JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O.No.155 of 2019
Tariq Muhammad
Versus
The Federal Public Service Commission and others

Date of Hearing:	23.05.2024
Appellant by:	Hafiz Noor Muhammad, Advocate along with appellant in person.
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General. Mr. Muhammad Arshad, Assistant Director (Legal), FPSC. M/s Muhammad Asad and Said Gul, Inspectors (Legal) for the NH&MP.

MIANGUL HASSAN AURANGZEB, J:- Through the instant appeal under Section 7(3)(d) of the Federal Public Service Commission Ordinance, 1977 (**"the FPSC Ordinance"**) the appellant, Tariq Muhammad, impugns memorandum dated 18.07.2019 issued by the Federal Public Service Commission (**"FPSC"**) whereby his review petition against order dated 18.06.2019 was dismissed. Vide said order dated 18.06.2019, the appellant's application against the rejection of his candidature for participating in the Section Officers Promotional Examination, 2016 (**"SOPE-2016"**) was turned down by the FPSC.

2. Learned counsel for the appellant submitted that on 28.07.2008, the appellant was appointed as Patrol Officer (BS-14) in the National Highways and Motorways Police (**"NH&MP"**); that on 10.10.2012, he was dismissed from service on baseless charges; that ultimately the said penalty was converted by the appellate authority into stoppage of increments for two years and censure; that the Federal Service Tribunal (**"FST"**) maintained only the penalty of stoppage of increments for two years; that the appellant had remained out of service from 10.10.2012 to 08.11.2017 which was initially treated as leave without pay, but on the basis of the judgment of the FST, was converted into service on duty; that in 2016, the appellant had applied to FPSC for participation in SOPE-2016; that the appellant was at No.1 of the merit list; that the FPSC

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did not recommend the appellant for posting due to the non-issuance of the Departmental Permission Certificate (**"DPC"**); that ultimately in 2019, the DPC was issued to the appellant; and that since the appellant had the required eight years of service for being eligible for participation in SOPE-2016, the FPSC could not have rejected his representation against the rejection of his candidature. Learned counsel for the appellant prayed for the appeal to be allowed in terms of the relief sought therein.

3. On the other hand, the learned Deputy Attorney-General assisted by the Inspector (Legal), NH&MP and the Assistant Director (Legal), FPSC submitted that the appellant had managed to obtain the DPC from the NH&MP West Zone, Quetta through concealment of material facts; that such certificate was withdrawn vide letter dated 19.11.2019; that the advertisement issued by the FPSC required eight years of regular service from candidates applying for participation in SOPE-2016; that since the appellant had remained out of service from 10.10.2012 to 08.11.2017, he did not have the required eight years of regular service as he had been employed as Patrol Officer (BS-14) in the NH&MP on 28.07.2008; that the appellant had made material misrepresentation in his application dated 22.12.2016 to the FPSC by taking the position that he had the required length of service when in fact he had concealed the matter regarding his dismissal from service; and that the appellant was not even in service when he applied for participation in SOPE-2016. Learned Deputy Attorney-General prayed for the appeal to be dismissed.

4. I have heard the contentions of the learned counsel for the appellant as well as those of the learned Deputy Attorney-General and have perused the record with their able assistance.

5. The record shows that on 28.07.2008, the appellant was appointed as Patrol Officer (BS-14) in the NH&MP. Vide office order dated 10.10.2012, the major penalty of dismissal from service was imposed on him on the ground of misconduct. The appellant's departmental appeal against the said office order was dismissed vide order dated 07.01.2013. The said orders were assailed by the appellant before the Federal Service Tribunal (**"FST"**) in an appeal

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which was dismissed vide judgment dated 02.06.2015. The appellant's review petition against the said judgment was also dismissed by the FST vide order dated 21.09.2015. The said orders passed by the FST were assailed before the Hon'ble Supreme Court through Civil Appeal No.702/2016, which was allowed vide order dated 03.10.2017. The said appeal was allowed primarily on the ground that the Senior Superintendent of Police who, in his capacity as the 'Authorized Officer,' had imposed the major penalty of dismissal from service on the appellant, had not been delegated the powers of the 'Authority.' It was held that the order of the 'Authorized Officer' should be treated as a recommendation to the 'Authority' for taking a decision in the matter.

6. After the said order was passed by the Hon'ble Supreme Court, the appellant was reinstated in service vide office order dated 08.11.2017. After such reinstatement, *denovo* proceedings were initiated against the appellant by issuing show cause notice dated 10.11.2017 to him. The proceedings pursuant to the said show cause notice culminated in the issuance of the office order dated 22.01.2018 whereby the major penalty of dismissal from service was again imposed on the appellant. Vide order dated 21.06.2018, the appellant's departmental appeal against the imposition of the said penalty was disposed of by converting the said penalty into minor penalties of (i) stoppage of increment for two years, and (ii) censure. Consequently, the appellant was again reinstated in service. The intervening period when he was out of service was treated as extraordinary leave without pay.

