P L D 2000 Supreme Court 104

Present: Abdur Rehman Khan and Sh.Raiz Ahmed, JJ

**FEDERATION OF PAKISTAN through
Secretary, Establishment Division, Government
of Pakistan, Islamabad and another---Petitioners**

versus

SALEEMULLAH KHAN---Respondent

Civil Petition for Leave to Appeal Nos. 1393 and 1394 and Criminal Original Petitions Nos.68 and 69 of 1999, decided on 7th October, 1999.

(On appeal against the judgment dated 24-7-1999 of the Federal Service Tribunal, Islamabad in Appeals Nos.913-R of 1998 and 173-R of 1999).

(a) Civil service---

----Misconduct---Removal from service---Issuance of corrigendum converting removal from service into compulsory retirement without bringing the matter to the notice of Competent Authority---Validity---Held, after issuance of the notification removing the civil servant from service, Department had become functus officio---No explanation having been offered for the issuance of the corrigendum, same was to be deemed to be null and void.

(b) Civil service---

----Misconduct---Competent Authority had directed that civil servant was to be compulsorily retired but he was removed from service by a notification--Validity-Notification of civil servant's removal from service being violative of the directions of the Competent Authority would be deemed to be null and void.

(c) Government Servants (Efficiency and Discipline) Rules, 1973--

----Rr. 3 & 4(1)(b)(iii)---Misconduct---Removal from service---Where nature of charges could not have been made basis for proceeding against the civil servant under the Government Servants (Efficiency and Discipline) Rules, 1973, proceedings taken against the civil servant were totally illegal and contrary to rules.

Mansoor Ahmed, Deputy Attorney-General and Alamdar Raza, Advocate Supreme Court with Ch. Akhtar Ali, Advocate-on-Record for Petitioners.

Respondent in person.

Date of hearing: 7th October, 1999.

ORDER

SH. RIAZ AHMED, J.---The Federation of Pakistan through Secretary, Establishment Division and the Secretary, Ministry of Interior, hereinafter called the petitioners, have filed above two petitions seeking leave to appeal against the judgment dated 24-7-1999 delivered by the Federal Service Tribunal whereby the appeals filed by the respondent Salimullah Khan were allowed and he was ordered .to be reinstated in service with effect from 15-7-1998 with all back benefits.

2. The relevant facts giving rise to the institution of these petitions are startling in nature. The respondent belongs to the Police Service of Pakistan and while he was performing his duties as Director, Bureau of Police Reference and Research, Islamabad, he was proceeded against under the Government Servants (Efficiency and Discipline) Rules, 1973, on nine charges contained in the charge-sheet. The charges are reproduced hereunder:--

"That while posted as Inspector-General (Prisons), N.-W.F.P., Peshawar, you committed the following acts of misconduct and corruption:--

(i) Illegally and without authorization collected Rs.96,400 from various Superintendents Jails and misappropriated this amount.

(ii) Imposed fee of Rs.2 for interview, with prisoners without authority and misappropriated the amount so collected.

(iii) Furnished a false certificate to the Home Department regarding no claim of medical charges by other staff.

(iv) Submitted and drew bogus T.A. bills amounting to Rs.20,800

(v) Attempted to misappropriate Government's funds worth Rs. one million released for the improvement of jail conditions.

(vi) As I.-G. Prisons, indulged in extravagance in the use of official telephones and vehicles.

(vii) Asked Superintending Engineer, WAPDA to reverse the electricity meter at your residence.

(viii) stopped payment of a cheque for Rs.6,905 on account of electricity dues.

(ix) Made illegal appointments without observing codal formalities.

