

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.D-636 of 2024

[*Muhammad Saqib Saghir v. Federation of Pakistan & 03 others*]

Before:

Justice Arbab Ali Hakro

Justice Riazat Ali Sahar

Petitioner by : M/s Mumtaz Ahmed Lashari and Abdul Rahim Lakho, Advocates

Respondents No.2 to4 by : Mr.Mumtaz Alam Laghari, Advocate

: Mr.Ghulam Abbas Sangi, Assistant Attorney General for Pakistan

Dates of Hearing : **27.01.2026**

Date of Decision : **03.03.2026**

JUDGMENT

ARBAB ALI HAKRO, J:- This petition, filed under Article 199 of the Constitution, calls into question the legality of the order dated 16.11.2023 whereby the petitioner, an employee of the Civil Aviation Authority, was visited with the major penalty of compulsory retirement.

2. The factual matrix, as stated by the petitioner in his petition, is that he joined the Civil Aviation Authority in 1986 and served for more than three decades with an unblemished record, consistently receiving very good performance reports. He avers that after developing serious cardiac and diabetic complications, including open-heart surgery in 2015 and a subsequent cardiac episode in 2021, he remained under continuous medical treatment. According to him, all his medical leave was duly supported by medical certificates and repeatedly verified by Medical Boards constituted by the Authority, which declared him fit for duty and recommended regularisation of his medical leave. The petitioner states that, despite these medical findings, respondent No. 2, allegedly acting with mala fide intent, declined to regularise his medical leave, withheld his salary for several months, and ultimately initiated disciplinary proceedings against him on allegations of unauthorised absence. He asserts that although he submitted

a detailed reply to the show-cause notice and denied all allegations, the Authorised Officer dispensed with the regular inquiry without assigning any lawful justification, despite the existence of factual controversy requiring evidence. He maintains that the impugned order of compulsory retirement was passed mechanically, without application of mind and in disregard of the recommendations of the Medical Board.

3. Respondents No.2 to 4, in their para-wise comments, oppose the petition primarily on the ground of maintainability, asserting that the service regulations of the Civil Aviation Authority are non-statutory. The relationship between the Authority and its employees is that of master and servant, thus excluding the jurisdiction of this Court under Article 199. They further averred that the petitioner spent most of his service at his home station and habitually avoided postings to other airports by invoking medical excuses. According to them, during 2021–2022, the petitioner remained absent for 324 days and, after his posting to Nawabshah Airport, for a total of 411 days. The respondents assert that multiple Medical Boards declared the petitioner fit for duty and that his medical certificates were dubious, contradictory, and unsupported by proper investigations. They maintain that the petitioner repeatedly failed to comply with directions to appear before inquiry committees and medical examinations and that he misled the department regarding his medical condition. They submit that after providing him an opportunity of personal hearing, the competent Authority found him guilty of misconduct, breach of discipline and unauthorised absence and therefore imposed the major penalty of compulsory retirement. They reiterate that no vested right of the petitioner has been violated and that the petition merits dismissal.

4. Learned counsel for the petitioner argued that the entire disciplinary process stands vitiated as the respondents failed to adhere to the mandatory procedure prescribed under the CAA Service Regulations and the Revised Leave Rules, 1980. He submitted that medical leave cannot be refused when supported by medical evidence and that the Medical Boards repeatedly

recommended regularisation of the petitioner's leave. He contended that the respondents dispensed with the regular inquiry without assigning any compelling or legally sustainable reasons, despite the existence of disputed facts requiring evidence, thereby violating the principles of natural justice. Learned counsel further argued that the impugned order is arbitrary, discriminatory and reflective of mala fide intent, particularly when the petitioner was declared medically fit, and his leave was recommended for regularisation. He submitted that this Court is fully competent to examine violations of service regulations even when such regulations are non-statutory, as held in the authoritative pronouncements of the Supreme Court. In support of his submissions, he relied upon the case law reported as **2016 SCMR 2146, 2013 SCMR 1707, PLD 2021 Lahore 770, 2010 PLC (C.S) 276, 2005 PLC (C.S) 203, 2001 SCMR 1566, 2008 PLC (C.S) 1005, 2021 PLC (C.S) 1237, 1998 PLC (C.S) 1272, 2011 PLC (C.S) 526, 2024 PLC (C.S) 661, 2010 SCMR 1484, PLD 2010 SC 676, 1991 PLC (C.S) 384 and 2025 PLC (C.S) 1283.**

