

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –5657 of 2019

Ghulam Murtaza Abbasi

Versus

National Bank of Pakistan

Dates of hearing : 09.02.2021 & 09.03.2021

Date of announcement : 12.03.2021

M/S Malik Naeem Iqbal & Faizan Hussain Memon, advocates for petitioner.

Mr. Faisal Mahmood Ghani, advocate for respondent.

Mr. Muhammad Nishat Warsi, DAG.

JUDGMENT

ADNAN-UL-KARIM MEMON, J. – Through this petition, the petitioner has impugned office memorandum dated 07.02.2019 passed by the Senior Vice President /Wing Head National Bank of Pakistan (“**NBP**”) whereby his services were dispensed with, by treating the period of suspension as punishment, on the ground of misconduct. He seeks reinstatement of his service with all back benefits. Petitioner has averred that out of seven charges, six were not proved as reported by the inquiry officer, whereas only one charge claimed to have been purportedly proved that relates to posting of cheques. It is his case that it had never been in his domain to supervise or manage such affairs as portrayed by the respondent-bank in the alleged charge sheet.

2. Mr. Faizan Hussain Memon, learned counsel for the petitioner, vehemently argued that it was an independent error that did not come within the frame of his domain. He emphasized that the WEBOC (Web-based One Customs) counter was not supervised by him, hence the purported charge could not be proved through independent evidence. It is further claimed that on such allegations major penalty of dismissal from service was not called for. Learned counsel submitted that he preferred the departmental appeal against the impugned action before the competent authority of respondent-bank, which has now been decided at the belated stage by converting the same onto a minor penalty of downgrading by two steps in pay scale vide office memorandum dated 02.3.2021. He further submitted that though the petitioner has been reinstated in service with effect from 20.9.2019 with back benefits instead of date of dismissal from service i.e. 07.02.2019. In support of his contentions, he relied upon fundamental rule 29 and argued that while imposing the penalty of reduction in pay scale / rank the competent authority

was/is required to specify the period for which such down gradation remains in force, as a same cannot be for an indefinite period of time.

3. At this stage, we asked the learned counsel for the petitioner that the main purpose of filing this petition has virtually been achieved on the premise that his dismissal from service is no more in the field for which he filed the instant petition. He replied that since the stigma of purported charges is still in the field, therefore, the appellate order to the extent of minor penalties is also not sustainable in law as such he is liable to be reinstated with honor along with back benefits.

4. At the outset, because of the appellate order passed by the respondent-bank, Mr. Faisal Mahmood Ghani learned counsel representing the respondent-bank has raised the question of whether in the absence of specific assertion of having remained unemployed; the petitioner was entitled to the back benefits? On this issue, he argued that it is clear from the pleadings of the petitioner that he did not assert that he had remained unemployed between the date of his termination from service and the date of modification of his penalty; and, that such assertion and proof thereof is necessary for the petitioner to succeed in obtaining back benefits. He further argued that in presence of the penalty, he is not entitled to back benefits. On merits, he has vehemently opposed the request of the petitioner for his reinstatement in service on the ground that the petitioner has been found guilty of the charges, though minor penalty has been imposed, still he is not absolved from the charge of misconduct. He elucidated that he caused an irreparable loss to the respondent-bank, as the business of the bank has suffered, which depended upon the goodwill/reputation of the bank, which had been tarnished by his conduct. He emphasized that based on sheer technicalities he cannot be exonerated from serious charges of misappropriation and fraud and subsequently reinstated in service. It is urged that his conduct made him disentitle to the relief claim in this petition. He further argued that the institution of banking is based on mutual trust and confidence reposed by the public at large; and, the bank authorities, in peculiar nature of the duties of their employees, could not afford such breach of trust, by retaining in service people who were involved in criminal breach of trust. However, he realized that though the petitioner has been awarded a minor penalty, at the appellate stage, still the penalty remained intact. In support of his contentions, he relied upon in the cases of Muhammad Yousuf Khan v. Habib Bank Ltd through President and others, **2004 SCMR 149**, Federation of Pakistan through Secretary Finance Government of Pakistan and others v. Khalid Javed, **2009 SCMR 720**, United Bank Ltd and others v. Raja Ghulam Hussain and four others, **1999 SCMR 734**, Ghulam Mustafa Channa v. Muslim Commercial Bank Ltd and others, **2008 SCMR 909**, Shoukat Ali and others v. Allied Bank of Pakistan Ltd and others, **2007 SCMR 198**. On the question of whether the regular inquiry was conducted in the matter, he replied that it

is not a hard and fast rule that where there are serious allegations against an employee which are denied by him the department is under an obligation to conduct a regular inquiry in all circumstances. He asserted that in case the departmental authorities conclude that there was/is sufficient documentary evidence available on record which was/is enough to establish the charge, it can, after recording reasons, which are of course justiciable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings.

5. At this juncture, we confronted him that courts can always re-examine the reasons assigned by the departmental authority for dispensing with the requirement of regular inquiry and if such reasons are not found cogent and legally sustainable, the Court has all requisite powers and is not debarred from sending the matter back to the department to hold a regular inquiry or pass an equitable order. In the case in hand, we have noted that the departmental authority did not give cogent reasons for dispensing with the requirement of regular inquiry. On the aforesaid proposition, we are guided by the recent decision of the Honorable Supreme Court rendered in the case of Chief Postmaster Faisalabad, GPO, and another v. Muhammad Afzal, **2020 SCMR 1029**.

6. We have heard the learned counsel for the parties and perused the material available on record and case-law cited at the bar.

7. The question requiring our determination is whether the petitioner was rightly and legally terminated from service or not?

8. On the face of record it is an admitted fact that the respondent-bank did not hold a regular inquiry to probe the guilt of the petitioner because the allegations were denied by him and it was incumbent upon the inquiry officer for holding a regular inquiry for that there was disputed fact involved to be enquired into.

9. To our understanding, the only allegation that prompted the inquiry officer to hold him guilty of charge No.3. For convenience sake, an excerpt of the charge is as under:

“Charge No.3

He failed to implement/check/report that the WEBOC Incharge deliberately had not implemented the system of collection as per instructions contained in SPM (Revised-2008) Chapter V, “Banking Transactions” and instead formulated such mechanism that any misappropriation at WEBOC Counter remained hidden as no balancing/tallying at end of day was carried out and WEBOC Operators were able to issue/generate GD’s without receiving Payment Orders/Cash and Cheques were taken from Customers without getting them posted. Moreover the number and amount of P.O’s received at WEBOC counters in a day were never balanced with the number and amount of P.O’s sent in Clearing. He gave all the responsibility of transferring the government

collection to Mr. Muhammad Rehan, OG-III. He signed/passed the cheques received from WEBOC Counter without checking that when GD's had been issued against the instrument.

The above allegation is proved from the following incidents:-

1. Mr. Tahir Ather, OG-III/WEBOC Operator on 11.02.2017 issued 10 GDs (Duty & excise) were released for Rs.5,435,425/- but cheque # 1741991 of Rs.5,435,425/- was posted/debited on 14.02.2017 due to insufficient funds in the account on 11.02.2017. The cheque had been signed/passed by him along with Mr. Muhammad Rehan, OG-III. The Daily Report of Mr. Tahir for Karachi Air Freight Unit and Port Qasim (Imports) Karachi for 11.02.2017 show the following Goods Declarations were issued for M/S Chess Shipping & Logistics but balance in the account was Rs.417,850/-.

GD#	Name of WEBOC Operator	Description	Instrument # (as mentioned on GD)	Daily Amount	Excise Amount	Total
53873	Mr. Tahir Athar, OG-III	Pay Order	NAchess	481,621	8,413	490,034
53874	Mr. Tahir Athar, OG-III	Pay Order	NAchess	213,650	5,852	219,502
39945	Mr. Tahir Athar, OG-III	Pay Order	NAchess	107,089	11,507	118,596
53872	Mr. Tahir Athar, OG-III	Pay Order	NAchess	448,595	7,507	456,102
53870	Mr. Tahir Athar, OG-III	Pay Order	NAchess	227,347	24,33	251,678
51272	Mr. Tahir Athar, OG-III	Pay Order	NAchess	855,521	12,734	868,255
52662	Mr. Tahir Athar, OG-III	Pay Order	NAchess	1,764,021	74,582	1,838,603
51675	Mr. Tahir Athar, OG-III	Pay Order	NAchess	445,019	40,715	485,734
162941	Mr. Tahir Athar, OG-III	Pay Order	NAchess	206,515	4,233	210,748
52860	Mr. Tahir Athar, OG-III	Pay Order	NAsaeedbhal	481,548	14,625	496,173
Total				5,230,926	204,499	5,435,425

He is guilty of hiding the criminal acts of Mr. Tahir Athar and not reporting his acts to Regional Management Karachi despite having full knowledge of the above incident. He had stated in his statement signed by him.

