

NATIONAL INDUSTRIAL RELATIONS COMMISSION ISLAMABAD
FULL BENCH AT ISLAMABAD

Before: **Mr. Justice (F) Abdul Rasool Memon, Chairman**
Mr. Shabbir Hussain Awan, Member
Syed Noor ul Hassnain, Member

Appeal No.12A(73)/2022

Shahid Khan Vs Bank Alfalah etc

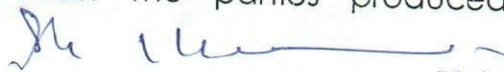
Present: Mr. Muhammad Safeen, Advocate for appellant
Mr. Riaz Hussain Haleem, advocate for respondent.

ORDER

03.01.2024 **Shabbir Hussain Awan, Member.**

Facts giving rise to the above titled appeal are that the appellant/petitioner filed a grievance petition by stating therein that he joined the respondent establishment as Document Management System Officer on 21-07-2014. During service he was issued a show cause notice on 18-02-2019 with the allegation of dishonesty and embezzlement regarding customer funds. Inquiry was conducted vide letter dated 26-02-2019, he denied all the allegations, even then he was dismissed from service. He served grievance notice but his grievance was not redressed ultimately, he filed the instant grievance petition.

2. The respondents resisted the petition through written reply by contesting the grievance petition on legal as well as factual grounds. The parties produced evidence in support of their


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respective versions. After hearing the arguments, the learned single Member dismissed the grievance petition vide impugned order dated 01-11-2022. Feeling aggrieved the instant appeal.

3. It is argued by the learned counsel for the appellant that neither any oral or written complaint was made against the appellant nor complainant whosoever, appeared before inquiry officer against the appellant; that the Manager of the concerned bank has also not been associated by the inquiry officer; that the impugned order has been passed without application of judicial mind; that the impugned order is outcome of non-reading and misreading of evidence; that the order of dismissal dated 19-03-2019 is against law, fact and circumstances, thus no more sustainable; that the learned Member has committed gross irregularity while dismissing the grievance petition; that the learned Member has ignored the material facts, thus, while allowing the appeal, the impugned order be set aside with the direction to respondent to reinstate the appellant with back benefits.

4. The learned counsel for the respondent, on the other hand, contends that the prayer of the grievance petition as well as that of appeal are silent regarding the inquiry during which the appellant was found guilty, followed by his dismissal from service. The appellant has not raised objection against the inquiry meaning



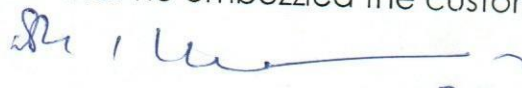
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thereby what was concluded by the inquiry officer stand admitted, therefore, the appeal being meritless, be dismissed; that the appellant committed embezzlement, as and when came into notice of the Branch Manager show cause notice was issued to him, domestic inquiry was conducted, the appellant was heard who ultimately, was found guilty and resultantly he was dismissed from service, therefore, the impugned order being well reasoned and according to the evidence merits no interference, hence, the appeal be dismissed.

5. Arguments heard, record perused.

6. Having given our decent considerations. Admittedly, the appellant was dismissed from service on the basis of ²any inquiry dated 04-03-2019 as he was concluded guilty of embezzling the customer funds dishonestly, we want to quote the conclusion of the inquiry officer in verbatim:-

"I conclude that the charges mentioned in the show cause notice are true and correct. During the inquiry it was observed that customer deposited the cash of Rs.725,000/- and Mr. Shahid Khan (Appellant) deposited only Rs.525,000/- which was settled through his uncle account by him on approaching customer. Hence, it is clear that he embezzled the customer funds dishonestly".


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7. It is manifest from what is referred above that the main stay of the termination order dated 19-03-2019 is the inquiry report. Therefore, if the inquiry report is found defective then the subsequent super structure will fall automatically because if the basis of a building collapse then the super structure subsequently built upon is bound to collapse. ¶

8. The domestic inquiry proceedings are available on the case file as Mark-A consisting of 07 pages which cannot be said to be proper, fair and impartial inquiry, due to the following reasons:-

First. Admittedly, there is no complaint either written or oral:

Secondly. The complainant whosoever, was not associated in the inquiry proceedings before the inquiry officer;

Thirdly. The appellant was not provided opportunity of defending himself nor his proper statement was recorded. Because the asking a few question by the inquiry officer does not fulfill the purpose of law;

Fourthly; It is still mystery as to upon whose complaint the inquiry was conducted.

Fifthly: the question of embezzlement and dishonesty is found to be shrouded in mystery because there is no solid evidence before the inquiry officer to stamp the

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appellant to be dishonestly embezzling the customer fund.

Since the inquiry dated 03-03-2019 is found floating in the occasion of dents, racks and legal defects, therefore, the dismissal from service of the appellant dated 19-03-2019 on the basis of same is no more sustainable. Therefore, the learned Member failed in properly evaluating the evidence available on the record. Thus, while allowing the appeal, the impugned order of dismissal of the grievance petition dated 01-11-2022 is hereby set aside. The respondents are directed to reinstate the appellant with all back benefits.

9. However, the bank authorities will be at liberty to initiate fresh inquiry against the appellant in accordance with law and after fair, free and impartial inquiry if he is found involved in embezzlement of customer fund in any way then he will be dealt with accordingly. There is no order as to costs. File be consigned to record room.

Announced in open Court

Dated:03-01-2024

(Abdul Rasool Memon)
Chairman

(Syed Noor ul Hassnain)
Member

(Shabbir Hussain Awan)
Member