JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3966 of 2016
Zulfiqar Ali Tanoli
Versus
Full Bench National Industrial Relation Commission, Islamabad and others

Date of Hearing:	20.06.2017
Petitioner by:	Mr. Muhammad Akhtar Anjum, Advocate.
Respondents by:	Mr. M. Umar Khan Vardag, Advocate for respondents No.2 and 3.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Zulfiqar Ali Tanoli, impugns the order dated 21.09.2016, passed by the learned Full Bench of the National Industrial Relations Commission, Islamabad ("N.I.R.C."), whereby the appeal of Pakistan International Airline Corporation (respondent No.2) against the order dated 20.04.2015, passed by the learned Member, N.I.R.C. was allowed. Vide the said order dated 20.04.2015, the learned Member, N.I.R.C. had accepted the petitioner's grievance petition, and directed respondent No.2 to reinstate the petitioner in service.

2. The record shows that on 02.06.1987, the petitioner was appointed as Passenger Service Assistant by respondent No.2. Subsequently, the petitioner was promoted as Passenger Service Supervisor. During 2004, the petitioner was granted ex-Pakistan leave so as to enable him to proceed to Canada. The petitioner claims to have been fallen ill while abroad. Since the petitioner did not return to rejoin his duties, respondent No.2 initiated an inquiry against him. The inquiry was to be held on 23.06.2005. The petitioner claims to have informed respondent No.2 about his illness, and also claims to have sent documents evidencing his illness. However, the petitioner was proceeded against *ex-parte*. On 25.07.2005, a show cause notice was issued to the petitioner. On 30.07.2005, the petitioner sent a reply to the said show cause notice. Vide order dated 16.08.2005, a major penalty of dismissal from service was imposed on the petitioner. The petitioner is said to have preferred a departmental representation on 28.08.2005,

against his dismissal from service. Since no reply was given by respondent No.2 to the said departmental representation, the petitioner filed an appeal before the Federal Service Tribunal ("F.S.T."). After the judgment of the Hon'ble Supreme Court in the case of Muhammad Mobeen-us-Salam Vs. Federation of Pakistan (PLD 2006 SC 602), the F.S.T. did not have jurisdiction to adjudicate upon appeals filed by the employees of respondent No.2, since they were no longer civil servants under the provisions of the Civil Servants Act, 1973. Consequently, vide notice dated 08.07.2006, the F.S.T. informed the petitioner that the pending proceedings, which were not protected or covered by the judgment of the Hon'ble Supreme Court in the said case shall stand abated, and that the litigants could resort to the competent *fora* for redressal of their grievance within 90 days, and that the bar of limitation provided by the respective laws shall not operate against them till the expiry of the stipulated period.

3. Regardless of the said notice dated 08.07.2006, the petitioner, in the year 2012, filed an application (i.e. Misc. Petition No.271/2012) before the F.S.T., praying for the passing of the judicial order regarding the abatement of the petitioner's appeal so that the petitioner could approach the competent forum. Consequently, on 28.05.2012, the F.S.T. ordered that the petitioner's appeal stands abated as the Tribunal had no jurisdiction in the matter. Thereafter, the petitioner on 13.08.2012, filed a petition under Sections 31 and 33 of the Industrial Relations Act, 2012, before the N.I.R.C. The grievance agitated by the petitioner in the said petition was that the inquiry was conducted behind the petitioner's back, and that no charge sheet had been issued to him. It was *inter-alia* pleaded that no inquiry report was provided to the petitioner.

4. Vide order dated 20.04.2015, the learned Member, N.I.R.C. accepted the petitioner's said petition and directed respondent No.2 to reinstate the petitioner in service. The petition filed before the N.I.R.C. was held to be within the limitation period. It was also ordered that the period during which the petitioner remained absent from his duty should be treated as leave without pay. The learned Member, N.I.R.C., was of the view that since the petitioner

was seriously ill and not in a position to travel from abroad, respondent No.2's act of not granting him an extension in the leave, and initiating an inquiry was "deplorable".

5. Against the said order dated 20.04.2015, respondent No.2 preferred an appeal before the learned Full Bench of the N.I.R.C. Vide order dated 21.09.2016, the learned Full Bench of the N.I.R.C. allowed respondent No.2's appeal. The order dated 20.04.2015, passed by learned Member, N.I.R.C. was set aside, and the petitioner's grievance petition was dismissed. One of the reasons for allowing respondent No.2's appeal was that the petitioner's grievance petition was time barred. The said order dated 21.09.2016, has been impugned by the petitioner in the instant writ petition.

