

# IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No.D-140 of 2016

**Present:**

Mr. Justice Syed Hasan Azhar Rizvi  
Mr. Justice Adnan-ul-Karim Memon

Syed Zahid Hussain ..... Petitioner

Versus

Federation of Pakistan and others ..... Respondents

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**Date of hearing 12.10.2017**

Mr. Ali Asadullah Bullo, Advocate for the Petitioner.  
Mr. Furqan Ali, Advocate for Respondents No. 2 to 5.  
Mr. Sahikh Liaquat Hussain, Assistant Attorney General.

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** Petitioner through the captioned Petition has sought the declaration to the effect that the impugned Dismissal Order dated 05.01.2016 passed by Respondent No.3 is illegal, unlawful, void ab-initio, issued without observance of procedure and in violation of fundamental principles of law and equity and same be set aside. Petitioner seeks further direction to the Respondents to issue the Notification of reinstatement of the Petitioner into service with all back benefits, and the period out of service may also be treated as leave with full pay.

2. Brief facts of the case as averred in the pleadings of the parties are that the Petitioner was appointed as Departmental Officer, on probation for a period of two years, in National Insurance Corporation (NIC) vide Office Memorandum dated

23.12.1984; that his service was confirmed in the grade of Departmental Officer vide Order dated 01.07.1986; that Petitioner was promoted as Chief Manager vide Office Order No. 241 dated 24.08.2005; that his promotion was confirmed to the position of General Manager (Administration and Real Estate) vide office Order No. 400 dated 18.11.2009; that Petitioner was issued several show cause notices on certain the allegations. Petitioner added that he replied to the Show Cause Notices vide letter dated 24.05.2011 and 14.06.2011, however he denied the allegations. He further asserted that Charge Sheet issued to the petitioner was replied vide letter dated 23.05.2012; that he also replied to the internal Departmental Enquiry vide letter dated 26.05.2012. Learned counsel for the Petitioner referred to the Enquiry Proceedings conducted against the Petitioner and other documents attached with memo of Petition (available at page 171 to 381). As per record enquiry was conducted on 26.06.2012 to probe into the allegations leveled against the Petitioner, the enquiry officers have given report with suggestion of removal of the petitioner from service. It is added by the Petitioner that a DE-novo inquiry was ordered by the then Chief Executive Officer/ Respondent No.4 on 27.09.2012. Per Petitioner third inquiry was ordered by the Respondent No.1 to probe the allegations, vide letter dated 07.03.2013; that all the inquiries initiated for the above purpose remained unconcluded, however, another enquiry was ordered by the Respondent No.1 vide letter dated 02.04.2013; that during the pendency of the DE-novo enquiry, the powers of Chairman and Chief Executive Officer of Respondent-Company were bifurcated; that on 2<sup>nd</sup> July 2015 Respondent No.3 wrote a letter to Respondent No.1, wherein he sought DE-novo enquiry against the Petitioner by relying upon the

Special Audit Report of National Insurance Company Limited, for the year 2008-2010; that during the pendency of 5<sup>th</sup> DE-novo enquiry, the petitioner was found to have committed misconduct, resultantly the Respondent No.3 issued the impugned dismissal order of the Petitioner vide Order dated 5<sup>th</sup> January 2016; Petitioner being aggrieved by and dissatisfied with the impugned dismissal Order dated 5<sup>th</sup> January 2016 has approached this Court on 08.01.2016.

3. Upon notice, the Respondent-Company has filed para-wise comments and denied the allegations.

4. Mr. Ali Asadullah Bullo, learned counsel for the Petitioner has contended that the impugned dismissal Order dated 5<sup>th</sup> January 2016 issued by the Respondent No.3 is without lawful authority; that impugned dismissal Order is in violation of National Insurance Corporation (Staff) Service Regulations, 1976; that Respondent No.3 has misused the authority of Respondent No.4, which is evident from the Public Sector Companies, (Corporate Governance) Rules, 2013, wherein the powers of Respondent No.3 were separated from the powers of Respondent No.4; that Respondent No.4 is the only Competent Authority to dispense with the service of the Petitioner under Rule 29, Chapter-I, Part II of Human Resource Manual of Respondent-Company, wherein the punishment of dismissal of an employee can only be imposed upon when he is convicted by a Competent Court of law and not otherwise. Per learned counsel the Respondents No. 2 to 4 had never concluded any of the purported enquiries against the Petitioner, wherein the Petitioner was alleged for different omissions & commissions and no allegation amongst all had ever

been proved against the Petitioner; that after the order of 5<sup>th</sup> DE-novo enquiry, all the previous enquiries have come to an end/ lost their legal existence, therefore, there was only one DE-novo enquiry pending against the Petitioner, which is also unconcluded, hence it has no legal footings to sustain in the instant case; that the Respondent No.3 through Respondent No.5 issued the impugned dismissal Order in violation of Rule 3.1 of Chapter 12 of part 1 of H.R. Manual of Respondent- Company; that the position of Chairman of Board of Directors and Chief Executive officer were separated under Security Exchange Commission of Pakistan (SECP) SRO No. 180 of 2013), therefore the dismissal from services order of the petitioner clearly shows the mala fide and colorable exercise of powers by the Respondent No.3; that imposing a major penalty by the Respondent No.3 in absence of powers can be termed as Coram non-judice and such illegality has already been condemned by the Hon'ble Supreme Court of Pakistan in its various judgments; that the Respondent No.3 is the Chairman of the Board of Directors as well as Appellate Authority of the Petitioner, under Rule 3.3 of Chapter 12 of part of I of HR Manual, and under the preamble also the Respondent No.4 is the Competent Authority of the Petitioner, therefore powers exercised by the Respondent No.3 of Respondent No.4 have no legal standing; that while issuing the impugned dismissal Order the Respondent No. 3 and 5 have relied upon those enquiries, which in letter and spirit have attained no logical or legal conclusion, which also shows the ulterior motive, mala fide intention as well as clear deviation from the prescribed procedure as defined under the law by the Respondents No. 3 & 5, which is void ab-initio and requires to be set aside and declared null and void having no bases in the

eyes of law, as the impugned dismissal order passed by an incompetent authority; that the guilt of the Petitioner has purportedly been proved, in absence of any material or conclusion of any of the enquiry, therefore adverse against the Petitioner even the Competent Authority cannot impose major punishment and condemn the Petitioner; that the discretion vested with the authority is not unbridled but requires to be exercised fairly, justly and honestly, keeping in view the circumstances faced by the Petitioner; that the Respondents, exercised the discretion arbitrary, malafidely capriciously and whimsically; Learned counsel for the Petitioner in support of his contention has relied upon the case of Muhammad Ashraf Khan Vs. Director Food Punjab Lahore and another (2004 SCMR 1472) Rasheed Ahmed Vs. Federation of Pakistan (PLD 2017 121), Willayat Ali Meer V. PIAC and others (1995 SCMR 650) and argued that discretion is not to be exercised on whims and mood of authorities. He further relied upon the case of Rana Muhammad Sarwar v. Government of Punjab and others (1990 SCMR 999) and argued that malafide personal bias, grudge or vindictiveness is apparent in the present case, because public power is never entrusted or reposed in functionary to be exercised or achieving personal ends like unjust enrichment, vindictiveness or revenge. He next argued that discrimination has been meted out with the Petitioner as the Board of Directors of the Respondent-Company have been exonerated who gave approval of alleged procurement of land and the Petitioner has been victimized by removing him from service, which is violative of Article 2-A, 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973.

5. Mr. Furqan Ali, learned counsel for Respondents No. 2 to 5 has contended that the instant Petition is not maintainable as the service rules of the Respondent-Company are not statutory as the same are merely approved by the Board of Directors; that the Petitioner has been found guilty of gross misconduct in a number of departmental inquiries initiated against him pursuant to the provisions of the Human Resource Manual (HRM) of the Respondent Company; that the Administrative and financial affairs of NICL are managed by the Board of Directors, who are elected under Section 178 of the Companies Ordinance, 1984 and the Board of Directors delegated powers to the Chief Executive Officer, who exercises the powers, pursuant to Section 196 of the Companies Ordinance 1984; that the law does not prohibit the Respondents from taking any departmental action in pursuance of their Human Resource Manual, against an employee of the Respondent-Company, if his service record establishes the fact that he has willfully and dishonestly caused losses to the Respondent-Company; that the Petitioner was given promotions at that time due to the support given to him by the then Management, which was heavily involved in corrupt practices; that first enquiry was conducted in accordance with Regulation 29 of the National Insurance Corporation Employees (Service) Regulation, 1976 and the Petitioner was found guilty of 'misconduct' as defined under Section 3, Chapter VIII, Part I of HRM; that the Petitioner challenged the First Enquiry on the ground that it was conducted by officers junior to him in good faith and the Respondents ordered a fresh enquiry at the request of the Petitioner; that the Enquiry Officer Syed Mumtaz Ali Shah was transferred / posted from NICL to the Government of Sindh and it

