

BEFORE THE PUNJAB SUBORDINATE JUDICIARY TRIBUNAL,
LAHROE.

Service Appeal No.18 of 2011

Abdul Haseeb Sheikh Versus Registrar

JUDGMENT

Date of hearing	28.04.2017
Appellant by:	In person
Respondent by:	Mr. Abdush Shakoor Ch., Advocate

SHAHID WAHEED, CHAIRMAN: Congruities of questions of law and facts involved in Service Appeal No.18 of 2011 and Service Appeal No.25 of 2011 have prompted us to decide them through this consolidated judgment.

2. Two judicial officers of the rank of Addl. District & Sessions Judges have preferred the above said appeals to challenge the major punishment of compulsory retirement, which was imposed upon them in consequence of disciplinary proceedings initiated under the provisions of the Punjab Civil Servants (Efficiency & Discipline) Rules 1975, on the ground that the same is illegal, irrational and result of procedural impropriety.

3. These appeals under Section 5 of the Punjab Subordinate Judiciary Service Tribunal Act, 1991 have arisen in the background that in the year 2003 when one Muhammad Aslam was working as Civil Nazir in the office of learned Senior Civil Judge, Khanewal audit of accounts of the Senior Civil Judge, Khanewal was conducted and misappropriation of an amount of Rs.193,762/- was detected by the audit party. Abdul Haseeb Sheikh (appellant of Servic Appeal No.18 of 2011), the then Senior Civil Judge, Khanewal got the matter inquired into from Muhammad Rizwan, the then Civil Judge, Khanewal. In the said inquiry, Muhammad Aslam, Civil Nazir was held responsible for embezzlement and found guilty; and thus, major penalty of compulsory retirement was awarded to him. The Authority also directed to recover Rs.193,762/- from Muhammad Aslam.

Punishment was challenged before the Punjab Service Tribunal through Service Appeal No.2718 of 2004. One of the pleas in the said appeal was that embezzled amount was in fact used by Abdul Haseeb Sheikh(appellant of Service Appeal No.18 of 2011), Nazir Ahmad Langah (appellant of Service No.25 of 2011) and Allah Bukhsh Dhandla who had worked as Senior Civil Judges, Khanewal. The punishment awarded to Muhammad Aslam was maintained by the learned Punjab Service Tribunal vide judgment dated 08.03.2005. However, with regard to recovery of amount of Rs.193,762/- the matter was remitted to the learned District & Sessions Judge, Khanewal (Appellate Authority) with a direction to call the above said three judicial officers and each of them be separately made to confront Muhammad Aslam and thereafter procedure prescribed in Article 163 of the Qanun-e-Shahadat, 1984 be adopted for determining the guilt or innocence of Muhammad Aslam to the extent of recovery only. Pursuant to the said order, proceedings of special oath on Holy Quran were conducted on 10.06.2006. During the proceedings of special oaths, Abdul Haseeb Sheikh and Nazir Ahmad Langah returned Rs.7,000/- and Rs.23,700/- respectively.

4. Subsequently, Muhammad Aslam on 10.10.2006, moved an application before the Hon'ble Chief Justice of Pakistan stating therein that present appellants were equally liable for the use of embezzled amount but discriminatory treatment was meted out; and, that the appellants be also retired compulsorily. On the basis of said complaint, the Authority decided to proceed against the appellants under the Punjab Civil Servants (Efficiency & Discipline) Rules, 1975 and issued notices to them by dispensing with regular inquiry. The replies were accordingly submitted. Upon perusal of reply, the Authority withdrew the notices and ordered to hold regular inquiry and, therefore, vide letter No.1175/RHC/C-I dated 26.09.2009 Syed Ijaz Hussain, the then District & Sessions Judge, Multan was appointed as Inquiry Officer whereas Ch. Abdul Rasheed Abid, Addl. District & Sessions Judge-I, Multan was appointed as departmental representative to assist the Inquiry Officer. Separate charge sheets were served upon the appellants.

