

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. D-1524 of 2016
(**Raees Muhammad Khan v Federation of Pakistan & others**)

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul_Karim Memon

Date of hearing and order:- 17.04.2025

M/s. Sathi M. Ishaque and S.K. Lodhi advocate for the petitioner.
Mr. Harchand Rai advocate for respondent Nos. 2 and 3.
Mr. Khan Imran Hussain, Law Officer.
Ms. Wajiha Mehdi, Assistant Attorney General

ORDER

Adnan-ul-Karim Memon. J: A petition filed by a former Assistant Vice President (AVP) of Zarai Taraqiati Bank Limited (ZTBL) in Karachi, against the bank's decision to dismiss him from service vide Office Memorandum dated 31.12.2015 and recover 50% of the outstanding loan amounts. The petitioner outlines his 27 years of unblemished service, his promotions, and numerous awards. The dismissal and recovery order stemmed from allegations that the petitioner sanctioned 82 loans (totaling approximately PKR 49.046 million) against fake security documents.

2. The respondent bank's competent authority thoroughly reviewed the Inquiry Committee's findings (22.08.2015), the petitioner's replies to the Show Cause Notices (22.09.2015 and 22.08.2015 regarding charge sheets dated 06.03.2015 and 07.07.2015 respectively), the Inquiry Officer's findings (18.08.2015), the Authorized Officer's recommendations, and all other case documents. This review led the authority to conclude that the allegations were substantiated by both inquiries. The petitioner also failed to attend the personal hearing on 21.10.2015. As of 10.09.2015, the outstanding loan amount was PKR 40.101 million. Considering the seriousness of the proven misconduct, and under ZTBL regulations and the Authorized Officer's recommendations, the competent authority imposed the major penalty of immediate Dismissal from Bank Service. Additionally, the petitioner is liable for recovering 50% of the outstanding loan principal plus accrued markup, as detailed in the charge sheets of 06.03.2015 and 07.07.2015. However, this penalty was without prejudice to other pending or future legal/disciplinary actions, and the bank reserved the right to recover any embezzled/misappropriated funds or outstanding bank advances.

3. The petitioner's counsel argued his innocence, stating he followed the Credit Manual guidelines and that the responsibility for verifying the genuineness

of security documents rested with the Mobile Credit Officer (MCO). He claims the investigation was flawed and wrongly placed responsibility on him. According to the Credit Manual, the MCO was responsible for verifying the title documents. The MCO in these cases certified the genuineness of the documents and rated the borrowers as "A". The petitioner's role in sanctioning was limited, and the Credit Administration Department (CAD) was responsible for reviewing pre- and post-sanction documents, yet they raised no objections. Internal audits also did not detect any irregularities. External legal counsel also provided opinions certifying the genuineness of the security documents in most cases. The petitioner's counsel claims all actions were taken in good faith and without any evidence of malafide intention, embezzlement, or connivance. He added that the major penalty of dismissal and 50% recovery is argued to be disproportionate to the findings and inconsistent with past practices in ZTBL. A similar case with a higher amount of embezzlement resulted in a lesser penalty for the involved officer. The petitioner claims he was not given a fair opportunity during the inquiry, including not being allowed to call witnesses or cross-examine them. The petitioner alleges bias from the Zonal Chief. He next argued that the appellate authority did not provide a proper hearing and deferred to a biased individual. The petitioner's primary request is for a court declaration that the dismissal and the order for recovery of loan amounts are unlawful and void. Additionally, the petitioner seeks a court order directing the respondents to reinstate him to his position with all associated benefits, including back pay. In his final submission, the petitioner's counsel argued that his client was unjustly held accountable for oversights that were not fundamentally his responsibility. The counsel further contended that the inquiry and appeal procedures were flawed and that the imposed penalty of dismissal and recovery is excessive and discriminatory, thus warranting the annulment of these orders.

