

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-3015 of 2017

Ghulam Haider
Petitioner through : Mr. Adnan Ahmed, advocate

Respondents
Through : Mr. Muhammad Nishat Warsi, DAG

Date of hearing
& order : **25.01.2022**

ORDER

Through the instant petition, the petitioner seeks issuance of Writ of Certiorari calling upon the respondents to deposit the arrears of increasing amount on his pensionary benefits, since 06.3.2012.

2. At the very outset, learned counsel for the petitioner, has submitted that petitioner stood retired in the year 1993 in BPS-17 from the service of respondent-Military Accounts (MES), and after completion of the requisite period of commutation, the respondents were required to add Rs.404/40 per month in his pension with effect from 1.3.2012, however, the same has been denied, compelling the petitioner to approach this Court.

3. We asked the learned counsel as to how this petition is maintainable on account of laches as the alleged cause of action accrued to the petitioner in the year 1993 and/or 2012 and he has filed the instant petition in 2017 after a considerable period, he referred the memo of petition and grounds raised therein and also reiterated his submission on the same analogy and prayed that this is a hardship case, therefore, the respondents may be directed to deposit the arrears of increasing amount on pension as per law.

4. To this proposition, Mr. Muhammad Nishat Warsi, learned DAG has refuted the claim of the petitioner and argued that the petitioner has been paid full and final payment and nothing is left on their part to be paid to the petitioner and further contended that the facts of the instant petition are akin to the facts as prevalent in C.P. No. D-6090 of 2017, and requested for dismissal of the instant petition on the same analogy.

5. Heard the parties at length and perused the order dated 26.02.2020 passed by this Court in C.P. No. D-6090 of 2017. For convenience sake, an excerpt whereof is reproduced as under:-

“3. The petitioner, who is present in person, has referred to his comments filed on 27.01.2020 on report dated 07.12.2019 of Nazir of this Court and submits that he has received 50% commuted portion of pension with certain increases, but the restoration of 50% commuted portion of pension amount has been wrongly calculated by alleged contemnor as well as by Nazir of this Court. He further contended that the aforesaid calculated amount is being treated as 100% Gross Pension, which calculation is wrong on their part; the alleged

contemnor has violated the basic spirit of the order passed by the Hon'ble Supreme Court on the premise that respondent No.4 has not determined the pension of the petitioner from the date of restoration of the commuted portion of the pension, instead of restoration from the date of his retirement, which is illogical and the respondent No.4 has not determined the quantum of increase on the restoration of commuted portion of pension from the date of retirement of the petitioner in the year 1999. He, however, disputed the statement of the respondents as well as Nazir's report regarding the recalculation of his pensionary benefits. The petitioner has referred to paragraphs 4 to 8 of the Affidavit-in-rejoinder, which read that on the date of restoration, i.e. 20.05.2014 this petitioner was drawing Rs. 66,950.05/- per month as pension (excluding medical & orderly allowances); that in view of the judgment of learned Lahore High Court, upheld by the Hon'ble Supreme Court of Pakistan referred to in para 3 above, the amount of pension (only) drawn on the date of restoration i.e. 20.05.14 was Rs. 66,950.05/- and should have been doubled to Rs: 133,900.1/- (66,950.05x 2=133,900.1). He lastly prayed for a direction to the respondents to pay the petitioner his pension benefits as per calculation made by him. In support of his contentions, he relied upon the order dated 24.04.2012 passed by the Hon'ble Supreme Court of Pakistan in Civil Petitions No.549 to 559 and 575 to 589 of 2012. The Hon'ble Supreme Court of Pakistan held as under:

“9. In the light of judgments of the Lahore High Court confirmed by the Apex Court and the judgment of the Punjab Services Tribunal, we accept the appeals. The respondents are directed to determine the pension of the appellants from the date of restoration of their commuted pension at the rate at which they were drawing 50% remaining pension. The arrears shall also be paid to them. It is also clarified that the appellants shall not be entitled to claim arrears from the period prior to restoration of their commuted pension.”

4. Conversely, Mr. Muhammad Nishat Warsi, Deputy Attorney General, has refuted the claim of the petitioner and argued that the petitioner has been paid full and final payment and nothing is left on their part to be paid to the petitioner. However, he submitted that commuted portion of pension viz. Rs.6612.5 was restored by the respondent vide No.G-5/P/6899/Misc. dated 12.06.2014 and pension of the petitioner was doubled viz Rs.6612.5 (Residual Pension) + Rs.6612.5 (commuted portion of pension) = Rs.13225 (Gross Pension); that annual increases in pension (IPs) have also been revised on gross pension except the I.P 1999 (as the same was already allowed on gross pension); that after authorizing the revised increases, the petitioner was entitled to Rs.95479 p.m. pension (including the amount of Medical and Special Additional Pension) with effect from 20.05.2014 ; that later on due to authorization of further increases (i.e. IP 07/2015, 07/2016, 07/2017 and 07/2018) the net payable, pension of the petitioner comes to Rs.151291/- with effect from 01.07.2018 onwards (as per letter of office of the Controller Military Accounts (P) CMA Complex Lahore Cantt. available with the statement dated 09.01.2019 filed by learned Deputy Attorney General) ; and, that the respondents are making payment of the pension through his bank account according to the rates admissible to him in the light of decisions rendered by the Hon'ble Supreme Court of Pakistan regarding restoration of commuted portion of pension. He lastly prays for dismissal of the listed application being meritless.

5. We have heard the petitioner who is present in person and learned DAG and have perused the report submitted by the Nazir of this Court.

