

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chadhry

C.P No. D- 1741 of 2016

Ali Murad Brohi.....Petitioner

V/s

Zarai Taraqati Bank Ltd.

& others.....Respondents

Date of hearing: 19.10.2018

Mr. Abdul Hakim Jakhro, Advocate for the Petitioner
Shaikh Liaquat Hussain, Assistant Attorney General

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, the Petitioner has impugned the Office Memorandum dated 21.12.2015, whereby he was awarded Major penalty of Dismissal from Service by Zarai Tarqati Bank Limited (ZTBL). The stance of the Respondent-Bank is that the Petitioner recommended 81 loan cases, amounting to Rs.48.557 million for Poultry Feed & Milk Collection Shop, against fake security documents of flats and buildings. Petitioner was further charged with the allegations that he appraised and recommended Rs.0.498 million in LC No.015987 for Poultry Feed, against fake security documents. Respondent-Bank appointed enquiry officer to probe the allegations leveled against the Petitioner. The enquiry officer conducted the enquiry and reached to the following conclusion:-

“I have thoroughly examined the charges framed against the officer vide charge sheet No.DPD /IU-III / Karachi-17/2012/4981 Dated 16.11.2012 and checked the record of branch, heard the accused officer, and staff of branch,

concerned Revenue Officials and finally concluded that the charge No.01 is fully proved on the accused officer. His reply and justification on the issue is not logical. He is found fully involved in the embezzlement of Bank's funds amounting to Rs.4399000/- + Markup.

It is therefore recommended that the accused officer may be removed from the service and 50% bank's loss (Rs.2199500 + markup) should be recovered from him."

2. We have noticed that on the basis of findings of the Enquiry Committee dated 22.08.2015, the Petitioner was proceeded and he was awarded Major penalty of Dismissal from Service vide Office Memorandum dated 21.02.2015. An excerpt of Office Memorandum dated 21.02.2015 is reproduced as under:-

"I have considered the disciplinary case of Mr. Ali Murad Borhi, PP No.076655, AVP/OSP (Recovery), ZTBL, Ibrahim Hyderi Branch, while posted as MCO, ZTBL, Ibrahim Hyder Branch, Karachi Zone, with reference to his (i) Charge Sheet dated 06.03.2015 & (ii) Charge Sheet dated 07.07.2015, containing following allegations:-

(i) He entertained, investigated & recommended 81 Loan cases amounting to Rs.48.557 (M) for Poultry, Feed & Milk Collection Shop against fake security documents of Flats & Buildings.

(ii) He appraised & recommended Rs.0.498 (M) in LC No.015987 for Poultry Feed against fake security documents of Flats & Buildings.

The findings of Inquiry Committee dated 22.08.2015, defence reply dated 19.09.2015 to the Show Cause Notice dated 01.09.2015, with reference to Charge Sheet dated 06.03.2015 and findings of Inquiry Officer dated 18.08.2015, defense reply dated 22.09.2015 to the Show Cause Notice dated 28.08.2015, with reference to Charge Sheet dated 07.07.2015, submissions made by him during personal hearing before the Authorized Officer on 21.10.2015, recommendations of Authorized Officer and other record available in the case files were also examined. I have concluded that the allegations leveled against him have been proved in both the Inquiries. As per status received from the concerned Branch as of 10.09.2015 an amount of Rs.49.161 (M) is still outstanding in involved loan cases.

Keeping in view the above, it is concluded that the charges have been proved against him, I therefore, in exercise of powers vested in me in ZTBL Officers Service (Efficiency & Discipline) Regulations 1975 read with Circular No.HRD/26/2015 dated 08.09.2015 by agreeing with the recommendations of Authorized Officer have decided to impose upon him major penalty of dismissal from Bank Service with immediate effect, besides recovery of 50% of outstanding amount with up to date markup of loan cases involved in his charge sheets dated 06.03.2015 & 07.07.2015.

The penalty imposed upon him is without prejudice to disciplinary case(s) initiated against him

or pending in the Court of Law, if any, the bank also reserves right to recovery from him any amount embezzled/mis-appropriated by him during service in the bank which may surface later on against him and recovery of bank's advances, if any, in case he fails to repay the same at his own accord."