7. Even against the said appellate order dated 21.06.2018, the appellant preferred an appeal before the FST, which will be discussed at a subsequent stage in this judgment.

8. The FPSC had published an advertisement inviting applications from eligible candidates to take part in the SOPE-2016 for the selection of Section Officers against 45 vacancies. The closing date for the submission of applications was 31.12.2016. Paragraph 2(c)(i) of the said advertisement required applicants to have eight years of regular service in BS-11 to BS-16 in the departments listed in the said advertisement. In the said

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advertisement, it was also explained that the length of service is to be regular service acquired before or after obtaining the required educational qualifications.

9. On 22.12.2016, the appellant applied to the FPSC to take part in the SOPE-2016. In the said application, the appellant claimed that he had served as Patrol Officer (BS-14) in the NH&MP from 28.07.2008 to 22.12.2016.

10. Letter dated 14.03.2018 from the FPSC shows that the appellant was issued roll No.1142 and in the SOPE-2016, he had emerged at serial No.1 on the merit list. However, the FPSC did not include his name amongst the 27 candidates who had been recommended suitable for appointment as Section Officers as the appellant had failed to submit a DPC.

11. The position taken by the NH&MP and the FPSC, in their written comments, is that the appellant was not eligible to apply for participation in SOPE-2016 as he did not have the required length of service. It was also pleaded that the appellant had remained out of service from 10.10.2012 (when the major penalty of dismissal from service was imposed on him) to 21.06.2018 (when the order to reinstate him in service was issued). It is for this reason that the NH&MP did not issue a DPC to join the training of Section Officers which was to commence from 16.08.2019.

12. Aggrieved by the decision of the NH&MP not to issue him a DPC, the appellant filed writ petition No.3794-P/2018 before the Hon'ble Peshawar High Court seeking *inter alia* a direction to the NH&MP to issue a DPC to him before 16.08.2018 so as to enable him to join the training of Section Officers. Vide judgment dated 06.09.2018, the said writ petition was dismissed. The question as to whether the appellant was eligible to participate in the competitive process conducted by the FPSC for the appointment of Section Officer was dealt with by the Hon'ble Peshawar High Court in the following terms:-

> ***"No doubt, during the course of litigation with the respondent-department, the petitioner had applied to the Federal Public Service Commission for the Section Officers Promotional Examination held in the year 2016 and was recommended for the training course on 14.3.2018 but subject to the submission of the Departmental***

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Permission Certificate, which has been refused by the respondent-department.

8. The refusal is primarily on the ground that the requirement of the advertisement of the Federal Public Service Commission was that a person having worked as a Patrol Officer for a term of eight years and since the petitioner as per the record, worked against the said post for a brief period of four years, therefore, he lacked the requisite experience / length of service to be qualified for the subject post.

During the course of arguments, the representative of the respondent-department drew our attention to the Section Officers Promotional Examination Rules, 2015, which too, provide a period of eight years of service as a Patrol Officer to qualify for the said exam. Moreover, the petitioner while submitting his application before the Federal Public Service Commission for such post did not even make any reference regarding the fact that he was engaged in litigation with the respondent-department regarding his dismissal from the service. Accordingly, not only the petitioner lacked the desired experience as provided in the ibid Rules i.e. eight years active service as a Patrol Officer but also that he did not make any reference of his dismissal from service in his application submitted before the Federal Public Service Commission for the subject post. Therefore, we hold the petitioner disentitled to the relief sought through the instant petition."

13. The appellant preferred Civil Petition No.4727/2018 against the said judgment dated 06.09.2018 before the Hon'ble Supreme Court. Order dated 07.03.2022 shows that the appellant appeared in person and informed the Hon'ble Supreme Court that his grievance had been redressed as he had been issued a DPC. He had also stated that the findings in the judgment dated 06.09.2018 passed by the Hon'ble Peshawar High Court should not adversely affect his interest or come in his way. The Hon'ble Supreme Court, while dismissing the said petition as infructuous, observed in the order dated 07.03.2022 that the observations made in the judgment of the Hon'ble Peshawar High Court which might adversely affect his interests shall not come in his way.

14. It appears that on 03.10.2019 (i.e., after the said judgment dated 06.09.2018 passed by the Hon'ble Peshawar High Court but before the order dated 07.03.2022 passed by the Hon'ble Supreme Court), the appellant had applied to the Sector Commander, Sector III N-25 RCD Highway, Kalat for the issuance of a DPC. Vide letter dated 04.10.2019, the Sector Commander, Sector III N-25 RCD Highway, Kalat informed the Deputy Inspector General of Police, NH&MP, West Zone, Quetta about the appellant's said application.

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15. It is pertinent to mention that the appellant has chosen not to bring on record his application dated 03.10.2019 for the issuance of a DPC. Perusal of the said application is necessary because it has to be seen whether the appellant had made his disclosure about (i) the earlier refusal by the NH&MP to issue him a DPC, and (ii) the judgment dated 06.09.2018 passed by the Hon'ble Peshawar High Court upholding the NH&MP's decision not to issue him a DPC. The implications of whether or not he made such disclosure is for the NH&MP to consider.

