JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

J.S.A.No.01 of 2021
Muhammad Jehangir Awan
Versus
Honourable Authority through Registrar Islamabad High Court

Dates of Hearing:	01.06.2023 and 06.07.2023
Date of Decision:	06.07.2023
Appellant by:	Mr. Qaiser Imam Ch. and Imdad Ullah Advocates
Respondents by:	Ms. Khadija Ali, learned State Counsel. Mr. Asif Iqbal, Departmental Representative, Islamabad High Court.

MIANGUL HASSAN AURANGZEB, J:- Through the instant judicial service appeal the appellant, Muhammad Jehangir Awan, impugns order dated 28.11.2020 passed by the Hon'ble Chief Justice of this Court, in his capacity as the Authority under the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 (**"the 1999 Rules"**), which have been made applicable to the members of the Islamabad Judicial Service by virtue of the proviso to Rule 25 of the Islamabad Judicial Service Rules, 2011 (**"the 2011 Rules"**) until the Islamabad High Court prescribes rules in matters relating to efficiency, discipline, penalty and appeal, etc. Through the said order dated 28.11.2020, the Authority imposed major penalty of dismissal from service on the appellant. Pursuant to the said order, this Court issued notification dated 07.12.2020, according to which, the appellant stood dismissed from judicial service.

2. On 17.12.2020, the appellant had filed a review application against the said order dated 28.11.2020 but since during the pendency of the said review application, the appellant had filed the instant appeal, the review application was held to have become infructuous vide order dated 24.04.2021 passed by the Hon'ble Chief Justice.

3. The facts essential for the disposal of the instant appeal are that on 13.09.2020 at approximately 06:45 p.m., the appellant and one Khurram Parvez had an altercation while overtaking each other

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in their respective vehicles. The appellant is alleged to have made an inappropriate gesture at Khurram Parvez. The appellant then drove into a PSO petrol station on Constitution Avenue, Islamabad for refueling his vehicle. Khurram Parvez, accompanied by his cousin Muhammad Bilal Abbasi, followed the appellant and assaulted him. During this scuffle, the appellant pulled out his pistol and fired two shots in the air. This caused a team of policemen to reach the site of the incidence and take all the above named three individuals, including the appellant, into custody. The pistol used by the appellant was also taken into custody along with two empties. The CCTV footage was also obtained from the petrol station and was taken into custody along with the Digital Video Recorder (DVR). The appellant's medico legal examination was conducted at Federal Government Services Hospital, Islamabad. A report / qalandra was also made against the appellant for aerial firing under Section 337H(ii) of the Pakistan Penal Code ("PPC"**) and against Khurram Parvez for assault and criminal intimidation under Sections 352 and 506 of the PPC. The rival parties had submitted criminal complaints against each other in the morning of 14.09.2020. The appellant's medico legal report shows that he had sustained an abrasion on his left upper eyelid with swelling and redness; an abrasion on the right side of nasal bone redness and swelling on the left side of the nasal bone; a mildly swollen upper lip with reddish discolouration; and a swollen dorsum of the foot with painful restricted movement and tenderness. The Radiologist's opinion was that the appellant had sustained no bony injury but that there was a fracture seen through the base of the fifth metatarsal bone, and that a cortical break was seen through the posterior margins of the calcareneum. The medical report also shows that three injuries sustained by the appellant were declared as *shuja-i-khafifa*, whereas one injury was declared as *shuja-i-hashima*.**

4. On the appellant's complaint, FIR No.210/20 was registered at Police Station Secretariat, Islamabad under Sections 337F(v), 337A(i), 352, 506 and 34 of the PPC against Khurram Parvez. Subsequently the appellant, in his supplementary statement,

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nominated Muhammad Bilal Abbasi as a co-accused. Muhammad Bilal Abbasi was arrested on 14.09.2020 whereas Khurram Parvez was arrested on 16.10.2020 when they appeared before the Investigating Officer. Muhammad Bilal Abbasi was said to have been granted post-arrest bail by this Court.

