

NATIONAL INDUSTRIAL RELATIONS COMMISSION

Peshawar Bench Peshawar

Before: Muhammad Zubair Khan, Member

Case No. 4B (36)/2018-P

Syed Ghafoor Shah S/o Syed Ali Shah, Ex MM-BB Tech: Swabi Division R/o Mohallah Ibrahim Village & P/O Maini Tehsil & District Swabi..... Petitioner

Versus.

H.R PTCL, Telephone House Peshawar and 02 others.....Respondents

Present: Mr. Yaqoob Khan, 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 MM-BB on adhoc basis vide order dated 25.10.1987 and later on his services were regularized from the date of adhoc appointment i.e. 03.11.1987 vide order dated 10.02.1992; that in the service book of the petitioner, the respondents entered the date of entry in service of the petitioner w.e.f 1989 instead of 03.11.1987 and decreased two years service; that the respondents introduced VSS Scheme and the petitioner has opted for VSS Scheme but due to wrong entry in the service book the petitioner is entitled for payment of arrears of pension of Rs. 42350/- plus Rs. 324,255/- as arrear of commutation and payment of Rs.350,000/- other arrears; that the petitioner

submitted various applications to the respondents but in vain, ultimately he filed a writ petition No.2275/2017 in Hon'ble Peshawar High Court Peshawar which was dismissed, thereafter, the petitioner submitted grievance notice to the respondents, and then filed this grievance petition.

2. The petitioner annexed with his petition copy of appointment order dated 25.10.1987 as annexure-A, copy of regularization in service letter dated 10.02.1992 Page-6, copy of service book-Page-7, copy of VSS employee calculation sheet as annexure-B, copy of application of the petitioner annexure-C, copy of order dated 12.04.2017 annexure-D, copy of writ petition No. 2275-P/2017 page-33-38, attested copy of order dated 18.09.2018 page-39-40, copy of grievance notice dated 06.05.2017 Page-45-47.

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, the para-1, 2 & 3 of the petition was denied by submitting that the date of joining of the petitioner in service is 11.11.1991 as written in the VSS documents and the petitioner had voluntarily opted the VSS Package 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. The question of maintainability raised by respondents that the grievance petition of the petitioner is time barred. Perusal of the

record reveals that the petitioner filed this petition u/s 33 of the Industrial Relations Act, 2012 for recovery of Rs. 366,614/- due to wrong entry in the service book and wrong calculation of service in VSS Notification Package dated 05.11.2014. 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 05.11.2014 when VSS Notification was issued against which he served the grievance notice on 06.05.2017 after lapse of more than two years 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.

6. As far as the merits of the case is concerned, same like matters came before august Supreme Court of Pakistan in

Civil Appeal No. 2506 to 2551 of 2016 and vide judgment dated 18.03.2019 which were decided in the following terms:

“6. We have noted that the appellants did not disclose the amounts received by them pursuant to VSS and particularly the amount of four hundred and fifty thousand rupees on account of the Separation Bonus. The appellants could only receive the Separation Bonus if they had less than twenty years of Qualifying Length of Service. The appellants also did not disclose that they had voluntarily participated in the VSS, accepted the calculations made by the Company and had executed the Waiver Form. This constituted nondisclosure of material facts. The appellants had instead projected themselves to have been wronged and embarked upon unnecessary litigation with a view to obtaining a benefit to which they were not entitled to. The fora below however mostly considered whether or not the appellants could have filed grievance opinion the appellants did not have a grievance as they had voluntarily severed their relationship with the Company by availing of the VSS, which included a substantial amount received on account of separation bonus which only an employee who had less than twenty years of service could receive. The case of PTCL v Masood Ahmed Bhatti, which has been relied upon by the learned counsel for the appellants, stipulates that where an organization is governed by statutory rules then any action taken by such organization in derogation of or in violation of such rules would, if it is prejudicial to an employee, may be set aside. However, in the present case the Company did not

take any action prejudicial to the appellants. On the contrary the appellant had voluntarily availed of the VSS, received payments thereunder, including the Separation Bonus which was only payable to those employees who had less than twenty years of Qualifying Length of Service.

7. If the appellants genuinely believed that their training period should have been counted towards their length of service, and consequently, they were entitled to pension then they were not entitled to receive the Separation Bonus amount. And, even if we presume that the Separation Bonus was paid to them by mistake it was incumbent upon them to have stated this and to have returned / refunded it to the Company before proceeding to claim a pension on the ground that they had served the Company for twenty years or more. Significantly, the appellants at no stage, including before us, have submitted that they were not entitled to receive the Separation Bonus, let alone offering to return it. The appellants' actions are destructive of their claim to pension, because if they had twenty years or more of service, they should not have received the Separation Bonus. Therefore, leaving aside the jurisdictional point which forms the basis of the judgments of the learned Judge of the High Court and of the learned Judge of the Labour Court the appellants had by their own action demonstrated that they had no grievance and that they were not entitled to pension.

Similarly, the august Supreme Court of Pakistan judgment dated 06.10.2022 passed in Civil Petition No. 68-K, 116-K to 130-K,

149-K TO 153-KM 157-K TO 184-K AND 1101 TO 1110 OF 2020 of august Supreme Court, held that.-

“4. We have heard the learned counsel for the parties at length and find no illegality on the impugned judgment. Essentially, the Petitioners voluntarily, of their own free-will accepted the terms and conditions of the VSS thereby severing their relationship with PTCL on obtaining a financial package as consideration for this severance. The Petitioners have been paid their severance pay, separation bonus, medical benefits, leave encashment and housing allowance based on the length of their service, as computed under the VSS. The terms of the VSS are contractual and the Petitioners are bound by the accepted terms and conditions of the VSS as the Petitioners contractually agreed to avail the financial benefits under the VSS and sever their ties with PTCL in the year 2008. Having availed the benefits, the Petitioners could not have subsequently challenged the VSS on the ground that they wish to avail their pensionary benefits. Furthermore, the grievance that they are entitled to their statutory pensionary benefits or that their training period should be calculated as part of their length of service are all afterthoughts. At the time of agreeing to the terms of the VSS, they were aware that they would opt out of statutory benefits and that training period is not calculated in the length of service. In fact, the objective of taking the VSS was that they will no longer be eligible for statutory benefits, pensionary or otherwise. So far as the distinction, the Petitioners have drawn of being transferred employees, this distinction is no longer relevant

as the employee of T&T were transferred to the Pakistan Telecommunication Corporation (**Corporation**) and from the Corporation to PTCL. Hence, the distinction they claim is no longer relevant or applicable, as they are all employees of PTCL who opted for the VSS.

5. Under the circumstances, these Petitions are dismissed and leave to appeal refused."

7. While relying on the above dictum, the petitioner too availed and received the Separation Bonus in year 2014 and sever the relationship with Respondent/PTCL, therefore, he has no grievance to redress. In view of the above, the instant petition is dismissed, being not maintainable. File be consigned to record room.

Announced in the open court

(Muhammad Zubair Khan)

Member

Certificate:

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

(Muhammad Zubair Khan)

Member