4. The Respondents' counsel raised objections to the petition's maintainability. Furthermore, a report from the ZTBL was presented, stating the bank's unwillingness to convert the dismissal penalty to compulsory retirement due to the serious nature of the misconduct, financial loss, and pending criminal proceedings against the petitioner. The report also details the findings of an inquiry into one of the loan cases, highlighting the fraudulent security documents and the borrower receiving the loan amount. At this stage, the Petitioner's Counsel maintained that the security documents were genuine, making the termination illegal without verification. The counsel for the respondent bank countered that an inquiry proved the security documents to be fake. We cannot determine the veracity of these claims at this stage, however, we will scrutinize the findings of the inquiry officer on the subject charges. Nevertheless, our observations are

limited to the Petitioner's service issue because, as noted previously, the Petitioner explicitly consented to convert the penalty to compulsory retirement. Furthermore, this Court has already decided the case of co-employee Ali Murad Brohi (then MCO) on similar charges based on a little bit of difference in role.

5. Learned Assistant Attorney General has also raised the question of maintainability of the captioned petition and has supported the impugned termination order dated 3.12.2015 passed by the Respondent-Bank and argued that the instant Petition is not maintainable, as the Petitioner is involved in causing loss to the public exchequer by recommending 81 Loans amounting to millions of rupees, thus was rightly found guilty and punished. She lastly prayed for the dismissal of the instant Petition.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. At the outset, we address the jurisdiction of this Court to entertain this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The maintainability of a writ petition against the Respondent-Bank is supported by the Supreme Court's judgments in Zarai Taraqiati Bank Limited, etc vs. Said Rehman & others (2013 SCMR 642) and Muhammad Rafiullah & others vs. Zarai Taraqiati Bank Limited & another (2018 SCMR 598). Based on these precedents, we conclude that this Petition falls within the Constitutional jurisdiction of this Court and can be heard and decided on its merits.

8. We also questioned the respondent's counsel regarding the imposition of two penalties, dismissal, and recovery, for the same set of transactions. Specifically, we sought clarification on whether the petitioner's actions constituted misconduct and if the law allows for the imposition of two penalties concurrently for a single charge related to the sanctioning of loans against security provided by borrowers.

9. Upon the next court query, raised on the previous date of hearing, the respondent bank's counsel informed the court that the petitioner, Raees Muhammad Khan (then Manager), and Ali Murad Brohi (then MCO) were both charge-sheeted on March 6, 2015, and July 7, 2015, respectively, concerning 82 fraudulent loan cases totaling PKR 49.055 million. These loans were allegedly approved based on counterfeit security documents. Following disciplinary proceedings, the bank's competent authority dismissed both officers with immediate effect and held them jointly liable for 50% of the total loan amount plus applicable interest. The petitioner's subsequent departmental appeal was processed and ultimately rejected by the Appellate Authority (President of

ZTBL). Consequently, the petitioner filed Petition No. 1524/2016 in this Court, challenging his dismissal. According to the latest report from the Karachi Region, PKR 23,531,393 remains outstanding across 81 of these loan cases. He further submitted that the co-accused, Ali Murad Brohi, who was also responsible for 50% of the recovery, has since passed away. Furthermore, a criminal case has been registered against the present petitioner with the Federal Investigation Agency (FIA), and the matter is currently under trial, with the next hearing scheduled for April 24, 2025, for evidence recording. The petitioner is currently on bail. The counsel emphasized that the petitioner has already exhausted his right to a departmental appeal, which has been definitively decided. Moreover, the bank's service rules and disciplinary policy do not allow for the conversion of a dismissal penalty to compulsory retirement at this stage, especially considering the severity of the misconduct, the significant financial loss incurred by the bank, and the ongoing criminal proceedings against the petitioner. Therefore, the bank submitted that it is not in a position to convert the dismissal penalty to compulsory retirement.

