**IN THE PESHAWAR HIGH COURT,**
**PESHAWAR,**
[Judicial Department].

**Writ Petition No.2574-P/2016**

Haider Ali,
Officer Grade-I PP. No.718
Islamic Banking Group,
The Bank of Khyber,
Head Officer State Life Building,
34-The Mall, Peshawar Cantt and four others.

Petitioner (s)

**VERSUS**

The Managing Director,
Bank of Khyber,
1st Floor, State Life Building,
34-The Mall, Peshawar Cantt Peshawar and others.

Respondent (s)

For Petitioners :- M/.S Shomail Ahmad Butt and Muhammad Khushdil Khan, Advocates.
For Respondents :- M/S Qazi Muhammad Anwar, SASC, Abdur Rauf Rohail, ASC and Muhammad Sohail Khan AAG.

Date of hearing: **18.06.2019**

## JUDGMENT

**ROOH-UL-AMIN KHAN, J:-** Petitioners, being employees of the Bank of Khyber **"respondents",** were dismissed from service vide different orders dated 15.04.2016, on about eight allegations, also signified in the dismissal orders, which they impugned through departmental appeals. During pendency of such appeals, the petitioners approached this Court under its constitutional jurisdiction through writ Petition No.2138/2016, which was disposed of vide order dated 07.06.2016, thereby directing the Departmental Authority

to decide the departmental appeals of the petitioners either way, strictly in accordance with law, through speaking order, as early as possible, but not later than twenty days. Complying the order (supra) of this Court, departmental appeals of the petitioners were disposed of in the form of dismissal, hence, the instant writ petition by the petitioners, wherein they seek the following relief:-

> **"It is therefore, humbly prayed that this Hon'ble Court may be pleased to:-**
> **i. Declare the impugned orders as illegal, without lawful authority, mala fide, unfair, unjust and against the principle of natural justice and be set-aside the same.**
> **ii. Direct the respondents to reinstate the petitioners into service of Bank with all back benefits.**
> **iii. Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioners."**

**2.** The instant writ petition came up for hearing, at first instance, before Division Bench of this Court on 25.07.2016, and comments of respondents No.1, 3 and 4, were called. On 09.05.2017, learned counsel for the respondents raised a preliminary objection qua maintainability of the petitions against the Bank of Khyber on the ground that "*Service Rules"* of the respondents-bank, being non-statutory, the petitioners cannot invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution. In this regard reliance was placed

on the judgment of this Court dated 03.06.2016, rendered in WP No.2983-P/2015 and judgment dated 17.10.2016, rendered in WP No.677-D of 2015**,** wherein it has been held that Rules of the respondents-Bank are non-statutory. However, in last para of the order of the same date, the Division Bench reached to the conclusion that the Rules are statutory, resultantly, passed the following order:-

> "At the very outset, the learned senior counsel for the respondents questioned the maintainability of the petition. He contended that the service rules of the respondent-bank being non-statutory, therefore, the instant petition is not maintainable. The learned counsel for the petitioner, on his turn, argued in favour of the maintainability of the petition. During the course of elaborate arguments addressed before us, the learned counsel for the respondents placed reliance on the judgments of this Court dated 03.06.2016 in WP No.2983-P/2015 and 17.10.2016 in WP No.677-D of 2015, whereby **both the Hon'ble Benches held the rules of the respondent-bank to be non-statutory.**
>
> **Since we have come to the conclusion that the rules of the respondent-bank are statutory, therefore, without seeking arguments on the merits of the case, we direct the office to place this petition before his lordship, Hon'ble the Chief Justice for constitution of a larger Bench to determine the issue".** (Emphasis supplied).

**3.** In view of the aforesaid backdrop, a Larger Bench was constituted and cases instituted against the Bank of Khyber, were clubbed and fixed before the larger Bench to give an authoritative verdict as to whether the employees' Rules of Bank of Khyber are statutory or non-statutory.

