

PUNJAB SERVICE TRIBUNAL, LAHORE

ORDER SHEET

APPELLANT/
PETITIONER

1094/2023

APPEAL NO. _____ 200

Shahid Khan

Versus

District & Sessions Judge, Mandi Bahauddin and another

RESPONDENT

Date of order of proceeding	Order with signature of Chairman, Members and that of parties or counsel, where necessary.
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14.07.2023	<p><u>PRESENT</u></p> <ol style="list-style-type: none">1. Mr. Allah Nawaz Khosa, Advocate Learned counsel for the appellant.2. Mr. Masood Karim, learned District Attorney.3. Mr. Shahzad Qaisar, SOC, DR. <p>Briefly stated the facts giving rise to the instant service appeal are that the competent authority/ Senior Civil Judge (Civil Division), Mandi Bahauddin initiated disciplinary proceedings against the appellant Shahid Khan, Process Server under Punjab Civil Servants (E&D) Rules, 1999 and appointed Saba Razzaq, Magistrate Section-30 inquiry officer, who issued the charge sheet dated 09.09.2022 to the appellant, containing the following allegations:-</p> <p><i>"You accused person complained against on 10.11.2020 has received Rs.160,000/- and later on, on different dates total amount of Rs.21,73,000/- from the complainant namely Razia Bibi in grab of managing job being officer 17th grade for the daughter and son of the complainant."</i></p> <p>Subsequently, the inquiry proceedings were entrusted to Iram Ali Malik, Civil Judge 1st Class/ Mandi Bahauddin. The inquiry officer held the appellant guilty, vide inquiry report dated 03.11.2022 and recommended penalty of removal from service, which was accordingly imposed by the competent authority on 17.11.2022. Feeling aggrieved, the appellant filed departmental appeal on 06.12.2022. Hence, the instant service appeal.</p> <ol style="list-style-type: none">2. Arguments heard and available record perused.3. The record reveals that the appellant submitted reply to the charge sheet stating therein that he is in service for 07 years and is fulfilling his duties honestly; that the complainant <p>ATTESTED</p>



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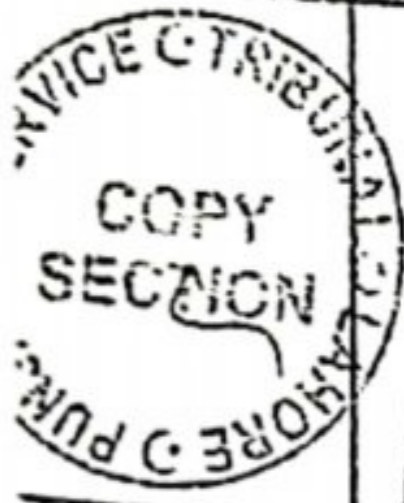
filed this application due to the reason that his brother Zahid Khan gave Rs.20,00,000/- as loan to the husband of the petitioner and received a cheque as guarantee; that the cheque was subsequently dishonoured and his brother got lodged an FIR against the husband of the petitioner u/s 489-F PPC; the pre-arrest bail of the complainant's husband Muhammad Anwar was dismissed from the Sessions Court, Mandi Bahauddin and also from the Hon'ble Lahore High Court, Lahore; that a civil suit filed by his brother for recovery is still pending against the husband of complainant; that Muhammad Anwar also filed an application before the DPO Mandi Bahauddin, which was also dismissed; that the complainant's husband wants to harass and blackmail him by filing this false and frivolous application, so that his brother withdraw his case; that he did not take a single penny from the complainant or her husband or her children. The appellant while recording his statements also relied upon documentary evidence with regard to litigation between his brother and husband of the complainant. The complainant got recorded his statement as CW-1, and deposed that on 10.11.2020 she gave Rs.1,60,000/- and thereafter she and her husband gave Rs.21,70,000/- on different occasions. Son, daughter, husband, and two others were also got recorded their statements before the inquiry officer as CW-2, CW-3, CW-4, CW-5 & CW-6. The inquiry officer mainly held the appellant guilty of the charges on the ground that the appellant failed to specifically rebut the prosecution witnesses during the course of cross examination.

The inquiry proceedings record reflects that during cross examination the CW-1/ complainant admitted that the brother of the appellant got registered case FIR No.607/2021 u/s 489-F PPC against her husband but it is wrong that against her husband a suit under Order XXXVII of CPC on account of issuing forged cheque was filed. On the other hand, the CW-2/son of the complainant during cross examination admits that it is correct that Zahid Khan (brother of the appellant) filed a suit against his father under Order XXXVII of CPC.

