



## DISPENSATION OF REGULAR INQUIRY UNDER PEEDA ACT 2006 IN PAKISTANI LAW: A CRITICAL REVIEW

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### Abstract

*This article will look into the circumstances under which regular inquiry can be dispensed with under the Punjab Employees Efficiency, Discipline and Accountability (PEEDA) Act 2006. It will be suggested that two conditions must be fulfilled before taking such an action. First, the department should have irrefutable documentary evidence to sustain the charge, and second reasons should be recorded in writing as to why regular inquiry is not needed. Next, the article will deliberate upon the importance of regular inquiry qua fair trial rights as guaranteed under article 10-A of the constitution. In the third place, the article will examine different types of inquiries, including fact finding and regular inquiry, de novo inquiry and inquiries applicable to contractual employees to make a point that one type cannot be substituted for another. Not only that, an attempt will be made to understand legislative intent behind the requirement to record reasons to dispense with regular inquiry. Finally, recommendations and conclusions will be made as to how the law can be made more responsive to the ordeal of civil servants pitched against the departments in long drawn litigation.*

**Key Words:** Regular inquiry, Dispensation, speaking order, Recording reasons, Fair trial rights, right to livelihood, Legislative Intent



### **Introduction:**

According to PEEDA Act 2006, a regular inquiry can be dispensed with under exceptional circumstances. This provision is frequently misapplied by the departments, resulting in to punishment orders being set aside by the superior courts in the exercise of their constitutional jurisdiction, after long drawn and protected legal battles. Based on the observation of superior courts, whenever a charge is disputed by the employee, facts become controversial and the same may only be proved through a regular inquiry.

As stated in **section 5(i)(b)(ii) of PEEDA Act 2006**, **regular** inquiry may only be dispensed with for reasons to be recorded in writing, the relevant text is reproduced as under:

*“Provided further that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, he is satisfied that there is no need to hold an inquiry.”*

As per superior courts, the legislature, by using these words intended the departments to exercise care and caution while dispensing with regular inquiry. Therefore, dispensation may only be ordered where the department has irrefutable evidence or admission of the accused qua charges against him, and the same must be shared with him for making a defense. Furthermore, the competent authority must give reasons in writing that why dispensation is called for.

As declared by the superior courts, dispensation of regular inquiry deprives the accused of his right to fair trial under article 10-A of the constitution. Hence, it has been held where the authority is contemplating to impose a major penalty, holding regular inquiry is imperative. Likewise, courts have been of the view that dispensation nullifies the age-old principle of *audi altrem paltrem* or no one should be condemned unheard. Furthermore, it shows bias of the authority towards the accused civil servant and lack of fairness of proceedings, accordingly it should be discouraged in all cases attracting major penalty. The concept of major and minor penalty is geared towards giving discretion to departmental authorities to determine quantum of punishment commensurate with nature of the charge but the discretion cannot be exercised arbitrarily, instead it must be used fairly, justly and honestly. Because it shows bias and prejudice of departmental authorities towards an employee, it must be rarely used.

Practically, dispensation of regular inquiry is done soon after service of show cause notice to the accused civil servant and receiving its reply. In the opinion of superior courts, this also requires communication of charges to the accused, providing substance of the evidence to him and indicating proposed punishment along with the opportunity to explain the circumstances against him. Additionally, it must be made clear in the show cause notice on what basis it has been decided to dispense with the regular inquiry.

Dispensation of inquiry quite often leads to setting aside the punishment at superior court level where a de novo inquiry is frequently ordered to find out if the accused is entitled to back benefits in addition to the restoration. This process takes years and sometime decades resulting in the employee having reached the age of superannuation making the remedy inefficacious.



Furthermore, sometimes, the department fails to conduct regular inquiry in de novo proceedings and try to utilize the evidence (material/ information) already put to use in the previous inquiry. This leads to delay in dispensation of justice and prolongs the agony of the aggrieved civil servants. Likewise, the appellate authorities at times bother not to respond to pending appeals or mechanically pass orders compelling the employees to invoke constitutional jurisdiction of superior courts which yet again tests the patience of a person who is denied the right to livelihood in a legally defective proceeding.

