

Ahmed v Metropolitan Transp. Auth.

2024 NY Slip Op 30679(U)

March 5, 2024

Supreme Court, New York County

Docket Number: Index No. 151492/2022

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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HUSAM AHMED,

Petitioner,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY
DEFINED BENEFIT PENSION PLAN

Respondent.

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INDEX NO. 151492/2022

MOTION DATE 03/04/2024¹

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for ARTICLE 78.

The petition to annul respondents' determination that petitioner is entitled to Tier 6 status in connection with his role as an MTA police officer is denied.

Background

Petitioner contends that he started working as a traffic enforcement officer in September 2007 and then worked for the NYPD from January 2013 until January 2021. He insists that he then went to work as a police officer for respondent MTA. Petitioner contends that members of a police pension fund are entitled to Tier 2 status if they started working for an applicable agency between July 31, 1979 and June 30, 2009. He insists requested Tier 2 status with respondents' pension plan and instead was given a Tier 6 placement.

^{1 1} Although this proceeding was transferred to the undersigned on March 4, 2024 the instant petition has been pending for nearly two years and so, on behalf of the court system, the Court apologizes for that delay.

In responding to petitioner's request, respondents sent a letter dated January 5, 2022 in which they observed that petitioner's NYPD membership date was January 9, 2013 (NYSCEF Doc. No. 6 at 1). They stressed that Tier 6 benefits applied to police officers hired on or after April 1, 2012 and he began work as a police officer for the NYPD after that date (*id.* at 2). Respondents noted that this prior "non-uniformed service cannot be credited in the MTADBPP Police Retirement Program because it was not service as a NYPD police officer. Such non-uniformed service does not entitle you to a Tier 2 level of benefits applicable to participants with MTADBPP Police Retirement Program creditable service earned prior to January 9, 2010" (*id.*).

Petitioner appealed that determination and noted that he obtained a letter from the New York City Police Pension Fund in which he allegedly obtained Tier 2 status with this pension fund (NYSCEF Doc. No. 7 at 8 of 11). Respondents then denied petitioner's appeal. Petitioner brings this proceeding to obtain Tier 2 status.

Respondents contend that placing petitioner in Tier 6 is consistent with the terms of respondents' pension plan. They emphasize that he did not begin his uniformed service with the NYPD until January 9, 2013 and that means he is Tier 6. Respondents argue that petitioner's reliance on Retirement and Social Security Law § 645 is misplaced as that law does not apply to respondents' pension plan. They observe that this statutory scheme applies to pension plans created by statute or a local ordinance but does not have any effect on MTA plans.

They include the affidavit of Denise Meehan (the Deputy Director of the MTA Consolidated Pensions Department and Acting Secretary of the MTA Defined Benefit Pension Plan) (NYSCEF Doc. No. 15). Ms. Meehan explains that the applicable retirement plan here – the MTA Twenty Year Police Retirement Program—has a tier structure similar to those of other police agencies but has different terms (*id.* ¶ 4). She emphasizes that under the MTA's plan,

non-uniformed service does not transfer for purposes of calculating a person's tier status (*id.* ¶ 17).

In reply, petitioner demands that he be treated as if he were a member of the New York City Police Pension Fund, a fund under which he would have Tier 2 status.

Discussion

In an Article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

This instant proceeding asks the Court to consider whether or not respondents are required to give petitioner Tier 2 status in their pension plan based on his status with the New York City Police Pension Fund, an unrelated entity. The Court finds that respondents' determination was rational and denies the petition. As an initial matter, respondents correctly pointed out that their pension plan is not subject to Retirement and Social Security Law § 645 as it is not a public retirement system cited in that statute (*Matter of Accurso v Bd. of Admin. of Manhattan and Bronx Surface Tr. Operating Auth. Pension Plan*, 1 Misc 3d 901(A) [Sup Ct, Kings County 2003], *affd* 18 AD3d 653 [2d Dept 2005]). The fact is that Retirement and Social Security Law § 645(1) defines which pension plans are covered under the provisions of that


statute and the MTA is not mentioned. Therefore, petitioner's reliance on this statute is misplaced and does not compel the Court to grant him Tier 2 status.

Next, the Court must consider whether the pension plan's rules permit the instant outcome. In the "Credited Police Service" section, "Transferred Police Service" is defined, in pertinent part, "Any service as a police officer in the New York City Police Pension Fund, prior to becoming a Participant, which is transferred pursuant to Retirement and Social Security Law Section 343; and provided, however, that such Participant has been employed in the Uniformed Authority police Force for fifteen years" (NYSCEF Doc. No. 16, MTA Defined Benefit Pension Plan § 10.1.03[g][ii]).

Respondents rationally observed that it therefore could only "count" petitioner's service as a uniformed police officer and did not have to include petitioner's employment as a traffic enforcement officer as part of his transferred service credit. That means that respondent was correct, under its own pension rules, to find that the relevant date for petitioner's tier status was January 9, 2013 (when he became a uniformed police officer). Petitioner did not point to any binding caselaw or relevant rule to show that respondents were required to credit him for his non-uniformed service. Instead, he offers the conclusory assertion that he is entitled to Tier 2 status. That he may have obtained Tier 2 status with the New York City Police Pension Fund does not automatically mean he is entitled to that status with respondent's fund. That he disagrees with respondents' interpretation of their own rules is not a basis to grant the instant petition.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

<u>3/5/2024</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE