

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 264 OF 2017

(On appeal against the judgment dated 15.12.2016
passed by the Federal Service Tribunal, Islamabad
on Appeal No. 3272(R)CS/2012)

Muhammad Younis

... Petitioner

VERSUS

Financial Advisor & Chief Accounts Officer, Pakistan Railways,
Lahore etc

... Respondents

For the Petitioner: In person

For the Respondents: Hafiz Muhammad Saeed, ASC
Mr. Manzoor Malik Moor, A.O.

Date of Hearing: 31.01.2018

JUDGMENT

FAISAL ARAB, J.- Vide Office Memorandum dated 04.09.2001, Government of Pakistan revised basic pay scales and fringed benefits of all its civil employees. On account of such revision, revised pension scheme was also introduced under the same Office Memorandum whereunder option was given to the employees either to draw pay in the existing basic pay scales that were lastly revised in 1994 or under the new revised scales. The petitioner, an employee of Pakistan Railways, is one of those employees who opted for pay scales that were revised in 1994. After exercising such option, petitioner retired from service on 31.03.2002 upon attaining the age of superannuation.

2. The dispute in these proceedings relates to quantum of increase that was made in pensions under the Office Memorandum No. F.4(I)-Reg.6/2009 dated 13.07.2009 and Office Memorandum No. F.4(1)-Reg.6/2010/721 dated 05.07.2010 whereby the pension was increased with effect from 01.07.2009 and 01.07.2010 respectively. In terms of both these Office Memorandums the pensioners who retired before 01.12.2001 were entitled to an increase of 20% whereas those who retired after 01.12.2001 were entitled to a raise of 15%. Considering the fixation of two different rates to be discriminatory, the petitioner agitated the matter seeking increase to the extent of 20% as was being granted to pensioners who retired on or before 01.12.2001. When denied of such relief, the petitioner appealed to the Federal Service Tribunal. The Service Tribunal vide impugned judgment held that as the petitioner had already been granted increase of 5% under Office Memorandum dated 04.09.2001 read with Office Memorandum No. F.1(15)Imp/2001 dated 13.05.2002 and the increases granted vide Office Memorandums dated 13.07.2009 and 05.10.2010 were only to the extent of 15%, he is not entitled to any further increase. Against such decision, present petition has been filed.

3. The case of the department also was that the petitioner had unduly received 5% increase under Office Memorandum dated 04.09.2001 to which he was not entitled. The petitioner who appears in person states that the 5% increase that was initially granted to those pensioners who retired on or before 01.12.2001 vide Office Memorandums dated 04.09.2001, the same benefit of 5% increase was extended to those pensioners as well who retired

after 01.12.2001 in terms of Office Memorandum dated 13.05.2002 and such increase granted to him had nothing to do with the subsequent increases in pension made from time to time under various Office Memorandums. In order to establish that 5% increase under 2001 Office Memorandum had nothing to do with subsequent increases in pension, he referred to sub paragraph 3 of paragraph 1 of Office Memorandum dated 13.05.2002, which reads *"1(iii) The employees who opted for 1994 pay scales and retired before or after 1.12.2001 shall be entitled to 5% increase in pension."* He stated that the subject of Office Memorandum dated 13.05.2002 was removal of anomalies that were contained in Office Memorandum No. F.1(5)Imp/2001 dated 04.09.2001. He then read paragraph 16(g)(iii) of the Office Memorandum dated 04.09.2001 and explained that under this paragraph, an increase of 5% was allowed to only those pensioners who retired upto i.e. 01.12.2001 and not to those like him who retired after 01.12.2001. However, in terms of sub paragraph 3 of Office Memorandum dated 13.05.2002 titled as 'removal of anomalies', benefit of 5% increase was extended to those pensioners as well who retired after 01.12.2001. Hence 5% increase under Office Memorandum dated 04.09.2001 read with Office Memorandum dated 13.05.2002 was entitlement of the petitioner independent of all increases that were made under Office Memorandums issued thereafter from time to time. Thus the stand of the respondent that 5% increase was unduly received by him under Office Memorandum dated 04.09.2001 is not tenable.

4. In terms of Office Memorandums dated 13.07.2009 and 05.07.2010, those who retired on or before 01.12.2001 were

given 20% rise in pension whereas those who retired thereafter were given only 15% rise. As to the fixation of two different rates of increase in pension for pensioners who had retired on different dates, the case of the petitioner is that there should not be two different rates of increase and all pensioners should be given the same percentage of increase in pension irrespective of their date of retirement. Different rates of increase have been called in question on the ground that the Office Memorandums of 2009 and 2010 are discriminatory being violative of Article 25 of the Constitution of Pakistan.

5. In the case of Federation of Pakistan Vs. I.A. Sherwani and others (2005 SCMR 292) it was held by this Court that the distinction between 'old pensioners' and 'new pensioners' is necessary as the quantum of pension is determined keeping in view the difference of pay in different time periods. The relevant portion from paragraph No. 13 of the judgment is reproduced below:-

"It is noted that, while in service the employees of any grade all the time do not get the same pay. For example, an employee, who enters into service earlier and get increments, his salary must be more than an employee, who joined service in the same grade after a year of the earlier employee. While serving-in the same grade, the employees get different pay, how they, could ask for computation of their pension in violation of Pension Rules in force on the date of retirement of civil servants. Admittedly, there is no contract between the pensioners and the Government regarding terms/conditions relating to the change of rate of pension in future, as such, the distinction between old pensioners and new pensioners could not be undone and each pensioner would get pay according to his entitlement under the law and this could not be termed as discriminatory. Pension is regarded as wealth and inequality in its distribution does not render it un-Islamic nor different rates could be

termed as discriminatory. The quantum of pension is determined having taken into consideration; (1) the length of qualifying service (2) emoluments drawn and (3) as per rates prescribed in relevant rules. The concept of "Adl" and "Ehsan" as enunciated in Islamic Principles is not contrary to the rules of pension, as applicable to the retired civil servants of Pakistan."

6. We are not impressed by the argument that there is discrimination as there is bifurcation between pensioners who retired on or before 01.12.2001 and those who retired thereafter. The same was considered necessary in order to maintain a uniform rise in pension due to the different rate of salaries the ex-employees were drawing at the time of their retirement. Hence keeping in sight the above judgment, we are of the opinion that the petitioner is entitled only to a 15% increase in pension as stipulated in the Office Memorandums of 2009 and 2010 based on reasonable classification. This petition is, therefore, dismissed.

JUDGE

JUDGE

Islamabad, the

Announced on _____ by Hon'ble Mr. Justice Faisal Arab

Approved For Reporting

Khurram