

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 4471/2019
Pakistan Steel Mills through its Chairman
Versus
Khawar Shahzad, etc

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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24.08.2020	Mr. Muhammad Akram Malik, Advocate for petitioner, Mr. Ishtiaq Ahmad Cheema, Advocate for respondent No.1.
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Through the instant writ petition, petitioner impugns orders dated 26.09.2019 and 03.07.2018, passed by respondents 2&3 respectively, whereby grievance petition filed by the respondent No.1 assailing his demotion was accepted while appeal filed by the petitioner was dismissed, consequently respondent No.1 was reinstated on his position as HSW-III .

2. Facts, relevant for the disposal of instant writ petition are that the respondent No.1 was proceeded against on the allegation of misconduct under Section 15(ii)(b) and 15 (3)(a)(g)(h) of the Industrial & Commercial Employment (Standing Order) Ordinance, 1968; that a regular inquiry was conducted wherein respondent No.1, admitted his guilt and tendered unconditional apology; that on the basis of inquiry report, major penalty of demotion/reversion from HSW-III to HSW-II was imposed vide Memorandum dated 30.04.2014.

3. The respondent No.1 assailed the penalty *ibid* before the respondent No.3 through a grievance petition which was accepted vide order dated 03.07.2018. The

petitioner assailed the said order before the learned respondent No.3 but the appeal was dismissed vide order dated 26.09.2019, hence, the instant writ petition.

4. Learned counsel for the petitioner contends that respondent No.1 was provided with due opportunity to contest the allegations; there was specific admission on his part; that the due process was followed and that the composition of respondent No.2, at the time of hearing of appeal was defective as one of its Member Mr.Noor Zaman was not in the Bench at the relevant time, therefore, proceedings being *corum non judice* are liable to be set-aside.

5. On the other hand, learned counsel for the respondent No.1 contends that the respondent No.1 had specifically denied the allegations; that the petitioner establishment had failed to rebut the stance of respondent No.1 during the inquiry proceedings and that not only the learned single Member but the Full Bench i.e. respondents 2&3 have rendered concurrent findings on the conclusion arrived at by the Inquiry Officer, therefore, the instant writ petition is liable to be dismissed.

6. Heard and record examined.

7. As regard the defective composition of learned respondent No.2, suffice it to say that the order dated 26.09.2019, not only bears the name but also the signatures of learned Member namely Mr. Noor Zaman, therefore, it cannot be said that the quorum of learned respondent No.2 was defective as sanctity is always attached to the record.

8. On merits, it is noticed that the respondent No.1 specifically denied the allegations. The witness RW-1 did not support the allegations and stated that he had not seen and read the affidavit Ex.R1 and only signed it on the asking of department and that he neither joined the inquiry nor his statement was recorded. RW-2 Mustansir Ali stated that he had not appeared during the inquiry proceedings. Likewise, RW-2 did not join inquiry proceedings while RW-5 Muhammad Hanif in cross-examination stated that the security guard informed him about the incident which amounts to hearsay evidence, needless to mention that hearsay evidence is no evidence in the eye of law.

9. In presence of above glaring discrepancies, the penalty of demotion was set aside and respondent no.1 was restored to the post of HSW-III.

10. The learned counsel for the petitioner has not been able to highlight any illegality or irregularity in the concurrent findings of the two learned forums. Consequently, the instant writ petition being devoid of merits is accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran