

**IN THE HIGH COURT OF SINDH, KARACHI**

**Present**

**Mr. Justice Muhammad Ali Mazhar**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P.No.D-2543 of 2011**

Mansur-ul-Haque.....Petitioner

Versus

Government of Pakistan  
and another.....Respondents

**Date of hearing: 22.12.2016**

Mr. Obaid-ur-Rehman, advocate for the petitioner  
Mr. Shaikh Liaquat Hussain, Standing Counsel  
Mr. Muhammad Altaf Awan, ADPG, NAB  
Mr. Akram Jawaid, Prosecutor NAB  
Along with Lieutenant Shafeeq-ur-Rehman Zuberi,  
Assistant Director Services/Superintendent  
Law Department, Pakistan Navy

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**J U D G M E N T**

**ADNAN-UL-KARIM MEMON-J:** The Petitioner Mansur-ul-Haque, former Chief of Naval Staff has filed this Constitutional Petition seeking for restoration of his pensionary benefits and other perks and privileges.

2. The brief facts of the case are that on 25.04.1998 the Petitioner stood retired from his post as Chief of Naval Staff, Pakistan Navy. On 04.05.2001, Chairman NAB filed a Reference bearing No. 43 of 2001 [The State vs. Admiral ® Mansur-ul-Haq and another] against the Petitioner, before the learned

Accountability Court at Rawalpindi. The allegations against the Petitioner in the Reference were that, in the year 1994, he had misused his public office and had received commissions and kickbacks, bribe from the foreign suppliers who were under contract with Government of Pakistan to supply Sub-Marines, Arms, Ammunition and other Defense material to Pakistan Navy and he, in this manner, had received an amount of US \$ 3,369,383 (three million three hundred and sixty-nine thousand three hundred and eighty-three) as his share of commission, out of the deal, hence committed the offence of Corruption and Corrupt practices as defined under Section 9 of the National Accountability Bureau Ordinance, 1999. ("the Ordinance")

3. The Petitioner was arrested in the said Reference and during the pendency of the same proceedings, the Petitioner availed the facility of plea bargain pursuant to section 25 of the Ordinance and voluntarily offered to return US \$ 7.5 Million. The offer of plea bargain was accepted by the learned Accountability Court, Rawalpindi vide Order dated 31.1.2002 and it was further held in the order that Proviso to Section 15 of the Ordinance shall be applicable, therefore, the Petitioner was released on his deeming conviction in the NAB Reference.

4. The Ministry of Defence, Government of Pakistan, vide Notification dated 2<sup>nd</sup> October, 2002, ("the Notification") suspended all pensionary benefits and all other benefits accruing to the Petitioner from retirement including benefits from Naval Officers Housing Scheme and duty free car, etc.

5. On 7.7.2011, the Petitioner, after a lapse of nine years filed the instant Petition. The office raised an objection, amongst others, with respect to laches. The Petitioner replied to the said office objection as follows:

*“Since the petitioner had entered into the plea bargain in NAB Reference No.43/2001 under Section 25 of the National Accountability Ordinance, 1999, therefore, there was embargo for filing this petition in view of Section 15 of the National Accountability Ordinance, 1999, therefore delay in filing petition, which is genuine.”*

6. The Respondent No.1 and 2 filed Parawise comments and raised legal objections with respect to the maintainability of the instant Petition.

7. The learned counsel for the Petitioner contended that the Petitioner retired on 25.4.1998 as the Chief of Naval Staff, Pakistan Navy and subsequently, he was implicated in a false Reference and was arrested and pressurized to enter into plea bargain. The learned counsel next contended that the Petitioner entered into the plea bargain, because he was under pressure and had no other alternative as he had already languished in jail for a period of about eighteen months. He has further contended that vide the Notification the name of the Petitioner was removed from the list of retired naval officers and all his pensionary benefits that had accrued to him from retirement including benefits from Naval Officers Housing Scheme and duty free car etc stood suspended and the period of such suspension has not been ascertained to suspend the pensionary benefits of the Petitioner, which has been

