

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO.1-K OF 2021

Against the judgments dated 06.11.2019
passed by Federal Service Tribunal
Islamabad (Karachi Bench) in Appeal
No.12(K)CS/2019 respectively.

Usman Ghani

...Appellant

VERSUS

The Chief Post Master, GPO, Karachi and others

...Respondent(s)

For the Appellant:

Mr. Sanaullah Noor Ghouri, ASC

For the Respondents

Mr. Nishat Warsi, DAG

Date of Hearing:

28.12.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J.- This Civil Appeal is directed against the judgment dated 16.11.2019, passed by the Federal Service Tribunal Islamabad (Karachi Bench) in Appeal No.12(K)CS/2019 whereby the appeal was dismissed.

2. The short-lived facts of the case are that the appellant was serving as time scale clerk who was issued a charge sheet by the respondent No.2 on 20.1.2018 along with statement of allegation that serious discrepancy has been recorded by past work verification committee vide report dated 17.06.2016 and the sum of Rs.47,09,838/- was found short on account of PPO pension payment/disbursement during the period September 2014 to April 2015. The appellant submitted his reply to the charge sheet in which he denied all the allegations and also asserted that no fraud was committed by him. The Inquiry Committee submitted the report and on 29.09.2018, the appellant was awarded punishment of stoppage of next annual increment for 5 years without future effect with recovery of Rs.10,29,546/-. The appellant preferred the

departmental appeal to the Respondent No.1 and vide order dated 17.12.2018, his punishment of stoppage of annual increment for five years was converted into one step reduction to a lower stage in his time scale for period of one year without future effect but the condition to make the loss good remained intact in the Appellate Order as well.

3. The learned counsel for the appellant argued that while deciding the appeal, the entire focus of the learned Tribunal was on the initial order dated 29.09.2018 by which penalty of stoppage of next annual increment for five years with recovery of loss amount was considered but no consideration was made to the Appellate Order which was also under challenge. He further argued that no witness was examined in the presence of appellant and no opportunity was afforded to him to conduct cross-examination of the witnesses. It was further avowed that there was no regular inquiry rather the entire case was based on fact finding inquiry. He made much emphasis that the fraud in the pension amount was committed by Muhammad Amin Khan and the learned counsel invited our attention to Page 149 of the Paper book which is the statement of Muhammad Amin Khan, Clerk Pension Branch, Karachi GPO who tendered his apology and accepted the entire responsibility.

4. The learned DAG, supported the Judgment of the learned Tribunal and argued that the guilt of the appellant was proved during inquiry proceedings and he was rightly awarded penalty by the department which was subsequently modified through the order passed by the Appellate Authority.

5. Heard the arguments. It is unequivocally visible from the record that the penalty of stoppage of annual increment for five years was converted vide Appellate Order into one step reduction to a lower stage in his time scale for period of one year without future effect including recovery of loss amount. Both these orders were assailed before the Tribunal but the learned Tribunal considered the aftermath of Original Order lonely and for this reason, while granting leave to appeal, this Court observed that the learned Tribunal has not at all adverted to the appellate order rather while

deciding the service appeal, confined itself to the original order of penalty dated 29.09.2018. The composite effect of inquiry and investigation depicts that Muhammad Ameen Khan, accepted his guilt through his statement dated 03.06.2016 which is available at Page 149 of the Paper Book and this very statement demonstrates that he voluntarily admitted his guilt and also confessed to deposit the loss amount in the government treasury and at Page 150 his another application is available which was addressed to the Chief Post Master that some more amount has also been deposited. It is further reflected from the record that Muhammad Amin Khan was convicted by Special Judge Central-I, Karachi in Case No.11 of 2015 vide order dated 30.08.2018 under Section 409 PPC and sentenced to suffer RI for three years with fine of Rs.50,000/-. The Tribunal has further observed in the impugned judgment that appellant was found negligent in receiving of Government money which he paid to co-accused on the orders of C.P.M., GPO but he failed to obtain the receipt and committed offence due to lack of knowledge and routine work adoption.

