

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3593 of 2016

Matee Ul Hassan

Versus

National Industrial Relations Commission Appellate Bench at
Islamabad and others

Date of Hearing: 04.05.2018.
Petitioner by: Syed Hamid Ali Bukhari, Advocate.
Respondents by: Ms. Moona Hussain, Advocate for
respondents No.2 to 5/H.B.L.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Matee Ul Hassan, impugns the order dated 24.08.2016, passed by the learned Full Bench, National Industrial Relations Commission ("N.I.R.C."), whereby the petitioner's appeal against the order dated 18.07.2013, passed by the learned Member, N.I.R.C., was dismissed.

2. The record shows that on 27.07.2012, the petitioner was issued a show cause notice calling upon him as to why disciplinary action should not be initiated against him on the charges of breach of trust, misappropriation and parallel banking. As per the said show cause notice, the petitioner had confessed to purchasing national prize bonds with the money deposited by customers, and to depositing the amounts in the respective bank accounts at a subsequent stage. On 08.08.2012, the petitioner submitted a reply to the said show cause notice. In the said reply, the petitioner took the position that the confessional statement had been obtained from him by force and on the dictation of the Branch Manager. However, the petitioner admitted to the delay in the deposit made in the customers' bank accounts. On 15.08.2012, the petitioner was issued an enquiry notice. After being found guilty of the charges levelled against the petitioner in the said show cause notice, respondent No.3 (General Manager-Human Resource Operations and Relationship Management of Habib Bank Limited), vide letter dated 11.09.2012, terminated the petitioner's services from the Bank with immediate effect. As per the termination letter

dated 11.09.2012, the charges against the petitioner had been proved during the course of the enquiry.

3. On 20.09.2012, the petitioner preferred an appeal against his termination before the President and Chief Executive Officer of Habib Bank Limited ("H.B.L."). The petitioner had sought the withdrawal of the termination letter dated 11.09.2012 and his reinstatement in service. Having not received any response regarding the said appeal, the petitioner filed a grievance petition under Section 33 of the Industrial Relations Act, 2012 ("I.R.A., 2012") before the N.I.R.C. The said petition was dismissed vide order dated 18.07.2013 primarily on the ground that the petitioner had not brought his grievance to the notice of "*his employer*" in terms of Section 33(1) of the I.R.A., 2012; and that a departmental appeal to the President and Chief Executive Officer of H.B.L., who had not been the petitioner's appointing authority, could not have been treated as the petitioner's employer for the purposes of Section 33(1) *ibid*. The proceedings initiated by the petitioner before the N.I.R.C. were held to be incompetent on account of a lack of grievance notice from the petitioner to his employer in terms of Section 33(1) *ibid*.

4. Against the said order dated 18.07.2013, the petitioner preferred an appeal before the learned Full Bench, N.I.R.C., which appeal was dismissed vide order dated 24.08.2016. The said concurrent orders passed by the learned Member N.I.R.C. and the learned Full Bench, N.I.R.C. have been impugned by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner submitted that the impugned orders passed by the learned Member N.I.R.C. and the learned Full Bench, N.I.R.C., have not been passed on the merits of the case; that through the said orders, the petitioner's grievance petition was held not to be maintainable for want of a grievance notice in terms of Section 33(1) of the I.R.A., 2012; that the learned Member N.I.R.C. and the learned Full Bench, N.I.R.C. erred by not appreciating that although an offer for appointment in H.B.L. was made by the Group Executive, Human Resources of the said Bank, but the Service Staff Rules of the said Bank show that

the petitioner's appointing authority is the President as well as the Group Executive of the said Bank; that under Rule 53 of the said Rules, an employee of the said Bank can file an appeal or a review petition against the imposition of any penalty before the next higher authority than the one which passed the orders of punishment; that the mere fact that the grievance notice dated 20.09.2012 was labeled as an "*appeal*" would not make any difference as the same could be treated as the petitioner's grievance notice; and that the substance of the said "*appeal*" would show that it was in effect the petitioner's grievance petition against his termination order. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned orders passed by the learned Member N.I.R.C. and the learned Full Bench, N.I.R.C. to be set-aside. In making his submissions, learned counsel for the petitioner placed reliance on the judgment in the case of Government of N.W.F.P. Vs. Dr. Hussain Ahmed Haroon (PLJ 2002 S.C. 1294).

6. On the other hand, learned counsel for respondents No.2 to 5 submitted that the concurrent orders impugned in the instant writ petition are strictly in accordance with the law; that a grievance petition filed before the N.I.R.C. without satisfying the precondition of submitting a grievance notice, is not maintainable; that the filing of a grievance notice before filing a grievance petition is mandatory; that the petitioner's appeal dated 20.09.2012 to the President of H.B.L. could not be treated as a grievance notice; that the said appeal had not been addressed to the Group Executive, Human Resources, who had issued the offer of appointment dated 12.02.2008 to the petitioner; and that the said appeal dated 20.09.2012 had not even been addressed to the authority next higher than the one which had passed the termination order. Learned counsel for respondents No.2 to 5 prayed for the writ petition to be dismissed. In making her submissions, learned counsel for the said respondents placed reliance on the judgment in the case of Khushal Khan Vs. Muslim Commercial Bank Ltd. (2002 PLC (C.S.) 907).

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

8. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs No.2 to 4 and need not be recapitulated.

