

**IN THE SUPREME COURT OF PAKISTAN**  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, HCJ.  
MR. JUSTICE IJAZ UL AHSAN.  
MR. JUSTICE MUNIB AKHTAR.

**CIVIL APPEAL NO.756 OF 2021**

*(Against the judgment dated 25.09.2018 passed by the Federal Service Tribunal, Islamabad in Appeal No.1332(R)CS of 2016).*

**AND**

**CIVIL REVIEW PETITION NO.11 OF 2021 IN  
CIVIL APPEAL NO.493 OF 2020.**

*(Against the order dated 04.12.2020 passed by this Court in Civil Appeal No.493 of 2020)*

Divisional Accounts Officer, Pakistan Railways, Rawalpindi.  
*(in CA.756/2021)*

Finance Secretary, Finance Division, M/o Finance,  
Islamabad.  
*(in CRP.11/2021)*

...App(s)/ Pet(s).

**Versus**

Muhammad Yasin (decd) through L.Rs. and others.

...Respondent(s)  
*(in both cases)*

For the Appellant(s): Mr. Jawad Mehmood Pasha, ASC.  
*(via video-link from Lahore)*  
*(in CA.756/2021)*

For the Petitioner(s): Ch. Aamir Rehman, Addl. AGP.  
Mr. Sajid Javed, Asstt. (Legal)  
Finance Division.  
*(in CRP.11/2021)*

For the Respondent(s): Asim Yasin.  
*(son of the respondent).*

Date of Hearing: 23.12.2021.

**JUDGMENT**

**IJAZ UL AHSAN, J-**. This single judgment shall  
decide Civil Appeal No.756 of 2021 *(filed by Divisional  
Accounts Officer, Pakistan Railways)* and Civil Review Petition  
No.11 of 2021 *(filed by the Secretary, Finance Division,*

*Islamabad*) as common questions of law and fact are involved in both matters.

2. This appeal arises out of a judgment of the Federal Service Tribunal, Islamabad (*"the Tribunal"*), dated 25.09.2018. Through the impugned judgment, a Service Appeal bearing No.1332(R)CS of 2016 filed by the Respondent (*Muhammad Yasin*) was allowed and it was held that since he was holding the post in substantive Grade-15 at the time of his retirement he would be entitled to 25% increase in pension as per Office Memorandum dated 23.07.1999. The Appellant was directed to allow medical allowance to the Respondent @ 25% of his pension with effect from 01.07.2010 and arrears with a direction to complete the process within 30 days.

3. Briefly stated the facts necessary for disposal of this Appeal are that the Respondent was a pensioner of Pakistan Railways. He joined Pakistan Railways on 05.05.1969. He was allowed move-over to BS-16 with effect from 01.12.2000. He retired from service on 31.03.2000. It appears that the Government of Pakistan had announced pay scales with allowances, vide Office Memorandum dated 05.07.2010. Through the said OM, Medical Allowance was allowed to the pensioners at the following rates:

- i) *From BS-1 to 15 @ 25% of the pension and*
- ii) *From BS-16 to 22 @ 20% of the pension.*

In view of the fact that the Respondent had been granted move-over to BS-16, he was allowed medical

allowance @ 20% of his pension. The Respondent claimed that since his substantive grade was BS-15 he was entitled to medical allowance @ 25% of the pension. His departmental representation was not responded, in consequence of which, the Respondent approached the Tribunal which allowed his Service Appeal, vide impugned judgment dated 25.09.2018 which is impugned before us through the present appeal.

4. The learned counsel for the Appellants submits that the Respondent had drawn last pay in BS-16 and as such he could not claim medical allowance at the rate which it was payable to those who were in BS-15. In this regard, he has drawn our attention to Office Memorandum No.F-16(1)-Reg.6/2010-778, dated 05.07.2010 ("OM"). He maintains that the Tribunal has misconstrued and misinterpreted the clear and unambiguous language of the said OM. He further maintains that the Tribunal failed to consider that the departmental representation as well as the Service Appeal filed by the Respondent were hopelessly barred by time and the reasons recorded by the Tribunal for condoning the delay are unsustainable. He submits that the Respondent had retired on 31.03.2000, drew pension and allowances on his last drawn pay and could not claim increase in medical allowance payable to those who retired in BS-15. He points out that by claiming the allowance in BS-15 while drawing pension in BS-16 the Respondent in essence was claiming two benefits which are not permitted by law. He also argues that the Tribunal lost sight of the fact that the Respondent

was allowed move-over to BS-16 with effect from 01.12.2000 on account of an option exercised by him and he could not have retraced his steps to claim an additional benefit of an increased medical allowance available to those who had retired in BS-15.

