

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Yahya Afridi  
Mr. Justice Shahid Waheed  
Mr. Justice Aqeel Ahmed Abbasi

II

**Civil Petition No.3649 of 2023**

*(Against the judgment dated 30.08.2023  
of the High Court of Balochistan, Quetta  
passed in C.P. No.570 of 2021)*

*National Bank of Pakistan through its President,  
Head Office, Karachi* ... Petitioner

Versus

*Roz-ud-Din and another* ... Respondents

For the Petitioner: Malik Khushal Khan, ASC  
*(via video link from Quetta)*

For Respondent No.1: Mr. Kamran Murtaza, Sr. ASC  
Syed Rifaqat H. Shah, AOR.

Date of Hearing: 12.09.2024.

**ORDER**

**AQEEL AHMED ABBASI, J.-** Through instant petition for leave to appeal, the petitioner has impugned the judgment dated 30.08.2021 of the learned Division Bench of the High Court of Balochistan, Quetta whereby CP No.570 of 2021 filed by the respondent Roz-ud-Din son of Siraj-ud-Din, an Officer of Grade-II, National Bank of Pakistan, Harnai Branch, Sibi Region, resident of Loralai against his dismissal from service vide impugned Memorandum No.HRMG/EDW/F&FD/SIBI-3321, dated 15.12.2020, has been partly allowed and the impugned memorandum is modified to the extent of penalty awarded to the



respondent “dismissal from service to that of down gradation by one step in his pay scale”.

2. The relevant facts for the purposes of disposal of the instant petition for leave to appeal are recorded in para 2 of the impugned judgment in the following terms:-

*“Briefly stated, facts of the case are that the petitioner was employed as Officer Grade-II, National Bank of Pakistan (NBP). A charge sheet/show cause notice No.HRMG/EDW/F&FD/SIBI-3321-130, dated 21.01.2020, was issued to him by the Wing Head (EDW) NBP, with certain allegations of omissions and irregularities. An Inquiry Officer was appointed/deputed, two show cause notices were issued to the petitioner, which were duly relied by him, thereafter, on conclusion of inquiry, vide memorandum No. HRMG/EDW/F&FD/SIBI-3321, dated 15.12.2020 (the impugned memorandum), issued by Wing Head (EDW) NBP, a major penalty was imposed upon the petitioner and he was dismissed from his services. It is further contention of the petitioner that against his dismissal, he also preferred a Departmental Appeal before the competent authority, but the same remained unattended and un-responded.”*

3. The learned Division Bench of the High Court of Balochistan, Quetta after hearing the learned counsel for the parties and having gone through the entire record of the case as well as the treatment meted out to other employees of the bank, who according to the learned Division Bench, were similarly placed in respect of the same inquiry, has been pleased to partly allow the petition filed by the respondent, while recording



detailed reasons and the finding as to the facts and law applicable thereto in paras 6 and 7 of the impugned judgment in the following terms:-

“ 6. We have heard the learned counsel for the parties and have gone through the available record with their able assistance. Admittedly, the petitioner was employed as Officer Grade-II, National Bank of Pakistan, whereas, on certain allegations of omissions and irregularities regarding ATM cash feeding, its maintenance and balancing, he was imposed with a major penalty of dismissal from service. It is the case of the petitioner that he had no concern with the ATM and the Branch Manager Babar Butt (main accused) was looking after the affairs of ATM, but the inquiry officer giving no weight to the explanation of the petitioner, has formulated erroneous findings and lastly he (petitioner) was dismissed from service. Record reflects that apart from petitioner, two other employees/officers of the Bank i.e. Mr. Amir Khan, OG-II and Syed Shafqat Hussain Shah, Vice President/then Area Manager, were also charge sheeted with same allegations, as to petitioner, but they were then awarded with punishment of downgraded by one step in their pay scale with immediate effect, whereas, the petitioner who was also facing the same allegations, was surprisingly awarded with a major penalty of dismissal from service, which in our considered view is a harsh punishment. Though the competent authority can award one of the following punishments if in its opinion a person is found inefficient or has ceased to be efficient for any reason or guilty of misconduct or corrupt or may reasonably be considered as corrupt:-

- a) Removal from service; or
- b) compulsory retirement; or



- c) reduction to lower post or pay scale; or
- d) one or more minor penalties as mentioned in the relevant Rules.

