

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1434 of 2020
Mohammad Naeem Khan
Versus

Full Bench, National Industrial Relations Commission and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18.09.2020	Mr. Ali Murad Baloch, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Mohammad Naeem Khan, impugns the order dated 20.04.2020 passed by the learned Full Bench, National Industrial Relations Commission ("N.I.R.C."), whereby the petitioner's appeal against the order dated 12.03.2020 passed by the learned Member, N.I.R.C., was dismissed primarily on the ground that the petitioner did not file the grievance petition within the limitation period provided by law.

2. Learned counsel for the petitioner submitted that vide letter dated 02.01.2013, respondent No.2 (Habib Bank Limited) dismissed the petitioner from service on the ground that he had committed misconduct; that prior to the issuance of the said letter, a regular inquiry had not been conducted against the petitioner; that subsequently, F.I.R. No.02/2013, dated 23.01.2013 under Sections 109, 409 and 420 P.P.C. was registered against the petitioner at Police Station F.I.A./C.B.C., Peshawar; that the petitioner was incarcerated for a period of one month after which he was released on bail; that the trial against the petitioner culminated in his acquittal, vide judgment dated 04.01.2017 passed by the Presiding Officer, Special Court (Offences in Banks), Khyber Pakhtunkhwa, Peshawar; that

the copy of the said judgment was given to the petitioner on 07.02.2017 and on the same day, he issued a grievance notice to respondent No.2; that having received no plausible response from respondent No.2, a grievance petition was filed by the petitioner on 13.02.2017; that the said grievance petition was dismissed by the learned Member, N.I.R.C., vide order dated 12.03.2020 primarily on the ground that the grievance notice was barred by time; that the learned Full Bench, N.I.R.C. erred by dismissing the petitioner's appeal against the said order; and that the limitation period for issuing a grievance notice would commence from the date on which the petitioner was acquitted by the Criminal Court, and not on the date on which his services were terminated. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

4. The petitioner is seeking the issuance of a writ of *certiorari* with respect to the appellate order dated 20.04.2020 passed by the learned Full Bench, N.I.R.C. and the original order dated 12.03.2020 passed by the learned Member, N.I.R.C. Through the said concurrent orders, the petitioner was non-suited primarily on the ground that he had not served a grievance notice on respondent No.2 within the limitation period provided in Section 33 of the Industrial Relations Act, 2012 ("I.R.A.").

5. It is not disputed that the petitioner was dismissed from service vide respondent No.2's letter dated 02.01.2013. It was not until after his acquittal by the Criminal Court that he issued a

grievance notice to respondent No.2, and after that he filed a grievance petition before the N.I.R.C., Peshawar Bench under Section 33 of the I.R.A.

6. Section 33(1) of the I.R.A. 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.”

7. Since the petitioner did not issue the grievance notice to his employer within a period of ninety days of 02.01.2013 when he was dismissed from service, it can safely be held that he did not fulfill the requirements of Section 33(1) of the I.R.A. Furthermore, under Section 33(4) of the I.R.A., 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 his employer had given a decision against the petitioner on his grievance notice. Respondents No.2 and 3 were under no obligation to respond to the petitioner's time-barred grievance notice.

8. 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."

9. 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).

10. The contention of the learned counsel for the petitioner that the limitation period for filing a grievance notice would commence from the date when the petitioner was acquitted from the criminal case is without any substance. Since the petitioner had been acquitted, he is presumed to be innocent at all material times. Admittedly, the petitioner was not incarcerated until the judgment dated 04.01.2017 passed by the Criminal Court. The petitioner was incarcerated only for a period of one month during the year 2013, he had no lawful excuse for not issuing a grievance notice to his employer within a period of ninety days from the date on which he was dismissed from service.

11. Since the petitioner did not send a grievance notice to respondents No.2 and 3 within a period of ninety days of his dismissal from service, and since the requirements of Section 33 of the I.R.A. had not been fulfilled, he has only himself to thank for the unsavory situation he finds himself in.

12. In view of the aforementioned, I do not find any merit in this petition, which is dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham