JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : ICA NO.52-2015
Pakistan Telecommunication Company Ltd.
Vs.
Abdul Hakeem Ghunio

Appellant by	**:**	**Mr. Shahid Anwar Bajwa, Advocate** **Mr. Habib Ahmad Bhatti, Advocate** **Mr. Akhlaq Ahmad Bhatti, Advocate** **Mr. Ali Nawaz Kharal, Advocate** **Malik Asif Raza, Advocate** **Hafiz Arfat Ahmad Chaudhry, Advocate &** **Ms. Kashifa Niaz Awan, Advocate (ICA No.62-2015)** **Mr. Salman Zafar, SM (Legal) & Raheel Zafar, Manager (Legal), PTCL.**
Respondents by	**:**	**Hafiz Arfat Ahmad Chaudhry, Advocate** **Ms. Kashifa Niaz Awan, Advocate** **Mr. Tahir Maqsood Butt, Advocate** **Mian Muhammad Shafique, Advocate** **Mr. Ashraf Ali Awan, Advocate** **Mr. Muhammad Umair Baluch, Advocate & Mirza Waqas Qayyum, Advocate** **Mr. G.M. Chaudhry, Advocate** **Ms. Kalsoom Akhtar, Advocate** **Mr. Muhammad Munir Peracha & Mr. Nauman Munir Peracha, Advocates** **Ms. Faiza Naseer Chaudhry, Advocate** **Respondents in person in ICA Nos.42 & 80-2018)**
Date of hearing	**:**	**23.05.2018**

AAMER FAROOQ J. This judgment shall decide instant appeal as well as the appeals mentioned in Schedule-A attached herewith, as the same involve common questions of law and facts.

2. The private respondents, in all the appeals, are/or have been the employees of the appellant (except ICA No.62-2015). The respondents were proceeded with disciplinary action which are either pending against them or have culminated in the form of dismissal from service and other penalties. They challenged the initiation of disciplinary proceedings against them and/or their removal from service or imposition of penalty by way of petitions under Article 199 of the Constitution against the appellant i.e. Pakistan Telecommunication

Company Limited (the appellant). The petitions filed by the respondents were allowed vide the impugned judgments which have been assailed in the instant appeals. In ICA No.62-2015, the dismissal from service order was set aside by Judge-in-Chambers but no order was passed regarding salary and benefits of appellant which has been assailed in appeal.

3. All the respondents were the employees of erstwhile Telegraphic & Telephone Department (T&T), the predecessor-in-interest of the appellant. The referred Department was given the status of a statutory corporation through Pakistan Telecommunication Corporation Act, 1991. In this behalf, terms and conditions of service of the transferred employees of T&T Department were protected under section 9(2) of 1991 Act. The status of the Corporation changed into a Company under Pakistan Telecommunication (Re-Organization) Act, 1996. Under the referred Act, employees of the Corporation were given statutory protection under section 36(2) ibid. It is an admitted position that all the respondents are transferred employees from erstwhile T&T Department and enjoyed protection awarded under section 9(2) & 36(2) ibid.

4. The appellant initiated disciplinary proceedings against them under its regulations framed as a Company however stance of the respondents is that since they are transferred employees and their terms and conditions of service are protected so they should be proceeded against under the Civil Servants' (Efficiency & Disciplinary) Rules, 1973, the position they enjoyed prior to the conversion of T&T Department into Corporation. The Judge-in-Chambers, in the impugned judgments, has held that the respondents are to be proceeded against in accordance with Civil Servants' (Efficiency & Discipline) Rules, 1973.