5. On 24.10.2020, the appellant appeared before the Judicial Magistrate and recorded his statement that he had forgiven both of the accused and had no objection if the accused were released and were acquitted. It was on the basis of this statement that Khurram Parvez was granted bail on 24.10.2020.

6. The facts and circumstances regarding the incident were reported to the Hon'ble Chief Justice of this Court who, vide notification dated 28.07.2020, placed the appellant under suspension. Thereafter, a notice dated 15.09.2020 was issued to the appellant calling upon him to show cause as to why one of the major penalties provided in Rule 4(b) of the 1999 Rules should not be imposed on him. The said show cause notice shows that the Hon'ble Chief Justice, in his capacity as the Authority, had decided that an inquiry in the matter was not necessary. The allegations against the appellant in the said show cause notice were as follows:-

> ***"i. That you were alleged to have been involved in an incident of road rage and that you resorted to use of a firearm weapon in the Red Zone of Islamabad Capital Territory. The Inspector General of Police submitted the report of incident, dated 14.09.2020.***
>
> ***ii. That you as a Judicial Officer, at all times, are required to demonstrate highest standards of probity expected from a person holding such an exalted position.***
>
> ***iii. That you acted in a manner that was unbecoming of a Judicial Officer.***
>
> ***iv. That this is not the first incident and you were earlier alleged to have committed misconduct and proceeded against. The disciplinary proceedings are pending."***

7. On 26.09.2020, the appellant submitted a reply to the said show cause notice. In the said reply, the position taken by the appellant was that the report submitted to this Court by the Islamabad Police was contrary to the facts and the available record. The appellant asserted that he had not been involved in any incident of road-rage, and that since Constitution Avenue is covered by the

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safe city CCTV cameras, a correct picture of the incident could be obtained and verified from the available footage. Furthermore, he asserted that he was not aware of the identity of the attackers, and that he had shown restraint by using such force as was necessary to eliminate the imminent threat of violence. The appellant complained that the attackers had caused injury to vital parts of his body, and that he had to resort to firing in order to protect his life. The appellant prayed for the proceedings to be dropped.

8. After the appellant was afforded an opportunity of a personal hearing on 28.11.2020, the Authority issued order dated 28.11.2020, whereby a major penalty of dismissal from service was imposed on the appellant. On the basis of the said order, this Court issued notification dated 07.12.2020 for the appellant's dismissal from service.

9. The primary ground agitated by the learned counsel for the appellant was that since the facts narrated in the police report dated 14.09.2020 had been disputed by him, the Authority could not have dispensed with a regular inquiry envisaged by Rule 6 of the 1999 Rules. Furthermore, it was submitted that where the Authority intends to impose a major penalty on an officer, a regular inquiry cannot be dispensed with.

10. The position taken by the Registrar of this Court, in his concise statement, is that since there was sufficient material on the record against the appellant, it was not necessary to conduct a regular inquiry against him. In support of this stance, reliance has been placed on the law laid down in the cases of Ghulam Mustafa Shehzad Vs. Lahore High Court through Registrar (2007 SCMR 1786) and Hassan Raza Vs. FBR through Chairman (2020 SCMR 994). Furthermore, it was asserted that the appellant had been informed of the Authority's decision to dispense with the inquiry and the reasons for doing so in the show cause notice dated 15.09.2020. It has also been pleaded that despite affording an opportunity of a personal hearing, the appellant did not make a request for cross-examining any person, including any police officer.

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11. We have heard the arguments of the learned counsel for the appellant and have gone through the concise statement submitted by the Registrar of this Court.

12. The vital questions that need to be answered are whether in the facts and circumstances of this case, the Authority could dispense with a regular inquiry envisaged by Rule 6 of the 1999 Rules, and whether major penalty of dismissal from service could have been imposed on the appellant after simply issuing him a show cause notice and affording him an opportunity of a hearing.

