BEFORE THE SINDH SERVICE TRIBUNAL AT KARACHI

PRESENT:
JUSTICE (R) SADIQ HUSSAIN BHATTI, CHAIRMAN
TARIQ MEHMOOD KHOSO, MEMBER
SHAHID ABDUL SALAM KHAN, MEMBER

APPEAL NO. 876 & 877 OF 2019

Khalid Pervaiz Joya
S/o Nazeer Hussain Joya, Muslim, Adult,
Former Sub-Inspector Now Head Constable
Sindh Police, Karachi Range,
Presently Posted at Police Headquarter,
Garden, Karachi R/o Police Headquarter,
Garden, Karachi, Sindh.....Appellant

VERSUS

1. The Inspector General of Police Sindh,
Central Police Office, I.I Chundrigar Road,
Karachi.

2. The Additional Inspector General of Police,
(Establishment & Training) Sindh, C.P.O
I.I Chundrigar Road, Karachi.

3. The Additional Inspector General of Police,
Karachi Range, having office at K.P.O
Near Saddar Police Station, Karachi.....Respondents

-:-:-:-:-:-:-:-:-:-:-:-

Date of hearing: 11.10.2024

Date of Judgment: 29.10.2024

-:-:-:-:-:-:-:-:-:-:-:-

Ms. Sana Junjhi, advocate for the appellant.
Mr. Ahmed Khan Khaskheli, A.G. alongwith PDSP Juma Din and PI Muhammad Yasin for the respondents.

-:-:-:-:-:-:-:-:-:-:-:-

JUDGMENT

TARIQ MEHMOOD KHOSO, MEMBER:

By this common judgment we propose to dispose of the above captioned two Service Appeals filed by the same appellant being aggrieved by and dissatisfied with the impugned original orders dated 30.12.2015 and 11.12.2017, passed by respondent No.03, and the appellate order dated 14.03.2019, passed by respondent No.2, the appellant has preferred the instant appeals.

2. Brief facts of these appeals are that while being posted at P.S. Kalri District City, Karachi, the appellant alongwith another Sub-Inspector was reverted from the rank of Sub-Inspector to A.S.I. and placed under suspension vide order dated 30.12.2015, by the respondent No.03. Later on the appellant was served with show cause and final show cause notices dated 06.01.2016 and 30.10.2017, issued by the Respondent No.3 under The Removal from Service (Special Powers) Sindh Ordinance, 2000 (herein after referred to as RSO-2000) with statement of allegations that as per enquiry conducted by Shabbir Mustafa Rajput and re-enquiry conducted by Mr. Adeel Hussain Chandio, SP Investigation-I, South Zone, Karachi, while he was posted at PS Kalri, registered false FIR Nos [redacted] The appellant refuted the allegations through his reply. Thereafter the appellant was awarded major punishment of Reduction in Rank from ASI to HC vide order dated 11.12.2017 by respondent No.03. The departmental appeal preferred before the respondent No.1 was rejected vide order dated 14.03.2019. Then the appellant filed the instant service appeals on 28.10.2019.

3. The respondent Nos.1 & 2 have filed their joint written statement, whereas respondent No.3 has filed separate written statement. The respondents in their written statements have narrated the same facts which need not to be repeated. It is further averred that on the directions of Respondent No.03, Mr. Adeel Hussain Chandio, PSP the then SP Investigation South conducted enquiry, against the appellant and submitted his findings that appellant was found guilty of registration of false FIRs. On the basis of recommendations of the enquiry officer, the appellant was awarded the major punishment. His departmental appeal was also rejected. It is also mentioned that Anti-Terrorism Court No.V Karachi, acquitted the accused from the subject cases vide judgment dated 16.05.2016 and notice u/s 27(aa) of Anti-Terrorism Act 1997 & u/s 193 PPC was issued against the appellant.

