

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.3941 of 2016

Iftikhar Hussain Shah Kazmi

Versus

Zarai Tarqati Bank Limited and others

Date of Hearing: 28.02.2017
Petitioner by: Mr. Taimoor Aslam Khan, Advocate.
Respondents No. by: Ch. Sagheer Ahmed, Advocate.

MIANGUL HASSAN AURANGZEB J:- Through the instant writ petition, the petitioner, Iftikhar Hussain Shah Kazmi, impugns the Office Memorandum/Order dated 18.10.2016, passed by respondent No.2, whereby, the petitioner's appeal against the Office Memorandum dated 04.05.2016, was dismissed. Vide the said Office Memorandum dated 04.05.2016, major penalty of dismissal from service along with recovery of the amount allegedly embezzled by the petitioner, was imposed on the petitioner.

2. The record shows that the petitioner while serving as Manager, Zarai Taraqati Bank Limited ("ZTBL"), Fatehjang, Branch, Islamabad Zone, was alleged to have committed serious irregularities amounting to embezzlement, inefficiency and misconduct. On 11.11.2015, a charge sheet was issued by the authorized officer to the petitioner. Along with the said charge sheet, a statement of allegations was also sent to the petitioner. The following were the allegations against the petitioner:-

1. *"He obtained signature/thumb impression of the borrower on blank loan documents including cheque No.H-2987713 for subsequent loan case No.159086 to adjust recovery in his previous Loan Case No.146484. Thereafter he arranged recovery of Rs.168,220/- through MCO Receipt No.1 of Book No.109505 dated 28.06.2014 with fake signatures of the borrower, vouched the same vide DC Voucher No.0568570 dated 30.06.2014. He sanctioned subsequent loan case No.159086 amounting to Rs.300,000/- for inputs under SBS in the name of borrower after closure of his previous loan case No.146484. The fake signature on MCO receipt dated 28.06.2014, non-acknowledgment of borrower on LA Fee voucher No.0568563 and pay in slip of Rs.900/- dated 02.07.2014, confirm that payment of loan and adjustments of*

recovery has been made in the absence of the borrower. Thus he has embezzled remaining amount of loan i.e. Rs.122,852/- after adjustment of recovery in previous loan case, causing the Bank's loan amounting to Rs.340,388/- at stake.

2. *He sanctioned Loan Case No.159086 amounting to Rs.300,000/- for input loan under SBS to the borrower on 02.07.2014, whereas the borrower previously availed a loan of Rs.140,000/- under Awami Zarai Scheme and was not eligible for SBS loan. Thus he has over financed the borrower with his ulterior intention for embezzlement of remaining amount of loan of borrower after adjustment of recovery in his previous loan.*
3. *He sanctioned Loan Case No.159086 amounting to Rs.300,000/- for inputs (Potatoes) under SBS to the borrower on 02.07.2014, whereas the borrower owned only 01-Kanal 05-Marlas irrigated land. Thus he has over financed due to his ulterior intention for embezzlement."*

3. The petitioner was required to submit his written defence within a period of ten days from the receipt of the charge sheet. The petitioner was also required to state whether he desired to be heard in person, and to lead evidence. On 16.12.2015, the petitioner submitted a reply to the charge sheet. The petitioner denied the charges leveled against him, and expressed his desire to be heard in person. Vide letter dated 30.12.2015 the petitioner was asked to attend the inquiry proceedings. Inquiry proceedings were conducted from 11.01.2016 to 13.01.2016. The petitioner did not attend the inquiry proceedings.

4. Vide notice dated 22.02.2016, the authorized officer called upon the petitioner to show cause as to why a major penalty of dismissal from service should not be imposed on him. Furthermore, it was stated that the authorized officer, after considering the inquiry report, had arrived at a provisional conclusion that the charges leveled against the petitioner had been proved. The petitioner was asked whether he wanted to be heard in person and whether he wanted to adduce further evidence.

