JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2657 of 2016

Khurshid Ahmed

Versus

The Chairman NHA, Islamabad, etc.

Date of Hearing:-	:	03.03.2022
Appellant by:	:	Mr.Khalid Munir, Advocate.
Respondent by	:	Mr. Akhlaque Awan, Advocate. Syed Nazar Hussain Shah, AAG.

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, petitioner has prayed for a direction to the respondents to implement the judgment dated 10.07.2013 and order dated 10.02.2016, passed by the Federal Service Tribunal (**"F.S.T")** and up held by the Hon'ble Apex Court, and pursuant thereto, benefit of upgradation to BS-20 be extended in favour of the petitioner in due course.

2. The facts arising out of the instant petition are that, the petitioner joined the National High Way Authority (**"N.H.A."**) as Deputy Director MIS, (BS-18) on 02.08.1988. Subsequently, due to non-availability of the promotion venue, on 29.05.2002, the post of the petitioner was upgraded to Director, MIS (BS-19). Thereafter, he filed a departmental appeal and Service Appeal before the F.S.T. bearing No. 2652(R) CS/2012, wherein the petitioner was seeking Upgradation of his post as per the policy dated 20.01.2001 introduced by Government of Pakistan Cabinet Secretariat, Establishment Division for Upgradation/Re-designation of posts, the Federal Service Tribunal allowed the appeal of the petitioner vide judgment dated 10.07.2013 in following terms:-

> *"For the reasons stated above, there is absolutely no justification for depriving the appellant from up-gradation if he fulfills the prescribed criteria. The appeal is, therefore, allowed with the direction to Chairman NHA to personally look into this case and consider his request preferably option III recommended by Secretary NHA in his note mentioned above in Para 9, if qualify for the up-gradation within a period of three months from the date a copy of this Tribunal is received in the office of the respondents."*

3. The petitioner filed numerous applications for the up-gradation but to no avail. He, then filed W.P. No. 4516/2013 for implementation of the

judgment ibid wherein vide order dated 15.01.2015, the matter was referred to the F.S.T. in the light of judgment reported as **(PLD 2014 SC 232)**; that in compliance with the said order, the petitioner filed miscellaneous petition No. 256/2015 before the F.S.T., which was disposed of vide order dated 10.02.2016 with the following observations;-

> *We have noticed with concern that Chairman, NHA paid no heed whatsoever, to the judgment and it amounted to indignation by him towards the judgment of this Tribunal which cannot be countenanced. His lukewarm repose is reflected from the fact that he was able to address the issue only on 21.01.2016 and constituted a committee with no deadlines to complete the task. No dead line whatsoever has been fixed for the committee to make its recommendations, therefore, we again direct that the compliance of the judgment of this Tribunal referred earlier, be made in terms of note No. 9 referred earlier within a period of two months from which coercive measures will be initiated against them. For the time being the MP. No. 256/2015 stands disposed of".*

4. The NHA filed appeal in the Apex Court against the order/judgment dated 10.02.2016, which was disposed of vide order dated 10.05.2016 by the Hon'ble Apex Court with the following observations:-

> *"We did not find and defect in the impugned order that merely requires compliance with the earlier direction. It goes without saying* ***that the petitioner shall act in accordance with law*** *while passing an order mandated by the direction dated 10.07.2013 and shall communicate such order to the respondent. Disposed of."*
> *"Emphasis provided"*

5. According to the petitioner despite lapse of considerable period of time, he is still remediless which constrained him to file the instant writ petition.

6. The respondent No. 1 (NHA) in its written comments resisted the stance of the petitioner, *inter alia* on the ground that the direction had been with regard to consideration in accordance with law and not to upgrade the post of the petitioner; that the direction has duly been complied with by considering the petitioner in due course, therefore, petition is liable to be dismissed.

7. Arguments heard, record perused.

8. It is settled principle that "*upgradation*" cannot be claimed as a matter of right but it is in fact based on a policy decision of the competent

authority for its implementation across the board for the particular categories of employees. There is difference between the upgradation and the promotion. The former amounts to advancement in rank, grade, or a footstep and root for advancement of higher position while the latter simply confers some monetary benefits by granting a higher pay scale to ventilate stagnation. Guidance in this respect is taken from the latest pronouncement of the Hon'ble Apex Court dated 28.09.2021, passed in **C.A. No. 465 of 2021** in the case of *"**Fida Muhammad v. Govt. of Khber Pakhtunkhawa Secretary of Education, Peshawar & others**"* It has graciously been held in paragraph 8 that:-

> *"The upgradation cannot be claimed as a matter of right but it is in fact based on a policy decision of the competent authority for its implementation across the board for the particular categories of employees jot down in the scheme/notification who fulfilled the required qualification which is normally a particular length of service in a particular pay scale. There is normally a particular length of service in a particular pay scale. There is a meticulous differentiation stuck between upgradation and promotion. The promotion involves advancement in rank, grade or a footstep en route for advancement to higher position whereas the facility or benefit of upgradation simply confers some monetary benefits by granting a higher pay scale to ventilate stagnation. In an upgradation, the candidate continues to hold the same post without any change in his duties but he is accorded a higher pay scale. It is also well settled exposition of law that the benefit of upgradation is normally granted to the persons stuck-up in one pay-scale for considerable period of their length of service either having no venue for promotion or progression. In order to minimize the anguish or suffering being stuck-up in particular pay scale for a sizeable period, the mechanism of up gradation as a policy decision comes in field for redress and rescue. This Court in the case of Regional Commissioner Income Tax versus Syed Munawar Ali (2016 SCMR 859) held that the expression "up-gradation" is distinct from the promotion which is not defined either in the Civil Servants Act or the Rules framed thereunder which is restricted to the posts and not with the person occupying it. In the case of **Federal Public Service Commission through Secretary vs. Anwar-ul-Haq (Private Secretary) Islamabad and others (2017 SCMR 890)**, this court held that up-gradation is carried out under a policy and specified scheme. It is resorted only for the incumbents of isolated posts, which have no avenues or channel of promotion at all. Up-gradation under the scheme is personal to the incumbents of the isolated posts to address stagnation and frustration of incumbent on a particular post for*

sufficient length of service on particular post without any progression or avenue of promotion.

9. In the present case, the petitioner was considered by the NHA as revealed through Office Order dated 11.05.2017, and proceeded to decline his request for up-gradation as GM (MIS) BS-20 on the grounds that NHA Management has no authority under the law to upgrade the sustentative pay scale of any post as it would amount to violation of the express provision of the schedule IV of the NHA (appointment & Promotion) Rules, 1995. Furthermore, the policy of the federal Government on matters of the up-gradations contained in Esta Code (Establishment Division O.M. No. F.8/36/2000.R.1 20.01.2001.) States that *" up-gradation of a post of personal basis may not be allowed accept if any officer already holding on regular basis the higher grade post, is posted against the post, carrying lower grade, due to exigencies of service"* which have been framed by the Federal Government, whereby up-gradation of a post, personal to an officer was made not permissible. It has also been highlighted that the Executive Board of the NHA has rescinded all the up-gradations made in the past contrary to the Service Rules of the Department.

10. In view of above, the direction in respect of consideration has been complied with while the entitlement for "*up-gradation"* cannot be claimed as a matter of right, as it is based on a policy decision of the competent authority for its implementation, as laid down in the case of ***Fida Muhammad Supra*****.** Even otherwise, this Court is not mandated with any authority to regulate the policies by stepping into the shoes of the competent authority. Consequently, instant writ petition fails and is accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on ____March, 2022

JUDGE

//Kamran//*