

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO. 1066 OF 2022

(Against the Judgment dated 28.01.2022
passed by Federal Service Tribunal,
Islamabad in Appeal No. 848 (P) CS/2019)

Rahimullah Khan

...Petitioner

VERSUS

Deputy Postmaster General, Southern Postal Region, Khyber
Pakhtunkhwa and others

...Respondents

For the Petitioner: Mr. Misbah Ullah Khan, ASC

For Respondents: Malik Javed Iqbal Wains, Add.AGP
Mr. Shahid Akhtar, D.S. Kohat

Date of Hearing: 24.11.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the judgment dated 28.01.2022 passed by the Federal Service Tribunal, Islamabad ("Tribunal"), in Appeal No. 848 (P) CS/2019, whereby the appeal filed by the petitioner was dismissed.

2. According to the short-lived facts, the petitioner was appointed as a postman (BPS-5) but was subsequently promoted as a Clerk (BPS-7). During the employment, his post was upgraded from BPS-7 to BPS-9. On attaining the age of superannuation, the petitioner was retired from service on 18.05.2015. Two different orders of the Tribunal dated 25.05.2016 and 26.05.2016 are available in the paper-book, passed by the same Tribunal in two appeals of the very same petitioner. The chronological events demonstrate that in Appeal No. 791 (P) CS/2013, the Tribunal modified the order of removal of service of the petitioner to stoppage of two increments for a period of two years without cumulative effect. As a consequence thereof, the impugned orders were set aside and the petitioner was reinstated into service with consequential back benefits. While the same Tribunal, on the very next

day, *vide* its order dated 26.05.2016, in Appeal No. 789 (P) CS/2013, allowed this appeal and also modified the penalty of withholding two steps increment for two years into one increment for one year only. The present grievance of the petitioner is that after four years of retirement, the respondent department issued the impugned order dated 14.02.2019, whereby the intervening period with effect from 01.09.2013 to 17.05.2015 was treated without leave, which was not adverted to by the Tribunal and his appeal was dismissed *vide* the impugned judgment.

3. The learned counsel for the petitioner argued that the petitioner had filed Miscellaneous Petition No.1122/2019 in Appeal No. 789 (P) CS/2013 before the Federal Service Tribunal for the implementation of the judgment dated 26.05.2016, but the Tribunal, *vide* its order dated 05.11.2019, disposed of the application, stating that the petitioner may challenge the said order before the competent legal forum. It was further contended that in the initial judgment, the Tribunal reinstated the petitioner into service with consequential back benefits, but the respondent department, even then, treated the above-stated intervening period as without leave, which is illegal. It was further averred that the Tribunal, while passing the impugned order, failed to consider that the department was legally bound to implement the judgment of the learned Tribunal dated 25.05.2016 in its true spirit and was liable to pay the pensionary benefits of the intervening period w.e.f. 01.09.2013 to 17.05.2015 to the petitioner. He further argued that the petitioner served the department during this intervening period for three years and was reinstated into service with all back benefits; hence, the department cannot penalize him after retirement. He further argued that the discretion exercised by the authority *vide* order dated 14.02.2019 was illegal.

4. The learned Additional Attorney General of Pakistan argued that the Tribunal had modified the major penalty of removal from service into a minor penalty of stoppage of two increments without cumulative effect. He further argued that though the petitioner was reinstated into service with all the consequential back benefits, no order was passed with regard to the intervening period; therefore, the department decided the question of the intervening period as per relevant rules and rightly withheld the benefits of the intervening period.

5. Heard the arguments. The nucleus of the impugned judgment passed by the Federal Service Tribunal depicts that the appeal of the petitioner was found to be hit by the doctrine of *Res Judicata*, with the rider that the issue of the intervening period was considered in the Tribunal's order dated 25.05.2016, which was not challenged by the petitioner in this Court. It was further observed by the Tribunal that in a fresh appeal, it cannot enlarge the scope or reinterpret a matter already decided, and since the petitioner was not acquitted honorably but the major penalty was modified to a minor penalty, hence as per F.R. 54 (b) of the Fundamental Rules, it was the jurisdiction of the authority to decide upon such portion of pay and allowances. It was further observed by the Tribunal that there is no provision of second departmental appeal in the law.

