

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P. No.3676/2018

Aurang Zeb Khan

**Versus**

Capital Development Authority through its Chairman and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**02.07.2019**

**Mr. Ali Murad Baloch, Advocate for the petitioner, Malik Javid Iqbal Wains, Advocate for respondent No.1/C.D.A.**

Through the instant writ petition, the petitioner, Aurang Zeb Khan, seeks a direction to the respondents to upgrade his post to BPS-16 with effect from 01.01.2011 in pursuance of the directive issued by the Prime Minister.

2. Learned counsel for the petitioner submitted that the petitioner deserved to be treated in the same very manner as the teachers working with the Federal Directorate of Education whose posts were upgraded; and that a summary for the up-gradation of the post occupied by the petitioner was moved before the Board of Capital Development Authority ("C.D.A."), but thereafter no development on the said matter has taken place. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgment reported as 2018 PLC (C.S.) 97.

3. On the other hand, learned counsel for C.D.A. submitted that it is well settled that no employee has a vested right for his post to be upgraded; that the Establishment Division's Office Memorandum ("O.M.") dated 04.06.2010 applied only to Physical Training Instructors in BPS-14 and BPS-16; that since the petitioner is a Physical Training Instructor (BPS-12), the benefit of the said

O.M. cannot be given to him; that the Prime Minister's directive No.2607, dated 17.02.2011 only applied to arrangements for the transport facility for the students and teachers especially in the Islamabad Capital Territory; that the petitioner has already been given up-gradation from BPS-11 to BPS-12; and that the petitioner cannot claim yet another up-gradation. Learned counsel for C.D.A. prayed for the writ petition to be dismissed. In making his submissions, learned counsel for the C.D.A. placed reliance on the judgments reported as 2017 PLC (C.S.) 58 and 2016 PLC (C.S.) 816.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. Vide memorandum dated 05.07.2007, the petitioner was offered appointment as Physical Training Instructor (BPS-11) in C.D.A. It is not denied that on 01.07.2010, the petitioner was given benefit of up-gradation to BPS-12 since there was no channel for his promotion.

6. On 09.12.2011, the petitioner applied for the up-gradation of his post to BPS-17. C.D.A.'s noting dated 21.02.2012 issued by Human Resource Officer shows that the views of the Finance Wing were solicited for the processing of the petitioner's case for up-gradation. The Finance Wing reported that the petitioner's request for up-gradation may be considered according to the Rules. Reference was made by the Finance Wing to instructions issued by the Cabinet Division for the up-gradation of the teaching post including Physical Training Instructors to BPS-16 and BPS-17. Finally, a summary was submitted to the C.D.A.'s Board proposing that the post of Physical Training Instructor (Junior) be upgraded from BPS-12 to

**BPS-16. A copy of the said summary is annexed at page-16 of this petition. The record is silent as to whether or not any decision was taken by the C.D.A.'s Board on the said summary.**

**7. As per the policy for up-gradation reflected in Establishment Division's O.M. dated 20.01.2001, up-gradation of posts is considered (i) when it is considered necessary to up-grade certain posts in order to rationalize the administrative structure of a Ministry/Division or a Department to make it more effective or to bring about uniformity of pay scales of similar posts in different organizations, (ii) where the duties and responsibilities attached to a post have considerably increased, and (iii) where pay scale of a post is considered grossly incommensurate with the qualifications and experience prescribed for appointment to that post. It is by now well settled that when the competent authority approves the up-gradation of a post, appointment to the upgraded post is to be made in accordance with the specific rules which regulate appointment to such a post. It is also not disputed that up-gradation of a post does not mean automatic up-gradation of its incumbent. Appointment to the upgraded post will have to be made in the manner prescribed for appointment to such a post. If a post is upgraded with immediate effect, the incumbent would be left without any post (in his grade) until he is approved for appointment to a higher grade. Appointment against the upgraded post is to be made in accordance with the specific rules, which regulate appointment to such a post. Therefore, appointments of the incumbents against upgraded posts without going through the prescribed selection process or approval of the competent**

authority are irregular. All this is explicitly stated in the policy of the Federal Government set out in Establishment Division's office memoranda dated 20.01.2001, 02.02.2001 and 31.12.2008. At this juncture, it is apposite to make reference to the following case law:-

