

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SYED MANSOOR ALI SHAH

CIVIL APPEAL NO.1474 OF 2015

(Against the judgment dated 16.12.2014
passed by the Peshawar High Court,
Peshawar in Writ Petition No.162 of 2014).

Muhammad Naeem Khan.

...Appellant(s)

Versus

President, National Bank of Pakistan, etc.

...Respondent(s)

For the Appellant(s):

Mr. Abdul Rehman Khan, ASC.

For the Respondent(s):

Mr. Ghulam Shoaib Jally, ASC.
Syed Rafaqat H. Shah, AOR.

Date of Hearing:

10.12.2020.

JUDGMENT

IJAZ UL AHSAN, J.- This appeal by leave of the Court is directed against a judgment of the Peshawar High Court, Peshawar dated 16.12.2014. Through the impugned judgment, a constitutional petition (W.P.No.162 of 2014) filed by the Appellant was dismissed.

2. Briefly stated the facts necessary for disposal of this *lis* are that the Appellant (*Muhammad Naeem Khan*) was holding the post of Assistant Vice President and was posted as Branch Manager, National Bank of

Pakistan, Main Branch, Swabi. A charge sheet was issued to him on various allegations including failure to keep comprehensive and intelligent check over the Branch affairs and control systems, failure to follow Circulars regarding steps to be taken to enhance confidence in the system resulting in increased business, better discipline, reduction in fraud and forgeries and improve controls to strengthen operational activities. It was alleged that he had failed to perform his assigned responsibilities rather he became instrumental and supported various individuals in defrauding the Government exchequer. It was further alleged that the Appellant was informed by a whistleblower namely, Gulfraz, Officer Grade-I about the fraud being committed in the Branch. However, instead of taking any action against the delinquents, he tried to pressurize the whistleblower and exerted pressure on him to keep silent about the issue. He also removed the whistleblower from the pension payment section of the Branch in order to facilitate continuation of fraudulent activities in the Branch. Despite being informed by the whistleblower that fraud was being committed in the pension payment section of the Branch, instead of bringing the fraud into the notice of the Regional Management he intentionally and deliberately concealed the facts from the Controlling

Office and withheld the relevant information. The charge sheet further alleged that the Appellant was in the knowledge of irregularities pointed out by the Regional Inspectors/Annual Audit/ Surprise Auditors/Internal Control Inspectors pertaining to pension payments. However, he deliberately kept silent and made no effort to improve internal working of the Branch and strengthening the operational controls. It was stated that he intentionally avoided to relieve an under transfer delinquent officer namely Hikmat Shah, OG-I for Moneri Branch and retained him in his Branch for more than 11 and a half months with the result that the said delinquent officer continued his fraudulent activities and embezzled pension payments in substantial amounts causing loss to the exchequer.

3. Finally during his tenure as Branch Manager important bank books were not maintained including pension payment book (B-59)/Pension Register (B-143) and updation of pension records. Through his acts of omission and commission, he had been guilty of negligence and dereliction of duty which resulted in huge financial loss to the exchequer. His reply to the charge sheet was not found satisfactory and after due process a penalty of demotion to one lower grade was imposed by way of demoting him from the post of Assistant Vice

President to Officer Grade-I. Although the Appellant alleges that the punishment was appealed in the departmental hierarchy which was not decided, the Respondent-Bank totally denies receipt of any such appeal. Nothing has been placed on record by way of proof of filing such appeal. He approached the Peshawar High Court, Peshawar in its constitutional jurisdiction challenging his punishment and seeking redressal of his grievance. Such petition was dismissed by the learned High Court, vide impugned judgment dated 16.12.2014.

4. Leave to appeal was granted by this Court on 08.12.2015 in the following terms:

"It is argued by the learned counsel for the petitioner that service in the respondent Bank is governed by National Bank of Pakistan (Staff) Service Rules, 1973, which are statutory rules and in terms of Rule 39 inquiry has to be conducted as per the instructions Circular No.4/2003 dated 24.04.2003, issued by the President of the Bank, SEVP and Chairman of Disciplinary Cases Committee was the competent authority to issue charge sheet to the Executives.

2. He contends that charge sheet to the petitioner has been issued by Mr. Naeem Khan, AVP/Manager, who was not competent. He further states that whole of the disciplinary proceedings against the petitioner were tainted with the illegalities.