- 1- Internal Cheques received at cash book writer for GD payment cheque and credit voucher and send it to GD counter against GD ...in Bank Books/Transfer scroll.
- 2- Internal Cheque received on WEBOC counter for GD Payment, the P.O/Ch posting/Transfer scroll against GD payment on same day.
- 3- The WEBOC Incharge is responsible the internal cheque was paid said cheque is debited the party account. If the cheque is not debt Collection.
- 4- WEBOC daily collection PO/intercity cheques received against G..practice is not implemented – only cash balancing.

2. The Daily Report of Mr. Tahir Athar for Port Qasim (Imports) Karachi for 19.10.2016 shows the 10 Goods Declarations for Rs.6,150,975/- were issued to M/s Chess Shipping & Logistics but balance in the account was Rs.3,693,050/-. The statement of account shows that cheques#78869418 & 78869419 for Rs.3,075,488/- and Rs.3,075,487/- were debited on 20.10.2016. The cheques had been signed/passed by Mr. Ghulam

Murtaza Abbasi, OG-I/Incharge Government and Mr. Muhammad Rehan, OG-III.

3. The Daily Report of Mr. Tahir Athar for Port Qasim (Imports) Karachi for 30.11.2016 shows the 09 Goods Declarations (Duty and Excise) for Rs.6,431,766/- were issued to M/s Chess Shipping & Logistics but balance in the account was Rs.2,923,913/-. The statement of account shows that cheques Rs.6,431,766/- was debited on 02.12.2016. The cheques had been signed/passed by Mr. Ghulam Murtaza Abbasi, OG-I/Incharge Government Mr. Muhammad Rehan, OG-III and Shamsuddin Siddiqui, Joint Custodian.

He had signed/passed the cheques received from WEBOC Counter without checking that when GDs had been issued against the instrument. He is therefore guilty of hiding the criminal acts of Mr. Tahir Athar and not reporting acts to Regional Management Karachi despite having full knowledge of the above incident.

The allegations are evident from the following documents:-

- 1- Statement of Chess Shipping & Logistics Pakistan Ltd.
- 2- Copy of Cheque for Rs.5,435,425/-.
- 3- Tahir Athar, WEBOC Operator Report for Port Qasim & Karachi Air Freight Unit dated 11.02.2017 showing issuance of GDs along with other collectorates.
- 4- The Excel sheet of Mr. Tahir Athar collection on 11.02.2017 showing receipt of cheque of Rs. 5,435,425/- under WEBOC Duty.
- 5- Statement of Mr. Ghulam Murtaza Abbasi, OG-I.
- 6- Statement of M/s Chess Shipping and Logistics account for year Oct-Dec 2016.
- 7- Copies of cheques for Rs.3,075,488/- and Rs.3,075,487/- & Rs.6,431,766/-.
- 8- Weboc Reports of Mr. Tahir Athar for Port Qasim (Imports) Karachi for 19.10.2016 & 30.11.2016 showing issuance of GD's."

10. We have considered the defense of the petitioner, which is as under:-

"The charge was framed unduly. The charge basically required to be fixed upon the then WEBOC Incharge instead of me as all the procedure adopted was well within the knowledge of the then branch management, nevertheless, as per prevailing practice during my time, all internal cheques were being deposited at in-charge WEBOC and subsequently GDs were generated upon the instructions of in-charge WEBOC. These cheques were then delivered to Manager/Operations Manager by in-charge WEBOC and thereafter Branch Manager delivered these instruments to the cash book writer who upon receipt debited the relevant accounts and affixing his initials and transfer stamp over the same. After reaching for signature as passing office in order to fulfill only pre-requisite of double signatures per Audit requirement.

