

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 875 of 2018

Mirza Ashfaq Ahmed BaigPetitioner

Versus

Karachi Metropolitan Corporation & others.....Respondents

Dates of hearing: 31.10.2018, 29.11.2018 & 18.12.2018

Mr. Imtiaz Mansoor Solangi, Advocate for the Petitioner.
Mrs. Azra Moqueem, Advocate for the Respondent-KMC.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through the instant petition the Petitioner has assailed the notification dated 18.01.2018, whereby the Respondent-KMC has awarded him the Major Penalty of reduction to lower post, on the allegations leveled in the final show cause notice dated 13.11.2017.

2. Brief facts of the case, in nutshell, are that the Petitioner was appointed as Inspector in BPS-14 on 19.05.2009 and served the Respondent-KMC with due diligence. Petitioner has submitted that during his tenure of service, he was served with notification dated 13.12.2016, whereby his services along with other officials were suspended, without assigning any valid reason and holding regular inquiry into the purported allegations leveled against them, in pursuance of Section 5 & 6 of the Efficiency & Discipline Rules 1973. Petitioner further submitted that his suspension was wrongly made by an incompetent authority of the Respondent-KMC. As per the petitioner, an inquiry officer was appointed to conduct thorough probe into the allegations and he was served with a letter to appear before the inquiry committee. Per Petitioner,

he appeared and replied to the final show cause notice dated 13.11.2017 and denied the allegations leveled against him, however, the Respondent-KMC was not satisfied with the said reply and awarded Major Penalty under Rule 4 (1) (b)(i) of the Efficiency & Discipline Rules 1973, whereby his service was reduced to a lower post vide letter dated 18.1.2018. Petitioner being aggrieved by and dissatisfied with the impugned order has filed the instant Petition on 31.1.2018.

3. Mr. Imtiaz Mansoor Solangi, learned counsel for the Petitioner has submitted that on 18.01.2018 the impugned notification was issued without holding a regular inquiry into the allegations, as envisaged under the law; that in the inquiry proceedings the inquiry officer has failed and neglected to take into consideration the relevant documents brought on record in favour of the Petitioner and even he did not hear the Petitioner and his witnesses; that nothing was proved against the Petitioner during the course of inquiry regarding the allegations leveled against him; that a discriminatory treatment was meted out with the Petitioner since its beginning when he was suspended from service; that the impugned notification was issued by the authority with malafide intention; that the Petitioner was condemned unheard throughout the proceedings, which is violative of Article 4 of the Constitution; that the entire proceedings conducted against the Petitioner is in violation of Article 10-A of the Constitution. In support of his contention he relied upon the case of *Asif Youssaf v. Secretary Revenue Division, CBR, Islamabad and another* (2014 SCMR 147) and argued that the Major Penalty could not be awarded without affording an opportunity of hearing to the Petitioner and conducting a regular inquiry. He also relied upon the case of *Basharat Ali v. Director Excise and Taxation, Lahore and another*

(1997 SCMR 1543) and argued that no misconduct on the part of the Petitioner was proved, hence, he was non-suited and was awarded a Major Penalty of reduction to a lower post which is in violation of the principle of natural justice. He next relied upon the case of Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440) and argued that in the inquiry proceedings legal procedure was not adopted, therefore, Major Penalty could not have been imposed upon the Petitioner. He next relied upon the case of Saad Salam Ansari v. Chief Justice of Sindh High Court, Karachi through Registrar (2007 SCMR 1726) and argued that a regular inquiry cannot be dispensed with when factual controversy is involved in a matter.

4. Mrs. Azra Moqueem, learned counsel representing the Respondent-KMC has relied upon the counter affidavit filed on behalf of the Respondent No.1-KMC and argued that service of the Petitioner along with other officials were placed under suspension vide orders dated 13.12.2016 and 07.09.2017, with the approval of the competent authority, on account of complaints lodged against them. She next contended that the inquiry officer called the Petitioner for recording his statement, as per letter dated 20.09.2017, and was duly heard on the allegations leveled against him; that in pursuance of the inquiry report the Petitioner was found guilty of misconduct due to which a final show cause notice dated 13.11.2017 under the signature of MC, KMC was served upon him based on the facts, in the light of the complaints made against him, therefore, no regular inquiry was necessary in the matter; that the entire inquiry proceedings were conducted in accordance with the rules and regulations adopted by the Respondent-KMC; that the allegations leveled against the Petitioner had been proved in the light of statements of various

complainants; that in pursuance of the recommendation of the inquiry officer and with the approval of the competent authority i.e. Mayor KMC, Major Penalty for reduction to a lower post was imposed upon the Petitioner and his service was rightly reduced to a lower post as per office order dated 18.01.2018, on the recommendations of the inquiry officer. She next submitted that about more than 50 employees of the City Warden had submitted their complaints against the Petitioner and others to the Mayor-KMC, who ordered to probe into the allegations leveled against them, who later on were found guilty of misconduct and were rightly awarded Major Penalty as discussed *supra*. She lastly prayed for dismissal of the instant petition being without any merit.