withheld since 2002, same is in violation of the principles of natural justice, reasonableness and proportionality and therefore, illegal, malafide and devoid of merits. Per counsel, in view of section 15 of the Ordinance, the Petitioner could not approach this Court for any relief, for a period of ten years and that on the expiry of the said period, the Petitioner had approached this Court and the Petition is filed within time. Per learned counsel, Rule 19 of the Pakistan Navy Rules, 1961 ("the Rules") the powers given under this law cannot be exercised to remove the name of the Petitioner from the retired persons' list for misconduct and on such removal the Central Government has suspended/withheld the pensionary benefits of the Petitioner, though the misconduct has not been defined in Pakistan Navy Ordinance, and Rules 1961 and Regulations. However, learned counsel for the Petitioner has further emphasized that the Petitioner is a retired personnel of Pakistan Navy and he cannot be penalized under such Rules on the ground of misconduct in any manner whatsoever, as Rules 19 of the Pakistan Navy Rules, 1961 cannot be made applicable to a retired Navy Personnel. Per learned counsel, the Section 75 of the Pakistan Navy Ordinance, 1961 is also not applicable which does not speak of misconduct as the Petitioner was on the retired list of officers and the same Section is only applicable those personnel who are in active service, however, the Petitioner had never been held in Court Martial proceedings by Pakistan Navy. He argued that the suspension does not connote meaning of cancellation or revocation but it only temporarily deprives the benefits. Since the name of Petitioner has been removed from the retired list of Pakistan Navy and his perks

and privileges/pensionary benefits have been suspended/withheld, which cannot be withheld/ suspended for an unlimited time. Per learned counsel, Sub-Rule 5 of Regulation No. 0804 of the General Provisions of Navy Regulations, 1987 (“the Regulations”) was prematurely implemented with malafide intentions. As the Petitioner had retired in the year 1998 and since then he was receiving all retirement benefits including the pension till the issuance of the impugned Notifications. He further contended that the pensionary benefits of a retired officer cannot be stopped as the amount of pension is paid from the gratuity and other funds deducted from his salary, during his service period and the act of withholding the pension does not come within the purview of Section 15 of the NAB Ordinance 1999. The learned counsel for the Petitioner has relied upon the case of National Accountability Bureau vs. Aamir Lodhi (PLD 2008 S.C 697), Messrs. Pakistan Army Furnishing Stores vs. Syed Ali Akbar Rizvi, (PLD 1985 Karachi 201) and Karachi City Cricket Association, Karachi vs. Mujeebur Rahman, Chairman AD HOC Committee, Pakistan Cricket Board, Lahore (PLD 2003 Karachi 721).

8. On the other hand, the learned Standing Counsel submitted that the Petitioner being an ex-Naval officer is governed under the provisions of Pakistan Navy Ordinance, 1961 and the Rules framed thereunder. He next contended that the Petitioner was involved in a mega corruption scandal and corrupt practice regarding purchase of Sub-Marines, the same offence was investigated and a Reference was sent to the learned Accountability Court for trial. During the

investigation, the Petitioner accepted his guilt and offered plea bargain under Section 25 of the Ordinance. The same was accepted by the learned Accountability Court and the Petitioner voluntarily returned US \$ 7.5 million to NAB in December 2001 to January 2002. He argued that the plea-bargain is a deeming conviction in terms of section 15 of the Ordinance. Consequently, the Federal Government took action under Rule 19 of the Rules as deeming conviction by a NAB Court on charges of financial corruption, categorized as misconduct on the part of the Petitioner. Accordingly, the pension, rank and other service privileges were withdrawn vide three SRO's No. 789, 790 and 791/2002 dated 2.10.2002. Per learned Standing Counsel, on the request of the Petitioner and the decision of the Prime Minister dated 22.06.2006, Federal Government released the House and duty free car vide Notification dated 17.9.2009. However, no orders for release of pension or use of rank etc had been issued by the Competent Authority. He further contended that the Petitioner was not qualified for pensionary benefits as per the law and all the actions that had been taken against the Petitioner were strictly in accordance with the law. He further argued that in the light of above, the Petitioner is not entitled for any pensionary benefit or any other sort of benefit as he had availed the facility of plea bargain, the same amounted to an admission of guilt on his part. He further added that the Competent Authority in exercise of the powers conferred by Sub-Rule 5 of the Rules 0804 of the Regulations withdrew all subjective ranks and honorary ranks conferred on the Petitioner for his proven misconduct after

