IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-2690 of 2022
(Muhammad Umair v National Accountability Bureau & others)

Date	Order with signature of Judge

Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and Order: 29.08.2025

Mr. Sarmad Hani advocate for the petitioner
Ms. Wajiha M. Mehdi, Assistant Attorney General
Syed Meeral Shah Bukhari, Special Prosecutor NAB

O R D E R

MUHAMMAD KARIM KHAN AGHA, J: Through the instant petition, the petitioner has prayed as under:-

1. Declare that the Impugned Notification dated 30th June 2021 and the Impugned order are illegal, arbitrary, and have been issued in violation of the principles of natural justice, equity, and fairness, and Article 10-A of the Constitution.

2. Declare that the impugned fact-finding inquiry report is illegal and in violation of the TCS Rules and the Fundamental rights of the petitioner.

3. Set aside the impugned Notification dated 30th June 2021 through which a major penalty of Removal from Service has been imposed upon the petitioner.

4. Direct the respondents to reinstate the petitioner with all back benefits.

5. Direct the respondents to take all appropriate legal measures by conducting a formal/regular inquiry against the act of theft by unknown persons and submit a report accordingly before this Court.

6. Grant a permanent Injunction by suspending the operation of the impugned Notification dated 30th June 2021 and the impugned order till the pendency of this petition.

7. Any other relief that this Court deems appropriate in the circumstances of the case.

2. This petition was filed by Muhammad Umair (former Investigation Officer) against the National Accountability Bureau (NAB). The petitioner was removed from his position as an Assistant Director at NAB, after

being accused of inefficiency, misconduct, and disclosing official secrets to favor the accused in the subject NAB Reference.

3. The core of the case of the petitioner revolves around a criminal investigation, the petitioner was involved concerning a prominent politician, Mr. Sharjeel Inam Memon. During the investigation, 77 documents were recovered from a co-accused. The petitioner filed a reference (a formal report of wrongdoing) and kept the original documents in a shared office cabin. Subsequently, 15 of these original documents, including sale deeds and power of attorneys, went missing from the cabin. The missing documents were related to the main accused and his family. The NAB authorities initiated a "Fact Finding Inquiry" and concluded that the petitioner was/is responsible, despite the petitioner's claim that the documents were stolen, and finally, he was removed from service vide Notification dated 30.06.2021, and his appeal was also dismissed vide order dated 17.11.2021, which triggered the petitioner to file the instant petition on 23.04.2022.

4. The petitioner's counsel argued that the petitioner was dismissed from service without a proper, formal/regular inquiry. He was not allowed to cross-examine witnesses or present his own defense, which he claims is a violation of his fundamental rights in terms of Article 10-A of the Constitution. He emphasized that the inquiry was based on a "fact-finding" report, which he argues is not sufficient for imposing a major penalty, from removal of service. The petitioner's counsel asserts that the missing documents were the result of a theft, not his inefficiency or misconduct as portrayed in the fact finding inquiry. He points out that the police never lodged a formal First Information Report (FIR) despite his request. He added that the NAB authorities initiated two parallel inquiries against him, which he claims is illegal and a sign of malafide intent. The petitioner's counsel claims that his seniors were also at fault for not ensuring the security of sensitive documents required in the Court for evidence. He mentions that the office cabin was shared with another officer, who was never investigated, and that the NAB lacks a proper record room, which is a violation of its own Standard Operating Procedures (SOPs). The petitioner's counsel argued that the petitioner is being made a scapegoat for a theft that occurred in a highly sensitive case against an influential politician, for which he conducted thorough investigation and collected sufficient evidence for trial, which shows his bonafide intention, however he has never been indulged in any sort of misconduct based on corruption and corrupt practices. The petitioner's counsel argues that the missing original sale deeds are not crucial to the case against the accused, Sharjeel Inam Memon. This is because

microfilmed copies of the same documents were also seized from the sub-registrar's office and are already part of the NAB reference as such the petitioner cannot be saddled with removal from service. These microfilmed copies are considered valid and can serve as evidence before the competent court of law. The petitioner's counsel contends that it makes no sense for him to have misplaced the documents as suggested in presence of the microfilmed copies. He was the one who worked diligently to build the case against the accused and collected the very evidence that went missing. He believes his actions demonstrate a commitment to the case, not a motive to sabotage it. In support of his contention, he relied upon the cases of *Shakir Ali National Accountability Bureau & others* **2021 PLC (CS) 683**, *Federation of Pakistan v Zahid Malik* **2023 SCMR 603**, *Usman Ghani v The Chief Post Master GPO Karachi and others*, **2022 SCMR 745,** and *Divisional Forest Officer, Kasur and another* **2011 PLC (CS) 1382.** He prayed for allowing the petition.