Petitioner being aggrieved by and dissatisfied with the aforesaid Office Memorandum dated 21.12.2015, preferred Departmental Appeal to the President/Appellate Authority (ZTBL), which was decided against the petitioner vide Office Memorandum dated 29.2.2016, with the following remarks:-

"On careful consideration of the appeal dated 01.01.2016 preferred by Mr. Ali Murad Borhi, PP No.076655, Ex-AVP/ the then MCO, ZTBL, Ibrahim Hyderi Branch, Karachi Zone against the Major penalty of dismissal from Bank Service with immediate effect besides the recovery of 50% of outstanding amount with up to date markup of loan cases involved in his charge sheet dated 06.03.2015 & 07.07.2015, imposed upon him by authority vide OM dated 21.12.2015.

The President ZTBL/ Appellate Authority have also heard the submissions made by him Personal Hearing on 15.02.2015, gone through the record available in the case file and concluded that the charges of entertained, investigated & recommended 82 loan cases amounting to Rs.49.055 (m) for Poultry, Feed & Milk Collection Shop against fake security documents of Flats & Buildings have been proved against him. Further he failed to defend himself and produce any documentary evidence/cogent reasons in his defense, therefore the penalty imposed by the Authority is commensurate with the proven charges.

The President ZTBL, in exercise of powers vested in him as Appellate Authority under ZTBL Officers Service (Efficiency & Discipline) Regulations-1975 read with Circular No.HRD/26/2015 dated 08.09.2015 have decided to decline his appeal and upheld the penalty imposed by him by the Authority vide OM dated 21.12.2015."

Petitioner being aggrieved by and dissatisfied with the aforesaid orders passed by the Respondent-Bank has approached this Court on 26.3.2016.

3. We queried from the learned counsel for the Petitioner as to how the instant Petition is maintainable against the Respondent-Bank as well as the charges leveled against the petitioner, which were subsequently proved against him.

4. Mr. Abdullah Hakim Jakhro, learned counsel for the Petitioner replied to the query and has submitted that the Respondent-Bank is a Government owned and controlled Bank; therefore, the instant Petition is maintainable under the law. On the second issue of charges leveled against the petitioner, he has submitted that the Inquiry Team/Officer has violated the basic rules, therefore the Inquiry report is nullity in the eyes of law, thus is void, and it cannot form the basis of punishment of the petitioner; that the Inquiry Team / Officer failed to scrutinize the security documents of flats/buildings, available in the loan case files to ascertain whether these were fictitious/fake or otherwise before recording his findings that the “charge is proved” without which the inquiry is void and cannot construed as gospel truth; that all the documents available in the respective loan case files were in order and no fraud had taken place, which invalidated the inquiry proceedings which was based on mere presumption; that the competent authority warded major punishment to the petitioner by placing reliance upon the inquiry report, without ascertain the truth; that the Inquiry Officer had opined in the report that **“As per available records, vouchers, negotiable instrument it has been established without any two opinions that amount of loan has been received by the borrower Mr. Aslam Pervez”**; that the Responded-Bank, branch was audited but nothing was found regarding, purported security documents to be fake/fictitious; that the inquiry Team/Inquiry Officer failed to discuss the aforesaid factum in the Inquiry Report, which was withheld malafidely; that on the same cause of action the Respondent-Bank has exonerated one Khadim Hussain official of the Respondent-Bank and he was allowed to recover the amount of involved loan; that discriminatory treatment was meted out with the Petitioner; that since the issue of recovery of loan was/is in

process, therefore, Petitioner cannot be saddled with the aforesaid liability; that the petitioner had served the Respondent-Bank for about 29 years, therefore lenient view may be taken against the petitioner. He lastly prayed for allowing the instant petition.

5. Sheikh Liaquat Hussain, learned Assistant Attorney General has raised the question of maintainability of the captioned petition and has supported the impugned termination order dated 21.12.2015 passed by the Respondent-Bank and argued that the instant Petition is not maintainable as the Petitioner is involved in causing loss to the public exchequer by recommending 81 Loans amounting to millions of rupees, thus was rightly found guilty and punished. He lastly prayed for dismissal of the instant Petition.

