JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD JUDICIAL DEPARTMENT

W.P. No. 3331 of 2023

Pakistan International Airlines Corporation Limited

Versus

Rahila Iftikhar w/o Iftikhar Qureshi, etc.

Petitioner by	:	Mr. Momin Ali Khan, Advocate.
Respondent No.1 by	:	M. Muzammil-Ud-Din Ch., Advocate.
Date of Hearing	:	15.05.2025

MUHAMMAD ASIF, J. Through this Writ Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**"the Constitution"**), the Petitioner, *Pakistan International Airlines Corporation Limited* (**"PIA"**), has impugned the order dated 31.07.2023, passed by the learned Full Bench NIRC, Islamabad, whereby appeal filed against the order dated 13.02.2023, passed by the learned Single Bench NIRC, Islamabad was dismissed.

2. The brief facts forming the factual substratum of the instant petition are that Respondent No.1, *Rahila Iftikhar*, was employed by the Petitioner as an Airhostess in the year 2006, initially stationed at Karachi and later transferred to Islamabad in November 2019. A complaint was lodged against her on the Pakistan Citizen's Portal, operating under the Prime Minister's Performance Delivery Unit, which led to an internal inquiry conducted by the Security & Vigilance Department of the Petitioner. The investigation revealed Respondent No.1's involvement in unethical, immoral, and unprofessional conduct with a Toronto-based Pakistani citizen namely *Adnan Malik*, including the unauthorized disclosure of personal contact details of fellow female cabin crew members without their consent. Consequently, a Show-Cause Notice dated 09.12.2020 was issued, followed by a Notice of Inquiry dated 02.02.2021. Despite being afforded opportunities,

including a personal hearing, Respondent No.1 failed to offer any satisfactory explanation or rebuttal to the allegations. Resultantly, vide order dated 12.03.2021, she was dismissed from service on the charges of gross misconduct.

Against the dismissal order, the respondent No.1 filed a Grievance Petition under Section 33 of the Industrial Relations Act, 2012 (**"IRA 2012"**) before the learned Single Bench NIRC, Islamabad, which was allowed with directions for her reinstatement along with all back benefits, vide order dated 13.02.2023. Aggrieved of it, the Petitioner filed appeal under Section 58 of the IRA, 2012 which was dismissed. Hence this petition.

3. The learned counsel for the Petitioner submits that the impugned orders are perverse, contrary to the record, and liable to be set aside as being misconceived both in law and on facts. It is argued that Respondent No.1 was dismissed after being afforded full opportunity of defense, including a show-cause notice, personal hearing; that the departmental inquiry was initiated based on a genuine complaint received through the Pakistan Citizen's Portal, which was independently investigated by the Security & Vigilance Department and found to be corroborated by credible evidence. The learned counsel further argues that the learned NIRC erred in declaring the inquiry defective despite Respondent No.1's participation in the process, and failed to consider the gravity of misconduct, which included disclosure of sensitive personal data of fellow employees to a third party. It is emphasized that the impugned orders unlawfully interfere with the disciplinary autonomy of the employer and undermine the Petitioner's legitimate right to determine suitable punishment for acts of serious misconduct. According to learned counsel, the concurrent findings of the learned fora below suffer from non-reading and misreading of material evidence, and are the result of mechanical and unreasoned adjudication. The learned counsel finally prays for setting aside of the impugned orders.

4. Learned counsel for Respondent No.1 has fully supported the impugned orders and stated that the dismissal of the Respondent No.1 was the outcome of victimization, driven by *malafide* intent, and in violation of statutory due process; that the Respondent No.1 was not confronted with specific evidence and that the inquiry proceedings were arranged and unilateral, conducted in a manner that denied the Respondent No.1 a fair hearing, thereby violating the principles of natural justice. Lastly, he prays that the impugned orders may be maintained and the petition may be dismissed.

