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IN THE HIGH COURT OF SINDH AT KARACHI

Before: **Mr. Justice Muhammad Ali Mazhar**
Mr. Justice Muhammad Karim Khan Agha

C.P. NO.D-3206 OF 2010

Shaukat Saleem Akhund
Versus
Pakistan Steel Mills Corporation Limited & others

Date of hearing	12.11.2015
Petitioner:	Shaukat Saleem Akhund through Mr.Latif Sagar, advocate
Respondents No.1 & 2	Pakistan Steel Mills Corporation Ltd through Mr.Mazhar Jaferi, advocate

JUDGMENT

Muhammad Karim Khan Agha, J.- The Petitioner was an employee (now retired) of Pakistan Steel Mills (PSM) who was holding the position of Deputy Manager when he was removed from service by the Respondents (PSM, PSM General Manager Administration and Personnel and Ministry of Industries and Production) under the Removal from Service (Special Powers) Ordinance 2000(RSO) by the Respondents by Order dated 26-6-2010 (the Impugned Order). According to the Petitioner his removal from service was illegal and hence he has moved this Petition under A.199 of the Constitution of the Islamic Republic of Pakistan 1973 seeking the following main relief's.

- a) *To hold and declare that the order of removal from service of the petitioner dated 23.06.2010 is illegal, unwarranted, bad before the eye of law and of no legal effect and set aside the same.*
- b) *To allow this petition of the petitioner, set aside order of removal from service dated 23.06.2010 and direct the respondents to reinstate the petitioner in their employment with all back benefits including continuity of employment, seniority, promotion and all fringe benefits connected thereto.*

2. The case of the Petitioner is that he had an excellent service record and was performing his duties to a high standard and was deserving of promotion. However on 19-9-2005 to both his shock and surprise he was awarded the major penalty of compulsory retirement by the Respondents which was an entirely illegal order in which he had not been given a proper opportunity to defend his position and even the relevant documents had not been supplied to him.

3. That being aggrieved by this Order the Petitioner moved an appeal against the same to the Respondents which was rejected and then approached the Federal

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Service Tribunal (FST) for relief which by Judgment dated 8-8-2009 (FST Judgment) noticed a number of irregularities/illegalities in the procedure which ultimately lead to the major penalty of compulsory retirement being imposed on the Petitioner. Para 2 of the FST Judgment is relevant which reads as under:

"During the course of argument, the appellant has drawn our attention to annexure 'P/8' (P-41) requesting for supply of some material in order to enable him to submit the proper reply. No reply was made. He further submits that during inquiry only one prosecution witness was examined and that the examination was also recorded in question- answer form. He further stated that even before the issuance of show cause notice and also after that, he filed an application with the department and so also before the inquiry submitting a list of persons/employees of the Steel Mill to be examined in defence. Neither those witnesses were called nor examined nor the application was decided in accordance with law. He has also pointed out several other illegalities committed by the inquiry officer. He has further pointed out that two other persons were also involved in the same transaction and against them inquiry was conducted and were exonerated of the charges. (bold added)

4. By consent of the parties Para 5 of the FST Judgment gave the following direction:

"In view of these circumstances, we set-aside the impugned order as well as the order passed by the departmental appellate authority and direct the respondents to reinstate the appellant into service for the purpose of facing the inquiry. The inquiry so initiated may be completed within a period of 120 days from the date of receipt of a copy of judgment. In case the inquiry is not initiated and completed within stipulated period, it will be presumed that no fresh action would be taken in the matter and the appellant shall stand reinstated in service with all back benefits." (bold added)

5. In a nutshell it is the case of the Petitioner that the Respondents deliberately and intentionally failed to comply with the FST Judgment which in particular according to him required the Respondents to produce certain documents which were essential to his case which it failed to do, allow him to cross examine a Prosecution witness and allow him to call witnesses in his defense and as such he was once again denied a fair hearing which ultimately lead to the Respondents 1 and 2 issuing order dated 24-6-2010 whereby the Petitioner was removed from Service under the Removal from Service (Special Powers) Ordinance 2000. It is this order which has been assailed by the Petitioner as being totally illegal and in particular contrary to the directions given by the FST for the re hearing of his case within a period of 120 days from receipt of the FST Judgment.