3. The submissions made, require consideration. Leave to appeal is granted to consider the above points."

5. The learned counsel for the Appellant submits that service in the Respondent-Bank is governed by the National Bank of Pakistan (Staff) Service Rules, 1973 ("*Rules, 1973*"). Such Rules are statutory in nature and in terms of Rule 39 of the Rules, 1973 an inquiry has to be conducted as per instructions contained in Circular No.4 of 2003 issued by the President of the Bank. He maintains that in issuing the charge sheet, the requirements of Rule 3 of the Rules, 1973 were not followed insofar as the charge sheet was issued by Muhammad Hassan Khaskheli, EVP/Divisional Head who was not competent to do so. He further maintains that disciplinary proceedings were not conducted by the competent officer and are therefore a nullity in the eye of law. He submits that some co-accused of the Appellant namely Syed Qurban Ali Shah, OG-I and Abdul Akbar, OG-II were exonerated while the Appellant who was overall supervisor of the Branch and was not directly involved in operational matters was wrongly punished. He further submits that the Appellant was not provided a copy of the proceedings or that of the inquiry report and the impugned penalty has been imposed upon him in violation of FR-29. He finally maintains that the Appellant was not granted personal hearing before imposing the major penalty which has violated his legal

and constitutional rights and amounts to being condemned unheard. Further, the major penalty of demotion to a lower rank did not specify the timeframe or duration of the penalty which is against the settled principles of law on the subject.

6. Learned counsel for the Respondent-Bank has however defended the impugned judgment. He submits that the Appellant being the Branch Manager was responsible to keep an eye on all activities in the Branch and maintain vigilance against any fraud or illegality in the Branch. He points out that despite fraud being pointed out to him by the whistleblower, instead of taking action the Appellant tried to pressurize the whistleblower and ultimately removed him from the pension payment section of the Branch. It is further pointed out that in contravention of his fiduciary duties the Appellant intentionally tried to conceal fraud and ignored illegalities committed in the pension payment section of the Branch despite such illegalities being pointed out during his surprise audit. He further submits that the Appellant was overall incharge of the Branch and it was his duty to ensure that all books and records including but not limited to pension records were immaculately maintained and his failure to do so resulted in heavy loss to the public exchequer. He further submits that all legal and

procedural formalities were properly followed, the Appellant was given adequate and multiple opportunities to defend himself yet he was failed to defend himself and was found guilty of most of the charges mentioned in the charge sheet by independent inquiry officers/competent authorities who had no personal bias or grudge against him.

7. As far as failure to specify the period of major penalty is concerned, the learned counsel for the Respondent-Bank has pointed out that a categorical statement was made before the learned High Court that the Appellant would be considered for promotion on the basis of available record to the next higher post after expiry of his three years penalty. Failure on the part of the competent authority to specify the period of punishment would not have the effect of nullifying the entire proceedings specially so where the defect stands cured and has been so mentioned in the impugned judgment of the learned High Court.

8. We have heard the learned counsel for the parties and gone through the record with their assistance. The main focus of the argument of learned counsel for the Appellant is that the show cause notice was issued by an incompetent authority. It is claimed by

the Respondent-Bank that the charge sheet was issued by an authorized officer and all proceedings were carried out as per the provisions of the Rules, 1973. We have examined the said Rules and find that the power to issue show cause notice has been mentioned in Rules 38 & 39 read with Rule 3(d) and Sr.No.12 of Appendix-I to the Rules, 1973. Rules 38 & 39 of the Rules, 1973 provide that a competent authority is authorized to issue show cause notice. Rule 3(d) of the Rules, 1973 defines the competent authority as an authority specified in Column No.4 of Appendix-I to the Rules, 1973. For ease of reference, Appendix-I to Rules 1973 is reproduced below:

Sr. No	Reference to Rules	Nature of powers delegated	Competent authority to whom powers delegated	Categories of employees in respect of which powers delegated upto
10.	32, 33 and 34	Grant of permission to incur unsecured debt and giving guarantee, etc to open accounts with other banks	(a) Managing Director (b) Deputy Managing Directors (c) Heads of Administration Department, Head Office/Principal Offices	I(a) I(b) II
11.	37 and 39	Dismissal and other punishments	(a) Managing Director (b) Deputy Managing Directors (c) Heads of Administration Department, Head Office/Principal Offices and Senior Regional Managers. (d) Regional Managers and Managers (Officers Grade II and above).	I(a) II III IV
12.	38 and 39	Suspension (pending enquiry) grant of permission to leave station during suspension and issue of show cause notice	(a) Managing Director (b) Deputy Managing Directors. (c) Heads of Administration Department, Head Office/Principal Offices and Senior Regional Manager. (d) Heads of Departments at Head Office/Principal Offices, Regional Managers and Managers (Officers Grade I and above) (e) Managers of Branches (Officers Grade II and above) (f) Managers of Branches (Officers Grade III and Junior Officers)	I(a) All Categories except I(a), (b) and (c) II III

9. A perusal of the Appendix-I above reveals that delegation of powers in respect of issuance of show cause

notices have been mentioned at Sr.No.12 thereof. In terms of the said item, the power to issue show cause notice to all categories except (i)(a), (b) and (c) are delegated to Deputy Managing Director, Head of Administration Department, Head Office, Principal Offices and Senior Regional Managers. In the case in hand, the show cause notice was issued by Executive Vice President/Divisional Head, Head Office, Karachi. It would therefore appear that the show cause notice to the Appellant has *prima facie* been issued by a competent authority. We, therefore, find that the power conferred through Rules, 1973 was rightly exercised by the Executive Vice President and the objection of the Appellant in this regard is misconceived and is accordingly over ruled and repelled.