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4. The learned counsel for the appellant has contended that original and appellate Orders are illegal, void ab-initio against the law, and rules; the appellant has been vexed twice for the same offence as firstly he was reverted from the rank of S.I. to ASI and then was awarded major punishment of Reduction in Rank from ASI to HC, which is violative of Article 13 of the Constitution of Islamic Republic of Pakistan, 1973; while awarding punishment of Reduction in Rank the period has not been specified; the challan of the FIR No. [redacted] was submitted in the Court by S.I.O. Zakaullah Sangi which was accepted by the Court, at the trial the witnesses supported the prosecution case. The subsequent investigation was assigned to Inspector Ghulam Mustafa for reinvestigation who filed vague report in the trial Court for disposal of the case under "B" Class but the same was dismissed by the trial Court vide order dated 19.02.2016. During re-investigation the I.O. did not take the notice of FIR No. [redacted] wherein accused Kamran Lassi was murdered alongwith 3 others; the allegations of Show Cause Notice regarding non-availability of some entries in KOT Register is incorrect but presently the appellant has no access to approach the P.S. and get the copies of the same; the allegations against the appellant in Show Cause Notice required evidence to be proved by holding a Regular Departmental Enquiry but the appellant has been deprived. The Honourable Supreme Court of Pakistan, in a case of Muhammad Haleem & others Vs. General Manager (Operations) Pakistan Railways Head Quarter, Lahore and others reported at 2009 SCMR 339 held that when initial order or act relating to initiation of proceedings was contrary to law and illegal then all subsequent proceedings and actions taken thereon would have no legal basis and will fall. He has supported his arguments citing the case laws reported as 2016 PLC (C.S.) 1102, 2005 PLC (C.S.) 411, 1988 SCMR 1696, 2022 SCMR 745, 2010 SCMR 532, PLD 1971 SC 124, 2003 SCMR 207, 1984 PLC (C.S.) 1234, 1997 SCMR 1543, 2009 PLC (C.S.) 650, 2004 PLC (C.S.) 959 and

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order dated 30.06.2020 passed by Honourable Supreme Court of Pakistan in Civil Appeal No.158-L of 2011.

5. The learned Assistant A.G. has contended that on the misconduct report appellant was reverted from the Rank of officiating Sub Inspector to his substantive rank of ASI and was placed under suspension which cannot be challenged through departmental appeal; after the recommendations of the enquiry officer and judgment dated 16.05.2016 of Honorable Anti-Terrorism No. V Karachi, the allegations were proved against the appellant, the Competent Authority awarded major punishment of Reduction in Rank from ASI to HC. The instant appeal merits no consideration which is liable to be dismissed.

6. Perusal of the record shows that the appellant while serving as officiating Sub-Inspector was reverted to his substantive rank of ASI vide order dated 30.12.2015 by respondent No.03. It is settled law that reversion to substantive rank is not a punishment. Hence, cannot be challenged through a departmental and a service appeal. Neither RSO-2000 nor the Sindh Police (Efficiency & Discipline) Rules, 1988, define reversion from officiating rank to substantive rank as a punishment nor provide any appeal there against. Therefore, Service Appeal No.877 of 2019 against the order of reversion to substantive rank is not maintainable.

7. The show cause notice dated 06.01.2016 was issued against the appellant on the allegations that as per report of SP Investigation-II, West Zone, Karachi dated 28.12.2015, an enquiry conducted by Inspector Shabbir Mustafa Rajput in FIR N[redacted], PS Kalri, in which it was established that the appellant registered false FIR. As per Kot register of the PS, there was no evidence of using Government SMG or ammunition, according to FIR, Station Diary entry of PS Kalri is also silent about using of Government SMG or ammunition. One Hussain Buksh Kaka was falsely implicated in the said FIR. That show cause notice was replied by the appellant. Afterwards, a final show cause notice was issued, containing additional allegations that an enquiry was conducted by Adeel Hussain

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Chandio, SP Investigation-I, South, Karachi, who submitted his findings that the appellant was found guilty of registering FIR Nos [redacted] 2015 of PS Kalri, by making a fabricated story and falsely nominating the accused, which was also replied by the appellant. The enquiry conducted by Inspector Shabbir Mustafa Rajput is produced by the respondent No.03 alongwith his written statement, who concluded in his enquiry that neither a police encounter taken place nor accused Daniyal @ Dani was arrested from the spot. Alleged recovery of weapon and hand grenade from accused was false. From the Kot register it was found that no round was fired from the SMG. Station Diary also does not show firing from the SMG. It was a concocted story: Accused Hussain Buksh Kaka was falsely nominated and SIP Khalid Pervaiz Joya (the present appellant), being complainant of the FIR, then SHO/SIP Abdul Moeed, PC Rafiq were responsible. The enquiry report dated 05.09.2016, of the enquiry conducted by Adeel Hussain Chandio, SP, Investigation-I, South, Karachi, has also been produced who concluded as under:

