IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.102 of 2021

[Pakistan National Shipping Corporation and another *versus* Ashiq Ali and another]

Present:
Mr. Muhammad Faisal Kamal Alam, J.
Ms. Sana Akram Minhas, J.

Dates of hearing	:	12.01.2026, 20.01.2026, 22.01.2026, 28.01.2026, 09.02.2026, 23.02.2026 and 06.04.2026.
Appellants	:	Pakistan National Shipping Corporation and another, through Mr. Khalid Javed, Advocate and Mr. Munawar-uz-Zaman Juna, Advocate.
Respondents No.1	:	Ashiq Ali, through M/s. Sarwat Jawahir, Sidrat-ul-Muntaha, Naheed Parveen and Anayat Ali Soomro, Advocates
Respondent No.2	:	Federation of Pakistan, through M/s. Khaleeq Ahmed, Deputy Attorney General, Irshad Ali and Rabia Khalid, Assistant Attorney General.

JUDGMENT

***Muhammad Faisal Kamal Alam, J*:** This Appeal is preferred by Pakistan National Shipping Corporation ["**PNSC**"] against the Judgment [dated 02.06.2021] and Decree [dated 05.06.2021] handed down by the learned Single Bench of this Court in Suit No.1456 of 2010, filed by Respondent No.1 [Ashiq Ali] against present Appellant and Federation of Pakistan [through Secretary, Ministry of Ports and Shipping, Islamabad], which is the Pro-forma Respondent.

2. Succinctly, the case of Respondent No.1 is that he was a regular employee of Appellant-PNSC, remained posted at different positions and lastly as a Manager Accounts / General Manager [Internal Audit], performed his duties efficiently and diligently but was impleaded in a false case registered against him and others for misappropriation in the Contributory Provident Fund Account; Respondent No.1 was arrested in FIR No.03 of 2000 by the Federal Investigation Agency ["**FIA**"], whereafter, six References, being Reference Nos.12 to 16 of 2003 and Reference No.29 of 2003 were filed before the Accountably Court No.1, Sindh, Karachi;

Respondent No.1 was convicted in Reference No.29 of 2003 through the Judgement dated 19.05.2004, but was acquitted in Criminal Accountability Appeal Nos.06 and 7 of 2004, by this Court, which was challenged by the State in Criminal Petition No.79-K of 2006 before the Hon'ble Apex Court, but leave was refused; besides this, Respondent No.1 was also acquitted by Accountability Court under Section 256-K of Cr.P.C. in the remaining References [***ibid***] filed against him.

In the intervening period, Appellant-PNSC retired Respondent No.1 from service with effect from 24.06.2002, through the Letter dated 23.05.2002 ["**Retirement Letter**", Exhibit 6/4]; but the post-retirement dues were not paid.

It is also averred in the Plaint that Respondent No.1 was deprived of his salaries and other dues so also medical treatment as per his entitlement.

Respondent No.1 also preferred a C. P. No. D – 2163 of 2009 before this Court for redressal of his grievance, which, subsequently he was allowed to withdraw by the Order dated 07.09.2010 and thereafter filed the above Suit with the following Prayer Clause_

"***PRAYER***

It is therefore, respectfully prayed that this Honourable Court may be pleased to pass judgment and decree as under:

a) Judgment and decree declaring the act of the Defendants No.2 and 3 for withholding/not releasing the salaries and the allowances and other benefits, etc., as admissible under the law and service rules of the Defendant Corporation, to the Plaintiff for the period w.e.f. June 2000 till 24.06.2002 (the date of superannuation of the Plaintiff) is malafide, arbitrary, illegal and colourful exercise of powers and thus not warranted by law.

b) Judgment and decree declaring the act of the Defendants No.2 and 3 for not releasing the dues to the Plaintiff ordinarily payable to him in consequence of his retirement from service of the Defendant Corporation covering the post retirement period as per his entitlement under the rules/law of the Defendant Corporation, is malafide, arbitrary, illegal and colourful exercise of powers and thus not warranted by law.

c) Judgment and decree directing the Defendants to release an amount of Rs.1,58,22,856/- (as detailed in in Schedule 'A' hereto) towards the salaries and the allowances, etc., to the Plaintiff for the period w.e.f. June 2000 till 24.06.2002 and the dues ordinarily payable to the plaintiff in consequence of his retirement from service of the Defendant Corporation covering the post retirement period as per his entitlement under the rules/law of' the Defendant Corporation along with mark-up on compound interest basis.

d) Judgment and decree directing the Defendants No.2 and 3, to reimburse an amount of Rs.200,000/- (Two lacs) incurred by the Plaintiff on his *hospitalization and medical treatment as stated in Para 12 while the Plaintiff was confined in the jail and pay the same along with interest @ 18% per annum on compound interest basis.*

e) *Judgment and decree directing the Defendants No.2 and 3 to pay mark-up @ 18% per annum on compound interest basis from the date when the said amount was due to be paid till its realization, the details whereof is given in Schedule 'A' annexed hereto.*

f) *Judgment and decree directing the Defendants to issue Job Certificate to the Plaintiff as required by him vide Letter dated 1.06.2010 (Annexure 'H').*

g) *Judgment and decree in favour of the plaintiff against the defendants No.2 and 3 jointly and severally in the sum of Rs.100,00,000/- (Rupees One Crore) towards mental shock, distress, agony, and damaging the reputation, honour and dignity of the plaintiff by wrongfully implicating him in false cases as a result of which the plaintiff had to suffer ordeal of illegal confinement in Jail.*

h) *Award costs of the suit.*

i) *Any other relief(s), which this Honourable Court may deem fit and proper under the circumstances so of the case.*"

3. The present proforma Respondent No.2 [Federal Government] filed its Written Statement and disputed the stance of the Respondent No.1.

