

APPELLATE TRIBUNAL  
PAKISTAN CRICKET BOARD  
NATIONAL CRICKET ACADEMY LAHORE

Present: MR JUSTICE AFTAB FURRUKH (R), Chairman  
MR HASEEB AHSAN, Member  
MR MOHAMMED NAVEED CHAUDRY, Member

MR ABID HASAN MINTO Senior Advocate assisted by Mr Bilal Minto  
Advocate Supreme Court and Appellant present in person

MR TAFFAZUL HAIDER RIZVI Advocate Supreme Court assisted by Ms  
Saba Latif Advocate High Court and Mr Haider Ali Khan Advocate High  
Court for Respondent

1. Appellant Shoaib Akhtar by this appeal impugnes the Order dated 01 April 2008 passed by Disciplinary Committee (hereinafter referred to as "the Committee") whereby the Committee unanimously banned the Appellant from playing cricket in Pakistan or for Pakistan at any level for five years. The Committee further held that the Appellant shall not be considered for selection for five years for any side representing Pakistan whether playing domestically or internationally in any format of the game.



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2. This Appeal was filed by the Appellant with the Pakistan Cricket Board (PCB). After appointment of the Tribunal, the first hearing was held on 17 April 2008 on which date it was formally entrusted to the Tribunal and taken up for hearing for the first time.
3. Learned Counsel for Appellant Mr Minto, Sr Advocate argued in support of Appeal the following legal as well as factual points:-
- i. That copy of impugned Order of the Disciplinary Committee was not supplied until the Counsel for Respondent was ordered by the Chairman Appellate Tribunal.
  - ii. That the charges were never brought to Appellant's knowledge nor they were mentioned in the notice of hearing. That there was no rule or disciplinary instruction which bound the Appellant; also asserted that ~~even the earlier order of Disciplinary Committee~~ which was passed on 11 October 2007 did not bind the Appellant as he had already paid the fine under the said order and after re constitution of PCB on 18 October 2007, the said order no more held the field. That the Appellant's Central Contract had already expired and no provision thereof was applicable to him nor he could be penalized under the provisions of the expired contract. He also referred to section 5 of the Sports (Development and Control) Ordinance, 1962 but did not mention the context in which the same was being referred.
  - iii. Mr Minto further argued that at the time of conducting disciplinary proceedings against the Appellant, no rules existed whereby PCB was authorized to undertake such matters as the Pakistan Cricket Board (Conduct of Disciplinary Proceedings) Policy, 2007 have

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not been saved in the newly formulated Constitution of PCB. He stated that the Appellant was not aware of the said policy as it was not notified and in any event by a lawful authority. He further argued that the policy was made by PCB which was earlier constituted under Notification No. S.R.O 55(KE) / 95 dated 22 February 1995. That PCB has been superseded by another Notification published in the Gazette of Pakistan on 18 October 2007 and repealed the earlier Notification. Under the fresh Notification, paragraph No.40 saves only the employment of certain persons and not this Policy. He added that the Policy was formulated under the clauses of Central Contract which was no more applicable to the Appellant as it had expired, therefore the Appellant could not be tried under the said policy. It was also emphasized by him that the policy did not contain any offences or penalties and only narrated the procedure for conduct of disciplinary proceedings.

- iv. Further contended that without conceding, assuming for the sake of argument that the Appellant stayed back in India after the end of Pakistani team's tour during subsistence of Central Contract, even then the Appellant could not be held guilty as during a foreign tour, the passports and visas of the players were in possession of the Team Manager which implies that staying back was with the consent of the Team Manager.
- v. That the imposition of penalty of five year ban is whimsical as no such punishment is provided under Schedule III of the Central Contract.

