IN THE HIGH COURT OF SINDH KARACHI

Before:
Mr. Justice Adnan-ul-Karim Memon
Justice Mrs. Kausar Sultana Hussain

Constitution Petition No.D-4800 of 2016
(*Muhammad Akram v. Federation of Pakistan and 07 others*)

Dr. Raana Khan, advocate for the petitioner
Mr. Iftikhar Ahmed Bhutto, advocate for respondents 2 to 5

Mr. Muhammad Nishat Warsi, DAG

Date of hearing : **18.04.2022**
Date of order : **29.04.2022**

ORDER

Adnan-ul-Karim Memon, J. Through the captioned Constitution Petition, the petitioner has challenged the vires of the disciplinary proceedings initiated against him on account of tampering in the original e-CIB reports dated 06.12.2012, 27.02.2013, and 24.10.2013, of Bank 'staff in Advance Salary Loan cases, however, the same proceedings culminated into termination of the services of the petitioner vide Office Memorandum dated 02.05.2016 issued by Senior Vice President (SVP)/Regional Manager (HR), National Bank of Pakistan (`**NBP**`). Petitioner has asserted that the aforesaid allegations leveled against him were/are false and fabricated; and, in derogation of NBP (Staff) Service Rules 1973; that no original e-CIB reports dated 06.12.2012, 27.02.2013, and 24.10.2013 were confronted to him, through regular mode of inquiry.

2. Dr. Raana Khan, learned counsel for the petitioner, has contended that the petitioner during his long service had an unblemished record and he always performed his duties with the utmost dedication, honesty, and satisfaction of his superiors, by earning profits for the bank. It is also contended that the petitioner has not committed any misconduct as portrayed by the respondent bank. The show-cause notices and charge sheets were/are completely bald and devoid of all particulars and specifications. Furthermore, the failure of the respondent bank to supply a statement of allegations along with the original record of purported e-CIB reports of borrowers of the advance loan; and to conduct the proper regular inquiry was/is in derogation of NBP (Staff) Service Rules 1973 and the dictum laid down by the Honorable Supreme Court. Learned counsel next conducted that no regular inquiry had been conducted despite the specific denial of charges leveled by the petitioner nor any opportunity of cross-examination the witnesses against him had been provided, which was/is not only a violation of Efficiency & Disciplinary Rules of respondent-bank but also a violation of fundamental of rights enshrined in the constitution and so also against the principles of natural of justice. On the contrary, the petitioner in the fact-finding inquiry was summoned and he submitted his defense which has not been considered at the time of the final decision. Learned counsel emphasized that the allegations leveled against the petitioner having been denied by him, holding of regular inquiry was the requirement of law; in which the whole evidence

against the petitioner was required to be brought on record after his participation and cross-examination. Further, that fact-finding inquiry was made the basis for imposing the major penalty, which could not be a substituted for regular inquiry, such lapse had resulted in miscarriage of justice and caused prejudice to the petitioner, consequently, the impugned original and subsequent orders, effecting his service, violated the mandate of law, are liable to be set aside and the respondent-bank may be directed to reinstate the petitioner in service with all consequential benefits. The learned counsel in support of the stance in the matter has relied upon the cases of **2009 SCMR 329:** *Chief Election Commission of Pakistan and other v. Miss Nasreen Pervaiz*, **2009 SCMR 339:** *M. Haleem and others v. General Manager Pakistan Railways*, **2010 SCMR 532:** *Muhammad Saleem v. Chief Executive Officer and another*, and **2017 SCMR 356:** *Muhammad Nadeem Akhtar v. Managing Director, Water, and Sanitation*,

