

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

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| Date | Order with signature of the Judge |
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Present:

**Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Muhammad Osman Ali Hadi.**

C.P.No.D- 5267 of 2024

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| Bank Al-Falah Ltd. | | Petitioner |
| | Vs. | |
| Federation of Pakistan & others | | Respondents. |

27.03.2025.

Mr. Tahmasp Rasheed Rizvi, Advocates for petitioner
Ms. Shazia Hanjra, DAG.
Respondent No.4 in person.

ORDER

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MUHAMMAD IQBAL KALHORO J: Petitioner, Bank Al-Falah Ltd, has filed this petition with following prayers:-

- i) Declare that the Impugned Order dated 28th August, 2024 passed by the Respondent No.1 in Representation No. 73/BM/2024 is a non-speaking order, passed in violation of Article 4 of the Constitution of Pakistan, illegal, unlawful, void ab-initio hence liable to be struck down/Set aside by this Hon'ble Court.
- ii) Declare that the complaint filed before the Respondent no.2 by the Respondent no.4 suffers from principle of laches as the same was filed after a lapse of 20 years.
- iii) Suspend the operation of the Impugned Notice dated 28.08.2024 and restrain the Respondents their respective officers, directors, employees, servants, representatives, successors, agents, assigns, etc and/or any other person acting under their control or on their behalf from taking any adverse or coercive action against the Petitioner.
- iv) Permanently restrain the Respondents their respective officers, directors, employees, servants, representatives, successors, agents, assigns, etc and/or any other person acting under their control or on their behalf from taking any adverse or punitive action on the basis of the Impugned Notice dated 28.08.2024.
- v) Grant such further relief which this Hon'ble Court may deem, just and proper in the circumstances of the case including the costs of the petition.

2. As per brief facts, respondent No.4, present in person today, approached the petitioner bank on 03.10.2019 with a written request to probe his alleged Term Deposit Receipt (TDR) facility bearing Account No.03011112 along with a receipt indicating TDR value of USD \$ 10,374 as on 25.05.1999 and verify the details on the ground that he could not remember whether he had encashed TDR facility or not, hence he made above request to the bank. On inquiry, the bank found that facility availed by respondent No.4 in the year 1999 was rolled over on 16.11.1999 and thereafter on 20.11.1999 TDR facility was encashed by him upon his written request by issuance of bearer bond. The record disclosed that request of encashment was processed on 20.11.1999, the Voucher available with the Bank clarified the said transaction dated 20.11.1999 pertained to respondent TDR facility. This information was shared with respondent no.4 but he being dissatisfied with it filed a complaint before respondent No.2, the Banking

Mohtasib Pakistan. There, he stated on oath, u/s 82D, of the Banking Companies Ordinance 1962, that he had availed TDR facility from the Bank for an amount of \$10374/- dated 25.05.1999 but he did not remember as to whether he had withdrawn the amount or not. When he requested the bank to provide details in this regard, the bank failed to do so. In reply to his complaint, the Bank submitted following response:-

- a) The Branch has tried to search the details of TDR provided by the Complainant but unable to retrieve any data pertaining to Mr. Muhammad Nazir TDR encashment, being very old record.
- b) Since the account/ instrument is very old pertaining to the data before 1999 (i.e. more than 20 years ago) and as per the available record (i.e. statement retrieved from old system), it shows that the last transaction/activity in the account had been done on November 20, 1999 where the account became Zero/Null in the last transaction.
- c) Complainant receipt is showing date of maturity as August 18, 1999 but as per account statement, it is clearly seen that TDR was rolled over on November 16, 1999 against which customer has not shown any valid proof and subsequently, TDR was encashed on November 20, 1999.
- d) Found the Internal vouchers against the transaction which reflects that encashment request was processed on November 20, 1999. These vouchers clearly indicates that statement reflecting transaction dated November 20, 1999 is of TDR encashment against the Customer request.
- e) As it is evident from foregoing, that no mis-conduct has been found on the part of the Bank and the allegations made in the Complaint against the Bank are found baseless and vehemently denied.
- f) Bank has further confirmed that as per bank's record the funds were not deposited to SBP in unclaimed deposit since 2006 till date.

