited in support of the arguments. He further contended that *vide* impugned consolidated judgment of the Tribunal, the service appeal of Rafique Ahmed Channa, Head Clerk/Assistant Superintendent, C.P Karachi, was also decided who was also given the major penalty of dismissal from service; however, the Appellate Authority converted the major penalty of dismissal from service into reduction into a lower post for a period of 3 years *vide* order dated 03.06.2020, but the Sindh Service Tribunal has set aside the order in his case and reinstated him with back benefits. The cases of the present petitioners, however, were not considered properly to adjudicate whether the allegations of misconduct were proved against them or not during the inquiry.

4. The learned Additional Advocate General, Sindh ("A.A.G."), addressed that total 16 Officers were issued show cause notices and faced the departmental inquiry and were also nominated in the FIR for criminal prosecution in addition to the departmental proceedings initiated on account of misconduct in the line of duty. He further argued that the inquiry was conducted in a transparent manner and after its completion, a report was submitted. The petitioners with other officials, who failed to perform the assigned duties according to the Jail Manual, were found responsible, hence they were rightly held guilty of the charges. It was further averred that the competent authority imposed different punishments according to the roles played by the officials. However, he admits that 20 witnesses were examined by the inquiry officer, but nothing from the inquiry report reflects whether any opportunity to cross-examine such a long list of witnesses was afforded to the petitioners for the defence of the allegations. According to him, the major penalty of dismissal from service was imposed on Ghulam Murtaza Sheikh, Senior Superintendent, C.P. Karachi, but in the departmental appeal his dismissal was converted into reduction to a lower post for 3 years, however, the learned Tribunal enhanced the punishment from 3 years to 5 years. He further admitted that this Court set aside the judgment of the Sindh High Court and acquitted him from the charge in Criminal Petition No.438 of 2022 *vide* order dated 21.05.2024. Likewise, another petitioner, Faheem Anwar Memon, Deputy Superintendent, C.P. Karachi, was also awarded the major penalty of dismissal from service but the Appellate Authority converted the major penalty of dismissal from service into compulsory retirement; however, the Service Tribunal again imposed upon him the major penalty of dismissal from service. This petitioner was also convicted by the ATC, but on appeal to the High Court, his conviction was maintained, but this Court set aside the judgment of the High Court and acquitted him from the charge in Criminal Petition No.351 of 2022 *vide* the same order dated 21.05.2024. On our query, the learned A.A.G. submitted a chart in chronological order with the name of other officials who faced the same inquiry to apprise us that some other persons were also declared guilty and punishments were awarded to them according to their role played in the misconduct, but it reflects from the details produced by the learned A.A.G, that in many cases the competent authority converted the major penalties to minor penalties or even in the case of major penalties, the punishments were reduced

to some lesser extent instead of outright dismissal from service and some of them also approached the learned Service Tribunal where their appeals are still pending against disciplinary actions or even against the modified/lesser penalties imposed by the competent authority.

5. Heard the arguments. While advertng to the inquiry report, the learned Tribunal observed that the inquiry officer has examined the matter in light of the statutory duties of the petitioners and other officials and reached the conclusion that the Inquiry Officer examined the case of the escape of under trial prisoners in the light of the statutory duties and held that the Senior Superintendent was overall responsible for the security and management of the Jail and the Deputy Superintendent was the Incharge of Raheem Ward, the kitchen, Security Wards 25 & 26, office block, and the quarter guard, and also referred to some Rules from the Jail Manual. So far as the case of Ghulam Murtaza Sheikh, Senior Superintendent of Jail, is concerned, the Tribunal held that he failed to perform his statutory duties provided in the Jail Manual, while for another petitioner, Faheem Anwar Memon, Deputy Superintendent, the Tribunal held that he had taken over 6 months before the incident, therefore, he does not deserve any leniency for the loose administration inside the Jail. Taking into account the defects in the inquiry pointed out to the Tribunal, it was held that the petitioners cannot take refuge of any procedural lapse on the part of inquiry officer especially when they failed to perform their duties satisfactorily as required by the rules in the Jail Manual.

