

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE YAHYA AFRIDI  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL PETITION NO.3186 OF 2020**

(Against the Order dated 07.10.2020 passed by the Punjab Service Tribunal, Lahore in Appeal No.1641/2020)

Junaid Wazir

...Petitioner

**VERSUS**

Superintendent of Police, PRU/Dolphin Police, Lahore ....Respondents

For the Petitioner: Mr. Mahmood Ahmad Qazi, ASC  
(Through video link from Lahore)  
Syed Rifaqat Hussain Shah, AOR

For Respondents: Mr. Sanaullah Zahid, Addl. AG, Punjab  
Syed Intikhab Hussain, DSP

Date of Hearing: 05.10.2023

**Judgment**

**Muhammad Ali Mazhar, J.** This Civil Petition for leave to appeal is directed against the Order dated 07.10.2020 passed by the Punjab Service Tribunal, Lahore ("**Tribunal**") in Appeal No.1641/2020 whereby the Appeal filed by the petitioner was dismissed.

2. The transitory facts of the case are that the petitioner was proceeded under the provisions of Punjab Police (Efficiency & Discipline) Rules, 1975 *vide* charge sheet dated 08.07.2019 with the statement of allegations which stated that the petitioner remained absent from official duty without any application or prior permission of the competent authority while posted at Sadar Division, Dolphin Squad, Lahore. The regular departmental inquiry was entrusted to DSP Headquarters, Dolphin Squad, Lahore. The petitioner appeared before the inquiry officer and his statement was recorded wherein he pleaded that he was seriously ill and also appended his medical report to substantiate the ground of illness. After recording the statement of

the petitioner, and without verifying the medical record, the inquiry officer declared the medical certificates fake and submitted the inquiry report, finding the petitioner guilty of absence from duty for a period of four months and twenty three days. The petitioner was called upon to appear in the orderly room for personal hearing but, according to the petitioner, without affording any proper chance of personal hearing to the petitioner, the respondent No.1 imposed the penalty of discharge from service *vide* order dated 05.09.2019. The petitioner filed a departmental appeal, but without touching the merits of the case the departmental appeal was rejected *vide* order dated 04.02.2020 being not maintainable against the discharge from service under Rule 12.21 of the Police Rules, 1934. Being aggrieved and dissatisfied, the petitioner filed Service Appeal No.1641/2020 before the learned Tribunal on 26.03.2020 (i.e. within 30 days of communication of appellate order dated 04.02.2020) but ultimately, the petitioner's appeal was also dismissed on the point of limitation by the learned Tribunal *vide* impugned order dated 07.10.2020.

3. The learned counsel for the petitioner argued that the learned Tribunal wrongly dismissed the appeal as time barred, holding that the petitioner should have filed the appeal in the Tribunal within 30 days of the penalty order, keeping aside the specific provisions of Section 21 (2) of the Punjab Civil Servants Act, 1974, read with section 4 (1) (a) of the Punjab Service Tribunals Act, 1974. It was further contended that the provision contained under Rule 12.21 of the Police Rules, 1934 could not override the provisions of Section 21 (2) of the Punjab Civil Servants Act, 1974, for depriving a civil servant from his right of departmental appeal/representation against an adverse order against him. It was further contended that the learned Tribunal also ignored Section 4 (1) of the Punjab Service Tribunals, Act, 1974.

4. The learned Additional Advocate General, Punjab argued that no right of appeal is provided against the penalty or punishment of discharge under Rule 12.21 of the Police Rules, 1934, hence the learned Tribunal rightly held that instead of filing a service appeal before the Tribunal, the petitioner wrongly filed the departmental appeal before the DIG of Police, Operations, Lahore which was not maintainable as no appeal against an order of discharge was provided.

5. Heard the arguments. The bone of contention in the matter in hand is whether a departmental appeal could be filed against the order of discharge from service under Rule 12.21 of Police Rules, 1934. According to the understanding of law put into operation by the learned Tribunal, the petitioner should have directly approached the Tribunal rather than filing the departmental appeal which was not maintainable. Since the petitioner wrongly filed the departmental appeal and waited for its decision before approaching the Tribunal, the appeal before the Tribunal had become time barred. The departmental authority only rejected the departmental appeal on the premise that no appeal lies against an order of discharge and the departmental appeal of the petitioner was consigned to the record *vide* order dated 04.02.2020. For the ease of convenience, Rule 12.21 of the Police Rules, 1934 is reproduced as under:

"12.21 Discharge of inefficient. A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment. There shall be no appeal against an order of discharge under the rules".

