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. 541 OF 2022

MUZAMMIL SHAH
S/o. Meer Zahid, Muslim, adult,
Ex-Police Constable in Sindh Police,
Lastly posted at PS Gizri, District South,
[redacted]
Karachi. .....Appellant

VERSUS

1. The Deputy Inspector General of Police,
South Zone,
Karachi, and

3. The Superintendent of Police,
District South
Karachi .....Respondents

Date of hearing: 14.04.2025.
Date of Judgment: 29.04.2025.

Ms. Sana Junjhi, advocate for the appellant.
Mr. Asif Hussain Mangi, Addl. A.G for the respondents.

SINDH SERVICE TRIBUNAL KARACHI

JUDGMENT

JUSTICE (R) SADIQ HUSSAIN BHATTI, CHAIRMAN:

This appeal, filed under section 4 of the Sindh Service Tribunals Act, 1973, is directed against the order dated 18.07.2022, whereby the appellant was awarded major penalty of dismissal from service by respondent No.2, and

order dated 29.09.2022, whereby his departmental appeal was dismissed by respondent No.1.

2. The facts of case, as narrated in the memo of instant appeal, are that the appellant, while performing his duties with SSP Mian Jamshed Inamullah, was dismissed from service on account of his alleged unauthorized leave for a period of 716 days, without issuing him any show-cause notice or final show cause notice and without holding any regular inquiry.

3. Learned counsel for the appellant submitted that the impugned original and appellate orders are illegal and void ab-initio and are not sustainable under the law; that no reasonable chance of defense was provided to the appellant during departmental proceedings which, per the learned counsel, is fundamental right of the appellant as guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; that the appellant was not absent from duty but, in fact, he was performing his duties as Gunman of SSP Mian Jamshed Inamullah under the orders of the concerned SSP. In this regard he referred to Annexures "D" and "E" to the memo of appeal (pages17 and 19 respectively).

4. The respondents, through their written statements, have submitted that show-cause notice dated 10.08.2020 was issued to the appellant which was not replied by him. Final show-cause notice dated 28.05.2021 was issued to the appellant which was also not responded by him.

SINDH SERVICE TRIBUNAL • KARACHI •

Thereafter, vide final order dated 18.07.2022 he was dismissed from service by respondent No.2.

5. The learned A.A.G. has contended that the appellant was awarded major punishment of dismissal from service on the charge of prolonged absence from duty from 01.05.2020 to 18.07.2022 (716 days). The appellant also failed to submit any reply to the show-cause notices issued to him. He preferred a departmental appeal which was considered and rejected by respondent No.1 as he was a habitual absentee.

6. We have heard the learned counsel for the appellant and the learned AAG for the respondents and have also perused the record.

7. The sole allegation against the appellant was that he remained absent from duty for 716 days i.e. for almost two years without any intimation and prior permission. In para 2 of the memo of appeal the appellant has claimed that "while posted at PS Gizri South the appellant was deputed by the SSP South to perform duties as Gunman of SSP Mian Jamshed Inamullah". Respondent No.1 in his Written Statement has responded to paras 1-4 (which includes para 2) as under

SINDH SERVICE TRIBUNAL KARACHI

"Para No. 01 to 04:

"The contents of these para are formal. Hence needs no comments.

Respondent No.2, in response to contents of para 2 has stated "No comments". The contents of para 2 are not

formal. On the contrary, para 2 rebuts the allegation that the appellant was absent from duty without any intimation and prior permission. Learned counsel for the appellant submitted that since the above allegation of fact has not been denied specifically, therefore, the same stands admitted. Reliance was placed on the case of Bashir Ahmed & others versus Muhammad Aslam and others (2003 SCMR 1804) wherein, while elaborating the requirements of Order VII, Rules 3, 4 and 5, CPC, the Hon'ble Apex Court held that denial in written statement must be specific and not evasive and that every allegation of fact if not denied specifically or by necessary implication would be taken to be admitted unless the Court may, in its discretion, require any fact so admitted to be proved otherwise than by such admission. In view of the above, we are of the view that the respondents have not denied the contents of para 2 specifically which stands admitted by them.