6. A fair opportunity of cross-examination metes out the opposing party a leeway and possibility to accentuate the weaknesses or flaws in his testimony which is a most effective tool to shatter the testimony of witness or witnesses to disprove the charge or allegations both in civil and criminal matters including the domestic/departmental inquiries conducted under the labour laws or civil servant laws. The purpose of conducting inquiries, on one hand, is to fix the responsibility of the delinquent *vis-à-vis* the charges leveled against him in the show cause notice or statement of allegations but in unison, it also aids and facilitates the catching and exposing of the actual culprit or delinquent. In the case in hand, it is quite strange that admittedly 20 witnesses were examined who deposed against the

petitioners but the inquiry officer failed to provide any opportunity to the petitioners to conduct cross-examination of such witnesses to discredit their statement or testimony. Under the civil and criminal law, the examination-in-chief or mere statement of any witness has no legal value or sanctity unless he appears for cross-examination to the other side. No evidence which is accusatorial to the opposite party would be admissible unless such party is afforded an evenhanded opportunity of skimming its exactitudes by cross-examination which is a most effective device invented to unearth the truth. It is not a concession but a vested right, hence not only this right should be safeguarded and made available but this right should be provided for effective cross-examination which is a fundamental limb and is at the heart of due process and the doctrine of natural justice. If any such grave lapses are committed by the Courts in judicial proceedings or quasi-judicial authorities in their proceedings, it will deduce without any shadow of doubt that the matter has not been decided in accordance with law. If the elementary principle of law is not contented, then obviously, the whole edifice of unwarranted proceedings will fall apart. In the case of Federation of Pakistan through Chairman FBR Vs. Zahid Malik (2023 SCMR 603), it was held that the right of proper defence and cross-examination of witnesses by the accused is a vested right. Whether the evidence is trustworthy or inspires confidence could only be determined with the tool and measure of cross-examination. The possibility cannot be ruled out in the inquiry that a witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. Not providing an ample opportunity of defence and depriving the accused from the right of cross-examination of departmental representatives who lead evidence and produced documents against the accused is against Article 10-A of the Constitution of the Islamic Republic of Pakistan ("Constitution"). The whys and wherefores of cross examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies. While the judgment rendered in the case of Raja Muhammad Shahid Vs. The Inspector General of Police (2023 SCMR 1135), articulates that during

regular inquiry it is obligatory for the inquiry officer to allow an even-handed and fair opportunity to the accused to place his defence and if any witness is examined against him, then a fair opportunity should also be afforded to cross-examine the witnesses. It is an onerous duty of the Inquiry Officer or Inquiry Committee to explore every avenue so that the inquiry may be conducted in a fair and impartial manner and razing and annihilating the principle of natural justice is avoided which may ensue that there is no miscarriage of justice. While in the case of Usman Ghani Vs The Chief Post Master, GPO Karachi (2022 SCMR 745), it was held that the foremost aspiration of conducting departmental inquiry was to find out whether a *prima facie* case of misconduct was made out against the delinquent officer for proceeding further. The guilt or innocence could only be thrashed out from the outcome of inquiry and at the same time it was also required to be seen by the Service Tribunal as to whether due process of law or right to fair trial was followed or ignored which was a fundamental right.

7. The crux of findings of the learned Tribunal in the impugned judgment straightforwardly divulges that while ignoring the shortcomings of the inquiry, the learned Tribunal held that the petitioners cannot take refuge of any procedural lapse on the part of inquiry officer especially when they failed to perform their duties satisfactorily as required by the rules in the Jail Manual. So for all practical purposes, the job description or nature of assignment of duties were given precedence by the Tribunal over the inquiry proceedings and its fairness, no matter whether any fair opportunity was given to defend the charges or not. Every employee, whether in government service or private sector, obviously is assigned to the job with some job description, either as the terms and conditions of his engagement or through some rules and regulations or code defining the nitty-gritties of the particular job or service for performance with good manner and good behavior within the remit of his assigned job. In the labour laws, the Standing Orders are in field to initiate disciplinary proceedings on account of misconduct, whereas in the civil servant laws, Efficiency and Disciplinary Rules are applicable to deal with cases of misconduct. In fact, in both genres, the relevant laws are in realm with well-defined procedure to deal with and try the cases of misconduct if committed by any employee in performance of his duty. The standard of proof

required in a departmental inquiry is not analogous to the standard of proof which is considered necessary in the criminal trial. The departmental inquiry stems from the charges of misconduct where the standard of proof depends on the balance of probabilities or preponderance of evidence but not a proof beyond reasonable doubt, which is a strict proof required in criminal trials. No doubt, both the petitioners have been acquitted by this Court in criminal proceedings and their convictions were set aside, but it does not mean that they could not be called upon to face the disciplinary proceedings on account of misconduct or dereliction of their duties. The inquiry should have been conducted to ensure and find out whether the petitioners failed to perform their duties or not. The inquiry officer was obligated to find out who is guilty in performance of his duties and for that it was not the sole criteria for the inquiry officer and the Tribunal to just condemn the petitioners on the ground that they failed to abide by the duties jotted down in the Jail Manual without adverting to whether they are really accused of violating their job description and whether, to prove their innocence, proper opportunity of defence was afforded to them or not. If this tendency is accepted then there was no need to hold the inquiry, rather the decision could be taken directly to condemn the petitioners unheard simply on the basis of duties in terms of the Jail Manual which could be a very destructive idea. Certainly, the role of inquiry officer was to sift the grain from the chaff and actually get the drift that the petitioners violated their assigned duties which could only be proved through evidence and if the opportunity of cross-examination was afforded to the petitioners as their defence to disprove the allegations raised against them.

