

Departmental Inquiries: Employees Cannot Be Punished on Uncharged Allegations and Reinstatement Carries Back Benefits

The Federal Constitutional Court held that materially enlarged allegations and denial of cross-examination vitiated disciplinary proceedings, and ordered reinstatement with salary arrears and back benefits under constructive continuity.

Federal Constitutional Court service-law and due-process analysis
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Case: C.P.L.A. Nos. 2501 and 500-P of 2024

Court and date: Federal Constitutional Court of Pakistan | 16 September 2026

Bench: Justice Rozi Khan Barrech and Justice Syed Arshad Hussain Shah

Result: Appeals allowed; reinstatement with arrears and back benefits ordered

The ruling in one sentence

The Federal Constitutional Court held that a public employee cannot be charged with one case and punished on materially different or enlarged allegations without a fresh and meaningful opportunity of defence, and that when the resulting dismissal is set aside the normal restorative consequence is reinstatement with arrears and back benefits unless gainful employment or another lawful limitation is proved.

The reported judgment decides Muhammad Zulfiqar Abbasi v Director General, Peshawar Development Authority and Israr Khan v Director General, Peshawar Development Authority, C.P.L.A. Nos. 2501 and 500-P of 2024. Justice Rozi Khan Barrech authored the judgment for a bench comprising Justice Rozi Khan Barrech and Justice Syed Arshad Hussain Shah. It was decided on 16 September 2026 and approved for reporting.

The alleged fraudulent plot transfer

The dispute arose from an alleged fraudulent transfer of Plot No. 32, Sector J-2, Phase II, Hayatabad, Peshawar. The Director General of the Peshawar Development Authority first appointed a fact-finding officer. After that report, the petitioners and other officials were suspended, an inquiry committee was constituted and charge-sheets were issued on 11 November 2022.

The original charge-sheets alleged that the petitioners had processed the fraudulent transfer and that genuine documents in the office file had been altered or replaced with fabricated documents. The employees submitted replies and participated in the inquiry.

The disciplinary authority ultimately dismissed them without compensation. The Peshawar High Court maintained the misconduct findings but reduced the punishment from dismissal to compulsory retirement. The employees challenged that result.

A charge-sheet defines the case to be answered

The central question was whether the departmental proceedings remained lawful when the show-cause notices relied on allegations materially different from those stated in the charge-sheets and the employees were not allowed to cross-examine witnesses.

The Court described a charge-sheet as the foundation of the defence, not an empty formality. It must tell the employee, in clear terms, the precise factual case that has to be answered. Without that knowledge, a reply cannot be informed and the opportunity of hearing becomes merely ceremonial.

The lawful sequence is straightforward: communicate the charge, provide an effective opportunity to defend, and decide the case on the allegations properly put to the employee. If the case changes materially during the proceedings, the authority must give a corresponding opportunity to meet the new case.

The later show-cause notices changed the case

The Court found that the later show-cause notices did more than add details. They widened and altered the substance of the allegations.

For example, the show-cause notice issued to Israr Khan relied on mobile call records and alleged regular contact with a property dealer and provision of the plot record. That allegation had not appeared in the charge-sheet. The same problem affected Muhammad Zulfiqar Abbasi.

Their replies to the original charge-sheets could not legally be treated as answers to allegations introduced later. An employee cannot be required to defend one case and then be condemned on another.

Cross-examination was part of the meaningful defence

The inquiry officer recorded statements from several witnesses. The record did not show that the petitioners were allowed to cross-examine them.

Where adverse testimony forms part of the case, a meaningful opportunity of defence normally includes the ability to test that material. The Court connected this requirement with *audi alteram partem* and the constitutional guarantees in Articles 4 and 10-A.

The denial was not treated as a minor technical defect. It went to the fairness and legality of the process that produced the misconduct finding.

An appellate reduction of punishment could not cure the defect

The Peshawar High Court reduced dismissal to compulsory retirement. The Federal Constitutional Court held that changing the quantum of punishment did not repair a proceeding that was defective at its foundation.

If the employee was never properly confronted with the case ultimately used against him, the misconduct finding itself cannot stand. A lesser penalty built on the same invalid finding remains legally vulnerable.

This distinction is important in service litigation. Proportionality concerns the appropriateness of punishment after misconduct is lawfully established. Due process concerns whether misconduct was validly established at all. A court cannot solve the second problem merely by adjusting the first.

No completed transfer or quantified financial loss

The alleged transfer was intercepted before completion. No property transfer was completed and no actual financial loss to PDA or the public exchequer was established or quantified.

The Court distinguished actual loss from an attempted transaction that did not produce that consequence. A possibility or intention to cause loss cannot automatically be described as completed embezzlement or fraud.

The absence of actual loss did not, by itself, make every possible form of misconduct disappear. It was nevertheless a material fact that the disciplinary authority had to assess accurately. Combined with the uncharged allegations and denial of a fair defence, it made the adverse finding unsustainable.

Constructive continuity after unlawful dismissal

After setting aside the proceedings, the Court addressed the financial consequences of reinstatement. Nothing on the record showed that the petitioners had been gainfully employed elsewhere during the period they remained out of service.

The Court applied the doctrine of constructive continuity. Once an unlawful dismissal is removed, the employee is treated, subject to lawful deductions or limitations, as having remained in continuous service. The remedy seeks to restore the position that would have existed if the illegal action had not occurred.

This may include salary, allowances, increments, seniority and other service benefits. The purpose is not an additional punishment against the employer; it is restitution for the consequences of an unlawful official act.

Back benefits are the norm, denial is the exception

The Court held that reinstatement ordinarily carries the financial benefits lost through the unlawful removal. Denial of those benefits requires clear and cogent material, such as proof that the employee was gainfully employed elsewhere or that the reinstatement was subject to a lawful limitation.

This approach was linked with the right to livelihood under Article 9, fair trial and due process under Article 10-A, dignity under Article 14 and equality under Article 25. A bare reinstatement that leaves the entire economic harm of an unlawful dismissal with the employee may fail to provide effective legal restoration.

The judgment also discussed the concept of a vanishing dismissal: once the removal is declared unlawful, it is treated as incapable of generating lawful continuing consequences. Constructive continuity expresses that restoration in service-law terms.

The final order

The Federal Constitutional Court converted both petitions into appeals and allowed them. It set aside the Peshawar High Court judgment to the extent that it sustained the misconduct findings and compulsory retirement.

The petitioners were ordered to be reinstated from the respective dates of dismissal or removal. They were also held entitled to salary arrears and other back benefits admissible in law for the intervening period, as if they had continued in service.

What the judgment does not hold

The judgment does not prevent an authority from amending or expanding charges when new material emerges. It requires the changed case to be communicated and a fresh, effective opportunity of defence to be given.

It does not establish that absence of financial loss always defeats disciplinary liability. Attempted misconduct, negligence or breach of duty may remain punishable if properly charged and proved under the applicable rules.

It does not make back benefits mechanically unconditional in every reinstatement case. Gainful employment, a conditional order, lawful deductions or case-specific statutory restrictions may affect the relief.

It does not replace the disciplinary authority's role with that of the court. Its holding is that the authority must act on specific charges, tested material and a fair procedure.

Practical guidance for disciplinary proceedings

The charge-sheet should identify the relevant act, date, role, record, rule and proposed misconduct with enough detail to permit a real answer. If call records, new documents or additional witnesses later become central, supplementary charges or a revised notice should be served before adverse reliance is placed on them.