CW-4 recorded his statement to the following effect:-

So/Supintendent
District & Sessions Judge
Mandi Bahauddin

04 NOV 2023



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بیان کیا کہ سیکرٹریل مشاں نے شاہد خان اور زاہد خان کو محمد انور سے بیسے روپے دلوانے جو کہ حیرت سے سامنے نہ دیے گئے ان کا آپس میں جو معاملہ چل رہا تھا اس کی تفصیل ہوتی نہ ہے۔ میرے سامنے محمد انور نے اپنا ذاتی مکان ارشد کبادیہ کو بیچا اور اس کے بیسے میرے ہاتھ سے شاہد خان وغیرہ کو دیے گئے جو کہ پانچ لاکھ روپے تھے۔

While cross examination the CW-4 stated as under:-

انور ذاتی مکان میں رہائش پذیر ہے۔ محمد انور نے اپنا ذاتی مکان ارشد کبادیہ کو 2,53,000/- میں بیچا۔

There is apparent contradiction in the statement and cross examination of the CW-4. In his statement he stated that Mr. Muhammad Anwar sold his house to Arshad (Kabadia) and the amount which was Rs.500000/- was given to Shahid Khan by his own hand; on the other hand during cross examination, the CW-4 submits that the house was sold to Arshad (Kabadia) for Rs.25,30,000/-.

4. It is pertinent to mention here that the FIR No.607/2021 was got registered by the brother of the appellant namely Zahid Khan against Muhammad Anwar on 03.12.2021 u/s 489F on account of dishonor of a cheque amounting to Rs.20,00,000/- and the complainant Razia Bibi filed the complainant against the appellant on 15.06.2022, after a delay of about 07 months, when the bail petitions of the husband of the complainant were rejected upto the Hon'ble Lahore High Court, Lahore. This very aspect has not been taken into consideration by the inquiry officer and the documentary evidence produced by the appellant has also not been taken into account and the inquiry officer just on the ground that appellant failed to rebut the allegations during cross examination, which finding is too against the factual position, as narrated above. It is also notable that the statement of the appellant goes unrebutted and no particular cross-examination was conducted upon the appellant. Further no proof of alleged money given by the complainant to the appellant was produced during the inquiry proceedings.

5. It is also notable that the competent authority while passing the penalty order dated 17.11.2022 did not scrutinize the evidence and without relying upon any material, passed the penalty order. It has been settled by the Hon'ble Supreme Court

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Independent
Sessions Judge

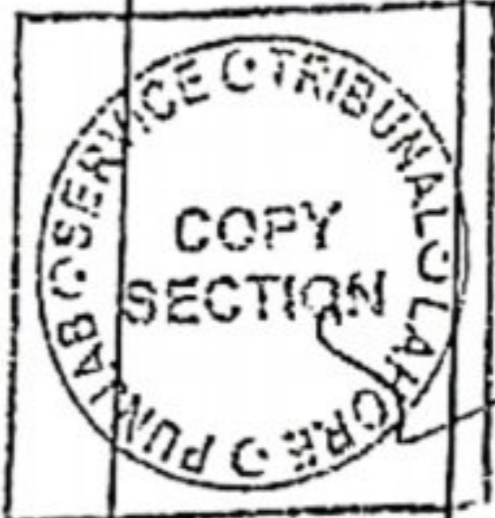
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of Pakistan in various judgments passed by the apex court that competent authority as well as appellate authority while passing the order of punishment or appellate order are bound to scrutinize the evidence on record and order is to be passed referring any incriminating evidence against the accused but in this case no evidence, whatsoever, is available which could be referred by the competent authority. In this regard reliance is placed upon "Chief Secretary, Government of the Punjab versus Muhammad Ali Saqib (2020 SCMR 1245)". The relevant paragraph is reproduced as under:-

"The orders of the competent authority as well as departmental appeal are on the basis that they agreed with the recommendation of the inquiry officer. They have not scrutinized the evidence available on the file themselves, but relying upon the recommendation of the inquiry officer and ignoring that no specific allegation through evidence was proved against the respondent, despite that major penalty of dismissal from service was awarded."

(emphasis provided)

5. For the reasons recorded above, the instant appeal is allowed and the impugned order 17.11.2022 is set aside. The appellant is reinstated into service and the intervening period during which the appellant remained out of service is treated as leave of the kind due.



Justice (R) Atir Mahmood CHAIRMAN
D-2 Registrar No. 19632
Application 2-11-23
Date of Receipt of Records
Date of Presentation of 04 NOV 2023
No. of Pages 13
Court Fee Rs. 26
Stamp Fee Rs. 26
Total Fee Rs. 52
CERTIFIED TO BE TRUE COPY
Punjab Service Tribunal Lahore
31/07/23

Shahbaz/
Punjab Service Tribunal Lhr. Form No. 11/47/23

Date of submission of application for certified copy..... 31/07/23
The date examined..... 31/07/23
Total number of pages.....
The cost of
Urgent fee per page 3
Total cost fee 32
Date of Delivery 31/07/23

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Sd/Superintendent
District & Sessions Judge Court
Mandi Bahaudin
Witnessed By Qanun-e-Shahdat
Act. 1/34

04 NOV 2023