

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO.469 OF 2021

Against the judgment dated 07.08.2019
passed by Federal Service Tribunal,
Islamabad in A.525(P)CS/2016

Muhammad Shafique

...Appellant(s)

VERSUS

The Additional Finance Secretary (Budget)
Government of Pakistan, Islamabad & another

...Respondent(s)

For the Appellant(s): Mr. Burhan Latif Khaisori, ASC

For the Respondent(s) Syed Nayab Hasan Gardezi, DAG
Mr. Muhammad Sultan, AD Legal

Date of Hearing: 10.09.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J. — This appeal with leave of this Court has been brought to challenge the judgment passed by learned Federal Service Tribunal, Islamabad on 07.08.2019 whereby the Service Appeal No.525 (P) C.S/2016 was dismissed and the major penalty of reduction to lower post imposed upon the appellant by the competent authority under the Government Service (Efficiency & Discipline) Rules, 1973 was maintained.

2. The short-lived facts of the present case are that the appellant was performing his duties as Deputy National Saving Officer (BPS-16) at National Saving Center-1, Dera Ismail Khan. He was issued charge sheet on 30.6.2015 with the allegations that on 12.11.2014, a client came to his center for encashing prize bonds of Rs.15,000/-, Rs.7500/- and Rs.25,000/- denominations and handed over the aforesaid prize bonds to the appellant for payment. The appellant

recorded the numbers of the prize bonds in his day book secretly and handed over said prize bonds to Shah Imran, JNSO for checking. It was further alleged that Shah Imran, JNSO, returned the said prize bonds to the appellant but prize bond No. 053047 of Rs.25,000/- was missing, later on it was disclosed that the said missing prize bond had won the prize of Rs.50 Million in 3rd draw held on 01.11.2012 at Hyderabad. It was alleged that the appellant had concealed that fact from the controlling officer for his personal gain and the matter was brought into the notice of NAB authorities through a complaint. During the investigation, the appellant was found involved in unauthorized checking and retention of the prize bonds illegally as the prize bonds and the prize money thereon were the property of the government and he was not authorized to retain the same, which amount to malpractice and parallel banking. It was further alleged that the appellant was involved in malpractice, misconduct and misuse of official decision and due to his ill motive, he caused embarrassment to the department before the NAB authorities and defamed the national saving organization, where trust of masses prevailed. The appellant submitted his reply to show cause notice and denied the allegations with lame excuses. Since his reply was not found satisfactory, therefore an inquiry was conducted on 01.08.2015 & 02.08.2015 and the inquiry committee submitted its report to the competent authority wherein the appellant was found guilty as under:

"1. Mr. Muhammad Shafique DNSO/Cashier handed over the prize bonds to Mr. Shah Imran JNSO for checking among other Bond number 053047 was present. Latter he found that the above mentioned number prize bond is missing. The dispute was developed between them. Discussions were underway between them. Officer in charge was not informed at first stage. Mr. Muhammad Shafique DNSO tried to conceal the facts and reach to some compromise with Mr. Shah Imran JNSO but failed. Disappointedly he informed SBP D.I Khan and gradually all staff member got informed, Some frustrated member of the staff directly or indirectly informed the NAB. Thus he misused his official capacity; keep his officer in-charge in dark and shown inefficiency in performing his official duty.

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4 Since the same official viz Mr. Muhammad Shafique, DNSO, is found guilty of the all charges as leveled against him. So appropriate administrative actions under the prevailing E&D rules 1973 may be taken against him, to safeguard the public money and to avoid any misuse of official position. As the staff member alleged has lost his credibility to stay in an institution of repute having trust of the masses across the country”.

3. The inquiry committee recommended appropriate administrative action to safeguard the public money and to avoid any misuse of official positions. Since the appellant was found guilty in the inquiry conducted by the committee, therefore, vide office order dated 13.01.2016, the competent authority imposed major penalty of reduction to lower post of ANSO (BPS-14) upon the appellant as provided under Rule 4 (1) (b) (i) of Government Servants (Efficiency and Discipline) Rules 1973. The appellant filed departmental appeal, however, vide order dated 21.06.2016, his appeal was rejected.