was only conducted in good faith at the behest of the Petitioner to redress his grievance; that the Petitioner was called upon to appear before the enquiry officer and he refused to co-operate for reasons best known to him; that the charges and allegations against Petitioner were examined in light of all the relevant record and the Petitioner was found guilty of illegal act, unfair and non-transparent procurement, gross negligence, misconduct act of omission and committing acts detrimental to the interest of the Respondent-Company; that the findings of the final enquiry were deliberated by the Board of Directors of NICL during 84th meeting held on 11.12.2015 and they decided to terminate the service of the petitioner in accordance with the HRM; that as per the Memorandum and Articles of Association of the Company, which is managed by the Board of Directors of the Company, the CEO and other officials of the Company, who exercise powers delegated to them by the Board of Directors is fully competent to dismiss the service of employees of NICL; that pursuant to the 77<sup>th</sup> meeting of the Board of Directors of National Insurance Company Limited held on 12.09.2013. "Item No.04 application of HR Manual Part-II to all employees" the Board of Directors of NICL is fully competent to dismiss/terminate the service of all employees without assigning any reason; that the dismissal order was not issued in violation of the HRM and or done with mala fide, and the Chief Executive and not the Chairman has the power to terminate the services of the Petitioner; that amended made in the Regulation No. 14 of the National Insurance Corporation Employees (Service) Regulations 1976, which gives powers to the Chief Executive Officer of the Company to terminate the service of the employee of the Respondent-Company; that discretion was exercised in accordance

with law as per direction issued by the Hon'ble Supreme Court of Pakistan in Suo Moto Case No. 18 of 2010; that on 12.10.2010, the former Secretary Commerce Mr. Zafar Mahmood was directed to lodge criminal complaint with FIA against Ayaz Khan Niazi, the then Chairman, NICL and all other persons, who were involved in irregular transactions, including the Petitioner; that the Director General FIA was also directed to register cases against all the concerned persons, who were involved in misappropriation of public money and gross corruption; that after registration of FIRs many of the officials responsible for this misconduct including the Petitioner were arrested by FIA and were proceeded before the competent Court of law; that there is sufficient documentary evidence available on record to connect the petitioner with the allegations, which have been proved, beyond reasonable doubt; that there are disputed question of facts involved in the present matter cannot be adjudicated in writ jurisdiction. He lastly prayed for dismissal of the instant Petition.

6. Mr. Shaikh Liaquat Hussain, learned Assistant Attorney General has adopted the arguments of learned counsel for Respondents No. 2 to 5.

7. We have considered the contention of the learned counsel for both the parties and have minutely gone through the material available on record with their assistance and case law cited at the bar.

8. The background of the Respondent-Company is that NICL got status of a Public Sector Company under National Insurance Corporation (Re-Organization) Ordinance, 2000. The claim of NICL management is that after conversion into Company, the service



issues of Respondent-Company are being dealt with by the Human Resource Manual only, which are non-statutory, therefore the instant petition is not maintainable.

9. The moot point involved in this Petition is whether the Petitioner can be reinstated in service of Respondent-Company?

10. We have perused the impugned Dismissal Order dated 05.01.2016 (available at page 383 of the file) issued by the Management of NICL (Respondent-Company) against the Petitioner to find as to whether any law has been violated and whether this Court has jurisdiction to examine the propriety of the impugned action taken against the Petitioner? For convenience, the contents of the said impugned dismissal Order are reproduced verbatim as follows:-

#### **DISMISSAL LETTER**

“As per the two enquires (the Enquiries) conducted on the basis of a special audit report for the year 2008 to 2010 by National Insurance Company Limited (NICL) and the Ministry of Commerce respectively, you have been found guilty of inter alia, willfully and dishonestly causing losses to NICL.

Pursuant to Rule 28 of the National Insurance Corporation Employees (Service) Regulations, 1976 (Regulations) an employee, who is guilty of any act of misconduct or insubordination shall be liable to removal suspension or dismissal.

On the basis of findings of the Enquiry Reports conducted in accordance with the procedure under Rule 29 of the Regulations, as stated in Part II of Human Resource Manual (HRM) of NICL, it has been established that your behavior constitutes misconduct and you are liable to be dismissed. Accordingly, under Rule 27 and 28 (2) of the Regulations as specified in Part II, Chapter I of the HRM, Your employment with NICL is hereby dismissed with immediate effect.

