

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-3669 of 2023

(Arbab Anas v. The Federation of Pakistan and 03 others)

Date

Order with signature of Judge(s)

Before:

**Mohammad Karim Khan Agha, J.**  
**Adnan-ul-Karim Memon, J.**

1. For orders on office objection.
2. For hearing of CMA No.16914/2023.
3. For hearing of main case.

**Date of hearing and order: 08.09.2025**

Mr. Talha Abbasi, advocate for the petitioner

Mr. Ameer Nausherwan Adil, advocate for respondents No.2 to 4

Ms. Wajiha Mehdi, Assistant Attorney General

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**ORDER**

**Adnan-ul-Karim Memon, J.** Through this petition, the petitioner has sought the following relief:

- Declare that the impugned dismissal order dated 22.03.2023 is illegal, and to set aside the same.*
- Any other relief(s) which this Hon'ble Court may deem fit for the disposal of the instant case /petition.*

2. The petitioner, a long-serving employee of the Karachi Port Trust (KPT) with over 33 years of "unblemished service," was dismissed from his position. The petitioner claims this dismissal was "wrongful/illegal" and driven by malice. He alleges that the actions against him were a direct result of his role as a key witness in a National Accountability Bureau (NAB) case concerning illegal appointments at KPT. He submitted that as Manager (HR), the petitioner was the designated "focal person" for a NAB inquiry into illegal appointments. He was summoned to Court to testify, which he claims initiated a campaign of harassment and pressure against him by KPT management. The NAB even requested police protection for him due to this pressure. He averred that he was abruptly transferred from his Manager (HR) position. While he was absent due to illness, the new manager, Ms. Safia Murtaza, allegedly took over his office without a proper handover, which the petitioner believes was a deliberate act to gain access to sensitive information related to the NAB case. A preliminary inquiry later confirmed the handover was not done correctly. He added that a preliminary inquiry was initiated, alleging that 20 files were missing from the petitioner's office. The petitioner claims this inquiry was a sham designed to discredit him. He points out that a member of the inquiry committee was himself an accused in the same NAB case. He submitted that he was

served with a charge sheet and placed on "Officer on Special Duty" (OSD) status, which he argues is illegal without a formal inquiry. He was refused access to documents needed to prepare his defense and was given only three days to respond to the charges. The KPT management also denied his request for a personal hearing. He further averred that he was arrested by the Federal Investigation Agency (FIA) after being tricked into appearing for a "departmental committee" meeting. This arrest, which he claims was orchestrated by KPT officials, led to his immediate suspension. A Court later granted him bail, noting the FIA case appeared to be an attempt to create "a smoke on the screen" to undermine his testimony in the NAB case. He submitted that despite being in jail and unable to defend himself, an ex parte departmental inquiry was concluded, with its findings based solely on the "induced" FIA report. After his release on bail, he was issued a show-cause notice, and his suspension was extended indefinitely; he faced a series of rescheduled and delayed personal hearings before the Chairman. After a period of "radio silence" and a change in leadership, he was finally dismissed from service on March 22, 2023, without a proper inquiry. He submitted that he has since filed a departmental appeal with the Federal Government for Maritime Affairs, which is currently decided, and now intends to amend the prayer to assail the vires of the appellate order. He maintains that his entire career has been victimized due to his cooperation in exposing illegal appointments at KPT.

