

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Rozi Khan Barrech
Justice Syed Arshad Hussain Shah

C.P.L.A.2501/2024 and C.P.L.A.500-P/2024
*(Against the judgment dated 02.05.2024
passed by the Peshawar High Court, Peshawar
in W.P Nos.866-P and 1200-P of 2023)*

Muhammad Zulfiqar Abbasi	In C.P.L.A.2501/2024
Israr Khan	In C.P.L.A.500-P/2024
	...Petitioner(s)

Versus

The Director General Peshawar Development Authority, Peshawar and others	...Respondent(s) (in both cases)
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For the Petitioner(s)	: Mr. Khalid Rehman, ASC (in C.P.L.A.2501/2024) Mr. Muhammad Asif Yousafzai, ASC Mr. Muhammad Jamal Afridi, ASC (in C.P.L.A.500-P/2024)
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For the Respondent Nos. 1, 3 and 4	: Mr. Sabah-ud-Din Khattak, ASC
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Date of Hearing	: 16.09.2026
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ORDER

Rozi Khan Barrech, J.- These petitions, having been granted leave to appeal, assail the judgment dated 02.05.2024 passed by the learned Peshawar High Court in W.P. No. 866-P/2023 and connected W.P. No. 1200-P/2023, whereby the penalty of dismissal from service imposed upon the petitioners was modified into compulsory retirement, while the finding of misconduct was maintained.

2. Since both matters arise out of the same transaction, involve substantially identical questions of law, pertain to departmental proceedings, and assail the same judgment, they are being decided through this common judgment.

3. We have heard learned counsel for the parties and have gone through the record with their able assistance.

4. The brief facts of the case are that the Director General, Peshawar Development Authority (hereinafter referred to as “**PDA**”), vide order dated 01.11.2022, nominated one Engr. Atta-ur-Rehman, Chief Engineer, PDA, to conduct a fact-finding inquiry into the alleged fraudulent transfer of Plot No. 32, Sector J-2, measuring 02 Kanal, Phase-II, Hayatabad, Peshawar. The Inquiry Officer, after conducting the fact-finding inquiry, submitted his report and held the petitioners, along with other officials of the respondent PDA, responsible for their

alleged involvement in the process of transfer of the aforesaid plot. Consequently, the competent authority suspended the services of the petitioners, constituted an Inquiry Committee vide office order dated 11.11.2022, and issued chargesheets of the same date, setting out the allegations contained therein. Subsequently, the respondents, after issuance of the show cause notices, imposed upon the petitioners the penalty of *dismissal from service without any compensation*.

5. The important legal question is whether the disciplinary proceedings stood vitiated on account of denial of a fair and meaningful opportunity of defence, particularly where the allegations in the show-cause notice materially varied from those contained in the chargesheets and no opportunity of cross-examination was afforded to the petitioners. The controversy involved in these petitions goes to the very root of the disciplinary proceedings. It is by now well settled that a delinquent employee must be made aware, in clear and unequivocal terms, of the precise allegations which he is required to meet. The chargesheet is not a mere formality; rather, it constitutes the very foundation of the defense. The delinquent employee must know the case set up against him to enable him to effectively controvert the same. The requirement of notice of the allegations and an effective opportunity of defense is a necessary facet of the principle of *audi-alteram-partem* and, in the context of disciplinary proceedings, forms part of the constitutional guarantee of fair trial and due process under Article 4¹ and 10-A² of the Constitution of Islamic Republic of Pakistan 1973 ("**Constitution**").

5. It is an admitted position on the record that the charge-sheets issued to the petitioners alleged, in substance, that they had processed the fraudulent transfer of Plot No.32, Sector J-2, measuring 02 Kanal, Phase-II, Hayatabad, Peshawar, and that the original documents available in the relevant office file had been altered or replaced with fake/fabricated documents. The petitioners submitted their respective replies to the said charge-sheets and participated in the proceedings.

6. The difficulty, however, arises from the subsequent show-cause proceedings initiated against the petitioners. The allegations set out therein were materially different from, and substantially broader than, those contained in the original charge-sheets. The later proceedings did not merely constitute a different

¹**4.Right of individuals to be dealt with in accordance with law, etc.**__ (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular__

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not required him to do.

