

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Amin-ud-Din Khan
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No. 921-L of 2017

On appeal from the Judgment dated
23.11.2016 passed by the Punjab Service
Tribunal, Lahore in Appeal No.5720/2015

Aamir Akbar

...Petitioner(s)

Versus

Additional Superintendent of Police, ...Respondent(s)
Bahawalpur, and others

For the Petitioner(s) : Mr. Muhammad Munir Paracha,
ASC
Syeda B.H. Shah, AOR

For the Respondent(s) : Mr. Baleegh uz Zaman, Addl.AG,
Punjab
Mr. Muhammad Wasif, DSP
(Legal) Bahawalnagar.

Date of Hearing : 04.12.2024

Judgment

Muhammad Ali Mazhar, J: This Civil Petition for leave to appeal is directed against the Judgment dated 23.11.2016 passed by the Punjab Service Tribunal, Lahore, in Appeal No.5720/2015.

2. The short-lived facts of the case are that petitioner was appointed as a Junior Clerk in the office of D.P.O. Bahawalnagar ("DPO") on 18.08.2010. On the charges of inefficiency and corruption, the competent authority, *vide* Order dated 06.01.2015, initiated a departmental inquiry against the petitioner. The Inquiry Officer conducted the inquiry and submitted an inquiry report on 14.04.2015 with the observations that the charges of misconduct against the petitioner were proved. The competent authority, *vide*

order dated 11.06.2015, awarded the major penalty of dismissal from service to the petitioner. The petitioner filed an appeal before the Inspector General of Police, Punjab, Lahore, but the appeal was also dismissed. Being aggrieved, the petitioner filed Service Appeal No.5720/2015 before the Punjab, Service Tribunal, Lahore, but it was also dismissed *vide* the impugned judgment.

3. The learned counsel for the petitioner argued that it was incumbent upon the departmental authorities to hold a regular departmental inquiry, but the inquiry report reflects that only the reply of the petitioner was incorporated, and it was concluded that the charges were proved. He further argued that the petitioner was not allowed to produce any witnesses or any documentary evidence in his defence, and in fact, no regular inquiry was conducted. The petitioner was dismissed from service merely on the basis of the alleged fact-finding inquiry.

4. The learned Additional Advocate General, Punjab ("AAG") argued that the charges against the petitioner were proved and after due process he was dismissed from service. He further argued that the petitioner was heard in person by the competent authority and was also given a chance to improve his conduct, but adverse reports were again received against him, and he was not found fit for a disciplined force. It was further averred that during his service period, the petitioner failed to perform his duties diligently; he was a habitual latecomer and was also found involved in immoral activities.

5. Heard the arguments. The charge sheet was issued to the petitioner under the provisions of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999 ("**E&D Rules**") on the following allegations:

- i. He is a habitual late comer, slips from office hours and leave the office before office timings without any permission from the senior officers.
- ii. On 22.04.2012, he remained absent from duty from 10:30 AM to 03:30 P.M. without any leave or permission from the competent authority.
- iii. On 16.05.2014, he reached the office at 01.45 P.M., an absence of 05 hours & 45 minutes.

- iv. On 19.05.2014 & 27.10.2014, he did not assume duty and absented himself without any leave or intimation.
- v. On 15.11.2014, he reached office at 02.00 P.M. after an absence of 06 hours.
- vi. On 07.11.2014, he slipped away from office at 10.00 A.M. and came back at 02.00 P.M., as a result another official was deputed for the disposal of official Dak.
- vii. On 10.10.2014, he slipped away from the office at 11.15 A.M. and did not turn up till 03.15 P.M., as a result another official was deputed for the disposal of official Dak.
- viii. He absented himself from duty without any lawful excuse on 22 and 23.12.2014.
- ix. He absented himself from duty without any lawful excuse on 26.02.2014.
- x. He has allegedly developed illicit relations with a girl. That girl is proceeding a case of "Khula" against her husband and Mr. Aamir Akbar who is a candidate for marriage with her is following the case. Therefore, his presence at Bahawalnagar may cause any harm to him.
- xi. He has already availed all the 24 casual leaves during nine months.
- xii. Reportedly, he is indulged in the immoral/illegal activity of gambling and bringing bad name to the department.
- xiii. He has borrowed much money from the many people/ shop-keepers for gambling. They came to the office for demand of borrowed money but the official could not face those people as he had nothing to pay back and that is why he willfully absented himself from office.

