

# IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

**Mr. Justice Salahuddin Panhwar**

**Mr. Justice Adnan-ul-Karim Memon**

## C.P No. D- 580 of 2020

**Syed Mansoob Ahmed  
Bukhari and 28 others**

Petitioners

through : Mr. Amir Saleem, advocate.

Respondent No.1

through : Mr. Muhammad Nishat Warsi, DAG.

Civil Aviation Authority/  
Respondents No.2 to 5

through : Dr. Shahnawaz Memon, advocate.

Date of hearing

& order : 25.08.2021

## ORDER

**ADNAN-UL-KARIM MEMON, J.** In the above referred Constitutional Petition, principally the petitioners are seeking inclusion of `Orderly Allowance` in their pensionable emoluments in the light of Amendment No.19 in clause/regulation 46 of Chapter IV (Emoluments) of Civil Aviation Service Regulation-2014 (CSR-2014) and the decision of 179<sup>th</sup> meeting held on 1.8.2019 by Pakistan Civil Aviation Authority (PCAA) Board Secretariat.

2. In a bird's eye view, the background giving rise to instant petition, is that the petitioners are retired employees of respondent-CAA, who served in Executive Group-07 as Additional Directors; and, claim the inclusion of orderly allowance in their pensionable emoluments as discussed supra; and, built up their case on the premise that aforesaid allowance had been allowed to the Directors, General Managers (EG-11 to 10), Senior Additional Directors (EG-8) and the officers of EG-7 in addition to their entitled pension, from their respective date of retirement, whereas the same benefit has been denied to them, in violation of Article 25

of the Constitution of the Islamic Republic of Pakistan 1973. It is further submitted that to utter shock and dismay of the Petitioners, the respondent-CAA vide Admin Order No. 27/2019 dated 06.09.2019 allowed the orderly allowance to the employees of CAA working in EG-7 and above with rider that the employees of EG-7 and above are entitled to receive the aforesaid allowance who had retired on or after 1<sup>st</sup> August 2019, which action, on their part was\is discriminatory and had deprived them of their legal legitimate and Constitutional right of disbursement as additional pensionary benefits, whereas the other employees of EG-7 who retired after 1<sup>st</sup> August 2019 are/were held entitled to the said allowance. Petitioners raised their voice of concern and agitated their claim for revision in pensionable service as per policy by moving representation to the Respondent-CAA, but to no avail. Petitioners being aggrieved by and dissatisfied with the impugned decision vide minutes of 308<sup>th</sup> Executive Committee meeting held on 30.10.2019, whereby the proposal as put forward by the competent authority for the said allowance in favour of the petitioners was declined by the Executive Committee of CAA, though not communicated to the petitioners in time, have filed the instant petition for the aforesaid relief.

3. Mr. Amir Saleem, learned counsel for the petitioners, has contended that the instant case pertains to pensionary benefits of the petitioners, which have not been paid by the respondent-CAA without any rhyme or reason, thereby compelling the petitioners to approach this Court and argued that the petitioners served with CAA and stood retired before 1<sup>st</sup> August 2019 on attaining the age of superannuation; the career of petitioners during the aforesaid period was unblemished; after they retired from service before the purported cut-off date as discussed supra, the respondent-CAA is not ready and willing to include the orderly allowance of the

petitioners in their pensionary benefits. He has further contended that according to the Admin Order dated 6<sup>th</sup> September 2019 by which employees of EG-7 are/were held entitled to the orderly allowance, who stood retired from the said cut-off date i.e. 01.08.2019, whereas the petitioners have been discriminated. He lastly argued that the case of the petitioners relates to the pensionary benefits, but they have been deprived of the same, which is a violation of his fundamental right, as such the instant petition is maintainable under Article 199 of the Constitution of Islamic Republic of Pakistan 1973. Learned counsel has relied upon the case of I. A Sherwani and others vs. Government of Pakistan **1991 SCMR 1081** and argued that the discrimination has been meted out with the Petitioners. In support of his contentions, he has also relied upon the decisions rendered by the Hon'ble Supreme Court of Pakistan in the cases of Defence Housing Authority versus Lt. Col Jawaid, **2013 SCMR 1707**, and Muhammad Rafi and other versus Federation of Pakistan and others, **2016 SCMR 2146** and Nizamuddin & another vs. Civil Aviation Authority & others (**1999 SCMR 467**). He lastly prayed for allowing the instant petition.

