

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-3982 of 2013

(Syed Qadeer Iqbal v. Federation of Pakistan and 06 others)

Mr. Sami Ahsan, advocate for the petitioner

Mr. Muhammad Nishat Warsi, DAG

Mr. Harchand Rai, advocate for respondents No.4 to 7
alongwith Agha Muhammad Najeebullah, Incharge Legal
Litigation, ZTBL, Karachi

Date of hearing
& order : **17.02.2022**

ORDER

Through the captioned petition, the petitioner has challenged the Office Memorandum dated 23.09.2013 issued by SVP (HROD) Zarai Taraqati Bank Limited (**ZTBL**) Islamabad, whereby the service of the petitioner already dispensed with vide order dated 23.09.2011, remained intact.

2. Mr. Sami Ahsan, learned Counsel for the petitioner, has briefed us about the case of the petitioner with the assertion that initially, the petitioner was appointed as Senior Vice President ZTBL in the year 2006. Per learned Counsel, due to certain dispute arose by and between the petitioner and president of the respondent-bank, petitioner was frequently transferred from one place to another place; he became diabetic; and, consulted the doctor, who advised him, complete bed rest, for which the petitioner requested to the competent authority of respondent-bank, for grant of medical leave, with effect from 14.02.2011 to 17.10.2011; that petitioner was directed to appear before the special Medical Board on 05.5.2011 for medical examination; the petitioner complied with the direction and got himself examined by the Medical Board. The Medical Board opined as under:

"He complains of Backache and bilateral mild aumo sensation in the legs, MRI shows minimal 1,4/5 disc bulge with mild stenosis. He is advised to reduce weight, use lumber belt, and mild analgesic."

3. Per learned counsel, the petitioner was served with the Charge Sheet dated 06.9.2011 with certain allegations of misconduct, however, the petitioner denied the charges leveled against him with certain pleas, since he was suffering from severe Backache as discussed supra and requested for his posting at Karachi with light duties, however, the Acting President of respondent-bank, issued him a Show Cause Notice dated 22.07.2011, which was replied with the same defense. Per learned counsel, the show cause issued to the petitioner was based on erroneous assumptions, and even the same

was issued without lawful authority as the acting president of respondent-bank had no authority to act on behalf of the president of the bank, which was a clear violation of the policy decision/Circular No.HRD/12/2011 dated 23.05.2011. Learned counsel further submitted that the Enquiry Officer, without mentioning any ground for not holding the regular inquiry opined against the petitioner, even he failed to provide a personal hearing to the petitioner. Learned counsel added that it is the policy of the bank that the husband and wife are posted at the same place of working in the same city but the respondent-bank did not approve the request of the petitioner nor allowed him posting at Karachi, as his wife was/is serving at Karachi as a civil servant. He finally submitted that respondent-bank issued the impugned Office Memorandum No DPDIU-11/1(880)/2011/9226 dated 23 September 2011, whereby his service was dispensed with on the plea of unauthorized absence from duty. Per learned counsel the impugned Office Memorandum of dismissal from service order is not sustainable under law as it has been passed in violation of Efficiency & Disciplinary Rules, 1975 as the petitioner has not been provided a copy of the Enquiry report and he has been denied a personal hearing in the matter under rule 513 (a & b) of E&D Regulations, 1975, as such the impugned order suffers from material irregularities, therefore liable to be set aside. Besides that petitioner was under medical treatment as opined by the Medical Board; that under these circumstances, on the one hand, the inquiry officer submitted his report on other grounds rather than of his absence from duty with effect from 08.05.2011 onwards and, on the other hand, on the same day he was penalized vide letter dated 23 September 2011; that respondent-bank also regularized his leave but without pay; that once the leave has been regularized. He next argued that the respondent bank had condoned the period of absence by allowing him, leave-without pay. Learned counsel also argued that leave was due to the petitioner and he had been making applications time and again accompanied by medical certificates; that the respondent-bank had no justification to non-suit the petitioner because the absence of the petitioner had been regularized as impugned order depicts; that there was nothing against the petitioner on record to penalize him and/or impose the penalty of any nature impugned through these proceedings; that the reasoning of the respondent-bank is not in conformity with the record; that the order of the respondent-bank imposing major penalty was passed in haste, overlooking the material on record.