6. Learned Counsel for the Petitioners cited the authorities set out below against each Proposition.

Proposition 1.

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That since the enquiry was not held in the light of the direction to initiate ~~and~~ complete such enquiry within the period of 120 days as such the petitioner is ~~entitled~~ for back benefits w.e.f. 19.09.2005 till decision of the Tribunal dated 03.08.2009 as such decision of the Tribunal was never assailed by the respondents which attained finality. Following case is relied upon:

Zarai Taraqiat Bank V Aftab Kalachi 2009 SCMR 129 rel. at page 133-A

Proposition 2

That it is well settled principle by this Court as well as by the Hon'ble Supreme Court that in case of such pendency if aggrieved person/employee reached to the age of superannuation he would be entitled for all back benefits till such date if action taken against him is set aside by the Court. Following case is relied upon:-

Secretary Local Government Punjab V Ahmad Yar Khan 2010 PLC (CS)-495, C.P. No.D-871/2007 and CP No.141/2011.

Proposition 3

That since the Hon'ble Supreme Court as well as this Court has been pleased to hold that the competent authority cannot enhance the punishment without giving reason for dissatisfaction to the recommendation of the Enquiry Officer or providing chance to the aggrieved person by giving explanation, memo or show cause to the effect that the punishment so recommended required to be enhanced otherwise such enhancement has been held to be illegal and without lawful authority. Following case law were relied upon:-

Secretary Local Government Punjab V Ahmad Yar Khan 2010 PLC (CS)-501.

Allah Yar V General Manager Railways HQ Lahore 2001 SCMR 256
Province of Punjab V Farooq Ahmed Rehman 2007 PLC (CS)-781(SC)

7. On the other hand learned counsel for the respondents submitted that the FST Judgment had been fully complied with and that the petitioner was given full opportunity to defend his case and was provided with the documents which he had requested. That all codal formalities were completed by the inquiry officer. That the competent authority was due to approve the final order on the basis of the final inquiry report when the petitioner filed a petition before this Hon'ble Court whereby through order dated 12.02.2010 this Hon'ble Court was pleased to restrain the respondents from passing any adverse order until the next date of hearing.

8. On 05.04.2010 however this Hon'ble Court dismissed the aforesaid petition for non-prosecution whereupon the respondent issued the order dated

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23.06.2010 removing the petitioner from service with immediate effect under Removal from Service (Special Powers) Ordinance, 2010.

9. Learned counsel for the respondent has no cavil with the authorities cited at the bar by the petitioner however he contended that they were not relevant in the given circumstances of this case and the petitioner had been rightly removed after following the directions contained in the FST Judgment and procedures contained in the RSO and that the Petitioner had been given a full opportunity to defend the case against him. He also specifically argued that the findings/recommendations of the Inquiry Report were not binding on the competent authority

10. We have heard the learned counsel at length, carefully perused the Court record with their able assistance and considered the judgments cited at the bar.

11. As per FST Judgment noted above at Para 5 it seems that one of the main purposes of reinstating the Petitioner was for the purpose of facing a de novo inquiry to be carried out by the Respondents which should be completed within a period of 120 days from receipt of the Judgment dated 8-8-2009 (which the PSM through its memorandum concerning reinstatement in service of the Petitioner dated 27-10-2009 admitted receiving on 9-10-09). As such the inquiry needed to be completed by 6-02-2010. This time line should have been quite achievable bearing in mind that the PSM had already carried out an earlier inquiry and only needed to fill in the due process aspects which it had failed to do at the time of the last inquiry.

12. A number of aspects of the inquiry would remain the same e.g allegation/charge sheet. It should also be borne in mind that as per the Preamble of the RSO one of its objects was to provide for the speedy disposal of cases. It is also note worthy that the FST Judgment was by consent. Para 5 of the FST Judgment specifically stated that "if the inquiry is not initiated and completed within the stipulated period it will be presumed that no fresh action would be taken in the matter and the appellant shall stand reinstated in service with all back benefits."

13. It was therefore incumbent on the PSM to complete the inquiry within the time stipulated by the FST and ensure due process as indicated in the FST Judgment especially in terms of providing necessary documents to the Petitioner which he required in order to defend his case and calling and cross examining witnesses bearing in mind that there was a possibility of a major penalty being imposed on him keeping in view the last order which was set aside by the FST Judgment.