5. Conversely, learned counsel for respondents No.2 to 4 argued that the petition is not maintainable as the service regulations of the Civil Aviation Authority are non-statutory, rendering the relationship between the Authority and its employees that of master and servant. He submitted that in such matters, constitutional jurisdiction cannot be invoked. He further argued that the petitioner remained absent for an extraordinary period, submitted contradictory medical documents and repeatedly avoided lawful directions of the Authority. According to him, the competent Authority, after providing due opportunity of hearing, imposed the penalty strictly in accordance with the law. Learned counsel maintained that no procedural irregularity has been committed and that the petitioner has failed to demonstrate a violation of any vested right. In support of his contentions, he relied on the cases reported as **2011 SCMR 523, 2013 SCMR 474, 2015 SCMR 1545, 2019 SCMR 278, 2020 SCMR 1625, 2020 PLC (C.S) 772, and 2023 PLC (C.S) 19.**

6. Learned Assistant Attorney General for Pakistan adopted the arguments advanced by learned counsel for respondents No.2 to 4 and supported the impugned order, submitting that no case for interference under Article 199 has been made out.

7. We have heard the learned counsel for the parties at length and have carefully examined the material available on record.

8. The petitioner has assailed the major penalty of compulsory retirement imposed upon him vide order dated 16.11.2023, alleging that the disciplinary proceedings culminating in the impugned order were conducted in stark disregard of the mandatory procedure prescribed under the Civil Aviation Authority (Efficiency & Discipline) Regulations, 2014 (Revised Version-2019) and in violation of the constitutional guarantee of fair trial embodied in Article 10-A. Before examining the merits of the controversy, it is necessary to address the preliminary objection raised by the respondents regarding the maintainability of the petition on the ground that the petitioner had already availed the statutory remedy of departmental appeal under the CAA Employees Appeal Regulations, 2014 (Revised Version-2019).

9. The record reveals that the petitioner preferred departmental appeal on 28.11.2023 and 07.12.2023. The present petition was instituted on 26.03.2024, when the appeal was pending and undecided. During the pendency of this petition, the appellate Authority rendered its decision on 03.06.2025, sustaining the penalty. The respondents contend that once the petitioner invoked the appellate mechanism under the Regulations, he could not simultaneously invoke the extraordinary jurisdiction of this Court under Article 199.

10. This objection, however, is misconceived. The law is firmly settled that the maintainability of a constitutional petition is to be assessed with reference to the date of its institution, and not on subsequent developments. On 26.03.2024, when the petition was filed, the petitioner had already been served with a major penalty, had his salary withheld, and had his service rights extinguished. The appellate Authority had not yet adjudicated his

appeal. In such circumstances, the petitioner was not required to await the uncertain outcome of the departmental appeal, particularly when the impugned order had already taken effect and was producing civil consequences. The rule of alternate remedy is a rule of prudence, not a rule of jurisdiction. It does not bar constitutional review where the impugned action is tainted by jurisdictional error, mala fide, a violation of mandatory procedure, or a breach of natural justice.

11. The Supreme Court authoritatively held that even where service regulations are non-statutory, an aggrieved employee may invoke Article 199 if the public Authority acts in violation of those regulations¹. The same principle was reiterated in², wherein it was held that constitutional jurisdiction is attracted whenever the action of a public authority is arbitrary, discriminatory or contrary to law, irrespective of the availability or pendency of an alternate remedy.

12. The respondents' reliance on the so-called "master and servant" doctrine is equally untenable. The Civil Aviation Authority is a statutory body established under the Civil Aviation Authority Ordinance, 1982, which has since been succeeded by the Pakistan Civil Aviation Act, 2023. In the case of **Jawaid Ghafoor**³, a Division Bench of this Court held that CAA, being a statutory authority with statutory regulations framed under Section 27 of the 1982 Ordinance, remains amenable to constitutional jurisdiction and the rule of master and servant does not apply where the Authority violates its own regulations or any other law. It was further held that violation of law includes not only breach of statutory provisions but also breach of judicially recognised principles such as natural justice, fairness and absence of mala fide. This principle applies with full force to the present case.

13. The respondents have argued that the regulations framed by the CAA Board under Section 27 of the 1982 Ordinance and Section 147 of the

¹ Muhammad Rafi and another v. Federation of Pakistan and others (2016 SCMR 2146)

² 2013 SCMR 1707 and PLD 2010 SC 676

³ Jawaid Ghafoor v. Pakistan Civil Aviation Authority and another (2010 PLC (C.S.) 276)

Pakistan Civil Aviation Act, 2023, are non-statutory, and therefore not enforceable through Article 199. This contention misconceives the ratio of ***Muhammad Rafi (Supra)***, wherein the Supreme Court held that even non-statutory rules, when violated by a public authority, may be judicially enforced under Article 199 because the constitutional jurisdiction is invoked not to enforce the rules per se, but to correct the illegal exercise of public power. The High Court does not sit as a Service Tribunal; it intervenes because the public Authority has acted without lawful Authority, in breach of mandatory procedure, or in violation of constitutional rights. The petitioner's grievance falls squarely within this category.

