JOSEPH S. COSTA,
Petitioner,

v.

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES' RETIREMENT
SYSTEM,
Respondent.

Decided August 23, 1979

Initial Decision

SYNOPSIS

Transfer of service credit from Police and Firemen's Retirement System to Public Employees' Retirement System was denied where the credit was based on service which was not honorable. Petitioner, a police officer, was convicted of misconduct in office and conspiracy to bribe, extort and commit misconduct in office. Such conduct constitutes dishonorable service involving crimes of moral turpitude. N.J.S.A. 43:2-1 permits a transfer of service credit only if an employee was entitled to benefits from the fund of which he was an original member. Since petitioner's prior service was not honorable, he was not entitled to the benefits from the fund and therefore could not transfer credit. Nor was the Board estopped from denying petitioner the transfer since no detrimental reliance had occurred.

Micheal Critchley, Esq., for petitioner
Stacy Moore, Deputy Attorney General, for respondent (John J Degnan, Attorney General of New Jersey, attorney)

MILLER, ALJ:

Joseph S. Costa (petitioner) appeals from a decision of the Board of Trustees of the Public Employees' Retirement System (respondent) denying his application for transfer of service credit from the Police and Firemen's Retirement System (PFRS) to the Public Employees' Retirement System (PERS).

At petitioner's request, a hearing was held on July 25, 1979. Prior to the taking of testimony, the following stipulations were made by and between counsel:
1. Petitioner enrolled in PERS effective December 10, 1956, when he became employed as a patrolman for the Newark Police Department.

2. Petitioner was indicted by the Essex County Grand Jury on September 10, 1975.

3. Petitioner was convicted on certain counts of the aforesaid indictment, as evidenced by a judgment of conviction dated March 2, 1976.

4. Petitioner was dismissed from his position with the Newark Police Department on March 12, 1976.

5. Petitioner accumulated 19 years, 7 months service credit with PERS while employed by the Newark Police Department.


8. Petitioner applied for an inter-fund transfer of service credit from PFRS to PERS by application dated August 9, 1978.

9. The Board of Trustees denied petitioner's application to effectuate such transfer, notifying him to that effect by letter dated January 24, 1979.

10. Petitioner's appeal from the adverse determination of the Board of Trustees was timely.

The only person to testify at the hearing was petitioner himself. He is 49 years of age, married, and the father of three children. He stated that after full investigation, he became employed as an investigator for the Essex County Welfare Board and is presently engaged in handling special investigations. He received a permanent appointment to a classified position within Civil Service effective May 1, 1978. On December 10, 1956, he commenced his employment as a patrolman with the Newark Police Department, where he was employed for 19 years and 7 months, the last 5 years of which as a detective. He received 43 citations for meritorious service. Petitioner admitted being indicted, tried and found guilty of conspiracy and misconduct in office; the convictions were affirmed on appeal. According to petitioner, the indictment against him was based on charges made by police informants who were convicted burglars. He was acquitted by the jury on two other counts (bribery and extortion).

Petitioner stated that prior to taking a position with the Essex County Welfare Board, he discussed the possibility of transferring his service credits with the PFRS with Elmer Baggaley, Secretary to the Board of Trustees of PFRS. According to petitioner, Mr. Baggaley
indicated to him that there should be no problem with effectuating the transfer. Petitioner also declared that Baggaley’s assurance played a big part in his decision to leave his position as a security guard for a private company and to take the job with the Essex County Welfare Board. He stated that he resigned his position as security guard in late April 1978, taking the job with the County of Essex on May 1, 1978. On cross-examination, petitioner admitted that Mr. Gabbaley told him that he (Baggaley) did not decide the question of transfer. Rather, “it would have to go before the Board of Trustees.” He admitted that in November 1978 he had a conversation with Mr. William Murphy (Secretary to the Board of Trustees of PERS) who also told him, among other things, that his application would have to be considered by the PERS Board of Trustees. Petitioner also admitted that he took Civil Service examinations for positions with the Essex County Probation Department as well as the Essex County Welfare Board sometime early in 1977.

Before proceeding to specific issues, it is important to discuss the general principles of law applicable to the granting of pension benefits in New Jersey Public Employment.

Honorable service is a sine qua non for the granting of a pension. Plunkett vs. Pension Comm’rs. of Hoboken, 113, N.J.L. 320, 232 (Sup. Ct. 1934), aff’d. 144 N.J.L. 230 (E. & A. 1935). That the statute does not explicitly by its terms make honorable service a condition precedent to the granting of a pension is of no consequence. It is settled law that such a requirement is implicit therein. Ballurio vs. Castellini, 27 N.J. Super. 113 (Law Div. 1953) aff’d. 29 N.J. Super. 383 (App. Div. 1954); Fromm vs. Bd of Directors of PFRS, 87 N.J. Super. 138 (App. Div. 1963). It has been consistently held that even though a person serves honorably for the minimum number of years set forth in the statute, no vested property right to a pension accrues. The requirement of honorable service has been held to continue during the entire period of active service. See, Plunkett, supra; Hozer vs. State, 95 N.J. Super. 196 (App. Div. 1967), certif. den., 50 N.J. 285 (1967). Furthermore, dishonorable service may be found in an activity totally unrelated to public employment if that activity involves moral turpitude. So, in Ballurio, supra, a city employee was denied retirement on pension because of his conviction of the then crime of performing an abortion, even though he satisfied statutory requirements of age and service.

Generally, condemnation of the inculpatory act sufficient to cause loss of pension rights is found in cases where the conduct touches
the administration of the employee's office or position, or where the 
conduct is said to involve moral turpitude. Gauli v. Board of Trustees, 

I.

