

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-3414 / 2022
(Rao Muhammad Anwar v. NIRC Full Bench & others)

Date	Order with signature of Judge
	Before:- Mr. Justice Riazat Ali Sahar Mr. Justice Ali Haider ‘Ada’

Date of hearing & order: 13.10.2026

Mr. Abdul Rauf, Advocate for Petitioner.
Mr. Muhammad Nishat Warsi, advocate for respondent No.3.
Mr. Irshad Ali, Assistant Attorney General.

ORDER

Riazat Ali Sahar, J. Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a. *Call for the record and proceedings of the case Nos. 12(01)/2022-K and 4B(284)/2014-K from respondents No.1 & 2 respectively, after providing the parties opportunity of being heard, may be pleased to set aside the impugned order dated 25.02.2022 and allow the petition of the petitioner with full back benefits to the petitioner till age superannuation i.e. 25.01.2018, as the petitioner was jobless till the date of superannuation i.e. dated.*
- b. *To grant any other or further relief as may be considered appropriate by this Honourable Court.*

2. The case advanced by Mr. Abdul Rauf, learned counsel for the petitioner, is that the petitioner entered the service of respondent No.3 on 14-10-1987 as a Driver and was subsequently promoted as an Equipment Operator. According to learned counsel, after his election as General Secretary of SAPS United Workers Union, management became hostile towards him, transferred him from Karachi to Quetta and, on an allegation of unauthorized absence, initiated disciplinary proceedings which culminated in his dismissal on 11-01-2012. It is asserted that the transfer and dismissal were retaliatory measures directed at lawful trade union activity. The petitioner also complains of non-supply of the inquiry proceedings and inquiry report and contends that his attendance record, correspondence and the oral evidence were not correctly appreciated by either forum of the NIRC. It is, therefore, argued that the impugned decisions are contrary to law and to the principles of natural justice.

3. Mr. Muhammad Nishat Warsi, learned counsel for respondent No.3, has opposed the petition. He submits that the petitioner's conditions of appointment authorized posting anywhere in Pakistan; hence transfer to Quetta was within the employer's lawful administrative powers. He maintains that, despite notice to show

cause and notice of inquiry, the petitioner neither reported for duty at Quetta nor joined the inquiry; accordingly, the proceedings were conducted ex parte and the dismissal followed. The asserted trade union office and allegation of retaliatory action, it is contended, were not proved. Learned counsel further refers to dismissal of an earlier unfair labour practice complaint by the NIRC on 12-02-2010, contends that the transfer preceded the relevant interim order and points out that proceedings under the Payment of Wages Act concerned a distinct cause. He submits that the two NIRC forums have returned concurrent findings on the evidence and that no ground for constitutional interference exists.

4. Mr Irshad Ali, learned Assistant Attorney General, has adopted the submissions made on behalf of respondent No.3 and supported the impugned orders.

5. Heard. Perused. The controversy is not whether another conclusion could conceivably be drawn from the same material, but whether the orders of the learned Single Member and Full Bench of the NIRC disclose an error of jurisdiction, a demonstrable misreading or non-reading of material evidence, a breach of a mandatory procedure, or a denial of fair hearing sufficiently serious to invite interference under Article 199. The connected questions concern the allegation of anti-union victimisation, the permissibility and fairness of the ex parte disciplinary inquiry, and the claim to consequential benefits.

6. The material chronology is substantially undisputed. The petitioner entered employment on 14-10-1987; his transfer from Karachi to Quetta became the subject of dispute; disciplinary action for the alleged failure to report at the transferred station led to the dismissal letter dated 11-01-2012; the grievance was decided against him by the learned Single Member on 14-12-2021; and his statutory appeal was dismissed by the learned Full Bench on 25-02-2022. The fact that a dismissal followed the transfer, without more, does not by itself establish that either decision was a colorable exercise of power. The legality of each action must be assessed against the terms of employment, the governing labor law and the evidence showing its actual purpose.

7. The right of a workman to undertake lawful trade union activity is protected by the Industrial Relations Act, 2012, and an employer's managerial powers cannot be employed as a device for suppressing that right. Equally, an employee's union activity does not confer an unconditional immunity from a lawful transfer or from disciplinary control. In **IFFCO Pakistan (Private) Limited v Ghulam Murtaza and others 2024 SCMR 1548**, the Supreme Court emphasized that an employer's right to manage its enterprise must be exercised consistently with labor rights and that formal arrangements cannot be used to circumvent such rights. The principle is relevant here because the employer's transfer power is real but is not a license to

victimise a trade unionist. The decisive issue remains whether a retaliatory purpose was established on the evidence before the NIRC.

8. On this aspect, the petitioner's assertion of election as a union office-bearer and the proximity alleged between his union activity, transfer and dismissal have been considered. Nevertheless, learned counsel has not pointed out any particular document, admission, discriminatory comparison or other material which the NIRC ignored and which would demonstrate that the transfer or ensuing action was directed against lawful union activity rather than the asserted failure to obey a lawful posting. In **Mansoor Ahmed Khan v President, National Bank of Pakistan and others, C.P. No.D-3460 of 2025, decided by this Court on 16-04-2026 (unreported)**, it was reiterated that transfer ordinarily remains within managerial discretion, whereas a claim of unfair labour practice must be founded upon specific and convincing material showing mala fide or victimization. The reasoning, though fact-sensitive, supports the distinction required in the present case. Similarly, in **K-Electric Limited v National Industrial Relations Commission and another, C.P. No.D-1621 of 2025, decided on 25-02-2026 (unreported)**, this Court recognized that disciplinary action may amount to an unfair labor practice if it is proved to be a cloak for suppressing protected union activities; a bare or un-particularized allegation is not enough. The petitioner has not shown that these governing distinctions were overlooked by the statutory forums.