²**10A. Right to fair trial.**__For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

formulation of the same allegations, nor did they amount to an amplification of particulars already communicated to the petitioners; rather, the very substance of the case was altered and enlarged. By way of illustration, the allegation incorporated in the show-cause notice dated 16.12.2022 issued to petitioner No.2, namely Israr Khan, stated that *“as per mobile call record, you were in regular contact with Mr. Arshad Khan, Property Dealer functioning in PDA Commercial Complex, Phase-V, Hayatabad and provided record of Plot No. 32, Sector J-2, Phase (02-Kanal), Hayatabad Town, Peshawar.”*³ This allegation, however, was not set out in the charge-sheet, nor was the petitioner afforded an opportunity to explain, rebut, or defend. Same is the case of the petitioner No.1 (Muhmmad Zulifqar Abbasi) as well. Such omission runs contrary to the principles of fair trial and due process as enshrined in the Constitution. The allegations ultimately relied upon for recording the adverse finding were, therefore, not specifically and properly put to the petitioners in the charge-sheets and remained deprived of their fundamental rights to be defended and dealt in accordance with the law. Further, we have flicked through the enquiry report and find that various witnesses were associated in the enquiry and their statements were also recorded but neither any opportunity was afforded to the petitioners to conduct cross examination, nor is it mentioned that an opportunity of cross examination was afforded. In this regard, the Supreme Court in the case of *Usman Ghani Vs The Chief Post Master, GPO Karachi and others (2022 SCMR 745)*, held that the foremost aspiration of conducting departmental inquiry is to find out whether a prima facie case of misconduct is made out against the delinquent officer for proceeding further. The guilt or innocence can only be thrashed out from the outcome of inquiry and at the same time it is also required to be seen to whether due process of law or right to fair trial was followed or ignored which is a fundamental right as envisaged under Article 10-A of the Constitution. Moreover, in this regard the Supreme Court in the case of *Raja Muhammad Shahid Vs the Inspector General of Police and others (2023 SCP 142)* held, *“What is more, the principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned.”*

7. Further, the law on the subject is settled. A delinquent employee cannot be punished for an allegation which was not the subject matter of the charge-sheet, nor can the disciplinary authority materially enlarge or alter the case after the delinquent employee has submitted his defense and thereafter proceed to determine the matter against him without affording a fresh opportunity of hearing. It has consistently been held that an employee cannot be punished based on allegations introduced or materially enlarged after the issuance of the original

³Show Cause Notice to Mr. Israr Khan Junior Clerk, DTE Of Excise Management, PDA dated 16-12-2022

notice. The reason is obvious: a delinquent employee cannot be called upon to defend one case and thereafter be punished based on subsequent allegations for which no opportunity to defend is afforded.

8. The sequence contemplated by law is clear: first, the charge must be communicated; second, an effective opportunity to defend must be afforded; and third, the competent authority must arrive at its determination based on the case lawfully put to the delinquent employee. If, during proceedings, the case is materially altered or enlarged, the delinquent employee must necessarily be afforded an appropriate and meaningful opportunity to meet the altered case. In the present matter, this essential requirement was not complied with.

9. The replies submitted by the petitioners to the original chargesheets could not, by any stretch of interpretation, be treated as replies to allegations which were subsequently introduced or materially enlarged. To hold otherwise would reduce the right of hearing to a mere ritual and render the requirement of a specific charge meaningless. As recognized in the jurisprudence relating to lawful and fair departmental inquiries, the right to a proper inquiry and an effective opportunity of hearing is protected by Articles 4, and 10-A⁴ of the Constitution.

10. The petitioners were, thus, condemned unheard in respect of the allegations which ultimately constituted the basis of the adverse determination against them. Such a defect cannot be brushed aside as a mere procedural irregularity, nor can it be cured by subsequently reducing the penalty. The defect strikes at the very foundation of the proceedings. Article 10-A mandates fairness throughout the adjudicatory process and does not permit the disciplinary authority to change the case against a delinquent midway through the proceedings without giving him a corresponding opportunity to defend himself. The principle of *audi alteram partem* necessarily requires that the delinquent employee be afforded an effective opportunity to answer the very factual allegations upon which the proposed punishment is to be founded.

