JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1620 of 2022
Iffat Nawaz
Versus
M/s The Bank of Khyber and others

Date of Hearing:	09.02.2023
Petitioner by:	Mirza Muhammad Afzal, Advocate.
Respondent by:	Syed Ishtiaq Haider, Advocate for respondent No.1 / Bank.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Iffat Nawaz, impugns the order dated 09.02.2022 passed by the learned Full Bench, National Industrial Relations Commission (**"N.I.R.C."**), whereby her appeal against the order dated 01.02.2021 passed by the learned Chairman, N.I.R.C., was dismissed. Vide the said order dated 01.02.2021, the learned Chairman, N.I.R.C. dismissed the petitioner's grievance petition against the imposition of the major penalty of removal from service on her.

2. Learned counsel for the petitioner submitted that the alleged misconduct of the petitioner came into the knowledge of the petitioner's employer on 02.09.2014 when an F.I.R. was registered against Malik Mehmood ur Rehman; that the inquiry proceedings against the petitioner were initiated on 11.11.2014 when a charge sheet was issued to the petitioner; that initiation of the inquiry proceedings against the petitioner are in violation of the requirements of Standing Order 15(4) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (**"the 1968 Ordinance"**), which mandates that within one month of the date of the misconduct, the workman is to be informed in writing as to the alleged misconduct; that Malik Mehmood ur Rehman, in his statement during the inquiry proceedings, had deposed that he alone was responsible for the wrongdoing and no other staff member was responsible for the loss caused to respondent No.1 / Bank; and that the grounds taken in the grievance petition as well as in the appeal have not been adverted to by

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the learned Full Bench as well as the learned Chairman, N.I.R.C. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for respondent No.1 / Bank submitted that F.I.R. dated 02.09.2014 was not registered against the petitioner but against Malik Mehmood ur Rehman; that the charge sheet dated 11.11.2014 was issued to the petitioner within one month of gaining knowledge of the misconduct committed by the petitioner; that the inquiry proceedings had been conducted strictly in accordance with the law; that a charge sheet had been issued to the petitioner on 11.11.2014 to which she submitted a reply on 19.11.2014; that the petitioner participated in the inquiry proceedings after which final show cause notice was issued to her on 22.07.2015 to which she submitted a reply on 31.07.2015; that in the inquiry report dated 09.02.2015, the petitioner had been found to be guilty of negligence; and that this Court cannot substitute a penalty that had been imposed on the petitioner and upheld concurrently by the learned Chairman and the learned Full Bench, N.I.R.C. Learned counsel for respondent No.1 / Bank prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The record shows that on 05.07.2010, the petitioner was appointed as Officer Grade-III on regular basis in respondent No.1 / Bank. She was initially posted at respondent No.1 / Bank's D.I. Khan Branch as General Banking Officer. After the Internal Audit Division ("**I.A.D.**") of respondent No.1 / Bank reported the fraudulent transactions between 23.01.2014 and 04.08.2014, the petitioner was suspended and a charge sheet along with statement of allegations was issued to her. The inquiry proceedings culminated in the issuance of an inquiry report dated 09.02.2015. Perusal of the said report shows that the inquiry was not just against the petitioner but seven other employees of respondent No.1 / Bank. As per the inquiry report, the petitioner was found to be guilty of negligence. For the purposes of clarity, the findings against the petitioner are reproduced herein below:-

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"As per record fraudulent entries amounting to Rs.4656160 were either entered or authenticated through ID of Ms. Iffat Nawaz. The accused has claimed that her system ID was known to all of the branch and Mr. Hamood ur Rehman using system ID used to access remotely to her system when she was log in to UBANK+ for her routine works without her knowledge. It may be possible in absence of the required protocols. The transactions timings by her ID were between 2 pm to 5 pm. Moreover, no instance was noticed nor footage provided by the system administrator where she left the branch and her ID was used as per system administrator claim. As per BO circular no.BOK/HO/BO/2014/4529 dated March 26, 2014 The officers other than CD In-charge, manager operation and branch manager are not authorized to have authentication powers where as in the instant case authentication powers were given to her by defeating control tool and exposing the bank and the employee to risk. However, no reservation was noticed from her side regarding this violation. As clearing officer she has ignored to check clearing account's status of previous day. Had she checked the fraud would have been surfaced at initial stage, for which she is guilty of negligence."

6. On 22.07.2015, a final show cause notice was issued to the petitioner calling upon her to show cause as to why disciplinary proceedings should not be taken against her. Vide letter dated 12.08.2015, she was removed from service. In the said letter, it was mentioned that the Inquiry Officer had found guilty of the charges levelled against her. Against the imposition of the said penalty, the petitioner issued a grievance notice to respondent No.1 / Bank. Vide letter dated 21.09.2015, respondent No.1 / Bank informed the petitioner that the penalty imposed on her had been upheld.

7. The only procedural defect in the inquiry proceedings that the learned counsel for the petitioner asserted was that the charge sheet dated 11.11.2014 had not been issued within a period of thirty days as required by Standing Order 15(4) of the 1968 Ordinance. He submitted that when an F.I.R. was registered against the co-accused Malik Mehmood ur Rehman on 02.09.2014 that is when respondent No.1 / Bank knew about the petitioner's alleged negligence and since the charge sheet was issued beyond a period of thirty days from 02.09.2014, the entire inquiry proceedings culminated in the imposition of the major penalty ought to be set at naught.

