ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.501 of 2023
Haroon Wazir
Versus
Federation of Pakistan and others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.02.2023	**Mr. Muhammad Ikram Ch., Advocate for the petitioner.**

Through the instant writ petition, the petitioner, Haroon Wazir, Senior Patrol Officer, National Highways and Motorway Police (“NH&MP”), has assailed the *vires* of the National Highways and Pakistan Motorway Police (Efficiency and Discipline) Rules, 2016 (“2016 NH&MP E&D Rules”). Furthermore, the petitioner seeks a declaration to the effect that the final show cause notice dated 09.01.2023 issued to him by the Deputy Inspector General of Police, NH&MP, is null and void and so are all the proceedings initiated against him under 2016 NH&MP E&D Rules.

2. Learned counsel for the petitioner submitted that the 2016 NH&MP E&D Rules were made on the pattern of the Civil Servants (Efficiency and Discipline) Rules, 1973 (“1973 E&D Rules”), which stand replaced by the Civil Servants (Efficiency and Discipline) Rules, 2020 (“2020 E&D Rules”); that since there are material differences between the impugned 2016 NH&MP E&D Rules and 2020 E&D Rules, 2016 NH&MP E&D Rules ought to be declared unlawful; that through office memorandum dated 16.12.2020, the Establishment Division has circulated 2020 E&D Rules to all Secretaries / Additional Secretaries Incharge, Ministries / Divisions at Rawalpindi / Islamabad; that through letter dated

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21.12.2020, the Ministry of Communications has also sent 2020 E&D Rules to the Inspector General, NH&MP for information and strict compliance; that vide letter dated 01.01.2021, the NH&MP has sent 2020 E&D Rules to the DIG (Motorway Zone, M-2), NH&MP, Islamabad; and that after making of 2020 E&D Rules, disciplinary proceedings could not have been initiated against the petitioner under the impugned 2016 NH&MP E&D Rules. In making his submissions, learned counsel for the petitioner placed reliance on the law laid down in the judgment reported as ***2022 SCMR 1787***.

3. I have heard the contentions of the learned counsel for the petitioner.

4. It is an admitted position that the petitioner is a civil servant. Through the instant writ petition, the petitioner is assailing the *vires* of 2016 NH&MP E&D Rules and has also questioned the initiation of the disciplinary proceedings against him under the said Rules. Essentially, the petitioner's case is that since 2020 E&D Rules, made pursuant to the provisions of the Civil Servants Act, 1973, have replaced 1973 E&D Rules, the initiation of the disciplinary proceedings against him under 2016 NH&MP E&D Rules are without lawful authority and of no legal effect. Therefore, the impugned 2016 NH&MP E&D Rules has an effect on the petitioner's terms and conditions of service.

5. It is well settled that in view of the express bar provided in Article 212 of the Constitution, the High Court does not have the jurisdiction under Article 199 of the Constitution to determine the challenge made to rules or notifications or office memoranda, which adversely effects a civil

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servant's terms and conditions of service, including disciplinary matters. This is so even if such rules or notifications or office memoranda are challenged on the ground that they infringe the civil servant's fundamental rights or are based on the *malafides* on the part of the government / department.

6. True, an *"order"* has not been impugned by the petitioner in the instant writ petition. However, for the purposes whether the instant petition is maintainable, the impugned 2016 NH&MP E&D Rules would be treated as an order. There was nothing preventing the petitioner to have challenged 2016 NH&MP E&D Rules before the Federal Service Tribunal.

7. The petitioner, aggrieved by 2016 NH&MP E&D Rules, could have assailed its *vires* before the Federal Service Tribunal. In holding so, I derive guidance from the law laid down by the Superior Courts in the following cases:-

i) In the case of I.A. Sherwani Vs. Government of Pakistan (1991 SCMR 1041), it has been held as follows:-

> ***"9. From the above quoted Article 212 of the Constitution and section 4 of the Act, it is evident that the jurisdiction of the Courts is excluded only in respect of the cases in which the Service Tribunal under subsection (1) of section 4 has the jurisdiction. It must, therefore, follow that if the Service Tribunal does not have jurisdiction to adjudicate upon a particular type of grievance, the jurisdiction of the Courts remains intact. It may again be pointed out that the Service Tribunal has jurisdiction against a final order, whether original or appellate, made by a departmental authority in respect of any terms and conditions of service. The question, therefore, arises, whether the relevant enactments/notifications containing the provision for payment of enhanced pension, which have been denied to the***

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pensioners, can be treated as a final order, original or appellate, passed by a departmental authority in respect of any terms and conditions of service.