retirement as the Petitioner is subject to laws applicable to the Armed Forces. He further contended that in pursuance of Article 7 of Warrant of Institution for the Armed Forces, the President of Pakistan approved the forfeiture of all Pakistani awards and foreign honors awarded to/or conferred on the Petitioner as a result of proven guilt and misconduct after his retirement. He further added that the conviction of the Petitioner is based on corruption and corrupt practice, which also falls within the ambit of word moral turpitude hence he is not entitled to the pensionary and other benefits. The learned Standing Counsel lastly contended that the grievance of the Petitioner, in respect of pensionary benefits forms part of the terms and conditions of his service and as such the same is governed by the laws of the Armed Forces and pursuant to the same, this Petition is not maintainable under Article 199(3) of the Constitution.

9. The learned counsel for the Respondent No.2, has adopted the same arguments of the learned Standing Counsel and stated that the Petition is liable to be dismissed as the same is not maintainable in law.

10. We have heard the learned counsel for the Petitioner as well as learned ADPG, NAB and the learned Standing Counsel and Perused the case law cited at the bar.

11. Perusal of the Notification dated 02.10.2002, reveals that the name of Petitioner was removed from the retired list of Pakistan Navy and his perks and privileges/pensionary benefits were

suspended by Respondent No.1, in exercise of the powers conferred by Rule 19 of the Pakistan Navy Rules 1961. For the convenience sake, same is reproduced herein below:-

**“19. Removal from the Retired List or the Emergency List.** – A permanent or a short service commissioned officer shall be liable to be removed from the Retired List or, as the case may be, the Emergency List by order of the Central Government for misconduct, and on such removal the Central Government may suspend or withhold in whole or any part of the pension of such officer.”

Admittedly, the NAB Reference No.43/2001 was submitted before the learned Accountability Court Rawalpindi against the Petitioner for the offences of corruption and corrupt practices under NAB Ordinance and on account of the Petitioner’s taking benefit of plea-bargain facility under Section 25 of the Ordinance, and by virtue of Order of the Accountability Court, the Petitioner, subsequently was released. Resultantly, the status of the Petitioner converted into a ‘convict’ in terms of Proviso of Section 15 of the Ordinance, and Respondent No.1 according to the NAVY Ordinance, Rules and Regulations, suspended his pensionary benefits and withdrew all his subjective/honourary ranks for his proven misconduct after his retirement from the Naval Service.

12. The question before us in the above circumstances is whether the word “suspend” used in the Notification dated 02.10.2002 means temporary or permanent suspension of the Petitioner’s basic rights as to pension and other perks and privileges.



In this regard, we refer to the Black's Law Dictionary where the word "suspend" is defined as under:-

"Suspend" to interrupt, to cause or cease for a time, to postpone, to stay, delay or hinder to discontinue temporarily, but with an expectation or purpose of resumption, to cause a temporary cessation as of work by an employee."

In Ballentine's Law Dictionary the word "suspend" has been defined as follows:-

"Temporarily inactive or inoperative, held in abeyance."

