

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4215 of 2019
Khalid Hussain
Versus
Full Bench N.I.R.C and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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05.12.2019	Khawaja Muhammad Arif, Advocate for the petitioner.
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Through the instant writ petition, the petitioner, Khalid Hussain, impugns the order dated 01.11.2019 passed by the learned Full Bench, National Industrial Relations Commission (“N.I.R.C.”), whereby his appeal against the order dated 14.10.2019 passed by the learned Member, N.I.R.C. was dismissed in *limine*. Vide the said order dated 14.10.2019, the learned Member, N.I.R.C. dismissed the petitioner’s grievance petition primarily on the ground that his grievance petition filed under Section 33 of the Industrial Relations Act, 2012 (“I.R.A.”) was time barred.

2. The record shows that in the year 1998, the petitioner was appointed as Baggage Attendant by respondent No.3/Pakistan International Airlines Corporation. He was permanently absorbed on 01.07.2008.

3. Respondent No.3 had called upon the petitioner to submit his original matriculation certificate, a copy whereof was alleged to have been submitted by the petitioner at the time of his appointment. The petitioner did not submit the original matriculation certificate. The petitioner filed a grievance petition (No.4A(10)/2014) before the N.I.R.C., and was able to obtain injunctive relief. The said petition was dismissed for non-prosecution on

19.11.2014. The petitioner did not apply for the restoration of the said petition.

4. Vide letter dated 09.12.2015, the petitioner was again asked by respondent No.3 to provide his original matriculation certificate. Vide show cause notice dated 31.12.2015, the petitioner was called upon to provide his original matriculation certificate failing which it would be presumed that the copy of the matriculation certificate submitted by the petitioner at the time of his employment was fake/bogus.

5. The petitioner filed a second grievance petition (No.4A(04)/2016) before the N.I.R.C. and was able to obtain an injunctive relief. Vide order dated 01.09.2016, the said grievance petition was dismissed by the learned Member, N.I.R.C. Vide order dated 22.09.2016, respondent No.3 dismissed the petitioner from service. Perusal of the said dismissal order shows that on 31.12.2015, a show cause notice containing a charge sheet/statement of allegations had been issued to the petitioner under the provisions of the Pakistan International Airlines' Employees (Service and Discipline) Regulations, 1985 ("the 1985 Regulations"). Apparently, the holding of an inquiry was dispensed with under the provisions of the said Regulations, and an opportunity of personal hearing was afforded to the petitioner, which he did not avail.

6. Aggrieved by the order dated 01.09.2016, passed by the learned Member, N.I.R.C., the petitioner preferred an appeal before the learned Full Bench, N.I.R.C. Vide order dated 22.02.2017, the said appeal was dismissed as time barred. The petitioner had not filed an application for condonation of delay along with his appeal. The said order dated 01.09.2016 passed by the learned

Member, N.I.R.C., and the appellate order dated 22.02.2017 passed by the learned Full Bench, N.I.R.C., were assailed by the petitioner before this Court in writ petition No.995/2017. Vide order dated 27.10.2017, the said writ petition was dismissed. The said writ petition was dismissed primarily on the ground that the mere issuance of a show cause notice did not amount to an unfair labour practice, and that the petitioner's appeal before the learned Full Bench, N.I.R.C. was time barred.

7. It is pertinent to mention that after the learned Member, N.I.R.C. dismissed the petitioner's grievance petition, respondent No.3, on 22.09.2016 dismissed him from service. The said dismissal order shows that the petitioner had not turned up for the personal hearing. The petitioner's dismissal had furnished him with a fresh cause of action against respondent No.3.

8. During the hearing of writ petition No.995/2017, the petitioner had also tried to assail his dismissal order. Since the petitioner's dismissal order had not been the subject matter of the proceedings before the learned Member and the learned Full Bench, N.I.R.C., this Court while dismissing the said writ petition observed that he was at liberty to challenge his dismissal order before the appropriate forum, should he so desire. Thereafter, the petitioner filed another grievance petition before the learned Member, N.I.R.C. assailing respondent No.3's order dated 22.09.2016, whereby he was dismissed from service. Vide order dated 14.10.2019, the said grievance petition was dismissed by the learned Member, N.I.R.C. The petitioner's appeal against the said order dated 14.10.2019 was dismissed by the learned Full Bench, N.I.R.C. Both *fora* had

