

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-2925 of 2013

(*Muhammad Israr Khan v Federation of Pakistan & others*)

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul\_Karim Memon

**Date of hearing and Order: 28.01.2025**

Petitioner present in person.

Mr. Ashfaq Ahmed advocate for respondent/ PTCL

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**ORDER**

**Adnan-ul\_Karim Memon, J:** The petitioner Muhammad Israr Khan requests this court to:

1. *Declare that the impugned order dated 29.03.2013 and 29.03.2013 of treating the intervening period from 19.02.2007 to 13.04.2011 as leave without pay is void unlawful and without any legal effect may be set aside.*
2. *Declare that the said intervening period mentioned above may be treated as spent on duty*
3. *Declare that the petitioner is entitled to be promoted to BS-17 w.e.f 17.10.200.*
4. *Declare that all back benefits of the petitioner from the intervening period from 19.03.2007 to 13.04.2011 after calculating based on BS-17 w.e.f. 17.10.2005 with all increments as per law.*

2. Brief facts of the case are that the petitioner was directly inducted in the service of Pakistan Telegraph and Telephone Department now Pakistan Telecommunication Company Limited (PTCL) as an Engineering Supervisor (BPS-11) regularly; that the petitioner put in 17 years unblemished and unimpeachable service career before involving him willfully and malafidely into the unpleasant activities which he never done at any stage of his whole period of service in past and current; that he was compulsory retired from the respondent department w.e.f 19.02.2007 not warranted by law. The petitioner is now requesting the court to order PTCL to give back benefits. He lastly prayed for allowing the instant petition.

3. Learned counsel for the respondent has contended that this petition is not maintainable as the PTCL is not a Government owned entity and the majority of its shares are held by other shareholders. He also states that the PTCL has non-statutory rules as well this petition is not maintainable. He further submitted that the respondents had modified the major penalty of compulsory retirement into a minor penalty of stoppage of two increments without cumulative effect. He further argued that though the petitioner was reinstated into service, the order was passed about the intervening period as leave without pay; therefore, the PTCL decided the question of

the intervening period without pay as per relevant rules and rightly withheld the benefits of the intervening period with effect from the termination of his service in 2007 and reinstatement in 2013. He further submitted that he preferred service appeal which was too dismissed. He lastly prayed for the dismissal of the instant petition.

4. We have heard the petitioner who is present in person and learned counsel for the respondent/PTCL and have perused the material available on record with their assistance.

5. The petitioner was reinstated after a period of compulsory retirement (19.02.2007 to 13.04.2011). The intervening period was treated as leave without pay (LWP) by PTCL vide order dated 17.06.2013. A previous case (CP. No. D-1235/07) resulted in an order (dated 07.02.2011) directing fresh show-cause notice and stating back benefits would depend on the final order. The order dated 07.02.2011 was upheld by the Supreme Court. The petitioner alleges inadequate opportunity of hearing in the proceedings leading to the order dated 17.06.2013 passed by PTCL.

6. The question for determination is whether the employee terminated from service and upon his reinstatement the intervening period can be treated as without pay. In this regard fundamental Rule 54, is clear in its terms, dealing with the reinstatement of an employee consequent to setting aside his dismissal/removal from service, the entitlement of the employee, to have the period of his absence from his service treated as "on duty" is a statutory consequence of his being reinstated on merits. That being so, we do not feel that it would be fair to deny the petitioner his entitlement to service benefits of the intervening period under FR-54.

7. The Supreme Court in the case of *Pakistan International Airlines Corporation through Chairman v. Inayat Rasool* (2003 SCMR 1128) has already settled the aforesaid proposition. Thus, there is no need to further deliberate on the subject issue; so the plea taken by learned counsel for the respondent-PTCL that the petitioner is not entitled to claim benefits for the intervening period, he remained out of service is not found tenable. The proposition noted above is obvious on the ground that the term reinstatement means to place a person in his previous position that has already been done in the year 2007 and therefore, according to Articles 358, 371-A, 423, and 474 (b) of Civil Service Regulations, his period under which he remained out of service, due to the purported act of the respondent/ PTCL, is countable to his substantive/regular service with pay.

8. In view of the foregoing legal position of the case, the petitioner is entitled to claim the service dues of the intervening period from 19.02.2007 to 13.04.2011 when he remained out of service till his reinstatement. On the aforesaid proposition, we are fortified by the decisions of the Supreme Court in the cases of Nafees Ahmad V/S Government of Pakistan and others, 2000 SCMR 1864, Ch. Muhammad Azim V/S The Chief Engineer, Irrigation and others, 1991 SCMR 255, and Chairman, Central Board of Revenue and others V/S Nawab Khan and others, 2010 SCMR 1399.

9. As a result of the above discussion, this Petition is allowed. The impugned order dated 29.3.3013 and the directions issued by the General Manager PTCL for withholding the pay of the petitioner and appellate are set aside, and he is entitled to be paid for the period mentioned in the letter dated 29.3.3013, accordingly within two (02) months from the date of receipt of this order.

JUDGE

JUDGE