

ORDER SHEET  
**BEFORE THE SINDH SUBORDINATE JUDICIARY**  
**SERVICE TRIBUNAL**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
Service Appeal No. 12 of 2017

---

Date	Order with signature of Judge(s)
------	----------------------------------

---

Present: *Mr. Justice Muhammad Junaid Ghaffar*  
*Mr. Justice Zulfiqar Ahmed Khan*

Appellant: Muhammad Afzal,  
Through Mr. Muhammad Aslam Roshan,  
Advocate.

Respondent: High Court of Sindh, Karachi Through  
Registrar,  
Mr. Ali Safdar Deepar, Assistant Advocate  
General.

Date of hearing: 11.12.2023.  
Date of Order: 20.05.2024.

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J:** Through this Service Appeal filed under Section 4 of the Sindh Service Tribunal Act, 1973 read with Section 3-B *ibid*, the Appellant has impugned his Dismissal Order dated 13.12.2016 and order dated 04.02.2017 dismissing his Review Application

2. Learned Counsel for the Appellant has contended that the Appellant has been dismissed from service without any appreciable evidence as to allegation of misconduct against him; hence, the said orders are liable to be set aside. According to him, in his 13 years of service the Appellant has no adverse report on record, whereas, he has been punished on the basis of hearsay evidence; rather if the evidence is read as a whole, it is in favor of the Appellant. He has prayed for setting aside of the impugned orders.

3. On the other hand, learned AAG has contended that occurrence of the incident has not been denied by the Appellant, whereas, not only a discreet inquiry was conducted; but so also a proper inquiry was also conducted and evidence was recorded;

hence, no ground for indulgence is made out. According to him, the Appellant has failed to establish his innocence; nor was able to lead any evidence to that effect; hence, the Appeal is liable to be dismissed.

4. Heard learned Counsel for the Appellant as well as learned AAG and perused the record. It appears that admittedly, the Appellant was involved in an incident which took place on 01.11.2010 at 01:30 A:M on a Restaurant Namely Stop-in-Plus, Rabi Chow, Hyderabad, which incident was brought to the notice of District & Sessions Judge, Hyderabad by the SHO Cantonment Police Station Hyderabad. The SHO concerned sent a report as well as Roznamcha Entry bearing No. 29 which shows that the Appellant was arrested along with his friend Major Ali on 01.10.2010 at 01:30 A:M on the complaint of the owner of the said restaurant alleging therein that the Appellant along with his friend being intoxicated created law and order situation and became antagonist with the owner and so also broke glass items of the restaurant. It has been further stated that in the Police Station, the Appellant identified himself as a Judicial Officer and also used filthy language against the police officials, and thereafter, the statement of the complainant was recorded, whereas, the Appellant was ordered to be referred to medical examination. However, in the meantime, the then Additional District & Sessions Judge, Hyderabad rushed to the Police Station and took away the Appellant from the police custody. Based on such report, the charge sheet was issued under Section 6(1) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 as prima facie, it amounts to misconduct within the meaning of the said rules rendering the Appellant liable for imposition of one of the penalties prescribed under Rule 4(1) of the said Rules. An Inquiry Officer was appointed and statement of allegations were issued and pursuant thereto a learned Judge of this Court conducted inquiry and furnished his report dated 11.11.2015 whereafter, a Final Show Cause Notice was issued and vide Order dated 07.11.2016, the Authorized Officer imposed a major penalty from dismissal of service as prescribed in Rule 4(1)(b)(iv) of E&D Rules, 1973. On this recommendation, the competent authority i.e. the then Hon'ble Chief

Justice passed his order dated 13.12.2016 by accepting the recommendation of the authorized officer and dismissed the Appellant from service as above. The Appellant being aggrieved preferred a Review Application which was also dismissed vide order dated 08.02.2017.

