

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

**Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Zulfiqar Ali Sangi**

C.P. No.D-3549 of 2017

Rao Abdul Khaliq Rajput ----- Petitioner

VERSUS

Federation of Pakistan & others ----- Respondents

Dates of hearing: 03.09.2019, 26.09.2019 and 08.10.2019.

Date of order: 16.10.2019.

Petitioner present in person.

Mr. Muhammad Hamayoon khan Assistant Attorney General for Pakistan.

Mr. Jhamat Jethanand, advocate for Respondent University.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Petitioner, who was appointed as electrician vide an order dated 15.06.2010 in Centre of Excellence Arts and Design (CEAD) Mehran University of Engineering and Technology (MUET) Jamshoro, has impugned in this petition an office order dated 2.11.2017, whereby he has been awarded major penalty of Removal from Service with effect from 25-4-2017.

2. Respondent-university has made a response to the petition revealing that in the first round of litigation, Board of Governors of CEAD, vide an order dated 28.04.2017 had imposed major penalty of removal from service upon the petitioner under Rule 4.1. (b) (iii) of Centre of Excellence Employees Efficiency & Discipline Rules, 1997 on the charges of subversive activities against the institution; propagating extremist views among staff and students instigating them to use violent means against those who are not conforming to his extremist views; delivering provocative sermons to instigate staff and students against Centre's management, etc. Further he was found involved in repeated acts of insubordination, indiscipline, and misbehavior with faculty members, staff and students. He was issued multiple explanations and warnings for his acts of omission and commission but he failed to improve his conduct/discipline. On aforesaid allegations he was served with a Show-Cause Notice dated

10/02/2016 and Charge Sheet on 05/04/2017. An Inquiry Committee was tasked to probe allegations against him, which found him inefficient and guilty of 'misconduct' and accordingly submitted its report to the competent authority on 21.04.2017 recommending disciplinary action against him for his "Removal from Service". The competent authority agreeing to said recommendations approved imposition of major penalty of 'Removal from Service' which was communicated to petitioner vide Order Ref. No.CEAD/Dir/197/2017 dated 28.4.2017.

3. Petitioner being aggrieved by and dissatisfied with the aforesaid order preferred Departmental Appeal to the Chairman, CEAD's Board of Governors i.e. Vice Chancellor (MUET), Jamshoro/Appellate Authority. Meanwhile he approached this court through a C.P. No.D-1036 of 2017 on 20.11.2017, which was disposed of vide order dated 22-08-2017 with direction to the CEAD to place Departmental Representation of the petitioner before the Board of Governors for a decision within three months and prior notices of personal hearing to the petitioner shall be issued to his address mentioned in the title of the petition through at least three modes i.e. by registered post, by courier, and by urgent mail service. In terms of said order, the Chairman, Board of Governors/Vice Chancellor MUET constituted an independent committee comprising Prof. Dr. Dost Ali Khowaja, Academic Coordinator, Department of Architecture & Planning, Dawood University of Engineering and Technology, Karachi; and Prof. Dr. Khan Mohammad Brohi, Dean, Faculty of Architecture and Civil Engineering, MUET, Jamshoro to look into the matter and provide an opportunity of personal hearing to the petitioner and make recommendations to the Board of Governors. Petitioner was served with a Notice dated 10/10/2017 through TCS, registered post and urgent mail to appear before the committee on 17.10.2017. He appeared before the committee and stated that he had nothing to add and his Departmental Representation may be treated as his statement. The Committee while finalizing its report supported findings of the Inquiry Committee and recommended to the Board of Governors to provide a final personal hearing to the petitioner and decide his Departmental Representation on merit. Consequently, the Board of Governors in its 10th meeting dated 20.10.2017 vide its Resolution No.10.04 dismissed the appeal of the petitioner. Consequent to which Director CEAD, MUET, Jamshoro issued the impugned order dated 2.11.2017.

4. The petitioner who was present in person submitted that the Inquiry Team/Officer has violated the basic rules; that the inquiry report is nullity in the eyes of law and it cannot be made a basis of his punishment; that this court vide order dated 22.8.2017 in C.P No.D-1036/2017 directed the Competent Authority / Board of Governors of CEAD, Jamshoro to decide his departmental

representation but they failed to comply with aforesaid directions and condemned him unheard; that he has been made victim as he had raised voice against the corruption and cronyism in the institution; that the authority which has imposed a major punishment on him is incompetent and has heavily relied upon the inquiry report without ascertaining the truth; that proper proceedings have not been conducted in his matter and he may be reinstated in service.

