

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-6417 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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Present:

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Agha Faisal

Khan Kamran Shamshad.....Petitioner

Versus

Federation of Pakistan & Others.....Respondents

1. For hearing on CMA No.27987/2018.
2. For hearing of main case.

12.04.2019

Petitioner present in person.

Mr. Muhammad Shahbaz, advocate for the
respondent Nos.4 & 5.

Muhammad Nizamuddin, Air Commodore (Retd.),
Registrar, PAF-KIET.

Syed Salman Ahmed, Faculty, PAF-KIET.

Muhammad Ali Mazhar, J.: This petition has been brought to challenge the Rustication letter dated 10.05.2018, issued by Chairperson, Students Discipline Committee PAF-KIET. According to the petitioner, this letter is illegal merely for the reason that it was issued without affording any opportunity of hearing to the petitioner. The rustication letter demonstrates that the Students Discipline Committee PAF-KIET referred to Clause 3.1.14 of Policy on Moral Code and Ethics (Students) which encapsulate and put in a nutshell that

showing disrespect and insubordination towards any staff member is not allowed and will result in strict disciplinary action.

2. In terms of paragraph 6 of the rustication letter, the petitioner was allowed to file review and appeal. It was further avowed that he may continue his studies after 30.06.2019. Paragraph 6 of the letter is reproduced as follows:

“As per the rules you can file review petition against the imposition of penalty within two week’s time to the Chairman Discipline Committee, who shall place it before the Committee for its consideration and decision within a maximum of two weeks to dispose of the case. An appeal against the imposition of penalty by the Discipline Committee may then be made to the President PAF-KIET, within two weeks. The decision of the President shall be final and no appeal may be filed thereon.”

3. The petitioner in person argued that the allegations leveled in the rustication letter are unjustified. It was further contended that he never shown any disrespect and insubordination to any staff member. Whereas the counsel for the respondent Nos.4 & 5 argued that some offending and malicious emails were generated by the petitioner due to which inquiry was conducted and he was found guilty.

4. At this juncture, the petitioner submits that according to remedies provided in rustication letter, he had filed review application. Earlier the same petitioner filed C.P. No.D-4489 of 2018 in which certain directions were issued by this court to decide the review application of the petitioner within 15 days. The copy of the order dated 02.07.2018 passed by Authority in review displays that review committee had maintained the earlier decision. The petitioner argued that after rejecting his review

application, he had filed an appeal on 20.07.2018 to the President, PAF-KIET University for the reconsideration of the earlier decision made by the Students Discipline Committee against him but no right of audience was afforded to him by the Appellate Authority.

5. On the contrary, learned counsel for the respondent Nos.4 & 5 shown us a letter dated 31.08.2018 communicated by the Chairperson, Student Discipline Committee to the petitioner. For the ease of reference paragraph 8 of the letter is reproduced as follows:

“You are hereby, informed that your appeal e-mailed on 22 July, 2018 was considered by the President PAF-KIET. He directed the Chairperson Student Discipline Committee to acquire Dr. Wali Mughni’s statement and then, the Student Discipline Committee to review your appeal in light of Dr. Wali Mughni’s statement. On the recommendation of the Committee, the President maintains decision of the Student Discipline Committee communicated on 10 May, 2018, that, “With effect from 10 May, 2018, Mr. Kamran Shamshad Student ID-61169 MBA (Aviation) has been rusticated till 30 June, 2019”

6. What we comprehend on visualizing the order in appeal that no personal hearing was afforded to the petitioner. Once the right of appeal was provided by the University itself in rustication letter and that was yet again mentioned in the order passed in review application, therefore, in all fairness, under the natural and usual canons, before passing any order by the appellate authority, at least an opportunity of hearing should have been provided to the appellant/petitioner.

7. Due process is prerequisite that needs to be respected at all stratum. The conception and perception of due process was developed on or after Clause 39 of Magna Carta that “No free man is to be arrested, or imprisoned,

or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land". In our Constitution, right to fair trial is a fundamental right. This constitutional reassurance envisaged and envisioned both procedural standards that courts must uphold in order to protect peoples' personal liberty and a range of liberty interests that statutes and regulations must not infringe. On insertion of this fundamental right in our Constitution, we ought to analyze and survey the laws and the rules/regulations framed thereunder to comprehend whether this indispensable right is accessible or deprived of? In case of stringency and rigidity in affording this right, it is the function rather a responsibility of court to protect this right so that no injustice and unfairness should be done to anybody. The proactive role of the court must alone prove that this right is not confined only within the precincts of the Constitution but in actuality and for all practicality it exists to do good to the people. The right to a fair hearing and or trial necessitates that no one should be penalized by the decision upsetting and afflicting his right or legitimate expectations unless he is given prior notice of the case, a fair chance to answer it and a fair opportunity to explicate/present the case. The right to a fair trial means that general public and commonalities can be sure that process will be fair and certain which is the finest method of detaching and disengaging a guilty from an innocent thereby protecting against injustice. The right to fair trial is recognized worldwide as a fundamental human right by virtue of Article 10 of Universal Declaration of Human Rights which expounds that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal,

in the determination of his rights and obligations and of any criminal charge against him". The honourable Supreme Court in the case of Warid Telecom (Pvt.) Limited v. Pakistan Telecommunication Authority, reported in 2015 SCMR 338 held as under:

"Constitution of Pakistan. Article 10A. Fundamental Rights. Whenever adverse action was being contemplated against a person a notice and/or opportunity of hearing was to be given to such person. Said principle was a fundamental right under Article 10A in the Constitution. However, both the requirements of a notice and providing an opportunity of a hearing may also be dispensed with in certain type of cases e.g. where such requirement would cause "more injustice than justice" or it was not in the "public interest". The Indian Supreme Court in the case of Karnataka Public Service Commission v. B. M. Vijaya Shankar (AIR 1992 Supreme Court 952) stated that, when meeting the requirement of notice and providing an opportunity of hearing will cause "more injustice than justice" or it is not in the "public interest" the same may be withheld. It will be useful to reproduce the following portion from the said judgment:--

"(4) Was natural justice violated? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed; since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require, flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment."

Another case from the India in a similar vein is the case of Union of India v. J. N. Sinha (AIR 1971 Supreme Court 40) where it was held, that:--

"As observed by this Court in Kraipak v. Union of India, AIR 1970 SC 150, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

8. The Registrar of the University and the faculty Member admitted that the petitioner was not called for hearing before the appellate authority, however, they agreed that on direction of this court a fair opportunity of hearing

shall be provided to the petitioner before the President who is also Vice Chancellor of the University.

9. As a result of above discussion, the petition is disposed of with directions to the Vice Chancellor/President, PAF-Karachi Institute of Economics & Technology to provide right of hearing to the present petitioner and decide the appeal of the petitioner afresh in accordance with law within 15 days' time.

Judge

Judge