4. In opposition, Dr. Shahnawaz Memon, learned counsel for respondent-CAA has argued that the instant petition is not maintainable on the ground that CAA does not have statutory Regulations of service; the petitioners are not entitled to discretionary relief under Article 199 of the Constitution. He further argued that the petitioners have an adequate alternate remedy under Civil Service Regulations 2014; that the petitioners are claiming orderly allowance based on the order passed by the learned Bench of Lahore High Court, Lahore, in Criminal Original No.31270/W/2019, which has no bearing in the case of petitioners. He has emphasized that the only employees who were

retired after 1st August 2019 were/are entitled to the orderly allowance, whereas the case of petitioners does not fall within the ambit of Admin. Order dated 06th September 2019, for the simple reason that they stood retired before 1st August 2019 as employees of respondent-CAA, therefore they are not entitled to the orderly allowance. He further averred that this Court cannot make any deletion, amendment, addition, or insertion in Admin. Order No.27/2019 when the same was free from any ambiguity and does not call for interference by this Court at this stage. He next added that the case of petitioners, who are seeking enforcement of Admin. Order which has no retrospective effect; and the same cannot be enforced, which is a non-statutory instrument, which ousted its applicability; that the pleas raised by the petitioners are factual cannot be determined under Article 199 of the Constitution; that CAA is not amenable to jurisdiction under Article 199 of the Constitution; that respondent No.2 is merely a designation/title and not a legal person; that the Petitioners have raised many disputed issues of fact, which require evidence, an exercise is to be undertaken by the Civil Courts and not by this Court under Article 199 of the Constitution; that no fundamental rights of the petitioners have been abridged; that pension is essentially protected but the inclusion of orderly allowance in the pension is the exclusive statutory function/domain of the respondent-CAA; that the petitioners cannot be allowed to wriggle out of such contractual obligation by availing the pensionary benefits and ask for other benefits i.e. orderly allowance. He further argued that the orderly allowance will only be admissible to officers as per policy and not those who may be on the same footing in another grade. He emphasized that there is no discriminatory treatment meted out to the petitioners as there is no unfair classification. In support of his contention, he relied upon the cases of Miss NAUREEN NAZ

BUTT v. PAKISTAN INTERNATIONAL AIRLINES through Chairman, PIA and others **2020 SCMR 1625**, PAKISTAN AIRLINE PILOTS ASSOCIATION and others v. PAKISTAN INTERNATIONAL AIRLINE and another, **2019 SCMR 278**, LAHORE DEVELOPMENT AUTHORITY v. BASHIR A. MALIK and others, **2014 SCMR 1849**, and MS. SHAMIM NAQVI v. PAKISTAN DEFENCE OFFICERS HOUSING AUTHORITY, through Secretary and 4 others **2020 PLC (CS) 1449**. He lastly prayed for the dismissal of the Petition.

5. Learned Deputy Attorney General representing respondent No.1, has adopted the arguments of learned counsel representing respondent-CAA.

6. We have heard the learned counsel for the Petitioners, learned counsel for the Respondent-CAA, and the learned DAG for Respondent No.1 and have perused the material available on record minutely with their assistance as well as the decisions relied upon by them.

7. Firstly, we address the question of jurisdiction of this Court under Article 199 of the Constitution. From the pleadings of the parties, we have noticed that the Civil Aviation Authority is an autonomous organization established under Section 3 of the Pakistan Civil Aviation Authority Ordinance, 1982, Section 12 of the said ordinance empowers the Civil Aviation Authority to prescribe by Regulations the procedure for appointment of its officers, servants, and consultants, and the terms and conditions of the service. The Honorable Supreme Court in the case of Muhammad Rafi and another vs. Federation of Pakistan and others 2016 SCMR 2146 has held that writ petition is maintainable against the CAA; therefore, we are of the view that the instant Petition could be heard and decided by this Court on merit in Constitutional jurisdiction.

8. So far as the objection raised by the learned counsel for the Respondent-CAA that the Petitioners cannot invoke constitutional jurisdiction of this Court against Respondent-CAA, which is an Authority with no statutory rules of service is concerned, we are of the considered view that this is not a case of enforcement of statutory or non-statutory rules of service but, this is a simple case of enforcement of Article 25 of the Constitution, which is a fundamental right of every citizen of this country and the Petitioners have specifically taken the plea of discrimination on the part of the Respondent-CAA.

9. Having decided on the maintainability of the instant Petition, questions, which agitate the controversy at hand, could be as follow:-

i) Whether the Petitioners are entitled to the inclusion of Orderly Allowance in their pensionable emoluments and meet all the conditions as mentioned in Admn. Order No.27/2019 dated 06th September 2019?

ii) Whether denying of Orderly Allowance to pensioners who had retired before 1st August 2019 and giving the same to the other class of employees of CAA by imposing conditions in the Admin. Order No.27/2019 dated 06.09.2019 is discriminatory and violative of Article 25 of the Constitution of the Islamic Republic of Pakistan?

