

NATIONAL INDUSTRIAL RELATIONS COMMISSION

Peshawar Bench Peshawar

Before: Muhammad Zubair Khan, Member

Case No. 4B (33)/202-P
7B (10)/2022-P

Ali Khan S/o Raheem Uddin R/o Joghani, Shugali, Tehsil Mathra,
District Peshawar..... Petitioner

Versus.

Chief Executive International Committee of Red Cross, office 40
Jamal Uddin Afghani Road, University Town Peshawar and 02
others.....Respondents

Presence: Mr. Kashif Naseem, counsel for petitioner

Mr. Syed Ishtiq Haider & Raja Umair Mustafa, counsel
for respondent No.1 & 2

Mr. Talha Yousafzai, counsel for respondent No.3

ORDER

21.09.2023

Petitioner aggrieved by his retirement order passed on 01.01.2020 brought this petition u/s 33 of the Industrial Relations Act, 2012, contending that petitioner served the respondent No.3 as Security Guard from 26.01.2001 to 07.06.2006 and got retired on 01.01.2020. Further contending that the date of birth of the petitioner according to CNIC is 31.12.1960 accordingly he attained the age of 60 in the month of December, 2020 but the respondent No.1 & 2 retired the petitioner in the month of January, 2020 and issued retirement letter dated 01.01.2020, thus the petitioner was retired at the age

of 59 and this order/decision of respondent No.1 & 2 is illegal, unlawful, unconstitutional having no legal effect upon the rights of the petitioner. Claiming that he be reinstated in service or in alternate compensate the petitioner and pay all the salaries and benefits for the petitioner was legally entitled.

2. The petitioner annexed with his petition his CNIC copy annexure-A, copy of service certificate annexure-B, copy of service certificate annexure-C, letter of retirement dated 01.01.2020 annexure-D, copy of plaint and order of civil judge dated 29.06.2020 annexure-E, copy of order dated 21.03.2022 annexure-F and copy of grievance notice annexure-G.

3. The respondents contested the petition by submitting written reply, claiming that the petitioner at the time of his recruitment as Security Guard provided copy of NIC where in the column the date and month has not been mentioned and his date of birth is mentioned as 1960, so he was rightly retired on superannuation on 01.01.2020.

4. Arguments heard and record perused.

5. The petitioner aggrieved by the order dated 01.01.2020 against which he served the grievance notice to the respondents on 20.06.2022 after lapse of two and a half years. The petitioner filed this petition u/s 33 of the Industrial Relations Act, 2012 according to 33 of ibid Act, **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 90 days of the day on which the cause of such**

grievance arises. It is settled law that grievance petition under section 33 would be time barred when grievance notice was not given by petitioner within prescribed limitation. Reliance is placed on case law reported as 2017 TD (Labour) 244. It is well settled law that the party approaching Court of competent jurisdiction for redress of grievance beyond specified period of limitation is bound to explain each day's delay to the satisfaction of respective forum because a valuable right accrues to the other side. In this regard reliance is placed on case law reported as 2007 TD (Labour) 27. But in the case in hand, the petitioner has failed to explain the explicit reasons of delay in filing the petition before this Commission within the prescribed period of limitation.

6. Moreover, the petitioner has only placed his CNIC which issued to him on 20.10.2020 after his retirement while the respondents placed on file N.I.C card where his date of birth is mentioned as 1960. Interestingly, the petitioner has also placed on file his retirement documents issued by Pakistan Army and according to his service book his date of birth recorded as 19.01.1956 and his date of enrolment in Army and at the time of joining of service of Pakistan Army his age was recorded as 18 years. It seems that the petitioner is in habit of making changing his documents particularly in column of his date of birth.

7. In reported case law 2017 PLC 226 case titled Razi v. Oil and Gas Development Company Ltd & Others, it has been held the following:

“11. The petitioner superannuated on 30.06.2016. The steps taken by him to have his year of birth entered in the records of respondent No.1 changed about a year prior to his retirement makes the petitioner's case bereft of bona fides. Stale and belated applications for alteration

of date of birth cannot be entertained. Change of date of birth is a very important responsibility to be discharged since there is a general tendency amongst the employees to lower their age and change their date of birth to suit their career and to lengthen their service career”.

Another case law reported as 2021 SCMR 595, case titled Muhammad Khaliq Mandokhail v. Government of Balochistan and another, it has been held the following:

“Alteration/correction of date of birth in service record--- Scope—Civil servant could not seek alteration in his date of birth at the verge of his retirement”.

8. For what has been discussed above, this petition is dismissed being not maintainable. No order as to costs. File be consigned to record room.

Announced in the open court

S/d

(Muhammad Zubair Khan)

Member

Certificate:

Certified that this order consisting of four pages. Each page is corrected and signed.

S/d

(Muhammad Zubair Khan)

Member

Iftikhar