ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4003 of 2019
Muhammad Sharif Awan
Versus
Federation of Pakistan through Secretary, Revenue Division Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	22.11.2019	**Mr. Aziz-ul-Haque Nishtar, Advocate for the petitioner**

Through the instant writ petition, the petitioner, Muhammad Sharif Awan, who is presently serving as Member (BS-21) in the Federal Board of Revenue (**"F.B.R."**), impugns the office order dated 07.05.2019 issued by the Revenue Division, F.B.R., whereby a Fact Finding Inquiry Committee (**"F.F.I.C."**) has been constituted to inquire into the allegations levelled against him.

2. The facts essential for the disposal of the instant petition are that in the year 2015, disciplinary proceedings were initiated by the F.B.R. against the petitioner without the approval of the Competent Authority, i.e. the Prime Minister. Charge sheet dated 25.02.2015 and statement of allegations dated 27.02.2015 were issued to the petitioner. The Inquiry Officer had also submitted an inquiry report which was adverse to the petitioner. The petitioner was afforded an opportunity of a personal hearing by the then Chairman, F.B.R. on 17.12.2015, but no final order was passed against him.

3. The Ministry of Law had opined that the disciplinary proceedings initiated against the petitioner without the approval of the Competent Authority were null and void. Subsequently, the petitioner was sent for the National Management Course and was also promoted to BS-21 on 28.01.2019.

4. Apparently, the F.B.R. initiated a fresh summary seeking approval of the Competent Authority for initiating disciplinary proceedings against the petitioner on the same grounds on which he was proceeded against earlier but such proceedings had not been taken to their logical conclusion. On 01.04.2019, the Establishment Division made the following observations on the summary:-

> ***"a. Since the accused officers were charge sheeted by the FBR itself, the designation of the Chairman FBR as the Authorized Officer will imply "conflict of interest".***
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> ***b. The points raised by this division vide O.M. No.13/05/2016-D-II dated 07.06.2016 placed at Annex-IV may be attended to.***
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> ***c. There is a mention of advice of Law Division (Annex-IX) in Para 11 of the summary. However, FBR's own take on the advice or action, if any, in pursuance thereof has not been reflected in the summary. It is also advised that a fresh advice may be taken from Law Division.***
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> ***d. Like Occupational Groups, being regulated by Establishment Division one Authorized Officer may be designated for a specific case."***

5. The petitioner's case is that in utter disregard of the said observations of the Establishment Division, the F.B.R. had proceeded to constitute a F.F.I.C. vide order dated 07.05.2019. The F.F.I.C. has already recommended the initiation of a regular inquiry against the petitioner.

6. On 12.07.2019, the petitioner requested the Member HR, F.B.R. for personal hearing and on 30.07.2019, the former submitted a representation raising objections to the constitution of the F.F.I.C. A second representation was submitted by the petitioner to the Chairman, F.B.R. on 18.10.2019. Having not received any response to the said representations, the petitioner has invoked the Constitutional jurisdiction of this Court.

7. Learned counsel for the petitioner was asked to satisfy this Court as to how the instant petition was maintainable in view of the bar contained in Article 212 of the Constitution. He submitted that the F.F.I.C. was proceeding with the inquiry without associating the petitioner in the process. He further submitted that the points agitated by the petitioner in the instant petition were matter of public policy and that the re-initiation of the proceedings against the petitioner was a waste of public time. He further submitted that until the petitioner is in a position to approach the Service Tribunal, he will be without a remedy against the unlawful constitution of the F.F.I.C. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

8 I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 6 above and need not be recapitulated.

9. The petitioner is admittedly a civil servant. He is challenging the initiation of disciplinary proceedings against him. As mentioned above, the earlier disciplinary proceedings did not culminate in any final order being passed against the petitioner since the said proceedings had been initiated without the approval of the Competent Authority. The petitioner is primarily aggrieved by the constitution of the F.F.I.C. and its recommendation to hold a regular inquiry against him. In other words, in the instant petition the petitioner has raised a matter pertaining to the terms and conditions of his service. The F.B.R. has already sent a summary to the Establishment Division seeking approval for the

initiation of disciplinary proceedings against the petitioner.

10. This Court is under an obligation to decide the question of its jurisdiction in view of the mandate contained in Article 212(2) of the Constitution. Reference in this regard may be made to the judgments of the Hon'ble Supreme Court in the case of Government of Sindh Vs. Nizakat Ali (2011 SCMR 592) and Asadullah Rashid Vs. Muhammad Munir (1998 SCMR 2129).

11. In the case at hand, the petitioner, being a civil servant, has agitated a matter relating to the terms and conditions of his service. It is well settled that the jurisdiction of this Court is ousted in matters which fall within the jurisdictional domain of the Service Tribunal. Even if this Court is to grant interim relief as a stopgap measure until the petitioner is in a position to agitate his grievance before the Federal Service Tribunal, it would amount to assuming jurisdiction over the *lis.* In doing so, this Court would be going against the mandate of Article 212(2) of the Constitution, which is reproduced herein below:-

> ***"(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal, other than an appeal pending before the Supreme Court, shall abate on such establishment:***
>
> ***Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal."***

12. The argument of the learned counsel for the petitioner that until the petitioner is in a position to

approach the Service Tribunal, he is without a remedy, has been adequately answered by the Superior Courts in the following judgments:-

(i) In the case of Abdul Wahab Khan Vs. Government of the Punjab (PLD 1989 SC 508), the petitioner had assailed the appointment of an authorized officer in a writ petition before the Hon'ble Lahore High Court. The said petition was dismissed as not maintainable due to the bar contained in Article 212 of the Constitution. The Hon'ble Supreme Court held that if an order passed against the civil servant was not appealable to the Service Tribunal, the civil servant would have to wait till such order was passed against him which was appealable before the Service Tribunal.