16. Be that as it may, a DPC was issued to the appellant signed by the Deputy Superintendent of Police, NH&MP, RCD Highway (N-25), Kalat and countersigned by the Deputy Inspector General, NH&MP, West Zone, Quetta. The date on which the said DPC is issued is not mentioned but it was submitted by the appellant to the FPSC on 17.10.2019.

17. When the Deputy Inspector General, NH&MP, Islamabad came to know about the said DPC issued to the appellant he, vide letter dated 07.11.2019, asked the Deputy Inspector General, NH&MP, West Zone, Quetta about whether the DPC issued to the appellant was genuine or not. In the said letter, it was also stated that when the appellant applied for participating in the SOPE-2016, he was not in service of the NH&MP, having been dismissed on 10.10.2012 and not reinstated until 08.11.2017. The Deputy Inspector General, NH&MP, West Zone, Quetta vide letter dated 19.11.2019 withdrew the DPC that had earlier been issued to the appellant.

18. It may be recalled that the appellant had preferred an appeal before the FST against the order dated 21.06.2018 passed by the Appellate Authority, whereby the penalty of dismissal from service imposed on him was converted into minor penalties of (i) stoppage of increment for two years, and (ii) censure. The appellant had also preferred an appeal against the NH&MP's decision to treat the period during which he had remained out of service as extraordinary leave without pay. The FST, vide judgment dated 25.03.2020, upheld the minor penalty of stoppage of two increments but set-aside the penalty of censure. As regards the period during which the appellant had remained out of service on account of having been

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dismissed from service, the FST held that the intervening period will be dealt with in accordance with the procedure laid down in Serial No.32.10 of Esta Code, 2015, Page 868 and the law laid down by the Hon'ble Supreme Court in the judgment reported as *2010 SCMR 11*. After this, on 06.06.2023, the NH&MP issued office order dated 06.06.2023, according to which the period between 10.10.2012 and 08.11.2017 was treated as "on-duty" with all consequential benefits.

19. The said judgment dated 25.03.2020 passed by the FST has become the basis for the appellant to assert that he had the prescribed length of regular service of eight years for him to be appointed by the FPSC as Section Officer. The appellant also wants the FPSC to take into consideration the DPC which already stands withdrawn vide letter dated 19.11.2019 issued by the Deputy Inspector General, NH&MP, West Zone, Quetta.

20. There is no denying the fact that the appellant had been dismissed from service (*albeit* his departmental appeal was pending) when he applied to the FPSC for participation in the SOPE-2016. One of the grounds for the FPSC to turn down the appellant's representation dated 17.01.2019 against the rejection of his candidature for the SOPE-2016 was that he had concealed the fact as to his dismissal from service which amounts to violation of his undertaking submitted to the FPSC along with his application dated 22.12.2016. For such concealment by the appellant, no explanation has been presented.

21. It is all very well to say that the appellant stands reinstated in service and the period during which he had remained out of service due to his dismissal has been converted into service on-duty. But this was not done until the NH&MP's office order dated 06.06.2023 which was issued on the basis of the FST's judgment dated 25.03.2020. In other words, if the said order dated 06.06.2023 had not been issued, the appellant would not have the requisite length of eight years of regular service in order to be eligible for the SOPE-2016. However, the fact remains that when the appellant applied to take part in the SOPE-2016, he had been dismissed from service and this fact had been concealed by him in his application dated 22.12.2016 submitted to the FPSC. Therefore, the FPSC did not

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commit any illegality by not accepting the appellant's eligibility for participation in SOPE-2016 without a valid DPC issued by the NH&MP.

22. The appellant did not deny that in his application dated 22.12.2016 in response to the advertisement issued by the FPSC inviting applications from eligible candidates to take part in the SOPE-2016, the appellant had stated that he had served as Patrol Officer (BS-14) in the NH&MP from 28.07.2008 to 22.12.2016. This was a clear misstatement as the appellant had been dismissed from service vide office order dated 10.10.2012 and had not been reinstated in service until 08.11.2017.

23. The lengthy litigation before this Court could have been averted had the appellant been truthful in his application dated 22.12.2016 to the FPSC that he did not have the requisite eight years of regular service on account of having been dismissed from service on 10.10.2012. Since the appellant did not have the required length of service when he submitted his application dated 22.12.2016 to the FPSC, I have no reason to interfere with the orders dated 18.06.2019 and 18.07.2019 passed by the FPSC rejecting his candidature for participation in the SOPE-2016.

24. In view of the above, the instant appeal, being totally devoid of merit, is dismissed with costs. Before parting with this order, I must record my appreciation for the invaluable assistance rendered by Mr. Muhammad Asad, Inspector (Legal) and Mr. Said Gul, Inspector (Legal), NH&MP.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 27/05/2024

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING

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