11. There is another aspect of the matter which also requires consideration. It is an admitted position that the alleged fraudulent transfer of Plot No.32 was intercepted before the transaction could be completed. No completed transfer took place and admittedly no actual financial loss has been shown to have been caused either to the respondent department or to the public exchequer. No pecuniary loss has been established or quantified on the record.

12. A distinction must necessarily be maintained between actual loss and an alleged attempt which does not culminate in such loss. Actual loss is a completed consequence, whereas an interrupted transaction, even if alleged to have been undertaken with an intention to cause loss, does not by itself establish that the

⁴**10A. Right to fair trial.** For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

contemplated consequence occurred. The disciplinary authority was required to determine the precise misconduct proved against each petitioner based on proceedings conducted in accordance with law. Mere possibility, apprehension or potentiality of loss cannot be equated with actual loss, nor can an intercepted transaction be treated as synonymous with completed embezzlement or fraud.

13. Significantly, the learned High Court itself noticed that no loss had been caused to the respondent department. Despite noticing this material circumstance, the learned High Court maintained the finding of misconduct and interfered only with the quantum of punishment by converting dismissal into compulsory retirement. In our view, once the disciplinary proceedings themselves stood vitiated on account of denial of an effective opportunity of defense in respect of the allegations ultimately relied upon, the finding of misconduct could not lawfully be sustained. The absence of actual pecuniary loss, though not by itself determinative of the question of misconduct, was nevertheless a relevant circumstance which required consideration while determining the nature and consequences of the alleged conduct.

14. In the given circumstances, the present case, however, is not one of mere reappraisal of evidence or substitution of one possible view for another. The defect here goes to the jurisdiction and legality of the very process by which the adverse finding was reached. A finding founded upon allegations which were never properly put to the delinquent employees for their defense coupled with the fact that actual loss had never occurred due to the alleged process of transferring the file cannot be sustained in law. Such a foundational defect cannot be cured merely because an appellate authority has reduced the punishment.

15. For the foregoing reasons, we are of the considered view that the departmental proceedings against the petitioners stood vitiated on account of denial of a fair and meaningful opportunity of hearing, coupled with the fact that no actual loss had resulted from the alleged processing of the transfer of the file and that the authorities had travelled beyond the scope of the charge-sheets. Consequently, the finding of misconduct recorded against the petitioners, as well as the punishment founded thereon, cannot be sustained and the impugned judgment dated 2nd of May 2024 is set-aside.

16. Moreover, we now turn into the important question of law, namely: Whether the petitioners, having been reinstated after setting aside the punitive order, are entitled to arrears of salary and back benefits for the intervening in the absence of proof that they were gainfully employed elsewhere? So far as the core question for back pay and benefits during the intervening period is concerned, there is nothing on the record to demonstrate that the petitioners were lawfully gainfully employed during the said period. As defined in **Black's Law Dictionary**, "back

pay” means the salary or wages that an employee ought to have received but did not receive on account of the employer’s unlawful action. The concept of reinstatement into service with original seniority and back benefits is founded upon the settled principle of jurisprudence that where an illegal action or wrong is set aside by a Court, it must also be ensured that no undue prejudice or loss is caused to the affected person as a result of such illegality or on account of delay in the redress of the grievance. Grant of back benefits while not expressly defined in the service laws of Pakistan is a well-established remedy in Pakistan as well as other jurisdictions. As defined in Black’s Law Dictionary, “back pay” refers to the salary an employee should have received but was denied due to unlawful employer action.⁵ Moreover, a “back pay award” restores the economic status quo ante, compensating for the loss incurred.⁶ Likewise, in our jurisdiction and the evolved jurisprudence, the term “back benefits” typically includes arrears of salary and related service entitlements.⁷ In the same vein, reinstatement thus presumes the restoration of all financial entitlements, unless specific exceptions apply. The logical corollary is that the reinstated civil servant is entitled to all benefits lost during the period of wrongful removal, unless it is shown that the civil servant was gainfully employed elsewhere or that reinstatement was conditional.⁸ Here it is important to apply the *doctrine of constructive*⁹ continuity in the given circumstances of the case. The word *constructive continuity* refers to this idea although no such doctrine under this name exists in the jurisprudence of Pakistan or comparative jurisdictions, its elements are implicit in the way courts grant relief after declaring a termination unlawful. *Constructive continuity*, as we conceive it, offers a principled and doctrinal framework for such relief. It rests on the notion that an unlawful act cannot be permitted to cause enduring disadvantage, and that the law must, to the extent possible, restore the person to the status quo ante. In this sense, the doctrine draws conceptual strength from the broader legal principle of restitution, which seeks to undo the unjust consequences of an unlawful act and re-establish the rightful position of the aggrieved party. Likewise, the doctrine of *constructive continuity*, therefore, proposes that once a dismissal or removal is declared unlawful, the civil servant shall be deemed to have remained in continuous service during the period of absence and shall be entitled, subject to lawful deductions or limitations, to all the salary, allowances, increments, and service-related benefits that would have accrued had the unlawful act not