6. It is an admitted position that the petitioner reached the superannuation age and was retired from service with effect from 18.05.2015. The bone of contention is the letter dated 14.02.2019 issued by the Office of Divisional Superintendent Postal Service Kohat, which is reproduced as under:-

“OFFICE OF THE DIVISIONAL SUPERINTENDENT POSTAL SERVICES KOHAT

No. F-5/FST/Rahimullah Dated at Kohat the, 14-02-2019

SUBJECT: DECISION/BIFURCATION OF INTERVENING PERIOD IN RESPECT OF MR. RAHIMULLAH KHAN, EX-POSTAL CLERK KOHAT POSTAL DIVISION NOW RETIRED FROM SERVICE W.E.F 18-05-2015.

The intervening period in respect of Mr. Rahimullah Khan, Ex-Postal Clerk Kohat Division now retired from service w.e.f 18-05-2015, for the period from 01-09- 2013 to 17-05-2015 is hereby decided as under in accordance with FR-54 (a) as the ex- official i.e. Mr. Rahimullah Khan, was not honourably acquitted by the FST Islamabad vide its judgment dated 25-05-2016 passed in appeal No. 791 (P) CS/2013 major penalty of Removal from Service served upon him vide this office judgment memo No. F-5/55/M. Zai dated 30-08-2013 was converted into minor penalty of stoppage of two Increments for two years without cumulative effect.

S #	Period		Treated as
	From	To	
1	01.09.2013	17.05.2015	Without pay

Sd/-
Divisional Superintendent
Postal Service Kohat”

7. The main reliance was made by the department on the niceties of F.R. 54 (a) with the justification that the petitioner was not honourably acquitted by the Tribunal *vide* order dated 25-05-2016 passed in Appeal No. 791 (P) CS/2013, therefore the period of service from 01.09.2013 to 17.05.2015 should be considered without pay.

8. The Fundamental Rules came into effect from 1st January, 1922, and the said Rules are applicable, subject to the provisions contained in its Rule 3, to all government servants who are subject to the rule-making powers of the president and whose pay is debitable to the civil estimates, and to any other class of government servants to which the president may, by general or special order, declare to be applicable. For ease of convenience, F.R. 54, substituted by S.R.O 718 (I)/1993, dated 02.08.1993, made effective from 30.06.1993, is replicated as under:-

"F.R. 54- Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty-

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising appellate authority so directs.

Explanation.- In this rule, "revising authority" means the "authority" or "authorised Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal".

9. The minutiae of F.R. 54 explicates that in the situation where a dismissed government servant is reinstated, the revising or appellate authority may grant his pay to him for the period of his absence from duty. Seemingly, the letter in question refers to F.R. 54 (a), which emphasizes that if such a government servant is honourably acquitted, he shall be granted the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal. In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. According to the explanation attached to this Rule, the "revising

authority" means the "authority" or "authorised Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal.

10. At this juncture, it is quite pertinent to have a look at the definition of "Authority" and "Authorised Officer". According to the definitions provided under Rule 2 of the Government Servants (Efficiency and Discipline) Rules, 1973, the "authority" means the appointing authority prescribed in Rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, provided that in the case of disciplinary proceedings already initiated against a government servant before 14th June, 2000, the powers of the "authority" shall be exercised by the officer designated as such before the aforesaid date. Whereas "authorised officer" means an officer authorised by the authority to perform the functions of an authorised officer under these rules or, if no officer is so authorised, the authority. Even otherwise, the niceties of F.R. 54 enlightens that in the case of reinstatement of dismissed or removed employee, only the revising or appellate authority may grant him his pay for the period of his absence from duty, and if he is honourably acquitted then, the full pay to which he would have been entitled to, and his period of absence from duty will be treated as a period spent on duty. Though this Rule is not germane to the present controversy, but at the same time, it is a ground reality that neither the respondents placed anything on the record to show that the Divisional Superintendent, Postal Service Kohat, was actually the revising or appellate authority, nor any document was submitted to show that he was authorised to issue any such letter or take any such decision in the capacity of a revising or appellate authority under the exactitudes of F.R. 54.