5. The NAB's counsel argues that the petition is liable to be dismissed because it's legally baseless and involves factual disputes beyond a constitutional court's scope under Article 199 of the Constitution. He asserts that the petitioner's dismissal from service was justified due to his gross negligence and misconduct. He submitted that the petitioner, as the sole custodian of the confidential documents, was responsible for their loss. His failure to inform superiors, appearing in court without permission, and a public apology for the loss caused immense embarrassment and weakened a high-profile case. NAB counsel insists it followed all procedural requirements, including a fact-finding inquiry, a show-cause notice, and a personal hearing, as per the NAB Employees (TCS-2002) rules. NAB counsel refutes the claim of a shared cabin key, stating the other officer had temporary access for a different case and the petitioner later changed the lock. He cites a Supreme Court precedent in *Rab Nawaz Hingoro case* reported as **2008 PLC (CS) 229** to justify conducting both a departmental and a criminal inquiry simultaneously. NAB counsel dismisses the petitioner's attempts to file a police report as an "eye-wash" and frames the incident as misconduct rather than theft. He prayed for dismissal of the petition.

6. Learned Assistant Attorney General has supported the stance of the respondent NAB's point of view and prayed for dismissal of the Petition.

7. We have heard the counsel for the parties and perused the record with their assistance and case law cited at the bar.

8. Petitioner, being Investigating Officer of the criminal case, seized the original record. Therefore, he was the authorized custodian of the sensitive record. However, he failed to secure highly sensitive record from his custody which resulted into missing / leakage of documents to unauthorized persons and embarrassment of the NAB. His purported 'inefficiency' & 'misconduct' resulted in disclosure of official secrets to unauthorized persons as defined in Section 11.02 (a), (b), & (d) of NAB Employees, TCS-2002 as well as breach /violations of NAB Standard Operating Procedures (SOPs) Operational Methodology Chapter-1 (Volume-I), however, in the present case, it is an admitted fact that no regular inquiry was conducted into the allegations level against the petitioner; only a fact-finding inquiry was carried out to establish the charges, which was/is not requirement of law in terms of recent judgment pronounced by the Supreme Court.

9. The central legal questions involved in the present proceedings are whether the petitioner's dismissal from service was/sis justified. This hinges on whether his actions constituted "gross negligence and misconduct" under the NAB's rules, given his role as the sole custodian of the missing documents, and whether a "fact-finding inquiry" is legally equivalent to a "regular inquiry" for the purpose of imposing a major penalty like dismissal and whether the petitioner was given a full and fair hearing before being dismissed from service, in light of the missing documents recovered during the investigation in a NAB Reference.

10. Addressing the proposition, in principle, the role of the Court is not to remake the decision being challenged or to inquire into the merits of that decision, but to conduct a review of the process by which the decision was reached to assess whether that decision was within the parameter of law or otherwise under the writ of certiorari ; and observance of rules of natural justice.

11. Of course, fair play is the basis, and if there is perversity or arbitrariness, bias, which vitiates the conclusions reached. In such a scenario, more particularly in service matters, this Court can only see whether: (a) the inquiry is held by a competent authority; (b) the inquiry is held according to the procedure prescribed on that behalf; (c) there is a violation of the principles of natural justice in conducting the proceedings; (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person

could ever have arrived at such conclusion; (g) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; (i) the finding of fact is based on no evidence.

12. However, we are also cognizant of the fact that this Court under Article 199 of the Constitution shall not be in a position to: (i) re-appreciate the evidence; (ii) interfere with the conclusions in the inquiry, in case the same has been conducted under the law; (iii) go into the adequacy of the evidence; (iv) go into the reliability of the evidence; (v) interfere, if there be some legal evidence on which findings can be based. (vi) correct the error of fact, however grave it may appear to be (vii) go into the proportionality of punishment unless it shocks its conscience.

13. To elaborate further on the subject question, it is well-settled law that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion that the authority reaches is necessarily correct in the eyes of the Court.

14. In service jurisprudence, the disciplinary authority is the sole judge of facts. Where the appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment, subject to the condition that proper regular inquiry has been conducted against the delinquent officials. On the aforesaid proposition, we are fortified by the decision of the Supreme Court in the case of *Ghulam Murtaza Shaikh v. Chief Minister Sindh* (**2024 SCMR 1757).**

15. In the present case, the allegations were/are denied by the petitioner and it was/is incumbent upon the inquiry officer/NAB to hold a regular inquiry in terms of principles of natural justice and to ascertain the truth about the allegations by producing cogent material and evidence against the petitioner, whereas no legal procedure has been adopted by the inquiry officer/NAB to substantiate the charges against the petitioner through regular inquiry. It is settled that when the civil / public servant in response to the Show Cause Notice, has specifically denied the charges against his/her and considering the nature of the charges, all those allegations required evidence, then it becomes incumbent upon the authority to have ordered a regular inquiry and in the above given situation departure from a normal course does not reflect bonafide on the part of the authority concerned. In this regard, reliance can be placed on the case *of Basharat Ali v. Director, Excise and Taxation, Lahore, and another* (**1997 PLC [CS] 817**) [SC].

16. The Supreme Court of Pakistan in the case of *Abdul Qayyum v. D.G. Project Management Organization JS HQ, Rawalpindi, and 2 others*

(**2003 SCMR 1110**) held that the requirement of regular inquiry could be dispensed with in exceptional circumstances. However, where recording of evidence was necessary to establish the charges, then departure from the requirement of regular inquiry under the Rules would amount to condemning a person unheard.

17. It is now well settled that a fact-finding inquiry is not equated with a regular inquiry; instead, it serves as an initial stage to gather information to determine if a formal, regular inquiry is warranted. While a fact-finding inquiry establishes preliminary facts for the management to consider, a regular inquiry is a formal process, triggered by a show-cause notice and allegations, that provides the accused with a fair opportunity to defend themselves through witness cross-examination and evidence presentation. A fact-finding inquiry report is admissible as evidence only if conducted fairly, with proper procedures, and based on credible evidence, especially when mandated by law or conducted by a competent authority. These requirements appear absent in this case. Moreover, this Court retains the right to scrutinize the fact-finding report and allow cross-examination of its contents. It is by now well-settled that the right to a fair trial means the right to a proper hearing by an unbiased, competent forum in terms of Article 10-A of the Constitution.

18. The Supreme Court in the recent judgment in the case of *Faisal Ali Vs District Police Officer* **2025 SCMR 92**, held that a departmental inquiry must be strictly confined to the allegations presented in the show cause notice. The employee can only be held accountable for charges he was formally notified of. Allowing an inquiry to go beyond the scope of the show cause notice would be a fundamental violation of due process and natural justice, rendering disciplinary proceedings a "sham" and a tool for victimization. The purpose of a show cause notice is to give an employee a fair chance to defend themselves; to take action on unmentioned allegations would be unjust and illegal. The Supreme Court further held that the benchmark for guilt in departmental proceedings is the balance of probabilities, not "beyond a reasonable doubt" as in criminal trials. A preliminary investigation to determine if there is a prima facie case for disciplinary action, the employee is not involved at this stage. Similar to a discreet inquiry, its purpose is to gather facts and report them to management. It does not determine guilt or innocence. The formal disciplinary process begins after a show-cause notice. The employee is given a full and fair opportunity to present his/her defense and cross-examine witnesses if any. This is the stage where a determination of guilt or innocence is made.

19. To elaborate further, in cases of alleged misconduct, this court's role is not to replace the employer's judgment but to review the proportionality and reasonableness of the punishment. This court can intervene and overturn a decision if the punishment is unreasonably harsh or "out of proportion" to the misconduct and the decision is so irrational that no reasonable person would have made it. This "proportionality test" ensures a fair balance between the employer's right to discipline and the employee's rights, acting as a safeguard against illogical or excessively severe penalties. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of *Ijaz Badshah versus Secretary, Establishment Division, Govt. of Pakistan* (**2023 SCMR 407**).

20. Applying the above principles, the impugned orders in the instant case cannot be treated to be a simpliciter termination from service in terms of reasons assigned by this Court in the case of *Shakir Ali v. National Accountability Bureau* (**2021 PLC (C.S.) 683**). Paragraphs 8, 9 and 10 of the said judgment are reproduced as under: -