13. In pursuance of Section 6 of the Islamabad High Court Act, 2010 read with Article 203 of the Constitution, the Islamabad High Court made the 2011 Rules. As regards the subjects of discipline, penalty and appeal, Rule 25 of the 2011 Rules provides that the High Court shall prescribe rules in matters relating to efficiency, discipline, penalty and appeal, etc. The proviso to the said rule provides that until such rules are prescribed, the rules of the Lahore High Court, Lahore shall *mutatis mutandis* apply.

14. Till date, the Islamabad High Court has not prescribed rules in matters relating to efficiency, discipline, penalty and appeal. Therefore, by virtue of the proviso to Rule 25 of the 2011 Rules, the Punjab Judicial Service Rules, 1994 (“the 1994 Rules”) would apply to the members of the Islamabad Judicial Service. The 1994 Rules do not have any provision specifically dealing with efficiency, discipline, penalty and appeal. However, Rule 11 of the 1994 Rules provides that in all matters not expressly provided for in the said rules, members of the Punjab Judicial Service shall be governed by the rules as have been or may hereafter be prescribed by government and made applicable to them.

15. The Punjab Employees Efficiency, Discipline and Accountability Act, 2006 made by the Provincial Legislature of Punjab applies to employees which, as per Section 2(h)(ii)(aa) of the said Act, does not include a Judge of the Lahore High Court or any Court subordinate to that Court or an employee of such Courts. It is the 1999 Rules which are to apply *mutatis mutandis* to members of the Islamabad Judicial Service.

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16. Chapter-III of the 1999 Rules titled "Inquiry and Imposition of Penalties" deals with the initiation of disciplinary proceedings, the procedure to be observed by the Authority, the procedure to be observed by the Inquiry Officer or Inquiry Committee, the powers of the Inquiry Officer and Inquiry Committee, etc.

17. Rule 6(2) of the 1999 Rules provides that the Authority, in the light of the facts of the case, shall decide whether in the interest of justice an inquiry is necessary, whereas Rule 6(3) sets out the steps to be taken by the Authority if it decides that it is not necessary to have an inquiry conducted against the accused. The first step that the Authority is to take if it decides that it is not necessary to conduct an inquiry is to inform the accused forthwith by an order in writing of the action proposed to be taken in regard to him and the grounds of the action. Through the show cause notice dated 15.09.2020, the Authority informed the appellant of the action proposed to be taken against him and the grounds for the action. The second step that the Authority is required to take is to give the accused a reasonable opportunity of showing cause against the action proposed to be taken against him within a period of fourteen days of the date of the receipt of the order. Rule 6(3)(c) enables the accused to make a representation to the Authority against the summary procedure adopted against him, within seven days of the receipt of the orders. The Authority is required to decide such a representation within a period of seven days. In the event such a representation is rejected, the accused is to be given seven days to show cause against the proposed action.

18. In the case at hand as mentioned above, the appellant was informed through the show cause notice dated 15.09.2020 that the Authority had decided that an inquiry was not necessary. The appellant did not submit any representation envisaged by Rule 6(3)(c) of the 1999 Rules against the decision of the Authority to dispense with an inquiry. But an inquiry is dispensed with where there is no dispute with respect to the facts alleged against an accused. The appellant, in his reply to the show cause notice, had disputed the facts which had formed the basis of the issuance of the

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show cause notice to him. There is no separate order of the Authority on the record dispensing with conducting a regular inquiry against the appellant. The show cause notice dated 15.09.2020 does not set out the reasons for the Authority's decision to dispense with an inquiry. It sets out the allegations against the appellant which, according to the Authority, constitutes misconduct but these allegations cannot be equated with admitted facts or with the reasons for dispensing with an inquiry. Allegations, no matter how serious, have to be probed where the same are denied by the accused. In the instant case, the appellant in his reply to the show cause notice, had denied the allegations levelled against him. This denial of the allegations would imply a challenge to the Authority's decision to dispense with an inquiry.