3. Mr. Iftikhar Ahmed Bhutto, learned counsel for respondents 2 to 5, has submitted that there is no element of victimization as the explanation to the charge sheet and corrigendum and the inquiry proceedings established the criminal breach committed by the petitioner. The Petitioner as being responsible staff found involved in the misconduct, as such found guilty of the offense and misconduct. He was provided with a proper and fair opportunity for defense but due to admitted acts of misconduct, the petitioner failed to prove his innocence, therefore in the circumstance under the rules of NBP Staff Rules, the petitioner was punished with the dismissal from service, therefore the question of his victimization does not arise. There was no complaint on the part of the Petitioner in which he had any complaint against such person whosoever is against the said person or any ill will before his dismissal from service, but now presently it is malafide and even an attempt to raise after thought assertions and has no substance or alleged in the proceedings, as such have no legal effect. He further argued that till his performance he was never asked for but if charges have been proved and the competent authority has acted upon according to the rules and found him as being involved in fraudulent conduct, forgery and acted over and above his powers, responsibility and beyond his authority, therefore, there was no alternative but to face the disciplinary proceedings under the rules and accordingly he was dismissed from service to save the integrity of the Bank as a financial institution. There were no defects in the inquiry proceedings or the conduct of the inquiry officer, wherein the petitioner without raising objections got completed the inquiry proceedings. It is submitted the allegations are specific and the inquiry proceedings are confined to them, resultantly there is no error or partiality, or unfairness in the findings into charges as mentioned in the inquiry proceedings and findings. The order of dismissal is self-explanatory, and there is no lapse and ambiguity in the said order dated 02.05.2016 issued by the Competent Authority; since the Petitioner failed to substantiate any illegality in the establishment of acts of misconduct committed by the Petitioner, as such the petition is liable to be dismissed. At this stage, learned counsel attempted to bring on record the appellate order whereby the appeal of the petitioner was dismissed in the year 2018 and argued that the petitioner was an officer Grade in the respondent bank, and due to his misconduct, he was dismissed from service, his appeal was too dismissed, which has not been challenged thus he is not entitled to any relief from this court under Article 199 of the Constitution. He

lastly prayed for the dismissal of the instant petition. At this stage we asked the learned Counsel whether the original copies of e-CIB reports of borrowers were produced in the regular inquiry proceedings and confronted the petitioner, whether the inquiry officer ascertained who allegedly tempered the same, and whether the respondent-bank has sustained any loss on account of advance salary loan cases of the staff of the bank, he candidly submitted that photocopies were produced and confronted to the petitioner in the inquiry proceedings, however, he has supported the impugned orders passed by the competent authority of the bank. Primarily respondent bank has no proper answer about tampering with the e-CIB reports, by whom, and alleged loss caused to the bank on the aforesaid account. Prima-facie the e-CIB reports were photocopies and the petitioner demanded originals, and the respondent bank withheld to produce the original in the fact-finding inquiry, despite demand and denial of allegations.

4. We have heard learned counsel for the parties and with their assistance also perused the material available on record and case-law cited at the bar.

5. About maintainability of the instant petition, in principle, the role of the Court is not to remake the decision being challenged or to inquire into the merits of that decision, but to conduct a review of the process by which the decision was reached to assess whether that decision was within the parameter of law or otherwise; and observance of rules of natural justice. Of course, fair play is the basis, and if perversity or arbitrariness, bias vitiate the conclusions reached. In such a scenario, more particularly in service matters, this Court can only see whether:

- ***(a)*** *the inquiry is held by a competent authority;*
- ***(b)*** *the inquiry is held according to the procedure prescribed on that behalf;*
- ***(c)*** *there is a violation of the principles of natural justice in conducting the proceedings;*
- ***(d)*** *the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- ***(e)*** *the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- ***(f)*** *the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- ***(g)*** *the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- ***(h)*** *the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- ***(i)*** *the finding of fact is based on no evidence.*

6. However, we are cognizant of the fact that this Court shall not:

- ***(i)*** *re-appreciate the evidence;*
- ***(ii)*** *interfere with the conclusions in the inquiry, in case the same has been conducted under the law;*
- ***(iii)*** *go into the adequacy of the evidence;*
- ***(iv)*** *go into the reliability of the evidence;*
- ***(v)*** *interfere, if there be some legal evidence on which findings can be based.*
- ***(vi)*** *correct the error of fact however grave it may appear to be*
- ***(vii)*** *go into the proportionality of punishment unless it shocks its conscience.*

7. It is well-settled law that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion that the authority reaches is necessarily correct in the eye of the Court. It is also a well-established

proposition of law that when an inquiry is conducted on charges of misconduct by a public servant, the Court is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules nor of proof of a fact or evidence in the Stricto-Sensu, apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge.

