

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

Writ Petition No.2824-P/2018

Amjad Ali Arbab,
 Son of Niaz Muhammad Arbab,
 Resident of Niazabad, near Police Public School,
 Jamrud road, Peshawar.

Petitioner

VERSUS

Government of Khyber Pakhtunkhwa,
 Through Chief Secretary,
 Civil Secretariat, Peshawar and others.

Respondents

For Petitioner :-	<u>Qazi Jawad Ehsanullah, ASC.</u>
For Respondents:-	<u>Mr. Abdur Rauf Rohail, Advocate for</u> <u>BOK.</u> <u>Qazi Muhammad Anwar, SASC for</u> <u>added respondent No.11.</u> <u>Mr. Wiqar Ahmad, AAG for</u> <u>Provincial Government.</u>

Date of hearing: **20.11.2018.**

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Petitioner Amjad Ali Arbab, hailing from District Peshawar, claiming to be a professional banker having experience of around three decades in the development and commercial banking, by invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (“**the Constitution**”), seeks issuance of an appropriate writ to the effect that entire

process of selection/appointment against the vacant position of the Managing Director (“**MD**”) Bank of Khyber (“**BOK**”), carried out by official respondents, being based on *mala fide* and discrimination may be quashed/set-aside and that the respondents be directed to re-advertise the said vacant position and re-initiate and finalize the process of appointment, fairly, in accordance with law and without any bias or prejudice to the petitioner or any other candidate.

2. The petitioner alleged that a vacant position of **MD BOK** was advertised by the Finance Department Government of Khyber Pakhtunkhwa through newspapers, wherein the last date for submission of applications was 06th October, 2017. The petitioner being equipped with the prescribed qualification, applied for his appointment against the said post. From the combating candidates, the candidates including the petitioner, having the requisite qualifications and experience were shortlisted by the Selection Committee (**the Committee**). The petitioner was called for interview held on 30.01.2018, but was taken aback by un-listing him by virtue of some charges allegedly received by the Chairman of the Committee, through his cell phone. The petitioner alleged that the episode of said charges was narrated and highlighted by one of the

Committee members, namely, Sheryar Ahmad/respondent No.7 in his letter dated 02.02.2018, addressed to members of the Committee as well as its Chairman. In his letter, respondent No.7, had mentioned that after interview of the petitioner, the Chief Secretary/Chairman virtually prejudiced the Committee by letting an unscholarly exaggerated story; read from no official record but from his mobile phone disclosing charges against the petitioner, and that too, in third meeting of the Committee, which was sufficient proof of *mala fide* on the part of the Chairman, whereby the Committee was successfully manipulated and hold the balance of power. It was urged that respondent No.7 apprised the Committee that due to information provided to the Interview Panel on most relevant and crucial occasion, by non-else, but the Chairman, the petitioner's candidature was dropped, although his interview and qualifications were capable enough for his consideration against the questioned post. Petitioner asserts that the letter of respondent No.7 was replied late by the Government on 07.03.2018, which was nothing but an eye wash. However, respondent No.7 responded to it to the effect that he met representative of the government of Khyber Pakhtunkhwa at Serna hotel, Islamabad and perused

the entire documents relating to the charges leveled against the petitioner and noticed a letter written by the Bank of Khyber to State Bank of Pakistan, wherein it had been confirmed that there was nothing against the petitioner on the bank's record. This clearance from Bank of Khyber helped in clearing the fit and proper test of the petitioner, resultantly, he was appointed as Director on the Board of a microfinance Bank, regulated by the State Bank of Pakistan. Based upon this conclusive documentary evidence, respondent No.7, responded that statement of Chairman of the Committee against the petitioner was totally inaccurate, however, remarks and recommendations of respondent No.7 to revisit interview assessment of the petitioner, were given a deaf ear by the Committee. Petitioner alleged that official respondents with *mala fide* intention are going to finalize the selection process by excluding him from the run in an unfair and discriminatory manner. He has learnt that the Committee has recommended someone else and its recommendations have been approved by respondent No.1 and the matter has now been sent to the State Bank of Pakistan for "fit and proper test". Petitioner claims that, correspondence in between respondent No.7 and the Provincial Government was sufficient to

prove that he had not been treated fairly, evenly and justly, hence, requested that illegal actions of the official respondents whereby his fundamental rights, as envisaged in the Constitution have been violated, may be struck down.

