

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-3568 of 2024

(Yawar Abbas v Federation of Pakistan & 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: 16.01.2025

M/s. Zain Jatoi, Mustafa Mamdani, and Jazib Aftab Memon advocates for the Petitioner.

Mr. Khalid Rajpar advocate for the respondents

Ms. Wajiha Mehdi, Additional Attorney General.

ORDER

Adnan-ul_Karim Memon, J: The petitioner Yawar Abbas requests this court to declare the Inquiry Report dated 08.05.2024 valid, confirming vide "findings" that there was/is no evidence of wrongdoing against the petitioner as such suspension Notification dated 14.07.2003 issued by respondent No.3 could be withdrawn. Consequently, his service will be restored vide suspension Notification dated 14.07.2023.

2. The petitioner, the Intelligence Officer in the respondent department, was granted BPS-17 but his promotion to Superintendent was withheld. This was allegedly due to an FIR lodged against him under the Prevention of Corruption Act and Customs Act. The inquiry proceedings were initiated against him, however, the respondent postponed the outcome of the inquiry proceedings due to the pendency of the criminal case.

3. The impugned letter dated 07.06.2024 refers to the letter No. 02/ADC-1/2024-PQ/43 dated 18.05.2024 related inquiry report, however the competent authority opined that under Clause 27.1(2)(1) of the Estacode, inquiry proceedings against the petitioner under the Civil Servants (E&D) Rules, 2020 were/ are deferred pending the final disposal of criminal proceedings against him in the Special Courts of Customs and Anti-corruption.

4. The inquiry officer opined that after reviewing the case record and submissions from the petitioner and the Department, since petitioner faced charges of "Inefficiency and Misconduct." However, the Department had not presented sufficient evidence to support the charges. Furthermore, it was opined that the departmental inquiry overlapped with ongoing criminal proceedings before the Special Court of Customs and Anti-Corruption. This overlap could impede the course of justice, as per Estacode 2021 Clause 27.1(2)(i). Therefore, it was/is recommended to suspend the departmental inquiry until the criminal proceedings are concluded.

5. The learned counsel for the petitioner submitted that the inquiry found all allegations against the petitioner to be unfounded due to lack of evidence. He emphasized that despite these findings in favor of the petitioner, the impugned letter recommended suspension of the departmental proceedings till finalizing the criminal proceedings, citing potential prejudice to the pending criminal trial against the petitioner. As per counsel this contradictory conclusion is unwarranted, unsustainable, and violates the petitioner's right to a fair trial under Article 10-A of the Constitution. The petitioner seeks to have the contradictory recommendation via the impugned letter is liable to be set aside as the petitioner is entitled to the consequences that should follow from the inquiry's findings of no wrongdoing. Learned counsel added that the impugned actions of the respondent department infringe upon the petitioner's guaranteed rights to life, liberty, and profession. The authority's decision to defer departmental proceedings despite the petitioner's bail release contravenes Rule 4(5) of the Civil Servant (Discipline & Efficiency) Rules, 2020. Per learned counsel, the petitioner has an unblemished record with no prior disciplinary actions as such suspension from service based solely on an unlawful FIR without substantiating evidence was/is unjustified. He emphasized that indefinite suspension and denial of promotions constitute grave injustice and violate fundamental rights. He added that the authority's reliance on Clause 27 1(2)(1) of the Estacode, 2021, is misplaced and indicates malafide intent as both the proceedings go side by side. He next argued that Rule 5 of the Rules mandates a 120-day initial suspension period for civil servants, requiring an extension to continue which has not been done, this implies inquiry proceedings must be completed within a reasonable timeframe (60 days as per rules); that indefinite deferral of inquiry pending criminal cases violates the law and principles of natural justice. He further submitted that the inquiry officer is obligated to conduct a full investigation and submit a report to the competent authority and the authority can review the inquiry, ensure its compliance with the law, and issue a reasoned order based on the findings (Rule 16). He next submitted that despite the petitioner's un rebutted defense of innocence, and the absence of any evidence of corruption, inefficiency, or misconduct, the respondents inexplicably recommended deferring the inquiry indefinitely. He referred to Rule 16 of the relevant Rules, which mandates the competent authority to promptly examine the inquiry report, determine if the charges are proven, and exonerate the civil servant if they are not. By deferring proceedings instead of issuing a speaking order, the respondents have violated these mandatory rules. He prayed for allowing this petition.