5. Mr. Jhamat Jethanand learned counsel for the Respondent-University has questioned maintainability of the petition and has supported the impugned order dated 2.11.2017. He next argued the petitioner was found involved in subversive activities against the university and causing loss to its reputation by propagating against its officials; that he was found guilty and rightly punished. He has referred to the statement dated 26.9.2019 filed on behalf of university and prayed for dismissal of the petition. He relied upon 2010 SCMR 121 and PLD 2011 SC 44 in support of his arguments.

6. Learned deputy Attorney General has supported the stance of the learned Counsel for the Respondent-University.

7. We have heard the parties at length and perused the record minutely. The impugned order dated 2.11.2017 passed by the Director CEAD shows full details that the enquiry was conducted against the petitioner on the aforesaid charges and on the basis of statement of witness and documentary evidences he was found guilty. Petitioner's main stance is that inquiry proceedings against him were violative of Article 10-A of the Constitution and that no regular inquiry was conducted to probe into the allegations against him. The university has relied upon old recommendation of the enquiry report and members of the committee were biased against him and he was declared guilty without ascertaining his guilt. Further, the university has failed to consider statement filed by him before the inquiry officer and that the respondents failed to appreciate that the petitioner had reposed no confidence against the inquiry officer and members of the committee.

8. However, a perusal of record speaks otherwise, the petitioner was afforded many opportunities to defend himself but he always behaved recklessly and made it impossible to conduct a smooth enquiry against him for which he was issued a separate show cause notice. Apparently with his behavior he tried his best to thwart the course of a smooth inquiry against him instead of offering any explanation rebutting the charges against him. Nonetheless, the enquiry was completed and he was found guilty and removed from service. Finally this court in his petition challenging his removal from service directed the respondent to afford a hearing to him and in compliance thereof his Departmental Appeal / Representation dated 08.5.2017 to the Board of Governors (CEAD) against the

impugned order was heard and decided vide order dated 2.11.2017 whereby his major penalty of removal from service has been maintained. For the sake of a ready reference, the operative paragraph of the said order is reproduced as under:-

- i. **Mr. Rajput was initially appointed as Electrician in BPS-05 with effect from 13/05/2010.**
- ii. **He was allowed promoting/up-gradation as Electrician in BPS-07 with effect from 13/05/2015.**
- iii. **He was found involved in subversive activities against the institution; propagating extremist views among staff and students instigating them to use violent means against those who are non-confirming to his extremist views; delivering provocative sermons to instigate staff and students against Centre's management/administration/mandate of arts and design (sculptures, paintings, statues, etc.). He was also found involved in repeated acts of insubordination, indiscipline, and misbehavior with faculty members, staff and students.**
- iv. **He was issued multiple explanations and warnings for his acts of omission and commission, but he failed to improve his conduct/discipline.**
- v. **In view of his gross misconduct and insubordination/undisciplined behavior, he was issued a Show-Cause Notice dated: 10/02/2016.**
- vi. **Meanwhile, he got involved in furtherance of his ideology on staff and students and resorted to violent means to subdue others. Thus, he was issued a Charge Sheet on 05/04/2017.**
- vii. **An Inquiry Committee duly approved by the Competent Authority was constituted to enquire into the Charge Sheet framed against Mr. Rajput. The Inquiry Committee conducted in-depth enquiry into the Charges, found Mr. Rajput inefficient and guilty of 'misconduct'; and accordingly submitted its report on 21/04/2017, whereby it established all the charges against him and recommended to the Competent Authority to impose major penalty of "Removal from Service" upon Mr. Rajput.**
- viii. **The Competent Authority agreeing to the recommendations of the Inquiry Committee, approved imposition of major penalty of 'Removal from Service' which was communicated to Mr. Rajput vide Order Ref. No.CEAD/Dir/197/2017 dated: 28/4/2017.**
- ix. **Against the aforesaid Order, Mr. Rajput made a Departmental Representation to the Chairman, CEAD's Board of Governors i.e. Chancellor of Mehran University of Engineering and Technology (MUET), Jamshoro, on 08-05-2017, and simultaneously he filed a Constitutional Petition No.D-1036 of 2017 in the Honorable Sindh High Court, Circuit Court, Hyderabad on 25-04-2017.**
- x. **The Honorable Court heard the matter and issued Order dated: 22-08-2017 by disposing of the petition and directing the CEAD to place the**

