JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 135 OF 2021

MUHAMMAD WAQAS

VS

CHAIRMAN, NADRA, ETC.

Petitioner by : Mr. Moazzam Sajjad Kiani, Advocate.

Respondents by : Malik Muhammad Khalid, Advocate for NADRA.

Date of hearing : 24.06.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), the Petitioner [Muhammad Waqas] has challenged the Order dated 29.04.2016 passed by the Director (Admin & HR), NADRA, Islamabad (**"Respondent No.3"**) and the Order dated 19.02.2020 passed by the Chairman NADRA (**"Respondent No.1"**). The Petitioner also seeks setting aside of the Impugned Orders and his reinstatement into service from the date of removal with all back benefits.

2. The brief facts of the case as per the Memo of Petition are that the Petitioner joined the National Database & Registration Authority (NADRA) as a Data Entry Operator on 14.11.2009, on a contract basis at RHO Islamabad. He was granted T-1 scale on contract basis on 14.11.2010 for a period of three years and later on, his services were regularized by the competent authority in the year 2012. The Director General NADRA (**"Respondent No.2"**) issued a show cause Notice No. NADRA/HR-03/SCN/16/32296 dated 24.03.2016 on the allegation that "you have been involved in illegal processing of 4-TIDs# 302441007909, 302441007903, 302441005349 & 302441005322 dated 13.01.2016 without observing SOP". In reply to the show cause notice, the Petitioner vehemently denied the allegation and narrated the real facts before the authority, stating that he processed these TIDs in accordance with SOP. Respondent No.3, by relying upon the fact-finding enquiry, imposed the major penalty of removal from service vide Impugned Order dated

29.04.2016. Being aggrieved, the Petitioner filed a departmental appeal before Respondent No.1, who did not allow the appeal and upheld the decision of major penalty of removal from service vide Impugned Order dated 19.02.2020. Feeling aggrieved by the Impugned Orders dated 29.04.2016 and 19.02.2020, the Petitioner has filed the instant petition.

3. The learned counsel for the Petitioner contended that the Impugned Order dated 29.04.2016 was passed by Respondent No.3, while the competent authority in the Petitioner's case was Respondent No.2, being his appointing authority. Therefore, the order passed by Respondent No.3 has no legal sanctity, being passed by an incompetent authority, and this sole ground is sufficient to vitiate the whole proceedings. That the Petitioner had sufficient grounds to rebut the allegations, but he was not given ample opportunity to defend himself. He was also not provided with the inquiry report and relevant documents, despite his request, for his defence, which was *sine qua non* as per the dicta of the Superior Courts laid down in 1987 SCMR 602, 2003 PLC (CS) 395 and 2003 TD (Ser) 384. The learned counsel further contended that all proceedings were initiated against the Petitioner ex-parte without affording him a proper opportunity to defend himself and to cross-examine the witnesses; that ex-parte proceedings have been deprecated by the superior Courts time and again. It is also a settled principle of law that no major punishment can be awarded to a civil servant without affording him a proper opportunity of defence; that the Petitioner was ousted from service merely on the basis of a show cause notice and charge sheet, which were not served upon him in time, and a harsh punishment of dismissal from service was imposed. That dispensation of inquiry should be exercised with due care and vigilance, especially when a civil servant denies the allegations in response to a show cause notice, hence, a regular inquiry must be held when facts are disputed. In this regard, the Learned Counsel placed reliance on 2009 TD (Ser) 85, 2009 TD (Ser) 350, 2007 SCMR 1326, 2001 SCMR 1320. Moreover, dispensation of regular inquiry by invoking provisions of the Act in absence of sufficient, lucid, and incriminating material would neither be justified nor warranted under the law. The learned Counsel placed reliance on 2016 TD (Service) 118. It is submitted that in the Petitioner's case, the competent authority while issuing the show cause notice dispensed with the regular inquiry and adopted a shorter procedure without cogent reasons or incriminating material. It has also been held by the apex Court that the major punishment of removal from service cannot be awarded without holding a regular departmental inquiry, and

before imposing such a penalty, a regular inquiry must be held to determine the actual basis of the allegation, which is required to be proved in accordance with law. When allegations require explicit proof, then holding of a regular inquiry cannot be dispensed with. That an opportunity of producing defence witnesses is also required to be given to the accused by the inquiry officer. In this regard, the learned counsel placed reliance on 1993 SCMR 603, 2000 SCMR 1321, 2001 SCMR 1566, and 2010 SCMR 1546 and urged that in view of the above, the Impugned Order of Respondent No.3 is against the fundamental rule of natural justice, based on mala fide and without any lawful justification, hence liable to be set aside. Lastly, learned counsel prayed that an appropriate writ may kindly be issued, declaring the Impugned Order of Respondent No.3 dated 29.04.2016 as upheld by Respondent No.1 on 19.02.2020, illegal, without lawful authority, and passed with *mala fide* intentions. It is also prayed that the Impugned Orders dated 29.04.2016 and 19.02.2020 may graciously be set aside and the Petitioner may kindly be reinstated into service from the date of removal with all back benefits.

4. On behalf of the Respondents, i.e., NADRA, it is argued that the Petitioner has not approached the Court with clean hands; that the instant petition is not maintainable as the Service Regulations of the Respondent department are non-statutory; therefore, the relationship between the Respondents and the Petitioner is that of master and servant. In this regard, learned counsel placed reliance on 2017 SCMR 1979 and 2019 SCMR 984. That the Petitioner was appointed as Data Entry Operator on short-term contract on 14.11.2009 at RHO Islamabad. Thereafter, the Petitioner was granted T-1 scale on contract basis on 14.11.2010 for a period of three years. During regularization, the Petitioner opted for regular employment and was subsequently placed in BPS-07 as Junior Executive with effect from 01.03.2012. That the Petitioner was working at MRV (RHO Islamabad) and was found involved in misconduct. It was revealed through technical analysis that the Petitioner solely processed (token, thumb, data entry, print, scanning, form printing, and approval) 04 TIDs, i.e., 302441007909, 302441007903, 302441005349 & 302441005322, without observing registration SOPs. That the Petitioner was dealt with under the Government Servants (Efficiency & Discipline) Rules, 1973, and upon completion of inquiry proceedings and recommendations of the Authorized Officer, the major penalty of "Removal from Service" was awarded by the competent authority on 29.04.2016. That the Petitioner submitted a departmental appeal dated 31.05.2016, received on 10.08.2016, for reinstatement

in service. Moreover, the Petitioner filed Writ Petition No. 1510/2019 before the Islamabad High Court, which was disposed of by this Court vide order dated 19.04.2019, with direction to decide the pending appeal. In compliance with the Court's direction, the Petitioner was granted an opportunity of personal hearing before the Chairman NADRA/Respondent No. 1, being Appellate Authority, on 16.05.2019. After hearing, the Chairman NADRA/Respondent No. 1 directed a technical analysis of all these TIDs. As per the technical analysis report, it was revealed that all TIDs had been processed by the Petitioner**.** Moreover, perusal of the inquiry record revealed that the Petitioner processed these TIDs in violation of SOPs. Subsequently, the Chairman NADRA/Respondent No. 1, being the Appellate Authority in terms of Regulation 24 (Amended) of NADRA Employees Service Regulations, 2002, did not allow the appeal and upheld the decision of the major penalty of "Removal from Service" awarded by the competent authority on 29.04.2016, as the facts were well established during inquiry and the Petitioner failed to provide any substantial document during the personal hearing to support his defence and prove his innocence.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. The learned counsel on behalf of the Respondents relied upon two judgments of the august Supreme Court of Pakistan reported as *Chairman, NADRA, Islamabad versus Muhammad Ali Shah,* **2017 SCMR 1979** and *Maj. (Retd.) Syed Muhammad Tanveer Abbas versus Federation of Pakistan through Secretary, Ministry of Interior,* **2019 SCMR 984**, to argue that the Service Regulations of the Respondent department are non-statutory; therefore, the relationship between the Respondents and the Petitioner is that of master and servant. In my view, this preliminary objection merits consideration before examining the merits of the case. The relevant portion of the judgment rendered by the august Supreme Court of Pakistan in *The General Manager, Punjab Provincial Cooperative Bank, Limited and others versus Ghulam Mustafa and others,* **2024 SCMR 1458** is reproduced hereunder: –

> *"9. Time and again, this Court laid down in various dictums that in absence of statutory rules of service, the aggrieved employee cannot invoke the writ jurisdiction of the High Court. In the case of PIAC v. Tanweer-ur-Rehman (PLD 2010 SC 676), it was held by this Court that due to non-statutory rules of service, the constitution petition under*

