

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Sayyed Mazahar Ali Akbar**Naqvi, JJ****Mirza AAMER HASSAN---Appellant****Versus****COMMISSIONER OF INCOME TAX and others---Respondents**

Civil Appeal No. 158-L of 2011, decided on 30th June, 2020.

(On appeal from the judgment of Federal Service Tribunal, Lahore dated 27.05.2020, passed in

Appeal No. 668(L)C.S/2001)

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 3(1)(e)(iii)---Fundamental Rules, R. 29---Major penalty of reduction/reversion to the lowest of the time-scale---Whether such penalty could be imposed without any specified time---Held, that major penalty of reduction/reversion to the lowest of the time-scale had to be time bound---Once the time was served the officer under penalty could revert to his original position or status in service.

Section 3(1)(e)(iii) of the Removal from Service (Special Powers) Ordinance, 2000 ('the Ordinance') did not specify any time as to how long the reduction to the lowest post or time scale or lower stage in time scale was to last. However Rule 29 of the Fundamental Rules clearly provided that any such major penalty had to be time-bound. Consistent practice of the Supreme Court over the years was to specify the time in such like penalties by placing reliance on Fundamental Rule 29.

Muhammad Sadiq v. Superintendent of Police and others 2008 SCMR 1296; Member (A.C.E. and S.T.) Federal Board of Revenue, Islamabad and others v. Muhammad Ashraf and 3 others 2008 SCMR 1165; Secretary Kashmir Affairs and Northern Areas Division, Islamabad v. Saeed Akhtar and another PLD 2008 SC 392; Government of Pakistan through Secretary, Establishment Division, Islamabad and others v. Muhammad Umer Morio 2005 SCMR 436 and Tanvir Ahmed v. Chief Secretary, Government of Punjab, Lahore 2004 SCMR 647 ref.

Major penalty of reduction to a lower post or pay scale or to a lower stage in a pay scale was not akin to the board game of Snakes and Ladders, relegating a civil servant to a lower position and making him rise up again. It was not the scheme of the penalty under the Ordinance that the officer after such reduction was to start all over again in the new position and rise up the ranks as if to re-live his service life again. This was not the purpose or the object of the major penalty. Such like penalties, by nature were time-bound, they were to punish an officer for the lapse committed and once the time was served, the officer under penalty could revert to his original position or status in service and stood restituted. A major penalty of reduction to lower position without specifying time not only defeated the object of the penalty but was also disproportionate with the lapse committed by the officer.

Sabir Iqbal v. Cantonment Board, Peshawar through Executive Officer and others PLD 2019 SC 189; Secretary to Government of the Punjab Food Department, Lahore and another v. Javed Iqbal and others 2016 SCMR 1120 and Muhammad Ali S. Bukhari v. Federation of Pakistan through Establishment Secretary, Islamabad and 2 others 2008 SCMR 214 ref.

Mian Muhammad Javaid, Advocate Supreme Court for Appellant.

Ibrar Ahmad, Advocate Supreme Court and Imtiaz A. Shaukat, Advocate-on-Record for Respondents.

Date of hearing: 30th June, 2020.

ORDER

SYED MANSOOR ALI SHAH, J.---Brief facts are that the appellant while working as Inspector in the Income Tax Department was proceeded against departmentally under The Removal from Service (Special Powers) Ordinance, 2000 ("Ordinance") on the allegations that there were persistent public complaints regarding harassment and corruption; inefficiency in the performance of his official duties

inspite of repeated warnings; failure to achieve budgetary targets; failure to furnish Annual Declarations of Assets and Liabilities; was appointed for extraneous political grounds in violation of the relevant rules. Vide order dated 26.05.2001 passed by the Competent Authority major penalty of reduction to the lowest of the time-scale was imposed upon the appellant. He filed a departmental appeal, which remained pending. As a consequence he filed an appeal before the Service Tribunal in terms of section 4 of the Service Tribunals Act, 1973, which was dismissed vide impugned judgment dated 27.05.2010. Leave was granted in this case on 24.05.2011 to consider whether the major penalty of reversion to the lowest of the time-scale can be without any specified time.

2. We have heard learned counsel for the parties. Section 3 (1), (e) (iii) reads as follows:

Section 3 Removal from Service.

(1)

(e)

(iii) reduction to a lower post or pay scale or to a lower stage in a pay scale.

The above provision does not specify any time as to how long the reduction to the lowest post or time scale or lower stage in time scale is to last. We, therefore, refer to Fundamental Rule 29, which provides as under:-

"F.R. 29. If a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade or post, or to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent."

The above Rule clearly provides that any such major penalty has to be time-bound. It has been the consistent practice of this Court over the years to specify the time in such like penalties by placing reliance on F.R. 29. See *Muhammad Sadiq v. Superintendent of Police and others* (2008 SCMR 1296), *Member (A.C.E. and S.T.) Federal Board of Revenue, Islamabad and others v. Muhammad Ashraf and 3 others* (2008 SCMR 1165), *Secretary Kashmir Affairs and Northern Areas Division, Islamabad v. Saeed Akhtar and another* (PLD 2008 SC 392), *Government of Pakistan through Secretary, Establishment Division, Islamabad and others v. Muhammad Umer Morio* (2005 SCMR 436) and *Tanvir Ahmed v. Chief Secretary, Government of Punjab, Lahore* (2004 SCMR 647).

3. The major penalty of reduction to a lower post or pay scale or to a lower stage in a pay scale is not akin to the board game of Snakes and Ladders, relegating a civil servant to a lower position and making him rise up again. It is not the scheme of the penalty under the Ordinance that the officer after such reduction is to start all over again in the new position and rise up the ranks as if to re-live his service life again. This is not the purpose or the object of the major penalty. Such like penalties, by nature are time-bound, they are to punish an officer for the lapse committed and once the time is served, the officer under penalty, can revert to his original position or status in service and stand restituted. A major penalty of reduction to lower position without specifying time not only defeats the object of the penalty but is also disproportionate with the lapse committed by the officer. See *Sabir Iqbal v. Cantonment Board, Peshawar through Executive Officer and others* (PLD 2019 SC 189), *Secretary to Government of the Punjab Food Department, Lahore and another v. Javed Iqbal and others* (2016 SCMR 1120) and *Muhammad Ali S. Bukhari v. Federation of Pakistan through Establishment Secretary, Islamabad and 2 others* (2008 SCMR 214).

4. Considering the nature of the case made out against the appellant and the fact that it is pending since 2001, we instead of remanding the matter to the competent authority, specify a period of three years for the major penalty of reduction to the lowest time scale imposed upon the appellant. The respondent department shall actualize the same and fix the service record of the appellant accordingly.

5. This appeal is, therefore, partially allowed in the above terms.

MWA/A-25/SC Order accordingly.