

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 1347 of 2023
(Muhammad Ayuoub Khan Sanjarani & another versus P.T.C.L. & others)

DATE	ORDER WITH SIGNATURE OF JUDGES
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing & orders: 08.9.2026

Mr. Ali Asadullah Bullo, Advocates for the Petitioner a/w Danial Sanjarani, Petitioner No.1.
Mr. Sufyan Zaman, Advocate for the Respondent.
Ms. Wajeeha Mehdi, Assistant Attorney General.
Hubdar Ali, Executive Legal, P.T.C.L.

ORDER

Adnan-ul-Karim Memon, J. Petitioners have filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following reliefs:

- A. *To declare action of the Respondent No.1 not issuing Retirement Notification of the Petitioner on reaching superannuation age on 06.02.2023 is illegal and unlawful.*
- B. *To direct Respondent No.1 to grant pension & gratuity as per entitlement of the Petitioner and incorporate all future pension increase as announced by the Federal Government from time to time and arrears be paid within one month.*
- C. *To restrain Respondent No.1 not to take any conceive action to dispossess Petitioner from provided accommodation till settlement of pay and pension issue of the Petitioner.*
- D. *To direct Respondents to deal the matter justly, fairly in accordance with the terms and condition of the initial appointment of the Petitioner and not otherwise.*

2. The case of the Petitioner is that he was appointed as Assistant Divisional Engineer (BPS-17) on 01.09.1988 in the erstwhile Pakistan Telegraph and Telephone Department. According to his date of birth, he attained the age of superannuation on 06.02.2023; however, Respondent No.1 failed to issue his retirement notification and unlawfully withheld his pension and other service benefits. He averred that earlier, the Petitioner was subjected to disciplinary proceedings and was dismissed from service vide order dated 19.05.2010. He challenged the dismissal before this Court, which, vide judgment dated 27.09.2019 in C.P. No.D-6171/2016, set aside the removal order and directed his reinstatement, subject to initiation and expeditious completion of a fresh de novo inquiry. This Court further held that if no inquiry was conducted within the

prescribed period, the Petitioner would be entitled to reinstatement and back benefits. In compliance, Respondent No.1 reinstated the Petitioner vide order dated 06.01.2020, but failed to conclude the de novo inquiry. The Petitioner thereafter reached the age of superannuation on 06.02.2023; however, without issuance of retirement notification and payment of his lawful dues.

3. The learned counsel for the petitioner contends that, upon cessation of employment by superannuation, the disciplinary proceedings stood abated and he became entitled to his pension, gratuity, arrears and other consequential service benefits. The Petitioner's counsel alleges that Respondent No.1, despite the judgment of this Court and the statutory protection available to transferred employees, has withheld his lawful service and retirement benefits. He further contends that Respondent No.2, being responsible under the Pakistan Telecommunication (Reorganization) Act, 1996 for protecting the existing terms and conditions of transferred employees, failed to safeguard his rights. Accordingly, the Petitioner seeks a declaration that failure to issue his retirement notification upon attaining superannuation on 06.02.2023 is illegal and unlawful, and a direction to the Respondents to release his pension, gratuity, arrears and future pension increases in accordance with law. He further seeks protection of his existing accommodation until settlement of his pay and pension claims. Learned counsel for the petitioner submitted that the petitioner died on 30.08.2023 during the pendency of the petition, and his legal heirs were brought on record by order dated 08.03.2024; therefore, the legal heirs are entitled to the family pension as per law. He prayed to allow this petition.

4. We asked the counsel for the respondent whether any termination/dismissal letter from service of the petitioner was issued after DE novo inquiry. The learned counsel for the respondents candidly submitted that no termination or dismissal order has, to date, been issued pursuant to the ex-parte inquiry.

