

IN THE HIGH COURT OF SINDH, KARACHI

C.P Nos.D-5396,5395 &5394 of 2014

PRESENT:

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Arshad Hussain Khan.

1. **C.P. No.D-5396/2014** *Naeem Akhtar Chang versus Federation of Pakistan & Ors*
2. **C.P. No.D-5395/2014** *Muhammad Tahir Wagho versus Federation of Pakistan & Ors.*
3. **C.P. No.D-5394/2014** *Shafique Ahmed Arain versus Federation of Pakistan & others.*

Petitioners: Through Mr. Malik Naeem Iqbal.
Advocate for all the Petitioners.

Respondent No1: Through Mr. Shaikh Liaquat Hussain,
Standing Counsel.

Respondents No.2 and 3: Through Mr. Chaudhry Muhammad Farooq,
Advocate .

Date of Hg: 30.09.2016 & 13.10.2016

JUDGMENT

ARSHAD HUSSAIN KHAN, J. We intend to decide the above constitutional petitions through this consolidated judgment having similar facts and law. The brief facts out which the above constitutional petitions arise are as follows :-

2. In **C.P. No.D-5396 of 2014** –*Naeem Akhtar Chang v. Federation of Pakistan and Others*. As per the averments in the petition, the petitioner was appointed as System Engineer (BS-16) in the Respondent No.2 (NDRA) on 31.08.2009. Petitioner possesses unblemished service record. The petitioner received a show cause notice dated 07.08.2012 whereby it was alleged that the petitioner has committed misconduct. No statement of allegations and no particulars were provided to the petitioner to show the basis of the charges levelled against petitioner in the said show cause notice. The petitioner through his reply to show cause notice dated 23.08.2012, denied the allegations/charges being baseless and unsubstantial. Thereafter, the petitioner was provided opportunity of personal hearing on 05.03.2013. During the personal hearing, the petitioner informed the competent authority about the glaring procedural illegalities in the disciplinary proceedings as no regular inquiry was conducted despite specific denial of charge levelled against the petitioner. Subsequently, the Respondents vide its Office order No. NDRA/HR/Disp/47/Skr/30648 dated

23.05.2013 [impugned in the petition] imposed Major Penalty of reduction to a lower stage (two stages). The petitioner on 04.07.2013 preferred departmental appeal to Respondent No.3, against the impugned order. The respondent No.2 instead of forwarding the petitioner's appeal to respondent No.3, which is the appellate authority, rejected the same, after giving a personal hearing for the sake of formality, through a non speaking joint order dated 12.12.2013.

3. In **C.P. No.D-5395 of 2014 – Muhammad Tahir Wagho v. Federation of Pakistan and Others**, the facts as averred in this petition are that the petitioner was appointed in the Respondent No.2 (NDRA) on 11.12.2003, due to his exceptional career record he was promoted from time to time. The petitioner was serving as Acting Manager/Acting Deputy Director (BS-17) in NADRA, when he was served with a charge sheet on 24.10.2011, whereby it was alleged that the petitioner was involved in illegal processing of CNICs' and that an enquiry committee was constituted to investigate the circumstances under which the omission/commission was occurred. No statement of allegations and or no particular were provided to the petitioner to show the basis of the charges levelled against petitioner in the charge sheet. The petitioner through his reply to charge sheet dated 31.10.2011, denied the allegations/charges being baseless and unsubstantial. Thereafter, the petitioner was provided opportunity of personal hearing on 10.11.2011. In the meanwhile on 21.2.2011 the service of the petitioner was terminated, however, upon challenging the same, the petitioner was reinstated into service on 25.4.2012. The respondent No.2 again issued show cause notice to the petitioner on 7.08.2012. The petitioner through his detailed reply dated 24.08.2012 denied the allegations. Thereafter on 5.03.2013 the petitioner was provided opportunity of personal hearing. During the personal hearing, the petitioner informed the competent authority about the glaring procedural illegalities in the disciplinary proceedings as no regular inquiry was conducted despite specific denial of charge levelled against the petitioner. Subsequently, the Respondents vide its Office order No. NDRA/HR/Disp/47/Skr/11528 dated 23.05.2013 **[impugned in the petition]** imposed Major Penalty of reduction to a lower post. The petitioner on 1.07.2013 preferred departmental appeal to Respondent No.3, against the impugned order. The respondent No.2 instead of forwarding the petitioner's appeal to the

respondent no.3, which is the appellate authority, rejected the same after giving a personal hearing for the sake of formality, by issuing a non speaking joint order dated 12.12.2013.