Departmental Representation of the petitioner i.e., Mr. Rajput before the Board of Governors for decision within three months and prior notices of the personal hearing of such appeal shall be issued at the address mentioned in the title of this petition through at least three modes i.e., by registered post, by courier, and by urgent mail service.

- xi. In the interest of justice and fairness, the Chairman, Board of Governors/Vice Chancellor MUET constituted an independent committee comprising Prof. Dr. Dost Ali Khowaja, Academic Coordinator, Department of Architecture & Planning, Dawood University of Engineering and Technology, Karachi; and Prof. Dr. Khan Mohammad Brohi, Dean, Faculty of Architecture and Civil Engineering, MUET, Jamshoro to provide an opportunity of personal hearing to Mr. Rajput, and to make recommendations to the Board of Governors.
- xii. In pursuance of the Order of the Honorable High Court, Mr. Rajput was issued Notice dated: 10/10/2017 through TCS, registered post and urgent mail to appear before the committee to be heard in person on 17/10/2017.
- xiii. Mr. Rajput appeared for personal hearing before the committee and stated that he had nothing to add and his Departmental Representation may be treated as his statement before the said Committee.
- xiv. The above Committee finalized its report and while supporting the findings of the Inquiry Committee, it recommended to the Board of Governors to provide final personal hearing to Mr. Rajput and decide his Departmental Representation on merit.

5. Consequently, the Board of Governors in its 10th meeting dated 20/10/2017 vide its Resolution No.10.04 decided: (i) not to accede to the prayer of Mr. Rajput made in the Representation dated 08-052017, and (ii) to endorse the decision taken by the Authority to impose major penalty of "Removal from Service" on Mr. Abdul Khaliq Rajput with effect from 25-04-2017.

6. This issues with the approval of the Board of Governors."

9. The allegations leveled against the petitioner are serious in nature and as per record have been proven against him as there is nothing to show that he has denied the same through some tangible substance. A proper procedure seems to have been adopted to bring home allegations against him, which are factual in nature. We while exercising constitutional jurisdiction cannot enter into disputed facts and hold that petitioner is innocent. The allegation and the substance in proof of the same have been examined by relevant committees and the highest forum of the university i.e. Board of Governors, who had no ill will or personal motive against the petitioner to remove him from service without substance. Nothing has been brought before us that the relevant committees, Board of Governors and the competent authority had no jurisdiction or they acted

illegally beyond their jurisdiction in making recommendation and pass the impugned order dated 2.11.2017.

10. Record further reflects that impugned findings are based on depositions of relevant witnesses and documents which in view of such fact alone cannot be brushed aside in constitution petition, unless gross illegality is pointed out. There were sufficient grounds for proceeding against the petitioner. The respondents have dilated upon the issue in an elaborative manner and have given findings appreciating the material in its true perspective. The claim of the petitioner that he was condemned unheard is contrary to the record, he was given full opportunity to rebut the allegations and was also confronted with the relevant record but failed to discharge his burden and was found guilty. These findings which were concurred by the highest forum of the university i.e. Board of Governors cannot be interfered with unless as stated above some important question of law or erroneous appreciation of evidence is indicated, which as discussed above is not the case here.

11. The conduct of the petitioner throughout his service tenure remained unbecoming of an employee. His insubordination towards the office discipline and decorum and his other activities were damaging for the institution plus prejudicial to its integrity, which fall within the ambit of "Misconduct" as defined under Centre of Excellence Employees Efficiency & Discipline Rules 1997 and which led to awarding of major penalty of removal from service on him on 2.11.2017 under Rule 4.1. (b) (iii) of above rules after a proper procedure was adopted. We are unable to find any violation of law or prejudice caused to the petitioner to take a contrary view.

12. For foregoing discussion, we find no merits in the petitioner and dismiss it accordingly.

JUDGE

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