5. Arguments heard, and record perused with the able assistance of learned counsel for the parties.

6. A bare perusal of the record reveals that the Respondent No.1 was dismissed from service, vide order dated 12.03.2021 with the allegation of impertinence behavior, unauthorized disclosure of information relating to the operations of the Petitioner's Company. It would be appropriate to reproduce hereinbelow the dismissal order for ready reference:

> ***"1****. This is in reference to Show Cause Notice Issued to you bearing LAOO. No. CF:12-2020-078 dated 09-12-2020, on account of Impertinence behavior, unauthorized disclosure of any Information relating to the operations of the company, breach of applicable laws and any other criminal offense or unlawful activity which has adverse Impact on Company's discipline. under the provisions of PIA Employees Disciplinary Policy 2019, clause 01, 25, 32 & 56 of Appendix-C.*
>
> ***2****. In response to the above show-cause notice, you submitted your reply which was declared unsatisfactory. You appeared in the enquiry proceedings conducted dated 09-02-2021 & 15-02-2021 but failed to provide any documentary evidence in your defense regarding said allegations and found Guilty. Thereafter, you were afforded an opportunity of Personal Hearing to defend your case before the Chief Human Resource Officer on 12-03-2021, wherein you again appeared but failed to justify your stance.*
>
> ***3****. After careful perusal of entire record of your case, the Competent Authority has decided to dismiss you from service of PIACL in accordance with the applicable rules of the*

> *company and provisions of Industrial & Commercial Employment (Standing Order) Ordinance. 1968. Accordingly, you are hereby* ***Dismissed*** *from the service of PIACL with immediate effect."*

7. While defending the dismissal order, learned counsel for the Petitioner states that due process was duly followed. However, I do not agree with this statement, for the simple reason that the inquiry was initiated based on an internal investigation, which itself stemmed from a complaint allegedly received through the Pakistan Citizen's Portal under the Prime Minister's Performance Delivery Unit (PMDU). Despite this, the record does not contain any copy of the said complaint, nor did the alleged complainant ever appear before the investigation or inquiry committee.

8. In the present case, two main allegations were brought against Respondent No.1. First, she was accused of engaging in unethical, immoral, and unprofessional conduct with *Adnan Malik*. Second, she was alleged to have shared the personal information, such as names and contact details, of her female colleagues.

9. Regarding the first allegation, the record is entirely devoid of evidence to substantiate the claim of immoral conduct. The individual alleged to be involved, *Adnan Malik*, was neither examined during the inquiry nor made part of the investigation. No witness testified to support the allegation, rendering it baseless and speculative. The inquiry officer's conclusion of guilt, in the absence of any cogent material or direct evidence, is arbitrary and untenable. Throughout all proceedings, including before both forums below, the Petitioner failed to establish the Respondent No.1's culpability. Accordingly, the learned Single as well as Full Bench of the NIRC rightly exonerated the Respondent No.1 of this allegation.

10. As to the second allegation concerning the sharing of female colleagues' personal data, the investigation and inquiry lack specificity, as no names were identified, nor were any alleged victims examined or

produced. *Adnan Ahmed Channa* (RW-1), in cross-examination, confirmed the absence of written complaint against the Respondent No.1.

11. It is patent from the language of Section 3 read with Section 15(4) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, that the services of a workman cannot be terminated, nor can a workman be removed, retrenched, discharged, or dismissed from service, except through a written order that clearly states the reasons for such action. However, the inquiry was conducted in contravention of the said provisions, no charge sheet was issued, nor was a copy of the inquiry report provided to the Respondent No.1. Crucially, none of the committee members involved in the investigation were presented as witnesses, and their absence without justification warrants adverse inference against the Petitioner, in line with the principle laid down by the Hon'ble Supreme Court of Pakistan in the case of *Shaukat Hussain v. The State through PG Punjab & another* reported as **(2024 SCMR 929)**.