5. Mr. Asim Yasin, son of the Respondent, who has appeared in person on behalf of his legal heirs has defended the impugned judgment. He maintains that the substantive Grade of his predecessor-in-interest at the time of retirement was BS-15. Therefore, he was entitled to payment of medical allowance payable to those who had retired in BS-15. He has also filed written submissions which have been gone through.

6. We have heard the learned ASC for the Appellants as well as Respondent's son and carefully gone through the record. The facts in the case are not disputed by either side which have been reproduced above. There is no denial of the fact that the Respondent had opted for move-over to BS-16 in which he chose to retire and was granted pension on the basis of last drawn pay of BS-16 and medical allowance permissible to those in BPS-16. The entire case turns on the interpretation of OM dated 05.07.2010 which in our opinion has been misinterpreted and misconstrued by the Tribunal.

7. It is significant to note that through the aforesaid OM, medical allowance was payable with effect from 01.07.2010 to all civil pensioners of the Federal Government

including civilians paid from Defence Estimate and Civil Armed Forces at the following rates:

- i) Pensioners who retired in BPS-1 to 15 @ 25% of pension drawn **(the underlining is ours)**.
- ii)
- iii) Pensioners who retired/will retire in BPS-16 to 22 @ 20% of pension drawn. **(the underlining is ours)**.

In our opinion, in the first instance, the Respondent had been granted move-over to BS-16 at his own option. Further, the rate of medical allowance was to be calculated on the basis of pension drawn. There is no denial of the fact that the Respondent drew pension on his last drawn pay which was in BS-16. Therefore, on a correct construction and interpretation of the OM, he was entitled to 20% of the pension drawn which is the deciding factor in determining the amount of medical allowance payable to a pensioner. The Tribunal, in our view, did not correctly interpret the language of the OM and read into the OM something which was not there. The intent, meaning and scope of the OM was clear and unambiguous and we are in no manner of doubt that the medical allowance was payable on the pension drawn. In view of the fact that the Respondent admittedly drew pension calculated on the basis of his last drawn pay which was that of BS-16, he was correctly paid medical allowance @ 20% of the pension drawn. We also find substance in the argument of learned counsel for the Appellants that the Respondent was actually claiming two benefits. While on the one hand he was drawing pension calculated on the basis of his last drawn pay in BS-16 and on the other hand he claimed benefit of a higher rate of medical

allowance payable to persons retiring in BS-15, which is contrary to the plain language of the OM. The determining factor were the words "of pension drawn". The finding of the Tribunal that the Respondent had retired "substantively in BS-15" is a terminology unknown to the Service Law or any legal phraseology. Further, the rate of medical allowance was to be determined on the basis of pension drawn and no where does the OM provide for whether or not a pensioner had retired holding a substantive grade.

8. Further, we find that the Tribunal misconstrued and misinterpreted the law of limitation and the reasons that prevailed with the Tribunal in condoning the delay were not attracted to the facts and circumstances of the instant case. It may be noted that the claim of the Respondent was not regarding his pension or any pensionary benefit. In fact, he had approached the Tribunal seeking interpretation of an Office Memorandum dated 05.07.2010 in 2016. As such, the question of limitation was material in view of the fact that the departmental representation as well as Service Appeal of the Respondent were patently barred by time. The entire tenor of the reasoning given by the Tribunal in allowing the Service Appeal is that the Respondent was holding a post in substantive Grade-15 which was alien to the considerations for grant of medical allowance as incorporated in the OM that was the subject matter of interpretation. Consequently, we find that the impugned judgment of the Tribunal is

unsustainable and is accordingly set aside. As a result, the appeal is allowed.

9. **CRP No.11 of 2021**. For the reasons recorded in the connected matter (*Civil Appeal No.756 of 2021*) which has been allowed by us, this Review Petition is also disposed of.

**ISLAMABAD.**

23.12.2021.

ZR/\*

*'Not Approved For Reporting'*