

IN THE HIGH COURT OF SINDH, AT KARACHI

Present: Mr. Justice Aziz-ur-Rehman
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1836 of 2018

Shoukat Hayat Awan Petitioner

Versus

Additional Inspector General Police
Karachi Range & 03 others Respondents

Petitioner: Through Mr. Muhammad Khalid.

Respondents: Through Mr. Abdul Jalil Zubedi, AAG
alongwith Ms. Jameela Siraj, State Counsel.

Date of hearing: 10.05.2018

Date of order : 10.05.2018

O R D E R

ADNAN-UL-KARIM MEMON, J:- Petitioner is serving as Sub-Inspector, in Sindh Police Department. Basically, he is aggrieved by the Show Cause Notice No.EB/E-III/S-I/Nil/Karachi dated Nil/02/2018 issued by Respondent No.1, in terms of which, an enquiry was conducted by SSP District West, Karachi vide his office letter No.SSP /W/EB/1444, dated: 30-01-2018, against him on the charges of '**Misconduct**' i.e. illegal harassment, detaining and taking amount etc. The enquiry officer recommended awarding major punishment against the Petitioner. Further allegations leveled against the Petitioner in the aforesaid Show Cause Notice are that he is involved in kidnapping for ransom cases as well as heinous crime cases. Petitioner was called upon to explain the

position, whether he is/was fit to be retained in the Disciplinary Force, in presence of the criminal charges as discussed supra?

2. The case of the Petitioner is that he was falsely involved in the purported Departmental proceedings, upon the aforesaid allegations leveled against him and resultantly was awarded Major penalty of **'Dismissal from Services'** by an unauthorized officer i.e. Senior Superintendent of Police, Operation-II CTD, Sindh, Karachi vide order dated 21.03.2016 in the following terms:-

**OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE
OPERATION-II CTD KARACHI.**

No.SSP /OPS-II/CTD/RDR/0363

Karachi Dated 21.03.2016

ORDER

The Defaulter **SI (K-1035) Malik Shoukat Awan** of Operation-II CTD Sindh Karachi was served with Show Cause Notice vide this office letter No.SSP/OPS-II/CTD/RDR/358, dated 11-03-2016, on the ground of his involvement in case FIR No.76/2016 u/s 365-A PPC of PS CTD Karachi and he was heard in person his written reply as well as oral explanation was found unsatisfactory. Hence he was awarded **major punishment of dismissal from services.**

Sd/-
(JUNAID AHMED SHAIKH) PSP
Senior Superintendent of Police
Operation-II CTD Sindh Karachi

Petitioner being aggrieved by and dissatisfied with the penalty of Dismissal from Service awarded by SSP, Operation-II, CTD, Karachi, preferred a Departmental Appeal before the Additional Inspector General of Police, CTD, Sindh Karachi, which was decided in his favour vide Order dated 06.11.2017 with direction to the office to take afresh Departmental proceedings against him by his **'Parent Unit i.e. Karachi Range'**. As per record afresh Inquiry proceedings were initiated against him and the finding of the Inquiry officer vide **'Inquiry report'** dated 30.1.2018 shows the following conclusion:

“From the enquiry conducted so far, statement and relevant documents, it has been revealed that the case FIR No.76/2016 u/s 365-A/34 PPC of PS CTD Karachi lodged against the defaulter SI and other police officials, but the prosecution has not proved their case against the accused police officials without shadow of doubt that they kidnapped anyone for ransom and released u/s 265-K(i) Cr.PC, the bail bond cancelled and sureties discharged accordingly. While the other parallel cases regarding illegal harassment, detaining and taking amount etc have been considered by SSP Investigation-I West Zone, Karachi and his reply was found satisfactory and filed. Therefore, one of the Major punishment forfeiture of approved service is suggested to be awarded to the defaulter SI and he may not be posted again in CTD.”

