

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.3851-2014

Khalid Safdar

Vs.

**The Secretary, Ministry of Finance, Government of Pakistan,
Islamabad**

Petitioner by : Mr.M. Shoaib Shaheen, Advocate
Respondent by : Mr. Jahangir Khan Jadoon, Standing
Counsel with Nadeem Arshad, SO
(Legal), Ministry of Finance.
Date of hearing : 07.11.2014

NOOR-UL-HAQ N. QURESHI J. Through the present writ petition by invoking writ jurisdiction, the petitioner seeks following prayer: -

“Under the above mentioned circumstances and facts, it is respectfully prayed that the writ petition may kindly be accepted and operation of Office Memorandum issued by the Finance Division (Litigation Wing) vide their OM F.No.4(5)-R-14/2012 dated 25th July, 2014 may be suspended till final decision of the case and the status of grant of BPS-18 and BPS-19 to the Private Secretaries may be changed to that of ‘promoted’ as already directed by this Honourable Court”

2. Brief facts leading towards the disposal of this writ petition are that the petitioner is serving as Senior Private Secretary BPS-19 in the Federal Board of Revenue, Islamabad bearing more than 25-years of reputable service. He was granted BPS-19 with nomenclature of Senior Private Secretary in the light of Office Memorandum dated 23.12.2011 issued by the Finance Division with the concurrence of the Prime Minister of Pakistan, whereby the posts of Stenotypists,

Stenographers & Private Secretaries were upgraded with immediate effect subject to fulfillment of the certain conditions. As the petitioner fulfilled such conditions, therefore he was granted BPS-19. Later on, after a period of three years, impugned Office Memorandum dated 25.07.2014 was issued by treating the status of Senior Private Secretaries (BPS-19) at par with move over, which was being granted on completing certain length of service prior to 01.12.2001. For this reason, Senior Private Secretaries (BPS-19) were held not to be entitled to any change in Rental Ceiling/House Rent Allowance. For convenience, the impugned Office Memorandum is reproduced herein below: -

“The undersigned is directed to refer to the above subject and to say that a number of queries are being received from various quarters regarding rental ceiling for hiring of residential accommodation to Private Secretaries BP-19 with a nomenclature of Senior Private Secretary.

2. It is clarified that grant of the higher time scale i.e. BS-18/19 to the Private Secretaries (BS-17) is not construed to be a promotion to the post carrying higher pay scale but the higher time scale is treated to be an extension of the post of Private Secretary (BS-17). The substantive pay scale of the Private Secretary remains BPS-17 even after grant of higher time i.e. BPS-18/19. In fact, with reference to its status, the grant of higher time scale on completing certain length of service should be treated at par with move-over, used to be admissible prior to 01.12.2001. The employees allowed move-over were not entitled to any change in Rental Ceiling/House Rent Allowance as clarified by Finance Division's OM No.F.1(7) R-3/85 dated 1st August, 1994 (copy enclosed)”

The petitioner's prayer with regard to grant of status as 'promoted' from BPS-18 to BPS-19 is based upon the judgment dated 17.04.2014 passed in W.P. No.2362/2008, 1408/2013, 1484/2013 & Crl. Org. Nos.147-W-2011 & 317-W-2012 by this

Court, wherein it was directed to make necessary corrections in the Notification regarding upgradation of the petitioners in BPS-18 and BPS-19 by using the words 'promoted' instead of 'placed in' to save them from financial loss as well as loss of pre-mature increments.

3. Learned counsel for the petitioner has argued that impugned Office Memorandum dated 25.07.2014 is against the law and facts of the case, which is liable to be declared as null and void. It is contended that impugned Office Memorandum has infringed the fundamental rights of the petitioner and has caused irreparable loss in lieu of hiring of residential accommodation viz-a-viz other officers of BS-19 of all other cadres who are enjoying the hiring facility as per entitlement of above Scale. The difficulty for the petitioner is that residential accommodation was got hired by him as per covered area according to BPS-19 and agreement was executed in this behalf, but now, at this belated stage, he will suffer from financial loss as well as deprivation of status in consequence of issuance of impugned Office Memorandum. The impugned Office Memorandum has been issued treating grant of BPS-19 to the Private Secretaries as move-over, which is ridiculous, as policy of move-over stood discontinued since the year 2001. Moreover, according to Office Memorandum dated 23.12.2011, the word 'Upgradation' has been used for Stenotypists, Stenographers and Private Secretaries, which means that after fulfillment of criteria mentioned in the above Office Memorandum, the incumbents shall be granted BPS-19 with

