

2023 S C M R 770

[Supreme Court of Pakistan]

Present: Sardar Tariq Masood, Amin-ud-Din Khan and Muhammad Ali Mazhar, JJ

ALLAH DITTA---Petitioner

Versus

DEPUTY POSTMASTER GENERAL (ADMN.), OFFICE OF THE POSTMASTER GENERAL, NORTHERN PUNJAB CIRCLE, RAWALPINDI and another---Respondents

Civil Petition No. 2602 of 2019, decided on 5th October, 2022.

(Against the judgment dated 20.05.2019 passed by Federal Service Tribunal, Islamabad in Appeal No.2321(R)CS of 2016)

(a) Civil service---

---Fraud and misappropriation of public money---In a case of proven fraud and misappropriation of public money, the delinquent cannot be exonerated--- Embezzlement of public money cannot be treated as misconduct of a minor nature.

(b) Civil service---

---Fraud and misappropriation of public money---Long term of service is no ground for conversion of punishment of dismissal from service into compulsory retirement---If such type of leniency is shown in the heinous matters of misappropriation of public money or public funds, then it will amount to giving a license to all such civil servants to first join service, then serve at considerable length and commit crimes or misconduct at the verge of retirement without any fear of disciplinary proceedings, but with the confidence and assurance that the dismissal order from service will be converted into compulsory retirement by the competent authority or court by taking a lenient view.

(c) Civil service---

---Fraud and misappropriation of public money---Accused refunding the misappropriated amount---Not a mitigating factor to reduce quantum of punishment---Civil servant has no justification for claiming lenient treatment (in the matter of his punishment) merely for the reason that he refunded the misappropriated amount, which does not vitiate the gross misconduct of misappropriation, nor can this be treated as mitigating circumstance.

Ch. Afrasiab Khan, Advocate Supreme Court for Petitioner.

Malik Javed Iqbal Wains, Additional A.G.P. and M. Hafeez ur Rehman, Dept. Rep. for Respondents.

Date of hearing: 5th October, 2022.

JUDGMENT

MUHAMMAD ALI MAZHAR, J.---This civil petition for leave to appeal is directed against the judgment dated 20.05.2019, passed by the learned Federal Service Tribunal, Islamabad ("Tribunal"), in Appeal No. 2321(R)CS/2016, whereby the service appeal of the petitioner was dismissed.

2. In fact the petitioner was performing his duties as Postmaster in BPS-9 at Diwalian Post Office, Chakwal Division. He was served a show cause notice on 04.05.2016, wherein allegations of misappropriation in the sum of Rs. 17,43,591/- through bogus withdrawals after securing signatures of account holders were levelled against him. In the charge-sheet, the account numbers along with the names of account holders whose amounts were misappropriated are also mentioned. After the show cause notice, a regular inquiry was conducted against the petitioner wherein he was found guilty and was dismissed from service. The petitioner had challenged his dismissal order issued on 30.06.2016 under the Government Servants (Efficiency and Discipline) Rules, 1973. The departmental appeal filed by the petitioner against the dismissal order was also rejected by the competent authority on 09.11.2016.

3. The learned counsel for the petitioner argued that the impugned judgment of the Tribunal is based on misreading and non-reading of evidence. It was further contended that the penalty of dismissal from service was too harsh. The petitioner had rendered a long service of 34 years to the department. He even made good the loss caused to the account holders by depositing the allegedly misappropriated amount even before the initiation of a formal inquiry against him. These were all mitigating circumstances that should have been taken into account while fixing the penalty against the petitioner. He also invited our attention to the order dated 28.07.2022, passed by this Court to show that the petitioner is not interested in challenging the dismissal order, rather he only prayed that the punishment of dismissal from service may be converted into compulsory retirement keeping in view his long tenure of service.

4. The learned Additional Attorney General of Pakistan argued that the punishment was imposed after proper inquiry in which the guilt of the petitioner was proved beyond any reasonable doubt. It was further contended that the learned Tribunal has also considered all relevant aspects and rightly dismissed the appeal as it did not find the case fit for conversion of punishment into compulsory retirement.

5. Heard the arguments. The record reflects that the petitioner was provided an ample opportunity of defence and due process of law was religiously followed. After finding him guilty on the basis of the inquiry report, the competent authority passed the dismissal order in accordance with law. The petitioner also admitted his guilt but tried to justify his illegal action of misappropriation of public money by claiming that he required money for his daughter's marriage, therefore the amount was misappropriated by him, which is by no means a justification to commit an offence and misappropriate public money. The right of personal hearing was also provided to the petitioner, and throughout the proceedings no mala fide intention, bias or malice was attributed to the inquiry proceedings.

6. The Court ordinarily would not substitute its own finding with that of the competent authority taken in the disciplinary proceedings unless it is found to be

unreasonable or against the law. The award of punishment is the function of the competent authority and the role of the Tribunal or Court is secondary. In case of fraud and misappropriation of public money, the responsible person cannot be let free or exonerated with a low degree of penalty. Merely for the reason that the petitioner served the department for 34 years is no justification to convert the punishment of dismissal from service into compulsory retirement. If such type of leniency is shown in the heinous matters of misappropriation of public money or public funds, then it will amount to giving a license to all such civil servants to first join service, then serve at considerable length and commit crimes or misconduct at the verge of retirement without any fear of disciplinary proceedings, but with the confidence and assurance that the dismissal order from service will be converted into compulsory retirement by the competent authority by taking a lenient view or else the same request will be made to the Court or Tribunal to convert the punishment into compulsory retirement under the garb of long length of service which is a dangerous idea and cannot be fortified or encouraged as it would seriously spoil the entire corpus and fabric of the civil servants service structure. The embezzlement of public money cannot be treated as misconduct of a minor nature which is also a matter of public confidence in public institutions that should not be depreciated or shaken. The petitioner was found guilty of misappropriation of Rs.17,43,591/- despite that, as a reward of proven misconduct, he is expecting or feels that he deserves the conversion of punishment into compulsory retirement. There is no justification for claiming this treatment merely for the reason that he refunded the misappropriated amount, which does not vitiate the gross misconduct of misappropriation, nor in the present facts and circumstances of the glaring misconduct, can this be treated as mitigating circumstances in the petitioner's blemished record of service. The doctrine of Mens rea refers to the intent or awareness of wrongdoing behind the crime and the criminal intent which means the criminal act must be voluntary or purposeful. The literal translation of this word from Latin is "guilty mind." It is apparent from the facts of the case that the petitioner misappropriated the public money purposely and consciously and also knowing that his act is an offence and intentionally and recklessly overlooked the considerable risk and jeopardy.

7. The learned counsel for the petitioner in support of his contention with regard to the conversion of dismissal into compulsory retirement cited the case of Sabir Iqbal v. Cantonment Board, Peshawar (PLD 2019 SC 189) which is somewhat distinguishable for the reason that it was a case of minor misconduct i.e. absence from duty only for one day and the Inquiry Officer in his report recommended that 1/4th amount of his monthly salary as fine but the authorized Officer dismissed him from service, but in the case in hand, the gravity of misconduct is much higher in which no latitude can be shown. The punishment of dismissal from service was quite proportionate to the act of misconduct and he does not deserve any indulgence for conversion.

8. As a result of above discussion, we do not find any illegality or perversity in the impugned judgment of the Tribunal. The petition is dismissed and leave is refused.

MWA/A-46/SC Petition dismissed.