*Form No: HCJD/C-121.*
*JUDGEMENT SHEET*
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

**WRIT PETITION NO. 1271 OF 2020**

Imran Aziz
*Vs*
Pakistan Telecommunication Company Limited, etc.

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| PETITIONER BY: | Mr. Ishtiaq Ahmed Chaudhry, Advocate |
| RESPONDENTS BY: | M/s Shahid Anwar Bajwa and Abdul Rehman Bajwa, Advocates.<br>Mr. Raheel Zafar, S.M, P.T.C.L. |
| DATE OF HEARING**:** | 04.03.2021. |

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***BABAR SATTAR, J.***- Through this petition the petitioner has impugned orders of respondent No.1 **("PTCL")** dated 23.10.2019 through which the petitioner was removed from service, and dated 05.03.2020 whereby the appellate authority converted the penalty of removal from service into compulsory retirement.

2. Learned counsel for the petitioner provided the brief facts germane to the controversy as follows, the petitioner was appointed in Pakistan Telegraph and Telephone Department (**"T&T Department"**) on 10.12.1988. He was transferred from T&T Department to Pakistan Telecommunication Corporation by virtue of section 9 of the Pakistan Telecommunication Corporation Act, 1991 whereby his terms and conditions of service were protected. The terms and conditions of service were once again protected under the Pakistan Telecommunication Ordinance, 1995. Upon promulgation of Pakistan

Telecommunication (Re-organization) Act, 1996 **("Telecom Act"),** the petitioner was transferred into the employment of PTCL and his terms and conditions of service were once again protected under sections 35 and 36 of the Telecom Act. PTCL transferred the petitioner as Revenue Officer Loralai through placement order, dated 21.04.2018. Aggrieved by the said order the petitioner filed a complaint before the National Industrial Relations Commission **("NIRC")** and obtained an injunctive order which was vacated upon withdrawal of the complaint on 13.06.2018. The petitioner sought medical leave which was approved till 13.07.2018, on which date he was examined by PTCL Medical Examination Board that declared him fit for duty. The petitioner was then directed to report for duty on 14.07.2018. The petitioner filed a joining report on 16.07.2018 whereby he sought permission to resume duty at Loralai with effect from 16.07.2018. The petitioner was issued a charge sheet under the Government Servants (Efficiency and Discipline) Rules, 1973 **("E&D Rules")** on 24.07.2018 along with statement of allegations for non-compliance of placement order posting the petitioner to Loralai. The petitioner filed a reply to the charge sheet on 01.08.2018. A show cause notice was issued to the petitioner on 12.11.2018 and the petitioner replied to such show cause on 17.11.2018. The petitioner also filed Constitutional Petition No. 1004/2018 before the learned Balochistan High Court challenging charge sheet issued to him on the ground that it was driven by malafide intent and was in breach of his terms and conditions. The petition was dismissed by order dated 20.02.2019 for being without merit. The

petitioner was removed from service on 23.10.2019. He then filed departmental appeal dated 20.11.2019 which was decided by the impugned order dated 05.03.2020.

3. The learned counsel for the petitioner stated that the petition is maintainable in view of the law settled by the august Supreme Court in P.T.C.L and others v. Masood Ahmed Bhatti and others [2016 SCMR 1362]. He submitted that the complaint filed before NIRC was withdrawn at an early stage once the petitioner realized that it was before a wrong forum given that the petitioner was a BPS-17 officer working in a company owned by the government against which writ is maintainable in view of the law laid out in Masood Ahmed Bhatti and others v. Federation of Pakistan through Secretary, M/o Information Technology and Telecommunication and others (2012 SCMR 152). And that as the petitioner is asserting his rights under Civil Servants Act, 1973 **("CSA")** and E&D Rules which have been protected under section 35 and 36 of the Telecom Act for purposes of the petitioner and his class of PTCL employees a writ lies before this Court.

4. Learned counsel for the petitioner stated that the impugned orders had been issued in breach of provisions of E&D Rules. That under Rule 6 of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 **("APT Rules")** read together with Rule 2 of E&D Rules, the authority competent for appointment of the petitioner was Secretary, Ministry of Communications. However, he had been proceeded against by the General Manager Human Resource (Operation) and so the

entire proceedings were *coram non judice.* The learned counsel then relied on Rule 9 of the E&D Rules to argue that in order to initiate disciplinary proceedings, PTCL was required to seek sanction from the Federal Government which remained his parent department. As the permission had not been sought, the disciplinary proceedings and penalty suffered from legal infirmity. He further submitted that initial penalty of removal from service had been converted to compulsory retirement under the PTCL Rules which were meant for company employees and not for the petitioner, whose terms and conditions are those provided under E&D Rules.