**4.** As the nature of controversy in all the writ petitions is different while preliminary objection in all is one and the same, wherefore through this single judgment, the preliminary objection shall be examined to draw a conclusion with palpable answer. So far as merits of each case are concerned, in case this larger Bench reaches to a conclusion that the writs are maintainable, merits of each case shall be discussed through a separate judgment in each writ petition except the instant writ petition, as its merit shall be discussed through the same judgment. Particulars of the connected writ petitions are given below:-

1. **WP No.2822-P/2018,**
   Sarmad Waseem Dar vs The President Bank of Khyber and others".

2. **WP No.879-P/2015.**
   Mst. Gul Raja Begum and another Vs Govt of Pakistan through its Secretary Finance and others"

3. **WP No.4064-P/2016**
   Usman Ayub and others Vs Bank of Khyber through its Managing Director and others"

4. **WP No.3141-P/2017**
   Syed Tariq Shah Vs Managing Director Bank of Khyber,

5. **WP No.4907-P/2017**
   Arif Ali Vs the Group Head HR, the Bank of Khyber etc.

**5.** We have heard the exhaustive arguments of learned counsel for the parties on the preliminary objection

and have gone through dissenting views of the two Benches of this Court formed in the abovementioned two sets of judgments/orders as well as the relevant law on the subject and the precedents referred to by the learned counsel. We have also heard arguments of learned counsel for the parties on merits of each case.

**6.** To determine as to whether the Rules of the Bank of Khyber are statutory or non-statutory, we deem it appropriate to, firstly, make recourse to the object and purpose of establishment of the Bank of Khyber (**BOK**), which was established through the Bank of Khyber Act, 1991 (***Act of 1991***). Preamble of the Act postulates the reasons for constitution of the Bank of Khyber for providing commercial banking and investment banking services in the Khyber Pakhtunkhwa so as to mobilize private savings and public funds for diverting the same to productive channels and ensure their availability; promote industrial, agricultural and other socio-economic processes through the active participation of private as well as public sectors in the province; help under-developed areas and create employment opportunities specially in the rural areas of the province, create a diversified and sound port-folio for utilization of otherwise idle fund and their investments in the existing as well as new ventures specially in the pioneering of high-tech, agro-based, export-oriented and engineering projects to ensure

maximum returns; to participate and seek the share of the Province in the capital market of Pakistan by way of subscription through the locally pooled resources in the leading stock exchanges of the country and eventually paving the way for the establishment of stock market in the province and it may in addition to commercial/conventional banking, develop and promote Islamic modes of banking in line with the policies, instruction and criteria as laid down by the State Bank of Pakistan for promotion of Islamic banking. Section 3 (g) of the Act defines **"Government"** which means the Government of the Khyber Pakhtunkhwa, whereas, section 4 says that the Bank is a body corporate having perpetual succession and a common seal and shall by name sue and be sued. According to section 8, **the Government shall be the major shareholder of the Bank,** but shall not, except for such time till shares of the Bank are floated to the public, hold more than fifty-one per cent of the shares issued by the Bank. Section 10 deals with general superintendence and direction of the affairs and business of the Bank which shall be entrusted to a "**Board",** which may exercise all powers and do all such acts and things as may be exercised or done by the Bank and are not by the Act expressly directed or required to be done by the Bank in annual general meeting. Section 11 speaks about composition of the Board i.e. the Board of Directors of the

Bank consists of nine Directors. Three Directors shall be elected in a special meeting of the shareholders, **whereas, fours shall be appointed by the Government.** The Managing Director appointed under section 12 of the Act by the Government is also one of the Directors. Similarly, one Director is to be appointed by the foreign/local institution by virtue of their share in the Bank.

**7.** The most important section of the Act, directly dealing with the controversy regarding maintainability of the instant writ petitions, is section 24 of the Act, which empowered the **Board** to make bye-laws not inconsistent with the Act and other matters enumerated therein. For the sake of convenience and ready reference section 24 is reproduced below:-

> **"24. Power to make bye-laws:-** The board may make bye-law not inconsistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act. This may include the manner for inviting share capital from the private and public sectors, laying down formats for Share Application Forms, Transfer Forms and other forms, procedure for Allotment of Shares, dealing with lost and defaced shares, transfer of shares, increasing of capital, cancellations, election of directors, quoraum, filing in casual vacancies of directors, their remuneration, recording of monthly, half yearly and annual accounts and book of account, secrecy, indemnity of Directors and employees, the Organogram, job descriptions ***and rules governing the employees*** and lending policies delegation of powers to Officers/Committees and other ancillary

