

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C. P. No.D-445 of 2021
(Pir Bux v. Federation of Pakistan & Ors)

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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27.02.2025.

BEFORE:

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Adnan-ul-Karim Memon

Mr. Faiz Muhammad Larik, advocate along with the petitioner.
Mr. Oshaque Ali Sangi, Asst. Attorney General.
Mr. Nadeem Ahmed Qureshi, advocate for respondents No.2 to 4.

ORDER

ADNAN UL KARIM MEMON-J.:- The petitioner, a former Pakistan Railways Gangman, seeks reinstatement and back benefits after being dismissed in 2012 for unauthorized absence due to a false criminal case. He was acquitted in 2018. He submits that his 21 years of service (1988-2009) entitled him to pension benefits, as such his penalty removal from service may be converted into compulsory retirement.

2. The Railways official opposes the petition as time-barred but acknowledges his service period and agrees to the extent that this court can consider the petitioner's request for converting his dismissal to compulsory retirement for pension eligibility.

3. The petitioner was employed as a Gangman in Pakistan Railways from September 22, 1988. A false criminal case forced him to go into hiding, resulting in his absence from duty from July 14, 2009. He was dismissed from service on January 26, 2012. He was acquitted in the criminal case in October 2018. His requests for reinstatement and a mercy appeal were denied. He repeatedly appealed for reinstatement, but his appeals were ignored. He claims a co-accused from another department was reinstated after acquittal. He is suffering misery and starvation. He is asking the court to order the Pakistan Railways to decide his appeal for reinstatement.

4. The respondents contend that the petitioner's case is invalid due to several factors: it is significantly delayed and therefore may be dismissed; this Court lacks the authority to handle this matter, as it falls under the jurisdiction of the National Industrial Relations Commission; and a comparable case was previously dismissed by this court. Furthermore, the petitioner's removal from service was conducted lawfully after he abandoned his duties and was implicated in a criminal investigation. He failed to defend himself during

the disciplinary proceedings. His subsequent appeal for leniency was denied because it was submitted after the allowed period. The reinstatement of a co-accused in a separate case is not relevant, as each case is judged individually. Additionally, the railway department, being a Federal entity, submits that the petition was not filed according to the necessary legal procedures. Consequently, they request that this court reject the petition and require the petitioner to cover the associated costs.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The petitioner was held in custody from February 16, 2018, to October 5, 2018, under a remand order from the 1st Additional Sessions Judge Jacobabad, and was subsequently released upon acquittal in crime No. 59/2009 by the same court petitioner employed by Pakistan Railways since 1988, and was dismissed in 2012 due to absences stemming from a false criminal accusation that forced him into hiding in 2009. He submits that even his 21 years of service (1988-2009) entitled him to pension benefits as such his penalty removal from service may be converted into compulsory retirement.

7. The Supreme Court advocates for proportional penalties, preventing severe punishments like dismissal for minor offenses. They prioritize reforming individuals over solely deterring others, especially in cases of unintentional negligence. When misconduct lacks malicious intent, courts often reduce harsh penalties to milder ones. The intent behind the punishment, retribution, deterrence, or reformation, is a key consideration. Courts distinguish between simple negligence and intentional misconduct. While administrative bodies set penalties, the judiciary ensures fairness and proportionality.

8. It is a well-settled law that when a major penalty is imposed upon a public servant and is punished with stigma, the requirements enumerated in law had to be adhered to i.e. charge shall be framed and the said employee would be allowed to give a reply of those charges after which evidence is to be recorded by examining the witnesses in respect of the charges. The said employee can also produce witnesses in his/her defense. In the present case, it is noted that this procedure has not been followed in its letter and spirit, and the witnesses were not examined in respect of the charges on oath, as provided under the law, which was necessary before imposing a major penalty upon the said employee. In service matters, the extreme penalty for certain acts depriving a person of the right to earn defeats the reformatory concept of punishment in the administration of justice. On the aforesaid proposition of law, we are fortified with the decision rendered by the Hon'ble Supreme Court in the case of Auditor General of Pakistan & others vs. Muhammad Ali & others (2006 SCMR 60).

9. Based on the preceding analysis, the Constitutional Petition is disposed of in terms that the impugned order is overturned and converted into compulsory retirement from service, as he has the requisite length of service in his credit to claim service benefits.

10. Resultantly, the competent authority of Respondents/Chairman of the Pakistan Railway is directed to provide the petitioner with full-service benefits (compulsory retirement) within one month of receiving this order. Any payments already received during the period of removal from service will be adjusted accordingly.