4. Similarly, in **C.P. No.D-5394 of 2014 – Shafique Ahmed Arain v. Federation of Pakistan and Others**. The facts as averred in this petition are that the petitioner was appointed in the Respondent No.2 (NDRA) on 24.07.2001 as Database Administrator due to his exceptional career record he was promoted from time to time. The petitioner was serving as Manager Operations/Deputy Director (BS-18) in NADRA, when he was served with a charge sheet on 24.10.2011, whereby it was alleged that the petitioner was involved in illegal processing of CNICs' and that an enquiry committee was constituted to investigate the circumstances under which the omission/commission was occurred. No statement of allegations and or no particular were provided to the petitioner to show the basis of the charges levelled against petitioner in the charge sheet. The petitioner through his reply to charge sheet dated 28.10.2011, denied the allegations/charges being baseless and unsubstantial. Thereafter, the petitioner was provided opportunity of personal hearing on 15.11.2011. In the meanwhile on 21.2.2011 service of the petitioner was terminated, however, upon challenging the same, the petitioner was reinstated into service on 25.4.2012. The respondent No.2 again issued show cause notice to the petitioner on 7.08.2012. The petitioner through his detailed reply dated 24.08.2012 denied the allegations. Thereafter on 5.03.2013 the petitioner was provided opportunity of personal hearing. During the personal hearing, the petitioner informed the competent authority about the glaring procedural illegalities in the disciplinary proceedings as no regular inquiry was conducted despite specific denial of charge levelled against the petitioner. Subsequently, the respondents vide its Office order No. NDRA/HR/Disp/47/Skr/11528 dated 23.05.2013 **[impugned in the petition]** imposed Major Penalty of reduction to a lower post. The petitioner on 8.07.2013 preferred departmental appeal to Respondent No.3, against the impugned order. The respondent No.2 instead of forwarding the petitioner's appeal to respondent No.3, which is the appellate authority, rejected the same after giving a personal hearing for the sake of formality by issuing a non speaking joint order dated 12.12.2013.

5. Upon notice of the present petitions, the respondents initially on 16.03.2015 filed their para-wise comments wherein while denying the allegations levelled in the petition, it was stated that the petitioners failed to perform their duties as per required SOP and further due to the non-professional and negligent attitude aliens were processed for National Identity Card by their subordinates. Proper inquiry was conducted under Government Servants (E & D) Rules, 1973 wherein it was established and proved that the petitioners were involved in illegal processing hence, committed misconduct. Thereafter, completing other procedural and codal formalities, major penalty of reduction to lower post was imposed.

6. The respondents No.2 & 3 with the leave of court on 12.06.2015 filed supplemental detail comments wherein the respondents while taking the same plea as that of in the earlier comments, inter alia, stated that upon a source report of illegal processing of CNIC carried out in suburbs of Quetta. A team of FIA with officers of NADRA conducted a raid and arrested one employee of NADRA. During initial interrogations, he disclosed some names of NADRA employee involved in illegal processing and the name of the petitioners were also included. Accordingly, a detailed inquiry under E & D rules 1973 was initiated. As per the source report, charge sheet was issued, however, after detailed inquiry, it was found that the petitioners were not directly involved in illegal processing of CNICs; rather due to their mismanagement and loose command illegal processing was taken place. As regards duration of the imposed penalty, it was stated that a policy has already been issued separately that major penalty of reduction to lower post is applicable for a period of three years.

