

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : ICA NO.34/2017

Pakistan Telecommunication Company Limited

Vs.

Noor Wali Khan etc.

CASE NO. : W.P.NO.2111/2015

Muhammad Amjad Aziz etc.

Vs.

Federation of Pakistan through Secretary to Prime Minister of Pakistan,
Islamabad & Another

CASE NO. : W.P.NO.2112/2015

Ghulam Distgir etc.

Vs.

Federation of Pakistan through Secretary to Prime Minister of Pakistan,
Islamabad & Another

CASE NO. : W.P.NO.2119/2015

Muhammad Azam etc.

Vs.

Federation of Pakistan through Secretary to Prime Minister of Pakistan,
Islamabad & Another

CASE NO. : W.P.NO.2206/2015

Amanullah etc.

Vs.

Federation of Pakistan through Secretary to Prime Minister of Pakistan,
Islamabad & Another

CASE NO. : W.P.NO.2258/2015

Syed Muhammad Husnain Zaidi etc.

Vs.

Federation of Pakistan through Secretary to Prime Minister of Pakistan,
Islamabad & Another

CASE NO. : W.P.NO.2265/2015

Muhammad Ashfaq Ajmal etc.

Vs.

Federation of Pakistan through Secretary to Prime Minister of Pakistan,
Islamabad & Another

CASE NO. : W.P.NO.2346/2015

Muhammad Imran Shafi

Vs.

Federation of Pakistan through Secretary to Prime Minister of Pakistan,
Islamabad & Another

CASE NO. : W.P.NO.2801/2015

Muhammad Tariq etc.

Vs.

Federation of Pakistan through Secretary to Prime Minister of Pakistan,
Islamabad & Another

CASE NO. : W.P.NO.3743/2016

Muhammad Amjad Anwar

Vs.

Federation of Pakistan through Secretary to Prime Minister of Pakistan,
Islamabad & Another

Appellants/Petitioners by : Mr. Shahid Anwar Bajwa, Advocate
 Mr. Tahir Maqsood Butt &
 Mian Muhammad Shafique, Advocates
 Respondents by : Ch. Atif Rafique, Advocate
 Hafiz Arfat Ahmad Chaudhry & Ms.
 Kashifa Niaz Awan, Advocates
 Mr. Habib Ahmad Bhatti, Advocate
 Mr. Ali Nawaz Kharal, Advocate
 Date of hearing : 19.09.2018

AAMER FAROOQ J. This judgment shall decide instant appeal as well as connected writ petitions, as they entail common questions of law and facts.

2. The petitioners, in all the petitions, are employees of erstwhile Pakistan Telephone & Telegraph Department. Upon conversion of the referred Department into Pakistan Telecommunication Corporation Limited, they were transferred however the relevant law protected terms and conditions of their services. Subsequently, their services were transferred again, when the Corporation was converted into Pakistan Telecommunication Company Limited but the terms of services were protected as well. The petitioners, in the instant petitions, seek declaration and appropriate direction that they are entitled to the same benefits, which government servants/civil servants, enjoy with increase/enhancement from time to time.

3. Learned counsels for the appellant/Pakistan Telecommunication Company Limited, *inter alia*, contended that undoubtedly, terms and conditions of services of employees of Pakistan Telecommunication and Telegraph Department were protected however they cannot be allowed the same pensionary benefits and similar post-retirement benefits, which were not protected under the law. Learned counsels did concede that there are various dicta of august Apex Court, in which, it has been held that employees of erstwhile T& T Department are entitled to the same benefits, but contended that

ICA No.34-2017 & W.P. Nos.2111-2015 etc.

referred cases including case reported as 'Pakistan Telecommunication Corporation and Another Vs. Riaz Ahmad and 6-others' (PLD 1996 Supreme Court 222) is not a good law, as the august Apex Court was not properly assisted in the matter. It was also contended that terms and conditions of service though were protected yet same did not include the pensionary benefits.

