

HIGH COURT OF AZAD JAMMU & KASHMIR

(Subordinate Judiciary Service Tribunal)

*Service Appeal No.01/2019;
Date of Institution 18.01.2019;
Date of Decision 20.12.2024.*

Javaid Iqbal Chohan Assistant Librarian
S/o Haji Muhammad Alam Chohan R/o
Habib Abad Post office & Tehsil Trar Khail,
District Sudhnoti (Assistant Reader) Shariat
Appellate Bench of Azad Jammu & Kashmir
High Court.

Appellant

VERSUS

1. Competent Authority Shariat Appellate Bench of High Court Azad Jammu & Kashmir, Muzaffarabad;
2. Khalid Hussain Saqib Registrar (Authorized Officer) Shariat Appellate Bench of High Court of Azad Jammu & Kashmir, Muzaffarabad;
3. Inquiry Officer (if he inquired secretly) appointed by the competent authority of the Shariat Appellate Bench of the High Court of Azad Kashmir Muzaffarabad through Registrar of the Shariat Bench of High Court, Muzaffarabad;
4. Accountant General of Azad Jammu & Kashmir, Muzaffarabad.

Respondents

SERVICE APPEAL AGAINST ORDER/NOTIFICATION DATED 25.10.2018 & 26.10.2018

**Before:- Justice Sardar Muhammad Ejaz Khan, Chairman.
Justice Khalid Rasheed Chaudhary, Member.**

PRESENT:

Mr. Asghar Ali Malik, Advocate for the appellant.
A.A.G. for the official respondents.

JUDGMENT:

Sardar Muhammad Ejaz Khan, Chairman. The captioned appeal has been filed against the order dated order/notification dated 25.10.2018 & 26.10.2018 whereby the appellant was compulsorily retired from his assignment of Assistant Librarian (Assistant Reader).

2. Synthesized facts as per version of the appellant taken in appeal are that he was permanent employee of Shariat Appellate Bench of High Court of Azad Jammu & Kashmir and was discharging his duties as Assistant Librarian (Assistant Reader). It has been stated that he was alleged to have issued a forged and fabricated notice in a case titled *Javaid Iqbal vs. Shahid Hussain* on which he was suspended by

the competent authority from service vide order dated 05.10.2018 and Registrar Shariat Appellate Bench of High Court was appointed as inquiry/authorized officer under the relevant provisions of The Azad Jammu & Kashmir Efficiency and Discipline, Rules 1977 while the appellant was charge-sheeted by the authorized officer and in response thereof, the appellant filed written reply on the basis of which the authorized officer submitted recommendations before the competent authority that the appellant in reply has admitted the alleged charges levelled against him, hence, the inquiry officer recommended a major penalty for removal from service without conducting regular inquiry whereupon the competent authority vide letter dated 18.10.2018 called him for personal hearing and thereafter, vide impugned notification dated 26.10.21018, he was compulsorily retired from service, which is

unconstitutional, capricious, unfair and against the natural justice. It has been craved that the appellant was pressurized and threatened by the high officials for admission of alleged allegations then he may be forgiven, hence, without ascertaining the real facts and circumstances, the impugned notification has been passed without conducting regular inquiry against the appellant. It has been prayed that whole proceedings conducted against the appellant are contrary to law and rules, which may be set-aside.

3. Heard. Record perused.

4. Before parting with the merits and demerits of the case, the objection raised by learned counsel for the appellant that the inquiry officer/authorized officer recommended major penalty for removal from service of the appellant without conducting regular inquiry as provided under law on which the competent

authority issued the impugned notification dated 26.10.2018 whereby he was awarded a major penalty and was compulsorily retired from service while he was ousted from service on the basis of reply submitted in response of charge-sheet rather he was compelled to admit the allegation levelled against him, as such, the procedure defined for regular inquiry has not been adopted, hence, the same is liable to be set-aside and the orders/notification in furtherance thereof were issued may also be set-aside in the interest of justice is concerned.