14. The subsequent decision of the appellate Authority dated 03.06.2025 does not render the petition infructuous nor does it bar this Court from examining the legality of the disciplinary proceedings. The appellate order is merely a continuation of the same disciplinary process and may be examined within the present proceedings even if not separately challenged. The appellate order in the present case is non-speaking, perfunctory and devoid of reasons. It does not address the petitioner's specific grounds, nor does it examine whether the mandatory procedure under Regulations 9 and 10 was followed. Such an order cannot cure the illegality of the original decision.

15. Having resolved the question of maintainability, we now turn to the merits. The petitioner served the Authority for more than three decades and has a long medical history, including open-heart surgery in 2015, subsequent cardiac complications and persistent diabetic and hypertensive conditions. The respondents themselves constituted multiple Medical Boards to ascertain his fitness. The final Medical Board, constituted on 12.10.2022, unequivocally declared the petitioner fit to perform his duties and expressly recommended that his previous medical leave be regularised on medical grounds. This recommendation was never rebutted by any contrary medical opinion.

15. The record reveals that despite the petitioner's repeated submission of medical certificates, the recommendations of the duly constituted Medical Board and his consistent explanation that his absence was occasioned by serious cardiac and diabetic complications, the respondents declined to regularise his medical leave. Instead, they treated the absence as unauthorised and issued a Show Cause Notice alleging misconduct, breach of discipline, and willful absence. The petitioner, in response, furnished a detailed and reasoned reply, categorically denying the allegations and annexing contemporaneous medical documents, prescriptions and the Medical Board's opinion certifying him fit for duty and recommending regularisation of his previous leave on medical grounds. At that juncture, the factual controversy between the parties was squarely joined.

16. Rather than initiating a regular inquiry as mandated by the Civil Aviation Authority (Efficiency & Discipline) Regulations, 2014 (Revised Version-2019), the Authorised Officer invoked the summary procedure and purported to dispense with the holding of a regular inquiry by resort to Regulation 10(1)(k). The legality of this course of action must be examined with reference to the text, structure, and purpose of the Regulations.

17. Regulation 9 of the CAA Regulations sets out the preliminary steps that must precede the initiation of a disciplinary inquiry. Regulation 9(1) (i) authorises the disciplinary Authority to require an employee to proceed on leave or be placed under suspension pending inquiry. Regulation 9(1)(c) then prescribes the mandatory sequence of actions: the issuance of an explanation letter, the consideration of the employee's reply and the decision whether to (i) accept the explanation and drop the matter, (ii) issue a show-cause notice only where the employee confesses or where sufficient documentary evidence exists or (iii) hold a regular inquiry under Regulation 10. The structure of Regulation 9 makes it abundantly clear that a regular inquiry is the norm and that the summary route is permissible only in the narrow situation where the employee admits the allegations or where the documentary evidence is so conclusive that no factual controversy survives.

18. Regulation 10 then delineates the procedure for inquiry. The relevant portion, Regulation 10(1)(k), provides:

“It there is sufficient documentary evidence against the accused regarding his involvement in misconduct or corruption and the Authorized Officer decides that it is not necessary to have an inquiry conducted through an inquiry officer or the inquiry committee; he shall:-

- i. by order in writing, inform the accused of the action proposed to be taken against such accused alongwith the grounds of action; and*
- ii. give him a reasonable opportunity of showing cause against the action within seven days or within such extended period as the Authorized Officer may determine;”*

19. This provision does not create an independent or free-standing power to punish without inquiry. It is a procedural adjunct to Regulation 9, and its invocation is contingent upon the existence of “**sufficient documentary evidence**” and the absence of any factual dispute. The phrase “sufficient documentary evidence” is not a matter of subjective satisfaction; it is a jurisdictional threshold. It requires that the material on record be so clear, undisputed and self-proving that no useful purpose would be served by examining witnesses or testing the evidence through cross-examination.

20. In the present case, the petitioner did not admit the allegations. On the contrary, he expressly denied them and placed medical evidence on record to justify his absence. The Medical Board constituted by the respondents themselves examined the petitioner, reviewed his medical history and concluded that he was fit for duty and that his previous medical leave ought to be regularised. This recommendation was never rebutted by any contrary medical opinion. The factual matrix was thus disputed, and the truth of the allegations could only be ascertained through a proper evidentiary process.

