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Snd Service Trib: Dismissed from Service
upheld

BEFORE THE SINDH SERVICE TRIBUNAL FOR SUBORDINATE JUDICIARY,
HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha (Chairman)

Mr. Justice Faisal Kamal Alam (Member)

Service Appeal No.11 of 2015

Service Appeal No.02 of 2009

Appellant	Ali Gul Khaskheli S/o. Ahmed Khan Khaskheli through M/s. Naeem Iqbal, Muhammad Saleem Khaskheli and Ahmed Khan Khaskheli, Advocates.
Hon'ble Chief Justice, through Registrar, High Court of Sindh.	Through Mr. Ali Safdar Deepar, Assistant Advocate General, Sindh
Date of Hearing	19.08.2023.
Date of Judgment	02.10.2023.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- At the outset we draw the attention of the appellant to the fact that the Supreme Court has held in judgment cited in 2023 (PLC (CS) 501 as under at para 20(d):-

"This Tribunal is not covered by the proviso to clause (2) of Article 212 of the Constitution of the Islamic Republic of Pakistan and therefore no leave petition or appeal lies to the Hon'ble Supreme Court of Pakistan in terms of clause (3) of the said Article."

The Appellant Ali Gul Khaskehli S/o. Ahmed Khan Khaskheli, Ex-Civil Judge & Judicial Magistrate has filed these service appeals against the order of Hon'ble Chief Justice dated 30.07.2015 whereby major penalty of "Dismissal From Service" was imposed upon him (impugned order) and against the impugned order in review dated 20.11.2008 whereby his representations against adverse remarks in his PER's were rejected. This appeal however was dismissed for non prosecution.

2. With regard to his review application in respect of adverse remarks order on review application and material facts about the application are set out in letter dated 22.11.2008 by Member Inspection team II in the following terms;

"I am desired to refer to inform you that the Review Application dated 17.2.2004 against the order dated 15.12.2003 for expunction of adverse remarks recorded in his ACRs for the period from 26.5.1997 to 31.12.1997, 1.1.1998 to 1.6.1998 and 12.6.1998 to 31.12.1998 as well as representations dated 17.10.2003 and 18.8.2008 made by Mr. Ali Gul Khaskheli, Civil Judge & Judicial Magistrate Daulatpur for expunction of adverse remarks recorded in his Annual Confidential Reports for the period from 1.8.1996 to 31.12.1996, 1.1.1997 to 25.5.1997, 1.1.1999 to 30.7.1999, 10.8.1999 to 31.12.1999, 6.3.2000 to

31.12.2000, 1.1.2002 to 31.12.2002, 1.1.2003 to 31.12.2003, 1.1.2004 to 31.12.2004, 1.1.2005 to 31.12.2005, 1.1.2006 to 31.12.2006 and 1.1.2007 to 31.12.2007 was considered by the Hon'ble Chief Justice/Authority and after personal hearing him on 12th November, 2008 has been pleased to pass the following orders:-

12.11.2008

"Mr. Ali Gul Khaskheli is present. He has been heard in the context of his Review Application against the order dated 15.12.2003 passed by the then Chief Justice, fixed today for hearing. He has also been heard as regards his other representations, which relates to communication of adverse remarks to him for the period 1.8.1996 to 31.12.1996, 1.1.1997 to 25.5.1997, 1999 to 2000 and 2002 and the adverse ACRs for the years 2003 to 2007.

The submission of the Judicial Officer is that he was not called for any counseling by the learned District and Sessions Judges, who have from time to time given him adverse remarks in the ACRs. His further submission is that some of the District and Sessions Judges, who have given adverse ACRs to him; were biased and, therefore, such remarks are liable to be expunged.

In the light of submissions made in the review application/representations, I have carefully perused the whole service record of Mr. Ali Gul Khaskheli, which goes to show that all along he has not enjoyed good reputation as regards his integrity and efficiency. From time to time, different District & Sessions Judges, have labeled him as such, which remarks have also been maintained by the High Court. Considering all these facts, the review application and representation, made by Mr. Ali Gul Khaskheli, for expunging of adverse remarks, are rejected." (bold added)

3. With regard to the dismissal from service appeal the facts of the case are that the appellant was issued Show Cause Notice bearing No.727/Conf:VI-Z-23(Report) dated 31st July, 2009 and No.480/Conf:VI-Z-23 (328)DP dated 17th June, 2013 under the provisions of Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 on the ground of 'corruption'.