nomenclature of Senior Private Secretary. Therefore, there exists no relation between grant of BPS-19 to the Private Secretaries and the policy of move over. It is further contended that in response to the Finance Division's OM dated 22.09.2014, the Establishment Division has cleared the clouds of doubt over the issue in hand by replying the above Office Memorandum through letter dated 24.09.2014 that the grant of higher scale and denial of allowances of the higher scale to the incumbents, prima facie, is discriminatory in nature and goes against the canons of justice. Therefore, the view held by the Establishment Division was that the Finance Division may review its policy and allow the grant of rental ceiling/other allowances of higher posts to the incumbents as the existing policy of the Finance Division is legally defective and cannot be endorsed by this Division. It is next argued that impugned Office Memorandum has been issued after delay of about three years from the date of issuance of Notification dated 23.12.2011, which highlights the discriminatory treatment viz-a-viz fringe benefits allowed to various officers of different cadres on grant of BPS-19 from BPS-18. Moreover, the Finance Division has itself used different words at various forums mystifying the status of grant of BS-18 & BS-19 to the Private Secretaries. It is further argued that nowhere in the Notification dated 23.12.2011, the word 'time scale' has been used, but Finance Division as an afterthought, has created difficulties for the petitioner and others by issuing impugned Office Memorandum. In furtherance of his arguments, it is contended by the learned counsel that the petitioner may be

given the same relief as was given earlier in above mentioned writ petitions by using the words 'promoted' to save him from financial loss as well as loss of premature increment.

4. On the other hand, learned Standing Counsel assisted by the representative of respondent has vehemently opposed the relief sought by the petitioner. It is contended that grant of BS-18/19 to Private Secretaries (BPS-17) is not promotion in terms of Section 9 (I) of the Civil Servants Act, 1973, but a financial benefit of higher scale. It is argued that on receiving queries from different quarters, it was considered appropriate to clarify the position through impugned Office Memorandum dated 25.07.2014. It is contended that Finance Division has wrote a letter to Establishment Division stating that the stance taken by it through above mentioned Office Memorandum dated 24.09.2014 is negation of their own comments/opinion which was requested to be rectified. It is further argued that through various Office Memorandums, the Establishment Division had earlier observed that the grant of higher time scale is not a promotion in terms of Section 9(1) of the Civil Servants Act, 1973 and does not involve upgradation of posts. It is further contended that there is no similarity of petitioner's case with the cases of Maula Bux Chandio & Imdad Hussain Malik as referred to by the learned counsel for the petitioner, because National Assembly is an autonomous body and it has its own service rules regarding terms and conditions of services of its employees, therefore, the status of petitioner cannot be compared with status of employees of National

Assembly in view of the prevailing recruitment rules of Federal Government. With reference to the status of Senior Private Secretary, it has been argued that the grant of higher time scale on completing certain length of service should be treated at par with move over used to be admissible prior to 01.12.2001, therefore, the employees who were allowed move over were not entitled to any change in rental ceiling/house rent allowance as clarified by Finance Division's OM dated 01.08.1994.

5. Arguments heard & Record perused.

6. From perusal of record, it is evident that the posts of Stenotypists, Stenographers and Private Secretaries were upgraded vide Office Memorandum dated 23.12.2011 issued by the Finance Division. This Office Memorandum clearly shows that upgradation of above posts was made after approval of the Prime Minister of Pakistan. In the said Office Memorandum, there is no mention that the upgradation was just like a move over or it was to be regarded as move over. The impugned Office Memorandum dated 25.07.2014 has been issued by the Finance Division at their own without obtaining any approval from the Prime Minister of Pakistan. Moreover, no consultation with the Establishment Division appears to have been made as apparent from impugned Office Memorandum. Another, not unrelated feature of this case to which this Court attached considerable importance is that impugned Office Memorandum has been issued after lapse of a considerable period of two years and ten months and during

this period, no action was taken by the Finance Division. It has not been explained that why the Finance Division kept mum for such a long time. It is also necessary to point out here that during this period, number of Senior Private Secretaries by taking advantage of BPS-19 got hired the residential accommodations according to the entitlement of BPS-19 and now when rent agreements have been executed in this behalf and payments have been made/received, suddenly the Finance Division has awakened from slumber and has issued the impugned Office Memorandum without giving any genuine reason. This action on the part of respondent No.1 is clearly anomalous.

7. It is also noticed that though posts of Stenotypists, Stenographers & Private Secretaries have been upgraded simultaneously through Office Memorandum dated 23.12.2011, but clarification made through impugned Office Memorandum that there will be change in Rental Ceiling/House Rent Allowance is only to the extent of Senior Private Secretaries which clearly smacks malafide on the part of respondent No.1, who has not explained that why other categories have been excluded. For this obvious reason, action taken by respondent No.1 amounts to discrimination.

