JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3793 of 2016
Muhammad Shafique
Versus
National Accountability Bureau through its Chairman

Date of Hearing:	13.07.2017
Petitioner by:	Mr. Ahmad Nawaz Bhatti, Advocate
Respondent by:	Mr. Ahsan Shahzad, Special Prosecutor, N.A.B.

MIANGUL HASSAN AURANGZEB, J:- Through the instant Writ Petition, the petitioner, Mohammad Shafique, has called in question the Office Order dated 12.03.2010 issued by the National Accountability Bureau ("the N.A.B."), whereby a major penalty of "compulsory retirement from service" was imposed on the petitioner for his unauthorized absence from duty for a period of 66 days. Furthermore, the petitioner's said unauthorized absence from duty was treated as extraordinary leave without pay.

2. Learned counsel for the petitioner submitted that the petitioner had rendered eight years of service at the N.A.B.; that the petitioner met with an accident in which he injured his spinal cord; that due to acute pain in his neck and spinal cord, he could not report for duty; that the petitioner applied for casual leave for four days (i.e. from 01.12.2009 to 04.12.2009) on account of his ailment; that on 10.12.2009, the petitioner had submitted an application for leave for a period of seven days (i.e. from 05.12.2009 to 11.12.2009); that since the petitioner did not recover from his ailment, and since the doctor had advised him to rest, the petitioner did not join his duty until 27.01.2010; that vide letter dated 17.12.2009, the N.A.B. called upon the petitioner to immediately report for duty, failing which disciplinary action was to be taken against the petitioner; that on 18.12.2009, the N.A.B. issued a show cause notice to the petitioner, wherein it was alleged that the petitioner remained absent from duty since 23.11.2009, without obtaining leave; that

on 29.12.2009, the petitioner submitted reply to the show cause notice; that the medical certificate issued to the petitioner showed that he had been advised rest for two weeks; and that despite the fact that on 28.01.2010, the petitioner resumed his duties, he was compulsorily retired from service on 12.03.2010.

3. Learned counsel for the petitioner further submitted that since the petitioner's unauthorized absence from duty for a period of 66 days (i.e. from 23.11.2009 to 27.01.2010) had been treated as extra ordinary leave without pay, a major penalty of compulsory retirement could not have been imposed on the petitioner. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the Office Order dated 12.03.2010 to be set aside.

4. On the other hand, learned counsel for the respondent/N.A.B. submitted that there were several complaints of irresponsibility and non-serious attitude towards service against the petitioner; that the petitioner's officer-in-charge had submitted several reports and complaints against the petitioner; that the petitioner, during his service at the N.A.B., had availed 1,627 days of leave; that accordingly the petitioner in his seven years of service with the N.A.B., remained on leave for almost four years; that the N.A.B. had rejected the petitioner's application for the grant of extra-ordinary leave without pay for a period of one year; that the petitioner remained absent from duty for a period of 66 days (i.e. from 23.11.2009 to 27.01.2010) without obtaining leave; that the petitioner did not respond to the directions of the N.A.B. to resume his duties after 23.11.2009; that the petitioner did not produce any document which could convince the N.A.B. that he suffered from an ailment; that the petitioner in his applications dated 28.10.2009 and 20.11.2009, had applied for leave for domestic and personal reasons and not on medical grounds; that the petitioner did not appear before the Internal Medical Board at the Federal Government Services Hospital, Islamabad on 27.01.2010 for medical examination; that the petitioner's story about his illness is a concoction; that at no

stage had the petitioner applied for the reimbursement of his medical expenses; and that although a major penalty of compulsory retirement was imposed on the petitioner, his unauthorized absence from duty for a period of 66 days was treated as extra-ordinary leave without pay as a gesture of N.A.B's benevolence and good faith. Learned counsel for the respondent/N.A.B. prayed for the writ petition to be dismissed.