5. Learned counsel for the appellant, *inter alia,* contended that disciplinary matters are not included in terms and conditions of service; that Judge-in-Chambers has not adverted to this aspect of the matter. It was further contended

that service rules of the appellant are the same as the Efficiency & Discipline Rules of Federal Government and there is no material difference; in other words, those are *pari-materia* hence respondents suffered no prejudice from the initiation of disciplinary proceedings under PTCL Service Rules. It was further submitted that a petition under Article 199 of the Constitution was not maintainable inasmuch as departmental remedy of appeal was not availed in the cases, where the respondents have been dismissed from service. It was submitted that in certain cases, petitions under Article 199 of the Constitution were filed against the show-cause notices, which were not maintainable inasmuch as disciplinary proceedings had not culminated into any order. Learned counsel further reiterated that there is distinction between terms and conditions and disciplinary matters. It was contended that the Civil Servants' (Efficiency & Discipline) Rules, 1973 come within the ambit of discipline and not under terms and conditions of service. It was contended that the Company is a *juristic person* and incorporated under the laws of Pakistan and is not owned by the government. Learned counsel further contended that where there are no statutory rules, a petition under Article 199 of the Constitution is not maintainable. It was further submitted that the respondents are not civil servants.

6. Learned counsel for the appellant further contended that the judgment of the Hon'ble Supreme Court of Pakistan in case reported as 'Pakistan Telecommunication Corporation and another Vs. Riaz Ahmad & 6-others (PLD 1996 Supreme Court 222) is not a good precedent inasmuch as in the same, the august Apex Court was not properly assisted. It was contended that now by virtue of the judgment cited as 'PTCL and others Vs. Masood Bhatti and others' (2016 SCMR 1362), it is settled that T&T employees are no longer civil servants on transfer to the Corporation and subsequently to the Company, however, it

was contended that it has been held by the august Apex Court that a petition under Article 199 of the Constitution is maintainable and Sections 3 to 22 of the Civil Servants Act, 1973 do apply. It was further submitted that though the terms and conditions of service have been protected yet disciplinary proceedings are not included in the terms and conditions of service therefore learned Judge-in-Chambers has erred in holding so. In this behalf, it was contended that bare reading of Article 212 of the Constitution provides that the words 'terms and conditions including disciplinary matters' have been mentioned therefore same are distinct.

7. Other learned counsels for the appellant adopted the arguments addressed by Mr. Shahid Anwar Bajwa, Advocate Supreme Court.

8. Hafiz Arfat Ahmad Chaudhry, Advocate Supreme Court, appearing on behalf of respondents, *inter alia* contended that terms and conditions of service of the employees, who have been transferred from T&T Department, were protected firstly under section 9 of 1991 Act and then under section 36 of 1996 Act hence disciplinary proceedings were to be initiated and proceeded with against the respondents under Civil Servants' (Efficiency & Discipline) Rules, 1973. In this behalf, it was contended that controversy has been put to rest by the latest judgment of the Hon'ble Supreme Court of Pakistan in case reported as 2016 SCMR 1362 supra. Learned counsel took the Court through the judgments on this issue and highlighted the principles laid down in the same. In this regard, learned counsel cited cases reported as 'Pakistan Telecommunication Company Limited through General Manager and another Vs. Muhamad Zahid and 29-others' (2010 SCMR 253), 'Pakistan Telecommunication Company Limited through Chairman Vs. Iqbal Nasir and others' (PLD 2011 Supreme Court 132), 'Masood Ahmad Bhatti and others Vs. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and

others' (2012 SCMR 152) & 'Muhammad Riaz Vs. Federation of Pakistan through Secretary, Ministry of Information Technology, Government of Pakistan, Islamabad and others' (2015 SCMR 1783). It was contended that where action is initiated, which is based on misconception of law and under the wrong law, it vitiates entire proceedings including the final order and hence cannot be sustained. Reliance was placed on case reported as 'Azizullah Memom Vs. Province of Sindh and another' (2007 SCMR 229). Lastly, it was contended that in a case reported as 2016 SCMR 1362 supra, it was held by the august Apex Court that terms and conditions of service of a civil servant contained in sections 3 to 22 of the Civil Servants' Act, 1973 have been protected, as they fall in Chapter-II of the Civil Servants Act, 1973 hence all protections afforded in the referred Sections which include efficiency and discipline are protected.

9. Other learned counsels, appearing on behalf of private respondents, adopted the arguments or addressed the arguments which are in consonance with the arguments mentioned hereinabove.