4. On 18.05.2021, leave to appeal was granted by this Court in the following terms:

“Relying upon FR 29 of the Fundamental Rules, the learned counsel for the petitioner contends that the penalty imposed upon the petitioner of reduction to lower post of Assistant National Savings Officer (BPS-14) vide order dated 13.01.2016, was required to contain the period for which such penalty was to maintain. He contends that no such period is mentioned in the order dated 13.01.2016 and thus, the same was required to be interfered with and the Federal Service Tribunal, Islamabad, fell in error in not addressing to such issue.

2. The submissions made by the learned counsel for the petitioner require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal stage paper-books be prepared from the available record with liberty to the parties to file additional documents, if any, within a period of one month. As the matter relates to service, the Office is directed to fix the appeal expeditiously, preferably after three months.”

5. The learned counsel for the appellant argued that the impugned judgment passed by the Federal Service Tribunal is against the settled principles of law. He further argued that during inquiry, proper opportunity to defend the charges was not provided to the appellant. The allegations leveled in the show cause notice were not proved

despite that the appellant was found guilty and major penalty was imposed on him. As a fall back argument, it was further contended that the learned Tribunal failed to consider that while imposing major penalty, the competent authority did not take into consideration the applicability of Fundamental Rule 29.

6. The learned DAG argued that incident occurred on 12.11.2014 but the appellant kept the department in darkness till the matter came into the knowledge of NAB authorities on 21.05.2015. The appellant was performing his duties as Cashier and it was his duty to check the authenticity of the currency notes and the prize bonds. During the inquiry, the appellant was provided fair opportunity to defend the charges and after conducting fair and impartial inquiry, the appellant was found guilty and awarded major penalty of reduction to the lower post in accordance with the E&D Rules 1973.

7. Heard the arguments. The record reflects that the departmental proceeding against the appellant was initiated on issuing show cause notice with the statement of allegations, the appellant submitted reply to the show cause notice and since his reply was not found satisfactory, therefore, an impartial domestic inquiry was conducted against him. During the inquiry proceedings, ample opportunity was afforded to the appellant, his statement was also recorded and before taking disciplinary action, second show cause notice was also issued on 22.9.2015. Even in the departmental appeal, the right of audience was provided by the appellate authority to the appellant. No doubt right to fair trial is a fundamental right and due process is prerequisite that needs to be respected at all stratum. The right to a fair hearing and or trial necessitates that a person should be afforded a fair opportunity to defend the inquiry or trial against him. In the case in hand, it is clearly manifesting from the record that proper right of

defence was provided to the appellant in the inquiry proceedings before taking disciplinary action. No bias, unfairness or partiality alleged or pointed out against the inquiry committee which might have any element to cause prejudice or setback to the case of appellant during inquiry.

8. Much emphasis was made by the learned counsel for the appellant that no loss was caused to the government or the public exchequer as the prize bond, which won the prize was not encashed. It is translucent from the record that encashment was immediately stopped when this scam was disclosed to the higher management. The respondents vigorously articulated that according to Chapter 10 of the National Saving Handbook Vol-II, the sale, encashment and custody of the prize bonds was the responsibility of the appellant and missing of any prize bond from his custody is definitely failure on his part as the same was his responsibility but he failed to discharge his primary duty with fraudulent and dishonest intention. In the cloudless case of misconduct, the plea of non-encashment of prize bond with no loss to government does not endow any help or support to the appellant case for dislodging or setting aside major penalty or exonerating him from the charge and guilt. The appellant was found guilty in an impartial inquiry and the competent authority has already taken a lenient view as instead of removal or dismissal from service, they only imposed penalty of reduction to a lower post.