5. The petitioner submitted an un-dated reply to the said show cause notice. The petitioner expressed his desire to be heard in person. The position taken by the petitioner was that he had been granted ex-Pakistan Leave to perform *Umrah* from 14.12.2015 to 27.01.2016, and that the Inquiry Officer

deliberately conducted the inquiry from 11.01.2016 to 13.01.2016, in the petitioner's absence.

6. Vide Office Memorandum dated 04.05.2016, the respondents, after considering *inter-alia* the findings of the Inquiry Officer, the petitioner's reply to the abovementioned show cause notice, and the recommendations of the Authorized Officer, concluded that the charges against the petitioner had been proved. In exercise of the powers conferred under the ZTBL Officers Service (Efficiency and Discipline,) Regulations 1975, etc., it was decided to impose a major penalty of dismissal from service on the petitioner. Furthermore, it was also decided to recover the embezzled amount from the petitioner.

7. Against the imposition of the said penalty, the petitioner preferred a departmental appeal, which remained pending for a long time. The petitioner instituted Writ Petition No.3302/2016, before this Court against the imposition of the said penalty on him. After the representative of ZTBL appeared before this Court on 22.09.2016, and submitted that the petitioner's appeal would be decided within a period of 30 days, the petitioner withdrew the said writ petition. Vide Office Memorandum dated 18.10.2016, the petitioner's appeal was dismissed. The said Office Memoranda dated 04.05.2016, and 18.10.2016, have been impugned by the petitioner in the instant writ petition.

8. Learned counsel for the petitioner submitted that the petitioner had committed no misconduct in the performance of his duties; that the charges leveled against the petitioner were baseless and motivated by ill will and malice; that the petitioner was granted ex-Pakistan leave from 14.12.2015 to 27.01.2016 in order to enable him to perform *Umrah*; that before proceeding abroad for *Umrah*, the petitioner had submitted his reply to the charge sheet and statement of allegations; that the inquiry proceedings were conducted against the petitioner in a hasty manner and in his absence; that the petitioner returned to Pakistan on 28.01.2016; that the petitioner in his reply to the show cause notice had mentioned that the inquiry proceedings were conducted in the petitioner's absence; that the findings of

the inquiry officer were not correct; that the petitioner was neither heard in person nor was he afforded an opportunity to cross-examine the witnesses against him; that the impugned orders/ office memoranda dated 04.05.2016 and 18.10.2016, were devoid of reasons and were, therefore, liable to be set aside; that under paragraph 6(5) of the ZTBL Officers Service (Efficiency and Discipline) Regulations, 1975, if an accused hampers the progress of an inquiry, he has to be administered a warning before proceeding further with the inquiry; that no such warning was given to the petitioner before the inquiry proceedings were completed; that under paragraph 6(3) of the said Regulations, the petitioner had a right to cross-examine the witnesses against him in the inquiry proceedings. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned orders/office memoranda dated 04.05.2016 and 18.10.2016, to be set aside.

9. On the other hand, the learned counsel for the respondents submitted that the petitioner was not granted ex-Pakistan leave; that while the inquiry proceedings were taking place, the petitioner was present in Pakistan and deliberately stayed away; that several notices were issued to the petitioner to appear before the Inquiry Officer; that the findings of the Banking Mohtasib of Pakistan in its order dated 02.12.2015, are detrimental to the petitioner; that the inquiry proceedings were conducted against the petitioner strictly in accordance the provisions of ZTBL Officers Service (Efficiency and Discipline), Regulations, 1975; that ZTBL Human Resource Manual, 2012, sets out the procedure for sanctioning ex-Pakistan leave to an employee of ZTBL; that the paragraph 4.12 of the said Manual provides that ex-Pakistan leave is not to be granted to an officer unless a certificate regarding non-involvement of the applicant in a disciplinary case is submitted; that an application of an employee of ZTBL for ex-Pakistan leave cannot be sanctioned without the submission of a surety bond from a regular/permanent employee having status higher than the applicant; that indeed an employee facing disciplinary

