

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO. 19 OF 2022

(Against the judgment dated 12.03.2020, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.332 of 2019)

Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Peshawar and others

...Appellants

VERSUS

Nargis Jamal, Ex-DEO (Female) Karak

...Respondent

For the Appellants: Mr. Shumail Aziz, Addl. A.G.KPK

For the Respondent: In-Person

Date of Hearing: 06.10.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Appeal by leave of the Court is directed against the Judgment dated 12.03.2020 passed by the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar ("**Tribunal**") in Service Appeal No. 332 of 2019.

2. Leave to appeal was granted vide order dated 11.01.2022 in the following terms:-

"The learned Additional Advocate General, K.P. contends that the respondent has remained absent for 1268 days and she has been travelling abroad very frequently without obtaining NOC from the department. The travel history of the respondent is given in para-4 of the impugned judgment at page-10 of the record. He contends that all codal formalities were complied with in respect of the disciplinary proceedings conducted against the respondent and ultimately she was imposed penalty of compulsory retirement. Contends that such penalty was imposed after the receipt of the report of the inquiry on issuance of a show cause notice and giving her personal hearing. The learned Addl. A.G. contends that the

Tribunal by the impugned judgment has modified the penalty, imposed upon the respondent, from compulsory retirement to that of reduction to lower substantive post from BPS-19 to BPS-18 for a period of four years. He contends that such interference by the Tribunal in the penalty imposed by the Competent Authority upon the respondent is not justified, more so, when the Tribunal itself has found that the respondent excessively has travelled abroad and that too without obtaining NOC from the department and even she did not file before the inquiry proceedings passport on which she has been travelled.

2. The contentions raised by the learned Addl. A.G. require consideration. Leave to appeal is granted to consider, *inter alia*, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents, if any, within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously, preferably, after three months.

3. C.M.A. No.746-1/20: In the meantime, operation of the impugned judgment is suspended."

3. The learned Additional Advocate General, KPK argued that the respondent travelled abroad frequently without prior approval of the competent authority. It was further argued that the travel history report of the respondent, featured in IBMS (Integrated Border Management System) was also produced before the learned Tribunal which was duly incorporated in paragraph 6 of the impugned judgment as a sufficient proof that the respondent travelled abroad many times and during the inquiry proceedings, she also failed to produce any documentary evidence that she ever obtained NOC before her travel. It was further contended that in the case of a government servant, NOC from the concerned department is also required for travelling abroad. He further averred that after complying with all requisite formalities and conducting impartial inquiry, the competent authority had decided to impose the punishment of compulsorily retirement.

4. The respondent in person argued that she joined the Education Department in the year 1992. Subsequently, she was appointed as headmistress on satisfactory performance and in the year 2017, she was promoted to BS-19. She also admitted her travel to abroad several times for certain training programmes but according to her, the leave was sanctioned with intervals. She further contended that the recommendations were made by the inquiry committee for minor penalty but the competent authority imposed the penalty of compulsory

retirement vide order dated 06.09.2018 beyond recommendations and the departmental appeal filed by her was also rejected on 26.02.2019.

5. Heard the arguments. In point of fact, the respondent had challenged the order dated 06.09.2018 whereby the major penalty of compulsory retirement was imposed on her. The main allegation or cause of concern against the respondent in the charge sheet was that "she travelled abroad several times without prior approval of the competent authority (permission/leave)". The travel history of the respondent is undisputed and even before the learned Tribunal, the respondent failed to offer any justification nor could she produced any document or NOC, nor did she contradict the "Travel History Report" divulged to the department via IBMS (Integrated Border Management System), which is a website hosted as <https://www.fia.gov.pk/ibms>, being a software of national level system of critical nature and a vital component to support FIA immigration to keep an eye on all incoming and outgoing international travelers on the basis of FIA Act 1974 and Foreigners Registration Act 1964. It is also part of the National Action Plan to support Law Enforcement Agencies (LEAs) & Intelligence Agencies (IAs) in the fight against terrorism, illegal trafficking and over stay of foreign nationals in Pakistan.

6. The finding recorded by the learned Tribunal in paragraph 8 of the impugned judgment is quite significant which is reproduced as under:-

"8. Before this Tribunal too, the appellant could not produce documentary evidence in the shape of approval of Ex-Pakistan leaves/NOC to justify her frequent travelling abroad as mentioned in her IBMS Travel History Report. The appellant could not therefore make out a case in her favor. This Tribunal also noted with concern that the appellant also managed to secure accelerated promotion to BS-19 despite her frequent traveling and stay abroad. It appeared that the appellant belongs to Teaching Cadre but she was also assigned the posts meant for Management Cadre."

