

IN THE FEDERAL SHARIAT COURT
(Original Jurisdiction)

PRESENT

MR. JUSTICE RIAZ AHMAD KHAN, CHIEF JUSTICE
MR. JUSTICE DR. ALLAMA FIDA MUHAMMAD KHAN
MR. JUSTICE SHEIKH NAJAM UL HASAN
MR. JUSTICE ZAHOOR AHMED SHAHWANI
JUSTICE MRS. ASHRAF JAHAN

SHARIAT PETITION NO.4/I OF 2008

Col. (Retd) Muhammad Akram son of Malik Fateh Khan,
R/o 105 Race Course Road, Street 1, Rawalpindi Cantt.

..... Petitioner

Versus

Federation of Pakistan through Secretary M/o Defence, Rawalpindi Cantt.

.... Respondent

Counsel for the Petitioner In person

Counsel for Federal Govt. Mr. M. Parvez Khan Tanoli,
Standing Counsel

For Pakistan Army Major Shah Jehan Khan,
JAG, GHQ, Rawalpindi

For Pakistan Navy Capt. M. Nawaz Mirza and
Commander Sami Waheed

For Pakistan Air Force Group Captain Rana Nazir
JAG, Headquarter Peshawar

Date of Institution 21.07.2008

Date of hearing 27.09.2016

Date of decision 31.10.2016

JUDGMENT

ALLAMA DR. FIDA MUHAMMAD KHAN, Judge.-

The petitioner Col. (Retd) Muhammad Akram has challenged the Pakistan Army Regulation (Rule) 133 Clause 'q', 'r' and 'u' and the parallel Rules of the Pakistan Navy and the Pakistan Air Force, if any, and prayed that the same may be declared to be against the Injunctions of Islam. The impugned rules read as follows:-

“133. **Vacation of Appointment.** An officer will vacate his appointment in the following circumstances. This Rule does not, however, affect the rules in the Pay and Allowances Regulations, under which command charge, staff or additional pay may, in certain cases, continue to be admissible to him and his successor notwithstanding the fact that he has ceased to actually perform, the duties connected with that appointment:-

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- q. From the date of being taken into military or civil custody or that of suspension from duty, on a charge for an offence of which he is afterwards convicted by a criminal court or a court martial or by an officer exercising authority under Section 23 PAA (see Note 2 below).
 - r. From the 22nd day of being placed under arrest or suspension from duty, for an offence other than falling under sub-rule q above (see note 2 below).

- u. On attachment to any formation/unit by GHQ on disciplinary grounds (see also Note 2 below).”

Note 2: Reference clause q, r and u above. If the officer is subsequently acquitted or for any reason is not brought to trial or his character is vindicated to the satisfaction of the Chief of the Army Staff by such enquiries as may be made under Rule 328, he may be re-appointed to the post he had vacated from the first day of vacation of his original appointment.

If an officer is convicted and receive a sentence of less than dismissal he may, at the discretion of Corps, Divisional, Log Area or independent Brigade Commander be re-appointed from the date he returns to duty.”

2. The learned counsel/petitioner has submitted in his petition, that:

- * if an Army Officer, holding temporary rank, is taken into custody or is suspended from duty, on a Charge for an Offence of which he is afterwards convicted by a criminal court or court-martial or by the officer under Section 23 of the Pakistan Army Act, he is to vacate his appointment from the date of custody/suspension from duty under Army Regulations, Vol 1(Rules) Rule 133 ‘q’ or from the 22nd day of being placed under arrest or suspended from duty, for an Offence other than falling under sub-rule ‘q’ ibid (A. R. (Rule 133 ‘r’). He is also to vacate his appointment from the date of his attachment to a

unit/formation on disciplinary grounds i.e. on a charge for an Offence. (Rule) 133 'u').

