

13/21

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO.498 OF 2020

(Against judgment dated 30.08.2018 of Federal
Service Tribunal, Lahore, passed in Appeal
No.77(L) of 2016).

Deputy Postmaster General, Central Punjab,
Lahore and another.

...Appellant(s)

Versus

Habib Ahmed.

...Respondent(s)

For the Appellant(s):

Mr. Sajid Ilyas Bhatti, Addl.AGP.
Shehzad Saleem, ASPO.

For the Respondent(s):

Mr. M. Ramzan Khan, ASC

Date of Hearing:

27.01.2021.

ORDER

IJAZ UL AHSAN, J-. This appeal by leave of the Court arises out of a judgment of the Federal Service Tribunal at Lahore (*"the Tribunal"*) dated 30.08.2018. Through the impugned judgment, a Service Appeal filed by the Respondent was partly allowed to the extent of modifying the penalty of dismissal from service to compulsory retirement.

2. Briefly stated the facts necessary for disposal of this appeal are that the Respondent was working as a Postmaster at Amar Sidhu Post Office, Lahore. He was placed under suspension by the Deputy Postmaster General being the Authorized Officer vide order dated 28.01.2011. Later, a

charge sheet was issued to him on the allegation of misappropriation of public money. The Respondent was directed to make up the deficiency discovered in the public money which was allegedly refunded by his brother, namely Maqsood Ahmed. A show cause notice was issued to him to which he replied. Personal hearing was also provided whereafter he was dismissed from service vide order dated 07.05.2013. He preferred a departmental appeal which was rejected by the Appellate Authority vide order dated 17.07.2013. He therefore filed a Service Appeal before the Tribunal which was allowed, vide impugned judgment dated 30.08.2018 in the aforementioned terms:

3. Leave to appeal was granted by this Court on 06.05.2020 in the following terms:

"The Respondent was employed as a Postmaster at Amer Sidhu Post Office, Lahore. He was issued a charge sheet alleging commission of misappropriation of Government Funds. As per the allegations, there was a temporary misappropriation of Rs.18783589/- and permanent misappropriation of Rs.4663877/-. An inquiry was conducted in the matter, pursuant to which the Respondent was dismissed from service vide order dated 07.05.2013. He filed a departmental appeal and then a Service Appeal before the Federal Service Tribunal, Lahore ("the Tribunal"). On the one hand, the Tribunal in the impugned judgment dated 30.08.2018 has found that the Respondent committed misappropriation of the amount of Rs.4663877/- and that the said fact was also admitted and confessed by the Respondent but on the other hand considering that the Respondent has 21 years service at his credit

modified the penalty of dismissal from service to that of compulsory retirement.

2. *The learned Additional Attorney General contends that where misappropriation of Government Funds stood established and admitted and the Tribunal also having recorded findings to that effect, there was no room for the Tribunal for giving of any premium to the Respondent in that he could not be granted any pensionary benefits. Adds that the impugned judgment of the Tribunal suffering from well known principles of law settled by this Court is not sustainable.*

3. *The submissions made by the learned Additional Attorney General need consideration. Leave to appeal is therefore granted to consider inter alia the same. Appeal stage paper books be prepared on the available record. However, the parties are at liberty 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 same for hearing in Court expeditiously, preferably after three months."*

4. The learned Additional Attorney General for Pakistan submits that the Respondent had misappropriated huge sums of money amounting to Rs.18,783,589 by way of temporary misappropriation on one count, and on the other he permanently misappropriated a sum of Rs.4,663,877/-. An inquiry was conducted in the matter pursuant to which the Respondent was dismissed from service. The Inquiry Committee as well as the Tribunal found that the charges of misappropriation stood established on record and in fact the Respondent had admitted his guilt. He maintains that having found that the charges had been established by independent evidence as well as by way of admission of the Respondent,

the Tribunal had no lawful authority to convert the penalty of dismissal from service to compulsory retirement for grant of pensionary benefits. He maintains that the Tribunal has failed to take notice of the principles of law laid down by this Court and the parameters repeatedly set by superior Courts within which the Tribunal has to exercise its jurisdiction insofar as it relates to matter of interfering in the quantum of punishment.

5. Learned ASC for the Respondent on the other hand has defended the impugned judgment. He submits that the misappropriated amounts had been repaid by the Respondent. There was no loss to the national exchequer and that being so it was a fit case for a lenient view which the Tribunal has correctly taken. He further maintains that the Respondent had 21 years of service to his credit and on account of dismissal from service he would be deprived of the monetary benefits that he has earned on account of his long service with the department and would constitute a disproportionate punishment for the offence alleged.

6. We have heard the learned Additional Attorney General for Pakistan as well as the learned ASC for the Respondent and gone through the record with their assistance.

7. We notice that between the period from 03.05.2010 to 02.12.2010 the Respondent temporarily misappropriated a sum of Rs.18,783,589/-. Further, between

the period from 02.12.2011 to 26.01.2012, he permanently misappropriated a sum of Rs.4,663,877/- making it an aggregate of Rs.23,447,466/-. He was charged with misappropriation, breach of trust, inefficiency and misconduct. A Committee comprising M/s Abdul Razzaq, APM (West) as Chairman and Qaiser Jehangir, ASPO (North), Lahore as Member was constituted in terms of Government Servants (E&D) Rules, 1973 to conduct a formal inquiry. Such inquiry was conducted and all allegations except the allegation of temporary embezzlement of Rs.18,783,589/- stood proved. It is also established from the record that a sum of Rs.4,663,877/- had been deposited by a brother of the Respondent on his behalf. In his departmental appeal, the Respondent took the plea that his close relative was booked in a murder case and in order to save him he used the aforesaid amount with the intention to refund the same after disposing of his immovable property. This was in contradiction to his earlier stance that his close friend as well as a brother were incarcerated in a murder case and in order to pay for a compromise he used the amount in question. Despite the contradictory stands one thing stood established that the Respondent had confessed/admitted the commission of offence of misappropriation, misconduct and breach of trust which attracted the major penalty of dismissal from service which was rightly awarded by the department considering that the Respondent being in a position of trust had blatantly, repeatedly and intentionally committed breach

of trust and misappropriated public funds that had been entrusted to him.

8. Surprisingly enough, having not found any error or defect in the proceedings conducted by the department including the inquiry as well as the admission/confession of the Respondent and having concluded that the charge of misappropriation stood established, the Tribunal opted to interfere with the penalty by taking a lenient view and converting the same into compulsory retirement. In doing so, the Tribunal lost sight of principles 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 context, reference may usefully be made to the case of Government of Pakistan v. Nawaz Ali Sheikh (2020 SCMR 656) where 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.

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*).

9. We therefore find that the Tribunal has not only exceeded its jurisdiction but exercised the same in a manner which is in violation of the settled principles of law on the subject. Further, in converting the major penalty of dismissal from service into compulsory retirement, the Tribunal has failed to assign any cogent, legally sustainable and valid reasons to support its finding. We have repeatedly held that although the Tribunal has the discretion to interfere in questions of quantum of punishment, such discretion can neither be arbitrarily 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 and structured manner duly supported by legally sustainable reasoning which is conspicuous by its absence in this case. We therefore find that the impugned judgment of the Tribunal is not sustainable and is liable to be set aside.

10. For reasons recorded above, we allow this appeal and set aside the impugned judgment of the Tribunal dated

30.08.2018 and restore the penalty of dismissal from service imposed upon the Respondent by the departmental authorities.

Sd/- HCT

Sd/- J

Sd/- J

ISLAMABAD.

27.01.2021.

ZR/ *

'Not Approved For Reporting'