

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL No. 1684 OF 2021

(Against the Order of Federal Service Tribunal,
Islamabad dated 15.11.2018 in Appeal
No.1492 (P) CS/2018)

Sohail Ahmad

...Appellant

VERSUS

Government of Pakistan through Secretary
Of Interior Ministry at Islamabad and others

...Respondents

For the Appellant:

Mr. Muhammad Asif, ASC

For Respondent Nos.2-4:

Mr. Farman Ullah Khattak, ASC

Date of Hearing:

10.05.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Appeal with leave of the Court is directed against the judgment passed by the Federal Service Tribunal, Islamabad on 15.11.2018 in Service Appeal No.1492 (P) CS/2018, whereby the aforesaid Service Appeal of the appellant was dismissed.

2. The brief facts of the case are that, vide Order dated 16.08.2017, the competent authority of Frontier Constabulary KPK, Peshawar transferred the appellant as punishment from Platoon No.44 FC Malakand to Platoon No. 509 FC Daryoba with immediate effect and in continuation thereof another Office Order was issued on 28.11.2017, whereby he was made Junior most in the Platoon No. 509 FC Daryoba. The appellant preferred a departmental appeal on 03.01.2018 which was followed by another representation on 16.08.2018 but the same was not responded to by the Department, hence, he filed an appeal in the Service Tribunal which was mainly dismissed on the ground of limitation without touching the merits of this case.

3. Leave to appeal was granted vide order dated 01.12.2021 in the following terms:-

“The learned counsel for the petitioner contends that the petitioner has been imposed penalty of transfer from Platoon No.44 FC Malakand to Platoon No.509 FC Daryoba vide enquiry punishment order dated 16.08.2017 without holding of a regular enquiry and without hearing the petitioner in support of his complaint. He further contends that not only this but the petitioner has also been inflicted a second penalty vide CFC's order dated 28.11.2017 whereby, he was notified as junior most in Platoon No.509 FC Daryoba. The learned counsel further contends that in the first matter principle of audi alteram partem was not at all adverted to and the second penalty has altogether illegal and void ab initio, for that, no Show Cause Notice or any hearing whatsoever was provided to the petitioner, while imposing the second penalty, which otherwise could not be imposed in terms of Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. Subject to limitation, leave to appeal is granted to consider, inter alia, the submissions made by the learned counsel. The appeal stage paper-books be prepared from the available record with liberty to the parties 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 appeal expeditiously, preferably after three months”.

4. The present Civil Appeal is time barred by 10 days. In the condonation of delay application (C.M.A. No. 758 of 2019) it has been pleaded that the Order of the Service Tribunal was supplied to the appellant on 28.11.2018 by post and since it was a backward area, the postal service was not very prompt. It was further alleged that the appellant was performing his duties in an operational area so it was very difficult for him to get leave from the platoon. Based on the aforesaid reason for condonation, leave to appeal has already been granted and in view of the reasons encapsulated in the application for condonation of delay, the delay is condoned accordingly.

5. The learned counsel for the appellant argued that the entire proceedings against the appellant were illegal and in violation of Frontier Constabulary Rules, 1958. The appellant has been condemned unheard. The subsequent order dated 28.11.2017 making the appellant junior most was also harsh. It was further contended that both the impugned orders are nonspeaking and

before passing such orders, neither the appellant was served any show cause notice, nor provided any opportunity for personal hearing.

6. The bone of contention in this appeal is that, vide order dated 16.08.2017, firstly, the petitioner was transferred to another platoon as punishment and subsequently, another order was issued in continuation on 28.11.2017, whereby he was moved to the junior most position of Sepoy in his platoon. The nucleus of the case is whether for the one and same alleged offence, the appellant could be punished twice. The inquiry punishment letter dated 16.08.2017 shows that based on the Appellant's complaint, an inquiry was conducted against some of his colleagues for alleged misbehavior and torturing of FC personnel belonging to poor families with further allegations of grouping, brawling and illegal use of government articles. This complaint was endorsed to the DOFC, Malakand for inquiry and submission of report. The DOFC, Malakand visited Platoon No. 44 and recorded the statements of several individuals including the accused personnel and found that the allegations leveled by the appellant in his complaint were baseless, rather some allegations were leveled against the appellant in the report stating that he is suffering from chronic epilepsy and consumes medicines and has low tolerance level. On these allegations it was recommended that appellant may be transferred to some other platoon for his tribe. The Enquiry Punishment letter is reproduced as under:-