6. We have noted that the aforesaid matter was disposed of by giving directions to the respondent No.4 / Controller of Military Accounts (Pensions) to restore the commuted portion of the petitioner and increases accrued thereupon strictly in accordance with law and keeping in view the decision of the Hon'ble Supreme Court of Pakistan in Civil Petitions No.549 to 559 and 575 to 589 of 2012. In pursuance of the direction of this Court, respondent No.4 has finally concluded the matter with the aforesaid assertions.

7. The precise question for determination before this Court is the quantum of 50% pension that is restored at the end of the commutation period.

8. As per record, the petitioner commuted his 50% pension for a period of 15 years, which means a lump sum payment of 50% of the pension on the basis of the pension as it stood in the year, 1999 was worked out. Therefore, under the Rules, the pension stands restored at the end of the commutation period i.e. 15 years, i.e. on 20.05.2014.

9. After the judgment of the Honorable Supreme Court, the petitioner became entitled to 100% pension as it stands at that date, therefore, 50% monthly pension being received by him on the said date shall be doubled. As per record, the petitioner was receiving an amount of Rs.66, 950.05/- as pension at the time of completion of commutation period, which included certain increases with effect from 1st July 1999.

10. The petitioner, through the listed application has made an abortive attempt regarding restoration of his pension at the double rate of current rate with the following calculation.

<i>Date of Retirement</i>	<i>Date of Restoration</i>
<i>20th May 1999</i>	<i>20th May 2014</i>
<i>Gross Pension on 20th May 1999 was Rs. 13,225/-</i>	
<i>50% commuted amount Rs. 6,612.5/-</i>	
<i>50% residual pension Rs. 6,612.5/-</i>	
<i><u>Pension excludes allowances on the date of Restoration i.e. 20.05.2014 was Rs. 67,326/-</u></i>	
<i><u>Pension excluding allowances after restoration should have been 67,326 +67326=134,652/-</u></i>	

11. The petitioner claims that the aforesaid amount should have been doubled. This assertion is misconceived for the simple reason that at the time of his retirement, he was getting Rs.6,612.5 as residual pension and after completion of the commutation period on 20.05.2014, he became entitled to double the said amount i.e. to Rs.13,225/- with certain increases with effect from 1st July 1999 to 1st July 2014.

12. Prima facie, the calculation of pension made by the petitioner is factually incorrect on the ground that the residual pension amount of petitioner as of 20.05.1999 was Rs.6, 612.5, which is retained portion for restoration of the commuted amount of pension and the said amount will be doubled after attaining the age of 72 years. As per Finance Division's O.M No.F.4 (1) -R.6/99 dated 23.07.1999, O.M No.F.16(1)-Reg.6/2010-1071 dated 18.10.2019, O.M No.F.13 (13) -Reg.6/2011 dated 21.01.2013 and O.M No.F.13 (13)-Reg. 6/2011 dated 11.03.2013 regarding restoration of pension, the petitioner's entitlement for Rs.62, 330/- at the double rate of the current rate as claimed by him is unfounded and not in accordance with the above order of the Honorable Supreme Court.

13. We are satisfied with the calculation made by the Nazir of this Court in consultation with office of the Accountant General Sindh, an excerpt whereof is reproduced as under:-

"4. However the Petitioner claims the Pension amount of Rs.134,652/ (Rupees Once Lac Thirty-Four Thousand Six Hundred Fifty-Two Only) as per Honourable Supreme Court Order dated 24.04.2012, the restoration of commuted portion of pension be double as 50% + 50% = 100%.

5. It is further submitted that differences come in the restored commuted portion of pension because of the increase of 20% (Rs.2,645) as per the notification as annexed "A", medical allowance, and Spl Adhoc Pension allowance, which have already been drawn by the petitioner in his regular monthly pension."

14. In view of the facts and circumstances of the case and for the reasons alluded as above, we are satisfied with the explanation offered by the respondent department that compliance with the judgment of the Hon'ble Supreme Court of Pakistan has been made in its letter & spirit. Accordingly, this application is dismissed with no order as to costs."

6. It appears from the record that the petitioner stood retired from the Military Engineering Services department as Assistant Engineer (BPS-16) and granted BPS-17 by virtue of move over with effect from 01.3.1994 and was granted a pension as under:

Gross pension:	Rs.4044/- p.m. w.e.f 01.03.1994
Commuted pension:	Rs.2022/- p.m.
Residual pension:	Rs.2022/- p.m. w.e.f. 01.03.1994

7. Per learned DAG, the petitioner has drawn pension plus increases allowed by Government from time to time from the National Bank DHS Karachi up to February 2016. His pension was started on Direct Credit System as per the order of the Government and paid pension by the respondent-office; that the commuted portion of pension Rs.2022/- was restored to the petitioner on 01.03.2012, and increases were also allowed on the amount of commutation portion of pension and instead of showing both amounts separately (2022 + it was shown as Rs.2426/-. Later on, the Government decided that after restoration, increases

given on net pension may be revised by including restored portion. Including an increase of the amount, i.e the amount of Rs.404.40. learned DAG pointed out that the actual amount of commutation is 2022 and not 2424 on 01.03.2012 as stated the petition in para 8 of the petition.

In view of the facts and circumstances of the case and for the reasons alluded as above, we are not in a position to decide the factual aspect of the case as calculation and recalculation of a certain amount is involved which requires evidence therefore it is for the petitioner to approach the Court of plenary jurisdiction for the resolution of his disputes on the analogy put forward by him Accordingly, this petition is dismissed with no order as to costs, leaving the petitioner to avail his remedy as provided under the law.

J U D G E

J U D G E

Nadir*