

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Review Application No. 14/2020.

Rao Abdul Waheed

Versus

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.04.2020.	Mr. Muhammad Umair Baloch, Advocate for applicant.

Through this Review Application, the applicant has prayed for review of judgment dated 20.03.2020, passed in W.P No.3868/2016, whereby this Court has not allowed the applicant to claim benefit of his salary w.e.f. date of compulsory retirement i.e. 21.08.2015 till date of superannuation and the said period has been treated as without pay.

2. Learned counsel for the applicant contends that this Court while adjudicating upon the issue relating to penalty of compulsory retirement of applicant set aside the order of authority, however, during the pendency of writ petition applicant has superannuated and the period has been declared as without pay; that such aspect is accidental slip/oversight as referred in ground 'c' of the review application; that this Court has not considered the clause 32.10 of ESTA Code Edition 2015, whereby when the order of termination has been set aside as a result of Court decision, such civil servant is allowed to receive salary for the period in which he remained out of service;

that this aspect has not been considered by the Court and review of judgment is required.

3. Arguments heard, record perused.

4. From the perusal of record, it has been observed that applicant has earlier assailed the notification dated 21.08.2015 as well as appellate order dated 27.09.2016, whereby he was compulsory retired from service of Frequency Allocation Board on the ground of misconduct and even the appellate authority maintained the said order. Both the orders have been assailed before this Court and it was declared by this Court that penalty of compulsory retirement is illegal and the same was set aside vide judgment dated 20.03.2020 in writ petition No.3868/2016 with the following observations:-

Keeping in view the above position, the impugned order of compulsory retirement is without any basis, reasons or justification, nor even substantiated by any charge which could be established by FAB through some record, hence, the same is declared to be illegal, therefore, the order dated 21.08.2015 of compulsory retirement is set aside. However, at this stage it has not been denied that petitioner has already been superannuated due to completion of his 60th year in 2019, therefore, he could not be re-instated in service and he is only entitled of benefits under the regulations, which were available to him like the benefit of LPR in terms of Regulation 128, however, the regulations are silent qua the pension and the services of Frequency Allocation Board are non-pensionable, therefore, all the benefits, which were available under the Frequency Allocation Board Employees Service Regulations, 2014 are in field shall be

granted to the petitioner by all means. The period of service w.e.f. the order of compulsory retirement till superannuation will be treated as without pay as petitioner has not performed any duty although there is no fault attributed to him.

*For what has been discussed above, instant writ petition stands **Accepted** in above terms.*

5. Keeping in view the above position, this court is cognizant of the fact that applicant has not performed any duty from the date of compulsory retirement till his superannuation and even as per Frequency Allocation Board Employees Service Regulations, 2014 his service is non pensionable and he is only entitled for other benefits which were allowed by this Court and as such applicant has failed to justify accidental slip or omission as claimed in ground 'c' of this application.

6. It is trite law that scope of review is limited to correction of mistake and error apparent on the face of record. Reliance is placed upon 2017 SCMR 1519 (Rashid Ali Channa Vs. M. Junaid Farooqui), however, if Court had taken conscious and deliberate decision on a point of fact or law, review petition would not be competent. Reliance is placed upon 2010 SCMR 1883 (Ghulam Murtaza Vs. Abdul Salam Shah and others).

7. I have gone through the concept of review enumerated in Order XLI Rule 1 CPC, which provides that review application is maintainable on account of mistake or error apparent on the face of record or for any other sufficient reason, however, the discovery of new or

important matters, which after exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at any time when the order or decree was passed, is not to be claimed for the purpose of review.

8. I have attended the proposition while considering the ESTA Code and there is no second opinion that the judgment assailed by the applicant is self explanatory. The ground raised by the applicant is not within the meaning of sufficient cause to be considered for the purpose of review as there is no accidental slip and reversal of conclusion earlier reached by this court after full consideration. The review could not be granted for merely re-examination of same arguments or some additional grounds and the aspect argued by the applicant was well within the knowledge of this Court. The applicant has failed to brought any error in the judgment, therefore, while applying the principle laid down in PLD 2010 SC 483 (Justice Khurshid Anwar Bhinder Vs. Federation of Pakistan) and PLD 2010 SC 949 (M. Naeem-ur-Rehman Vs. State Bank of Pakistan), instant applicant has no merits, therefore, Review Application is hereby dismissed in limine.

(MOHSIN AKHTAR KAYANI)
JUDGE