BEFORE SINDH SUBORDINATE JUDICIARY SERVICE TRIBUNAL (IN THE HIGH COURT OF SINDH AT KARACHI)

Service Appeal No. 14 of 2004

Present: **Mr. Justice Naimatullah Phulpoto, Chairman**
Mr. Justice Abdul Maalik Gaddi, Member

Date of Hearing	:	14.12.2019
Date of judgment	:	14.12.2019
Appellant	:	Sahibzada Pir Atta-ur-Rehman through Mr. Muhammad Ibrahim Sahito Advocate
Respondent	:	Mr. Ali Safdar Depar Assistant Advocate General Sindh

JUDGMENT

NAIMATULLAH PHULPOTO, CHAIRMAN.- This appeal is directed against the order of removal from service dated 16.04.2003, whereby appellant was awarded major penalty of removal from service and such Notification was issued.

2. Brief facts leading to the filing of the appeal are that disciplinary action was initiated against appellant on the basis of a report by Mr. Justice S.A.Rabbani (as he then was). While hearing Cr. Acquittal Appeal No. 02/97, his Lordship noticed that in Criminal Case No. 17/96, appellant rejected an application moved by the police for release of the accused on 03.12.1996, with the observation that guilt or innocence of the accused could only be determined after recording evidence of the witnesses. Nevertheless, before any evidence could be recorded, the appellant by order dated 01.01.1997 acquitted the accused under section 249-A Cr.P.C holding that there was no possibility of the conviction of the accused.

3. During disciplinary proceedings, Authorized officer observed that such order of acquittal prima facie was premised on ulterior motives and patently tainted in terms of the law declared by the Honourable Supreme Court in the case reported as Government of Sindh vs. Saiful Haq Hashmi (1993 S.C.M.R 956). The monthly statements of disposal of the cases by appellant for January and February 2001 were examined, which indicated that he had earned 17.33% and 31.75% of required units. Learned Sessions Judge concerned had also reported that the integrity of appellant was constantly under clouds and his efficiency was below average. Accordingly, the Authorized Officer issued a show cause notice

dated 27.11.2001 requiring appellant to show cause why penalties for misconduct and inefficiency should not be imposed upon him. Authorized Officer further held that since no fact-finding was involved and the record spoke for itself the requirement of regular inquiry was dispensed with.

4. In response to the show cause notice, the appellant submitted his reply dated 10.12.2001, an evasive explanation with regard to the order of acquittal was given and it was asserted that the powers under section 249-A Cr.P.C could be invoked at any stage and the earlier order dated 3.12.1996 was only interlocutory. However, it was not shown that any witness had been examined or change of circumstances had taken place within the four weeks interval between two orders. With respect to inefficiency, routine grounds were advanced and no substantial explanation was offered by the appellant.

5. Upon consideration of the reply, Authorized Officer came to the conclusion that appellant was guilty of both misconduct and inefficiency. Accordingly, a final notice dated 22.3.2002 was issued requiring him to show cause why the major penalty of dismissal from service may not be recommended. Appellant was also required to appear for personal hearing on 18.4.2002, if he so desired. Appellant submitted a written reply to the final notice on 17.4.2002 and also appeared for personal hearing on 18.4.2002 and 25.4.2002. In the written reply, he questioned the validity of the final notice and stated that he be accorded a personal hearing to explain facts "which could not be incorporated in the reply".

6. The Authorized Officer observed that appellant could not furnish any plausible explanation whatsoever for acquitting the accused within four weeks of passing order rejecting application under section 169 Cr.P.C. It was further observed that keeping in view the first order it was evident that the second one could not be claimed to be premised on an honest mistake of law. It was patently perverse and the gross impropriety in passing such order was evident on its face. In the absence of any evidence to the contrary it was observed that it could be assumed to have been passed for corrupt and ill motives.

7. The appellant during his personal hearing stated before the Authorized Officer that he had passed the second order, at the request of a senior colleague who was working as an Additional District & Sessions Judge in one of the Districts of Karachi and was related to the accused. However, appellant failed to furnish any evidence in support of this allegation. Authorized Officer observed

that a judicial officer was required to perform his duties with strict impartiality and without being influenced by any quarter whatsoever and passing an order on the recommendations/approach of any other person including a senior colleague was gross misconduct on the part of a judicial officer. Hence, declared the appellant unfit to hold any judicial office.

8. As regards his efficiency in performance of duties, the report of his six months performance from August 2000 to January 2001 was placed on record and during this entire period he has only earned 22.14% of the required units and it appeared that there was not a single month during which he could earn more than 50% units. The learned Sessions Judge had also reported that the integrity of this officer was constantly under clouds and his performance was below average. Authorized Officer after hearing the appellant in person and examining the material available on record, came to the conclusion that the appellant was guilty of both misconduct and inefficiency and recommended major penalty of removal from service.