4. After affording an opportunity of personal hearing to the appellant and perusing the record, the authorized officer had come to the conclusion that the delinquent officer is guilty of the charge leveled against him and

liable to impose major penalty of "dismissal from service" prescribed under Rule 4(1)(b)(iv) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 upon him, as such final Show Cause Notice bearing No.409/Conf:VI-Z-23 (328) DP, dated 2nd May, 2015 was served upon him, reply thereof was furnished by him on 21st May, 2015. The authorized officer once again had come to the conclusion that the delinquent officer is guilty of the charge leveled against him and liable to impose major penalty of "dismissal from service" prescribed under Rule 4(1)(b)(iv) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 be imposed upon him.

5. The Hon'ble Chief Justice after considering the facts as well as circumstances of the matter and hearing the delinquent officer in person decided in exercise of powers under clause (b) of Sub-Rule (4) of Rule 5 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 to impose major penalty of 'dismissal from service' as prescribed under Rule 4(1)(b)(iv) of the Sindh Civil Servants (Efficiency & Discipline) Rules 1973 upon Mr. Ali Gul Khaskehli, Civil Judge & Judicial Magistrate vide order dated 30.07.2015.

6. Learned counsel for the appellant after initially starting to argue his case on merits when confronted with the record, on instructions has not argued his appeal on merits and contended that he would be satisfied if the penalty imposed on the appellant of dismissal from service was reduced to that of compulsory retirement by this Tribunal taking a lenient view on humanitarian grounds that the appellant had a large family to support, that by not arguing the appeal on merits he had shown genuine remorse and saved the time of this Tribunal and the fact that the appellant had put in 20 years of judicial service. In support of his contentions he has placed reliance on the cases of *Muhammad Alamzeb Khan v. Registrar, Peshawar High Court Peshawar* and another (2008 SCMR 1406), *Samiuddin Qureshi v. Collector of Customs* (PLD 1989 Supreme Court 335), *Water and Power Development Authority WAPDA House, Lahore and 2 others v. Muhammad Yousaf, Test Inspector* (1997 PLD (C.S.) 424), *Noor Muhammad Khan v. Registrar, Lahore High Court* and another (2008 PLC (C.S) 1188) and *Shakir Ali and another v. National Accountability Bureau through Chairman, Islamabad* and another (2021 PLD (C.S) 683).

7. On the other hand learned learned AAG has not agreed to a reduction in the penalty imposed on the appellant through the impugned order and has contended that the findings against the appellant are so serious that the penalty of dismissal from service is fully justified and should remain in place and the appeal be dismissed.

8. We have heard the parties, minutely gone through the material on record and considered the relevant case law.

9. The appellant has not contested the appeal on merits and as such the only issue before us is whether the appellant has through the mitigating factors which he raised persuaded us to modify the penalty handed down to him.

10. In this regard it is also important to consider the reasons why the impugned Order dated 30.07.2015 dismissed him from service which are set out below;

"With regard to the Final Show Cause Notice issued to Mr. Ali Gul Khaskheli, Civil Judge & Judicial Magistrate, has been called upon to show cause as to why major penalty of dismissal from service may not be imposed upon him.

2. It may be recalled that initially Show Cause Notice was served upon Judicial Officer under Rule 5(3) of Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 wherein he had been called upon to show cause as to why one of the penalties prescribed under Rule 4(1) of the aforementioned Rules may not be imposed upon him for the following reasons:

A. That in PER of 01.08.1996 to 31.12.1996, in Part II your Integrity was recorded as "Below Average". In Part V(b)-Counseling, Reporting Officer had recorded "He was advised to bring improvement in himself specially with reference to integrity". In Part VI (b) Reporting Officer had recorded "No yet fit for promotion".

B. That in PER of 01.01.1997 to 25.05.1997, in Part III your Integrity was recorded as "Below Average". In Part V(b)-Counseling, Reporting Officer had recorded "He was advised to safeguard his image". In Part VI (b) Reporting Officer had recorded "Not yet fit for promotion". Your Representation for expunction of adverse remarks was rejected.