8. In our view, the Court in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its independent findings on the evidence. The Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court may interfere with the conclusion or the finding and mold the relief to make it appropriate to the facts of each case. It is a well-established principle of service jurisprudence that the disciplinary authority is the sole judge of facts. Where the appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment.

9. It is an established principle of service jurisprudence, even in the cases of Master and servant, who cannot be permitted to play hide and seek with the law of dismissals. The same processes must be grounded on the substantive reason for the order. Even the discretion to dispense with the inquiry could not be exercised arbitrarily but honestly, justly, and fairly in consonance with the spirit of the law, after application of a judicious mind and for substantial reasons. For this purpose, the nature of the allegations against the accused has to be considered. In a case when it is clear to the authority that the allegations could be decided about the admitted record or it forms an opinion that un-rebuttable evidence on the touchstone of QANUN-E-SHAHADAT, to prove the charge against the accused/employee is available on the record, the procedure for regular inquiry, may be dispensed with, otherwise, the ends of justice demand an inquiry. However, there can be a situation where the real fate of allegations can only be adjudged by a regular inquiry and not by mere textual proof. The Hon'ble Supreme Court of Pakistan in the case of *Abdul Qayyum vs. D.G. Project Management Organization JS HQ, Rawalpindi, and 2 others* (**2003 SCMR 1110**) held that requirement of regular inquiry could be dispensed with in exceptional circumstances. Where recording of evidence was necessary to establish the charges, then departure from the requirement of regular inquiry under the Rules would amount to condemning a person unheard. On the aforesaid proposition, we are guided by the decisions of the Honourable Supreme Court in the cases of **2012 PLC (CS) 189**: *Mst. Sajida Shaikh v. Deputy Post Master General, Northern Sindh Circle Postal Services, Hyderabad and others*, **2012 PLC (CS) 728**: *Muhammad Afzal v. Regional Police Officer Bhawalpur and Others,* **2008 PSC 1180**: *Member (ACE & ST),*

Federal Board of Revenue, Islamabad and others v. Muhammad Ashraf and 3 others, **2008 PLC (CS) 910**: *Ehsanullah Khan Ex-Assistant Director, FIA v. Federation of Pakistan through Secretary Establishment and another*, **2007 SCMR 1726**: *Saad Salam Ansari v. Chief Justice of Sindh High Court, Karachi through Registrar*, **1998 SCMR 1970**: *Shakeel Ahmed v. Commandant 502 Central Workshop E.M.E., Rawalpindi and another, 1973*. And, **2008 PLC (CS) 786**: *Ali Muhammad Samoo and 2 others v.Chairman, Pakistan Steel, Karachi, and 2 others*.

