ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2144 of 2021
Shahid Kamal
Versus
Capital Development Authority and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.01.2022	**Mr. Kashif Ali Malik, Advocate for the petitioner, Mrs. Misbah Gulnar Sharif, Advocate for the C.D.A.**

Through the instant writ petition, the petitioner, Shahid Kamal, impugns the order dated 10.06.2021 whereby the Authority / Chairman, Capital Development Authority (**"C.D.A."**) imposed on him a major penalty of *"reduction to lower post for a period of five (5) years"* under the Capital Development Authority Employees (Service) Regulations, 1992.

2. Learned counsel for the petitioner submitted that in the impugned order it is mentioned that writ petition No.1011/2021 was fixed before this Court on 15.03.2021 and notices had been issued for 18.03.2021; that the allegation against the petitioner was that he had failed to perform his duty due to the non-representation of the C.D.A. in the said writ petition on 18.03.2021; that order dated 15.03.2021 passed by this Court in writ petition No.1011/2021 shows that on the said date, notices had not been issued to the C.D.A. and the matter was simply directed to be re-listed on 18.03.2021; that since no notices had been issued to the C.D.A., only the counsel for the petitioner in the said writ petition appeared before this Court on 18.03.2021 and was able to obtain an injunctive order; and that the petitioner could not be penalized for not arranging representation for the C.D.A. on 18.03.2021 in writ petition No.1011/2021 when no notices had been issued to the C.D.A. Learned

counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for the C.D.A. raised an objection to the maintainability of the instant petition on the ground that the petitioner had the alternative remedy of filing an appeal before the Secretary, Ministry of Interior in terms of Regulation 20.02 of the Capital Development Authority Employees (Service) Regulations, 1992 (**"the 1992 Regulations"**). She submitted that before delving into the merits of the case, this Court ought to decide whether the instant petition is maintainable.

4. Learned counsel for the petitioner submitted that since the major penalty of reduction to lower post for a period of five years was imposed on the petitioner by the Chairman, C.D.A., who also happens to be the appellate authority, the petitioner decided to file the instant petition instead of filing an appeal before the same very authority which had imposed major penalty on him.

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

6. I deem it appropriate in the first instance, to decide the objection taken by the learned counsel for the C.D.A. as to the maintainability of the instant petition.

7. Perusal of the impugned order dated 10.06.2021 shows that major penalty of reduction to lower post for a period of five years was imposed on the petitioner by the Chairman, C.D.A. The said penalty was imposed under the provisions of the 1992 Regulations. Regulation 20.02 in Chapter 20 titled "Appeal and Representation" of the said Regulations provides a remedy of an appeal to the

appellate authority against an order passed by an authority or an authorized officer for the imposition of a penalty. The forum before which an appeal is to be filed is also provided in the said Regulation. For the purposes of clarity, Regulation 20.02 of the 1992 Regulations is reproduced herein below:-

> ***"Appeal against an order imposing a penalty and appellate authorities. – (1) Every employee shall be entitled to appeal to the appellate authority from an order passed by an authority or an authorized officer imposing upon him any penalty.***
>
> ***(2) The appellate authority for purposes of sub-regulation (1) of this regulation shall be the authority next above the 'authority' specified in regulation 8.01 provided that the appellate authority from an order of the Secretary of the Administrative Division concerned shall be the Government."***

8. Regulation 8.01 of the 1992 Regulations as amended by the notification dated 24.06.2013 shows that for employees of the C.D.A. in BS-16 to 19, the Chairman, C.D.A. is the Authority. It is not denied that the order for the imposition of the major penalty on the petitioner was passed by the Chairman, C.D.A. In terms of Regulation 20.02(2) of the 1992 Regulations, an appeal against the imposition of the said penalty by the Chairman, C.D.A. would lie before the *"authority next above"* the authority specified in Regulation 8.01 of the said Regulations. Since the authority with respect to the petitioner specified in Regulation 8.01 was the Chairman, C.D.A., the petitioner had the alternative remedy of filing an appeal before the Secretary, Ministry of Interior, which is the authority next above the Chairman, C.D.A.

9. Recently, vide judgment dated 21.05.2021 passed by the Hon'ble Supreme Court in civil appeal Nos.909 to 912/2020, it was held as follows:-

> ***"The writ jurisdiction is extraordinary in its scope, it has to be exercised sparingly. The jurisdiction conferred on the High Courts under Article 199 of the Constitution is an***

extraordinary relief and the same has to be exercised in aid of justice and not to interfere in jurisdictions of other statutory forums. When the law has provided an adequate remedy, constitutional jurisdiction under Article 199 of the Constitution cannot be exercised as the same has to be exercised in exceptional circumstances, which could justify invoking the said jurisdiction. It has time and again been said by this Court that tendency to bypass remedy provided under relevant statue by resorting to constitutional jurisdiction is to be discouraged so that legislative intent is not defeated. The same is meant to be exercised in extraordinary circumstances and not in run of the mill cases. Even otherwise, we have noted that the respondents had not approached the learned High Court after exhausting the remedy of filing departmental appeal. Therefore, we are compelled to observe that the very constitutional petitions were not maintainable before the learned High Court."

10 Since the petitioner had the alternative remedy of filing an appeal under Regulation 20.02 of the 1992 Regulations before the Secretary, Ministry of Interior against the impugned order dated 10.06.2021, the instant petition is liable to be dismissed as not maintainable.

11. The petitioner is at liberty to file an appeal along with an application for condonation of delay before the said appellate forum.

12. In view of the above, the instant petition is dismissed as not maintainable.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*