- (i) As per the law laid down by the Hon'ble Supreme Court in the case of Federal Public Service Commission Vs. Anwar-ul-Haq (Private Secretary) Islamabad (2017 SCMR 890), up-gradation is not a promotion, as generally misunderstood; up-gradation is carried out without necessarily to create posts in the relevant scales of pay; it 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; up-gradation is carried out under a scheme and or a policy to incentivize and to encourage and to give financial benefits without creating additional vacancies of higher grade; up-gradation by no standards could be treated and or considered as promotion to higher grade; and incumbents occupying upgraded posts retain their substantive grades.
- (ii) In the case of Regional Commissioner Income Tax, Northern Region Vs. Munawar

Ali (2016 SCMR 859), it has been held as follows:-

*“6. ...The expression "upgradation" is distinct, from the expression "promotion", which is not defined either in the Civil Servants Act or the Rules framed thereunder, and is restricted to the post (office) and not with the person occupying it. The upgradation cannot be made to benefit a particular individual in term of promoting him to a higher post and further providing him with the avenues of lateral appointment or transfer or posting. In order to justify the upgradation, the Government is required to establish that the department needs re-structuring, reform or to meet the exigency of service in the public interest. In the absence of these pre-conditions, upgradation is not permissible.*

*7. The aforesaid definition of the expression "upgradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. ...”*

- (iii) In the case of Mrs. Saima Iqbal Vs. Government of Punjab (2010 PLC (C.S.) 1444), it has been held by the Hon'ble Lahore High Court that the question of up-gradation of a post is a matter of policy, which cannot be interfered with by the High Court in exercise of its Constitutional jurisdiction. Furthermore, it was held that an up-gradation cannot be claimed by an employee as a matter of right.

On 26.07.2007, the erstwhile Ministry of Education made a presentation to the Prime Minister of Pakistan. The minutes of the meeting show that the Prime Minister, in principal approved *inter-alia* the following:-

*“The minimum qualification of primary teachers will be B.A/B.Sc with preference for B.Ed. They may be placed in BS-16 and re-designated as Junior Lady Teachers. Similarly, minimum qualification for teachers at secondary level will be*

***M.A/M.Sc. They may be re-designated as Lecturer and placed in BS-17”.***

8. In May, 2009, the Ministry of Education submitted a proposal for the up-gradation of various posts of teaching staff along with their revised grades and nomenclature to the Establishment Division. Concurrence of the Establishment Division was sought for the up-gradation of the posts of teaching staff in the educational institutions along with the incumbents under the Federal Directorate of Education with effect from 01.07.2009. Vide office memorandum dated 04.06.2010, the Establishment Division conveyed its approval to the Ministry of Education with respect to the up-gradation/re-designation of posts in Federal Government Schools under the Federal Directorate of Education. The up-gradation of the said posts was in the following terms:-

- “(i) The posts of Trained Under Graduate Teacher and Drawing Master (BS-14) upgraded as Trained Graduate Teacher and Drawing Master (BS-16) respectively.***
- (ii) The posts of Physical Training Instructor (Junior) (BS-14) upgraded as Physical Training Instructor (Senior) (BS-16).***
- (iii) The posts of Matric Trained Teacher (BS-09) upgraded as Elementary School Teacher (BS-14).”***

9. Perusal of the said O.M. shows that the benefit of up-gradation was only with respect to posts in the Federal Government Schools under the Federal Directorate of Education, and not in C.D.A. Furthermore, under the said O.M., the post of Physic Training Instructor (Junior) (BPS-14) was to be upgraded as Physical Training Instructor (Senior) (BPS-16). Since the petitioner holds a

**BPS-12 post in C.D.A., he cannot seek the benefit under the said O.M.**

**10. As regards the Prime Minister's directive No.2607, dated 17.02.2011, the petitioner could only claim the arrangements of transport facility, but not the up-gradation of his post from BPS-12 to BPS-16. It is well settled that in the absence of the specific service rules governing up-gradation, the petitioner cannot claim to have a vested right for the up-gradation of his post. Therefore, this Court cannot grant the relief sought by the petitioner in the instant writ petition.**

**11. Be that as it may, since the Human Resource Development Directorate of C.D.A. had submitted a summary to C.D.A.'s Board proposing the up-gradation of the petitioner's post to BPS-16, it is expected that the said C.D.A.'s Board would take a decision on the said summary expeditiously and after affording an opportunity of hearing to the petitioner.**

**12. Disposed of in the above terms.**

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**Qamar Khan\***