

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**  
**Constitutional Petition No. D –5203 of 2020**

Before

Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Adnan Iqbal Chaudhry

Muhammad Khalid  
*Versus*  
Federation of Pakistan and 11 others

Date of hearing & order : 12.11.2020

Mr. Arslan Wahid, advocate for the petitioner.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through the instant Petition, the Petitioner has impugned the office order dated 03.09.2019, whereby he was awarded Major penalty of Termination from Service by the competent authority of National Institute of Cardiovascular Diseases Karachi. The stance of the Respondent-Institute is that the Petitioner misused his power and authority being Male Staff Nurse by misusing laboratory services for personal use and made fake requisition for Lab Test for his relatives and friends and misused official stamps and signature of Dr. Pervaiz Chaudhry. Respondent-Institute appointed inquiry officer to probe the allegations leveled against the Petitioner. The inquiry officer conducted the inquiry and reached the following conclusion: -

**“Finding of the Committee**

1. Enquiry Notices dated 10.08.2019 & 19.08.2019 respectively was issued to Mr. Muhammad Khalid staff Nurse to appear before committee for explaining above charges of allegations against him, but he failed to comply with the Notices or sent any written intimation to this office.

**Recommendation of Enquiry Committee**

The Enquiry Committee after review of written record provided by Administration Department and failure to appeared in personal hearing by Mr. Muhammad Khalid staff Nurse, the committee has consensus for following action:-

1. Despite of several notices given by office to Mr. Muhammad Khalid Staff Nurse to improve his performance. He has completely failed to pay and heed to cautions given to him time to time. Similarly, he forged the documents for his personal motives. So the Committee has recommended under NICVD Service regulations Chapter-VII. Clause 62 Ground for Penalty (a,b &c) and (63) Penalties (b) Major Penalties(iii).
2. However, subsequent approval from competent authority (Executive Director) shall be taken before proceed any major action against Mr. Muhammad Khalid Staff Nurse.

3. Mr. Muhammad Khalid Staff Nurse has right to submit appeal within (30) days against the decision of Enquiry Committee under NICVD Service Regulations Chapter-VII.71 (1) Appeal to competent authority.
4. Further, the order passed on appeal shall be final under NICVD Service Regulations Chapter-VII.71 (2) Appeal to competent authority.”

2. We have noticed that on the basis of findings of the Enquiry Committee dated 31.8.2019, the Petitioner was awarded the Major penalty of Termination from Service vide Office Order dated 3.9.2019. An excerpt of Office order dated 3.9.2019 is reproduced as under:-

**“TERMINATION FROM SERVICE**

With reference to the call notices No.NICVD/P/274, 2182 & 2196 dated June 29, July 04 & July 15, 2019 respectively, followed by the enquiry notices dated August 10 & August 19, 2019 in which you were instructed to appear before the Enquiry Committee on August 17 and August 24, 2019 but you have failed to do so.

With respect to the above mentioned facts, it has been decided to take action against you under the NICVD service regulation 1997. Having been approved by the competent authority i.e. Executive Director, you are hereby awarded the penalty of “Termination from Service”.

Therefore, your services have been terminated with effect from September 03, 2019.”

3. Petitioner being aggrieved by and dissatisfied with the aforesaid Office order dated 3.9.2019, preferred Departmental Appeal to the Executive Director Appellate Authority (NICVD), which was decided against the petitioner vide Office order dated 17.3.2020, with the following remarks:-

**“APPEAL FOR REINSTATEMENT INTO SERVICE**

With reference to your Appeal dated 08.02.2020 on above cited subject, the appeal was submitted to competent authority after expiry of stipulated period of (3) days.

However, the undersigned having carefully gone through the records of Inquiry and the facts and circumstances of the case, which was led to imposition of Major Penalty i.e. Termination from Service.

NOW THEREFORE, the undersigned has come to conclusion to validate the decision of Enquiry Committee i.e. Termination from Service. Hence, the appeal filed by you for reinstatement into Service is hereby rejected.