4. Mr. Harchand Rai learned Counsel representing the respondent-bank has supported the impugned action of the respondent-bank and argued that petitioner had applied for medical leave from 31.01.2011 to 14.02.2011, 12.02.2011 to 11.03.2011 10.03.2011 to 06.04.2011, 06.04.2011 to 04.05.2011, and finally from 05.05.2011 to 15.06.2011. The competent authority, keeping in view his persistent absence from duty on medical grounds, referred the matter to Special Medical Board at Services Hospital, Karachi for a second opinion. The Medical Superintendent examined him on 05.05.2011 and advised him to resume light duties; that petitioner did not join duty on 8th May 2011 and absented himself willfully and unauthorizedly; that Show Cause Notice No.DPD/IU-11/1(880)/2011/7691 dated 22.07.2011 was issued to him on account of a willful absence from duty amounting to noticeable glaring misconduct. He was asked to show cause as to why a major penalty of dismissal from the Bank's Service may not be imposed upon him on

account of the above-stated act of misconduct. He was also advised to state as if he wants to be heard in person and produce any evidence in his defense; that he submitted a reply to the show-cause notice on 3rd August 2011 and did not put forth any plausible or lawfully tenable cogent reasons for the willful absence from duty. He also did not ask for an opportunity for a personal hearing. The matter was placed before the authority (President, ZTBL) for appropriate orders. The authority gave careful consideration to the given circumstance and had taken into account submissions made by the petitioner in his reply to the show-cause notice. Having found the reply to the show-cause notice unsatisfactory and in the face of established willful absence from duty w.e.f. 08th May 2011, the Authority, in the exercise of the powers vested in him under ZTBL Staff Regulations-2005 read with Circular No.HRD/05/2011 dated 12.03.2011, had imposed upon the petitioner a major penalty of dismissal from service with immediate effect. The period of absence from duty with effect from 08.05.2011 to the date i.e 23.9.2011 has been considered as leave without pay. Per learned counsel, the penalty imposed upon him is without prejudice disciplinary case(s) initiated against him or pending in the Courts of Law. He prayed for dismissal of the instant petition.

5. We have heard the contentions of learned counsel for both the parties and have perused the record as well as the case law cited at the bar.

6. It appears from the record that the show-cause notice seeking the explanation of the petitioner for his unauthorized absence was issued containing the charge, however, the respondents continued with the disciplinary proceedings and finally issued Office Memorandum dated 23.09.2011 which reads as under:-

"Syed Qadeer Iqbal, Senior Vice President, P.P.No.111430, Insurance Department, ZTBL, Head Office, Islamabad applied for medical leave from 01.2011 to 14.02.2011, 12.02.2011 to 11.03.2011, 10.03.2011 to 06.04.2011, 6.04.2011 to 04.05.2011 and finally from 05.05.2011 to 15.06.2011. The competent authority, keeping in view his persistent absence from duty on medical grounds, referred the matter to Special Medical Board at Services Hospital, Karachi for a second opinion, The Medical Superintendent examined him on 5.05.2011 and advised him to resume light duties. He was to join duty immediately from 8th May 2011.

2. *Instead, Syed Qadeer Iqbal did not join duty on 8th May 2011. and absented himself willfully and unauthorizedly.*

3. *Show Cause Notice No.DPD/IU-II/1(880)/2011/7691 dated 22.07.2011 was issued to him on account of a willful absence from duty amounting to noticeable glaring misconduct. He was asked to show cause as to why a major penalty of dismissal from the Bank's Service may not be imposed upon him on account of the above-stated act of misconduct. He was also advised to state as if he wants to be heard in person and produce any evidence in his defence.*

4. *He submitted a reply to the show-cause notice on 3rd August 2011 not put forth any plausible or lawfully tenable cogent reasons for the willful absence from duty. He also did not ask for an opportunity for a personal hearing. The matter was placed before the authority (President, ZTBL) for appropriate orders. The authority gave careful consideration to the given circumstance and has taken into account submissions made by Syed Qadeer Iqbal in his reply to the show-cause notice unsatisfactory and in the face of established willful absence from duty w.e.f. 08th May 2011, the Authority, in the exercise of the powers vested in him under ZTBL Staff Regulations-2005 read with Circular No.HRD/05/2011 dated 12.03.2011, has imposed upon Syed Qadeer Iqbal, Senior Vice President, P.P.No.111430, Insurance Department, ZTBL, Head Office, Islamabad major penalty of dismissal from service with immediate effect. **The period of absence from duty w.e.f. 08.05.2011 to date has been considered as leave without pay.***

5. *The penalty imposed upon him is without prejudice to the disciplinary case(s) initiated against him or pending in the Courts of Law (if any). The Bank also reserves the right to recover from him any amount embezzled/misappropriated by him during service in the Bank which may surface later on against him and recovery of Bank's advances (if any), in case he fails to repay the same at his own accord.*

6. *This issues with the approval of the Authority."*

7. We have noticed that the response submitted by the petitioner did not find favor with the competent authority of the respondent bank vide office order dated 23.9.2013 directed the petitioner's removal from service.