⁵Bryan A Garner (ed), Black’s Law Dictionary (10th edn, Thomson Reuters 2014) 166.

⁶Ibid and Aguinaga v. United Food & Commercial Workers Int’l Union 993 F.2d 1463, 1473.

⁷Muhammad Sharif v. Inspector General of Police, Punjab 2021 SCMR 962 and Smith v. West, 1999 US App Vet Claims LEXIS 475, 6.

⁸Inspector General of Police, Punjab v. Tariq Mahmood 2015 SCMR 77; Muhammad Bashir v. Government of the Punjab 1994 SCMR 1801 and Pakistan v. Mrs. A.V. Issacs PLD 1970 SC 415.

⁹The term “*doctrine of constructive continuity*” was, for the first time, employed and applied in the case titled Tahir Kazmi and Others Vs Inspector General of Police, Punjab Lahore and Others 2025 SCP 237

occurred. The purpose of this doctrine is not merely to provide compensation but to restore the legal and institutional integrity of the employment relationship.¹⁰

17. Moreover, this presumption of complete legal restoration is reflected in the common-law doctrine of “**vanishing dismissal**,” particularly recognized in the United Kingdom, whereby a successful challenge to a dismissal causes the dismissal to disappear in law as though it had never existed. Under this doctrine, where a civil servant’s removal or dismissal is declared unlawful, whether on account of procedural infirmity, violation of due process, or on the merits of the disciplinary action; the impugned order is set aside and rendered ineffectual. The restorative operation of vanishing dismissal is not merely remedial in character; rather, it stems from the fundamental principle that an act done without lawful authority cannot be permitted to generate lawful consequences. The doctrine thus reaffirms that the exercise of State power must remain within the confines of law, and where those limits are transgressed, the legal consequence is a complete restoration to the status ante violation. In practical terms, this ordinarily entails reinstatement of the civil servant, regularization of the period of absence, and, in appropriate cases, award of salary and other emoluments. The relief proceeds on a juristic fiction that the civil servant is deemed never to have been lawfully removed in the first place. On this touchstone, keeping in view the doctrine of vanishing dismissal it is a constructive legal state that reconstructs the continuity of service and restores the civil servant to the position he or she would have occupied had the illegal order not been passed. Similarly, the doctrine of constructive continuity as first proposed and surfaced in *Tahir Kazmir’s*¹¹ case is seconded in the given circumstances of the case as well. Although no such doctrine under this name exists in the jurisprudence of Pakistan or comparative jurisdictions, its elements are implicit in the way courts grant relief after declaring a termination unlawful. Constructive continuity, as we conceive it, offers a principled and doctrinal framework for such relief. It rests on the notion that an unlawful act cannot be permitted to cause enduring disadvantage, and that the law must, to the extent possible, restore the person to the status quo ante.¹²

18. It is a settled principle that when the foundational order is without lawful authority, the superstructure built upon it collapses.¹³ In the same vein it is important to state here that the civil servant must be placed in the position they would have occupied had the unlawful action not occurred. The concept of

¹⁰Ibid,

¹¹Tahir Kazim and others Vs Inspector General of Police, Punjab Lahore and others 2025 SCP 237