19. As mentioned above, other than the show cause notice, there is no other document which shows that the Authority had dispensed with conducting a regular inquiry against the appellant. The requirement of the law is that there must be reasons recorded for dispensing with an inquiry. In the case of Chief Engineer, Gujranwala Electric Power Company Vs. Khalid Mehmood (2023 SCMR 291), it was held that *"there is no rigid or definitive rule that in each and every case after issuing show cause notice, a regular inquiry should be conducted, but if the department aspires to dispense with the regular inquiry due to some compelling circumstances or exigency, then justifiable reasons should be assigned in writing before dispensing with the inquiry."* In the case at hand, the show cause notice dated 15.09.2020 lists the reasons which caused the Authority to take a *prima facie* view that the appellant had committed misconduct but these are not the reasons for dispensing with a regular inquiry. These reasons simply state the allegations that were levelled against the appellant and nothing more. Therefore, we are of the view that the mandatory condition of recording reasons for dispensing with a regular inquiry had not been fulfilled in the case at hand.

20. Perusal of the impugned order dated 28.11.2020 shows that much reliance has been placed by the Authority on the incident

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report dated 14.09.2020 submitted by the Superintendent of Police, City Zone, Islamabad. In this report, it is mentioned that the appellant had made *"an inappropriate gesture"* while overtaking Khurram Parvez's vehicle. This has been emphatically denied by the appellant in paragraph (I) of his reply to the show cause notice. Not conducting an inquiry over this matter is to simply ignore the appellant's said denial and to give credence to the said report dated 14.09.2020. Whether or not an inappropriate gesture had been made by the appellant could have been ascertained by viewing the footage of the CCTV cameras installed for the Islamabad Safe City Project. This footage was not obtained at any material stage. The allegations against the appellant contained in the show cause notice do not stem from the admitted documents or admitted facts. As mentioned above, the appellant had denied not just the allegations against him but the facts which had formed the foundation for the issuance of the show cause notice to him. In the case of Chief Engineer, Gujranwala Electric Power Company Vs. Khalid Mehmood *(supra),* it was held that *"where the allegations are based on disputed questions of fact, then obviously the employee cannot be denied a right of regular inquiry, [especially] where the allegations cannot be resolved without leading evidence and providing a fair opportunity to the parties to cross-examine the witnesses."* The appellant's denial as to an attribution made against him in the said report dated 14.09.2020 made it necessary for a regular inquiry to be conducted in the matter. In holding so, reliance is placed on the following case law:-

(i) In the case of Saleem Wazir Vs. Government of Khyber Pakhtunkhwa (2019 PLC (C.S.) 224), it has been held as follows:-

> ***"Indeed, it is a settled principle of law that any disciplinary proceedings relating to the misconduct of an employee/officer of any department, which entails major penalty of removal/dismissal from service, must be inquired through regular inquiry, which cannot be dispensed with, in matter where controversial facts and ticklish questions are involved. Guidance can be sought from Muhammad Naeem Akhtar v. Managing Director Water and Sanitation Agency LDA, Lahore (2017 SCMR 356), Muhammad Abdul Moied v.***

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Government of Pakistan (2010 SCMR 1546), Government of Punjab v. Tauqeer Mazhar Bukhari (2008 SCMR 1362), Zulfiqar Ali v. District Health Officer, Okara (2014 PLC (C.S.) 856), Syed Sajjad Haider Kazmi v. Director-General (S&GAD) WAPDA (2007 SCMR 1643) and Engineer Majeed Ahmed Memon v. Liaquat University of Medical and Health Sciences Jamshoro (2014 SCMR 1263)."

(ii) In the case of Iqbal Hussain Vs. Federation of Pakistan (2019 PLC (C.S.) 475), it has been held that *"holding of regular enquiry in case of imposition of major penalty is a prerequisite and mandatory condition which could not be dispensed with."* The Hon'ble High Court of Sindh while holding so placed reliance on the cases of Naseeb Khan Vs. D.S. Pakistan Railways (2008 SCMR 1369), Alamgir Vs. Divisional Forest Officer, Multan (1992 SCMR 603), Nawab Khan Vs. Government of Pakistan (Ministry of Defence) (PLD 1994 SC 222) and Basharat Ali Vs. Director Excise and Taxation Lahore (1997 SCMR 1543).

