

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

CIVIL APPEAL NO.18-K OF 2021

(On appeal against judgment dated
28.01.2020 passed by Federal Service
Tribunal Bench, Karachi in Appeal No.13(K)
CS/2005)

The Postmaster General, Karachi and anotherAppellants

VERSUS

Arshad AliRespondent

For the Appellants: Mr. Nishat Warsi, DAG
Mr. Rahat Ali, Asstt. Superintendent
Mrs. Abida Parveen Channar, AOR

For the respondent: Mr. Altaf Hussain, ASC
Alongwith Respondent in person

Date of Hearing: 02.08.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Appeal, with leave of the Court, is directed against the judgment dated 28.01.2020, passed by the learned Federal Service Tribunal Bench at Karachi, in Appeal No.13(K)CS/2005, whereby the appeal filed by the respondent was allowed with the directions of his reinstatement in service with all back benefits.

2. The short-lived facts of the case are that the respondent was officiating as Head Postmaster at Kutchery Post Office, Karachi, where a huge fraud in the Savings Bank Accounts was unearthed on 16.05.2003. Disciplinary proceedings were initiated against the respondent under the provisions of the Removal from Service (Special Powers) Ordinance, 2000 ("**RSO 2000**"). The respondent was also indicted in NAB Reference No. 25/2003, however, the Accountability Court, vide order dated 20.02.2007, acquitted the respondent although, against the said judgment, Cr. Acctt. Acq. Appeal No. 06/2007 is pending adjudication in the Sindh High Court. In the disciplinary proceedings initiated by the department, the respondent was found guilty of misconduct and dismissed from service. The

chronology of the case shows that after preferring a departmental appeal, the respondent filed a Service Appeal in the Federal Service Tribunal, Karachi which was allowed. Against the said judgment dated 08.08.2011, passed by FST Karachi previously, the petitioners filed an appeal in this Court which was disposed of vide order dated 16.5.2013 and the matter was remanded to the FST but, after the remand, the learned FST again allowed the service appeal of the respondent vide judgment dated 28.01.2020 which is under challenge in the instant appeal.

3. Leave to appeal was granted vide order dated 17.05.2021 in the following terms:

“Learned DAG contends that in the enquiry, the charge against the respondent was established of his abetting the crime committed by Izhar Hussain Siddiqui that of misappropriation of huge amount of the Post Office. He further contends that respondent being Post Master of Kuchehry Post Office, Karachi was in full knowledge of wrongful activities being committed by the lower staff of post office; by which huge amount of the post office saving account was being embezzled. He further contends that learned tribunal has not addressed this very issue in the impugned judgment.

2. The submission made by the learned counsel for the petitioner requires 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 matter expeditiously, preferably after three months”.

4. The learned DAG argued that the learned Tribunal failed to consider that the respondent was posted at Kutchery Post Office Karachi and he was performing his duties as Head Postmaster (Incharge) so he was under an obligation to keep a vigilant eye on the financial affairs thereof and report any irregularity and/or fraud to the competent authority. The inquiry report depicts that the respondent was not directly involved in the embezzlement but he was guilty of supervisory negligence, concealment of facts and criminal breach of trust. It was further contended that the respondent himself admitted in his defence to the Statement of Allegations that he was performing his duties as Head Postmaster, Kutchery Post Office Karachi and during the period of fraud, he was working as Incharge of the Post Office.

5. The learned counsel for the respondent argued that the allegation against the respondent was that he failed to report serious irregularities and fraud committed by Izhar Hussein Siddiqui in Kutchery Post Office and concealed the extensive misappropriation from the higher authority, hence the Inquiry Officer concluded that the respondent was also involved in corruption, abetment and connivance with Izhar Hussain Siddiqui who misappropriated a sum of Rs.298,207,618/-. It was further contended that Izhar Hussain Siddiqui admitted that he committed the fraud amounting to Rs.168,000,000/- and no other officer/employee had any role or knowledge of the same. He further averred that during inquiry, the prosecution failed to prove that the respondent was ever posted to officiate as Head Postmaster of the Kutchery Post Office. It was further contended that the procedure adopted by the Inquiry Officer was opposed to the procedure laid down under the law and the findings of the Inquiry Officer are contradictory, hence the FST rightly ordered the respondent's reinstatement in service.

6. Heard the arguments. In fact, the show cause notice under the provisions of the RSO 2000 was issued with the following statement of allegations:

STATEMENT OF ALLEGATIONS

"Mr. Arshad Ali formerly officiating Head Postmaster Kutchery PO Karachi LSG B-9 (under suspension) is accused of Misconduct, In-efficiency, Corruption, Abetment and Connivance arising out of the following acts of omission/commission as detected during the surprise visit by the departmental officers committee at Kutchery PO. Karachi on 16-5-2003 on account of embezzlement/fraud in the Saving Bank Accounts.

2. That while posted as officiating Head Postmaster Kutchery PO Karachi from 22-9-2001 to 17-7-2002:-

- i. Mr. Izhar Hussain Siddiqui a retired Head Postmaster Kutchery PO. Karachi, who was authorized as assistant to Assistant Director (Legal) Circle Office Karachi had been performing official duty and making the transaction in the Saving Bank Accounts.
- ii. Mr. Arshad Ali officiating Head Postmaster Kutcherty PO, w.e.f 22-9-2001 to 17-7-2002 and APM. LSG (B-9) from 18-7-2002 to 16-5-2003 at Kutchery PO, failed to point out serious irregularities to the higher authorities.
- iii. That the connivance and abetment with Mr. Izhar Hussain Siddiqui (Rtd.) Head Postmaster Kutchery Post Office Karachi made heavy transactions in Saving Bank Accounts through cash and cheques tendered by the depositors in connection with their deposits/withdrawals but being Head Postmaster you Mr. Arshad Ali concealed the facts and even did not report this serious irregularities to the higher authorities.

- iv. That a sum of Rs.298207618/- has been misappropriated by Mr. Izhar Hussain Siddiqui and department has to sustain heavy loss. Further verification is under way.
- v. That due to misconduct, In-efficiency, Corruption, Abetment and Connivance with Mr. Izhar Hussain Siddiqui retired Head Postmaster Kutchery Post Office Karachi you Mr. Arshad Ali former officiating Head Postmaster Kutchery PO (under suspension), is responsible for commitment of embezzlement/fraud".

7. After conducting inquiry, the respondent was found guilty and dismissed from service. The dismissal order is reproduced as under:-

**"PAKISTAN POST
OFFICE OF THE DEPUTY POSTMASTER GENERAL,
KPR-I, KARACHI**

No. KPR-I/Staff-Misc/Kutchery PO/Arshad Ali-APM Dated at Karachi the, 13/10/04

Mr. Arshad Ali, APM, LSG (B-9), Kutchery PO Karachi (Under Suspension) was proceeded against under Removal from Service (Special Powers) Ordinance 2000 on account of following allegations:

- i. Mr. Izhar Hussain Siddiqui a retired Head Postmaster Kutchery PO. Karachi, who was authorized as assistant to Assistant Director (Legal) Circle Office Karachi had been performing official duty and making the transaction in Savings Bank Accounts.
- ii. Mr. Arshad Ali officiating Head Postmaster Kutchery PO w.e.f. 22-9-2001 to 17-7-2002 and APM, LSG (B-9) from 18-7-2002 to 16-5-2003 at Kutchery PO, failed to point out serious irregularities to the higher authorities.
- iii. That the connivance and abetment with Mr. Izhar Hussain Siddiqui (Rtd.) Head Postmaster Kutchery Post Office Karachi made heavy transactions in Saving Bank Accounts through cash and cheques, tendered by the depositors in connection with their deposits/withdrawals but being Head Postmaster, you Mr. Arshad Ali concealed the facts and even did not report this serious irregularity to the higher authorities.

Syed Qadeer Muhammad former Chief Postmaster, Saddar GPO, Karachi was appointed as Inquiry Officer vide this Office memo of even No. dated 01-01-2004 who submitted his report vide No. SDR/CPM-1/10/Arshad Ali/04, dated 31-01-2004.

After going through the inquiry report, a show cause notice vide this Office memo of even No. dated 26-07-2004 was issued to the accused official along with copy of inquiry report. He submitted his written defence on 16-09-2004.

After detailed examination of statement of allegations, defence of accused, official inquiry report, show cause notice and its reply by the accused official, all charges against Mr. Arshad Ali stand proved as per inquiry report. The Inquiry Officer has also recommended major punishment for the accused. Due to inefficiency and negligence of accused official, the government has sustained heavy loss. He is therefore dismissed from Service with immediate effect. His suspension period will be treated as leave due".

8. According to clause (b) of Section 2 of the RSO 2000, the definition of "misconduct" includes conduct prejudicial to good order or service discipline or conduct unbecoming of an officer and a gentleman or involvement or participation for gain either directly or indirectly in industry, trade or speculative transactions or abuse or misuse of the official position to gain undue advantage or assumption of financial or other obligations to private institutions or persons such as may cause embarrassment in the performance of official duties or functions. Whereas Section 3 of the same Ordinance, is germane to the dismissal, removal and compulsory retirement of certain persons in government or corporation service, which powers could be exercised by the competent authority in the circumstances and state of affairs, if the person/employee is found inefficient or has ceased to be efficient for any reason or is guilty of being habitually absent from duty without prior approval of leave or guilty of misconduct or corrupt or may reasonably be considered as corrupt etc. However, before taking any drastic action, it was incumbent upon the competent authority to inform the accused in writing the grounds of the action and give him a reasonable opportunity of showing cause. The record reflects that the respondent took a plea that nothing was produced during the inquiry proceedings to show that he was ever assigned the officiating duty of APM or HPM, therefore any concealment of reporting the huge embezzlement and misappropriation did not arise. On the contrary, in his reply dated 07.01.2004 submitted to the competent authority in response to the statement of allegations, he himself confessed that he performed the duties of APM and HPM for a very limited period, whereas the main accused had been committing fraud since 1990. The inquiry report recapitulates that the respondent as well as departmental representative Wazir Ahmed A.S. (Admin) both appeared and participated in the inquiry and an ample opportunity of defence was provided to the respondent, including a personal hearing. During inquiry it was further substantiated that the respondent performed his duties as HPM on officiating basis from 22.09.2001 to 17.7.2002 and as APM from 18.07.2002 to 16.05.2003 at Kutchery Post Office, Karachi.

9. During the course of the inquiry, the Inquiry Officer had also confronted the respondent vis-à-vis his duties and obligations as HPM, as jotted down in the "Memo of Distribution of Work" of the Kutchery Post Office on which the respondent admitted his failure to discharge his legitimate duties as Head Postmaster. It was further reflected, from the documents produced by the respondent during the inquiry proceedings, that Izhar Hussain Siddiqui was engaged after his retirement to assist the Assistant Director (Legal) whereas as per the memo of distribution of work for the Kutchery Post Office, the Saving Bank accounts were required to be supervised by the Head Postmaster himself but the respondent failed to do so and allowed Izhar Hussain Siddiqui to perform his duties beyond the job description who made transactions in the Saving Bank Accounts during the period when the respondent was officiating as HPM. After due deliberation and providing ample opportunity of defence, the respondent was found guilty and the Inquiry Officer forwarded his recommendations, stating therein that due to the negligence and failure of the respondent in the discharge of his legitimate duties as HPM, the department has sustained heavy loss and after providing opportunity of personal hearing, he was dismissed from service.

10. The learned DAG also pointed out the excerpt from the Pakistan Post Office, Post office Manual, Volume-VI, Chapter 8, (Corrected up to 31st March 1968) to demonstrate the job description of Head Postmaster which is as follows:-

SAVINGS BANK

N.B.— 'All the duties of the postmaster in connection with the savings bank department may, under the orders of the Head of a Circle, be performed by the deputy postmaster, assistant postmaster, supervisor or head clerk in the case of head offices and by the deputy sub-postmaster, assistant sub-postmaster, supervisor or head clerk in the case of sub-offices, except that in the case of the head offices: -

(i) The head postmaster must himself decide claims in respect of savings bank accounts of depositors which lie within his powers of decision and will be responsible for the safe custody of the records relating to such claims. The head postmaster must keep all Government securities and investment certificates in his personal custody and instruct sub and branch post masters how to act in all cases arising out of applications for the purchase, sale, etc., of such securities. The head postmaster must also sign all savings bank returns to be submitted to the Audit Office unless this duty has been delegated to the deputy postmaster or an assistant postmaster.

(ii) The duties prescribed in rules 408, 495 and 497 in connection with the keeping up of the register of undeliverable pass books in

detention in the office, the examination of all savings bank vouchers, the check of the voucher list and the submission of Savings Bank returns complete to the Audit Office, may be delegated to the Deputy Postmaster or Assistant Postmaster Incharge of the Savings Bank Department of a Head Office.

PART 1-GENERAL

GENERAL RULES

403. Responsibility of postmaster.-(1) The postmaster is personally responsible that savings bank returns are despatched on the due dates, and for the duties connected with transactions relating to Government securities.

(2) The postmaster is specially entrusted with the duties connected with transactions relating to Government securities. All applications for the purchase, sale, etc., of Government securities should be attended to personally by him, and he will be held responsible that every transaction of the kind receives prompt attention, and is correctly passed through the books of the savings bank department.