C. That in PER of 26.05.1997 to 31.12.1997, in Part II (3), (4), (5), (6), (7), (8), (9), (10), (11) (12-c) and (14) your Attitude including integrity and in Part IV (2) and (4) Proficiency in Job were recorded as "Below Average". In Part V Reporting Officer had recorded "An unreliable officer". "Counseling-Yes, with negative results". In Part VI (a) Overall Grading was

recorded as "Meets bare minimum standards (Below average)" and in Part VI (b) Reporting Officer had recorded "Unlikely to progress further".

D. That in PER of 01.01.1998 to 11.06.1998, in Part III (3), (5), (7), (8), (9), (11) and (14) your Attitude including integrity and in Part IV (1) to (7) your Proficiency in Job were recorded as "Below Average". In Part V Reporting Officer had recorded "An unreliable officer, doubtful integrity". "Counseling-Yes, with no positive result". In Part VI (a) Overall Grading was recorded as "Meets bare minimum standards (Below average)" and in Part VI (b) Reporting Officer had recorded "Not yet fit for promotion".

E. That in PRR of 12.06.1998 to 31.12.1998, in Part III (3) your integrity and overall grading in Part III, in Part IV (6) your Proficiency in job (Work output) were recorded as "Below Average". In Part V Reporting Officer had recorded "He is an average officer but so far his integrity is concerned he does not enjoy good reputation. 'counseling did not bring about any improvement', In Part VI (a) Overall Grading was recorded as "Meets bare minimum standards (Below average)" and in Part VI (b) Reporting Officer had recorded "Not yet fit for promotion". Your Representation for expunction of adverse remarks and Review Application were rejected,

F. That in PER of 01.01.1999 to 30.07.1999, in Part III integrity was recorded as "Below Average", In Part V Reporting Officer had recorded "He can be rated as an average officer but not enjoying good reputation with regard to his integrity. 'counseling did not prove effective', In Part VI (b) Reporting Officer had recorded "Not yet fit for promotion",

G. That in PER of 10.08.1999 to 31.12.1999, in Part V Reporting Officer had recorded 'An officer with doubtful integrity but necessary evidence could not be collected only because the member of the Bar failed to discharge their official duties towards achieving the required results'. "Counseling-Yes, negative". In Part VI (b) Reporting Officer had recorded "Not yet fit for promotion".

H. That in PER of 06.03.2000 to 31.12.2000, in Part VI (b) Countersigning Officer had recorded "Not yet fit for promotion".

I. That in PER of 01.01.2002 to 31.12.2002, in Part II (1), (7) and (9) were recorded as "Below Average". In Part IV Reporting Officer had recorded "He has stated nothing in Part II(2). However, he requires due improvement by hard working to enable him to achieve the targets as per the remarks/ observations made against him on 23.12.2002 during annual inspection of his court. The same were also communicated to him for compliance and improvement but it was proved to be futile exercise". "He was

enjoying bad reputation and his integrity was under cloud. He was also counseled by confidential letter DO No.72 dated 26.09.2000 but failed to improve. On the charge of corruption, misconduct and inefficiency a departmental inquiry is also pending against him before High Court of Sindh". "On account of frequent complaints and transfer applications of litigant many cases were transferred from his court on his failure to make improvement all criminal cases were then transferred from the file of his court and ultimately the jurisdiction of sole police station assigned to his court was also taken away from him, leaving only civil and family suits on the file of his court". The Reporting Officer had recorded Overall grading as "below average", As to fitness for promotion Reporting Officer had recorded "Not yet fit for promotion".

J. That in PER of 01.01.2003 to 31.12.2003, in Part If (1) (8) and (9) were recorded as "Below Average". In Part IV Reporting Officer had recorded "His performance was not satisfactory or upto the mark". "His integrity remained under clouds and he also failed to enjoy good reputation. However, he made some improvement when he was dealt with strictly. But still much improvement is required in his case". "As per remarks report dated 14.06.2003 of the Hon'ble Inspecting Judge Mr. Justice Anwar Zaheer Jamali the orders passed by this judicial Officer were of below average quality and that he needs improvement in legal knowledge and the manner of writing orders". The Reporting Officer had recorded Overall grading as "below average" and in Part IV (7) had recorded "Not yet fit for promotion".