10. Despite prior submissions, the inquiry revealed that in loan case No. 015987 (Mr. Aslam Pervez, PKR 498,150, Ibrahim Hyderi Branch, 30.01.2012), sanctions against fraudulent Flat No. D-32, Saleem Centre, North Karachi security, the petitioner (Raees Muhammad Khan) failed to verify the borrower's lease deed and the search certificate entries (before and after disbursement). The mutation entry in favor of the Bank (falsely dated 27.01.2012) was countersigned by the petitioner on the loan utilization documents. The Sub Registrar confirmed in writing (06.08.2015) that no ownership or mutation entry existed for the flat. A site visit to Saleem Centre confirmed the flat's existence but not the owner's (rented via an agency). Mr. Aslam Pervez received the PKR 498,150 loan (revolved on 08.01.2013), with funds withdrawn through various means (bank statements in Annexures E & F). The inquiry officer concluded the loan was received by the borrower, but all flat security documents were fraudulent (fabricated lease deed, fake mutation entry with forged Sub Registrar signature). This fake security was used for sanctioning despite Credit Manual Vol-I, Para 2.20.8 requiring verification of security documents before loan approval. Consequently, the charge against the petitioner was proven, leading to his dismissal.

11. We have considered the petitioner's defense (Annex-C, dated 09.06.2015), and he denied responsibility for appraisal, spot investigation, and title document verification. He cited Credit Manual Vol-1, Para 3.9.24 (i), stating the MCO is responsible for appraisal. He argued that re-appraisal wasn't needed as the MCO rated borrowers 'A', and his sanctions were within his PKR 0.500 million limits.

He also referenced Para 3.9.24 (iv) (Manager re-appraisal above PKR 0.500 million, not applicable here), Paras 3.8.1-3.9.7 & 3.9.1-3.9.12 (MCO/appraisal staff duties), and Para 1.15.6 (vi) & (x) (MCO's responsibility for document verification with revenue records/field visits and mutation verification). He added that despite Para 9.7.4 allowing disbursement on mortgage deed acknowledgment, they waited for Book No 1/Additional Book No. 1 filing and MCO verification. In his additional statement (Annex-D), he reiterated that all 81 sanctions followed MCO recommendations, due diligence, title document confirmation by the revenue authority, and DAC issuance by Incharge CAD. He claimed loans were paid via branch deposit accounts and asserted his honest desk scrutiny and integrity in sanctioning.

12. The Inquiry Officer's initial findings prima facie suggest the petitioner acted correctly regarding the borrower's identity. However, the issue was the use of fake documents to defraud the bank, stemming from the MCO's significant deviations from established procedures (Credit Manual Vol-1, Paras 1.15.6 (vi & x), 3.8.1-3.9.12, and MCO's Job Description No HRD/20/2007 dated 24.05.2005). While the Manager sanctioned loans based on appraisal and title verification, he isn't fully exonerated by the MCO's SOP violations. Record scrutiny and inquiry revealed lapses that, if proactively addressed, could have safeguarded the bank's substantial financial interests.

13. In a disciplinary proceeding, awarding both dismissal from service and recovery of a monetary amount is not legally sound in certain circumstances, especially if the recovery is considered a second punishment for the same offense, potentially violating the principle of double jeopardy. We have observed that the conducted inquiry proceedings lacked the recording of evidence from both parties under oath and did not allow the Petitioner to cross-examine witnesses. Established legal precedent dictates that once an inquiry is deemed necessary by the inquiry officer, the procedural requirements outlined in the respondent bank's regulations must be strictly adhered to. This includes the framing of charges, allowing the employee to respond to these charges, and subsequently recording evidence through the examination of witnesses concerning the charges. On the aforesaid proposition of law, we are fortified with the decisions rendered by the 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). However, we confine our observations to the Petitioner's service issue, based on his consent for compulsory retirement and our precedent in the similar case of co-employee Ali Murad Brohi.

14. Taking into account the aforementioned facts, circumstances, findings of the inquiry officer, contested orders, and the Petitioner's agreement to a change in punishment, we hereby modify the penalty of dismissal from service to compulsory retirement. This decision is made in light of the inquiry officer's findings on the stated charges. Accordingly, the challenged office memorandum and appellate order are annulled and amended to reflect this modification.

15. In light of the facts and circumstances presented, this Petition is hereby allowed. The order of dismissal from service is modified to compulsory retirement from service, acknowledging that the petitioner has completed the necessary length of service. The Competent Authority of the respondent bank is directed to grant the petitioner service benefits (compulsory retirement) along with all applicable back benefits, in accordance with the law, within three (03) months from the date of receiving this order.

JUDGE

Head of Const. Benches