

Form No. HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. Writ Petition No.31653/2021

Hamid Hayat **Versus** D.G. Excise and Taxation etc.

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signatures of Judge, and that of Parties or counsel, where necessary
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24.05.2021	Ch. Irshad Ullah Chatha, Advocate for the petitioner. Mr. Asif Afzal Bhatti, Additional Advocate General. Rana Saifullah, Inspector Excise, Hafizabad.
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Through the instant constitutional petition, the petitioner, presently working as constable in the Office of Excise and Taxation Department, Region-A, Lahore, has assailed the Impugned Order dated 17.05.2021 passed by respondent No.1/Director General, Excise and Taxation Department, Punjab with the following prayer:

“...it is most respectfully prayed that the order dated 17.05.2021 passed by Respondent No.1 may graciously be set aside and the direction may graciously be issued in the interest of law and justice, fair-play and the fair trail as enshrined in Article 10-A of the Constitution by changing the Enquiry from District Hafiz Abad to any other District preferably at Lahore, where the petitioner had been lastly posted.”

2. Admittedly, the petitioner is a civil servant. When confronted as to how the instant petition is maintainable in the light of bar contained under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter “the Constitution”), the learned counsel for the petitioner vehemently stated that the terms and conditions of a civil servant, as defined under the law in vogue, do not cover the challenge to an administrative or executive action whereby the competent authority has refused to transfer the inquiry from one region to the other, on the basis of alleged bias against the inquiry officer. Further

submits that when the hearing was conducted by respondent No.1, on the direction of this Court passed in Writ Petition No.23886/2021, to decide the application of the petitioner to transfer the inquiry to Lahore region from Hafizabad region, the order announced was to the effect that inquiry is to be shifted to Lahore. Learned counsel also submits that he himself and many others including the Law Officer and Steno of the Excise Department as well as representatives of District Office, Excise Hafizabad were present during the hearing before respondent No.1; however, it appeared as a shock to the petitioner when the Impugned Order was released by respondent No.1 whereby the application of the petitioner for transfer of inquiry was declined. Learned counsel has placed reliance on his own affidavit to this extent. Learned counsel further submits that petitioner's right to fair trial envisaged under Article 10-A of the Constitution has been infringed as *mala fide* on part of the department is evident from the fact that respondent No.3 while holding look after charge as an ETO, cannot initiate the disciplinary proceedings against the petitioner.

3. On the other hand, the learned Law Officer along with departmental representative submits that the instant petition is not maintainable in terms of bar contained in Article 212 of the Constitution. Administrative and executive actions on part of the competent authority such as change/shifting of an inquiry in disciplinary proceedings fall under the purview of Article 212 of the Constitution inasmuch as that once the inquiry is concluded, any adverse outcome based thereon can always be challenged by the petitioner through departmental representation followed by an appeal before the Service Tribunal.

4. Arguments of the learned counsel for the petitioner as well as the learned Law Officer have been heard.

5. Bar contained under Article 212 is absolute and inflexible. The august Supreme Court of Pakistan in case cited as Peer Muhammad v. Government of Balochistan through Chief Secretary and others (2007 SCMR 54) has clearly held that the ouster clause embodied in Article 212 is a constitutional command, which ousts the jurisdiction of the High Court as well as the civil court. In addition to the pronouncement in case of Peer Muhammad *supra*, the Hon'ble Supreme Court of Pakistan in case titled Ali Azhar Khan Baloch and others v. Province of Sindh and others (2015 SCMR 456) has exhaustively defined the jurisdictional delineations of the High Court pertaining to the matters of terms and conditions of service of civil servants. In the said judgment, the apex Court deprecated the exercise of constitutional jurisdiction in the matters pertaining to terms and conditions of service of civil servants and held that the said exercise is not only in defiance of constitutional contours of Article 212 of the Constitution but also confront and defy Article 189 thereof. Therefore, the question of *mala fide* as well as the authority of respondent No.3 to initiate disciplinary proceedings against the petitioner, who admittedly is a civil servant, cannot be looked into by this Court in constitutional jurisdiction.

6. However, the short legal point raised by the learned counsel for the petitioner that requires determination by this Court is to examine the nature of an order of the competent authority to allow or disallow the appointment and/or change of an inquiry officer or otherwise transfer of an inquiry from one region to another region in

departmental proceedings so as to ascertain whether such order is an administrative and/or executive action not falling within the purview of the bar envisaged under Article 212 of the Constitution.

7. Chapter II of the Punjab Civil Servants Act (hereinafter “the Act”) deals with the terms and conditions of a civil servant. Section 15 of the Act pertains to efficiency and discipline and forms part of chapter II, which contemplates that a civil servant shall be liable to such disciplinary action and penalties, and in accordance with such procedure, as may be prescribed. The inquiry proceedings as well as the appointment of inquiry officer is part of the larger ambit of disciplinary proceedings, which clearly falls within the terms and conditions of service. The contention of the petitioner flies in the face of the constitutional mandate underlying Article 212 as well as the intention of legislature envisaged under the Punjab Service Tribunal Act, 1974 as the initiation of disciplinary proceedings precedes the issuance of show cause notice or appointment of inquiry officer by the competent authority. There is no distinction between an administrative/executive order or a *quasi-judicial* order envisaged under the Act. Once the disciplinary proceedings commence, any step in those proceedings formulate the proverbial rung of the ladder of disciplinary proceedings and to carve out any step out of those proceedings such as appointment of inquiry officer or change/transfer of inquiry on the pretext that it is an executive/administrative action falling outside the jurisdictional tentacles of Service Tribunal is clearly an unwarranted notional stretch. I am fortified by the law laid down in Abdul Wahab Khan v Government of the Punjab and 3 others (PLD 1989 Supreme Court 508) wherein an

objection was raised in respect of appointment of an authorized officer, which was challenged in the constitutional jurisdiction of the High Court without success on ground of maintainability that was followed by dismissal of intra court appeal and finally, the honourable Supreme Court declined the leave to appeal while holding that matter fell within the jurisdiction of Service Tribunal.

8. Needless to spell out that the inquiry officer has to carry out proceedings in accordance with the law and to taint the conduct of proceedings by the inquiry officer on the basis of pre-emptive apprehensions in itself does not dovetail to the principles of propriety. Without commenting upon the merits of the case to the prejudice and/or detriment of the parties in the instant case, it is well within the rights of the petitioner to raise any such objections before the competent forum by establishing any irregularity and/or *mala fide* in and during the disciplinary proceedings or against the recommendations of the said inquiry officer. **Therefore, it is misconception to assert that the appointment and/or change of inquiry officer is a separate and independent administrative and executive action not falling within the scope of disciplinary proceedings and hence out of the purview of the bar contained under Article 212.** Even otherwise, such an interpretation would imply that while the punishment inflicted in furtherance of the disciplinary proceedings is to be challenged before the Service Tribunal, the appointment and/or change of inquiry officer does not fall within the jurisdiction of Service Tribunal being an administrative/executive action. This would engender an anomalous position which is not envisaged under the law. In view of unequivocal pronouncements of the august Supreme Court on the subject and constitutional bar

contained in Article 212, this Court has no jurisdiction even to entertain the proceeding that relates to terms and conditions of service of a civil servant.

9. In view of the above, this constitutional petition is not maintainable, hence, **dismissed**.

(ANWAAR HUSSAIN)
Judge

Approved for reporting.

Judge

Akram