In the end, it will be suggested that the law be amended to clarify that dispensation of inquiry may not be resorted to in cases where major punishment is contemplated. Moreover, to invoke this provision, employers be obliged to share substance of the evidence with the accused and give them reasonable time to make defense and opportunity to explain the charges against them. Furthermore, recommendation will be made to fix time limit for the appellate authorities to decide appeals relating to dispensation of regular inquiry. In this respect, Sindh High Court has taken the lead to express its dismay over the mechanical process employed at appellate level and reminded the authorities of their obligation to pass speaking orders.

1. Requirements for dispensation of Inquiry under PEEDA Law.
  - 1.1 Not applicable in major penalty cases

There are a number of judgements of superior courts listing the conditionalities for dispensation of inquiry. Foremost amongst these is Abdul Qayyum in which the Supreme Court held that it is now a settled law that regular inquiry cannot be dispensed with in cases where imposition of major penalty is contemplated. The PEEDA Act 2006 provides for three kinds of major penalties, i.e., compulsory retirement, removal from service and dismissal from service. In either of these cases, imposing penalty without inquiry is held to be in breach of fair trial rights of the accused civil servant. According to the Supreme court, as per spirit of the PEEDA Act, these major and minor punishments have been provided to give discretion to the competent authority to determine quantum of punishment commensurate to the nature of offence. However, the exercise of discretion is regulated by the rules of natural justice.

- 1.2 Not applicable where disputed question of fact is involved

In (*Muhammad Waris v. DG 1122*), the Lahore High Court held that regular inquiry as envisaged in PEEDA Act 2006 cannot be dispensed with where charges are denied or controverted by the accused civil servant. The dispensation of inquiry is only permissible where charges are admitted by the accused or irrefutable evidence is available on record to sustain the charges.

Where facts in issue are denied, the story of the department becomes controversial which makes it all the more important to determine the guilt or innocence of the accused by holding a regular inquiry. Regular inquiry implies a proceeding where the accused is given a fair opportunity to confront or controvert the charges against him. Thus, where after service of show cause notice, a reply in rebuttal is received from the accused civil servant, an impartial inquiry officer should be appointed to give fair opportunity to the accused to cross examine witnesses against him



and question the credibility of documentary evidence, if any. Conversely, in order to dispense with inquiry, the department must prove that the accused never challenged the charge sheet or admitted the same.

In a recent case, the accused employee was served with a show cause notice containing serious allegations of misconduct which were all denied by him. As a result, a disputed question of fact arose for which regular inquiry was held to be indispensable by the Lahore High Court.

### 1.3 Procedure to dispense with inquiry

CJP Justice Umar Ata Bandial has outlined the procedure to dispense with regular inquiry in (*Muhammad Sadiq v. IGP Punjab*). Here, it was held that under section 5 of PEEDA Act 2006, the accused civil servant must be served with a show cause notice summarizing the evidence against him on the basis of which the decision to dispense with inquiry has been made. Furthermore, the showcause notice must also give reasons in writing on the basis of which such a decision has been taken. As per the facts, the accused civil servant was removed from service for wilful absence from duty. The department argued before the tribunal that the accused had received minor punishments on 27 previous occasions for the same offence prior to his dismissal on the fateful day. By contrast, the accused took the plea that he was burned out and fatigued, and upon refusal of his superior officer to grant leave, he had to absent himself due to physical exhaustion. Clearly, the charge was denied and controverted making the inquiry indispensable, especially when the accused could have provided medical evidence in support of his contention. Instead, the department simply proceeded to terminate him. Because neither the show cause notice nor the removal order served upon the accused civil servant disclosed the evidence available with the department or gave any reasons in writing for doing away with regular inquiry, the order of dismissal was held to be perverse, fanciful and unlawful. Consequently, the civil servant was reinstated with the direction to conduct regular inquiry. If the accused succeeded in establishing his innocence, he would be entitled to back benefits. It was held further that back benefits could only be denied if the accused had accepted a gainful employment or carried on a profitable business during his dismissal.