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14. As noted in the FST Judgment in essence the case was remanded back for a fresh inquiry, with the consent of the Respondents, largely on account of the fact that it appears that certain due process/procedural irregularities/illegalities may have occurred during the conduct of the original inquiry proceedings under the RSO the findings of which had lead to the compulsory retirement of the Petitioner under the RSO.

15. It is therefore necessary to consider whether the FST Judgment was carried out in both letter and spirit regarding due process and the given time lines were met. As per FST Judgment a new Inquiry Officer (IO) was appointed.

16. Turning to the first issue whether the time line given by the FST was met i.e. completion of the inquiry within 120 days from the date of the FST Judgment. The Respondent admits that it received a copy of the FST Judgment on 9-10-2010 and as such the inquiry had to be completed by 6-2-2010 being 120 days from the announcement of the FST Judgment . The record shows that the inquiry report was completed on 3-2-2010 and thereafter a show cause notice was issued to the Petitioner on 4-2-2010 to which he replied on 12-2-210 which serves as ample proof of receipt of the show cause notice which also enclosed the Inquiry report for the Petitioner to respond to.

17. It was argued by the Petitioner that the 120 day period applied to the final inquiry report being issued i.e. his reply to show cause notice along with his comments on the Inquiry Report being considered by the Competent authority and a final order being made in his case. However, on balance we do not consider this to be a practical or fair interpretation of the FST Judgment under the facts and circumstances of the case. This was because the Inquiry Report had been completed within the 120 day period during which time the Petitioner was heard, evidence collected and analyzed and a recommendation made.

18. The show cause notice which issued thereafter along with a copy of the Report was more of a safety value to give the Petitioner a final opportunity to comment on the action proposed to be taken against him by way of complete fairness, under S.3(2) RSO, and in particular because the Petitioner had been found guilty of misconduct and was liable to a Major Penalty, in this case, a one step down in post as per the recommendation of the Inquiry Report. The fact that it may take a little longer to finalize the penalty to be given, after considering objections, by the Petitioner in our view does not mean that the inquiry had not been concluded. The inquiry had been concluded within time.

19. Even otherwise if the penalty to be imposed had not been finalized under such circumstances when the Inquiry was complete this aspect should not lead to a

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technical knock out as it is well established that the law prefers matters to be decided on merits rather than on technicalities. In this case there is little doubt that the Inquiry was being carried out seriously and at a reasonable pace and as such, as mentioned above, we find that the Inquiry was completed within the given 120 day time frame given in the FST Judgment.

20. Turning to the next issue which in essence was whether due process was followed and the Petitioner had an adequate and fair opportunity to defend himself against the allegations which had been leveled against him. In particular it had been highlighted in the FST Judgment that certain documents which the Petitioner deemed necessary to adequately defend himself had not been provided to him at the time when his original compulsory retirement order was against him (later set aside by the FST Judgment).

21. The PSM (Administration and Personnel) by Order of Inquiry letter dated 17-11-2009 communicated to Mr.M.Atiq Khan that he had been appointed as inquiry officer (IO) by the Competent authority under the RSO to inquire into 7 allegations which had been made against the Petitioner all connected with the theft from the PSM of costly material (Ferro Silicon), which allegations included amongst others, violation of SOP's during the theft, making false statement to investigation committee looking into the theft and a failure to check vehicles used in the theft.

22. The above referred Order of Inquiry specifically stated as under:

"3. You will conduct the enquiry under the provisions of the Removal from Service (Special Powers) Ordinance-2000 (as amended) by following the under mentioned procedure and submit finding/recommendations to the Competent Authority within 25 days of the initiation of enquiry).

Communicate to the accused the charges and statement of allegation as specified above.

Require the accused within 07 days from the day the charge is communicated to him to put in a written defence and after expiry of the stipulated period inform the accused regarding fixing of the date, time and place of the enquiry accordingly.

Enquire into the charges and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him.(bold added)

Hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the Competent Authority".

23. By letter dated 7-12-2009 the Inquiry Officer Mr M.Atiq Khan (who was changed mid way through the Inquiry by Muhammed Zahir Ghorri on account

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of criminal proceedings being lodged against Mr. Atiq Khan) under S.5 (1) (a) RSO served a statement of allegation and charges on the Petitioner seeking his written explanation within 7 days after which he would be informed about the date, time and place of inquiry. The Petitioner was alleged to have committed misconduct under S.3 (1) (b) of the RSO.

