

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-4002 of 2011

*(Ibrahim Noor v Pakistan International Airlines corporation & others)*

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul-Karim Memon

**Date of hearing and Order: 07.04.2025**

Syed Ashfaq Hussain Rizvi advocate for the petitioner.

Mr. Khalid Jawed advocate for the respondent No.1

Ms. Wajiha Mehdi, Assistant Attorney General.

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**ORDER**

**Adnan-ul-Karim Memon:** The petitioner, Ibrahim Noor, requests this Court to direct Respondents 1 and 2 to recall and nullify the dismissal order issued on August 9, 2010, which was a result of the initial inquiry. Furthermore, he requests to be retired with all standard retirement benefits, given that he reached the designated retirement age on November 30, 2010.

2. Ibrahim Noor worked for Pakistan International Airlines Corporation (PIAC), Respondent No. 1, in the finance department from 1976 to 2010. He averred that his service record was consistently positive and praised by his superiors. However, PIAC conducts its passenger and cargo business globally through IATA and non-IATA agents. These agents submit sales reports (fortnightly/monthly) and payments to local PIAC offices, which then deposit the funds and forward the reports, including details of any discrepancies (short, excess, or delayed receipts), to PIAC Head Office according to established procedures. This ensures that PIAC's senior management and directors are fully informed about transactions at the local sales offices. The petitioner claims a grave injustice meted out to him, stating that after the Investigation Committee's findings, the Head Office established an inquiry that disproportionately penalized branch office staff including him, culminating in his dismissal from service vide letter dated 09.10.2010 based on inquiry report. He points out the lenient treatment or complete inaction towards other implicated parties/private respondents, including Head Office officials who were not even investigated. The petitioner emphasizes the case of Mrs. Amna Nazir (Respondent No. 6), the Assistant Finance Manager, against whom the Inquiry Committee recommended action, yet she was promoted and eventually posted to Canada. This, the petitioner illustrates nepotism and favoritism, undermining natural justice and exposing the charges against him as baseless. He further averred that as a Finance Manager in a branch office with limited administrative functions regarding payments authorized by the Head Office for M/s Cargo Aids, the

petitioner finds his dismissal particularly egregious when compared to the District Manager, the branch's head and ultimately responsible official, who received only retirement whereas he has been victimized in spite of knowing the fact that he reached the age of superannuation just few months before the penal action as such this penalty needs to be either modified or be annulled.

3. The learned counsel for the petitioner points out that the petitioner was dismissed from service by order dated August 9, 2010, and that this action was taken under the Removal from Service (Special Powers) Ordinance 2000, therefore, relying on the judgment rendered by the Supreme Court in the case of Shahid Mehmood Usmani v. House Building Finance Corporation (2010 PLC (CS) 1360), the counsel asserts the maintainability of this petition on the aforesaid analogy. On merits, learned counsel for the petitioner submitted that the commercial nature of the agents' operations across PIAC's global network occasionally leads to minor payment delays when agents face temporary difficulties in arranging timely payments. Counsel asserted that these instances are managed according to the policies and instructions of PIAC's senior management at the Head Office, utilizing methods such as the encashment of bank guarantees, subsequent period recoveries, and write-offs. Additionally, counsel highlighted the case of M/s Cargo Aids in October 2007, who defaulted on payments for sales periods spanning the latter half of June, July, and September 2007, totaling two and a half months of sales revenue. Counsel further argued that the Head Office management, in an attempt to shield itself, established a three-member investigation committee comprising the Director of Quality Assurance and a Finance Department officer, who had a vested interest adverse to the petitioner. Learned counsel submitted that a NAB Reference (No. 20/2011) concerning charges of corruption and corrupt practices was initiated against the petitioner under the NAB Ordinance 1999, leading to his conviction under Sections 9/10 of the Ordinance. However, the Learned Division Bench of this Court at Karachi, in Criminal Accountability Appeal No. 04/2018, acquitted the petitioner on February 22, 2018, finding that the prosecution failed to establish his guilt on the charges leveled by the respondent PIAC against the petitioner in the memo of allegations. Consequently, learned counsel urged this court to allow the present petition by setting aside the impugned orders.

4. The respondent counsel contends that the PIAC Employees (Service and Discipline) Regulations 1985 are non-statutory, establishing a master-servant relationship. Consequently, based on precedents from the Supreme Court and this Court (citing specific cases), a constitutional

petition under Article 199 of the Constitution concerning service terms is not maintainable before this Court. The respondent counsel further argues that the petitioner's rights are based on non-statutory instructions and policies, which, according to **PLD 2010 SC 676**, do not allow for Article 199 of the Constitution relief. The service rules, being non-statutory, form part of the employment contract, making the relationship purely contractual and unenforceable through a constitutional petition. Additionally, the respondent counsel points to the significant delay in filing the petition, the presence of disputed factual questions, and the petitioner's admitted superannuation before filing the petition, all as grounds for dismissal. Learned counsel for respondent No.1 contended that the petitioner's claimed rights are based on administrative circulars, including Circular No. 51/85 regarding credit policy, which are internal guidelines issued by PIAC management and not statutory service rules or regulations. Consequently, any alleged violation of these internal guidelines, even if proven, cannot be enforced through a writ petition. For these reasons, he requested this court to dismiss the petition.