K. That in PER of 01.01.2004 to 23.12.2004, in Part II (1) (3), (4), (5), (8) and (9) were recorded as "Below Average". In Part IV Reporting Officer had recorded "His overall performance was not satisfactory, the detail of which was also given in the report of annual inspection of his Court conducted on 20.12.2004", "He was neither honest nor he enjoyed good reputation. However, he improved himself after he was dealt with strictly". "He should give due attention to his judicial work / duty with due interest". The Reporting Officer had recorded overall grading as "below average". As to fitness for promotion Reporting Officer had recorded "Not yet fit for promotion".

L. That in PER of 14.02.2005 to 31.12.2005, in Part V Reporting Officer had recorded "Previously he was not enjoying good reputation. There are no complaints against him, however, he requires to improve his reputation" "Counseling is followed by him". "He is average in routine cases, he requires to improve the knowledge of basic law and need training". As to fitness for promotion the Reporting Officer had recorded "Not yet fit for promotion".

M. That in PER of 01.01.2006 to 31.12.2006, in Part V Reporting Officer had recorded "His judgments are average, he is advised to improve his judgment and knowledge of basic law". "He is average in routine as well as in complicated cases". As to fitness for promotion the Reporting Officer had recorded "Not yet fit for promotion".

N. That in PER of 01.01.2007 to 16.11.2007, in Part III your integrity and professional competence were recorded as "Below Average". In Part IV Reporting Officer had recorded "He is characterless and unfit for judicial department". "He is selfish, there were complaints from advocate and litigant regarding his corruption, his integrity is below average". "On receiving oral complaint against him undersigned called him in chamber for several times and counseling him to improve his integrity and reputation but no avail". The Reporting Officer in Part IV had recorded "Unlikely to progress further".

O. That you remained under suspension for a period w.e.f. 11.09.2007 to 21.05.2008 on the charges of misconduct, inefficiency and corruption and minor penalty of 'Censure' as prescribed under Rule 4(1) (a) (i) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 was imposed.

P. That you were suspended on 21.07.2009 on the charges of corruption and were reinstated on 10.03.2012 without prejudice to the final result of the disciplinary proceedings under Rule 5 (3) of Sindh Civil Servants which are pending decision.

Q. The DPC in the years 2003, 2008 and 2013 on account of adverse reports as to your performance and integrity your such PER did not promote you to the next position.

3. Departmental proceedings were initiated against this officer on account of persistent reputation of being an inefficient and corrupt officer. In his Performance Evaluation Reports (PER) for the years 1996, 1997, 1998, 1999, 2000, 2002, 2003, 2005, 2005, 2006, 2008 and 2009 he has been described as below average with doubtful integrity and recommended not fit for promotion. Even for the years 2004 and 2007 he was described as dishonest and characterless officer as well as unfit for judiciary. His representations against some adverse remarks and review applications were rejected by the competent authority.

4. An opportunity of personal hearing was given to the Judicial Officer. He appeared before me on 27.07.2015 and states that he may be pardoned on humanitarian grounds as he has three wives and 23 children. He further states that he is ready to take special Oath that in future he will mend his ways and behave like an honest officer, He also submits that with regard to adverse remarks, he has filed appeal before the Service Tribunal and till its decision, the final show cause notice may be withdrawn. No submission was made with regard to the findings of the Hon'ble Authorized Officer which could have prevailed to modify his recommendations, Even No legal infirmity or factual incorrectness has

been pointed out in the order passed by the Hon'ble Authorized Officer on 06.06.2015 recommending dismissal from service.

5. In the circumstances, I accept the recommendation of the Hon'ble Authorized Officer and impose major penalty of "dismissal from service" provided in Rule 4(1)(b)(iv) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 with immediate effect.(bold added)

Sd/-
Chief Justice.

11. On review of this impugned order the following letter was communicated to the appellant on 22.12.2015 by the Assistant Registrar of this court;

Subject: REVIEW/APPEAL AGAINST IMPOSITION OF MAJOR PENALTY OF DISMISSAL FROM SERVICE VIDE ORDER DATED 30.7.2015.