8. The impugned order has been challenged from various standpoints, including medical ground. It was argued on behalf of the petitioner that he was granted leave without pay with effect from 08.05.2011 till the date of termination, which means that the respondent bank condoned the absence, however, without pay. The argument of the learned counsel for the bank that the petitioner willfully remained absent from duty for the aforesaid period; that the reasons assigned by the Medical Board are not sufficient to believe the version of the petitioner that he requested for medical leave, which ought to have been granted to the petitioner on medical grounds automatically, thus the absence period with effect from 08.05.2011 till the date of termination was not regularized by the office memorandum dated 23.09.2011.

9. Be that as it may, under similar circumstances, the Hon'ble Supreme Court of Pakistan in the recent judgment has dealt with the issue of unauthorized absence of the employee from duty and did not consider the plea of the employer on the premise that the period of absence from duty was treated as extraordinary leave without pay which amounts condoning the absence. Since the office memorandum dated 23.09.2011 also directed the treatment of petitioner's un-authorized absence as leave without pay and the entire controversy, as projected before us, revolves around the treatment of petitioner's such un-authorized absence from duty as leave, therefore, it would be proper to reproduce the office order dated 23.9.2013 whereby the original order of dismissal from service dated 23.09.2011 remained intact as discussed supra, which reads as under:

"OFFICE MEMORANDUM

Consequent upon dismissal of Writ Petition in Islamabad High Court, Islamabad as withdrawn on 22.03.2022, the orders dated 23.09.2011 regarding the dismissal of Syed Qadeer Iqbal are intact. Accordingly, the O.M. No.HROD/ESM/20(111430)/2011/10097 dated 03.11.2011 also become infructuous.

The Bank also reserves the right to recover from him any amount surface later on against him and recovery of Bank's dues (if any), in case he fails to repay the same at his own accord."

10. Perusal of this office memorandum order dated 23.09.2011 would reflect that the competent authority has expressed its mind explicitly on the unauthorized absence of the petitioner by imposing the major penalty of dismissal from service with immediate effect, by treating the period of absence from duty i.e. 08.05.2011 to the date of termination from service as leave without pay.

11. Touching to the merits of the case, since the penalty imposed by the competent authority was of dismissal from service based on unauthorized leave, therefore, in our

opinion, it was the harsh decision of the respondent-bank. In our opinion, such powers are to be exercised sparingly, when the petitioner pleaded his entire case based on the medical ground as opined by the Medical Board, having been unable to move from one place to another place and was advised complete bed rest. In such circumstances, prima-facie, it was very difficult for the petitioner to resume duties, however, he sent various applications for grant of leave on medical grounds, but the respondent bank turned deaf ear to his requests. Even how the respondent bank could go against the opinion of the special Medical Board constituted in this regard. An excerpt of the opinion of the final medical board dated 07.05.2011 is reproduced:

*“OFFICE OF THE
MEDICAL SUPERINTENDENT SERVICES HOSPITAL
AND CIVIL SURGEON, KARACHI*

NO. SHK/MED/109/ 3035

DATED THE 07th MAY 2011

To

*The EIAVP/Medical Officer (MSD),
Kissan Supprt Services (Pvt.) Ltd
1. Faisal Avenue,
Islamabad.*

*SUBJECT:- SPECIAL MEDICAL BOARD – MR, SYED QADEER IQBAL PP NO. 11430,
SVP, ZARI TARAQIATI BANK LIMITED*

Reference:- Your letter No.P(MU)(1)/Med-41(167)/2011-513 dated 19th April 2011

Mr. Syed Qadeer Iqbal, PP No.114530, SP, Zarai Taraqati Bank Limited, appeared before the Medical Board on 05.5.2011, for medical examination, he has been examined by the members of the board, in the opinion of the board

He complains of Backache and bilateral/mild numo sensation in the legs, MRI shows minial L4/5 de bulge with mild stenosis. He is advised to reduce weight, use lumber belt and mild analgesie.

Tab. Neubrol Forte 1+0+1 (04 weeks)

Tab. Negogab 100mg 1+1+1 (04 weeks)

His (05) five Medical Certificates issued by Medical Officer, Sindh High Court Clinic are returned duly countersigned. He should resume light duties.

