

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-7529 of 2021
(Mumtaz Shah v Federation of Pakistan & others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 11.2.2026

Malik Naeem Iqbal, advocate for the petitioner
Ms. Wajiha Mehdi, Assistant Attorney General
Ms. Naseema Mangrio advocate for the KPT/Respondent Nos. 2 to 4

ORDER

Adnan-ul-Karim Memon, J. – Petitioner has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- i) To declare and hold that the denial of the benefit of the increment 2016 for the purpose of recalculate pensioner benefits to the petitioner through impugned letters dated 05.11.2019 and 06.04.2021 are illegal, bad in law, violation of Article 25 of the Constitution of Pakistan and the law laid down by the Hon'ble Supreme Court in the reported judgment as 1995 SCMR 1185 and set aside the impugned letters/orders dated 5.11.2019 and 06.04.2021.
- ii) To direct the officials Respondent No.2 to 4 to grant annual increment-2016 for recalculation of pensioner benefits, commutation and gratuity, arrears along with @ 15% profit per annum;

2. Learned counsel for the petitioner submitted that the petitioner was appointed in KPT on 15.12.1982 and was promoted as Traffic Inspector 2nd Grade on 12.08.2016 against the departmental promotion quota. He contended that although the promotion process was deliberately delayed, the petitioner was ultimately retired on 16.07.2021 as Traffic Inspector 1st Grade on attaining the age of superannuation. It was argued that due to the date of promotion, the petitioner was deprived of the annual increment due on 01.12.2016, causing financial loss and affecting his pensionary benefits. The petitioner made several representations between 2016 and 2021 and also approached the Grievance Committee and the Prime Minister's Citizen Portal; however, his request for a grant of annual increment in 2016 and a change of promotion date was declined through letters dated 05.11.2019 and 06.04.2021. Counsel further submitted that similarly placed officers and batch mates were granted the benefit of annual increment after adjustment/change of their promotion dates, and denial of the

same to the petitioner amounts to discrimination in violation of Articles 4 and 25 of the Constitution. He maintained that B.R. No. 214 dated 14.02.1968 is still operative and that the issue relates to the recalculation of pensionary benefits, which is a recurring cause of action. It was contended that the constitutional petition is maintainable in view of the judgments of the Supreme Court. He prayed to allow this petition.

3. Conversely, learned AAG assisted by learned counsel for Respondent Nos. 2 to 4 opposed the petition and raised preliminary objections regarding maintainability. It was contended that the petition is not maintainable under Article 199 of the Constitution, that the petitioner is not an aggrieved person, that disputed questions of fact are involved, and that no mandatory notice under Section 87 of the KPT Act, 1886, was served. On merits, it was submitted that B.R. No. 214 stood superseded by a Memorandum of Settlement dated 10.05.1979 between KPT Management and the CBA. It was argued that other promotees changed their date of promotion from 12.08.2016 to 02.12.2016 and, therefore, became entitled to the increment. In contrast, the petitioner did not opt for such a change and retained his seniority from 12.08.2016, based on which he later earned further promotion. Hence, he was only entitled to one promotion increment, which was duly granted. Allegations of discrimination and mala fide were emphatically denied, and it was prayed that the petition be dismissed with costs.

4. After hearing learned counsel for the parties and perusing the record, it appears that the controversy revolves around the petitioner's claim for a grant of annual increment for the year 2016 for the recalculation of his pensionary benefits.

5. The admitted position is that the petitioner was promoted as Traffic Inspector 2nd Grade with effect from 12.08.2016 and was granted the promotion increment in accordance with the applicable rules. It is also not disputed that other officials, who were similarly promoted, opted for a change of their promotion date to 02.12.2016 and, on that basis, became entitled to the annual increment falling due on 01.12.2016.

6. The record reflects that the petitioner did not opt for a change of his date of promotion and retained his seniority from 12.08.2016, on the strength of which he subsequently earned further promotion. Having consciously retained the earlier date for seniority and promotional benefits, he cannot now claim the financial benefit attached to an altered date without surrendering the corresponding advantage. It is a settled principle of law that a person cannot approbate and reprobate simultaneously, nor can he claim inconsistent benefits arising from mutually exclusive positions.

7. The plea of discrimination is also not sustainable. Article 25 of the Constitution guarantees equality before the law among persons similarly placed. However, equality cannot be claimed in disregard of differing factual positions.

8. In the present case, the petitioner and the officials cited by him were not identically placed, as the latter opted for a change of promotion date, whereas the petitioner did not. It is well-settled that equality is among equals and not otherwise. Where a benefit is extended on fulfillment of a particular condition, a person who does not fulfill that condition cannot claim parity as a matter of right.

9. As regards the reliance on B.R. No. 214 dated 14.02.1968, the respondents have specifically asserted that the same stood superseded by the Memorandum of Settlement dated 10.05.1979. In the absence of any material placed on record to establish that the said B.R. remained operative and overriding the subsequent settlement, the petitioner has failed to demonstrate any vested legal right.

10. It is a trite law that constitutional jurisdiction under Article 199 can only be invoked for the enforcement of a legal right and not for seeking a discretionary or equitable adjustment.

11. Moreover, service matters involving disputed questions of fact, particularly relating to terms and conditions governed by statutory rules and settlements, are ordinarily not amenable to writ jurisdiction unless patent illegality, mala fide, or violation of law is established.

12. In the present case, no mala fide has been substantiated; rather, the impugned letters disclose reasons based on the applicable service framework.

13. While pensionary benefits constitute a recurring cause of action, such a principle does not dispense with the requirement of establishing entitlement under the governing rules. Since the petitioner was granted the promotion increment admissible to him and did not opt for alteration of his promotion date, denial of the additional annual increment cannot be termed illegal or discriminatory, as agitated by the petitioner after his retirement from service in the year 2021.

14. For the foregoing reasons, the petitioner has failed to make out a case of violation of law or constitutional right warranting interference by this Court in the exercise of its constitutional jurisdiction. Consequently, the petition is dismissed along with pending application(s) with no order as to costs.

JUDGE

JUDGE