7. Learned counsel for the petitioner during the course of his argument has contented that petitioners during their long service having unblemished record and they always performed their duties to the utmost dedication, honesty and satisfaction of their superiors. It is also contended that petitioners have not committed any misconduct as alleged. The show cause notices and charge sheets are completely bald and devoid of all particulars and specification. Furthermore, failure of the respondents to supply statement of allegations and conduct proper enquiry, is in derogation of E & D Rules and dictum laid down by apex court. Learned Counsel further contended that the impugned order is violative of Rule 29 of the Fundamental Rule, inasmuch as respondent No.2 has failed to specify the

length of time for which the penalty will be operative. Next conducted that no regular inquiry has been conducted despite specific denial of charges levelled nor any opportunity of cross examination the witnesses against him has been provided which is not only violation of E & D Rules but also violation of fundamental of rights enshrined in the constitution and so also against the principle of natural of justice. On the contrary, the petitioner in the fact-finding enquiry was summoned as witnesses and not as accused. It is also argued that the employees of the respondent No.2, against whom the FIR was lodged in connection with the illegal processing of CNIC, were acquitted by the Hon'ble High Court of Balochistan, Quetta vide its judgment dated 21.04.2015. The Respondents did not prefer appeal against the said judgment. The learned counsel, at the end of his argument, also apprised the court that the petitioners of C.P No. D-5395/2014 and C.P. No. 5394/2014 were restored in their actual stage/grade after completion of penalty period. In this regard, the learned counsel, subsequently, through his statement dated 3.10.2016 also placed on record the office orders issued by the respondents in respect of said restoration of service of above referred petitioners. The learned counsel in support of the stance in the case has relied upon the following case law:

2012 PLC (CS) 189: *Mst. Sajida Shaikh v. Deputy Post Master General, Northern Sindh Circle Postal Services, Hyderabad and others.*

In this case major penalty of dismissal from service was imposed on appellant, on certain allegations including forgery, after issuing her show-cause notice but dispensing with the regular inquiry. The Federal Service Tribunal while deciding the case has held the allegations levelled against the appellant having been denied by her, holding of regular inquiry was a must; in which the whole evidence against the appellant was to be brought on record after her participation and cross-examination. Further held that fact-finding inquiry was made basis for imposing penalty, which could not be a substitute for regular inquiry consequently the impugned orders which were in violation of the mandate of law, were set aside and the authorities were directed to reinstate the appellant in service with all consequential benefits.

2012 PLC (CS) 728: *Muhammad Afzal v. Regional Police Officer Bhawalpur and Others.*

In this is case the Hon'ble Supreme Court while setting aside the judgment of Service Tribunal and directing Authority to hold a de novo regular inquiry against appellant to be completed within specified time, held that imposition of the penalty of compulsory retirement on the charge of misconduct on the basis of material collected from fact finding departmental inquiry and dispensing with regular inquiry against appellant without giving opportunity to cross-examine witnesses, such lapse had resulted into miscarriage of justice and caused prejudice to appellant.

2008 PSC 1180: *Member (ACE & ST), Federal Board of Revenue, Islamabad and others v. Muhammad Ashraf and 3 others*

In this case the Hon'ble Supreme court while maintaining the judgment passed by Service tribunal dismissed the appeal. The Hon'ble Supreme Court held that the penalties imposed by the authority upon the respondents did not specify length of time and thus was in clear violation of Fundamental Rule of 29 and that the Penalty for indefinite period is not provided in law.

2008 PLC (CS) 910: *Ehsanullah Khan Ex-Assistant Director, FIA v. Federation of Pakistan through Secretary Establishment and another.*

In this case the Hon'ble Supreme Court while deciding the Civil Review Petition from the judgment passed in CPLA, held that Where authorized officer exonerated civil servant of charge, then charge sheet served on him earlier would lose its efficacy and could not satisfy requirement of Rule. 6-A(2) of Government Servants (Efficiency and Discipline) Rules, 1973. Further held that where authority decided to proceed against civil servant under Rule 6-A(2), then authority would be legally bound to serve a fresh notice/charge sheet on civil servant, who should be given fair opportunity of showing cause against proposed action as no one could be condemned unheard in violation of maxim "audi alteram partem".

2007 SCMR 1726: *Saad Salam Ansari v. Chief Justice of Sindh High Court, Karachi through Registrar.*

In this case the Hon'ble Supreme Court while setting aside the judgment passed by the Service Tribunal, reinstated the judicial officer and directed the competent authority may, if so desire holds a proper enquiry in the matter against the appellant. The Hon'ble court while deciding the case held the authorized officer has to decide as to which of the two procedures provided in R.5 of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, has to be adopted. If authorized officer is in favour of adopting summary procedure, he should exercise such discretion with extra care so that no prejudice is caused to the civil servant facing departmental proceedings for the charge of misconduct. It is also held that the decision regarding dispensation of regular inquiry always depends on the nature of charge and circumstances of each case. However, in a case in which charge cannot be established without recording evidence and providing a proper opportunity to civil servant to cross-examine witnesses and also produce evidence in defence, dispensation of regular inquiry is not justified except in extraordinary circumstances. Further held that charge of misconduct based on allegation of misuse of power for extraneous consideration involving factual inquiry which was required to be proved through evidence and dispensation of regular inquiry amounted to condemning the judicial officer unheard and refusing him right of defence.

