

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

**CPNo.D-6291 of 2021**

Capt. Muhammad Ali Khan

Petitioner: Through Mr. Faizan Hussain Memon, advocate

Respondent No.1&2: Through Mr. Khalid Mahmood Siddiqui, advocate

Qazi Ayazuddin Qureshi, Assistant Attorney General

Date of hearing

& Decision: 16.01.2023.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.** – Through the captioned petition, the petitioner has assailed the vires of Warning Letter dated 07.10.2021, issued by the Director (HRM), Port Qasim Authority, whereby the petitioner has been warned to be careful in future and refrained from such unfair attitude, failing which strict disciplinary action would be initiated against him under the Civil Servant (Efficiency and Discipline) Rules, 2020, which is extracted hereunder.

“As a result of fact-finding inquiry regarding your unprofessional and threatening behavior with the senior officer, while on board MV RDO fortune and Pilot Boat Seaman Pride, the committee after considering facts of the case recommended that you are found guilty in misbehaving, showing disrespect and not accepted instructions of your senior Pilot in presence of Captain and crew of the foreign flag ship, which gave bad impression of the Port, as well as prestige of the country.

2. You are hereby warned to be careful in future and refrain from such unfair attitude and misbehavior, failing which strict disciplinary action will be taken against you under the Civil Servant (Efficiency and Discipline) Rules, 2020.

This issues with the approval of the Chairman on the recommendations of Fact Finding Inquiry Committee.”

2. We asked the learned counsel for the petitioner as to how this petition is maintainable against the Warning letter, which is not punishment under Service Jurisprudence, he replied to the query and submitted that the impugned warning

letter has been issued in violation of law and against principle of natural justice, and there is no adequate remedy available against impugned warning.

3. On merits, learned Counsel for the petitioner submitted that based on the complaint by one Capt. Sheikh Naeemuddin, alleging that the petitioner had misbehaved with the complainant and used abusive language on 02.05.2021 at around 1150 hours, and an Explanation Letter dated 03.05.2021 was issued to the petitioner, which was duly responded to on the same date by the petitioner in writing, whereas, such allegations were vehemently denied and the request was made that the facts may be ascertained by calling witnesses if any and through the record of CCTV Cameras. According to learned Counsel, the respondents constituted a fact-finding committee, however, such committee never provided a personal hearing or an opportunity of being heard to the petitioner, nor witnesses were called, therefore, the petitioner was constrained to file a written statement dated 04.07.2021 to explain his position. Learned Counsel for the petitioner further submitted that the fact-finding committee, without confronting the petitioner or calling the witnesses, referred the matter to the Director (HRM), Port Qasim Authority, who had issued the impugned Warning Letter, which was/is penal in nature, and would not only adversely affect the eligibility of the petitioner at the time of his promotion, but, there is the likelihood that respondents will use this warning letter as an excuse for taking disciplinary action against the petitioner under the Civil Servant (Efficiency and Discipline) Rules, 2020. Learned Counsel for the petitioner further submits that malafide on the part of the respondents is manifest from their conduct and arbitrary proceedings against the petitioner, who is being penalized for having filed objections on the seniority list issued by the respondents while ignoring the petitioner.

4. Mr. Khalid Mahmood Siddiqui, learned counsel for respondent Port Qasim Authority, referred to para-wise comments filed by respondents and submitted that a serious incident had been reported, PQA Management taking a lenient view, did not initiate Disciplinary Proceedings against the Petitioner and simply served him a "Warning" to be careful in future, as it was only a "Fact Finding Inquiry", such "Warning" is non-recordable and will not affect the Petitioner's career in any manner. It is submitted that since the petitioner has remained involved in various unprofessional conduct and at multiple times

has been served with Show Cause Notice and Explanations, from time to time. Learned counsel for PQA alleged that Petitioner has himself admitted that another Pilot who is Senior to him, had submitted a written complaint on 02.05.2021; that the Petitioner was given full chance to defend himself and clarify his position through due process, in the Fact-Finding Inquiry; that the Petitioner's allegations that the impugned letter has been issued in retaliation to his representation, clearly false and fraudulent as the complainant is a Pilot and the person who has issued the Warning is the Director of PQA; that the Petitioner's allegations against the entire Authority and the Director HRM, are in bad taste and reflect upon his resolve not to follow the norms of good conduct; that the Petitioner has admitted that a Fact Finding Inquiry could not be made basis to impose any penalty. Warning not being a penalty, no prejudice has been caused to the Petitioner. Learned counsel added that keeping in view the disorderly behavior of the petitioner, the petition does not possess the sufficient force to be allowed and the same is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

6. The petitioner challenges the Warning letter, in the circumstances narrated above because there was no proper departmental inquiry in this case, and the petitioner was not allowed to cross-examine witnesses and to give evidence in rebuttal.

7. The main points emerge for consideration based on these respective contentions of the parties in this case. Whether the Officer had jurisdiction to pass the order of issuing a Warning letter dated 07.10.2021? Whether there was a proper departmental inquiry in which the petitioner was allowed to meet the charges against him?

8. Primarily, a warning is not a punishment under the Classification, and it is difficult to see a warning is a punishment besides the same is not given in Service Rules as one of the punishments that could be imposed under the Rules is the withholding of promotion. Counsel for the petitioner contends that the warning could be used as a ground for non-consideration of the promotion of the petitioner in the future.

9. To see whether a Warning is a punishment under Rule 4 of the Civil Servant (Efficiency and Discipline) Rules, 2020, which is extracted as under:

4. Penalties.—(1) The authority may, by an order, in writing showing reasons, impose one or more of the penalties, in accordance with these rules.

(2) The following shall be various minor penalties, namely:—

a) censure;

b) withholding of increment or increments for a specific period, subject to a maximum of three years without cumulative effect:

Provided that the penalty of withholding of increment shall not be imposed upon a civil servant who has reached the maximum of his pay scale or will superannuate within the period of penalty;

c) reduction to a lower stage or stages, in pay scale, for a specific period, subject to a maximum of three stages without cumulative effect; and

d) withholding of promotion for a specific period, subject to a maximum of three years, otherwise than for unfitness for promotion in accordance with the rules or orders pertaining to the service or post:

Provided that this period shall be counted from the date when a person junior to the accused is considered for promotion on regular basis for the first time:

Provided further that penalty under this clause shall not be imposed upon a civil servant who has no further prospects of promotion or will superannuate during the period of the said penalty.

10. From the above excerpt, it is noted that in the case of consideration for promotion by the promotion committee, it needs after the conclusion of the departmental proceedings. In the case of an employee, who has been awarded the minor penalty of withholding of increment or withholding of promotion, primarily, promotion can be made only after the expiry of the penalty as discussed supra. The above passage makes it clear that censure is inflicted as a regular penalty in proceeding taken under the law; and it is difficult to see how a warning which is not even punishment in the aforesaid rules and which is not given under the principles of natural justice, can stand on a better or stronger footing in the manner are preventing an employee's promotion for the simple reason that warning has not been described as punishment under the Civil Servant (Efficiency and Discipline) Rules, 2020.

11. The counsel for the parties have tried to address the details of charges and the fact findings thereon, but we have refrained from referring to the same as that would not be within the scope of jurisdiction exercisable by this Court

under Article 199 of the Constitution. However, we have further noticed that the inquiry proceedings, which were conducted by way of fact-finding were without recording the evidence of the parties on oath and the opportunity of cross-examination of the witnesses to the Petitioner. Hence, in our view, the action suggested by the inquiry committee is violative of the principles of natural justice, was not sustainable under the law. On the aforesaid proposition, our view is supported by the decision rendered by the Honorable Supreme Court in the case of Jan Muhammad Vs. General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440) and Auditor General of Pakistan & others vs. Muhammad Ali & others (2006 SCMR 60).

12. The Warning letter dated 07.10.2021 issued to the petitioner is based on the allegations leveled by the complainant Shaikh Naeemuddin is to be looked into by the competent authority as they are at loggerhead on the issue of seniority, besides there was no proper departmental inquiry on the allegations in compliance with aforesaid Rules. A warning letter ought to be ignored by the respondents in terms of the statement of Chairman PQA recorded by this Court vide order dated 24.02.2022. However, the respondents are at liberty to take action against the petitioner, if he commits misconduct in terms of Rules, 2020, however, that is subject to holding a regular inquiry after providing the opportunity of hearing to him.

13. Petition stands disposed of in the above terms, with no order as to costs.

**JUDGE**

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