6. It appears from the impugned judgment that the learned Tribunal failed to mull over and ruminate the inquiry report and the evidence recorded during the inquiry and even the effect of statement of Muhammad Amin Khan was not considered by the learned Tribunal who admitted his guilt and accepted the entire liability and also confessed that no other person is responsible for the loss. In order to make the losses good, he also deposited amount in the government treasury. The Appellate Order dated 17.12.2008 passed by the Chief Post Master, Karachi, GPO shows that appellant failed to perform his legitimate duties which caused to give chance to Muhammad Amin Khan (main accused) who committed fraud and convicted by court of law which finding apparently reflects that the appellant was found negligent in his duties but after admission of guilt by Muhammad Amin Khan, the charge of misappropriation or embezzlement cannot be directly attributed to the appellant unless it is clearly manifesting from the inquiry proceedings and the witnesses appeared before the Inquiry Officer implicated the appellant for the charge. All these important

aspects were ignored by the learned Tribunal and without considering the report and the inquiry proceedings, whether the appellant was found guilty or not, dismissed his appeal.

7. The wisdom of setting up Service Tribunal under Article 212 of the Constitution is to deal and decide the matters relating to the terms and conditions of service of Civil Servants. Under Section 5 (2) of the Services Tribunal Act 1973, the Tribunal for the purposes of deciding any appeal be deemed to be a Civil Court and have the same powers as are vested in such court and even under Rule 18 of the Services Tribunals (procedure) Rules 1974, framed by the Federal Government in exercise of powers conferred by Section 8 of the Services Tribunals Act, 1973, the Tribunal may if it considers necessary, appoint an officer of the Tribunal to record evidence of a witness for and on behalf of the Tribunal and the parties and their Advocates may suggest any question to the witness and a Member may, besides such questions, put any other question to the witness. As a forum of exclusive jurisdiction, the Constitutional mandate as well as the provisions of Services Tribunal Act 1973, articulates and commands to do the complete and substantial justice between the parties with a rational denouement of the case.

8. The foremost aspiration of conducting departmental inquiry is to find out whether a prima facie case of misconduct is made out against the delinquent officer for proceeding further. The guilt or innocence can only be thrashed out from the outcome of inquiry and at the same time it is also required to be seen by the learned Service Tribunal as to whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution. A distinction also needs to be drawn between a regular inquiry or preliminary/fact finding inquiry. A regular inquiry is triggered after issuing show cause notice with statement of allegations and if the reply is not found suitable then inquiry officer is appointed and regular inquiry is commenced (unless dispensed with for some reasons in writing) in which it is obligatory for the inquiry officer to allow evenhanded and fair opportunity to the accused to place his defense and if any

witness is examined against him then a fair opportunity should also be afforded to cross examine the witnesses, whereas a discrete or fact finding inquiry is conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct is made out to initiate disciplinary proceedings.

9. The standard of proof looked-for in a departmental inquiry deviates from the standard of proof required in a criminal trial. In the departmental inquiry conducted on the charges of misconduct, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not a "proof beyond reasonable doubt", which strict proof is required in criminal trial. The doctrine of natural justice communicates the clear insight and perception that the authority conducting the departmental inquiry should be impartial and delinquent civil servant should be provided fair opportunity of being heard and if the order of the competent authority based on inquiry report is challenged before the Service Tribunal then it is the legal duty of the Service Tribunal to give some reasons and there should be some discussion of evidence on record which is necessary to deliberate the merits of the case in order to reach just conclusion before confirming, reducing or setting aside the penalty.

10. In the wake of above discussion, the appeal is allowed, the impugned judgment of the learned Federal Service Tribunal is set aside and the matter is remanded back to decide the appeal afresh after providing proper opportunity of hearing to both the parties.

Judge

Judge

KARACHI

28th December, 2021

Mudassar/*

Approved for reporting