

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Constitutional Petition No. D –580 of 2020

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Date	order with signature of Judge(s)
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For hearing of Misc. No.29528/2021 (Contempt)

**23.02.2022**

Mr. Amir Saleem, advocate for the petitioner

Mr. Khalid Mehmood Siddiqui, advocate for the respondents 2 to 5

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The captioned petition was disposed of vide order dated 25.08.2021 with the following observation:-

*“15. In the present case, the petitioners stood retired before the cut-off date as discussed supra, however, the orderly allowance was being paid to the employees of EG-07 and above who have retired on or after 1st August 2019, thus, the classification made cannot be regarded as reasonable. Prima-facie the Petitioners have been given highly discriminatory treatment for no plausible reason whatsoever by non-inclusion of orderly allowance in their monthly pensionary benefits. The principle of equality before the law has been applied by the Honorable Supreme Court of Pakistan in matters of pay and pension in the case of I.A. Sherwani supra. In this regard, while placing reliance on the dicta laid down by the Honorable Supreme Court in the case of I.A. Sherwani supra. The larger Bench of learned Five Members Bench of Honorable Supreme Court made exhaustive scrutiny of concerning granting of pensionary benefits to a class of retired employees of Executive Branch, who had retired within a particular period, while the same was denied to another class of employees similarly placed, who had retired in another period. Accordingly, while following the principle of law enunciated in I.A. Sherwani’s case (ibid), and in view of the peculiar facts and circumstances of the present case while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we hereby declare the impugned decision /action/order of the Respondent-CAA is in negation to the strict and prohibitory command contained in Article 25 of the Constitution, because the Petitioners have been treated with sheer discrimination, which cannot be approved on any premises whatsoever.*

*16. The case law cited by the learned counsel for the Respondent-CAA on the subject has already been dealt with by the Hon’ble Supreme Court in its various pronouncements, therefore no further discussion is required on our part on the aforesaid case laws.*

*17. In the light of the foregoing discussion, the matter of the Petitioners is referred to the Competent Authority of Respondents on the issue of inclusion of Orderly Allowance in pensionable emoluments of the petitioners under law and dicta laid down by the Honorable Supreme Court of Pakistan, in the above-referred matter, as well as the observation made in the preceding paragraphs, within two months, from the date of receipt of the order of this Court.*

*18. On 25.08.2021, after hearing the arguments, we have allowed this petition and these are the reasons for the same.”*

On 13.11.2021 Petitioners filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No.29528/2021) for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional and deliberate act of disobeying the above-mentioned order passed by this Court.

Mr. Amir Saleem, learned counsel for the applicants, has argued that despite clear directions in the above-said order, the contemnors have not complied with the same. He next contended that since the Admin Order No.27/2019 dated 06.09.2019 issued by the Director Human Resource, was/is discriminative and had deprived all the petitioners who

retired before 1<sup>st</sup> August 2019 from their legal right of disbursement of Orderly Allowance as additional pensionary benefits, whereas other employees of EG-07 who retired after 1<sup>st</sup> August 2019 were entitled to the said allowance, hence, they made applications to Director General CAA, on which a working paper was also prepared on the subject issue for consideration and approval of CAA Executive Committee. Per learned counsel, the PCAA Executive Committee, in its 308<sup>th</sup> meeting held on 30<sup>th</sup> October 2019, did not approve the same. Per petitioners after passing of the order dated 25.08.2021, they approached the alleged contemnors for implementation of the above order and inclusion of Orderly allowance in their pensionary benefits but till today neither the orderly allowance is included in their pension nor they have paid any heed to them rather they have rejected the claim of the petitioners which is violative of the directions issued by this court in paragraph 15 and onwards in the order passed by this court, therefore, they are liable to be hauled up under the contempt proceedings.

Mr. Khalid Mehmood Siddiqui learned counsel for the respondents 2 to 5, states that the directions passed by this Court have been complied with in its letter and spirit, however, he referred to para 16 & 82 of the minutes of the 189<sup>th</sup> meeting of the CAA Board and argued that after due deliberations, CAA Board decided that a committee be constituted to holistically review the pay, allowance, perks/perquisites, and benefits for CAA employees, thereafter the same shall be presented to the CAA Board for its review and approval. Per learned counsel, the CAA Board decided that the date of applicability of the Orderly Allowance in the pension of retired Additional Directors (EG-07) shall remain the same i.e. 1<sup>st</sup> August 2019, and shall be without prejudice to the complete review of pay and allowances of CAA employees. He has prayed for the dismissal of the listed application.

This is a simple case of enforcement of the order dated 25.08.2021 passed by this Court as discussed supra.

The record reflects that this Court vide order dated 25.08.2021 disposed of the instant petition, in which, the matter of the Petitioners was referred to the Competent Authority of respondents on the issue of inclusion of Orderly Allowance in pensionable emoluments of the petitioners under law and dicta laid down by the Honorable Supreme Court of Pakistan, within two months.

The compliance reports dated 24.01.2022 explicitly show that the respondent-department in its 189<sup>th</sup> meeting decided that the date of applicability of the Orderly Allowance in the pension of retired Additional Directors (EG-07) shall remain the same i.e. 1<sup>st</sup> August 2019 and shall be without prejudice to the complete review of pay and allowances of CAA employees. *Prima facie*, the aforesaid findings of the respondent-department negates the basic spirit of the order dated 25.08.2021 passed by this Court, which cannot be construed to be substantial compliance of the aforesaid order.

Prima facie, the record does not reflect that respondent CAA has obtained an interim order from the Hon'ble Supreme Court of Pakistan, restraining this court not to implementing the order passed by this court. If this is the position of the case, the compliance report dated 24.01.2022 submitted by respondent CAA is rejected in the light of observation given by this court in paragraphs 14 & 15, warranting interference of this Court to take action against the alleged contemnors under Article 204 of the Constitution.

In view of the facts and circumstances of the case and for the reasons alluded above, we are not satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 25.08.2021 passed by this Court has been made in its letter and spirit. Therefore, at this juncture, the case for initiating contempt proceedings against the alleged contemnor is made out. Resultantly, let a Show Cause Notice be issued to the alleged Contemnors for further proceedings in the matter. The alleged contemnors are directed to be in attendance on the next date of hearing. CMA No. 29528/2021 is adjourned; to be taken after two (02) weeks.

**JUDGE**

**JUDGE**

Nadir/-