10. It also appears to us that the nomenclature of different designations has changed overtime. However, the powers of officers of various categories, in the matter of disciplinary proceedings remain the same. According to the learned counsel for the Respondent-Bank, after change of nomenclature, various categories may be read as follows:

"CATEGORY 1

- a) Senior Executive Vice President/Executive Vice President
(Executive grade)
- b) Senior Vice President: (Senior grade-I)
- c) Vice President: (Senior grade-II)
- d) Assistant Vice President: (Senior grade-III)
- e) Officer Grade-I.
- f) Officer Grade-II/Chief Cashier.

g) Officer Grade-III/ Senior Head Cashier.

CATEGORY II

- a) Senior Assistant/Head Cashier/ Stenographer/ Godown Inspector/Head Draftsman.
- b) Draftsman/Estimator/Overseer.
- c) Senior Cashier/ Stenotypist/Teleprinter/ Telex Operator/ Key Punch Operator.
- d) Assistant/Typist/Cashier/Godown Keeper/Machine & Telephone Operator/Construction Supervisor/Works Supervisor/Tracer/Mechanic and other technicians.

CATEGORY III

- a) Electrician (Possessing Wireman's Competency Licence)/Ferro Printer.
- b) Driver/Chief Jemadar/Daftari
- c) Bank Guard/Chowkidar/Messenger/ Electrician/Mali and other inferior staff.
- d) Sweeper."

11. As far as the argument of the learned counsel for the Appellant in respect of President's Office Circular No.4 of 2003 dated 22.04.2003 is concerned, the same mentions the authority to issue charge sheet as Chairman/Disciplinary Cases Committee (DCC). We have found the said reading of the Circular by the Appellant is erroneous and misleading. Rule 5 of the Rules, 1973 defines delegation of powers as follows:

"Rule 5(2) provides that "The Managing Director may, where considered necessary, delegate any of the powers vested in him to the Deputy Managing Directors and those exercised by the Deputy Managing Directors to other officers."

12. It appears that by virtue of the powers available under Rule 5(2), the President of the Bank delegated his powers to the DCC through Circular No.4 of 2003. In the same circular at point No.2(a) it is clearly mentioned that *"all the disciplinary cases falling within the competence of the President and the Board of Directors, shall be considered, deliberated upon and decided/recommended by the Committee"*. It further

appears that under Circular No.4 of 2003, the President of the Bank delegated his own powers which by virtue of the Appendix are in respect of issuing show cause notices to Deputy Managing Director, Senior Principal Officers and Principal Officers. In the case in hand, the matter is not in respect of issuing show cause notice to any of the said officers because the Appellant was neither Deputy Managing Director, Senior Principal Officer nor the Principal Officer and in fact he was an Assistant Vice President. Therefore, his stance that only the Chairman/DCC were the competent authorities to issue him show cause notice is clearly misconceived. We have also gone through NBP Instruction Circulars, Office Circulars, information Circulars and NBP Employee Discipline Policy (EDP). On perusal of the said documents leads us to the conclusion that the charge sheet was validly and lawfully issued by an authorized officer, competent to do so.

13. Having dealt with the question of validity of the charge sheet, we have gone through the inquiry report and the material collected during the inquiry. It is clear and obvious to us that the Appellant being Branch Manager was responsible to keep an eye on the activities in his Branch relating to its business. There is no denial of the fact that fraud was actually committed and in the

opinion of the inquiry officer, lack of vigilance for long periods of time and failure of the Appellant to put systems in place and maintaining the relevant registers, perpetrated and perpetuated continuous fraud for almost four years. It also appears that the Appellant consciously and deliberately covered up the fraud and thereby facilitated commission of such fraud which resulted in misappropriation of substantial sums of money at the cost of the exchequer. There is no explanation available on the record why despite being intimated by a whistleblower and others including surprise audits the Appellant remained complacent, failed to take any action and taking steps to ensure that the delinquents were brought to book by way of appropriate action in accordance with law and that continuation of the fraud and misappropriation of public money was stopped. Instead, he pressurized the whistleblower to remain silent and ultimately removed him from the pension payment section and failed to take any action despite identification of fraud and misappropriation of funds from the pension account during surprise audits. This emboldened those who were misappropriating funds to continue their activities for years on end.