4. Learned counsels for the respondents/employees/petitioners, *inter alia*, contended that petitioners are entitled to the same benefits as the civil servants. In this behalf, reliance was placed on judgment of the august Apex Court reported as 'Pakistan Telecommunication Employees Trust (PTET) through M.D. Islamabad and others Vs. Muhammad Arif and others' (2015 SCMR 1472) as well as 'Muhammad Riaz Vs. Federation of Pakistan through Secretary, Ministry of Information Technology, Government of Pakistan, Islamabad and others' (2015 SCMR 1783).

5. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

6. In a similar controversy regarding terms and conditions of services of employees of Telephone and Telegraph Department and maintainability of a petition under Article 199 of the Constitution against Pakistan Telecommunication Company Limited, this Court vide judgment dated 12.07.2018 in ICA No.52-2015, handed down the judgment, which clinches the matter on the subject. In the referred judgment, this Court observed as follows: -

"11. The sole question of law involved, in the instant appeals, is as to the status of the respondents, who are or were employees of the appellant and the law, under which, they are to be proceeded with for disciplinary action.

12. It is an admitted position that T&T Department was converted into statutory Corporation by virtue of section 3 of Pakistan Telecommunication Corporation Act, 1991. Section 9(2) of the referred Act granted protection to the terms and conditions of the service of transferred employees inasmuch as it is stated in the referred provision that terms and conditions of service of any such person as is referred to in subsection (1) shall not be varied by the Corporation to his disadvantage. The Corporation changed into Company under the

Pakistan Telecommunication (Re-organization) Act, 1996. Section 36(2) of the referred Act granted protection to the terms and conditions of service of the employees transferred from Corporation to the Company.

13. Initially, it was believed that the employees of T&T Department are civil servants. In this regard, in case reported as 'Pakistan Telecommunication Corporation and another Vs. Riaz Ahmad & 6-others (PLD 1996 Supreme Court 222), the Hon'ble Supreme Court held that employees of T&T Department are civil servants within the meaning of Civil Servants' Act, 1973. In case reported as 'Divisional Engineer Phones, Phones Division, Sukkur and another Vs. Muhammad Shahid and others' (1999 SCMR 1526) similar view was reiterated. In case reported as Pakistan Telecommunication Company Limited through Chairman Vs. Iqbal Nasir and others' (PLD 2011 Supreme Court 132), the august Apex Court held that rules of service of Pakistan Telecommunication Corporation are non-statutory. The august Apex Court, in case reported as Masood Ahmad Bhatti and others Vs. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others' (2012 SCMR 152), observed that it is not in dispute that prior to the establishment of Pakistan Telecommunication Corporation under the PTC Act, 1991, the appellants were civil servants and were governed by the various rules and regulations governing services of the civil servants. The Civil Servants' (Efficiency & Disciplinary) Rules, 1973 and the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 provides instances of rules, which amongst others, were applicable to the relationship between the appellant and its employees. It was also observed that such rules were statutory as were framed by the rule making power granted to the Federal Government under the Civil Servants Act. In para-9 of the judgment, the Hon'ble Apex Court observed as follows:-

"9. It is clear from this legal provision, that the rules relating to the terms and conditions of employment of the appellants were given statutory status. This status was on a higher plane than the status of regulations framed by way of subordinate legislation under section 20 of the PTC Act. Consequently, whatever rules were in place governing the employment of the appellants in the T&T Department, were adopted by reference in the statute itself and were made applicable to and binding on the Corporation. There can be little doubt that by virtue of section 9, *ibid* such rules acquired statutory status having been sanctified by the PTC Act itself. We can, therefore, conclude without difficulty that the rules of employment which were applicable to the appellants during their service with the Corporation were statutory rules".

It was further observed in paragraphs 15 & 16 as follows: -

"15. Thus it is evident that at the moment of transition when the appellants ceased to remain the employees of the Corporation and became the employees of PTCL, they admittedly were governed by rules and regulations which had been protected by the PTC Act. The said rules, therefore, by definition were statutory rules as has been discussed above. PTCL, no doubt, could make beneficial rules in relation to its employees which were in addition to the rules of employment prevailing on 1-1-1996. However, by virtue of the aforesaid proviso, PTCL had no power to "vary the terms and conditions of service" of its employees who were previously employees of the Corporation, "to their disadvantage". Even the Federal Government was debarred by virtue of section 35 *ibid*, from varying

such terms and conditions of service to the disadvantage of the appellants.

