

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.2473/2017

Abdul Hameed
Versus
Secretary, Ministry of Defence

Petitioner by: Raja Saif-ur-Rehman, Advocate.

Respondents: Barrister Amna Abbas, Advocate for
Respondents No.2&3.

Date of Hearing: 27.09.2018.

JUDGMENT

Through this writ petition the petitioner has prayed for the following relief:

"In view of the above it is most respectfully prayed that the petitioner's writ petition may kindly be accepted, the impugned order of wrong fixation of his pay decreasing his salary may be set-aside and the respondents may please be directed to fix the petitioner's salary to the next stage of SPS III at Rs.8,070/- pm including one premature increment because according to LPC the petitioner was already drawing Rs.7,530/- pm in his previous department, from the date he was appointed in PMO with all consequential benefits.

It is further prayed that fixation of petitioner's pay at Rs.7,420/- per month in PMO, may please be held to be illegal, incompetent, unjustified and against all norms of justice and fair play.

Any other relief, which this Honourable Court may deemed proper in the circumstances of the case, may also be awarded to the petitioner."

2. Brief facts referred in the instant writ petition are that the petitioner was serving as Machinist (BPS-12) in PAC, Kamra on a pay scale of Rs.3155-225-9905, whereafter he was appointed in Project Management Organization (PMO) under NESCOM through proper channel. The petitioner has been appointed in SPS-III, which started from Rs.4820-325-12945. The previous service of petitioner in PAC, Kamra was duly counted vide order

dated 31.03.2010 but his salary was decreased and the petitioner in BPS-12 was drawing salary of Rs.7,530/- per month in PAC, Kamra, however when he was appointed in PMO, his monthly pay was fixed less than that at Rs.7,420/- in SPS-III. The petitioner exhausted his departmental remedy and filed Appeal No.1877(R)CS/2011 in the Federal Service Tribunal. However, during the said period, the apex Court decided the case titled *Shafique Ahmad Khan vs. NESCOM (PLD 2016 SC 377)* whereby the NESCOM has been declared as a statutory body and any aggrieved person can approach the higher Courts for redressal of grievance. Hence, the instant writ petition.

3. The learned counsel for petitioner contends that the NCA Employees Service Rules, 2011 provide the concept of pay protection and under FR-22 pay is protected and petitioner could not be deprived of his already accrued rights; that the NESCOM authorities under the National Command Authority has also adopted the FR Rules in letter and spirit and the concept of pay protection has been drawn from the FR Rules, therefore, any contrary interpretation is not accepted.

4. Conversely, learned counsel for respondents No.2 & 3 contended that petitioner is appointed in PMO under the NESCOM and governed under the National Command Authority Act, 2010 and the instant writ petition is not maintainable mainly on the ground that the relationship of the parties is of master and servant as intended by the parliament and the constitutional jurisdiction of the high court is not available after the amendment in the NCA Act, 2010 as all the rules of the NCA are non-statutory and the Review Petition No.62/2016 is also pending against judgment of apex Court in case titled *Shafiq Ahmad Khan vs. NESCOM (PLD 2016 SC 377)*; that the respondents No.3 and 4 have already considered the request of the petitioner and increased his salary in terms of Fundamental Rules 22(a)(ii) and he was

granted Rs.110/- as personal pay w.e.f. 07.12.2007 up to 01.12.2008 which consequently brought his pay to Rs.7,530/-.

5. Arguments heard, record perused.

6. From the perusal of record it has been observed that the instant writ petition relates to the dispute of pay protection as claimed by the petitioner, whereas the petitioner was initially appointed in PAC Kamra and later on recruited in PMO under the NESCOM and his previous service was duly considered vide order dated 31.03.2010. However, at the time of joining his new service in PMO, his salary was decreased as at the time of his joining he was getting Rs.7,530/- per month in BPS-12 in PAC, Kamra and after his new appointment in PMO his salary was fixed as Rs.7,420/- per month in SPS-III. Learned counsel for petitioner has referred the recruitment/promotion policy under NCA Employees and Service Rules, 2010 in which the concept of pay protection *is available* and as such the respondents No.2&3 have duly applied the F.Rs as the same were adopted, therefore, in order to clarify the proposition, it is necessary to reproduce the relevant F.R. 22, which is as under:

“F.R. 22. The initial substantive pay of a Government servant who is appointed substantively to a post on a time-scale of pay is regulated as follows:--

*(a) If he holds a lien on a permanent post, other than tenure post, or would hold a lien on such a post has his lien not been suspended***[*]*

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an

increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, which-ever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay."