(Professor Nadeem Qamar)  
DIPLOMATE AMERICAN BOARD OF INTERNAL MEDICINE  
EXECUTIVE DIRECTOR &  
PROFESSOR OF CARDIOLOGY”

4. In the meanwhile petitioner being aggrieved by and dissatisfied with the aforesaid actions/ orders passed by the Respondent-Institute had approached this Court by filling C.P No. D-1139 of 2020 on 12.2.2020, which was dismissed as not pressed on 21.9.2020 with the following observations:-

“Statement dated 21.09.2020 has been filed on behalf of respondent No.3, which is taken on record. Accordingly, to the above statement, petitioner No.1 has been dismissed from service and the services of respondent No.2 have been restored and he is receiving full pay and other allowances. It is stated by learned counsel for respondent No.3 that the appeal filed by petitioner No.1 before the Executive Director of NICVD has been dismissed. Learned counsel for the petitioners states that petitioner No.1 is not aware of any such decision nor has he been provided with a copy of any such order, however, he will avail his remedy against the order of dismissal of his appeal. Learned counsel for respondent No.3 undertakes to provide copy of the order of dismissal of the petitioner No.1’s appeal to his learned counsel within three (03) days. In view of the above, the present petition and listed application are dismissed as not pressed with no order as to costs leaving petitioner No.1 at liberty to avail his remedy for redressal of his grievance, if any, before the competent forum in accordance with law.”

5. We queried from the learned counsel for the Petitioner as to how the instant Petition is maintainable against the Respondent-Institute as well as the charges leveled against the petitioner, which were subsequently proved against him.

6. Mr. Arslan Wahid learned counsel for the Petitioner replied to the query and has submitted that the Respondent-Institute is a Government-owned and controlled Institution; therefore, the instant Petition is maintainable under the law. On the second issue of charges leveled against the petitioner, he has submitted that the Inquiry Team/Officer has violated the basic rules by not providing a hearing to him on the charges leveled against him, therefore the Inquiry report is a nullity in the eyes of law, thus is void, and it cannot form the basis of punishment of the petitioner; that the competent authority awarded major punishment to the petitioner by placing reliance upon the inquiry report, without ascertaining the truth; that the petitioner had served the Respondent-Institute for about 9 years, therefore lenient view may be taken against the petitioner. He lastly prayed for allowing the instant petition. We posted another question to him with regard to the decision of this Court passed in C.P No.D-1139 of 2020, whereby his earlier petition was dismissed as not pressed vide order 21.9.2020. He replied that this Court directed the petitioner to avail the remedy, and now he has approached this Court by filing the present petition.

7. We have heard learned counsel for the petitioner on the maintainability of the instant petition and perused the entire material available on record.

8. Record reflects that the Petitioner was given a charge sheet and domestic inquiry was also conducted and he was found guilty in the inquiry proceedings and finally was removed from service.

9. We do not see any violation of law, rules, and regulations in the proceedings of the inquiry conducted by the Respondent-Institute against the Petitioner as asserted by the Petitioner. The record reflects that there was no motive or malice on the part of Respondent-Institute to falsely implicate the Petitioner in the proceedings.

10. We on the basis of documents placed on record by the petitioner have concluded that the case of Petitioner does not require further investigation so far as the allegations leveled against him are concerned. Since he had been proceeded on the ground of misconduct, was given a fair opportunity of hearing, and was finally found guilty of the charges leveled against him as discussed supra. The impugned order dated 3.9.2019, supports the stance of Respondent-Institute, which does not require interference at our end for the reasons that, the matter requires a thorough probe, which is not permissible under Constitutional jurisdiction. It is the considered view of this Court that to maintain a Constitution Petition it is the duty and obligation of the Petitioner to point out that the action of the respondents violated their rules and regulations. In the wake of the above, the Petitioner has failed to point out and failed to make out his discrimination case as well.

11. In view of the foregoing discussion, the Petitioner has failed to make out his case. Consequently, the instant Petition is dismissed in limini along with the listed application(s).

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