ORDER SHEET
HIGH COURT OF SINDH, KARACHI

Suit No.1675 of 2016

Date	**Order with signature of Judge**

Present:
Mr. Justice Muhammad Ali Mazhar

Naved Alam Zubairi .....Plaintiff

Versus

Federation of Pakistan & others.....Defendants

For hearing of CMA No.10565/2016.

Dates of hearing: 27.03.2018, 05.04.2018 & 10.04.2018

Mr. Yasir Ahmed Shah, Advocate for the Plaintiff.

Mr. Kashif Hanif, Advocate for the Defendant No.2 to 4.

Mr. Naveed Ahmed, Senior Executive (Legal), P.S.O.

******

Muhammad Ali Mazhar, J. This suit for declaration and permanent injunction has been brought to challenge the suspension and inquiry letter dated 04.07.2016 with the request to restrain the defendant No.2 to 4 from initiating any inquiry and dismissing the plaintiff from service. The plaintiff has also filed an application under Order XXXIX Rule 1 & 2 C.P.C for soliciting the interim orders consonant to the relief as entreated in the plaint.

2. The learned counsel for the plaintiff argued that the plaintiff was appointed as General Manager vide appointment letter dated 10.06.2002. PSO is shareholder in the Asia Petroleum Company Ltd. (APL). The plaintiff was appointed as MD APL and served until year 2009. After repatriation to PSO, the internal auditors of APL found some irregularities in the procurement process and referred the matter to the APL Board but the BOD took no further action and closed the matter within the company. Notwithstanding, the plaintiff was issued an Explanation Letter dated 19.07.2010 and

placed under suspension. PSO appointed enquiry officer and also referred the matter to the FIA. Having found no evidence, the PSO Board authorized the MD to examine the case. The MD PSO after considering the written explanation of the plaintiff recommended closure of the disciplinary proceedings. The Board considered the recommendations in its 199th BOM meeting and decided to close the case. This decision was acted upon and the plaintiff was restored. After almost three years, the FIA lodged an FIR in which the plaintiff was arrested and obtained bail vide order dated 04.11.2015. He voluntarily deposited Rs.1.2 million in court to obtain bail. Subsequently, the plaintiff was acquitted by the Special Court vide order dated 17.06.2016 on application moved under Section 265-K Cr.P.C.

3. He further argued that the inquiry proceedings were illegally reopened vide PSO BOM decision dated 04.07.2016. The second disciplinary proceedings are exactly based on the same charges in which the plaintiff was earlier discharged. It was further contended that no one can be vexed twice for the same allegations. The reopening of inquiry amounts the violation of Article 13 of the Constitution. It was further avowed that the criminal and departmental proceedings are totally independent having no bearing on each other and both may result in different conclusions. If the Appeal against the acquittal of the plaintiff is allowed, trial is resumed and if the plaintiff is convicted then off course PSO may decide to take any further disciplinary action. In support of his contention, the learned counsel for the plaintiff referred to **2010 PLC (C.S.) 426, 1985 PLC (C.S.) 1108, 2000 PLC (C.S) 1373, 1989 SCMR 1224 and 2010 PLC (C.S) 495.**

4. Quite the opposite, the learned counsel for the defendant No.2 to 4 argued that on 19th July 2010, an explanation was issued to the plaintiff by the defendant No.2 on seven counts including the embezzlement of the company funds. The inquiry committee was

constituted vide letter dated 05th April, 2011 to probe but before the commencement of inquiry, the Board of Management on the statement of the then Managing Director closed the inquiry for an erroneous reason. Subsequently it transpired that the statement made by the then Managing Director was incorrect and the Board of Management had closed the inquiry on the basis of erroneous facts therefore, the Board of Management of defendant No.2 reopened the inquiry in its 233rd meeting held on 02 & 3rd July 2016. Accordingly, an inquiry letter was issued on 4th July 2016 and through a separate letter, the plaintiff was also placed under suspension. The matter was taken up by this court on 19.07.2016 when interim orders were passed but it is matter of record that this court on 26.07.2016 directed the defendant No.2 to ensure that the enquiry is conducted fairly but through the same order the plaintiff was also directed to participate in the enquiry proceedings. In order to meet the ends of justice, the Enquiry Officer provided many opportunities to the plaintiff and in this regard five notices were issued to the plaintiff on July 4, 2016, July 13, 2016, July 21, 2016, July 26, 2016 and August, 5, 2016 but the plaintiff never participated in the inquiry. After providing ample opportunity, the enquiry officer concluded the inquiry on 14.10.2016.

