ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2306/2014

Muhammad Tariq Khan, etc.
Vs.
Government of Pakistan through Secretary Ministry of Communications, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.01.2022	Mr. ArshadZamanKiani, Advocate for petitioner. Syed NazarHussain Shah, learned AAG.

Through the instant writ petition, petitioners pray for a direction to the respondents to upgrade the post of Assistant Superintendent Post Office ("**ASPO**") from BPS-14 to BPS-16 in the General Post Offices along with the incumbents.

2. The case of the petitioners is that the post/scale of others cadresof contemporary employees of Pakistan Post i.e. Junior Accountants (BPS-12), Data Coder (BPS-12) and Postal Accountant (BPS-9) were upgraded to their higher promotional scale BPS-14/16 under the directions of Respondent No. 2 vide Circulars/Notifications dated 21-07-2011, 28-03-2013 and 10-05-2013, respectively, but, they are being treated with discrimination.

3. The respondents in their separate comments repelled the stance of the petitioners by contending that the benefit of upgradation has already been extended to them and that further upgradation has been declined due to financial constraints.

4. The learned counsel for the petitioner contended that the petitioners are working as Assistant Superintendent Post Office "ASPO and that the petitioners were initially appointed as ASPOs in BPS-11". The learned counsel contended that the post of the ASPOs was re-designated post/cadre from Inspector Post Office and it is the feeding cadre to the post of Assistant Director BPS-16 and Senior Post Master/Postal Superintendent BPS-16. The rules for initial recruitment, qualification/experience and promotion to the post of ASPOs are provided in the Pakistan Posts Office, appendix No. 17 & 18 of Volume IV deals with the same. He further stated that the initial appointment shall be made by 25% and 75% by promotion. The learned counsel further contended that however, the post of ASPOs has been upgraded from BPS-11 to BPS-14 w.e.f. 01st July 2007 but the same was to be upgradable to its higher promotional scale i.e. BPS-16.

5. On the other hand the learned AAG vehemently opposed the contention raised by the learned counsel for the petitioners and stated that the post of ASPOs had already been upgraded from BPS-11 to BPS-14 and that the ASPOs is the feeding of Senior Post Master/Assistant Director BPS-16, if these posts are upgraded to the level of BPS-16 it will create administration problems for the department; that the upgradation cannot be claimed as a matter of right as the same entail financial implication and its relates to policy matter which falls within the exclusive

domain of the Executive, be that as it may, but it is surprisingly noted that the respondent No.4 Finance Division (Regulation wing) in their reply has supported the contention raisedby the petitioners in their petition.

6. Heard, record examined.

7. The issue relating to upgradation of civil servants can be decided by a High Court in exercise of its constitutional jurisdiction being not part of terms and conditions of service and the bar contained under Article 212 (3) of the Constitution would not be attracted. Therefore, instant writ petition is maintainable and being decided on merits. Reliance is placed upon **(2016 SCMR 859),**2015 SCMR 456 and unreported Judgment in Civil Appeal No. 992 of 2014.

6. Record reveals that the post of ASPO has been up-graded from BPS-11 to BPS-14 w.e.f 01-07-2007. It is a feeding cadre post of Senior Postmasters, Assistant Director (BPS-16). Therefore, it cannot be said that petitioners have not availed the benefit of upgradation or that it is a stagnant post.

7. The claim of upgradation cannot be sustained as a matter of right rather the same is based on policy decisions 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).**

8. The petitioners claim upgradation on the principle of equality. The Hon'ble Supreme Court of Pakistan in the latest pronouncement in the case of *Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Syed Sadiq Shah and others* **(2021 SCMR 747)** has held that principle of equality does not mean that every law, policy matter, notification, administrative or executive order etc must have universal application to all the persons who by nature, attainment or circumstances are not in the same position.

9. It has further been laid down in the case of **Government of KP (supra)** that *"Constitutional courts being guardians of the Constitution had the power to judicially review the executive actions and the conduct of the public authorities but the same should be on the touchstone of fairness, reasonableness and proportionality. Courts while exercising power of judicial review must not violate the right of any other organ of the state and (should) remain within the prescribed limits as disclosed in the Constitution".*

10. In the light of principle laid down by the Hon'ble Apex Court, the ground of provision of the benefit of upgradation at par with the other employees cannot be claimed as a matter of right as the Courts while exercising constitutional jurisdiction is not bestowed with authority to violate the right of any

organ of the State.

11. In view of above, no case for exercise of discretion in terms of Article 199 of the Constitution, as prayed for, is made out. The instant writ petition is **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.Ansari

Announced in the open Court on this _____Day of January, 2022.

JUDGE