proceedings is entitled to cross-examine the witnesses against him; that the petitioner was given such an opportunity, but he chose to stay away from the inquiry proceedings; that the petitioner was asked, vide letter dated 30.12.2015, to appear before the inquiry proceedings; that again through telephone calls on 11.01.2016 and 13.01.2016, an attempt was made to ask the petitioner to appear in the inquiry proceedings; that proceeding abroad without obtaining ex-Pakistan leave is yet another misconduct by the petitioner. Learned counsel for the respondents prayed for the writ petition to be dismissed.

10. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the writ petition are set out in sufficient detail in paragraphs 02 to 07 above, and need not be recapitulated.

11. The central ground raised by the petitioner in these proceedings is that the inquiry proceedings against the petitioner were conducted from 11.01.2016 to 13.01.2016, during which period the petitioner had proceeded for *Umrah* after being granted ex-Pakistan leave. The petitioner had sought the quashment of the original order / office memorandum dated 04.05.2016 and appellate order / office memorandum dated 18.10.2016 through the issuance of the writ of certiorari.

12. The only document brought on record by the petitioner to show that he had been sanctioned ex-Pakistan leave from 14.12.2015 to 27.01.2016, is a letter dated 08.04.2016, from the Manager ZTBL, Fateh Jang Brach to the Zonal Chief, ZTBL Zonal Office, Islamabad, recommending the sanction of ex-Pakistan leave to the petitioner for the said period. The said letter which is appended at page 21 of this petition, also makes reference to the petitioner's application dated 11.12.2015, for ex-Pakistan leave. The said letter dated 08.04.2016, cannot come to the petitioner's aid, because it was sent much after the date on which the petitioner claims to have returned from *Umrah*. It appears that this letter was sent only to create an excuse for the petitioner's non-appearance in the inquiry proceedings.

13. The petitioner may well have applied for the grant of ex-Pakistan leave, but there is no document on record showing that the petitioner was granted ex-Pakistan leave by the competent authority from 14.12.2015 to 27.01.2016. The respondents, in their written comments, have explicitly denied the grant of ex-Pakistan leave to the petitioner. The respondents' Human Resource Manual, 2012, sets out the procedure for the sanction of ex-Pakistan leave to the employees of ZTBL. Paragraph 4.11 of the said Manual is reproduced herein below:-

"4.11 In order to safeguard the Bank's outstanding dues against the employees proceeding on Ex-Pakistan Leave, the existing proforma of surety bond has been revised with the approval of the Competent Authority which is enclosed for strict compliance. Moreover, it may be ensured that employee who is proceeding on Ex-Pakistan Leave shall submit surety bond of another regular/permanent employee of at least of his/her status. Concerned leave sanctioning authority may accept the surety bond keeping in view guarantor's creditworthiness, length of service and feasibility to repay the dues, being guarantee."

14. The format of the surety bond required under paragraph 4.11 of the said Manual is also annexed to the said Manual. The said surety bond is also required to be attested by a Notary Public or an Oath Commissioner. As per paragraph 4.12 (vii) of the said Manual, such a bond is also required from an officer who wants to proceed on ex-Pakistan leave for the performance of *Umrah*. The learned counsel for the petitioner could not come up with a plausible reply when asked as to whether the procedure prescribed for obtaining ex-Pakistan leave had been complied with by the petitioner. Other than the requirement in paragraph 4.11 *ibid*, paragraph 4.12(i) of the said Manual also requires an applicant for ex-Pakistan leave to submit a certificate regarding non-involvement in any disciplinary case. Since the petitioner was charge sheeted on 11.11.2015, which is much before the date on which he claims to have proceeded abroad on ex-Pakistan leave, he could not have given such a certificate.