3. The counsel for the petitioner argues that the petitioner's dismissal is illegal because he was denied a "fair hearing," a fundamental right guaranteed by the Constitution of Pakistan. He emphasized that the dismissal was imposed without a formal, regular inquiry. The counsel highlights that the final inquiry report itself admits the petitioner was never questioned, rendering the entire process an "eyewash." The counsel contends that the entire disciplinary action against the petitioner was malicious. The timing of the proceedings immediately after the petitioner became a key witness in a NAB case against KPT officials suggests a motive to punish him for exposing illegalities. He argued that the petitioner was placed on OSD status and suspended indefinitely without proper legal grounds. He added that the inquiry committee was "completely illegal" because a key member, Mr. Muhammad Iqbal, was himself an accused in the NAB case. The inquiry's findings were based solely on a pending FIA case (which was initiated by KPT management) and not on independent evidence, which is illegal as no guilt can be attributed before a conviction. The counsel states that KPT management deceived the petitioner, luring him to a meeting only to hand him over to the FIA for arrest, which is a violation of the principles of natural justice. The petitioner's 33-year career was free of any prior misconduct, further supporting the claim that the current proceedings were initiated with malicious intent. He lastly prayed for allowing the instant petition.

4. The counsel for the respondents (KPT) argued that the petitioner's case is not valid, despite his acquittal in the criminal case. The respondents' counsel argued that the petitioner failed to prove his claims and is instead relying on "concocted stories." He contends that the petition is not maintainable because the petitioner's departmental appeal is still pending. However, the petitioner's counsel countered that they waited a reasonable three months before filing the petition and have been out of a job for over a year and a half while the appeal remains undecided. He further admitted that no regular inquiry was conducted and that the decision was based on a list of files allegedly recovered by the FIA Investigation Officer, which the petitioner denies. The respondents' counsel stated that the criminal proceedings and the departmental proceedings are two separate matters and are not dependent on each other. However, they acknowledged that they based their disciplinary action on the FIA report, a point the petitioner's counsel argued was illegal, as it didn't involve an independent departmental inquiry. The respondents' counsel denied that the petitioner's arrest was orchestrated by KPT officials. They also denied that the petitioner had a spotless service record and maintained that he had been in possession of sensitive files. The respondents' counsel claimed that the petitioner's allegations of mala fide intent and retaliation for his role in the NAB case were false and unsubstantiated. They also denied that the inquiry committee members were biased. The respondents' counsel also contested the petitioner's claims that he was denied a meaningful personal hearing. In essence, the respondents' counsel sought to dismiss the petition by highlighting procedural issues and denying the petitioner's claims of malice and illegal conduct. He also maintained that the criminal and departmental cases were separate and that the departmental action was justified, despite the petitioner's acquittal.

5. Learned Assistant Attorney General has adopted the arguments advanced by learned counsel for respondents No.2 to 4 and submitted a copy of the decision of the Ministry of Maritime Affairs, stating that the petitioner's departmental appeal has been reviewed and rejected. She further submitted that since the departmental appeal has been decided and the dismissal upheld, the petition before the Court has become "infructuous" and may be dismissed.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. A letter from the Ministry of Maritime Affairs confirms that the appeal of the petitioner, the former Manager of HR at KPT, has been rejected vide letter dated 3.1.2025. The Ministry had recommended to the Federal Cabinet that the appeal "merits no consideration." The Federal Cabinet's decision, made on December 17, 2024, approved this proposal and upheld the "Dismissal from Service" penalty.

8. The petitioner at this stage is asking the Court to allow amendments to his pleadings. The primary reason for this request is the recent dismissal of their departmental appeal, as discussed supra, which had been pending for nearly two years. The petitioner's counsel argues that this new development is crucial for the Court to consider the full scope of the case. The proposed amendments include reflecting that the appeal was dismissed on January 3, 2025, almost two years after it was filed. The petitioner wants to add a new legal ground (Ground I/I). This proposed amendment suggests that the belated dismissal of the appeal was a "malicious" act by the respondents, designed to derail the case and avoid a proper hearing in Court. The petitioner claims the dismissal was a "rubber stamp" and lacked any legitimate reasoning. The petitioner's request for relief is to set aside not only the original dismissal order but also the new "impugned appellate order" that rejected his appeal. Be that as it may, we intend to decide the present petition on the merits.

9. The core question in this case is whether the petitioner was given a fair and proper hearing to address the charges against him based on fact-finding inquiry 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 files.

