

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NOS. 1499 & 1500 OF 2019

(On appeal against the judgment dated 10.09.2018 passed by the Federal Service Tribunal, Lahore in Appeal Nos. 243(L) & 244(L)/2016)

Divisional Superintendent Postal Services Jhang and another
...Appellant(s)

VERSUS

Siddique Ahmed
Jhandy Khan

(In CA 1499/2019)

(In CA 1500/2019)

...Respondent(s)

For the Appellant(s): *Mr. Sohail Mehmood, Addl. Att. General*
 Raja Abdul Ghafoor, AOR
 (In both cases)

For the Respondent (1): *In person in both cases*

Date of Hearing: *08.07.2021*

...

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- *Through these appeals by leave of the Court under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have called in question the vires of the impugned judgment dated 10.09.2018 passed by the learned Federal Service Tribunal, Lahore, whereby the Service Appeals filed by the respondents were allowed and the penalty of dismissal from service was converted into withholding of one increment for two years.*

2. *Briefly stated the facts of the matter are that the respondents in both the appeals namely Siddique Ahmed and Jhandy Khan were working as Postmen. The allegation against the respondents is that they have misappropriated money orders amounting to Rs.50,000/- and Rs.15000/- respectively by forging signatures of the payees and showed the same to have been paid to the rightful owners. During the course of investigation, the respondents confessed their guilt, which led to issuance of Show Cause Notices to them by the competent authority on account of inefficiency, misconduct and corruption. The respondents submitted their explanations before the Authorized Officer in which they admitted their guilt. Ultimately,*

after affording an opportunity of personal hearing, the competent authority vide separate orders dated 06.11.2015 imposed major penalty of dismissal from service upon the respondents. The respondents preferred departmental appeals but the same stood dismissed vide orders dated 18.01.2016 & 22.01.2016. Being aggrieved, the respondents filed Service Appeals before the learned Federal Service Tribunal, which have been allowed vide impugned judgment and the major penalty of dismissal from service has been converted into withholding of one increment for two years. Hence, these appeals by leave of the Court.

3. *The crux of the arguments advanced by learned Additional Attorney General is that the respondents have themselves admitted that they have put forged signatures of the payees and kept the money with them; that merely the fact that subsequently, they returned back the misappropriated amount does not absolve them of their liability; that they were duty bound to either deliver the money orders to the payees or in case they were not available, to handover the same to the Post office; that the learned Service Tribunal also taken note of the fact that the money orders were used by the respondents for their own purpose and they were habitual in committing temporarily misappropriation of the money orders but despite that it allowed the appeals, which is not sustainable in the eyes of law.*

4. *The respondents, who appeared in person, admitted that although they had kept the amount of money orders with them but it was on the asking of the payees, who were out of town due to their official commitments.*

5. *We have heard learned Law Officer as also the respondents in person and have perused the available record.*

6. *In the present case, the fact of misappropriation of the money orders amount is not disputed. The respondents, who appeared in person, have admitted before us that instead of delivering the said amount to the payees, they kept the same with them for 10/15 days. However, they have stated that it was on the asking of the payees, who according to them were out of town. On our specific query, as to whether they were not supposed to handover the money orders back to the Post Office if the payees were not available at the address to which they admitted that they ought to have done so. According to learned Law Officer, the respondents did not take this stance in their written*

statements, which they had submitted before the Authorized Officer. Although, the said written statements are not annexed with these appeals but the respondents did not join this issue before us, which shows their implied admission. This Court in the case of Divisional Superintendent, Postal Services Vs. Muhammad Arif Butt (2021 SCMR 1033) while dealing with the similar case where the respondent postman instead of delivering the amount to the rightful owner had utilized the amount of Rs.36,400/- for his personal use, has candidly 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. It is a fundamentally important requirement of his job that Rules and regulations are followed and violations be dealt with strictly." In paragraph 7 of the impugned judgment, the learned Federal Service itself taken note of the fact that the respondents had used the money orders' amount for their own purpose and they are in the habit of committing temporarily misappropriation of the same amount but despite that it took a lenient view, which was not warranted in law because misappropriation of the amount either meager or huge results in breach of trust which is reposed in a government servant and the delinquent has no right to be retained in service.

7. For what has been discussed above, these appeals are allowed and the impugned judgment is set aside.

CHIEF JUSTICE

JUDGE

Islamabad, the
8th of July, 2021
Approved For Reporting
Khurram