15. The petitioner has appended a document at page 20 of this petition showing the petitioner's status to be on ex-Pakistan leave from 14.12.2015 to 27.01.2016. The petitioner's reply to the

statement of allegations as well as his reply to the show cause notice make no mention of this document. The respondents, who assert that the petitioner was never granted ex-Pakistan leave, have denied this document. Since the petitioner's assertion that he had been granted ex-Pakistan leave from 14.12.2015 to 27.01.2016, has been denied by the respondents, this disputed question of facts cannot be resolved by this Court in its constitutional jurisdiction.

16. True, the inquiry proceedings were conducted from 11.01.2016 to 13.01.2016, at ZTBL's Fateh Jang Branch. Vide letter dated 30.12.2015, the petitioner was intimated about the schedule of inquiry. The petitioner neither appeared before the Inquiry Officer nor participated in the inquiry proceedings. As per the Inquiry Officer's report dated 08.02.2016, the petitioner was telephonically informed on 11.01.2016 to attend the inquiry proceedings. It is also reported that the petitioner attended the call and promised to attend the inquiry proceedings, but did not turn up for the same. Therefore, the Inquiry Officer proceeded with the inquiry in the petitioner's absence. In the case of Qari Ahmed Jan Vs. Government of Balochistan through S&GAD Quetta and others (2003 PLC (C.S.) 1078), it has been held that willful non-participation of the petitioner in the inquiry would not provide him a ground to contend that he was condemned unheard. In the case of Messrs EVERNEW AGENCIES Vs. Customs, Central Excise & Sales Tax Appellate Tribunal, Lahore, (2006 PTD 207), it has been held that a party absenting himself to appear before an authority could not claim that he was not provided an opportunity of hearing. Furthermore, in the case of WATER AND POWER DEVELOPMENT AUTHORITY/LAHORE ELECTRICITY SUPPLY COMPANY Vs. Messrs BHATTICE AND RICE MILLS, BUCHIKI (2004 YLR 1263), the petitioner was granted several opportunities to appear and file reply to the allegations leveled against him, but he failed to file the same. It was held that he could not be subsequently allowed to take the plea that the order passed against him was in violation of the principles of natural justice. Since, notice dated 30.12.2015 was

issued to the petitioner informing him about the schedule of inquiry, he could not make any grouse against the inquiry proceedings being conducted in his absence.

17. The perusal of the appellate order / office memorandum dated 18.10.2016, shows that during the personal hearing, the petitioner was not able to defend himself or to produce any documentary evidence in his defence.

18. In the petition at hand, the petitioner is seeking the issuance of a writ of certiorari. Certiorari is not a writ of right, but one of discretion. Its object is to curb excess of jurisdiction, and to keep inferior Courts and Tribunals within their bounds. The High Court while judicially reviewing the proceedings and judgments of the inferior Courts and Tribunals, cannot substitute its own decision with that of such inferior Courts or Tribunals. The grounds on which certiorari may be invoked is where there is an error of law apparent on the face of the record, and not every error either of law or fact which can be corrected by the appellate authority. It lies where the inferior Court or Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of law which they was meant to administer. It is also issued when the inferior Court or Tribunal acts illegally in exercise of its jurisdiction. For instance, when it decides without giving any opportunity to the parties to be heard or violates the principles of natural justice. The High Court while issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. The High Court will not judicially review findings of fact reached by an inferior Court or a Tribunal unless there is manifest error apparent on the face of the proceedings, or where such findings are based on disregard of the provisions of law. The Superior Courts have also interfered with the findings of the inferior Courts and Tribunals where such findings have been found to be perverse or patently erroneous i.e. contrary to the evidence on the record. The essential prerequisites for issuing a writ of certiorari do not appear to be satisfied in this case.

19. Since, I neither find any error of law apparent on the face of the record, nor any excess of jurisdiction in the proceedings or the impugned Office Memoranda dated 04.05.2016, and 18.10.2016, I am not inclined to interfere in the findings against the petitioner. Resultantly, this petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

APPROVED FOR REPORTING

Sanaullah

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