21. The reasons recorded by the Authorised Officer for dispensing with the inquiry do not meet the legal threshold. The order merely recites that the petitioner remained absent for a certain number of days and failed to obtain prior permission. These assertions amount to nothing more than a restatement of the allegations themselves. They do not explain why a regular inquiry could

not be held, nor do they demonstrate that the facts were admitted. The respondents' reliance on the "self-explanatory" nature of the record is equally untenable. Once the petitioner furnished medical documents and the Medical Board's opinion in support of his explanation, the matter ceased to be self-explanatory. It became a contested factual issue requiring the examination of witnesses, verification of medical records and cross-examination of relevant officials.

22. The Supreme Court has consistently held that where allegations involve disputed facts, particularly in matters carrying serious civil consequences such as dismissal or compulsory retirement, the holding of a regular inquiry is not a mere procedural formality but a substantive safeguard. In **Sohail Ahmed Usmani**⁴ The Supreme Court emphasised that disciplinary authorities must meaningfully consider the employee's explanation and cannot disregard material evidence without cogent reasons. Similarly, in **Jawaid Ghaffoor** (*supra*), the Division bench of this Court held that the Civil Aviation Authority, being a statutory body with its own regulations, is bound to adhere to its procedural framework, and any deviation therefrom amounts to a violation of law in the broader constitutional sense.

23. The present case is a textbook illustration of procedural impropriety. The allegations against the petitioner of unauthorised absence, misconduct and breach of discipline were all matters requiring factual determination. The petitioner's medical condition, the authenticity of his medical certificates, the recommendations of the Medical Board and the circumstances surrounding his absence were all issues that could only be resolved through a regular inquiry. By dispensing with the inquiry without satisfying the statutory preconditions, the respondents deprived the petitioner of the opportunity to confront the evidence against him, to cross-examine witnesses and to establish the truth of his explanation. Such an approach is antithetical to the

⁴ Sohail Ahmed Usmani v. DG, CAA (2014 SCMR 1843)

principles of natural justice and incompatible with the constitutional guarantee of fair trial under Article 10-A.

24. In sum, the invocation of the summary procedure under Regulation 10(1)(k) was legally untenable. The reasons recorded by the Authorised Officer are insufficient, circular and fail to engage with the disputed factual matrix. The disciplinary proceedings, having been conducted in violation of the mandatory procedural safeguards, stand vitiated in law. The Supreme Court in the case of **Chief Postmaster, Faisalabad, GPO**⁵ held that where allegations are denied and involve factual controversy, the department is under an obligation to conduct a regular inquiry, and dispensing with it is permissible only when compelling reasons are recorded in writing.

25. The impugned order dated 16.11.2023 does not reflect any independent application of mind. It merely recites the allegations and concludes that the charges stand proved. It does not discuss the Medical Board's findings, the petitioner's explanation, or the legal requirement to hold a regular inquiry. The appellate order dated 03.06.2025 suffers from the same infirmity. It does not examine whether the procedure prescribed under the Regulations was followed, whether the findings were supported by evidence, or whether the penalty was proportionate. Such an order cannot be sustained.

26. The cumulative effect of the above is that the disciplinary proceedings were conducted in violation of the mandatory procedure prescribed under the Regulations, in breach of the principles of natural justice and in disregard of the constitutional guarantee of fair trial. The impugned penalty of compulsory retirement, being the product of such defective proceedings, cannot be allowed to stand.

27. For the reasons recorded in the foregoing discussion, the impugned order dated 16.11.2023, whereby the petitioner was visited with the major penalty of compulsory retirement, is declared to have been passed without lawful Authority and in violation of the mandatory procedural framework

⁵ Chief Postmaster Faisalabad, GPO and another v. Muhammad Afzal (2020 SCMR 1029)

prescribed under the Civil Aviation Authority (Efficiency & Discipline) Regulations, 2014 (Revised Version-2019). The subsequent appellate order dated 03.06.2025, being a mere continuation of the same defective process and suffering from identical legal infirmities, is also set aside.

28. As a necessary corollary, the petitioner stands reinstated into service with all consequential benefits flowing from such reinstatement, including continuity of service, restoration of seniority and release of withheld salary for the relevant period, subject to adjustment of any amount already paid. The respondents shall further regularise the petitioner's medical leave strictly in accordance with the recommendations of the Medical Board dated 01.11.2022 and the applicable leave regime. The petition is **allowed** in the above terms. No order as to costs.

JUDGE

JUDGE

Sajjad Ali Jessar