

NATIONAL INDUSTRIAL RELATIONS COMMISSION, ISLAMABAD
(FULL BENCH AT ISLAMABAD)

Appeal No.12A(29)/2023-P

BEFORE: **Mr. Justice(R) Abdul Rasool Memon, Chairman**
Shabbir Hussain Awan, Member
Abdul Qayyum Khan, Member

MCB Bank Limited through its President, MCB House, 15-Main Gulberg Road, Lahore and three others.

.....Appellants.

Versus.

Anwar Zeb S/o Aurangzeb R/o Mohallah Panjpaow, Islamia Colony, Swabi Tehsil & District Swabi.

.....Respondent.

Present: Mr.Minhaj Ahmad Khan, Advocate for appellants.
Mr.Affan Ehsan, Advocate for respondent.

ORDER

28.11.2023

Abdul Qayyum Khan, Member

The appellants have filed the instant appeal under section 58 of the Industrial Relations Act, 2012 against the impugned order dated 23.05.2023 passed by the learned Single Bench NIRC Peshawar whereby he has allowed the grievance petition No.4B(23)/2014-P of the respondent.

2. The concise facts given rise to this appeal are that the respondent (Anwar Zeb) has filed grievance petition before learned Single Member, NIRC with the contention that he was appointed as Cashier during the year, 1993 in the appellants Bank; that on 06-08-2013, he was served charge sheet with the allegation of embezzlement while he was posted at MCB Bank Ltd, Topi Branch Mardan which was replied by him by denying the allegations levelled



against him; that the appellants have also lodged complaint/FIR against him on 04-02-2013 in the FIA Police Station Peshawar regarding the said embezzlement; that 09 other employees of the Bank were also proceeded departmentally in the said embezzlement, however, no criminal proceedings were initiated against them. According to the respondent, he was served with a letter of inquiry dated 26-08-2013 and thereafter without properly associating him with the inquiry proceedings, a partial inquiry was conducted; that the inquiry officer has submitted report which was not provided to him; that thereafter he has been dismissed from service on 10-12-2013 without issuance of final show cause notice; ; that being aggrieved from the said dismissal order, the respondent has served grievance notice on 15-01-2014 through LCS for redressal of his grievance but the same has not been responded, hence his grievance petition with the prayer that the impugned dismissal be set-aside and he may be reinstated into service with all back benefits.

3. The appellants have contested the grievance petition through written reply by controverting the averments of the grievance petition and raised many objections on the points of law as well as facts and prayed for dismissal of the same.

4. Record depicts that after filing of written reply by the appellant, the learned Single Bench has fixed the grievance petition for 26-12-2019 for evidence but on the said date, no one had appeared on behalf of appellants, hence they were proceeded



against ex-parte. Thereafter, the learned Single Member after hearing arguments of both parties has accepted the grievance petition vide order dated 09-01-2020; being aggrieved from the said order, the appellants have preferred appeal No.12A(13)/2020-P before learned Full Bench which was accepted vide order dated 25-10-2021 and case remanded to the learned Single Bench for decision after recoding evidence of both the parties. Thereafter, pro and contra evidence in the matter have been recorded and after hearing final arguments, the grievance petition has been allowed vide impugned order dated 23-05-2023 with the following observations:-

"In view of what has been discussed above, it is, held that the respondents in the instant matter has failed to proceed in accordance with the provisions of the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968, therefore, the petition is allowed, the impugned dismissal from service order is set aside and the petitioner is reinstated in service with all back benefits".

5. Feeling aggrieved of the impugned order, the appellants have preferred the instant appeal with the following prayer:-

It is, therefore, prayed that on acceptance of instant appeal, the impugned judgement/order dated 23-05-2023 passed by the learned Single Bench, Peshawar may be set-aside and grievance petition of the present respondent be dismissed and any other relief deem fit and proper in the circumstances of case".