6. Learned counsel for the petitioner submitted that after the petitioner was granted ex-Pakistan leave, he developed a problem of his spinal cord due to which he was unable to return Pakistan upon expiry of his leave period; that the petitioner had sent medical certificates to respondent No.2 in order to establish that the petitioner was suffering from a serious ailment; that the petitioner's application for an extension in ex-Pakistan leave was wrongfully declined by respondent No.2; that respondent No.2 initiated an inquiry against the petitioner on baseless grounds; that at no stage was any charge sheet issued to the petitioner; that the inquiry against the petitioner was conducted in violation of the principles of natural justice; that the petitioner's reply to the show cause notice was not taken into consideration by the inquiry officer; and that the order dated 16.08.2005, whereby the petitioner was dismissed from service was illegal and of no legal consequence.

7. Learned counsel further submitted that against the said dismissal order dated 16.08.2005, the petitioner submitted a departmental appeal, which was not responded to; that the said departmental appeal should have been treated as a grievance notice; that since no response was received from respondent No.2, the petitioner filed an appeal before the F.S.T. against the dismissal order dated 16.08.2005; that even though as a consequence of the judgment of the Hon'ble Supreme Court in Mobeen-us-Salam's case (*supra*), the petitioner's appeal before the F.S.T. had abated, the

competent forum would not accept a grievance petition without a judicial order passed by the F.S.T.; that in 2012, the petitioner filed an application before the F.S.T. to pass a judicial order regarding the abatement of his appeal; that the F.S.T. passed a judicial order regarding the abatement of the petitioner's appeal on 28.05.2012; that since the petitioner filed his grievance petition before the N.I.R.C. on 13.08.2012, the same was within the limitation period; that this crucial aspect of the case was not appreciated by the learned Full Bench of the N.I.R.C.; that the learned Full Bench of the N.I.R.C. erred by not appreciating that on 28.08.2005, the petitioner had preferred a departmental appeal against the dismissal order dated 16.08.2005; and that the said appeal should have been treated as a grievance notice. Learned counsel for the petitioner prayed for the order dated 21.09.2016, passed by the learned Full Bench of the N.I.R.C. to be set aside, and for the order dated 20.04.2015, passed by the learned Member, N.I.R.C. to be restored.

8. On the other hand, learned counsel for respondents No.2 and 3 submitted that the impugned order dated 21.09.2016, is strictly in accordance with the law and facts of the case; that between 08.07.2006 and 13.08.2012, the petitioner remained silent, and had not explained as to why he did not agitate his grievance before the competent forum within the limitation period stipulated in the judgment of the Hon'ble Supreme Court in Mobeen-us-Salam's case (*supra*); that after having received notice dated 08.07.2006, from the F.S.T. regarding the abatement of his appeal, the petitioner should have soon thereafter filed a petition before the competent forum; that the belated application filed by the petitioner before the F.S.T. for the issuance of a judicial order was only to overcome the bar of limitation; that an essential pre-requisite for invoking the jurisdiction of the N.I.R.C. is the issuance of a grievance notice by a workman against his employer; that at no stage did the petitioner issue such a grievance notice to respondent No.2; that the petitioner consciously decided not to appear before the inquiry officer or to join the inquiry proceedings; and that since the petitioner had been given a notice of the inquiry proceedings, he could not assert that such proceedings were in violation of the

principles of natural justice. Learned counsel for respondents No.2 and 3 prayed for the writ petition to be dismissed.

9. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 5 above, and need not be recapitulated.

10. It is not disputed that the primary reason for the initiation of disciplinary proceedings against the petitioner was that he did not return after the expiry of his ex-Pakistan leave so as to join his duties. The petitioner does not deny the service of the show cause notice issued by respondent No.2. The petitioner asserts that due to his illness, respondent No.2 should have extended his ex-Pakistan leave instead of initiating inquiry proceeding against him. In the inquiry proceedings, the petitioner had been proceeded against ex-parte. The inquiry proceedings had culminated in an order imposing a major penalty of dismissal from service on the petitioner.

11. On 28.08.2005, the petitioner had preferred a departmental appeal against his dismissal from service. No order has been passed at any stage on the said appeal. Having not received any response from respondent No.2, the petitioner filed an appeal against his dismissal from service before the F.S.T. During the pendency of the petitioner's appeal before F.S.T., the Hon'ble Supreme Court passed a judgment in the case of Mobeen-us-Salam *(supra)*. As a consequence of the said judgment, the petitioner's appeal before the F.S.T. abated. This was because the employees of respondent No.2 could no longer be treated as civil servants under the provisions of the Civil Servants Act, 1973.