11. The petitioner was deprived of his pay for the intervening period, from 01.09.2013 to 17.05.2015, in view of F.R. 54 (a) merely on the ground that he was not honourably acquitted by the Tribunal, and the major penalty was modified in view of the judgment passed on 25.05.2016 in Appeal No. 791 (P) CS/2013. Still, in tandem, the department is ignoring that the same Tribunal in the same judgment also set aside the impugned orders, and the petitioner was reinstated into service with consequential back benefits. In another judgment in

the case of the same petitioner by the same Tribunal on the very next date, i.e., 26.05.2016, in Appeal No. 789 (P) CS/2013, the major penalty of withholding of two steps increment for two years without future effect was modified into withholding one increment for one year only. However, in the judgment dated 25.05.2016, the reinstatement order was passed with consequential back benefits, which order is in the field. There is a marked distinction between criminal cases and service matters. The petitioner was not indicted by the Tribunal in any criminal case or offence; rather, the decision was rendered on the appeals of the petitioner, whereby he challenged the order of the departmental authority and not the order or judgment of any court of law trying the offence under criminal or penal laws. Therefore, in the present set of circumstances, the question of honourable acquittal or conviction does not arise. Furthermore, when the Tribunal has passed the reinstatement order with consequential back benefits, then, in this particular situation, the revising or appellate authority cannot undo or make ineffective the order or judgment passed by the Tribunal for the payment of consequential back benefits. The penalty imposed on the petitioner was only confined to withholding of an increment for a certain period, which does not otherwise mean to withhold his pay for the period he actually rendered his services to the department, and the principle of "no work, no pay" is not applicable when consequential back benefits have been accorded by the Tribunal.

12. The Civil Service Regulations are premeditated to define the conditions under which salaries, leaves, pension, and other allowances are earned by the employees in the service of the Civil Departments and the manner in which the perks are calculated. But at the same time, these regulations do not deal otherwise than indirectly and incidentally with matters relating to recruitment, promotion, official duties, and discipline. Since the intricacies of Article 417-A of the Civil Service Regulations ("C.S.R.") bear significance in addressing the controversy, therefore, it is reproduced as under:-

"417-A. If an officer, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty".

13. The petitioner retired on 18.05.2015 and the letter for withholding his emoluments from 01.09.2013 to 17.05.2015 was issued to him on 14.02.2019, whereas, under Article 417-A of the C.S.R., the pending disciplinary proceedings could not continue if the officer attains the age of superannuation before the completion of the inquiry. Therefore, in that context too, the pending proceedings if any were abated and there was no justification to issue the letter after considerable period of retirement for withholding the salary with retrospective effect which was totally unjustified and unwarranted. The two judgments of the Tribunal passed in two different appeals of the same petitioner on 25.05.2016 and 26.05.2016 are also mutually destructive and raised much confusion regarding the right decision of the department and even in the last judgment dated 28.01.2022, which is impugned before us in the present petition, the Tribunal failed to correctly touch on, reconcile, and distinguish its earlier two judgments in the case of the petitioner (Appeal No. 791 (P) CS/2013, decided on 25.05.2016 and Appeal No. 789 (P) CS/2023, decided on 26.05.2016), which in reality created much perplexity and misconception and also became a cause of concern due to its non-implementation in the right and appropriate manner.

14. As a result of the above discussion, this Civil Petition is converted into an appeal and allowed. The impugned judgment of the learned Federal Service Tribunal dated 28.01.2022 and the directions issued by the Divisional Superintendent, Postal Service Kohat, *vide* letter dated 14.02.2019 for withholding the pay of the petitioner are set aside, and he is entitled to be paid for the period mentioned in the letter dated 14.02.2019 accordingly.

Judge

Judge

Islamabad
24th November, 2023
Khalid
Approved for reporting.