24. S.3 (1) (b) RSO reads as under:

[Dismissal, removal and compulsory retirement etc] of certain person in Government or corporation service, etc (1) Where, in the opinion of the competent authority, a person in Government or corporation service, is-

b) guilty of misconduct; or

the competent authority, after inquiry by an inquiry officer or the inquiry committee constituted under section 5, may, notwithstanding anything contained in any law or the terms and conditions of service of such person, by order in writing dismiss or remove such person from service, compulsorily retire from service, or reduce him to lower post or pay scale, or recover from pay, pension or any other amount payable to him, the whole or a part of any pecuniary loss caused to the organization in which he was employed or impose one or more minor penalties as prescribed in the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973

25. S.5 (1) RSO reads as under:

5. Power to appoint an inquiry officer or inquiry committee-(1) Subject to the provisions of sub-section (2), the competent authority shall, before passing an order under section 3, appoint an Inquiry Officer or Inquiry Committee to scrutinize the conduct of a person in Government service or a person in corporation service who is alleged to have committed any of the acts or omissions specified in section 3. The Inquiry Officer or, as the case may be the Inquiry Committee shall-

- (a) communicate to the accused the charges and statement of allegations specified in the order of inquiry passed by the competent authority;*
- (b) require the accused within seven days from the day the charge is communicated to him to put in a written defence;*
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him' and*
- (d) hear the case from day to day and no adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority. (bold added)*

26. As can be seen S.5 (1) RSO was largely set out in the Order of Inquiry.

27. The Petitioner on 14-12-2009 submitted his written reply to the statement of allegations and charges and denied them all. Interestingly the IO through letter dated 11-12-2009 before receiving the Petitioners written Reply called the Petitioner to appear in the inquiry proceeding on 21st December 2009 at 11am.

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28. This pre dating of the notice of inquiry although not in conformity with the laid down procedure we consider does not make any material difference. As probably it was done on account of the Petitioner denying the charges in the first proceedings which were set aside by the FST Judgment and it was presumably anticipated that he would deny them again. It was also probably done in an attempt to meet the deadline set by the FST Judgment. Even otherwise the hearing was set for 21st December 2009 and the technical defect did not in our view in any way prevent the Petitioner from making a full defense to the allegations leveled against him.

29. Significantly, a memorandum dated 16-12-2009 (5 days before the hearing was due) addressed to the Petitioner was found on the record of the Inquiry proceedings which were made a part of the Court record which specifically allowed the Petitioner to inspect the relevant documents in connection with the inquiry which were before the IO so that he could respond to them if he so desired during the inquiry proceedings. The memorandum for ease of reference is reproduced below:

*"PAKISTAN STEEL
(Administration & Personal)"*

No.A&P/Discip. Cell/2009 823 D

December 16, 2009

MEMORANDUM

*Subject :- **PROVISION OF DOCUMENTS / MATERIAL***

Ref. His application dated 10.12.2009 addressed to Mr.M.Atiq Khan, DGM (Sintering)/Enquiry Officer on the subject captioned above.

Mr.Shoukat Saleem Akhund, P.No.071021, DM (Admn) Transport Department is hereby informed that statement of Allegation and charges issued to him by the Enquiry Officer is quite elaborative. Moreover as per established procedure of conducting the Enquires, the accused (during course of Enquiry before Enquiry Officer or the Enquiry Committee) is allowed to see the official papers, which are to be taken into account by the Enquiry Officer/Enquiry Committee.

2. However, in keeping with the prevailing practice to provide full and fair chance of defence in the disciplinary case, he is hereby allowed to have go through / study of relevant document / papers available with Discip. Cell during the working hours within two days in Disciplinary Cell (A&P Deptt) for expeditious / judicious finalization of the enquiry in accordance with the provision of the ordinance 2000 as amended. (bold added)

*(NOOR A. MEMON)
Dy.General Manager (A&P)*

*To,
Mr.Shoukat Saleem Akhund,*

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P.No.071021, D.M (Admn),
Transport Department,
Pakistan Steel.

cc. to:-
Mr.M.Atiq Khan,
DGM (Sintering) Enquiry Officer."