7. From the perusal of F.R. 22 referred above, the pay of any Government servant has to be regulated through F.R. 22 when he is appointed on a new post and if his lien on the previous post has not been suspended, such kind of eventuality only covers two different interpretation as per F.R. 22(a)(i) & (ii), although there is no cavil to the proposition that any Government servant, if appointed on any position, in some other posts involves assumption of duties or responsibilities of greater importance, he is entitled to pay protection as held by the case reported as 2017 SCMR 482 (Controller of Military Accounts (RC) Education Cell, Rawalpindi vs. Muhammad Zafar, Assistant Professor, etc.), wherein it has been held that:

"5. The principle laid down in Section 11-A is clear. Where a civil servant is declared surplus pursuant to any Government decision, then he is to be accommodated to a post carrying equal pay scale. In case equal post is not available then he can be appointed to a lower post but the pay which he was drawing in the higher post shall remain protected. In our view, this benefit cannot be denied to respondent No.1."

Similarly, in the case reported as 2008 SCMR 14 (Syed Abdus Samad Pirzada vs. Government of Punjab, etc.), wherein it has been reasoned that:

"5. An employee of Pakistan Broadcasting Corporation though not a civil servant in the strict sense of term yet granted the status thereof through the above judgment, it was followed by a full Bench of this Court in Amjad Hussain's case 1998 SCMR 1442 where the matter of fixation of pay was determined in the light of F.R.22(A)(i). It was a case where, conversely to the one in hand, a civil servant was inducted into an autonomous body and in the given circumstances it was held that he was entitled to the protection and fixation of his pay in terms of Fundamental Rules (supra), in the light of principles laid down in Chairman Pakistan Broadcasting Corporation 1995 SCMR 1593. F.R.22(A)(i) can also be applied to the cases where a person through proper channel leaves the present Corporation to join civil service."

6. *It may be advantageous to refer to another case of Nafees Ahmad 2000 SCMR 1864 where, again a full Bench of this Court while dealing with the case of an employee of State Bank of Pakistan (an autonomous body/Body-Corporate under the State Bank of Pakistan Act, 1956), who was transferred to Government service through Federal Public Service Commission in the Federal Bureau of Statistics, Statistics Division, this Court has gone to the extent of granting him pensionary benefits of previous service under autonomous body. The authorities concerned were held bound, inter alia, to follow the law regarding protection of pay and counting of his period of service with the autonomous body towards the pensionary benefits."*

Likewise, in the case reported as 2000 SCMR 1864 (Nafees Ahmad vs. Government of Pakistan, etc.) wherein it has been held that:

"(b) Pensionary Rules of Handbook for Drawing and Disbursing Officers---Chap. IX, R.9(v)---Pensionary Rules --- Pensionary benefits---Earlier appointment of civil servant with an autonomous body---Failure to count the period of earlier appointment towards pensionary benefits---Effect---Civil servant had submitted his last pay certificate from the autonomous body, and after obtaining the requisite documents, the Authorities had fixed his pay-- Authorities were not left with any locus poenitentiae to undo the same and that too without hearing the civil servant---Authorities were bound to follow the law in relation to the facets of the claim of the civil servant qua protection of his pay and counting of his period of service with the autonomous body towards pensionary benefits---Failure on the part of Service Tribunal to act in accordance with the law on the subject, could not but be reversed with a direction to the Authorities to fix the salary of the Civil servant accordingly."

8. The principles laid down by the apex Court in the abovementioned case laws, if seen in the light of NCA Employees Service Rules, 2011, there is no denial that petitioner is entitled for his pay protection in the PMO and as such the respondent organization has provided the pay fixation proforma in which the petitioner has been appointed in SPS-III at Pay Scale of Rs.5,785-390-17,485 and his pay was fixed at Rs.8,905/- after its revision of pay scales on 01.07.2008, which substantially covers his claim and as such nothing is to be left for the interpretation of this Court as petitioner is

enjoying the revised pay scale and the pay benefits, even the pay slips submitted by the PMO justifies their stance.

9. I have gone through the provision of Section 7 of NCA Act, 2010, wherein the powers and functions of the authorities have been defined, which duly authorized the authority to prescribe specific terms and conditions of the employees and to take actions, issue appropriate orders and instructions, as it may deem fit, or in order to advance or achieve the purpose of its establishment. Similarly, the authorities are also vested with power to declare application of any law, provision of law, rules and regulations etc. to its employees as the case may be, while exercising the powers referred in Section 7(d)(l)(p) of NCA Act, 2010, the NCA may, if so desired, can seek further guidance for the interpretation of F.R. 22(a)(i) & (ii) for the settlement of issue with pay protection from the Accountant General of Pakistan Revenues, who are competent to decide such issues.

10. Keeping in view the above background, I have also gone through the question of maintainability of the instant writ petition and in my humble view, after the passing of judgment by the apex Court in case reported as PLD 2016 SC 377 (Shafiq Ahmad khan vs. NESCOM), the NCA Act, 2010 has been amended, whereas the terms and conditions of employees and rules covered under the NCA have been declared non-statutory and as such, this amendment has not yet been struck down in any order of the Court or through any other new legislation by way of amendment, therefore, the instant writ petition is not maintainable on this score, is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 8th October, 2018.

Khalid Z.

JUDGE