

Misc. Application No. 834/2022 in Service Appeal No. 1115/2016

23.01.2024 1. Learned counsel for the petitioner present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Sohail Ahmad Zeb, ADEO for the respondent present.

2. Arguments on application heard.

3. Petitioner through instant application U/S 152 CPC for correction clerical error/mistake to the extent of four advance increments instead of two and addition of BPS-9 with BPS-14 occurring at page 9 of the judgment dated 19.01.2022.

4. Perusal of record reveals that vide order dated 19.01.2022, this Tribunal decided execution petition No. 84/2020 in service appeal No. 1276/2007 alongwith 15 others execution petitions including one filed by the petitioner bearing No. 40/2022, wherein it is held that:

“Consequently, it was directed and declared that the petitioners would be entitled for four advance increments with effect from the date of qualifying of M.A/M.Sc examination”.

It was directed that the petitioner would be entitled for four advance increments w.e.f the date of qualifying of M.A/M.Sc exam.

4. In the said order a question was formulated that “whether the department after having implemented the judgment dated 12.05.2009 of this Tribunal in service appeal No. 1276/2007, how and under what lawful authority was competent to withhold two increments out of four increments previously granted to the petitioner?” Reply of the same was given that same was given with the conclusion that:

“With the given position herein above, the only question for determination remain whether the recovery of the payment of the advance increments as directed vide para 3(4) of the letter circular dated 15.12.2010 is double or not. The answer to the said question is negative, This is for the reason that the advance increments (if availed) by the petitioners over and above their entitlement on

academic qualification was not the result of any fraud or wrong doing on their part. They availed the benefit of advance increments, at the most, because of misconception of the Notification of the Government by the department. The advance increments so availed, albeit over and above the entitlement have become part of emoluments of the petitioner. Therefore, the respondents are estopped by their conduct to give effect to par 3(4) of the Notification dated 15.12.2010 to the extent of petitioners. Thus, they are restrained from recovery of the increments having already become part of emoluments of the petitioners being a past and closed transaction. If any of the petitioner has not availed the benefits of two advance increments after having been granted higher grade in BPS-14, this order shall not be operative in his favour seeking the grant of such increments.”

5. In my humble view, there is no error/mistake in the order rather it is mentioned therein clear and loud words that the petitioner who had availed the benefits of two advance increments in higher grade of BPS-14 this order shall not be operative to their extent.

6. Grant of such increments means that they are entitled only for two increments and not for four in view of circular dated 15.12.2010. So, far over and double payment of four increments is concerned said benefits was given to whom who had already availed it in pursuance of judgment and the same become the part of their emoluments due to misconception/misunderstanding of the notification by the department, therefore, there is no clerical mistake in the order dated 19.01.2022, hence, the instant application is dismissed. Costs shall follow the event. Consign.

7. *Pronounced in open court at Abbotabad and given under my hand and seal of the Tribunal on this 23rd day of January, 2024.*



(Rashida Bano)
Member (J)

Camp Court, Abbottabad