

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.3130 of 2020**

Zahir Shah  
Versus  
The President Islamic Republic of Pakistan etc.

Petitioner by:	Khawaja Muhammad Arif, Advocate
Respondents No.1&2 by:	Mr. Atiq ur Rehman Siddique, AAG
Respondents No.3&4 by:	Mr. Muhammad Umer Khan, Advocate
Date of hearing:	<b><u>14.03.2022</u></b>

**Sardar Ejaz Ishaq Khan, J:** The petitioner Zahir Shah assails his compulsory retirement from service qua major penalty by the respondent Pakistan International Airlines Corporation Limited (PIAC), the order of a single member of the National Industrial Relations Commission (NIRC) sending him away to seek recourse before the Ombudsman, the order of the Federal Ombudsman for Protection against Harassment of Women at the Workplace dismissing his appeal for being time-barred, and the order of the President dismissing his representation against the Ombudsman's order for the same reason.

2 The petitioner was employed as a pantry man with PIAC since 2003. He was absorbed permanently in PIAC in 2008. On 08.03.2017, he received a show cause notice (SCN) alleging sexual harassment of a female employee sourced by PIAC from a contractor. He was accused of clutching the female employee's shoulder while in the office van. The SCN clubbed the charges under two distinct legal frameworks, one under the *Protection Against Harassment of Women at the Workplace Act 2010 (2010 Act)* and the second under clauses 75 (ar) and (e) of PIAC Employees (Service and Discipline) Regulations, 1985 (**Service Regulations**), which read as follows:

*75(ar): "Any act of sexual harassment or insult to the modesty of a female employee".*

75(e) "*Impertinence, insubordination, disorderly indecent behavior intemperance.*"

3 Being a resourceless pantry man, he wrote a hand written basic reply to the SCN claiming that he slipped while boarding the van (ergo, scrambled for support landing his hand unwittingly on the female's shoulder) due to his fractured leg which made him walk (and climb the van) with a crutch, that there had never been any such incident nor complaint in the past (15 years of employment), that he had been travelling in the PIA staff van for more than a year by then, and that he was a father of a daughter and had sisters and he could never imagine to commit an act of sexual harassment. His reply has a hand written note by his superior that the reply was found unsatisfactory, directing to proceed with disciplinary action.

4 On 20.04.2017, he received a notice of inquiry intimating him that *an inquiry officer* had been appointed to inquire into the allegations against him, asking him to appear before the inquiry officer. His reply to the inquiry officer is also a hand-scribbled short note (what more could be expected from a pantry man without the resources to engage a lawyer) reiterating the reply to the SCN he gave earlier. He was given the chance to cross-examine his accuser, and not being trained in the art of cross-examination as a lawyer would, he did not do a well enough job. (It is noteworthy that PIAC didn't attach the full record of cross-examination and attached only the answer to one question, reading which it is obvious that there were preceding questions and answers that are apparently withheld from the record.)

5 A one-pager inquiry report surprisingly followed the same day as the notice of inquiry, that is, the inquiry report is also dated 20.04.2017 (a remarkable and unparalleled efficiency that is not witnessed in PIAC's flight operations). It was signed by the inquiry officer, and recommended action under the Service Regulations only. The inquiry report relied on the statements of the petitioner, the complainant, and the van driver. The van driver could be considered 'independent'. However, his statement is reflected in one sentence only stating that "*the van driver confirmed that the incident happened during transit*", which is quite ambiguous, for it neither denies nor affirms the petitioner's version of an accidental occurrence. An impartial inquiry officer would be expected to focus not on

just the incident, which was never denied by the petitioner, but whether it was accidental or deliberate. The above factors leave one with no little misgiving as to the impartiality of the entire exercise. The petitioner then received the order dated 02.05.2017 of his compulsory retirement from service, referring to the so-called “comprehensive” inquiry finding him guilty (**Retirement Order**).

6 Notwithstanding that the inquiry report recommended action under clauses 75(ar) &(e) of the Service Regulations only – and this is important - the Retirement Order added the violation of the 2010 Act too as an added ground. As would become clear, this flip flop between two different legal regimes left the petitioner in a quandary as to the appellate forum available to him.

