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3. On 28.12.12 he got transferred a sum of Rs.300,000/- through IBT from A/c #. 11509-0 being maintained at Main Branch, Sukkur in the name of Mrs. Sameena (his wife) without any authority from the constituent and the amount was embezzled by him. Further the following exceptions were noted:-

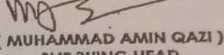
- In order to complete illegal transaction he mentioned on debit voucher cheque #. 00592510 which was not actually received by the bank.
- The amount was received in transfer and got encashed by him
- Debit voucher was singly passed by him instead of jointly by the two authorized officers. (SPM-327)

4. He fraudulently in order to fulfill his desires created two DDPs on 21.01.12 & 22.01.12 each for Rs.20,000/- against cheque # 2402665 drawn on A/c # 194485-6 being maintained at NBP Sharifabad (the branch where DDPs were created) and embezzled the amount. Following further exceptions were noted:-

- In order to deceive the inspecting officials DDP vouchers narrated as pension / benevolent fund payment.
- Both the vouchers were dated, 16.01.13 whereas the DDPs were purchased on 21.01.13 & 22.01.13
- The vouchers were singly passed by him instead of getting the same signed by two authorized officers (SPM-327)

His all above acts tantamount to criminal negligence, breach of trust, misconduct, sheer violation, and dereliction of duty on his part.

He should submit his explanation within 7 (Seven) days to Ms. Saeeda Begum, AVP, NBP, Main Branch Kotli, Regional Office, Hyderabad, who has been appointed as Enquiry officer to conduct enquiry as per rules.


 (MUHAMMAD AMIN QAZI)
 SVP/WING HEAD

Mr. Abdul Waheed Memon,
 Officer Grade-II /Operations Manager (U/S),
 National Bank of Pakistan,
 Regional Office,
 KARACHI (WEST).

Per learned counsel, after conducting the fact-finding inquiry the respondent-NBP dispensed with the service of the petitioner vide order dated 07.9.2015, followed by initiation of recovery proceedings and penal action vide office memorandum dated 02.10.2015. An excerpt of the dismissal from banks service order is reproduced as under:

“DISCIPLINARY ACTION AGAINST M/S. ABDUL WAHEED MEMON, OG-II/OPERATIONS MANAGER (U/S) AND AHMER OMER, OG-III/INCHARGE EOBI PENSION (CONTRACTUAL) MISAPPROPRIATION OF RS.3,899,066/- IN EOBI PENSION PAYMENTS AT NBP SHARIFABAD BRANCH, R.O (WEST) KARACHI
 Please refer to your letter No.ROWK/HR&ADMN/DCD-1432/2014/3870 dated 26.12.2014 on the above subject.

After taking into consideration all aspects of the case the competent authority has decided the disciplinary cases against the following delinquents as under:-

Mr. Abdul Waheed Memon, OG-II/operations managers (U/S) (PG#1913840)	Dismissed from Bank's service with immediate effect treating the period of suspension as punishment with instruction to make full recovery otherwise FIR be lodged.
Mr. Ahmer Omer, OG-III/Incharge EOBI Pension (PF# NA.)	Downgraded by one (1) step in pay scale for three (3) years and immediate transfer from the current position.

Please take necessary action in the matter accordingly under advice to us and all concerned.”

2. Mr. Abdul Salam Memon, learned counsel for the petitioner, has contended that the guilt or innocence can only be threshed out from the outcome of a regular inquiry. Per learned counsel, there is the distinction between a regular inquiry and a preliminary/fact-finding inquiry and in this case, only departmental inquiry was conducted against the petitioner and he was found guilty of charges of misconduct which lacks bonafide and transparency. Learned counsel for the petitioner referred to charge-sheet dated 15.01.2015, his written defense, finding of the Inquiry Officer, second show-cause notice dated 22.4.2015, dismissal from service order dated 07.09.2015, letter dated 02.10.2015 and argued that all has happened due to unnecessary harassment caused to the petitioner which is reflected from the letter dated 04.2..2015 written by the petitioner and dispatched to the President NBP with the assertion that he is not directly involved in the payment of EOBI Pension but implicated in this case and was forced to deposit the alleged amount in the account of National Bank of Pakistan from his own account, just to save himself from the unnecessary harassment. Learned counsel for the petitioner extensively read the paragraph of the inquiry report and argued that this is a simple

eyewash and nothing concrete could be proved against him, thus the impugned orders are a nullity in the eyes of law. Elaborating his arguments, he submitted that the first such illegality committed by the respondent-NBP is that the fact-finding inquiry was not regular, thus depriving the petitioner of the opportunity of cross-examining him for bringing on record grave illegalities committed by the Inquiry Officer during the inquiry proceedings. In support of his contentions, he relied upon the case of *National Bank of Pakistan and another v. Punjab Labour Appellate Tribunal and 2 others*, **1993 SCMR 105** and unreported judgment dated 28.12.2021 passed by the Hon'ble Supreme Court of Pakistan in **Civil Appeal No.1-K/2021** *Usman Ghani v. Chief of Post Master, GPO, Karachi, and others*.

3. We asked learned counsel for the petitioner whether recovery of the embezzled amount of Rs.1635,629/- has been made by the respondent-bank from the petitioner and; whether he voluntarily deposited the alleged amount with the respondent-NBP, therefore, let loss comes to Rs.2,205,337 needs to be recovered from the petitioner.

4. Learned counsel for the petitioner replied to the query and referred to various paragraphs of the memo of the petition and submitted that the petitioner was harassed and compelled to deposit the alleged amount, just to save his skin from the tyranny of the respondents. He further argued that the act of respondents who illegally terminated his service is without lawful authority. He denied the assertion as portrayed by the respondent-Bank with the resolution that the petitioner is innocent and has been victimized of highhandedness of respondent-bank, thus entitled to relief as prayed.

