JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 3339 of 2017

Umar Zaman

Versus

Chairman NAB, Islamabad, etc.

Date of Hearing	:	01.04.2022.
Petitioner by	:	Khalil ur Rehman Abbasi, Advocate
Respondent by	:	Yasir Saleem Rana, Advocate

ARBAB MUHAMMAD TAHIR, J. The petitioner is aggrieved of Notification dated 28.12.2016 and order dated 20.09.2017, issued by the respondents (NAB), whereby major penalty of "*dismissal from service*" was imposed upon him in terms of Section 11.3 (b)(iii) of National Accountability Bureau (NAB) Employees Terms and Conditions of Services (TCS), 2002 (**"TCS, 2002"**) on being found guilty on the ***charges of misconduct and inefficiency on account of unauthorized absence from duty w.e.f 05.04.2016 till the passing of the notification*** while the intervening period of unauthorized absence was treated as Extra Ordinary Leave (**"EOL"**) without pay and he was directed to deposit outstanding dues to the tune of Rs. 1,095,904/- against the house building advance, motor car advance and G.P. Fund loan within 15 days while through the second order dated 20.09.2017, his departmental appeal was rejected by the Appellate Authority.

2. Relevant facts are that the petitioner joined the respondent department as Assistant Director (BS-17) vide Memorandum dated 24.03.2006. He was then posted at NAB, KP where he served for more than a year and then transferred to NAB HQ where he served for more than eight and a half year. The dispute cropped up when he was transferred to NAB Sukkar vide Notification dated 16.12.2015. The petitioner insisted for having a posting of his choice but was ultimately relived vide Notification dated 06.04.2016. The petitioner then opted to assail the said two orders through W.P. No. 1361/2016, which was dismissed vide order dated 23.11.2016. The operative paragraphs 5 & 6 of the said order are as under:-

> *"5. As stated above the terms and conditions of the service of the petitioner are governed under National Accountability Bureau Terms and conditions of Service, Rules, 2002. Under*

the schedule to the referred Rules the Deputy Director holds post in BPS-18. Similarly, under clause 7.02 the Director General Administration of the NAB is competent to order the transfer of an employee holding post in BPS-18 or within a cadre. The order impugned before this Court has been passed by the competent authority i.e. respondent No. 2. The basic thrust of the arguments by the learned counsel for the petitioner was that order has been passed with malafide. There is nothing on record which reflects malafide on part of the respondents; even otherwise the same is a question of fact which cannot be adjudicated in the instant proceedings. The transfer order of the petitioner was postponed till January, 2016 in the light of the minutes of the meeting dated 28.10.2015. The petitioner has been relieved from the current position after the said period.

6. It is an admitted position that petitioner has tendered resignation from service on 11.11.2016, however, the same has not been accepted. Under clause 8.04 of the Terms of Service, 2002 an employee may after submission of the resignation withdraw the same before it is accepted and if it is done so it shall be deemed to have been withdrawn. Similarly, the resignation of an employee shall not be accepted if any disciplinary proceedings are in progress, therefore, tendering the resignation by the petitioner is inconsequential for the present proceedings."

3. On 20.04.2016, the petitioner was served with show-cause notice (**"SCN"**) on the allegations of misconduct on account of unauthorized/will full absence from duty. On 15.05.2016, he was again served with a notice in continuation of SCN with direction to report for duty at the place of transfer i.e. Sukkur NAB within three days or else, he will be placed under suspension. Subsequently, it was so happened as reveals through Notification dated 20.05.2016. Ultimately served with final SCN on 07.06.2016 and then removed from service vide Notification dated 28.12.2016. His appeal against the said order remained unsuccessful vide order dated 20.09.2017. Hence, instant writ petition.

4. The respondent department in its written comments controverted the stance of the petitioner, in terms that petitioner under service discipline was bound to follow the lawful order of the competent authority; that the conduct demonstrated by the petitioner is like unbecoming of an officer; that he was directed even during the course of inquiry to join the place of posting but he deliberately avoided to comply with the direction of the competent authority; that the petitioner was afforded due opportunity of hearing; that impugned actions are in accordance with law and the rules while the petitioner also retains remedy of review/representation.

5. Heard the learned counsel for the parties and perused the record.

6. Perusal of record reveals that petitioner was proceeded against on account of alleged disobedience to the order of the Competent Authority and for unauthorized absence. The disciplinary proceedings were conducted under the TCS, 2002 wherein remedy of appeal in terms of Rule 11.14 is also provided. In addition, remedy of review application/representation is also available to an employee in terms of Rule 13.09 while it is to be preferred within 30 days as stipulated under Rule 13.01 of the rules ibid.

7. The petitioner questioned the impugned orders on multiple grounds and also agitated his grievance against the order-in-appeal being non speaking and without considering the grounds agitated in the appeal, that includes the imposition of major penalty despite condonation of absence by treating it extra ordinary leave, which, according to the petitioner could not have been inflicted when the very basis stood vanished by operation of the impugned order itself. In addition, the petitioner agitated the explanation qua reliving orders, reference to fundamental Rules-FR, 52, 55, stoppage of salary during suspension and grounds to confront the order of recovery.

8. As remedy of review application/representation in terms of Rule 13.09 against the impugned orders is available to the petitioner; therefore, it would not be just to lay any comment upon merits of the case.

9. The first impugned order was passed on 28.12.2016 and as per Rule 13.01 appeal had to be preferred within 30 days of the date of communication of the order. The petitioner filed the appeal within the stipulated period on 04.01.2017, after the dismissal of appeal vide order dated 20.09.2017, filed the instant writ petition within fortnight on 29.09.2017. The petitioner has approached this Court with promptitude while alternate remedy under the TCS, 2002 is available to him, therefore, in the attending circumstances, it would be in the interest of justice not to lay any comments upon merits of the case, to be adjudicated by the Competent Authority in terms of Rules 13.09 of the TCS, 2002.

10. In view of above, the instant writ petition alongwith annexures and the counter response are transmitted to the respondent-department for its onward transmission to the Competent Authority for disposal in accordance with law in terms of Rules 13.09 of TCS, 2002 within a

period of two months from the receipt of this order after affording due opportunity of hearing to the petitioner.

11. The instant writ petition is accordingly **disposed of** in the above terms.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____04.2022.

JUDGE

A.R.Ansari