3. In the complaint, respondent No.4 was examined and his view point was recorded. He reiterated the contents of his complaint and further added that his USD account was opened in the then BCCI Bank (Bank Al-Falah) and he had the cheque book. He never withdrew any amount except once. TDR contains auto instruction for renewal after three months; therefore, there was no need to request for renewal. He further added that he visited the relevant branch to enquire about TDR but no satisfactory reply was given to him.

4. The bank representative was also examined and his view point was also recorded. He reproduced his stance as noted above and further stated that as per Bank record, TDR was encashed on 20.11.1999. Further, they were not aware of Dollar bearer bonds (DBB) which are outstanding with State Bank of Pakistan (SBP) or not. According to him, the bank approached the State Bank but it asked the bank to provide original bearer bond to check at their end. He further stated that their register which contains details of bearer bonds for registration number 520/DBU/99 and booking date November 20, 1999 are as follows:-

| S# | Denomination | Serial# |
|----|--------------|-----------|
| 1 | 10,000 USD | Q0057063 |
| 2 | 1,000 USD | P-0224777 |
| 3 | 100 USD | N-190591 |
| 4 | 101 USD | N-190592 |
| 5 | 102 USD | N-190593 |
| 6 | 103 USD | N-190594 |
| 7 | 104 USD | N-190595 |

5. Respondent No.2 in the impugned order has made following observations and findings:-

Encashment request from the customer provided by the Bank doesn't have any date which makes difficult for the Bank to identify the period it is referring to for the transaction of encashment the disputed TDR or it was for previous one.

Bank has not provided any proof regarding payment made to the Complainant. The record of SOA and other documents did not properly support for any payment made to the Complainant.

The Bank has failed to provide any evidence of taking Original TDR back from the customer, proving that the encashment was made, in cash or by crediting the Complainant's account.

The Bank doesn't have SOA in a proper format to show encashment. Provided SOA to this Secretariat is in an excel format on premise that it was being maintained in the said format during those days. No system generated SOA available with Bank in support of their stance.

BAFL had issued US Dollar Bonds against encashment of the TDR of the Complainant, however they could not produce strong evidence that original TDR was presented by the Complainant and he had requested for encashment. Also, no clear evidence was produced to support the BAF claim that they have issued US Dollar Bearer bonds to the Complainant.

The Complainant provided Cheque book issued to him by the then BCCI which shows that the Complainant had a valid account and proper statement of affairs to reflect the transactions for deposit and encashment of TDR.

The Bank was in a position to safeguard the situation and establish the legitimacy of the disputed transaction provided they keep the encashment of TDR intact. The Bank has, therefore, committed gross maladministration on their part.

Findings:

In view of above, I, under the powers vested in me vide section 82D of the BCO, 1962 read with section 9 of the Federal Ombudsmen Institutional Reforms Act, 2013, allow the Complaint and direct the Bank Alfalah to pay/credit in Complainant's account the sum of US\$.10,374/- with profit forthwith and report, compliance.

6. Petitioner being aggrieved by and dissatisfied with the order filed a representation before respondent No.1, the President, Federation of Pakistan. This representation has been dismissed by the President through impugned order dated 28.08.2024 which has been challenged by the petitioner in this petition.