5. Learned counsel for the respondent company/PTCL argued that the petition is not maintainable given that the petitioner was employed as Lower Division Clerk/Junior Accounts Clerk in 1988 as a workman, for purposes of Industrial Relations Ordinance 1969, and could only agitate his grievance before the forum provided under the Industrial Relations Act, 2012. He argued that even though the petitioner is now a Revenue Officer serving in BPS-17 his status would remain the same as that at the time of his initial appointment and consequently the proper forum for adjudication of grievances was NIRC and not this Court. The learned counsel placed reliance on Muhammad Yousuf v. Labour Appellate Tribunal, Baluchistan, Quetta and two others (1987 PLC 430), National Bank of Pakistan v. Sindh Labour Appellate Tribunal and others (1990 PLC 197), National Bank of Pakistan and another v. Punjab Labour Appellate Tribunal and 2 others (1992 PLC 415), National Bank of Pakistan v. Punjab

Labour Court No. 5, Faisalabad and 2 others (1993 PLC 595) and Shahid Mehmood Usmani v. House Building Finance Corporation through Managing Director and others (2010 PLC (CS) 1360). The learned counsel then submitted that there was no authorized officer appointed in the instant case for purposes of rule 2(3) of the E&D Rules and consequently it was competent authority that proceeded against the petitioner. Relying on Masood Ahmed Bhatti he submitted that it had now been clarified by the august Supreme Court that employees of T&T Department had become employees of the company and while their terms and conditions of service are protected, such terms and conditions could not be confused with disciplinary proceedings that had to be conducted by PTCL and not by the Federal Government. He submitted that as the petitioner had ceased to be a civil servant and was a company employee. And thus the Federal Government or Ministry of the Federal Government had nothing to do with his employment matters. That the Board of Directors of PTCL in accordance with memorandum and articles of PTCL delegated authority to officers of PTCL for disciplinary purposes and it was in exercise of such delegated authority that initiation of disciplinary proceedings was approved, inquiry conducted, charge sheet and show cause notice issued, penalty imposed and subsequently penalty reduced through appeal order. He submitted that the General Manager Human Resource **("GMHR")** was only communicating the orders issued by competent authorities and there was nothing in law that prohibited the discharge of such ministerial functions by GMHR. On the merit of the allegation, the learned counsel for the

respondent/PTCL submitted that joining report purportedly submitted by the petitioner on 16.07.2018 is a fabricated document and finds no mention in his reply to the charge sheet dated 01.08.2018 or reply to the show cause notice dated 17.11.2018 or even in the memo of the instant petition. He argued that in the event that the petitioner had complied with the order there would have been no need to initiate or continue disciplinary proceedings for his failure to abide by the placement order which the petitioner has continued to challenge before all available forums.

6. In rebuttal the learned counsel for the petitioner stated that compulsory retirement from service is a penalty under rule 4 of E&D Rules and could not apply to this case. He further submitted that GMHR is not mentioned in E&D Rules as competent authority neither is the PTCL Board mentioned as the competent authority and thus the disciplinary action could only be initiated by the Secretary, Ministry of Communications, who is also the Chairman of the Board of PTCL, and not by anyone else. In rebuttal to the challenge to maintainability, he argued that the petitioner's complaint before NIRC was misconceived and as consent does not vest jurisdiction in an adjudicatory forum neither his petition before NIRC could have vested jurisdiction in NIRC in relation to the present subject-matter nor such petition disqualifies the petitioner from bringing his grievance before this Court. He submitted that the petitioner is a BS-17 officer and cannot be treated as a workman.