30. This memorandum seems to shatter the stance of the Petitioner that he was **not** afforded access to the relevant documents, if he choose to inspect them and as **such** would therefore have been aware of all the documentary evidence against **him**. Such denial of access to documents was one of the main planks of the Petitioners case in this Petition.

31. The Inquiry Report is detailed consisting of 203 pages and the proceedings of the Inquiry as set out in the Inquiry Report also indicate that the inquiry was carried out with due process bar from the Petitioner not being allowed to cross examine one witness. An extract of the Inquiry Proceedings as set out in the Inquiry Report dated 3-2-2010 is reproduced as under to illustrate the point.

ENQUIRY PROCEEDINGS

- 5.1 Enquiry proceedings were started on 21.12.2009. prosecutor recorded his statement on 21.12.2009 (Flag-E) along with relevant documents comprising (i) Copy of SOP [Page 1 to 12] (ii) 04 photocopies of weighing slips (iii) 04 photocopies of Dispatch Note / Delivery Challan (iv) 01 photocopy of job description (v) photocopies of pages 94-97 and (vi) photocopy of Annex-J. All these papers are placed from page 28 to 50.
- 5.2 Enquiry was continued on 22.12.2009, 23.12.2009, 24.12.2009, 30.12.2009, 06.01.2010, 08.01.2010 and 11.01.2010, During these dates the defendant cross examined the prosecutor and asked 48 questions which are available from Page 104 to 146 (Flag-F). (bold added)
- 5.3 Defendant submitted his statement on 14.01.2010 placed at pages 147 to 163 (Flag-G) (bold added)
- 5.4 Prosecutor cross examined the defendant on 14.01.2010 and 18.01.2010 (Flag-H) and asked 12 questions (Page 186 to 176 (sic)).
- 5.5 On 20.01.2010 the Enquiry Officer, Mr. Atique Khan, DGM (Sintering) return the enquiry to APEO (A&P) on the plea that he has been nominated in FIR 01/2010 dated 16.01.2010 in canteen corruption case. (Flag-I). consequently, the undersigned was appointed as Enquiry Officer in the same case vide letter No. A&P/Disp. Cell/2010/823D dated 27 January, 2010 and asked to conduct enquiry proceedings from the step of its halt. (Flag-J). The undersigned was on Ex-Pakistan Earned Leave w.e.f. 25.01.2010 to 29.01.2010 (Flag-K) and joined duty on 01.02.2010.
- 5.6 Enquiry notice to continue the proceedings from step of its halt was issued to defendant on 01.02.2010 and date of enquiry was fixed for 02.02.2010 (Flag-L).
- 5.8 Enquiry proceedings were resumed from question No.13 on 02.02.2010 at 1030 Hrs. and continued to 1610 Hrs. The prosecutor cross examined the defendant and asked 30 questions in total (Page 180 to 186).

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5.9 *During the enquiry on 02.02.2010 the defendant requested to Enquiry Officer to summon Mr.Rana Naseer of Shaheen Freight services for cross examination (Flag-N). The request of defendant was not considered by enquiry officer (bold added).*

32. In the event the Inquiry Report found the Petitioner guilty of 6 of the 7 ~~charges~~/allegations and recommended a major penalty be imposed on the ~~Petitioner~~ with the recommendation of one step down i.e. reduction to a lower ~~post~~.

33. On being provided with a show cause notice and a copy of the Inquiry Report by letter dated 4-2-2010 the Petitioner made a detailed response by letter dated 15-2-2010 largely concerning his denial of access to relevant documents, ~~the~~ denial of his right to cross examine one witness and the great speed in which ~~the~~ Inquiry Officer was proceeding which lead to him not being able to call any ~~defense~~ witnesses and the violation of the FST Judgment in that the proceedings ~~were~~ not concluded in 120 days. He also made comments on the particular findings in respect of each allegation and described the Inquiry as a sham.

34. That having considered the reply of the Petitioner by letter dated 23-6-2010 the Petitioner was removed from Service with immediate effect which was a higher penalty than that recommended in the Inquiry Report without assigning any reason for such up lift in penalty.