9. Thereafter, a final show cause notice under Rule 5(4)(b) of the Sindh Civil Servants (Efficiency & Disciplinary) Rules 1973 was issued against appellant and after hearing the appellant in person, the Honourable Chief Justice held that both the charges of misconduct and inefficiency stood proved against delinquent officer and major penalty of removal from service was imposed upon him. He was removed from service with immediate effect vide order dated 16.04.2003. For the sake of convenience, order dated 16.04.2003 is produced as under:

> *"16.4.2003*
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> *On the basis of a report of Mr. Justice S.A. Rabbani, as he then was, during the proceedings in Criminal Acquittal Appeal No.02 of 1997, and the report of District & Sessions Judge, Malir, Karachi that the delinquent officer was an inefficient officer and did not perform his duties diligently, a show cause notice under Rule 5(3) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 (hereinafter referred to as the E&D Rules) was served on Sahibzada Pir Atta-ur-Rehman, IIIrd Judicial Magistrate, Malir, Karachi for misconduct and inefficiency. The delinquent officer submitted his reply to the show cause notice which was not found satisfactory by the learned Authorized Officer who after observed that no fact finding exercise was involved and the record spoke for itself dispensed with the requirement of departmental inquiry.*
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> *The brief facts are that pursuant to FIR No.280/96 of P.S Taimoria under section 13(d) of the Arms Ordinance one accused Khaliq Ahmed Khan was charge-sheeted in Court on 24.11.1996. On 2.12.1996 Investigating Officer submitted an application under Section 169 Cr.P.C for release of the said accused Khaliq Ahmed Khan on the ground of lack of evidence. This application was rejected by the delinquent officer vide order dated 9.12.1996 holding that the guilt or innocence could be determined only after trial and the Court had no power to*

release the accused under Section 169 Cr.P.C. However, within four weeks of the said order, the delinquent officer vide order dated 1.1.1997 acquitted the accused under Section 249-A Cr.P.C without referring evidence holding that there was no probability of conviction of the accused.

The Authorized officer after going through the explanation submitted by the delinquent officer and giving him an opportunity of personal hearing came to the conclusion that both the charges of misconduct and inefficiency were proved against him and recommended imposition of major penalty of removal from service.

Final Show Cause Notice was issued to the delinquent officer to appear before the undersigned in pursuance whereof he appeared and was heard. The delinquent officer had also submitted fresh explanation to the Final Show Cause Notice.

The delinquent officer tried to justify his action stating that, in his humble opinion, application under Section 169 Cr.P.C was not maintainable as charge sheet had been submitted against the accused and in such a case the Court could not exercise power under Section 169 Cr.P.C. This submission is without any substance in view of the settled provision of law that there is nothing to prevent an Investigating officer from submitting another report in supersession of an earlier one either on his own initiative or under the directions of the higher police officer. The Investigating Officer can legally submit a charge sheet after previously submitting a final report or a report after submission of the charge sheet. It is also settled principle that the Court does not become functus officio after entertaining the first report under Section 173 Cr.P.C and it can act on the report submitted after subsequent investigation, declaring the accused innocent. However, the delinquent officer by discharging the accused within a period of four weeks under Section 249-A Cr.P.C contradicted and negated his version that after submission of challan the guilt or innocence of the accused could be decided only after recording the evidence of the prosecution witnesses while rejecting the report under Section 169 Cr.P.C. The delinquent officer was unable to give a plausible and justifiable explanation for acting in the above manner. There existed only two possibilities for making such an order. Firstly, either it was passed with ulterior motive and mala fide intention in view of the observations made by the Supreme Court in the case of GOVERNMENT OF SINDH AND OTHERS VERSUS SAIFUL HAQ HASHMI AND OTHERS (1993 SCMR 956). Secondly, that it was in ignorance of law and procedure. In either cases, the delinquent officer would be deemed to be unfit to hold the judicial office held by him being an officer of doubtful integrity, incompetent and ignorant. He is guilty of misconduct.

From perusal of the order of the learned Authorized Officer, it transpires that the delinquent officer had raised a plea during his personal hearing that he had passed the impugned order at the request of a senior colleague, an Additional District & Sessions Judge, working in one of the Districts of Karachi, who was related to the accused. If this explanation is to be accepted as correct then it proves that the delinquent officer is prone to pressures and influences in deciding cases judicially and is capable of passing an illegal or wrong order. A Judicial Officer who cannot withstand pressure, influence or request be that of a senior Judicial Officer or any other person or authority would not be fit to hold a judicial post as he will be deciding cases not on merit but under influence, pressure or request.

The allegation of inefficiency also stands proved as he has not been able to give any satisfactory explanation for his extremely low disposal during the period in dispute.

Both the charges of misconduct and inefficiency stand proved against the delinquent officer and he has rendered himself liable for imposition of one of the major penalties provided under Rule 4(1)(b)(iii) of the E&D Rules. Accordingly, major penalty of removal from service is imposed on the delinquent officer and he stands removed from service with immediate effect.

10. Review application was filed by the appellant, which was also dismissed vide order 28.04.2004. Such Notification was issued.