3. The petition came up for hearing for first time on 31.05.2018, on which date comments of respondents No.1 and 2 were called for 13.06.2018. Meanwhile, status quo was ordered to be maintained. During pendency of the writ petition, one Saif-ul-Islam son of Noor Ahmad Noori, (candidate recommended by the Committee for appointment against the questioned post) submitted CM No.1525-P/2018, for his impleadment in the panel of the respondents in the writ petition. His application was allowed, resultantly, he was arrayed as respondent No.11 vide order dated 04.09.2018.

4. The official respondents as well as respondent No.11, contested the writ petition by filing Para-wise comments, wherein they besides raising variety of objections legal as well as factual, strongly rebutted the claim of the petitioner. According to their comments, entire process of appointment against the questioned post was fair and transparent and in accordance with the prescribed and structured criteria, duly approved

by the Competent Authority. They have further asserted that no doubt respondent No.7 had addressed letter dated 02.02.2018 to the Committee to revisit interview assessment of petitioner, however, in a meeting dated 06.04.2018 of the Selection Board, he withdrew his aforesaid letter and signed minutes of the meeting dated 06.04.2018 wherein respondent No.11, was recommended for appointment against the questioned post, hence, sought dismissal of the instant writ petition.

5. Having heard the arguments of learned counsel for the parties, it appears from the record that official respondents have not denied advertisement with regard to appointment against the vacant position of MD BOK. They also admit that in pursuance of the said advertisement, the petitioner along with others applied against the questioned post. Grievance of the petitioner is that his candidature was dropped by the official respondents with *mala fide* intention. He has also questioned the entire process of appointment against the questioned post, on the ground that notification, on the basis of which, the process of recruitment has been carried out, has no legal backing as it has not been issued by the Competent Authority and that there was no structured mechanism and procedure for

appointment against the questioned post, therefore, the entire process of appointment be declared as null and void and post in question be re-advertised.

From the arguments advanced at the bar, we have formulated the following points for determination:-

- i.** Whether Notification No.F.No. 1-1(F/L)FD/2017/Vol-VII dated 23.10.2017, on the basis of which entire process of recruitment against the questioned post have been carried out, has been issued by the Government/Competent Authority as provided under Article 129 of the Constitution?.
- ii.** Whether there was no structured mechanism or procedure for appointment against the questioned post, if yes, what would be the effect of entire process of appointment?
- iii.** What would be the effect of non-participation of one of the members of the Selection Committee in the selection process?.
- iv.** Whether the entire Committee was bias and having mala fide against the petitioner?

6. There is no cavil to the proposition that under the Bank of Khyber Act, 1991, the Government of Khyber Pakhtunkhwa, is vested with the powers to appoint Managing Director of the Bank of Khyber, for a period not less than 03 years, who shall be a senior professional Banker, having not less than twenty (20) years experience, on such terms and conditions as the Provincial Government may determine. Article 129 of the Constitution of Islamic Republic of Pakistan, 1973, defines government as under:-

“129. (1) Subject to the Constitution, the executive authority of the Province shall be exercised in the name of the Governor by the Provincial Government, consisting of the Chief Minister and Provincial Ministers, which shall act through the Chief Minister.

(2) In the performance of his functions under the Constitution, the Chief Minister may act either directly or through the Provincial Ministers.”

In case titled, **“Messrs Mustafa Impex, Karachi and others vs The Government of Pakistan through Secretary Finance, Islamabad and others” (PLD 2016 Supreme Court 808)**”, the Hon’ble apex court has observed that Government, in its normal connotation, was equivalent to the term “Executive” and that the Cabinet was a composite concept and its components were the Prime Minister and the Federal Ministers.

7. On the measures and criterion mentioned above, we searched entire record of the case with valuable assistance of learned counsel for the parties, which reflects that on expiry of service tenure of earlier Managing Director, namely, Mr. Shams-ul-Qayyum, the post of Managing Director fell vacant on 30.09.2017. The Secretary Finance Department, Government of Khyber Pakhtunkhwa, submitted a draft summary to the Chief Minister with a request that the Finance Department may be allowed to initiate process of recruitment against the vacant post of Managing Director, BOK, as provided under section 12 of the Bank

of Khyber Act, 1991. The summary was approved by the Chief Minister on 17.08.2017, consequent whereupon, the questioned post was advertised in leading National and International Urdu and English newspapers. Another summary in respect of **selection criteria**, framed for short listing the candidates, was submitted to the Chief Minister which was also approved. The selection criteria was as under:-