5. On merits the learned counsel for the Respondents submit that this Constitutional Petition is not maintainable as the Petitioner has approached this Court with unclean hands by concealing and misrepresenting material facts regarding his service. The Petitioner was proceeded against on serious charges of inefficiency, misconduct, irregularities and corruption and was removed from service after an inquiry. The Respondents' counsel state that in C.P. No.6171 of 2016, this Court, vide judgment dated 27.09.2019, set aside the removal order only conditionally and directed that the Petitioner's reinstatement would remain subject to a de-novo inquiry, with his entitlement to back benefits and consequential relief dependent upon the outcome of such inquiry. Accordingly, the Petitioner was reinstated on 06.01.2020 subject to the said condition. Pursuant

thereto, a de novo inquiry was duly conducted. The Petitioner was served with the charge and was repeatedly called upon to appear before the Inquiry Committee and submit his defence. He added that despite notices and reminders, he failed to appear before the Committee and subsequently submitted a written reply which was found unsatisfactory. He emphasized that the Inquiry Committee examined the record and found all four allegations relating to failure to properly execute and monitor development projects, failure to achieve prescribed targets, improper relocation of PTCL network and payment for uncompleted cable work to be established. Consequently, the allegations of misconduct and corruption were affirmed vide inquiry proceedings dated 24.05.2021. It is further submitted that the Petitioner never challenged the de-novo inquiry proceedings or the decision dated 24.05.2021 before any competent forum. His claim that no de novo inquiry was conducted ex-parte is therefore contrary to the record. The Respondents maintain that, having been dismissed from service following the inquiry, the Petitioner is not entitled to pension, retirement benefits, back benefits or continued occupation of the employer-provided accommodation. The Respondents further submit the Petition is barred by the principles of res judicata and concealment of material facts, as the Petitioner had already sought substantially similar relief in Suit No. 1075 of 2023 before the learned VIth Civil Judge, Karachi (South), which was dismissed vide order dated 07.02.2024. The present proceedings are therefore an attempt to reopen matters already adjudicated and so continue enjoying the benefits of employment and accommodation despite his dismissal from service.

6. We reminded him to produce the termination letter, but he failed to place it on record and relied only on the inquiry proceedings. We further pointed out that an inquiry report is merely recommendatory and the competent authority must pass the final order under service jurisprudence. He agreed with this proposition in principle, but, without conceding, maintained that the petitioner's service was dispensed with after the inquiry.

7. Learned AAG representing the Respondent No.2, Ministry of Information Technology & Telecommunication, separately submits that it has no role in the Petitioner's retirement notification, pension or gratuity, as these matters fall within the domain of PTCL and the concerned pension arrangements. It is further submitted that PTCL employees are not civil servants and that the pensionary status of such employees is subject to proceedings pending before the competent courts. Since relief has been claimed against Respondent No.2, the Petition is liable to be dismissed against it. In view of the foregoing, the Respondents pray that the Constitutional Petition be dismissed, with exemplary costs, as being based on concealment of material facts, misrepresentation, and an attempt to obtain

relief despite the adverse outcome of the de novo inquiry and the dismissal of the Petitioner's earlier suit.

8. We have heard the learned counsel for the parties and perused the record with their assistance.

9. The controversy essentially revolves around three questions: firstly, whether the petitioner continued to have a legally enforceable claim to his service and pensionary benefits upon attaining the age of superannuation on 06.02.2023; secondly, whether the purported de-novo inquiry could lawfully deprive him of such benefits in the absence of a duly issued and communicated order of dismissal, and thirdly, what is the effect of the petitioner's death on 30.08.2023 upon the disciplinary proceedings and upon the accrued pensionary rights which devolved upon his legal heirs.

10. At the outset, it is material to note that the petitioner was originally appointed in the erstwhile Pakistan Telegraph and Telephone Department and was subsequently transferred to PTCL. His service was, therefore, not an ordinary contractual employment. Section 36(1) of the Pakistan Telecommunication (Re-organization) Act, 1996 expressly guarantees to transferred employees their existing terms and conditions of service and rights, including pensionary benefits, while Section 36(2) prohibits their adverse alteration except in accordance with law or with the employee's consent and appropriate compensation. The Supreme Court has repeatedly recognized that these protections constitute statutory rights of the transferred employees.

11. The judgment dated 27.09.2019 passed in C.P. No.D-6171/2016 had admittedly set aside the earlier order of removal and directed reinstatement of the petitioner subject to a de novo inquiry. The petitioner was accordingly reinstated on 06.01.2020, which remained in force till his death. The legal effect of such reinstatement was that the earlier order of dismissal/removal ceased to furnish a lawful basis for treating the petitioner as out of service, subject to the result of the fresh proceedings. Consequently, until a subsequent lawful order was passed pursuant to the de novo inquiry, the petitioner continued to remain in service, and his service status could not be defeated merely by an inquiry report or an internal recommendation, which has no binding effect upon the competent authority under the service law.