6. The learned Tribunal held that before taking the drastic action of dismissal from service, an inquiry was conducted, and the record indicates that the competent authority heard the petitioner/appellant in person on 16.04.2015. He was given a chance to mend his ways, but the DPO reported that the petitioner/appellant failed to improve his conduct. During departmental proceedings and even before the Tribunal, the petitioner/appellant miserably failed to prove his innocence.

7. The precise procedure that needs to be followed by the Inquiry Officer or the Inquiry Committee is lucidly provided under Rule 7 of the E&D Rules, which *inter alia* accentuates that the Inquiry Officer or the Inquiry Committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defence of the accused as may be considered necessary, and where any witness is produced by one party, the other party shall be entitled to cross-examine that witness. It is further provided within the same Rule that the Inquiry Officer or the Inquiry Committee, as the case may be, shall complete the inquiry proceedings within a period of sixty days, commencing from the last date of submission of the written defence by the accused or within such further period as may be allowed by the authority and within 10 days of the conclusion of the proceedings, to determine whether the charge has been proved or not, and if found that the charges are proved, then forward the report to the competent authority with the recommendations for the quantum of penalty to be imposed. If it is proposed to drop the proceedings, the Inquiry Officer or the Inquiry Committee shall, submit the case to the authority and the authority may, within a period of 15 days, either accept the recommendations of the Inquiry Officer or the Inquiry Committee, as the case may be, or it may order initiation of a *de novo* inquiry by passing a speaking order.

8. At this juncture, we would like to reproduce an excerpt from the guidebook compiled by the Services and General Administration Department and assimilated in the Punjab Estacode, 2013, for Departmental Inquiries under the E&D Rules as under:-

“The Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 have been framed to eliminate, as far as possible, chances of delay by removing bottlenecks. The usefulness of these rules will depend upon those who have to apply them after understanding the contents and procedures laid down thereunder. Procedural lapses causing miscarriage of justice to the accused lead to vitiation of proceedings resulting in not only unnecessary waste of time and effort, but also indiscipline and low morale amongst the personnel. This guidebook has been prepared with the objective to improve the understanding of rules and to facilitate task of the

functionaries under these rules. Besides complete and up-to-date text of the Efficiency and Discipline Rule, 1999, it contains step-wise chronological detail of the procedure of departmental inquiry along with model drafts of charge sheet and essential notices or orders required to be issued at different stages. It must, however, be clearly borne in mind that model drafts cannot be used as “fill in the blanks” formats. These shall have to be suitably adapted to suit the requirements of each case. It must also be clearly understood that this guidebook is not a substitute for the substantive laws/rules which should invariably be studied at every stage of the proceedings. This guidebook is intended merely to be an aid to better understanding of the rules”.

As far as the strict observance of the doctrine of natural justice is concerned, the aforesaid guidebook emphasized as under:

“It hardly needs to be pointed out that many administrative orders have been quashed by the superior courts on the sole ground that they violated the principle of natural justice, although the orders in any way, did not contravene any of the statutory provisions. The concept of natural justice has meant many things but now, with the judicial pronouncements by superior courts of various countries, the term “natural justice” has attained a definite meaning; most important of these are: a) Audi Alteram Partem i.e., nobody can be condemned unheard. b) Nemo Judex in cause sua potest i.e., no one can be a judge in his own cause. c) Action should not be mala fide. d) The party must in good time know the precise case he has to meet. The procedures prescribed for various stages of action under these rules aim at observing the principles of natural justice. These principles are deeply associated with the proceedings undertaken by the departmental authorities and should be taken care of while deciding cases under the PCS (E&D) Rules, 1999”.

[Ref: <https://regulationswing.punjab.gov.pk/system/files/GuideBook>]

9. Though the E&D Rules provide the procedure for conducting an inquiry, for better understanding, help, and assistance of the Inquiry

Officer/Committee, the aforesaid guidebook has incorporated a step-by-step procedure to ensure that a fair and impartial inquiry may be conducted without any procedural lapses. The guidelines for the procedure to be abided by the Inquiry Officer/Committee are as under:

“1) No party to any proceedings is to be allowed to be represented by a lawyer.

2) Where any witness is produced by one party, the other party must be allowed to cross-examine that witness.