The first question presented in this matter is whether petitioner's 
conviction of conspiracy and misconduct in office constitutes dis-
honorable service. Clearly, the crimes of conspiracy and misconduct 
in office for which petitioner was convicted touched the administra-
tion of his office or position. Petitioner was a police officer for 
the City of Newark at the time the crimes occurred. As alleged in 
the second count of the indictment, the acts constituting the crime 
occurred under the color of his position in that he "offered to 
guarantee to one Charles Festa a favorable disposition of any charges 
aring out of (an lawful entry and larceny) in exchange for the 
unlawful payment of moneys..."

Furthermore, it is clear that the crimes of bribery and extortion 
involving moral turpitude. See, Mount v. Trustees of Public Employees' 
to commit such crimes also involves moral turpitude. Daniello v. Board 
of Trustees (N.J App Div, March 10, 1978, A-2154-76) (unreported) 
(conspiracy to obtain airline tickets through unlawful use of credit 
cards); and In the Matter of Glass (N.J App Div, Dec. 22, 1975, 
A-31-0879) (unreported) (conspiracy to extort).

Under the well settled case law cited above, petitioner's convictions 
render his service as a police officer dishonorable and thus disentitle 
him to an award of pension benefits from PFRS.

II.

The next issue is whether the recent decisions of Gauli v. Board of 
State, 76 N.J. 87 (1978) compel a different result in the instant case. 

Gauli, supra, reversed the decision of the Board of Trustees which 
denied a petitioner pension benefits because he had pled guilty to a 
high misdemeanor (unlawful possession of a weapon). The Appellate 
Division stated that such a plea does not per se admit to moral 
turpitude or less than honorable service and that the circumstances 
of the illegal activity should be considered.

Makwinski held that a police chief who was convicted of misconduct 
in office did not lose his pension rights because he did not personally
profit from the illegal activity, stating that the employee’s “motive and intent must be weighed in the balance.” *Makwinski, supra*, at 92.

These cases are readily distinguishable. In the instant case, petitioner made no effort to show that his motive and intent were pure or that he did not personally profit. Nothing was said about the circumstances of the crimes which mitigate their seriousness. Conspiracy by a police officer to bribe and extort is unquestionably “to the common moral sense prevailing throughout the community,” *State Board of Medical Examiners v. Weiner*, 68 N.J. Super. 468, 484 (App. Div. 1961) and therefore constitutes moral turpitude.

III.

The third question presented is whether *N.J.S.A. 43:2-1* authorizes, permits or requires the transfer of petitioner’s service credit from PFRS to PERS where the credit is based on service that was not honorable.

*N.J.S.A. 43:2-1* reads as follows:

Any officer or employee who is a member of and entitled to benefits in any retirement system or pension fund operated wholly or partly by the state, and which system or fund the member contributes thereto . . . may transfer his membership to another retirement system upon accepting an office or position in another branch of service and thereby make it possible for him to participate in other system, . . . (emphasis added).

The emphasized phrase is crucial. An employee can transfer only if he is “entitled to” pension benefits from the Fund of which he is a member. As already noted in Points I and II, above, petitioner is not entitled to benefits from PFRS because his service with the system was not honorable. To hold otherwise would obviate and frustrate the public policy of denying retirement benefits to a public employee whose service has been dishonorable or who has committed a crime of moral turpitude.

IV.

Finally, it must be determined whether—as petitioner contends—the Board of Trustees is estopped from denying him the opportunity to effect the transfer.

In my opinion, the doctrine of estoppel is not applicable here. This
doctrine rests upon the principle that where someone has done an act or made a statement which would be a fraud to controvert because another party justifiably acted upon it in the belief that what was done or said was true, conscience and honest dealing require that the first person be not permitted to repudiate his act or gainsay his statement. *Bowler vs. Fidelity and Casualty Co. of N.Y.*, 99 N.J. Super. 84 (App. Div. 1968). The doctrine of estoppel also usually requires that the individual invoking the doctrine has sustained some damage or detriment. See, *Black's Law Dictionary* (Third Edition).

There is no evidence in this case that the Board of Trustees of PERS has acted in any way other than conscientiously and honesty. That the Secretary to another Board of Trustees may have misled petitioner is irrelevant. There is no claim that Mr. Murphy (the Secretary to the PERS Board) misled or misinformed petitioner. Quite to the contrary. Mr. Murphy told petitioner that the decision on whether to allow the transfer would be made by the Board of Trustees itself. Furthermore, there was no convincing evidence that petitioner's decision to take the position with the Essex County Welfare Board was detrimental to him.


**FINDINGS OF FACT**

1. Stipulations number 1 to 10 inclusive as though set forth in full.
2. Petitioner was convicted of the crime of conspiracy to bribe, extort and commit misconduct in office and of the crime of misconduct in office.
3. Petitioner's illegal conduct was directly related to his position as a patrolman for the police department of the City of Newark and involved moral turpitude.
4. Petitioner presented no mitigating circumstances to warrant a
determination that no moral turpitude was involved in his criminal conduct.

5. Petitioner did not rely to his detriment on any false statement made by or on behalf of the Board of Trustees of PERS.

I CONCLUDE that petitioner is not entitled to transfer his service credits from PFRS to PERS. Accordingly, it is ORDERED that petitioner's application to effect such transfer be denied.

After reviewing the Initial Decision, 
the Board of Trustees, Public Employees' Retirement System on April 25, 1980 issued the following Final Decision:

The Board of Trustees at its meeting held on April 21, 1980 denied your application for deferred retirement in accordance with the provision of N.J.S.A. 43:16A-11.2.

It confirmed that you did not satisfy the requirements for an allowance under this section of the law due to the qualification of honorable service.