

**IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)**

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE MUHAMMAD ALI MAZHAR

Civil Petition No.231-K of 2020

(Against the judgment dated
22.01.2020 passed by the Federal
Service Tribunal, Islamabad
(Karachi Bench) in Appeal No.7(K)
CS/2019)

Muhammad Anwar

...Petitioner

Versus

Chairman Wapda and others

...Respondents

For the petitioner:

In-Person

For respondents 1-4:

Dr. Raana Khan, ASC/AOR
Along with Mr. Mukhtar Ahmed,
Director Finance.

Date of hearing:

19.01.2022

JUDGMENT

Muhammad Ali Mazhar, J. This Civil Petition for leave to Appeal is directed against the Judgment dated 22.01.2020 passed by the learned Federal Services Tribunal, Islamabad (Karachi Bench) whereby the appeal of the petitioner was dismissed.

2. The brief facts of the case are that the petitioner joined WAPDA on 11.12.1973. He was retired from service on 31.12.1999 on attaining the age of superannuation. His case is based on the plea that during service, he was allowed three ad hoc reliefs and after his retirement, WAPDA has only accorded the benefit of ad hoc relief of Rs.300/- and 7% cost of living allowance of Rs.357/- for the calculation of monthly pension but the effect or benefit of Special Additional Allowance of Rs.634/- was not afforded while working out his pensionary benefits.

3. The petitioner argued in person that the learned Service Tribunal has wrongly held that the petitioner is not entitled for the inclusion of Special Additional Allowance effect in his monthly pension. He further argued that WAPDA was bound to extend the effect of Special Additional Allowance in the consolidated emoluments of petitioner at the date of retirement for determination of his pension but the learned Service Tribunal in its impugned judgment failed to consider this important aspect. He further argued that the judgment of this Court relied on by the Tribunal in the impugned judgment for nonsuiting the petitioner was quite distinguishable to his case. It was further contended that the learned Tribunal ought to have decided the appeal in the light of judgment of this court reported as 2003 SCMR 1037 (Managing Director, Pakistan Railways Carriage Factory, Islamabad Vs. Muhammad Asghar) and not on the basis of judgment reported as 2014 SCMR 570 (Federation of Pakistan through Secretary Vs. Sultan Ahmed Shams and 17 others).

4. The learned counsel for the respondents argued that the Government had allowed Special Additional Allowance to the civilian employees of the Federal Government as well as the civilians paid from Defence Estimates and to all the Armed Forces Personnel/Civil Armed Forces Personnel. Since the said allowance was allowed with the condition that it would not be treated as part of emoluments for the purposes pension calculation, therefore, the said allowance was not taken into consideration for the purpose of pension in view of CSR.486, however the petitioner was allowed pensionary benefits according to rules/policy without any discrimination. In support of her contention, the learned counsel also referred to Finance Division's O.M.No.1(7)-Imp/99, dated 23.07.1999.

5. Heard the arguments. The bone of contention is non-inclusion of Special Additional Allowance, extended vide Finance Division's O.M.No.1(7)-Imp/99, dated 23.07.1999 which was not reckoned for the purposes of pensionary benefits calculation of the petitioner. The impugned judgment of the Tribunal also reflects that the petitioner relied on the Judgment of the Federal Service Tribunal in Appeal No.1520 (R) CS/2011 whereby the ad hoc relief allowances were included in the last pay/emoluments drawn by that petitioner for the

purposes of calculation of monthly pension whereas the respondents have raised the plea that taking into account CSR-486, the Special Additional Allowance could not be included in the emoluments. The learned Tribunal has also referred to a judgment rendered by this Court in the case of Federation of Pakistan through Secretary Vs. Sultan Ahmed Shams and 17 others. (2014 SCMR 570). The above judgment demonstrates that various Service Appeals were decided through a consolidated judgment in which bunch of appeals, the Service Appeal No.1520 (R) CS/2011 was also included and vide aforesaid judgment, the Service Appeals preferred by the Federation of Pakistan were allowed and the impugned judgment of Federal Service Tribunal was set aside. The definition of emoluments and average emoluments are defined in CSR-486 (*Civil Service Regulations*) which is reproduced as under: -

“Emoluments and Average Emoluments

486. The term “emoluments” means the emoluments which the officer was receiving immediately before his retirement and shall include: -

- (a) Pay as defined in FR 9 (21) (a) (i);
- (b) Senior Post Allowance;
- (c) Special Pay of all types and nature;
- (d) Personal Pay;
- (e) Technical Pay;
- (f) Indexed Pay;
- (g) Increments accrued during leave preparatory to retirement;
- (h) Any other emoluments which may be specially classed as Pay.”

6. Consistent with the CSR 486, the emoluments mean the emoluments which the officer was receiving immediately before his retirement. In fact, the Civil Service Regulations (CSR) encompasses and comprehends Government instructions for standardizing and regulating the terms and conditions of service including the pay, leave, pension and other allowances payable to the Government servants in their respective departments. In order to rationalize and restructure these Service Regulations according to ongoing need and pressing priority, certain changes and revisions are brought in from time to time or intermittently to maintain harmony and uniformity. In

the case of Sultan Ahmad Shams (supra), this Court while considering the effect of CSR-486, held in paragraph 9 that on reading of the above definition of emoluments, it is clear that the terms emoluments are to be calculated upon what the officer was receiving immediately before his retirement i.e. Basic Pay, Senior Post Allowance, Special Pay of all types and nature, Personal Pay, Technical Pay, Index Pay, increments accrued during LPR, any other emoluments which may be specially classed as pay. The term "emoluments" as is defined by this CSR apparently seems to be all inclusive and though the word "include" has been used but it does not seem to enlarge the scope from the one that is enumerated in its items (a) to (h). The term "include" as appearing in this CSR will not include alien and extraneous elements for calculation of emoluments rather it will confine itself to the incidence attached to or connected with enumerated items (a) to (h). It was further held that the learned Tribunal in its impugned judgment has altogether omitted to consider this CSR although the appellant in its para-wise comments has specifically raised the defense that the CSR 486 does not include the allowances claimed by the respondents in the emoluments reckonable towards calculation of pension.

7. Though the petitioner attained the age of superannuation on 31.12.1999 and also pleaded that the aforesaid Judgment passed by this Court was much after the date of his retirement therefore it does not apply in his case but the fact remains that CSR-486 being a part of Regulations was very much in existence before the superannuation of the petitioner which defines the perks that have included in the emoluments. Further the Office Memorandum dated 23rd July 1999 is very much relevant which was issued by Deputy Secretary Finance Division, Government of Pakistan in connection with the grant of Special Additional Allowance earlier to the date of retirement with some stipulations and qualifications but not unconditional. By means of this Office Memorandum, all Civilian Employees of the Federal Government including Civilian paid from Defence estimates, a Special Additional Allowance w.e.f. 1st July 1999 till further orders was granted i.e. 25% of the minimum of relevant pay scale was sanctioned for BS 1-16 and 20% allowance was accorded to BS 17-22 officers

subject to Clause (a) to (e). It is quite noteworthy that in Clause (c) of the Office Memorandum, it is very lucidly explicated that this allowance will not be treated as part of emoluments for the purposes of calculation of pension and recovery of house rent. According to CSR-486, the term "emoluments" inter alia means and includes the "Pay" as defined in FR 9 (21) (a) (i). The compilation of Fundamental Rules and Supplementary Rules (FR&SR) made by the President including Orders issued by the Federal Government delineate and structure the financial terms and conditions of government employees like pay, allowances, leave and travelling allowances etc. The definition of the word "Pay" as enumerated in Chapter II. F.R-9 (21) is reproduced as under: -

(a) Pay means the amount drawn monthly by a Government servant as:

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and [Emphasis applied]

(ii) overseas pay, technical pay, special pay and personal pay, and

(iii) any other emoluments which may be specially classed as pay by the President.

8. Due to the assimilation and incorporation of Clause (c) in the aforesaid Office Memorandum, obviously, the grant of Special Additional Allowance cannot be reckoned or considered as part of emoluments for the purpose of calculation of pension of the petitioner. The petitioner has claimed the inclusion of the Special Additional Allowance on the basis of Office Memorandum in field but he never challenged vires of Clause (c) of O.M, if he was aggrieved by this condition which allegedly infringed his fundamental right hence he can cannot pick and choose that the conditions favorable to him are acceptable but the condition of non-inclusion of the allowance for the purposes of pension is not acceptable. The Office Memorandum shall apply across the board in its letter and spirit with all riders and not at the whims of the petitioner. No vested right can be claimed on the basis of a conditional or qualified grant unless such conditions

are fulfilled. At this juncture we would also like to ruminate the case of Managing Director, Pakistan Railways Carriage Factory, Islamabad Vs. Muhammad Asghar (2003 SCMR 1037) wherein this court observed that Prime Minister of Pakistan allowed financial relief to the low paid employees which was not ad hoc or temporary relief rather the financial relief was allowed to all the employees from BS-1 to BS-16 with effect from 1st March 1997, hence this Court considered the said increase permanent in nature and held that said increase would be reckonable towards the pensionary emoluments. No such condition or document was presented before the Court in the aforesaid case to show that the ad hoc relief granted by the Prime Minister was considered as a part of emoluments for the purposes of pension as mentioned in Clause (c) the Office Memorandum dated 23rd July 1999.

9. In view of above discussion, we feel no justification for any interference in the impugned judgment. This petition is dismissed and leave refused.

Judge

Judge

Karachi, the
19.01.2022
Approved for reporting.
Khalid