5. The learned counsel also focused on the allegations that payment of Rs.5 Million was made to M/s. Nasir & Co. without any evidence of performing any services to the APL. A sum of Rs.4.7 Million was paid to M/s Nasir & Co. on 9th March 2007 and from the same account of M/s. Nasir & Co. Rs. 1.2 Million was received by the plaintiff. On same charges FIR No. 18/2015 was lodged against the plaintiff and the plaintiff during the proceedings have returned the embezzled amount to the FIA. The learned counsel expressed much reservation to the acquittal order and pointed out that a Criminal Acquittal Appeal No. 263/2016 is pending. He further argued that during the period from March to October, 2006 Rs.800,000/- was paid to Major General Ret. Saleemullah whereas no consultation

report/evidence of work performed by him was available on the record. During the inquiry it came on the record that certain individuals and families have travelled at the expenses of APL who were not APL employees and due to such unauthorized travelling the company sustained a loss of 0.22 million and the name of such individuals are available at page Nos. 291 & 295 of court file. During inquiry it also revealed that plaintiff failed to take any action against some fake guaranties against which a sum of Rs.1,225,819/- was paid for the supply of batteries but M/s Oil Field Services failed to supply the same.

6. Heard the arguments. The record reflects that on 19.07.2016 the injunction application was placed for orders before the learned Judge (O.S) of this court. While issuing notices to the defendants, the learned Judge restrained the defendants not to take any coercive action against the plaintiff. The operation of the suspension letter was suspended with the directions to the defendants to commence and conclude the investigation against the plaintiff within three months, however, till such time no final order shall be passed nor the services of the plaintiff be terminated. However, when this matter was again placed before the learned Single Judge on 26.07.2016, the court directed the plaintiff to participate in the inquiry proceedings and the defendants were directed to ensure that the inquiry is conducted fairly. The defendants were also directed to submit the conclusive findings in court. This order further reflects that the counsel for the plaintiff raised some reservation against the person who was heading the inquiry but the DGM Legal Affairs, PSO present in court apprised that besides the Managing Director there are only two officers who are senior to the plaintiff against one of those the plaintiff is already under litigation, therefore, the only possibility was to appoint Yaqoob Sattar to conduct inquiry. It appears from the order that this aspect was considered by the learned Single Judge and despite that, the plaintiff was directed to participate in the inquiry proceedings

before the same inquiry officer.

7. The learned counsel for the plaintiff made much emphasis that earlier on the similar allegations inquiry was conducted but the board approved the M.D's proposal that the case be closed and the plaintiff be restored. He further argued that the second inquiry cannot be conducted on the same allegations. It is clearly reflecting from the board decision that earlier the inquiry was not completed but pending inquiry, the M.D proposed to close the case. The minutes of 233rd meeting held on 2nd and 3rd July 2016 shows the reasons for reopening of inquiry against the plaintiff. It is further stated that while the formal inquiry against the plaintiff was under way, the then M.D informed the board of management in its 199th meeting held on 09.02.2012 that he has examined the case of the plaintiff and after review, he proposed that case be closed and the plaintiff be restored to its position. It is further mentioned in the minutes that subsequently certain incriminating evidence came on record against the plaintiff in FIA inquiry No. 12/2013 and FIR No. 18/2015 including the depositing of cheques by the plaintiff amounting to PKR. 1.2 Million, the board of management unanimously resolved that the inquiry against the plaintiff be reopened. The state of affairs lead to an unambiguous aftermath that earlier the case was not closed after full-fledged inquiry and or the basis of the findings of Inquiry Officer so after finding some incriminating material against the plaintiff, the management decided to reopen the inquiry to probe into the allegations against the plaintiff. In my considered view the reopening of an incomplete inquiry against the plaintiff cannot be considered illegal or unlawful act on the part of the management. I have also seen the inquiry report brought on record by the management in which it is stated that five opportunities were given to the plaintiff to appear before the Inquiry Officer to defend the allegations but he did not appear on any date despite the fact that he was directed to participate in the inquiry by this court. He was also provided the copies of

statement of prosecution witnesses along with documents and was allowed opportunity to cross examine the prosecution witnesses but he failed to do so. Consequently, the Inquiry Officer submitted the report to the management and concluded that the allegations leveled against the plaintiff in the explanation letter dated 19.07.2010 have been established.