I am directed to inform you that the Review/Appeal dated 26.8.2015 filed by you against imposition of major penalty of "dismissal from service" has been dismissed by the Hon'ble Chief Justice/ Authority on 18.12.2015, with the following orders:

"Mr. Ali Gul Khaskheli, Civil Judge present in person. Heard. The delinquent officer says that he does not dispute nor challenges the observations made against him and the assessment made in his Annual Evaluation Reports. He says that his mistakes may be forgiven and one Opportunity may be given to him to serve the institution and that he will not give any cause of complaint in future. He further stated that he has 27 children and on humanitarian grounds his service be restored. I have heard the delinquent officer at length and minutely examined the Annual Evaluation Reports as well as the order whereby recommendation for dismissal were made. The service record of the delinquent officer is so bad that I cannot even think restoring him back to the judicial service. I, therefore, dismiss the Review."

This is for your kind information please.

Sd/-
(AUSAF HUSSAIN)
Assistant Registrar (Confidential)
for REGISTRAR

12. It would be easy for us to take the option of simply reducing the penalty imposed on the appellant from dismissal from service to compulsorily retirement but we are bound to consider the facts of the case, the material before us and weigh this against the mitigating circumstances,

raised by the appellant to see whether any reduction/modification in penalty is justified.

13. It is to be noted that we have carefully gone through each ACR on record which we find not to be subjective as they are detailed and deal with many aspects of the appellants work, character and other attributes. It has also to be kept in mind that the appellant is a judicial officer who was placed in a position of trust and responsibility for 20 years who the public had to rely on to administer fair, honest and even handed justice.

14. The impugned order sets out in detail the ACR's of the appellant over a 20 year period of judicial service which time again show the lack of integrity, year after year found in the appellant through at least **three** different reporting officers. It may be that one reporting officer was bias against the appellant or bore some ill will or grudge against him but we find that not all 3 would have been programmed to share the same traits. In essence three separate senior judicial officers have found the appellant over a period of 20 years to lack integrity, to have only a basic knowledge of the law and be not fit for promotion with a couple stating that he would not progress any further in his career. A minor penalty had already been imposed on him and it appears that he did not even pay heed to this. It is noted that after nearly every ACR the appellant received counseling but was unable to make any improvements especially in respect of his integrity. This indicates to us that he had no intention of changing his ways in terms of integrity and if we are to speak plainly in the English language this "integrity issue" means dishonesty either financially or intellectually and in effect corruption.

15. In the impugned order he did not challenge his conduct and only appears to have thrown himself at the mercy of his presiding officers. The fact that in his oral submission in the impugned order he stated as follows, "he is ready to take special Oath that in *future* he will mend his ways and behave like an honest officer" we find to be an admission of his lack of integrity. Even in his final review of the impugned order which was rejected by the Chief Justice was stated that, "*The service record of the delinquent officer is so bad that I cannot even think restoring him back to the judicial service. I, therefore, dismiss the Review.*" which we find to be particularly damning remarks from a Chief Justice based on the appellants ACR's in terms of integrity.

16. It might be that one minor integrity issue over a 20 year period could be treated differently as we ourselves as judges know that in an adversarial system unjustified complaints are often made against judges in order to undermine and pressurize them but continuously receiving bad integrity issue reports over a period of 20 years cannot be taken in the same vein and cannot be brushed under the carpet as a particular person having it in for the appellant.

17. Such conduct of the appellant brings disgrace on the entire judicial institution and erodes the public's confidence in the judiciary and by far out weighs the mitigating factors raised by him and as such we are not inclined to take a lenient view of reducing the penalty imposed on the appellant whose case stands proven to the hilt; instead his penalty should act as an deterrent to other judicial officers that if their integrity is consistently in question there is no place for them in the judiciary and that they will receive the maximum penalty for such conduct if proven against them.

18. Thus, for the reasons mentioned above, the appeal is dismissed and the major penalty of dismissal from service is upheld with the other appeal for restoration of adverse remarks being dismissed as infructuous along with any pending applications.

19. The appeals stand disposed of in the above terms.