10. On merits, the fact of the matter transpires from the record that the Petitioner was appointed as OG-II in regular Cadre of National Bank of Pakistan on 27-10-2010 and he was confirmed as OG-II on 27-09-2011 with effect from 16-08-2011 through a letter dated 27-09-2011; that after about more than 3 years of his service on 28-01-2014 the Petitioner was placed under suspension vide letter dated 28-01-2014 issued by the Respondent No.4; that after about 6 months of above suspension a Charge Sheet / Show Cause Notice dated 18-06-2014 was served upon Petitioner by Respondent No.3, which was replied on 15-07-2014; that on 18-09-2014 a Corrigendum was issued by the Respondent No.3 with certain amendments in the charge sheet and "Inquiry Officer" was appointed to probe the allegations against the petitioner; that the Petitioner submitted the reply to the amended Charge Sheet / Show Cause Notice, thereafter attended Inquiry proceedings conducted by the Respondent No.6 accordingly. The Inquiry Officer during the proceedings of Inquiry was requested by the Petitioner for production of the original e-CIB alleged to have been manipulated/tempered with but the DR / Bank Complainant failed to produce the original document based on which the allegations/charge was framed, which facts have been mentioned in the Denovo Inquiry Report/order dated 11-11-2015 by the Inquiry Officer. Petitioner has averred that in February 2016 the Respondent No.5 issued another Show Cause Notice to him vide letter dated 01-02-2016 with a copy of Inquiry Report wherein certain documents related to the allegations leveled in the Charge Sheet / Show Cause Notice were referred but the same was never supplied to him, despite his repeated requests as well as written application dated 03-02-2016 to the Respondents for the production of the copies of relevant documents referred in the Inquiry Report; that on 09-02-2016 the 7 days' time period given by the Respondent No. 5 for submission of Reply to 2nd Show Cause Notice was being expired hence the Petitioner submitted his reply to 2nd Show Cause Notice to avoid ex-partee decision. Petitioner further submitted that on 18-02-2016 another application for a personal hearing was submitted by the Petitioner to Respondent No.3 but no opportunity of personal hearing was afforded to him and Impugned Order was passed without justification and with malafied intention. Petitioner further added that on 16-05-2016 the Petitioner preferred Departmental Appeal against the Impugned Order dated 02-05-2016 which despite a lapse of more than 3 months could not be decided by Respondent No. 2. Per petitioner, he has been victimized for no fault on his part; that he has been removed/dismissed from service without proper Inquiry & prescribed procedure thus he was/is being deprived of his legitimate right to serve on his job.

11. Adverting to the case in hand, there is nothing available on record that could show that upon denying the allegations by the petitioner any regular inquiry was conducted and or any opportunity to cross-examine the witnesses was provided. As discussed above, in this case, specific allegations had been leveled against the petitioner which included inefficiency and misconduct. When the petitioner in response to Show Cause Notices, and a charge sheet had specifically denied the charges leveled against him and considering the nature of charges, all those allegations required evidence, then it had become incumbent upon the authority to have ordered a regular inquiry rather than fact-finding inquiry, and in the above-given situation departure from a normal course does not reflect bonafide on the part of the respondent-bank. In this regard reliance can be placed on the case of *Basharat Ali v. Director, Excise and Taxation, Lahore and another* (**1997 PLC [CS] 817**) [**Supreme Court of Pakistan**].

12. It is by now well settled that the right to a fair trial means the right to a proper hearing by an unbiased competent forum. The right to a fair trial has been associated with the fundamental right of access to justice, which should be read in every statute even if not expressly provided for unless specifically excluded. While incorporating Article 10-A in the Constitution and making the right, to a fair trial a fundamental right, the legislature did not define or describe the requisites of a fair trial, which showed that perhaps the intention was to give it the same meaning as is broadly universally recognized and embedded in jurisprudence in Pakistan. Reliance can be placed on the *SUO MOTU CASE NO.4 OF 2010* (**PLD 2012 SC 553**).

13. Applying the above principles, the impugned order in the instant, case, cannot be treated to be a simpliciter termination. It was an order passed by way of punishment and, with stigma, therefore, was an order of dismissal which having been passed without holding a regular departmental inquiry.

14. In view of what has been noted above and because of the principle of law discussed supra, the order of termination and subsequent order based on the report of the Fact-Finding Inquiry cannot be sustained without holding the regular inquiry as discussed in the preceding paragraphs.

15. Since the petitioner has not been confronted with the original record of the documents (tempered e-CIB data) and no regular inquiry has been conducted, therefore, no conclusive finding can be given in the matter and it is for the respondent Bank to hold a regular inquiry and confront the petitioner with the original documents as discussed supra and pass a speaking order after providing meaningful hearing to the petitioner, within two weeks from today.

16. In view of the foregoing, the impugned order dated 02.05.2016 and subsequent order is set aside. The petitioner shall be reinstated in service forthwith, however, the issue of back benefits shall be subject to the outcome of the regular inquiry proceedings.

The petition stands disposed of in the above terms.

JUDGE

JUDGE

Nadir*