6. The record reflects that the allegation against the petitioner was absence from duty without application or prior permission of the competent authority. The regular departmental inquiry was conducted and the petitioner also appeared before the inquiry officer where his statement was also recorded, so in all fairness this is not a case of simpliciter discharge on the ground of inefficiency. The right of appeal or representation is provided under Section 21 of the Punjab Civil Servants Act, 1974 which enunciates that where a right to prefer an appeal or apply for review in respect of any order relating to the terms and conditions of his service is allowed to a civil servant by any rules applicable to him, such appeal or application shall, except as may otherwise be prescribed, be made within sixty days of the Communication to him of such order and if no provision for appeal or review exists in the rules in respect of any order, a civil servant aggrieved by any such order may, except where such order is made by the Governor, within sixty days of the communication to him of such order, make a representation against it to the authority next above the authority which made the order. Provided that no representation shall lie on matters relating to the determination of fitness of a person to

hold a particular post or to be promoted to a higher post (emphasis supplied).

7. In juxtaposition, Section 4 of the Punjab Service Tribunals Act, 1974, provides that any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal, whichever is later prefer an appeal to the Tribunal. This Section *inter alia* provides that where an appeal, review or representation to a departmental authority is provided under the Punjab Civil Servants Act, 1974, or any rules, against any such order no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal of application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was so preferred (emphasis supplied).

8. We are sanguine that no right of appeal against the discharge from service is provided under Rule 12.21 of the Police Rules, 1934 but at the same time, we cannot ignore the niceties of Section 21 of the Punjab Civil Servants Act, 1974 wherein it is clearly spelled out that if no provision for appeal or review exists, a civil servant aggrieved by any such order may make a representation to the authority next above the authority which made the order. Likewise, the nitty-gritties of Section 4 of the Punjab Service Tribunals Act, 1974 are also very noteworthy which explicate that where an appeal, review or representation to a departmental authority is provided under the Punjab Civil Servants Act, 1974, or any rules, against any such order no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal of application for review or representation to such departmental authority. The petitioner filed the departmental appeal and was only nonsuited on the ground that no appeal lies against the discharge, but the departmental authority failed to consider that against the order of discharge, representation was maintainable. The departmental Authority should have seen the pith and substance of the grievance lodged by the petitioner rather than focusing solely on the nomenclature of the representation. Even mentioning an incorrect provision of law does not debar or relieve the competent authority from

examining the case according to the remedy provided under the law to an aggrieved civil servant. The entire emphasis of the learned Tribunal was on the fact that, instead of filing a service appeal, the petitioner filed a departmental appeal before the DIG of Police, Operations, Lahore which was not appealable before the departmental authorities in terms of Rule 12.21 of the Police Rules, 1934, hence the departmental appeal was consigned to record being not maintainable *vide* order dated 04.02.2020. While making this observation both the departmental authority and the learned Tribunal failed to take into account that if a right of appeal or review was not provided in the aforesaid Rule then, in unison, it does not debar or prohibit the civil servant from electing the remedy of filing a representation as of right, which could not be turned down on hyper-technical grounds but should have been decided on merits, rather than rejecting it being non-maintainable as an appeal instead of representation. The doctrine of *Ex debito justitiae* refers to the remedies to which a person is entitled as a matter of right as opposed to a remedy which is discretionary. The legal maxim "*Ex Debito Justitiae*" (Latin) means "as a matter of right or what a person is entitled to as of right". This maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act *ex debito justitiae* is an inherent power of courts to fix procedural errors.

9. To enjoy the protection of law and to be treated in accordance with the law is the inalienable right of every citizen. The purposefulness of Article 4 of the Constitution is to ascribe and integrate the doctrine of equality before law or equal protection of law, and no action detrimental to the life and liberty of any person can be taken without due process of law. Public functionaries are supposed to execute and perform their duty in good faith, honestly and within the precincts of their legally recognized powers so that the person concerned may be treated in accordance with law. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, explain and contest the claims against him before he is found guilty and condemned. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any

departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-defined, just, right and understandable, therefore it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principles of natural justice. In the case of Tariq Aziz-ud-Din, Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 14309-G of 2009 (2011 PLC (C.S.) 1130), this Court held that all judicial, quasi-judicial and administrative authorities must exercise power in a reasonable manner and also must ensure justice as per spirit of law and instruments regarding exercise of discretion [Ref: Delhi Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101 and Mansukhlal Vithaldas Chauhan v. State of Gujarat 1997(7) SCC 622].

10. The aforesaid Civil Petition was fixed for hearing on 05.10.2023, when it was converted into appeal and allowed *vide* our short order as under:-

“For reasons to be recorded later, this petition is converted into an appeal and allowed. The impugned judgment is set aside and the matter is remanded to the appellate authority where petitioner’s appeal dated 20.09.2019 shall be deemed to be pending, which shall be treated as Representation under Section 21 (2) of the Punjab Civil Servants Act, 1974, and the same shall be decided strictly in accordance with law after due notice to the parties.”

Above are the reasons assigned in support of our short order.

Judge

Judge

Islamabad  
5<sup>th</sup> October, 2023  
Khalid  
Approved for reporting.