3. The respondent submitted reply to the charge-sheet denying all the charges and, thus, a regular inquiry was conducted by Mr. Muhammad Javed Ashraf Hussain, Additional - Secretary, Interior Division: On 9-7-1997 the Inquiry Officer submitted his report holding that the charge No. l had been partly proved to the extent of having

collected Rs.96,400 from various Superintendents of Jails on the pretext of holding a conference on the Reforms and Rehabilitation of Prisoners, but the charge as to the misappropriation of any amount was not proved. In respect of charge No.2, the Inquiry Officer reported that the recovery of Rs.2 from each person desiring to meet a prisoner was within the knowledge of the Home Department, but its misappropriation by the respondent stood disproved. As regards charge No.3, it was observed that an attempt by the respondent to suppress truth regarding the medical bills of the staff and his own medical bills having been sanctioned within the available budget was made. but such attempt was aborted by the Home Department and in this regard a warning was issued to the respondent, but on a representation made by the respondent the said warning was set aside by the Chief Secretary to the Government of the N.W.F.P. Charge No.4 was reported not having been proved. Charge No.5 was considered by the Inquiry Officer as hypothetical as no expenditure had been incurred and the amount, thus, had lapsed. However, the respondent desired to include certain items towards the welfare of the prisoners and improvement of jail, but those proposals were not agreeable, hence question of misappropriation did riot at all arise. Charges Nos.6 and 7 were reported not having been proved and it was further opined by the Inquiry Officer that the charges were misplaced and the same should be dropped. In respect of charge No.8, the Inquiry Officer submitted that the matter was sub judice before the Ombudsman. Similarly, charge No.9 was also not proved. .

4. On the receipt of the inquiry report, the Secretary Interior (Authorised Officer) issued final show-cause notice dated 15-9-1997 to the effect that on the basis of the inquiry report, it was proposed to impose upon the respondent major penalty of removal from service in terms of provisions of rules 3 and 4(1)(b)(iii) of the Government Servants (Efficiency -and Discipline) Rules, 1973. The respondent submitted his reply, but the competent Authority by means of the impugned notification dated 15-7-1998 imposed the penalty of removal from service with immediate effect. The said show-cause notice also contained a provision that the inquiry had been conducted on nine charges and the respondent was found guilty by the Inquiry Officer on charges 1, 2 and 3 and the Authorised Officer had further found the respondent guilty of charges 2, 7 and 8. Aggrieved by the penalty imposed, on 12-8-1998 the respondent preferred departmental appeal, but the same having remained unresponded, the respondent filed Appeal No.913-R of 1998 on 11-11-1998 before the Federal Service Tribunal. It so happened that on 29-10-1998 a corrigendum was issued and the penalty of removal from service was converted into compulsory retirement from service. Aggrieved by this order, the respondent preferred a separate Departmental Appeal on 26-11-1998, but no heed was paid to the same and thus the respondent filed another Appeal No. 173-R of 1999 on 25-2-1999. Both these appeals were heard together and were allowed by the Tribunal as stated above.

5. Both the appeals were heard and vehemently contested by the petitioners. We have noticed that before the Tribunal after, it had reserved the judgment, a miscellaneous application was filed to hold an inquiry as to whether in fact the respondent had filed a Departmental Appeal so as to become eligible for invoking the jurisdiction of the Tribunal. In fact before the Tribunal the respondent had contended that before filing Appeal bearing No. 173-R of 1999 assailing the corrigendum issued by the petitioners retiring the respondent from service, it had been contended by the respondent that he

had filed Departmental Appeal and copy of the same had been delivered and a receipt from an official of the R & I Branch of the Interior Division had been obtained. On behalf of the petitioners it was contended that no such Departmental Appeal had been filed and therefore the appeal was incompetent. This objection was repelled by .the Tribunal and rightly so because in para. 11 of the memo. of Appeal No. 173-R of 1.999 the respondent clearly stated that he filed a Departmental Appeal on 26-11-1998 against the aforesaid corrigendum through proper channel and a copy of the same was annexed with the memo. of appeal as Annexure 'C'. The Tribunal came to the conclusion that the said copy of the appeal had been received in the R & 1 Branch and an official had put signature on the same on 26-11-1998. As against this documentary, evidence. the petitioners, had no material to rebut it.. The Tribunal also rightly concluded that from the date of filing of the appeal on 25-2-1999 till hearing of the arguments on 20-7-1999, no effect was made by the petitioners to make any such application for holding of inquiry and no reason was forthcoming for such unexplained delay. Similarly while filing Appeal No.913-R of 1998 assailing the removal from service the respondent had asserted that lie had filed the Departmental Appeal on 12-8-1998. The Tribunal was amazed to notice that in the parawise comments the petitioners took a preliminary objection to the effect that no appeal had been filed, but in para. 12 of the comments the petitioners stated that the respondent had preferred an appeal on 11-8-1998 impugning the Establishment Division's notification dated 15-7-199.8. In our view, it was highly unjust on the part of the petitioners to approbate and reprobate.