- * The Officer, on vacation of his appointment, is to lose his temporary rank as well under A R (Rule) 149 'b' (1). He also mentioned that promotion upto and including the rank of 'Major' is by time scale, and to the rank of Lieut-Colonel and above is by selection.(AR (Rule) 204).
- * Loss of 'Rank' means deprivation of 'Rank' emoluments and position as such. The Officer stands deprived of his means of livelihood. The Officer, who is taken into custody or is suspended from duty or is attached on disciplinary grounds, remains innocent till he is proved 'Guilty' under Law. (Sura 'Al-Noor 24, Ayat 12-13 – PLD 1982-Jour-13)
- * A Govt. servant remains entitled to service emoluments and all other benefits and facilities provided to him for the period he remains suspended from duty. (PLD 1994 SC 72 at 78, Citation 'F').

3. The Federation on its behalf and on behalf of the Pakistan Armed Forces, in its comments, has expressed serious reservations about the pleas raised by the petitioner. In addition, the Pakistan Air Force and the Pakistan Navy submitted separate comments also

wherein all of them have opposed the petition. For the sake of brevity,

the objections raised by them are summarized as under:-

- a). The Pakistan Army Act, 1952 (hereinafter referred to as the said Act) had already been examined on the touchstone of Injunctions of Islam but no citizen of Pakistan ever brought to the notice of the Honourable Court the impugned provisions inspite of notification of a public notice;
- b). The Armed Forces have their peculiar justice system and by virtue of sub section (2) of sub section (5) of the Code of Criminal Procedure 1898 the provisions of Cr.P.C. for the trial of offences under the Pakistan Army Act. are not attracted;
- c). After amendment in the said Act pursuant to the judgment of this Court as well as the Honourable Shariat Appellate Bench of Supreme Court, appellate forum has been provided;
- d). Joining employment in the Armed Forces is voluntary and nobody is forced. Thus whoever joins the Armed Forces willingly accepts the compliance of all Rules and Regulations enforced therein;
- e). A crime committed by a common person may not be a big crime but the same crime amounts to a heinous crime when committed by an official of the Armed Forces because it is an urgent requirement in peace and war.

f). Maintenance of discipline is imperative and foremost responsibility of the command.

4. We have heard learned Petitioner as well as the learned standing counsel for Federation and have thoroughly examined the impugned Rules in the light of their submissions. The learned Petitioner reiterated the points mentioned in his Petition and contended that the officer on vacation of his appointment loses his temporary rank and its emoluments which is against the Injunctions of Islam.

5. It is pertinent to mention here that the impugned Rule 133 pertains to vacation, appointment and various sub rules to the same have been enacted to show the effective date and elaborate procedure in that connection. It has, however, been specifically mentioned right in the beginning that this rule does not affect the rules in Pay and Allowances Regulations under which command charge, staff or additional pay may, in certain cases, continue to be admissible to him and his successor notwithstanding the fact that he has ceased to actually perform, the duties connected with that appointment. It means that this rule mentions only the conditions for vacation of appointment. So far as

the pay and allowances are concerned, these are governed by Pay and Allowances Regulations and, therefore, apprehension by the learned petitioner that such an officer stands deprived of his means of livelihood has no basis. According to the said rules the officer loses only the temporary rank and not the substantive rank nor its emoluments to which he remains duly entitled. It has been added in the Note 2 to the impugned Rule that in case of acquittal, he may be reappointed to the post he had vacated from the first day of vacation of his original appointment. In case of his conviction, if he receives a sentence of less than dismissal, he may be reappointed from the date he returns to duty.

6. So far his pay and allowances are concerned, the impugned rules specifically provides, as mentioned above, that these will remain unaffected as the Pay and Allowances Regulations has duly taken care of the same. The learned counsel/petitioner could not give any reference to the specific Regulations in the Pay and Allowances Regulations which debars such officers from receiving their Pay and Allowances for the substantive ranks they hold.

7. In this view of the matter, we have found this petition misconceived and dismissed it accordingly.

MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN

MR. JUSTICE RIAZ AHMAD KHAN
CHIEF JUSTICE

MR. JUSTICE SHEIKH NAJAM-UL-HASAN

MR. JUSTICE ZAHOR AHMED SHAHWANI

MRS. JUSTICE ASHRAF JAHAN

Announced in open Court
on at Islamabad
Umar Draz/*