12. In this regard, the respondents' own statement before this Court assumes considerable significance. Although the respondents now rely upon a purported (decision dated 24.05.2021 and assert that the allegations were established, learned counsel for the respondents candidly stated that no termination or dismissal order

has, to date, been issued pursuant to the purported de novo inquiry. This admission is inconsistent with the further assertion that the petitioner stood dismissed from service on 24.05.2021. An inquiry proceeding and a final disciplinary order are legally distinct stages. Unless the competent authority passes a lawful final order imposing the prescribed penalty, and such order is duly issued/communicated in accordance with the applicable law, the mere conclusion of an inquiry cannot, by itself, bring the statutory relationship of employment to an end.

13. Even otherwise, the decisive event is that the petitioner attained the age of superannuation on 06.02.2023. Thus, even assuming that the de novo inquiry had remained pending, the respondents could not indefinitely keep the petitioner in a state of uncertainty regarding his service status and thereby deprive him of his retirement benefits. The principle embodied in Fundamental Rule 54-A is particularly instructive: where a government servant facing disciplinary proceedings attains superannuation before completion of the proceedings, such proceedings abate, and the employee retires with the pensionary benefits admissible under law. It is well settled that the attainment of superannuation before completion of disciplinary proceedings brings such proceedings to an end and a de-novo inquiry cannot thereafter be revived merely to defeat retirement benefits.

14. Although the petitioner was a transferred employee of PTCL, his service and pensionary rights were/are protected by statute and his existing terms and conditions, including pensionary rights, remained statutorily protected under Sections 35 and 36 of the 1996 Act. Such employees can invoke the constitutional jurisdiction of this Court where those protected statutory rights, if, are violated.

15. More importantly, in the present case the de-novo inquiry, according to the respondents themselves, had already been conducted and concluded on 24.05.2021. If the respondents' case is that the inquiry culminated in a decision to dismiss the petitioner, then the burden lay upon them to demonstrate the existence of a lawful final order of dismissal issued by the competent authority. Their categorical admission that no such termination/dismissal order was issued is therefore fatal to the proposition that the petitioner stood dismissed. An inquiry report cannot be equated with a penalty order. In the absence of a legally operative dismissal order, the petitioner remained in service until the legally prescribed date of superannuation, i.e. 06.02.2023.

16. The position becomes even clearer after the petitioner's death on 30.08.2023. A disciplinary proceeding is essentially personal in character and is tended to determine whether the employee, during his service, committed

misconduct warranting a disciplinary penalty. Where the employee dies before a final disciplinary penalty is lawfully imposed, the proceedings cannot ordinarily be continued against a dead person for the purpose of imposing a personal punishment upon him. It is well settled principle that disciplinary proceedings abate upon the death of the employee and that no disciplinary order can lawfully be passed against a deceased employee after his death.

17. In the present case, the petitioner had not merely died during service; he had already attained the age of superannuation approximately six months before his death. Therefore, after 06.02.2023, there was no subsisting service relationship capable of being terminated through a disciplinary penalty, particularly when no final dismissal order had been issued during the petitioner's lifetime. The subsequent death on 30.08.2023 consequently left no lawful basis for reviving or continuing a disciplinary process for the purpose of imposing a penalty which had neither been validly imposed before superannuation nor communicated to the petitioner during his lifetime.

18. It follows that the de-novo inquiry, even if validly initiated pursuant to the judgment dated 27.09.2019, could not operate indefinitely so as to suspend the petitioner's vested retirement rights. At the latest, upon his superannuation on 06.02.2023, the disciplinary process lost its efficacy for the purpose of terminating his service, unless the governing statutory regime expressly authorized continuation of proceedings against a retired employee and the prescribed conditions for such continuation were strictly fulfilled. No such provision or valid post-retirement proceeding has been shown before us. After his death on 30.08.2023, the possibility of imposing a personal disciplinary penalty stood extinguished altogether.

19. We are therefore unable to accept the respondents' contention that the petitioner could be treated as dismissed employee merely on the basis of the alleged conclusion of the inquiry dated 24.05.2021. The respondents cannot simultaneously assert that the petitioner was dismissed pursuant to the de-novo inquiry and admit that no dismissal/termination order was ever issued.