6. We have heard learned counsel for the parties and perused the entire material available on record.

7. To commence, we would address the question of the jurisdiction of this Court with regard to maintainability of the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. In the light of judgment dated 15.2.2013 passed by the Honorable Supreme court in the case of ***Zarai Taraqati Bank Limited etc vs. Said Rehman & others (2013 SCMR 642) and Muhammad Rafiullah & others vs. Zarai Taraqati Bank Limited & another (2018 SCMR 598)***, the writ petition against Respondent-Bank is maintainable. Accordingly, we are of the view that this Petition could be heard and decided on merits by this Court, while exercising its Constitutional jurisdiction.

8. Learned Counsel for the Petitioner emphasized during the course of hearing that all the security documents furnished by the borrowers are genuine and hence the termination of the service of

the petitioner, without determining the genuineness of the said security documents is illegal. However, said assertion has been refuted by the learned AAG on the basis that the furnished documents were found fake in the enquiry proceedings and no further determination is required. Be that as it may, we cannot determine the veracity of these claims and counter claims at this stage. Since, we have already held in the preceding para to decide the present matter on merits.

9. The only question before us is that whether service of the Petitioner can be terminated without providing opportunity of hearing on the aforesaid issue. In our view he who seeks equity must do equity and approach the Court with clean hands, ill-gotten gains cannot be protected. It is argued by the Respondent-Bank that the Petitioner had played vital role in recommending certain loans to the beneficiaries being trustees of public funds and caused colossal loss to the public, thus cannot agitate any grievance on the pretext of denial of due opportunity of hearing to him.

10. The grievance of the Petitioner is that he is an ex-employee of the ZTBL; his services were terminated on 21.12.2015 on the accusation of causing loss to the Respondent-Bank, amounting to millions of Rupees by recommending certain loan to the beneficiaries, who in return furnished fake security documents, and thus Respondent-Bank sustained loss of millions of rupees.

11. Record reflects that the Petitioner was given charge sheet and domestic inquiry was also conducted and he was found guilty in the enquiry proceedings and finally was removed from service.

12. We have gone through the case file and heard the parties at length on the aforesaid allegations. Prima-facie the Petitioner

sanctioned /recommended 81 Loan cases amounting to Rs.48.557 (M) for Poultry Feed & Milk Collection Shop, against fake security documents. As per record he also recommended Rs.0.498 (M) in LC No.015987 for Poultry, Feed & Milk Collection Shop against fake security documents.

13. Upon perusal of findings of the Inquiry Committee, which explicitly show the involvement of the Petitioner in the scam. However, we confine our observation to the extent of service issue of the Petitioner and so far as issue of recovery of alleged amount from the Petitioner is concerned, we leave it to the parties to seek appropriate measures, in accordance with law.

14. We have also noted that Petitioner was given full opportunity to rebut the allegations and was also confronted with the relevant record but he failed to discharge his burden and was found negligent and inefficient under ZTBL Officers Service (Efficiency & Discipline) Regulations 1975 read with Circular No.HRD/26/2015 dated 08.09.2015. The allegations against the Petitioner were established by recording evidence and in the light of such evidence the proper findings were given by Respondent-Bank.

15. We do not see any violation of law, rules and regulations in the proceedings of enquiry conducted by the Respondent-Bank against the Petitioner as asserted by the Petitioner. Record reflects that there was no motive or malice on the part of Respondent-Bank to falsely implicate the Petitioner in the scam.

16. We on the basis of documents placed on record by the parties have reached to the conclusion that the case of Petitioner does not require further investigation so far as the allegations leveled against him are concerned. Since he had been proceeded, was given fair opportunity of hearing, he was confronted with the

documents and was finally found guilty of the charges leveled against him as discussed supra. The impugned order dated 21.12.2015, supports the stance of Respondent-Bank, which does not require interference at our end. It is the considered view of this Court that for the purpose of maintaining a Constitution Petition it is the duty and obligation of the Petitioner to point out that the action of the Respondents was in violation of their rules and regulations. In the wake of above, the Petitioner has failed to point out and failed to make out his case for discrimination as well.

17. In view of the forgoing discussion, we do not find any illegality, infirmity and material irregularity in the impugned order dated 21.12.2015 and enquiry proceedings conducted against the Petitioner, therefore, the Petitioner has failed to make out his case on merits, consequently, the instant Petition is dismissed along with listed application(s).

Karachi
Dated: .12.2018

JUDGE

JUDGE

Nadir/PA