5. Though learned Counsel appearing on behalf of the Appellant has made his best efforts to point out some inconsistency in the evidence so recorded before the Inquiry Officer, and also attacked the discreet inquiry report, however, it is a matter of record that the incident which occurred at the late hours on 31.10.2010 / 01.11.2010 at 01:30 A:M has not been denied. While, hearing this appeal, the Appellant's Counsel was confronted as to what was his defence of being present at such odd hours and involving himself into altercation with the owner of the restaurant, and in response he contended that in fact it was the Appellant's driver which had some issue with the restaurant owner and the Appellant had just gone to sort out the same. However, this argument appears to be an afterthought as the Appellant never produced the said driver in his defence and to substantiate his innocence and presence at the place of incident. The argument that no medical examination was carried out; hence, it has not been established that the Appellant was intoxicated, is for the present purposes not of much of relevance, as apparently, the Appellant was helped out by a senior officer i.e. Additional District & Sessions Judge, Hyderabad who took him away from the Police Station without conduct of any medical examination. If the Appellant was not intoxicated as claimed, then there was no need to call the Additional District & Sessions Judge, Hyderabad for his assistance and help and thereafter, leaving the Police Station without a proper medical examination. Notwithstanding this incident, it has not been responded to in any manner, that as to why the Additional District & Sessions Judge, Hyderabad was called by the Appellant except for having some personal friendship inasmuch as the Appellant at the time of incident was not posted within the jurisdiction of Hyderabad. If he wanted to report any untoward incident or conduct of the restaurant owner or for that matter the police authorities, he immediately ought to have

contacted his own District & Sessions Judge at Karachi, where he was posted; but instead he sought help from a local judicial officer. This goes without any explanation as to why the said officer, at the very outset, came to rescue the Appellant at the Police Station and took him away without his medical examination.

6. The occurrence of the incident is not denied, and therefore, the onus was on the Appellant to contest the charges while denying the allegations. The argument that it was his driver who had this altercation is also not supported from any witness or evidence / material of whatsoever nature. At best, the Appellant could have produced him as a witness and his entire position had been cleared. This conduct suggests drawing an adverse inference against the Appellant. The Appellant being a Judicial officer himself, was not even otherwise, required to settle the dispute of his driver as contended. This line of defence is not only shaky; but so also has not been supported or corroborated in any manner. As to the argument that at best this was his personal conduct, it will suffice to observe, that if it was so, then the Appellant ought not to have asked the Additional District & Sessions Judge at such late hours to rescue him. Moreover, it has also come on record that he tried to impress upon the police authorities and obstructed their investigation by claiming that he is a Judicial Officer. It is a matter of record that in the discreet inquiry as well, the learned District & Sessions Judge, Hyderabad also reported adversely against the Appellant and therefore, at this stage of the proceedings taking refuge under any technicalities does not help the Appellant in manner. Time and again, the superior Courts have held that the conduct of a Judicial Officer vis-à-vis. even in his private affairs has to be above board and shall not be subject to any such misconduct be it of a lesser magnitude. Any involvement of a Judicial Officer, be it in his private affair by misusing his office tantamount to abuse his judicial powers<sup>1</sup>. The overall conduct of the Appellant and clear misuse of the Judicial Officer (along with his Additional District & Sessions judge) paints a clear picture of misconduct which is not only in violation of the trust placed in him by virtue of his office and place in the society, but also

---

<sup>1</sup> Rao Shafay Ali Khan v Lahore High Court (2012 SCMR 1757)

signal a disregard for the law and procedure he has been entrusted to enforce for others. Therefore, a robust response in the form of disciplinary action is not only justified but essential to deter similar conduct in the future<sup>2</sup>. The Appellant as a judicial officer was holding a very sacred office being custodian of the rights of the public at large; hence, was required to be extra vigilant in such affairs. It is the duty of the Judicial Officer to maintain the image and dignity of the judiciary so that high expectations of the people from judiciary should not be damaged by his conduct and work<sup>3</sup>. The holder of a Judicial Office must be extra careful, honest and straightforward and should not act and behave in a manner which may lower the image of the judiciary in the estimation of people and create doubt in the minds of a common person regarding the integrity and fairness of the Judicial Officer in his private and public life<sup>4</sup>. The argument of the Appellants Counsel that he was condemned unheard all along is without any substance and merits inasmuch as the record speaks otherwise. During the inquiry proceedings the witnesses have been cross examined on behalf of the Appellant; rather, the conduct of the Appellant before the competent authority speaks for itself. Time and again efforts were made to delay finalization of the disciplinary proceeding and at least on 10 dates adjournment was sought on one ground or the other for filing of reply and it is only after 8 months that a reply was filed. Not only this, even thereafter, delay tactics were adopted by way of a Constitutional petition in which after being unsuccessful again various frivolous applications were filed on one ground or the other. Such conduct reflects badly on the Appellant who being a Judicial Officer is supposed to be well versed the manner by which these proceedings are to be culminated. This willful conduct of the Appellant would not provide him a ground to contend that he was condemned unheard<sup>5</sup>.