7. Learned counsel for petitioner has argued that impugned order is non-speaking, has failed to decide the controversy materially; the impugned order fails to consider that the complaint of respondent No.4 was hit by the latches as the transaction pertained to year 1999; the impugned order fails to consider the evidence produced by the Bank showing withdrawal of the amount by respondent No.4; that plea of respondent No.4 is vague that he does not remember withdrawal of cash from the bank; that bank was able to produce a debit voucher dated 20.11.1999 (available at page 45 of the file) which was sufficient evidence; that burden was on the respondent No.4 to prove that he had not encashed TDR facility; the TDR facility pertained to the year 1999,

respondent No.4 approached the Bank in 2019 after two decades, hence his complaint was time-barred. According to him, the bank as per regulatory compliances is only liable to maintain account and record of past 10 years, whereas respondent No.4 disputed the payment made over to him almost after two decades; that impugned order does not contain any reason in favour of findings, hence liable to be set-aside.

8. On the other hand, respondent No.4 present in person has filed comments and has supported the impugned order.

9. Learned DAG has also supported the impugned order and has further submitted that stance of the bank is self-contradictory as on the one hand the bank has stated that since the transaction is two decades old, the bank has no record available, and on the other hand, has produced a debit voucher (available at page 49) to show withdrawal of the amount by respondent No.4.

10. We have considered submissions of the parties and perused material available on record. The bank is not disputing deposit of disputed amount with it by respondent No.4. Its stance, notwithstanding, to deny the case of respondent No.4 is that it does not have documents available with him to reflect the said amount having been withdrawn by respondent No.4 as the transaction is old one having taken place in the year 1999. The bank is only required to maintain the record of 10 years. However, this stance, as rightly pointed out by learned DAG, contradicts bank's own claim in the shape of a document viz. a debit voucher dated 20.11.1999, purportedly generated by the computer with endorsement in handwriting relating to withdrawal of the amount. The plea that the document of withdrawal are not available therefore is not founded on any solid undergird

11. Except this document, the bank has not come forward to place any convincing evidence before any of the fora below to show that the amount was withdrawn by respondent No.4. When disputed amount is admitted by the bank to have been deposited, the burden would be upon the bank to show that the said amount was subsequently withdrawn by respondent No.4. In absence of any valid evidence presented by the bank showing any withdrawal of the amount by respondent No.4, the presumption would run against the bank that the disputed amount remained in its possession and was never withdrawn.

12. The bank is regulated by the laws and regulations and hence is required to maintain the record of every transaction for future reference. The claim of the bank that it is required to maintain the relevant record of only 10 years; and in this case, therefore, after 10 years, the relevant record was disposed of is not supported by any documentary evidence. The bank has placed no

document/memos on record that after 10 years, the relevant record pertaining to TDR facility availed by respondent No.4 was destroyed or disposed of to support such plea.

13. In such situation, when the bank has miserably failed to present any evidence regarding withdrawal of the disputed amount by respondent No.4, the observations recorded by the respondent No.2, reproduced above, appear to be spot on. Therefore, no exception qua such findings in absence of any convincing evidence forthcoming from the bank supporting their claim can be taken. In the representation before the President of Pakistan, the bank did not add any material to strengthen its case and to show that the findings recorded by respondent No.2 were illegal or perverse or based on material not part of the record. Therefore, after considering such scanty evidence as above relied upon by the bank, the President proceeded to dismiss its representation.

14. Now, there are concurrent findings recorded by both the forums below on facts of the case. In the constitutional jurisdiction unless those findings are shown to be rooted in illegality, perversity, or a result of a consideration based on extraneous circumstances or an outcome of mis-appreciation of facts or wrong interpretation of law, a different view cannot be taken. When we asked what illegality has been committed by both the forums below in recording a conclusion against the bank, the only stance of learned counsel for the bank has been that burden of proof was upon respondent No.4 which he has miserably failed to discharge. However, we have already discussed above that we do not find this view to be in accordance with law as once the amount is admitted by the bank to have been deposited with it, the burden is upon the bank to show its withdrawal etc. and in this case the bank has miserably failed to discharge its burden and the stance taken in this regard is self-contradictory. Hence, there is no option left with this court but to endorse the concurrent findings recorded by both the forums below. Resultantly, We dismiss this petition, being meritless, alongwith pending application(s).

The petition stands dismissed.

JUDGE

JUDGE