4. ***Whereas***, Appellant-PNSC not only denied the claim of Respondent No.1 through their Written Statement but also filed a Counter-Claim. Appellant's stance is that the acquittal of Respondent No.1 is based on technical ground by extending benefit of doubt and since it is not an honorable acquittal, therefore, he was not entitled to the service benefits as claimed. In Paragrapn-8 of the Written Statement, it is stated that as per Provident Funds' record, Respondent No.1 had a debit balance of Rs.10,971,107/- in his contribution account and credit balance of Rs.596,459.19 in his corporation contribution account, hence, a net debit balance was of Rs.10,374,647.19. It is also contended that Respondent No.1 has a debit balance of Rs.35,216,755/- under special codes as mentioned in the break up prepared by the PNSC showing the outstanding balance against Respondent No.1 and other accused. Till the above debit balance is settled, salaries, benefits / facilities, if any, could not be paid to the Respondent No.1. It is stated that exhaustive Inquiry Report was prepared by the PNSC, but departmental disciplinary proceeding could not be concluded owing to the fact that the FIA had already initiated an action against Respondent No.1, the

matter was *sub judice* before the Accountability Court and Respondent No.1 in the intervening period attained the age of superannuation.

5. Respondent No.1 filed his Written Statement and disputed the above Counter Claim of the Appellant-PNSC.

6. Issues herein under were framed, evidence was led, followed by the impugned Judgment and Decree_

1. *Whether the suit is maintainable in law?*

2. *Whether the suit of the plaintiff is time barred?*

3. *Whether the plaintiff is entitled for retirement benefits including ancillary reliefs i.e. salaries, allowances, etc? If so, to what extent?*

4. *Whether the plaintiff is not entitled to the dues ordinary payable to him in consequence of his retirement from the service of the defendant corporation covering post-retirement period as per his entitled under the rules/law of the defendant corporation alongwith mark-up on compound interest basis?*

5. *Whether the plaintiff was found to be involved in misappropriation of Corporation's Employees Contributory Provident Fund to the tune of Rs.50 million or for any other amount thereby causing loss to the said fund?*

6. *Whether the plaintiff is entitled for damages?*

7. *Whether the defendants are entitled to the Counter Claim or any part thereof as claimed?*

8. *What should the decree be?*

7. It is necessary to mention that Respondent No.1 during pendency of present Appeal withdrew an amount of Rs.23,53,992/- together with profit of Rs.839,519/-, as per the Order dated 06.03.2025.

8. The matter was heard and reserved for Judgment on 06.04.2026 and in the intervening period, Written Arguments dated 13.04.2026 were also filed by the Respondent No.1.

9. Mr. Khalid Javed, Advocate, along with Mr. Munawar-uz-Zaman Juna, Advocate, referred to the Statements made by Respondent No.1 during inquiry before the Committee and states that it is an admission on behalf of Respondent No.1 with regard to embezzlement and thus his technical acquittal in the above Accountability References could not be treated as a final decision about his innocence. He has also raised a serious question about the maintainability of the Suit, so also pleaded in the Written Statement

that it is barred by limitation in terms of Articles 19, 22 and 23 of the Limitation Act [1908], prescribing the period of one year for bringing an action in respect of malicious prosecution and any other injury, but present Suit was filed on 22.09.2010 and it is hopelessly time barred and should have been dismissed instead of decreeing. In support of his contentions, he has cited the following case law_

i. **P L D 1985 Supreme Court 134**
[*The Deputy Inspector-General of Police, Lahore and others **versus** Anis-ur-Rehman Khan*] – **DIG Case**;

ii. **2001 S C M R 789**
[*Inspector-General of Police, Punjab, Lahore and others **versus** Muhammad Tariq*] – **Tariq Case**;

iii. **1989 S C M R 333**
[*Amir Abdullah **versus** Superintendent of Police, and others*] – **Amir Abdullah Case**;

iv. **1989 S C M R 332**
[*Sh. Mumtaz Ahmad **versus** General Manager (Distribution), Wapda and another*]; and

v. **P L D 2017 Baluchistan 85**
[*Ibrahim Shah **versus** Pervez Rana*] – **Ibrahim Shah Case**.

10. Mr. Khaleeq Ahmed, learned Deputy Attorney General for Pakistan, along with M/s. Irshad Ali and Rabia Khalid, Assistant Attorney General, has supported the case of Appellant-PNSC, *inter alia*, states that the Appeal be accepted.

11. Ms. Sarwat Jawahir, Advocate representing Respondent No.1, assisted by M/s. Sidrat-ul-Muntaha, Naheed Parveen and Anayat Ali Soomro, Advocates, controverted the above line of arguments of Appellant-PNSC and Federal Government and gist of their arguments is that the allegations of mis-appropriation was finally decided against the Appellant-PNSC in Accountability Appeal, by this Court, coupled with the fact, that the disciplinary proceeding never concluded and, therefore, Respondent No.1 cannot be saddled with any fictitious liability; Appellant-PNSC has illegally withheld pre and post service retirement dues of Respondent No.1 since decades, without any justification and, therefore, besides, the monetary claim as mentioned in Schedule – A of the Plaint, which is produced [in evidence] as Article 5/3, Respondent No.1 is also entitled to receive damages, as has been rightly awarded by the impugned Judgment, which is within the parameters of law and this Appeal should be dismissed.

12. Arguments heard and record perused.

13. **Points for Determination**:

A- Whether the Suit No. 1456 of 2010 filed by the Respondent No.1 is time barred.

B- What is the effect of the acquittal of the Respondent No.1 in the Special Criminal Accountability Appeals No. 6 and 7 of 2004, by this Court.

C- Whether the Respondent No.1 is entitled to his pre and post-retirement service dues and damages as claimed.

D- Is the Appellant-PNSC entitled for the counterclaim raised in its pleadings?

E- What should the decision be.

