

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Appeal No. 1671 of 2021

*(On appeal from the Judgment dated
29.01.2021 passed by the Islamabad
High Court in W.P.No.1834/2020)*

Secretary to the Government of Pakistan, ...Appellant(s)
Establishment Division, Islamabad and
another

Versus

Muhammad Ahmed Khan and others ...Respondent(s)

For the Appellant(s) : Mr. Rashdeen Nawaz Qasuri,
Additional Attorney General of
Pakistan

For the Respondent : Ms. Shireen Imran, ASC
No.1-18 Rifaqat Hussain Shah, AOR

Date of Hearing : 06.11.2024

Judgment

Muhammad Ali Mazhar, J.- This Civil Appeal with leave of the Court is directed against the Judgment passed by the Islamabad High Court dated 29.01.2021 in W.P.No.1834 of 2020.

2. The short-lived facts of the case are that the respondents are performing their duties in the Naval Headquarters, Islamabad, as Machine Supervisors/Data Control Supervisors (BS-14) and Control Assistants (BS-12). The Ministry of Defence ("MoD"), on 19.06.2018, forwarded the case to the Management Services Wing ("MS Wing"), Establishment Division, for upgradation/re-designation of the posts of

Control Assistant (BS-12) and Machine Supervisor/Data Control Supervisor (BS-14) to Data Control Officer (BS-16). The Establishment Division, *vide* Office Memorandum ("OM"), dated 03.10.2019, accorded approval/concurrence for upgradation of the posts of Control Assistant from BS-12 to BS-14 and Machine Supervisor/Data Control Supervisor from BS-14 to BS-15. However, the MoD requested the MS Wing to re-examine the case of upgradation of the posts of Control Assistant (BS-12) and Machine Supervisor/Data Control Supervisor (BS-14) as Data Control Officer (BS-16). Since the upgradation was not accorded, the respondents filed Writ Petition No.1834/2020 in the Islamabad High Court with the prayer that the respondents/petitioners may be directed to upgrade and re-designate the posts of Control Assistant (BS-12) and Machine Supervisor/Data Control Supervisor (BS-14) as Data Control Officer (BS-16). The writ petition was allowed *vide* impugned judgment dated 29.01.2021 on the notion that the case of upgradation was already forwarded from BS-12 and BS-14 to BS-16 respectively. Therefore, to bring uniformity in pay scales of similar posts in different organizations, the respondents/petitioners were directed to upgrade the posts in light of the OM dated 20.01.2001 in order to rationalize the administrative structure of the department as has already been done in other departments including the MoD.

3. The leave to appeal was granted by this Court *vide* order dated 09.12.2021 to consider the plea of the learned Additional Attorney General of Pakistan ("AAGP"), who contended that the respondents were already granted upgradation by means of OM dated 03.10.2019. It was further averred that grant of upgradation and re-designation of the posts is a matter of policy, and unless there exists a policy, the relief regarding grant of upgradation and re-designation of the posts cannot be allowed by the High Court. Hence, the reliance of the High Court in the impugned judgment, on the OM dated 20.01.2001, was erroneous.

4. The learned AAGP argued that the learned High Court could not exercise the power of judicial review over cases arising out of terms and conditions of service of civil servants and straightaway ordered for upgradation of the posts instead of remanding the case back to the Government for their consideration and for making a fresh decision. It was further contended that *vide* Establishment Division's OM, dated 11.09.2018, all Ministries/Divisions were advised to refer to the proposal for upgradation of the post in light of orders of this Court along with specific recommendations of the MS Wing on upgradation/re-designation of posts for consideration under the policy. It was further contended that the upgradation of the posts of Control Assistant from BS-12 to BS-14 and Machine Supervisor/Data Control Supervisor from BS-14 to BS-15 was made as per policy guidelines and the learned High Court overlooked the fact that the upgradation as prayed by the present respondents would disturb the positions of System Operator and Method Officer. He further averred that the upgradation of the posts involves financial implications and, therefore, a decision in relation thereto exclusively falls within the domain of the concerned department and the proposed upgradation in the instant case will hinder the promotion of other employees, cadre, or feeding posts.

5. The learned counsel for the respondents argued that the upgradation policy was not properly followed, whereas the Establishment Division is bound to follow the guidelines of the concerned Ministry for upgradation and re-designation of posts to bring uniformity in pay scales of similar posts in different organizations. It was further contended that the MoD made a request to remove such disparity in similar organizations *vide* letter dated 19.06.2018 but the Establishment Division, MS Wing, upgraded the post of Data Control Supervisor and Data Control Assistant to BS-15 and BS-14 (instead of BS-16) and cancelled the previous recommendations. It was further argued that the upgradation of the posts of Control Assistant and Data Control Supervisor

would not disturb the positions of the System Operator and Method Officer as, after the upgradation, the feeding post of Control Assistant will become Data Control Officer (BS-16), while the System Operator is also in BS-16. However, further promotion will not depend on nomenclature but rather on the length of service in the current scale. Both the System Operator and the Method Officer serve as feeding posts for the position of Computer Programmer (BS-17). It was further contended that the Upgradation Policy dated 20.01.2001 was not enforced properly, which created serious disparity and frustration amongst the employees.