9. All financial institutions have traditionally recognized their duty to act in a manner of public trust and confidence. Its reputation, goodwill and integrity is most valuable virtue and asset which is indeed established by the demeanor of its employees and management who have a duty to perform their duties with utmost honesty, dedication, professional manner and commitment without any cause of complaint

to its customers/clients. They are expected to act in a way that enhances reputation of institution and nurtures its client relationships and expected not to give rise to a conflict of interests between their personal interests and their financial institution. They need to provide their customers transparency, reciprocal loyalty, and truly personal customer relationships. In the line of duty they should shun and avoid involvement in any act of misconduct, embezzlement or fraudulent activity which may destroy or shatter the confidence of public on the credibility and goodwill of financial institutions which will obviously result in immediate disciplinary action without any leniency and imposition of penalty in accordance with law.

10. This court has already expressed strong views for deterrence and took serious note of cases of fraud and misappropriation/embezzlement committed by the employees of financial institutions/government departments. In the case of Assistant Director (Admin) National Savings Center and others vs. Muhammad Anwar (1990 SCMR 1214), the appellant before the Service Tribunal did not press the appeal on merits but he only requested for reduction of penalty. This court clearly expressed that the Tribunal could not convert findings of misappropriation into those of mere late posting of moneys in the relevant register. Not only, the order of Tribunal was set aside but the court further held that the respondent was working in a financial institution and his duties included dealing with the moneys entrusted to him by the public. A charge of misappropriation, even though for a short duration, against a person working in a post that the respondent held, could not be taken lightly. The department had, therefore, sufficient justification for removing him from service and the Tribunal should not have interfered with the penalty awarded to him. Similarly, in the case of Divisional

Superintendent, Postal Services, Gujranwala and another vs. Muhammad Arif Butt (2021 SCMR 1033), this court again held that a Government servant who is found to have misappropriated public money, notwithstanding its amount, breaches the trust and confidence reposed in a Government servant who is charged with the responsibility of handling public money. Misappropriation of the same, whether temporary or permanent and irrespective of the amount constitutes dishonesty and misconduct. Such an employee/individual has no place in Government Service because he breaks the trust and proves himself to be unworthy of the confidence that the State reposes in him. Whereas in the case of Ghulam Mustafa Channa vs Muslim Commercial Bank Ltd, (2008 SCMR 909), this court held that the business of bank is based on mutual trust between bank and the customers and further that the bank acts as a custodian of the public money, any slightest doubt or suspicion with regard to its activities and transaction and dishonesty of its employees would shake the confidence of the customers resulting in ruination of the business of the Bank. Alike view was expressed by this court in the case of Shaukat Ali and others. vs. Allied Bank of Pakistan Ltd. & others (2007 PLC 55) that business of bank depends upon its goodwill/reputation. It is well-settled that on the basis of sheer technicalities appellants cannot be exonerated from serious charges of misappropriation and fraud. It makes them disentitled to remain in service of bank.

11. So far as a fall back argument of the learned counsel for the appellant that while imposing the major penalty, the implication of FR-29 was not taken into consideration by the competent Authority. On perusal of record, it reflects that no such plea was taken by the appellant in his departmental appeal to consider the implication of FR-

