

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2439 of 2013

Mian Mushtaq AhmedPetitioner

Versus

DGW & CE (Army) GHQ
Rawalpindi & another Respondents

Date of hearing: 31.08.2018

Petitioner, Mian Mushtaq Ahmed, present in person
Shaikh Liaquat Hussain, Assistant Attorney General a/w Mr.
Maqsood Anwar, SSO c/o ACE (A) S Corps.

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ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner is seeking directions to the Respondents to pay his salary, pension, TA/DA and other retirement benefits.

2. Brief facts of the case are that on 01.06.1976 Petitioner was appointed as Store Man in BPS-5 in Military Engineering Service Lahore and was promoted as Junior Supervisor in BPS-07 vide Order dated 28.05.1998. Petitioner has submitted that he was compulsorily retired from service and as such he filed Service Appeal No. 101 K(K) CS/2012) before the learned Federal Service Tribunal Karachi Bench, which was allowed vide Judgment dated 3.6.2015, Respondents preferred Civil Petition No. 1812 of 2015

before the Hon'ble Apex Court, which was dismissed vide order dated 10.1.2017. Petitioner has submitted that he retired from service of the Respondents on 06.06.2012 and he has not been paid 04 increments and other ancillary benefits on his retirement. Petitioner being aggrieved by and dissatisfied with the aforesaid actions of the Respondents filed the instant petition on 01.06.2013.

3. Upon notice, the Respondents have filed para-wise comments and denied the allegations leveled against them.

4. Petitioner present in person has contended that he has highlighted different deficiencies in the payment of amount which has not been included by the Respondents department while calculating and finalizing his pension. According to the Petitioner, he is being paid Rs.7,260/- per month only as pension and as per his calculation the amount should have been Rs.13,200/- per month. According to petitioner Revised Basic Scale Rules 2011, have not been considered as per the Office Memorandum dated 13th July, 2010; that he has been deprived of the Annual increment of the year 2010. As per the petitioner the respondent department is avoiding to pay his legal dues. He lastly prayed for allowing the instant petition.

5. Shaikh Liaquat Hussain, learned Assistant Attorney General along with Mr. Maqsood Anwar, SSO c/o ACE (A) S Corps, Departmental representative, have contended that petitioner's pension/ commutation was calculated up to 21.12.2010 as per the pension/commutation performa and LPC, because his absence

period was regularized as EOL (without pay) and subsequently pension/commutation was granted to him on 2.4.2015. They further stated that so far as 4 increments are concerned, the petitioner was granted the same for the month of December 2010 at the rate of Rs.190, however, no premature increment is admissible on retirement as the petitioner retired from service on 22.12.2010, thus he was not entitled for any increment. According to the respondent the said increment is admissible to those pensioners who were stuck up in the maximum of their respective pay scales and were not allowed increments beyond the maximum of their pay scale in the year of their retirement, as per the circular of Finance Department dated 13.7.2010. They further contended that the petitioner has been allowed/granted annual increment as per the personal pay on 1.12.2010 in the year of retirement beyond maximum of his pay scale; therefore no benefit of additional increment, except the above quoted increment for December 2010 is allowable to the petitioner, since the petitioner retired from service on 22.12.2010 before 1st of December, therefore, his entitlement for usual increment does not fall within the purview of existing rules/finance office memorandum dated 29.12.1999. They further stated that so far as advance increment on account of possessing higher education over the above prescribed qualification is concerned, the same has already been granted to him. They contended that pension/commutation amount paid to the petitioner has been finalized and no arrears are payable/outstanding. Learned Assistant Attorney General has drawn the attention of this Court to the Order dated 09.11.2017

and argued that payment of bill for the period from 22.12.2010 to 05.09.2011 amounting to Rs.169,590/- for payment was ordered to be paid to the Petitioner and this Court passed a detailed order dated 12.1.2018 in this regard. He lastly prayed for dismissal of the instant petition.

6. We have heard the Petitioner in person, Shaikh Liaquat Hussain, learned Assistant Attorney General & Mr. Maqsood Anwar, SSO c/o ACE (A) S Corps, Departmental representative of respondents and have perused the material available on record.

7. It is seen that the main prayer of the petition in the instant petition is regarding salary, pension, TA DA and other retirement benefits. Petitioner admits that the respondent is paying the pension to the petitioner but he has not been paid four annual increments in the following terms:-

- (i) annual increment December 2010 @ 320 per month,**
- (ii) premature increment on retirement @ 320 per month**
- (iii) Increment @ 320 per month which were stuck up in the maximum stages of pay scales, usual increment @ 320 per month who retiring during the period on and from 1.6. and 1.12 of the year,**
- (iv) 4 increments @ 320 x 4= 1280 as per Hon'ble Supreme Court's order, actual pension due at Rs. 13200/= per month,**

8. We have noticed that this Court vide Order dated 18.5.2017 directed the parties to sit together and calculate the payable amount to the Petitioner in accordance with the applicable rules and regulations and that the legally due amount would be paid to the Petitioner within a period of one month. As per the record, the

learned Assistant Attorney General filed a statement along with letter dated 17.10.2017 issued by Admin. Officer Commander MES Army to CMA (LC) Pay Sec Lahore Cantt in respect of payment of bill for the period from 22.12.2010 to 05.09.2011 amounting to Rs.169,590/-, for audit and authorizing payment out of cash assignment to the Petitioner. Such statement was taken on record and it was ordered that the payment shall be made to the Petitioner by the concerned authority. Per learned Assistant Attorney General, the said amount has been paid to the Petitioner, which has not been denied by the Petitioner. Learned Assistant Attorney General also referred to the statement dated 22.02.2018 and argued that the Petitioner has been granted the following benefits:-

- a. Revised LPC and PAF 357 have also been processed CMA (KC) Kci for revision of Pension.**
- b. Rs. 190087/- on regularization of his EOL period w.e.f 22 Dec 2010 to 05 Sep 2011.**
- c. Farewell grant.**

9. We during the course of arguments enquired from the Petitioner as to how he is entitled for the four annual increments. The Petitioner in reply to the aforesaid query referred to the Office Memorandum dated 13th July, 2010 and 04th July, 2011 and stated that the Hon'ble Supreme Court has decided the issue that the benefit of one increment may also be allowed to all those pensioners who were stuck up in the maximum stages of their pay scales and were not allowed increment beyond their maximum pay scales in the year of their retirement. He further stated that as per

revision of Basic Pay Scales vide Office Memorandum dated 04th July 2011, he is entitled for annual increment. The aforesaid claim of the Petitioner has been refuted by the learned Assistant Attorney General on the premise that Petitioner has already been allowed / granted annual increment in the month of December, 2010 as personal pay and no other increment is admissible to the Petitioner. From the above factual aspects it is noted that the Petitioner has failed to satisfy this Court regarding his entitlement for the aforesaid 4 increments. The Petitioner is receiving his pensionary benefits and his claim of four annual increments as per the Office Memorandums as discussed *supra* is not available to him since these memorandums talk about one increment only which he has duly received. The Petitioner has simply failed to justify and demonstrate as to how he is entitled for four increments which are not reflected anywhere from any document furnished by the Petitioner. Upon perusal of the Office Memorandums, we are not convinced that the petitioner is entitled to the benefits which are not available in the said Office Memorandum. The claim of the petitioner in respect of 4 annual increments dues/benefits is neither borne out of any record nor from any office memorandum. Hence in the facts and circumstances and for the reasons alluded above, we do not agree with the contention of the Petitioner and are not inclined to grant the benefit as claimed by him. The Petition thus having no merits is accordingly is dismissed.

JUDGE

JUDGE