¹²Ibid,

¹³Superintendent of Police v. Ijaz Aslam 2024 SCMR 1831; Vice Chancellor Agriculture University v. Muhammad Shafiq 2024 SMCR 527 and Pakistan Peoples Party Parliamentarians v. Federation of Pakistan PLD 2022 SC 574.

constructive continuity,¹⁴ as articulated here, reinforces this consequence and gives expression to the broader principles of legal restoration and administrative fairness that underpin service jurisprudence. Similarly, *Constructive continuity* is, therefore, not only an administrative doctrine; it draws strength from constitutional protections. Article 9 of the Constitution enshrines the right to life, which includes the right to livelihood¹⁵, a right that is fundamentally impaired when a civil servant is deprived of his employment through an unlawful act. Article 10A secures the right to fair trial and due process¹⁶, which would be hollow if reinstatement does not lead to full restitution. Article 14 protects the dignity of man¹⁷, and Article 25 ensures equality before the law. Denying back benefits to a reinstated civil servant who has suffered procedural or substantive injustice infringes upon these constitutional guarantees. The *doctrine of constructive continuity* is the furtherance of constitutional foundation and finds affirmation in judicial precedent, most notably in *Tariq Mahmood*¹⁸ and *Muhammad Sharif*¹⁹. Principally, the grant of back benefits is the norm and whereas denial of service benefits to such reinstated employee is an exception. Any departure from this position must be supported by clear and cogent evidence establishing that the employee was gainfully employed elsewhere during the intervening period. The underlying rationale is straightforward: once a Court declares an official act to be unlawful, it is incumbent upon the Court not only to set aside the impugned decision, but also to neutralize the consequential prejudice occasioned thereby. Restitution, therefore, constitutes an integral component of corrective justice and is not to be treated as a matter of unfettered discretion. To deny such back benefits, notwithstanding the Court's conclusion that the original penalty was excessive, would be to perpetuate the very disproportionality that the Court has sought to rectify. Such a course would be inconsistent with the constitutional guarantees of fairness, equality before law, and non-discrimination enshrined in Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The Court accordingly holds that, the doctrine of constructive continuity shall apply, whereby the civil servant shall be deemed to have remained in service and shall, therefore,

¹⁴Tahir Kazim and others Vs Inspector General of Police, Punjab Lahore and others 2025 SCP 237

¹⁵Aatika Hina Mushtaq v. Secretary Special Education, Government of Punjab 2025 SCP 158 (SC citation); Divisional Superintendent v. Umar Daraz 2023 SCMR 761; Province of Punjab v. Kanwal Rashid 2021 SCMR 730; Pir Imran Sajid Versus Managing Director 2015 SCMR 1257; Abdul Wahab v. HBL 2013 SCMR 1383 and Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180.

¹⁶Naveed Asghar v. The State PLD 2021 SC 600 and Altaf Ibrahim Qureshi v. Aam Logue Ittehad PLD 2019 SC 745.

¹⁷Mubarik Ali Babar v. Punjab Public Service Commission 2023 SCMR 518; Uzma Naveed Chaudhary v. Federation of Pakistan PLD 2022 SC 783 and Malik Ubaidullah v. Government of Punjab 2021 PLC (C.S.) 65.

¹⁸Inspector General of Police, Punjab v. Tariq Mahmood 2015 SCMR 77.

¹⁹Muhammad Sharif v. Inspector General of Police, Punjab 2021 SCMR 962.

be entitled to all back benefits that would have accrued under the corrected disciplinary order.

19. Accordingly, these petitions are converted into appeals and are allowed.

20. The judgment dated 02.05.2024 passed by the learned Peshawar High Court in W.P. No. 866-P/2023 and connected W.P. No. 1200-P/2023, to the extent that it sustains the finding of misconduct and the penalty of compulsory retirement, is hereby set aside. Consequently, the petitioners shall be reinstated in service with effect from the respective dates of their dismissal/removal from service and shall be entitled to arrears of salary and such other back benefits as are admissible in law for the period during which they remained out of service, by applying the doctrine of constructive continuity, as if they had continued in service during the intervening period.

The appeals stand allowed in the above terms.

Judge

Judge

Islamabad
16.09.2026
Zahid/Ihtaram Ul Haq (Dy. Research Officer) *
Approved for Reporting