**Section 5(1)(b)(ii) of PEEDA Act 2006** stipulates that regular inquiry can be done away with after recording reasons in writing or when the department has irrefutable evidence in its possession that justifies such an action. If neither of these things is referred to in the Show Cause Notice and dismissal order, such a proceeding will be illegal. Likewise, proviso to **section 7 (f) (i) and (ii) of PEEDA Act 2006** states, in order to impose major punishment in cases of unauthorized absence from service, period of absence must be longer than a year. Additionally, recovery shall be imposed in addition to penalty of dismissal in cases involving grave corruption only. The aforesaid section is copied below to shed light on the procedure to dispense with regular inquiry:

‘Provided that – (i) Where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the penalty of recovery, if any; and (ii) Where charge of absence from duty for a period of more than one year is proved



against the accused, the penalty of compulsory retirement or removal or dismissal from service shall be imposed upon the accused.'

Obviously, imposing a major penalty in violation of these provisions will be manifestly illegal. In short, procedure to dispense with inquiry necessitates that material/ information on the basis of which regular inquiry is proposed to be dispensed with must be communicated to the accused. The reply of the accused in response to such material and information can form basis to dispense with inquiry. Otherwise, the authority shall appear to be biased and devoid of judicious mind.

Thus, in (*Muhammad Safdar v. PIA*), due to failure of the department to share substance of the evidence with the accused, even the grave charge of instigating strike could not hold ground in the superior court.

#### 1.4 Requirement to look into nature of charges

Nature of charges should be looked into before deciding whether or not to dispense with a regular inquiry. Accordingly, if the charges are such that they can be proved by un-rebuttable evidence admissible on the touchstone of QSO 1984, regular inquiry can be done away with. Secondly, if the accused has admitted the charge, the inquiry can be waived. To give you an idea, in a case involving inefficiency and misconduct, the nature of charges necessitates regular inquiry because neither of these heads can be proved without evidence. There are simply no specific facts which can be admitted or denied by the accused.

## 2. Rules of natural justice

### 2.1 Right to fair trial and due process

According to superior courts, dispensation of regular inquiry deprives an offender of his rights to fair trial, due process, to be treated in accordance with law, equality before law and right to livelihood. These rights are provided in articles 10-A,4, 8,9 of the constitution of Pakistan. Therefore, an order denying these rights is challengeable under article 199 of the constitution. In (*Muhammad Waris v. DG Punjab Emergency Services etc*), it was held, 'The competent authority may in the exercise of powers under PEEDA Act 2006, by dispensing with the requirement of regular inquiry, follow the summary procedure, but this power must be exercised in exceptional cases, in which there is no factual controversy or facts are admitted' As a result, where an adverse conclusion is drawn against the accused civil servant on the basis of disputed facts without recording the evidence and affording an opportunity to cross examine the witnesses, principles of natural justice can be said to have been violated. In keeping with rulings of superior courts, such an order will be against the spirit of PEEDA Act 2006 which contemplates punishment for a delinquent civil servant and vindication for an innocent one, falsely charged with breaching discipline.

Due process is provided in article 4 of the constitution which affirms a citizen's right to be dealt with in accordance with law and to be subject to equal protection of law. Where facts are



disputed, denied and controverted, doing away with the inquiry procedure as laid down in **Sections 5 and 7 of PEEDA Act 2006** would amount to denial of due process rights of the accused civil servant.

Fair trial rights are guaranteed under **article 10-A** of the constitution which incorporates right to know the evidence against you and cross examine the witnesses against you. Additionally, these include right to question the credibility of documentary evidence against you.

All said, as laid down in (*Usman Ghani v. Chief Post Master*), burden of proof in departmental proceedings is not as heavy as in criminal cases because the decisions are based on preponderance of evidence rather than establishing guilt beyond any shadow of doubt. However, lesser threshold does not mean procedure can be flouted in departmental proceedings. Addedly, right to life under article 8 of the constitution enclose right to livelihood and if the same is unjustly taken away, it will be amenable to High Court's constitutional jurisdiction under **article 199**.

