IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1066 of 2010

[Muhammad Khalil ……v……Pakistan Telecommunication Limited & another]

Dates of Hearing	:	08.10.2021, 21.10.2021 & 10.11.2021
Plaintiff	:	M/s. M.M. Aqil Awan, Danish Rashid Khan & Ghulam Akbar Lashari, Advocates.
Defendants	:	Mr. Faisal Mahmood Ghani, Advocate.

JUDGMENT

Zulfiqar Ahmad Khan, J:- Plaintiff seeks declaration, permanent injunction and damages through this suit.

2. Brief facts of the case as derived from the plaint are that the plaintiff was initially appointed as peon (BS-1) in the defunct Telephone & Telegraph Department, thereafter, he was promoted as LDC and with the passage of time and upon having completed prescribed training, he was appointed/promoted as Telephone Technician. It is pointed out in the body of the plaint that upon the promulgation of Pakistan Telecommunication Corporation Act, 1991 ("**Act of 1991**") the defunct Telephone & Telegraph Department gotten converted into a "Corporation" and under Section 9 of the said Act, employees were transferred into the said Corporation. It is further stated in the plaint that upon promulgation of Pakistan Telecommunication (Reorganization) Act, 1996 ("**Act of 1996**"), the employees merged into the defendant entity where the plaintiff was promoted as Engineer Supervisor Phones vide order dated 28.12.2002. It is stated by the plaintiff that he was issued a charge sheet dated

02.06.2009 in violation of Act of 1996 which was answered by him, thereafter, a questionnaire was also provided to him and reply of the plaintiff was also obtained on the said questionnaire. The Inquiry Committee submitted its report alleging that the charges leveled against the plaintiff were partially proved while charge Nos. 3 & 4 were not proved against the plaintiff, whereafter another show cause notice dated 31.12.2009 was issued to the plaintiff which was also replied by him and having been provided with an abrupt long-distanced right of personal hearing, the plaintiff was removed from the service on 19.05.2010. Plaintiff further alleged in the plaint that since he was unlawfully removed, therefore, he was entitled to be reinstated in service with back benefits as well as claimed damages while making the following prayers:-

> "1). That this Hon'ble Court would be pleased to declare that impugned order of removal from service dated 19.05.2010 is void ab initio and quash the same and reinstate the plaintiff in service with full back benefits.
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> 2). That in alternate this Hon'ble Court would be pleased to grant decree of damages in favour of plaintiff to the tune of Rs.15,339,787/- (Rupees One Crore Fifty-three Lac Thirty-nine Thousand Seven Hundred and Eighty-seven only) and Defendants be directed to pay the same on the usual bank rate interest from the date of filing of the suit till the actual amount is paid to the plaintiff .
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> 3). That this Hon'ble Court would be pleased to grant permanent injunction against the Defendants restraining them to implement the impugned order from removal from serviced dated 19.05.2010 through themselves, their subordinates, their attorneys, their assignees or any other person claiming through them and suspend the same and pas the decree to that effect.

4). Cost of suit be borne by the Defendants.

3. Contrariwise, the Defendants contested the matter and filed their written statement. Defendants in operating part of the written statement raised objections that the suit was not maintainable on the ground that the relief sought pertained to terms and conditions of service being barred by Section 21 of Specific Relief Act, 1877. It is stated that the Defendant company exists under the Companies Ordinance, 1984 and there are no statutory rules governing the employment in respect of its employees and in the absence of any such statutory rules/regulations, the common law of master and servant under the law of contract is applicable, therefore, no declaratory relief is permitted. The defendants further claimed that plaintiff was guilty of misconduct and corruption, thereafter, was fired from the service following the principle of natural justice, having undertaken proper departmental inquiry. It was prayed that suit be dismissed with costs.

4. The record shows that on 02.12.2015, issues were framed and with mutual consent of the parties, Mr. Kabeeruddin, Advocate was appointed as Commissioner for the recording of evidence. The issues settled by this court are:-

"1. Whether the plaintiff was to be governed by the Civil Servants (Efficiency and Discipline Rules), 1973 applicable to the civil servants of the Federation of Pakistan Telecommunication Corporation Services Regulations, 1996?

2. Whether the service of the plaintiff was governed by statutory rules or non statutory rues?

3. Whether terms and conditions of service of the plaintiff can be changed to his disadvantage by the

defendant No.1 under the law as plaintiff was originally the employee of Telephone and Telegraph Department?

4. Whether the procedure provided under Pakistan Telecommunication Corporation Service Regulations, 1996 was followed by the Defendants?

5. Whether the plaintiff was given fair opportunity to defend the charges during enquiry proceedings and whether the principles of natural justice were followed by the Defendants

6. Whether the plaintiff was malafidely and unlawfully removed from service, if yes, whether the plaintiff is entitled to the remedy of reinstatement with full benefits or to the remedy of damages, if any

7. What should the decree be?"

5. Mr. M.M. Aqil Awan, learned Senior Counsel for the plaintiff traced the legislative history in terms of which PTCL came into being as an incorporated entity and how the plaintiff ended up becoming an employee thereof. He submitted that originally plaintiff was an employee of the erstwhile T&T (Telephone and Telegraph) Department of the Government of Pakistan. Thus, he had been civil servant since inception and he was governed by the terms and conditions of service which were very statutory in nature. With the creation of the Pakistan Telecommunication Corporation ("PTC"), a statutory body created by the Pakistan Telecommunication Corporation Act, 1991 ("1991 Act"), the plaintiff stood transposted to PTC but on the same terms and conditions as before. Most relevantly for present purposes, according to learned counsel, this meant that the plaintiff's terms and conditions of service continued to be governed by the statutory rules, i.e., those having originally regulated his affairs when he was an employee of the T&T Department. Per learned counsel, the 1991 Act was repealed by the

Pakistan Telecommunication (Re-organization) Act, 1996 ("the 1996 Act"). Per learned counsel the said statute was in fact preceded by two successive Ordinances, one promulgated in 1995 and the other in 1996, which were substantially the same in all material respects. Section 34 of the 1996 Act made provision for the incorporation of PTCL as a company registered under the Companies Ordinance, 1984. Upon its incorporation, employees of PTC including the plaintiff stood transferred to PTCL. However, the plaintiff being a T&t employee continued to be governed by the same terms and conditions as before. Thus, notwithstanding the plaintiff's journey from a government department to a company incorporated under the Companies Ordinance by way of a statutory corporation, his terms and conditions of service continued to be statutory in nature. In support of the foregoing submissions, learned counsel relied on Abdul Rahim v. Pakistan Broadcasting Corporation (1992 SCMR 1213), Pakistan Telecommunication Corporation v. Riaz Ahmed (PLD 1996 SC 222) and Divisional Engineer Phones v. Muhammad Shahid (1999 SCMR 1526). However, the greatest reliance by far was placed on the case of Masood Ahmed Bhatti and others v. Federation of Pakistan and others (2012 SCMR 152).

