

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEAL NO.1010 OF 2020.

*(Against the order dated 20.02.2019 passed by
the Federal Service Tribunal, Lahore Bench,
Lahore in Review Petition No. 03 of 2019).*

The Chief Postmaster General, Post Office,
Multan and others.

...Appellant(s)

Versus

Hameed-ud-Din.

...Respondent(s)

For the Appellant(s): Mr. Ayyaz Shaukat, DAG.
 Mr. Mehmood A. Sheikh, AOR.

For the Respondent(s): Mian Mahmood Hussain, ASC.

Date of Hearing: 25.06.2021.

JUDGMENT

IJAZ UL AHSAN, J. - . The Appellant through this Appeal has challenged the judgment of the Federal Service Tribunal, Lahore dated 20.02.2019 passed in Review Petition No.03 of 2019. Through the Review Petition, the Appellant prayed that the judgment of the Federal Service Tribunal, Lahore, dated 19.12.2018 passed in Service Appeal No. 271(L) of 2017 be reviewed (hereinafter referred to as "**Impugned Judgments**"). Through the Service Appeal, the Respondent had challenged the order dated 24.02.2017 whereby his departmental appeal was rejected. The learned Federal Service Tribunal (hereinafter referred to as "**FST**") through the Impugned Judgment allowed the Service Appeal of the Respondent thereby converting his penalty of dismissal from service to that of stoppage of increment for one year

without cumulative effect. Aggrieved, the Appellants filed a Review Petition before the FST, Lahore, which was dismissed.

2. The necessary facts giving rise to this *lis* are that the Respondent was posted in GPO, Multan as Postal Clerk, Utility Bills Compilation and was further entrusted with the additional duty of Assistant Chief Postmaster (Counter) GPO ("**ACPM**"), Multan w.e.f. 14.05.15 to 11.09.15. The Respondent while working against the said post signed the Postal Payment Order ("**PPO**") Paid Statement for July 2015 to September 2015 and sent the same to the office of the Director of Accounts. The said Accounts Office informed that the PPO Paid Vouchers amounting to Rs. 11,09,500 which ought to have been with the PPOs were missing, even after a lapse of 04 months i.e. from July to September 2015. When inquired, the Respondent stated that he had kept the said vouchers in a bag, however, the said bag was lost. The Respondent was placed under suspension on 25.11.15 on the allegation that he failed to submit PPOs for July, August, and September 2015. The department served the Respondent with a charge sheet and statement of allegations vide order dated 02.01.2016. After completion of the inquiry, the Respondent was served with a Show Cause Notice dated 05.03.16 which was responded to on 26.01.16. Vide order dated 28.04.2016 the Respondent was dismissed from service and recovery of Rs. 10,39,500 was ordered by the competent authority. The departmental appeal of the Respondent was dismissed vide order dated 24.02.17. The Respondent preferred a service

appeal before the Service Tribunal which was partly allowed and the penalty was modified. The Appellants are aggrieved of the said order. Hence, this appeal.

3. Leave to appeal was granted by this Court vide order dated 25.11.2020 in the following terms:-

"Learned Counsel contends that the respondent was entrusted for payment of PPOs in the sum of Rs. 11,09,500. The respondent was required to maintain the paid vouchers of such PPOs and submit them along with the monthly statement, but he did not do so and it was found that the Post Office had incurred a loss of the said amount. The charge was framed against the respondent, who in response thereto, filed a letter mentioning that he is depositing Rs. 40,000 towards the loss amount and requested that this case may not be referred to the FIA. It seems that the petitioner conducted an inquiry and in such inquiry, the respondent was found responsible for the commission of such loss and recommended dismissal from service and recovery of the loss amount. Thus, through the order dated 28.04.16 the respondent was imposed with the penalty of dismissal from service and recovery of the loss amount, against which the respondent filed a service appeal before the Federal Service Tribunal (Tribunal), which was decided by the judgment dated 19.12.2018, converting the penalty of dismissal from service and recovery to stoppage of increment for one year without cumulative effect. The petitioner filed a review petition before the Tribunal stating that the Tribunal has wrongly exercised jurisdiction in modifying the penalty, however, by the impugned order dated 20.02.2019, the Tribunal dismissed the review petition.