(ii) In the case of Dr. Ghazanfar Ullah Vs. Secretary Health, Government of Punjab (2010 PLC (C.S.) 51), the Hon'ble Lahore High Court held as follows:-

> ***"8. Arguments heard. Article 199 is "Subject to the Constitution", while Article 212 being a non obstante Article prevails over Article 199. Article 212 clearly states that "no Court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends". Therefore, this Court has no jurisdiction to entertain a matter that stands barred under Article 212 of the Constitution. The arguments of the counsel that he has been left remediless after filing his representation under section 4 of the Punjab Service Tribunals Act, 1974 is without any force. The filing of the representation before a departmental authority is itself initiation of the remedy under section 4(1)(a) of the Service Tribunals Act, 1974. The pendency of the representation for a maximum period of 90 days is a part of the procedure/remedy prescribed for a civil servant which then culminates into right to file an appeal. In fact the pendency of the representation before the departmental authority cannot be taken to mean that the petitioners have been left***

> ***remediless. In fact the petitioners have invoked the remedy and the remedial process has been set in motion. For the sake of arguments even if a writ is issued during this period of 90 days it will make a mockery of the statutory process provided under section 4(1)(a) rendering the final right to appeal in 90 days totally meaningless. Constitutional jurisdiction cannot be put to use to frustrate statutory remedial process as in the present case. In any case this argument is totally fallacious. Once this Court has no jurisdiction under Article 212, the same cannot be conferred on it just because after filing the representation under section 4 of Punjab Service Tribunals Act, 1974 the petitioner has been rendered "remediless" it is not the question of alternate remedy but of bar of jurisdiction. In fact Article 199 cannot be set in motion due to the jurisdictional bar, therefore the question of alternate remedy or mala fide or political consideration or the nature of grievance does not even begin to arise. This distinction between bar of jurisdiction and exercise of judicial power must be clearly understood."***

The Hon'ble Judge who authored the said judgment rose to grace the Hon'ble Supreme Court. Therefore, the said judgment deserves respect and reverence.

13. The jurisdiction of the High Court is barred under Article 212(2) of the Constitution even if an order assailed before the High Court or the proceedings which a civil servant is aggrieved by or are alleged to be *malafide*, *coram non judice*, without jurisdiction or are assailed on the ground of violation of the civil servant's fundamental rights. Reference in this regard may be made to the following case law:-

(i) In the case of <u>Muhammad Amin Butt Vs. Secretary Education, Government of the Punjab (2003 PLC (C.S.) 926)</u>, a show cause notice was issued to the petitioner on the basis of a preliminary inquiry. The petitioner's case was that the petitioner had earlier been exonerated by the Anti-Corruption Agency and that the

allegation against him could only be established in a regular inquiry. The Hon'ble Supreme Court held that the issue raised by the petitioner, was a civil servant, was germane to the terms and conditions of his service and since no final order had been passed, the bar of jurisdiction contemplated by Article 212 of the Constitution was attracted.

(ii) In the case of Akhtar Ali Vs. Province of Punjab (PLD 1992 Lahore 127), the petitioner had challenged the appointment of the inquiry committee and the framing of the charge against him. The Hon'ble Lahore High Court after making reference to Article 212 of the Constitution as well as to the provisions of the Punjab Service Tribunal Act, 1974 held as follows:-

> ***"The aforenoted provisions place it beyond doubt that the Service Tribunal has been given exclusive jurisdiction in the matters relating to the terms and conditions of the service of the civil servants including disciplinary matters and the jurisdiction of all other Courts in respect of matters falling within the competence of the Service Tribunal stands ousted. Needless to observe that non obstante clause in Article 212(2) gives it overriding effect with the result that the jurisdiction of this Court under Article 199 of the Constitution to entertain any proceedings in respect of matters falling within the ambit of Service Tribunal is completely excluded."***

Law to the said effect has also been laid down in the cases of Syed Arshad Ali and others versus Pakistan Telecommunication Company Ltd and others (2008 SCMR 314), Peer Muhammad versus Government of Baluchistan through Chief Secretary and others (2007 SCMR 54), Noor Badshah Khattak versus Government of N.W.F.P. and others (2004 PLC (C.S.) 1084 and Khalid Mehmood Wattoo versus Government of Punjab and others (1998 SCMR 2280).

14. Regardless of the views of this Court on the question as to whether the requirements of due process had been fulfilled before the decision to constitute a F.F.I.C. or whether the proceedings of the said Committee were lawful, the instant petition is not maintainable given the bar contained in Article 212(2) of the Constitution. Therefore, this petition is dismissed as not being maintainable.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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