8. In para-4 of facts to the written comments submitted by respondent No.1., it has been mentioned that posts of Private Secretaries have not been upgraded rather they have been granted senior scale on completion of prescribed length of service. A bare perusal of Office Memorandum dated

23.12.2011 whereby above posts were upgraded reveals that there is not a single word regarding grant of time scale, rather the word 'Upgradation' has been specifically used for the above posts.

9. Another interesting point which cannot be lost sight is that in prayer clause of para-wise comments submitted by respondent No.1, it is mentioned that after filing of instant writ petition, Finance Division has referred the matter to the Establishment Division for views/comments on 22.09.2014. It would not be out of place to mention that in response to letter dated 22.09.2014, Establish Division has issued letter dated 24.09.2014. Although, comments were submitted by respondent No.1 on 14.10.2014 yet letter dated 24.09.2014 has not been submitted with the same by respondent No.1 deliberately with malafide intention. Therefore, the petitioner had to submit this letter as additional document through CM No.5299/2014, which was allowed on 05.11.2014. On the said date, representative of respondent No.1 sought time to verify the said letter, but today, nothing has been explained in this regard, rather along with report, a copy of letter F.No.9(24)R-I/2014-379 dated 05.11.2014 issued by the Finance Division to the Establishment Division has been attached, which shows that instead of verifying the above said letter dated 24.09.2014 as directed by this Court, respondent No.1 has asked to rectify the said letter dated 24.09.2014, which shows that direction issued by this Court has not been complied with. It also shows that respondent No.1 has admitted the genuineness of said

letter dated 24.09.2014. In Office Memorandum dated 24.09.2014, Established Division clearly alleged that grant of higher scale and denial of allowances of the higher scale to the incumbents, prima facie, is discriminatory in nature and goes against canons of justice. It was advised by the Establishment Division therein that the Finance Division may review its policy and allow the grant of rental ceiling/other allowances of higher posts to the incumbents, as the existing policy of the Finance Division is legally defective and cannot be endorsed by the Establishment Division. This OM sufficiently proves stance taken by the petitioner.

10. It is also observed that to issue such like letters (impugned Office Memorandum) is the authority of Establishment Division. Had respondent No.1 any authority to issue impugned letter then why it sought clarification from the Establishment Division after issuance of impugned Office Memorandum. It shows the malafide attitude of respondent No.1. In this regard, I would like to refer Rule 11 of Rules of Business, 1973, which is regarding Consultation with the Establishment Division. This Rule says as under:-

11. Consultation with the Establishment Division.—

No Division shall, without previous consultation with the Establishment Division, issue, or authorize the issue of, any orders, other than orders in pursuance of any general or special delegation made by the Establishment Division, which involve—

- a) -----
- b) -----
- c) -----
- d) a change in terms and conditions of service of Federal civil servants.
- e) a change in the statutory rights and privileges of any Federal Government servant”.

From the above rule it is copiously clear that the authority to issue the impugned Office Memorandum dated 25.07.2014 lies with Establishment Division and respondent No.1 had no authority to issue impugned Office Memorandum.

11. It is axiomatic of law that “**A communi observantia non est’ recedendum**” (where a thing was provided to be done in a particular manner it had to be done in that manner and if not so done, same would not be lawful). So, it is observed that before issuance of impugned Office Memorandum dated 25.07.2014 without prior consultation/concurrence from the Establishment Division, respondent No.1 has committed a serious illegality, so the same is also ineffective upon the rights of Private Secretaries, who have been or going to get benefit of Office Memorandum dated 23.12.2011. On the basis of obstructive document, a right occurred in favour of beneficiaries after approval of the Prime Minister of Pakistan cannot be snatched away.

12. From all above, the Hon’ble Supreme Court of Pakistan in an unreported case titled ‘Federation of Pakistan Vs. Mahmood Javed Butt (Civil Appeal No.637 of 1998 decided on 28.01.2002) has observed that upgradation amounts to promotion. Relevant portion of the said judgment is reproduced as under for reference:-

“After careful consideration of all the facts of the case we are of the view that although upgradation has been described as placement but in fact it amounts to promotion because all the criteria for the same as laid down by law has been fully dealt with”

13. For what has been discussed above, it is held that impugned Office Memorandum dated 25.07.2014 has no value in the eye of law. So, the same is set aside. Consequently, upgradation of Private Secretaries as Senior Private Secretaries made through Office Memorandum dated 23.12.2011 will be considered as promotion to save them from financial loss as well as loss of premature increments.

14. With above observations, instant writ petition stands disposed of.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Approved for Reporting.

JUDGE

Zawar