29 by the appellate authority if remained unattended in the major penalty order whether it could continue for some definite or indefinite period. However, this plea was taken first time in the Tribunal, which was discarded. The provision in FR-29 explicates that the reduction order shall state the period for which it shall be effective and whether on restoration, it shall operate to postpone future increments and if so, to what extent. The niceties of FR-29 is only confined to lay down the period for which it shall be effective and in no case this tantamount to curtail or set aside the decision of major penalty imposed by the departmental Authority. Rule 4 of the E&D Rules 1973, connotes and embodies, minor and major penalties. According to Clause (b) of Sub-Rule (1) of Rule 4 of the E&D Rules 1973, the major penalties encompassed (i) reduction to a lower post or time-scale or to a lower stage in a time scale; (ii) compulsory retirement; (iii) removal from service; and (iv) dismissal from service. In the E&D Rules 1973, there was no provision that while imposing major penalty for reduction to a lower post or time scale, the period for which it shall be effective should be mentioned in the order. However, on 11.12.2020, the Civil Servants (Efficiency and Discipline) Rules, 2020 were notified and in terms of Rule 21, it repealed Government Servants (Efficiency and Discipline) 1973. In 2020 Rules again, Rule 4 is related to the minor and major penalties. Its Sub-Rule (3) Clause (a) to (e) provides different genera of major penalties and predominantly, Clause (b) is pertinent to the reduction to a lower post and pay scale from the substantive or regular post with specific period subject to a maximum of three years. So for all intent and purposes, under the E&D Rules 2020 major penalty of reduction to a lower post and pay scale from the substantive or regular post now can be subject to a maximum of three years but at the time of deciding the case of the appellant's misconduct, no such provision was available in the E&D Rules 1973 hence no retrospective

effect of rules promulgated in 2020 can be given in the appellant case. No such prayer was made before the appellate authority in departmental appeal to reconsider or revisit the departmental decision as provided under FR-29 but the whole emphasis was made for setting aside the imposition of major penalty imposed by the competent authority on the appellant.

12. We are sanguine that the binding effect and aftermath of FR-29 has already been expounded by this court in various judgments. Reference can be made to the dictums laid down in the case of Tanvir Ahmed vs. Chief Secretary, Government of Punjab, Lahore (2004 SCMR 647), Government of Pakistan through Secretary Establishment Division, Islamabad and others vs. Muhammad Umer Morio (2005 PLC (CS) 169 = 2005 SCMR 436), Member (A.C.E. & S.T.) Federal Board of Revenue, Islamabad and others vs. Muhammad Ashraf and 3 others (2008 SCMR 1165), Muhammad Sidiq vs. Superintendent of Police and others (2008 SCMR 1296), Secretary Kashmir Affairs & Northern Areas Division, Islamabad vs. Saeed Akhtar (PLD 2008 SC 392) and Mirza Aamer Hassan vs. Commissioner of Income Tax and others (2020 SCMR 1218). The ratio deducible from the above judgments unequivocally deciphered that while passing an order, imposing the penalty of reduction to a lower post or time scale or to a lower stage in the time scale, the conditions laid down in FR-29 should be considered and followed. For the ease of reference, FR-29 and the Auditor's General decision are reproduced as under:-

"F.R.29. If a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade or post, or to a lower stage in his time-scale, (Emphasis Applied) the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent.

Auditor-General's decision.-Having regard to the principle underlying Fundamental Rule, 29, the question as to whether an increment falling due during the period of reduction should or should not be allowed is one necessarily to be decided with

reference to the exact terms of the orders of the punishing authority. If the Audit Officer feels any doubt about the intention underlying the orders of the punishing authority, he has simply to ascertain it and act accordingly.

(Ar.G's. U.O.No.917/308-42, dated the 9th December, 1942.)

13. As a result of above discussion, we are not inclined to interfere in the impugned judgment passed by the learned Services Tribunal on merits of the case where the appellant failed to sustain his grounds of challenge to the imposition of major penalty, therefore this appeal is dismissed. So far as the implication and applicability of FR-29 is concerned, it obviously elucidates that any such major penalty has to be time bound but seemingly it escaped attention of competent Authority while imposing major penalty of reduction to a lower post from Deputy National Saving Officer BPS-16 to Assistant National Saving Officer BPS-14, therefore, the respondents are directed to consider this aspect in view of the ratio of the judgments of this court (supra) and fix the specific period of reduction to lower post within one month compliant with FR-29.

Chief Justice

Judge

Judge

ISLAMABAD
10th September, 2021
Mudassar/★

"Approved for reporting"