

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No. 51310 of 2017

Tariq Maqsood

Versus Govt. of Pakistan etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties of counsel, where necessary
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1.2.2018 Mr. Amir Saeed Rawn, Advocate for the petitioner.
Kh. M. Usman, Advocate for respondents No.3 to 5.
Mr. Mian Tariq Ahmad, Deputy Attorney General for Pakistan.

Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner has challenged the legality and validity of letter dated 11.7.2017 whereby he has been suspended from service.

2. Brief facts of the case are that the petitioner joined Pakistan Audit and Account Service (PA&AS) in 1986. In 2010 he was appointed as Financial Advisor and Chief Accounts Officer in Pakistan Railways. At present he is performing duties as Controller Military Accounts, Defence Purchase, Rawalpindi. It is asserted that prior to posting of the petitioner as Financial Advisor & Chief Accounts

Officer Pakistan Railways in 2009 had awarded a contract for the purchase of 5000 metric tons of pig iron to M/s Pak Steel Traders. The said contractor supplied CPI pig iron instead of FPI-2, which was deficient in Silicon. The contractor offered to make up the metallurgical deficiencies in the pig iron. The concerned officer of Pakistan Railways sought concurrence of the petitioner, which was approved with the condition that the deficiency in the material will be made good absolutely free of cost by the contractor by providing carbon, manganese and silicon additives to upgrade the metallurgical deficiency from CPI to FPI-2. The contractor complied with the condition and provided the required additives free of cost. However, the contractor in connivance with some officers of Pakistan Steel Mill succeeded in receiving illegal refund of Rs.48.2 million which Pakistan Railways had to pay to Pakistan Steel Mills. Thereafter on a complaint the National Accountability Bureau, Lahore initiated an inquiry against 6 officers of Pakistan Railways, including the petitioner, 2 officers of Pakistan Steel Mills and 2 contractors on the allegation of embezzlement to the tune of Rs.48.2 million. A reference has also been sent to the

Accountability Court in which the petitioner has been charged as under:

“You accused, Tariq Maqsood, the then Financial Advisor and Chief Accounts Officer, Railways concurred to proposal for acceptance of this low quality Pig Iron on the condition that M/s Pak Steel Trader shall provide additives to remove the deficiency in metallurgy free of cost. To meet metallurgy deficiency of CPI to FP 1-2 of this partial supply. M/s Pak Steel Traders (Contractors) provided Carbon, Manganese and Silicon additives to Railway free of cost.”

It is alleged that besides initiation of proceedings in the Accountability Court the Prime Minister’s office, vide letter No.2-10/2-17 admn-I, dated 12.5.2017 has also ordered for holding inquiry against the petitioner. It is further alleged that the petitioner approached the Inquiry Officer for provision of relevant record to face the charge-sheet but the same was not supplied to him. The petitioner has also been suspended by office of the Auditor General of Pakistan, vide Notification dated 11.7.2017, which is under challenge in the instant writ petition.

3. Learned counsel for the petitioner contends that there is no incriminating material available with the department to connect the petitioner with the alleged embezzlement; that from the bare reading of the charge leveled against the petitioner in

the NAB reference it is evident that the petitioner has not committed any illegality or irregularity in concurring with the proposal of allowing the contractor to make up the deficiency in the material provided under the contract; that the contractor provided the additives free of cost and the petitioner has no role in the alleged refund received by the Pakistan Steel Mills from Pakistan Railways in connivance with officers of their departments; that suspension of the petitioner without first decision of the NAB reference is not justified; and that the inquiry proceedings initiated against the petitioner being tainted with mala fide his suspension order is not sustainable in the eye of law.

4. Conversely, learned Deputy Attorney General for Pakistan and learned counsel for respondents No.3 to 5 have resisted the instant petition by arguing that the petitioner being civil servant cannot invoke the Constitutional jurisdiction of this Court due to the bar as contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. They further argued that the petitioner is facing serious charges of financial corruption/embezzlement,

therefore, there is no illegality in issuing his suspension order.

5. Arguments heard. Record perused.

6. Admittedly, the petitioner is a civil servant. The Hon'ble Supreme Court of Pakistan has consistently held that a Constitutional petition under Article 199 of the Constitution is not maintainable by a civil servant in relation to any matter connected with the terms and conditions of service in respect whereof the respective Service Tribunal has the exclusive jurisdiction in view of the provisions contained in Article 212 of the Constitution. Reliance is placed on the cases of *Imam Bakhsh v. Deputy Commissioner Layyah* (1992 SCMR 365), and *Rakhsana Ijaz v. Secretary Education* (1997 SCMR 167). As per law the petitioner should wait for decision of his application/representation till expiry of a period of 90 days and if it remains unattended during that period then he may approach the Federal Service Tribunal for redressal of his grievance. In any case, jurisdiction of this Court is ousted in the matters relating to terms and conditions of a civil servant. In this case the petitioner has challenged his suspension from service. In the case

of *Province of Punjab and another* v. *Ch. Muhammad Ashraf and another* (2000 PLC (C.S.) 118) it has been held that the matters relating to terms and conditions of civil servants, would include suspension from service of a civil servant and Service Tribunal alone had the jurisdiction to adjudicate upon such matter in appropriate proceedings. The jurisdiction of the High Court is clearly barred in such matters under Article 212 of the Constitution.

7. As to the claim of the petitioner that he has approached the Inquiry Officer for providing of the relevant record on the basis of which charge sheet has been issued to him, to enable him to submit his reply and defend himself, it is needless to point out that it is an inalienable right of every accused that he/she be provided along with the charge sheet all the materials and documents on the basis of which the allegations/charge sheet has been raised against him. This is the mandate of Rule 6 of the Government Servants (Efficiency & Discipline) Rules, 1973. Above all this is the most salient feature in determining guilt or innocence of an accused that he/she be provided fair trial and due process as provided under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973

being the fundamental right of each and every citizen of this country. Without providing the materials and information to be used against an accused and giving an opportunity to comment and put up his stance to the same and to allow him to cross-examine the witnesses there can be no due process and fair trial.

7. In view of the above, this writ petition is not maintainable and the same is hereby **dismissed**.

(Muhammad Farrukh Irfan Khan)
Judge

APPROVED FOR REPORTING:

Rafiq*