7 He filed a grievance petition under section 33 of the Industrial Relations Act 2012 before the NIRC. The order of the single member NIRC notes the PIAC’s counsel’s contention at paragraph 3 that the petitioner was awarded punishment under the 2010 Act, which was a special law and the punishment order was not appealable before NIRC. It is key to note that PIAC did not take the position that the petitioner was also punished under the Service Regulations (and neither did the single member NIRC bother to look at the record) per the recommendations of the inquiry report, clubbed later with the charge under the 2010 Act under the Retirement Order. NIRC dismissed his grievance petition taking the view that the 2010 Act was a special law, and the remedy thereunder for the petitioner lay under section 6 of the 2010 Act before the Ombudsman. NIRC’s order makes no mention of the Retirement Order premised equally under the Service Regulations.

8 The poor fellow went before the Ombudsperson for Protection against Harassment of Women at Workplace, where he was sent packing stating that he had come too late and his appeal had become time barred while he was seeking redress from NIRC. As the Retirement Order was passed on 02.05.2017, his appeal before the Federal Ombudsman filed on 26.09.2019 was hopelessly time barred given that under section 6 of the 2010 Act the appeal had to be filed within 30 days. It is again noteworthy that the Federal Ombudsperson took into account only the punishment

under the 2010 Act, which is all he could do anyway. The petitioner's representation before the worthy President was also dismissed for the same reason of being time barred.

9 The record shows that PIAC took divergent positions before each of the appellate forums, which PIAC's counsel seeks to defend by saying that the relevant clauses of the Service Regulations and the relevant provisions of the 2010 Act are *pari materia*. They may well be, but the doctrine of *pari materia* is one for construction and interpretation, and its application ends where the specific statutory requirements and the appellate forums diverge.

10 The inquiry under the 2010 Act can only be done by an *inquiry committee* and not by a single inquiry officer. Section 3(2) of the 2010 Act stipulates that the inquiry committee shall consist of 3 members, with at least one woman member. Section 4 provides a procedure for holding inquiry, and that too only by the inquiry committee. The findings and recommendations to the competent authority can be submitted only by the inquiry committee, and section 4(5) provides that the competent authority shall impose a penalty recommended by the inquiry committee.

11 One fails to see how an inquiry conducted in the instant case by a single inquiry officer for the purposes of the 2010 Act meets the mandatory statutory requirements under the 2010 Act. The entire inquiry by a single inquiry officer was void ab-initio for the purposes of the 2010 Act, and the Retirement Order could not add the charge under the 2010 Act without an inquiry by an inquiry committee of 3 members with one woman member. Accordingly, the charge of a violation of the 2010 Act in the Retirement Order had to be discarded altogether. Resultantly, the NIRC could not have declined jurisdiction – on the urging of the PIAC's counsel – that the Retirement Order was issued based under a special law, the 2010 Act. An appeal lay against the NIRC order, but a pantry man with insufficient resources was given the wrong cue by a judicial forum – if there was ever any instance where the maxim *actus curiae neminem gravabit* were to apply with full force, then this is the one, for NIRC did not at all take the pain to review the record and the 2010 Act relying on which its jurisdiction was challenged. The charges under the 2010 Act therefore must be excised

from the Removal Order, leaving only the charges under the Service Regulations for consideration.

12 The Service Regulations under regulation 78(6) envisage inquiry by a single officer or by an inquiry committee. The appointment of an inquiry officer to probe into the charges under clauses 75 (ar) and (e) of the Service Regulations was therefore valid. However, the inquiry itself was not, for the reasons stated in paragraph 5 above and hereinafter. It is trite law that an inquiry ought to be conducted above board, especially where a stigma attaches to the accused as a result that shatters his further employment prospects. An inquiry report that draws an adverse inference from a single sentence which can be interpreted equally to the benefit of the accused is neither transparent nor a speaking order – see Government of Pakistan through Director-General, Ministry of Interior, Islamabad and others versus Farheen Rashid (2011 SCMR 1), where the Hon'ble Supreme Court held that public functionaries are bound to decide cases of their subordinates after application of mind with cogent reasons. This requirement becomes all the more imperative where the result of the inquiry is a stigma attached to the accused. I am not to conclude that the absence of any other allegation of sexual harassment in his 15 year service career is to be taken in and of itself of absolving him of the allegations, but I would certainly take the view that the inquiry report on a plain reading thereof does not inspire confidence that it was carried out and concluded taking a fair and unbiased approach.

