

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 Petition No. 3813/2019

(Against the judgment dated 24.07.2019 of the
Federal Service Tribunal, Islamabad passed in
Appeal No. 1860(R)CS/2017)

Ijaz Badshah

Petitioner(s)

Versus

***The Secretary, Establishment Division, Govt. of
Pakistan, Cabinet Block, Constitution Avenue,
Islamabad & others*** *Respondent(s)*

For the Petitioner(s) : Mr. Abdul Rahim Bhatti, ASC

For the Respondent(s) : Not Represented

Date of Hearing : 12.10.2022

JUDGMENT

Muhammad Ali Mazhar, J. This Civil Petition for leave to appeal is directed against the judgment dated 24.07.2019 passed by the learned Federal Service Tribunal, Islamabad ("**Tribunal**") in Appeal No. 1860(R)CS/2017 with Miscellaneous Petition, whereby the Service Appeal along with the Miscellaneous Petition was dismissed.

2. The transitory facts of the case are that the petitioner was performing his duties as Secretary (PCS/BS-19) in the Federal Board of Revenue, Islamabad. He challenged the notification of major penalty of his dismissal from service issued on 07.10.2016 by the Secretary (Mgt-Customs-II), Federal Board of Revenue, Government of Pakistan ("**Notification**"). For the ease of convenience, the charge sheet/statement of allegations issued to the petitioner is replicated as under:-

"a) That you were granted one month leave by Customs Wing, FBR w.e.f. 09.07.2014. On the expiry of said leave,

you again submitted application dated 05.08.2014 for further extension of 04 weeks and then the application dated 22.09.2014 for grant of leave upto 30.10.2014 (calculates period 01 month and 24 days). But at your own will, you remained absent without getting it approved from the Competent Authority/Member (Admn) and issuance of leave Notification by the Management Wing.

b) That you are availing of un-authorized leave w.e.f. 09.08.2014 as reported by the Customs Wing FBR.

c) That is evident from the record (FIA's report) that you are holding various passports bearing Nos. KC869353, AF3417801 KG656679, SS609689 and AF3417802 for which you did not obtain any departmental permission/NOC for the purpose. You mis-declared your profession as "Business Owner" instead of "Government Servant" in the Passport(s).

d) That it is also revealed from the FIA's report that you proceeded abroad on 12.07.2014 on passport bearing No. AF3417802 via Flight No QR615 destined from Doha Qatar bypassing all norms of the Government rules/instructions, without taking prior permission. Moreover, you undertook frequent private visits of various foreign countries (e.g. Dubai-UAE, Glasgow-UK, Istanbul-Turkey, Doha-Qatar etc.) on different passports, without prior approval."

3. In response to the charge sheet/statement of allegations the petitioner sent his reply on 04.11.2014 in which he denied all the allegations, however, he remained absent and did not join the inquiry. After ex-parte inquiry, a further show cause notice was issued but the petitioner did not avail any right of personal hearing, and thereafter the dismissal order was passed.

4. The learned counsel for the petitioner at the very outset invited our attention to paragraph 11 of the impugned judgment of the Tribunal and entreated that, even before the Tribunal, the petitioner was not interested in obtaining reinstatement or setting aside the dismissal order, rather he requested the conversion of his penalty of dismissal from service into compulsory retirement. Before us as well he made a similar request that the dismissal order may be converted into compulsory retirement, but in one fell swoop he straight away admitted that the petitioner travelled abroad on different passports without securing NOC from the Government, but he tried to justify the illegality on the pretext that, due to illness of his mother, the petitioner travelled abroad and by reason of exigency he could not obtain the NOC. The learned counsel further argued, that while awarding the punishment on account of misconduct, the competent

authority should have considered the doctrine of proportionality and reasonableness and in support of his contention he referred to the judgment of Sabir Iqbal vs. Cantonment Board, Peshawar (PLD 2019 SC 189).

5. When in a similar way the plea of the petitioner's mother's illness, which ensued in the travel without NOC or approval, was brought to the notice of the learned Tribunal, it was considered meticulously on the strength of the available record where only some photocopies of medical history/reports of the petitioner's mother were presented and the learned Tribunal overtly observed that all the medical certificates/reports are issued by local hospitals, and nothing was brought on record which may transpire or substantiate that at any point in time the mother of the petitioner was under the care and treatment of a hospital located in any foreign country.