12. It is universally settled principles of law enunciated from the Roman Law that ***"Expressio Unis Est Exclusio Alterius"*** that when law requires a thing to be done in particular manner then, it should be done in that manner and anything done in conflict of the command of law shall be unlawful being prohibited or not permissible. The Hon'ble Supreme Court in several cases held that in the failure to follow, it would be non-compliance of legislative intent. The Honorable Supreme Court laid down the principle as follows:

> *"It is settled law that where the law requires something to be done in a particular manner, it must be done in that manner. Another important canon of law is that what cannot be done directly cannot be done indirectly"*

13. The Petitioner has attempted to shield its actions behind the veil of *"discretionary powers"* and the employer's prerogative to

determine appropriate disciplinary measures in cases of alleged misconduct. However, it is trite law that discretion cannot be exercised arbitrarily or whimsically. Even where discretion is lawfully vested, it must be exercised in accordance with the foundational principles of fairness, justice, and equity. The Hon'ble Supreme Court, in the case of *Abid Hussain v. PIAC* (**2005 SCMR 25**), has firmly held that no public functionary may wield discretion as a tool of unchecked authority; rather, such discretion must be deployed with transparency and legal justification. In the present case, the Petitioner's reliance on discretion to justify a dismissal unsupported by concrete evidence amounts to a colorable exercise of power, squarely in conflict with the governing legal framework.

14. Furthermore, it is well established that discretionary powers, even when lawfully conferred, are not immune from judicial scrutiny where their exercise fails to meet the essential tests of reasonableness and good faith. A power that purports to be discretionary, yet is exercised without adherence to statutory safeguards or in the absence of foundational facts, constitutes a clear abuse of authority. The authoritative pronouncement in the case *Abid Hussain* (supra), drawing upon *D.J. Galligan's* seminal work on discretionary powers, reinforces that any decision devoid of **evidentiary basis** or rational justification cannot qualify as a **bona fide exercise of discretion**. Here, the Petitioner's actions are devoid of substantive findings or procedural regularity, rendering the invocation of discretion legally untenable and, in fact, **a misuse of powers**.

15. The above principles have been consistently reiterated in the cases of *Director Food, N.W.F.P. and another v. Messrs Madina Flour & General Mills (Pvt) Ltd. & 18 others*, (**PLD 2001 SC 1**), *Chief Secretary Punjab and others v. Abdul Raoof Dasti*, (**2006 SCMR 1876**), and *Abdul Wahab and another v. Secretary, Government of Balochistan and another*, (**2009 SCMR 1354**).

16. It is an undisputed fact that Respondent No.1 had rendered approximately 15 years of unblemished service with the Petitioner prior to her dismissal. Not a single complaint or adverse report had been recorded against her during this period. Notably, one *Khalid Mehmood*, who appeared as a witness in support of Respondent No.1, categorically testified to her exemplary character and professional conduct. He affirmed that she diligently performed her duties and that no complaint had ever been made against her. Significantly, this testimony was not subjected to cross-examination by the Petitioner, thereby attracting the principle that unchallenged evidence is deemed to be admitted. In the absence of any rebuttal, the testimony of *Khalid Mehmood* stands unshaken and lends substantial credence to the Respondent's defence, which further undermines the Petitioner's stance.

17. While courts generally exercise restraint in interfering with disciplinary proceedings conducted by employers, such deference is neither absolute nor unconditional. Where it is demonstrably established, as in the present case, that the inquiry was vitiated by breaches of natural justice, and where no credible evidence supports the allegations, judicial intervention becomes not just warranted but imperative. The concurrent findings rendered by the Single Bench NIRC and Full Bench NIRC Islamabad are based on sound reasoning and have not been shown to suffer from any illegality, perversity or jurisdictional defect.

18. Summing up the case I am of the view that the consistent pattern of arbitrary action and mala fide intent on part of the Petitioner reflects not a bona fide disciplinary process, but a sustained attempt to humiliate and wrongfully penalize the Respondent No.1. Such conduct is reprehensible and must be decisively curtailed. Resultantly, the impugned order dated 31.07.2023, passed by the learned Full Bench NIRC is upheld, and the Petitioner/PIA is directed to implement the order of the learned Single Bench NIRC dated 13.02.2023, with all its

fairness, with no future snag with full consequential financial and service benefits to the Respondent No.1.

19. In view of foregoing reasons, the instant petition is **dismissed**.

Pending application No.1637 of 2025 stands disposed of.

(MUHAMMAD ASIF)
JUDGE

Announced in open Court on 30.07.2025

JUDGE

APPROVED FOR REPORTING
BLUE SLIP ADDED

MALIK KAKAR