7. There is no hesitation to state that the charges of guilty of misconduct or corruption are always considered at higher pedestal than the charge of inefficiency. No doubt, the competent authority had jurisdiction to award any of the above punishments to a person/employee found guilty, but for the purpose of safe administration of justice, such punishment should be awarded, which commensurate with the magnitude of the guilt otherwise the law dealing with the subject will lose its efficacy. As stated above, the other employees who were dealt with same allegations were awarded punishment of downgraded by one step in his pay scale, whereas, the petitioner was awarded with major penalty i.e. dismissal from service. The employees, who are similarly placed, cannot be treated discriminately in violation of Article 25 of the Constitution, which guarantees equality to all citizens before law and equal protection of law. Even otherwise, the main accused i.e. Babar Butt, recorded his statement during inquiry admitted his guilt and accepted the entire liability and also confessed that no other person is responsible for the loss, thus, after admission of guilt by Babar Butt, the charge of misappropriation or embezzlements cannot directly be attributed to the petitioner unless it is clearly manifesting from the inquiry proceedings and the witness appeared before the inquiry officer not implicating the petitioner for the charge. To fortify our this view, we may place reliance to the case title as "Secretary to Government of the Punjab, Food Department, Lahore and another v. Javed Iqbal and others reported in 2006 SCMR 1120."



4. Learned counsel for the petitioner was confronted to assist the Court as to whether there is any factual error or legal infirmity in the impugned judgment passed by the learned Division Bench of the High Court of Balochistan, in response to such query of the Court, the learned counsel has argued that *prima facie*, there is no factual error with regard to chronology of events as recorded in the impugned judgment, however, according to the learned counsel, the learned Division Bench of the High Court has failed to appreciate that since all the legal formalities i.e. issuance of charge sheet/show cause notice and conducting of an inquiry by the authorized officer and providing opportunity of being heard to the respondent, were fulfilled and thereafter, the respondent was found guilty of misconduct and negligence, therefore, the punishment of dismissal from service was awarded to the respondent as per law and National Bank of Pakistan (Staff) Service Rules, 1973 read with National Bank of Pakistan Staff Service Rules, 2021, which authorize the bank to award one of the punishment i.e. (a) Removal from service; (b) Compulsory retirement; (c) Reduction to lower post or pay scale and (d) One or more minor penalties as mentioned in the relevant Rules. According to the learned counsel for the petitioner, since the respondent demonstrated negligence and allowed Mr. Baber Butt, the Branch Manager to feed cash in ATM, maintenance and balancing etc, whereas the Disciplinary Cases Committee of the Bank also approved the findings of the inquiry officer to this effect, hence awarded the punishment to the respondent in accordance with law and relevant rules, therefore, the Divisional Bench of the High Court was not justified to interfere with such



decision, according to learned counsel for the petitioner, the impugned judgment is liable to be set aside.

5. Conversely, Mr. Kamran Murtaza, learned Sr. ASC present in Court on behalf of respondent No.1 has controverted the submissions made by the learned counsel for the petitioner, supported the impugned judgment passed by the learned Division Bench of the High Court, and has also placed on record copy of order dated 13.12.2023 passed by this Court in the cases of “National Bank of Pakistan through its President, Karachi. Vs. Syed Shafqat Hussain Shah and others” Civil Petitions No.3801 and 3648 of 2023, whereby, according to the learned counsel for the respondent, in respect of the same inquiry, allegations and charges against another employee of the National Bank of Pakistan namely, Syed Shafqat Hussain Shah, Vice President/Regional Executive CAD, NBP, who was awarded punishment of one step downgraded from Vice President to Assistant Vice President, however, such the memorandum was set aside by the learned Division Bench of the High Court of Balochistan, with the directions to reinstate Syed Shafqat Hussain Shah on his previous position of Vice President/Regional Executive CAD, NBP in accordance with law. It has been contended by the learned counsel for the respondent that there is no allegation of corruption, misappropriation or any embezzlement of money against the respondent Roz-ud-Din nor the allegations/charges of even gross negligence could be proved during the inquiry proceedings which according to the learned counsel, otherwise were based on mala-fides, whereas, the entire