14. Précis of the Case Law cited by the Legal Team of PNSC is_

In the **DIG Case [*supra*]**, an FIR was registered against SHO and Sub-Inspector for malversation and misconduct with one lady, along with initiating disciplinary action. Both were dismissed from service as a result of disciplinary proceedings, which were challenged in the Departmental Appeals, but while those Appeals were pending before the Senior Officials of Police Department, Respondent-Anis-ur-Rehman and the other Sub-Inspector filed the Service Appeals before the Punjab Service Tribunal, which were allowed and they were reinstated in Service with full honours and back benefits. This Order was challenged before the Apex Court. The scope of disciplinary and Criminal / Judicial proceeding has been explained, which are distinct with each other, by ruling that the Tribunal erred in assuming that the matter before it and the criminal charge were co-extensive and interconnected, consequently, accepting the appeal and decision of the Tribunal was set-aside. Held as follows_

> **"*In the case before the Tribunal the judgment in the criminal case could be relevant only for reascertaining whether it was a judgment of conviction or acquittal and whether it was an honourable acquittal. The other opinions or findings, apart from these two, recorded or expressed in the judgment could not be utilized for unsettling the other proceedings. The extent to which the Tribunal utilised the judgment would be apparent not only from the passages reproduced from it but also the comments made on it.*"**

In **Tariq Case** [***supra***]**,** the principle is reiterated that acquittal in criminal cases does not debar the Departmental Authorities to take action against the delinquent in accordance with law and rules, because such acquittal does not give clean certificate of his absolvement from the departmental proceedings; both proceedings can go side by side as their nature is totally different.

Reported Judgment in **Ibrahim Shah Case** [***ibid***]**,** is primarily on the proposition of malicious prosecution, explaining that the action only lies when three main ingredients are present, viz. plaintiff was prosecuted by the defendant and the prosecution terminated in plaintiff's favour; ***secondly,*** it was actuated by malice and; ***thirdly,*** the defendant acted without reasonable and probable cause. Since appellant (of the reported Judgment) was acquitted on the basis of benefit of doubt and not on the ground that the plaintiff proved his innocence, therefore, the judgment and decree (of the reported Judgment) passed by the learned Trial Court was set-aside and Appeal was allowed.

The afore-referred principle is reiterated in **Amir Abdullah Case** [***supra***].

<u>POINT – A</u>.

15. At the outset, the question of limitation, which goes to the root of the maintainability of the suit, is considered. The Legal Team of the PNSC have placed reliance on Articles 19 [*compensation for false imprisonment*], 22 [*compensation for any other injury to the person*] and 23 [*compensation for a malicious prosecution*] of the Limitation Act [1908], and states that a period of one year is prescribed for filing claim of the present nature, but the Respondent No.1 instituted the suit after more than eight years, from the date of his retirement, when allegedly the dues were payable; that although the acquittal is on technical grounds, [**vide above referred Judgment dated 07.11.2005, maintained by the Apex Court through the Order dated 18.05.2006**], but even then, if at all the action for malicious prosecution lies, the limitation period is one year, ***whereas***, above ***LIS*** [Suit No.1456 of 2010] was filed on 22.09.2010 and is time barred by four years, five months and four days, hence, on this ground alone the impugned Judgment be set-aside.

16. It is opposed by Ms. Sarwat Jawahir, the learned Counsel for the Respondent No.1, *inter alia*, contending that at all material times, the parties hereto were litigating, in which the Respondent No.1 was eventually

successful; the last Order of acquittal passed by the Accountability Court is of 3-3-2009 [Exhibit 5/6] in a separate Accountability Reference [No.12 of 2003], whereafter, the above Constitutional Petition No C. P. No. D – 2163 of 2009 was filed, which was finally disposed of on 07.09.2010 [dismissed as withdrawn], and Suit was filed on 22.09.2010, that is, after approximately fifteen days thereafter, hence, is not time barred.

17. Although the proceeding at the departmental level were initiated on 28.04.2000 by the PNSC against Respondent No.1, upon issuance of show cause notice, but, simultaneously, the matter was referred to FIA and then multiple Accountability References were filed in the Accountability Court, wherein Respondent No.1 was initially convicted by the Judgment dated 19.05.2004, but the said Judgment was set aside, by this Court, vide Judgment of 07.11.2005, which was eventually maintained by the Hon'ble Supreme Court [as stated in the foregoing paragraphs] vide Order dated 18.05.2006. Undisputedly, in the intervening period Respondent No.1 addressed various representations and correspondence, which are part of the record, *Pages-183 to195 of the Evidence File* [Exhibits 5/8 to 5/11]. Respondent No.1 attained superannuation and he was retired from service through the Retirement Letter dated 23.05.2002 of the PNSC. The Suit was instituted in this Court on 22.09.2010, that is, after disposal of Constitutional Petition [Dismissed as Withdrawn], on 07.09.2010 [Exhibit 5/18]. However, in the aforesaid Retirement Letter [Exhibit 6/4], the PNSC has mentioned that the service dues of Respondent No.1, would remain withheld until the pending Court proceedings were concluded and the PNSC would be able to take disciplinary action in accordance with law. Thus, the Appellants themselves linked the release of the Respondent's retrial benefits with the culmination of the Court proceedings and not merely with the date of retirement. Therefore, the objection that limitation commenced from the date of retirement or acquittal cannot be accepted without examining the subsequent conduct of the parties and the correspondence exchanged after the criminal proceedings attained finality. The issue of limitation must, therefore, be appreciated in the backdrop of the entire sequence of events.

18. Afore-referred facts about the litigation and last acquittal of Respondent No. 1, in the Reference No(s) 13 of 2003, 14 of 2003, 15 of 2003 and 16 of 2003, on 03.03.2009, followed by the Constitutional Petition No.

D – 2163 of 2009 are undisputed facts. In view of this, the cause of action continued to subsist and it never stopped in the intervening period, because the Respondent No.1 continuously pursued his claim. Consequently, from the last Correspondence of 29.06.2010 [Legal Notice] only three months lapsed, and the Suit was within the prescribed period of limitation. Point No. A is answered in the negative against the Appellants and in favour of Respondent No.1.

<u>Point No. B</u>

19. The Legal Team of PNSC laid much emphasis on the purported admissions of the Respondent No.1 contained in his Statement dated 17.05.2000 before the Inquiry Committee [produced by the PNSC Witness as **Exhibit 6/7**]. The Inquiry Report is part of the Evidence as Article 6/4; the original could not be produced as it was destroyed in a fire incident. In this regard, the contention of Counsel for Respondent No.1, is that the entire Inquiry Report is to be discarded because it is a photocopy.