IN HEAD OFFICES, Government securities received for transmission to the Deputy Comptroller (Posts, Telegraphs and Telephones) or delivery to depositors should be kept in the custody of the head postmaster so long as they remain in the post office. The head postmaster is also required to instruct sub and branch postmasters how to act in all cases arising out of similar applications received by them.

(3) IN HEAD OFFICES, the head postmaster is required to pay special attention to the examination of pass-books and documents placed before him relating to accounts open at sub and branch offices. If any erasures or alteration in s.b. acknowledgements [Form S.B.-8 (Revised)] or applications for withdrawal (S.B.-7) or other suspicious circumstances attending s.b. transactions at sub and branch offices, are noted by the postmaster or brought to his notice by the savings bank clerk, the matter should be reported at once to the Superintendent.

11. Indeed, the reinstatement was directed by the learned Service Tribunal on misconstrued and misjudged notions. It was predominantly on the basis that no evidence was on record to the effect that the embezzlement of a huge amount in Savings Bank Accounts was in the knowledge of respondent, hence the respondent could not be presumed to be guilty of inefficiency, connivance or abetment of crime. Seemingly, these findings have been recorded by the learned Tribunal without adverting to or scrutinizing the inquiry report in pith and substance as well as the job description of HPM and APM. While affording a clean slate to the respondent, his job description and responsibilities were overlooked and not taken into consideration in their true spirit. The respondent was bound to perform his duties in accordance with his job description but he was found to be reckless and incompetent. The articulation that misappropriation of huge amount of public money from saving

accounts was not in the knowledge of respondent is nothing but a figment of imagination and also beyond reasonable comprehension. In contrast, it is a deceptive and dishonest plea in our sagacity, which in fact aggravates the degree of negligence, inefficiency and incompetence and proves that the respondent was not capable or qualified to hold any responsible post as he failed to sense any act of embezzlement and misappropriation of public money in the post office under his command, which could not have happened had the respondent performed his duties diligently and kept a vigilant eye on the books of account with periodic exercise of reconciliation for prompt checking and reporting in case any mishap or misappropriation of public funds is detected in the accounts. Being the Postmaster, he was responsible for overseeing all aspects of the post office including the management of staff and the services or products offered by the post office. The corruption of substantial sums of public money could not be taken so lightly and that is why the respondent was dismissed by the management, but the Service Tribunal without any just cause took the lenient view whereas the respondent did not deserve any compassion or sympathy. Sometimes a little negligence or inefficiency may cause serious disaster and stern end results, therefore, at the time of appraising any act of misconduct contrasted with the penalty imposed by the management, the Service Tribunal is obligated to reevaluate the evidence all-inclusive and then inquiry findings with recommendations. The foresight of deterrent punishment is not only to maintain balance with the seriousness of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society. The respondent was found guilty in discharge of his duties, hence he could not be let free or exonerated.

12. The learned counsel for the respondent argued that the respondent was booked in the NAB reference as well, but he was acquitted by the Accountability Court. In response, the learned DAG argued that an acquittal appeal is pending in the Sindh High Court. The underlying principle of initiating disciplinary proceedings is to ascertain whether the charges of misconduct against the delinquent are proved or not, whereas prosecution under the penal statutes is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. The common sense or realism of criminal trial is to mete out punishment of the offences committed

by the accused while departmental inquiry is started off for making inquiry into the allegations of misconduct in order to maintain and uphold discipline and decorum in the institution and efficiency of the department to strengthen and preserve public confidence.

13. A civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge. While facing expulsive proceedings on departmental side on account of his indictment on criminal charge, he may not save his job in the event of acquittal as the department may still have reasons to conscionably consider his stay in the service as inexpedient. The department can assess the suitability of a civil servant, confronted with a charge through a fact finding method, which somewhat inquisitorial in nature, but without the heavier procedural riders otherwise required in criminal jurisdiction to eliminate any potential risk of error. Ref: Dr. Sohail Hassan Khan and others vs. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708) and District Police Officer, Mianwali and 2 others vs. Amir Abdul Majid (2021 SCMR 420),

14. As a result of above discussion, this Civil Appeal is allowed, consequently, the impugned judgment of the Service Tribunal is set aside and the Service Appeal filed by the respondent in the Federal Service Tribunal is dismissed.

Judge

Judge

Karachi,
2nd August, 2022
Khalid.
Approved for reporting