6. Learned Assistant Attorney submitted that the petitioner, an Intelligence Officer (BS-16), was apprehended by the FIA at Jinnah International Airport while attempting to board a flight to Islamabad. During a search of his official vehicle, authorities recovered a significant amount of cash (PKR 5,437,200/-, US\$ 2,406/-, UAE Dirham 6,100/-). The petitioner admitted that the money was "speed money" collected from Customs officials at various check posts; it was reported that the petitioner admitted that the monthly collection from all Customs check posts ie Mochko, Moach Goth, Sohrab Goth, and Ghaggar Phatak is approximately Rs. 40 to 60 million. Moreover, the monthly collection in the facilitation of the smuggling of betel nuts is around Rs.60 million approx. After the seizure of the recovered amount, the petitioner was interrogated at PS FIA, ACC, Karachi where he once again reportedly admitted to facilitating the smugglers to transport smuggled goods from border areas of Baluchistan to Karachi via land routes organized manner. Whereas the recovered PKR and foreign currencies were the speed money collected by Mochko Check Post the petitioner was arrested under Section 5(2) PCA 1947 read with Section 156 (8) (89) of Customs Act, 1969 read with Section 109 PPC and FIR No.19/2023 was lodged by FIA, Anti-Corruption Circle, Karachi. That, on the basis of the FIR No. 19/2023, lodged by the FIA, Anti-Corruption Circle, Karachi on 14.07 2023 before the Hon'ble Special Judge Anti-Corruption (Central-I), Karachi and subsequent submission of Interim Charge Sheet No.74/2023 dated 31 07 2023, the petitioner's above mentioned acts of omission and commission fall within the preview of "Inefficiency "Misconduct" & "Corruption" in terms of Civil Servants (Efficiency & Discipline) Rules, 2020; That accordingly, the Order of Inquiry along with the Charge Sheet/Statement of Allegations was served upon the petitioner vide letter No No.02/ADC-1/2024-PQ dated 17.01.2024, (copy of letter is attached herewith and marked as Annex-A) where he was required by the Inquiry Officer (hereinafter referred to as answering respondent) to submit his written defense thereof and also intimate whether or not he desired to be heard in person; That upon expiry of the stipulated time to submit the written reply, the petitioner was issued a hearing memo conducted Six hearings dated 17.01.2024, 03.02 2024, 17.02.2024, 29.02 2024, 22 03 2024 & 17.04.2024 on the subject inquiry The petitioner being inquired upon submitted his written submissions including various oral and other documentaries evidences which was judiciously made part of the inquiry record and also mentioned in the note sheet side of the file as well as inquiry report, after due process, an inquiry report was issued stating all the facts of the case, including all/any evidence so gathered, all submissions and pieces of evidence provided by the petitioner, was incorporated in the report. The inquiry report was issued to the Authority on 18.05.2024. however, inquiry proceedings

against the petitioner were deferred pending the outcome of criminal proceedings which analysis is supported by Clause 27 1(2)(1) of the Estacode, 2021, however, she agreed that criminal and departmental proceedings could proceed simultaneously. There is no legal bar except Clause 27 1(2)(1) of the Estacode, 2021 to conduct both types of proceedings at the same time, as long as they are conducted separately. However, there are certain situations where it may be advisable to stay in the departmental proceedings until the conclusion of the criminal case when the departmental proceedings and the criminal case are based on identical and similar sets of facts. She emphasized that the charge in the criminal case against the petitioner is grave, ultimately, the decision of whether or not to proceed with departmental proceedings while a criminal case is pending rests with the competent authority as such under Article 199 of the Constitution this court lacks the jurisdiction as the decision of the respondents is valid need no interference by this court. She prayed for the dismissal of the petition.

7. We have heard learned counsel for the parties and have perused the material available on record with their assistance.

8. The petitioner, Intelligence Officer (BS-16) was apprehended at Jinnah International Airport with a substantial amount of cash (PKR, USD, AED) while attempting to travel to Islamabad. This followed the seizure of PKR 5.437 million from his vehicle. The officer allegedly admitted to facilitating the smuggling of betel nuts, with monthly collections estimated at Rs.60 million. He was arrested under relevant sections of the PCA 1947, Customs Act 1969, and PPC, and an FIR was registered by FIA, Anti-Corruption Circle, Karachi against him and his accomplice. The inquiry proceedings were initiated, but the respondent postponed its outcome due to a pending criminal case, against the petitioner. So far as the suspension from service is concerned suspension from service is generally not considered a punishment under service laws. It is typically viewed as a precautionary measure taken during an investigation to prevent the employee from interfering with the inquiry or potentially harming the organization. The Government Servants (Efficiency and Discipline) Rules, 1973, govern the suspension of government servants. Rule 5 of these rules allows for suspension when an inquiry is initiated against a government servant. The suspension is typically for a limited period and can be extended with proper authorization. In the case of the Government of NWFP Vs I.A. Sherwani (PLD 1994 SC 7), the Supreme Court of Pakistan reiterated that suspension is not a punishment and should be ordered only when it is necessary and expedient for the inquiry. The Supreme Court also emphasized that the period of suspension should be as short as possible