16. *An easy and uncomplicated test becomes available to us to help determine the status of the employment rules governing the appellants. If the current employer of the appellants viz. PTCL is constrained by legislation such as section 35(2) of the Reorganization Act, and as a consequence, cannot vary the existing rules to the disadvantage of the appellants, because of such legislation, it must follow that such law has the effect of saving the rules which existed when the appellants became employees of PTCL. Such existing rules, having been protected by section 35(2), therefore, can only be categorized as statutory rules"*

Finally, the Hon'ble Supreme Court of Pakistan concluded as under: -

"It is important, at this point, to draw a distinction between employees who stood transferred to PTCL by virtue of section 35 ibid and the Vesting Order, on the one hand and those employees, who joined PTCL after 1-1-1996. The protection under the Federal Government guarantee would not be available to the latter category whose terms and conditions of service would be contractual in nature and would, therefore, be non-statutory"

The said judgment came under review by the Larger Bench of the Hon'ble Supreme Court of Pakistan in case reported as 'PTCL and others Vs. Masood Bhatti and others' (2016 SCMR 1362). The august Apex Court, after concluding that petition under Article 199 of the Constitution is maintainable by an employee of the appellant, who is a transferred employee i.e. originally was employee of erstwhile T&T Department, observed as follows:-

"A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employees of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court"

In terms of the above judgment of the august Apex Court, it is clear that employees, who were part of T&T Department and were transferred from the referred Department to the Corporation and then to the Company, have their terms and conditions of service protected. They are not civil servants, but their terms and conditions of service are statutory as provided in sections 3 to 22 of the Civil Servants Act, 1973. In case any one of terms and conditions of their service is violated, they can agitate the matter by way of a petition under Article 199 of the Constitution.

14. *All the provisions provided in sections 3 to 22 of the Civil Servants' Act, 1973 are applicable to the transferred employees including disciplinary*

matters as provided in section 16 of the Civil Servants' Act, 1973. Under the referred section, a civil servant shall be liable to prescribed disciplinary action and penalties in accordance with the prescribed procedure. In this behalf, the Civil Servants' (Efficiency & Discipline) Rules, 1973 were framed and have been notified and are statutory in nature. The respondents are entitled to be proceeded with under the said Rules as part of their protected terms and conditions of service”.

In light of the above judgment of this Court, following the dicta of the august Apex Court in case reported as 2016 SCMR 1362 observed that the employees of erstwhile T&T Department though are not civil servants yet have the protection by way of application of Sections 3 to 22 of Civil Servants Act, 1973 and a petition under Article 199 of the Constitution, is maintainable against Pakistan Telecommunication Company Limited.

7. In so far as entitlement to the pensionary and similar benefits of employees of erstwhile T&T Department is concerned, the august Apex Court has conclusively decided the matter in case reported as ‘Pakistan Telecommunication Employees Trust (PTET) through M.D. Islamabad and others Vs. Muhammad Arif and others’ (2015 SCMR 1472), the august Apex Court in the referred judgment, observed as follows;-

“13. From the reading of the Act of 1991 and thereafter of the Act of 1996, it is abundantly clear that the employees of T&T Department were transferred to the Corporation with the terms and conditions of their service similar to the one they were enjoying before such transfer. It is not in dispute before us that the employees of T&T Department, whose case is before us, were transferred to the Corporation and they enjoyed the same terms and conditions of service as were applicable to them as employees of T&T Department. Under the terms and conditions of service, such employees were also entitled to payment of pension on their retirement. On 2nd April, 1994, the Corporation executed a Trust Deed establishing Pakistan Telecommunication Corporation Employees Pension Fund. Para 2 of which reads as follows:-

"All departmental employees transferred to the corporation as defined in section 9 of the Pakistan Telecommunication Corporation Act, 1991 shall be entitled to benefits as defined under the Federal Government Pension Rules as applicable to such employees before the formation of PTC."