5. We have heard the learned counsel for the parties and have perused the material available on record as well as case laws cited at the Bar.

6. We have noticed that the inquiry officer was appointed to probe into the allegations leveled against the Petitioner vide letter dated 25.9.2017. The inquiry report dated 12.10.2017 explicitly show the factual position of the case, which reads as under:-

ENQUIRY REPORT

The undersigned has been appointed as Enquiry Officer vide Order No.Secy/MC/KMC2017/1172 dated: 25-09-2017 to probe in to the allegations leveled against following officer/officials of the City Warden Department, KMC, under suspension:

1. **Mr. Malik Noor CW-0920 Inspector (Incharge Admin)**
2. **Mr. Ashfaq Ahmed Baig CW-1498 Inspector (Account Incharge / Dy. Dir.)**
3. **Mr. Inamul Haque CW-0865 Warden (Incharge Special Squad.**

2. 52 employees City Warden Department, KMC have submitted their Complaints to the Honorable Mayor, KMC, and leveled the following allegations against the above named Employees:

- i. That they were used to misbehave with officials of City Warden.
- ii. They were used to demand money for allowing them to remain away from duties.
- iii. Services of many officials were also got terminated by them.
- iv. They had made tempering/forgeries in the services records.
- v. They had managed fake/illegal/out of turn promotions.
- vi. They had also arranged/processed illegal bills at their own levels.

Statement of the following complainants was recorded on 26-09-2017.

- i. Waqas Ahmed S/o Feroze Uddin (Employee No.0335)
- ii. Rafatullah Khan s/o Rahatullah Khan (Employee No.2561) Contract Employee.
- iii. Salman Ahmed S/o Mushtaq Ahmed (Employee No. CW-0939)
- iv. Muhammad Ali S/o Muhammad Shabbir (Employee No.0641)
- v. Salman Ahmed
- vi. Zeeshan Yousuf S/o Yousuf Hussain (Employee No. CW-0786)
- vii. Muhammad Zahid S/o Wali Muhammad (Employee No. CW-0924)
- viii. Muhammad Nabil Qureshi S/o Ahfaz Qureshi (Employee No.CW-1503)
- ix. Muchael Aslam S/o Aslam Masih (Employee No.CW-1503)
- x. S. Mehboob Ali S/o Rashid Ali (Employee No.CW-0394)
- xi. Muhammad Fahim S/o Muhammad Yaqoob (Employee No.705687)
- xii. Rao Shahid S/o Dildar (Employee No.1509)
- xiii. M. Ilyas S/o M. Anwaar (Employee No.CW-0431)
- xiv. Muhammad Slaman S/o M. Nizam (Employee No.CW-0003)

The undersigned has issued a letter to Director City Warden, KMC vide Sr.Dir/KA/KMC/02/2017 dated: 25-09-2017 and required to direct the accused persons for appearance on 27-09-2017 at 11:00 in the office of the undersigned. The Accused attended and recorded their statements.

The accused have given the opportunity of personal hearing and they denied all the allegations framed against them. However, the allegations are based on facts and they kept their service record in their own custody and hardly submitted in the office of City Warden wherein out of turn promotion of Mr. Muhammad Inam ul Haq has not been recorded but fixation of pay in the promoted scale is appeared and missing of pages of Service Book, which shows their forgery in the service record.

Further Supplementary bill amounting to Rs.1,24,916/- of the above out of turn promotion of Mr. Muhammad Inam ul Haq, duly signed by Accountant Incharge and Dy. Chief, City Warden (Mr Ashfaq) was passed on to Pay Roll, KMC for printing through Director, CW on 12-04-2017, while the signatory Director CW, was relieved there from on 20-12-2016, shows malafide intension.

FINDINGS

- a) the allegation (i) has confirmed on all three accused from the statements of the Complainant & other sources.
- b) the allegations (ii & iii) have been verified on Accused No.2 & 3 from the statements of the Complainant & other sources.

- c) the allegations (iv to vi) have also been confirmed and verified on Accused No. 2 & 3 from the available records & other sources, etc.

RECOMMENDATIONS:

After examining the whole case thoroughly the undersigned suggested that the following major penalties may be imposed upon the Accused M/S. Ashfaq Ahmed Baig and Inam ul Haq, respectively, to set an example for others:-

- i. Reduction to a lower post (never transfer in City Warden Department)
- ii. Removal from Service

AND

Minor penalty "unfitness for promotion" may be imposed upon Mr. Malik Noor and adjust him in other department and never transfer him in City Warden."

The enquiry report is being submitted for perusal and further action under the Efficiency & Discipline Rules, 1974.

