

NATIONAL INDUSTRIAL RELATIONS COMMISSION

Peshawar Bench Peshawar

Before: Muhammad Zubair Khan, Member

Case No. 4B (30)/2023-P

CMA No. 7B (03)/2023-P

Obaid Ullah Khan, Officer Grade-II, R/o Ghari Khanikhel, Tehsil Lahore, District Swabi.

..... Petitioner

Versus.

M/s Askari Bank Ltd, through its Vice President-HRD, Human Resource Division, First Floor, Plot No.18, NPT Building, F-8 Markaz, Islamabad and 04 others

.....Respondents

Present: Mr. Asad Mahmood, counsel for petitioner

Mr. Bilal Ahmed Kakaizai, counsel for respondents

ORDER

13.09.2023

Petitioner aggrieved by order dated 14.04.2022 brought this petition u/s 33 of the Industrial Relations Act, 2012, contending therein that he was appointed on 16.05.2007 as Cash Officer/OG-III by designation but as a worker by nature of job and rendered his service without any interruption till 14.04.2022; that the petitioner was charge sheeted with baseless allegation for pocketing cash of Rs. 21,25,323/- received from customer on different dates on account of utility bills, fee challans and ACMS and did not comply with Bank SOPs, which was replied and without conducting impartial and regular

enquiry as required under the Standing Orders, Ordinance, 1968 he was terminated from service vide impugned order dated 14.04.2022. The petitioner requested for setting aside impugned order and reinstatement in service with all consequent back benefits. Also the petitioner has filed an application for condonation of delay.

2. The petitioner annexed with his petition appointment letter annexure-A, service confirmation letter annexure-B, letter regarding meeting for depositing of demand note bills issue annexure-C, letter regarding deposit of student's fee slips annexure-D, copy of charge sheet annexure-E, letter of dismissal annexure-F, grievance notice dated 12.05.2023 annexure-G.

3. Respondents were summoned who contested the petition by submitting written reply mainly contending that letter of dismissal issued on 14.04.2022 against which the petitioner submitted appeal on 19.04.2022 and the appeal was dismissed vide order dated 30.06.2022 and the petitioner sent grievance notice on 12.05.2023.

4. Moreover, the respondents also contending that the petitioner was serving as Officer Grade-II when he was dismissed from service and thus, he was not a workman and cannot maintain his petition under the Industrial Relations Act, 2012.

5. Arguments heard and record perused.

6. In para-3 of the application for condonation of delay, the petitioner contending the following:

“the petitioner without wasting any time; served a grievance notice upon employer on 12th May, 2023 through courier; received on 15th May, 2023”

7. The petitioner has filed this petition u/s 33 of the ibid Act. 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 petitioner was dismissed from service on 14.04.2022 which letter was received to him on 15.04.2022 against which he filed departmental appeal on 19.04.2022 and appeal was dismissed on 30.06.2022 thus the averment of the application has not supported to the facts of the case. If we calculate three months from the impugned order or even calculate the date of dismissal of appeal i.e. 30.06.2022, the alleged grievance notice served on 12.05.2023 is time barred. 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.

8. The dismissal order which annexed by the petitioner as Annexure-F clearly suggest that at the time of dismissal the petitioner was serving as OG-II. The Apex Court in reported judgment 2019 SCMR 946 titled HBL versus Gulzar Khan and others, it has held as under:-

“Workman”---Scope---Whether a Bank Manager (Officer Grade-II) was workman---Grievance petition before the Labour court filed by a Bank Manager--- Maintainability--- Respondent bank manager admitted in his evidence, that his duties included issuing of drafts and cheques, depositing of cash in the strong room and locking the same---All affairs of the branch were under his management and control, even the entire cash and record of the Bank relating to the branch as well as all communications of the branch were under his supervision, upon which he was required to take decisions as to how the same had to be dealt within the best interest of the bank---Such functions of the Manager amply demonstrated the nature of his work, which was mainly managerial and supervisory and not of a clerical nature--- Functions of the Manager did not fall within the ambit of term workman as defined in the Industrial and commercial Employment(Sanding Orders) Ordinance, 1968 or the Industrial Relations Ordinance, 2002”.

For what has been discussed above, I hold that the petitioner being Officer Grade-II (OG-II) does not fall within the definition of workman, hence this Commission lacks jurisdiction to entertain the present petition, thus the petition in hand is dismissed. File be consigned to record room.

Announced in the open court

(Muhammad Zubair Khan)
Member

Certificate:

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

(Muhammad Zubair Khan)
Member

Iffikhar