JUDGMENTSHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2363 of 2020

Mubashir Imam

Versus

Federation of Pakistan Etc.

Petitioner by	:	Malik Muzafar Khan Advocate.
Respondents by	:	Syed Nazar Hussain Shah, AAG
Date of hearing	:	02.06.2022

ARBAB MUHAMMAD TAHIR, J: Through the instant writ petition, the petitioner has prayed for a direction to the respondents to upgrade him in BS-16 with consequential benefits with effect from 14.03.2017.

2. The petitioner's case is that he was appointed as Data Control Assistant BS-14 in the Pakistan Museum of Natural History Islamabad (respondent No.4) on 14.03.2017; that pursuant to the decision of the Government of Pakistan, Establishment Division and the Finance Division (respondents 2&3) vide O.M. dated 10.08.2016 regarding upgradation of ministerial posts, the Pakistan Science Foundation-PSF (respondent No.5) announced upgradation of Science Assistants and Data Control Assistants of respondent No.4 vide letter dated 29.01.2018 and clarification dated 12.02.2018; that pursuant to said policy, petitioner applied for his upgradation from BS-14 to BS-16 instead he was upgraded to BS-15 vide Office Order dated 08.1.2020; that on 10.1.2020, he again submitted an application for upgradation to BS-16 followed by reminders but the respondents are reluctant to accede to his legitimate request, hence instant writ petition.

3. Learned counsel argued that the O.M dated 10.08.2016 clearly states upgradation from BS-14 to BS-16 and that several employees relating to technical and computer related posts of other departments including the FBR, FPSC and AGPR have already been extended the same benefit but the petitioner has been treated with discrimination. Learned counsel relied upon case law reported as **2017 PLC (CS) 1445 and 2017 PLC (CS) 1030.**

4. On the other hand, learned AAG resisted the above submissions on the grounds that the petitioner has already been granted benefit of upgradation in accordance with O.M. dated 10.8.2016 and that as per policy decision, his upgradation as claimed for cannot be allowed as he was appointed subsequently on 14.03.2017 while the O.M. extends benefit of upgradation to BS-16 with effect from 01.07.2016, therefore, petition is liable to dismissed.

4. Heard, record examined.

5. The respondent-department has taken the stance that under the OM dated 10.08.2016, the post of Assistant Incharge/Assistant was upgraded from BS-14/15 to BS-16 for existing strength on 01.07.2016 but post of Assistant BS-14 was upgraded to BS-15 for new incumbents. The petitioner has joined the respondent department on 14.03.2017, hence his post was upgraded from BS-14 to BS-15 and that the respondent has implemented the government policy in letter and spirit.

6. In view of stance of the respondent department, as the petitioner was appointed on 14.3.2017, therefore, under the OM he cannot be granted upgradation to BS-16 which was for existing strength as on 01.07.2016.

7. Furthermore, it was a policy decision as revels through Office Order dated 08.01.2020 whereby the PSF Board of Trustees accorded approval for upgradation of Science Assistant and Data Control Assistant from BS-14 to BS-16 in accordance with O.M dated 10.08.2016 and the petitioner was granted the said benefit in BS-15 with effect from 14.03.2017.

8. The benefit of upgradation cannot be agitated as a matter of right as it is based on policy decision of the competent authority as laid down by the Hon'ble Supreme Court of Pakistan in the case of ***Fida Muhammad v. Government of Pakistan KPK through Secretary Education, Peshawar and others*** **(2021 SCMR 1895)** in terms that *"upgradation could not be claimed as a matter of right but was in fact based on a policy decision of the competent authority jotted down in a scheme/notification for its implementation across the board for particular categories of employees who fulfilled the required qualification which was normally a particular length of service in a particular pay scale."* Reliance is also placed upon case of ***Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Syed Sadiq Shah and others*** **(2021 SCMR 747).**

9. In view of above, instant writ petition fails and is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in Open Court on _____.06.2022

JUDGE

//Kamran//