(JUDGMENT SHEET)

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.1834 of 2020

Muhammad Ahmad Khan & others
Versus
Government of Pakistan through Secretary Establishment Division

Petitioners by:	Mr. Farooq Ahmad Seemab, Advocate
Respondents No.1 & 2 by:	Ch. Fayyaz Hussain Dhariwal, Assistant Attorney-General.
Respondents No.3 & 4 by:	Mr. Abid Hussain Alvi, GSO-II
Date of hearing:	01.12.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

> *" In the light of above submissions, it is earnestly prayed that the respondent No.1 may kindly be directed to upgrade and re-designate the posts of the petitioners i.e. Control Assistant (BPS-12) and Data Control Supervisor (BPS-14) as Data Control Officer (BPS-16) from the date of upgradation of the same posts in other Federal Government Departments in the interest of justice, which would not only open a venue for the advancement of the career of the petitioners, who are working against an underpaid post since their appointment despite their higher qualification and professional experience.*
>
> *Any other relief which Hon'ble Court deems fit may also be granted to meet the ends of justice."*

2. Briefly stated facts of the case are that the petitioners are presently working as Data Control Supervisors in BPS-14 and Control Assistants in BPS-12 with the respondents. It is their grievance that in some other departments of the government like Pakistan Military, FBR, PCB, their posts carrying the same nature of job have already been upgraded from BPS-12 and BPS-14 to BPS-16 and their nomenclature has also been changed. Petitioners are serving the same nature of duty, but they have not been considered

for this benefit. The petitioners feeling aggrieved filed representations on different dates which were forwarded by the Joint Secretary-II, Defence Division to the Establishment Division vide letter dated 11.10.2018. That respondent No.3 vide letter dated 27.05.2019 requested the Establishment Division for removal of the discrimination being carried out to the petitioners. That the Secretary Government of Pakistan Cabinet Division however vide letter dated 03.10.2019 accorded approval for up-gradation of the post of Data Control Supervisor BPS-14 and Control Assistants BPS-12 to BPS-15 and BPS-14 instead of BPS-16. It is the case of petitioners that their grievance has not been redressed as yet as the disparity existing in the pay scale and nomenclature has not been removed according to the employees of the department of the Federal Government.

3. Learned counsel for the petitioners has contended that the government has upgraded the post of Control Assistant to Data Control Supervisors in some department like PMAD, FBR, FPSC, and PCB from BPS-12 and BPS-14 to BPS-16. Posts held by petitioners also involve the same nature of duties. Their parent department, respondents 2 to 4 have also supported their upgradation to remove their sufferings and disparity amongst different organs of the government; that respondent No.1 in response to representations forwarded by the petitioners accorded approval to upgrade their posts from BPS-12 and BPS-14 to BPS-16 respectively, but the grievance of the petitioners still remain unsatisfied and the disparity amounts discrimination. Lastly, prayed for acceptance of petition.

4. Conversely, learned counsel for the respondents has opposed the contention of learned counsel for the petitioner and contended that the cases of up-gradation of different posts are regulated by the government in accordance with the judgments of Hon'ble Supreme Court of Pakistan dated 17.02.2016 passed in Civil Appeals No.101 & 102/2011 and the guidelines issued by the Establishment Division

on 20.01.2001; that the case of petitioners does not fall in the policy decision as mentioned in the guidelines dated 20.01.2001 and the decision of the Hon'ble Supreme Court dated 17.02.2016; that no fundamental rights have been infringed and the petitioners cannot claim up-gradation as a matter of right. Lastly, urged for dismissal of petition.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. The grievance of the petitioners is that in some departments of government like PMAD, FBR, FPSC, PCB posts carrying same nature of duties as held by them were upgraded several years ago while this benefit has been denied to them. It may be observed that the recommendations by respondent No.3 as mentioned in their letters dated 11.10.2018 and 27.05.2019 show that those were not for specific person. Petitioners also do not want up-gradation to their extent only. They have come before this Court to remove the disparity existing among the different service cadres involving same nature of duties. Moreover, while responding to their representations, respondent No.1 has clearly accorded approval to upgrade their posts from BPS-12 and BPS-14 to BPS-14 & BPS-15 respectively. Such a response by respondent No.1 manifests that they admit the disparity, but probably due to financial constraints, their posts have not been upgraded to BPS-16 as prayed by the petitioners.