This issues with the approval of Competent Authority, which in this case is the Board of Directors of NICL.”

11. The allegation against the Petitioner as set forth in the impugned Dismissal Order dated 05.01.2016 explicitly show that two enquiries were conducted on the basis of Special Audit Report for the year 2008 to 2010 by Respondent-Company and Respondent No. 1-Ministry of Commerce respectively. In both the said enquiries, the Petitioner was found guilty of misconduct by causing losses to the Respondent-Company as well as to the public exchequer. The excerpt from the Report of Enquiry Officer is reproduced as follows for ready reference:-

### **Findings**

“The committee found his reply to be unsatisfactory and found him guilty of the charge.

Syed Zahid Hussain was given opportunity to cross-examine the prosecution and produce evidence or witness in his defense, which he refused with comments that whatever he has stated is sufficient.

### **Conclusion:-**

Keeping in view the above, the Committee concluded that as chief Manage and then as General Manager of Real Estate Department of NICL, Syed Zahid Hussain could not effectively protect interest of the company and is therefore, found guilty of “misconduct” under the Regulation 28 © of National Insurance Corporation Employees (Services) Regulations 1976. However, considering his unblemished service record of over 25 years of the company the Enquiry Officers are of the view that had he been a corrupt officer, he would not have waited all these years for this opportunity to indulge into corrupt practices, we, therefore, recommend that Competent Authority may award following major penalty to Syed Zahid Hussain.

Removal from service with pension benefits.”

**Report of Mr. Rizwan Ahmed Chairman TCP/ Enquiry Officer dated 08.10.2015 reproduced as under:--**

“Muhammad Zahoor CFO (Finance) and Mr. Zahid Hussain Chief Engineer R.E (being members of the committee entrusted with a task of short listing, evaluation and recommending award of contract to the contractors) were responsible for the above illegal acts and unfair, non-transparent procurement as enumerated at (a) to (c) accordingly, I am of the view that they are guilty of gross negligence, misconduct and committing acts of omission and commission detrimental the interest of NICL in terms of Regulation No. 28(1) of the NICL Employee Service Regulations 1976.”

12. The word ‘misconduct’ is defined in Human Resource Manual Part-I as follows:-

**“3. Misconduct**

*Following acts are considered as misconduct, which may lead to the dismissal of the employee:*

- a) willful insubordination or disobedience to any lawful and reasonable orders of a superior;*
- b) theft, fraud or dishonesty in connection with the company’s business or property;*
- c) willful damages to or loss of company’s property or image;*
- d) habitual absence without leave or absence without leave for more than 10 days;*
- e) habitual late attendance;*
- f) taking or giving of any illegal gratification;*
- g) habitual breach or non-compliance of company’s policies;*
- h) riotous or disorderly behavior during working hours in the company or any act subversive of discipline;*
- i) habitual negligence or neglect of work;*
- j) using derogatory language against senior or colleagues; and*
- k) issuing press statement posters, or any written material tarnishing the image of the Company or its employees.”*

13. Record shows that during service of the Petitioner with Respondent-Company he was served with the following Show Cause Notices mentioning therein the gist of allegations. An excerpt of said Show Cause Notices is reproduced as follows for the sake of convenience:-

- a) **Show Cause Notice dated 16.05.2011 in respect of 20 K 2 Marla Property on Lahore Airport road with allegation of.**
- i) *Irregular and unauthorized expenditure on procurement of land by violating Public procurement rules 2004-Rupees 1,065-300 (Million)*
  - ii) *Loss due to purchase of property without due diligence and at a higher rate of Rs. 502-800 (Million)*
  - iii) *Irregular and unsecured payment of advance against procurement of land Rs. 250 (Million)*
  - iv) *Loss of interest income (Rs. 218.009) Million due to un planned procurement of land resulting into blockage of funds for 19 months –Rs. 1,171.830 (Million).*
- b) **Show Cause Notice dated 16.05.2011 in respect of 803 Kanal property in in Moza Toor Warraich Lahore with allegation of.**
- i) *Irregular advance payment of full amount of procurement of land against the provisions of agreement Rs. 1,686.300 (Million).*
  - ii) *Undue favor extended to seller of Land by unfair evaluation of the offered Land measuring 100 acres.*
  - iii) *Undue favor extended to seller by violating PPRA Rules 2004.*
- c) **Show Cause Notice dated 16.05.2011 in respect of Legal Opinion with allegation of.**
- i) *Unjustified Expenditure of obtaining Legal Opinion regarding Applicability of Public Procurement Rules on Land Procurements Rs. 1.475 Million.*
- d) **Show Cause Notice dated 16.05.2011 in respect of Furnishing and furniture work of NICL offices Lahore, Islamabad and Karachi with allegation of.**