5. Allegations against Nazir Ahmad Langah, appellant were as follows:

- i. *You got Rs.66,099/- from Muhammad Aslam, Ex-Civil Nazir, Civil Court, Khanewal for personal use, which was government money in his possession as Civil Nazir, exceeding your legal limits which is an exorbitant aberration of law.*
- ii. *Subsequently, you returned an amount of Rs.22,398/- to Muhammad Aslam, Ex. Civil Nazir, Khanewal at the time of your transfer from Khanewal and you also returned Rs.20,000/- to Muhammad Aslam, Ex-Civil Nazir through money order.*
- iii. *During the proceedings of special oath, you did not make special oath to rebut statement of Ex-Civil Nazir, Khanewal to the effect that Rs.23,701/- were payable by you as per order passed by the Hon'ble Chairman Punjab Service Tribunal which were recovered from you as indicated in letter dated 23.9.2008 (Photostat enclosed) submitted by the Senior Civil Judge, Khanewal.*
- iv. *You not only facilitated embezzlement but also reaped benefit from the same which is gross misconduct.*
- v. *By reason of the above you appear to be guilty of misconduct within the meaning of Rule 2(1)(e) and 3(b) of the Punjab Civil Servants(Efficiency & Discipline) Rules, 1999 and such, are liable to disciplinary action under the Punjab Civil Servants(Efficiency & Discipline) Rules, 1999 which may include imposition of one or more of the penalties prescribed by Rule 4 of the said Rules.*

6. Allegations against Abdul Haseeb Sheikh, appellant were to the following effect:

- i. *You have been receiving various amounts from Muhammad Aslam, Ex-Civil Nazir, Civil Courts, Khanewal, for your personal use which amount was Government money in the possession of the aforesaid Ex-Civil Nazir, hence, you exceeded your legal limits which amounted to exorbitant aberration of law.*
- ii. *You returned an amount of Rs.11,932/- to Muhammad Aslam, Ex-Civil Nazir, Civil Courts, Khanewal on 01.10.2003 as admitted by you in letter dated 12.12.2003 addressed to the then District & Sessions Judge, Khanewal.*
- iii. *You while returning Rs.11,932/- got undertaking from Muhammad Aslam, Ex-Civil Nazir, Civil Courts, Khanewal under coercion that nothing was outstanding against you.*
- iv. *You during the proceedings of special oath expressed your willingness to pay a sum of Rs. 7000/- more to Muhammad Aslam, Ex-Civil Nazir on account of the outstanding amount against you taken from the Ex-Civil Nazir out of the Government money which was recovered from you as indicated in letter dated*

23.09.2008 submitted by the Senior Civil Judge, Khanewal.

- v. *You not only facilitated embezzlement but also reaped benefit from the same which is gross misconduct.*
- vi *.By reason of the above you appear to be guilty of misconduct within the meaning of Rule 2(1)(e) and 3(b) of the Punjab Civil Servants(Efficiency & Discipline) Rules, 1999 and such, are liable to disciplinary action under the Punjab Civil Servants(Efficiency & Discipline) Rules, 1999 which may include imposition of one or more of the penalties prescribed by Rule 4 of he said Rules.*

7. Both the appellants submitted replies to the charge sheets and denied allegations. During the course of inquiry, the prosecution examined Muhammad Aslam, complainant as PW-1, Amjad Jahangir son of the complainant as PW-2 and closed its evidence after tendering documents i.e. (i) copy of judgment dated 6.4.2004 passed by Saif ur Rehman Khan, District & Sessions Judge, Khanewal in service appeal No.1-2 A of 2003 titled "Muhammad Aslam vs State" Ex.PA.,(ii) a certified copy of the interim order dated 12.04.2006 passed by the District & Sessions Judge, Khanewal in service appeal titled "Muhammad Aslam vs Stated"Ex.PB (iii) a certified copy of the interim order dated 6.5.2006 passed by the District & Sessions Judge, Khanwal. Ex. PC, (iv) a certified copy of an application for adjournment dated 6.5.2006 moved by the officers complained against before the District & Sessions Judge, Khanewal. Ex.PD,(v) a certified copy of the interim orders from 24.05.2005 to 28.06.2005 of the District & Sessions Judge, Khanewal in the service appeal titled "Muhammad Aslam vs State" Ex.PE,(vi) a certified copy of written reply made by Nazir Ahmad Langah in response to the demand made by the complainant submitted before the District & Sessions Judge, Khanewal Ex.PF(some portion of Ex.PF not legible),(vii) a certified copy of letter No.511 dated 30.05.2005 written by Abdul Haseeb Sh. to the learned District & Sessions Judge, Khanewal. Ex.PG, (viii) a certified copy of the receipt dated 01.10.2003 showing the payment of Rs.11,932/- by Abdul Haseeb Sh. executed by the complainant in favour of Abdul Haseeb Sh.Ex.PH, (ix) a certified copy of the statement of Mr.Allah Bukhsh Khan Dhandla recorded on 14.07.2005 by the District & Sessions Judge, Khanewal in the service appeal titled"