In his above Statement he [the Respondent No.1] has stated in response to Question No.10, that excessive payments were made and audit of Provident Fund was delayed. To Question numbers 95 to 100 about outstanding PF [Provident Fund] loan against him, he replied that he owed Rupees Ten Million, which would be re-paid. In response to Question No.117, he stated that in good faith he signed the cheques of huge amount.

20. The above Statement is to be evaluated in the light of the overall testimonies of the Parties and the Record of the past litigation.

21. <u>Respondent No.1 examined himself as Exhibit 5/1.</u> In the Affidavit-in-Evidence / Examination-in-Chief, he reiterated his stance, *inter alia*, about his acquittal in the NAB References, retirement from the PNSC in the intervening period [on 24.06.2002], filing of representations for settling of claim together with award of damages. Challenged the legality of the above Inquiry Report. Sought damages including on account of false cases as a result of which he remained in Jail for four years. Testified that counter-claim of the PNSC is fictitious and fabricated. Deposed about discriminatory treatment meted out to him by PNSC, when other co-accused Jawaidul Hassan was neither arrested nor tried, and given Rupees Two Million towards his service and retirement dues and no counter claim was filed. Produced certified copies of the Orders by the Accountability Court, this

Court and Honourable Supreme Court, in Accountability References, Representations, Legal Notice, having different exhibits and relevant documents are already discussed in the foregoing paragraphs.

22. Respondent No.1 was subjected to exhaustive cross-examination. Has not disputed the fact that Inquiry was conducted against him for allegedly embezzling Rs.11 Million and he appeared before the Inquiry Committee. Much emphasis is laid by the Appellant's Counsel Mr. Khalid Javed, on the affirmative reply of Respondent No.1 to the question that he was given benefit of doubt in the acquittal Judgment. The complete reply of the Respondent No.1 is as under_

> **"***. . . . . . It is correct that in the High Court Judgment [Ex-5/2], I was given benefit of doubt while holding that "the case of prosecution is highly doubtful against the appellant.***"**

23. It is pertinent to mention here that the Respondent No.1 was not cross-examined on his specific assertion about discriminatory treatment [*as mentioned herein above*], coupled with the fact that the Witness of PNSC in his Affidavit-in-Evidence / Examination-in-Chief did not dispute that above named Jawaidul Hassan was not an accused. Respondent No.1 has denied the liability and counter monetary claim of PNSC, in particular, afore-referred Exhibit 6/9, concerning claim of Rs.10,374,647 and Rs.35,216,755/-.

24. Sole witness of the Appellant [Syed Wahid Ali Rizvi] has testified in support of the claim of PNSC / Appellant. With his Affidavit-in-Evidence / Examination-in-Chief, various documents relating to the controversy were produced including the Charge Sheet dated 28.04.2000, issued to Respondent No.1 [Exhibit 6/5], and Reply thereto [dated 08.05.2000] of Respondent No.1, produced in the Evidence as Exhibit 6/6. The Photocopy of the Departmental Inquiry Report [dated 25.05.2000] is produced by the above witness of Appellant as Article 6/4.

25. The witness of PNSC reiterated that Respondent No.1 was involved in misappropriation of Rs.50 Million and the employees' contributory provident funds of PNSC along with other persons; Rs.11 Million were withdrawn by Respondent No.1 in his own name illegally in collusion with other co-accused. Deposed that Respondent No.1 is not entitled for medical reimbursement as Agha Khan University Hospital was / is not on the

approved panel lists of the hospitals. Testified that Respondent No.1 is not entitled for any damages, because it was him who caused loss to the PNSC.

In his **cross-examination,** he admitted that Respondent No.1 and other co-accused were acquitted, relating to embezzlement of provident funds, by this Court in the afore-referred Accountability Appeals, which was maintained by the Hon'ble Supreme Court. To a question about allegation of mis-appropriation, since his reply was in affirmative, therefore, both question and answer are reproduced herein under_

> "*Q: In terms of para15 & 16, PNSC was not able to prove such allegations against Ashiq Ali. What you say?*
>
> *Ans: As Ashiq Ali was acquitted by the Hon'ble Courts and has not considered the allegations, hence amounted not proved.*"

26. To a question, has admitted that the afore-referred Inquiry Committee was a fact finding Committee to investigate the mis-appropriation in provident fund and to fix the responsibility on persons and the above Inquiry Report submitted by the Witness [Article 6/4] is a fact finding report and <u>not against the particular person</u>; accepted the fact that no document is produced to show that any action was taken on the suggestions of Inquiry Committee as contained at its Page-40; admitted that Respondent No.1 was posted as Secretary of the Contributory Provident funds and as per Rules of 1979, <u>the Secretary has no role</u> [voluntarily says that he was also one of the Administrators], but admitted that he has not produced any document showing that Respondent No.1 as Administrator. Admitted that Respondent No.1 was one of the authorized signatories of the provident funds. Admitted that no disciplinary proceeding carried out against Respondent No.1 till his retirement.

27. We have perused the above Acquittal Judgment of this Court in the Criminal Accountability Appeals No.6 and 7 of 2004. The allegation / subject matter of the Accountability Reference, so also highlighted in the above Judgment was that Raees Ahmad as Administrator and Respondent No.1 as Secretary along with other persons misappropriated an amount of Rs.1,35,05,000/- from the years 1995 to 2000.

28. After a minute appreciation of the evidence, this Court came to the following conclusion_

> "*23. It is clear from the scrutiny of the evidence that the prosecution has failed to prove that 27 cheques were issued in the names of private*

> *and fictitious persons, which is the basis of the prosecution story and allegation. The prosecution has also failed to prove that the appellants had misappropriated the amounts of the cheques beyond any reasonable doubt. As such, the appellants are entitled to the benefit of doubt.***”**

29. The purported affirmative reply of Respondent No.1 about his acquittal on technical grounds, as highlighted by the Legal Team of PNSC, does not carry any adverse consequence, because a Witness [here the Respondent No.1] cannot be bound by a reply on a question of law; ***secondly***, his so-called affirmative reply, is diluted by the deposition of the Witness of PNSC, which is stated in the preceding paragraphs.

