

**IN THE SUPREME COURT OF PAKISTAN**  
(APPELLATE JURISDICTION)

**PRESENT:**

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

**Civil Appeal No.201 of 2020**

Against judgment dated 18.09.2019 of Punjab  
Service Tribunal at Bahawalpur, passed in Appeal  
No.2362 of 2018.

Province of Punjab through its Special  
Secretary, Specialized Healthcare & Medical  
Education Department, Lahore, etc

**Appellants**

**VERSUS**

Khadim Hussain Abbasi

**Respondent**

For the Appellant(s): Syed Wajid Ali Gillani, Addl.AG, Pb.

For the Respondent(s): Mr. M. A. ~~Rehman~~ Qureshi, ASC

Date of Hearing: 13.04.2021

**JUDGMENT**

**IJAZ UL AHSAN, J-**. This appeal by leave of the Court arises out of a judgment of the Punjab Service Tribunal at Bahawalpur (*"the Tribunal"*) dated 18.09.2019. Through the impugned judgment, a Service Appeal bearing No.2362 of 2018 filed by the Respondent was partly allowed to the extent that major penalty of compulsory retirement from service was converted into minor penalty of forfeiture of past service for a period of two years.

2. Briefly stated the facts necessary for disposal of this *lis* are that the Respondent was serving as Chief Technician, District Blood Unit, Sheikh Zayed Hospital, Rahim Yar Khan. He was proceeded against departmentally

under Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (*"PEEDA Act, 2006"*) on the allegations of misconduct, illegal sale of blood, absence from duty without leave and malpractices. An inquiry was conducted in which the Respondent was found guilty of the charges. Consequently, vide order dated 09.03.2017 major penalty of compulsory retirement from service was imposed upon him. He filed a departmental appeal which was rejected. Therefore, he approached the Tribunal. During the course of the hearing before the Tribunal the only argument made by learned counsel for the Respondent was to the effect that major penalty awarded to the Respondent may be converted into a minor penalty. He also produced a copy of the judgment dated 17.01.2019 passed by Magistrate, Section 30 Rahim Yar Khan who had acquitted the Respondent in the criminal case registered against him. The Tribunal came to the conclusion that the Respondent had been dealt with harshly and the penalty imposed on him was not commensurate with the gravity of the offence. It therefore vide impugned judgment dated 18.09.2019 proceeded to allow the Service Appeal in the manner noted above.

3. The Appellants were aggrieved of the said impugned judgment and approached this Court by way of a Civil Petition in which Leave to Appeal was granted on 03-03-2020 in the following terms:

*"We have heard the learned Additional Advocate General, Punjab and have also gone through the case record. Serious allegations of misconduct, involvement in illegal sale of blood, absent from duty and involvement in malpractice*

were leveled against the Respondent by way of a charge sheet dated 22.12.2016. A regular inquiry was conducted into the matter, the Respondent was found guilty of the aforesaid allegations and ultimately after following the codal formalities, he was recommended to be dismissed from service by the inquiry officer. However, the competent authority after considering all aspects of the matter imposed a major penalty of compulsory retirement from service upon the Respondent, vide order dated 09.03.2017. The departmental appeal filed by him against the said order was rejected, vide order dated 22.05.2018. He then filed a service appeal before the Punjab service Tribunal, Lahore. Although, the Service Tribunal has found that allegations against the Respondent stood established on record, but for no reason given in impugned judgment dated 18.09.2019 interfered with the penalty of compulsory retirement imposed upon the Respondent by the department and converted the same into forfeiture of past service for a period of two years.

2. The learned Law officer has pointed out that by the time the impugned judgment was passed, the respondent had already received all benefits of his compulsory retirement and thus this very appeal before the Service Tribunal on such basis had become infructuous.

3. The contentions raised by the learned Additional Advocate General, Punjab need consideration. Leave to appeal is therefore granted to consider inter alia the same."

4. The learned Additional Advocate General, Punjab appearing for the Appellants submits that the judgment of the Tribunal is not in consonance with the law declared by this Court in various judgments including Inspector General (Prisons) NWFP, Peshawar & others v. Syed Jaffer Shah, ex-Assistant Superintendent Jail & others (2009 PLC (CS) 47) and a flurry of recent judgment rendered by this Court. He maintains that the impugned judgment is devoid of any reason and relies on philanthropic ideas rather than any sound, legal or judicial principles. He submits that charges of