5. It appears from record that a forged and fabricated notice attributed to the appellant was issued in a case titled *Javaid Ahmed vs. Shahid Hussain* on which he was suspended from service vide order dated 05.10.2018 and an inquiry officer/authorized officer-Registrar Shariat Appellate Bench of High Court was appointed to conduct inquiry who issued

charge-sheet of allegations levelled against him on 05.10.2010 and in response thereof, he filed written reply (*annexure "PD"*). The inquiry officer made basis the reply submitted by the appellant as sufficient proof and held that there is no need to conduct further inquiry while recommending major penalty on which the then Hon'ble authority called the appellant for personal hearing on 19.10.2018 vide letter dated 18.10.2018 while he was heard on 22.10.2018 and in this regard his statement has also been recorded on the basis of which the then Hon'ble authority awarded him major penalty by which he was compulsorily retired from service vide impugned notification dated 26.10.2018.

6. It is an admitted fact that a regular inquiry has not been conducted as postulated in the AJ&K Civil Servants (Efficiency and Discipline) Rules, 1977 rather after perusal of reply submitted in response of charge-sheet

dated 05.10.2018, it depicts that the reply answered in affirmative in response of charge-sheet dated 05.10.2018 is subject to evidence particularly the appellant mentioned the prevailing circumstances of admission of charges levelled against him. It is precondition for inquiry officer to ascertain the guilt of alleged charge after thorough probe into the matter and dig out the truth on surface by providing a fair opportunity rather the inquiry officer formed its opinion on the basis reply at very initial stage of inquiry and it was enjoined upon the inquiry officer to conduct regular inquiry on the ground that he recommended major penalty for removal from service of the appellant even then the appellant himself admitted the allegation levelled against him because the inquiry officer is under the legal obligation to reach the logical conclusion under what circumstances he made such statement or whether he was compelled to

make such admission. It is apparent on the face of record that the affidavit has been brought on record by the appellant in which he specifically mentioned circumstances that were compelling him to make such admission and he also mentioned that he was called for personal hearing on 19.10.2018 and in this guise, he was personally heard on 22.10.2018 and his statement was also recorded. Therefore, after deep scanning of record, we unanimously come to the conclusion that a regular inquiry has not been conducted rather reasons recorded for not conducting regular inquiry by the inquiry officer are not justified on basis of which the competent authority had to give solid reasoning while concurring with the findings of inquiry report and awarding major penalty to the appellant but no sufficient reasons have whatsoever been explained for the purpose, hence, in such like state of affairs, no major penalty could have

been imposed without holding regular inquiry. Our this view fortifies from a case reported as *Shakir Ali and another vs. National Accountability Bureau through Chairman, Islamabad and another* [2021 PLC (C.S.) 683] wherein it is provided as under:-

“Imposition of major penalty of dismissal from service, without inquiry, would suggest the element of bias and unfair treatment at least in the matter of quantum of sentence; findings of a fact finding inquiry/committee, without joining the civil servant against whom findings are compiled, cannot be made basis for his removal from service as such proceedings would be contrary to the principles of natural justice enshrined in the maxim audi alteram partem; the competent authority must not dispense with the inquiry that may be necessary to probe into the charge, particularly when there is a likelihood of imposition of major penalty of removal from service if the allegation is proven; if inquiry is dispensed with without any plausible reason, such dispensation would not be justified; and, imposition of major penalty of removal from service without holding inquiry would result into

grave miscarriage of justice and prejudice to the aggrieved civil servant.

7. The views expressed by us in the preceding paragraph are fortified by the law laid down by Hon'ble Supreme Court in Muhammad Idris Khan, Fatima Bibi, Divisional Forest Officer Kasur, Muhammad Afzal, and Muhammad Naeem Akhtar (supra). Therefore, the impugned dispensation of inquiry against the petitioners, the impugned show-cause notice issued to them and the impugned orders of their removal from service, being contrary to law, are not sustainable.”