*In (Muhammad Waris v. DG Rescue 1122)*, an employee was dismissed after having been served a show cause notice. The allegation was that the accused being a rescue worker was deputed to respond to an emergency case of poisoning. On his way, he collided with a tractor and trolley causing severe damage to the rescue vehicle. It was believed that he was under the influence of drugs at the time of accident. Although, the accused in his reply denied that he was intoxicated, yet no regular inquiry was held to establish the charge and the he was terminated summarily. Consequently, the High court reinstated him with the direction to hold regular inquiry to decide if he was eligible for back benefits.

## 2.2 Speaking Orders

In (*Shakir Ali v. NAB*), it was proclaimed that all judicial and quasi-judicial authorities are required to justify their orders with reasons, and their orders should be speaking, conforming to the requirements of **article 24-A of the General Clauses Act 1897**. The SHC went on to say, it was disheartening to note that the appellate authorities, including Governor and the President either concur with the department sans application of mind, or sit on appeals for months and years without taking any action resulting into more suffering for already distressed civil servants.

Correspondingly, *in (Usman Ghani v. Chief Post Master)*, the department charged the accused with embezzlement and misappropriation and thereby causing loss to the department of millions of rupees. Pursuant to the charge, the accused was issued a Show Cause Notice by the department and the same was specifically denied by him in his reply. Upon this, the department instead of appointing an inquiry officer, proceeded to impose major punishment of dismissal from service after giving him a formal opportunity of hearing. When the matter went to appeal, the appellate authority dealt with the matter carelessly. As much as, it did not even bother to look at the record placed before it, in which another employee namely Muhammad Amin had confessed the crime of misappropriation and also deposited a substantial amount in the account



of the department to make good the loss. Furthermore, on the basis of his confession, the accused Muhammed Amin was prosecuted and punished by the court. Overlooking all this evidence, the appellate authority agreed with the department. Consequently, the decision was set aside by the Supreme Court and the accused was ordered to be reinstated with back benefits.

2.3 Discretion to dispense with inquiry to be exercised judiciously.

The superior courts have pronounced that discretion to dispense with regular inquiry has to be exercised in the nature of a judicial decision. The word 'discretion' connotes something optional but in **Section 5 of PEEDA Act 2006**, the phrase 'decision' has been used with reference to the act of dispensation of inquiry. Black's law dictionary defines 'decision' as judicial determination after consideration of facts and law. As a consequence, discretion to dispense with inquiry has to be exercised in the nature of a judicial decision since the legislature requires the authority to record reasons in writing under **section 5**. Therefore, reasons must be recorded to dispense with the inquiry.

It was held in (*Rai Zaid Ahmad Kharal v. Chairman WAPDA*), the sole object of this legislative requirement appears to be that the legislature intended that discretion which was being left up to the authority must be exercised judiciously and not arbitrarily. Comparably, in (*Abdul Qayyum v. D.G. Project Management Organization JS HQ, Rawalpindi & 2 others*), the Supreme Court observed that the inquiry could be dispensed with in 'exceptional circumstances.' Where recording of evidence was necessary to establish the charge, the departure from the requirement to conduct inquiry would amount to condemning a person unheard.

In (*Muhammad Sadiq v. IGP Punjab*), the department argued that the proper and lawful procedure was adopted to dispense with inquiry i.e., show cause notice was served and reply was received. The court held that this does not amount to reasonable opportunity of showing cause against the proposed action. Reasonable opportunity can be said to have been granted to show cause against the proposed action where the accused is communicated particulars of the charge against him, substance of the evidence and possible punishment in case the charge is proved. Additionally, he must be given access to the record and reasonable time to make his defense.

Right to fair trial is associated with fundamental right of access to justice which should be read in every statute if not expressly provided for, unless specifically excluded. The case (*Basharat Ali V. Director Excise & Taxation Lahore*), reinforces the argument by suggesting that fair trial right is inalienable right of the person against whom any allegation is levelled.

In summary, the PEEDA Act 2006 gives discretion to dispense with inquiry but the discretion has to be exercised fairly, honestly and justly, by application of judicious mind and for sound reasons. According to article 5, nature of the allegations has to be looked into, if they can be proved with reference to admitted record or irrefutable evidence, the inquiry can be dispensed with.



