

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D – 5601 of 2024
(Karim Bux versus the Honorable President of Islamic Republic of Pakistan & others)

DATE	ORDER WITH SIGNATURE OF JUDGES
	Mr. Justice Adnan-ul-Karim Memon Mr. Justice Muhammad Jaffer Raza

Date of hearing & orders: 03.9.2026

Malik Naeem Iqbal, Advocate for the Petitioner.
M/s. Syed Khurram Kamal and
Saeeda Khurshid, Special Prosecutor, NAB.
Ms. Wajeeha Mehdi, Assistant Attorney General.

ORDER

Adnan-ul-Karim Memon, J. Petitioner Karim Bux has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following reliefs:

- a. *Declare that the impugned orders dated 26th August, 2024 and 17th April, 2024 passed by the Respondents No.1 and 2 respectively, are unjust, unlawful, arbitrary, illegal, unconstitutional, discriminatory, irrational and in violation of the fundamental rights as enshrined in the Constitution of Islamic Republic of Pakistan, and set aside the same and reinstate the Petitioner with all back benefits;*
- b. *Suspend the operation of the impugned dismissal order dated 17th April, 2024 till final adjudication of the captioned petition.*

2. The petitioner, an Ex-Assistant Director/Investigation Officer (BPS-17) of the National Accountability Bureau (NAB), was appointed in 2013 and was promoted to BPS-17 in 2019. It is averred that during his service, he claims to have performed his duties diligently and dealt with numerous complaint verification cases, investigations, and references. An inquiry was initiated against the petitioner pursuant to the charge sheet and statement of allegations dated 27.07.2023, alleging misconduct, corruption, and disclosure of official information. The petitioner denied the allegations. However, during the inquiry, statements of witnesses were recorded in his absence, though he was subsequently allowed to cross-examine them. The petitioner contends that most witnesses did not implicate him and that the inquiry committee nevertheless found him guilty of one of the charges. He further asserts that copies of the cross-examination proceedings were not supplied to him despite repeated requests. On the basis of the inquiry report, a show-cause notice dated 26.01.2024 was issued, alleging, inter alia, that the petitioner had met NAB accused Aijaz Ali Dawach and had received Rs.5 million from him, and that the petitioner and his wife had pressured a witness not to participate in the inquiry. The petitioner maintains that some of these allegations were either not part of the original charge sheet or did not

constitute any misconduct. He submitted a detailed reply denying the allegations and was afforded a personal hearing, which, according to him, was merely a formality. Consequently, the Chairman NAB, on the recommendations of the authorized officer, imposed the major penalty of dismissal from service upon the petitioner vide order dated 17.04.2024 under Section 11.03(1)(b)(iv) of the NAB Employees TCS, 2002. The petitioner alleges that the order was based on misreading and non-reading of the inquiry report and evidence and was passed in violation of the principles of natural justice and due process. The petitioner thereafter preferred a departmental appeal before the President of Pakistan on 15.05.2024. He subsequently came to know on 18.10.2024 that his appeal had already been dismissed on 26.08.2024 without affording him an opportunity of hearing and without formally communicating the appellate order to him. He therefore challenged the orders dated 17.04.2024 and 26.08.2024 before this Court under Article 199 of the Constitution.