Similar proposition has been resolved in a case reported as *Naeem Ahmed vs. Registrar Lahore High Court, Lahore* [2023 PLC (C.S.) 1462 in which it has been opined as under:-

“Termination of services with stigmatic charges, without holding a regular inquiry, degenerates a host of adverse assumptions against one's character, which has bearing on his/her reputation and goodwill for his/her future service career. Thus, it offends right to life and dignity of man as enshrined in Articles 9 and 14(1) of the Constitution of the Islamic Republic of Pakistan, 1973. The competent authority must not dispense with

the regular inquiry that may be necessary to probe into the charge, particularly with there is a likelihood of imposition of major penalty of termination from service if the allegation is proven because it would result into grave miscarriage of justice and prejudice to the aggrieved civil servant if at all, regular inquiry is to be dispensed with, plausible reasons should have been provided.”

Likewise, the apex Court of Pakistan in a case reported as *Federation of Pakistan through Chairman Federal Board of Revenue FBR House, Islamabad and others vs. Zahid Malik* [2023 SCMR 603] in which it has been observed as under:-

“Mere reproduction of charge with defence submitted in writing by the accused and then the rebuttal submitted by the departmental representative in the inquiry report was not sufficient to prove the accused’s guilt as there was no evidentiary value except two statements on record and allegations vice versa (words against words) which could only be proved one way or the other. Had the evidence been recorded, both the statements would have subjected to

the cross-examination accompanied by other oral and documentary evidence for sifting the grain from the chaff. Without exploring and finding guilt of accused into the charges of misconduct, neither the inquiry report can be construed as fair and impartial, nor is it commensurate the procedure provided under the E&D Rules for conducting an inquiry into allegations of misconduct. It is undoubtedly revealing from the inquiry report that no opportunity was provided to the accused to conduct cross-examination even on the departmental representative who allegedly rebutted the defence of the accused in writing before the inquiry officer and also produced evidence against the accused; at least he should have been subjected to the cross-examination by the accused officer, particularly when no other witness was called for recording evidence.”

It has further been held in that report:-

“However, we felt it appropriate to note down that the matter of a departmental inquiry should not be concluded in a cursory or perfunctory manner and in order to improvise the norms and standards of departmental inquiry under the Civil Servants Act, 1973 and E&D Rules, or in other enabling Rules, it would be advantageous that a

“Handbook” of inquiry procedure be complied by the appellant with the excerpts of all relevant Rules including the rule of natural justice and due process of law enshrined under Article 10-A of the Constitution for the step-by-step help and assistance of inquiry officers or inquiry committees so that in future, they may be well conversant with the precise procedure before embarking on the task of an inquiry and conduct the inquiry proceedings without ambiguities.”

Similar views have been expressed by the apex Court of Azad Jammu & Kashmir in a case reported as *Javaid Iqbal vs. Director General Local Govt. & 5 others* [2022 SCR 699] wherein the following principle has been laid down:-

“As under the provisions of Azad Jammu & Kashmir Civil Servants (Efficiency and Discipline) Rules, 197 a penalty cannot be imposed without a proper inquiry, whereas, in the instant case the law has been violated but the learned Service Tribunal failed to appreciate this aspect of the case in a legal manner.”

7. By taking into account the principles laid down in the afore-referred case law, the judicial consensus is that major penalty cannot be imposed on an employee without holding regular inquiry, which may only be dispensed with if sufficient material is available on the record for awarding major penalty rather the reasoning recorded by the inquiry/authorized officer on the basis of reply does not show conscious application of mind to the facts of the case to dispense with the regular inquiry, hence, whole proceedings conducted in retiring the appellant from service on compulsorily basis are contrary to law and rules, which are liable to be *set-aside*.

8. Be that as it may, appeal is accepted while *setting-aside* the entire proceedings of inquiry and order/notification dated 25.10.2018 and 26.10.2018 and the case is remanded to the Hon'ble competent authority to hold fresh

regular inquiry for the purpose in accordance with law within a period of three months from the date of announcement of this judgment.

Muzaffarabad: **CHAIRMAN** **MEMBER**
20.12.2024(J.ZEB)

Approved for reporting

CHAIRMAN **MEMBER**