Muhammad Aslam vs State”Ex.PJ,(x) a certified copy of the interim order sheet dated 28.03.2005 to 31.10.2005 in the service appeal.EX.PK,(xi) a certified copy of the request for nomination of some other officer as appellate authority by District & Sessions Judge, Khanewal dated 05.01.2006 to Punjab Service Tribunal, Lahore. Ex.PL, (xii) a certified copy of interim orders dated 09.01.2005 , 03.01.2006 and 27.12.2006 passed by the District & Sessions Judge, Khanewal in service appeal titled Muhammad Aslam vs State Ex.PM, (xiii) a certified copy of the statement of Nazir Ahmad Langah recorded by the District & Sessions Judge, Khanewal on 28.06.2005.Ex.PN,(xiv) a certified copy of the statement of Abdul Haseeb Sh dated 28.06.2005 recorded by the learned District & Sessions Judge, Khanewal Ex.PQ, (xv) a certified copy of the interim order dated passed by District & Sessions Judge, Khanewal in servide appeal titled “Muhammad Aslam vs State Ex.PR,(xvi) a certified copy of the affidavit of the complainant submitted before the learned District & Sessions Judge, Khanewal, Ex.PS, (xvii) a certified copy of the statement of the complainant dated 10.06.2006 made before the District & Sessions Judge, Khanewal, Ex.PT, (xviii) a certified copy of the statement of Abdul Haseeb Sheikh dated 10.06.2006 made before the District & Sessions Judge, Khanewal, Ex.PU (xix) a certied copy of the statement of Mr.Allah Bukhsh Khan Dhandla made before the District & Sessions Judge, Khanewal Ex.PV, (xx) a certified copy of the statement of Nazir Ahmad Langah dated 10.06.2006 made before the District & Sessions Judge, Khanewal Ex.PW, (xxi) a Photostat copy of letter endorsement No.404 dated 20.11.2003 of the learned SCJ, Khanewal (some portion note legible) Mark-E and (xxii) a Photostat copy of letter Endst. No.41-COC/A 1 dated 31.07.2004 issued by the learned SCJ, Khanewal Mark-F.

8. On consideration of the matter, the Inquiry Officer in his report dated 26.07.2010 found both the appellants guilty and proposed minor penalty to each of them of withholding of their promotion for a period of four years. The recommendations of the Inquiry Officer were placed in the meeting dated 19.08.2010 of the Hon’ble Administration Committee of the High Court for consideration. After examining the inquiry report, the

Hon'ble Administration Committee directed to issue show cause notices to the appellants for enhancement of minor penalty to one of the major penalties. Accordingly show cause notices were issued to the appellants and the same were duly replied. The Hearing Officer i.e. Hon'ble Mr. Justice Nasir Saeed Sheikh, as he then was, recommended that the case of imposition of major penalty was made out and stood proved. On the recommendations of the learned Hearing Officer, both the appellants were compulsorily retired from service vide Notification dated 28.03.2011. Both the appellants through separate petitions under Rule 18 (2) of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999 sought review of the punishment. The said petitions were not responded and, therefore, the instant appeals were preferred before this Tribunal.

9. The chief moot points involved in these appeals are as to whether in the given facts and circumstances of the case, imposition of major penalty of compulsory retirement was reasonable; and, whether it could be imposed upon the appellants on the basis of evidence led by the prosecution before the Inquiry Officer. The appellants argued that if anything was proved against them, it was only negligence on their part; that the said negligence alone could not be made basis of punishment particularly when the same was not prompted by any mala fide, ill will or ulterior motive; and, that the prosecution had failed to prove that the amount which was borrowed by them from the Civil Nazir was public money; that since the allegations were not proved to the hilt, the punishment awarded to them was uncalled for. On the other hand, learned counsels for the respondent have vehemently opposed these two appeals and resisted the afore-noted arguments. They stated that the appellants were fully aware that Civil Nazir was the custodian of government money which he had to spend to defray various expenditure like utility bills and making purchase sanctioned by the competent authority; and, that by borrowing money from Civil Nazir for personal use, the appellants, definitely exceeded their legal limits bringing into exorbitant aberration of law.