*Sd/-
MEDICAL SUPERINTENDENT
SERVICES HOSPITAL AND CIVIL SURGEON
KARACHI”*

12. The Hon'ble Supreme Court of Pakistan has held that the conversion of unauthorized absence, as EOL/ is not a penalty/punishment, but in the present case, leave without pay along with dismissal from service is a penalty/punishment, such two punishments, prima-facie cannot coexist at the same time. It is well-settled law that if a man has absented himself from work without the permission of his employer, he of course is not entitled to a right for payment of salary for such period. However, the respondent-bank vide office memorandum dated 3.11.2011 released the salary of the petitioner with effect from 13.10.2011 till the final decision of the learned Islamabad High Court, and petitioner was allowed posting order dated 3.11.2011, however upon withdrawal of Writ petition by the petitioner under the settlement by and between the parties, the respondent-bank in a haphazard manner revived the original dismissal from service order on the plea that petitioner voluntarily withdrew the Writ petition from learned Islamabad

High Court, Islamabad and finally knocked out the petitioner from service vide the office memorandum dated 23.4.2013. We are unable to digest the conduct of the respondent bank while dealing with the service matter of the petitioner, who beseeched for medical leave.

13. Perusal of the impugned dismissal from service order dated 23.09.2011 reveals that the petitioner had been non-suited based on inquiry report dated 23.9.2011 and on the same day, he was dismissed from service. The record further reveals that the petitioner was not allowed to join in the inquiry proceedings initiated against him as the petitioner intimated the inquiry officer regarding his ill health, however, he continued with the proceedings on certain other allegations which were not part of the office memorandum dated 23.9.2011 on the analogy that petitioner had avoided appearing in the proceedings. An excerpt of the inquiry proceedings dated 23.9.2011 is reproduced as under:

“ENQUIRY REPORT IN RESPECT OF SYED QADEER IQBAL, SVP/INSURANCE DEPARTMENT ZTBL, HEAD OFFICE ISLAMABAD,-CHARGE SHEET # DPD/IU-IV/(879)/2011/4968 DATED 26.05.2011

Through the Disciplinary Proceeding Deptt, ZTBL, Head Office letter # DPD/IU-IV/(879)/2011/ 4868 dated 26.05.2011. I was appointed enquiry officer in the captioned case. Syed Qadeer Iqbal has submitted his written reply to the Charge Sheet which is enclosed as Annexure-A. Keeping in view the contentious of stance of Syed Qadeer Iqbal, SVP was advised to appear on the 10th August 2011 in the office of the undersigned for Enquiry proceedings vide this office letter No.EVP(Credit)/Enquiry/2011/1740 dated 2nd August 2011 but he did not turn up.

Again on 6th September 2011, he was advised to appear before the undersigned for Enquiry Proceedings on 15.09.2011 at 10.00 am in my office vide letter No.EVP(Credit)/2011/Enquiry/2011/1952 with the clear instructions that in case of nonattendance on the given date it shall be presumed that you have nothing to offer in defense and exparte proceedings shall be undertaken. He did not appear before the undersigned on 15.09.2011. The Department Representative attended the enquiry proceedings as witness and his statement recorded ex-parte is attached as Annexure-B.

On 16th September 2011, I have received a letter dated 14th September 2011 from Syed Qadeer Iqbal stating therein that due to his physical health next date of Enquiry be intimated to him at Karachi. Annexure-C On 17th September 2011 I requested SEVP (Services) being functional Head of Insurance Department, for medical Report and leave Status of Syed Qadeer Iqbal, SVP. Upon receipt of medical report Annexure-D, from the concerned division, I examined it. According to the medical report Syed Qadeer Iqbal was to resume light duties. This report is fortifying the stance that he is deliberately avoiding to attend the enquiry proceedings.

Hence the undersigned was left with no option but to conduct Ex-Parte Enquiry Proceedings. My findings are as under.

Allegation # 1. Annexure E

Allegation pertains to not responding to the HO letters and unnecessary delay in matters.

Findings

After going through the record and statement of the witness it is proved that Syed Qadeer Iqbal has unnecessary delayed the process and the Allegation is proved against him.

Allegation # 2. Annexure E

Allegation pertains to unjustified demand of Rs. 0.700 M for repair of vehicles.

Findings

After going through the record and statement of the witness it is proved that the same vehicles were repaired in 2010 against the expenditure of Rs. 578200/-

Hence the allegation is proved against Syed Qadeer Iqbal.