6. Learned counsel for the plaintiff formulated his submissions under two broad headings. Firstly, he contended that the applicable rules and regulations, being statutory in nature, had not been applied to the plaintiff, since he had been proceeded against under the 1996 Regulations, which were admittedly framed by PTCL itself for its own internal purposes and other set of employees (which did not come from T&T) were inapplicable to the plaintiff. Since the plaintiff was

governed by statutory rules, his case stood on a materially different pedestal as compared to those employees who were governed by non-statutory terms of service. Secondly, he submitted (without prejudice to the first submission) that even the 1996 Regulations had not been properly applied, and the procedure laid therein had not been followed. There were material defects in the proceedings and as a result the entire exercise stood vitiated, he emphasized.

7. As regards his main case, that the rules applicable to the plaintiff were statutory in nature, learned counsel, principally relied on the case of Masood Bhatti case *supra* and submitted that the employees of PTCL could be divided into three categories. The first comprised of those employees whose careers had originated in the T&T Department and who were posted to PTCL in the aforementioned manner. The second category comprised of those employees who had been recruited or employed by PTC and had then been transferred to PTCL. Learned counsel pressed that in Masood Bhatti case reliance was placed by PTCL on the case of Ejaz Ali Bughti v. PTCL (2011 SCMR 333) to assist this Court that the relevant and applicable rules were non-statutory, but it was expounded by the Hon'ble Supreme Court that this finding was only based on a concession, which could not be regarded as determinative of the issue. Learned counsel for the plaintiff submitted that it was clear from the principles enunciated in the Masood Bhatti (*supra*) case that *the employees who came in either of the first two categories, were governed by the statutory rules and regulations, and therefore their service matters could not be regulated by the non-statutory 1996 Regulations*. In this context, learned counsel pointed out that the 1996 Act pursuant to which

PTCL came into being did not confer any rule making powers to the latter and at the same time did not rescinded earlier rights, thus, his primary objection was that wrong provisions had been applied to the plaintiff and hence the entire exercise against him was a nullity in the eye of law. Furthermore, (and his second limb of the arguments) he stated that even if the proceedings against the plaintiff could be regarded as valid (e.g. for academic purposes), any violation of the applicable rules or regulations could be set aside by the Court and a declaration can also be made for his reinstatement as in the case of statutory rules of service, it was well established principle that a violation of same could be remedied by way of such relief. Learned counsel referred to a few cases in support of his submissions too.

8. Without prejudice to his foregoing primary submission with regard to the 1996 Regulations, learned counsel submitted that even if the 1996 Regulations were to apply, there had been material breaches thereof. He submitted that the principles of natural justice had been grossly violated in the exercises undertaken by the defendants. In this context, he submitted that the inquiry committee, whose report formed basis for the impugned action, was not constituted as per law nor was it stood as an independent body as its members were individuals who were employed on contract basis and thus, for obvious reasons, beholden to PTCL. No compelling evidence was produced against the plaintiff nor has he was given an opportunity to rebut or confront the same. Although Karachi was the place of occurrence of the alleged culpable acts or conduct, the enquiry itself was held in Islamabad and that also, over the course of only a single day only. A perusal of the report(s) produced by the

committee showed that the burden of proving innocence had been placed on the plaintiff rather than, as the law required, on PTCL to establish plaintiff's guilt. Thus, the proceedings even under the 1996 Regulations were even grossly mistaken and liable to be set aside. Learned counsel submitted that the entire exercise was mala fide in nature, and the equities lay clearly in favour of the plaintiff.

9. Conversely, Mr. Faisal Mahmood Ghani, learned counsel for the defendants contended that the requirements of law and the 1996 Regulations had been strictly adhered to. Proper show cause notice was issued, the particulars of the culpable acts/misconduct were conveyed in full and an opportunity of hearing was granted. The inquiry committee comprised of at least one person who was senior in the rank to the plaintiff concerned and other members were either senior or equal in rank. It was denied that any members of the committee were junior to the plaintiff. Since the entire case against the plaintiff was documentary in nature, no witness was required and hence none was produced. The plaintiff however, was confronted with the documents that formed the basis of the impugned action. Plaintiff was fully aware of the nature of the case against him, to which he had made detailed replies. Learned counsel pointed out that the plaintiff had not produced any witness for himself. Referring to the record, learned counsel contended that the principles of natural justice had been fully adhered to, resultantly the case against plaintiff stood established and therefore the appropriate action (i.e., termination from service) was justifiably, warranted and fully in accordance with law. Learned counsel further contended that the Court could not substitute its own judgment for that of the

appropriate tribunal or authority insofar as the merits of the case were concerned, all that it could examine was the procedural aspect, in order to satisfy itself that the requirements of law in this regard had been complied with. Since that, according to learned counsel, was the situation in the cases at hand, no interference was warranted with the decision or impugned action itself.

10. According to learned counsel, the 1996 Regulations were fully applicable on their own terms and contended that those have been properly adhered to. In this context, learned counsel submitted that in any case all that was required was a substantial compliance of the procedural requirements, which had been faithfully applied. It was also submitted that even if the plaintiff was regulated by any statutory rules or regulations those were in all material respects the same as the 1996 Regulations provided and hence the plaintiff had not been prejudiced in any manner. Learned counsel further contended that the plaintiff had in fact availed many benefits under the 1996 Regulations, such as salaries, postings, etc. and hence the plaintiff could not be allowed to approbate and reprobate.

11. Heard the arguments and considered the evidence. In my considerate view, Issues 1 to 6 are inextricably linked and largely questions of law based upon little evidence of the plaintiff and defendants, therefore, it would be advantageous to discuss those simultaneously, in one go. **Issue No.1** germane to applicability of rules for initiation of proceedings against the plaintiff who happens to be employee of defendant company under Civil Servants (Efficiency and Discipline Rules), 1973 or Telecommunication

Corporation Service Regulations, 1996. A learned Division Bench of this Court in the case of Shakeel Ahmed v. PTCL reported as 2017 PLC (C.S) Note. 76 has already dealt with this issue and in the deliberation of the said case, the dictum laid down in the case of Masood Ahmed Bhatti (2012 SCMR 152) was also taken into consideration. It would be thus advantageous to reproduce the relevant excerpt to reach to a right conclusion of the issue under discussion which is delineated hereunder:-

> "….8. But there is dispute in this Petition, as to the issue that whether the disciplinary proceedings against the Petitioner were to be held under PTCL Service Regulations, 1996 or under Government Servant (E&D) Rules, 1973. This question has been dealt with and resolved by the Apex Court in the case of Masood Ahmed Bhatti (supra), against which Civil Review Petitions Nos. 247-249/2011, have also been dismissed by the Apex Court vide unreported Judgment dated 19.02.2016, and as such it is settled issue that the Petitioner being employee of PTCL, is to be dealt under Government Servant (E&D) Rules, 1973, and the case of Masood Ahmed Bhatti (supra) has been referred to by the Apex Court in their un-reported Judgment dated 23.8.2013, in Civil Petitions Nos.717 and 718 of 2013 (The President, PTCL v. Faiz-ur-Rehman), in which the Civil Review Petitions Nos.253-254/2013, have also been dismissed by the Apex Court vide unreported Order dated 06.12.2013. **As such in view of the said announcements of the Apex Court the disciplinary proceedings against the petitioner was to be initiated and proceeded under Government Servant (E&D) Rules, 1973, and not under PTCL Service Regulations, 1996. Per learned Counsel for Respondent the provisions of said two Rules are one and the same, so no prejudice has been caused, this contention of learned Counsel has no legal force** as in view of the said pronouncements of the Apex Court in the cases of PTCL employees and reliance of learned Counsel for Respondent in support of his contention on the case of Iqbal Nasir (supra), decided on 23.12.2010, is not applicable to the case of Respondent, as when the Impugned Letter dated 22.5.2012, was passed, the case of Masood

Ahmed Bhatti (supra), decided on 07.10.2011, was in field.