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| i. Academic Qualification | 06 marks. |
| ii. Professional Qualification and course attended related to core banking i.e. Credit/Tresury/Operation. | 04 marks. |
| iii. Professional experience | 20 Marks |
| iv. Interview. | 20 Marks |

The Competent Authority vide impugned notification dated 23.10.2017, constituted a Selection Committee to evaluate applications of the candidates, to conduct interview and to make recommendations for selection of the prospective Managing Director the Bank of Khyber. The said Committee was comprising of the following:-

1.	Chief Secretary, Khyber Pakhtunkhwa	Chairman
2.	Additional Chief Secretary, P&D Department/Chairman Board of Director, Bank of Khyber.	Member.
3.	Finance Secretary, Khyber Pakhtunkhwa	Member.
4.	Senior Member Board of Revenue Khyber Pakhtunkhwa	Member
5.	Dr. Shahid Hassan Siddiqui	Member.
6.	Chief Manager, State Bank of Pakistan	Member.
7.	Mr. Shaharyar Ahmad, Director Bank of Khyber	Member.

The Committee in its meeting held on 10.11.2017, initially, scrutinized applications of 37 candidates, against the prescribed criteria, and segregated 22 as **ineligible** and 15 as **eligible**. In the second round, the Committee scrutinized the aforesaid 15 shortlisted candidates and bifurcated **07** as **ineligible** and **08** as **eligible**. In the meantime, on certain observations of the State Bank of Pakistan, the Committee was restructured as below:-

1.	Mr. Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa	Chairman
2.	Mr. Shahzad Khan Bangash, Additional Chief Secretary, P&D Department/Chairman Board of Director, Bank of Khyber.	Member.
3.	Mr. Shakeel Qadir Khan, Finance Secretary, Khyber Pakhtunkhwa	Member.
4.	Mr. Zafar Iqbal, Senior Member Board of Revenue Khyber Pakhtunkhwa	Member
5.	Mr. Shaharyar Ahmad, Director Bank of Khyber	Member.
6.	Mr. Zia ur Rehman, Ex-Finance Secretary	Member.
7.	Mr. Shahid Hassan Siddique	Member

8. From the above position, it is manifest that the Selection Committee was properly constituted by the Competent Authority i.e. the Provincial Government.

9. Before examining the argument and prayer of learned counsel for the petitioner regarding quashment of selection process and issuance of a writ qua re-initiation of the selection process, we, may at the very outset observed

that this Court while considering the process of the Selection Committee, cannot sit as a Court of Appeal having limited scope to interfere and to settle that either selection is actuated with *mala fide* or statutory or settled provisions have not been followed by the Committee. In the case in hand, it is manifest from meeting of the Selection Committee that eight eligible candidates including the petitioner were examined and interviewed one by one and marks were awarded to each candidates, by each member of the Committee including its Chairman on the proforma devised in this regard. After an interview, a consolidated proforma containing qualification, professional qualification, professional experience and interview marks, awarded by Chairman as well as all members of the Committee, was submitted for signatures. It was made a free confusion and ambiguity from the record notes of minutes of the meeting that before submitting the consolidated proforma to the Chairman, one of the members, namely, Mr. Shaharyar Ahmad/respondent No.7, returned the proforma with a request that the Committee may revisit interview assessment process owing to certain allegation against one of the candidates i.e. Amjad Ali Arbab, the petitioner. Since, his letter was addressed to the Chairman as well as

members of the Committee, but none of them agreed with his request on the ground that the Committee in its meeting held on 05th April, 2018, has deliberated on overall proceedings and has observed that in the previous meeting held on 30th January, 2018, the Committee has already assessed the candidates in an elaborate interview session, focusing primarily on their banking experience and expertise, leadership and decision making competencies, strategic vision and progressive attitude, on the basis of which, interview marks had been awarded to them and **no adverse marks** have been given to any candidate on the ground of any allegation, therefore, request of respondent No.7 to revisit interview assessment of the petitioner, was turned down, to which respondent No.7 agreed, resultantly, he withdrew his letter dated 02.02.2018. The Selection Committee, unanimously decided to propose a panel, based on scores given on 30th January, 2018. A summary was submitted to the Chief Minister for approval to the effect that as per recommendations of the Selection committee, the Finance Department has proposed for placing the matter before the Provincial Cabinet for appointment of Mr. Saif ul Islam who has achieved highest score. It was also recommended that candidature of Mr. Saif ul Islam, if approved will be sent

to the State Bank of Pakistan for “fit and proper test”. In case of his failure to clear the test, Mr. Muhammad Shahbaz Jameel, a candidate on 2nd position, will be considered as an alternative selectee. After approval of the said summary by the Chief Minister, it was placed before the Provincial Cabinet and the Cabinet in its decision dated 11.04.2018, approved the same.