6. The learned counsel for the appellants has argued that the impugned order is wrong, illegal and against facts. He has further argued that the respondent Anwar Zaib was employed as Cashier in the appellants bank; he was served with charge sheet dated



06.08.2013 on the charges of embezzlement and committing misconduct; that the respondent submitted reply which was found unsatisfactory, therefore enquiry proceedings were initiated against him; that during enquiry the respondent had fully participated and he was also provided opportunity of hearing & defense; that the respondent had also signed each and every page of enquiry proceedings; that during enquiry the Enquiry Officer proved him guilty of the charges levelled against him, so he was dismissed from service after observing all codal formalities. The learned counsel for the appellant has further submitted that against the dismissal order, the respondent has filed a grievance petition which was contested by the appellant by filing written reply and after filing reply by appellants, the case of the respondent was fixed for evidence; that after recording evidence of both parties and hearing final arguments, the learned Single Bench without determining the preliminary objections raised by the appellant in the written reply and without appreciating the enquiry proceedings which were conducted against the respondent in his presence in which he was proved guilty of the charges of embezzlement and committing misconduct, has passed the impugned order dated 23.05.2023 which is a result of misreading and non-reading of evidence based on summarize and conjecture, as such the impugned order is not sustainable in the eye of law. He has prayed that this appeal be accepted, the impugned order be set aside and the grievance petition of the respondent be dismissed.



7. Conversely, the learned counsel for the respondent while controverting the arguments advance by the learned counsel for the appellants has supported the impugned order.

8. Arguments of the learned counsel for the parties heard and record perused.

9. The allegations against the respondent Anwar Zaib mentioned in the charge sheet dated 06.08.2013 were as under:

- 1) You visited Topi Branch on Gazetted holiday dated 25-12-2012 without prior permission of competent authority and not adopted the off time policy and moved 2 CCTV cameras of the branch from their actual positions.
- 2) Absent from duty on 26-12-2012 without applying leave.
- 3) Embezzlement of Bank Cash Rs:41.598 million, through flying entries.
- 4) Embezzlement of Bank Cash Rs:22.997, 437.82 through 103 flying entries.
- 5) Embezzlement of Bank Cash Rs:8,046,000/- through 18 flying entries.
- 6) Fraudulent transaction by using un-authorized IDs of the Staff.
- 7) Non-posting of debit/credit transactions against source documents.
- 8) Embezzlement of Rs:900,000/-received from one customer.
- 9) Making un-authorized transactions in different routing accounts.
- 10) Un-authorized cash withdrawal against cheque being given to Bank for crediting the same to some other account.
- 11) Un-authorized issuance of use of cheque books fraudulently.
- 12) Made Flying entries when you were posted as Cashier at Lahore Rapore Branch.
- 13) You are held responsible for paying cheques in cash and posting the same through intra accounts to avoid compulsory tax deduction.

10. The respondent had replied to the said charge sheet which was found unsatisfactory, thereafter enquiry proceedings were initiated against him. Admittedly the respondent had appeared before the Enquiry Officer and had fully participated in the enquiry proceedings. During cross-examination the RW-1 has deposed that he



had conducted the inquiry and management representative produced documentary evidence including Audit and Investigation report, statement of accounts, transactions report alongwith statements of staff of the bank branch. He further deposed that the inquiry proceedings were conducted against the petitioner as per standard procedure. During cross-examination, not a single word has been asked from inquiry officer that whether the petitioner was not provided proper opportunity to cross-examine the prosecution witnesses and to defend his case. The inquiry report is available on file as Ex.R/2 in which each and every point has been discussed in detail. The inquiry proceedings reveal that total proceedings have been conducted in the presence of petitioner and he had signed each and every page of the enquiry proceedings. The learned Single Member while deciding the petition has mentioned that inquiry proceedings have not been conducted in accordance with the Standing Orders Ordinance, 1968. This finding is not correct as detailed inquiry proceedings as well as inquiry report, available on record. Since the charges levelled against the respondent were fully established against him, hence he was rightly dismissed from service by the appellants. No malafide on the part of the Enquiry Officer has been brought on record. Under the law this Commission cannot sit as appellate forum on the enquiry report when conducted in accordance with law, so this Commission cannot interfere with the findings of the Enquiry Officer. There is nothing on record to reveal that the inquiry proceedings have

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not been conducted according to Standing Order 15 of Industrial & Commercial Employment (Standing Orders) Ordinance, 1968. Hence the findings of learned Single Member are not sustainable in the eye of law.

11. For what has been discussed above, we accept the instant appeal, set aside the impugned order dated 23-05-2023 passed by the learned Single Member and dismiss the grievance petition of the respondent. There is no order as to costs. File be consigned to the record room after due completion.

Announced in Open Court

Dated:28-11-2023

(Abdul Rasool Memon)
Chairman

(Abdul Qayyum Khan)
Member

(Shabbir Hussain Awan)
Member

Madad