9. **Since the Government of Pakistan has still got the Shares of the PTCL/Respondent No.1, and terms and conditions of the transfer employees including Petitioner, having been protected statutorily, as stated above, for which the Government Servants (Efficiency and Disciplinary) Rules, 1973, having been made applicable by the Apex Court and not the PTCL Service Rules, 1996, so the contention regarding the provisions of said two Rules being pari materia the same, would have no legal effects** particularly in view of the settle principle of Administration of Justice that thing as required to be done can be done in that very manner, otherwise the same would have no legal effect and for which reliance is placed on the case of Muhammad Anwar v. Ilyas Begum (PLD 2013 SC 255) wherein the Apex Court has held that:

> **"....It is a well-known principle of law that where the law requires an act to be done in a particular manner it has to be done in that manner alone and such dictate of law cannot be termed as a technicality."**

In the case of Muhammad Mustafa v. Azfar Ali, PLD 2014 Sindh 224 (D.B), it has been observed:

> **"..... that where things have not been done in the manner, as required by the law and procedure, the same cannot be given legal sanctity particularly when the same are resulting in penal consequences or causing rights of an individual,..."**

10. Moreover, Abdul Hakeem Ghunio, one of the delinquent official, who was removed from service after inquiry under PTCL Service Regulations, 1996, had filed Writ Petition No.3946/2012, in the Islamabad High Court, **which was allowed vide Judgment dated 13.01.2015, whereby the removal from service was set aside, on the basis that PTCL was required to adhere to the protected terms and conditions of service and the Disciplinary Proceedings under PTCL Service Regulations 1996, was without proper authority, which clearly violate the legislative intent and that the Official was re-instated.**

11. **As such in view of above, we are of the firm view that terms and conditions of service of the**

> **Petitioner have been statutorily protected, coupled with the pronouncements in the cases of Masood Ahmed Bhatti and Faiz-ur-Rehman (supra), the Respondent/PTCL was to adhere to the same, so the disciplinary proceedings were to be initiated under Government Servants (E&D) Rules, 1973, whereas the Respondent/PTCL, carried disciplinary proceedings against Petitioner under PTCL Service Regulations, 1996, which is of no legal effect** and violates the legislative intent and in such situation Petition in High Court is entertainable and relief can be granted.
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> 12. In view of the above, the impugned compulsory retirement of the Petitioner by the PTCL/ Respondent through impugned Letter dated 22.5.2012, is set aside and the Petitioner is reinstated in the service. However, the Respondents Nos.1 to 4, may conduct inquiry afresh in accordance with Government Servants (E&D) Rules, 1973, within three months. The payment of back benefits shall be subject to the final outcome of inquiry proceedings and report. This petition along with listed Application is disposed off accordingly……"
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> [Emphasis added]

12. What I perceived from the dictum laid down in the Masood Bhatti case as well as verdict of the learned Division Bench of this Court mentioned in the preceding paragraphs is that the disciplinary proceedings against the plaintiff were to be initiated and proceeded under Government Servant (E&D) Rules, 1973, and not under the PTCL Service Regulations, 1996. Furthermore, it is a well settled principle of law that where the law required an act to be done in a particular manner, it had to be done in that manner alone and such dictate of law cannot be termed as a technicality or mere formality, and where things have not been done in the manner, as required by the law and procedure, the same cannot be given legal sanctity particularly when the same are resulting in penal consequences or causing irreparable injury to an individual. **Therefore, the issue**

relating to the applicability of E&D Rules for initiation of disciplinary proceedings is answered accordingly. So far as the remaining issues are concerned, since the learned counsel for the plaintiff sought to eschew the grounds / prayer of reinstatement in service with back benefits alone and sought the Court's deliberation exclusively upon the question of damages, therefore, the issues under discussion are answered as redundant except the issue of payment of damages.

13. After having come to the conclusion that the Plaintiff's termination was illegal and unlawful, the plaintiff definitely is needed to be compensated and he is unquestionably entitled for the award of damages. Damages are always divided into two categories. First being Special damages, which are to be specifically pleaded and proved, which are what the plaintiff has claimed regarding loss of earning and out of pocket expenses and such damages are generally capable of exact calculation. Second kind of damages are general damages which in law are implied upon happening of certain event and so also in case of a favorable decision for a party. These may not be specifically pleaded and may or may not be capable of exact proof strictly. It may be observed that insofar as claim and award of general damages is concerned, though it may not have been specifically pleaded and proved, but any shortcoming or deficiency in the plaint or in the evidence will not come in the way of the Court to grant any such damages once the plaintiff is entitled for such a relief. It cannot be said that plaintiff must not have sustained injury and suffered any economic loss on account of his wrongful dismissal from the service. In the given facts, I am of the view that though the

plaintiff has not been able to prove his claim of special damages specifically, but is found to be entitled to claim damages on account of agony, physical stress, loss of reputation as well as social persecution which cannot be corrected through monetary compensation but at least he is entitled for such compensation, and it cannot be said that since this is not going to restore his position as it should have been, if he had not been dismissed, he is not entitled at all for any compensation in the form of damages. The Hon'ble Supreme Court in the case of Abdul Majeed Khan v. Tawseen Abdul Haleem and others [2012 PLC (C.S.) 574], after a detailed examination of various local and international case law, in the additional note of the then Chief Justice (Iftikhar Muhammad Chaudhry. J.), has been pleased to observe as follows:-

> "….3. At this stage, it is to be noted that there are two types of damages namely; 'special damages' and 'general damages'. The term 'general damages' refers to the special character, condition or circumstances which accrue from the immediate, direct and approximate result of the wrong complained of. Similarly, the term `special damages' is defined as the actual but not necessarily the result of injury complained of. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition. It is settled that in an action for personal injuries, the general damages are governed by the rule of thumb whereas the special damages are required to be specifically pleaded and proved. In the case of British Transport Commission v. Gourley [(1956) AC 185] it has been held that special damages have to be specially pleaded and proved. This consists of out-of pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. The general damages are those which the law implies even if not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future. The basic principle so

> far as loss of earnings and out-of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened…"