> matters for smooth functioning of the bank." (**Emphasis supplied).**

In pursuance of power conferred upon the Board under the above-quoted section, the Board of Directors of the Bank has approved the Rules, namely, **"The Bank of Khyber Human Resource Manual 2009",** to govern the terms and conditions of the service of employees of the BOK. There is no cavil to a proposition that section 24 of the Act of 1991, empowered the Board to make bye-laws not inconsistent with the Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the Act. It is also undeniable fact that the dominant control and management under the Act of 1991, vests in the Government as is manifest from the composition of the Board. According to section 11 (b) of the Act, majority of the Directors are to be appointed by the Government, one of whom shall be the Additional Chief Secretary to the Government, Planning, Environment and Development Department, and another shall be the Secretary to the Government Finance Department, while the other two Directors shall be appointed for two years. Over all superintendence and directions of the affairs and the business of the Bank have been entrusted and vested in the Board. The Chief Executive i.e. the Managing Director of the Bank is also to be appointed by the Government. From the above, it is

manifest that section 8 describes the Government to be the main share holder in the Bank, while section 11 empowered the Government to appoint Directors for constitution of the Board, whereas, section 10 vests the power of general supervision and running all the affairs and business of the Bank, including power to make bye-laws and Rules governing the employees. Perusal of Preamble of the Act of 1991 coupled with a glance over sections 8, 11 and 12 will lead one to the irresistible conclusion that not only the Bank is creation of the Statute but effective and substantial role of the Provincial Government in its affairs and governing the business of Bank is more direct.

**8.** The moot question in the case is whether the Bank of Khyber falls in the definition of "Person" envisaged under Article 199 of the Constitution of Pakistan, 1973 or not?

At this juncture, it would be advantageous to reproduce sub-article 1(a)(i) and sub-article 1(c) of Article 199 of the Constitution:-

(i) Directing a **person** performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

> **1(c)** on the application of any aggrieved **person**, make an order giving such directions to any person or authority, including any government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter I of Part-II".

The term **"Person"** has also been defined in Article 199 (5) of the Constitution in the following manner:-

> **"Person"** includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan".

While dilating upon the term **"Person"** the august Supreme Court of Pakistan in case titled, **"Salah ud Din Vs Frontier Sugar Mill Ltd (PLD 1975 SC 244)** formulated a test fulfilling the following three conditions in order to consider it as **"Person"** performing function in connection with the affairs of the Government.

i. Function of the State including some exercise of the severing of public powers;
ii. Control of organization of person shall be substantially in the hand of Government; and
iii. The bulk of the fund is provided by the State.

On the touch-stone of the fulfillment of above test, the august apex Court declared the Aitcheson College as **"Person"** in case titled, **"Aitcheson College Vs Muhammad Zubair (PLD 2002 SC 326)**. Subsequently, the view taken by the august apex Court in **Salah ud Din's** case (supra) was reiterated by the august Court in the case titled, "**Pakistan International Airlines Vs Tanweer ur Rehman (PLD 2010 SC 676).** We have noted that in Salah ud Din's case (supra) it was argued that Service Rules framed by the Pakistan Red Crescent Society are statutory as these had been framed under section 5 of the Red Crescent Act, but the argument was repelled by the august Court by holding that Rules not approved by the Federal Government were non-statutory. The controversy with regard to approval of the Rules by the Government again came up before the Hon'ble Supreme Court in case titled, **"Shafique Ahmad Khan and others Vs NESCOM through Chairman, Islamabad and others" (PLD 2016 Supreme Court 377),** and it was held by the apex Court that where approval of the Rules is not the requirement of Statute, the Rules cannot be declared non-statutory. In Shafiq Ahmad Khan's case (supra) the hon'ble apex Court observed as under:-

