

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Constitutional Petition No. D-256 of 2025

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| Date | Order with signature of Judge(s) |
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Before:  
Mr. Justice Muhammad Karim Khan Agha  
Mr. Justice Adnan-ul-Karim Memon

**Date of hearing and order: 24.1.2025**

Mr. Atta Hussain advocate for the petitioner

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**ORDER**

**Adnan-ul-Karim Memon, J.** – The petitioner Hafeezullah Khan Khoso has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic Pakistan, 1973 and prayed that this Court may be pleased to direct respondents No.1 and 2 to adjudicate the petitioner's Departmental Appeal dated 31<sup>st</sup> January 2024 against the order dated 05.1.2024, whereby major penalty of dismissal from service was imposed upon the petitioner and recommendation was made for recovery of embezzled amount.

2. Petitioner's counsel argued that the departmental proceedings violated his fundamental right to be free from illegal and discriminatory treatment. He claimed that the proceedings lacked natural justice, denying the petitioner a fair opportunity to defend himself due to inadequate consideration of evidence and circumstances. He argued that the chart failure was due to heavy rainfall and insufficient storage which is National Logistics Center's (NLC) responsibility. Despite repeated written requests, no action was taken. However, the respondents failed to address this crucial aspect. He argued that dismissal was a disproportionate and punitive penalty. He claimed that the petitioner was unfairly blamed for systemic logistical failures. He next submitted that the National Logistics Cell (NLC) failed to ensure safe wheat storage, despite repeated requests and warnings from the petitioner regarding inadequate security measures. He submitted that heavy 2022 rains damaged open-stored wheat. He added that instead of addressing the root cause of the damage and holding accountable those responsible for logistical failures, the Respondents issued a show-cause notice to the Appellant, blaming him entirely for the loss. He averred that the petitioner submitted detailed replies with supporting evidence (documentary and video), proving attempts to notify authorities. These were disregarded in the final order. He argued that respondents cited Rule 5(3) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 to bypass a formal inquiry, instead informing the petitioner of the proposed action and requesting a response, which Rule 5(3) of the said Rules provides as follows:

*"If the authorized officer decides that it is not necessary to have an inquiry conducted through an Inquiry Officer or Inquiry Committee, he shall*

*(a) by order in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of the action, and*

*(b) give him a reasonable opportunity of showing cause against that action."*

3. This action violates natural justice principles, especially when material facts are disputed. The petitioner denied negligence and misappropriation, citing evidence that the wheat damage resulted from heavy rainfall and NLC's logistical failures. Bypassing a proper inquiry denied the petitioner a fair and transparent defense. When facts are disputed, a formal inquiry is essential to determine culpability. This failure gravely breaches the principle of audi alteram partem (the right to be heard), a cornerstone of justice as upheld by the Sindh Service Tribunal, High Courts, and the Supreme Court of Pakistan in the cases of *Shamsuddin v. Province of Sindh & Others* (2018 SCMR 1401), *Mian Munir Ahmed v. Federation of Pakistan* (2017 SCMR 1040). By failing to conduct a formal inquiry, respondents denied the petitioner due process, including the right to present evidence, examine witnesses, and defend against allegations. This procedural flaw renders the dismissal order invalid and warrants its reversal. The Petitioner has again requested respondent No.1 to decide the departmental appeal.

4. We have heard the petitioner's counsel's arguments on the petition's validity and reviewed the case file.

5. The Supreme Court of Pakistan in the case of *Falak Sher v. Govt. of Punjab* (1995 SCMR 962) has ruled that if a departmental authority does not decide a civil servant's appeal within 90 days, the civil servant can file an appeal with the Service Tribunal. The Service Tribunal must decide the appeal on its merits, and cannot direct the departmental authority to decide it. However, in the present case the petitioner was dismissed from service on 05.1.2024 and he preferred Departmental Appeal on 31.1.2024, which remained unattended for almost one year and the petitioner ought to have waited for ninety days from the date of original order and ought to have filed the Service Appeal before the Sindh Service Tribunal, but he opted to wait for a longer period and file the instant petition on 21.1.2025, thus his case can fall within the ambit of limitation before the Service Tribunal if he approaches.

6. It is well-settled that the civil servants must first pursue internal appeals within 90 days. If the appeal is not decided within that timeframe, he/she can then approach the service tribunal to challenge the original order. Once they do so, the Tribunal must decide the appeal on merits and cannot merely direct the department to decide it, as the 90 days for the department to act has already expired. On the aforesaid proposition, we are guided by the decision of the

Supreme Court in the case of Dr. Sayyid A.S. Pirzada v. The Chief Secretary, Services and Administration Department, etc (2023 SCMR 1087).

7. In view of the above facts and circumstances of the case, petitioner can approach the Sindh Service Tribunal against the impugned order dated 05.1.2024 and it is for the learned Sindh Service Tribunal to take decision in terms of law laid down by the Supreme Court in the case of Dr. Sayyid A.S. Pirzada (supra).

8. This petition stands disposed of in the above terms alongwith listed applications.

JUDGE

HEAD OF CONST. BENCHES