14. Similar view has been expressed in the case of Qazi Dost Muhammad v Malik Dost Muhammad (1997 CLC 546), Islamic Republic of Pakistan v. Sh. Nawab Din (2003 CLC 991), Azizullah Sheikh v. Standard Chartered Bank Ltd., (2009 SCMR 276), Mrs. Alia Tareen v. Amanullah Khan (PLD 2009 SC 99). The next question which arises is that though the plaintiff's dismissal has been held to be illegal but at the same time he wants to drop the prayer of reinstatement, then what is the quantum of damages which in the given circumstances would suffice. In this regard it may be observed that there appears to be no hard and fast rule for determination of such quantum of damages. A learned Division Bench of this Court in the case of National Bank of Pakistan v. Ghulam Muhammad Sagarwala (PLD 1988 Karachi 489) has been pleased to hold that in case of wrongful dismissal of an employee on the ground of misconduct, the measure of damages may include an amount to compensate him for the injury caused to him by attributing misconduct. A learned Single Judge of this Court in the case of Mehboob Rabbani v. Habib Bank Limited [2006 PLC (C.S.) 272] while dealing with more or less similar situation was pleased to grant damages to the tune of Rs.5.0 Million by observing the following:-

> "….Since I have held that the dismissal of the plaintiff from service was wrong, he is entitled to recover damages from the defendants. The plaintiff can claim special damages (pecuniary damages) and general damages non-pecuniary damages). However, the plaintiff has only demanded general damages (non-pecuniary

damages). In an action of personal injury the damages are always divided into two main parts, First, there is what is referred to as special damage which, has to be specially pleaded and proved. This consists of loss of earning and out of pocket expenses and is generally capable of substantially exact calculation. Secondly there is general damage which in law implies and is not specially pleaded and cannot be capable of exact proof. This includes compensation for pain and suffering. What is claimed in the present case is the general damages which cannot be specifically proved and any shortcoming in the plaint or in the evidence would not come in the way of the Court awarding damages. There is no hard and fast rule to calculate the quantum of compensation, as well as there is also no yardstick to measure the sufferings. The plaintiff has claimed damages on account of huge present and future economic loss and on account of undergoing irreversible phase of perpetual mental agony, physical stress and strain, social persecution, pangs of miseries and no likelihood of getting suitable job. The plaintiff no doubt must have sustained pecuniary loss on account of wrongful dismissal in the shape of earnings but no evidence was led in this regard. The plaint is silent in this regard. The plaintiff has also not led any evidence to prove the huge present and future economic loss. The plaintiff's dismissal from service was wrongful as the same was in violation of principles of natural justice. The plaintiff in the circumstances was entitled to damages for mental agony, physical stress and social persecution. This type of damages fell in the category of general damages for assessment of which no definite method is available. For computing/assessing damages consideration should be given to education, status in life, age and the position enjoyed during employment and his earnings while in employment of a person to whom injury has been caused. The plaintiff underwent harassment of unlawful dismissal during prime time of his life. The plaintiff was an officer of bank posted at New York and has enjoyed good reputation and social status and all of a sudden due to wrongful dismissal he lost everything. It is not believable that the wrongful dismissal has not caused any harm to plaintiff. The plaintiff is entitled to the general damages. The contention of the defendant that the dismissal was right and the plaintiff is not entitled to any damages is misconceived. Now the question is that what will be the quantum of damages for which the plaintiff is entitled under the circumstances of the case.

> There is no hard and fast rule for grant of damages and there is also no yardstick to measure the damages caused to a person and then to determine the compensation. This is the crucial point in this case. The amount though assessed must not appear to be punitive in nature or exemplary.
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> Applying the principles of the above case that compensation can be granted where a wrong has been done to a party and the damages flow from that wrong the plaintiff is entitled to a fair compensation to be assessed by the Court. The criteria is that while granting the H compensation the conscience of the Court should be satisfied that the damages awarded would if not completely, satisfactorily compensate the aggrieved party. I therefore, hold that plaintiff is entitled to the damages in the sum of Rs.50,00,000,…"

15. The Honorable Supreme Court in the case of Sufi Muhammad Ishaque v. Metropolitan Corporation Lahore (PLD 1996 SC 737) while discussing the award of compensation on account of mental torture and injuries has been pleased to hold as under:-

> "…5. Previously jurists and Judges were reluctant to grant claim for damages for mental shock and torture, but now it is well-settled that a person, who suffers mental torture and nervous shock, is entitled to recover damages. In Hinz v. Berry (1970) 2 QB 40, Lord Denning observed: "It' has been settled that damages can be given for nervous shock caused by the sight of an accident, at any rate to a close relative. Damages are, however, recoverable for nervous shock, or to-put it in medical terms, for any recognizable psychiatric illness caused by -the breach of duty by the defendant". In awarding damages for nervous shock and mental torture, or "psychiatric illness" or "Psychosomatic illness", which are the terms currently used the Court should be vigilant to see that the claim is not fanciful or remote and in fact it fairly or naturally results from the wrongful act, of the defendant. Therefore, in order to claim damages for mental or nervous shock and suffering or psychiatric illness, a party must prove wrongful act done by the defendant and that due to such act he has suffered mental shock and torture, which

> may, at times also result in physical injuries, but not in all cases.....
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> 8. 'Once it is determined that a person who suffers mental shock and injury is entitled to compensation on the principles stated above, the difficult question arises what should be the amount of damages for such loss caused by wrongful act of a party. There can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned, it depends upon the evidence produced to prove the nature, extent- and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in those circumstances it is the discretion of the Judge who may, on, facts of the case and considering how far the society would deem it to be a fair sum, determines the amount to be awarded to a person who has suffered such a damage. The conscience of the Court should be satisfied that the damages Awarded would, if not completely, satisfactorily compensate the aggrieved party…..”

16. Again in the case of Gohar Ali and another v. Hoechst Pakistan Limited [2009 PLC (C.S.) 464] while following the aforesaid case of Sufi Muhammad Ishaque (Supra) the Hon’ble Supreme Court has been pleased to observe as follows;

> “….10. Adverting to the question of compensation it may be observed that the effect of the application of the master and servant rule is that an employee of a corporation in the absence of violation of law or any statutory rule cannot press into service constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service, his remedy for wrongful dismissal is to claim damages. It was held by this Court in Sufi Muhammad Ishaque v. The Metropolitan Corporation, Lahore through Mayor PLD 1996 SC 737 that there can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned, it

> depends upon the evidence produced to prove the nature, extent and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in those circumstances it is the discretion of the Judge who may, on facts of the case and considering how far the society would deem it to be a fair sum, determines the amount to be awarded to a person who has suffered such a damage. The conscience of the Court should be satisfied that the damages awarded would, if not completely, satisfactorily compensate the aggrieved party…."

17. Above discussion and facts of the case reexamined with the applicable law and regulations leads me to the conclusion that it would be appropriate and meet the ends of justice and equity that Plaintiff be declared to be entitled for some appropriate compensation payable by the Defendant company. Accordingly, after having considered the quantum of salary which the plaintiff was earning, his future economic loss which he suffered due to his wrongful dismissal (including pension prospects, gratuity, medical and other service benefits available to such employees), I am of the view that it would be fair if plaintiff is paid an amount of Rs. 15,339,787 (rupees one crore fifty three lac thirty nine thousand seven hundred and eighty seven only) in lieu thereof as damages / compensation with simple mark-up at the rate of 10% per anum from the date of the suit till realization of the decree. The issue of damages is thus answered accordingly.

18. So far as issue No.7 is concerned, in view of rationale and discussion contained hereinabove, the plaintiff's suit is decreed in the above terms.

Karachi: JUDGE
Dated:20.07.2022

Aadil Arab

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I have heard learned counsel as above, examined the record with their assistance and considered the case-law relied upon. The first matter that requires consideration is the stated conflict between Masood Ahmed Bhatti and others v. Federation of Pakistan and others 2012 SCMR 152 and Pakistan Telecommunication Co. Ltd. v. Iqbal Nasir and others PLD 2011 SC 132, and if such conflict does exist, what ought to be the approach taken by this Court. As already noted, both decisions are by three-member Benches of the Supreme Court. The judgment in Iqbal Nasir was pronounced on 23-12-2010, while the hearing in Masood Bhatti took place on 11-8-2011, with the decision being announced on 7-10-2011. As presently relevant, the background to these decisions is a judgment of a Division Bench of this Court pronounced on 3-6-2010. The decision is reported as Nasiruddin Ghori v. Federation of Pakistan and others 2010 PLC 323. By that decision, a number of connected petitions, largely filed by employees of PTCL, were disposed off. Two questions were considered by the Division Bench (pg. 324). The first was whether PTCL was amenable to constitutional (or writ) jurisdiction under Article 199 of the Constitution. To this question an affirmative answer was given. The second question was whether the petitioners before the Court could seek redress of their grievances by way of constitutional petitions. Most of the petitioner-employees were aggrieved by the application (or non-application as the case may be) of a voluntary severance scheme that had been initiated by PTCL, although some of the petitions raised other matters in relation to service, such as grievances with regard to promotion and the non- implementation of a decision of the Services Tribunal. The Division Bench concluded (see pp.345-347 and 349) that PTCL did not have statutory rules of service and the writ
jurisdiction of the High Courts could only be invoked where there were such rules. The petitions were accordingly dismissed as not maintainable.

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11. A number of employees preferred appeals to the Supreme Court. Some of these appeals came up for hearing before the three-member Bench that gave judgment in Iqbal Nasir. It is to be noted that these appeals were taken up along with a number of other appeals, some from the Hyderabad circuit of this Court, and others from the Lahore and Peshawar High Courts. It may also be noted that in some of the eases, the High Courts had given relief to the employees and therefore, in those cases PTCL was the appellant. PTCL contended that it was not amenable to constitutional jurisdiction under Article 199. However, the Supreme Court held (at pg. 146) that it was so amenable. The matter of whether the rules of service of PTCL were statutory or not was considered at pp.146-149, and it was held that the rules were non-statutory. The appeals of the employees were accordingly dismissed. Thus, the decision of the Division Bench of this Court in Nasiruddin Ghori was upheld on both counts.

12. Several months after the decision in Iqbal Nasir, three of the appeals that had been taken by PTCL employees against the decision in Nasiruddin Ghori came up before the differently

constituted three-member Bench that gave judgment in Masood Bhatti. The only question was whether the rules of service as applicable to the employee-appellants were statutory in nature. The Supreme Court undertook a detailed survey of the relevant legislation, including the 1991 and 1996 Acts, and the position of the appellants, who had started out as employees of the T&T Department. It was concluded, by reason of the various statutory provisions as found applicable, that the rules of service carried over from the initial employment and were therefore statutory in nature. Since the merits of the case had not been considered by the High Court (by reason of its finding on maintainability), the judgment was set aside insofar as it related to the appellants and the relevant writ petitions were deemed to be pending before this Court.

13. It would therefore seem that this case raises, in an acute form, the question that does on occasion confront a High Court: what is the proper approach to take when presented with two conflicting decisions of the Supreme Court? This issue is of course not unique to Pakistan and can, and does, arise in any jurisdiction where the court of final appeal normally sits not en bane but in benches (or panels) of varying strength. Two points may be respectfully made before proceeding further. Firstly, I approach the matter entirely from the perspective of the High Court (i.e., of a court subordinate to the Supreme Court), which is bound by any decision on a question of law or enunciation of principle of law by the latter as provided by Article 189 of the Constitution. Secondly, a court of law must, in the end, decide the case before it and if that requires the court to address the question posed in this pant, then it must do so no matter how formidable and challenging this may be. With these points in mind, I now turn to the delicate, difficult and daunting task at hand.

14. Two situations can be envisaged. One is where the conflicting decisions arc by Benches of unequal strength. This is of course, not the matter at hand and in any case the law is well settled that the High Court is bound by the decision of the larger Bench. The second situation, which is the matter at hand, is where the conflicting decisions are by co-equal Benches. Here again, two situations can be envisaged. The first is
where the attention of the subsequent Bench was drawn to the decision of the earlier Bench. The rule governing, this situation was stated by a five-member Bench in Cowasjee and others v. Karachi Building Control Authority and others 1999 SCMR 2883. The Supreme Court was there called upon to resolve two conflicting three-member Bench decisions in which the earlier decision was cited before, but not considered by, the subsequent Bench. The rule was stated as follows (pg.2912):

"19. Before concluding the above judgment, we may refer to the conflict of views between the two judgments of this Court in the case of Abdul Razak v. Karachi Building Control Authority and others (PLD 1994 SC 512) (supra) and Multiline Associates v. Ardeshir Cowasjee and others (PLD 1995 SC 423) (also reported in

1995 SCMR 362) (supra) noticed in the leave granting order which is to be resolved. The former case was decided on 31-3-1994 by a Bench comprising Ajmal Mian, Sajjad Ali Shah and Saleem Akhtar, JJ. (as then they were), whereas in the latter case judgment was rendered on 22-1-1995 by a Bench comprising Sajjad Ali Shah, C.J., Mir Hazar Khan Khoso and Muhammad Munir Khan, JJ. (as then they were). It appears that while deciding the latter case notice of the above earlier judgment of Abdul Razak was not taken though, according to Mr. Naimur Rehman, the same was cited. It may be pointed out that a Bench of the same number of Judges of the same High Court, or of the Supreme Court, cannot deviate from the view of an earlier Bench as rightly has been held in the case of Multiline Associates v. Ardsher Cowasjee and others PLD 1995 SC 423 (supra) in relation to the High Court." (emphasis supplied)

After considering the conflicting views that had been taken in the two decisions, it was held as follows (pg. 2917):---

"We, therefore, hold that the judgment in the case of Multiline Associates v. Ardsher Cowasjee and others (PLD 1995 SC 423) (supra) to the extent of inconsistency to the judgment in the case of Abdul Razak v. Karachi Building Control Authority and others (PLD 1994 SC 512) (supra) does not reflect the correct legal position and, thus, the same is overruled to that extent."

Since in such a situation the subsequent Bench could not have deviated from the view taken by the earlier Bench, it necessarily follows that the High Court must regard itself as bound by the latter and not the former decision. However, two points may respectfully be made in the present context. Firstly, it may be that the subsequent decision considers and explains the earlier decision (which was not the situation in respect of the conflicting cases considered by the five-member Bench in Ardeshir Cowasjee). In such a situation, it is respectfully submitted that no question of a conflict ought to arise because the subsequent bench has authoritatively (i.e., from the respective of the subordinate courts) explicated the earlier decision. In Muhammad Shahnawaz v. Karachi Electric Supply Co. Ltd. 2011 PLC (C.S.) 1579, I had (at pg. 1586 et. seq.; paras 9-11) suggested that in such a situation the High Court would be bound by the explication of the earlier decision as given the subsequent decision. Secondly, the words used in the rule ("cannot deviate from") indicate that the conflict must be between the ratio (or any part thereof) of the earlier decision and the ratio (or any part thereof) of the subsequent decision. It is of course well-settled that a court subordinate to the Supreme Court is bound even by an obiter dictum of the latter if it comes within the scope of Article 189. However, the Supreme Court is obviously not so bound. Therefore, if the relevant (i.e. supposedly conflicting) view in the earlier decision is obiter, but in the later decision is part of its ratio, then there has been no "deviation" from the former decision by the latter and it is respectfully suggested that the High Court must consider itself bound by the subsequent decision. Likewise, where the conflicting

views are obiter in both cases, then again there has been no "deviation" within the meaning of the rule. However, in this situation the High Court would be bound by both views (though each may be obiter) and it is respectfully suggested that the matter would then have to be dealt with in terms of the approach stated in the paras infra.

15. The second situation which can involve conflicting decisions of co-equal Benches is of course the one at hand, where (it appears) the attention of the subsequent Bench was not drawn to the earlier decision. What is the proper approach for the High Court to take? One possible solution is to reason by analogy from the rule laid down in Ardeshir Cowasjee noted in the preceding para. The subsequent Bench could not have deviated from the earlier decision if its attention had been drawn to it. It would have had either to follow it or refer the matter for constitution of a larger Bench. In either case, it is the earlier decision that would have been in the field. Therefore, by analogy, it is the earlier decision that must be applied by the High Court. In my view, this approach, while attractive cannot in the end be regarded as providing an acceptable solution from the High Court's perspective. Firstly, it does not take into consideration the situation where the relevant (i.e., supposedly conflicting) view in the earlier decision is obiter, but in the later decision is part of its ratio. As respectfully suggested, in such a situation, it is the later and not the earlier decision that would have to be followed by the High Court. Secondly, this approach also does not take into consideration the possibility that had the subsequent Bench been aware of the earlier decision, it may have clarified and explained its meaning such that (from a subordinate court's perspective) it is the later decision that would be binding. Thirdly and most importantly, this approach requires the subordinate court to undertake an exercise, necessarily speculative, as to what the subsequent Bench would or would not have done had its attention been drawn to the earlier decision. In my view, it is neither desirable nor appropriate for a subordinate court to take such an approach to a Supreme Court decision. The subordinate court must apply the law as it stands, and if it finds the law as it stands to include two conflicting decisions of co-equal Benches, it must then (absent any rule having been expressly laid down by the Supreme Court itself) apply the law as best it can.

16. The problem under consideration has also arisen in the Indian jurisdiction, and it would be instructive to consider the approach taken by the Indian High Courts. The first decision to be noted in this regard is Indo Swiss Time Ltd. v. Umrao and others AIR 1981 P&H 213 (FB). Although the final outcome of the case was by majority decision, all the three Judges of the Punjab and Haryana High Court were unanimous in respect of the point under consideration. Sandhawalia, C.J. (who was in the minority insofar the final outcome was concerned) observed as follows (pp. 219-20; emphasis supplied):

"23. Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior court are of co-equal benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant then both of them cannot be binding on the courts below. Inevitably a choice though a difficult one has to be made in such a situation. On principles of it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co-equal Benches of the Superior Court are earlier or later is a consideration which appears to me as hardly relevant."

The learned Chief Justice took notice of a Full Bench decision of the Karnataka High Court in Govindanaik G. Kalaghatigi v. West Patent Press Co. Ltd. AIR 1980 Kant 92 where it appeared that that High Court had, by majority, held that it was the later decision that would prevail. However, he explained that in fact, two questions had been before that court and only one had been addressed by the majority, namely as to how a conflict between decisions of Benches of unequal strength was to be resolved, and its decision was in this context. He noted that on the question of co-equal Benches (not considered by the majority), the minority view was: "It seems to us the High Court would be well advised to consider which of two conflicting decisions it will follow in the interest of the administration of justice and it ought to follow that which is better in point of law than in point of time".

17. Jain, J., who wrote for the majority in Indo Swiss, observed as follows on the question of conflicting decisions (pg. 223):

"39. On this question, my Lord the Chief Justice in his elaborate judgment has held that the Courts may follow the judgment which appears to them to state the law accurately and that mere incidence of time whether the judgment of the co-equal Benches of the superior Court are earlier or later is a consideration which appears to be hardly relevant. I have also given my thoughtful consideration to the entire matter and find myself in respectful agreement with the aforesaid observation of my Lord the Chief Justice."

18. In Amar Singh Yadav v. Shanti Devi and others AIR 1987 Patna 191, a Full Bench of the Patna High Court took the same view. It was observed as follows (pp. 197-8):

"16. Now the contention strongly urged on behalf of the respondents that the earlier judgment of a co-ordinate Bench is to be mechanically followed and must have preeminence, irrespective of any other consideration, because the later one has

missed notice thereof, does not commend itself to me. When judgments of the superior Courts are of co-equal Benches, and, therefore, a matching authority, then their weight inevitably must be considered by the rational and the logic thereof and not by the mere fortuitous circumstance of the time and date on which they were rendered. Equally, the fact that the subsequent judgment failed to take notice of the earlier one or any presumption that a deviation therefrom could not be intended, cannot possibly be conclusive. Vital issues, pertaining to the vital questions of the certainty and uniformity of the law, cannot be scuttled by such legal sophistry. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority exist, then both of them cannot be binding on the Courts below. A choice, however difficult it may be, has to be made in such a situation and the date cannot be the guide. However, on principle, it appears to me, that the High Court must in this context follow the judgment, which would appear to lay down the law more elaborately and accurately. The mere incidence of time, whether the judgments of co-equal Benches of the superior Court are earlier or later, and whether the later one missed consideration of the earlier, are matters which appear to me as hardly relevant, and, in any case, not conclusive."

19. In Ganga Saran v. Civil Judge AIR 1991 All. 114, a Full Bench of the Allahabad High Court took note of the judgment in Indo Swiss (paras 15-16 above) and agreed with the observations made therein.

20. A Full Bench of the Bombay High Court was confronted with the issue of conflicting decisions in Kamieshkumar Ishwardas Patel v. Union of India and others 1995(2) BomCR 640; 1994 Cri.LJ 3105 (available at: http//www.indiankanoon.org). The High Court cited with approval the decision of the Allahabad High Court in Ganga Saran (para 18 above). It also quoted at length from a decision of a special (full) Bench of the Calcutta High Court reported as Bholanath Karmakar and others v. Madanmohan Karmakar and others AIR 1988 Cal. 1. Although the Calcutta High Court itself refused (at pg. 7, para 19) to give a conclusive answer to the question of what a High Court should do when asked to consider and apply conflicting decisions of co-equal Benches, it made a number of observations to which the Bombay High Court gave its "unqualified concurrence". These observations, quoted at length by the Bombay High Court, were essentially along the lines adopted by the Punjab and Haryana, Patna and Allahabad High Courts.