By section 44 of the Act of 1996, the Federal Government has established a trust called Pakistan Telecommunication Employees Trust (the Trust). Section 45 of the Act of 1996 made provision for issuing of Vesting Order by the Federal Government of vesting of all assets and such Liabilities as are specified in the Trust from the effective date. Section 46 of the Act of 1996 lays down functions and powers of the Trust which, inter alia, provides for making of provision for the payment of pensions to telecommunication employees to the extent of their entitlement with exclusive right to determine the amounts, if any, payable in respect of pension benefits to the telecommunication employees. It has

already been mentioned above that by the Vesting Order dated 7-2-1996, inter alia, the liability of payment of pension of telecommunication employees was transferred to the Trust and the Company was liable and has assumed the responsibility to contribute to the Trust, the amounts determined in accordance with section 45.

14. The question that needs to be addressed is about the status in obtaining of pension by the employees of the erstwhile T&T Department, who were transferred to the Corporation from where they were transferred to the Company. It is clear from the reading of provision of the Act of 1991 so also that of the Act of 1996 that the terms and conditions of service of the Transferred Employees from T&T Department to the Corporation and then to the Company remain unaltered and they continued to be paid the benefits as were admissible to them as employees of T&T Department. There seems to be no dispute until 2009 regarding the entitlement of pension to the employees of erstwhile T&T Department inasmuch as they have been paid pension at the same rate of increase as has been provided by the Federal Government to its employees as is apparent from the record of pension payment submitted by the counsel for the Trust by way of C.M.A. No.6331 of 2014, which shows the payment of pension as follows:-

C.M.A. No.6331 of 2014

Pension increased by the Pakistan Telecommunication Company Employees Trust

Year(s)	Category	Percentage
2004-05	Retired before 01-01-96	16% As per GOP
	Retired after 01-01-96	8%
2005-06	(i) Retired before 01-01-96	10% as per GOP
	(ii) Retired after 01-01-96	10%
2006-07	Retired before 01-01-96	200% As per GOP
	Retired after 01-01-96	20%
2007-08	Retired before 01-01-96	Per GOP
	Retired after 01-01-96	
2008-09	Retired before 01-01-96	20% As per GOP
	Retired after 01-01-96	20%
2009-10	Retired before 01-01-96	15% As per GOP
	Retired after 01-01-96	15%

18. Thus, in the above case this Court has held that the terms and conditions of service so also the rules of service which were applicable to the T&T Department employees while in employment of the Government of Pakistan will continue to be applicable to them on their transfer to the Corporation and then to the Company. The proposition advanced by Mr. Khalid Javed Khan, learned Advocate Supreme Court, that an order granting increase in pension is an executive function based on a policy taking into consideration various factors of inflation and financial conditions, on its face, appears to be correct as the same is based upon the pronouncement of this Court in the case of Akram ul Haq Alvi v. Joint Secretary (R-II) Government of Pakistan, Finance Division, Islamabad and others [2012 SCMR 106]. However, the question before us is not about the tenor and status of the government order or the order which is passed by the petitioner for increasing the pension on the very entitlement of the respondents to the benefit of increase in pension awarded by the Government. The entitlement of the respondents to the increase in pension, as the one announced by the Government of Pakistan, is to be