7. The law in relation to protection of terms and conditions of erstwhile employees to T&T Department, who are now employees of PTCL, has been clarified by the august Supreme Court in Masood Ahmed Bhatti and others v. Federation of Pakistan through Secretary, M/o Information Technology and Telecommunication and others (2012 SCMR 152) and P.T.C.L and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362), as follows:

> *"15. Thus it is evident that at the moment of transition when the appellants ceased to remain the employees of the Corporation and became the employees of PTCL, they admittedly were governed by rules and regulations which had been protected by the PTC Act. The said rules, therefore, by definition were statutory rules as has been discussed above. PTCL, no doubt, could make beneficial rules in relation to its employees which were in addition to the rules of employment prevailing on 1-1-1996. However, by virtue of the aforesaid proviso, PTCL had no power to "vary the terms and conditions of service" of its employees who were previously employees of the Corporation, "to their disadvantage". Even the Federal Government was debarred by virtue of section 35 ibid, from varying such terms and conditions of service to the disadvantage of the appellants.*
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> *16. An easy and uncomplicated test becomes available to us to help determine the status of the employment rules governing the appellants. If the current employer of the appellants viz. PTCL is constrained by legislation such as section 35(2) of the Reorganization Act, and as a consequence, cannot vary the existing rules to the disadvantage of the appellants, because of such legislation, it must follow that such law has the effect of saving the rules which existed when the appellants became employees of PTCL. Such existing rules, having been protected by section 35(2), therefore, can only be categorized as statutory rules.*

> *17. Section 36 of the Reorganization Act also has relevance in determining the controversy which arises in these appeals. Subsection (2) of section 36 gives protection to the terms and conditions of service of employees such as the appellants who stood transferred from the Corporation to PTCL on 1-1-1996. Their terms and conditions of service cannot be altered adversely by PTCL "except in accordance with the laws of Pakistan or with the consent of the transferred employees and the award of appropriate compensation". When this legal provision is read together with section 35, it becomes abundantly clear that by operation of the Reorganization Act, the terms and conditions of service of the appellants as on 1-1-1996 stood conferred on them as vested rights under the said law."*

8. The PTCL filed a review against Masood Ahmed Bhatti and the august Supreme Court by judgment reported as P.T.C.L and others v. Masood Ahmed Bhatti and others (2016 SCMR 1362) held the following:

> *"A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are*

*essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court. Though in the cases of Pakistan Telecommunication Corporation and another v. Riaz Ahmed and 6 others and Divisional Engineer Phones, Phones Division, Sukkur and another v. Muhammad Shahid and others (supra) it was held that the departmental employees on their transfer to the Corporation and then to the Company would continue to be the Civil Servants, but this interpretation does not appear to be correct as they on their transfer became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Retention of their status as civil servants is thus not supported by the words used in the aforesaid provisions.*

9. The learned counsel for the respondent company has argued that this petition is not maintainable as the petitioner was a workman when he was hired as Junior Accounts Clerk on 10.12.1988. And that even though he is now an Accounts Officer in BPS-17, when he was first appointed his status was that of a workman and he had a remedy under the Industrial Relations Ordinance, 1969, and he would thus retain his status as workman throughout his service and still has a remedy before the NIRC under the Industrial Relations Act, 2012. The argument is misconceived. Whatever the status of the petitioner at the time of his appointment in the T&T Department thirty-three years back, he is presently an Accounts Officer equivalent to a position in BPS-17 and does not qualify as a worker. His grievance is rooted in his claim that his terms and conditions of service protected under statute have been breached. He is not a civil servant and thus cannot agitate his grievance before the Federal Service Tribunal (FST). Consequently his petition would be maintainable in view of the dicta of the august Supreme

Court in PTCL vs. Masood Ahmed Bhatti (2016 SCMR 1362). The case law relied on by the learned counsel for the respondent company only supports the proposition that a worker could agitate his grievance before forums provided under the Industrial Relations Ordinance, 1969 even if it resulted from the denial of rights guaranteed under any other law. The proposition does not support the challenge to maintainability in the instant case as here the petitioner is not a workman.

10. The CSA and the Government Servants and E&D Rules comprise both, substantive provisions regulating the rights and obligations of employees, and procedural requirements to be complied with. The CSA and E&D Rules also regulate and determine which authority is competent to exercise what power.