3. The learned counsel for the petitioner argued that the impugned orders were passed in violation of the principles of due process and fair trial guaranteed under Article 10-A of the Constitution, as the major penalty of dismissal was founded on inferences and material which was neither properly proved nor confronted to the petitioner. He submitted that the inquiry itself was defective, inter alia, because the charge-sheet and statement of allegations were not signed by the Inquiry Committee as required under Section 11.07(2)(a) of the NAB Employees TCS, 2002. Learned counsel further argued that the alleged meeting of the petitioner with Aijaz Ali Dawach, which was itself denied, could not constitute misconduct, particularly when the petitioner was neither the Investigation Officer nor Case Officer in the relevant matter, and there was no evidence of receipt of any bribe. Aijaz Ali Dawach, despite being cited as a witness, did not record his statement before the Inquiry Officer and the petitioner was consequently deprived of an opportunity to cross-examine him. It was also contended that the statements of witnesses were not properly recorded in the petitioner's presence and the cross-examination conducted by him was neither supplied to him nor reproduced in the inquiry report, thereby materially prejudicing his defence. Counsel submitted that the Inquiry Committee also relied upon an alleged CDR analysis regarding the petitioner's purported meeting with an accused person, although no such analysis was available or confronted to the petitioner during the inquiry. Likewise, statements allegedly obtained from accused persons during custody and under coercion were relied upon without any independent evidence connecting the petitioner with the alleged misconduct. According to counsel, none of the witnesses examined during the inquiry attributed any substantive role to the petitioner, or their assertions could not withstand cross-examination. It was further argued that the Inquiry Committee

introduced an additional allegation that the petitioner and his wife had allegedly pressurized Ali Ahmed Mangan not to participate in the inquiry, although such allegation was neither part of the original charge-sheet nor the statement of allegations, nor was any proper proceeding conducted in respect thereof under Section 11.07(2)(e) of the NAB Employees TCS, 2002. Its subsequent incorporation in the show-cause notice and reliance upon it for imposing the major penalty was, therefore, contrary to due process. Learned counsel maintained that the competent authorities passed the impugned orders mechanically on the recommendations of the Authorized Officer, without independently considering the petitioner's defence or affording him an effective opportunity of hearing. The orders were therefore non-speaking, arbitrary and without proper application of mind, particularly as the material relied upon had never been confronted to the petitioner, offending Section 24-A of the General Clauses Act as well as Articles 4 and 25 of the Constitution. Lastly, counsel emphasized the petitioner's unblemished service record and submitted that the extreme penalty of dismissal was based on surmises and conjectures, was disproportionate to the alleged misconduct, and could not lawfully be sustained in the absence of substantial and reliable evidence. In support of his contentions, he relied upon the case of Shakir Ali v. National Accountability Bureau (2021 PLC (C.S.) 683), order dated 29.8.2025 passed by this Court in CP No. D-2690/2022 (Muhammad Umair versus National Accountability Bureau & others). He accordingly prayed that the impugned orders dated 17.04.2024 and 26.08.2024 be set aside, the petitioner be reinstated with all consequential/back benefits, and operation of the dismissal order be suspended during pendency of the petition, along with any other appropriate relief.

4. Learned AAG, assisted by the learned Special Prosecutor NAB, submits that the instant petition is not maintainable and is liable to be dismissed, as the petitioner has failed to establish any violation of his vested or lawful rights or to show that he is an aggrieved person. It is contended that the petitioner, an employee of NAB governed by the NAB Employees Terms and Conditions of Service, 2002, was proceeded against under Chapter-XI thereof on charges of misconduct, corruption and disclosure of official information. A regular departmental inquiry was conducted, wherein the charges, including the allegation of taking illegal gratification from an accused person, were found proved. Learned special prosecutor submits that the petitioner was provided full opportunity to defend himself. He was served with the inquiry report and show-cause notice, submitted his reply, and was also afforded a personal hearing before the Authorized Officer. After completion of all prescribed legal and departmental formalities, the Competent Authority, on the recommendation of the Authorized Officer, imposed the major penalty of dismissal from service. The petitioner

thereafter preferred a departmental appeal before the President of Pakistan, which was rejected for want of cogent grounds, and the decision was duly communicated to him. It is therefore argued that the disciplinary proceedings were conducted strictly in accordance with the NAB Employees TCS-2002 and that the allegations of denial of hearing, procedural irregularity, mala fide or unlawful exercise of authority are misconceived and based on mere presumptions. The inquiry findings were supported by the material recorded during the proceedings, including the statement of the relevant witness, and the charges stood proved before the competent departmental forum. Learned AAG and learned Special Prosecutor NAB consequently submit that the petition discloses no valid cause of action, has been filed with unclean hands, and seeks to challenge a duly concluded disciplinary process without establishing any illegality or violation of law. Since the petitioner was afforded the prescribed procedural safeguards and exhausted the departmental remedy, no ground for interference under Article 199 of the Constitution is made out. The petition, being devoid of merit, may therefore be dismissed.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. The controversy essentially revolves around the legality of the disciplinary proceedings conducted against the petitioner and, more particularly, whether the major penalty of dismissal was imposed after affording him a meaningful and effective opportunity of defence in accordance with the NAB Employees Terms and Conditions of Service, 2002 and the constitutional guarantee of due process.