11. Learned Advocate for the appellant mainly argued that no regular inquiry was conducted; that an error of judgment in deciding a criminal case while discharging judicial functions cannot ipso facto lead to an inference of dishonesty. Lastly, it is contended that dismissal of the appellant from service was a very harsh decision. Learned counsel for the appellant relied upon the cases reported as Sardar Muhammad vs. The Auditor General of Pakistan Islamabad and 3 others (2000 PLC (C.S) 1019), Mushtaq Ahmed Sabto and others vs. Federation of Pakistan and others (2001 PLC (C.S) 623) and Tasleem Akhter vs. Pakistan through Secretary Revenue, Islamabad and 3 others (2010 PLC (C.S) 795).

12. Mr. Safdar Ali Depar, Assistant Advocate General Sindh contended that premature acquittal order was examined at several levels before the impugned action followed; that appellant has been dismissed from service as he was found guilty of misconduct and inefficiency. He further submits that appellant passed order of acquittal with ulterior motives and same was patently illegal; that his disposal was also found to be inadequate. He, lastly submitted that appellant served for about 07 years and there were adverse entries in his ACRs. Learned A.A.G in support of his contentions relied upon the case of Government of Sindh and others Versus Saiful Haq Hashmi and others (1993 SCMR 956). He has opposed the appeal.

13. We have considered the submissions on behalf of the parties and also precedents sought to be relied upon by them respectively. Record reflects that disciplinary proceedings were initiated against appellant on the basis of report made by Mr. Justice S.A.Rabbani (as he then was) while hearing Criminal Acquittal Appeal No.02/2007. His Lordship noticed that in criminal case No.17/96, appellant/Magistrate rejected an application moved by the police for release of the accused on 03.12.1996, with observation that guilt or innocence of the accused could only be determined after recording of the evidence of the prosecution witnesses. Nevertheless, before any evidence could be recorded, the same Magistrate/appellant by order dated 01.01.1997 acquitted the accused

under section 249-A Cr.P.C while holding that there was no probability of conviction of the accused in that case. This Court in Criminal Acquittal Appeal No.02/1997 vide judgment dated 08.06.2001 set aside the acquittal order passed by appellant for the following reasons:

> *12. The report under section 169, Cr.P.C was once rejected and it could not have been made basis of acquittal under section 249-A Cr.P.C. The Magistrate was also not legally authorized to decide the case on the basis of statements of witnesses under section 161 Cr.P.C.*
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> *13. The impugned order is absolutely baseless and can not be maintained. It is set aside and the case is remanded to the trial court for a decision on merits on the basis of evidence to be recorded by the Court. Revision stands disposed of accordingly.*

14. Learned Authorized Officer/ Senior Puisne Judge in his order has observed that appellant stated before him that he passed order of acquittal on the recommendation of his senior colleague and it was gross misconduct on the part of the judicial Officer and he was not fit to hold any judicial office. Learned Sessions Judge concerned had also reported that integrity of the appellant was constantly under clouds and his performance was below average. So far the submission of the learned Advocate for the appellant is concerned that no regular inquiry has been held, it is observed that appellant had acquitted accused under Section 249-A Cr.P.C on extraneous considerations as reported by Mr. Justice S.A. Rabbani (as he then was) vide his report dated 16.08.2001. Since no fact finding inquiry was involved and record spoke itself, the requirement of regular inquiry was rightly dispensed with. Learned Sessions Judge concerned had reported that integrity of the appellant was constantly under clouds and his performance was below average. Appellant admitted before learned Authorized Officer that he had passed impugned acquittal order at the request of his senior colleague an Additional District & Sessions Judge who was related to the accused. Rightly, it has been held by Honourable Chief Justice that if this explanation is accepted as correct then it proves that the appellant was prone to pressures and influences in deciding cases. A Judicial officer always passes orders without any pressure or influence. It is a matter of record that Appellant was provided proper opportunity of his defence at every stage. A bonafide error of judgment may need correction and counseling. But a conduct which creates perception beyond the ordinary cannot be countenanced. For a trained legal mind, a judicial order speaks for itself. The submission that his integrity was not doubtful, leaves us unimpressed. There can hardly be any direct evidence with regard to integrity as far as a judicial officer is concerned. It is more a matter of

inference and perceptions based upon the conduct of the officer as held in the case of Government of Sindh and others Versus Saiful Haq Hashmi and others (1993 SCMR 956). In the present case, acquittal order was first examined by Mr. Justice S.A. Rabbani (as he then was) who was satisfied that acquittal order was based on malafides. The comments of the appellant were called for. Honourable Senior Puisne Judge/ Authority was not satisfied with explanation furnished and opined that act of acquittal by the appellant was not above board. The comments/ reply of the appellant were again called for. On an overall assessment of the appellant's service record and acquittal recorded for malafide reasons, he was rightly removed from service.

15. We have also come to the conclusion that charges of misconduct and inefficiency stood proved against the appellant and for the valid and sound reasons, major penalty of removal from service has been imposed upon him. Order dated 16.04.2003 requires no interference. Appeal is without merits and the same is dismissed. These are the reasons for our short order dated 14.12.2019.

CHAIRMAN

MEMBER