> "Fact that certain Rules or Regulation were framed without the approval of the Federal Government was not the sole criteria to term them as non-statutory in nature. It was indeed

their nature and area of efficacy which were determinative of their status. Rules dealing with instructions of internal control or management were treated as non-statutory while those, whose area of efficacy was broader and were complementary to the parent statute in the matters of crucial importance were statutory. The Rules framed under sections 7, 9 and 15 of the Act fell in the latter category as they were not only broader in their area of efficacy but were also complementary to the parent statute in matters of crucial importance. It would rather be naïve and even myopic to equate the Rules of the Authority dealing with matters of crucial importance having so wide a scope and area of efficacy with the instructions meant for internal management and thereby depriving them for their statutory status. Although, said rules have not been framed with the intervention and approval of the Federal Government, but that would not prevent them from being statutory. First, because approval of Federal Government was not required either under section 9 or 15 of the Act; secondly because, all those who called the shots were already part of the Authority while framing the Rules, and thirdly because; the scope and area of their efficacy not only stretched beyond the employees of the Authority but overreached many other strategic organizations including nuclear and space related technologies systems and matters, as mentioned in sections 8 and 9 of

> the Act. Rules enacted and approved by members of the Authority under sections 7, 9 and 15 of the Act also did not require another approval of yet any other personage."

**9.** The language employed in section 24 is plain, clear and unambiguous, according to which the power lies solely in the hands of the Board to make/frame rules ***without any intervention or approval of any authority of the Government*** and this clearly reflects the intention of the Legislature. Had there been need of approval of the Rules by the Government or publication of the Rules in the Official Gazette, the Legislature could insert words **"subject to approval of the Government and publication in the Official Gazette"** in section 24 of the Act of 1991, but such is not the position. Section 24 prescribes its own procedure, according to which the draft statutes becomes enforceable upon its approval by the Board. Powers of making the Rules have been exclusively conferred upon the Board, therefore, are not subject to approval of the Federal Government or any other Authority. Perusal of section 24 of the Act of 1991 and the Rules framed thereunder reveal that these not only deal with the instructions of internal control or management but are boarder in spare and complementary to the parent statute in matters of crucial importance enumerated in section 24 of the Act of 1991. In identical situation, the Hon'ble Supreme Court in case titled, "**Muhammad Zaman and**

**others Vs Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others" (2017 SCMR 571)** has held that:-

> "Test of whether rules/regulations were statutory or otherwise was not solely whether their framing required the approval of the Government or not, rather it was the nature and efficacy of such rules/regulations. Court had to see whether the rules/regulations dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute in matters of crucial importance, in which even they would be statutory".

The aforesaid view has been reiterated by the Hon'ble Supreme Court in case titled, "**Pakistan Defence Officers Housing Authority Vs Mrs. Itrat Sajjad Khan and others" (2017 SCMR 2010)** in the following words:-

> "The test to gauge as to whether the service rules are statutory or not was laid down by this Court as far back as in the year 1984 in the case of the Principal Cadet College, Kohat and another Vs Muhammad Shoab Qureshi (PLD 1984 SC 170) by holding that unless rules of service of a statutory body are made or approved by the Government, such rules could not be regarded as statutory but mere instructions for guidance. However, in the case of Shafique Ahmad Khan vs NESCOM through Chairman, Islamabad (PLD 2016 SC 377), as well as in the case of Muhammad Zaman and others Vs Government of Pakistan (2017 SCMR 571), this Court while widening the scope of such criterion held that "**the test of whether rules/regulations are**

> **statutory or otherwise is not solely whether their framing requires approval of the Federal Government or not, rather it is the nature and area of efficacy which determine their status. Rules dealing with instructions for internal control or management are treated as non-statutory while those, whose area of efficacy is boarder and/or complementary to the parent status in the matter of crucial importance, are statutory.**" (emphasis supplied).