8. Learned counsel for the appellant also submitted that the appellant was duly performing his duty as Gunman to SSP Mian Jamshed Inamullah and invited our attention to para 4 of the memo of appeal wherein it has been stated that earlier a show cause notice dated 17.10.2018 was issued to him on the same ground that he was absent from duty from 29.09.2018, however, when the matter was brought before SP Suhai Aziz of Clifton Division South, he made the following observations:

SINDH SERVICE TRIBUNAL KARACHI

"However, it has been informed by the office of the worthy Senior Superintendent of Police District South Karachi that he is performing duty with SSP Mian Jamshed Inamullah. Hence above notices are hereby filed. His absence period w.e.f. 13.09.2018 to date is hereby treated as leave of kind due."

9. The above observations are contradictory as in case the appellant was performing his duty as Gunman with SSP Jamshed Inamullah then why the period "w.e.f. 13.09.2018 to date" was treated as leave of kind due. However, one thing is clear that the appellant was performing his duty and the show-cause notice issued to him was filed.

10. In view of above, we are of the opinion that the respondents have not been able to prove that the appellant was absent from duty for 716 days without any permission or intimation.

11. Apart from above, in para 3 of the memo of appeal, the appellant has claimed that he was dismissed from service without serving any show-cause notice or final show-cause notice on him. In response to para 3, the respondent No.2 has stated that show-cause notice dated 10.08.2020 as well as final show-cause notice dated 28.05.2021 were issued to the appellant but he has not placed on record a duly received copy of the said show-cause notices to prove that the same were actually served upon the appellant.

SINDH SERVICE TRIBUNAL KARACHI

12. It was also argued by learned counsel for the appellant that no regular inquiry was conducted before awarding major punishment of dismissal from service to the appellant. In this regard learned counsel relied on the

case of Sr. Superintendent of Police (Operations) and others Vs. Shahid Nazir (2022 SCMR 327), wherein the Hon'ble Supreme Court of Pakistan held that there is no hard and fast rule that in each and every case after issuing show-cause notice a regular inquiry should be conducted but if the department wants to dispense with the regular inquiry there must be some compelling and justifiable reasons assigned in writing. We have examined the show-cause notice dated 10.08.2020 which states, "I am satisfied that the nature of allegation is such that no formal enquiry is necessary..." which, to say the least, is not sufficient reason for dispensing with holding a regular inquiry.

13. We are of the view that an authorised officer has discretion to decide, whether in a disciplinary proceeding against a civil servant a regular inquiry should be held or not. The above discretion is not controlled by any precondition or guideline but nevertheless this discretion, like all other discretions, is to be exercised fairly and reasonably and not arbitrarily or capriciously with the object to deny the civil servant the right of fair defence. So, if the charge is founded on admitted documents/facts no full-fledged inquiry is required but if the charge is based on disputed questions of fact, a civil servant cannot be denied a regular inquiry, as the same cannot be resolved without recording evidence and providing opportunity to the parties to cross-examine the witnesses.

SINDH SERVICE TRIBUNAL KARACHI

14. In the present case, once the allegation of absence was denied by the appellant, there was no justification in dispensing with the regular inquiry by the competent authority as such disputed question of fact could not be resolved without recording evidence.

15. In view of the above, this appeal is allowed and the impugned Orders dated 18.07.2022 and 29.09.2022 are hereby set aside. The appellant is reinstated in service with full back benefits. Parties to bear their own costs.

Pronounced in open Court on this 29th day of April, 2025.

Sd/-
(JUSTICE (R) SADIQ HUSSAIN BHATTI)
CHAIRMAN
Sd/-
(TARIQ MEHMOOD KHOSO)
MEMBER
Sd/-
(SHAHID ABDUL SALAM KHAN)
MEMBER

SINDH SERVICE TRIBUNAL KARACHI

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