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- vi. That the impugned order of the Disciplinary Committee also violates and negates the Constitutional rights of the Appellant as a citizen as well as a cricketer.
4. After the Counsel for the Appellant completed his arguments, the Counsel for Respondent Board Mr Taffazul Rizvi vehemently countered the arguments point by point defending the impugned order.
- i. The Counsel for Respondent while replying to the arguments of Counsel for the Appellant brought on record that the letter dated 11-02-2008 sent to the Appellant to show cause clearly stated/required him to explain his position regarding criticism made by the Appellant towards PCB and its policies. In the first instance this contention has no merit at all as the notice was duly and an admittedly served on Shoaib Akhtar at his Lahore residence, to which he replied vide letter dated February 16, 2008 addressed to Mr. Subhan Ahmad (General Manager) International Pakistan Cricket Board, Gaddafi Stadium, Lahore on the subject.
- ii. Mr Rizvi emphasized that before the Committee that the Appellant not only categorically admitted the charges but rather miserably tried to justify them. He drew the attention of the Tribunal that the public criticism by the Appellant is admitted and such statements whenever he utters are telecasted by every T V channel.
- iii. Regarding the assertion of the Appellant's Counsel about "*no earlier legally binding order*", stated that the Appellant was already on two years probation vide judgment dated 11 October 2007 in earlier disciplinary proceedings which were initiated against him for causing physical injury to fellow player which is also a penal offence under the

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Pakistan Penal Code, 1860; presumably realizing the consequences, he chose not to challenge the penalty and in a press conference he admitted accordingly. The penalty was implemented therefore the Order dated 11-10-2007 has attained finality and is now a transaction past and closed and not open to challenge in any manner whatsoever. The video of said press conference of the Appellant was also shown to the Tribunal. According to the Order dated 11-10-2007 of Disciplinary Committee, the Appellant was held guilty of several clauses of the Central Contract relating inter *alia* to disciplinary violations and other breaches due to which he was penalized in the amount of Rupees 34 lacs, Penalty Points 5.5 along with ban of 13 Matches. The said order also placed him under two year's probation. The Respondent has a checkered history and a severe attitudinal problem once again created a situation by making unreasonable statements in media and criticizing PCB's policies and additionally on the report of Coach and Manager of Federal Area Team, PCB was forced to initiate disciplinary proceedings against him. The Counsel for PCB contended that although PCB did not award central contract to the Appellant this year, but he was selected by PCB and was playing as captain of Federal Areas Team in the Pentangular Cup prior to unilaterally and capriciously withdrawing himself, therefore is subject to the Pakistan Cricket Board (Conduct of Disciplinary Proceedings) Policy, 2007.

Misconduct in the Disciplinary Policy has been defined as "any act which is prohibited under the ICC Rules, the central contract or any other law for the time being in force" and under clause 2(i) penalty means "any penalty awarded by the Disciplinary Committee or Appellate Tribunal and include penalty by the Manager".

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iv. He further states that as ICC Code of Conduct is applicable to all member countries and players (Pakistan being the full member of ICC) according to which the assault by the Appellant on a fellow player is a level 4 offence which attracts among other punishments a life ban on the player; further any conduct which is prejudicial to the interest to the game of cricket attracts a ban of 5 years and fine. The fine as defined under the ICC Rules is unlimited and shall be left to be assessed in the light of actual circumstances, therefore a heavy fine which befits the infringements by the Appellant should be imposed. Further argued that the Disciplinary Committee should have imposed a life ban but may be due to apologies by the Appellant, it took a lenient view, however it is necessary for the sake of over all discipline among the cricketers that the punishment should be enhanced. He referred the "Law and Procedure of Departmental Enquiries (in Private and Public Sectors) by B.R. Ghaiye Volume I, Third Edition, page 278 which mentions that if a misconduct is waived but is repeated in future then the waived misconduct can be considered as past bad record.

v. The Counsel for the Respondent further elaborated that the procedure followed in the disciplinary proceedings was the same which was adopted in the earlier proceedings i.e. the one as envisaged in the Pakistan Cricket Board (Conduct of Disciplinary Proceedings), 2007. Therefore it would be utterly wrong and audacious to claim that the Appellant or his Counsel were not aware of the said Policy. The Disciplinary Committee is empowered to take cognizance of the disciplinary violations committed by the Appellant as he was playing the Pentangular Cup organized under the auspices of the Pakistan Cricket Board – the sole authority for the regulation of game of cricket in Pakistan.

