

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**C.P. No. D- 2067 of 2021**

**Present:**

**Mr. Justice Muhammad Iqbal Kalhoro**

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

Muhammad Ismail

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Petitioner

VERSUS

Federation of Pakistan  
& others

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Respondents

**Date of hearing: 11.08.2022**

**Date of decision: 11.08.2022**

Mr. Agha Waqar Ahmed, Advocate for Petitioner

Mr. Zulfiqar Ahmed Rajput, Asst. Attorney General

**ORDER**

**ADNAN-UL-KARIM MEMON, J.-**

Through instant petition, the

petitioner has prayed as under:-

a. That this Honourable Court may be pleased to allow the instant petition and strictly are directing the respondents No. 2 to 5 to make sure for restoration of pension of the petitioner according to the memorandum issued by Finance Division, Government of Pakistan.

b. That, this Honourable Court may be pleased to direct the respondents No. 4 & 5 to restore the pension of the petitioner according to the abstract of Summary Notice issued by Divisional Superintendent Pakistan Railway Karachi / Respondent No.4 dated 14.11.2012.

2. Brief facts of the case are that the petitioner was serving in Pakistan Railway from 16.02.1976 and was compulsorily retired from service on 13.1.2003 through a letter dated 9.1.2003. The petitioner retired and his pension started. That as per office memorandum dated 7<sup>th</sup> July 2015 the employees who retired / would retire on or after 1.12.2001 shall be entitled to the benefit of restoration of commuted portion of pension in place of commutation / gratuity under the applicable rules. That the petitioner completed his commuted period in the year 2018 but his pension was not restored for

which he moved several applications to the department but were not considered, hence the instant petition.

3. Learned counsel submits that the Honorable Supreme Court of Pakistan in various cases has held that full pension would be restored inclusive of periodic increase in pension during the commutation period and further pension of a retired civil servant was commuted to one half for 15 years according to the memorandum issued by the Provincial as well as Federal Government. Learned counsel further submits that Rule with regard to 72 years after retirement does not apply to the petitioner because this Rule applied to those employees who retired from Railway service on attaining the age of 60 years but the petitioner retired on attaining the age of 48 years and now he is due for restoration his monthly pension in 18 years after retirement. Learned counsel submits that the petitioner has suffered sufficient monetary losses at the hands of official respondents. Learned counsel in support of his contentions has relied upon the cases of Ghulam Yaseen vs. Accountant General Punjab and other (2014 PLC (C.S) 73) and Additional Accountant General Pakistan Revenue, Lahore vs. AA Zuberi (2011 PLC (C.S) 580) and argued that the restored pension would simply be doubled the amount of 50% pension which the Petitioner was already drawing at the time of his retirement and after completion of 15 years in the year 2018 this should have been doubled and ancillary benefits accrued thereon, which have been denied to the Petitioner rather deduction has been made by the Respondent-Pak Railways from the pension of the Petitioner which cannot be allowed under the law. In support of his submissions, he referred to Section 19 of the Civil Servants Act, 1973 and the case of I.A. Sherwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041 (at 1096). He lastly prayed for directions to the Respondents to clear pensionary benefits of the Petitioner under the judgment passed by Honorable Supreme Court of Pakistan as discussed supra.

4. We have heard the parties on the aforesaid issue and perused the material available on record and the case law cited at bar.

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

6. To fully appreciate the contentions of the parties, we have noticed that the Petitioner commuted his 50% pension for 15 years, which means that a lump sum payment of 50% of the pension based on the pension as it stood in the year 1997 was worked out. Therefore, under the Rules, the pension stands RESTORED at the end of the commutation period i.e. 15 years. This means that the Petitioner is once again entitled to 100% pension as it stands on the day of his retirement as provided under Rule 3.29 of the Pension Rules.

7. We are cognizant of the fact that this Court can enforce the fundamental rights of the pensioner, for the simple reason that the judgment dated 05.01.2012 passed by the learned Federal Service Tribunal and upheld by the Honorable Supreme Court of

Pakistan vide judgment dated 24.04.2012 in Civil Petition No.549 to 559 & 575 to 589 of 2012 has categorically ordered to release commutation amount of pensioners, therefore, Respondent-Pakistan Railway cannot be allowed to sit in appeal against the judgment passed by Honorable Supreme Court of Pakistan and withhold the pensionary benefits of the pensioner. The payment of the pensionary benefits to the Petitioner has been delayed for which the Petitioner cannot be held responsible at this stage.

8. In view of the facts and circumstances of the case and for the reasons alluded above, we are not satisfied with the explanation offered by the Respondent-Pakistan Railways that compliance with the judgment of Honorable Supreme Court of Pakistan has been made in its letter and spirit; therefore, at this juncture, before taking cognizance of the matter for enforcing the judgment of Honorable Supreme Court of Pakistan, we in the above circumstances, at the first instance direct the Additional Registrar of this Court to consult with the Accountant General Sindh, who is directed to depute an Official to assist the Official of this Court to undertake the exercise of recalculation of the pensionary benefits of the Petitioner including commutation as directed by the Honorable Supreme Court of Pakistan in the aforesaid judgment, under rules and regulations. However, he may also undertake the exercise of excessive payment, if any, received by the Petitioner as alleged by the Respondent-Pakistan Railways. A comprehensive report has to be submitted by the Additional Registrar of this Court within one month from the date of receipt of this order. The parties are directed to file their claim and counter-claim before the Additional Registrar of this Court within one week, who thereafter will transmit the same to the Accountant General Sindh for recalculation. Such report shall be submitted within the stipulated period after receipt of this order.

9. The hearing of this matter is adjourned to be taken up after one month

**JUDGE**

**JUDGE**