guilt of fraud in respect of ATM cash was duly accepted by the Branch Manager of the Bank namely, Babar Butt (main accused) who was looking after the affairs of ATM, whereas, a criminal case was also registered against him on the same set of allegations and charges. However, per learned counsel, the inquiry officer and the Disciplinary Cases Committee of the Bank ignored such aspect of the matter and without establishing any case of fraud, misappropriation or misconduct against the respondent, on mere allegation of negligence, awarded the major penalty of dismissal from service in an arbitrary manner. Per learned counsel, the impugned memorandum dated 15.12.2020 is otherwise discriminatory as two other employees/officers of the bank i.e. Mr. Amir Khan, OG-II and Syed Shafqat Hussain Shah, Vice President/Area Manager, who were also charge sheeted with the same allegations, were awarded with lesser penalty i.e. downgraded by one step in their pay scale, however, that punishment was also set aside by the Division Bench of the High Court which decision has been duly approved by this Court in Civil Petitions No.3801 and 3648 of 2023 vide order dated 13.12.2023 copy of which has been placed on record. It has been prayed by the learned counsel for the respondent that instant petition having no merits is liable to be dismissed with cost.

6. We have heard the learned counsel for the parties, perused the record with their assistance and have also gone through with the order dated 13.12.2023 passed by this Court in Civil Petitions No.3801 and 3648 of 2023 (National Bank of



Pakistan through its President, Karachi vs. Syed Shafqat Hussain Shah and others).

7. Since the facts regarding allegations and charges against the present respondent namely Roz-ud-Din son of Siraj-ud-Din and the other employees of the National Bank of Pakistan including Amir Khan, Officer Grade-II and Syed Shafqat Hussain Shah, Vice President/Area Manager serving in the same branch, have been duly examined in detail by the Division Bench of the High Court in the impugned judgment in CP No.570 of 2021, as well as by this Court in its order dated 13.12.2023 in Civil Petitions No.3801 and 3648 of 2023, therefore, we do not deem it appropriate to further highlight such facts, more particularly, when facts have not been disputed, whereas, in the impugned judgment, it has been held that under similar facts and circumstances as well as the same set of allegations and charges, the other employees of the National Bank of Pakistan i.e. Amir Khan, OG-II and Syed Shafqat Hussain Shah, were awarded lesser punishment by the Disciplinary Cases Committee of National Bank of Pakistan, and no reason whatsoever has been assigned to single out the respondent Roz-ud-Din who has been awarded the major punishment of dismissal from service which amounts to clear discrimination. It is pertinent to note that nothing has been brought on record to show that respondent Roz-ud-Din was directly responsible or has committed any gross misconduct or negligence in respect of the allegations as contained in the charge sheet/show cause notice, whereas, the guilt regarding allegations and charges in the instant case has



been duly accepted through confessional statement by another employee of the bank namely, Baber Butt against whom a criminal case was also registered, however, such aspect has been totally ignored while awarding the major punishment of dismissal from service, which, on the face of it, was otherwise not commensurate with the magnitude of the guilt and the role assigned to respondent. Reliance in this regard has been rightly placed by the learned Division Bench in the case of Secretary to Government of the Punjab Food Department, Lahore and another v. Javed Iqbal and others (2006 SCMR 1120) wherein, it has been held as under:-

