ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No. 1099 of 2015

RaiNasirIqbal Vs Federation of Pakistan through Chairman NAB etc.

Serial No. of order of proceedings	Date of order of proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
1	2	3
	11.03.2022	M/s Muhammad Saqib Bhatti and Syed Sabe-ul-Hassan, advocates for petitioner. M/s Jahanzeb Ahmed Bharwana APG, NAB and YasirSaleemRana, SPP,NAB

Through the instant writ petition, the petitioner has impugnedNotification dated 20.02.2015 (suspension), Charge sheets dated 06.02.2015, 25.02.2015, Show Cause Notice dated 02.03.3025, and Notification dated 20.03.2015, whereby in an inquiry, he was placed under suspension, served with charge sheets and show cause notice and finally on culmination of proceedings, removed from service in terms of Section 11.03 (1)(b)(iii) of the National Accountability Bureau's Employees Terms & Condition of Service (**'TCS–2002'**) with immediate effect on account of inefficiency and misconduct.

2- Precisely, relevant facts are that on the direction of the Hon'ble apex Court, a Fact Finding Committee was constituted by the respondent-NAB in order to probe and identify the responsible for not apprehending the accused persons involved in a Reference. In the light of the recommendation of the Fact Finding Committee, an Inquiry Committee was constituted under clause 11.05 and 11.07 of TCS-2002, petitioner was served with charge-sheet, statement of allegations and after due inquiry, served with Final Show Cause Notice and ultimately, major penalty of removal from service was imposed upon him vide Notification dated 20.03.2015, hence, instant writ petition.

3- Learned counsel for the petitioner questioned the impugned proceedings on multiple grounds, *inter alia*, amongst are that in case of the petitioner the Director General (Administration) was the

Authorized Officer in terms of Rule 11.01(b) of the TCS-2002, therefore, the constitution of Committee in terms of Rule 11.05 (1) read with Rule 11.07 of the TCS-2002 by the respondent No.4 (D.G, HRM) was without lawful authority consequently, entire inquiry proceedings would be void ab-initio; that replies to the charge-sheet were not made part of the inquiry whereby the petitioner requested for provision of list of witnesses for the purpose of cross-examination; that the petitioner was not provided with opportunity to cross-examine the crucial witnesses; that the report of the inquiry is result of malice, malafide and vindication; that the inquiry report, itself, is self-contradictory as despite determination that nothing was available on record which constitutes ill-intention on the part of the any of the accused persons, petitioner has been held guilty of misconduct; that in the light of the opinion of the NAB Headquarter, petitioner could not have been held guilty; that the charge of not causing the arrest of the three accused persons is, otherwise, groundless when it had been an admitted fact that the said three persons were already declared proclaimed offenders in number of criminal cases.

4- The learned counsel also highlighted the grounds to constitute the impugned action being result of malice, discriminatory and unilateral without due application of law and procedure of inquiry.

5- On the other hand, learned APG & SPP NAB while reiterating the stance contained in the written comments objected upon the maintainability of the instant writ petition in presence of remedy of appeal against the impugned action in terms of Rule 13.01of TCS-2002, which the petitioner has not availed. On facts, it was asserted that the petitioner had availed every opportunity before the Inquiry Committee that includes opportunity of hearing and tendering of documents in support of his version; that the proceedings conducted under a statute having remedy of appeal cannot be called in question in terms of Article 199 of the Constitution as said exercise would amount to nullify the legal course therefore, petition is liable to be dismissed.

6- Heard, record examined.

7- It is an admitted position that the petitioner was proceeded against under the TCS-2002. Rule 11.14 of the said Rules provides remedy of appeal to a person on whom a penalty is imposed as prescribed in Chapter 13 while Rule 13.01 provides that where a right to prefer an appeal or applying for review in respect of any order relating to terms and conditions of service is provided to an employee under these TCS, such an appeal or application for review shall, except as may be otherwise prescribed be made within thirty days of the date of communication to the him of such order.

8- As the remedy of appeal is available, direct recourse in terms of Article 199 of the Constitution is not available to the petitioner as it would amount to circumvent and nullify the legal course under available a statute i.e. TCS- 2002.

9- The actions, being interlocutory in nature i.e. placing the petitioner under suspension, issuance of charge-sheets, and statement of allegations stood merged in the Final Order of removal from service where against statutory remedy of appeal in terms of Rule 11.14 & 13.01 of the TCS-2002 is available to the petitioner, therefore, grounds being pressed can well be agitated before appropriate forum.

10- Furthermore, the remedy of appeal in terms of Rule 13.01 TCS, 2002 can be availed within 30 days of the passing of the impugned order and according to the learned APG, NAB, the petitioner has lost right of said remedy by afflux of time due to filing of the instant writ petition without having knowledge of right of appeal.

11- There is no second opinion that the petitioner had to avail the statutory remedy of appeal within 30 days but, as per his stance, resort in terms of Article 199 of the Constitution had been due to wrong advice, therefore, cannot be held guilty of inordinate delay.

12- Whether the petitioner has '*sufficient ground'* tomake out his case for condonation of delay, the impugned Notification qua removal of service of the petitioner was passed on 20.03.2015

while in terms of Rule 13.01 of TCS-2002 he had to file an appeal within 30 days instead filed the instant writ petition. It is noticed that the instant writ petition was filed 16.04.2015 i.e. before the expiry of thirty days provided for filing an appeal therefore, filing of the instant writ petition with promptitude within the time limit provided for filing an appeal against the impugned orders, prima facie, constitutes a '*sufficient ground'* to condone the delay in filing appeal in terms of Rule 13.01 of TCS-2002. Order accordingly.

13- In view of above, the instant writ petition stands **disposed of** with observation that the petitioner may prefer an appeal against the impugned orders,if so advised, in terms of Rule 11.14 & 13.01 of TCS-2002 before appropriate forum within a period of thirty days of the passing of this Order which shall be decided in accordance with law within a period of two months from the receipt of this Order.

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.ANSARI*