35. On a detailed examination of the Record of the inquiry it appears that the Petitioner's application to cross examine one witness was not allowed. It also appears that he had access to all relevant documents.

36. With regard to his contention that he was refused the right to call defense witnesses there is no such application on file whereby he has intimated the defense witnesses which he proposes to call whereas interestingly his application to cross examine one witness, which was declined, is on file.

37. It was also not recorded in the inquiry proceedings that the Petitioner wanted to call defense witnesses which was disallowed which seems surprising when the IO readily conceded in his Report that the cross examination of one witness was declined. It also needs to be considered that this was in effect the second inquiry (the first one having been set aside by the FST Judgment) so logically the Petitioner ought to have been ready with his defense witnesses and applied in writing to the inquiry officer for their call during the inquiry which he failed to do.

38. The only failure to follow due process from the record of the proceedings appears to be refusal by the IO to allow the Petitioner to cross examine one

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witness. No reasons for this refusal were given by the IO, for example, that the point of cross examination was irrelevant to the allegations. Thus, in our view the cross examination of the witness ought to have been allowed as a matter of due process even if the questions were disallowed by the IO especially as the Respondents had to be extra cautious in such respects bearing in mind that the FST Judgment had largely ordered de novo proceedings on account of certain due process requirements not being followed in the earlier inquiry which was set aside by the FST Judgment.

Reliance is placed on **Muneer Ahmed V Asst.Chief Human Resource 2015 PLC (CS) 501 at P.504 Para 8.**

"No doubt the Petitioners were given notice dated 16.07.2012, for personal hearing on 20.07.2013 and they were also required to sign "undertaking" that hearing was afforded to them but where de-hiring is result of serious allegations of corruption, undisciplined attitude and poor performance, **the principle of natural justice must be followed not merely, as a formality but as a well-meaning and effective requirement of law, which includes confronting the parties with statement of allegations, opportunity to rebut the documents and charges against them through written and oral defence and cross-examination witness if any available against them and after aforesaid opportunities passing of a speaking and well-reasoned order as mandated under section 24-A of the General Clauses Act, 1897". (bold and italics added)**

39. We noted however that notwithstanding the above failing that the Petitioner was found guilty of 6 of the 7 allegations so it is unlikely that he would have been entirely exonerated of all the allegations even if his cross examination had shattered the evidence of the one witness in question bearing in mind the large amount of documentary evidence on record against the Petitioner.

40. What may have been affected however was the penalty imposed. By way of equitable relief and taking all factors and the particular circumstances of the case into account including the Petitioners long and apparently unblemished service record at PSM with no evidence of his poor performance and the denial of his right to cross examine one witness without reason we are of the view that the Petitioner could not have been awarded a higher penalty by the competent authority than that recommended by the IO without at least being given a speaking order as to why the penalty was increased which was not done in this case.

41. The second show cause notice under S.3 (2) RSO ought to have set out that the competent authority was intending to depart from the recommendations of the

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10 in his Inquiry Report and giving the specific penalty to be imposed by the competent authority and why in this case it deemed it necessary to increase the recommended penalty. This would have given the Petitioner a better chance to respond more strongly to the second show cause notice and would seem to be in line with the language of S.3(2) RSO which reads as under:

3 (2) Before passing an order under sub-section (1), the competent authority 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 within seven days or within such extended period as the competent authority may determine;

42. It may be settled law that the Competent Authority is not bound by the recommendations contained in the Inquiry Report but the Competent Authority cannot in our view without reason and potentially in an arbitrary manner increase the penalty without giving reasons especially in a case like this where the Petitioner had objected to the lesser recommendation contained in the Inquiry Report through a detailed representation/Reply

43. Reliance is placed on **Government of Punjab V Abdul Sattar SCMR 1990 P.995** (which was followed in **Province of Punjab V Farooq Ahmad Awan (2007 PLC (CS) 781)**)

"2. The respondent was Assistant Research Officer in the Veterinary Research Institute and he was proceeded against departmentally for overstaying his leave ex-Pakistan from 1.11.1982 to 19.05.1983 when the rejection of the leave was conveyed to him by a letter dated 18.05.1982. The Enquiry Officer exonerated him. The competent authority after serving a show-cause notice and hearing him ordered his compulsory retirement from service from 01.11.1980.