8. Learned counsel for respondent No.1 / Bank was correct in pointing out that the thirty-day period for the issuance of the charge sheet is to commence from the date of the employer's knowledge as to the misconduct committed by an employee. Standing Order 15(4) of the

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1968 Ordinance provides *inter alia* that no order of removal shall be made unless the workman concerned is informed in writing of the alleged misconduct within one month of the date of such misconduct *"or of the date on which the alleged misconduct comes to the notice of the employer."* Indeed F.I.R. dated 02.09.2014 is only against Malik Mehmood ur Rehman, but there is nothing on the record to show the date on which the alleged misconduct committed by the petitioner came to respondent No.1 / Bank's knowledge. Be that as it may, the petitioner did not agitate the ground as to the delay in the issuance of the charge sheet in her grievance petition or grievance notice dated 24.08.2015.

9. The petitioner also relied on Malik Mehmood ur Rehman's statement during the inquiry proceedings that he alone was responsible for the wrongdoing and no one else. This statement by itself would not cause the petitioner's exoneration from the charge, since she has to defend the case against her independently.

10. Respondent No.1 / Bank, vide letter dated 12.08.2015, imposed the major penalty of removal from service on the petitioner. In the said letter, it is mentioned that she had been found guilty of the charges levelled against her in the charge sheet. In the charge sheet dated 11.11.2014, she was accused of having committed misconduct, whereas in the statement of allegations, she was accused of having committed fraudulent transactions.

11. The vital question for determination in this case is that whether a major penalty of removal from service could have been imposed on the petitioner given the fact that although there was a charge of misconduct against her but in the inquiry proceedings, she had been found guilty of negligence. The finding of negligence is also not that of habitual negligence but a solitary act of negligence. Standing Order 15(3) of the 1968 Ordinance lists the acts and omissions that are to be treated as misconduct. As per Standing Order 15(3)(i), *"habitual negligence or neglect of work"* has been classified as misconduct. Assuming that the findings against the petitioner in the inquiry report dated 09.02.2015 are correct (in that she was guilty of negligence), could a major penalty of removal from service be imposed on the petitioner?

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12. In the case of Saifi Development Corporation Ltd. v. Workers Union (PLD 1965 Karachi 347), the Hon'ble Mr. Justice Wahiduddin Ahmed (as he then was) after making reference to Standing Order No.13(3)(i) of the Industrial and Commercial (Standing Orders) Ordinance, 1960, which is in *pari materia* to Standing Order No.15(3)(i) of the 1968 Ordinance, interpreted the expression *"habitual negligence or neglect of work"* in the context of misconduct, in the following terms:-

> *"It appears to me that the view of the learned Industrial Court in this respect is perfectly correct because the words "negligence or neglect of work" are not used in disjunctive sense. There are very good ground to hold so. Firstly, neglect of work is also a kind of negligence and being of a lesser kind would be covered by it, which has a broader meaning. Secondly, it is a well recognized principle of law that to carry out the intention of the Legislature, it is occasionally found necessary to use the conjunction "or" and "and" one for the other. Since the sub-clause in question is penal, I am inclined to construe it favourably to the employees. I would, therefore, hold that the neglect of work mentioned in this subsection must be of a habitual nature. I am in respectful agreement with the learned Chairman of the Industrial Court that one single instance of sleeping while on duty cannot be termed as habitual negligence or neglect of work so as to bring it within the mischief of the above - mentioned Standing Order."*

13. In the said report, it was held that *"a single instance of negligence or neglect of work cannot bring the case within the mischief of Standing Order 13(3)(i)."* Additionally, in the case of OPAL Laboratories (Pvt.) Ltd. v. Raheela (1995 PLC 451), the Labour Appellate Tribunal, Sindh, held as follows:-

> *"Under Standing Order 15(3) all the workers were dismissed from service for misconduct. The only clause applicable to their case is Standing Order 15(3)(i) "habitual negligence and neglect of work." One or two instances of neglect during the entire career cannot be regarded as "habitual." It means neglect of work by habit which connotes continuous course of conduct."*

14. The learned Chairman, N.I.R.C., in his order dated 01.02.2021, has observed that according to the findings of the Inquiry Committee, *"the petitioner was held guilty of connivance and gross negligence."* I have gone through the report of the Inquiry Committee and there is no such finding of connivance or gross negligence against the petitioner. Since the Inquiry Committee found the petitioner guilty of a solitary act of negligence which cannot be termed as *"habitual negligence or neglect of work"* so as to bring it within the ambit of "misconduct," the

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punishment of removal from service awarded to the petitioner is not commensurate with the finding of negligence.

15. In view of the above, the instant petition is allowed; the concurrent orders dated 01.02.2021 and 09.02.2022 passed by the learned Chairman and Full Bench, N.I.R.C. are set-aside; and the matter is remanded to the learned Chairman, N.I.R.C. for a decision afresh. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 20.02.2023.

JUDGE

Ahtesham*

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