

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Adnan ul Karim Memon

C.P.No.D-4216 of 2022

Habib Nasir Siddiqui & 9 others
Petitioners through

Mr. Aamir Saleem advocate

Respondents No.2 to 5
through

Mr. Khalid Mehmood Siddiqui advocate

Respondent No.1
through

Mr. Kashif Nazir, Assistant Attorney
General

Date of hearing : **12.03.2024**

Date of announcement : **27.03.2024**

J U D G M E N T

Adnan-ul-Karim Memon, J. Petitioners are retired employees of the Civil Aviation Authority ('CAA') and seeking a declaration to the effect that they are entitled to an Orderly Allowance to be added to their pension. Additionally, they are also seeking annulment of the decision taken in the 191st meeting of CAA Board dated 25.03.2022 as well as Admin Order No.16/2022 dated 22.06.2022, whereby Orderly Allowance with effect from 25.03.2022 was denied to them by cancelling the earlier Admin Order No.15/2022 dated 20.06.2022.

2. The grievance of the petitioners is that they retired after 1st August 2019 in EG-07 (Executive Group) as Additional Directors from CAA and after the transformation of the new service structure under Para 13 of CAR's-2014, they were allowed Orderly Allowance in addition to their entitled pension. Per petitioners, the respondent CAA has discontinued their Orderly Allowance by omitting Regulation No.46(10) of Chapter IV (Emoluments) of CAA Employees Pay and Pension Regulations 2014 ('CAA Regulations-2014') vide Admin Order dated 16/2022 dated 22.06.2022. As per petitioners, all the retired employees from EG-08 and above are still receiving such allowance except the petitioners, whereas EG-07 & EG-08 positions are of the same Executive Group, which is discriminatory treatment and as per the decision of 179th PCAA Board meeting held on 01.08.2019, the petitioners cannot be deprived of their vested right of pensionary benefits.

3. Mr. Aamir Saleem learned counsel for the petitioners has submitted that the colleagues of the petitioners filed C.P No. D-580 of 2020 before this Court (*re-Syed Mansoob Ahmed Bukhari and 28 others v Civil Aviation Authority & others*) which was disposed of with the following direction:-

“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.

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

4. As per learned counsel in compliance with the aforesaid order the CAA took the following decision in its 191st meeting dated 25.03.2022 and issued Admin order No. 16/2022 dated 22.06.2022, whereby omitted Regulation 46(10) of the CAA Regulations-2014 and declined Orderly Allowance to the petitioners with effect from 25.03.2022:-

“Decision

89. After undertaking a comprehensive review of its earlier decisions on the matter, the CAA Board decided to withdraw the admissibility of Orderly Allowance to retiring/retired Additional Directors (EG-07)”

5. Learned counsel further submitted that the petitioners are also affected by the aforesaid decision of the CAA Board withdrawing the Orderly Allowance to retiring/retired Additional Directors (EG-07) who have filed this petition based on discrimination; that the CAA is allowing the same Orderly Allowance to EG-08 retiring officers and above in addition to their pension, who retired after first August 2019; that CAA to circumvent the order dated 25.08.2021 passed in C.P. No.D-580/2020 have issued the Admin Order No. 16/2022 dated 22.06.2022 whereby petitioners were disallowed to receive Orderly Allowance with effect from 25.03.2022 by omitting the Regulation No. 46(10) of CAA Employees pay and pension Regulation 2014 (Revised Version 2019) and cancelled earlier Admin Order No. 15/2022 dated 20.06.2022 without amending the law. For convenience sake, an excerpt of Regulations No. 46 (9 & 10) is reproduced as under:-

46. CALCULATION OIF EMOLUMENTS

- (1) -----
- (2) -----
- (3) -----
- (4) -----
- (5) -----
- (6) -----
- (7) -----

- (8) -----
- (9) **Employees of EG-08 and above shall be entitled to orderly allowance in addition to entitled pension.**
- (10) **Employees of EG-07 and above shall be entitled to orderly allowance in addition to entitled pension.**

6. At this juncture, we enquired from the learned counsel for the petitioners as to how this petition is maintainable against the vires of law i.e. amendment made by the CAA Board by omitting Regulation 46(10) of Employees Pay and Pension Regulation 2014.

