

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-137 of 2018

Khalid Mehmood

Petitioner:

Through Mr. Abdul Latif Chandio, advocate

Respondent No.1 :

Through Mr. Yasir Ahmed Shah, AAG

Respondents No.2&3 :

Through Dr. Shahnawaz, advocate assisted by Ms.
Fozia Muhammad Murad, advocate
Mr. Zahoor Muhammad, Law Officer, CAA

Date of hearing

& Decision:

21.02.2023.

ORDER

The petitioner has assailed the legality of the disciplinary proceedings initiated against him by the Civil Aviation Authority (`CAA`), which culminated in his removal from service under Regulation No.7 (b) (1) (C) of Civil Aviation Authority (Efficiency and Discipline) Regulations, 2014, vide office order dated 30.01.2015.

2. Facts, in nutshell, are that initially, the petitioner joined CAA as Tele-Printer Operator on 15.04.1979, then as Radio Technician (Grade-9) on 21.09.1980 and finally he was promoted to the post of Assistant Director (EG-2). During his tenure of service, the petitioner was served with show cause notice dated 07.05.2017 on the charges of misconduct i.e. tempering his F.Sc Mark Sheet/ Certificate to obtain his service and/or to procure a higher grade. Petitioner denied the allegations; however, respondent CAA did not consider his defense as gospel truth and directed to hold the regular inquiry, wherein he was found guilty of the charges discussed supra, and the competent authority directed his removal from service in 2015. According to the petitioner, he approached learned NIRC in Case No.48 (153)/2015-K and succeeded in obtaining favorable order dated 28.04.2016 against which respondent-CAA filed the appeal before Full Bench of NIRC which was accepted vide order dated 10.03.2017, thereafter he filed Writ Petition No.1346/2017 before learned Islamabad High Court, which was dismissed vide judgment dated 16.10.2017. The petitioner being aggrieved by and dissatisfied with the aforesaid decisions has filed the captioned petition.

3. We asked the petitioner how this petition is maintainable under Article 199 of the Constitution when his actual grievance has already been heard and decided by the competent courts of law and on a similar cause of action, no second *lis* lies in terms of section 11 of CPC.

4. Mr. Abdul Latif Chandio, learned counsel for the petitioner, replied and contended that the major penalty of removal from service has been imposed on the petitioner without the opportunity to demonstrate that the petitioner did not submit any such false/fake degree/mark sheet /certificate of his educational qualification. The learned counsel averred that the colorable exercise of the dispensation of regular inquiry could not be bestowed upon the respondent-CAA. The learned counsel further argued that the respondents neither asked for submission of the original F. Sc. certificate/mark sheet nor any copy produced by the petitioner and acknowledged by the respondents. As such in the absence of verification of the original F.Sc. certificate/mark sheet, the respondents with a predetermined mind sent a photocopy of the F.Sc. certificate/mark sheet to the Board of Intermediate Education, Karachi (BIE) for verification. The learned counsel next argued that the basic charge leveled against the petitioner has not been inquired under law. The learned counsel submitted that the acts and actions taken and omissions committed by the respondents are illegal, arbitrary, malafide under the colorable exercise of power and in violation of Articles 2-A, 4, 9, 10-A & 25 of the Constitution. The learned counsel submitted that the petitioner has a long service record with the respondent CAA and the punishment awarded to him was disproportionate to the gravity of the alleged offense.

5. At this stage, we confronted him with the fact that the petitioner had been found guilty of tampering with the F.Sc. certificate/mark sheet, however, he has not been able to offer any cogent or reasonable defense as to how his F.Sc. certificate/mark sheet came into the hands of respondent-CAA and upon its verification, it was found bogus. Petitioner only submitted that the allegations need to be inquired through regular inquiry proceedings. He, alternatively submitted that the competent authority of CAA may be directed to reconsider his case for the major penalty of compulsory retirement from service rather than removal from service as his colleagues have been awarded the similar treatment. In support of his contentions, he relied upon the cases of Muhammad Nazir v. Director of Schools Education, Hyderabad, and another, 1976 PLC (CS) 118, Yousaf Ali v. Muhammad Aslam PLD SC 104, Ghulam Fareed v. Divisional Canal Officer, Western Bar canal Division, Thingi District Vehari and another, 2007 YLR 2179, Syed Abid Hussain v. Government of Islamic

Republic of Pakistan through Secretary Establishment Division, 1987 PLC 266, Muhammad Mustafa v. Azfar Ali, PLD 2014 Sindh 224, 2001 SCMR 838, 1995 SCMR 650, 2005 SCMR 25, 2001 SCMR 256, 2009 PLC (CS) 523 SC, 2009 SCMR 187 and 2005 SCMR 100. He lastly prayed for allowing the instant petition.

6. Dr. Shahnawaz, learned counsel for the respondents submitted that this petition is not maintainable due to the non-backing of statutory rules of CAA and the relationship between employer and employee is of that master and servant. It is contended by the learned counsel that the offer letter issued in his favor required the petitioner to submit both original matriculation and Intermediate (Pre-Engineering) Science Certificates; that throughout the process of promotions, the petitioner posed himself to be the holder of the F.Sc. degree and accordingly he got the advantage of his false/tempered document; that even though the petitioner has denied the allegation of the fake certificate, however, when he was confronted with his application dated 27.7.1980, he admitted his guilt and he was considered to be F.Sc. in all process of promotion. The learned counsel submitted that no appointment can be obtained based on fake documents. The learned counsel further submitted that the Petitioner produced a fake F.Sc. certificate/mark sheet, which was referred to the Board of Intermediate Education, Karachi vide CAA letter dated 13.03.2014 for its verification and the BIE Karachi vide its letter dated 28.04.2014 informed the CAA that the particulars were checked with the relevant record but, they found the F.Sc. certificate/mark-sheet as a fake document. The learned counsel next contended that the opportunity for a personal hearing was provided to the petitioner and the Competent Authority of CAA after fulfilling the codel formalities, awarded the major penalty of his dismissal from the service vide order dated 30.01.2015. In support of his contentions, he relied upon the cases of Deputy District Officer (Revenue) Kasur and another v. Muhammad Munir Sajid, 2013 SCMR 279, Province of Punjab through Special Secretary, Special Healthcare and Medical Education Department, Lahore and others v. Khadim Hussain Abbasi, 2021 SCMR 1419, Director General Federal Directorate and another v. Tanveer Muhammad and another, 2021 SCMR 345, Commissioner Faisalabad Division, Faisalabad and another v. Allah Bakhsh, 2020 SCMR 1418, Deputy Postmaster General, Central Punjab, Lahore and another v. Habib Ahmed, 2021 SCMR 584, unreported order dated 04.06.2021 passed by Divisional Bench of this Court in CP No.3553 of 2021, and Muhammad Mateen Khan v. Federation of Pakistan through Secretary, Ministry of Interior

Islamabad and 3 others, 2020 PLC (CS) 1. Lastly, learned counsel sought for dismissal of this petition.

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

8. At the outset, it may be made clear that even in a departmental inquiry on the charge of securing appointment on the strength of a forged or fabricated document such as a degree or certificate of eligibility qualification, the burden of proof would always be on the person who has secured the appointment on the strength of such document, therefore, the assertion that it was incumbent upon the respondents to prove the allegations is of no consequence in presence of the verification letter submitted by BIE Karachi.

9. The core of the controversy was/is securing the appointment based on forged and fabricated documents is indeed a serious matter. It is trite law that the charges in the departmental proceedings are required to be proved by a preponderance of the evidence. Prima facie, the respondents have no malafide intention to send the mark sheet/certificate of the petitioner to BIE for verification; as such the non-availability of evidence as portrayed by the petitioner is of an afterthought, for the reason that the respondent-CAA succeeded to prove that the offense of tempering the Mark sheet was committed by the petitioner and therefore he was given the punishment based on evidence adduced before it by the BISE Karachi with a categorical finding that the FSC Mark sheet was tempered one. Whether or not the petitioner himself forged the FSC Mark sheet, the fact remains that he was the beneficiary of that tempered documents and had been allowed to join and work on the strength of that documents for a considerable time with the management of respondents.