> *Article 199 does not lie in the High Court. Whereas in another judgment rendered by this Court in the case of PIAC v. Syed Suleman Alam Rizvi (2015 SCMR 1545), while referring to the case of Tanweer-ur-Rehman (supra), Abdul Wahab v. HBL (2013 SCMR 1383), Pakistan Defence Officers' Housing Authority v. Lt.Col. Syed Jawaid Ahmed (2013 SCMR 1707) and Syed Nazir Gilani v. Pakistan Red Crescent Society (2014 SCMR 982), reaffirmed that no writ petition lies in the High Court in the matters where the terms and conditions of service are not governed by statutory rules. In view of the well-settled exposition of law, we feel no hesitation in our mind to hold that Writ Petitions in the Lahore High Court filed by the employees were not maintainable owing to the relationship of master and servant and the absenteeism of the statutory rules of service."*

7. Similarly, in Civil Petition No. 2923 of 2020, the august Supreme Court of Pakistan refused leave to appeal on the preliminary ground of maintainability against the decision of the learned Division Bench of the Islamabad High Court, wherein it was held that the terms and conditions of service were non-statutory in nature, and therefore, the writ petition was not maintainable.

8. The question whether regulations of NADRA are statutory arose before the Hon'ble Supreme Court of Pakistan in the case of *Maj. (Retd.) Syed Muhammad Tanveer Abbas versus Federation of Pakistan through Secretary Ministry of Interior and another*, **2019 SCMR 984**. In that case, several NADRA employees had filed Constitutional petitions before the Sindh High Court challenging their termination orders. The Division Bench of the Sindh High Court dismissed the petitions, holding that the regulations, being framed under Section 45 of the NADRA Ordinance, were non-statutory in nature. The judgment was upheld by the Supreme Court of Pakistan. Relevant observations of the apex Court are reproduced hereunder: –

> *"When the DHA case is compared with the appellants' case, there are certain obvious similarities, the first and most important being of course that both involved situations of termination from service. Apart from that, in our view, as held by this Court in relation to DHA, there can hardly be any doubt that NADRA is also a "person" within the meaning of Article 199(1)(a)(ii) read with clause (5) thereof. Equally, it is also clear that the 2002 Regulations, like the DHA Service Rules of 2008, were non-statutory in nature. It also cannot be in doubt that the termination clauses involved in the present appeals are in all material aspects the same as Rule 8(b)(1) of the DHA service rules. This is apparent on a bare reading of the said provisions. The crucial question therefore is whether the termination clauses involved here can be treated in the same manner as Rule 8(b)(1), and the same or similar relief accorded the present appellants?"*

9. The same view has been reiterated by the august Supreme Court in *Chairman NADRA, Islamabad through Chairman, Islamabad and another versus Muhammad Ali Shah and others*, **2017 SCMR 1979**, *Muhammad Zaman and 14 others versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others*, **2017 SCMR 571**, *PTCL and others versus Maqsood Ahmad Bhatti and others,* **2016 SCMR 1362**, *Zarai Taraqiati Bank Limited and others versus Said Rehman and others*, **2013 SCMR 642**, and *Pakistan Defence Officers' Housing Authority and others versus Lt. Col. Syed Jawaid Ahmad*, **2013 SCMR 1707**.

10. It is an admitted fact that the terms and conditions of the Petitioner's service with NADRA were governed by the NADRA Employees (Appointment, Promotion and Transfer) Regulations, 2002. The Notification dated 22.01.2004, through which the 2003 Regulations were issued, indicates that the said regulations were made by NADRA/the Authority in accordance with Section 45 of the Ordinance and not by the Federal Government. Thus, the regulations governing the Petitioner are non-statutory. It is well settled that a writ petition is maintainable only where the Respondent authority has violated a provision of law or statutory rules. Employees governed by statutory rules/regulations may avail the remedy of a Constitutional petition; however, where the applicable rules are non-statutory, the principle of master and servant applies.

11. In light of the above discussion, this Court concludes that the Petitioner's service was governed by non-statutory regulations. Therefore, writ jurisdiction under Article 199 of the Constitution cannot be invoked for redressal of grievances relating to terms and conditions of his service. Resultantly, the instant Writ Petition is dismissed as not maintainable.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on this _____ day of July, 2025.

JUDGE

//Sajid//