7. Up-gradation of the post in the Ministry is considered and made in the light of the policy guidelines circulated vide Establishment Division O.M No. 08/36/2000/R. Further, up-gradation is not a vested right of an employee and rather it is an administrative arrangement of the department, which is to be decided in accordance with the job requirement and nature of responsibility in the light of the direction issued by the Federal Government. In the instant case, the petitioners are seeking a direction to respondent No. 1 for up-grading their posts from the date of up gradation of the

same posts in other Federal Department. Up-gradation of any post is not provided in any statute rather the policy has been formulated for up-gradation of a post in the light of above said Office Memorandum issued by the Establishment Division dated 20.01.2001, clause (a) to (d) of the above said Memorandum deals with up-gradation, the same are reproduced below for ready reference:-

> *(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) that 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 low grade, due to exigency of service.*

8. Bare perusal of these clauses reveals that up-gradation of certain posts can be made and that it is also clear that up-gradation of a post exclusively falls within the jurisdiction of the relevant Ministry or Division and if the concerned Ministry or Division is satisfied that up-gradation of a post is justifiable and within the prescribed parameters, then proposal in this regard is to be initiated and forwarded to the Finance Division for further concurrence, whereas approval of the Finance Division is subject to the sanction of Establishment Division. As per policy, Secretaries of the Finance Division and Establishment Division are fully empowered to grant sanction of the proposal with regard to up-gradation of any post.

9. Up-gradation of a post is done if the conditions mentioned in clause (d) of paragraph 2 of the above mentioned policy are fulfilled. In the instant case, the petitioners are claiming up-gradation and re-designation of the post of Control Assistant (BPS-12), Data Control Supervisor (BPS-14) as Data Control Officer (BPS-16) from the date

of up-gradation of the same posts in other Federal Government Departments. It is pertinent to mention here that Establishment Division vide Office Memorandum dated 03.10.2019 has already upgraded the posts of Control Assistant from BPS-12 to BPS-14 and Machine Supervisor/Data Control Supervisor from BPS-14 to BPS-15 in Pakistan Navy Ministry of Defence and case of the petitioner was placed before respondent No.1 whereby it has been requested for up-gradation and re-designation of the post of Control Assistant and Data Control Supervisor from BPS-12 to BPS-14 of I.T Staff of Naval Headquarter and lower formations of Pakistan Navy to avoid discrimination and to bring uniformity in pay scales in other departments.

10. The stance of the petitioners is substantiated from the available record as in other departments working under the Ministry of Defence, the same posts have already been upgraded and re-designated as Data Control Officer (BPS-16) whereas the posts of petitioners, who are working in the Naval Headquarters have also been upgraded to BPS-14 and 15 vide Annexure-C & D, therefore, such practice amounts to discrimination and a denial of fundamental rights as guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. As per Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, similarly placed persons are to be treated similarly. When the petitioners are performing the same duties like the employees working in other government departments, whose posts have been upgraded, therefore, case of the petitioners should not be treated otherwise. As such, the case of the petitioners is to be dealt with at the touchstone of Articles 4 and 25 of the Constitution. In this regard, I am fortified by the law laid down in the case reported as "*Ali Fida Versus Federation Of Pakistan through Secretary and 4 others*" (**2018 PLC (C.S.) Note 43**), wherein it has been held as under:-