Petitioner was served with another Show Cause Notice dated Nil-2-2018 with the following accusations:-

“Statement of Allegation

An enquiry conducted by SSP District West, Karachi vide his officer letter No.SSP /W/EB/1444, dated: 30-01-2018, it has been deputed so far, statement and relevant documents, it has been revealed that the case FIR No.76/2016 u/s 365-A/34 PPC of PS CTD Karachi lodged against the you and other Police Officials, but the prosecution has not proved their case against the accused police officials without shadow of doubt that they kidnapped anyone for ransom and released u/s 265-H(i) Cr.PC, the bail bond cancelled and sureties discharged accordingly. While the other parallel cases regarding illegal harassment, detaining and taking amount etc the enquiry officer also recommended /suggested awarding major punishment”

It is further observed that you are also involved in kidnapping for ransom cases as well as heinous crime cases, therefore, it has been show that you are bad reputation Police officer and not fit to be retained in this department”

Petitioner being aggrieved by and dissatisfied with the aforesaid Show Cause Notice and Inquiry report has filed the instant Petition on 06.3.2018.

3. Upon notice the Respondent No.1 filed para-wise comments and controverted the allegations leveled against them.

4. Mr. Muhammad Khalid, learned counsel for the Petitioner has argued that the Petitioner has been vexed twice for the same allegations, which is violative of Article 13 of the Constitution; that the Petitioner is entitled for a fair opportunity in terms of impugned order dated 17.07.2017 passed by the Additional IGP Sindh to clear his position in terms of Article 10-A of the

Constitution of the Islamic Republic of Pakistan 1973. He lastly prayed for allowing the instant petition.

5. Mr. Abdul Jalil Zubedi, learned AAG has controverted the submissions of the learned counsel for the Petitioner and raised the question of maintainability of the instant Petition and argued that the allegations leveled against the Petitioner and after giving proper opportunity of hearing to the Petitioner, found him guilty of Misconduct, and awarded him major punishment of dismissal from service. Per learned AAG, the Petitioner preferred the Departmental Appeal against the impugned order dated **21.3.2016** before Additional Inspector General of Police Karachi, Range (ADIGP), who considered his Appeal and allowed the same vide order dated 06.11.2017 for want of authorization/competency only, however, afresh Disciplinary proceedings were directed to be initiated against him by his Parent Unit i.e. Karachi, Range. He next argued that the Petitioner has adequate and efficacious remedy against the Final order of Show Cause Notice dated Nil-02-2018 issued by Additional IGP Karachi Range.

6. In rebuttal the learned Counsel for the Petitioner stated that the said Show Cause Notice cannot be issued to him on the premise that Petitioner has already been exonerated from the aforesaid charges by the competent court of law as well as by the Department, therefore, the Petitioner cannot be saddled with the same set of allegations, which amounts double jeopardy and against the basic spirit of Article 13 of the Constitution and Section 403(1), Cr.P.C.

7. We have attended to each of such aspects in some detail with reference to the relevant provisions and the precedent cases.

Section 403(1), Cr.P.C. provides as follows:

“403. Persons once convicted or acquitted not to be tried for the same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be **tried again** for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 36, or for which he might have been convicted under section 237. **(Bold letters have been supplied for emphasis)**

8. It is quite obvious from a plain reading of the aforesaid section that the principles of **autrefois acquit and autrefois convict** contained in section 403(1), Cr.P.C. forbid a new trial after a conviction or acquittal on the basis of the same facts has attained finality, but it is equally obvious that the said principles have no application to the case in hand, wherein holding of a new trial is not in issue, for the simple reason that in Disciplinary Force, the Department has to see each and every aspect of the delinquent, whether there is criminal element still exists or otherwise. The principles of autrefois acquit and autrefois convict contained in section 403(1), Cr.P.C. have no relevance to a case wherein the question under consideration in an Appeal is not as to whether a new trial of the convict should be held or not, but the issue is as to which sentence would be the appropriate sentence for a convict. It had been held by the Honorable Supreme Court in the case of Abdul Malik and others v. The State and others **(PLD 2006 SC 365)** that:

“15. When the conviction or acquittal of a person is under challenge in appeal or revision the proceedings are neither fresh prosecution nor there is any question of second conviction or double jeopardy. It is by now a well settled principle of law that an appeal or revision is continuation of trial and any alteration of sentence

would not amount to double jeopardy. In *Kalawati and another v. The State of Himachal Pradesh* AIR 1953 SC 131, the Court was called upon to comment on a similar question when it ruled in para. 9 of page 10 that, “---- an appeal against an acquittal wherever such is provided by the procedure is in substance a continuation of the prosecution”. **(Bold letters have been supplied for emphasis).**

9. In the case of *Iftikhar Ahmed Khan v. Asghar Khan and another* **(2009 SCMR 502)**, the Honorable Supreme Court had held as under:

“9. In law, there are two legal maxims on this point: ---

(i) **Autrefois acquit and autrefois convict** (formerly acquitted and formerly convicted) and the other is,

(ii) **Nemo debet bis vexari pro una et eadem causa** (It is a rule of law that a man shall not be twice vexed for one and the same cause): Principles of autrefois acquit and autrefois convict are incorporated in section 403 of the Criminal Procedure Code, 1898, which provides that persons once convicted or acquitted are not to be tried for the same offence. But this principle is not *stricto sensu* applicable to the facts and circumstances of the case in hand because convict is not being tried for the same offence again by any other Court as the present proceeding is, in fact, a continuation of the same proceeding which had commenced from the first Court. It is not a fresh or another round or trial of the proceeding against the accused after his conviction for the same offence.”

10. We have, therefore, faced no difficulty in concluding that the principles of **“double jeopardy”** will not apply, and there is no bar for filing afresh Show Cause Notice by the Competent Authority for departmental action. Principles of double jeopardy will not apply when accused was discharged due to lack of proper sanction, for the reason that earlier the Petitioner was reinstated in service due to fact that he was wrongly dismissed from service by the SSP, Operation-II, CTD, Karachi, who was not competent under the law, therefore, the provision of Article 13(a) of the Constitution and Section 403, Cr.P.C. are not attracted to the situation posed by the present case. The concept of double jeopardy is inseparably linked with the principles of autrefois acquit and autrefois convict and, thus, the said concept may also have little relevance to the case in

hand. Our view is supported by the decision rendered by the Honourable Supreme Court in the case of Additional Inspector General of Police Karachi & another v. Muhammad Ismail Lashari & another [2017 PLC (CS) 279], whereby the Honourable Supreme Court held at paragraph 15 that Article 13(a) of the Constitution provides that no person shall be prosecuted or punished for the same offence more than once. Primarily, the wisdom behind this Article is to provide protection to a person who was tried and convicted to be vexed again in the same offence, whereas the concept of Police Rule 16.2 is, completely different whereby the penalty of dismissal from service of a police officer is awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service.

11. We have heard the learned counsel for the parties on the point of maintainability and perused the material available on record.

12. The following legal question has been raised in the present proceedings:-

i) Whether the Civil Servants can file a Writ Petition by invoking Constitutional Jurisdiction of this Court in respect of the terms and conditions of his service when there is a bar contained in Article 212 of the Constitution?

13. We are of the view that Article 212 of the Constitution ousts the jurisdiction of this Court in respect of the matters pertaining to the terms and conditions of the Civil Servants. The ouster Clause under Article 212 of the Constitution is a Constitutional command, which restricts the jurisdiction of this Court under Article 199 of the Constitution on the subject, which

squarely falls within the exclusive domain of the Tribunals. The expression “**Terms and Conditions**” includes Show Cause Notice, which is part of Disciplinary proceedings, we are fortified on this point by the decision of the Hon’ble Supreme Court in the case of *Ali Azhar Khan Balouch and others Vs. Province of Sindh and others* (2015 SCMR 456), the Honorable Supreme Court has held at Paragraph 238 as under;-

“238. We have noticed that the Counsel representing the State did bring to the notice of the learned Judge in Chambers of the High Court the case of Ahmed Khan Dehpal v. Government of Baluchistan (2013 SCMR 759), which was not taken note of. We can safely assume that neither the learned Judge in Chambers nor the Appellate Bench have carefully read the provisions of section 4(1) of the Federal Service Tribunal Act 1973 which confers exclusive jurisdiction upon the Federal Service Tribunal to adjudicate upon the matters relating to the terms and conditions of service of a Civil Servant inclusive of the disciplinary proceedings. Article 212 of the Constitution places fetters on the jurisdiction of a Civil Court and a High Court to entertain matters relating to terms and conditions of service of a Civil Servant. (Bold letters have been supplied for emphasis).