### 3 Kinds of Inquiries

#### 3.1 Fact finding and regular inquiry

In *Usman Ghani v. Chief Post Master GPO Karachi*, the Supreme Court made a clear-cut distinction between a fact finding and a regular inquiry. According to the facts of the case, upon receiving a reply to show cause notice, the department constituted a committee to probe into the guilt of accused. The committee held the accused guilty and recommended imposition of a major penalty. As stated by the court, an ostensible inquiry cannot be substituted for a regular inquiry because in line with procedure laid down for regular inquiry, an impartial officer should be nominated pursuant to serving a show cause notice and receiving a reply thereto. The nominated inquiry officer shall give opportunity to the accused civil servant to cross examine the witness who may have deposed against him, and also to make his defense against the charge. Providing this opportunity is vital because as per general rule, a piece of evidence not having been put to the test of cross examination is not admissible in a judicial or quasi-judicial proceeding.

On the contrary, a fact-finding inquiry is internally arranged by the department to consider if a prima facie case of misconduct is made out against the accused civil servant, and if there are sufficient grounds to proceed further against him.

Simply put, a fact-finding inquiry is not required under PEEDA Act 2006, still it can be conducted to see if there is enough material on record to proceed against the delinquent officer. It should not be confused with a regular inquiry which has no validity without the opportunity afforded to the accused to cross examine the witness and make his defense.

#### 3.2 De novo Inquiry

The word *de novo* according to Black's Law dictionary connotes trying afresh, hearing something a new as it has never been decided or considered before. Keeping this in mind, if it is ordered by an appellate authority that a de novo inquiry be held, it means everything shall begin afresh, making applicable all provisions of the law from the very beginning as if no action has been taken before. Any step which is taken in the previous inquiry shall be deemed null and void. Where the department, contrary to the orders of tribunal, in lieu of holding a de novo inquiry issued a show cause notice, the court regarded it a blatant violation of law and denial of the right to make defense. For example, in *Iqbal Hussain v. Secretary IT & Govt. of Pakistan*, the service tribunal upon accepting petitioner's appeal ordered de novo inquiry in a case where major punishment of dismissal from service was imposed. Still and all, the department served a show cause notice upon the accused and on receiving reply thereto awarded major punishment of compulsory retirement, the proceeding was held to be illegal. While setting aside the order, the Sindh High Court observed that the word de novo means hearing, trying and deciding afresh, therefore, issuance of show cause notice based on a previous proceeding by no stretch of imagination fulfills this requirement. Understandably, therefore, the evidence collected during an earlier proceeding cannot be used in a de novo inquiry.





### 3.3 Inquires of contractual employees in cases of stigmatic allegations

In *(2016 PLC (CS) 296 Lah)*, it was held that regular inquiry is an integral part of fair trial rights and even contractual employees may not be deprived of it. In the opinion of the court, fair trial is a constitutional right which cannot be taken away arbitrarily. Although the authority has discretion to lay off contractual employees but not capriciously, quite the reverse, after communicating particulars of the charge, substance of the evidence and punishment to be meted out to him in case charges are established.

In particular, where stigmatic allegations are levelled against the accused civil servant, he cannot be denied of a regular inquiry. Such an action shall be followed by a reasonable opportunity to make defense against the proposed action and to cross examine the witness. Nonetheless, if regular inquiry is to be dispensed with, reasons must be recorded in writing. Noticeably, there can be two grounds for explaining away dispensation of regular inquiry, i.e., availability of irrefutable evidence of breach of discipline satisfying the standards of QSO 1984 or the accused civil servant having admitted the charges against him.

In *(Muhammad Riaz v. Ms. Services Hospital)*, the court held that even contractual employees cannot be terminated in violation of their due process and fair trial rights under article 10-A of the constitution. The court explained that nature of charges must be looked into, if they are inefficiency and misconduct, regular inquiry is called for because fair trial rights are fundamental right of every citizen, and allegations like these are stigmatic in nature. Therefore, civil servants must be given reasonable opportunity to defend themselves against disrepute regardless of permanent or contractual nature of their employment. Hence, the discretion to terminate contractual employees must be exercised in consonance with spirit of law, by application of judicious mind and for cogent reasons to be recorded in writing.