10. The nut-shell of the above discussion led this Court to the conclusion that procedure adopted by the Selection Committee, cannot be found to be arbitrary or in any way discriminatory or illegal. As observed in the preceding paragraph, mere letter of one of the members of Selection Committee, having reservations about disclosing certain allegation against one of the candidates will not be sufficient to give power and jurisdiction to this Court to set as an Appellate Authority over the Selection Committee. It is settled law that one has to give credit to the selection committee for making assessment and it shall not be subjected to appeal. Taking the overall proceedings conducted by the Selection Committee led one to the conclusion that at every occasion, the past performance i.e. qualification, experience, professional skill of the candidates have been evaluated. Over and above, the selection process has

been placed before the Government of Khyber Pakhtunkhwa which was scrutinized and approved, hence, recommendations of the Selection Committee being approved by the Provincial Government, cannot be set-aside or vitiated on the ground of dissenting note of one of the members of the Selection Committee, who has otherwise awarded highest marks to the selectee/ approved candidate than the petitioner. It also cannot be controverted that the Selection Committee comprising of experts has selected the added respondent after going through all the relevant material before it. In such a situation, this Court would not like to sit as an Appellate Authority, nor will prefer to play the role of Selection Committee.

11. In view of the above facts and circumstances supported by documentary proof, we are of the considered view that all the recruitment process right from inception till finalization have been conducted by the official respondents in accordance with the criteria laid down by the Provincial Government for appointment against the post of the Managing Director Khyber Bank and has rightly approved by the Competent Authority i.e. the Government viz the Chief Minister and its Cabinet.

12. Adverting to the next point of *mala fide* on the part of the official respondents in the process of appointment as alleged by the petitioner, it appears from record that in the short-listed candidates, respondent No.11 by securing 38.3 marks out of 50, was on top, while petitioner Amjad Ali by securing 29.7 marks out of 50, was figured at S.No.5 of the said list. It is to be noted that respondent No.7, has given 13 marks in interview to respondent No.11 and 10 marks to the petitioner. Besides, respondent No.11, three other candidates are on higher positions than the petitioner, that is why Mr. Muhammad Shahbaz Jameel at S.No.2 of the short-listed candidates has been recommended as alternate candidates in case of non-approval of candidature of respondent No.11. Admittedly, letter dated 02.02.2018, addressed by respondent No.7 to the Selection Committee has been withdrawn by him in the next meeting of the Selection Committee held on 5th April, 2018, wherein, the Selection Committee including respondent NO.7, unanimously agreed and proposed a scores basis panel. Resultantly, summary with regard to appointment of respondent No.11 (added respondent) was submitted to the Chief Minister, which after his approval was sent to the Provincial Cabinet. As such, mere allegations are too farfetched to render

the entire selection process invalid, on the ground of so called *mala fide*. Sharing information by the Chairman from cell phone with members of the Committee, without any unfounded remarks, is purely flight of imagination. The petitioner has failed to show any *mala fide* on the part of respondents or any discriminatory treatment meted out to him. His candidature has not been dropped due to the episode as alleged by respondent No.7 in his letter dated 02.02.2018, rather, as per his merit position, which was low not only than respondent No.11 but other candidates.

13. So far as question of appointment on the questioned post without any structured mechanism or procedure is concerned, as stated earlier, proper criteria was formulated and approved by the Competent Authority, on the basis of which, credentials and experience of the candidates including the petitioner, were assessed and determined. Besides, the eligibility criteria and terms for appointment have been given wide publication in different daily newspapers. The petitioner having low merit position determined on the basis of said criteria, was not recommended for appointment.

14. As regards effect of non-participation of one of the Committee member in the process of selection, the

Committee was consists of 07 members including the Chairman. Majority of the members i.e. 06 have participated in the process and have unanimously recommended respondent No.11 for appointment against the questioned post. One of the members could not participate due to his personal inability, therefore, mere non-participation of one of the members which has not prejudiced the petitioner, would not vitiate the entire process of recruitment.

15. For what has been discussed above, this writ petition being meritless is hereby dismissed.

Announced:

20.11.2018

Siraj Afridi P.S.

JUDGE

JUDGE