13 When the charges are confined to the violation of Service Regulations, then, prima facie, NIRC's jurisdiction was attracted. As noted earlier, NIRC was misled and let itself be misled by PIAC's stance before it that the petitioner was dismissed under a special law. The conduct of PIAC based on its inconsistent stances taken in the SCN, the inquiry report, the Retirement Order and before the NIRC is the cause for the travails faced by the petitioner, that left the poor pantry man in a quandary as to whether his appellate recourse lay before the Ombudsman or before the NIRC. PIAC must bear the consequences therefor: *allegans contraria non est audiendus* (he is not to be heard who alleges things contradictory to each other). An

appeal is a valuable right and it is not to be confounded by the respondent taking inconsistent positions.

14 Before concluding, I deal with the submissions of the learned counsel for PIAC that the Service Regulations are non-statutory and a writ does not lie to grant relief to the petitioner. *Firstly*, the petitioner did not come directly to this Court against the Retirement Order, but was driven here by the President's order on representation against the Ombudsman order, which in turn was the culmination of PIAC misleading NIRC on the premise of an illegal and void-ab-initio inquiry for the purposes of the 2010 Act. *Secondly*, the existence of non-statutory rules is not a bar to the exercise of writ jurisdiction where the act complained of emanates from a breach of the rules of natural justice. The Hon'ble Supreme Court granted relief to the petitioner in Pakistan Defence Officers Housing Authority vs. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010) despite finding that DHA's service regulations were non-statutory where breach of natural justice was patent, and it is settled law that the principle *audi alteram partem* is not confined just to a hearing, but entails a hearing with absence of bias and trial by a competent tribunal, which, for the reasons aforesaid, were lacking in the instant case.

15 The cumulative effect of the foregoing circumstances makes this a plain and clear case of a denial of right to a fair trial and due process to the petitioner, violating his fundamental right under Article 10-A of the Constitution. It is trite law that when an initial order or act relating to initiation of proceedings was contrary to law then all subsequent proceedings and actions taken thereon would have no basis and would fall - Muhammad Haleem and another versus General Manager (Operation) Pakistan Railways, etc. (2009 SCMR 339). The inquiry report violates section 24-A of the General Clauses Act 1897 for failing to give adequate reasons for the conclusion reached therein and is liable to be set aside. It is also settled law that there are 4 ingredients of "due process", namely, (1) notice of proceedings, (2) reasonable opportunity to defend, (3) impartiality of adjudicatory tribunal, and (4) competent jurisdiction of tribunal - see Ishtiaq Ahmed vs Honble Competent Authority (2016 SCMR 943). For the reasons aforesaid, the Removal Order missed out on ingredient no. (4), and

the inquiry report missed out on ingredient no. (3). Further, ingredient no.(2) stood denied to the petitioner due to the conduct of PIAC before NIRC. A Division Bench of this Court held in Pakistan Sugar Mills Association (PSMA), etc. vs. Federation of Pakistan through Secretary, Cabinet Division, etc. (PLD 2021 Islamabad 55) as follows:

The jurisdiction of this Court under Article 199 of the Constitution is extraordinary, discretionary and equitable in nature and is to be exercised in the larger interest of justice. While exercising this jurisdiction, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. It can be exercised *ex debito justitiae*, i.e. to meet the ends of justice. While exercising writ jurisdiction, the High Court not only acts as a Court of law but also as a Court of equity. It is, therefore, the duty of this Court to ensure that it exercises jurisdiction to advance the ends of justice and uproot injustice. In exercise of this jurisdiction, this Court will intervene where justice, equity and good conscience require such intervention.

16 Resultantly, this petition is allowed, the Retirement Order is set aside, and PIAC is directed to reinstate the petitioner in service with all back benefits within 30 days under intimation to this Court.

**(Sardar Ejaz Ishaq Khan)**  
**Judge**

Announced in open Court on 10.06.2022.

**Judge**

Imtiaz