

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.3293-P/2017

JUDGMENT

Date of hearing.....09.10.2018.....

Petitioner: (Sadaqatullah) By Mr. Khalid Rehman Khan,
Advocate.

Respondents (Federation of Pakistan) By Mr.Kifayat Ullah,
Deputy Attorney General.

QALANDAR ALI KHAN, J.- Saqadatullah,
petitioner, was Admin. Assistant in Pakistan Air Force
since 19.02.1999, He was charged in a criminal case
under Sections 302/324/34 PPC vide FIR No.447 dated
13.07.2009 in Police Station Badaber, Peshawar, while
performing his duties at PAF Camp Badaber,
Peshawar. He and other co-accused in the case were
tried for the offences, he and other co-accused were
charged with, in the Court of Additional Sessions
Judge, Peshawar; and, eventually, acquitted by the
learned trial Court vide judgment dated 26.05.2016.
According to the petitioner, after his acquittal, he
surrendered himself to the Air Force Authorities on
03.10.2016, but was charge sheeted on 05.10.2016 by
the Officer Commanding Administrative Wing,
Pakistan Air Force Base, Peshawar, under Section 38

(1) and Section 65 of the Pakistan Air Force Act, 1953, for deserting the service and acting in a manner prejudicial to good order and Air Force Discipline. He was "*again*" tried by the District Court Martial constituted under Pakistan Air Force Act, 1953, and finally punished with rigorous imprisonment for one year and 5 months along with dismissal from service. The proceedings of the Court and sentence awarded to the petitioner were confirmed by the confirming authority, but two months of the sentence of rigorous imprisonment were remitted vide letter dated 02.01.2017. The petitioner approached the Court of appeals, Pakistan Air Force, which partially accepted the appeal and reduced the sentence of rigorous imprisonment to further three months, whereas punishment of dismissal from service was maintained vide order dated 08.02.2017. The petitioner served out the sentence; but claimed right to re-instatement into service alongwith all back benefits in terms of Para-4 and 5 of the Circular dated 13.12.1992, issued by the competent authority. It was pointed out in the writ petition that the offence with which the petitioner was charged was not of moral turpitude, therefore, under the policy of the Air Force, the same could not entail the harsh punishment as awarded to the petitioner, and that the so-called desertion of the petitioner was

neither intentional nor deliberate but it was due to circumstances beyond his control; therefore, the extreme punishment awarded to him was neither justified nor according to law, hence, not sustainable. The petitioner alleged his trial twice on the same allegation which was prohibited under Article 13 of the Constitution of Islamic Republic of Pakistan, 1973; and prayed for declaring the impugned order vide letter dated 02.01.2017 and order in appeal vide letter dated 08.02.2017 as without lawful authority and hence of no legal effect; and, consequently, prayed for his re-instatement into service with all back benefits.

2. In their para-wise comments, it was contended on behalf of all the four respondents in the writ petition that the petitioner deserted the service on 13.07.2009, and surrendered himself on 03.10.2016, at PAF Base Peshawar after desertion of about 7 years and 3 months. He was, therefore, charge sheeted under Sections 38 (1) and 65 PAF Act, 1953, for deserting the service, 'an act prejudicial to good order and Air Force Discipline'. A District Court Martial, after conducting trial and recording evidence, sentenced the petitioner to rigorous imprisonment for 17 months along with dismissal from service. The proceedings of Court Martial were confirmed by the confirming authority, but a lenient view was taken and

two months of rigorous imprisonment were remitted. The Court of appeals further remitted three months of rigorous imprisonment of the petitioner. In their para-wise comments, the respondents also raised objection to the jurisdiction of this Court under Article 199 (3) of the Constitution of the Islamic Republic of Pakistan, 1973, as the petitioner was a member of the Armed Forces of Pakistan (PAF).

3. Arguments of learned counsel for the petitioner and learned Deputy Attorney General heard; and record perused.

4. Admittedly, the petitioner was a member of the Armed Forces of Pakistan as Admin. Assistant in PAF, and was charged in a criminal case under Sections 302/324/34 PPC, but was acquitted of the charges while extending him benefit of doubt by the learned trial Court/ASJ-V, Peshawar, vide judgment dated 26.05.2016. However, the fact of desertion of the petitioner is admitted in the writ petition in the words *"that the so-called desertion of the petitioner was neither intentional nor deliberate but it was obviously due to the circumstances beyond the control of the petitioner"*.

5. The record, particularly the charge sheet, would show that the petitioner absented himself without leave from his unit from 13.07.2009 at 07.30


hours, and remained deserter until he surrendered himself on 03.10.1916 at 1100 hours; meaning thereby that the petitioner remained deserter for seven years and three months; and was, therefore, tried by the District Court Martial under Sections 38 (1) and 65 PAF Act, 1953, on the charge of deserting the service, 'an act prejudicial to good order and Air Force discipline'; and, obviously, not "*again*" tried for the same offences under Sections 302/324/34 PPC, as claimed by the petitioner in his writ petition. After trial and recording of evidence, the petitioner was convicted and sentenced to imprisonment and also dismissed from service, which were affirmed by the confirming authority as well as Court of appeals, *albeit* with slight modifications in the term of sentence of imprisonment, while maintaining/upholding conviction of the petitioner and his dismissal from service. The petitioner has already undergone the punishment of imprisonment; but seeks his re-instatement into service alongwith back benefits in terms of para-4 and 5 of the circular dated 13.12.1992.

6. A bare perusal of the circular dated 13.12.1992 would show that the circular was issued on the subject of "discharge from service/re-instatement/retention in service of personnel involved in criminal cases tried by Civil Court". As such, the

circular in question has no relevancy to trial and conviction of the petitioner by the District Court Martial; whereby the petitioner was not subjected to trial "*again*" on the same criminal charges, but tried for deserting the service; which not only was outside the ambit of circular dated 13.12.1992; but jurisdiction of this Court in the matter also barred under the barring clause of Article 199 (3) of the Constitution of the Islamic Republic of Pakistan, 1973, for the obvious reason that not only the writ petition was filed by a member of the Armed Forces of Pakistan (PAF), but the petition was also in respect of his terms and conditions of service, and also in respect of action taken in relation to him as a member of the Armed Forces of Pakistan.

7. The writ petition is, therefore, misconceived; hence dismissed, accordingly.

Announced
09-10-2018



JUDGE



JUDGE

Ayub

(D.B)

Hon'ble Mr. Justice Qaiser Rashid Khan.
Hon'ble Mr. Justice Qalandar Ali Khan.