ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

W.P. No.2107 of 2017
Amir Khan
Versus.
Secretary Aviation Division, and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	06.06.2017	Raja Saif-ur-Rehman, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Amir Khan, impugns the order dated 23.01.2015, issued by respondent No.4 (Director, Human Resource, Civil Aviation Authority), whereby the petitioner was awarded major penalty of removal from service under Regulation No.7b(1)(C) of the Civil Aviation Authority (Efficiency and Discipline) Regulations, 2014.

2. The facts leading to the filing of this writ petition are that on 21.12.1999, the petitioner was appointed as Air Traffic Control Assistant ("ATC Assistant") by the Civil Aviation Authority ("C.A.A"). During 2014, the C.A.A. started the process of verification of academic certificates of all its employees. In this process, the petitioner's intermediate certificate was sent for verification to the Board of Intermediate Education, Karachi, which found the said certificate to be forged. The petitioner was instructed by the C.A.A. to report to the Human Resource Branch with all his educational documents on 13.10.2014. Since the petitioner did not comply with the said instructions, on 23.10.2014, a show cause notice was issued to the petitioner. Apparently, on 06.11.2014, the petitioner was granted an opportunity of personal hearing. Vide impugned order dated 23.01.2015, major penalty of "removal from service" was awarded to the petitioner. On 15.02.2015, the petitioner gave a

grievance notice to respondent No.2 (Director General, Civil Aviation Authority). In the said grievance notice, the petitioner requested respondent No.2 to recall the said order dated 23.01.2015, and to reinstate him with all back benefits. On 18.03.2015, the petitioner's application for reinstatement in service was turned down. In the said letter dated 18.03.2015, it was observed that sufficient time had been given to the petitioner to respond to the show cause notice. The allegation against the petitioner was that he had submitted a forged intermediate certificate. Through the instant writ petition, the petitioner has challenged the order dated 23.01.2015 (whereby major penalty of removal from service was imposed on the petitioner) and the order dated 18.03.2015 (whereby the petitioner's application for setting aside the said order dated 23.01.2015, was dismissed).

3. Learned counsel for the petitioner further submitted that on 21.12.1999, the petitioner was appointed as ATC Assistant by the C.A.A; that the required qualification for appointment against the said post was matriculation, and not intermediate; that the petitioner had submitted the required educational testimonials at the time of his appointment; that the petitioner's appointment could not be questioned after several years on the ground that his intermediate certificate was forged; that in the case of ***M/s Millat Tractors Limited Vs. Punjab Labour Court No.3, Lahore (1996 SCMR 883***), it was held that the presentation of a photocopy of a matriculation certificate (which had not been proved to be genuine), did not constitute misconduct, and that the employment of an employee who was holding such a matriculation certificate could not be terminated. Furthermore, it was held that matriculation was not a prerequisite

qualification for an appointment for a post of a Technician. Learned counsel for the petitioner submitted that since intermediate was not the required qualification for the post of ATC Assistant, the petitioner's employment could not have been terminated on the ground that his intermediate certificate was bogus. Additionally, he submitted that there was a marked difference in the intermediate certificate in the petitioner's possession and that sent by C.A.A. for verification.

4. Since the C.A.A.'s Service Regulations were admittedly non-statutory, learned counsel for the petitioner was asked to satisfy this Court as to how this writ petition was maintainable.

5. Learned counsel submitted that since C.A.A. had been created by a federal statute (i.e. Pakistan Civil Aviation Authority Ordinance, 1982, ("C.A.A. Ordinance")), and since C.A.A.'s Service Regulations had been made in exercise of the powers conferred by the provisions of the C.A.A. Ordinance, the employees of the C.A.A. could file a writ petition in order to challenge an action taken to the detriment of such employees in violation of the said Service Regulations.

6. Learned counsel submitted that in the case of Muhammad Rafi Vs. Federation of Pakistan (2016 SCMR 2146), the Hon'ble High Court of Sindh had dismissed a writ petition filed against the C.A.A. by the appellants as not maintainable on the ground that the C.A.A.'s Service Regulations were non-statutory. In that case, the C.A.A. had scrapped the entire recruitment process through which the appellants had been appointed in the C.A.A. The appellants had assailed the judgment of the Hon'ble High Court of Sindh before the Hon'ble Supreme Court. It was *inter-alia* held by the Hon'ble Supreme Court that (although the C.A.A.'s Service

Regulations were admittedly non-statutory as they had not been approved by the Federal Government, but since the said Service Regulations had not conferred any power on the C.A.A. to keep in abeyance or to cancel the appointments, which had been made pursuant to a process undertaken by the C.A.A. after observing all codal formalities), the action of the C.A.A. of scrapping the appointments and/or keeping them in abeyance to be contrary to the said Service Regulations. Furthermore, it was held (after referring to the judgment in the case of Pakistan Defence Officers' Housing Authority Vs. Jawaid Ahmed (2013 SCMR 1707) that an aggrieved person could invoke the constitutional jurisdiction of the High Court against a public authority if the act of the authority was violative of the Service Regulations, even if they are non-statutory. Consequently, the appeal was allowed.