9. Nor can the earlier order dated 12-02-2010, whereby an unfair labour practice complaint was dismissed, be treated as automatically extinguishing a separate cause of action arising from a later dismissal in 2012. That earlier order is a relevant circumstance, not a blanket bar. Even on that approach, however, the petitioner was required to establish the pleaded nexus between protected union activity and the specific disciplinary action now under challenge. On the material identified before us, no such evidentiary nexus has been shown to have been disregarded by the two NIRC forums. Likewise, the assertion that an interim order was disobeyed has not been substantiated by demonstrating that the challenged transfer post-dated, or was otherwise contrary to, an operative restraint.

10. The complaint concerning the domestic inquiry requires particular care. A disciplinary inquiry is not rendered fair merely because the employer describes it as regular, nor is it rendered void merely because an employee, after due notice and without sufficient cause, elects not to participate. The essential questions are whether proper notice of the charge and hearing was given, whether participation was genuinely possible, whether the applicable mandatory procedure was followed and whether the charge was supported by evidence. In *Faisal Ali v District Police Officer, Gujrat* and another 2025 SCMR 92, the Supreme Court stressed that the charge must be brought to the employee's notice and that a reasonable opportunity of defence is indispensable. In *Sanaullah Sani v Secretary Education Schools and*

others 2024 SCMR 80, the Court likewise underlined the need for a sufficiently particularised notice of charges. These decisions arose in civil service proceedings and their particular statutory requirements cannot mechanically be transplanted into industrial employment; their principles of notice, fair opportunity and due process remain instructive.

11. The limits of proceeding ex parte are illustrated by *The Director General, Intelligence Bureau, Government of Pakistan and others v Babar Ali Solangi 2025 SCMR 353*. There the Supreme Court disapproved an inquiry conducted while the employee was incarcerated and unable, in any real sense, to defend himself; formal notice could not cure the denial of a practical opportunity of defence. That decision does not hold that every inquiry in the absence of an employee is unlawful. It establishes that the absence must not be the product of an employer-created or otherwise unavoidable impediment to defence. In the present case, the employer's position, accepted by the statutory forums, is that notices were issued but the petitioner neither joined the transferred station nor participated in the inquiry. No comparable impediment preventing participation, or specific defect in service of notice which was overlooked by the NIRC, has been demonstrated before this Court.

12. The employer nevertheless bore the burden of establishing the misconduct in the inquiry; non-participation by the petitioner could not itself constitute proof. In *Saeed Ahmed v Nestle Pakistan Limited and others 2026 SCMR 105*, the Supreme Court, while dealing directly with a workman's domestic inquiry under the labour laws, emphasised that a finding of misconduct must rest on reliable material and observance of the essential requirements of natural justice. There the failure to examine a key witness necessary to prove the charge rendered the disciplinary finding unsustainable. That authority has not been overlooked. The present petitioner has, however, identified no analogous absence of essential proof, unexamined decisive witness, or material contradiction which the learned NIRC forums failed to address. It would be equally erroneous to presume misconduct from non-attendance at inquiry or, conversely, to nullify the inquiry without identifying a proved illegality in its conduct.

13. The particular complaint that copies of the inquiry proceedings and report were not supplied must also be assessed in the light of the service rules or standing orders applicable to the petitioner, the procedural stage at which those documents were required and the effect of the alleged omission upon his defence. Where a mandatory entitlement to such material exists, its denial cannot be dismissed as a triviality; nor does the employee invariably have to prove that a fair inquiry would necessarily have ended differently. In the present proceedings, however, no applicable provision or material part of the record has been shown to us which contradicts the NIRC's concurrent conclusions on procedural compliance or

establishes that the alleged non-supply deprived the petitioner of a reasonable opportunity to answer the charge. The general allegation, without identifying the violated obligation or the resulting impairment of defence, does not on the present record justify setting aside the impugned findings.

14. The controlling limit upon this Court's jurisdiction has been explained with particular reference to the NIRC in **IFFCO Pakistan (Private) Limited v Ghulam Murtaza and others 2024 SCMR 1548**. The Supreme Court held that findings concurrently returned by the Single Member and Full Bench on relevant evidence ordinarily are not to be displaced in constitutional jurisdiction merely for the purpose of arriving at a different appraisal of the same testimony; intervention remains open where the findings are perverse, manifestly erroneous, illegal or violative of fundamental procedure or natural justice. The restriction is not a prohibition on judicial review, but a distinction between correction of legal error and a further appeal upon facts. Applying that test, the petitioner's challenge substantially invites another appreciation of attendance documents, correspondence and testimony without identifying a decisive misreading, omission or jurisdictional flaw capable of displacing the conclusions reached by the NIRC.

15. The claim for back benefits until the petitioner's asserted superannuation on 25-01-2018 is consequential upon the invalidation of his dismissal dated 11-01-2012. No freestanding legal basis for payment throughout the intervening period has been shown once the disciplinary action and the NIRC orders remain undisturbed. The separate proceedings under the Payment of Wages Act do not, merely by their existence, establish unlawfulness of the dismissal or an independent entitlement to the relief sought in this petition.

16. For these reasons, we find that the petitioner has not established that either the order dated 14-12-2021 of the learned Single Member or the appellate order dated 25-02-2022 of the learned Full Bench of the NIRC suffers from any jurisdictional infirmity, patent misreading or non-reading of material evidence, or established breach of mandatory procedure or natural justice warranting interference under Article 199 of the Constitution. The Constitutional Petition is, accordingly, dismissed, together with any pending application. The impugned orders shall remain undisturbed. There shall be no order as to costs.

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