2. Learned Deputy Attorney General contends that the loss amount could not be explained by the respondent and even he did not place before the petitioner the record pertaining to the loss amount and by depositing Rs. 40,000, the respondent has admitted that he was responsible for causing loss to the government. He further contends that the Tribunal has interfered with the penalty imposed on the respondent on the ground that he has not committed misappropriation or embezzlement but the inquiry report shows that such was the case."

4. Learned Deputy Attorney General appearing on behalf of the Appellants contends that the Director of Accounts ("DA") vide letter dated 05.08.2009 requested for the provision of

PPO Paid Vouchers or recovery of the lost paid vouchers amounting to Rs. 11,09,500. The Respondent in his application dated 26.01.2016 informed that he had returned an amount of Rs. 40,000 and further promised to credit the remaining amount of loss voluntarily which amounts to an admission by the Respondent of his guilt. Further, that the Respondent was allowed to provide the department with the Serial Numbers of the lost PPOs, however, he failed to do so. He further submitted that the Respondent signed the PPO Paid Statement himself for July to September 2015 and dispatched the same to the office of the DA ("DA") while the regular ACPM was present on duty which is a violation of Rule 402/27 of the Pakistan Post Office Manual Volume 6. Thereafter, the Appellant Department informed that the supporting vouchers (PPO Paid) amounting to Rs. 11, 09,500 were not supplied even after a lapse of four months and, this act of the Respondent has caused the Appellant Department a loss of Rs. 11,09,500. Further, that the Respondent when asked stated that the vouchers were kept by him in a bag which was lost, however, he failed to report this loss to his superiors which at any stage was a violation of the relevant rules of the Appellant -Department which the Respondent was bound to follow.

5. Learned ASC appearing on behalf of the Respondent submitted that it is only after the payment is made that vouchers are issued. Just because the vouchers were purportedly missing, it cannot be held that the

Respondent misappropriated or embezzled the amount when the Respondent has stated that he placed the vouchers in a bag which was lost due to no fault of his own. Further, that the Respondent was condemned unheard and the departmental order was passed without affording the Respondent a fair opportunity to defend himself. Further, that the charges levelled against the Respondent in the charge sheet are different from those which are mentioned in the Show Cause Notice issued to the Respondent. He further added that parallel inquiries were conducted against the Respondent in the shape of a preliminary inquiry and a final inquiry. The result of these inquiries was that the preliminary inquiry prejudiced the final inquiry and prompted the Appellant Department to impose the penalty suggested in the preliminary inquiry report. The Chief Postmaster conducted a preliminary inquiry against the Respondent and recorded adverse findings therein, which prejudiced the formal inquiry which was to take place subsequently. After the formal disciplinary proceedings concluded, the recommendations of the Chief Postmaster were accepted, consequently, the penalty of dismissal from service was imposed upon the Respondent in a slipshod manner. Lastly, the learned ASC submitted that no allegation of fraud or misappropriation was levelled against the Respondent and a case of mere negligence is different from a case of misappropriation and misconduct and cannot be treated at par with it so as to warrant the dismissal of the Respondent and recovery of loss (if any) from him.

6. We have heard the learned Deputy Attorney General and the learned ASC appearing on behalf of the parties. The issues which require adjudication by this Court are as follows:-

- I. Was the Respondent condemned unheard in violation of the principles of natural justice and the law?
- II. Was the inquiry conducted against the Respondent in violation of the prescribed procedure?
- III. Was the penalty of dismissal and recovery commensurate with the seriousness of allegations levelled against the Respondent?

WAS THE RESPONDENT CONDEMNED UNHEARD IN VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE AND THE LAW?