30. The argument of Mr. Khalid Javed, Advocate, in this regard, that the acquittal recorded by this Court was on technical grounds by extending benefit of doubt, is untenable, because, this Court has determined after exhaustive discussion on the evidence, that prosecution failed to prove that the Respondent No.1 and other co-accused misappropriated the amounts. The other convincing and admitted fact is the afore-referred Retirement Letter, communicated to Respondent No.1, by the Appellant-PNSC about his retirement from 24.06.2002, which is produced in the evidence [by both, PNSC and the Respondent No.1] **as Exhibit 6/4,** in which it is specifically stated that disciplinary action would be taken against Respondent No.1 under the Service Regulations and post-retirement dues payable were withheld till the pendency of Court proceeding. The earlier Court proceeding culminated in favour of Respondent No.1 and the <u>disciplinary proceeding admittedly was not concluded,</u> as in the intervening period Respondent No.1 retired from service.

Therefore, the Counter Claim of Appellant-PNSC with regard to same set of allegation of mis-appropriation in the Contributory Provident Fund Account, which are already set aside by the Courts, cannot be re-agitated in this proceeding, *inter alia,* as they were not proved. The cited case law [***ibid***] is distinguishable from the facts of the present ***LIS,*** inter alia, because disciplinary proceeding was never concluded, through which PNSC could have independently proven their Claim. The above Decisions in the Accountability Appeals, maintained by the Apex Court, followed by the separate acquittal orders, in fact exonerated Respondent No.1 in respect of the allegations of misappropriation. <u>Point B answered accordingly.</u>

Points C and D.

31. The monetary claim of Respondent No.1 can be categorized into the following three categories_

Category - 1

32. Salaries, allowances and perquisites during suspension period [01.09.2000 to 24.02.2002], as per the calculation of Respondent No.1, contained in Schedule – A, produced in the evidence as Article 5/3 is Rs.1,525,418/-. The Respondent No.1 has also added interest at the rate of 18% and the total figure is Rs.1,799,993/-.

A/10

ASHIQ ALI
DETAILS PAYS AND ALLOWANCES WITH OTHERS BENEFITS DURING
SUSPENSION PERIOD W.E.F 1-09-2000 TO 24-02-2002
FOUR MONTHS DETAILS

SCHEDULE A

NO A	PARTICULARS	PERIOD	NO OF MONTH	RATE IN RS	AMOUNT IN RS	REMARKS
I	SALARIES ALLOWANCES	1-9-200 TO 31-12-2000	4 MONTHS	42,227	168,908	
II	RESIDENTIAL TELEPHONE EXPENSE	1-9-200 TO 31-12-2000	4 MONTHS	1,000	4,000	1000 CALLS ALLOWED PER MONTH AMOUNT ESTIMATED
III	ENTERTAINMENT EXPENSE	1-9-200 TO 31-12-2000	4 MONTHS	1,000	4,000	
IV	CAR DRIVER SALARY	1-9-200 TO 31-12-2000	4 MONTHS	3,000	12,000	
V	COST OF PETROL	1-9-200 TO 31-12-2000	4 MONTHS	32.19 PER LITER	25,752	200 LITTERS USE ALLOWANCES P.M
VI	REPAIRS & MAINTENANCES OF CAR	1-9-200 TO 31-12-2000	4 MONTHS	1,000	4,000	ESTIMATED
VII	MEDICAL EXPENSES FOR SELF & FAMILY	1-9-200 TO 31-12-2000	4 MONTHS	1,000	4,000	ESTIMATED
		TOTAL AMOUNT RECEIVEABLE			222,660	
	ADD INTEREST @ 18% P.YEAR				13,597	
A	TOTAL AMOUNT RECEIVEABLE FOR 4 MONTHS				236,257	
		TWELVE MONTHS DETAILS				
NO B	PARTICULARS	PERIOD	NO OF MONTH	RATE IN RS	AMOUNT IN RS	REMARKS
a	SALARIES ALLOWANCES	01-01-2001 TO 31-12-2001	12 MONTHS	44,014	528,168	WITH ANNUAL INCREMENT
b	RESIDENTIAL TELEPHONE EXPENSE	01-01-2001 TO 31-12-2001	12 MONTHS	1,000	12,000	
c	ENTERTAINMENT EXPENSE	01-01-2001 TO 31-12-2001	12 MONTHS	1,000	12,000	
d	CAR DRIVERS SALARY EXPENSE	01-01-2001 TO 31-12-2001	12 MONTHS	3,000	36,000	
e	COST OF PETROL @ 200 LITTERS PM	01-01-2001 TO 31-12-2001	12 MONTHS	32.19 PER LITER	77,256	
f	REPAIRS & MAINTENANCE OF CAR	01-01-2001 TO 31-12-2001	12 MONTHS	1,000	12,000	
g	MEDICAL EXPENSES SELF AND FAMILY	01-01-2001 TO 31-12-2001	12 MONTHS	1,000	12,000	
h	LEAVE ENCHASMENT FOR 30 DAY			44,014	44,014	
		TOTAL AMOUNT RECEIVEABLE			733,438	
	ADD AMOUNT RECEIVABLE AS SHOWN IN PARA A				236,257	
	RECEIVABLE FOR 16 MONTHS				969,695	
	ADD INTEREST ON 4 MONTH AND 12 MONTH @ 18%				174,545	
	TOTAL AMOUNT RECEIVABLE FOR SIXTEEN MONTHS				1,144,240	
NO C	PARTICULARS	PERIOD	NO OF MONTH	RATE IN RS	AMOUNT IN RS	REMARKS
i	SALARIES EXPENSES	1-01-2002 TO 24-06-2002	5 MONTHS 24 DAY	45,081	261,469	RETIRED ON 24-06-2002
ii	ENTERTAINMENT EXPENSE	1-01-2002 TO 24-06-2002	6 MONTHS	1,000	6,000	
iii	RESIDENTIAL TELEPHONE EXPENSE	1-01-2002 TO 24-06-2002	6 MONTHS	1,000	6,000	
iv	CARD DRIVERS SALARIES ALLOWANCES	1-01-2002 TO 24-06-2002	6 MONTHS	3,000	18,000	
v	MEDICAL EXPENSE FAMILY AND SELF	1-01-2002 TO 24-06-2002	6 MONTHS	1,000	6,000	
vi	COST OF PETROL @ 200 LITTERS P.M	1-01-2002 TO 24-06-2002	6 MONTHS	32.19 PER LITER	38,628	
viii	LEAVESENCASHMENT 30 DAYS	1-01-2002 TO 24-06-2002		45,081	45,081	
C	TOTAL RECEIVABLES				381,178	
	ADD AMOUNT RECEIVABLE AS SHOWN IN PARA B				1,144,240	
	PERIOD	NOTE				
		GRAND TOTAL			1,525,418	TRUE COPY
	ADD INTEREST AS 18% ON RS 1525418/-				274,575	
	TOTAL AMOUNT RECEIVEABLE DURING SUSPENSION PERIOD				1,799,993	Advocate