The Service Tribunal set aside the compulsory retirement holding as hereunder:-

"The Enquiry Officer after making elaborate inquiry came to the conclusion that the appellant's case was genuine and exonerated him from the charge of willful absence. Furthermore, what I find in this case is that even the Authorized Officer agreed with the Enquiry Officer and exonerated the appellant, finding his case as genuine. This being the facts of the case, the ratio decidendi of this ruling of the Supreme Court of Pakistan will be fully applicable to the case of the appellant. The Authority in this case while serving a show-cause notice has failed to mention a single reason for not accepting recommendations of the Enquiry Officer as well as by the Authorized Officer, therefore, the impugned order so passed by him could not be sustained. (bold added)

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The result is I accept the appeal, set aside the impugned orders and direct the appellant be reinstated in service with all back benefits. There will be no order as to costs."

We find that the factual aspect of the case has received full attention of the authorities who were called upon to look into the case and no question of law of public importance as envisaged by the constitutional provision arises in the case to call for further examination. Leave to appeal, is therefore, refused."

44. Reliance is also placed on **S.M Nawaz V Federation of Pakistan** (2010 PLC (CS) 501 at Para 17 which held as under:

17. What is the purpose behind serving a show-cause notice. By the stage of show-cause notice, inquiry has been held (or dispensed with) and conclusion as to guilt or innocence has been arrived at. To us it appears that it has only one purpose after informing the employee that he has been found guilty in domestic proceedings, it conveys to the employee mind of the competent Authority that his conduct deserved a particular punishment. When a particular punishment is stated it is naturally indicative to the employee of mental conclusion of the employer as to seriousness of the offence and the stakes stacked against him, and since punishment must be proportionate to gravity of the offence, the punishment proposed indicates to the employee that it is this which the employee deserves to get as a consequence of his delinquency. It also shows or indicates to the employee that if he neglects or refuses to submit any reply to the show-cause notice the maximum that competent Authority would do is it would come to the conclusion that the employee has no defence as far as the punishment proposed is concerned. If the employee submits a defence the competent Authority can either accept the defence completely and exonerate him or completely reject the defence of the employee and impose the punishment proposed in the show-cause notice. The third possibility is that the competent Authority is somewhere between complete acceptance and complete rejection. In that eventuality the competent Authority would be justified in imposing a punishment less severe than one proposed or at the most, the one proposed **and if the competent Authority proposes one punishment in the show-cause notice (and we must not lose sight of the fact that show-cause notice is issued after approval of the competent Authority and is therefore, signal indicator of degree of satisfaction and the tentative conclusion arrived at by the competent Authority after considering the proceedings of inquiry and report of the Inquiry Committee) and imposes a more severe one, it indicates that competent Authority has changed its mind after show-cause notice was issued. Was the employee put at notice regarding this modified conclusion by the competent Authority to his detriment? Obviously not. Would the employee have preferred a different defence or would he have preferred or attempted a better defence had he known as to what is going to stare him in face. The possibility cannot be ruled out. Therefore it after issuing a show-cause notice the competent Authority imposes a punishment more severe than the one proposed in the show-cause notice the only conclusion that is obvious is that case of the employee has been prejudiced and employee has gone condemned unheard qua the impugned punishment."**(bold added)

45. The upshot of the above discussion therefore is that the Removal from Service Order dated 23-6-2010 (the Impugned Order) is struck down primarily on account

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of the 2nd show cause notice not precisely specifying the type of major penalty to be imposed and not giving reasons as to why the Competent Authority had departed from the recommendations of the Inquiry Officer in the Inquiry Report and intended to impose a higher penalty on the Petitioner which he was not given an adequate opportunity to respond to. However if the Respondents want to impose a major penalty beyond that recommended by the Inquiry Officer in the Inquiry Report they should confront the reasons for their departure in writing to the Petitioner and after providing him with an opportunity of personal hearing pass a speaking order within 20 days positively of this Judgment. Failing which the Respondents shall pay to the Petitioner all back benefits based on the recommendation of the Inquiry Officer until he reached superannuation within 7 days and thereafter any consequential benefits, if any, such as pension etc. That within 30 days of receipt of all back benefits the Petitioner shall vacate the flat which belongs to the Respondents and which he is currently occupying.

Dated: 16-12-15