11. The findings of the enquiry officer is as under:-

"The complaints produced the following documents in support of this charge:

1. Copies of 10 GDs along with cheques of Rs.4, 4354, 25.00 dated 11.02.2017. GDs were cleared earlier to clearing of cheque.
2. Copies of two cheques amounting Rs.3,375,488/- and Rs.3,075,487/- along with Weboc Report of Mr. Tahir Ather dated 19.10.2016 and 30.11.2016 showing the detail of GDs proved that GDs are cleared before the clearing of cheques.

*The submitted explanation to this charge by the accused is not logical and not support to the procedure adopted being an incharge of Government Collection Department at the Branch.
Therefore, the charge is proved and he is found guilty of this charge.”*

12. In the light of the above facts and circumstances of the case, in our view, although the competent authority of respondent-bank was/is empowered to impose any of the penalties as provided under Rules, 1973, it is also by now well settled that the penalty should commensurate with the gravity of charges leveled and proved against the delinquent officer.

13. We have noticed that the case of the petitioner was distinguishable from that officer who was proceeded for the subject allegations and that the case of the petitioner was wrongly bracketed with him. We are thus of the considered opinion that the punishment imposed upon the petitioner upon the aforesaid allegations was extremely harsh. The allegations were not of such a nature that they entail a major penalty of dismissal from service. Reliance is placed on the cases of Auditor General of Pakistan v. Muhammad Ali (2006 SCMR 60), G.M. Pak Railways v. Muhammad Rafique (2013 SCMR 372), Muhammad Ali S. Bukhari v. Federation of Pakistan (2008 SCMR 214), Syed Fida Hussain Kazmi v. IGP Punjab (2008 SCMR 1513), Secretary to Government of the Punjab Food Department Lahore v. Javed Iqbal (2007 PLC (C.S.) 692), Maqbool Ahmad v. Chief Executive, FESCO (2004 SCMR 637) and Commissioner, Punjab ESSI v. Jamal Butt (2004 SCMR 186).

14. Prima-facie, the charges leveled against the petitioner vide office memorandum dated 07.02.2019 on account of certain allegations without conducting a regular inquiry and without affording a fair opportunity of hearing against the petitioner was/is against the principle of natural justice. We have also noticed that the principal accused has already been provided a minor penalty of down gradation of two steps in pay scales vide office memorandum dated 21.04.2020 and now the petitioner has been given the same treatment in 2021 after filing an appeal during the pendency of this petition. We have also noticed that there is no financial loss to the respondent-bank and no irregularity/complaint of misappropriation in the relevant account has been established in the inquiry proceedings, mere irregularity in the procedure as opined by the inquiry officer could not be construed to be misconduct of gravest form. Besides that the charge No.3 itself discloses that the description of instruments as Pay Order rather than cheque as portrayed by the respondent-bank, as such the inquiry officer erroneously charged the petitioner and wrongly opined by giving his findings, thus this charge is not sustainable in law.

15. About the back benefits, we have noticed that there are two basic principles on the subject; (a) that back benefits do not automatically follow the order of reinstatement where the order of dismissal or removal has been set aside; and (b) as regards the matter of onus of proof in cases where a workman is entitled to receive the back benefits it lies on the employer to show that the workman was not gainfully employed during the period of the workman was deprived of service till the date of his reinstatement thereto, subject to the proviso that the workman has asserted at least orally, in the first instance, that he was (not) gainfully employed elsewhere. On his mere statement to this effect, the onus falls on the employer to show that he was so gainfully employed. The reason is that back benefits are to be paid to the workman, not as a punishment to the employer for illegally removing him but to compensate him for his remaining jobless on account of being illegally removing him but to compensate him for his remaining jobless account of being illegally removed from service. Prima facie, though the petitioner has not insisted on the grant of such back benefits in his pleadings, however, the respondent-bank has reinstated him vide appellate order dated 02.03.2021 with effect from 20.09.2019 with back benefits. If this is the position of the case, therefore, we are not inclined to touch the issue of back benefits as the same has already been granted to the petitioner vide the appellate order dated 02.03.2021.

16. In view of the above facts and circumstances of the case, this petition is allowed. The impugned memorandum of dismissal from service dated 07.02.2019 is set-aside as well as the appellate order downgrading two steps pay scale is also of no consequence. Resultantly, the respondent-bank is directed to reinstate the petitioner in service forthwith.

17. The petition is allowed in the above terms with no order as to costs.

J U D G E

J U D G E

Nadir*