and that the employee should be reinstated if the inquiry is not completed within a reasonable time. This court in the case of Ramzan Ali Hemani vs. Habib Bank Ltd. and another (2009 MLD 1424), held that suspension is not a punishment but a precautionary measure to facilitate a fair and impartial inquiry. This court further emphasized that suspension should not be used as a tool for harassment or victimization. Therefore, while a writ of mandamus under Article Article 199 (1) (a) (i) of the Constitution of the Islamic Republic of Pakistan 1973 is available in certain limited circumstances, it is generally not considered the most appropriate remedy for challenging a suspension from service. An excerpt of the Article is reproduced as under:-

Article 199 (1) (a) (i)

a. On the application of any aggrieved party, make an order-

b. Directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province, or a local authority, to refrain from doing anything he is not permitted by law to do or to do anything he is required by law to do; or

9. So far as clause 27.1 (2) (i) Chapter 8 of Estacode 2021 states:

"2 (1) There is no legal bar to the holding of a departmental inquiry against a government servant who is being prosecuted in a criminal court. It may however be pointed out that where the holding of departmental inquiry side by side with the criminal proceedings may have the effect of impeding the course of justice or of prejudicing the trial, the inquiry should be deferred till the termination of criminal proceedings."

10. On the subject proposition, primarily, the disciplinary proceedings and criminal proceedings are altogether different and independent of each other and cannot be termed synonymous and interchangeable. The departmental inquiries for misconduct use a lower standard of proof ('balance of probabilities') compared to criminal trials ('proof beyond reasonable doubt'). The forums for adjudication, principles of evidence, and procedure are also separate and distinct. The decision of one forum cannot have a bearing on the decision of the other forum. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the cases of Dr. Sohail Hassan Khan v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), (2021 SCMR 420), The District Police Officer, Mianwali and others v. Amir Abdul Majid, Province of Punjab v. Khadim Hussain Abbasi (2021 SCMR 1419) and Usman Ghani v. The Chief Post Master, GPO Karachi, and others (2022 SCMR 745). The respondent department's reliance on clause 27.1 (2) (i) of Estacode 2021 to defer proceedings against the petitioner is incorrect based on Supreme Court rulings.

11. In our view, a person convicted or acquitted in a criminal trial cannot influence the disciplinary proceedings. We are fortified in our view by the decisions rendered by the Supreme Court in the cases of *Mir Nawaz Khan vs. Federal Government and others* [1996 SCMR 314], *Arif Ghafoor v. Managing Director, H.M.C. Taxila and others*' (PLD 2002 SC 13), *Muhammad Iqbal v. District Police Officer, Sahiwal and another* (2011 SCMR 534), *Executive Engineer and others v. Zahid Sharif* (2005 PLC (C.S.) 701), *Falak Sher v. Inspector General of Police, Punjab and 2 others*' (2005 SCMR 1020), *Rab Nawaz Hingoro v. Government of Sindh and others*' (2008 PLC (C.S.) 229), *Nazir Ahmed v. Capital City Police Officer, Lahore and another*' (2011 SCMR 484), *Syed Muhammad Iqbal Jafri v. Registrar, Lahore High Court Lahore*' (2004 SCMR 540); *Khaliq Dad v. Inspector General of Police and others*' (2004 SCMR 192), *Muhammad Ayub v. The Chairman Electricity Board WAPDA, Peshawar and another*' (PLD 1987 SC 195).

12. The impugned order lacks legal basis and is contrary to Supreme Court precedent (cited cases). This petition is disposed of as per the Supreme Court's ruling in *Mumtaz Uddin Shaikh v. Chief Post Master GPO Hyderabad & Others* (2024 SCMR 1683). The respondent authority is directed to complete the departmental inquiry within one month.

JUDGE

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