In case titled, **"Bahadar Khan and others Vs Federation of Pakistan through Secretary M/O Finance, Islamabad and others" (2017 SCMR 2066),** the Hon'ble apex Court after exhaustive discussion in light of its judgments has held that failure to have the notification published in the official gazette would not shear it off its statutory status. In the judgment (supra) the august Court has placed reliance on the judgment rendered in case of **Saghir Ahmad through Legal Heirs vs Province of Punjab through Secretary, Housing and Physical Planning Lahore and others (PLD 2004 SC 261)** in the words as follow:-

> "Even otherwise, the provisions of a statute for the publication or a notification in official Gazette are generally regarded by the Courts as directory and where their strict non-compliance does not provid for any consequences. The legal certainty also requires that ordinarily a statutory instrument should not be treated as invalid because of a failure on the part of public functionaries to publish it in the official Gazette. There may be many things done on the basis of such an instrument. It would seem unfortunate where these things held to be invalid if it were at some stage discovered that there had been a failure by a public

authority to go meticulously by the manner and mode of publication of an instrument or notification in the official Gazette. In the case of Multiine Associates Vs Ardeshir Cowasjee and 2 others (PLD 1995 SC 423) this court took the view that even if Karachi Building and Town Planning Regulations, 1979 were not published in the official Gazette under section 21-A(3) of the Sindh Buildings Control Ordinance, 1979, they could be construed and acted upon as regulations for the purpose of the said Ordinance. In Pakistan through Secretary Ministry of Defence and others Vs Late Ch. Muhammad Ahsan (1991 SCMNR 2180), the factual acquisition of land had not been denied and same had been acted upon for nearly 50 years and there was an airfield in the land for such a long time. The notice/notification although had been signed and issued to all concerned but had not been gazetted. In other words, the purpose of the publication in the ordinary sense was practically served almost contemporaneously when the acquisition took place and in fact it was more substantial publication insofar as the owners were concerned than if it would have been in the official Gazette. It was further observed that mere fact that publication in the Gazette was delayed would not invalidate the notification. A somewhat similar view was taken in Muhammad Siddique Vs Market Committee, Tandlianwal (1983 SCMR 785). In this case of Manzur ul Haq vs Controlling Authority, Local Councils, Montgomery and others (PLD 1963 SC 652) it was held by reference to the provisions of Article 26 of the Basic Democracies Order, 1959, and section 17 of the Municipal Administration Ordinance, 1960, that mere provision in a statute for notifying name of holder of office in Gazette was not a condition precedent to the holding of the office. In Chief Commissioner, Karachi vs Jamil Ahmad and another PLD 1961SC 145 the Court held that the provision in section 280(1) of the City of Karachi Municipal Act, 1933 relating to general election being notified in official Gazette was directory and not mandatory and a substantial compliance with

> that would be enough. In Regina Vs Sheer Metal Craft Ltd and another 1954 1 QB 586 Lord Streatfeild,J, took the view that "a statutory instrument, made by a Minister or other competent authority was valid and effective as soon as it was made, notwithstanding that the provisions of the Statutory Instruments Act, 1946, and the regulations, made (hereunder relating to the printing and issuing of statutory Instrument Act 1946 and the regulations, made (hereunder relating to the printing and issue of statutory instruments had not been complied with".

At the cost of repetition, it can be firmly stated that section 24 of the Act of 1991 and the rules framed thereunder not only deal with the instruction for internal control or management of the Bank but have broader and wide spread application to so many crucial internal and external matters of the Bank, enumerated in section 24 of the Act of 1991. Besides, as hitherto stated, the Bank of Khyber has been created under the Act of 1991, which shall be a body corporate having perpetual succession and a common seal and shall by the name sue and be sued as contemplated in section 4 of the Act. The Government holds 51% share in the Bank under section 8 of the Act, therefore, this Court can examine the acts of the Bank authorities in its constitutional jurisdiction under Article 199 of the Constitution in light of rationale of judgment of the Hon'ble apex court in case titled, **"Pakistan Defence Officer, Housing Authority and others Vs Lt. Col. Syed Jawaid Ahmad" (2013 SCMR 1707),** wherein it has been held that:-

> "Keeping in view the statutes which established and the functions of the appellants' authorities, and having considered in the light of "function test" we hold and declare that these are statutory bodies, performing some of the functions which are functions of the Federation/State and through the exercise of public power, these bodies create public employments. These bodies are therefore "persons" within the meaning of Article 199(1)(a)(ii) read with Article 199 (5) of the Constitution. If their actions or orders passed are violative of the Statute creating those bodies or of Rules/regulations framed under the Statute, the same could be interfered with by the High Court under Article 199 of the Constitution."

**10**. For what has been discussed above and deriving wisdom from the judgments (supra) of the august apex Court, we are firm in our view to hold that The Bank of Khyber is a statutory body having statutory Rules, therefore, is amenable to writ jurisdictions.

**11**. Adverting to merits of the instant writ petition, it has been averred in the writ petition that petitioners were the employees/officers of the respondents-bank. Initially, petitioner No.1 was appointed as Business Development Officer on contract basis in the year 2006. In the year 2009, his services were confirmed against the post of Officer Grad-III, followed by his promotion as Officer Grade-II in the year 2012 and Officer Grad-I in the year 2016. In addition, he was the President of the Bank Officers Associations. Petitioner No.2 was appointed as

Officer Grade-III in the year 1994 and promoted as Officer Grad-II and then as Junior Assistant President. Petitioner No.3 was appointed as Management Trainee Officer in the year 2005, promoted as Officer Grade-I, and then as Assistant Vice President-I. In addition, he was elected as senior Vice President of the respondent-Bank Officers Association. Petitioner No.4 was appointed as Junior Officer in the year 1994 and was finally promoted as Assistant Vice President-I. In addition, he too was the Vice President of the respondent-bank Officers Association. Petitioner No.5 was appointed as Management Trainee Officer in the year 2005, promoted as Officer Grade-II, then Officer Grade-I and finally as an Assistant Vice President-I. Also, he was the joint Secretary of BOK Officers Association.

Grievance of the petitioners is that all of a sudden, the respondent No.1, without giving them any show-cause notice or conducting inquiry or providing an opportunity of hearing, dismissed them from service vide impugned orders dated 15.04.2016, against which they filed departmental appeals before respondent No.3 as well as writ petition before this Court. Their writ petition was disposed off vide order dated 07.06.2016 whereby the Departmental Authority was directed to decide their appeals strictly in accordance with law through a speaking order, as early as possible, but not later than twenty days,

on receipt of the order. In compliance of this Court's order, the appeals of the petitioners were decided (dismissed) by the Appellate Authority vide orders dated 01.07.2016, hence, this writ petition, whereby the petitioners have questioned their dismissal orders as well as orders of the appellate Authority.

**12.** When summoned, the respondents contested the petition by filing para-wise comments refuting therein stance of the petitioners by asserting that the petitioners, having been found guilty of **"misconduct"** under the Bank's Service Rules & Policies, have been dismissed from service in accordance with law.

**13.** It appears from record that petitioners are seeking protection of **"Disciplinary and General Conduct Rules"** enumerated in Chapter-14 of the Human Resources Manual (Updated May 2015)" ***(to be referred hereinafter as the Rules)*** to the effect that no regular inquiry has been conducted against them and so they have been condemned unheard, whereas a major penalty in the shape of dismissal under the "Misconduct Stigma" has been imposed against them. We have gone through impugned stereotype orders vide which the petitioners have been dismissed from service with immediate effect on the charges of "Misconduct". Rule 14.3 of the Rules speaks about the grounds for proceedings under which an employee of the Bank ***shall*** be liable to be proceeded against under the

Rules if he is found, in the opinion of the Authority, to have committed any of the offences enumerated in rule 14.3 of the Rules, which also includes **"guilty of misconduct".** Misconduct has been defined under rule (k) of rule 14.2 of the Rules. Rule 14.4 of the Rules speaks about minor and major penalties. The major penalties include (i) reduction to a lower post or time-scale or to a lower stage in a time scale (ii) compulsory retirement; (iii) removal from service; and (iv) dismissal from service. Rule 14.6 provides a proper mechanism for initiation of proceedings against accused employee. For the sake of convenience and ready reference, these are reproduced below:-

> "**14.6 Initiation of Proceedings**:
>
> 1. If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient ground for initiating proceedings against a Bank Employee under these rules it **shall** either:-
>
> **(a)** Proceed itself against the accused **by issuing a show cause notice under the rule 14.7 and for reasons to be recorded in writing, dispense with inquiry.**
>
> **OR**
>
> **(b)** Provided that no opportunity of showing cause or personal hearing shall be given where:-
>
> **i.** The competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
>
> **ii**. A Bank employee is involved in subversive activities; or
>
> **iii**. It is not reasonably practicable to give such an opportunity to the accused; or

**c.** Get an inquiry conducted in to the charge or charges against the accused, by appointing an inquiry officer of an inquiry Committee, as the case may be under rule 14.11.