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vi. The Counsel for Respondent asserted that the Appellant's past conduct indicates that he habitually violates discipline and makes statements and then apologize. For instance, after passing of earlier Disciplinary proceedings against the Appellant in the year 2007, he announced in the press earlier that he will not challenge order dated 11 October 2007 but during recent hearing before the Committee, he alleged that he was pressurized to say so; similarly during the course of instant proceedings, the Appellant once again apologized before the Tribunal as well as publicly but the same time remained adamant that such apology does not mean confession whereas it is generally understood that once apologizes only when admits his guilt. The Counsel referred to video clipping of the press conference addressed by the Appellant after decision of earlier Disciplinary Committee, wherein he stated that "I have learnt my lesson"; the Counsel added that in fact the Appellant never learnt any lesson.

vii. Regarding the "apology" tendered by the Appellant, the Counsel for the Respondent argued that it is generally understood that a person apologizes when he admits his guilt. He referred "Law and Procedure of Departmental Enquiries (in Private and Public Sectors) by B.R. Ghaiye Volume I, Third Edition; on page 426 it has been mentioned that "Apology was nothing but an admission of guilt ... ." at page 436, it has been referred that "if a person offers an apology and at the same time tries to justify his act, then he takes the inconsistent position which is untenable in law and, therefore there cannot be both justification and apology." It further mentions "There appears to be an impression abroad that an apology consists of magic formula of word which has to be uttered as an incantation at the last possible moment when all else has failed and it is evident that retribution is inevitable to stave off punishment. It appears to be felt that a man

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*should be free to continue unfounded attacks upon another's honor and character and integrity with the utmost license till the last possible moment and then when he is unable to stave off the consequence of his infamous conduct any longer, all he needs to do is to wave this single formula referred to as an apology in a judge's face in order to emerge triumphantly from the fray."*

- viii. In reply to the contention of Counsel for the Appellant that the Policy is no more valid under the newly formulated Constitution of PCB and that the previous PCB has been superceded by the new one constituted under this Constitution, the Counsel for the Respondent argued that through formulation of new Constitution, the legal existence of PCB was neither abolished, wound up or cease to exist. He referred and elaborated paragraphs 3 and 40 of the Constitution, the detail of which has been in the forthcoming paragraphs hereof.

#### FINDINGS OF THE TRIBUNAL

We have perused the entire record with the assistance of learned counsel, gone through the transcript of Committee as well as the video recordings, heard the arguments of Counsel for both the parties at length and hold as under:

1. The Appellant's objection regarding knowledge of charges and that he was not bound by any rule or disciplinary instructions etc. is ill-founded for the reason that are discussed herein. In the first instance, PCB falls within the ambit of the term "home board" as defined in the ICC Code of Conduct for Players and team officials. Being a body legally vested with the sole

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authority to control cricket in Pakistan and affiliated as full member with ICC, and in that capacity obliged to follow and maintain the international discipline as stated in paragraph B – Persons/matches Covered at page 189 of ICC Playing Hand Book 2007-2008 *"this code shall apply to*

*1(a) players*

.... "

And not only to "cricketers" within the meaning of the cricketer as defined in the Central Contract, as asserted by Mr Minto..

It is worth noting that the ICC Code of Conduct is applicable to all member countries as well as the players. The word "player" denotes all category of "player" whether on contract or otherwise. The player on contract may have distinctive privileges under his respective contract with the "home board" but he is equally bound by the ICC Code irrespective of his obligations under his personal contract/arrangement with the Board.

