

NATIONAL INDUSTRIAL RELATIONS COMMISSION, ISLAMABAD
(FULL BENCH AT ISLAMABAD)

Appeal No.12A(115)/2022

Before:- **Mr. Justice(F) Abdul Rasool Memon, Chairman**
Shabbir Hussain Awan, Member
Abdul Qayyum Khan, Member

Waqar Asghar Mir S/o Ghulam Sabir Mir R/o House No.D-94,
Khayaban-e-Sir Syed, Sector II, Rawalpindi.

.....Appellant.

Versus.

Trading Corporation of Pakistan (Pvt) Ltd through Chairman, 4th & 5th
Floor, Block B, Finance & Trade Centre, Shahrah-e-Faisal, Karachi and
two others.

.....Respondents.

Present: Mr.Jameel Hussain Qureshi, Advocate for appellant.
Mr.Rizwan Shabbir, Advocate for respondents.

ORDER
27-11-2023

Abdul Qayyum Khan, Member, NIRC

The appellant has filed the instant appeal under section 58 of the Industrial Relations Act, 2012 against the impugned order dated 23-05-2022 passed by the learned Member, NIRC Islamabad Bench whereby he has dismissed the grievance petition of the appellant.

2. The concise facts giving rise to this appeal are that the appellant was appointed as Assistant in the respondents Corporation on contingent basis for 89 days vide order dated 25-02-2009 on the basis of Intermediate qualification and he has joined the said post on 26-02-2009; that later on his services were converted into yearly contract in September, 2010 and his services were regularized vide

Qa,

order dated 25-10-2011 with the approval of Sub-Committee of the Cabinet; that he has been reverted to the post of Jr.Assistant vide order dated 16-07-2014; that being aggrieved from the said order, he has submitted applications to the different officers and lastly, he was given reply vide order dated 24-01-2022; that he served grievance notice which was rejected on 22-03-2022, hence he has filed the grievance petition with the prayer that the impugned order dated 22-03-2022 be set aside and he be reinstated to his original position as Assistant with all back benefits.

3. The respondents have filed their written reply to the said grievance petition by controverting the averments of the petition and raising many objections on the point of law as well as facts and prayed for dismissal of the same.

4. After hearing arguments of learned counsel for the parties the learned Single Member, NIRC Islamabad has dismissed the grievance petition vide impugned order dated 23-06-2022 on the ground of limitation as well as on merits.

5. Feeling aggrieved from the above said order, the appellant has preferred the instant appeal with the following prayers:-

 "In view of the above stated facts and circumstances, it is therefore humbly prayed that the impugned order of the single bench of NIRC dated 23-05-2022, as well as the impugned orders dated 22-03-2022 and 24-10-2022 passed by the respondents in the instant matter be set aside by declaring as illegal and void ab-initio and against the principles of natural justice and consequent thereto the appellant may kindly be re-instated to his original position of Assistant with all back benefits to meet the ends of justice.

6. The learned counsel for the appellant after reiterating the contents of grievance petition and instant appeal has argued that the services of the appellant have been regularized by the respondents as Assistant; that the requirement for the post of Assistant was B.A. qualification and the appellant at the time of regularization was having required qualification i.e. B.A but he has been reverted to the post of Jr.Assistant illegally against the rules and regulations of the respondents department. He has further argued that after rejection of his departmental appeal, he has filed the grievance petition which is well within time but this fact has not been considered by the learned Single Member, NIRC and was dismissed the grievance petition on the point of limitation as well as on merits in hasty manner. He has prayed that the instant appeal & grievance petition may be accepted, set aside the impugned order and respondents management may also be directed to reinstate the appellant in original position as Assistant with all back benefits.

7. Conversely, the learned counsel for the respondents has controverted the arguments of the learned counsel for the appellant by supporting the impugned order and prayed for dismissal of the instant appeal.

8. Arguments heard and record perused.

9. Admitted, the appellant was appointed as Assistant on contingent basis on 26-02-2009 on the basis of F.A qualification and his services were regularized on 04-11-2011. After scrutiny of record by the



respondents, it was found that at the time of initial appointment, the qualification of the appellant was matching with the post of Jr.Assistant, therefore, he was adjusted against the post of Junior Assistant. According to law, the appointment on contingency basis in the Federal Government Departments is allowed only for BS-1 and BS-2 posts and the appointment on the post of Assistant (BS-14/15) is not allowed under contingency fund. The appellant has been regularized in service on the basis of his length of service from the date of his initial appointment. Admittedly, at the time of initial appointment, the qualification of appellant was F.A whereas the required qualification for the post of Assistant was B.A. The matching qualification of the appellant at the time of his initial appointment was Jr.Assistant and when this fact came into knowledge of respondents, he has been reverted/adjusted against the post of Jr.Assistant.

10. Admittedly, the services of the appellant were reverted by the respondents on 16-07-2014 from Assistant to Jr.Assistant and he has allegedly served the grievance notice and filed the grievance petition under section 33 of the IRA, 2012 on 22-04-2022. The version of learned counsel for the appellant is that after decision of his appeal dated 24-01-2022, the appellant has sent the grievance notice within time. This version of learned counsel for the appellant is not sustainable because perusal of the said alleged grievance notice reveals that the same is undated and without postal receipt, hence the said grievance notice is not valid grievance notice. Serving of grievance



notice within stipulated period is mandatory requirement of section 33 of the IRA, 2012 which is reproduced 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. In these circumstances, since the grievance notice has not been served by the appellant within stipulated period and he has filed the grievance petition before this Commission on 22-04-2022 after lapse of period for more than 07 years from the accrual of cause of action i.e. 16-07-2014, therefore, the grievance petition is hopelessly time barred.

12. For what has been discussed above, we are of the considered opinion that the learned Single Member has not committed any illegality or irregularity while passed the impugned order dated 23-05-2022 which is up-held. Resultantly, the instant appeal is hereby dismissed with no order as to costs. File be consigned to record after due completion.

Announced in Open Court
Dated: 27-11-2023

(Abdul Rasool Memon)
Chairman

(Abdul Qayyum Khan)
Member

(Shabbir Hussain Awan)
Member