

NATIONAL INDUSTRIAL RELATIONS COMMISSION

Peshawar Bench Peshawar

Before: Muhammad Zubair Khan, Member

Case No. 4B (32)/2018-P

Muhammad Rafiq S/o Ghulam Rasool, Ex-Customer Relations Supervisor R/o House No. 10-A, Bari Lal Kurti, The Mall Peshawar Cantt..... Petitioner

Versus.

General Manager HRBP (North) PTCL, Islamabad and another.....Respondents

Present: Mr. Fazle Mahmood, counsel for petitioner

Mr. Waqar Ahmed Khalil, counsel for respondents

ORDER

18.09.2023

Petitioner filed this grievance petition u/s 33 of the Industrial Relations Act, 2012, contending that he was appointed as Telephone Operator on adhoc basis on 01.03.1988 and later on his services were regularized from the date of adhoc appointment i.e. 01.03.1988; that the petitioner has been retired from service w.e.f 15.05.2018 after attaining the age of superannuation; that the respondents while calculating pension, the service of the petitioner was incorrectly calculated from 14.05.1992 instead of 01.03.1988 and he has been deprived from the benefits of about 04 years services. Feeling aggrieved, the petitioner served the grievance notice to the respondents on 03.10.2018 but the same was not replied, hence this petition.

2. The petitioner annexed with his petition copy of retirement notification dated 27.02.2018 as annexure-A, copy of regularization in service letter dated 04.02.1992 as annexure-B, copy of VSS notification package annexure-B/1, copy of VSS employee calculation sheet as annexure-C, copy of grievance notice page-32.

3. Respondents contested the petition by filing written reply wherein preliminary objection was raised on the ground that the grievance petition of the petitioner is hopelessly time barred. On facts, it is contended that the petitioner was appointed on 01.03.1988 and his qualifying service was counted from the date of qualifying the required test as per rules which petitioner accepted without objection and Option Waiver Form was also signed and duly notarized and the petitioner is bound by the VSS Package and its terms and conditions. The respondents requested for dismissal of the instant petition.

4. Arguments heard and record perused.

5. Admittedly, the petitioner was working in the respondent establishment as Telephone Operator and now he has been retired from service on attaining the age of superannuation vide order dated 27.02.2018. The petitioner has not questioned the veracity of his retirement order rather he sought for 04 years of service benefits w.e.f 01.03.1988 when he was appointed on adhoc basis till regularization in service on 14.05.1992. According to section-2(xxxiii) of the Industrial Relations Act, 2012 "worker" and "workman" mean a person not falling within the definition of employer who is employed (including employment or as an apprentice) in an establishment

or industry for hire or reward either directly or through a contractor whether the terms of employment be express or implied, and for the purpose of any proceedings under the Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity. In the light of above definition, the petitioner is no more in the employment of the respondent establishment as he is a retired person. He was neither dismissed nor discharged, laid-off or removed from service in connection with or consequence of any industrial dispute, thus he does not fall within the definition of workman as laid down in the Industrial Relations Act, 2012. Here I referred the case law reported as 2015 PLC 137 titled Syed Ali Salman v. Editor, Pakistan BBC Urdu, Islamabad & others, where it has been held that:

---S.2(xxxiii)---'Workman'---Status---Determination of---
Every workman who was in service was a 'workman' while a former workman, was to be regarded as a workman only, if his services were terminated in connection with, or a consequence of an industrial dispute---Former workman, whose services were terminated, not in connection with or a consequence of an industrial dispute, was not a workman in terms of S.2(xxxiii) of Industrial Relations Act, 2012

6. Moreover, regarding the question of maintainability is concerned. Perusal of the record reveals that the petitioner u/s 33 of the Industrial Relations Act, 2012 against his retirement notification

which was issued on 27.02.2018. According to section 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.** But in the case in hand, the cause of grievance risen to the petitioner on 27.02.2018 when his retirement notification was issued against which he served grievance notice on 03.10.2018 after lapse of seven months which is time barred. 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.

In view of the above, the instant petition is dismissed, being not workman. File be consigned to record room.

Announced in the open court

(Muhammad Zubair Khan)
Member

Certificate:

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

(Muhammad Zubair Khan)
Member

Iftikhar