21. A Division Bench of the Delhi High Court, in Gopa Manish Vora v. Union of India (UOI) and another, decided on 10-2-2009 (available at the website of the High Court: http://delhihighcourt.nic.in), agreed with the views of the Allahabad and the Punjab and Haryana High Courts (in the cases cited supra) and held that of the conflicting decisions, the High Court should adopt and apply that in which the law appears to have been stated "accurately and elaborately". Similarly, single

Benches of the Madras, Kerala and Andhra Pradesh High Courts have taken the same views. Reference may be made to the decisions of these High Courts reported as Subramaniam v. Gunasundari (2007) 2 MLJ 241, Jossy Kondody v. Chacko Thomas 1999 Cri.LJ 4707 and Panduranga Traders and others v. State Bank of India 2000 (3) ALD 134; 2000 (2) ALT 511 respectively. (These three decisions also are available at: http://www.indiankanoon.org.)

22. From the foregoing review of Indian decisions, it is clear that the prevalent and dominant view among the High Courts is that in the case of conflicting decisions of co-equal Benches of the Supreme Court, the High Court is not bound to follow either the earlier or the later decision, but should follow and apply that decision which appears to "lay down the law more elaborately and accurately". I will have something to say about the test formulated and applied by the Indian High Courts in a moment. First however, for purposes of completeness, the decisions of two High Courts that have taken a contrary view need to be noted. In Gujarat Housing Board v. Nagajibhai Laxmanbhai and others AIR 1988 Gujarat 81, a Full Bench of the Gujarat High Court disagreed with the view of the Punjab and Haryana High Court in Indo Swiss and the line of
decisions that followed it. Instead, the Full Bench held (at pg. 88, para 12) that in case of conflicting decisions, the High Court should follow the one later in time. The position in the Madhya Pradesh High Court is rather interesting. In State of Madhya Pradesh v. Balveer Singh AIR 2001 MP 268, a (three-member) Full Bench cited with approval the decision of the Patna High Court in Amar Singh Yadav (para 17 above) and held (at pg. 283) that the High Court should follow that decision which states the law "more elaborately and more accurately and in
conformity with the scheme of the Act" under consideration. However, a few years later, in Jabalpur Bus Operators Association and others v. State of M.P. and another AIR 2003 MP 81 the matter was revisited by a five-member Bench of the High Court. It was held as follows (pg. 114):

"In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the later Bench of equal strength, in which case the later decision is binding. Decision of a larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench, unless distinguished by later Division Bench, is binding on the High Courts and the Subordinate Courts.... No decision of Apex Court has been brought to our notice which holds that in case of conflict between the two decisions by equal number of Judges, the later decision in binding in all circumstances, or the High Courts and Subordinate Courts can follow any decision which is found correct and accurate to the case under consideration."

The earlier Full Bench decision in Balveer Singh was overruled.

23. In my respectful view, unless the Supreme Court expressly lays down a rule in this regard, in a situation where there are conflicting decisions of co-equal Benches, and the earlier decision was not brought to the attention of the subsequent Bench, the incidence of time (either way) ought not to be regarded as decisive. However, with respect, I cannot accept the test formulated and adopted by the majority of the Indian High Courts, namely that it is that decision which should be applied and followed which appears to "lay down the law more elaborately and accurately". This is so for two reasons. Firstly, it requires a High Court to carry out a comparative exercise that will almost inevitably be rather subjective in nature and it would be inappropriate for a subordinate court to subject Supreme Court decisions to such scrutiny. Furthermore, the High Courts may differ in their conclusions as to which decision is more "elaborate" and/or "accurate", with the result that there could be a veritable judicial cacophony, which would be most unseemly. Secondly, the choice made by a High Court on such a basis would appear to be a determination of law and hence may well be binding according to established rules of precedents. For example, if a Full Bench of a High Court makes such a determination, it would be binding on all (smaller) Benches of the court as well as of course on subordinate courts. Similarly, such a determination made by a Division Bench would be binding on other such Benches and so on. The effect therefore of applying the test formulated by the Indian High Courts could well be to disapply one of the two conflicting decisions of the Supreme Court insofar as that High Court and its subordinate courts are concerned. In my view, it is hardly possible for a High Court to in effect decide whether a Supreme Court decision is to apply within its jurisdiction.

24. In my respectful view, the High Court should apply that decision from the two conflicting decisions that is most relevant for or applicable to the facts and circumstances of the case before it. This approach has the advantage of focusing the High Court's attention on the factual aspect of the case actually before it (rather than on determining which of the two decisions is more "elaborate" and/or "accurate"). Furthermore, precisely because it focuses on the factual aspect, a choice made in such circumstances will not have the effect of precluding the other decision
from being applied in a later case where such application may be more appropriate. Thus, even if a Full Bench of the High Court applies one of the Supreme Court decisions on such a basis that will not prevent (e.g.) a single Bench from subsequently applying the other decision should the facts and circumstances before it make such a choice more appropriate. In other words, both Supreme Court decisions would remain valid and applicable without the High Court having by its own choice effectively disapplied a decision of the Supreme Court within its jurisdiction.

25. In light of the foregoing discussion, I would respectfully suggest that the approach of the High Court when confronted by co-equal decisions of the Supreme Court said to be in conflict,

with the subsequent decision having been made by a Bench whose attention was not drawn to the earlier decision, should be as follows. (a) The High Court must carefully consider both decisions in order to fully satisfy itself that in fact there is a conflict between them. The importance of this exercise cannot be emphasized enough. It may well be that an apparent conflict, as sought to be made out by learned counsel in the rush and heat of oral argument, disappears altogether when the matter is subsequently considered in the relative serenity of the chamber. (b) If however, it does appear that there is a conflict, then the High Court should carefully establish the point (or points) on which there are conflicting views and the context in which such views were expressed. It may be that on such consideration, the High Court is able to conclude that the case actually before it can be determined without involving, and therefore requiring it to resolve, any of the point(s) on which there is a conflict. (c) If the High Court concludes that the point(s) on which there is a conflict are also those which it does need to address in the case before it, then it must consider whether the supposedly conflicting views for m part of the ratios of the respective decisions or are in the nature of obiter dicta. If in one of the decisions, the relevant view is part of the ratio while in the other it is obiter, then it is respectfully suggested that the High Court must regard itself as bound by that decision in which the view is part of the ratio. (d) If however, in both decisions the relevant (i.e., supposedly conflicting) views are part of the respective ratios or both are obiter, then (but only then) the High Court needs to undertake the exercise noted in the last preceding para. (This is so because from a subordinate court's perspective, a principle of law enunciated by the Supreme Court is binding whether it is part of the ratio of its decision or is only an obiter dictum. Hence it is not relevant whether the conflicting views in the decisions are both part of the ratio, or both are obiter.)