7. The findings of inquiry report do reflect that for some visits abroad the respondent sought the sanction of leave, sometimes on half pay and sometimes without pay. So far as her request for 118 days leave without pay w.e.f. 20.08.2012 to 15.12.2012, 126 earned leave w.e.f. 05.02.2015 to 10.06.2015, 35 days earned leave w.e.f. 19.02.2017 to 25.03.2017 and for ex-post facto leave for 1268 days, there was no prior sanction or

approval available before the Inquiry Committee which could justify or straighten up that the respondent availed the leave with the approval of competent authority. Quite the reverse, the application for ex-post facto approval of leave makes it somewhat obvious that, had the respondent secured the sanction of leave before travel, there would have been no occasion or rationale for applying for ex-post facto approval for regularizing the period of leave availed without sanction.

8. Regardless of rendering stringent and rigid observations by the Tribunal in paragraph 8, together with the reservations to the accelerated promotion of respondent to BS-19, as well as frequent travelling without NOC, the Tribunal without any commonsensical or analytical justification, modified the punishment of compulsory retirement to reduction to lower substantive post from BS-19 to BS-18 for a period of four years. The punishment of compulsory retirement was imposed after due process of law and conducting proper inquiry into the charges of misconduct. It was the province and dominion of the competent authority to award punishment in case the allegations of misconduct are proved in the inquiry. There is no hard and fast rule that the competent authority in all circumstances is bound to adhere to the recommendations of the inquiry committee or inquiry officer but what carries great weight is the assiduousness and onerous duty of the competent authority to scrutinize and gauge the inquiry proceedings and inquiry report with proper application of mind for a fine sense of judgment and if charges of misconduct are proved and ample opportunity of defence was afforded to the accused during the inquiry, then obviously, keeping in mind all attending circumstances including the gravity or severity of the proven charges, the competent authority may impose the punishment in accordance with law. In our sagacity, the competent authority has already taken a very lenient view against the respondent and instead of preferring dismissal from service, the punishment of compulsory retirement was imposed.

9. Without a doubt, under Section 5 of the Service Tribunal Act 1973, the Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against and, for the purpose of deciding any appeal, the law authorizes the Tribunal to make a decision on the question of penalty awarded to a civil servant by the departmental authority and substitute the quantum of punishment in a right and proper manner but only in a

suitable case within the statutory command. Be that as it may, the award of punishment under the law is primarily the function of the competent authority and the role of the Tribunal or Court is secondary unless the punishment imposed upon the delinquent is found to be unreasonable or contrary to law, but according to our solicitous evaluation and scrutiny of the case in hand, the conversion of punishment by the Tribunal was neither pragmatic nor judicious.

10. In the case of Director General Federal Directorate and another vs. Tanveer Muhammad and another (2021 SCMR 345), this Court held that where the Tribunal exercises jurisdiction under section 5 of the Service Tribunals Act, 1973, legally sustainable reasons must be recorded. Merely and casually making an observation that the penalty imposed is not commensurate with the gravity of the offence is not enough and constitutes arbitrary, capricious and unstructured exercise of jurisdiction. The order must show that the Tribunal has applied its mind to the facts and circumstances of the case and exercised its discretion in a structured, lawful and regulated manner keeping in view the dicta of superior Courts in the matter. Whereas in the case of Divisional Superintendent, Postal Services, Faisalabad and others vs. Muhammad Zafarullah (2021 SCMR 400), it was held by this Court that the Tribunal enjoys powers to modify any order passed by the departmental authorities. However, such power is required to be exercised carefully, judiciously and after recording cogent reasons for the same in appropriate cases keeping in view and considering the specific facts and circumstances of each case. 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 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 in granting relief to the respondent. While in the case of Government of Pakistan, Revenue Division, Federal Board of Revenue through Chairman, Islamabad and another vs. Nawaz Ali Sheikh (2020 SCMR 656), this Court held that, 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. Whereas in the case of Commissioner Faisalabad Division, Faisalabad and another Vs. Allah Bakhsh (2020 SCMR 1418), it was held that the powers of the Tribunal under section 5 of the Punjab Service Tribunals Act, 1974 to confirm, set aside, vary or modify orders appealed against are neither discretionary nor unbridled. Such powers have to be exercised cautiously, carefully and with circumspection where the order imposing the penalty is wholly perverse or ex facie so demonstrably disproportionate and excessive for the offence/misconduct, that to let it stand would be unfair, unjust and inequitable.

11. As the result of the above discussion, this appeal is allowed. The impugned judgment of the Tribunal is set aside and the punishment of compulsory retirement awarded to the respondent is restored.

Judge

Judge

Judge

Islamabad the
6th October, 2022
Khalid
Approved for reporting.