> *"8. We do not agree with the contention of learned Special Prosecutor NAB that inquiry was not required in these cases in view of the findings and recommendations of the Committee, or that the competent authority of NAB had the discretion and power to dispense with the inquiry under Sub-Rules (1) and (2) of Rule 11.05 of NAB Employees TCS 2002. Perusal of the impugned show cause notices issued to the petitioners shows that it was vaguely mentioned therein that after examining the reports and their enclosures, the authorized officer had arrived to the conclusion that there was no need for a formal inquiry. No reason whatsoever, let alone any plausible reason, was assigned in the impugned show-cause notices for dispensing with the inquiry. Thus, the impugned dispensation of inquiry was not justified in view of Divisional Forest Officer Kasur (supra). Regarding the power and discretion of the authorized officer under Rule 11.05 of NAB Employees TCS, 2002, needless to say exercise of such power and discretion must not be arbitrary, mala fide, discriminatory or whimsical, and it must be exercised in accordance with law and the well-established principles of natural justice. We are of the clear view that plausible reason(s) for dispensing with the inquiry against an employee must be disclosed and communicated to him even if Rule 11.05 ibid is silent in this regard.*
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> *9. There is another important aspect of these cases. The appeals filed by the petitioners before the President of Pakistan against their removal from service by NAB were rejected, however, this fact was conveyed to them by the respondents / NAB vide separate letters dated 11.12.2019 without supplying to them copies of the orders passed on their appeals. Even the dates of such orders were not disclosed in the above letters. It is stated on behalf of the petitioners that they were not provided any opportunity of hearing in their appeals and till date they have not been informed by the Secretariat of the President / appellate authority about the fate of their appeals, nor have copies of*

> *the orders of the purported rejection thereof been supplied to them. In our opinion, the petitioners were entitled to know the reasons that prevailed with the appellate authority for rejecting the grounds urged by them in their appeals. It is well-settled that every court / tribunal / authority is duty-bound to record reasons of its findings in its order / judgment, failing which the order / judgment is considered to be void. We are also of the view that while deciding statutory appeals, the President of Pakistan or the Governor of a Province, as the appellate authority under the statute concerned, are not immune of this important and fundamental legal requirement. Therefore, the order of rejection of the petitioners' appeals purportedly passed by the President of Pakistan / appellate authority is also not sustainable in law.*
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> *10. For what has been discussed above, both these petitions are allowed, however, with no order as to costs. Resultantly, the impugned orders of removal of the petitioners from service are hereby set aside and their cases are remanded back to the competent authority of NAB for holding regular inquiry against them after providing opportunity of hearing / representation to them strictly in accordance with law, which exercise shall be completed within three (03) months from the date hereof. Needless to say the question of granting back benefits to the petitioners shall depend upon the outcome of the inquiry to be held in pursuance of this judgment."*

21. It appears that this is removal from service of the petitioner without a regular inquiry. These orders were passed by way of punishment and, with stigma, without holding a regular departmental inquiry. The law provides that the punishment must always be commensurate with the gravity of the offense charged. The punishment imposed on the petitioner is disproportionately excessive and it is not within the reach of natural justice for the simple reason that the petitioner has explained his position with regard to missing of the documents but could not convince the respondent NAB and if the assertions of the petitioner were not acceptable to them they ought to have inquired the allegations through regular mode of inquiry, which they have failed to do so, thus leaving this Court with no option but to accept the version of the petitioner at this stage to remit the case to the competent authority of the respondent-NAB to inquire the allegations through regular mode of inquiry in terms of the ratio of the recent judgment passed by the Supreme Court as discussed supra, by allowing the petitioner to cross-examine the witnesses, if any, and produce the evidence in defense.

22. It is to be noted that the right of "access to justice to all" is a well-recognized inviolable right enshrined in Article 9 of the Constitution and is equally found in the doctrine of "due process of law". It includes the right to be treated according to law, the right to have a fair and proper trial, and a right to have an impartial Court or tribunal. On the aforesaid

proposition, we are guided by the decision of the Supreme Court in the case of *Sh. Riaz-Ul-Haq v. Federation of Pakistan* (**PLD 2013 SC 501**). The right to a fair trial has been associated with the fundamental right of access to justice, which should be read in every statute even if not expressly provided for unless specifically excluded. While incorporating Article 10-A in the Constitution and making the right, to a fair trial a fundamental right, the legislature did not define or describe the requisites of a fair trial, which showed that perhaps the intention was to give it the same meaning as broadly universally recognized and embedded in jurisprudence in Pakistan. Reliance can be placed on the *Suo Moto Case No.4 of 2010* (**PLD 2012 SC 553**).

23. Accordingly, the impugned Notification dated 30th June 2021 of removal from service of the petitioner and the appellate order dated 17.11.2021 are set aside. The respondents / competent authority of the NAB is directed to reinstate the petitioner on his original post and position forthwith with all back benefits. However, the competent authority is free to initiate a regular inquiry against the petitioner, if they have sufficient material, in accordance with the law.

24. This petition is allowed on the aforesaid terms.

HEAD OF THE CONST. BENCHES

JUDGE

Shafi