ENQUIRY REPORT IN RESPECT OF SYED QADEER IQBAL, SVP INSURANCE DEPARTMENT ZTBL, HEAD OFFICE ISLAMABAD,-CHARGE SHEET # DPD/I-U IV/(879)/2011/4868 DATED 26.05.2011

Allegation # 3. Annexure E

Allegation pertains to arranging the meeting of Zonal Repair Committee.

Findings

After going through the record no evidence of the meeting of Zonal Repair Committee for the purpose is available. In reply to the charge sheet, Syed Qadeer Iqbal remained silent in this respect.

Hence the allegation is proved against Syed Qadeer Iqbal.

Allegation #4. Annexure F

Allegation pertains to lingering on the matter deliberately by demanding abnormally high funds.

Findings

After going through the record and statement of the witness it is proved that Syed Qadeer Iqbal has unnecessarily delayed the process and the Allegation is proved against him.

Hence the allegation is proved against Syed Qadeer Iqbal.”

14. Prima-facie, all the actions, including the last show cause notice dated 15.3.2012 issued by the acting president of respondent-bank were taken against the petitioner behind his back and just before his retirement date i.e. 28.2.2014, even he was not allowed LPR, which has caused the grave miscarriage of justice.

15. We have gone through the Inquiry Report, thus, it is prima facie clear that the inquiry officer, though we have the reservation on the constitution of the inquiry officer i.e. EVP, based its findings against its SVP on the premise that all allegations proved against petitioner without examining the material evidence, however, it had been made clear in the report that the inquiry officer was not in a position to fix responsibility on the petitioner concerning unauthorized absence from duty on the aforesaid charges.

16. We have noticed that the inquiry proceedings, which were conducted were without recording the evidence of the parties on oath and opportunity of cross-examination of the witnesses to the Petitioner. It is a well-settled law that if the inquiry officer has decided that there should be an inquiry then the procedure laid down in the aforesaid Regulations of the respondent-bank has to be followed and the requirements enumerated therein had to be adhered to i.e. charge shall be framed and the said employee would be allowed to give reply of those charges after which evidence is to be recorded by examining the witnesses in respect of the charges. The said employee can also produce witnesses in his/ her defense.

17. In the present case, it is noted that this procedure has not been followed in its letter and spirit and the witnesses were not examined in respect of the charges on oath, as provided under the law, which was necessary before imposing a major penalty upon the said employee. In such circumstances, in our view, the petitioner was entitled to a fair opportunity to clear his position in terms of Article 4, 10-A, and 25 of the Constitution of the Islamic Republic of Pakistan 1973. On the aforesaid proposition of law, we are fortified with the decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of Pakistan Defense Housing Authority & others Vs. Lt. Col. Syed Jawaid Ahmed (2013 **SCMR 1707**), Muhammad Sharif Abbasi vs. Member, Water, WAPDA Lahore (2013 **SCMR 903**), and Lahore Development Authority vs. Muhammad Nadeem Kachloo (2006 **SCMR 434**).

18. Record reflects that the impugned office memorandum was assailed before the learned Islamabad High Court, Islamabad, in Writ Petition No.2743/2011 and the learned Single Bench vide order dated 22.3.2011 allowed the petitioner to withdraw the subject petition; and, thereafter petitioner approached this court in CP No.D1078/2012 whereby this Court vide order dated 26.3.2012 directed the respondents not to pass any adverse order against the petitioner. However, the same petition was withdrawn by the petitioner vide order dated 20.03.2013; and, the respondent-bank raised no objection for withdrawal of the petition; and, thereafter the respondent-bank vide office memorandum dated 23.04.2013 allowed him to join his duties as SVP recovery and SAM ZTBL Hyderabad. Finally, vide office memorandum dated 23.09.2013, he was removed from service with effect from 23.09.2011. Prima facie, the above conduct of the respondent-bank is not appreciated on the premise that they did not hold a fresh inquiry against the petitioner if at all he was guilty of the charges; and continued with the old one, without hearing him.

19. In view of the above facts and circumstances of the case, the impugned office memorandum dated 23.09.2013 is set aside. Consequently, the original order dated 23.09.2011 regarding the dismissal of the petitioner is also set aside.

20. In the light of the above facts and circumstances of the case, this Petition is allowed with the directions to the Competent Authority of the respondent-bank to award pensionary benefits (superannuation) to him along with back benefits, within one (01) month from the date of receipt of this judgment under law.

J U D G E

J U D G E

Nadir*