20. In law, the Court is required to proceed on the basis of the operative order actually passed and not upon an uncommunicated or purported decision. Consequently, in the absence of a lawful final dismissal order, the petitioner's service needs to be treated as having continued up to his date of superannuation, subject to adjustment of any benefits strictly permissible under the applicable law.

21. As regards pension and retirement benefits, the same cannot be treated as matter of grace or bounty. The petitioner had rendered service from 01.09.1988

and had acquired the status of a transferred employee whose existing pensionary rights were expressly protected by Section 36 of the 1996 Act. The statutory guarantee extended to pensionary rights and prohibited their adverse alteration otherwise than in accordance with law. The Supreme Court has recently reiterated, in the context of former T&T/PTCL employees, that the rights of transferred employees are to be determined in accordance with the statutory framework governing PICL. and its pension arrangements, the precise extent of pension increases, however, must be determined in accordance with the applicable statutory/pension scheme and the classification of the employee.

22. The petitioner's death during the pendency of the petition does not extinguish rights which had already accrued to him during his lifetime. The legal heirs, having been brought on record by order dated 08.03.2024, step into the proceedings to the extent of the deceased petitioner's surviving and transmissible monetary/service claims. They are therefore entitled to have the deceased petitioner's lawful pensionary and retirement benefits determined and released in accordance with the applicable PTCL/PTET pension regime and the law governing family pension. The distinction must, however, be maintained between arrears and other monetary benefits which had accrued to the petitioner during his lifetime and family pension, which is a distinct statutory entitlement of eligible family members. The latter is payable only to such heirs and in such proportion and for such period as prescribed by the applicable pension rules/scheme as per their entitlement under the law.

23. The legal heirs cannot, merely by substitution in the constitutional petition, acquire a better substantive right than that possessed by the deceased; nevertheless, they are fully entitled to pursue and receive those rights which had vested in the deceased before his death, as well as the family pension and other death-related benefits to which they are independently entitled under the applicable law. Thus, the death of the petitioner does not render the entire petition infructuous. Rather, the nature of the relief undergoes a consequential change: the claim for personal reinstatement or continuation of service becomes academic, whereas the claims relating to pension, gratuity, arrears, retirement benefits and family pension survive for determination according to law by the competent authority.

24. We also find support from the broader principle that pensionary rights, once accrued under the governing law, cannot be withheld merely on the basis of administrative inaction or an unresolved disciplinary controversy. The retirement and pension benefits are also enforceable legal rights where continuity of service has been established.

25. Consequently, we are not in a position to revive the de novo inquiry or remit the matter for another inquiry against a deceased employee for the reason that disciplinary proceedings cannot continue for imposition of a personal penalty after the death of the employee. The inquiry, to the extent that it had not culminated in a validly issued final penalty order during the petitioner's lifetime, is treated as having shared upon his death, and in any event had ceased to furnish a lawful basis for withholding his retirement benefits after his superannuation on 06.02.2023.

26. For the foregoing reasons, we are of the considered view that the petitioner was entitled, subject to verification of his qualifying service and the applicable pension scheme, to be treated as retired on attaining the age of superannuation on 06.02.2023, rather than as dismissed based on an unissued disciplinary order. His accrued pensionary, gratuity and other retirement benefits could not lawfully be withheld merely because an inquiry report had been prepared. Upon his death on 30.08. 2023, the personal disciplinary proceedings stood abated, while his accrued monetary rights survived for the benefit of his estate and his eligible family members, and the eligible legal heirs became entitled to family pension in accordance with the applicable rules/scheme.

27. Accordingly, the respondents are directed to determine and release, after due verification, the pension, gratuity and other admissible retirement dues of the deceased petitioner from the date legally prescribed for their commencement, together with the consequential arrears by issuing proper retirement notification of the petitioner forthwith. The claim for future pensionary increases shall be governed by the applicable PTCL/PTET statutory pension framework and any binding judicial determination applicable to the deceased's category of transferred employees. The eligible legal heirs shall further be considered for family pension strictly in accordance with the applicable rules.

28. In the circumstances, the petition is disposed of in the above terms with direction to the competent authority of the respondents to process and release the admissible benefits of the deceased by issuing proper retirement notification of the petitioner forthwith.

JUDGE

JUDGE

Nadeem Qureshi PA