8. The bail granting order passed by the Special Court (Central-I), Karachi in FIR No. 18/2015, lodged under Section 161/409/420/468/471/34/109 PPC read with Section 5(2) of Prevention of Corruption Act, 1947 at P.S. FIA, Corporate Crime Circle, Karachi do show that the learned Special Court (Central-I), Karachi granted the bail to the plaintiff on medical grounds. Furthermore, the plaintiff deposited Rs.500,000/- in court in favour of APL/PSO and requested for time to deposit Rs.700,000/- more within three months. The Learned Prosecutor, FIA on medical ground conceded to the grant of bail subject to deposit of amount as mentioned above. Subsequently on an application moved under Section 265-K Cr.P.C the plaintiff was acquitted but the learned counsel for the defendants robustly argued that being dissatisfied with the acquittal order, the defendants have already filed acquittal appeal which is pending. An austere look to the prayer clauses make evident that the plaintiff approached this court to challenge the suspension letter and inquiry letter with further prayer not to initiate inquiry proceedings against him but the order dated 26.07.2016 passed by the learned Single Judge of this court makes it clear that the court directed the defendants to conduct an inquiry so the prayer made in the plaint to the effect of restraining order against the initiation of inquiry has become infructuous as the inquiry has been completed by the management and the report has been submitted.

9. It is an admitted position that PSO (defendant No.2) has no statutory rules of service, therefore, the relationship of their

employees with the management is of Master and Servant. Since at the time of filing of suit only suspension letter and inquiry letter were in field and naturally at that time neither the inquiry was initiated nor it was completed but the plaintiff was called upon to appear before the Inquiry Officer so the plaintiff could not plead anything to challenge the inquiry report which was not in existence. So the premise and precincts of this suit is confined only to the challenge to suspension letter including the prayer to restrain the defendants not to initiate the inquiry which has been otherwise completed under the orders of this court. No damages have been claimed in the suit nor after filing the inquiry report any application was filed for seeking any amendment in the plaint keeping in view the changed circumstances. I have seen the inquiry report in which the Inquiry Officer has discussed the allegations point to point and sent his report to the management with the findings that the charges against the plaintiff have been established.

10. Now it is the dominion and province of the management to consider the report and pass appropriate order on it. At this stage, this court can neither exercise supervisory jurisdiction nor the appellate jurisdiction over the inquiry report because it is premature at this stage to articulate as to what action the management will take against the plaintiff on the basis of report. It is not the case here at the moment that the plaintiff has challenged his dismissal based on inquiry so this court may undertake an exercise of evaluating the inquiry report but approached this court prematurely without any order of dismissal or termination. In case the services of the plaintiff are dismissed, he may off course challenge the dismissal letter if he considers it wrongful dismissal and under the relationship of Master and Servant he can claim damages and compensation. At this point of time, I do not want to dilate upon the inquiry report in detail before passing any order by the management nor do I want to give any findings on the inquiry report which may influence and prejudice the mind of the

management. However, at this premature stage, this may be left at the prudence of the management to fairly consider the inquiry report and take appropriate action.

11. It is well settled exposition of law that the management/employer has an unbridled right and prerogative to issue show cause notice/explanation letter if any employee is found to have committed any misconduct or dereliction of duty and then conduct a fair and impartial inquiry for taking administrative and organizational action. The employer possesses what is generally acknowledged as management prerogative. Under the doctrine of management prerogative, an employer has natural and inherent right to regulate its business according to own wisdom and judgment with regard to hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off, discipline and dismissal. The only limitations to the exercise of this prerogative are those imposed by laws, norms and canons of equity, fair play and substantial justice. The show cause and termination/dismissal are entirely two distinct features and phenomena. The show cause/explanation letter is issued to a person who is found to be guilty of misconduct and or doing something against the interest of organization/management. It means an order issued by Organization asking an individual to explain or to show cause in writing as to why the disciplinary action should not be taken due to involvement in certain incidents, misconduct, poor performance and wrongdoing. A show cause/explanation letter may be issued after reviewing the entire incident and if finds that the person accused or is involved in wrongdoing however the exceptions are there that any disciplinary action should be taken keeping in mind the principle of natural justice and right to fair trial/due process of law. Mere issuance of show cause notice or explanation letter asking explanation does not always mean the outcome of a drastic action of termination or dismissal but the purpose of asking the reply and if the reply is not

found satisfactory then off course the management may hold an independent and impartial inquiry into the allegations of misconduct. The inquiry officer is appointed to hold the inquiry who submits the report with his findings as to whether the allegations are proved or not. The rest is left at the fine sense of judgment of the management. After considering the entire report and evidence if any led before the inquiry officer, the management may decide the quantum of punishment if delinquent is found guilty. It is also solely rests on the discretion of the management whether they want to impose major penalty which includes the dismissal from service or some minor penalty which may include stoppage of increment, demotion to lower stage, fine etc. In all fairness it is legally recognized right of management to consider the inquiry report and decide the fate of delinquent. The interference with an employer's fair judgment in the conduct of its business is discouraged unless it is manifestly against the statutory requirements or due process of law/fair trial.

12. The learned counsel for the plaintiff in support of his contention referred to the case of **Ghulam Mustafa Khan vs. Federation of Pakistan (2010 PLC (C.S.) 426).** In this case the petitioner was reinstated by Service Tribunal in earlier round of litigation and the judgment was maintained by Supreme Court but permission was granted to the authorities to conduct fresh inquiry. Authorities initiated fresh inquiry and on the basis of previous allegation again dismissed the petitioner from service. High Court directed the authorities to reinstate the petitioner in service with back-benefits. This case is somewhat diverging to the facts of the case in hand. Neither the inquiry was completed nor the plaintiff was earlier dismissed nor was he reinstated. The counsel thence cited the case of **Muhammad Saifullah vs. Chief Secretary, Government of Sindh (1985 PLC (C.S) 1108).** Accused was not found guilty in departmental enquiry and acquitted by competent authority. Successor in office decided to proceed afresh, cancelling acquittal

order. In the present case, the plaintiff was never acquitted but the incomplete inquiry was closed so this also does not attract to the present case. In the case of **Muhammad Khaliq vs. Board of Intermediate & Secondary Education, Faisalabad (2000 PLC (C.S) 1373),** a civil servant was punished by imposition of minor penalty and the action attained the finality so the court held that by no principle of law same matter could be re-opened for purpose of imposing a higher penalty. No penalty was imposed in this case on the plaintiff which attained finality but only inquiry was reopened. In the case of **Secretary Local Government and Rural Development, Government of Punjab vs. Ahmad Yar Khan (2010 PLC (C.S.) 495),** a civil servant was awarded penalty of censure under Punjab Removal from Service (Special Powers) Ordinance, 2000. The court held that recovery could have been made by competent authority but only minor penalty was imposed probably for the reason that civil servant was exonerated by inquiry officer regarding alleged loss suffered. This case is also distinguishable. In last, the learned counsel referred to the case of **Director General (Field), Agricultural Department, Lahore vs. Haji Abdul Rehman (1989 SCMR 1224)** in which court held that the civil servant was reinstated in the departmental appeal but he was again terminated on the same charges hence the subsequent order found unlawful. This judgment is also distinguishable to the facts and circumstances of the case.

13. In the case of **Ghulam Nabi Shah versus Pakistan International Airlines Corporation,** reported in **2013 PLC (C.S.) 768,** I have discussed the object of interlocutory injunction which is precisely granted to protect the plaintiff against the injury by violation of his right for which he could not be adequately compensated for damages recoverable in the action if the uncertainty were resolved in his favour at the trial, but the plaintiff needs for such protection must be weighed against the corresponding need of the defendant to be protected against injury

resulting from his having been prevented from exercise of his own legal right for which he could not be adequately compensated if the uncertainty would be resolved in the defendant's favour at the trial. The court must weigh on need against another and determine where the balance of convenience lies. In my another judgment reported in **2010 MLD 1267 (Sayyid Yousaf Hussain Shirazi v. Pakistan Defence Officers' Housing Authority)**. I have discussed in detail the essential conditions to be considered by the court while granting temporary injunction, which includes prima facie existence of right of the plaintiff and its infringement by the defendant or the existence of prima facie case in favour of plaintiff, an irreparable loss, damages or injuries which may occur to the plaintiff if the injunction is not granted, inconvenience which the plaintiff will undergo from withholding the injunction will be comparatively greater than that which is likely to raise from granting it or in other words the balance of inconvenience should be in favour of the plaintiff. All the three essential ingredients must be fulfilled and absence of anyone of such ingredients would not warrant grant of injunction. Relief of injunction is discretionary to be granted according to sound legal principles and ex debito justitiae. The plaintiff asks for injunction must satisfy the court that his own acts and dealings in the matter have been fair, honest and free from any taint or illegality and that if in dealing with the person against whom he seeks the relief, he has acted in an unfair or inequitable manner he cannot have this relief.

14. For the foregoing reasons, I am not inclined to confirm the interim orders passed earlier. Consequently, the injunction application (CMA No.10565/2016) is dismissed and the interim orders are recalled.

Karachi:-
Dated.30.7.2018 **Judge**