7. The learned counsel for the petitioners has submitted that all retired employees in the EG-07 Category are aggrieved by the omission of Regulation 46 (10) of Employees Pay and Pension Regulation 2014 vide Admin Order 16/2022. He further contended that petitioners stood retired before the cut-of date i.e. 01.08.2019 and they were being paid the pension, including the Orderly Allowance, which has now been declined with effect from 25.03.2022 as per Admin order 16/2022 dated 22.06.2022 and this was the reason the colleagues of the petitioners filed the C.P. No.D-580/2020 before this court which was disposed of with a direction to the Competent Authority of CAA to decide the issue of inclusion of Orderly Allowance in pensionable; emoluments of the petitioners in the aforesaid case under law and dicta laid down by the Honorable Supreme Court of Pakistan in the case of *I. A Sherwani & others v Government of Pakistan* 1991 SCMR 1041. However, the CAA to avoid paying the Orderly Allowance to the pensioners amended Regulation 46(10) of Employees Pay and Pension Regulation 2014, by denying the same benefit to the petitioners who were earlier receiving the Orderly Allowance, which is a discriminatory action on the part of CAA and in violation of the dicta laid down by the Supreme Court in the case of *I. A Sherwani* as the retired officer(s) of EG-08 are already receiving the Orderly Allowance in addition to their pension however the officers who retired after 01.08.2019 have been left out. Per learned counsel, the EG-07 and EG-08 service group positions are of the same Executive Groups and referred to the (Classification of post) as disclosed in the memo of the petition and submitted that petitioners have been discriminated against. For convenience sake, the Table of Service Group of CAA Employees is reproduced as under:-

Existing Pay Group	Revised CAA Pay Group	Service Group
P.G-01	SG-01	Support Staff
P.G-02	SG-02	Group

	SG-03	
P.G-03	SG-04	
P.G-04	SG-05 SG-06	T & A Staff Group
P.G-05	SG-07 SG-08 SG-09	
P.G-06	SG-10 SG-11	
P.G-07	EG-01 EG-02	
PG-08	EG-03 EG-04	
PG-09	EG-05 EG-06	
PG-10	EG-07 EG-08	
PG-11	EG-09	
-----	EG-10	

8. At this stage, learned counsel for the respondent CAA has submitted that EG-07 is a junior position i.e. Additional Director / TATCO Grade II whereas EG-08 position is Senior Additional Director/ TATCO grade -1 therefore there is much difference between the two positions i.e. EG-07 and EG-08.

9. To the aforesaid assertion, learned counsel for the petitioners has submitted that EG-8 is equivalent to EG-07 and there is only a post of Additional Director EG-07, whereas there is no post of Senior Additional Director EG-08 in rules, which is only a move-over incentive given to EG-07 officers on seniority basis; and is not a promotion post as both EG-07 and EG-08 are same Executive Group as well as of Service Group as shown in the aforesaid Table; that as per Admin Order 04/2018 dated 19.02.2018 the retired officers of EG-08 and above are granted Orderly Allowance in addition to their entitled pension and this was the reason the CAA Board in its 179th Board Meeting amended CAA Regulation 2014 to 2019 extended Orderly Allowance to EG-07; again vide Admin order No. 27 of 2019 dated 06.09.2019 the retired officers of EG-07 were given Orderly Allowance with rider that the officers who had retired on or after 01.08.2019. Learned counsel also referred to the order 29.06.2022 passed by the Single Bench of the Islamabad High Court Islamabad in Writ Petition No. 2440 of 2022 (*re-Muhammad Anwar Khattak and others v Civil Aviation Authority & others*) as well as the order dated 07.07.2022 passed by this court in C.P. No. D-580 of 2020 and submitted that the Admin Order No. 16/2022 dated 22.06.2022, terminating the entitlement of retired employees in EG-07 to the Orderly Allowance with effect from 25.03.2022 and the resultant deduction of the Orderly Allowance already paid

have been suspended and the matter is pending adjudication on the subject issue as such the respondent CAA cannot take resort to the subject Admin Order and refuse the Orderly Allowance to the petitioners based on such discriminatory amendments made in regulation No. 46(10) of CAA Employee's Pay and Pension Regulation 2014 without proper amendment as provided under the law by issuing the Executive order. He prayed for annulment of the purported amendment and Admin Order No. 16/2022 with direction to the CAA to pay the Orderly Allowance to the petitioners from the date of entitlement.