9. The vital question that needs to be determined in the instant case is whether the grievance petition filed by the petitioner before the N.I.R.C. was maintainable in view of the fact that the petitioner had filed an appeal on 20.09.2012 against the termination of his services before the President of H.B.L. instead of filing a grievance notice before his employer in terms of Section 33(1) of the I.R.A., 2012.

10. Section 33(1) of the I.R.A., 2012 is reproduced herein below:-

"33. Redress of individual grievances. – (1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within ninety days of the day on which the cause of such grievance arises."

11. Under Section 33(4) of the I.R.A., 2012, the petitioner could take its 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. Hence, the filing of a grievance notice in terms of Section 33(1) of the I.R.A., 2012 is an essential pre-requisite for filing a grievance petition before the N.I.R.C. 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.”

12. 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. M. 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 of the 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 and a reply thereto was communicated to them. Therefore, the procedure prescribed under Section 33 of the I.R.A., 2012 had not been followed as no grievance notice had been served.

13. Furthermore, in the case of Zar Khan Vs. Senior Vice-President, Muslim Commercial Bank Ltd., (1984 PLC 89), the Hon'ble Peshawar High Court held as follows:

“5. Insofar as the other point of the learned counsel for the petitioner is concerned, it may be stated that no doubt no special form of a grievance notice is specified in section 25-A of the Industrial Relations Ordinance and there are reported cases of Superior Courts whereby a Mercy petition or an appeal to the higher authorities was treated as a grievance notice but there are also reported judgments of Superior Courts wherein it has been held that an appeal or a Mercy petition to the higher authorities or the authority above the employer could not be treated a grievance notice. In the case, reported in 1981 PLC 605 it has been held that no particular form or procedure of a grievance notice has been provided by section 25-A for its compliance and that petition, appeal or application submitted within time can be regarded compliance of grievance procedure and Mercy petition submitted after departmental appeal could be regarded as sufficient compliance of section 25-A. In the case of Muhammad Ozair Qureshi v. Chairman, National Construction Company Limited, Karachi and others (1982 PLC 17) it was held that first appeal to Chairman could be treated as a grievance notice as no specific form is prescribed to bring grievance to notice of employer. On the contrary, in the case reported in 1982 PLC 389 it was held that departmental appeal to Appellate Authority could not be treated as grievance notice and in the case reported in 1982 P L C 920 it was held that grievance notice is to be served upon employer and not upon final Appellate Authority and that representation to President of Bank could not be treated as a grievance notice. It shall thus be seen that although, no specific form of a grievance notice is provided in section 25-A of the Ordinance, however, it is clear that the notice is to be served upon the employer and not on any higher or Appellate Authority. Moreover, a Mercy petition, an

appeal, or a petition to the Labour Court, cannot be treated as grievance notice. We are inclined to agree with the latter two reported cases, because having anxiously applied our minds to the provisions of section 25-A and the reported cases, we are of the considered opinion that a grievance notice is a document independent of a Mercy petition or an appeal to the Appellate Authority and it has to be served upon the appointing authority and not to an authority higher than the appointing authority. We would, therefore, not accept this contention either.
(Emphasis added)

14. Although Section 33(1) of the I.R.A., 2012 does not prescribe the form of the grievance notice, but the law mandates that it must be addressed to the “*employer*” and none other. The petitioner’s offer for appointment dated 12.02.2008 was issued by the Group Executive, Human Resources of H.B.L. Even if the petitioner’s appeal dated 20.09.2012 is to be treated as a grievance notice, the same was not addressed to the petitioner’s employer, but to the President of H.B.L.

15. H.B.L.’s Staff Service Rules became effective on 01.02.2008. The appendix to the said Rules provides that the power to make appointments up to the level of General Managers and the power to sign service agreements of all employees had been delegated to the President of H.B.L. Be that as it may, the fact remains that the offer for appointment to the petitioner was not made by the President of H.B.L., but by the Executive, Human Resources of H.B.L. The petitioner has not brought on record any service agreement signed by the President of H.B.L. Therefore, the essential pre-requisite of issuing a grievance notice on the employer before filing a grievance petition before the N.I.R.C. had not been satisfied in the instant case.

16. I also cannot bring myself to agree with the contention of the learned counsel for the petitioner that the petitioner’s appeal dated 20.09.2012 to the President of H.B.L. should be treated as a grievance notice. In the case of Khushal Khan Vs. Muslim Commercial Bank Limited (2002 SCMR 943), it has been held *inter-alia* that an appeal filed by an employee before the employer could not be treated as a grievance notice within the meaning of Section 25-A of the Industrial Relations Ordinance, 1969. Without a grievance notice, the proceedings initiated by an employee before a Labour Court were held to be incompetent. Section 33(1) of the

I.R.A., 2012 requires a worker/employee to bring his grievance in respect of any right guaranteed or secured to have by or under any law or any award or settlement for the time being enforced to the notice of his employer in writing within 90 days of the date on which the cause of such grievance arises. Since the petitioner's appeal to the President of H.B.L. could not be treated as a grievance notice, the grievance petition before the N.I.R.C. was filed by the petitioner without satisfying the essential pre-requisite of issuing a prior grievance notice. Hence, the learned Member N.I.R.C. and the learned Full Bench of the N.I.R.C., were correct in concurrently dismissing the petitioner's grievance petition.

17. In view of the above, I do not find any jurisdictional infirmity with the impugned orders dated 18.07.2013 and 24.08.2016, passed by the learned Member and the learned Full Bench of the N.I.R.C., respectively. Consequently the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in an open Court on _____ 2018

JUDGE

APPROVED FOR REPORTING

Sultan*

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