26. Applying the foregoing principles and approach to the case at hand, it appears to me that the crucial point to note is that in both Iqbal Nasir and Masood Bhatti, the question being considered by the Supreme Court was whether the writ petitions were maintainable or not. It was only in this context that the question whether the appellant-employees were governed by statutory rules or not came to be considered. Obviously, this is not the context before me since I am dealing with applications for interim relief in suits filed on the original side of this Court. Now, in the present case although it has been contended that the plaintiffs are governed by statutory rules, the relevant rules or regulations (i.e., in respect of disciplinary proceedings) have not been identified or particularized. To the extent reference was at all made to statutory rules, learned counsel for the plaintiffs referred to Rule 6 of the Civil Servants (Efficiency and Discipline) Rule, 1973. However, it was accepted that the relevant provisions of the 1996 Regulations were identical to the aforesaid rule. It has therefore not been shown how (if at all) the 1996 Regulations are more onerous or stringent than the rules (whatever they may be) that are said to apply. If anything, the contrary has been accepted. In

other words, the plaintiffs have failed to show that the impugned action was taken on a basis that was disadvantageous to them as compared with that which ought to have been applied. Since nothing to the contrary has been placed on the record, I must therefore proceed on the basis that the impugned action is to be tested on the anvil of the 1996 Regulations. Thus, the issue raised before me is rather different from the context in which the Supreme Court expressed views in Iqbal Nasir and Masood Bhatti respectively.

27. It is however submitted that the question of whether the plaintiffs are governed by statutory rules is relevant since it is only in such a situation that there is a possibility of reinstatement. If the rules and regulations as applicable are non-statutory (i.e., contractual in nature) then reinstatement, and hence interim relief, is not possible. In the applications before me, the interim relief that is sought is suspension of the orders of termination, and that is the only point with which I am concerned. I am not, as such, at this stage and in this decision, concerned with the question of reinstatement. Now, if the governing rules were statutory, then if a proper case is made out, interim relief could be granted. But in my view, the same position obtains if the governing rules were only contractual. In Muhammad Shahnawaz (see para 14 above), I observed as follows (pp. 1603-4):

"As noted above, contracts of employment are generally regarded as falling within the class of contracts specified in section 21(b) of the Specific Relief Act, in respect of which specific performance will not be granted. This section is then read with section 56(f) to preclude any injunctive relief. However, in my view, that does not end the matter. Reference must also be made to section 57 of the Specific Relief Act, which provides as follows:---

`Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.' [illustrations omitted]"

I then referred to Nooruddin Hussain and another v. Diamond Vacuum Bottle Manufacturing Co. Ltd. and another PLD 1981 Kar. 720 (SB). It appears to me that in view of the detailed and elaborate provisions contained in Chapter 7 of the 1996 Regulations, it is at least an implied term that PTCL shall not take any action against an employee save and except as permitted under the said Chapter and in the manner as therein provided. In other words, even if the plaintiffs are governed by non-statutory (i.e., contractual) rules and may not therefore be entitled to a mandatory injunction, they may yet be entitled to a prohibitory injunction if a case can properly be made out that there has been a violation of the 1996 Regulations. This is so because there would

be an implied term in the contract of employment that PTCL would not take any disciplinary action except in terms as stated in Chapter 7. A breach of such a term would fall within the scope of section 57 of the Specific Relief Act and if a proper case is made out, the employee would be entitled to interim injunctive relief. (This was, in fact, one of the bases on which I decided Muhammad Shahnawaz.) Thus, regardless of whether the governing rules applicable to the plaintiffs are statutory (as contended by learned counsel appearing for them) or only contractual (as contended by learned counsel for PTCL), if a proper case is made out the plaintiffs may be entitled to interim injunctive relief by way of suspension of the orders of termination of service.

28. It therefore appears to me that for the reasons stated in the last two preceding paras, it is not necessary for me to consider the conflict between the two Supreme Court decisions noted above and/or to attempt to resolve it. In my view, the facts and circumstances of the present case prima facie appear to engage and require application of the second of the principles identified by me in para 25 above. For purposes of determining the present applications, it is not necessary for me to consider whether, and if so the extent to which, the two decisions of the Supreme Court in Iqbal Nasir and Masood Bhatti are in conflict or, in other words, to proceed with the exercise in terms of the third and/or fourth principles noted in para 25 above.

29. 1 turn therefore to consider whether the 1996 Regulations have been properly applied or not. I have carefully considered the rival submissions made in this regard. Since the cases are the same in all material respects, I take up the record of Suit 1029 of 2010. It appears that a detailed charge sheet was issued to the plaintiff in which the allegations against him were particularized in great detail. He was asked to appear before the inquiry committee. The plaintiff filed a detailed written reply. He was given an opportunity of hearing at which he placed reliance on his written reply. Thereafter, the Inquiry Committee submitted its report, giving careful consideration to the allegations, the relevant record and the plaintiff's reply. It is pertinent to note that the inquiry committee in fact concluded that one of the allegations was not established. Thereafter, the plaintiff was issued with a show cause notice. He gave a reply thereto, and was given an opportunity of hearing. Thereafter on consideration of the relevant facts, he was removed from service. It appears to me that there has been proper (or at the very least substantial) compliance with the provisions of Chapter 7 of the 1996 Regulations. In my view, none of the objections that have been taken by learned counsel for the plaintiffs to the procedure or the composition of the inquiry committee or the manner in which the proceedings were conducted appear to have merit even on a tentative or prima facie basis. I am fully satisfied that all the procedural requirements, both as stated in Chapter 7 or as imposed as a matter of law as part of the principles of natural justice, have been complied with and adhered to. Learned counsel for the plaintiffs referred to various decisions, including Samiuddin Qureshi v. Collector of

Customs PLD 1989 SC 335, National Book Foundation v. Muhammad Arif Raja PLD 2006 SC 175, Basharat Ali v. Director Excise and Taxation 1997 SCMR 1543, Jan Muhammad v. General Manager, Karachi Telecommunication Region 1993 SCMR 1440, I.-G. Police HQ Karachi v. Shafqat Mahmood 1993 SCMR 207 and PIA v. Shaista Naheed 2004 PLC (C.S.) 344 (SC) to show the relevant principles in terms of which inquiries are to be conducted. Obviously, there can be no cavil with the propositions laid down by the Supreme Court, which I have carefully considered with reference to the present cases. However, the issue is always with regard to the application of legal principles, and this must in the end depend on the facts and circumstances of each case. After having perused the record of the present case, I am not at all satisfied that there has been any breach of these principles by PTCL in the conduct of the inquiries and disciplinary proceedings against the plaintiffs. It appears to me, with respect, that on the merits, the plaintiffs' cases are long on rhetoric but rather short on specifics. In view of this conclusion, it is not necessary for me to refer specifically to the other decisions relied upon by learned counsel. Furthermore, in these circumstances it is also not necessary for me to consider in any detail the case-law relied upon by learned counsel for PTCL.

30. In view of the foregoing, I must conclude that the plaintiffs have failed to make out a case for the grant of interim relief. Accordingly, the applications under consideration fail and are hereby dismissed. Any interim orders made earlier stand recalled and vacated.

MH/A-54/K Application dismissed.