The same is true for a "player" who has not executed or not been offered any formal contract with the "home board" but is playing cricket in Pakistan. We note that the Appellant, although did not get any central or retainer contract from PCB but was selected for Pentangular Cup to play as captain for Federal Areas Team. We also note that the Appellant played in the said capacity, therefore he is fully bound by ICC Rules.

2. As regard the objection regarding the show cause notice, we find it having no foundation and against the facts. We accept the argument of Counsel for Respondent that the Appellant was issued a Show Cause Notice on 11-02-2008 which mentioned the statement made by the Appellant. A copy of article reported on the website of Daily Dawn was also attached with the same. In his response dated 16-02-2008 to the show cause notice, the Appellant admitted that he *"just pronounced his spontaneous views"*. In view of this, it will be fallacious to agitate that the Appellant was not

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communicated or was not in the knowledge of the charges against him as the major part of the same constituted his own "statements" which were later before the Disciplinary Committee, unconditionally admitted by him. At this point, Counsel for the Respondent referred to some statements of the Appellant from the transcript of proceedings of Disciplinary Committee. A very small portion of such charges consists of his performance and conscious absence/withdrawals from the tournaments/matches wherein he was playing and even those were unconditionally admitted by the Appellant before the Disciplinary Committee. Therefore the Appellant cannot legally claim that the "notice of hearing" of Disciplinary Committee which was later meant to communicate the date and time, twice, did not disclose the nature of the Disciplinary proceedings or the charges to rebut we are appending herewith the admitted transcript of the Committee proceedings, which clearly reflects that the Appellant even misinformed his counsel.

**SHOW CAUSE NOTICE:**

In the context of the charge the reply is evasively an admission, blaming the press and at the same time offering an apology. We are quoting since the reply is amusing and self explanatory. We will not have to record any finding by choosing to incorporate the letter itself. The highlighting and underlying added.

Quote:

- ii) As for the Media, you might be aware, are always prone to reporting news and stories quite out of context with the

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actual happenings/statements emanated in peculiar situations in point of time and scenario. 'Concocted versions of celebrities' statements are quite common to be found in today's Press. Pressure groups with vested interest are always out to capitalize such opportunities/loopholes for their personal gains.

Unquote.

From the transcript of the proceeding of Disciplinary Committee, we find that not only, the Appellant was fully aware of the charges but was blowing hot and cold at the same time. Instead of reproducing, we deem it appropriate to append the entire transcript with this order for the reader to judge himself the value of the argument and conduct of the Appellant. While dealing the quantum of penalty, we will be referring the relevant extracts of transcript. In fact for the purposes of this appeal, as per finding of the Committee to the effect that the Appellant "admitted the charges and failed to satisfy the Committee with his response to the charges. He ... tries to justify his conduct regarding public criticism on the pretext that it was a natural reaction".

2. We are of the opinion that the question left for determination before us is limited to two points i.e. legality of the sentence and the quantum of sentence. The argument of the Appellant's counsel on merits in the light of extracts of Disciplinary committee before this Tribunal lose all weight and we will be confining ourselves to the said issues.
3. At the very outset, before we discuss the other issues, on the charge of overstaying in India and not returning along with the team, suffice it to say that we are accepting the argument of Appellant as we find no evidence on record tendered by the Board to rebut the argument that it was with

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consent of Team Manager as the passport was taken from the Manager which implies his consent therefore the benefit goes to the Appellant and we acquit him of this charge.

Similarly the contention about not notifying the Policy is of no substance as notifying means bringing it to the notice of public at large and especially to people concerned. In the instant case the Policy was well known to all players especially to the Appellant his disciplinary proceedings were conducted and he was penalized under the same Policy. The earlier disciplinary order has attained finality.

