

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**  
**Constitutional Petition No. D –2001 of 2021**

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Mirza Anwar Mehmood Baig

*Versus*

Civil Aviation Authority and another

Date of hearing & order : 07.04.2021

Mr. Farrukh Zia Shaikh, advocate for the petitioner.

Dr. Shahnawaz, advocate for CAA.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through the instant petition under Article 199 of the Constitution 1973, the petitioner has sought suspension of the operation of Show Cause Notice dated 25.2.2021 issued by the respondent-Pakistan Civil Aviation Authority (“**CAA**”) on the accusation of production of a copy of the mark sheet No.00575 of BA (Pass) 1<sup>st</sup> and 2<sup>nd</sup> Year Examination of 1987, which was later on found fake, which amounts misconduct as provided under Civil Aviation Authority (Efficiency and Discipline) Regulations, 2014.

2. Primarily, the petitioner has called in question the disciplinary action of the Respondent-CAA, whereby he was served with show-cause notice (**‘SCN’**) dated 25.02.2021 with the allegations of misconduct as discussed supra.

3. At the very outset, we inquired from learned counsel as to how the instant Petition is maintainable against the SCN, which relates to the terms and conditions of his service and the outcome of the disciplinary proceedings has yet to come, and after its conclusion, he has the remedy under the law to assail the findings adversely affecting him, if any.

4. Mr. Farrukh Zia Shaikh, learned counsel for the petitioner, has submitted that the impugned SCN cannot be termed as the order passed within the terms and conditions of service of the Petitioner. He further argued that the petitioner denied the charges leveled against him vide letter dated 03.03.2021 with the plea that at the time of his initial induction in respondent-CAA, in the year 1987 the only academic qualification for the subject post was required as Secondary School Certificate i.e. Intermediate, (FSC), however, he denied the factum that he never acquired Bachelor of Arts degree for the subject post. Per learned

counsel, the same has been imposed upon him to get him rid of, from the service based on B. A degree, which he neither produced, nor they have submitted any degree certificate to show that the same was ever submitted by the petitioner, merely producing mark sheet, which cannot be construed to be a degree certificate, did not amount to misconduct on his part. Learned counsel reiterated the grounds agitated in the memo of the petition and argued that all the allegations leveled against him by the respondent-CAA are designed to mislead this Court. Per learned counsel, the SCN was / is based on malafide intention; that there is nothing adverse against the Petitioner, therefore, depriving him of the job based on purported disciplinary action, is against the basic spirit of the law; that he was condemned unheard on the charges leveled against him; that the career of the petitioner is at stake at the hands of respondent-CAA who are bent upon to deprive him of his service of 35 years; that the petitioner is fully entitled to be treated under the law; In support of his contention, he relied upon the documents attached with this petition; that this is a hardship case and this Court can hear and decide the matter on merit. He prayed for allowing the petition.

5. On the other respondent-CAA has taken the plea that at the time of his initial appointment, he posed himself to be a graduate i.e. B. A Pass and submitted his documents from time to time which primarily shows his qualification as B.A. The mark sheet submitted by him was later on verified and was found fake, thus respondent initiated disciplinary proceedings against him, against which he has filed the instant petition, which is not maintainable on the ground that the terms and conditions of the petitioner are governed by non-statutory rules of service and the relationship of master and servant is applicable in the present case. Learned counsel relied upon the para wise comments filed on behalf of respondent Nos.1&2 and argued that this petition is not maintainable against the disciplinary proceedings initiated against him, however, he categorically stated that the respondent-CAA is ready and willing to conclude the inquiry proceedings and shall not impose a major penalty upon him on the aforesaid charges. He further stated that the petitioner was served with the SCN and his stance was considered on his submission of forged qualification documents and the final decision shall take place under the law. He prayed for dismissal of the instant petition.

6. We have heard the learned counsel for the parties on the issue of show cause notice and perused the material available on record.

7. We do not agree with the statement of the learned counsel for the Petitioner for the simple reason that disciplinary proceedings fall within the ambit of expression terms and condition of service of the petitioner.

8. A bare perusal of impugned SCN dated 25.2.2021 shows that the petitioner was charged with allegations of Misconduct.

9. Before dilating upon the above, at the first instance we would like to consider whether the Petitioner can challenge his SCN, which is prima-facie yet to be acted upon, in a constitution petition?

10. We may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to restrain the competent authority from taking action under law against a public Servant against whom prima facie evidence showing his involvement in the serious charges of misconduct was available, for the reason that any such direction would be disharmonious to the principle of good governance and canon of service discipline. Rather causing undue interference to hamper the smooth functioning of the departmental authorities, more particularly in CAA.

11. In law show cause is not defined as a punishment. In our view, the Petitioner cannot file a petition against the issuance of SCN, which is simply an opportunity to explain the position in the course of the inquiry. Against the adverse result of inquiry arising out of SCN, if any, the petitioner will have the remedy of appeal and in presence of such adequate remedy; this Court at this juncture will not step in to declare the SCN issued to the Petitioner illegal or void. More so, the Petitioner's objection on the issuance of SCN is technical and procedural, since we do not see malice or ulterior motives on the part of respondent-CAA and/or violation of the principles of natural justice. In such circumstances, we would not like to exercise our discretion in his favour to thwart the whole process arising out of the SCN and set aside SCN on any of the technical ground, which will amount to interfering in the right of the authority to enquire into allegations against the Petitioner. Besides respondents have leveled serious allegations against the petitioner in their comments about his qualification of B. A, being fake document as discussed supra, which will certainly be considered by the competent authority in the inquiry proceedings against the petitioner.

12. Since the show cause was issued against the petitioner and he replied and it is for the respondent-CAA to decide under law for which this Court is not required to show indulgence in the matter under Article 199 of the Constitution to set aside the disciplinary proceedings initiated against him.

13. Keeping in view the above-mentioned facts and circumstances of the case, we do not see any infringement of the right of the Petitioner which could be called in question by way of Writ Petition. It is a well-settled principle of law that a public Servant has no vested right to call in question the disciplinary proceedings in Writ Petition.

14. Before parting with this matter, we may observe that respondent-CAA may initiate the disciplinary proceedings and culminate the same to its logical conclusion with a period of three months, however, in the intervening period, no adverse inference shall be drawn against him and he shall be provided a meaningful hearing in the inquiry proceedings and his all defense shall be taken into consideration while passing the final order.

15. This being the legal position of the case, we find no merits in the instant petition, which is dismissed accordingly with no order as to costs.

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