

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

C.P. No.D-4160 of 2015

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Arshad Hussain Khan

Mushtaque Ahmed Soomro Petitioner

Versus

National Bank of Pakistan & others Respondents

Date of hearing 06.10.2016

Mr. Arshad Khan Tanoli Advocate for Petitioner.

Ch.Mohammad Ashraf Advocate for Respondent No.1 & 2.

Shaikh Liaqat Hussain Standing Counsel.

Muhammad Ali Mazhar, J: This constitutional petition is en route for challenging the office order dated 03.04.2015 by means of which the services of the petitioner were dismissed with immediate effect.

2. The short-lived facts of the case are that on 24.01.2013, a show cause notice was issued to the petitioner with diverse allegations including the charge of negligence committed by the petitioner in his official duties when he was posted Operation Manager, N.B.P Branch Thatta. After submitting reply, an Inquiry Officer was appointed who conducted the inquiry into the allegations of misconduct. The inquiry report is available on record with

the preliminary objections/comments filed by the Respondent No.1 and 2.

3. The learned counsel for the petitioner argued that impugned order is mala fide. The petitioner had clean service record in his past service; he earned achievement awards consecutively for three years. The penalty was inflicted upon him disproportionately to the quantum of allegations. The Inquiry Officer committed violation of inquiry procedure. Neither the petitioner was examined nor was he allowed any opportunity to cross examine the management representative. Unless proper inquiry is conducted with fair opportunity to the petitioner no allegation can be proved. The petitioner had faced elongate departmental inquiry in the course of which he remained under suspension while co-accused persons were never suspended. During inquiry, no original call deposits were produced before the Inquiry Officer nor were these confronted to the petitioner to prove the guilt. It is elementary principle and procedure of domestic inquiry that the witnesses are to be examined in support of charge before the Inquiry Officer and accused has a right to cross examine them. The principal accused was reinstated but the petitioner was made escape goat who was not responsible for any alleged liability. He further argued that the Inquiry Officer in her report concluded that the bank has sustained a loss of Rs.2000/- and in concluding paragraph she has reported that the petitioner failed to perform his duties properly and due to his negligence and loose control, criminal minded staff left on their wisdom to do whatever they want to do.

4. The learned counsel for the respondent Nos.1 and 2 argued that that the petitioner had fully participated in the

inquiry. The statements of prosecutor and the petitioner were recorded. Before imposing major penalty, the petitioner was afforded opportunity of personal hearing by the competent authority. The bank is an institution in which the trust is reposed by the public at large. Once the misappropriation is proved, the management has a right to take action irrespective of quantum of amount involved in the misconduct. The inquiry was fair and impartial. The petitioner never raised any objection even when the inquiry was in progress. Awarding achievement awards does not mean that if petitioner commits any act of misconduct the inquiry cannot be conducted against him.

5. No doubt the excerpt of the inquiry proceedings available at page 51 demonstrates that no allegation was leveled by the petitioner against the Inquiry Officer. While page 55 is also part of the inquiry proceedings which transpires that since no defence witness was produced by the petitioner, hence the complainant bank did not cross examine the petitioner. In tandem, petitioner was also not allowed to cross examine the management representative. We have also appraised the inquiry report prepared in a tabular genre. In first column, the charge has been reproduced whereas in the second column, the reply of accused is recapitulated and in the third column the statement of representative of bank is allude to while in the fourth column the findings of the Inquiry Officer are jot down. We have also browse through Inquiry proceedings from top to bottom and perceive that the reply of the accused employee was totally disregarded. Even in the Inquiry report nothing is touched on to pay any attention to the defence. This also carries some weight that no examination in chief or cross examination was recorded in the inquiry which is incurable and irredeemable oversight and discernible defect in the

inquiry proceedings sufficient to declare entire process sham and distrustful. Under Article 10-A of the Constitution of Republic Pakistan 1973 right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process for the determination of his civil rights and obligations or in any criminal charge against him. This fundamental right integrated in the Constitution bearing in mind Constitution (Eighteenth Amendments) Act 2010 whereas the inquiry in the case in hand was completed in the year 2013, nevertheless, the petitioner was deprived of his indispensable fundamental right of fair trial. The rationale and underlying principle of examination-in-chief is to achieve testimony for the reinforcement of version of the facts in issue or relevant to the issue while the object of cross examination is two-fold, first to elicit material information with regard to facts in issue or relevant to the issue that is favourable to the party on whose behalf the cross examination is conducted and secondly to cast doubt upon the accurateness and exactitude of evidence-in-chief given against such party. In the case of **Muslim Commercial Bank Ltd. v. Abdul Waheed Abro & others (2015 PLC 259)**, (judgment authored by one of us Muhammad Ali Mazhar-J) it was held that the Management has to provide fair opportunity of defence in the inquiry to an accused employee for exercise of such power. Inquiry officer should explore every avenue so that the inquiry might be conducted in a fair and impartial manner. Inquiry officer should avoid razing and annihilating the principle of natural justice which might ensue the miscarriage of justice. Inquiry cannot be treated at par with the court proceedings nor the inquiry officer as judicial officer. Principles of natural justice could not be ignored and once a person/employee was subjected to inquiry and evidence was recorded then it was his right to

cross examine the witnesses and if such right was not made available then testimony of witness against such employee would have no dependability or admissibility to decide the guilt. Right of fair trial and due process had now become fundamental right in the Constitution. The purpose of the cross examination is to check the credibility of witnesses and to elicit truth or to expose falsehood. Whether evidence of witness was trustworthy or inspiring confidence could be tested only with the tool of cross-examination. When the statement of witness was not subjected to cross-examination its evidentiary value could not be equated and synchronized with such statement that was made subject to the cross examination. Cross Examination is not just a mere formality but it is a valuable right to bring the truth out. Where no opportunity of cross examination is provided the testimony of witness would be inadmissible.

6. As a result of above discussion, dismissal order of the petitioner from service is set aside and he is reinstated in service with back benefits. However the management may conduct de novo inquiry but shall conclude the same within two months. If the management well within their right decides to conduct inquiry then ample opportunity shall be provided to the petitioner to defend the charges. The payment of back benefit amount shall be subject to the final outcome of the de novo inquiry if any. Petition is disposed of in the above terms.

Judge

Judge