**"GOVERNMENT OF PAKISTAN
FRONTIER CONSTABULARY HEAD QUARTERS
PESHAWAR KHYBER PAKHTUNKHWA**

CFC'S ORDER

No.16275-76/Legal/M-156

Dated Peshawar the 16.08.2017

SUBJECT: ENQUIRY PUNISHMENT

A complaint lodged by Sepoy Sohail Ahmad P/44 (Mohmand Tarakzai) of FC Malak and (posted at Buner Swat) stating therein that some colleagues of his platoon namely Naib Habib Said, L/Naik Fateh Rehman, Sepoy Noor Khan, Sepoy Noora Khan, Sepoy Sher, Sepoy Khanzada and Sepoy Khial Akbar are in a habit of torturing and misbehave with FC personnel comparatively belongs to poor families and involved in malpractice i.e. grouping, brawl, illegal using of government articles etc.

To ascertain the facts the complaint was endorsed to DOFC Malakand for detailed probe and report at the earliest. The DOFC Malakand, Capt: (R) Dost Muhammad (PSP), in order to substantiate the facts, personally visited Platoon No.44 stationed at Daggar (Buner) and previews and recorded statements of several individuals including the accused personnel and platoon commander. The DOFC Malakand after conducting thorough probe concluded and recommended that:

"Allegation leveled in the application is baseless as no concrete evidence was produced by the complainant. The application as forwarded after an scuffle between Naik Habib and Sepoy Sohail Ahmad on routine duty matter... Sepoy Sohail Ahmad is suffering from Chronic epilepsy and consumes medicines. Sepoy Sohail Ahmad has low tolerance and has (sic) of scuffle with several of his platoon mates in past.....Has tendency of false reporting and bypassing chain of command....recommends that Sepoy Sohail Ahmad may be transferred to some other platoon of his tribe".

The undersigned having gone through the enquiry papers, statements and recommendations of Enquiry Officer hereby transferred Sepoy Sohail Ahmad from Platoon No.44 FC Malakand to Platoon No.509 FC Daryoba with immediate effect.

This is issue with approval of the competent authority.

For Commandant
Frontier Constabulary
Khyber Pakhtunkhwa, Peshawar"

7. The first aforesaid punishment letter of transfer was issued on 16.8.2017 but just after two months, in continuation of first punishment letter, another letter was issued on 28.11.2017 whereby the seniority of the appellant was upset and he was made junior most in the platoon. The second punishment letter is reproduced as under:-

**"GOVERNMENT OF PAKISTAN
FRONTIER CONSTABULARY HEAD QUARTERS
PESHAWAR KHYBER PAKHTUNKHWA**

CFC'S ORDER

No.23326-28/Legal/M-156

Dated Peshawar the 28/11/2017

SUBJECT: APPLICATION/SENIORITY

In continuation to this HQrs Order No.16275-76/Legal/M-156 dated 16/08/2017, Sepoy Sohail Ahmed is hereby transfer from Platoon No.44 FC Malakand to Platoon No.509 FC Daryoba as "Junior Most" in platoon.

This disposes off DOFC Daryoba Memorandum No.4309/AC dated 02/11/2017

For Commandant
Frontier Constabulary
Khyber Pakhtunkhwa, Peshawar"