10. From the above cited cases, it is evident that it has been consistently held inter alia by this Court that a civil servant if is aggrieved by a final order, whether original or appellate, passed by a departmental authority in respect of his terms and conditions, his remedy, if any, is by way of an appeal before the Service Tribunal even where the case involves vires of a particular Service Rule or a notification or the question, whether an accused civil servant can claim the right to be represented by a counsel before the Enquiry Officer. We are inclined to hold that if a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of subsection (1) of section 4 of the Act in order to file an appeal before the Service Tribunal. However, in the present case, the petitioners' case is founded solely on the ground of discriminatory treatment in violation of Article 25 of the Constitution and not because of any breach of any provision of the Civil Servants Act or any service rule. Furthermore, the question involved is of public importance as it affects all the present and future pensioners and, therefore, falls within the compass of clause (3) of Article 184 of the Constitution. However, we may clarify that a civil servant cannot bye-pass the jurisdiction of the Service Tribunal by adding a ground of violation of the Fundamental Rights. The Service Tribunal will have jurisdiction in a case which is founded on the terms and conditions of the service even if it involves the question of violation of the Fundamental Rights."

(Emphasis added)

ii) In the case of National Assembly Secretariat Vs. Manzoor Ahmed (2015 SCMR 253), it has been held as follows:-

"8. We have heard the learned counsel for the parties and have perused the record. Admittedly, respondent No.1 is a Civil Servant and, therefore, he could not have approached the High Court under Article 199 of the Constitution for redressal of his grievance, which

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pertained to the terms and conditions of his Service in view of the Bar created under Article 212(2) of the Constitution. The High Court, therefore, was not competent to adjudicate the issue raised in the Writ Petition. The High Court has fallen in error while proceeding on the erroneous assumption that respondent No.1 had raised the issue of violation of the statutory Rules, therefore, it was competent to decide the issues. This was an incorrect approach of the learned High Court to entertain a Constitution Petition of a Civil Servant on the ground of the statutory violation. Such grievances of a Civil Servant fall within the domain of the Federal Service Tribunal as mandated by the Constitution."

iii) Recently, in the case of Irfan Aman Yousafzai Vs. Federation of Pakistan (2017 PLC (C.S.) 905), the Division Bench of the Hon'ble Peshawar High Court, after referring to a catena of case law, has laid down the following principles with respect to a challenge being made by a civil servant to the *vires* of rules/notification:-

"(i) A Civil Servant can move the Apex Court under Article 184(3) of the Constitution, in cases where vires of service rules or notifications are challenged on the touch stone of being against their fundamental rights with the paramount condition that the matter be of public importance.

(ii) Civil Servant can move the High Court in its constitutional jurisdiction under Article 199 of the Constitution only in cases where the bar of Article 212 of the Constitution cannot be invoked, as the Federal Services Tribunal lacks the jurisdiction to entertain the impugned matter.

(iii) Civil Servant can challenge the Service Rules or Notification before the Federal Services Tribunal, as the same are deemed to be final orders, within the contemplation of section 4(1) of Civil Servant Tribunal Act, 1973.

(iv) Civil Servant can move the Services Tribunal challenging the vires of the rules even on the touch stone of being in

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> ***violation of fundamental rights or mala fide.***
> ***(v) The Civil Servant cannot move the Constitutional jurisdiction of a High Court challenging the vires of a service rule or notifications, which affects the prospects of promotion of a civil servant even if the challenge is made on the touch stone of breach of fundamental rights of the civil servant or mala fide on the part of the Executive to frame the said rules or Notification."***

Law to the said effect has also been laid down in the cases of Iqan Ahmad Khurram Vs. Government of Pakistan (PLD 1980 S.C. 153), Khalid Mahmood Wattoo Vs. Government of Punjab (1998 SCMR 2280), Government of the Punjab Vs. Muhammad Zafar Bhatti (PLD 2004 S.C. 317), Peer Muhammad Vs. Government of Balochistan (2007 SCMR 54) and Engineer Musharaf Shah Vs. Government of Khyber Pakhtunkhwa (2015 PLC (C.S.) 215).

8. As regards the petitioner's contention that the disciplinary proceedings initiated against him are based on *malafides*, this can also be agitated by him before the Federal Service Tribunal after a final order is passed, subject to law.

9. In view of the above, the instant petition is dismissed in *limine* as not maintainable. The petitioner is at liberty, subject to law, to agitate his grievance *qua* 2016 NH&MP E&D Rules before the appropriate forum. Having held that this petition is not maintainable, there is no need to go into the merits of the case.

(MIANGUL HASSAN AURANGZEB)
JUDGE

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