> *"1- That there was a dispute over land between PC M. Rafiq and the applicant. PC M. Rafiq in collaboration with ASI Abdul Moeed, then SHO Kalri PS and ASI Khalid Pervaiz malafidely implicated the name of Hussain Bux Kaka in the above mentioned case in order to gain undue advantage in the land dispute.*
>
> *2- On the other hand, mother of arrested accused Daniyal Hussain had also filed Constitution Petition No.1377 of 2015 on 14-03-2015 before the Honorable High Court of Sindh regarding missing of her son. After filing petition, the apprehension of Daniyal Hussain on 19-03-2015 also becomes suspicious.*
>
> *3- In the light of statements of PWS Insp. Zakaullah Sangi, submitted report U/S 173 Cr.P.C. in the court of law. Later on, real facts came on record but the investigation was transferred to other unit."*

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Thus, he recommended for necessary departmental action against Sub-Inspector Abdul Moeed SHO PS Kalri, SI Khalid Pervaiz (the appellant) of PS Kalri and PC Rafiq of PS Baghdadi.

8. The criminal cases emanating from the FIRs lodged by the appellant bearing FIR N[redacted] were jointly tried by learned Anti-Terrorism Court No.V, Karachi and accused Daniyal Hussain and Hussain Buksh Kaka were acquitted vide judgment dated 16.05.2016. In the said judgment, it was concluded by the learned trial court that case(s) were false and the accused persons have been challaned malafidely, hence, notices u/s 27(aa) of Anti-Terrorism Act, 1997 and Section 193 PPC be issued against IO Inspector Zakaullah, Complainant SIP Khalid Pervaiz Joya (the present appellant) and witnesses and copy of the said judgment was sent to the Home Secretary for approval of prosecution of these officials. No doubt it is settled law that without holding a regular enquiry major punishment cannot be imposed against a civil servant but where sufficient documentary evidence is available non-holding of regular enquiry is of least significance. In view of consistent findings of the enquiry officers Inspector Shabbir Mustafa Rajput, SP Adeel Hussain Chandio and the Anti-Terrorism Court regarding the FIRs being false, the story being concocted and the accused being falsely implicated, we are of the view that there was sufficient material to connect the present appellant with commission of the alleged misconduct.

9. However, we are also mindful of the fact that a major punishment of Reduction in Rank or Reduction in Pay should be time bound and these cannot operate indefinitely in view of Fundamental Rule, [illegible]. Since we have come to the conclusion that the major punishment was awarded to the appellant on the basis of sufficient material, therefore, the matter cannot be remanded solely on the ground that the period of effectiveness of major punishment of Reduction in Rank has not been specified in the original order. In this regard reliance is placed on the judgment of Honourable Supreme Court dated 30.06.2020, passed in Civil

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Appeal No.158-L of 2011, in case of Mirza Aamer Hassan v. Commissioner of Income Tax, etc. We may also observe that in view of the aforesaid judgment of the Honourable Supreme Court of Pakistan, IGP Sindh had circulated a guideline through circular dated 28.12.2023, whereby he made it clear that if the period of reduction to the lower rank is not specified in the order it shall have effect up to three years.

10. The remaining case laws cited by the learned counsel for the appellant are distinguishable from the facts and circumstances of the present case.

11. In view of above discussion Service Appeal No.877 of 2019 is dismissed and Service Appeal No.876 of 2019 is partly allowed and the period of punishment of Reduction in Rank is specified as three years. Since the original order was passed against the appellant on 11.12.2017 and the period of three years has already been completed on 11.12.2020, hence, the appellant is directed to be restored to his substantive rank from 12.12.2020 and onwards with all consequential benefits.

Pronounced in open Court on this 29th day of October, 2024.

Sd/-
(JUSTICE (R) SADIQ HUSSAIN BHATTI)
CHAIRMAN

Sd/-
(TARIQ MEHMOOD KHOSO)
MEMBER

Sd/-
(SHAHID ABDUL SALAM KHAN)
MEMBER

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