concurrently held that the petitioner's grievance petition was time barred. The said concurrent orders dated 14.10.2019 and 01.11.2019 passed by the learned Member, and the learned Full Bench, N.I.R.C. have been assailed in the instant writ petition.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that since this Court in its order dated 27.10.2017 passed in writ petition No.995/2017 had observed that the petitioner was at liberty to challenge his dismissal order before the appropriate forum, the learned Member and learned Full Bench, N.I.R.C. could not have dismissed his grievance petition on the ground that it was time barred; that the reason why the petitioner did not challenge his dismissal order within time was because the litigation regarding the issuance of the show cause notice to him were already pending; and that the petitioner had furnished sufficient grounds for the delay in filing the grievance petition. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

10. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 8 above and need not be recapitulated.

11. The vital question that needs to be determined is whether the learned Member, and learned Full Bench, N.I.R.C. were justified in dismissing the petitioner's grievance petition on the ground that it was time barred.

12. Section 33(1) of the I.R.A. provides that a worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or by any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shops steward or collective bargaining agent within ninety days of the date on which the cause of such grievance arises. It is an admitted position that the cause for the petitioner's grievance arose on 22.09.2016, when he was dismissed from service. It is also admitted that at no material stage did the petitioner serve respondent No.3 with a grievance notice in terms of Section 33(1) of the I.R.A.

13. Furthermore, under Section 33(4) of the I.R.A., the petitioner could take his grievance to the N.I.R.C. only if his employer failed to communicate a decision within a period of fifteen days of the submission of the grievance notice, or if the employer had given a decision against the petitioner on his grievance notice. For filing a grievance petition before the N.I.R.C., the *proviso* to Section 33(4) of the I.R.A. provides a limitation period of sixty days from the date of the communication of the employer's decision or the expiry of fifteen days of the issuance of the grievance notice.

14. In the case at hand, for filing a grievance petition before the N.I.R.C., the petitioner has not satisfied the essential prerequisite of the service of a grievance notice on respondent No.3 against his dismissal order dated 22.09.2016. A grievance petition before the N.I.R.C., without the service of a grievance notice on the employer, is not maintainable. Since the petitioner had not served a grievance notice on respondent No.3 against his dismissal from service, his grievance petition before

the N.I.R.C. was not maintainable. This Court, in the case of Pakistan Telecommunication Company Limited Vs. Muhammad Dilpazeer Abbasi (2016 PLC 367), has held *inter-alia* as follows:-

“A worker/ workman can file a petition for redressal of grievance in the mode or in accordance with the procedure provided in section 33 of the Act. In this behalf a worker/workman is required to bring to the notice of his employer in writing the grievance within 90 days of the cause by which grievance arises and if the employer, under subsection (4) of section 33 fails to make/communicate decision within 15 days of the grievance or the decision rendered is not satisfactory then the matter can be agitated before the Commission. Under proviso to subsection (4) a worker/ workman who desires to take the matter to the Commission shall do so within a period of 60 days from the date of commencement of the employment or as the case may be from expiry of the period mentioned in subsection (2) or subsection (3) as the case may be.”

15. In drawing the said conclusion, this Court relied upon the case law titled Khushal Khan Vs. Muslim Commercial Bank Limited (2002 PLC (C.S.) 907, Allied Bank of Pakistan Limited Vs. Muhammad Iqbal Sipra (2007 PLC Labour Cases 398), and Abdul Rauf Vs. Muhammad Shafiq (2006 PLC Labour Cases 135). In the said case, one of the reasons why this Court set-aside the concurrent orders of the learned Member and the learned Full Bench, N.I.R.C. was that there was nothing on the record to establish that the employees (petitioners before the N.I.R.C.) had served a grievance notice on their employer.

16. As regards the contention of the learned counsel for the petitioner that his grievance petition could not have been dismissed as time barred since this Court had placed the petitioner at liberty to assail his dismissal order before the appropriate forum, suffice it to say that this Court did not and could not exempt the petitioner from fulfilling the abovementioned requirements of Section 33(1) and

(4) of the I.R.A. to serve a grievance notice against his dismissal from service and to challenge the decision of his employer on such a notice within the limitation period provided in the *proviso* to Section 33(4) of the I.R.A. for filing a grievance petition.

17. In view of the above, the instant petition is dismissed in *limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

APPROVED FOR REPORTING

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