Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,

JUDICIAL DEPARTMENT.

Writ Petition No. 2396 of 2019

Muhammad Aslam and others

Versus

Federal Investigation Agency, through its Director General, Islamabad and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(06)	26.02.2025	Mr. Muhammad Rustam Malik, Advocate for the petitioners. Ms. Shaista Tabussam Khan Sultan Puri, learned Assistant Attorney General. Dr. Muhammad Ismail Hasni, Section Officer, Ministry of Finance. Instant writ petition has been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer; ***"Under the above said circumstances, it is most humbly prayed that the instant writ petition may please be accepted and respondents may kindly be directed to consider the petitioners for upgradation to the posts of Constable from BPS-5 to 7, Head Constable BPS-7 to 9 and ASI BPS-9 to 11 by declaring the inaction at the part of respondents as illegal, unlawful and without lawful authority, alongwith consequential/back benefits including costs.*** ***Any other relief which this honourable Court deems fit and appropriate may also be granted."***

02. Succinctly stated, the facts mentioned in the writ petition are that the Basic Pay Scales of Assistants Sub-Inspector, Head Constables and Constables in other federal departments i.e. Islamabad Capital Police, Intelligence Bureau, Airport Security Force etc. have been upgraded from BPS-09, BPS-07 and BPS-05 to BPS-11, BPS-09 and BPS-07, respectively, however, Assistants Sub-Inspector, Head Constables and Constables serving in Federal Investigation Agency ("FIA") are still in BPS-09, BPS-07 and BPS-05, respectively, which is promoting a sense of despair and discrimination, hence the instant petition.

03. Learned counsel for the petitioners, *inter-alia,* contends that the inaction at the part of the respondents is a discriminatory and is against Article 25 of the Constitution which gives equal protection and equality before the law to all; there is no need of separate and independent orders for upgradation but incumbents alongwith post automatically become entitled to the said grade, reliance in this regard is placed upon the cases reported as **1994 PLC(CS) 308** and

1990 PLC(CS) 156; when a decision is made on a point of law or a relief is given to some employees in identical circumstances, the benefit of the same shall be extended to all rather than compelling and dragging the employees into litigation, reliance in this regard is placed upon the cases reported as ***1996 SCMR 1185, 2005 SCMR 499*** and ***2009 SCMR 1***; the posts held by the petitioners are required to be upgraded in accordance with the policy of the Federal Government and has prayed to accept the instant petition.

04. Learned Assistant Attorney General submits that parawise comments/reports have been prepared by the respondents No. 1, 2 & 3 which are placed on file/record. Crux of the same are as under;

Report/comments of respondent No. 1/DG, FIA.
The instant petition is liable to be dismissed being not maintainable, misleading, misguiding and devoid of any merit; up-gradation could not be claimed as a matter of right but was in fact based on a policy decision of the competent authority; on 03.10.2023, case for up-gradation was prepared in the light of Cabinet Secretariat, Establishment Division O.M No. 8/36/2000-R-1, dated 29.06.2022 and 21.07.2022 and the same was forwarded to MOI for further

disposal, but the committee deferred the matter since huge financial impact was involved in the case.

Report/comments of respondent No. 2/Establishment Division.
The up-gradation of posts is considered on the basis of policy guidelines contained in Establishment Division O.M. No. 8/36/2000-R-1, dated 20.01.2000-R-1, these instructions do not empower this Division to up-grade any post without prior recommendation of Administrative Ministry/Division; all the Ministries/Divisions have been advised vide O.M. No. 8/36/2000-R-1, dated 11.09.2018 to refer the proposal for up-gradation and re-designation of the post to the Establishment Division in light of orders of the Supreme Court of Pakistan in Civil Appeals No. 101 & 102-P of 2011 and Finance Division U.O No. 9(121)R-1/2016-236, dated 19.07.2017 alongwith specific recommendations of Management Services Wing of the Establishment Division; the petitioner is not aggrieved by any order issued by Establishment Division and has prayed to decide the matter on merits.