7. It is an admitted fact that the Respondent was granted a personal hearing. The Respondent in his appeal before the FST has stated that he was called for a personal hearing, however, the personal hearing was "*meaningless*". The learned DAG has submitted that the Respondent was heard twice. Once on 30.03.2016 and then on 28.04.2016 and that during the personal hearing on 28.04.2016, the Respondent admitted the fact that he was negligent and he failed to submit the PPO Paid Vouchers.

8. We have examined the order of the Postmaster-General, Southern Punjab Circle, Multan. The said order

states that the Respondent was called for a personal hearing on 17.02.2017. The Respondent appeared in person and stated that due to heavy workload, he could not submit the statement of PPOs to the DA and he kept the same in a bag that was stolen. He further stated that this was unintentional and that he was a Hafiz-e-Quran who had an unblemished service record. The fact that the Respondent was able to explain his working conditions, his religious qualification, and that he had an unblemished service record goes to establish that the personal hearing granted to the Respondent was not meaningless, however, the Respondent was unable to justify his actions which prompted the Appellant-Department to take action against him. This aspect of the case has been left unconsidered by the FST. In the presence of these facts and circumstances, it cannot by any stretch of imagination be held that the Respondent was condemned unheard. The Respondent has not brought anything on the record to establish that he asked his superiors to change his duties so that he could perform them more efficiently, owing to his workload. He voluntarily performed the duties he was assigned. He cannot blame the Appellant Department in this regard and pin the blame of his negligence on his circumstances.

9. We are, therefore, unable to agree with the learned ASC for the Respondent to the effect that he was condemned unheard. Even otherwise, sufficient material is available on the record which establishes that the Respondent was

granted various opportunities to defend himself. The findings of the FST in this regard are against the record and unsustainable in law as well as fact. When confronted with the aforesaid averments, the learned ASC replied by saying that the charges against the Respondent were different in the charge sheet and the show-cause notice. This, in our view, does not address the question of whether or not the Respondent was condemned unheard. When he has stated that the personal hearing was in his opinion "*meaningless*", it cannot be held that a hearing was not granted and the rule of *audi alteram partem* was violated. If the hearing was not up to the satisfaction of the Respondent or he did not get the relief that he was expecting, the Appellant Department cannot be held to have condemned him unheard. The only grievance of the Respondent is that he was not heard properly and the Respondent has left this ground unsubstantiated. As such, the findings of the FST in this regard are erroneous and unsustainable.

WAS THE INQUIRY CONDUCTED AGAINST THE RESPONDENT IN VIOLATION OF THE PRESCRIBED PROCEDURE?

10. The learned ASC appearing on behalf of the Respondent has stated that the inquiry proceedings against the Respondent were conducted in a disorderly manner. The learned DAG in this regard has drawn our attention to the Show Cause Notice, Charge Sheet and Statement of Allegations served upon the Respondent. A perusal of the said documents reveals that the Respondent was issued a charge

sheet and was asked to submit his defence. He was issued a Show Cause Notice to which he replied rebutting the allegations against him. An inquiry was conducted in which he participated and thereafter, the penalty of dismissal from service along with recovery was imposed upon the Respondent. The Respondent then preferred a departmental appeal which was rejected. This prompted the Respondent to approach the FST by filing a service appeal.

11. The Respondent was proceeded against under the law. Nowhere has the Respondent during the pendency of the aforesaid process stated that the proceedings against him were biased or were being conducted improperly. He participated in the proceedings and was able to give his defence, which was left to the Appellant Department to accept or not accept. Not only a regular inquiry but a preliminary inquiry was also held against the Respondent. The contention of the learned ASC for the Respondent that two parallel inquiries were being conducted, one of which prejudiced the final inquiry proceedings against the Respondent is not supported by the record. We have perused the final inquiry report and the preliminary inquiry report of the Chief Postmaster. Both of these reports are comprehensive and have analysed the Respondent's case thoroughly. The fact that there are similarities in both the said reports is inconsequential because the foundation of the charges levelled against the Respondent which has been made the basis of the preliminary inquiry and final inquiry is the same.

The preliminary inquiry report merely recommended that the Respondent be proceeded against on the charges which were levelled against the Respondent. The Final Inquiry Report investigated the charges levelled against the Respondent and held him guilty of the allegations. It can be seen from the preliminary inquiry report that disciplinary action along with a recovery of Rs. 11,09,500 was recommended against the Respondent, whereas, the final order of dismissal mentions that he was dismissed from service and recovery of Rs. 10,39,500 was ordered to be effected by the Respondent. The difference which exists in each of these inquiries and also the order of dismissal sufficiently establishes that the said order and inquiry reports were independent of each other and were prepared after examining the record and due application of mind. The Respondent has not been able to establish from the record that any official of the Appellant-Department was biased or had a grudge against the Respondent which prompted them to proceed against the Respondent with malice or ill will.

WAS THE PENALTY OF DISMISSAL AND RECOVERY COMMENSURATE WITH THE SERIOUSNESS OF ALLEGATIONS LEVELLED AGAINST THE RESPONDENT?

12. It is an admitted fact that the Appellant Department suffered a financial loss of Rs. 11,09,500, which could have been prevented but for the alleged loss of or inability of the Respondent to account for the PPO Paid Vouchers. The Respondent signed the PPO Paid Statement while the incumbent APCM was present on duty. Furthermore, the Respondent in his application dated 26.01.2016 has stated that he will make up for the loss caused to

the Appellant Department and has further requested that his case may not be sent to the FIA. It is pertinent to mention that PPOs are documents that were of fundamental importance and needed to be proved or if they had been lost, independent evidence should have been produced to show that the payments were made against surrendered PPOs which had been cancelled, retained and relevant particulars thereof had been entered in the relevant records. The Respondent was also required to present the vouchers against which PPO payments were made to authenticate such payments. No such evidence/material/documents were placed on record. The Appellant Department gave several opportunities to the Respondent to prove his innocence. The Respondent in return deposited an amount of Rs. 40,000, which in our view, amounts to admission on his part of the misappropriation. This aspect of the case has been ignored by the learned FST in the impugned judgment.

13. The learned FST has taken the stance that all the allegations against the Respondent stood proved, however, he could not have been held responsible *ipso facto* for embezzlement or misappropriation. We are unable to agree with this observation for the reason that, when the FST, on one hand, held that the Respondent was indeed responsible for the loss caused to the Appellant-Department, it could not assume the role of the competent authority and hold that embezzlement or misappropriation was not proved without holding that there was a defect in the inquiry proceedings which caused serious prejudice to the Respondent.

14. The Tribunal has recorded in its order that the Respondent had deposited three amounts i.e. Rs. 4,13,400 and Rs.

2,91,400, which totals Rs. 11,09,500 with the department towards the settlement of his liability. The learned Counsel for the Appellants states that this finding is factually incorrect. We have asked the learned ASC for the Respondent to show us any material on the record which establishes that the Respondent did make the said payments. He has been unable to do so. Lastly, we asked the learned ASC for the Respondent if there was a mistake in the impugned judgment, and, he candidly admitted that there was indeed a factual error in the impugned judgment insofar as payment of the said amount is concerned. As such, given the said facts and circumstances, the learned FST could not have arbitrarily changed the impugned penalty into that of stoppage of increment of one year without cumulative effect.

15. The learned FST has incorrectly applied the relevant law, misunderstood the facts and circumstances of the case, and has misread the record which warrants interference by this Court. As a result of this, the impugned judgment passed by the learned FST is unsustainable and liable to be set aside.

16. For the reasons noted above, this appeal is allowed and the impugned judgments of the learned FST dated 19.12.2018 and 20.02.2019 are accordingly set aside.

Chief Justice

Judge

ISLAMABAD.

25.06.2021.

Haris LC/*

Not Approved For Reporting