Another contention that the Board in the first instance itself examined and then referred the matter to the Committee, which was not fair. The Learned Counsel is over looking the procedure and practice in penal matters including departmental proceedings. When any complaint or offence is reported in the first instance there is an preliminary enquiry/investigation to see whether there is any evidence/material worth taking notice of. If there is any then only the relevant penal proceedings/departmental enquiries etc. commences and that evaluates material and decides to penalize or acquit the accused. Otherwise any malicious, false and frivolous complaint could harass, humiliate an innocent and honest victim through blackmail.

4. Regarding the challenge to the legal status of the Committee, its jurisdiction over contractual and non-contractual players and his liability on expiry of the contract and the effect thereof, on the probationary part of the penalty, we agree with Mr Rizvi who has successfully controverted this argument. The perpetual existence of PCB remains intact irrespective of any change in legislation, Constitution, Rules or Regulations unless PCB is expressly dissolved, wound up or superceded by any specific body. Merely the introduction of new law (in the instant case new Constitution) does not mean that the existence of legal entity has been eliminated. In this regard,

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he referred to Paragraph 3(3) of the new Constitution provides that "PCB shall, on the commencement of this Constitution, immediately take over the assets, liabilities, programs, funds and executives and employees of the Board set up by Notification No. S.R.O 55(KE) 95, dated the 22<sup>nd</sup> February, 1995".

5. So far as the assertion of the Counsel for Appellant regarding saving of Disciplinary Policy, Paragraph 40(2) of the new Constitution of PCB states as follows:

(2) *Notwithstanding anything contained in sub-paragraph (1), all employees of PCB appointed under the Notification referred to in sub-paragraph (1) or any rules, regulation, by-laws or contract of service shall, unless removed in accordance with the terms and condition of their employment, continue to be the employees of PCB under these rules.*

The underlined words i.e. "contract of service" clearly shows that it has been saved in the new Constitution and it should be noted that the Appellant was bound under a contract of service viz. the central contract, till 31 December 2007.

6. The transcript of the Disciplinary Committee not only knocks out the objection as to the opportunity to show cause but also mentions that during hearing, the Appellant maintained his stance and categorically and repeatedly stated that "yes I criticized the Board because this is the B-grade cricket" and "Pakistan Cricket was a bogus cricket". The Appellant's reply to the Disciplinary Committee regarding the charge as to why he pulled out from the Pentangular Cup, was that "he told the Manager that he cannot play as he was not gaining anything out of it". In the same hearing of Disciplinary Committee, initially the Appellant replied

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to the same question by saying that it was his "sister's commitment" due to which he withdrew from the Pentangular Cup. Later the Appellant was specifically asked from whom did he seek permission prior to pulling out of the said tournament to which he clearly stated that "he spoke in the media". The replies given by the Appellant to the Disciplinary Committee clearly proves that in his view speaking in media was sufficient notice to PCB. We feel it is extremely unfortunate that the Appellant attempts to misuse the media for influencing the Board for personal gains. He cannot be permitted to profit on account of the same.

7. Clause 1 of the Pakistan Cricket Board (Conduct of Disciplinary Proceedings) Policy, 2007:

*1. Short title, commencement and application: The Policy may be called Pakistan Cricket Board (Conduct of Disciplinary Proceedings) Policy, 2007 and shall be applicable with effect from 01 September 2007 to all proceedings and Appeals involving any cricketer who has entered into a central contract or retainer-ship contract or selected to be a part of any squad or team at any level within or outside Pakistan by Pakistan Cricket Board.*

The words "or selected to be a part of any squad or team at any level within or outside Pakistan by Pakistan Cricket Board" in the above Clause make it abundantly clear that that the Appellant falls within the ambit of the Disciplinary policies of the Board as he was selected and was playing the Pentangular Cup which was organized by PCB. We further observe that the Respondent was bound under the terms of the Central Contract when he stayed back in India in December 2007 and the team returned on 13<sup>th</sup> of December 2007, but giving him the benefit of doubt we have acquitted him