Report/comments of respondent No. 3/Finance Division.
In terms of Article 212 of the Constitution, service matters can only be adjudicated in the Federal Service Tribunal (FST), therefore, this Hon'ble Court lacks jurisdiction over the subject matter and in this regard placed a reliance on reported judgment **2009 SCMR 980**; Ministry of Interior being administrative Ministry of the FIA has not been impleaded as party in the instant petition; in the wake of new policy dated 29.06.2022 and consequent upon suppression of old policies for up-gradation/re-designation, Finance Division has no mandate/authority to convey concurrence for up-gradation/re-designation

of posts; Ministry of Interior has taken up the up-gradation case of FIA employees with up-gradation Committee in Establishment Division, the Chair observed that police and FIA have different service structure and analogy cannot be drawn between the two services; up-gradation of existing posts may lead to additional expenditure which is banned under the austerity measures, as per the Cabinet's decision for case No. 232/28/2024 dated 27.08.2024, Finance Division vide O.M. 7(1)Exp-IV/2024 dated 04.09.2024, and the same have been issued with respect to restricting the expenditure of Federal Government; the Hon'ble Supreme Court as well as Hon'be High Courts in number of judgments have mentioned that post up-gradation is not a vested right of employees rather it is an administrative arrangement and has prayed to dismiss the instant writ petition.

05. Arguments advanced by learned counsel for the parties have been heard and record has been perused with their able assistance.

06. The petitioners are serving as constable BPS-05, Head Constable BPS-07 and Assistants Sub-Inspector BPS-09 in the Federal Investigation Agency (FIA) under the control of Ministry of Interior since last many years. The posts of the officials serving under the control of Ministry of Interior have been upgraded.

07. The posts of Constable, Head Constable and Assistant Sub-Inspector serving in law

enforcement / intelligence Agencies have been up-graded from BPS-5 to BPS-7, BPS-7 to BPS-9 and BPS-9 to 11, respectively, detail whereof is given below;

i. Islamabad Capital Territory, Police, vide Office Memorandum dated 09.11.2016.

ii. Punjab Police, vide letter dated 28.09.2016.

iii. Intelligence Bureau, Islamabad, vide notification dated 27.01.2017.

iv. Khyber Pakhtunkhwa (KPK) Police, vide notification dated 03.01.2018.

v. The Home & Prisons Department Gilgit Baltistan, vide notification dated 24.04.2019.

vi. Balochistan Police, vide notification dated 29.08.2019.

vii. Anti Narcotics Force, vide notification dated 26.02.2020.

viii. Sindh Police, vide notification dated 07.07.2022.

08. Up-gradation of the posts of Constable, Head Constable and ASI in the above mentioned law enforcing/intelligence agencies have clearly established the right of the petitioners.

09. The Federal Government has approved up-

gradation policy vide Office Memorandum dated 20.01.2001, which is reproduced as under:

Government of Pakistan
Cabinet Secretariat
Establishment Division

No.F.8/36/2000-R-I Islamabad, the 20th January 2001

OFFICE MEMORANDUM

Subject:- ***UP-GRADATION/REDESIGNATION OF POSTS.***

The undersigned is directed to say that, on a Summary submitted recently to the Chief Executive, he has pleased to approve the policy for up-gradation/redesignation of posts as indicated in the succeeding paragraphs.

2. Henceforth, the up-gradation of posts shall be considered in the following cases only:-

A) When it is considered necessary to up-grade certain posts in order to rationalize the administrative structure of a Ministry/Division or a Department to make it more effective or to bring about uniformity of pay scales of similar posts in different organizations.

B) Where the duties and responsibilities attached to a post have considerably increased.

C) Where pay scale of a post is considered grossly incommensurate with the qualifications and experience prescribed for appointment to that post.

D) Up-gradation of a post on personal basis may not be allowed except if any officer, already holding on regular basis a higher grade post, is posted against a post, carrying lower grade, due to exigencies of service.

3. Subject to the observance of the parameters referred to in the sub-paras (a)-(d) above, the future proposals for the up-gradation/re-designation of posts shall be processed as under:

(i) The cases for up-gradation/re-designation of the posts in BS-1 to 19 will be decided by the Finance Division in consultation with the Establishment Division. However, the decision about the proposed up-gradation/re-designation of posts in BPS-1 to 19 will be taken at the level of Secretary, Finance Division and the Secretary, Establishment Division.

(ii) Cases of up-gradation/re-designation of posts in BPS-20 and above will be submitted to the Chief Executive for approval but after seeking the concurrence of the Finance Division and the Establishment Division.

