JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1002 of 2016

Karam Ilahi

Versus

PTCL, etc.

Petitioner By	:	Mr. Khalil ur Rehman Abbasi, Advocate.
Respondent By	:	Mr. Shahid Anwar Bajwa, Advocate Mr. Khizar Ali Khan, Manager (L). Syed Nazar Hussain Shah, AAG.
Date of Hearing	:	08.06.2022

ARBAB MUHAMMAD TAHIR J. Through the instant writ petition, petitioner has prayed for a direction to the respondent No.1 to consider him for promotion to the next higher position and grant all consequential benefits arising out of same and in the event of retirement, the same be included in his pensionary benefits.

2. The case, as presented by the learned counsel for the petitioner, is that he joined the erstwhile Pakistan Telegraph and Telephone Department (T&T) on 16.05.1975 as Telephone Operator; that T&T was converted into Pakistan Telecommunication Corporation (PTC) by virtue of Section 3 of the Pakistan Telecommunication Corporation Act, 1991 **(Act of 1991**); that terms and conditions of service of the employees so transferred to PTC were the same as mandated in Section 9 of the Act of 1991; that subsequently in the year 1996, by the promulgation of the Pakistan Telecommunication (Reorganization) Act, 1996 (**Act of 1996**), the Pakistan Telecommunication Employees Trust, Pakistan Telecommunication Authority, Frequency Allocation Board, National Telecommunication and The Pakistan Telecommunication Company Limited **(PTCL**) were established; that by the Act of 1996, the terms and conditions of

service of the employees of PTC were protected under section 35 of the Act of 1996 with stipulation that the same shall not vary to their disadvantage; that by operation of law, referred to above, the terms and conditions of the service of the petitioner were made protected and cannot be varied to his disadvantage; that on 23.09.1999, the petitioner along with counterparts had undergone mandatory training course 'RTTS' and completed the same in 2000 but he was never considered for promotion to the next higher position of Supervisor; that he made several requests for his regular promotion but the same remained un-responded; that instead of promoting the petitioner, several juniors were granted the same benefit without realizing the fact that petitioner ranks at seniority position No.1 in his Region, as per the seniority list issued by the respondent No. 1/PTCL; that the petitioner was treated with discrimination as his juniors namely Mazhar Saleem, Muhammad Zahid Hanif and Bushra Parveen were promoted and that finding no adequate alternate remedy, petitioner has approached this Court for redressal of his grievance through the instant writ petition.

3. The respondent No.1-PTCL in its written comments asserted that though the terms and conditions of service of former T&T employees are protected but condition for promotion did not fall within the ambit of terms and conditions; that services of the petitioner were terminated vide order dated 14.09.2010; that against the said termination, petitioner filed a Grievance Petition before the Punjab Labour Court which was accepted with order of reinstatement with back benefits. In appeal before the Punjab Labour Appellate Tribunal, the order to the extent of back benefits was suspended; that the petitioner was reinstated vide letter dated 09.05.2014. It is further asserted that under section 9 of the Act of 1991, the terms and conditions of service that stood on 31.12.1990 were protected and not the revision and changes brought about by the Federal Government in terms and conditions of civil servant after 01.01.1991.

4. Learned counsel for the petitioner while reiterating the grounds contained in the memo of the petition prays for acceptance of instant writ petition while learned counsel for respondent-PTCL referred case law reported as **PLD 2008 Supreme Court 395 and 2006 SCMR 1465** to contend that as the petitioner stood retired during pendency of appeal, filed by the respondent PTCL against reinstatement, as such could not be considered for promotion with retrospective effect. In-addition, learned counsel referred **PTET case (ICA 82/2020**).

5. Heard, record perused.

6. On the question of maintainability of the instant writ petition against the respondent PTCL, reliance is placed upon case of ***"Pakistan Telecommunication Company Limited v. Muhammad Samiullah"*** (**2021 SCMR 998**) wherein it has graciously been held that:-

> "12.With regards to the argument of the learned counsel for the Petitioner that PTCL is not under federal control and is therefore not a person within the meaning of Article 199(5) of Constitution, the same is misconceived. This question has been adequately put to rest by this Court in Pakistan Telecommunication Company Ltd. through Chairman v. Iqbal Nasir and others **(PLD 2011 SC 132).** The relevant part is reproduced below for ease of reference:
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> > "22. The question whether the PTCL was a 'person' performing functions in connection with the affairs of the Federation within the contemplation of Article 199(5) of the Constitution was first dilated upon by this Court at great length in Muhammad Zahid's case in which the plethora of case law was gone into and it was held that the employees of the erstwhile T&T Department transferred to the Corporation [PTC] under the relevant provisions of the Act of 1991 and later/ on succeeded by the PTCL, discharging their functions and duties in the International Gateway Exchange as Operators were inducted permanently or regularized subsequently under the rules necessarily related to one of the affairs of the Federation within the purview of provisions of Article 199 of the

> Constitution; hence similar duties and functions in the International Gateway Exchange being discharged by the private respondents as Operators could not be distinguished to say that the same did not relate to the affairs of the Federation though conferred upon the Corporation [PTC], and finally upon the PTCL. It was further held that the Telecommunication undisputedly was the subject which pertained to one of the important affairs of the Federation dischargeable now through the PTCL; hence such entity involved in the same exercise of the sovereign powers, essentially fell within the connotations of the word 'person' as defined in clause (5) of the Article 199 of the Constitution; accordingly, the grievance of the private respondents was amenable to the writ jurisdiction of the High Court."

7. Record reveals that services of the petitioner were terminated vide Order of Termination dated 14.09.2010 and was reinstated/taken on duty with immediate effect vide letter dated 19.05.2014, without back benefits pursuant to order-in-appeal and thereafter stood retired during pendency of the said appeal on 20.03.2016. It is important to mention that the petitioner brought the instant writ-petition on 17.03.2016 but he did not mention all these facts in the memo of the petition rather the same came to light through the written response filed by respondent-PTCL.

8. There is no denial on the part of the respondent-PTCL with regard to status of the petitioner, being employee of erstwhile T&T. The petitioner joined the service as Telephone Operator in erstwhile T&T in 1975 and by operation of law stood transferred to PTCL and retired on 20.03.2016. The terms and conditions of service of the petitioner, therefore, had the protection and cannot vary to his disadvantages. However, in view of the dictum laid down by the Hon'ble Apex Court in the case of ***Muhammad Aslam Sultan*** **(2006 SCMR 1465**) the claim of the petitioner cannot be acceded to. It has graciously been laid down that:-

> "3. In our opinion, this question needs no examination for the reason that the petitioner had retired from service on 28.04.1987 and this Court in the case of Government of

Pakistan through Establishment Division Islamabad and 7 others v. Hameed Akhtar Niazi **2003 PLC (CS) 212** has **held that promotion from back date to a retired civil servant cannot be granted**."

9. It was also not the case of the petitioner that his case was ripe for promotion and that there were any such recommendations and thus had been deprived of his vested right. In-addition, though the petitioner in order to highlight element of discrimination had referred promotion letters of his counterparts whereby they were promoted to the next rank in February, 2016 but the case of the petitioner is distinct as he was proceeded against on account of willful absence, his services were terminated and subsequently taken on duty pursuant to order-in-appeal without paying back benefits and as per response of PTCL, said appeal is still pending.

10. In view of above, no case for exercise of discretion in terms of Article 199 of the Constitution as prayed for is made out. Consequently, instant writ petition fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on ___06.2022

JUDGE

//Kamran//