7. An act of judicial impropriety, lack of mannerism has also been reckoned as “misconduct” by the Supreme Court in *Noor Muhammad Khan*<sup>6</sup>. In *Kh Saeed-UI-Hassan*<sup>7</sup> there were various

---

<sup>2</sup> *Manzar Abbas v District Police Officer* (2023 SCMR 2111)

<sup>3</sup> *Qari Ahmed Jan Government of Baluchistan* [2003 PLC (CS) 1078]

<sup>4</sup> -*ibid*-

<sup>5</sup> *Qari Ahmed Jan v Government of Baluchistan* [2003 PLC (CS) 1078]

<sup>6</sup> [2008 PLC (CS) 1188]

<sup>7</sup> *Kh Saeedul Hasan v Government of Punjab* [1994 PLC (CS) 1113]

allegations against the judicial officer, including but not limited to a bad reputation; taking bribe; having a reputation of being a corrupt officer; misbehavior with Advocates; drinking alcohol with Advocate friends; and so on and so forth. The inquiry officer came to the conclusion that all these charges are not proved with any substantial evidence, whereas, the allegation of prolonging cases is common and no action was recommended. However, the Chief Justice of the Lahore High Court did not agree with the recommendations and held that the officer was guilty and recommended to the competent authority that he may be removed from service. The following observations of the Chief Justice are relevant and read as under;

"I have observed in my previous note that in order to establish the reputation of corruption of an accused officer it is not necessary that there should be an absolute concurrence of opinion of his superior officer, members of the bar and the public at large. No specific kind or quantum of evidence is required to be brought on the record in a disciplinary inquiry of the present type for drawing of an inference in respect of corrupt reputation of Government servant. Therefore, the presence of citation or particularisation of specific instances of corruption by any of the witnesses appearing against the accused officer in support of the charge levelled against him is not necessary as the charge does not pertain to actual acceptance of bribe or indulgence in corruption by the accused officer. But it simply relates to the enjoyment of continued reputation of corruption by him without there being any solid proof of actual indulgence in corruption. I may point out that in the instant case evidence was produced to show that the accused officer had in fact received illegal gratification from certain parties. But it has not been considered so as to establish beyond any shadow of doubt that he had in fact received illegal gratification. If this was established then instead of departmental proceedings, criminal proceedings could have been initiated against him. Anyway, the object of assessment of this type of evidence, in a departmental inquiry of the present kind was to show as to what bearing it may have on the general charge as against the accused officer to the effect that he had a persistent reputation of being corrupt.

In the light of what has been discussed above, I am still of the view that there is sufficient evidence to prove all the three parts of the main charge, and since the main charge stands proved, I am convinced in my mind that the accused officer enjoyed a persistent reputation of being corrupt."

8. Being aggrieved, the officer approached the Supreme Court and his appeal was dismissed with the observations that "*substantiation of the guilt / allegation beyond doubt is not required in domestic enquiry. All that is required is that the inferences should be such as can reasonably and fairly be drawn from facts presented*". It was further observed that "*in the matter of reputation it was not necessary to look for reasonable degree of specificity and definitiveness*". And lastly it was held that;

22. When we say that in domestic inquiry the conclusion/finding should be reasonable and fair, we necessarily bring in the job-requirement, the environment in which the duties are discharged, the manner in which they are expected to be discharged and the standard of performance to be attained. These differ from service to service, from post to post. The apprehension of the designated authority that "if a false campaign of vilification and character assassination is unleashed against a person and fabricated on such a large scale that it grips the minds of the people, it does not amount to a proof of truthfulness of the campaign "could be used for demonstrating it to be so but not for introducing an element of doubt in the absence of it, on the mere ability of it being so.

9. In *Saiful Haq Hashmi*<sup>8</sup>, while dealing with a case of a judicial officer who had been removed from service on the grounds of passing certain illegal orders and orders beyond his pecuniary jurisdiction it was observed by the Supreme Court that "*The Courts presided over by Judges are institutions which command respect, faith and confidence for implementation of rule of law, justice and equity. If at any stage justice is tainted, tarnished or contaminated with dishonesty and corruption or abhors the judicial conscience, the blame squarely lies upon the Judge for behaving in a manner unbecoming of a Judge or a gentleman. Purity of the fountain of justice has to be maintained and protected zealously from corruption, contamination and pollution which distorts its angelic and divine face*".

10. In view of hereinabove facts and circumstances we are of the view that no case of indulgence is made out; hence, the Appeal is hereby dismissed.

**Dated: 20.05.2024**

**CHAIRMAN**

**MEMBER**

Arshad/

---

<sup>8</sup> Government of Sindh v Saiful Haq Hashmi (1993 SCMR 956)