It may also be pointed out that the up-gradation of posts does not mean automatic up-gradation of the incumbents of these posts as well. In fact, the appointment against the up-graded post is required to be made in the manner prescribed in the Recruitment Rules for that particular post and with the approval of the competent authority therefor.

The above instruction may please be noted by the

Ministries/Division for strict compliance thereof.

This supersedes Establishment Division's O.M. No. 8/130/91-R.1, dated 12th May, 1992 on the subject of 'up-gradation of post'.

(NASEER UDDIN)
Joint Secretary

All Ministries/Divisions

10. In case of the petitioners meeting was held in the office of Additional Secretary-I, Establishment Division on 24.07.2020, with representative of Ministry of Interior and MS Wing, the approval of the Establishment Division for up-gradation of the posts of the petitioners was conveyed by Establishment Division to FIA/Estt Wing of Ministry of Interior vide Office Memorandum dated 10.08.2020, which is reproduced for ready reference;

Government of Pakistan
Cabinet Secretariat
Establishment Division

No. 8/41/2016-R-6 *Islamabad the 10th August 2020*

OFFICE MEMORANDUM

Subject:- ***UP-GRADATION OF THE POSTS OF CONSTABLE, HEAD CONSTABLE AND ASSISTANT SUB INSPECTOR IN FIA.***

The undersigned is directed to refer to Ministry of Interior's O.M. No. 4/42/2016-FIA/Estt dated 6th July, 2020 and meeting held in office of the Additional Secretary-I, Establishment Division on 24.07.2020 with representative of Ministry of Interior & MS Wing on the subject noted above and to convey the approval of Establishment Division for upgradation of the posts of Constable from BPS-5 to BPS-7, Head Constable from BPS-7 to BPS-9 and Assistant Sub-Inspector from BPS-9 to BPS-11 in the Federal Investigation Agency (FIA) under Ministry of Interior subject to the concurrence of Finance Division amendment in the Recruitment Rules and filing up the up-graded posts in the prescribed manner as per this Division's d.o letter No. 8/36/2000-R-I dated 31-12-2008.

2. It is further informed that the mandatory training/courses for promotion to the posts of Assistant

Sub-Inspector and Head Constable may also be incorporated in the recruitment Rules of the posts.

(IHSANUD Din)
Section Officer (R-VI)

Ministry of Interior,
(Mr. M Awais Javed),
Section Officer (FIA/Estt),
Government of Pakistan,
Islamabad.

11. The Director General, FIA has also approved the up-gradation of the posts of Constable, Head Constable and Assistant Sub-Inspector in FIA which is established by letter dated 15.02.2024, sent by Deputy Director/HRM, Office of the Director General, FIA, Islamabad to the Section Officer (FIA/Estt), Ministry of Interior, Islamabad which is reproduced for ready reference:

Office of the Director General
Federal Investigation Agency
Islamabad

No. Misc/69/HR-II/2021-24/1041-42 Dated 15-02-2024

To,
The Section Officer (FIA/Estt)
Ministry of Interior
Islamabad

*Subject:-**UP-GRADATION OF THE POSTS OF CONSTABLE, HEAD CONSTABLE AND ASSISTANT SUB INSPECTOR IN FIA.***

Kindly refer to the Establishment Division letter dated 13.09.2023 (Copy enclosed).

2. In this regard, it is requested that the finance implication and subsequent financial allocation for upgradation of subject cited posts may kindly be met from the existing budget of Ministry of Interior, please.

3. This issues with the approval of Director General, FIA.

(Ahmed Rizwan Khan)
Deputy Director/HRM

Copy to:
1. The Director HRM, FIA Hq, Islamabad.

12. The FIA has recommended that the financial allocation of up-gradation of subject cited posts be met from the existing budget of Ministry of Interior.