10. The arguments advanced by learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

11. The sole question of law involved, in the instant appeals, is as to the status of the respondents, who are or were employees of the appellant and the law, under which, they are to be proceeded with for disciplinary action.

12. It is an admitted position that T&T Department was converted into statutory Corporation by virtue of section 3 of Pakistan Telecommunication Corporation Act, 1991. Section 9(2) of the referred Act granted protection to the terms and conditions of the service of transferred employees inasmuch as it is stated in the referred provision that terms and conditions of service of any such person as is referred to in subsection (1) shall not be varied by the Corporation to his disadvantage. The Corporation changed into Company under the Pakistan

Telecommunication (Re-organization) Act, 1996. Section 36(2) of the referred Act granted protection to the terms and conditions of service of the employees transferred from Corporation to the Company.

13. Initially, it was believed that the employees of T&T Department are civil servants. In this regard, in case reported as 'Pakistan Telecommunication Corporation and another Vs. Riaz Ahmad & 6-others (PLD 1996 Supreme Court 222), the Hon'ble Supreme Court held that employees of T&T Department are civil servants within the meaning of Civil Servants' Act, 1973. In case reported as 'Divisional Engineer Phones, Phones Division, Sukkur and another Vs. Muhammad Shahid and others' (1999 SCMR 1526) similar view was reiterated. In case reported as 'Pakistan Telecommunication Company Limited through Chairman Vs. Iqbal Nasir and others' (PLD 2011 Supreme Court 132), the august Apex Court held that rules of service of Pakistan Telecommunication Corporation are non-statutory. The august Apex Court, in case reported as 'Masood Ahmad Bhatti and others Vs. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others' (2012 SCMR 152), observed that it is not in dispute that prior to the establishment of Pakistan Telecommunication Corporation under the PTC Act, 1991, the appellants were civil servants and were governed by the various rules and regulations governing services of the civil servants. The Civil Servants' (Efficiency & Disciplinary) Rules, 1973 and the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 provides instances of rules, which amongst others, were applicable to the relationship between the appellant and its employees. It was also observed that such rules were statutory as were framed by the rule making power granted to the Federal Government under the Civil Servants Act. In para-9 of the judgment, the Hon'ble Apex Court observed as follows:-

> *"9. It is clear from this legal provision, that the rules relating to the terms and*

conditions of employment of the appellants were given statutory status. This status was on a higher plane than the status of regulations framed by way of subordinate legislation under section 20 of the PTC Act. Consequently, whatever rules were in place governing the employment of the appellants in the T&T Department, were adopted by reference in the statute itself and were made applicable to and binding on the Corporation. There can be little doubt that by virtue of section 9, ibid such rules acquired statutory status having been sanctified by the PTC Act itself. We can, therefore, conclude without difficulty that the rules of employment which were applicable to the appellants during their service with the Corporation were statutory rules".

It was further observed in paragraphs 15 & 16 as follows: -

"15. Thus it is evident that at the moment of transition when the appellants ceased to remain the employees of the Corporation and became the employees of PTCL, they admittedly were governed by rules and regulations which had been protected by the PTC Act. The said rules, therefore, by definition were statutory rules as has been discussed above. PTCL, no doubt, could make beneficial rules in relation to its employees which were in addition to the rules of employment prevailing on 1-1-1996. However, by virtue of the aforesaid proviso, PTCL had no power to "vary the terms and conditions of service" of its employees who were previously employees of the Corporation, "to their disadvantage". Even the Federal Government was debarred by virtue of section 35 ibid, from varying such terms and conditions of service to the disadvantage of the appellants.