14. Admittedly, the Petitioner is a Civil Servant and his case falls within the ambit of Section 3 (2) of the Sindh Service Tribunals Act, 1973 which says that “*Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of the service of the Civil Servants*”. Section 4 of the Sindh Service Tribunal Act states that “*a Civil Servant has a right to file an appeal against the impugned orders adversely affecting the terms and conditions of his service before the Tribunal subject to the qualification provided therein.*”

15. In the facts and circumstance of the case, on this point, this Court has no jurisdiction to interfere by means of Writ. We are fortified on this issue by the decision rendered by the Hon’ble

Supreme Court in the case of Government of Khyber Pakhtunkhwa and others Vs. Hayat Husain and others (2016 SCMR 1021).

16. Reverting to the main point as agitated by the Petitioner with regard to the issuance of second Show Cause Notice to him on the same set of allegations. In our view, in service jurisprudence, the issuance of Show Cause Notice is not a punishment. The Competent Authority 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 disciplinary action. 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 the department. It means an order issued by the Competent Authority asking the official 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 decision of the competent authority. After considering the entire report and evidence, if any, led before the inquiry officer, the competent authority may decide the quantum of punishment if delinquent is found guilty. It is also solely rests on the discretion of the competent authority 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 the department to consider the inquiry report and decide the fate of delinquent. The interference in the intervening period by this court in the affairs is discouraged unless it is manifestly against the statutory requirements or due process of law/fair trial.

17. Similarly, 'Misconduct' on the basis of which action can be taken under the Sindh Police (Efficiency and Discipline) Rules 1988 means:

“Misconduct” means conduct prejudicial to good order or discipline in the Police Force, or contrary to the government Servants (Conduct) Rules or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any provision of any law or rules regulating the function and duty of a Police Officer or to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer.”

18. Prima-facie, the penalty of dismissal from service of a police officer attracts only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service that whether such police officer is fit to continue in the police service. It is the prime duty of the superior officers in the police hierarchy to ensure discipline within the police force, which is a public service and also to keep a strict check on the conduct of such police officers. A constant watchful-eye on the police officer is need of the day and if the Competent Authority reaches the conclusion that the police officer has indulged in acts of misconduct, which prove incorrigibility and render complete unfitness of such police personnel in the service, then the Competent Authority should award the penalty of dismissal from service.

19. Upon perusal of Police Rule 16.2, its scope is wide and the object behind it is to discipline the police force and to ensure that the police officers in uniform shall not behave in a manner which, entails patronizing crime or other social evils. The scheme which seems behind the Rule is to ensure that the police officials in discharge of their duties shall act in a manner which should restore confidence in the public at large. It is well settled law now that if a police official with such patchy record is allowed to continue in service, it would not only damage the image of police force, but will also encourage social evils in the society, which the police force is required, to eliminate.

20. Keeping in view the above mentioned facts and circumstances of the case, the captioned Petition is not maintainable under Article 199 of the Constitution of the Islamic

Republic of Pakistan 1973; hence dismissed. The Petitioner may however seek appropriate remedy as provided under the law subject to the conditions enumerated under the law. Before parting with this order, we direct the Inspector General of Police, Sindh to screen out all those police officials who have patchy records in their dossiers and initiate departmental proceedings against them under the law and the same proceedings be completed within a reasonable time strictly in accordance with the dicta laid down by the Honourable Supreme Court in the case of Additional Inspector General of Police Karachi & another v. Muhammad Ismail Lashari & another [2017 PLC (CS) 279]. Let a copy of this order be communicated to the Chief Secretary, Sindh and Inspector General of Police, Sindh for information and compliance.

JUDGE

JUDGE

Nadir/-