

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

C.P No.D-356 of 2013

(Syed Sharafat Ali versus National Bank of Pakistan & Others)

DATE	ORDER WITH SIGNATURE OF JUDGE
	Present:- <u>Mr. Justice Adnan-ul-Karim Memon</u> <u>Mr. Justice Adnan Iqbal Chaudhry</u>
Petitioner:	Through Mr. M. Sulleman Unar advocate
Respondents:	Through Ch. M. Ashraf Khan, advocate Mr. Ashfaque Nabi Qazi, Asstt: Attorney General
Date of hearing:	02.11.2021
Date of decision:	02.11.2021

O R D E R

ADNAN-UL-KARIM MEMON, J: Through this petition, the petitioner seeks his reinstatement in service with all back benefits, which includes proforma promotion and payment of pension and gratuity.

2. Facts of the case, as unfolded in the memo of the petition, are that the petitioner was appointed as Junior Clerk by the respondent Bank through an order dated 10.04.1965 (***Annexure-A page 35***) and earned promotions from time to time up to the Officer Grade-II, vide order dated 20.12.1982 (***Annexure-B/1 to B/3 page 37-43***); however, vide order dated 18.10.1989 (Annexure-D page 51), he was placed under suspension on account of unauthorized discounting / purchase of export Bill, thereafter, he was served with a charge sheet on 22.11.1990 (***Annexure-E page 53***) and was finally dismissed from service vide impugned order dated 26.12.1991 (***Annexure-O page-163***), hence this petition.

3. At the very outset, we have asked from learned Counsel representing the petitioner to satisfy this Court with regard to maintainability of the instant Petition on the point of laches. Learned counsel for the petitioner replied that the petitioner was acquitted

from all criminal cases, hence he cannot be punished departmentally. He further contends that the petitioner had been proceeded under the National Bank of Pakistan Staff Service Rules, 1990, which are statutory thus right of the petitioner could not be extinguished, merely based on departmental proceedings, which were simply based on a criminal case from which he was subsequently acquitted in 2012. He argued that it is well-settled law that where petitioner was dismissed from service on charges from which he was subsequently acquitted by the competent Court of law the impugned dismissal order is liable to be set aside. Lastly, while reiterating the grounds of the petition, learned counsel prayed for allowing the petition. In support of his contention, he has relied upon the case of Muhammad Ayaz Khan versus the Government of Sindh & others (**SBLR 2007 Sindh 732**) & Shamas-ud-Din Khawaja versus Government of Pakistan through Secretary Establishment Islamabad and 2 others (**PLD 2003 SC 187**).

4. On the other hand learned counsel, representing the respondent Bank, vehemently opposed the petition and argued that a full-fledged domestic inquiry was conducted against the petitioner and he was given full opportunity of hearing, which includes personal hearing, as such there is no illegality in the impugned order. He next argued that against his dismissal order, the petitioner had preferred a departmental appeal; however, the same was also dismissed under acknowledgment of petitioner on 13.04.1994 (**Annexure-R page-4 of the objections**); however, he has filed this petition after about 19 years, hence same is liable to be dismissed being not maintainable. He prayed for the dismissal of the petition.

5. Heard learned counsel for the parties and perused the material available on record as well as case-law cited at the bar.

6. We do not concur with this assertion of learned counsel for the Petitioner with his explanation of laches. We are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner filed the instant Petition in the month of February 2013 whereas the alleged cause of action accrued to him in the month of April 1994 i.e. approximately 19 years prior to the filing of instant Petition. Those who sleep over their right cannot be given premium. The observations of the Honorable Supreme Court in

the case of *Ardeshir Cowasjee v. Karachi Building Control Authority* (1999 SCMR 2883) is guiding principle on the issue of laches.

7. Adverting to the main contention of the Petitioner regarding acquittal from the criminal case and entitlement of the Petitioner for pensionary benefits and reinstatement in service, we observe that the disciplinary proceedings and criminal proceedings are altogether different and independent of each other and cannot be termed as synonymous and interchangeable. The forums for adjudication, principles of evidence, and procedure are also separate and distinct. The decision of one forum cannot have bearing on the decision of the other forum.

8. In our view, a person convicted or acquitted in a criminal trial cannot influence the disciplinary proceedings. We are fortified in our view by the decisions rendered by the Hon'ble Supreme Court in the cases of *Mir Nawaz Khan vs. Federal Government and 2 others* [**1996 SCMR 314**], '*Arif Ghafoor v. Managing Director, H.M.C. Taxila and others*' (**PLD 2002 SC 13**), '*Muhammad Iqbal v. District Police Officer, Sahiwal and another*' (**2011 SCMR 534**), '*Executive Engineer and others v. Zahid Sharif*' (**2005 PLC (C.S.) 701**), '*Falak Sher v. Inspector General of Police, Punjab and 2 others*' (**2005 SCMR 1020**), '*Rab Nawaz Hingoro v. Government of Sindh and others*' (**2008 PLC (C.S.) 229**), '*Nazir Ahmed v. Capital City Police Officer, Lahore and another*' (**2011 SCMR 484**), '*Syed Muhammad Iqbal Jafri v. Registrar, Lahore High Court Lahore*' (**2004 SCMR 540**); '*Khaliq Dad v. Inspector General of Police and 2 others*' (**2004 SCMR 192**) & '*Muhammad Ayub v. The Chairman Electricity Board WAPDA, Peshawar and another*' (**PLD 1987 SC 195**).

9. The case law cited by the learned Counsel for the Petitioner is distinguishable from the facts of the case in hand.

10. Since the case of the Petitioner is suffering from serious laches, therefore, the captioned Constitutional Petition is found to be not maintainable and is accordingly dismissed along with the listed Application[s]. The Petitioner, however, may avail appropriate remedy if available to him under the law.

JUDGE

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