7. At the outset, it is settled that an employee of a public institution cannot claim immunity from disciplinary proceedings merely because the penalty imposed upon him is severe. Equally well settled, however, is the principle that where the competent authority exercises statutory or regulatory power to impose a major penalty, such power must be exercised strictly in accordance with the prescribed procedure, the principles of natural justice and Article 10-A of the Constitution. The Court, while exercising jurisdiction under Article 199, ordinarily does not sit as an appellate authority to re-appraise departmental evidence; nevertheless, where the decision-making process itself is shown to be contrary to law, based on material never confronted to the delinquent employee, or suffers from denial of a fair opportunity of defence, constitutional jurisdiction can legitimately be invoked.

8. The respondents have principally relied upon the fact that a regular departmental inquiry was conducted, that the petitioner was served with the inquiry report and show-cause notice, that he submitted a detailed reply and was

afforded a personal hearing, and that the competent authority thereafter imposed the penalty of dismissal. Mere compliance with these formal stages, however, is not by itself sufficient. The real question is whether the opportunity afforded to the petitioner was effective, meaningful and in accordance with the prescribed procedure, and whether the final decision was founded upon material lawfully brought into the proceedings and confronted to him.

9. In the present case, the petitioner has specifically alleged that the inquiry committee relied upon material and allegations which were not part of the original charge-sheet and statement of allegations, particularly the allegation concerning his alleged meeting with Aijaz Ali Dawach and receipt of Rs.5 million and the subsequent allegation that the petitioner and his wife allegedly pressurized Ali Ahmed Mangan not to participate in the inquiry. If these allegations were introduced subsequently and were made a basis for the finding of guilt or the imposition of the major penalty without framing appropriate additional charge/allegation and without affording the petitioner an opportunity to meet the same, such procedure would materially prejudice his defence and could not be treated as a mere irregularity.

10. It is urged that the allegation regarding the alleged receipt of gratification is of a serious nature and if the statement of Aijaz Ali Dawach was relied upon as a material witness but his statement was not recorded before the Inquiry Officer, and the petitioner was consequently denied an opportunity to cross-examine him, his alleged statement or version could not ordinarily be used against the petitioner in a manner which deprived him of a fair opportunity to rebut it. It is also urged that the right of cross-examination is particularly material where the allegation constitutes the principal foundation for a major penalty such as dismissal. The petitioner has further asserted that a CDR analysis was relied upon to establish his alleged meeting with an accused person, although the said analysis was neither supplied to him nor confronted during the inquiry. He states that the record confirms this assertion, and reliance upon such material would offend the fundamental requirement of fair hearing. It is added that a person cannot effectively defend himself against evidence which is withheld from him and is subsequently used to sustain an adverse finding. Article 10-A requires a real and substantive opportunity to defend, and not merely an opportunity existing in form. The same principle applies to the alleged statements of accused persons recorded during custody. It is submitted that if such statements were relied upon as substantive material against the petitioner, the Inquiry Officer was required to assess their evidentiary worth and their relevance to the charge against the petitioner, particularly where the petitioner disputed the allegations and no independent evidence directly connected him with the alleged receipt of illegal

gratification. It is also submitted that the departmental forum may certainly determine facts on the basis of the material legally available to it, but it cannot base an adverse finding upon material which was never fairly put to the delinquent employee.