6. After anxious consideration, we are of the view that there was force in the arguments of the respondent that while issuing corrigendum converting his removal from service into compulsory retirement, the matter had not been brought into the notice of the competent Authority. The first notification removing the respondent from service was made in compliance of the approval of the competent Authority, i.e., the Prime Minister, but the corrigendum seems to have been issued at a lower level probably by a Deputy Secretary or a Joint Secretary in the Establishment Division without the matter being brought into the notice of the competent Authority. especially when the departmental appeal against the impugned notification dated 15-7-1998 removing the respondent from service had already been preferred by way of Appeal No.913-R of 1998, which was pending adjudication when this corrigendum was issued. We are in agreement with the Tribunal that after the issuance of the notification dated 15-7-1998 removing the respondent from service, the Establishment Division had become functus officio. Strangely enough the petitioners tried to explain that it was a typographical mistake, which had crept into the notification data) 15-7-1998 and due to inadvertence in the notification, the removal from service was incorporated and the same could be rectified at any time by the officials of the Establishment Division. The Tribunal repelled this contention and rightly so because it perused the record and the note on the file. The note is reproduced as under:--

"61. The competent Authority has approved imposition of major penalty of compulsorily retirement from service upon Mr. Saleemullah Khan, PSP (BS-20) (page 33/N). The officer belongs to APUG (PSP). Notification of his compulsorily retirement is required to be issued by E.Wing. A draft U.O. from Joint Secretary (D/L) to J.S.(E) is plated below for approval. ,

(Sd.) (SIKANDAR HAYAT MAKEN),
D.S.(D-11) 15-7-1998.

J.S.(D/L) 62. Pl, put up draft notification on the approved pattern.

(Sd.) J.S. 15-7-1998

DS(D-II)

63. Draft notification imposing major penalty of "removal from service" upon Mr. Saleemullah Khan. PSP BS-20 is placed below for approval.
(Sd.) DS (D-I1)
15-7-1998
JS(D)
(Sd.) JS
15-7-1998

Addl. Secy.

(Sd.) Addl. Secy.
15-7-1998

Secretary.

64. Approved with slight amendment in para. 1 of the preamble . (DFA).

(Sd.)
Secretary.
15-7-1998."

The explanation can hardly be believed. Assuming otherwise, it was a blunder and if at all it had been noticed by the officers in the Establishment Division that a mistake had been committed, then it was their bounden duty to place the matter before the competent Authority for clarification and for obtaining necessary orders. In our view, the explanation rendered by the petitioners for the issuance e of the corrigendum is an afterthought. The order could have only been reviewed or revised by the President of Pakistan. It was not a clerical or typographical mistake, rather it was alteration in the major penalty. The respondent, in our view. seems to have been victimised for the reason best known to the Establishment Division.

7. It is, thus, manifest that the notification dated 15-7-1998 was not in accordance with the directions of the competent Authority as it runs contrary to the noting reproduced above. The competent Authority directed that the respondent was to be compulsorily retired, but he was removed from service, therefore, the notification being violative of the direction of the competent Authority would be deemed to be null and void. Similar is the position of the corrigendum. As already stated above, the same was issued not at the instance of the competent Authority or the revising Authority, but by some officials

in the Establishment Division. No explanation was offered before us for the issuance of the corrigendum.