10. It is true that in service laws it is choice of the Departmental Authority to determine quantum of punishment in the light of nature of

misconduct. However, penalty should be commensurate with the magnitude of the misconduct committed. In the case on hands the prime allegation against the appellants was that they had received government money for their personal use from Muhammad Aslam, ex-Civil Nazir (complainant). The plea of the appellants was that though they had received money from Muhammad Aslam, ex-Civil Nazir but the same was not government money. This plea raised preliminary issues as to whether the amount which was allegedly received by the appellants was government money or not; and, whether Muhammad Aslam, ex-Civil Nazir was in a position to give government money to the appellants. These preliminary issues require appraisal of rules governing the duties and functions of the Civil Nazir. In this regard reference may be made to Chapter-8 of Volume-II of the Rules and Orders of the Lahore High Court, Lahore. The salient features of Chapter-8 are: (i) that Civil Nazir is required to maintain: (a) sheriffs petty account; (b) Civil Court deposit account; and (c) all other items e.g. pay of staff, contingency, etc (ii) that it is duty of the Civil Nazir to maintain: (a) Register of receipts; (b) Register of disbursement; and (c) Cash Book; (iii) that whenever during the month a sum in hand of the Nazir at the Headquarter of District is Rs.500/- or more surplus over Rs.400/- is required, at once, to be remitted to the Treasury (now vide notification No.131-LEGIS/II.D.4 (II) dated 11.05.2016 a Nazir is required to deposit the amount which exceeds to Rs.50,000/- in an account to be opened for this particular purpose with MCB Bank); (iv) that it is duty of the Officer Presiding over a Court to examine and check the registers of his court relating to pecuniary transactions frequently and at least once a month and should enter his initial and date, after last entry found in them;(v) that Sheriffs Petty account, Civil Court deposit account and accounts of property made over to the Nazir for custody will be audited as far as possible once a year; and (vi) that in no case may a subordinate official be allowed to refund money which has been kept out of account without report to Higher Authority. Before proceeding further it would be apposite to state here that Nazir Ahmad Langah served as Senior Civil Judge at Khanewal from 23.11.1989 to 16.04.2001 whereas tenure of Abdul Haseeb Sheikh as

Senior Civil Judge at Khanewal was from 17.10.2001 to 20.04.2003. In the light of afore stated provisions of the Rules and Orders of the Lahore High Court, Lahore the prosecution was required to prove that Muhammad Aslam, ex-Civil Nazir at the relevant time had alleged government amount in his hand; that how the Civil Nazir used to maintain the registers/cash book; and, that whether the amount lent to the appellants was government money. This could only be done by producing the relevant registers i.e. register of receipts, register of disbursement; cash book and Audit report. The prosecution withheld the said important piece of evidence without furnishing any justification. The prosecution also did not bring on record any evidence to prove the date and time: (i) when the alleged government amount was given to the appellants; and, (ii) when the government amount was returned/ adjusted in the register/account book. This omission was fatal.

11. The appellants were proceeded against under the disciplinary rules on the complaint of Muhammad Aslam, ex-Civil Nazir who was found guilty for committing embezzlement and misappropriation of government money. It was the statement of Muhammad Aslam that the amount which was found embezzled was in fact the alleged amount given to the appellants for their personal use. An ancillary question arises as to whether on the mere statement of Muhammad Aslam, ex-Civil Nazir, whose status at best may be described as of accomplice, was sufficient to prove the alleged misconduct and to impose punishment of major penalty upon the appellants. Needless to state here that presumption of honesty, integrity and impeccability is attached to that person who holds the office of a Judge. This presumption though is rebuttable but the same cannot be done through a solitary statement of an accomplice. Muhammad Aslam, ex-Civil Nazir was undoubtedly a competent witness but the very fact that he was found guilty of misappropriating the government money introduced a serious stain in his evidence/statement and, therefore, it was required to be corroborated in material particulars by other independent evidence. In the case on hands neither any independent witness nor relevant register/record was produced to establish the fact that money which was given to the appellants was in fact government money; that by

borrowing money the appellants caused any loss to the public exchequer; and, that the appellant facilitated Muhammad Aslam to misappropriate government money. Thus, prime charges that the appellants had received government money from Muhammad Aslam, ex-Civil Nazir; and, that the appellants facilitated embezzlement were not proved. Perhaps this is the reason that the learned Hearing Officer while making his recommendations did not make any reference to this aspect of the matter and held the appellants guilty by relying upon Rule 10 of the Punjab Government Servants (conduct) Rules, 1966 which contemplates that *no government servant shall lend money to, or borrow money from, or place himself under any pecuniary obligation to any person within the local limits of his authority or any person with who he has any official dealings.*