11. We are also mindful that departmental proceedings are not criminal trials and the strict rules of evidence applicable to criminal proceedings do not necessarily govern a disciplinary inquiry. The standard of proof in disciplinary proceedings may be different from that applicable in a criminal case. Nevertheless, this distinction does not dispense with the requirements of natural justice. The delinquent employee must know the case he has to meet, must be confronted with material relied upon against him and must be afforded a reasonable opportunity to rebut such material.

12. Another important aspect requiring consideration is the petitioner's assertion that the charge-sheet and statement of allegations were not signed by the Inquiry Committee as contemplated by Section 11.07(2)(a) of the NAB Employees TCS, 2002. It is also urged that this requirement is mandatory and the record establishes its non-compliance, the respondents were required to explain the legal consequence thereof. He emphasized that a disciplinary authority cannot disregard a mandatory procedural requirement on the assumption that it is merely technical, particularly where the consequence is the imposition of the extreme penalty of dismissal.

13. The respondents have not, in the submissions placed before us, satisfactorily answered the petitioner's specific objections regarding the introduction of additional allegations, non-supply of the cross-examination proceedings, reliance upon the alleged CDR analysis, non-examination of Aijaz Ali Dawach and reliance upon material which was allegedly not confronted to the petitioner. Their general assertion that the petitioner was allowed to defend himself cannot, by itself, answer these specific procedural objections. The distinction between an opportunity in theory and an effective opportunity in law is material.

14. We are also unable to overlook the nature of the appellate order passed by the appellate authority. An appellate authority exercising statutory or regulatory appellate jurisdiction is required to independently examine the grounds raised in appeal and pass a reasoned order. Section 24-A of the General Clauses Act, 1897 requires statutory powers to be exercised reasonably, fairly and justly and, where appropriate, for reasons to be recorded. The requirement of a speaking order is not an empty formality; reasons demonstrate that the authority has applied its mind to the grievance and enable the aggrieved person and the reviewing Court to

ascertain the basis upon which the decision was reached. The Courts have consistently emphasized that an order affecting valuable rights cannot be sustained merely because it records a conclusion without disclosing the reasoning supporting it. Therefore, prima facie, the appellate order dated 26.08.2024 merely rejects the appeal by observing that no cogent grounds have been shown, without addressing the petitioner's specific objections regarding denial of cross-examination, reliance upon un-confronted material, introduction of additional allegations, alleged procedural defects in the inquiry, and proportionality of the penalty, the appellate order would not satisfy the requirement of an independent and meaningful appellate determination.

15. The judgment in Shakir Ali v. National Accountability Bureau supra is also relevant. In that case, this Court interfered with major penalties imposed upon NAB employees where the disciplinary process suffered from material procedural deficiencies and remanded the matters to NAB for a regular inquiry after providing proper opportunity of hearing/representation. The said precedent does not mean that every disciplinary order passed by NAB is liable to be interfered with; rather, it reinforces the principle that the disciplinary authority must comply with its own prescribed procedure and the requirements of fair hearing.

16. We are conscious of the submission of the learned AAG and learned Special Prosecutor that the petitioner was served with the inquiry report, submitted his reply and was granted personal hearing. We also acknowledge that this Court ought not substitute its own opinion for that of the competent departmental authority on disputed questions of fact merely because another view may be possible. However, judicial restraint does not require this Court to uphold a disciplinary order where the very process leading to the conclusion is alleged, and on examination found, to have denied the delinquent a meaningful opportunity to meet the material relied upon against him.

17. The principle is particularly significant in the present case because the penalty imposed upon the petitioner is dismissal from service, the severest major penalty carrying grave civil consequences. The more serious the consequence, the greater is the obligation upon the competent authority to ensure scrupulous compliance with the prescribed procedure and to demonstrate, through a reasoned order, that the defence of the delinquent has actually been considered.

18. The petitioner's plea regarding his previous service record, by itself, would not exonerate him if misconduct is otherwise proved. Similarly, the mere assertion of an unblemished service record cannot override a properly established charge. Nevertheless, while determining the appropriate penalty, the competent

authority is required to consider the nature and gravity of the proved misconduct, the evidence supporting the finding, the petitioner's service record and all other relevant circumstances.