“(6). It is also important to note that the word ‘inefficient’; has not been defined in this Ordinance, however, definition of the word ‘misconduct’; is almost the same which has been assigned to it in Punjab Civil Servants (Efficiency and Discipline) Rules, 1999. There is no gain in saying that charges of guilty of misconduct or corruption are always considered at higher pedestal than the charge of inefficiency. No doubt the competent authority had jurisdiction to award any of the above punishments to the Government employee but for the purpose of safe administration of justice, such punishment should be awarded which commensurate with the magnitude of the guilt otherwise the law dealing with the subject will lose its efficacy. In instant case admittedly respondents are not guilty of the charge of misconduct or corruption, therefore, extreme penalty of removing them from service for the charge of inefficiency or negligence was on a high side. As such we are of the opinion that to meet the ends of justice learned Service Tribunal has rightly reduced the quantum of punishment



*awarded to the respondents by the competent authority. As the judgment of the Service Tribunal has proceeded on recognized principles of law as has been discussed herein above, therefore, impugned judgment admits no interference by this Court. Thus for the foregoing reasons instant petitions are dismissed and leave declined."*

8. It will not be out of place to refer to provisions of Article 25 of the Constitution, which guarantees equality to all citizens before law and equal protection of law and, whereas, it is also well settled that for safe administration of justice, the Authority vested with discretion to award punishment to an employee shall ensure that such punishment should commensurate with the magnitude of guilt. In the instant case, employees of the National Bank of Pakistan, who according to the finding as recorded by the High Court in the impugned judgment, were similarly placed and facing the similar charges, could not be treated differently nor the respondent-Roz-ud-Din, in the absence of any charge of fraud, embezzlement or misappropriation of funds, or even establishing the allegation of misconduct, could be awarded major punishment of dismissal from service in a arbitrary manner. In the instant case, it is manifest from the record that there is no charge of commission of any act which may be termed as misconduct, gross negligence, or inefficiency in performance of his duties, however, it appears that respondent omitted to follow instructions whereby he was assigned the work of feeding cash in ATM, its maintenance and balancing, and the said work was contained by the Branch Manager Babar Butt, who has admitted his guilt. Moreover, the Division Bench of the



High Court of Balochistan in CPs. No.131(S) and 132(S) of 2021 vide judgment dated 30.08.2023 in the case of Syed Shafqat Hussain Shah and others, has been pleased to even set aside the office memorandum issued by the National Bank of Pakistan, which order has been duly upheld by this Court in Civil Petitions No.3801 and 3648 of 2023 vide order dated 13.12.2023, while directing the National Bank of Pakistan to reinstate Syed Shafqat Hussain Shah on his previous position of the Vice President/Regional Executive CAD, NBP in accordance with law. However, in the instant case, the Division Bench of the High Court of Balochistan, Quetta has partly allowed the petition filed by the respondent (Roz-ud-Din son of Siraj-ud-Din) whereby, the impugned memorandum dated 15.12.2020 issued by Wing Head (EDW) NBP dismissing him from service, has only been modified to the extent of penalty of dismissal from service to that of down gradation by one step in his pay scale with immediate effect. It is pertinent to note that neither in the charge sheet nor in the proceedings before the Disciplinary Cases Committee there is any direct charge of misconduct, fraud, embezzlement of fraud or even the connivance of respondent-Roz-ud-Din with the offence committed by Mr. Babar Butt, OG-II (Branch Manager) of NBP who has accepted his guilt and entire responsibility, therefore, on the allegation of not complying with office circulars to handle the ATM cash feeding and allowing the Branch Manager Babar Butt, OG-II who was reportedly performing the said duty as joint custodian, major penalty of dismissal from service is not only harsh but also disproportionate to the allegations/charge, besides being discriminatory. Accordingly, we do not find any



substance in the instant petition for leave to appeal which was dismissed and leave to appeal was refused vide our short order of even date and above are the reasons of such short order.

**Islamabad.**

12.09.2024.

*'Approved for Reporting'*

*(Zubair)*