12. Now it is to be seen that whether private pecuniary transaction of the appellants with their subordinate staff, i.e. Civil Nazir constitutes misconduct. Answer to this question is very simple and, that is, “yes”. According to Rule 10 of the Punjab Government Servants (Conduct) Rules, 1966 the appellants were required not to borrow money from their subordinate staff. However, the evidence available on record does not indicate that by borrowing money the appellants extended any illegal help to the Nazir. Thus, the act of borrowing money from subordinate staff on the part of the appellants may at best be construed as negligence which was not prompted by any ill will or malice.

13. It goes without saying that purpose of deterrent punishment is not only to maintain balance with gravity of wrong done by a person but also to make an example for others as preventive measures for reformation of society whereas the concept of minor punishment under the law is to make an attempt to reform the individual wrong doer. In the present case the allegation of using government money was not proved. Only misconduct which stands proved against the appellants is that they had been borrowing money from their subordinate staff. This was negligence which did not deserve major penalty. Justice, in the given circumstances of case, should be tampered with mercy and compassion. The punishment of compulsory retirement, in our view, does not commensurate with the

gravity of charge and, thus, we are inclined to convert the same into censure as it would serve the purpose.

14. Since each of the appellants has attained his age of superannuation, the prayer for reinstatement into service has become redundant.

15. The last question which falls for determination in this case is whether the appellants are entitled for the grant of back benefits. Anent the propriety of awarding back benefit, the principle is that the same should be granted as a rule to that person who had been kept illegally away from his employment. This rule is, however, subject to certain riders, that is, (a) that while deciding the issue of back benefits, the adjudicating authority or the Court or the Tribunal may take into consideration the length of service of the employee, the nature of misconduct, if any, found proved against the employee, and similar other factors; (b) that an employee who is desirous of getting back benefits is required to either plead or at least make a statement before the adjudicating authority or the Court/Tribunal of first instance that he was not gainfully employed; (c) that employee is required to state and prove that in consequence of punishment he has not received any kind of benefit; (d) that where inquiry though held against the employee is consistent with the rules of natural justice/ or rules applicable thereto, but the punishment is found disproportionate to the misconduct found proved, then it is the discretion not to award back benefits. However, if the Court/Tribunal finds that the employee is not at all guilty of any misconduct or that the Authority had foisted a false charge, then there will be ample justification for award of full back benefits; and, (e) that whether the Authority was in good faith in inflicting punishment. In this regard reference may be made to the case of **General Manager / Circle Executive Muslim Commercial Bank Limited and another v Mehmood Ahmad Butt and others** (2002 SCMR 1064), **Administrator Zila Council Sahiwal v Arif Husain and others** (2011 SCMR 1082). **Deepali Gundu Surwase v Krants Junior Adhyapak Mahavidyalay** (2013) 10 SCC 324), **Integrated Microelectronics, Inc v Pionilla** (716 Phil 818), **Pepsi-Cola Products Phils, Inc v Molon** (704 Phil 120) and

Itogon-Suyoc Mines, Inc v NLRC (202 Phil 850). Reverting to the case in hand, we find that both the appellants after presenting the memorandum of appeals before this Tribunal applied to the Competent Authority for the release of pension and other retiral benefits. This request was allowed and the pensionary benefits were paid to them. This fact constitutes estoppel against the appellants to claim back benefits. Besides above, in the attending circumstances of the case, it cannot be held that the appellants were illegally kept away from their employment for the reason that inquiry held against them though was valid but the punishment is found disproportionate to the misconduct; and, that the Authority was in good faith in awarding punishment of compulsory retirement. Thus, the prayer for grant of back benefits cannot be acceded to.

16. In the sequel, both the appeals are partly allowed and punishment of compulsory retirement inflicted upon the appellants is modified and the same is converted into censure whereas the prayer with regard to reinstatement and back benefits is declined.

(SHAHID WAHEED)
CHAIRMAN

(SADAQAT ALI KHAN)
MEMBER

(ATIR MAHMOOD)
MEMBER

Approved for reporting.

Chairman