10. On the contrary, learned counsel representing the CAA has referred to the objections/comments filed on behalf of respondents Nos. 2 to 4 and has submitted that the CAA Board had approved Orderly Allowance to the retired EG-07 officers with effect from 01.08.2019 in addition to entitled pension but withdrew the same from 25.03.2022 which explicitly show the said allowance had never been part of the entitled pension and was extended as an additional benefit and it is prerogative of the CAA to omit/amend the law and the petitioners have no right to call in question such amendment through this petition which even otherwise the Admin Order is issued without discrimination as per policy decision made by CAA on the point of similarity of EG-07 and EG-08, he submitted that both categories of officers are not of the same group as portrayed by the petitioners as the said allowance was never a part of the pension of the petitioners as officers of EG-07. He has further contended that regulation No. 46(10) has been omitted as such the petitioners are no longer entitled to ask for Orderly Allowance. On the point of approval of Finance Division, he submitted that there is no requirement of law that amendment so made through minutes of the meeting of CAA Board to be approved by the Finance Division as representative of the Finance Division is the member of CAA Board.

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

12. We have heard the learned counsel for the Petitioners, learned counsel for the Respondent-CAA, and learned AAG for Respondent No.1 and have perused the material available on record minutely with their assistance.

13. In view of the above position of the case, the questions involved in this petition are four-fold:-

(i) Whether this Court while exercising the power of judicial review has the authority to interfere in policy matters of the CAA whereby they have decided to omit Regulation 46(10) of the Civil

Aviation Authority Employees Pay and Pension Regulations, 2014 (Revised version 2019).

(ii) Whether there was/is classification in EG-07 and EG-08 Executive Service Group was based on intelligible differentia and contrary to Article 25 of the Constitution of the Islamic Republic of Pakistan,

(iii) Whether the CAA can classify and sub-classify EG-07 and EG-08 Executive Group to grant Orderly Allowance.

(iv) Whether the CAA can nullify the effect of the order dated 25.08.2021 passed by this Court in C.P. No. D-580 of 2020 by amending the CAA Regulations.

14. Primarily, we have to determine whether there is a classification between two Executive Groups i.e. EG-7 and EG-8 based on intelligible differentia. On this issue, the Supreme Court in the case of *House Building Finance Company Ltd. v. Muhammad Irfan Khan* (2020 SCMR 98) has discussed the issue of ‘intelligible differentia’, and held that the word “differentia” means an attribute that distinguishes one entity from another, especially an attribute that distinguishes one species from others of the same genus. The expression “intelligible differentia” means difference capable of being understood, a factor that distinguishes a class from another which is capable of being understood. The Supreme Court has also dilated upon Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantees to every person the right to equality before the law and the equal protection of the laws. The Supreme Court further held that the expression “equal before the law” is a declaration of equality of all persons irrespective of gender, race, religion, colour, caste, creed, status language etc, implying thereby the absence of any privilege in favour of any individual.

15. Coming to the main issue, it appears that through the impugned decision in its 191st meeting dated 25.03.2022, the CAA Board withdrew the Orderly Allowance to the petitioners / retiring/ retired Additional Directors (EG-07). The reason as furnished by the CAA is that they are paying to the petitioners pension, and the Orderly Allowance is meant for senior positions, i.e. Senior Additional Directors (EG-08), hence, the petitioners are not liable to pay the Orderly Allowance to them, after their retirement from service; that there is difference between EG-08 and EG-07 Executive group; that the competent authority can amend the Regulation 46 (10) whereby employees of EG-07 and above were earlier held entitled to Orderly Allowance in addition to their entitled pension and now in view of recent amendment in sub-regulation 10 of regulation 46, the petitioners are no more entitled to Orderly Allowance with effect from 25.03.2022.

16. We have scanned the documents and noticed that the Government of Pakistan Finance Division (Regulations) vide Office Memorandum dated 24.12.2012 took the policy decision and approved that the retired officers in BPS-20 and above shall be paid special additional pension equal to the Orderly Allowance admissible to the serving officers with effect from 01.01.2013. Consequently, the CAA issued Admin Order 27/2019 dated 06.09.2019 allowed the employees of EG-7 and above who stood retired on or after 1st August 2019 to the benefit of Orderly Allowance in addition to their entitled pension which continued till they took a U-turn and decided to withdraw admissibility of Orderly Allowance to the petitioners/retired Additional Directors (EG-7).