Provided that the competent authority shall dispense with the inquiry where:-

i. A Bank employee has been convicted or any offence other than corruption by a court of law/under any law for the time being in force.

ii. A Bank employee is or has been absent from duty without prior approval of leave.

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

Issue the charge sheet or statement of allegation or the show cause notice, as the case may be by himself or through the Officer Authority by him."

In this case, as mandated under rule 14.6(a) of the Rules, neither any show-cause notice has been given to the petitioners nor any reason has been recorded in writing to dispense with the inquiry. Rule 14.7 of the Rules speaks about the procedure where inquiry is dispensed with. The same is reproduced below:-

**"14.7 Procedure where inquiry is dispensed with:-**

If the competent authority decides that it is not necessary to hold an inquiry against the accused under rule 14.6**, it shall**

a) Inform the accused **by an order in writing, of the grounds for proceedings against him, clearly specifying the charges therein, along with**

**apportionment of responsibility and penalty or penalties propose to be imposed upon him;**

**b) Give him a reasonable opportunity of showing cause against the proposed action within seven days of receipt of the order or within such extended period, as the competent authority may determine;**

c) On receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether the charge or charges have been proved against the accused or not;

Provided that after receipt of reply to the show cause notice from the accused, the competent authority shall decide the case;

**d) Afford an opportunity of personal hearing before passing any order of penalty under clause (f). If it is determined that the charge or charges have been proved against him;**

e) Exonerate the accused by an order in writing, if it is determined that the charge or charges have not been proved against him'

f) Impose any one of more penalties mentioned in rule 14.4 by an order in writing, if the charge or charges are proved against the accused.

Provided that where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the penalty of recovery, if any. (**Bold and underlines supply emphasis).**

**14.** It appears from record that that while issuing the impugned dismissal orders of the petitioners, the mandatory provisions of rule 14.7 have not been complied with. By use of word **"shall"** in the rule ibid, the competent authority was bound to inform the accused by an order in writing of the grounds for proceedings against them, clearly specifying the charges therein along with apportionment of responsibility and penalty or penalties proposed to be imposed upon them. Similarly, under clause (b) of rule 14.7, the competent authority was bound to provide an opportunity to the petitioners to show cause against the proposed action within seven days coupled with an opportunity of personal hearing before passing any order of penalty under clause (f). The petitioners have been awarded major penalty by one stroke of pen without proceedings them in accordance with the rules ibid, which is worst example of injustice.

**15.** For what has been discussed above, we are firm in our view to hold that the impugned orders of the respondents-bank vide which the petitioners have been dismissed from services, suffer from inherent illegalities, irregularities and defects, therefore, are not sustainable in the eye of law. Resultantly, this writ petition is allowed. The impugned dismissal orders of the petitioners dated 15.04.2016 and orders dated 01.07.2016 of the Departmental Appellate Authority are hereby set-aside.

The respondents are directed to re-instate the petitioners in the service. However, the petitioners shall not be entitled for any back benefit as during the period of their dismissal, they have not served the respondents-Bank. The respondents-Bank may proceed against the petitioners but strictly in accordance with the mandate of rule 14.7 (Chapter-14) of the Bank of Khyber Employees Service Rules 2012. Order accordingly.

***Announced:***
***18.06.2019***

*Siraj Afridi P.S.*

**JUDGE**

**JUDGE**

**JUDGE**

**Larger Bench consist of:-**
**Hon'ble Mr. Justice Rooh ul Amin Khan;**
**Hon'ble Justice Musarrat Hilali, and**
**Hon'ble Mr. Justice Muhammad Ibrahim Khan.**