13. We are mindful of the above fact and have gone through the Order dated 31.01.2002 passed by the learned Accountability Court, Rawalpindi in NAB Reference No.43/2001 available at Page-33 of the file, which clearly shows that the Petitioner accepted the option of plea-bargain and Petitioner, being Ex-Naval Chief knew the consequences arising out of the Proviso of Section 15 of the NAB Ordinance. A look at the Order dated 31.01.2002 and the suspension Notification dated 02.10.2002 clearly show that no illegality has been committed by the Respondent No.1 by removing the name of the Petitioner from the list of Retired Personnel of Pakistan Navy. Therefore, any perks, privileges and pensionary benefits cannot be restored to him at any stage, as the word 'suspend' in the present case, infers indefinite period of suspension of pensionary and allied benefits of the Petitioner since the (deeming) conviction of the Petitioner was based on corruption and corrupt practices as defined under Section 9 of the Ordinance and the same falls within the definition of "moral turpitude". The

expression 'moral turpitude' has been explained in Words and Phrases. Permanent Edition 27-A, which is as follows:-

“In determining whether crime is one involving “moral turpitude”, the test is whether the act denounced by the statute offends the generally accepted moral code of mankind.”

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“Moral turpitude” is a vague term, and its meaning depends to some extent on the state of public morals; it is anything that is done contrary to justice, honesty, principle or good morals; and act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man; it implied something immoral in itself, regardless of fact whether it is punishable by law.”

14. So far as the suspension of pension is concerned, it is not simplicitor suspension but before suspending the pensionary benefits, the name of the Petitioner was first removed from the list of retired Naval Officers so virtually when he is not being considered as retired Naval Officer then question of payment of pension does not arise.

For the above reasons, we are of the view that the Petitioner has not been deprived of his fundamental rights as alleged by the learned counsel for the Petitioner, as the Petitioner, being Ex-Naval Chief was, for the reasons given in the Order dated 31.01.2002, rightly charged with the offence of corruption and corrupt practices under NAB Ordinance. Coupled with the fact that the act of the plea-bargain was an admission of his guilt, under the NAB Law. The act of the Petitioner accordingly falls within the ambit of “Moral

Turpitude” and the Petitioner at this stage accordingly is not entitled for restoration of his perks, privileges and pensionary benefits. This principle is enunciated by the Honourable Apex Court in the case of Ghulam Hussain vs. Chairman P.O.F Board, Wah Cantt and another [2002 SCMR 1691], relevant portion of which is as under:-

“Perusal of the meaning of above expression clearly indicates that anything which is done contrary to the good principles of morality is within the circuit of above expression. In fact, any act which runs contrary to justice, honesty, good moral values, established judicial norms of a society, falls within the scope of above expression. Keeping in view above, it is noted that Petitioners was tried and convicted for the offence mentioned earlier. The line of demarcation drawn by learned counsel for the Petitioner to test as to which offender falls within the ambit of above expression, is incorrect. An offence of murder or attempt to murder is definitely against the well-recognized principles of a society. Narrow interpretation to the extent as propounded by the learned counsel for the Petitioner, is not only unrealistic but also contrary to law. The Tribunal correctly reached the conclusion that the Petitioner is not entitled to the pensionary benefits. Learned Tribunal has already ordered to return G.P.F Fund, after deducting any amount outstanding against him.”

15. Besides above, we do not concur with this assertion of the learned counsel for the Petitioner with his explanation of laches and we are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner filed the instant Petition in the month of July 2011 whereas the alleged cause of action accrued to him in the month of October 2002, i.e. approximately 9 years prior to the filing of the instant Petition.

16. Also we while deciding this Petition, in exercise of powers under Article 199 of the Constitution, are cognizant of Sub-Article (3) of the aforementioned Article, which envisages that no Order shall be made in relation to a person, who is a member of the Armed Forces, or in respect of any matter arising out of his service or in respect of any action taken in relation to him as member of Armed Forces. Since the case of the Petitioner is clearly meritless, therefore, any discussion as to this Court's jurisdiction under Article 199 (3) of the Constitution is not necessary.

20. In view of the aforementioned facts and circumstances as well as the law referred to above, the instant petition stands dismissed along with listed applications.

**JUDGE**

**JUDGE**