determined on the basis of the law applicable to their employment. In Masood Ahmed Bhatti's case (supra), this Court has held that not only the terms and conditions of service of the employees of T&T Department who were transferred to the Corporation and then to the Company will be the same but also the rules of service as were applicable to them as employees of T&T Department. Thus, it becomes clear that the employees of T&T Department who were transferred to the Corporation and then to the Company having retired, they will as per the terms and conditions of service will be entitled to payment of pension also according to the one announced by the Government of Pakistan. Thus if any increase in pension is announced by the Government of Pakistan for its employees, the same will also apply and will be paid to the employees of T&T Department transferred to the Corporation and then to the Company. This view of ours is further fortified by the provision of section 46(1)(d) of the Act of 1996 where it is stated that the Board of Trustees of the Trust shall make provision for payment of pension to telecommunication employees to the extent of their entitlement. The very term "to the extent of their entitlement" shows that there are different kinds of employees having different entitlement and provisions for them have to be made accordingly. This is also apparent from the chart shown above where there already existed two kinds of employees, one who have retired before 1-1-1996 and the other who have retired after 1-1-1996 to whom different rate of increase in pension is paid. It is, therefore, not correct to state that there will be redundancy of section 44 of the Act of 1996 if the Trustees are allowed to make provision for the pension according to their own working. In view of this clear provision in section 46 of the Act of 1996, we do not find that this Section has any direct nexus with section 44 of the Act of 1996 nor the redundancy to section 44 can be attributed. We are here only dealing with cases of those employees, who were employed in T&T Department and transferred to the Corporation and then to the Company and not any other employees. Similarly, we also note that there is no mention in either of the two impugned judgments regarding the question of VSS. We, therefore, do not consider it appropriate to decide this question at this stage.

19. Adverting to the submission of Mr. Shahid Anwar Bajwa, learned Advocate Supreme Court, we may note that while the Company may be entitled to fix the terms and conditions of service of its employees so also the provision of pension by the Board of Trustees of the Trust but as discussed above, as regards the employees of T&T Department transferred to the Corporation and then to the Company, their terms and conditions of service stand protected by the provision of section 9 of the Act of 1991 and sections 35, 36 and 46 of the Act of 1996 and thus they will be entitled to payment of increase in pension as is announced by the Government of Pakistan. The contribution of the Company to the Pension Fund determined by the Actuary and its payment by the Company does not appear to be of much relevance because the question before us is of entitlement of the respondents to the increase in pension. In the case of Secretary, Government of the Punjab, Finance Department and 269 others v. M. Ismail Tayer and 269 others [2014 SCMR 1336], this Court has held that while on completion to commutation period the civil servant is entitled to payment of full pension. It was noted, and such has been done time and again by this Court that pension is a part of a civil servant's retirement benefit and is not bounty or an ex-gratia payment but a right acquired in consideration of his past service which was a vested right with legitimate expectation. The right to pension is conferred by law which could not be arbitrarily abridged or reduced except in accordance with law. The aspect of the statutory rules has already been dealt with above and we tend to agree with the rule laid down in the case of Masood Ahmed Bhatti (supra).

20. For the foregoing reasons, we have come to conclusion that the respondents, who were the employees of T&T Department having retired after their transfer to the Corporation and the Company, will be entitled to the same pension as is announced by the Government of Pakistan and that the Board of Trustees of the Trust is bound to follow such announcement of the Government in respect of such employees. Consequently, these petitions are dismissed".

Similar position was taken in the case cited as 'Muhammad Riaz Vs. Federation of Pakistan through Secretary, Ministry of Information Technology,

Government of Pakistan, Islamabad and others' (2015 SCMR 1783) and it was concluded as follows: -

"8. In the above perspective, taking into consideration the judgment of three member bench of this Court delivered in C.Ps. Nos. 565 to 568/2014, etc., wherein the subject matter of the instant petition has already stood adjudicated and decided in favour of transferred employees, we convert this petition into appeal and allow the same while setting aside the impugned judgment, and it is held that the case of the petitioner is at par with the case of transferred employees in C.Ps. Nos.565 to 568/2014, etc., therefore, the petitioner is entitled to payment of increase in pay and pension as announced by the Government from time to time".

8. In light of above two judgments of the Hon'ble Supreme Court of Pakistan, it is clear that employees of erstwhile T&T Department are entitled to the same pensionary benefits, which the civil servants in the government service, are entitled.

9. In view of referred position of law and facts, the judgment impugned in the instant appeal, does not suffer from any error of law or fact calling for interference by this Court. Likewise, declarations and directions sought in the writ petitions, are allowed in terms of above observations.

10. For the above mentioned reasons, instant appeal is dismissed and the writ petitions are allowed.

(MOHSIN AKHTAR KAYANI)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 19.12.2018

JUDGE

JUDGE

Zawar