10. According to Karachi Port Trust (KPT), the petitioner was dismissed from service due to misconduct and negligence. The KPT's internal inquiry found him responsible for 20 missing files, including 13 for which there were acknowledgment receipts and 7 related to illegal appointments and regularization cases. A charge sheet was issued to the petitioner on December 11, 2020, accusing him of failing to cooperate with the inquiry committee. Failing to properly hand over his office and its files upon transfer. Negligence that caused losses to KPT. The KPT Chairman's dismissal order, dated March 22, 2023, stated that the petitioner's responses were unsatisfactory and that he had failed to defend himself despite being given several opportunities for personal hearings. Based on these findings, the KPT Board approved his dismissal, and later his departmental appeal was also rejected vide order dated 3.1.2025.

11. It is pertinent to note that the petitioner was also saddled with criminal liability on the similar charges however, the trial Court has acquitted the petitioner of all criminal charges, finding the prosecution's case to be weak and lacking in credible evidence. The Court's decision was based on several key factors, including the KPT could not prove that the missing files were ever officially entrusted to the petitioner, a crucial element for a criminal breach of trust charge. The evidence presented was only circumstantial and not conclusive enough to prove guilt "beyond a reasonable doubt." The prosecution's failure to produce the 137 files they claimed to have

recovered from the petitioner was particularly damaging. The trial Court noted the possibility that the charges were brought with malicious intent, as the petitioner was a key witness in a separate NAB investigation against KPT officials. The case was also undermined by procedural flaws, including the lack of proper authorization for the FIR and missing documentary proof in the inquiry report. Ultimately, the trial Court granted the petitioner the "benefit of the doubt" and acquitted him of all charges under the Prevention of Corruption Act and the Pakistan Penal Code.

12. Regarding acquittal from the criminal case, we observe that the disciplinary proceedings and criminal proceedings are altogether different and independent of each other, and cannot be termed as synonymous and interchangeable. The forums for adjudication, principles of evidence, and procedure are also separate and distinct. The decision of one forum cannot have bearing on the decision of the other forum. In our view, a person convicted or acquitted in a criminal trial cannot influence the disciplinary proceedings. On the aforesaid proposition, we are fortified in our view by the decisions rendered by the Hon'ble Supreme Court in the cases of Mir Nawaz Khan v. Federal Government and 2 others [1996 SCMR 314], Arif Ghaffoor 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 2 others (2004 SCMR 192) and Muhammad Ayub v. The Chairman Electricity Board WAPDA, Peshawar and another (PLD 1987 SC 195).

13. The petitioner's situation is unusual in the present case, he was a key witness for the National Accountability Bureau (NAB) in an inquiry against the KPT officials, but was later accused of misconduct and faced a departmental inquiry himself.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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).

19. In the present case, the allegations were/are denied by the petitioner and it was/is incumbent upon the inquiry officer 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 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].

20. 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.

21. 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.

22. The Supreme Court in the recent judgment in the case of Faisal Ali v. 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 himself; 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.

23. It appears that this is the 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 KPT 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-KPT 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. At this stage, we have been informed that in the intervening period petitioner reached the age of superannuation on 24.11.2024. In such circumstances, his case cannot be sent back for a new inquiry, as he is no longer a Karachi Port Trust (KPT) employee.

24. Accordingly, the impugned order dated 22.03.2023 of removal from service of the petitioner and the appellate order dated 3.1.2025 are set aside. The respondents / competent authority of the KPT is directed to reinstate the petitioner on his original post and position forthwith with all back benefits; however, if the petitioner has reached the age of superannuation during the pendency of this petition, such service benefits shall be disbursed to him accordingly in accordance with the law.

25. This petition is allowed on the aforesaid terms, all applications including amendment are also disposed of. Office to assign proper number to the application and amended memo be brought on record.

**Judge**

**Head of Const. Benches**