

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-4212 of 2022

(Abdul Rasheed v. Federation of Pakistan and others)

Date

Order with signature of Judge(s)

Before:

**Muhammad Karim Khan Agha, J.
Adnan-ul-Karim Memon, J.**

Date of hearing and order: 02.09.2025

Ghulam Muhammad, advocate for the petitioner

Nemo for the SUPARCO.

Ms. Wajiha M. Mehdi, Assistant Attorney General

ORDER

Adnan-ul-Karim Memo, J:- Through this petition, the petitioner has sought the following relief:

- i) *To set aside the Order dated 31-03-2022 passed by Respondent Nos 2, 3, and declaring as illegal, unlawful, and further direct the Respondent No. 2.3 & 4 to allow the Petitioner to join the duty.*
- ii) *To direct the Respondent No 2 to 4 to ensure the Justice with Petitioner and further pass the Order for issuance of payment considering the record of availability of personal leave of Petitioner which is more than 558 days and direct the Respondent No. 2 to 4 to issue the payment from date of absentee w-e-f 07-09-2021 and converting absenter in to balance leave of Petitioner which is more than 558 days.*
- iii) *To direct the Respondents to give all benefits of services payable under the law and restrain the Respondents No 2 to 4 to stop such mala fide illegal practice to deprive the Petitioner from Service who has served SUPARCO for more than 16 years.*

2. The petitioner's case against his dismissal from SUPARCO service is that he was appointed as a driver at SUPARCO in 2006, was dismissed on March 7, 2022, after 16 years of "unblemished" service. The dismissal was for "unauthorized absence," which, according to the petitioner, was due to circumstances beyond his control. Petitioner submitted that on August 2, 2021, he was granted 35 days of leave. While on leave, he was falsely accused and arrested in a murder case (FIR No. 649/2021). He was taken into judicial custody in August 2021. On February 23, 2022, the petitioner was released on bail after a court found no "sustainable evidence" against him. On February 25, 2022, He immediately reported for duty and resumed his work, serving for 42 days until March 6, 2022. His supervisor even recommended his pay, noting he was "extremely hard working & dedicated." On March 31, 2022, SUPARCO issued an office memorandum dismissing him from

service, effective March 7, 2022. This action was taken despite his having already returned to work. The petitioner submitted that his absence was not willful but caused by his judicial custody. He rejoined duty as soon as he was released, a fact the department ignored. He further submitted that the dismissal was carried out without a proper inquiry or a fair hearing. The notices for the disciplinary proceedings were sent to his home while he was in jail and were received by his "uneducated spouse," who could not respond in time. This violates the principle of 'audi alteram partem' (the right to be heard). The petitioner submitted that such a harsh penalty (dismissal from service) is disproportionate and fails to consider the circumstances. He had a substantial leave balance of 558 days, which should have been used to cover his absence. The department's action disregards his 16 years of loyal service and the positive recommendation from his immediate supervisor upon his return. The petitioner asserts that the dismissal is illegal, arbitrary, and violates the fundamental rights guaranteed to a citizen under the Constitution of Pakistan, 1973. The petitioner seeks to have the dismissal order set aside, submitting that it was based on an illegal process, ignored the genuine reason for his absence, and unfairly punished him despite his return to work and clean service record.

3. The petitioner's lawyer argues that the petitioner's dismissal was/is unjust and should be overturned. He argued that the petitioner's absence was due to being in jail, not misconduct. He should have been placed on leave, as he had 558 days of leave available. He argued that the dismissal was disproportionately harsh for an employee with a 16-year clean record. The disciplinary notices were invalid because he was in jail and couldn't respond. His "uneducated spouse" also couldn't understand the notices, which were in English. The dismissal was invalid because it occurred after he had already returned to work for 42 days with his supervisor's approval. The lawyer claims that the dismissal violated proper legal procedure, fundamental rights, and the principles of justice. In support of his contention he relied upon the cases of *Khalid Siddique v Secretary Excise and Taxation Department Punjab & others* **2002 SCMR 690**, *Superintendent of Police and another v Muhammad Rasheed* **2019 PLC (CS) Note 37** and *Muhammad Soomar Chandio v Inspector General of Police Central Police office Sindh and others* **2005 PLC (CS) 224**. He lastly prayed for allowing the instant petition.

4. The learned Assistant AG has contended that the petitioner is not fit to be retained in service due to his unauthorized absence from official duties; the impugned orders do not call for interference. On the modification of the punishment, learned AAG submitted that once unauthorized absence for more than 42 days was established on record, this court cannot convert the penalty of dismissal from service imposed upon the petitioner into compulsory retirement. Departmental proceedings initiated against the petitioner were under the law, due process rights were granted to him and he was given every possible opportunity to defend himself. On his failure to

justify his continuous absence from duty, the only possible penalty was imposed upon him accordingly. She prayed for dismissal of the petition.

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

6. The petitioner's lawyer is arguing that the dismissal was unjust and legally flawed. The key points are that SUPARCO did not conduct a full and fair inquiry to prove the petitioner's guilt. Simply issuing a show-cause notice was not enough. The punishment of dismissal was too harsh and disproportionate, especially since the employee had 558 days of leave available. The petitioner was never properly served with the disciplinary notices because he was in jail, which prejudiced his defense. This constitutes a violation of the principles of natural justice. Besides, the charges against him were not serious enough to warrant such a severe penalty. The respondents could have granted extraordinary leave to cover his absence, but failed to do so, instead choosing the most severe punishment possible.

7. Prima facie, respondents acted improperly by dismissing the petitioner without conducting a proper inquiry. The respondents should have held a hearing and allowed the petitioner to be heard, as required by the principles of natural justice, rather than simply relying on an alleged absence, especially since the petitioner had 558 days of leave available.

8. In the light of the above facts and circumstances of the case, this petition is disposed of with direction to the respondents' competent authority to give the petitioner a proper hearing and initiate disciplinary proceedings within two months of receiving the order, consequently Impugned orders are set aside..

Judge

Head of Const. Benches