10. In principle, orderly allowance is now part of pensionary benefits. Besides above this matter pertains to orderly allowance; and, the entitled officers had the option during their service, either to retain the "Orderly" or to receive an "Orderly Allowance" in lieu thereof as provided under the law and even based on the principle of equity and fairness, the competent authority of Government of Pakistan had approved that the retired officers in BPS-20 and above would be paid special additional pension equal to the orderly allowance admissible to serving officers w.e.f. 01.01.2013 and that whenever the Government revises the rates of orderly allowance in future, the same increase shall be made applicable to the special

additional pension of the retired officers. Since the respondent-CAA is Government owned and controlled autonomous body has already allowed the aforesaid allowance to the officers of EG-08 and EG-07 thus no discrimination is to be meted out with the petitioners.

11. We have been informed that CAA Board in its 179th meeting held on 1st August 2019, approved orderly allowance to EG-07 and above officers which were previously allowed to EG-08 and above officers only. It is urged by the petitioners that in this regard Admn. Order No.27/2019 dated 6.9.2019 was issued by which officers of EG-07 and above, who had retired from CAA Service on or after 1st August 2019 were authorized for orderly allowance; that discrepancy was pointed out in the aforesaid Admin. order which was in contradiction to CAA Board approval as it had not been linked with a retirement date of officers, therefore, it was rightly recommended amendment of this order could be issued and it was finally concluded and recommended that the employees of EG-07 and above are entitled to an orderly allowance in addition to entitled pension with effect from 1st August 2019, under the approval of CAA Board irrespective of their date of retirement. However, no back-dated arrears to this effect were admissible, however, this proposal was not acceded to by the CAA Executive Committee so far as the cut-off date is concerned. Primarily this decision of the Executive Committee to that extent is erroneous, therefore needs to be reversed. An excerpt of Admn. Order No.27/2019 dated 6.9.2019 and recommendation dated 29.10.2019 and decision are reproduced as under:

"Ref: HQCAA/2573/024/HRCB/I                      Dated: 6 September 2019  
Admin Order No.27/2019  
ORDERLY ALLOWANCE

In pursuance to amendments in clause 46 of chapter IV (Emoluments) of CSR-2014, the employees of EG-07 and above who have retired on or after 1st August 2019 are eligible for Orderly Allowance in addition to entitled pension.

Sd/-  
 (Samar Rafiq)  
 Director Human Resource  
 Ext: 2030"

#### CONCLUSION/RECOMMENDATIONS

CAA Executive Committee is requested to approve amendment of Admin Order No.27/2019 regarding Orderly Allowance as the employees of EG-07 and above are entitled to Orderly Allowance in addition to entitled pension w.e.f. 1st August, 2019 in accordance with approval of CAA Board irrespective of their date of retirement. However, no backdated arrears to this effect are admissible."

#### DECISION(S):

After detailed deliberations, CAA Executive Committee did not approve the proposal regarding authorization of Orderly Allowance to officers of EG-07 and above who had retired prior to the approval date (1st August, 2019) by CAA Board."

12. The orderly allowance, was refused to the petitioners by the Executive Committee meeting held on 30.10.2019, by the Executive Committee of CAA on the premise that they stood retired before 1<sup>st</sup> August 2019. Primarily, this decision of respondent-CAA to that extent is contrary to the basic provision of Article 25 of the Constitution, which postulates that all state subjects are equal before the law and are entitled to equal protection of the law, thus liable to be set aside.

13. It reflects from Admin order *ibid* that it does not indicate as to why only employees of EG-07 and above who have retired on or after 1<sup>st</sup> August 2019 are eligible for Orderly Allowance in addition to entitled pension and have been given preference; and, there appears to be no rationale whatsoever, to give preferential treatment to the employees who have retired on or after 1<sup>st</sup> August 2019 only. This admin order No.27 to the extent of age restriction as discussed *supra* is also against the basic spirit of natural justice, thus is liable to be reversed by the respondent-CAA. It is well-settled law that if an executive order discriminates among certain classes it becomes arbitrary if it is not founded upon reasonable grounds, therefore, based on Fundamental Right as enshrined under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners cannot be discriminated against

based on retiring age alone as such their case needs to be looked into by the competent authority of CAA afresh, in the light of Article 25 of the Constitution.

14. The argument of the respondent-CAA that they are paying to the petitioners pension, hence, they are not liable to pay the orderly allowance, after their retirement from service, is not a sound proposition. Merely because the Respondent-CAA imposed a rider in the Admin order concerning retirement age of employees of EG-07 on or before 1<sup>st</sup> August 2019, it does not absolve them from paying separately the "orderly allowance", which is being paid to the similarly placed employees of EG-07. We are of the considered view that it will not be just and proper to decline the relief to the petitioners on the above technical aspect.

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 1<sup>st</sup> 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.

**JUDGE**

**JUDGE**