

2019 P L C (C.S.) 87

[Federal Service Tribunal]

Before Raja Hassan Abbas and Manzoor Ali Khan, Members

MUHAMMAD AZIM KHAN LEGHARI

Versus

THE ESTABLISHMENT DIVISION through The Secretary Establishment, Islamabad and 3 others

Appeal No.1046(R)CS of 2018, decided on 22nd November, 2018.

Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 3(a) & 4(1)(b)(i)---Police Rules, 1934, R.69---Police official---Inefficiency and lack of supervision---Reduction to lower post for a period of one year---Major penalty converted to minor penalty---Punishment not commensurate with the lapse---Police vehicle used by the appellant/senior police official was stolen from a market along with official weapons belonging to other police officials---Appellant was charged for negligence, inefficiency and lack of supervision---Competent authority imposed on the appellant major penalty of reduction to a lower post from BS-20 to BS-19 for a period of one year---Legality---Driver of the appellant left the vehicle unattended and it was his duty to ensure its safety---Similarly, all police officials who were issued weapons were responsible for their safe keeping---Appellant, as a senior official, conducted his own inquiry and recommended penalty against seven police officials involved and also imposed fines on them to recover cost of vehicle and weapons, however such penalties were set aside by the Appellate Authority i.e. Provincial Inspector General, though amount of loss was recovered---Safe custody of vehicle and arms was not the personal responsibility of the appellant nor were they issued in his name---Moreover all those responsible were let of by the appellate Authority---Appellant could not be held accountable being not directly responsible---Appellant had been treated harshly by the competent authority and his punishment did not commensurate with his lapse---Major penalty of reduction to a lower post from BS-20 to BS-19 was converted into minor penalty of 'censure'---Appeal was disposed of accordingly.

2002 SCMR 690 ref.

Barrister Harris Azmat for Appellant.

Arshad Mehmood Malik, Assistant Attorney General for Respondents.

Temur Ehsan, Section Officer, Establishment Division, Islamabad as departmental representative.

Date of hearing: 22nd November, 2018.

JUDGMENT

MANZOOR ALI KHAN, MEMBER.---The appellant has been aggrieved by the impugned order dated 20.02.2018 whereby a major penalty of reduction to lower post has been imposed from BS-20 to BS-19 for a period of one year. His departmental appeal has been rejected vide order dated 14.05.2018. Hence, this appeal.

2. Brief background of the case is that the appellant while serving as DIG VVIP Security, Special Branch Lahore, a vehicle belonging to VVIP - Security Unit of Special

Branch was stolen from Johar Town Lahore Sunday Bazar along with official weapons. Driver along with the Cook went to buy groceries from Juma Bazar. Later it transpired that the 8 weapons (SMGs) along with 16 Magazines were also in the car. First Information Report was registered. A preliminary enquiry was conducted by Additional Inspector General of Police, Research and Development, Punjab on the basis of which charge sheet and statement of allegations was issued by the Establishment Division. The enquiry proceedings and the charge sheet finally resulted in show-cause notice and major penalty of reduction to a lower post from BS-20 to BS-19 for a period of one year vide Notification dated 20.02.2018 on charges of inefficiency and lack of supervision was imposed. His appeal to the appellate authority (President of Pakistan) against the penalty was rejected on 14.05.2018.

3. The appellant has put in 28 years of service of unblemished record. It has been stated by the appellant that the inquiry proceedings were initiated after almost five years of the incident. The appellant had expressed his distrust on the Authorized Officer and Inquiry Officer and requested Establishment Secretary for de novo enquiry which was not entertained. Cost of the stolen vehicle and weapons was got determined by the appellant through a Committee and it was recovered. It has been alleged by the appellant that prejudices, mala fides and ulterior motives are involved as the inquiry was conducted after a delay of five years. The appellant had nominated three employees / staff who, were involved in the theft on the behest of vested interest holders they were never arrested, interrogated and punishments awarded by the appellant as a result of inquiry against them were also set aside. Other supervisory officers senior to the appellant SP, DSP, RI & HO were not subjected to departmental inquiry nor punished for lack of supervision. Further, Inquiry Officer relied upon the statements of police employees who were punished by the appellant and cost of stolen car and weapons was recovered from them. Out of 16 staff / persons only one constable Riaz's statement was examined, while rests were ignored. All this, according to the appellant, has been done to ruin his career, as he was twice deferred in CSB meetings and was deprived from his due promotion.

4. Respondents, on the other hand, have defended punishment meted out to the appellant. Government of the Punjab forwarded statement of allegations to initiate disciplinary proceedings against the appellant, which were initiated and completed as per procedure laid down in the Government Servants (Efficiency and Disciplinary) Rules, 1973. The Inquiry Officer in his report held that the accused officer was guilty of negligence and lack of supervision and failed to devise proper mechanism for safety of official property. On the recommendations of the Authorized Officer, Prime Minister being Authority imposed major penalty, which was upheld by the appellate authority, the President.

5. The statements of the witnesses were recorded in the presence of the appellant, who, was given full opportunity to cross-examine all the witnesses in the light of their statements. It has been submitted by the respondents that there was no properly designed guard in charge to manage affairs of police guard, nor was there any SOP to regulate the same. All affairs of the guard including their attendance, leave or rest even daily roaster were being personally supervised by the appellant. The respondents have prayed that the appeal be dismissed.

6. We have heard arguments from learned counsel of both sides and perused record / material submitted.

7. There is doubt that a severe lapse occurred when official vehicle along with weapons and bullets were stolen in broad day light in Lahore. Despite lodging of FIR on the same day of occurrence, stolen items have not been recovered till date. This is very embarrassing for the Police Department and the Government. Primarily it was the duty of the Driver, who was detained with the vehicle to ensure its safety and should not have left the vehicle unattended at any cost. Similarly, all those officials who were issued weapons were responsible for safe keeping of the weapons. They violated the Rule 6.9 of Police Rules which says when rifles are issued from the armory each man shall take the particular rifle registered against his name and will be held responsible for it. It has been held in 2018 PLC (C.S.) Note 69 that inordinate delay in initiation of disciplinary action against civil servant would render legitimacy of action high doubtful and liable to be set aside. Similarly, it has been held in 2001 PLC (C.S.) 336 Lahore High Court. In 2002 SCMR 690 it has been held that in case of negligence on the part of the petitioner, imposition of major penalty does not commensurate with guilt. There is no doubt that the appellant showed lack of supervision, control and negligence as a senior police officer and failed to devise proper mechanism for ensuring safety of official property at his disposal. The appellant conducted an inquiry which made recommendation of penalty against the seven officials involved and fine was imposed to recover cost of the vehicle/weapons. However, the penalties were set aside by the appellate authority i.e. I.G. Punjab, though amount of loss was recovered from them.

8. In view of the above, we are of the opinion that safe custody of vehicle and arms was not personal responsibility of the appellant nor they were issued in his name. Similarly, all those directly responsible were let off by I.G. Punjab on appeal. Therefore, the appellant could not be held accountable being not directly responsible. The appellant has been treated harshly and his punishment does not commensurate with his lapse. Therefore, we convert his major penalty of 'reduction to a lower post from BS-20 to BS-19' into minor penalty of 'censure'.

9. There shall be no order as to costs.

10. Parties shall be informed accordingly.

MWA/1/FST

Order accordingly.