5. We have heard learned counsel for the parties on the maintainability of the petition and have perused the material available on record with their assistance.

6. The Investigation Report held the petitioner, the former Finance Manager, and other staff responsible for misconduct leading to the M/S Cargo Aids default. Specifically, the petitioner was accused of failing to object to improper stock issuance practices despite his involvement in the process; not reporting delays in cash receipt issuance (3-164 days); neglecting to report dishonored cheques to senior management and improperly accepting further cheque payments; failing to implement the Mango Policy's advance payment requirement or raise objections, which exacerbated the default; not issuing Credit Control Committee meeting agendas (March-October 2007); taking an incorrect position on PKR 15.4 million in dishonored cheques; not sending the Cargo Agents Ledger to Head Office; and failing in timely finance functions related to revenue, funds management, and credit control. The investigation concluded that his significant negligence contributed to the Corporation's substantial loss of PKR 147 million.

7. During cross-examination, the Investigation Committee explained that their inquiry focused on branch-level staff, and the lack of findings against Head Office personnel was not due to any malicious intent. Regarding the petitioner's failure to object to the District Manager and Cargo Sales Manager's practices, the Committee pointed out that the airway bills issued between October 3, 2006, and August 16, 2007,

approved by the DM/CSM and marked by the Finance Manager for the Accounts Officer Cargo, contained no such objections. Additionally, two Cargo Sales Managers corroborated the continuation of this practice. Concerning the Mango Policy advance, the Committee clarified that the Finance Manager was responsible for its collection, as the policy email dated May 2, 2007, jointly addressed to the Station Head, Finance Manager, and Cargo Manager, explicitly mandated the cash deposit before shipment acceptance. When questioned by the petitioner about the absence of questioning relevant Head Office officials (Manager Cargo Revenue, Assistant Manager Cargo Revenue, and the dealing Accounts Officer), the Investigation Team stated that they did not formally investigate these individuals. The investigation concluded that the charges were proven against one Aftab Ahmad (then District Manager, DSO, Karachi). Petitioner Ibrahim Noor (then Finance Manager DSO, Karachi). Arshad Mahmood Raja (then Cargo Sales Manager DSO, Karachi). Muhammad Azam Khan (Cargo Sales Manager, DSO, Karachi). However, the findings were also made against other staff, namely Mrs. Amna Nazir (Assistant Finance Manager, DSO, Karachi): Two out of four charges proven. Muhammad Nasim Ansari (Sr. Sales Promotion Officer (Cargo), DSO, Karachi): Two out of three charges proven. Riaz-ud-Din Akhtar (Accounts Officer (Cargo), DSO, Karachi): One out of three charges proven.

8. The proposition advanced by the petitioner's counsel is that the petitioner's previous exoneration from criminal charges concerning similar conduct warrants the termination of the disciplinary proceedings that are founded upon the same allegations. Primarily, the disciplinary proceedings and criminal proceedings are altogether different and independent of each other and cannot be termed synonymous and interchangeable. The departmental inquiries for misconduct use a lower standard of proof ('balance of probabilities') compared to criminal trials ('proof beyond a reasonable doubt'). The forums for adjudication, principles of evidence, and procedure are also separate and distinct. The decision of one forum cannot have a bearing on the decision of the other forum. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the cases of Dr. Sohail Hassan Khan v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), (2021 SCMR 420), The District Police Officer, Mianwali and others v. Amir Abdul Majid, Province of Punjab v. Khadim Hussain Abbasi (2021 SCMR 1419) and Usman Ghani v. The Chief Post Master, GPO Karachi, and others (2022 SCMR 745).

9. Even, if a petitioner was acquitted in a criminal case following a conviction, in NAB Reference No. 20/2011, this does not automatically

lead to exoneration from departmental charges based on the same factual grounds. While a writ under Article 199 is available in specific limited situations, it is generally not the appropriate remedy to contest a dismissal from service based on these charges, particularly when the employee was afforded a full opportunity to cross-examine witnesses and present his/her defense but did not convince the department of his/her innocence.

10. Based on the findings of the inquiry committee, this petition is not considered maintainable and is therefore liable to be dismissed, which is dismissed accordingly with pending application(s) if any.

JUDGE

Head of Const. Benches