14. A perusal of the record also reveals that the Appellant was provided all relevant documents required

by him in order to build his defence and he was also given an opportunity to cross-examine the witnesses who appeared against him. The Appellant signed the inquiry proceedings confirming the fact that he was provided all due process rights for his defence and cannot be heard at this stage to take a different stance specially so where this stance was not even taken before the High Court.

15. As far as the argument of the learned counsel for the Appellant that some of the co-accused were exonerated and the Appellant deserved equal treatment is concerned, we find that the same is contrary to the record. Our examination of the record reveals that all relevant officials were charge sheeted and their cases were decided as per gravity of their involvement. It has been pointed out to us that penalties were imposed on nine (09) different delinquents and only two namely, Shahab ud Din, OG-I and Muhammad Said, OG-II, Incharge Government Section were exonerated because the charges against them were not proved. However, a co-accused with the Appellant namely Shah Nawaz, AVP/Manager was down graded by one step in his pay scale. Syed Qurban Ali Shah, Operation Manager was demoted to next lower grade like the Appellant. Muhammad Umar, OG-I and Abdul Akbar, OG-II were demoted to the next lower grade. Badar Munir, OG-II and

Bakht Sher, OG-III were dismissed from service with immediate effect. It appears and has also been stated at the bar that except the Appellant none of the said officials has challenged the penalties imposed upon them.

16. We have also gone through the record and find that there is no denial of the fact that there was continuous embezzlement in pensionary funds in the Main Branch, Swabi where the Appellant was posted as Branch Manager. In view of his senior and supervisory position, it was his responsibility and duty to supervise, exercise, control and keeping a vigilant eye on each and every aspect of business and services provided by different sections of the Branch including but not limited to pension payment section. He was not only required to be vigilant but to have direct and first hand knowledge and maintain supervision of all activities and the manner in which such activities were being conducted. It is clear and obvious to us that controls of the Appellant were lacking, he was unwilling to take responsibility for the job that had been assigned to him and was reluctant to take action despite being informed by various sources that misappropriation was being committed by officials working under his supervision and control. Further, he failed to inform the Regional Management, his immediate

superior authority about the delinquency of his subordinate staff. On the contrary, he made active efforts to cover up and hide their activities and let embezzlement continue unabated for about four years.

17. The argument of learned counsel for the Appellant that some of the officials have been visited with lesser penalties while the Appellant was demoted to a lower grade indefinitely is concerned, the same has not impressed us. Admittedly, other officials were at a lower level of seniority, were not responsible and answerable for all activities of the Branch, while the main focal person and Incharge of the Branch was the Appellant. Failure on his part to perform his functions efficiently, diligently and vigilantly has correctly attracted a higher penalty in view of the fact that he not only ignored the Standard Operating Procedures and failed to maintain records and conduct or cause to be conducted regular scrutiny of the records to ensure that there were no violation of the procedures and no financial mishandling, misappropriation or embezzlement of public money but also actively and deliberately ignored information and reports that embezzlement was taken place. This is clearly highlighted by his treatment of the whistleblower who had provided direct and credible information to him. In these circumstances, we are neither persuaded nor

convinced by the argument of the learned ASC that the Appellant has been discriminated against on the issue of imposition of penalty or that his penalty was unduly hard and disproportionate to the offences committed by him.

18. As far as the duration of the penalty is concerned, the Respondent-Bank had made a categorical statement before the learned High Court to the effect that the penalty imposed on the Appellant was for a limited period of three years and that he shall be considered for promotion in accordance with the rules by the competent authorities on expiry of the said period. This has been repeated before us during the course of arguments. Further, it is settled law that after the period of penalty of an official has expired, the same does not operate as an impediment in his future prospects of promotion if otherwise due.

19. We find that the judgment of the learned High Court elaborately and extensively discusses all pleas raised by the Appellant, has correctly applied the relevant law, rules and regulations to the facts and circumstances of the case. No illegality, failure or refusal to exercise jurisdiction or erroneous conclusions unsupported by the record have been pointed out to us. On hearing the entire matter extensively and scrutinizing the record, we have

reached the same conclusions as the High Court and have no reason, basis or justification to take a different view.

20. For reasons recorded above, we find no merit in this appeal. It is accordingly dismissed.

sd/ — HCT
sd/ — J
sd/ — J

ISLAMABAD.

10.12.2020.

ZR/*

'Not Approved For Reporting'

6/2/21