1998 SCMR 1970: *Shakeel Ahmed v. Commandant 502 Central Workshop E.M.E., Rawalpindi and another.*

In this case the Hon'ble Supreme while dismissing the appeal has held that no legal infirmity in the order of Service Tribunal was found to warrant interference in the proceedings as the departmental authority had acted fairly, justly and in consonance with the principles of natural justice while imposing penalty of removal from service. It is also held that a civil servant while proceeded against for misconduct must be provided with charge-sheet/statement of allegations to explain his position. Where, however, the charge-sheet was self-explanatory and embodied reasons which fully satisfied the requirements of law and civil servant was fully aware of the charges levelled against him to which he gave his reply and never demanded statement of allegations in support of charge-sheet, no prejudice was caused to the civil servant by non-supply of the statement of

allegations in circumstances of the case. Further held that the departmental appellate authority has to assign reasons which prevailed with same while rejecting the appeal of aggrieved civil servant, however, failure to do so would not render the order of Service Tribunal illegal inasmuch as, the Tribunal had itself scrutinized the whole material on record and found no substance in the appeal filed by the civil servant. Supreme Court, however, directed for future guidance of all concerned that the Departmental Authority must assign reasons which prevailed with it while rejecting/accepting the departmental appeal. Further held that where inquiry proceedings are conducted by way of questionnaire without examination of witnesses in support of charge or the defence, such enquiry proceedings are not sustainable in view of R. 6 of the Government Servants (Efficiency and Discipline) Rules, 1973.

2008 PLC (CS) 786:

Ali Muhammad Samoo and 2 others v. Chairman, Pakistan Steel, Karachi and 2 others.

In this case the Federal Service Tribunal while setting aside the impugned order with direction to the employer to reinstate the appellants in service with all benefits for which appellants would submit an affidavit before the competent authority to the effect that they were not gainfully employed elsewhere during said period, has held that the enquiry against all appellants had not been conducted as provided under the Removal from Service (Special Powers) Ordinance, 2000 as it was conducted in questionnaire form, which procedure had been disapproved by the Supreme Court. Proper opportunity of personal hearing was not afforded to appellants. It is also held that personal hearing was not merely a formality, as civil servant should be provided full opportunity to explain his position with regard to the charges levelled/proved against him during the enquiry proceedings. Two other officers who were also proceeded along with appellants, were subsequently let off by issuing a warning letter, but appellants were awarded major penalty. Such was a case of discrimination, in circumstances. Chief Medical Officer being important witness, had not been examined in the inquiry and chief of appellants was let off with the warning only, whereas appellants had been dismissed from service. No witness had been examined to support the audit report regarding purchase of stationery items the Employer, in circumstances had failed to establish its cases against the appellants.

8. On the other hand, the learned counsel for the respondents while defending the impugned orders have resisted the above petitions. It is contended by the learned counsel for the respondents that upon proper enquiry it was found that Petitioners were involved, though not directly but in directly, in the crime of illegal processing of Alien, national Identity card. Therefore, by taking lenient view only imposed penalty of reduction to lower post. It is also contended that the respondents while conducting the enquiry have not committed any violation of E & D Rules as alleged. Further contended that during the enquiry all opportunities were provided to the petitioners to defend themselves however, the petitioner have failed resulting which major penalty in the shape of reduction to lower post was imposed. Next contended that even for the sake of argument, if during enquiry, any lapse in the procedure is occurred, it could at best be treated as irregularity and this would not render the enquiry null and void.

9. We have heard learned counsel for the parties and with their assistance also perused the material available on record. It was agreed upon by the learned counsel for the parties that all the constitutional petitions may be disposed of finally at the stage of Katcha Peshi.