5. On the contrary, Mr. Suleman Huda, learned counsel for respondent-NBP, has submitted that the act of petitioner was prejudicial with the interest of the Bank who committed fraud and forgery and subsequently admitted his guilt by depositing the amount involved in the fraud; that once a fact of misappropriation is proved against an employee, the misconduct alleged against him stands irrespective of the quantum of the amount and he was rightly punished. He further argued that the allegation against the petitioner was subjected to the anvil of a proper inquiry and repeated opportunities were provided to the petitioner to dispel the charge(s) against him. Learned counsel further pointed out that as per the admitted documentation filed, the preponderance of the incriminating record against the petitioner could not be controverted. He lastly submitted that Article 199 of the Constitution contemplates the discretionary powers of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter admittedly there existed an adequate remedy, however, the same was duly availed and exhausted; and, no case has been set forth before this Court for *de-Novo*, agitation of the matter. He prayed for dismissal of the instant petition.

6. We have heard learned counsel for the parties and have gone through the inquiry report, coupled with the admission of the petitioner in the inquiry proceedings, his subsequent depositions of the misappropriated amount involved in the fraud and forgery committed in the respondent bank, perused the other material available on record and case-law cited at the bar.

7. The only question before us is whether the service of the Petitioner could be terminated without holding of a regular inquiry; and, providing the opportunity of hearing on the allegations leveled against him. 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-NBP that the Petitioner had played a vital role in the embezzlement of the EOBI amount and his subsequent deposition of the embezzled amount in the account of respondent-NBP, prima facie, proved his guilt. He 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 and/or conducting of a regular inquiry. However, he was quite satisfied with the way the inquiry was conducted by the Inquiry Officer. He also placed reliance on various documents on this point.

8. As per the investigation report fraud of Rs. 3,899,066/- was detected; and, during inquiry proceedings the Petitioner was found involved in the above case and was charge-sheeted; and, finally dismissed from service. As per record, the petitioner appeared before the inquiry officer and recorded his statement; and, purposely admitted his guilt by depositing the embezzled amount in the account of the respondent-NBP. The record further reveals that all the actions taken by the respondent-NBP were as per rules and regulations for the simple reason that proper charge sheet and show cause notice dated 15.01.2015 was issued to the Petitioner and the competent authority found the explanation of petitioner unsatisfactory; and before taking any action against the Petitioner by the respondent-NBP, he was again issued second show-cause notice, giving him a further opportunity for defending himself to the satisfaction of the Bank. He replied to the show cause notice and submitted his written defense and repeated earlier version taken by him during the inquiry proceedings and did not request for personal hearing; that the case of the Petitioner was placed before a competent authority who after considering all the aspects of the case dismissed the petitioner from bank's service. The petitioner preferred a departmental appeal on 23.05.2016 and said appeal was declined by the competent authority of respondent-Bank vide its letter dated 01.03.2017.

9. Primarily no fundamental rights of the Petitioner have been infringed; that the Petitioner was given full opportunity to defend himself during the inquiry and out of four (4) charges, three (3) were proved against him; that all the charges against the Petitioner were criminal, therefore he was rightly awarded major punishment as discussed supra. On the aforesaid proposition of law, we seek guidance from the decisions of the Honourable Supreme Court rendered in the cases of the unreported judgment dated 18.08.2020 passed in Farooq Hussain vs. Shaikh Aftab Ahmed (**CRP 104-L of 2019 & connected matters**), *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab*, **PLD 2006 Supreme Court 1124**; *Naseer Ahmed Siddiqui vs. Aftab Alam*, **PLD 2013 Supreme Court 323**, *Syed Iqbal Hussain Shah Gillani vs. PBC & Others*, **2021 SCMR 425**; *Muhammad Fiaz Khan vs. Ajmer Khan & Another*, **2010 SCMR 105**, *Syed Iqbal Hussain Shah Gillani vs. PBC & Others*, **2021 SCMR 425**; and *Muhammad Fiaz Khan vs. Ajmer Khan & Another*, **2010 SCMR 105**.

10. It is apparent that the entire spectrum of departmental proceedings to establish culpability has been exhausted in the present case and even the remedy of appeal stands availed. It is settled law that an appeal is a creation of statute and in the absence, thereof no presumption in such regard is merited. The absence of yet another forum of appeal does not confer automatic jurisdiction upon High Court to act as the appellate court in the exercise of its constitutional jurisdiction, which may only be invoked if the precepts of Article 199 are attracted.

11. Primarily, the business of the bank is based on mutual trust between the bank and the customer and further that bank acts as custodian of the public money, any slightest doubt for suspicion about its activities and transaction and dishonesty of its employees could shake the confidence of the customer, resulting in ruination of business. On the aforesaid proposition, we are guided by the decision of the Hon'ble Supreme Court of Pakistan rendered in the case of *Ghulam Mustafa Channa v. Muslim Commercial Bank Limited and others*, **2008 SCMR 909**.

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

13. We, based on documents placed on record by the parties have concluded that the case of Petitioner does not require further investigation so far as the allegations leveled against him are concerned. Since he had proceeded, was given a 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 orders support the stance of respondent-NBP, which do not require interference at our end. It is the considered view of this Court that to maintain a Constitution Petition it is the duty and obligation of the Petitioner to point out that the action of the respondents violated their rules and regulations.

14. In the wake of above, the Petitioner has failed to point out and failed to make out his case for the indulgence of this Court, therefore, in view of the fact-finding inquiry as discussed supra, coupled with the admission of the guilt of the petitioner, this petition is accordingly dismissed.

15. These are the reasons for our short order dated 03.02.2022, whereby we have dismissed the instant petition.

JUDGE

JUDGE