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

6. The record shows that on 01.09.1990, the petitioner was appointed as an Upper Division Clerk in the Ministry of Food, Agriculture and Livestock, Islamabad. On 18.12.2002, the petitioner was absorbed in the N.A.B. During his service in the N.A.B., the petitioner availed 1,627 days of leave. The petitioner's application for the grant of leave without pay for a period of one year was turned down by the N.A.B. The petitioner absented himself from duty without obtaining leave from 23.11.2009 onwards. Therefore, on 18.12.2009, the N.A.B. issued a show cause notice to the petitioner. The proceedings against the petitioner culminated in the issuance of Office Order dated 12.03.2010, whereby a major penalty of "compulsory retirement from service" was imposed on the petitioner. Furthermore, the petitioner's absence from duty for a period of 66 days was treated as extra-ordinary leave without pay. Aggrieved by the order of compulsory retirement, the petitioner filed an appeal before the Federal Service Tribunal, Islamabad. Vide order dated 17.02.2011, the petitioner's appeal was allowed, and it was directed that the petitioner be reinstated in service with back benefits. The operative part of the said order dated 17.02.2011, is reproduced herein below:-

> *"We have seen the impugned order. The absence of the appellant had been regularized as EOL. After this regularization no other punishment could be given to the appellant. The result is that the appeal is not only admitted to regular hearing but is also allowed. The impugned order is set aside. He is reinstated in service with back benefits. He shall refund pensionary benefits if he has received the same, according to the rules."*

7. The N.A.B. challenged the said order dated 17.02.2011, in Civil Petition No.766/2011, before the Hon'ble Supreme Court of Pakistan. Vide order dated 01.06.2016, the said petition was allowed and the order dated 17.02.2011, passed by the Federal Service Tribunal was declared to be without jurisdiction. The petition was not decided on merits, but on the question whether the Federal Service Tribunal had the jurisdiction to adjudicate upon and decide the petitioner's appeal, considering the fact that the petitioner was not a civil servant and his appointment was not under the provisions of the Civil Servants Act, 1973. In the said order dated 01.06.2016, it was observed that the petitioner *"may avail remedy in accordance with law"*.

8. On 24.10.2016, the petitioner instituted the instant writ petition praying for a direction to the N.A.B. to permit the petitioner to join his duty. The petitioner also prayed for a direction for the payment of all his back benefits from the date when the payment of his salary was stopped. Now, it is not disputed that the petitioner remained absent from duty for a period of 66 days (i.e. from 23.11.2009 to 27.01.2010). It is also admitted that the petitioner was not granted leave for the said period by the competent authority. The contesting parties are at variance on whether the petitioner's absence from duty for the said period was due to the petitioner's ailment or not.

9. The N.A.B. has filed several documents to show that the petitioner had availed a total of 1,627 days of leave on different occasions. The documents filed by the N.A.B. with its written comments also show that several warnings and explanation letters were issued by the N.A.B. to the petitioner for not observing office timings and dereliction of duty. The authenticity of the documents filed by the N.A.B. along with its written comments were not disputed by the petitioner.

10. After the petitioner absented himself from duty with effect from 23.11.2009, the N.A.B., vide letters dated 01.12.2009, 10.12.2009, and 14.12.2009, called upon the petitioner to explain as to why disciplinary action should not be taken

against him under the rules. On 01.12.2009, the petitioner had came up with an excuse that he had had a minor accident a few days ago and had injured his back. He had applied for casual leave for a period of four days from 01.12.2009 to 04.12.2009. Vide letter dated 22.01.2010, the N.A.B. asked the petitioner to report to the Internal Medical Board at the Federal Government Services Hospital, Islamabad, on 27.01.2010, at 10:00 a.m. with his previous medical record. It is an admitted position that the petitioner did not attend the hospital on the said date.