10. Without going through the factual aspect or controversy, the fact of the matter transpires from the record is that on 24.10.2011, the Chief Operating Officer of the respondent No.2 constituted a fact finding committee to inquire into omission/commissions committed by the employees of SRHQ Sukkur in illegal processing of CNICs. The report of the said fact finding committee has been filed by the respondents through their statement and is available in the court file. The said inquiry report reveals that during the enquiry twenty (23) employees of the respondents were examined as witnesses and a list in respect thereof is available at page 2 of the said report. In the said list amongst other, the petitioners are also arrayed as witnesses such as Mr. Shafique Ahmed Arain at serial No.9, Mr. Muhammad Tahir Wagho at serial No.11 and Naeem Akhtar Chang at serial 23. This report also transpires that the witnesses were examined through a questionnaire. Pursuant to the said enquiry, show cause notices were issued to the petitioners, which were duly replied to and the allegations levelled therein were specifically denied. Thereafter, the petitioners were afforded opportunity of personal hearing and subsequent thereto the respondents through impugned orders imposed major penalty of reduction to a lower posts. Against the said order departmental appeals were preferred however, said appeals were also rejected. For the sake of ready reference the relevant portion of the decision whereby the appeals were rejected is reproduced as under:

“1. It is informed that personal hearing with the Chairman NADRA was granted to following employee of your region to decide their departmental appeals. After personal hearing held on dates mentioned against each, the Chairman NADRA being Appellate Authority has rejected their departmental appeals as they failed to prove themselves innocent. Therefore, you are requested to please inform the concerned individuals accordingly:-

11. The discretion to dispense with the inquiry could not be exercised arbitrarily but honestly, justly, and fairly in consonance with the spirit of law, after application of judicious mind and for substantial reasons. For this purpose, the nature of allegations against the accused has to be considered. In a case when it is clear to the authority that the allegations could be

decided with reference to admitted record or it forms an opinion that un-rebuttable evidence on the touchstone of QANUN-E-SHAHADAT, to prove the charge against the accused/employee is available on the record, the procedure for regular inquiry, may be dispensed with, otherwise, the ends of justice demand an inquiry.

There can be a situation where real fate of allegations can only be adjudged by a regular inquiry and not by mere textual proof. The Hon'ble Supreme Court of Pakistan in the case of *Abdul Qayyum vs. D.G. Project Management Organization JS HQ, Rawalpindi and 2 others* (2003 SCMR 1110) held that requirement of regular inquiry could be dispensed with in exceptional circumstances. Where recording of evidence was necessary to establish the charges, then departure from requirement of regular inquiry under the Rules would amount to condemn a person unheard.

12. Adverting to the case, there is nothing available on record which could show that upon denying the allegations by the petitioner any regular inquiry was conducted and or any opportunity to cross examine the witnesses was provided. As discussed above, in this case specific allegations had been levelled against the petitioners which included inefficiency and misconduct. When the petitioner in response to Show Cause Notice, had specifically denied the charges against them and furthermore, considering the nature of charges, all those allegations required evidence, then it had become incumbent upon the authority to have ordered for a regular inquiry and in the above given situation departure from normal course does not reflect bonafides on the part of the authority. In this regard reliance can be placed on the case of *Basharat Ali v. Director, Excise and Taxation, Lahore and another* (1997 PLC [CS] 817) [Supreme Court of Pakistan]

It is by now well settled that right to a fair trial means right to a proper hearing by an unbiased competent forum. Right to a fair trial has been associated with the fundamental right of access to justice, which should be read in every statute even if not expressly provided for unless specifically excluded. While incorporating Article 10A in the Constitution and making the right, to a fair trial a fundamental right, the legislature did not define or describe the requisites of a fair trial, which showed that perhaps the intention was to give it the same meaning as is broadly

universally recognized and embedded in jurisprudence in Pakistan. Reliance can be placed on the *SUO MOTU CASE NO.4 OF 2010(PLD 2012 SC 553)*.

13. The upshot of the above discussion is that the impugned order and imposition of Major Penalty of reduction to a lower post, passed against the petitioners is not sustainable in law. Consequently, these petitions are allowed, the impugned order dated 23.05.2013 is set-aside with the directions to pay the back benefits to the petitioners curtailed due to imposition of major penalty. However, the respondents if so advised, shall be at liberty to initiate *de novo* regular inquiry in the matter in accordance with law. The inquiry, if any, should be completed within a period of two months from the date of communication of this judgment.

JUDGE

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