10. Progressing further on the subject, the entire claim of the petitioner is that he joined CAA as Tele-Printer Operator in 1979 and thereafter served in the CAA for about 36 years and in the year 2014, he was served with a show cause notice with the allegations of submitting false/fake degree/mark sheet/certificate of his educational qualification. Petitioner replied to the show cause notice dated 05.6.2014 on the premise that he never submitted any other fake/bogus or genuine F.SC mark sheet/certificate during his employment in CAA since July 1979, however, his assertion was belied by the respondent CAA while holding a departmental inquiry against him and finally imposed the major penalty of removal from service vide impugned letter dated 30.01.2015, and as per petitioner appeal preferred thereon has not yet been entertained the respondent

CAA. Petitioner failed to obtain favorable order from the Full Bench of NIRC vide order dated 10.03.2017 wherein respondent CAA succeeded in setting aside the order dated 28.04.2016 passed by the learned Single Bench of NIRC. Petitioner's Writ Petition No.1346/2017 before the learned Islamabad High Court, Islamabad was also dismissed vide judgment dated 16.10.2017. However, the story did not end there petitioner again filed this petition before this court on 30.12.2017 on the same grounds already agitated by him before the aforesaid competent forums.

11. Since the petitioner's Writ Petition No.1346/2017 before the learned Islamabad High Court Islamabad has already been heard and decided vide judgment dated 16.10.2017 and this petition could not be treated as an appeal against the decision of the learned Islamabad High Court Islamabad. It is well-settled law that once the final adjudication of the matter has been made by the competent court of law and on a similar cause of action, no second *lis* lies in terms of section 11 of CPC for the reason that Res judicata debars a court from exercising its jurisdiction to determine the *lis* if it has attained finality.

12. The next point as agitated by the petitioner that respondent CAA has reinstated in service his colleagues on identical charges after the award of punishment. We asked the learned counsel for the petitioner as to how he pleads discrimination in this matter on the aforesaid plea. Prima-facie if his colleagues have been reinstated in service who were terminated on similar charges, this could best be a blunder on the part of the CAA if it is true, however, we cannot endorse this stance under Article 199 of the Constitution. Petitioner insisted on similar treatment as meted out with his colleagues to the extent of conversion of the major penalty of removal from service to compulsory retirement from service as he has 36 years of length of service in his credit. Prima-facie, if this is true, these glaring illegalities as pointed out above on part of official respondents, cannot be condoned under the law.

13. Reverting to the claim of the Petitioner that he has been condemned unheard by the respondent authority based on the unfounded allegation of producing his fake educational document of FSc. certificate/mark sheet. The record reflects that the petitioner was issued a show-cause notice, which was replied to by the petitioner. Additionally, the Application Form dated 27.1.1980 submitted by the petitioner explicitly shows his academic qualification as FSc in pre-engineering. His mark sheet, as per CAA, submitted by him was referred to the Board of Intermediate Education Karachi for verification, and on verification, the Assistant controller

Examination disclosed his FSc. Mark sheet as tempered document vide letter dated 28.4.2014. Besides, the data verification letter shows that the petitioner disclosed his education as F.Sc., which factum was also confronted to the petitioner by the CAA wherein the petitioner admitted that he submitted a fake degree to get a higher position which factum was examined by the competent authority and recommended his case for a major penalty on the premise that petitioner had 36 years' service in CAA. Finally, the competent authority approved the recommendations on 27.1.2015. The record shows that the respondent authority provided him an opportunity to rebut the allegation, but the petitioner failed to do so.

14. Primarily, compliance with the principles of natural justice is intended to achieve the ends of justice and they cannot be perverted to achieve the very opposite end. Justice means justice between both parties. The interest of justice equally demands that the guilty should be punished and that technicalities and irregularities which do not occasion a failure of justice are not allowed to defeat the ends of justice.

15. During the arguments, we have been informed that the Hon'ble Supreme Court of Pakistan in Suo Motu Case No.1/2020 has passed the order dated 21.7.2020 and directed the CAA to deal with its employees and take stern action against all those found involved in violation of or deviation from the rules and procedures and bring them to book.

16. Since the petitioner has claimed his 36 years of service benefits under the law, this aspect could be seen by the competent authority of respondent CAA under the law, if the petitioner is at all entitled to the service benefits for the aforesaid period,

17. Looking at the above perspective and factual position of the case as well as the order passed by the Hon'ble Supreme Court of Pakistan in the above proceedings, we find no merit in this petition and dismiss the same with no order as to costs.

JUDGE

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