11. Having gone through the entire record, I am not convinced as to the petitioner's *bonafides*. The petitioner has not produced any document to convince me that his absence from duty for a period of 66 days (i.e. from 23.11.2009 to 27.01.2010) was because he had met with an accident and injured his spinal cord. The document annexed at page 28 (Annex J) of the petition does not show that the petitioner had met with an accident. The said document is an "outdoor ticket" of the Federal Government Services Hospital, and not a medical certificate. The first page of the document is undated, whereas the second page bears the date of 29.01.2010 (by which date the petitioner had resumed his duties). Even in the writ petition it is not pleaded as to when the petitioner met with an accident. The pleadings in the writ petition are silent as to any rule or regulation that was violated by the N.A.B. in proceeding against the petitioner. All these facts cumulatively examined, make me reluctant to grant relief to the petitioner in the constitutional/discretionary jurisdiction of this Court. This is my view as regards the facts of this case.

12. Be that as it may, vide the impugned office order dated 12.03.2010, the N.A.B. has not just imposed a major penalty of compulsory retirement on the petitioner for remaining absent from duty for 66 days, but has also treated the petitioner's 66 days of absence from duty as extra-ordinary leave without pay. The law laid down by the Hon'ble Supreme Court in the case of Lahore Development Authority Vs. Muhammad Nadeem Kachloo and another (2006 SCMR 434), is squarely applicable

to the case at hand. The facts of the said case were that the respondent was proceeded against departmentally due to his absence from duty for a period of 260 days. He was awarded a major penalty of dismissal from service. However, his absence from duty was ordered to be treated as leave without pay. The respondent's appeal against his dismissal from service was allowed by the Service Tribunal. Just like in the case at hand, the view taken by the Service Tribunal in Lahore Development Authority's case *(Supra)* was that when the respondent was considered to be on leave, he could not have been considered as absent. Furthermore, it was ordered that the respondent be reinstated in service. The Hon'ble Supreme Court dismissed Lahore Development Authority's appeal against the said order of the Service Tribunal. So much so that the Hon'ble Supreme Court issued notice to the Lahore Development Authority to explain as to why costs should not be imposed on it for filing a frivolous petition and knowing well that the competent authority had treated the period during which the respondent remained absent as leave without pay. Para 05 of the said judgment is reproduced herein below:-

> ***"5. In view of the observations made by the Tribunal in the concluded para., noted hereinabove, and also having gone through the contents of the order of the L.D.A. dated 27th May, 2002 we called upon learned counsel to explain as to whether, after allowing the respondent leave without pay during the period when he was absent from duty, there was any justification to dismiss him from service, he could not answer satisfactorily except saying that the period of absence was treated as leave without pay in order to grant him service benefits. We are surprised that once a person has been ordered to be dismissed from service, could at all the benefits of salary etc. can be given to him? As it has been pointed out hereinabove that Director-General himself had condoned the period of absence by allowing him leave without pay. Learned counsel also admitted that leave was due to the respondent and he had been making applications time and again accompanied by medical certificates for the purpose of extending the period of his leave. In this view of the matter, we are of the opinion that Director-General, L.D.A. had no justification to institute this petition because of the fact that absence of the respondent had been regularized."***
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> **(Emphasis added)**

13. Just like in the case of Lahore Development Authority *(Supra)*, in the case at hand, the impugned office order shows

that a major penalty of "compulsory retirement from service" was imposed on the petitioner, but his unauthorized absence from duty for a period of 66 days was treated as extra-ordinary leave without pay. It is well settled that any decision of the Hon'ble Supreme Court to the extent that it decides a question of law or enunciates a principle of law is binding on all other Courts in Pakistan. By virtue of Articles 189 and 190 of the Constitution, a judgment of the Hon'ble Supreme Court is binding on each and every organ of the State. I am, therefore, bound to follow the judgment of the Hon'ble Supreme Court in the case of Lahore Development Authority *(Supra).*

14. In view of the above, this petition is allowed and the impugned office order dated 12.03.2010, to the extent of imposing a major penalty of compulsory retirement of the petitioner is set aside. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

M.A. Raza

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