11. Section 3 of the CSA, in a nutshell, affords protection to the terms and conditions of service and prohibits their variation to the disadvantage of the employee. Section 4, 5, 6 and 7 regulate tenure, appointments, probation and confirmation. Section 8 creates, regulates and protects the right to seniority. Section 9 regulates promotion. Section 10 creates an obligation for the employee to serve in such post as ordered by the competent authority, provided that his pay is not less favorable. Section 10-A creates restrictions on service in international organizations. Section 11 regulates the power of the government/employer to terminate the service of employees and Sections 11-A and 11-B deal with absorption of civil servants rendered surplus and civil servants not appointed through the prescribed procedure. Section 12 regulates the

power to revert and regulates the discretion of the government to re-employ a retired civil servant. Section 15 vests power in the government to regulate the conduct of employees through rules or instructions. Section 16 mandates that prescribed procedure is to be followed which taking disciplinary action and imposing penalties. Section 17 protects the entitlement of employees to pay. Section 18 creates a right to be granted leave in accordance with rules. Sections 19, 20 and 21 create and protect a right to pension and gratuity to participate in the provident fund and to benevolent fund and group insurance, respectively. Section 22 creates a right for the employees to appeal and representation.

12. It has been held by the august Supreme Court in PTCL vs. Masood Ahmed Bhatti (2016 SCMR 1362) that while employees of the erstwhile T&T Department, such as the petitioner, are no longer civil servants, their terms and conditions of sevice, as provided under the CSA are protected by virtue of Section 35 of the Telecom Act. Given that they are not civil servants anymore, they have no recourse to the FST. But to the extent that they are aggrieved due to a breach by their employer company of their terms and conditions of service, which have been afforded statutory protection under Section 35 of the Telecom Act, such breach would constitute breach of law for purposes of *Article 199* of the Constitution and the High Court would have jurisdiction to hear a petition raising such grievance. In case of erstwhile employees of T&T Department, presently employed by PTCL, whose terms and

conditions of service as prescribed and protected under CSA are protected and who have no standing before the FST, the bar of Article 212 of the Constitution would not come into play.

13. In the instant matter, the questions before this Court are the following:

i. What constitutes the terms and conditions of service of employees of T&T Department that are protected under Section 35 of the Telecom Act and are to be honored by PTCL, which is the current employer of the petitioner and others falling within his category of employment?

ii. Does the competent authority as specified under Rule 6 of the APT Rules continue to remain competent authority for purposes of PTCL employees, such as the petitioner, who are erstwhile employees of the T&T Department, and are their cases to be sent to the Federal Government under Rule 9 of the E & D Rules for purposes of initiating disciplinary action and imposition of a penalty, as if they are deputationists working at PTCL on a temporary basis?

iii. Did PTCL breach the terms and conditions of service of the petitioner by initiating disciplinary action and imposing a penalty on him?

14. The answer to these questions can be gleaned from the judgment of the august Supreme Court in 2016 SCMR 1362, wherein it has been stated that right of employees emanating from Section 3 through 22 of the CSA are protected. What that means is that the rights of erstwhile employees of the T&T Department who are now employees of PTCL under the said

provisions of CSA, including substantive rights and procedural due process rights, are and will remain protected. However, this does not mean that the current status of such employees of PTCL is that of government servants or government servants on deputation to PTCL. The petitioner is now an employee of PTCL. His entitlement to substantive and procedural rights under the CSA and E&D Rules stands protected due to legislative fiat. But his employer is PTCL and not the Government of Pakistan and consequently the procedures prescribed under rules framed under the CSA, such as E&D Rules, APT Rules and Government Servants (Conduct) Rules, 1964, shall apply mutatis mutandis and not literally. Consequently for purposes of initiation of disciplinary proceedings and imposition of penalty, the competent authority in case of the petitioner is not that listed under Rule 6 of the E&D Rules, but the Board of Directors of PTCL ("Board"). To the extent that the Board had duly authorized the initiation of disciplinary proceedings and imposition of penalty in accordance with the constituent documents of PTCL, and the disciplinary proceedings followed the procedural stages and steps prescribed by the E&D Rules and end with imposition of a penalty provided in the E&D Rules after affording the employee due process rights guaranteed therein and further afforded him the right of appeal and or representation, it cannot be argued that such proceedings have been conducted or penalty imposed in breach of terms and conditions of the employee guaranteed under Section 35 of the Telecom Act. Any other interpretation of Section 35 would render the relationship between the employer and its employees

dysfunctional. It cannot be countenanced that the legislature while promulgating Section 35 of the Telecom Act had indented to disable PTCL as an employer from discharging basic human resource management functions, such as taking disciplinary action against recalcitrant employees and outsource such function to the Secretary of a Ministry or the Establishment Secretary or even the Prime Minister, depending upon the grade of the employee to be proceeded against. As the CSA and E&D Rules apply to employees of PTCL who are erstwhile employees of T&T Department, such Act and Rules are also to apply mutatis mutandis and not literally as intended by the legislature.

