

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.4753/2010.**

**Muhammad Manzoor**                      **Vs.**                      **Chairman CDA Islamabad etc.**

Petitioner by:    In person.

Respondents by:    Ms. Misbah Gulnar Sharif, Advocate.

**Date of Decision:**    **18.11.2019.**

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioner, who is Ex-Forester of Environment Directorate, CDA has prayed for issuance of direction to the respondents to release his pensionery benefits and other perks.

2.        Brief facts referred in the writ petition are that the petitioner was recruited as forest guard on regular basis in Environment Directorate, CDA and at that time age of the petitioner was approximately 24 years; that the petitioner obtained school leaving certificate on the direction of the respondents, wherein his date of birth was mentioned as 6.8.1948, which was accepted by the respondents in order to maintain his service book, however, when the petitioner got retired on 5.8.2008 on attaining age of superannuation after 30 years of service, his pensionery benefits were withheld on the ground that his date of birth is not correct as he previously served in Pakistan Army and record of Pakistan Army has been obtained from Artillery Centre, Attock through letter dated 18.11.2013, in which date of birth is referred as 06.11.1947 and due to the said change of date of birth, the petitioner has served for extra 9 months in the department on regular basis due to which his extra 9 months salary amount of Rs.1,37,514/- was deducted from the gratuity given to the petitioner.

3.        The petitioner in person contends that he has served the department despite wrong date of birth, therefore, he is entitled for salary benefits, whereas his pensionery benefits have already been released but 9 months salary was deducted through gratuity without due course of law.

4. Conversely, CDA has taken stance that the petitioner has served for extra 9 months after attaining age of superannuation as per date of birth given in Military record i.e. 6.11.1947, therefore, his extra 9 months salary has been deducted, whereas other pensionary benefits have been released. Learned counsel for CDA has relied upon GFR 117(3) and contends that when a person who first entered Military employee is subsequently employed in a civil department, the date of birth for the purpose of the civil employment should be the date stated by him at the time of enrolment and as such deduction has rightly been made by the accounts department of CDA.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the petitioner joined as Forest Guard on regular basis in Environment Directorate, CDA Islamabad on 18.07.1970 and he has produced his school leaving certificate with date of birth referred as 06.08.1948, the same was entered in his service book record in the relevant column 5 maintained by CDA and as per said date of birth he was superannuated on 03.11.2019 after attaining age of 60 years, however, CDA while calculating pensionary benefits of the petitioner sought information from Artillery Centre, Attock, whereby it revealed that petitioner has initially served Pakistan Army before joining CDA and his date of birth was 06.11.1947 and due to said change of date of birth the petitioner served CDA 9 months extra but respondents authority has deducted amount of Rs.1,37,514/- for his over stay period of 9 months.

7. Keeping in view above background, I have also gone through the General Financial Rules (GRF), whereby section 118 provides the concept of acknowledgment of date of birth, whereby the same can be considered as correct date of birth, which was recorded by the employee at the time of his employment/enrolment and as such the date of birth cannot be changed especially at the verge of retirement. Reliance is placed upon **2015 SCMR 456 (Ali Azher Khan Baloch vs. Province of Sindh).**

8. The record appended with instant writ petition reveals that in service book of the petitioner the date of birth was referred as 6.8.1948, which has not been changed nor the petitioner ever claimed change of his date of birth as such the

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respondents department itself cannot go into the scrutiny of date of birth after retirement of the petitioner. Even otherwise, the petitioner has performed his duty for extra 9 months as per contention of the respondents department, therefore, he cannot be deprived of his hard earned salary of 9 months for which he has performed his duties. Reliance is placed upon 2017 P L C (C.S) 331 (Abdul Qayyum Awan vs. Director General Anti-Corruption and others).

9. Besides the above referred position, the petitioner has performed his duties and it is settled principle of law that when decisive step has been taken, it cannot be rescinded or revoked as it falls under past and close transaction, even deduction of salary by the respondents department is hit by principle of locus poenitentiae, therefore, any recovery of amount paid on the basis of incorrect order, which has been received by the recipient of bonafide belief that he was entitled to the same, such order is protected under the principle of locus poenitentiae. Reliance is placed upon PLD 1992 SC 207 (The Engineer-In-Chief Branch and another vs. Jalauddin).

10. In view of above reasons, the instant writ petition is allowed. The respondents department/CDA is directed to release amount of Rs.1,37,514/- to the petitioner within 10 days under intimation to this Court.

(MOHSIN AKHTAR KAYANI)  
JUDGE

R.Anjam