3) If the accused fails to submit his explanation within the period prescribed in the charge sheet the inquiry officer/inquiry committee shall proceed with the inquiry and hear the case on day-to-day basis.

4) No adjournment can be given except for reasons to be recorded in writing.

5) Every adjournment has to be reported to the authority and normally no adjournment shall be of more than a week.

6) If the inquiry officer/inquiry committee finds that the accused is hampering the proceedings it should administer a warning and if even that is disregarded, the inquiry should be completed in such manner as the inquiry officer/inquiry committee may think best in the interest of justice.

7) Absence from the inquiry on medical grounds. Unless medical leave is applied and is sanctioned on the recommendations of the Medical Board, absence from the enquiry proceedings shall be considered tantamount to hampering the progress of inquiry. The authority is, however, empowered to sanction medical leave up to 7 days without recommendations of the Medical Board.

8) In conducting an enquiry, the enquiry officer/committee exercises judicial or quasi-judicial functions. The enquiry officer/enquiry committee must act in a judicial spirit and manner in conformity to well recognized principles of natural justice without fear, favour or bias.

9) The enquiry officer/enquiry committee should not refuse to summon and examine the witnesses enlisted by the accused. All witnesses should be examined in the presence of the parties, enabling one party to cross-examine the witnesses of the other.

Task Force: In order to check delays in the completion of enquiries, Chief Minister has constituted a Task Force at the provincial level. Its constitution, role and responsibilities are contained at Annexure-VIII in this manual. All administrative departments and their subordinate offices shall extend maximum cooperation to the Task Force in the accomplishment of its chartered functions."

[Ref: <https://regulationswing.punjab.gov.pk/system/files/GuideBook>]

10. The underlying aspiration of conducting departmental inquiry is to determine whether a case of misconduct is made out and whether the accused is found guilty by the Inquiry Officer/Committee. As a fact-finding forum, the learned Service Tribunal is obligated to ascertain whether due process of law or the right to a fair trial, as envisaged under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, was followed. A regular inquiry cannot be considered or labelled a regular inquiry unless fair opportunity is provided to defend the charges. The inquiry report in the present case reflects that only the charges were confronted to the petitioner, and his response was recorded, and this was the end of the story. Despite various charges of misconduct, neither was any evidence recorded by the Inquiry Officer nor did he recommend any punishment being mindful of the gravity of the charges. Had evidence been recorded, such statements would have been subjected to cross-examination. The principles of natural justice require that the delinquent should be afforded a fair opportunity to contest the charges before being found guilty. Here, no efforts were made by the Inquiry Officer, either intentionally or unintentionally, to explore the guilt of the petitioner. For all practical purposes, the inquiry report cannot be construed as fair and impartial, nor is it commensurate with the procedure provided under the E&D Rules for conducting an inquiry into allegations of misconduct. Time and again, we have noted that due to defective departmental inquiries or lapses on part of the Inquiry Officer/Committee, departmental actions are reversed by the Court/Tribunals, despite severe cases of misconducts, on account of procedural errors in the inquiries, including the failure to provide ample opportunity of defence, which amounts to a sheer violation of the fundamental right of fair trial.

11. The learned Tribunal also failed to note some inherent defects in the inquiry, which are manifest in the report, and it hardly seems to

be a regular inquiry. Even the letter dated 11.06.2015, whereby the major punishment of dismissal from service was imposed upon the petitioner, reflects that the Inquiry Officer conducted a discreet inquiry. It is evident from this disclosure that the department intended to hold a discreet inquiry rather than a regular inquiry, but without affording a proper opportunity, the petitioner was found guilty in an injudicious and heedless manner.

12. In light of the above discussion, the aforementioned civil petition is converted into an appeal and allowed. As a consequence, thereof, the impugned judgment passed by the Punjab Service Tribunal, Lahore, in Appeal No.5720/2015, and the departmental order dated 11.06.2015, imposing the major punishment of dismissal from service, are set aside. Since we have found the inquiry proceedings and report to be defective, the matter is remanded to the department for conducting a *de novo* regular inquiry into the same allegations of misconduct jotted down in the charge sheet and provide a fair opportunity to the petitioner to defend the charges, and a speaking order must then be passed and conveyed to the petitioner. The inquiry proceedings should be completed within a period of two months, and the payment of back benefits will be subject to the outcome of the *de novo* inquiry.

Judge

Judge

Judge

Islamabad
04.12.2024
Khalid
Approved for reporting.