6. No doubt this Court may examine and judicially review the executive discretion on the ground of proportionality and reasonableness but at the same time the gravity of the charges raised in the statement of allegations are also to be considered. The standard of unreasonableness *vis-à-vis* the exercise of powers under the doctrine of judicial review correlated to the judiciary's power to determine the constitutional legitimacy of laws and the lawfulness of decisions made by public bodies was dealt with and mulled over in the case of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation ((1948) 1 KB 223), which explicates that a reasoning or decision is unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it, whereas in the test of proportionality, the courts may quash the exercise of discretionary powers in which there is no reasonable relation between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The Supreme Court of India in Civil Appeals Nos. 5675-5677/2007, Chairman, All India Railway Rec. Board v. K. Shyam Kumar and others have also discussed the principle laid down in the Wednesbury case, delineating the premise of unreasonableness and proportionality in the following terms:

"30. Wednesbury and Proportionality - Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to 'assess the balance or equation' struck by the decision-maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a state burial, with full honours is surely not to happen in the near future.

37. Proportionality requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The Court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere".

7. While exercising the role of judicial review in order to examine whether the punishment awarded by the competent authority may be converted into some lesser punishment or not, the set of circumstances of each and every case have to be considered minutely to determine whether the person deserves such treatment or not. In fact, it is the gravity of misconduct and charges which predominately guides the exercise of judicial review. In the case in hand, the magnitude of charges and the conduct of the petitioner explicate that, despite having full knowledge that, being a civil servant in BPS-19, he was not allowed to travel abroad without NOC and approval

issued by the competent authority, he still travelled on different passports by deception and impersonation as a businessman. However, it is another mystery as to how he is in possession of five different passports, which is an admitted position, the numbers of the passports are also mentioned in the impugned judgment of the Tribunal and he frequently travelled without NOC, but nobody could check or trace this illegality and impropriety. It is noteworthy to accentuate that Section 6 of the Passports Act, 1974 points towards the penalties for certain offences relating to passports which may extend to three years or with fine, or with both and under clause (i) of the same Section, obtaining more than one passport by any person either in the same or different names by concealing the fact of his already being in possession of a passport is an offence. Under Section 9 of the same Act, the burden of proving that a statement made in any document used for obtaining a passport is true shall lie on the person making the statement.

8. We have cautiously surveyed the judgment rendered by this Court in the Sabir Iqbal case (*supra*), but found it quite distinguishable for the reason that he was absent from duty only for one day i.e. 07.02.2011 on which the Department initiated disciplinary proceedings against him and the Inquiry Officer in his report recommended that 1/4th amount of his monthly salary may be deducted as fine with a last chance to him to improve his behaviour, but the authorized Officer dismissed him from service. This Court judicially reviewed the executive discretion exercised by the authorized officer on the ground of proportionality along with reasonableness and the punishment of dismissal on one day's absence was rightly found to be too harsh, as in our own sagacity also, for the mere absence of one day a minor penalty could have imposed which includes admonition, rather than putting the whole carrier or service on peril or stake by way of dismissal from service.

9. The primary objective of carrying out a departmental inquiry is to catch on the truth whether a case of misconduct is made out or not. The guilt or innocence of a civil servant can only be thrashed out from the outcome of the inquiry. The award of punishment is the dominion of the competent authority and the role of the Tribunal or

Court is secondary unless the punishment imposed upon the delinquent employee is found to be unreasonable, disproportionate or against the law as it was found out by this Court in the case of Sabir Iqbal (*supra*). However, at the same time, the rationale of deterrent punishment in the case of gross misconduct is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure in order to maintain discipline for the general administration of the institution or organisation. If in such cases of grievous misconduct any latitude is shown for conversion of penalty, then it would also seriously prejudice the discipline of the civil servants service structure. The punishment of dismissal from service in this case awarded to the petitioner is proportionate and reasonable to the act of misconduct committed by the petitioner, hence he does not deserve any indulgence for conversion of his punishment from dismissal of service to compulsory retirement.

10. As a result of the above discussion, we do not find any illegality, perversity or impropriety in the impugned judgment. The petition is therefore dismissed and leave to appeal is refused.

Judge

Judge

Judge

Islamabad, the
12th October, 2022
Rizwan
Approved for reporting.