

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO. 873 OF 2021

(On appeal against the judgment dated 02.02.2021
passed by the Federal Service Tribunal, Lahore in
Appeal No. 12(L)/2017)

Muhammad Yaseen

...Petitioner(s)

VERSUS

Secretary, Ministry of Interior & Narcotics Control, Narcotics Control
Division, Islamabad and another

...Respondent(s)

For the Petitioner(s): Mr. Manzar Abbas Khokhar, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Ch. Ehtisham ul Haq, Special Prosecutor ANF
Mr. Muhammad Tariq, Joint Director Law, ANF

Date of Hearing: 25.07.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the legality of the judgment dated 02.02.2021 passed by the learned Federal Service Tribunal, Lahore, whereby the service appeal filed by the petitioner was dismissed and the penalty of dismissal from service imposed by the departmental authority was upheld.

2. Briefly stated the facts of the matter are that petitioner was serving as ASI in the Anti Narcotics Force. On 03.02.2016, he was charge-sheeted on the allegation that he illegally took/snatched an amount of Rs.103,000/- from civilian Khalid Mehmood (PW-2) when a picket was set by ANF officials on Sargodha Khushab Road. An inquiry was conducted and on the recommendations of the Inquiry Officer, major penalty of dismissal from service was awarded to the petitioner. He filed departmental appeal, which was declined vide order dated 28.11.2016. He then filed appeal before the Federal Service Tribunal, Lahore, but

it also met the same fate vide impugned judgment. Hence, this petition seeking leave to appeal.

3. At the very outset, learned counsel for the petitioner contended that the co-accused of the petitioner, who were charge-sheeted on the same allegation, have been dealt leniently by the department as minor penalties of censure have been awarded to them whereas a harsh penalty of dismissal from service has been imposed upon the petitioner. Contends that the petitioner had an unblemished service record of 33 years and was at the verge of retirement when he was dismissed from service and depriving him the retirement benefit would not be in the interest of justice.

4. On the other hand, learned Special Prosecutor ANF vehemently opposed this petition by contending that the petitioner was directly charged for taking money from Khalid Mehmood (PW-2), therefore, his case being distinguishable, he was rightly awarded major penalty of dismissal from service.

5. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

6. There is no denial to this fact that the petitioner along with three other ANF officials was charge-sheeted for illegally taking/snatching an amount of Rs.103,000/- from Khalid Mehmood (PW-2) and a joint inquiry in this regard was conducted by Mr. Maqbool Ahmed, Deputy Director, ANF. After inquiring into the matter, the Inquiry Officer recommended imposition of minor penalties on the co-accused of the petitioner namely **(i)** Muhammad Zeb, Inspector, **(ii)** Amjad Ali, Inspector and **(iii)** Usman Shafique, Constable. The perusal of record shows that Constable Usman Shafiq was awarded the penalty of censure along with stoppage of increments for three years whereas Inspector Amjad Ali was given the punishment of forfeiture of approved service upto 02 years along with stoppage of increments for three years. However, there is no mention as to what minor penalty was awarded to Muhammad Zeb Inspector. On our specific query as to why the petitioner has been treated differently, learned Law Officer stated that his case is distinguishable from that of the other ANF officials. However, he could not spell out the same from the record. We have noted that in his statement before the Inquiry Officer, Khalid Mehmood stated that the petitioner

Muhammad Yasin, Constable Usman Shafiq and Ashfaq Ahmed snatched Rs.103,000/- from him but later returned the same in a Police Station situated in Saddar Bhalwal. It is clear from his statement that the case of the petitioner was not distinguishable from the others. Even otherwise, we have noted that during cross-examination, the said Khalid Mehmood took an altogether different stance and stated that the petitioner had taken Rs.8000/- from him directly, therefore, both the stances taken by him are at variance. The said Khalid Mehmood stated that when he was stopped by the petitioner and other ANF officials, an amount of Rs.175,000/- was in his wallet. However, this is also a matter of consideration as to truthfulness of such stance. We have been informed that the petitioner has 33 years of unblemished service on his part and during these proceedings, his retirement age has passed. After serving the department for such a long period, the pensionary benefits are the right of an employee, which enable him to spend rest of his life peacefully. Article 25(1) of the Constitution ordains defiance of discrimination. However, by dismissing the petitioner from service while awarding minor penalties to the other officials, the petitioner has been discriminated against and the learned Service Tribunal did not take into consideration this aspect of the matter. As the petitioner has since retired from service, hence, no order for reinstatement is required.

7. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned judgment to the extent of the petitioner and direct the respondent No. 2 to similarly treat the petitioner as his co-accused/colleagues were dealt with by awarding him minor penalty. If the date of retirement of the petitioner has passed, all pensionary benefits for which he is entitled, shall be given to him within a period of two months from the date of receipt of certified copy of this order.

JUDGE

JUDGE

Islamabad, the
25th of July, 2023
Approved For Reporting
Khurram