Category – 2

33. Retiring Benefits as per the Table of Schedule A [***ibid***] is herein under_

ASHIQ ALI
RETIRING BENEFITS RECEIVABLE AS ON 24-6-2002

NO	PARTICULARS	PERIOD	NO OF MONTH /YEARS	RATE IN RS	AMOUNT IN RS
I	GRATUITY	01-01-1974 TO 24-06-2002	29 YEARS	26000 (BASIC PAY)	754,000
II	MEDICAL EXPENSES ON RETIREMENT				72,000
III	LEAVE ENCASHMENT				
	TOTAL LEAVE DUE 600 DAY LESS 60 DAYS PREVIOUSLY ACCOUNTED ON P	540 DAYS BALANCE			
				45,081.00	811,458
		TOTAL RETIRING BENEFITS RECEIVEABLE			1,637,458
	ADD SALARIES AND ALLOWANCES AND OTHER BENEFITS DURING SUSPENSION PERIOD AS SHOWN ON PAGE 1				1,799,993
	TOTAL AMOUNT RECEIVABLE FOR REMUNIRATION DURING SUSPENSION PERION AND RETIRING BENEFITS				3,437,451
	ADD INTEREST ON RS 3437451 @ 18% FROM 1-1-2002 TO 31-12-2002 I.E 12 MONTHS				618,741
	ADD INTEREST @ 18% P.A FROM 01-01-2003 TO 31-12-2003 I.E 12 MONTHS			TOTAL	4,056,192
					730,115
	ADD INTEREST @ 18% P.A FROM 01-01-2004 TO 31-12-2004 I.E 12 MONTHS			TOTAL	4,786,307
					861,535
	ADD INTEREST @ 18% P.A FROM 01-01-2005 TO 31-12-2005 I.E 12 MONTHS			TOTAL	5,647,842
					1,016,612
	ADD INTEREST @ 18% P.A FROM 01-01-2006 TO 31-12-2006 I.E 12 MONTHS			TOTAL	6,664,454
					1,199,602
	ADD INTEREST @ 18% P.A FROM 01-01-2007 TO 31-12-2007 I.E 12 MONTHS			TOTAL	7,864,056
					1,415,530
	ADD INTEREST @ 18% P.A FROM 01-01-2008 TO 31-12-2008 I.E 12 MONTHS			TOTAL	9,279,586
					1,670,325
	ADD INTEREST @ 18% P.A FROM 01-01-2009 TO 31-12-2009 I.E 12 MONTHS			TOTAL	10,949,911
					1,970,984
	ADD INTEREST @ 18% P.A FROM 01-01-2009 TO 31-08-2010 I.E 8 MONTHS			TOTAL	12,920,895
	SUB TOTAL AMOUNT RECEIVABLES DURING SUSPENSION PERIOD +RETIRING BENEFITS ALONG WITH INTEREST				1,401,961
	ADD PROVIDENT FUND ACCOUNT (INTEREST TO BE CHARGED)				14,322,856
				*	1,500,000
				GRAND TOTAL	15,822,856
				*ESTIMATED	

NOTE: 1.THE INTEREST HAS BEEN CALCULATED ON THE PRESUMPTION OF BANK RATE @18% P.A ON COMPOUND INTEREST BASIS.

2. THE INTEREST HAS BEEN CHARGED UPTO 31ST AUGUST 2010 WHICH SHOULD ALSO BE PAID FOR THE PERIOD FROM 1ST SEPT 2010 TO THE DATE OF FINAL SETTLEMENT ON COMPOUND INTEREST BASIS.

34. The claim is of Rs. 16,37,458/- [without adding interest / mark-up]. Total Claim- Category 1 and 2 comes to Rs. 3,162,876/- [Rs. 1,525,418/- + Rs. 16,37,458/-], covering his pre and post-retirement service dues.

35. On the above amount, the Respondent No.1 has added 18% interest for different period starting from 01.09.2000, when he was put under suspension till 31.08.2010. Thus, total amount comes to Rs. 15,822,856/- [*Detail of this interest component is already mentioned in the above two tables*].

Category – 3

36. Respondent No.1 has claimed damages and compensation of Rupees ten million, for suffering humiliation, mental torture, distress and agony.

37. ***Whereas***, the Appellant-PNSC in Paragraph 12 of Supporting Affidavit of their Stay Application in the present Appeal, has stated that ***"at best, a sum of Rs.23,53,992/- was said to be payable"*** for the period starting from 01.09.2000 to 24.06.2002 [date of superannuation], including twenty eight years of gratuity, medical facilities, leave encashment, salaries and allowances and other benefits, as per term and condition of the employment, and **disputing the calculation of Respondent No.1** mentioned in the Schedule – A, which comes to Rs.34,37,451/- [*actual calculation, without adding interest/ mark up, as per Respondent No.1 of his dues from the date of his suspension till retirement*]; besides, raising the Counter Claim of Rs.46,187,862.00 [as highlighted in the foregoing paragraphs], detail whereof is mentioned in the document [herein under] is produced in the evidence by the witness of Appellant-PNSC as Exhibit 6/9 [*page 87 of the Evidence File*].

