

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 2450/2020

Abdul Ghafoor & another

Versus

Full Bench of National Industrial Relation Commission, Islamabad, etc.

Petitioners by: Mrs. Shireen Imran, Advocate alongwith petitioners.

Respondents by: Mrs. Misbah Gulnar Sharif, Advocate for CDA.

Date of Decision: 21.09.2021.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioners have assailed the order dated 23.06.2020, passed by learned Full Bench, NIRC, whereby appeal filed by the CDA has been allowed and order dated 05.07.2019, passed by learned Single Bench, NIRC has been set aside.

2. Learned counsel for the petitioners contends that CDA Board has adopted the up-gradation policy 2001 and as such case of petitioners falls within Para A & C of the said policy; that the post of Store Supervisor physically existed in the CDA but it has not been mentioned in the Service Regulations, 1992, as a result of the same no promotion criteria has been defined in the said regulations and the said position has been fixed with low pay scale of BPS-8; that petitioners were appointed on 25.08.2004 through advertisement on the said position but they have not been given any further promotion as there is no channel of promotion provided in this case, even up-gradation has not been given to the petitioners; that on

19.07.2008 CDA Board has approved the amendments in the CDA Regulations, 1992 including 46 different cadres having no line of promotion but despite that case of petitioners has not been considered; that other employees of different departments on the post of Store Supervisor have been up-graded to BPS-15 with different qualification but CDA authorities have not given the comparative benefit to the similarly placed employees/petitioners; that both the petitioners have jointly filed grievance notice u/s 41 of the IRA, 2008 on 01.03.2011 for up-gradation of the post of Store Supervisor but their case has been neglected, although the first up-gradation was notified on 25.02.2010 (BPS-11) and all Store Keepers have been given BPS-14; that similarly other cadre's supervisors and Medical Store Keepers were granted BPS-16, hence, petitioners are deprived from their legitimate right; that learned Full Bench NIRC has not considered the law in its true perspective and allowed the appeal on hyper technical reasons by declaring that up-gradation being not a vested right of the petitioners.

3. Conversely, learned counsel for respondent/CDA contends that vide notification dated 25.02.2010 post of Store Supervisor was up-graded from BPS-8 to BPS-11 and petitioners have also assumed the charge against the post in BPS-11, therefore, they are not entitled for the up-gradation; that learned Full Bench, NIRC has rightly allowed the appeal by setting aside the order of learned Single Bench, NIRC.

4. Arguments heard, record perused.

5. Perusal of record reveals that entire case revolves around the claim of petitioners qua up-gradation of their post who are working as Store Supervisor in BPS-8 in the office of CDA which is clerical in nature and as

such no promotion criteria against the said post has been referred in the CDA Regulations, 1992. As such it was ex-cadre post and no future prospect has been defined in the said line of cadre. Establishment Division, Government of Pakistan has issued up-gradation policy through O.M dated 20.01.2001 and 03.02.2001 for up-gradation/re-designation of posts, whereby certain criteria has been fixed to consider the cases for the up-gradation and as such petitioners who have filed their grievance petition before the CDA with the claim that their post may be up-graded but their request was not considered and both the petitioners have filed their grievance petition before the NIRC in terms of Section 41 of the IRA, 2008 and the same was allowed vide order dated 05.07.2019. However, matter was assailed before the Full Bench, NIRC in terms of appeal u/s 58 of the IRA, 2012 by the CDA, which was allowed and order of learned Single Bench, NIRC was set aside primarily on the ground that jurisdiction of NIRC u/s 33 of IRA, 2012 is confined to the cases of workman, who has a grievance in respect of any right guaranteed or secured or under any law of any award or settlement for the time being enforce and as such the up-gradation is not a vested right of any employee, resultantly appeal was allowed and order dated 05.07.2019 was set aside. Though the observations made by the learned Full Bench, NIRC are based upon judgments reported as 2010 PLC (C.S) 1444 (Mrs. Samia Iqbal vs. Government of the Punjab through Home Secretary Punjab, Lahore), 2017 PLC (C.S) 1030 (Regional Commissioner Income Tax, Northern Region, Islamabad vs. Syed Munawar Ali), 2009 PLC (C.S) 712 (Muhammad Farid Khattak vs. Chief Secretary, Government of N.W.F.P) and PLD 2007 SC 681 (Muhammad Idress vs. ADBP), whereby it has been settled

that expression up-gradation is distinct from the expression promotion and same is matter of policy which could not be interfered by this court in exercise of constitutional jurisdiction.

6. This court is also agreed with the observation made by the learned Full Bench, NIRC, even recent pronouncement of the Apex Court 2015 SCMR 456 (Ali Azhar Khan Baloch vs. Province of Sindh), 2017 SCMR 890 (Federal Public Service Commission vs. Anwar-ul-Haq and others) further highlight the concept of up-gradation of post which could only be made when the department needed restructuring, reform or that it was to meet the exigency of service in public interest and as such up-gradation could not be made to benefit a particular individual in terms of promoting him to a higher post or further providing him with the avenues of lateral appointment or transfer or posting. Hence, in the light of above mentioned case laws, this court is of the view that it is the prerogative and domain of CDA authorities to decide the question as to whether any re-structuring in service cadre of Store Supervisor is required. In such scenario they are bound to follow the up-gradation/re-designation of posts, O.M dated 20.01.2001, which is policy document, hence, instant writ petition stands disposed of with observation and direction to the CDA Board to consider the case of up-gradation of the post of Store Supervisor in terms of policy adopted by the CDA Board and shall pass any appropriate order, subject to their own requirements under the rules and regulations, within period of next six months.

(MOHSIN AKHTAR KAYANI)
JUDGE