> *Even otherwise mere difference of nomenclature does not disentitle the petitioner from the same benefit which has been granted to similarly placed employees of the same department. In these circumstances, I am of the view that*

the petitioner is being discriminated by the respondents, which is not permitted under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. The law requires that similarly placed persons, must be treated alike and criterion of distinction, must be based on intelligible differentia having nexus with the object of the law. In the case of Javaid Hussain Qureshi v. Finance Department, Government of the Punjab through Secretary Finance and 2 others (supra) this Court while dealing an identical matter has observed that when the qualification for both the posts was the same and both the officials were performing the same duties, the petitioner could not be treated differently. It has further been observed that the principle 'equal pay for equal work' although not specified in the Constitution as Principle of Policy, yet it was built in Article 3 of the Constitution. Learned counsel for the respondents has failed to draw any distinction between the two posts except of nomenclature, which is immaterial in view of the case reported as Abid Hussain and 5 others v. Secretary to Government of the Punjab, Finance Department, Civil Secretariat, Lahore and 5 others (2012 PLC (C.S.) 26). In this view of the matter, this Court is of the considered view that the petitioner has been deprived of the right of up-gradation without any justifiable reason or ground. The interpretation of notification dated 29.6.2007 made by the respondent-department is against the settled principle of reasonable classification defined by the superior courts of this country.

Similarly in the case reported as "*Ali Razzaq and others Versus D.C.O. and others*" (**2015 PLC(C.S.) 1495**), it has been held as under:-

This act of respondents depicts their discriminatory treatment which is not recognized under the law and even by the Constitution of the country. In this context Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 may be referred which enshrines golden rule of equality of citizens before law. The Article reads as under: ---

> *"Article 25. Equality of Citizens:*
> *(1) All citizens are equal before law and are entitled to equal protection of law.*
>
> *(2) There shall be no discrimination on the basis of sex.*
>
> *(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*

The Article clearly provides that all citizens similarly placed are to be treated equally and not otherwise. The right to be treated equally is one of the fundamental right guaranteed

in Part II, Chapter I of the Constitution of Islamic Republic of Pakistan, 1973. Treating the persons differently and discriminately, who falls in the same category, by making divergent yardsticks would be mockery of law and cannot be permitted to continue in any manner. Steering thoughts in this regard can also be taken from the cases of Shrin Munir and others v. Government of Punjab through Secretary Health, Lahore and another (PLD 1990 SC 295), Pakistan International Airlines Corporation through Chairman and others v. Shahzad Farooq Malik and another (2004 SCMR 158), Market Committee, Multan through its Administrator and another v. Muhammad Sabir (1995 SCMR 305) and Muhammad Ikram v. Principal and Chairman Admission Committee, Sukkur and 2 others (2014 MLD 1).

13. Article 7 of the Universal Declaration of Human Rights also states that all are equal before the law and are entitled without any discrimination to equal protection of the law.

14. Principle of equality is basic and indispensible element in the structure of Islamic Society. The differences of colour, race or social status are only accidental. They do not at all effect the real status of any person in the sight of God. There are clear instructions in the Holy Quran and the Hadith that in their rights and obligations all are equal. The Holy Prophet Muhammad (Peace Be Upon Him) in worldly admired Last Sermon at the time of Hajja-tul-Widah said:---

> *"O mankind, your Lord is one and your father is one. You all descended from Aadam, and Aadam was created from clay. He is most honoured among you in the sight of God who is most upright. No Arab is superior to a Non-Arab and no non-Arab is superior to an Arab, no black person to a white person or a white person to a black person except by Taqwa (Piety)." (Ahmad & Al-Tirmithi)*

Thus guided by the golden principle of Islam and law of the land regarding equality, the respondents cannot be permitted to discriminately treat the petitioners from other similarly placed persons.

11. In view of the foregoing reasons, as case of the petitioners has already forwarded to upgrade their posts from BPS-12 and BPS-14 to BPS-16 respectively, therefore, to bring about uniformity of pay scales of similar posts in different organizations, respondents are directed to upgrade the posts of the petitioners, in the light of Office Memorandum dated 20.01.2001, in order to rationalize the

administrative structure of their department as has already been done in other departments including the Ministry of Defence.

12. With the above observation, this writ petition stands **disposed of**.

(Ghulam Azam Qambrani)
Judge

Announced in Open Court, on 29.01.2021.

Judge

Approved for reporting.

S.Akhtar