19. IT is well settled that a major penalty cannot be sustained merely on conjectures, assumptions or allegations which were not duly established in the disciplinary proceedings.

20. Before parting with this order, we may observe that both petitions No. 4905 of 2023 and 5601 of 2024 were heard together and are being decided separately for the reasons that both cases are distinguishable based on the nature and extent of procedural violations established on the record. In *Karim Bux's case*, although the respondents asserted that a regular inquiry, show-cause notice and personal hearing had been provided, the Court found material procedural deficiencies which went to the root of the disciplinary process, including reliance upon additional allegations not forming part of the original charge-sheet, non-supply/confrontation of material such as the alleged CDR analysis and cross-examination proceedings, non-examination of a material witness Aijaz Ali Dawach whose alleged version was relied upon, and failure of the appellate authority to pass a reasoned and speaking order; consequently, the Court held that the petitioner had not been afforded a meaningful opportunity of defence and set aside the dismissal and appellate orders, remanding the matter for fresh proceedings. Conversely, in *Muneer Ahmed's case*, this Court found that the petitioner was served with the charge-sheet and statement of allegations, participated in the inquiry, was allowed to confront and cross-examine witnesses, submitted his response, received a show-cause notice, was granted personal hearing, and subsequently pursued a departmental appeal; the petitioner failed to demonstrate any specific procedural violation causing substantial prejudice, while the departmental findings were supported by material including his statement, witness statements and allegations of substantial illegal gratification and assets beyond known sources. This Court therefore treated his challenge essentially as an attempt to seek re-appraisal of departmental evidence, which was impermissible in constitutional jurisdiction, and dismissed the petition. Thus, the distinguishing feature is that Karim Bux established material denial of a fair and effective opportunity of defence and reliance on un-confronted material, whereas Muneer Ahmed was found to have been afforded the prescribed procedural safeguards and failed to establish substantial prejudice or patent illegality warranting interference under Article 199 of the constitution.

21. Consequently, we are of the considered view that the impugned dismissal order dated 17.04.2024 and the appellate order dated 26.08.2024 cannot be sustained in their present form.

22. Accordingly, this Constitutional Petition is allowed. The impugned dismissal order dated 17.04.2024 passed by the competent authority, NAB, and the appellate order dated 26.08.2024 passed by the President of Pakistan are hereby set aside; his service shall be restored forthwith; if not, consequences shall follow. The matter is remanded to the competent authority of NAB to proceed afresh strictly in accordance with the NAB Employees Terms and Conditions of Service, 2002 and the Constitution. If the respondents intend to rely upon any additional allegation, document, CDR analysis, witness statement or other material against the petitioner, the same shall first be duly brought on record and supplied/confronted to him, and he shall be afforded a reasonable opportunity to submit his defence and, wherever legally permissible, to cross-examine the relevant witness. The inquiry shall thereafter be concluded within two months by a competent and impartial authority in accordance with law. The competent authority shall consider the petitioner's defence independently and shall pass a detailed, reasoned and speaking order, dealing with each material contention raised by him. The appellate authority, if approached by the aggrieved party, shall likewise decide the appeal independently by a speaking order in accordance with Section 24-A of the General Clauses Act, 1897 and the applicable NAB service framework.

23. As regards back benefits, the petitioner shall not be entitled to automatic unconditional back benefits merely by reason of this order. His entitlement to consequential benefits shall abide by the result of the fresh proceedings and the applicable service rules. The competent authority shall, however, pass an appropriate consequential order regarding his status and financial benefits in accordance with law after conclusion of the proceedings.

24. The fresh proceedings shall preferably be concluded within two months from the date of receipt of this judgment, subject to reasonable opportunity being afforded to both sides.

25. Pending applications, if any, stand disposed of accordingly.

JUDGE

JUDGE

Nadeem Qureshi PA