13. The up-gradation of a post is not a vested right, rather it stems from a policy decision intended to benefit a particular set of employees under the scheme embedded in the policy. Up-gradation cannot be mixed up with promotion. In the case of up-gradation, the employee continues to hold the same post without any change in his duties, but he is accorded a higher pay scale in order to mitigate the distress associated with stagnation due to a lack of progression or promotional avenues. Once the Government announces a policy, it is also responsible for enforcing such policy across the board to accord the benefit of the policy to all those who are eligible under it and may be benefited because of it. No doubt, the Court cannot interfere in the policymaking domain of the Government, but when a widespread and comprehensive policy is announced to benefit

employees, it should be implemented bigheartedly and generously, without adding any ifs and buts or discrimination that can stifle the main objective of the policy. In fact, an efficient policy implementation aligns with the actual targets and rationales of a policy to operationalize it and ensure its optimal impact rather than creating hindrances in its swift implementation. In the present cases, not only did the department of the respondents fully supported the up-gradation, but also communicated with the concerned quarter in order to espouse the interest of their employees. The up-gradation policy was approved by the Chief Executive, which should have been implemented in letter and spirit. However, it has often been observed that despite validly approved polices with a broad spectrum, instead of being implemented conscientiously within their purview and scope, the Finance Department or other departments, loyal more than the king, raise unwarranted objections to nullify the effect of these policies,

rendering them unworkable or redundant; a demeanor that ought to be obviated.

14. The literal connotation of the word "discrimination" essentially refers to different treatment of the same kind or class of persons or behaving less favourably towards them. During the course of employment, discrimination occurs when an employer treats an employee less favourably or disadvantageously than others without any intelligible differentia. Equal treatment with equal opportunity is a cornerstone for an egalitarian society, while acts of discrimination in the workplace seriously undermine a harmonious working environment and create unrest among employees discriminated who are deprived of perks and privileges. In fact, the doctrine of equal treatment underscores the broad-spectrum canons envisioned for the protection of human rights. The philosophy of equality within the same class or category of workers at the workplace evokes equal opportunities to work. Article 25 of the Constitution of the Islamic Republic of

Pakistan, 1973, establishes a tremendous benchmark for maintaining equality amongst the citizens, stating that all citizens are equal before the law, and are entitled to equal protection of the law, and there shall be no discrimination on the basis of sex. However, the same article also provides a further clause which articulates that nothing in this Article shall prevent the State from making any special provision for the protection of women and children. This article cannot be interpreted with narrow-minded, pedantic, or lexicographic approach to restrict or diminish its wideranging scope. Therefore, similar laws, rules, and policies should apply uniformly to all in similar situations, without any discrimination or distinction between one employee and another, within the sphere of legislation or policy, provided that their status is substantially equivalent and indistinguishable. Even in cases of classification or categorization, such distinctions must not be arbitrary but should be based on reasons, qualities, and characteristics that establish an

intelligible differentia for those who have been left out of the arena or who have been excluded, with clarity regarding the objective sought to be achieved. Reliance in this regard is placed upon a law laid down by the Hon'ble Supreme Court of Pakistan in *Civil Appeal No. 1671 of 2021 titled as Secretary to the Government of Pakistan, Establishment Division, Islamabad and another Vs. Muhammad Ahmed Khan and others.*

15. As the up-gradation cannot be construed as promotion, but can be granted through the policy, in this regard it is held by the Hon'ble Supreme Court of Pakistan in a case titled as ***Regional Commissioner Income Tax, Northern Region, Islamabad and another Vs. Syed Munawar Ali and others (2016 SCMR 859)*** that:

> ***"Issue relating to upgradation of civil servants could be decided by High Court in exercise of its constitutional jurisdiction and bar contained under Article 212(3) of the Constitution would not be attracted. Policy of upgradation, notified by the Government, in no way, amended the***

terms and conditions of service of the civil servant or the Civil Servants Act, 1973 and or the Rules framed thereunder. Service Tribunal had no jurisdiction to entertain any appeal involving the issue of upgradation, as it did not form part of the terms and conditions of service of the civil servants."

16. The nutshell of above discussion is that the petitioners have successfully established that they have been treated discriminatory by the respondents in the matter of up-gradation of posts, which act of the respondents offends the mandate of Article 25 of the Constitution of Islamic Republic of Pakistan. Resultantly this petition is **allowed**. As a sequel whereof, the respondents are directed to up-grade/re-designate the posts of Constable, Head Constable and ASI from BPS-5 to BPS-7, BPS-7 to BPS-9 and BPS-9 to 11, respectively. No order as to costs.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-

Approved for Reporting.