8. It is resonating from the aforesaid departmental letters that in fact an inquiry was conducted on the complaint of the appellant against some alleged delinquents, but not against the appellant. Though upon holding the inquiry, the allegations leveled by the appellant in his complaint were found baseless, nevertheless, the appellant could not have been transferred as a punishment or revenge for the reason that he filed a false complaint against some of his colleagues which was found false without issuing show cause notice or providing the right of personal hearing to him. The matter did not rest here as on 28.11.2018, another office order was issued whereby his seniority was disturbed as a second punishment for the same alleged offence and he was made junior most in his platoon. We have also examined the North West Frontier Constabulary Rules, 1958 in which Rule 17 is germane to punishments and also delineates the authority for punishments and the types of punishments that may be awarded to the members of the Frontier Constabulary under Sections 8 to 13 of the North West Frontier Constabulary Act XIII of 1915 which governs punishment in war time, punishment in peace time and judicial punishments for departmental offences and departmental punishments. On the other hand, Rule 8 concerns Departmental Proceedings for offences meriting the punishments of dismissal, reduction in rank of emoluments, a fine exceeding 15 days' pay and allowance, or confinement to quarter-guard exceeding 7 days. Further, Rule 8 requires the preparation of a file containing a summary of the misconduct; the prosecution evidence; the charge; the defence evidence; statement of the accused; and the finding and order. It is clear beyond a shadow of doubt that while imposing the first punishment of transfer, or even at the time of upsetting his seniority, neither any show cause notice was issued to the appellant, nor any inquiry was conducted into any allegation, nor any right of personal hearing was afforded in compliance with the aforesaid rules but both punishments for the one and the same alleged offence were imposed in a hasty and injudicious manner.

9. When confronted with the aforesaid letters to the learned counsel for the respondent Nos. 2 to 4 as to whether such punishment was imposed without any show cause notice or inquiry proceeding, the

learned counsel could not satisfy this Court and fairly conceded that before imposing the punishment of transfer and upsetting the appellant's seniority, no opportunity of hearing was afforded to the appellant.

10. Under Article 10A of our Constitution, the right to a fair trial is a fundamental right. On adding this fundamental right in our Constitution, the Court is bound to analyze in the facts and circumstances of the case to ascertain whether this indispensable right was afforded or deprived of. What is more, the principles of natural justice require that the delinquent should be afforded a fair-minded opportunity to converge, give explanation and contest it before he is found guilty and condemned. Where any authority regulates and perform its affairs under a statute which provides the compliance of the principles of natural justice in a straightforward *modus* then application of natural justice should have been adhered to stringently and even in the second limb, notwithstanding, the statute is maintaining muteness on the area under discussion, the canons of natural justice should be lived up to. It is an elementary rule of law that no decision which is affecting the right of any person should be taken without providing an opportunity of being heard.

11. Whereas under Article 13 of the Constitution of Pakistan, it is clearly provided that no person shall be prosecuted or punished for the same offence more than once or shall when accused of an offence, be compelled to be a witness against himself. In the case in hand, it is apparent that the appellant was vexed twice for the same alleged offence of making false complaint against his colleagues who were found innocent after inquiry. The punishment of transfer as well as declaring him junior while upsetting the seniority through another office order issued in continuation are for the one and the same cause is also hit by the doctrine of double jeopardy which provides a legal defence to shield a person from being tried again for the same indictments after an acquittal or conviction. The word 'double jeopardy' originates from the rule '*Nemo bis punitur pro eodem delicto*,' which means "no one should be punished twice for the same offence" and another common-law rule '*Nemo debet bis vexari*,' which

means "*a man must not be put in peril twice for the same offence.*" It is also based on rule of conclusiveness and finality based upon the maxim of Roman jurisprudence '*Interest reipublicae ut sit finis litium*' (it concerns the state that there be an end to law suits). The jurisdiction of this Court within the precincts and borderlines of Article 187 of the Constitution endows the power to issue directions, orders or decrees as may be necessary for doing complete justice and also to mold the relief sanguine to the circumstances of the case in order to secure the ends of justice. The catchphrase "complete justice" is actually a wide-ranging and all-inclusive expression articulating to do justice by all means so that the dominant interest of justice is not altered or distorted on mere technicalities.

12. As a result of the above discussion, the Transfer Order dated 16.8.2017, Movement Order of the appellant dated 23.8.2017 and CFC's Order dated 28.11.2017, whereby the seniority of the appellant was upset and he was made junior most in the Platoon are set aside. However, it is clarified that in case of allegations of misconduct against the appellant, the Department may issue a show cause notice to him and if the reply is found unsatisfactory, a regular inquiry may be conducted in accordance with the law for further action. The civil appeal is disposed of in the above terms.

Judge

Judge

Islamabad the
10th May, 2022
Khalid
Approved for reporting