(iii) In the case of Saad Salam Ansari Vs. Chief Justice of Sindh High Court (2007 SCMR 1726), the allegations against the accused, who was a judicial officer, was that he had granted an injunction after entertaining a suit which was beyond his pecuniary jurisdiction. The authorized officer adopted a summary procedure by dispensing with a regular inquiry. Major penalty of removal from service was imposed on the judicial officer and the Judicial Service Tribunal upheld the imposition of the said penalty. The Hon'ble Supreme Court held that a charge of misconduct based on allegation of misuse of power for extraneous consideration involving factual inquiry required to be proved through evidence and dispensation of a regular inquiry amounted to condemning the judicial officer unheard and refusing him a right of defence. The Hon'ble Supreme Court set-aside the orders of the authorized officer and the Judicial Service Tribunal while passing an order for his reinstatement in service. Furthermore, it was held that the competent authority may hold a proper inquiry into the matter.

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21. In view of the above, the instant appeal is allowed on the sole ground that given the facts and circumstances of the case, the essential prerequisites for dispensing with a regular inquiry against the appellant had not been fulfilled. Consequently, the impugned order dated 28.11.2020 is set-aside and the appellant is entitled to be reinstated in service.

22. As regards the appellant's claim for the grant of back benefits, it ought to be borne in mind that this Court has not allowed his appeal on merits but on the basis of a procedural impropriety and defect in the disciplinary proceedings conducted against him. With the instant appeal being allowed, the disciplinary proceedings against the appellant are not extinguished. The instant appeal being allowed does not insulate the appellant from being subjected to a regular inquiry with respect to the allegations made against him in the show cause notice. The show cause notice dated 15.09.2020 has reference to earlier disciplinary proceedings pending against the appellant. It goes without saying that such proceedings would revive and be taken to their logical conclusion. Since allegations of misconduct against the appellant are to be inquired into, his entitlement to back benefits would depend on the result of such proceedings. In holding so, reliance is placed on the law laid down by the Hon'ble Supreme Court in the case of Muhammad Sharif Vs. Inspector General of Police, Punjab (2021 SCMR 962), wherein it was held as follows:-

> ***"16. An employee on reinstatement on merits cannot be deprived of back benefits. Any such deprivation would be against the constitutional rights (discussed above) guaranteed to an employee. Besides, CSR 7.3 (a) also points in this direction. In case of reinstatement or restoration to a post on merits, the employee is entitled to full back benefits and there is no discontinuity of service, thus the question of intervening period does not arise in such a case. The discretion under the second proviso to section 16 of the Act is to be exercised in favour of the employee by granting him all the back benefits.***
>
> ***17. However, the above principle of grant of back benefits is qualified by a situation where the order of reinstatement is conditional; either civil servant's dismissal from service is declared illegal for a defect in disciplinary proceedings or the penalty is modified to be on the lower side with the result that the civil servant is reinstated. In the former situation, the merits of the case and the determination of the fault of the employee go untouched, even***

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though he stands reinstated. Here, an inquiry could still be made into the employee's conduct or his conduct may be considered such as to call for a departmental inquiry. The de novo proceedings could be initiated from the stage where the defect had crept in. In such a situation, the entitlement with regard to back benefits is put off till the final determination with regard to the civil servant's conduct. If he is found at fault, the competent authority could justifiably deny him part of the back benefits. And, in the latter situation, the civil servant is not declared blameless; rather, his penalty is reduced and, therefore, part of back benefits, as necessitated by the implications of reduced penalty, may justifiably be denied to him."

23. This appeal is <u>allowed</u> in the above terms. No costs.

(TARIQ MEHMOOD JAHANGIRI)
MEMBER / JUDGE

(MIANGUL HASSAN AURANGZEB)
MEMBER / JUDGE

(MOHSIN AKHTAR KAYANI)
CHAIRMAN / JUDGE

<u>Qamar Khan</u> ***<u>APPROVED FOR REPORTING</u>***

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