15. The learned counsel for petitioner has failed to point out what breach of E&D Rules and CSA has been committed in the instant case. That proceedings have been conducted and penalty imposed in exercise of authority delegated by the Board to officials of PTCL duly authorized for such purpose. The petitioner has been afforded due process and all procedural steps prescribed in the E & D Rules have been followed. The initiation of disciplinary action was duly authorized on 20.07.2018, by the GMHR in exercise of authority delegated by the Board in its 143rd Meeting held on 30.04.2009. A charge sheet was served on the petitioner on 27.07.2018, along with a statement of allegations. An inquiry was conducted and inquiry report submitted on 28.08.2018, wherein the petitioner was found to be delinquent for his failure to join duty as Revenue Officer, Loralai in compliance with his placement order. A show

cause notice was issued on 12.11.2018, while affording the petitioner an opportunity to present his defense. The removal order was passed on 23.10.2019, which falls within the list of penalties prescribed under Rule 4 of the E&D Rules. The petitioner was then also afforded the right to appeal and the appellate authority reduce the penalty form "removal from service" to "compulsory retirement", which is also a penalty prescribed under Rule 4 of the E&D Rules.

16. In terms of merit of the orders passed by PTCL, it is not for this court to step-into the shoes of the competent authority, second guess its decision or gives a factual finding different from that recorded, in the absence of evidence on record that appears to have been misread. In the instant case the petitioner challenged his placement order to Loralai before the learned Baluchistan High Court. Had he had joined service in Loralai or had sought permission to join service on 16.07.2018, which position he has taken before this court, he ought to have brought such fact to the notice of the learned Baluchistan High Court as proof of the malafide he was attributing to PTCL. But he did not do so. The learned Baluchistan High Court did not find PTCL's transfer order tainted with mala fide and dismissed the petition for want of merit. Also in response to the charge sheet dated 24.07.2018, the petitioner stated that he had applied for leave with effect from 16.07.2018 to 04.08.2018, which had not been approved. When the inquiry was being conducted for his refusal to abide by a transfer order, why would he not mention in his explanation he

had already complied with it and had already sought permission on 16.07.2018 to resume duty. The letter dated 16.07.2018 titled joining report purportedly submitted by the petitioner to PTCL thus inspires no confidence as an authentic document. In case the document is forged, it could render the petitioner liable for the offence of perjury for misrepresentation before this Court.

17. In view of the above, PTCL is not found to have breached the E&D Rules in imposition of the penalty of removal from service after it found that the petitioner had failed to comply with the transfer order posting him to Loralai, which penalty was subsequently reduced to that of compulsory retirement. Section 10 of the CSA creates an obligation for employees to serve at a post where they are ordered to serve and no employee is afforded the entitlement to serve at a post or location of choice. It is for the employer to determine where the services of the employee would best serve the needs of the employer. By refusing to serve at Loralai when so posted by PTCL, the petitioner rendered himself liable for disciplinary action and the orders of PTCL do not call for interference by this Court in its extra-ordinary constitutional jurisdiction.

18. Given that the initial penalty of removal from service has been reduced to compulsory retirement from service in consideration of the petitioner’s departmental appeal after granting him a personal hearing on 07.01.2020, the petitioner would be entitled to any retirement benefits guaranteed under the CSA and Rules framed thereunder to employees who are

compulsorily retired under Rule 4 of the E&D Rules as a penalty. While the decision in appeal ordering his compulsory retirement is dated 05.03.2020, he would be deemed to have compulsorily retired from the date when he was dismissed from service by order dated 23.10.2019 and would be eligible to receive service benefits in accordance with provisions of CSA and the rules framed under it till the date that he remained an employee of PTCL.

19. This petition is disposed of accordingly with no order as to cost.

(BABAR SATTAR)
JUDGE

Announced in the open Court on 20.04.2021.

JUDGE

Saeed.