8. Adverting to the nature of charges, a reference to them would also he necessary. The first charge against the respondent was that he had collected donations from Jail Superintendents, but according to the report of the Inquiry Officer. one Haji Habib Gul, the Office Superintendent had been dealing with the disbursement of the said amount and the respondent was not found to have misappropriated a single penny. Scrutiny of the findings also leads to the irresistible conclusion that the respondent was not at all involved even in collection of such donations. The respondent had produced documentary evidence in the form of certificates issued by the Jail Superintendents of Kohat, Haripur. Mardan and many others to prove that no efforts were made by them for the collection of such funds nor had they remitted any amount to him in his capacity as I.-G. Prisons, N.-W.F.P. Strangely enough, Qayyum Nawaz, Superintendent Jail, Haripur and Abdul ,Latif Arshad, Superintendent Jail, Mardan appeared as witnesses against the respondent and deposed that they had paid Rs.5,000 to Haji Habib Gul to meet the expenses of conference held for the welfare of the prisoners and for no other purpose. Their statements run contrary to the certificates already issued in which they stated that they did not remit any amount. In our view as well, such evidence could not have been relied upon to prove the charge. The Inquiry Officer also came to the conclusion that the entire expenditure for such conference was borne by Gandhara Lions Club whereas Haji Habib Gul stated that he had paid Rs.86,000 through his three jail officers against the bills submitted by them. It is obvious that contradictory stand was taken. The expenses had been borne by Gandhara Lions Club and Printographic Printers and this expenditure was for a conference held to consider the various proposals for the welfare of the prisoners. We fail to understand as to how this could be considered as misconduct. No iota of evidence was produced to show that the respondent was in any manner involved in collection of funds. Even according to the Inquiry Officer the respondent had not at all misappropriated any amount. The Tribunal rightly took judicial notice of the fact that numerous philanthropic societies/organizations collect funds for donating the same for the welfare of the prisoners to provide them fans, medicines., clothes and cash is also collected to meet other expenditure. In any event, without further probe charge No. l could not be proved. As regards charge No.2, the imposition of fee of Rs.2 for holding a meeting with the prisoners was within the knowledge of the Home Department, but no action was taken to forbid the raising of fund by this device. The Tribunal came to the conclusion that in fact the Minister of Jails, who held a meeting, initiated this proposal and the collection of funds was meant to meet the expenditure towards the welfare of the prisoners because it is well known that Government is short of funds. The Tribunal had also seen the minutes of the meeting in which at the instance of the Jail Minister this proposal was accepted and the practice remained in vogue only for about two months and thereafter, it was the respondent who in his capacity as I.-G. Prisons, suo motu ordered to discontinue collection of such fee. The Inquiry Officer also came to the conclusion that no misappropriation of money had taken place, hence this charge also could not be proved against the respondent. As far as charge No.3 is concerned, the same also could not be proved. The respondent had not at all suppressed medical bills of the subordinate officials with a view to receiving his own bill. The warning allegedly issued by the Home Department was set aside by the Chief Secretary to the

Government of N.-W.F.P., therefore, this was a frivolous charge. Similar is the fate of charges 4, 5, 6 and 7. In fact, charges 7 and 8 related to private and personal matters of the respondent and he could not have been proceeded against on the basis thereof.

9. as far as final show-cause notice dated 15-9-1997 is concerned, it transpires that the Authorized Officer concurred with the findings arrived at by the Inquiry Officer for imposing major penalty of removal from service, besides holding the respondent guilty on three more charges while the competent Authority held the respondent guilty on charges 1 to. 3 and strangely enough no reason was advanced to differ with the findings of the Inquiry Officer. The competent Authority also did not notice nor gave any reasons to differ with the findings of the Inquiry Officer.

10. From the perusal of all these facts and nature of the charges referred to above, and discussed at length by the Tribunal, it is obvious that these charges could not have been made basis for proceeding against the respondent under the Efficiency and Discipline Rules and the proceedings taken against the respondent thus were totally illegal and contrary to rules.

11. For the foregoing reasons, we do not find any merit in these petitions. The same are hereby dismissed and leave to appeal is refused. The criminal original petitions are also dismissed.

M.B.A./F-64/S Petitions dismissed.

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