X-6/2
Converted to
Ex-6/9
D/3

.5/03/2003 - 14/00

PAKISTAN NATIONAL SHIPPING CORPORATION
STATEMENT OF PROVIDENT FUND
FOR THE PERIOD FROM 01/07/2001 TO 30/06/2002

PAGE NO : 427/1

2 Sheets

P.CODE : 017226 ASHIQ ALI

AUDITED.

VOUCHER NO	VOUCHER DATE	ACCOUNT CODE	NARRATION	CHEQUE NO	P.N.S.C CONTRIBUTION	MEMBER'S SUBSCRIPTION	PROVIDENT FUND LOAN	INSURANCE PREMIUM	EMPLOYEE'S NET BALANCE
			BALANCE B/F ...		567131.81				11105485.00DR
S0001	30/07/2001	3280384	BANK SALARY JUL - 01		-	-	10505.00	-	11094980.00DR
S0001	~~30/07/2001~~	3280494	BANK SALARY JUL - 01		2444.00	2444.00	-	-	11092536.00DR
S0002	29/08/2001	3280384	BANK SALARY AUG - 01		-	-	10505.00	-	11082031.00DR
S0002	29/08/2001	3280494	BANK SALARY AUG - 01		2444.00	2444.00	-	-	11079587.00DR
S0003	[illegible]/09/2001	3280384	BANK SALARY SEP - 01		-	-	10505.00	-	11069082.00DR
S0003	27/[illegible]/2001	3280494	BANK SALARY SEP - 01		2444.00	2444.00	-	-	11066638.00DR
S0004	29/10/2001	3280384	BANK SALARY OCT - 01		-	-	10505.00	-	11056133.00DR
S0004	29/10/2001	3280494	BANK SALARY OCT - 01		2444.00	2444.00	-	-	11053689.00DR
S0005	28/11/2001	3280494	BANK SALARY NOV - 01		2444.00	2444.00	-	-	11051245.00DR
S0006	27/12/2001	3280384	BANK SALARY DEC - 01		-	-	10505.00	-	11040740.00DR
S0006	27/12/2001	3280494	BANK SALARY DEC - 01		2444.00	2444.00	-	-	11038296.00DR
S0007	30/01/2002	3280494	BANK SALARY JAN - 02		2444.00	2444.00	-	-	11035852.00DR
S0008	19/02/2002	3280384	BANK SALARY FEB - 02		-	-	10505.00	-	11025347.00DR
S0008	19/02/2002	3280494	BANK SALARY FEB - 02		2444.00	2444.00	-	-	11022903.00DR
S0009	28/03/2002	3280384	BANK SALARY MAR - 02		-	-	10505.00	-	11012398.00DR
S0009	28/03/2002	3280494	BANK SALARY MAR - 02		2444.00	2444.00	-	-	11009954.00DR
S0010	29/04/2002	3280384	BANK SALARY APR - 02		-	-	10505.00	-	10999449.00DR
S0010	29/04/2002	3280494	BANK SALARY APR - 02		2444.00	2444.00	-	-	10997005.00DR
S0011	29/05/2002	3280384	BANK SALARY MAY - 02		-	-	10505.00	-	10986500.00DR
S0011	29/05/2002	3280494	BANK SALARY MAY - 02		2444.00	2444.00	-	-	10984056.00DR
S0012	~~25/06/2002~~	3280384	BANK SALARY JUN - 02		-	-	10505.00	-	10973551.00DR
S0012	25/06/2002	3280494	BANK SALARY JUN - 02		2444.00	2444.00	-	-	10971107.00DR
			CURRENT YEARS TOTAL		29328.00	29328.00	105050.00	0.00	
			BALANCE		596459.81				10971107.00DR
			PROFIT		0.00				0.00
			BALANCE C/F		596459.81				10971107.00DR

AA o/s as on 30-6-02

20020624

Net Debit Rs. 10,374,647.19

D/4

21/10/2010 PFML02

PAKISTAN NATIONAL SHIPPING CORPORATION
CONTRIBUTORY PROVIDENT FUND TRUST
PF Balance Summary as on 21/10/2010

PAGE: 8
PROV LGR

P.Code	NT	Name	Corp Balance	Own Balance	Date Left
042015	NT	ASHIQ ALI (SPECIAL PCODE)	0.00	-15,202,000.00 I	
042023	NT	ASHIQ ALI - AKRAM KHANZADA	0.00	-16,347,000.00 I	
04203[illegible]	NT	ASHIQ ALI - JAWAID HASAN	0.00	-2,082,751.00 I	
042046	NT	ASHIQ ALI - RAEES AHMED	0.00	-1,308,000.00 I	
042054	NT	ASHIQ ALI - ABDUL KARIM KANDAWALA	0.00	-12,004.00 I	
042062	NT	ASHIQ ALI - JANE ALAM	0.00	-235,000.00 I	
042077	NT	ASHIQ ALI - M. ILYAS	0.00	-30,000.00 I	

TOTAL Rs. 35,216,755/=

38. The above <u>Witness of PNSC in his cross examination has admitted</u> that gratuity is payable as per Rules to the employee upon his retirement or resignation, so was payable to Respondent No.1; an employee when he retires, is also entitled for payment against balance leaves; admitted that car maintenance and cost of fuel is also payable to the Manager category employees during their employment. Acknowledged that benefit of medical facility is given to an employee up to four years after his retirement and Respondent No.1 was entitled for Rs.72,000/- at the time of his retirement for medical allowance, while admitting that in special cases, an employee is allowed by the Authority [PNSC] to be treated at any hospital even not on the Panel. With regard to the Exhibit 6/9 [the two Tables referred herein above], the Witness admitted that it does not bear any signature of the Appellant and it is merely a computerized Statement. To a question, has replied in affirmative that yearly audit of Provident Fund is carried out. <u>Showed ignorance that any intimation was given to Respondent No.1 about the outstanding amount against him</u> [*voluntarily states that because criminal cases were pending against him till the filing of the Suit*]. **Admitted** that Respondent No.1 was arrested, remained in jail, suffered monetary damages and agony, thereafter was acquitted. Admitted that PNSC did not give any retirement benefit to Respondent No.1 after his retirement till date.