17. The question is whether the respondent CAA can rescind the Orderly Allowance to the petitioners without providing the petitioners with a meaningful hearing. It is well-settled now that rights once accrued cannot be wiped out by a prospective amendment and the benefits that were acquired under existing rules cannot be taken away by an amendment with retrospective effect. However, the respondent CAA has taken away the Orderly Allowance with retrospective effect vide Admin Order No.16/2022 dated 22.06.2022 which action on the part of respondent CAA is not appreciated at all for the reason that once beneficial provision was in favour of the petitioners, the same could not be rescinded without providing an opportunity of hearing to the persons affected by such omission.

18. The analogy so put forward by the respondent-CAA has already been discarded by this Court in C.P. No.D-580/2020 because the Respondent-CAA imposed a rider in the earlier Admin order concerning retirement age of employees of EG-07 on or before 1st August 2019, as such it does not absolve them from paying separately the "Orderly Allowance", which was being paid to the petitioners in EG-07 as such it will not be just and proper to decline the relief to the petitioners on the above technical aspect that CAA has omitted the provision of the Orderly Allowance to be paid to the petitioners. Additionally, to deprive the petitioners in CP No.D-580/2020 against the decision that came in favour of those petitioners and now the CAA authority has also deprived the petitioners who were already receiving the Orderly Allowance and on that analogy, the petitioners in CP No.D-580/2020 filed the petition, which was allowed.

19. From the above facts and circumstances of the case, it is inferred that the CAA has left the present petitioners as well as petitioners in CP No.D-580/2020 in lurch under the garb of purported amendment, though the contempt

proceedings are reported to be pending against CAA in the aforesaid petition. This discriminatory attitude on the part of CAA cannot be appreciated at all which decision needs to be set at naught as the same is violative of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

20. 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-08 and above, and thus, the classification made cannot be regarded as reasonable as discussed supra. This Act of CAA being discriminatory to the present Petitioners serving in Executive Group-07 is further evident from the fact that initially EG-07 and EG-08 were in same Pay Group i.e. PG-10. Though subsequently, Pay Group PG-10 has been now bifurcated into EG-07 & EG-08; however, the various allowances which are admissible to both these categories of employees as per the Second Schedule (Regulation-16 of the CAA) Service Regulations 2014 (Revised version-2019) are identical in a all respect. For example, EG-07 & EG-08 are entitled to an entertainment allowance of Rs. 4500/- each. Similarly, both these Executive Groups are further entitled for a project allowance for up to Rs. 65000/- per month and in the same line the instructional allowance for these groups is also the same i.e. up to Rs. 65000/- per month. Going down further in the head of ancillary grant and cost EG-07 and EG-08 have been bracketed together for a similar/ identical benefit in the following manner:-

“2. **EG-07 to EG-08**

- a. Cost of one Split A/C (energy saver), Refrigerator (energy saver) and laptop once in 5 year as determined by the concerned Directorate from time to time.
- b. Rs. 80,000/- be paid as furnishing grant once in EG-07 & EG-08
- c. Cell phone minimum of 64 GB capacity
- d. One club membership”

21. The above categorization of both these Executive Groups at par in various allowances clearly reflects that all along they were bracketed in the same Pay Group and despite splitting PG-10 in EG-07 & EG-08, most of the allowances are identical and equal. Therefore, any discrimination in the payment of orderly allowance after retirement amongst both these Executive Groups does not appear to be fair and justified; rather amounts to discrimination, for no plausible reason whatsoever by non-inclusion of orderly allowance in their monthly pensionary benefits has been assigned. As the principle of equality before the law has been applied by the Supreme Court of Pakistan in matters of pay and pension in the case of *I.A. Sherwani* supra.

22. Touching to the last proposition, it is well-settled law that a legislative act to nullify a judgment, without taking away its basis, is an impermissible exercise. Whereas in the present case, this Court in the case of *Syed Mansoob Ahmed Bukhari and 28 others as discussed supra*, directed the Competent Authority for 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, however the respondent CAA without taking away the basis of the order omitted sub-regulation 10 of Regulation 46, which exercise amounts to nullify the effect of the order, which is not permissible under the law.

23. In view of the above facts and circumstances of the case, this petition is allowed with the direction to place the case of petitioners at par with EG-08 retired officers and allow the Orderly Allowance to them from the date when they were receiving the said allowance, without discrimination.

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