misconduct, illegal sale of blood from the Blood Bank, tampering with the record, etc stood fully established in addition to unauthorized absence from duty for more than 75 days. Therefore, there was neither reason nor justification for the Tribunal to interfere with the punishment imposed by the departmental authorities after following due process of law. He further maintains that neither any reason nor justification was given by the Tribunal for finding the punishment disproportionate to the gravity of offence. It has further been pointed out that it is settled law that acquittal in criminal proceedings has no impact on the departmental proceeding as the two can simultaneously proceed and the result of one has no bearing on the outcome of the other unless the departmental proceedings have not been independently conducted and solely and exclusively rely on the criminal proceedings, which is not the case here. In this regard, the learned Law Officer has relied upon Nazir Ahmed v. Capital City Police Officer (2011 SCMR 484), Muhammad Iqbal v. District Police Officer (2011 SCMR 534), Shahid Wazir v. Secretary, Kashmir Affairs and Northern Areas and States of Frontier Regions Division (2006 SCMR 1653) and Shahid Masood Malik v. Habib Bank Limited (2008 SCMR 1151). He finally submits that the Respondent had already received his pensionary benefits, gratuity and GP Fund etc without protest and had thereby accepted the penalty imposed by the Department. In such circumstances, the Service Appeal filed by the Respondent had in any event become infructuous and the Tribunal committed serious error in ignoring and

overlooking this fact and proceeding to reduce his penalty without recording any reasons for the same.

5. Learned ASC for the Respondent on the other hand has attempted to defend the impugned judgment. He submits that the Respondent has long service record with the Appellants and the punishment awarded to him was disproportionate to the gravity of the offence. However, when confronted with the fact that the Respondent had been found guilty of illegal sale of blood from the Blood Bank, tempering with the record and unauthorized absence from duty, he has not been able to offer any cogent or reasonable defence.

6. We have heard the learned Additional Advocate General Punjab, learned ASC for the Respondent and have gone through the record with their assistance.

7. The record indicates that the Respondent was proceeded against under PEEDA Act, 2006 on the allegations of misconduct, illegal sale of blood, tempering with the record of the Blood Bank and unauthorized absence from duty for at least 75 days. An inquiry was conducted against him in which he was found guilty of all charges. Surprisingly enough, the only defence taken before the Tribunal was that the punishment may be reduced from major penalty to a minor penalty. No effort whatsoever was made to deny or contest the charges against the Respondent. This constituted admission of charges which were admittedly of a very serious nature. The Tribunal has for reasons best known to it chosen to ignore such a vital and material aspect of the case. Although

the judgment of Magistrate, Section 30 Rahim Yar Khan was produced before the Tribunal, whereby the Respondent had been acquitted of the criminal charges, nothing turns on the same in view of the independent inquiry conducted by the Department and clear and categorical findings of the departmental authorities holding the Respondent guilty of the charges leveled against him. This Court has repeatedly held that departmental proceedings and criminal prosecution are not mutually exclusive, can be proceeded independently and acquittal in criminal proceedings does not affect the outcome of the departmental proceedings. It may be noted that departmental proceedings are undertaken under a different set of laws, are subject to different procedural requirements are based upon different evidentiary principles and a different threshold of proof is to be met. Criminal proceedings on the other hand are undertaken under a different set of laws, have different standards of proof are subject to different procedural requirements and different thresholds of proof are required to be met. Therefore, acquittal in criminal proceedings cannot and does not automatically knock off the outcome of the departmental proceedings if all legal and procedural formalities and due process have been followed independently. In this context, reference may usefully be made to the cases of Nazir Ahmed; Muhammad Iqbal; Shahid Wazir; and Shahid Masood Malik (*ibid*).

8. Further, without reference to the specific charges against the Respondent which stood established against him,

the Tribunal completely ignored the fact that he had in effect admitted the charges and accepted his guilt before it. However, the learned Tribunal nevertheless thought it fit to launch upon a discussion of philosophy of punishment in a vague, ambiguous and abstract manner which has no place in judicial verdicts. Further, the Tribunal without discussing the facts and circumstances of the case proceeded to observe that, "the guilt and the quantum of severe punishment in the absence of tangible material is against the principle of natural justice to award severe punishment, fair and transparent method should be adopted, the punishment imposed under these circumstances is too harsh".

9. We are at a loss to understand how and on what basis the Tribunal came to the conclusion that there was absence of "tangible material" in the case of the Respondent against whom all charges stood established in a properly constituted inquiry and who had for all intents and purposes admitted his guilt even before the Tribunal. Further, the Tribunal did not bother to elaborate how the process was "unfair" or "lacked transparency". No reasons whatsoever were recorded let alone cogent for conclusion of the Tribunal that the punishment was harsh, considering the seriousness of the charges against the Respondent. Paragraphs 8 and 9 of the impugned judgment have no nexus or connection with the facts of the case as very briefly narrated in the earlier part of the impugned judgment. There is total lack of discussion of facts of the case, procedure followed and the finding of guilt

recorded by the departmental authorities and how there was absence of tangible material or any procedural impropriety. We are constrained to hold that in passing the impugned judgment, the Tribunal has completely ignored and disregarded the basic and foundational principles of law laid down by this Court in various judgments spelling out the parameters for exercise of jurisdiction under Section 5 of the Service Tribunals Act, 1973. In this regard, reference may also be made to the case of Inspector General (Prisons) NWFP, Peshawar & others (*ibid*) where the practice of undue and unwarranted interference in the penalties awarded by the departmental authorities has been deprecated. In a recent judgment of this Court reported as Government of Pakistan v. Nawaz Ali Sheikh (2020 SCMR 656) it was held as under:

*"13. No doubt, under Section 5 of the Service Tribunals Act, the Service Tribunal enjoys powers to modify any Appellate order but such power is to be exercised carefully judiciously and with great circumspection by assigning cogent, valid and legally sustainable reasons justifying such modification. We fail to understand how and from where the Service Tribunal derived the authority and jurisdiction to arbitrarily and whimsically grant the relief that it has ended up granting to the Respondent.*

*14. All Courts and Tribunals are required to act strictly in accordance with law and all orders and judgments passed by them must be entrenched and grounded on the Constitution, the law and the rules. No Court, Authority or Tribunal had any jurisdiction to grant any relief in favour of any person which is not based upon the foundation of the Constitution, the law and the rules. We notice that the Service Tribunal has not assigned any reason whatsoever in accepting the appeal of the Respondent in the manner noted above, which it was required to do to justify the reduction in penalty. In this regard, reference may usefully be made to the case of "Chairman Dr. A.Q. Khan, Research Laboratories*



*and another. v. Malik Muhammad Hamid Ullah Khan” (2010 SCMR 302) as well as a judgment of this Court passed in Civil Appeal No.1343 of 2017 in the case of Secretary, Revenue, Division, Federal Board of Revenue, Islamabad and another. v. Asif Yousaf and another.”*

The aforesaid principles were reiterated by this Court in the case of Chief Postmaster Faisalabad v. Muhammad Afzal (2020 SCMR 1029) where it was held as under:

*“There is no cavil with the proposition that under Section 5 of the Service Tribunals Act, the Tribunal enjoys powers to modify any order passed by the departmental authorities but such power is required to be exercised carefully, judiciously and after recording reasons for the same. In the present case, the penalty in question had been imposed by the departmental authority on the basis of established charges and the major penalty of dismissal from service was imposed upon him in accordance with the law and the rules. In these circumstances, we are at a loss to understand how and from where the Tribunal derived the authority to exercise a power in favour of the Respondent in such an arbitrary unstructured and whimsical manner. We have found the exercise of jurisdiction by the Tribunal to be wholly without any lawful authority whatsoever, specially so where no reasons, let alone cogent have been assigned for exercise of jurisdiction in this manner by the Tribunal.*

8. All Courts/Tribunals seized of matters before them are required to pass orders strictly in accordance with the parameters of the Constitution, the law and the rules and regulations lawfully framed under the law. No Court has any jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law. This basic and fundamental principle of jurisprudence appears to have eluded the attention of the Tribunal which has clearly exceeded its jurisdiction power and authority in granting relief to the Respondent.

10. Further, the principles of law settled by this Court in the cases reported as Government of the Punjab v.

Muhammad Arshad (2020 SCMR 1962) and District Police Officer v. Muhammad Hanif (2020 SCMR 1610) are also to the same effect as laid down in the cases of *Chief Postmaster, Faisalabad and Government of Pakistan (ibid)*.

11. We therefore find that the Tribunal has not only exceeded its jurisdiction but exercised the same in a manner which is in complete violation of the settled principles of law on the subject. Further, in converting the major penalty of compulsory retirement from service into a minor penalty of forfeiture of past service for a period of two years, the Tribunal has failed to assign any cogent, legally sustainable and valid reasons to support its finding. As such, the impugned judgment can safely be termed as a non speaking judgment which does not meet the test of a judicial verdict. We have repeatedly held that although the Service Tribunal has the discretion to interfere in questions of quantum of punishment, such discretion can neither be arbitrarily and capriciously exercised nor are powers of the Tribunal unqualified or unlimited. Where the Tribunal exercises its discretion to interfere in the penalty awarded by the competent authorities, such discretion has to be exercised in a circumscribed, restricted, carefully calibrated and structured manner duly supported by legally sustainable reasoning, which is conspicuous by its absence in the instant case. We therefore find that the impugned judgment of the Tribunal is not sustainable in law or fact and is liable to be set aside.

12. For reasons recorded above, we allow this Appeal, set aside the impugned judgment of the Tribunal dated 18.09.2019 and restore the penalty of compulsory retirement from service imposed upon the Respondent by the departmental authorities vide order dated 09.03.2017.

13. Let a copy of this judgment be transmitted to Chairman, Punjab Service Tribunal, Lahore for its circulation amongst all members of the Tribunal for their perusal and adherence to the principles of law enunciated and reiterated herein.

**~~Chief Justice~~**

**Judge**

**ISLAMABAD, THE**

13<sup>th</sup> April, 2021

ZR/ \*

~~'Not Approved For Reporting'~~