12. Vide notice dated 08.07.2006, issued by the F.S.T., the petitioner was informed that the pending proceedings, which were not protected or covered by the judgment of the Hon'ble Supreme Court in the said case shall stand abated, and that the litigants could resort to the competent *fora* for the redressal of their grievances within 90 days, and that the bar of limitation provided by the respective laws shall not operate against them till the expiry

of the stipulated period. In the said judgment, the Honourable Supreme Court gave *inter-alia* the following directions:-

> *"(c) The cases or proceedings which are not protected or covered by this judgment shall be deemed to have abated and the aggrieved persons may approach the competent forums for redressal of their grievances within a period of 90 days and bar of limitation provided by the respective laws, shall not operate against them till the expiry of stipulated period".*
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> *"(e) The Service Tribunal shall decide pending cases under Section 2-A of the STA, 1973 in view of the above observations. However, if any of the cases is covered by clause 'c' (ibid), a period of 90 days shall be allowed to aggrieved party to approach the competent forum for the redressal of its grievance."*

In view of the said judgment of the Hon'ble Supreme Court, the F.S.T. could only hear cases/appeals filed by civil servants (as defined in the Civil Servants Act, 1973) or their employers. The appeals of the appellants before the F.S.T. who were not civil servants abated, and such appellants were left to avail the remedies prevailing prior to the promulgation of Section 2-A the Civil Servants Act, 1973.

13. The petitioner cannot claim to have no knowledge of the said judgment of the Hon'ble Supreme Court. It is well settled that ignorance of the law is no defence. This is moreso after the petitioner received the above referred notice dated 08.07.2006, from the F.S.T. Upon the receipt of the said notice, the appellant knew or ought to have known that his appeal before the F.S.T. had abated. He should have been vigilant by approaching the competent forum within a period of 90 days from the passing of the said judgment by the Hon'ble Supreme Court. The petitioner did not do so. Instead, after a lapse of almost six years, he applied to the F.S.T. for the issuance of a judicial order regarding the abatement of his appeal. In his application, the petitioner made express reference to the said notice dated 08.07.2006, issued by the F.S.T. I would tend to agree with the learned counsel for respondents No.2 and 3 that this was done by the petitioner to overcome the obstacle of limitation. The petitioner wanted to project an impression that the limitation period for invoking the jurisdiction of the N.I.R.C. would commence from the date of the passing of the judicial order by the F.S.T. regarding the abatement of the petitioner's appeal.

This is what was submitted by the learned counsel for the petitioner during arguments. I do not agree with this contention. There was no need for the passing of a judicial order regarding the abatement of the petitioner's appeal before the F.S.T. for the petitioner to have taken his grievance before the competent forum. Since the petitioner took several years after the judgment of the Hon'ble Supreme Court in Mobeen-us-Salam's case (*supra*) to file a grievance petition before the N.I.R.C., the same was clearly barred by time. The said petition does not appear to have been accompanied with an application for condonation of delay. To hold that the petitioner could (after a lapse of 90 days from the date of the judgment of the Honourable Supreme Court in Mobeen-us-Salam's case (*supra*)) file an appeal before a competent forum against his dismissal order, would be tantamount to adding words in the said judgment of the Hon'ble Supreme Court. This is certainly not permissible.

14. I also cannot bring myself to agree with the contention of the learned counsel for the petitioner that the petitioner's appeal dated 28.08.2005, to respondent No.2 should be treated as a grievance notice. In the case of Khushal Khan Vs. Muslim Commercial Bank Limited (2002 SCMR 943), it has been held *inter alia* that an appeal filed by an employee before the employer could not be treated as a grievance notice within the meaning of Section 25-A of the Industrial Relations Ordinance, 1969. Without a grievance notice, the proceedings initiated by an employee before a Labour Court were held to be incompetent. Section 33(1) of the Industrial Relations Act, 2012, requires a worker to bring his grievance in respect of any right guaranteed or secured to have by or under any law or any award or settlement for the time being enforced to the notice of his employer in writing within 90 days of the date on which the cause of such grievance arises. Since the petitioner's appeal to respondent No.2 could not be treated as a grievance notice, the grievance petition before the N.I.R.C. was filed by the petitioner without satisfying the essential prerequisite of issuing a prior grievance notice. This is an added reason why the learned Full Bench of the N.I.R.C. was correct in setting aside the order of the learned Member, N.I.R.C.

15. In view of the above, I do not find any jurisdictional infirmity with the impugned order dated 21.09.2016, passed by the learned Full Bench of the N.I.R.C. Consequently the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham

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