- i) *Irregular award of contract of the renovation works Rs. 162.110 Million.*
  
- e) **Show Cause Notice dated 16.05.2011 in respect of Consultancy Service for renovation of NICL offices with allegation of.**
  - i) *Irregular award of contract for Consultancy Service for renovation of offices Rs. 12.238 Million.*
  
- f) **Show Cause Notice dated 30.05.2011 in respect of Loss due to Imprudent decision for the purchase of Generator Set Rs. 19,959 Million.**
  - i) *Loss due to imprudent decision for the purchase of Generator Set—Rs. 19.759 Million.*

14. The above position is prima-facie suggesting that the allegations against the Petitioner were inquired and established by proper evidence. And, in the light of evidence, proper findings were given by the Enquiry Officers mentioned (Supra).

15. Apparently, the Respondent-Company while dispensing with service of the Petitioner has followed the relevant procedure and the Rules and Regulations pertaining to the service issues of its employees.

16. The record placed before us is showing that the Petitioner was confronted with the relevant record besides full opportunity to rebut the allegations but, he failed to discharge his burden. Hence, the proceedings were concluded and Petitioner was found negligent and inefficient under Regulations No. 28 of National Insurance Corporation Employees (Service) Regulation, 1976.

17. Reverting to the claim of Petitioner that impugned action against him is not taken by the Competent Authority of the

Respondent-Company but, by its Board of Directors. Suffice it to say that, as per Section 14 (a) and (b) of National Insurance Corporation Employees (Service) Regulation, 1976 the powers were conferred upon the Chairman with prior approval of the Board. But, after 77<sup>th</sup> Meeting of the Board of Directors of NICL (Respondent-Company) held on 12.09.2013, it was resolved to substitute word 'Chairman' with 'Chief Executive Officer' of Respondent-Company with further resolve that the termination clause 14(1)(a) and (b) of National Insurance Corporation Employees (Service) Regulation, 1976 shall be applicable to all employees. Accordingly, the Board of Directors of Respondent-Company in its meeting held on 11.12.2015 resolved to dismiss Petitioner from service in exercise of powers under above said Termination Clause 14(1)(a) and (b) which reads as follows:-

***“14. Termination of Service. (1) The service of permanent employees may be terminated without assigning any reasons or as a measure of retrenchment after giving him three months’ notice in writing or pay in lieu thereof.***

*(a) by the CEO, with the prior approval of the Board, if he is the appointing authority; and*

*(b) by the Officer-In-Charge of the Establishment and Administration Department in the Head Office or a Regional Office, with the prior approval of the CEO, in the case of other employees.” ( Section II, Part II of HRM Manual).*

18. In the light of above legal position, the Board of Directors of Respondent Company is competent to terminate service of the Petitioner. Therefore contention of the learned counsel for the Petitioner that only Chairman of the Respondent-Company is competent to terminate the service of the Petitioner is untenable hence, discarded.

19. The Honorable Apex Court also took cognizance of the NICL matter in Suo Moto Case No.18 of 2010 (2014, SCMR, 585) and observed that during the period between 2008 and 2011 the senior management of the Respondent-Company was involved in a scam worth billions of rupees; that material irregularities had occurred with respect to procurement of lands and properties, financial investments, award of contracts, human resource management etc. Hence, we cannot dilate upon any further.

20. Learned Counsel for the Petitioner during course of arguments stated that Petitioner has been acquitted from the criminal cases lodged against him therefore, he cannot be vexed twice for the same offence by the Respondent-Company. Suffice it to say that the criminal proceedings have no binding effect upon the departmental proceedings and both can be initiated if the delinquent officer is found guilty of misconduct and corrupt practices. Hence, this plea is discarded. The above proposition is already settled by the Hon'ble Supreme Court in the case of Khaliq Dad Vs. Inspector General of Police and others (2004 SCMR 195).

21. In the light of above facts and circumstances of the case, we conclude that there is no illegality, infirmity or material irregularity in the Enquiry Report and the impugned Order dated 05.01.2016 passed by the Respondent-Company. Consequently, the instant Petition is dismissed along with listed applications.

JUDGE

JUDGE