8. It is a well-known fact that the inquiry officer cannot be equated or measured up to a trained judicial officer, but in all disciplinary laws dealing with the acts of misconduct, the precise procedure is already provided for the observance and guidance of the inquiry officer who is ought to explore every avenue so that the inquiry should be conducted in a fair and impartial manner. The inquiry officer in the present case did not adhere to the principle of natural justice and due process of law. Neither the inquiry report depicts that the statements of the alleged 20 witnesses were recorded in presence of petitioners nor any right of cross-examination was provided to the

petitioners. The departmental inquiry should not be conducted in a cursory or perfunctory manner. It is often seen that due to defective Departmental inquiry conducted either intentionally or unintentionally, the whole process is overturned by this Court or Service Tribunal, therefore it must be a grave concern and caution for the competent authority or authorities that while conducting inquiry and appointing an inquiry officer, they should ensure that the inquiry is conducted transparently, fairly and without violating the due process of law and principle of natural justice. This was the reason that in the case of Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others Vs. Zahid Malik (2023 SCMR 603), this Court invited the attention of governments that in order to improvise the norms and standards of departmental inquiry, a "Handbook" of inquiry procedure be compiled with the excerpts of all relevant Rules including the rule of natural justice and due process of law enshrined under Article 10-A of the Constitution for the step-by-step help and assistance of inquiry officers or inquiry committees so that in future, they may be well conversant with the precise procedure before embarking on the task of an inquiry and conduct the inquiry proceedings without ambiguities.

9. Last but not least, the wisdom of setting up Service Tribunal under Article 212 of the Constitution is to deal with and decide the matters relating to the terms and conditions of service of Civil Servants. The Services Tribunal, for the purposes of deciding any appeal, is deemed to be a Civil Court and has the same powers as are vested in such court, therefore, as a fact finding forum of exclusive jurisdiction, it has the duty to do complete and substantial justice between the parties with a rational denouement of the case. All judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice. Not affording the right of cross-examination in the inquiry was a serious defect and in no way can be construed as taking refuge in procedural lapses; it was a grave blunder which in fact destroyed the whole substratum of inquiry and the case of misconduct made out by the department against the petitioners. It was the legal duty of the Service Tribunal to vet the whole inquiry report for the purposes of fact-finding, including the effect of non-

affording the right to cross-examine which was necessary to decide both the appeals on merits.

10. In the wake of the above discussion, the aforesaid Civil Petitions are converted into appeals and allowed. As a consequence thereof, the penalty awarded to Ghulam Murtaza Sheikh (petitioner in CP.646-K/2021) by the Original, Appellate Authority, and enhanced by the Tribunal from 3 years to 5 years is set aside, and he should be restored immediately to his original position with back benefits; whereas the punishment awarded to Faheem Anwar Memon (petitioner in CP.647-K/2021) by the Original, Appellate Authority and conversion of his compulsory retirement into dismissal from service by the Tribunal is also set aside and he is reinstated in service with back benefits.

N.B: Office is directed to transmit the copy of this judgment to the Chief Secretary, Government of Sindh, Secretary, Law, Parliamentary Affairs & Criminal Prosecution Department, Government of Sindh, and the learned Advocate General, Sindh, for drawing their attention to compile a "Handbook" of inquiry procedure with excerpts of all relevant provisions of Sindh Civil Servants Act, 1973, Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, Sindh Police (Efficiency and Discipline Rules), 1988, and Sindh (Repeal of the Police Order, 2002 and Revival of the Police Act, 1861) Act, 2011, etc., including the rule of natural justice and due process of law enshrined under Article 10-A of the Constitution. Once such handbook is compiled and printed, a copy of handbook should be circulated at the governmental level in all government departments/attached departments for the help, assistance and strict adherence of inquiry officers or inquiry committees so that they may be well-conversant with the precise procedure before embarking on the task of an inquiry and conduct the inquiry proceedings fair and square without any defects and ambiguities.

Judge

Judge

Announced in open Court

On _____ at Karachi
Khalid
Approved for reporting

Judge_____