

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-3400 of 2017

Abdul Subhan Solangi,
Petitioner, through : Mr. Dhani Bakhsh Baloach, advocate

National Bank of Pakistan,
Respondents 1 to 4 through : Mr. Suleman Huda, advocate

Federation of Pakistan,
Respondent No.5 through : Mr. Muhammad Nishat Warsi, DAG

Date of hearing : 15.01.2020

Date of decision : 24.01.2020

JUDGMENT

Adnan-ul-Karim Memon, J. By means of this petition, the petitioner has impugned order dated 26.11.2014 passed by the Regional Head, National Bank of Pakistan, Sukkur ("NBP") whereby he was demoted from the post of Vice President/Ex-Manager to next lower grade. The petitioner is also seeking annulment of second punitive action taken against him vide order dated 03.3.2017, asserting that it is in derogation of NBP (Staff) Service Rules 1973, which are statutory rules of service.

2. The case of the petitioner is that he was inducted in the service of NBP as Officer Grade-III in year 1985; that in view of outstanding performance, seniority he was promoted as Vice President with effect from 01.01.2004 though he was eligible for promotion as Senior Vice President on 01.01.2004. The petitioner has averred that during his tenure of service as Manager of Ranipur Branch, Annual Audit was conducted and irregularity of late sending of the Demand Draft Purchase (DDPs) to the main branch at Karachi by the Branch Operations Manager was detected with further allegation that Branch Management applied the interest/Markup on DDP outstanding Balance with effect from 18.5.2010 to 31.12.2010 Rs. 12,494,115.00 and such markup amount credited to branch income. The petitioner has submitted he was erroneously held responsible for diarized Audit findings No.214/519/2011 and he was warned to be careful in future; however the petitioner was charge sheeted on the aforesaid allegations on 24.3.2014 and he denied allegation in his reply and pleaded innocence vide letter dated 15.4.2014 by relying upon responsibilities of Branch Manager and Manager Operations; the petitioner also relied upon the admission of the Operations Manager

vide his letter dated 23.11.2010 addressed to the competent authority. The petitioner contends that despite this he was punished twice for the same allegations vide impugned orders as discussed supra. The petitioner being aggrieved by and dissatisfied with the aforesaid actions has filled the instant petition.

3. We have noticed that disciplinary action was taken against the petitioner for the aforesaid irregularity in respect of unrealized/disputed income of DDPs of wheat procurements of Bozdar Wada Centre, Ranipur, accounted for in branch income and his review application submitted to the competent authority was decided against him vide order dated 03.03.2017.

4. The main contention of the learned Counsel for the petitioner is that he is not responsible for the charges levelled against him, which being operation related pertain to the Manager Operations. In support of his contention, he referred to letter dated 23.11.2010 (available at Page-145 of the file) and argued that Operation Manager, NBP admitted his responsibility for the aforesaid charges, therefore, the punishments awarded to him were not justified in eyes of law. He lastly prayed for allowing the instant petition.

5. Conversely, learned Counsel representing the respondent-bank has referred to his counter affidavit filed on behalf of respondent-bank and argued that petitioner was responsible for recovery of Rs.12.494 million in the case of non-realization of mark up of 27 wheat DDPs at Ranipur Branch, therefore, he was demoted as AVP for 03 years vide order dated 24.11.2014, his punishment was converted into down grading pay scale by one step from prospective date treating the intervening period from 24.11.2014 to the date of decision; that he is not eligible for promotion as SVP in terms of policy; that the aforesaid action was taken against the petitioner because the bank has sustained two months loss of unrealized mark up of Rs.12,494 million taking into income account during the year 2010 which ultimately inflated the profit and loss position of the branch; that the aforesaid exercise was undertaken by the petitioner by signing the relevant voucher singly and the branch profit was inflated by said amount; that he failed to reverse the same till his transfer from the branch on 22.8.2011; that proper inquiry was conducted and the aforesaid charges were proved against the petitioner and he was awarded punishments accordingly. He lastly prayed for dismissal of the instant petition.

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

7. We have perused the charge sheet and show cause notice issued to the petitioner by the respondent-bank which explicitly shows that the respondent-bank did

not hold proper inquiry to probe the allegations. It appears from the record that operations manager had admitted of late sending of the Demand Draft Purchase (DDPs) to the main branch at Karachi vide his letter dated 23.11.2010 which explicitly shows that he dispatched the original wheat procurement of DDPs 66 to 82 on 19.5.2010 through Leopards courier receipt but the same was misplaced and sent to another branch mistakenly, however, the duplicate DDPs were accordingly dispatched. The aforesaid factum cannot be brushed aside as the petitioner was booked on the aforesaid charges and operation manager was later on exonerated from the said charges vide letter dated 5.1.2014, but petitioner was served with the show cause notice however no regular inquiry was conducted and in absence of that he was declared guilty by the respondent Bank, without refuting/controverting stance taken by the petitioner. Besides, NBP letter dated March 15, 2014 to the Manager NBP Ranipur Branch regarding deletion of diarized findings, the letter dated June 09, 2015 by the Regional Manager, Risk Management Group, NBP Sukkur addressed to the SVP/Wing Head, Risk Management Group, NBP, Karachi and appreciation letters produced by the petitioner also cannot be ignored while concluding the matter. The findings of the Audit showing lapse on part of the Manager Operations also cannot be ignored.

8. Adverting to the claim of the petitioner with regard to his promotion in the next rank under NBP Staff Service Rules, 1973. It is well settled proposition of law that it is the Service Rules Committee of the respondent-bank which has to determine the eligibility criteria of promotion of the petitioner for which they have to take decision in accordance with law.

9. In view of the foregoing facts concluded in para 07 supra, the action taken by the respondent Bank is/was too harsh, therefore we set aside the impugned orders dated 26.11.2014 regarding demotion of the petitioner and order dated 03.03.2017 regarding demotion in pay.

10. The petition is allowed in above terms with no order as to costs.

JUDGE

JUDGE