In *Rai Zaid Ahmad Kharal v. Chairman WAPDA* case, the LHC noted while assuming jurisdiction, “if the termination order would convey the message of any stigma, the employee could not be ousted from service without resorting to the procedure of Efficiency and Discipline rules.”

In a nutshell, it can be argued that protection of right to livelihood being part right to life, and that of access to justice being component of fair trial right necessitates that normal course should be adopted in departmental proceedings necessitating regular inquiry. Nonetheless, according to Supreme Court, normal course can be departed from in exceptional circumstances.

### Conclusion

Considering the foregoing, it can be argued that dispensation of inquiry under PEEDA Act 2006 is an unusual provision to be resorted to in extraordinary circumstances. Dispensation deprives a person from his right to fair trial and violates the natural justice principle of *audi altrem paltrem*, therefore, it must be barely employed. Regrettably, however, the departments, of late have started invoking this provision excessively without fulfilling the statutory



requirements attached. Fortunately, however, the superior courts have taken note of this and while disapproving this practice laid down certain rules which can be summarized as follows:

- i. *Regular inquiry affords a right to an accused civil servant to cross examine the witness who deposed against him and explain the circumstances indicating towards his guilt.*
- ii. *Dispensation is a decision which must be taken after applying judicious mind and recording reasons.*
- iii. *Dispensation is not justified where the authority has contemplated to impose major punishment on the accused civil servant.*
- iv. *Dispensation would be defensible if the accused has admitted the charge or sufficient evidence is available satisfying Qanon-e shahdat Order's admissibility standards to procure conviction.*
- v. *The pre-condition to record reasons in the PEEDA Act points to the fact that the legislature insists on the department to exercise care and caution when using this provision.*
- vi. *If stigmatic allegations like inefficiency and misconduct are levelled against an employee, he should have the right to make his defense in a regular inquiry*
- vii. *According to courts, the procedure to dispense with regular inquiry necessitates that the accused employee should be communicated the charges against him, substance of the evidence and proposed punishment in case the charges are proved.*
- viii. *Dispensation of inquiry amounts to denial of fair trial rights amenable to the constitutional jurisdiction of High Courts under article 199.*
- ix. *If the allegations are denied by the accused, the fact becomes controversial and a disputed fact in issue postulates regular inquiry.*
- x. *Fair trial rights are associated with right to access to justice and they are deemed to be part of every law unless specifically excluded. Such rights can be taken away on fairly strong grounds such as admission of guilt or availability irrefutable evidence.*

Supplementarily, the superior courts have held that even a contractual employee cannot be awarded a major penalty without holding a regular inquiry if the allegations against him are stigmatic in nature. In (*Muhammad Safdar Anjum v. PIA*), the Sindh High Court condemned the practice of appellate authorities to dismiss appeals without giving reasons. As stated by the court, such practices are reprehensible as authorities like Presidents and Governors are thought to be responsible enough to apply their independent mind while deciding departmental appeals as opposed to mechanically endorsing the departmental opinions. The court noted further that pursuant to **article 24 A of General Clauses Act** both Judicial and non-judicial authorities are equally expected to pass speaking orders.

Against this background, instead of letting the civil servants languish in long drawn and protected litigation with the departments, it is recommended that the law be amended. Under the revised law, the dispensation of inquiry may either be done away with or allowed under clearly elaborated special circumstances. For instance, currently to dispense with inquiry, PEEDA ACT 2006 only requires reasons to be recorded in writing and the department being in possession of irrefutable evidence. Additional conditions should be added in the light of landmark rulings of the superior courts based on fair trial rights of accused civil servants. For



example, dispensation of inquiry should be expressly barred where imposition of a major penalty is contemplated. Furthermore, in no case involving stigmatic allegations, regular inquiry should be dispensed with. Finally, yet importantly, the appellate authorities be obliged to decide the departmental cases within a reasonable time and with speaking orders, or else the cases be reverted back to the department for de novo proceedings.



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