Sd/-

(SABAH UL ISLAM KHAN)
Sr. Director / Enquiry Officer
Katchi Abbadis, KMC.

7. Prima facie the allegations leveled against the Petitioner are serious in nature, which needs to be looked into in their true perspective.
8. The pivotal point in the present proceedings is as under:-

Whether the Petitioner was guilty of the charges under rule 4(1)(b)(iv) of Efficiency & Discipline Rules, 1973?

9. The allegations against the Petitioner as set up in the statement of allegation as discussed *supra* are supported by the inquiry proceedings coupled with statement of the witnesses and documentary evidences brought on record.
10. Record further reflects that in the departmental inquiry conducted against the Petitioner, he was found guilty on all the charges. The Inquiry Officer has opined against the Petitioner and other officials of the KMC. Record reflects that the following allegations were leveled against the Petitioner:

- i. That he used to misbehave with officials of City Warden.
- ii. He used to demand money for allowing the officials to remain away from duties.

- iii. **Services of many officials were also got terminated by him and others.**
- iv. **He had made tempering/forges in the services records.**
- v. **He had managed fake/illegal/out of turn promotions.**
- vi. **He had also arranged/processed illegal bills at his own levels.**

11. The aforesaid allegations were inquired and the Petitioner was found involved in them which falls within the ambit of insubordination towards the office discipline and decorum, which comes under the definition of "Misconduct", as defined under Rule 2 (4) of Efficiency & Discipline Rules, 1973 and due to these reasons, he was awarded a major penalty of reduction in lower rank on 18.1.2018.

12. We have examined the impugned order issued by the Senior Director, Human Resources Management KMC against the Petitioner in detail to find out as to whether any law has been violated and whether this Court has the jurisdiction to examine the propriety of the impugned action taken against him. For convenience, the contents of the impugned order are reproduced below:-

- READ:**
- 1. **Proceeding of the case from para-01/n to 41/n.**
 - 2. **Recommendation of Enquiry Committee at para-36/n.**
 - 3. **Opinion of Law Department, KMC at para-26/n to 31/n.**
 - 4. **Approval of the Mayor, KMC at para-43/n.**

ORDER:

Approval is accorded by the Competent Authority, with the Imposition of Penalties/Restriction on the following Officials of the City Warden Department, KMC as under against:

- 1. **Penalty of Reduction to Lower Post is imposed upon Mr. Ashfaq Ahmed Baig, Inspector (BS-14) with the condition that he will be transferred along with salary from City Warden Department, KMC & never posted back in the said Department.**
- 2. **Penalty of Removal from Service is imposed upon Mr. Inam Ul Haq, Warden (BS-07), City Warden, KMC.**
- 3. **Minor Penalty of unfitness for promotion of Financial advancement, in accordance with the rules or order pertaining to the service or post is imposed upon Mr. Malik Noor, Inspector (BS-14) with the condition that he will be transferred along with salary from City**

Warden Department, KMC & never posted back in the said Department.

**Senior Director
Human Resources Management
K.M.C**

13. Perusal of the impugned order reveals that he has been punished on the basis of aforesaid inquiry report.

14. We have also noticed that the Petitioner was given full opportunity to rebut the allegations and was also confronted with the relevant record but he failed to discharge his burden and was found negligent and inefficient and an unbecoming official, as provided under the Efficiency & Discipline Rules, 1973. The allegations against the Petitioner were established by documentary evidences and in the light of such evidences, in our view, proper findings were given by the Inquiry Officer, hence the impugned order dated 18.1.2018 was rightly passed by the Respondent-KMC.

15. We also do not see any violation of law, rules and regulations in the inquiry proceedings conducted by the Inquiry Officer against the Petitioner as asserted by him.

16. Record also reflects that there is no motive or malice on the part of Respondent-KMC to put false allegations against the Petitioner regarding his misconduct as discussed *supra*. The case law relied cited by the learned counsel for the Petitioner is quite distinguishable from the facts of the case.

17. In the light of above facts and circumstances of the case, we conclude that there is no illegality, infirmity of material irregularity in the inquiry report and the impugned order passed by the Respondent-KMC.

18. In view of the above, the instant petition merits no consideration and is accordingly dismissed along with the pending application with no order as to cost.

19. Before parting with this order, we have noticed that the Petitioner was appointed as Inspector on regular basis against existing vacancy in BPS-14 vide letter dated 19.05.2009 without public notice. In the light of above fact, we direct the Competent Authority of KMC to look into the service record of the Petitioner as to whether the post of Inspector in BPS-14 was published in newspaper or otherwise and whether the Petitioner was appointed in accordance with law. The aforesaid exercise should be completed within a period of 02 months from the date of receipt of this order after fulfilling all the legal and codal formalities as provided under the law. Let a copy of this order be sent to the Mayor for information and compliance.

Karachi
Dated: 21.12.2018

JUDGE

JUDGE

S.Soomro/PA.