7. Learned counsel for the petitioner also placed reliance on the unreported judgment dated 26.02.2013, passed by the Hon'ble Supreme Court in Civil Petition No.1563/2012, titled "Mr. Muhammad Zubair and others Vs. Federation of Pakistan, through Secretary, Ministry of Defence and others", wherein it was held that the National Command Authority Employees Service Rules, 2011 were statutory in nature as they had been framed by the National Command Authority in exercise of its powers conferred by Section 7 read with Section 9(2) of the National Command Authority Act, 2010. In the said case, the rule making powers had been exclusively conferred upon the National Command Authority, and was not subject to the approval of the Federal Government. The Hon'ble Supreme Court held that a writ petition filed by the employees of the National Development Complex, which was a part of the National Command Authority, was maintainable.

Reliance was also placed by the learned counsel for the petitioner on the unreported judgment dated 28.04.2011, passed by the Hon'ble Supreme Court in Civil Petition No.495/2010, titled "The Rector, National University of Sciences & Technology (NUST), Islamabad and others Vs. Driver Muhammad Akhtar", wherein the National University of Sciences & Technology (Enforcement of Academic, Service and Financial Matters) Statute, 2005, were held to be statutory in nature as they had been framed in accordance with the procedure prescribed in the University of Science and Technology Act, 1997. The Hon'ble Supreme Court upheld the decision of the Federal Service Tribunal whereby the penalty of compulsory retirement imposed on the respondent/driver was set-aside.

8. Learned counsel for the petitioner after making reference to the case of Pakistan Defence Officers' Housing Authority Vs. Jawaid Ahmed (2013 SCMR 1707) submitted that where a body had been created by a statute, its employees can file a writ petition, where the statutory body takes a decision in violation of its Service Rules or Regulations framed by the statutory body under the powers derived from statutes.

9. I have heard the contentions of the learned counsel for the petitioner and have perused the record with their able assistance. The facts leading to the filing of this petition have been set out in sufficient detail in paragraph 2 above, and need not be recapitulated.

10. I have read and re-read the writ petition filed by the petitioner. The pleadings in the writ petition are silent as to the violation of any Rules or Regulations of the C.A.A. in the proceedings against the petitioner, which culminated in the imposition of a major penalty of his removal from service. Even

during the arguments, the learned counsel for the petitioner did not point out any provision in the Service Regulations of 2000 or 2014 which had been violated by the respondents. The petitioner has not even bothered to file a copy of the show cause notice dated 23.10.2014, along with the writ petition. After the imposition of a major penalty on the petitioner, vide order dated 23.01.2015, the petitioner submitted a grievance notice dated 15.02.2015 to the Director General of C.A.A.

11. In the case at hand, the Civil Aviation Authority Service Regulations, 2000, were made by the Board of the C.A.A. in its 87th meeting held on 15.01.2000. These regulations were made in exercise of the powers conferred by Sections 12, 14 and 27 of the C.A.A. Ordinance. Section 12(2) of the said Ordinance provides that the C.A.A. shall prescribe by regulations the procedure for appointment of its officers, servants, experts and consultants, and the terms and conditions of their service. Furthermore, Section 27 of the said Ordinance empowers the C.A.A. to make regulations, not inconsistent with the said Ordinance and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for carrying out the purposes of the said Ordinance. Similarly, the Civil Aviation Authority (Efficiency and Discipline) Regulations, 2014, have not been made or approved by the Federal Government.

12. In the case of Muhammad Zaman Vs. Government of Pakistan (2017 SCMR 571), the Hon'ble Supreme Court held that since the State Bank of Pakistan Officers (Pension-cum-Gratuity) Regulations, 1980, were non-statutory, therefore, the employees of the State Bank of Pakistan could not invoke the constitutional jurisdiction of the High

Court for a direction for the grant of periodical increases in pension in line with those granted by the Federal Government. In the said judgment, it was *inter-alia* held that in order to determine whether the Rules or Regulations of a statutory body were statutory or otherwise it had to be seen whether the Rules or Regulations *"deal with instructions for the internal control or management, or they are broader then and or complimentary to the parents statutes in matters of crucial importance".* The former were held to be statutory, whereas the latter were to be non-statutory. C.A.A's Service Regulations dealing with procedure for disciplinary proceedings of the employees of C.A.A. are clearly for the internal control and management of C.A.A.

13. The provisions of the C.A.A. Ordinance do not require the Service Regulations to be approved by the Federal Government. It is an admitted position that the C.A.A.'s Service Regulations, 2000, have not been approved by the Federal Government. Since the Hon'ble Supreme Court in the case of Muhammad Nawaz Vs. Civil Aviation Authority and others (2011 SCMR 523) has already declared the Service Regulations of the C.A.A. to be non-statutory, therefore, following the latest judgment of the Hon'ble Supreme Court (i.e. Muhammad Zaman's case (supra)), this petition is dismissed *in limine* as not maintainable. I have refrained to express any view on the merits of the case. The petitioner is at liberty to seek the redressal of his grievances from the Court of competent jurisdiction. No order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*

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