16. An easy and uncomplicated test becomes available to us to help determine the status of the employment rules governing the appellants. If the current employer of the appellants viz. PTCL is constrained by legislation such as section 35(2) of the Reorganization Act, and as a consequence, cannot vary the existing rules to the disadvantage of the appellants, because of such legislation, it must follow that such law has the effect of saving the rules which existed when the appellants became employees of PTCL. Such existing rules, having been protected by section 35(2), therefore, can only be categorized as statutory rules"

Finally, the Hon'ble Supreme Court of Pakistan concluded as under: -

"It is important, at this point, to draw a distinction between employees who stood transferred to PTCL by virtue of section 35 ibid and the Vesting Order, on the one hand and those employees, who joined PTCL after 1-1-1996. The protection under the Federal Government guarantee would not be available to the latter category whose terms and conditions of service would be contractual in nature and would, therefore, be non-statutory"

The said judgment came under review by the Larger Bench of the Hon'ble Supreme Court of Pakistan in case reported as 'PTCL and others Vs. Masood Bhatti and others' (2016 SCMR 1362). The august Apex Court, after concluding that petition under Article 199 of the Constitution is maintainable by an employee of the appellant, who is a transferred employee i.e. originally was employee of erstwhile T&T Department, observed as follows:-

> *"A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court"*

In terms of the above judgment of the august Apex Court, it is clear that employees, who were part of T&T Department and were transferred from the referred Department to the Corporation and then to the Company, have their terms and conditions of service protected. They are not civil servants, but their terms and conditions of service are statutory as provided in sections 3 to 22 of the Civil Servants Act, 1973. In case any one of terms and conditions of their service is violated, they can agitate the matter by way of a petition under Article 199 of the Constitution.

14. All the provisions provided in sections 3 to 22 of the Civil Servants' Act, 1973 are applicable to the transferred employees including disciplinary matters as provided in section 16 of the Civil Servants' Act, 1973. Under the referred section, a civil servant shall be liable to prescribed disciplinary action and penalties in accordance with the prescribed procedure. In this behalf, the Civil Servants' (Efficiency & Discipline) Rules, 1973 were framed and have been notified and are statutory in nature. The respondents are entitled to be proceeded with under the said Rules as part of their protected terms and conditions of service.

15. It is vehemently argued on behalf of appellant that no prejudice has been caused and/or that PTCL service regulations are *pari-materia* with Civil Servants' (Efficiency & Discipline) Rules, 1973, whereas on behalf of respondents, it has

been argued that if an action has been agitated under a wrong provision of law, it is non-est i.e. has no legal sanctity. Reliance was placed on case reported as 'Azizullah Memom Vs. Province of Sindh and another' (2007 SCMR 229).

16. There is no cavil with the principle of law laid down in the referred judgment. However, it is also a settled proposition that mere wrong mentioning of any provision does not vitiate proceedings. In this regard, the Judge-in-Chambers has noted down certain eventualities in paragraph-10 of the impugned judgment dated 12.01.2018. We do not find any infirmity with the referred observations and directions as those are in accordance with law and the interpretation afforded to it by the Hon'ble Supreme Court of Pakistan.

17. It is also pertinent to observe that in one of the cases before the Hon'ble Supreme Court of Pakistan titled 'Khalid Mahmood Chaudhry Vs. Government of Pakistan' (Civil Appeal No.230-L/2015), vide order dated 29.11.2016, it was observed that appellant conceded the initiation of denovo disciplinary proceedings despite the fact that it has been the stance of the appellant that its service regulations are in accordance with the Civil Servants' (Efficiency & Discipline) Rules, 1973.

18. In view of the foregoing, the judgments impugned in the instant appeals do not suffer from any error of law or factual infirmity therefore same do not call for any interference. In I.C.A. No.62/2015, appeal was filed by employee of T&T Department, who was dismissed from service and challenged the same by way of petition under Article 199 of the Constitution (W.P. No.3947/2012). His petition was allowed to the extent of dismissal from service but no order was passed regarding payment of salary and back benefits for the period he remained dismissed. In this regards, I.C.A. No.62/2015 is disposed off with the observation that appellant shall file representation for payment of salary and

other benefits for the referred period before appellant which shall decide the same within one month of this judgment.

19. For the above mentioned reasons, instant appeals are without merits and are accordingly dismissed. I.C.A. No.62/2015 is disposed off as mentioned in the preceding paragraph.

(MOHSIN AKHTAR KAYANI)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in Open Court on _____

JUDGE

JUDGE

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