The two Documents [Exhibit 6/9] produced by the Witness of the Appellant-PNSC with regard to debit balance, in support of its Counter claim, are not proven as required, as the entries have to be justified by the concerned person / Accountant; admittedly the above Documents are

unsigned; it can be seen by looking **at the two Documents [**reproduced above], that the figures of "Rs.10,374,647.19 and Rs.35, 216.755" are hand written, and both the Documents do not contain any certification [as required] that they are computer generated documents / from an automated information system. The above two Documents are to be considered in the light of Article 46-A of the Qanoon-e-Shahadat Order [1984] and the Electronic Transactions Ordinance, [2002]. The Superior Courts have ruled that for such kind of computer generated print out, its certification is mandatory. The following reported Decisions are relevant_

i. **2018 CLD 799**
[*Askari Bank Limited* ***versus*** *DCD Services Limited and 3 others*]; and

ii. P L D 2024 [Lahore] 228
[*Akeel Ahmad* ***versus*** *Chairman, Punjab Public Service Commission, Lahore and others*].

Secondly, in the above Retirement Letter [Exhibit 6/4], the PNSC did not mention anything about their claim and / or debit balance as stated in the Counter Claim, which is filed after almost after nine years from the date of Retirement Letter.

Thirdly, the re-appraisal of the evidence conclude that the Counter Claim of PNSC is belied by the testimony of its Witness. The Pleading, viz. Written Statement and Counter claim is also contradictory in nature, when it is stated in Paragraph 8 and 2 [of the Written Statement and Counter Claim, respectively] that the debit balance of Rs.35,216,755/- is against the Respondent No.1 **"and other accused";** this is a vague and contradictory statement, as PNSC itself is not certain about the specific outstanding liability against the Respondent No.1 and has come up with a hypothetical figure of Rs.35,216,755/- as a collective liability, payable [purportedly] by the other accused also.

In addition to the above Finding, if the first figure of Rs.10,374,647.19 [Exhibit 6/9] is treated as outstanding liability against the Respondent No.1, as argued on behalf of PNSC [the Appellant], even then this alleged liability is not recoverable, being hopelessly time barred, in view of Article 57 of the Limitation Act, prescribing a period of three years, when the loan is made, because, undisputedly, PNSC did not file any proceeding against the Respondent No.1, for recovery of the above outstanding liability [as claimed] and it is first time highlighted in their Counter Claim / Written

Statement, which is filed on 5.5.2011. Even, if the Retirement Letter is taken as a cutoff date [24.06.2002] for settling of outstanding liability from the service dues, then, the recovery proceeding should have been instituted by the PNSC within three years, from the above retirement date, but, claiming that in the above pleadings, after almost nine years, cannot be condoned and thus, is hopelessly time barred.

Conclusion is that the Respondent No.1 is entitled to receive all of his service dues <u>after deduction of salaries and other allowances paid during his suspension period till his retirement.</u> To this extent the impugned Judgment is modified.

<u>Adverting to the claim of damages</u>.

39. Respondent No.1 has claimed damages of Rupees ten million as stated in the foregoing paragraphs. After appraisal of the evidence, the learned Single Bench has formed an opinion that Respondent No.1 is entitled to only Rupees Twenty Five Lacs towards general damages, *inter alia*, because as post-retirement dues were not settled even after passing of Acquittal Judgment [*ibid*] of this Court dated 07.11.2005 and maintained by the Hon'ble Supreme Court [vide Judgment dated 18.05.2006]. PNSC being a statutory corporation should have shown responsibility in this regard, considering the old age of Respondent No.1, who also remained in jail. Consequently, the award of damages is justified and the impugned Judgment is correct.

40. The Respondent No.1 has also claimed reimbursement of medical expenses of Rs.200,000/- [Rupees Two Lacs] and according to him he was admitted in the Aga Khan Hospital. However, stance of Appellant-PNSC so also deposed by its witness is, that Aga Khan Hospital was not on Panel.

Speaking generally, if the factum of hospitalization of an employee and incurring of expenses is not disputed, then the defense that the hospital was not on Panel, is a feeble one. However, in the instance case, the Respondent No.1 did not produce the medical bills of this treatment in Aga Khan Hospital and since this onus is to be discharged by Respondent No.1, which he failed to prove, therefore, his claim towards medical expenses is discarded. However, D.W.-1 [of Appellant-PNSC] admitted in his cross-examination that actual amount of medical allowance is Rs.72,000/- [Rupees Seventy Two Thousand] at the time of his retirement, therefore, the impugned

Judgment is incorrect to this extent. Only the above admitted sum of Rs.72,000/- is admissible towards medical claim.

41. The Respondent No.1 has enhanced its claim by adding 18% interest per annum till 31.08.2010, which is not permissible, because at best, the markup can be awarded as per the prevalent market rate, which is correctly appreciated and awarded at the rate of ten percent per annum, in the impugned Judgment.

42. The conclusion of the above discussion is, that the impugned Judgment is within the parameters of law and is not interfered with except as decided in the preceding paragraphs. This Appeal is disposed of and the Decree is accordingly modified in the following manner:

i- The Respondent No.1 is entitled to receive all service dues as decided in the impugned Judgment **after deducting** salaries and allowances paid by PNSC during his suspension period till superannuation so also already received [as mentioned herein above] during pendency of this Appeal.

ii- Medical allowance is reduced to Rs. 72,000/- [as admitted in the evidence by the Witness of PNSC].

iii- Damages of Rs. 2.5 million as determined in the impugned Judgment.

Parties to bear theirs costs.

Judge

Judge

Karachi.
Dated: 20.07.2026.

Riaz / P.S.