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8. We are requested to observe the Minutes of meeting dated 18 April 2007 of Ad-hoc Committee who has approved SOPs of PCB which will be applicable with retrospective effect enabling PCB to restructure organization. The Committee also in principle approved the revision of PCB Employee's Service Rules subject to implementation of SOPs with retrospective effect. This instance saves the Pakistan Cricket Board (Conduct of Disciplinary Proceedings) Policy, 2007. Be that as it may we confine ourselves to observing that saving has been done in paragraphs 3 and 40 of PCB Constitution and the principles of interpretation of section 6 of the General Clauses Acts Central or Provincial follow the British Interpretation Act Section 30. Section 6 *supra* provides "(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or (e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;"

9. Even otherwise the Disciplinary Proceedings and the current proceedings of this Appellate Tribunal are being conducted under the said Policy. The Appellant after taking part in the proceedings before the Disciplinary Committee is now taking a U-turn by challenging its jurisdiction and existence which cannot be permitted. The Appellant has not only submitted to the jurisdiction of the Appellate Tribunal but is also availing legal representation of his choice; an Appeal is always a continuation of the proceedings/trial hence the Appellant cannot claim relief from the Appellate Tribunal by attacking the basic formation the Disciplinary Committee having submitted to the jurisdiction of the Appellate Tribunal and benefiting from the interim relief so granted by us for playing abroad.

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10. Mr Minto also claimed violation of fundamental right of the Appellant as a citizen and cricketer; we regret that we cannot accept that a person found picking a pocket claiming that he should not be sent to jail because this will deprive him of his sole mean of earning his bread and butter. Freedom of speech does not mean freedom to abuse or to blackmail. Every right is subject to restrictions so as to protect the corresponding right of the other, none howsoever high in his respective is above the law.
11. The Appellant in print and electronic media has tried to portray himself to be a victim of displeasure of the Chairman of the Board, something we find baseless. The Committee comprised of Lt. General (R) Munir Hafeez as Chairman and senior business executive Mr Farooq Rehmatullah as member and Mr Nadeem Akram Director HR & Admin of Board as an ex officio member. The Chairman and other member of the Committee are recognized and respected public personalities in their own right. Their unanimous judgment is well reasoned, based on cogent material and a speaking order. We were amazed to find that the first manager of the Appellant in 1997 Mr Ejaz Yousaf (now an Honorable Judge of Supreme Court) recommended sever penalty against the Appellant and the track record as well as the participation performance of the Appellant from 2005 onwards is abysmal and appended herewith.

**IN VIEW OF THE ABOVE FINDINGS**, we uphold the decision of the Disciplinary Committee but only in view of the public apology of the Appellant the ban is reduced to One and Half (1 ½) year to be operative from the date of the Judgment of Disciplinary Committee. We also impose a fine of Rupees Seven (07) Million on the Appellant as the previous fine of 3.4 Million failed to make an impact on him.

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The Appellant is further directed to undergo mandatory attitudinal counseling from a Consultant nominated by Pakistan Cricket Board. The Board is directed to nominate the Consultant with 60 days of this Judgment.

At the end, we thank the *amicus curiae* Khawaja Sultan Ahmed, Senior Advocate for his valuable input at a critical juncture of these proceedings and the counsels for the Parties for their able assistance.

This judgment consists of 17 pages. A copy of this judgment shall be provided to the Appellant free of cost.

Announced this 14<sup>th</sup> day of June 2008.

Signed

*Aftab Feroz*

Justice Aftab Feroz (Rtd.)  
(Chairman)

I concur with the opinion that  
instead of 5 years ban of player  
in Pakistan should be  
fines and more fine should be given  
for disciplinary action.

*Mohammed Naveed Chaudry*

Mohammed Naveed Chaudry  
(Member)

*Haseeb Ahsan*

Haseeb Ahsan  
(Member)

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