6. Heard the arguments. The minutiae of the case reveal that the respondents invoked the writ jurisdiction of the learned High Court, seeking directions against the respondents/petitioners for upgrading the posts of Control Assistant (BS-12) and Data Control Supervisor (BS-14) to Data Control Officer (BS-16) from the date when similar posts were upgraded by the Federal Government in other Departments, such as the Pakistan Military, Federal Board of Revenue, Pakistan Cricket Board, and the Public Service Commission of Pakistan. The requests made by the respondents for upgradation, in order to maintain uniformity and harmony, were forwarded by the competent authority to the Establishment Division to address the alleged discrimination. Consequently, the Cabinet Division, *vide* letter dated 03.10.2019, accorded approval for the upgradation of the posts of Data Control Supervisor (BS-14) and Control Assistants (BS-12) to BS-15 and BS-14, respectively, instead of BS-16. The record further reflects that the parent department also supported the respondents' request for upgradation to avoid any disparity.

7. At the outset, let us elucidate and discuss the gist of the four OMs as follows:

I) OM No.F.1(19)/2017-MSW-III, dated 21.02.2019. This OM was issued by the Government of Pakistan, Establishment Division, MS Wing, Islamabad, which is germane to the upgradation of the posts of Control Assistant & Machine Operator, which explicates that the proposal regarding upgradation and merger of the posts of Control

Assistant (BS-12) and Data Control Supervisor/Machine Supervisor (BS-14) to BS-16 in Pakistan Navy has been re-examined in light of the Recruitment Rules provided with the OM referred above. It has now been observed that the posts of System Operator (BS-16) and Method Officer (BS-16) are fed by Data Control Supervisor (BS-14) and Machine Supervisor (BS-14), respectively. The said information/Recruitment Rules were concealed by the MoD despite the fact that the MS Wing specifically asked "whether the proposed upgradation will cause any hindrance/effect to promotion of other employees/cadre or feeding post(s)" *vide* its OM dated 2.07.2018 and wherein the MoD confirmed the same *vide* OM No.1/19/D-11/2014 dated 27.05.2019. Hence, the upgradation of the posts of Data Control Supervisor/Machine Supervisor as earlier recommended by the MS Wing *vide* OM dated 12.09.2018 has been reviewed and the upgradation from BS-14 to BS-15 is now recommended to streamline the structural linkage of the Recruitment Rules. It was further stated that the MS Wing's OM dated 12.09.2018 stands modified to the extent mentioned above and as for the request of upgradation/re-designation of the posts of Control Assistant (BS-12) to the post of Data Control Officer, apparently it is not a case of overall restructuring of Naval Headquarters, rather it aims to bring it at par with similar nature of posts and job descriptions of other departments/organizations under the MoD, and while referring to the Supreme Court judgment in Civil Appeal No.101 and 102-P of 2011, it was further stated that the expression 'upgradation' clearly manifests that it cannot be construed as promotion, but can be granted through policy, with the further rider that since the policy of upgradation/re-designation (Circulated *vide* OM No.F.8/36/2000-R-1 dated 20.01.2001) is being dealt with and implemented by the Regulation Wing of this Division, the referring Ministry may refer the case of upgradation and re-designation of the post of Data Control Assistant to that Wing for their consideration/further processing as per the rules/policy and on the basis of a similar set-up available in the Pakistan Military Account Department (PMAD), under the MoD, if any, in order to bring harmony and symmetry.

II. Office Memorandum No.1/19/D-11/2014, dated 27.05.2019.

This OM, issued by the Government of Pakistan, MoD, is also related to the upgradation of the posts of Control Assistant & Machine Supervisor/Data Control Supervisor. The main focus here was that promotion is considered to be a major factor that keeps the HR motivated. However, in the Pakistan Navy, the senior IT staff including the Control Assistant and Data Control Supervisor/Machine Supervisor are feeling deprived of their upgradation, whereas their counterparts in the above-mentioned government departments are enjoying the same. Therefore, the case for upgradation and re-designation of the IT Staff in the Pakistan Navy was taken up with the Establishment Division (MS Wing) after being recommended by the Finance Division (MF Wing). After jotting down some justifications, the proposal for the upgradation of Control Assistant (BS-12) to (BS-16) with re-designation as Data Control Officer was forwarded, whereas the post of Machine Supervisor/Data Control Supervisor (BS-14) was proposed to be re-designated as Data Control Officer in BS-16. Finally, the Establishment Division (Reg. Wing) was requested to consider the upgradation of the IT Staff, as mentioned in paragraph 3 of the aforesaid OM on the analogy of upgradation of similar posts in PMAD under the MoD and accord the concurrence.

III. OM No.8/4/2016-R-6, dated 03.10.2019. This OM was issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division, which accorded the upgradation to the posts of Control Assistant & Machine Supervisor/Data Control Supervisor, with reference to an OM of the MoD, No.1/19/D-II/2014, dated 30.08.2019. It conveyed the approval of the Establishment Division for upgradation of Control Assistant from BS-12 to BS-14 and Machine Supervisor/Data Control Supervisor from BS-14 to BS-15

in the Pakistan Navy under the MoD. The upgradation was made subject to the fulfilment of all procedural & codal formalities, concurrence of Finance Division, framing/amendment in the Recruitment Rules and filling up the upgraded posts in the manner prescribed as per this Division's letter No.8/36/2000-R-I dated 31.12.2008.

IV. OM No. No.F.8/36/2000-R.1, dated 20.01.2001. In fact, by dint of this OM, the Government of Pakistan, Cabinet Secretariat, Establishment Division, notified the Upgradation/Re-designation of posts which further accentuates that a summary was submitted to the Chief Executive who was pleased to approve the policy for upgradation/re-designation of posts in the following terms:

"2. Henceforth, the up-gradation of posts shall be considered in the following cases only:

(a) 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.

(b) Where the duties and responsibilities attached to a post have considerably increased.

(c) Where pay scale of a post is considered grossly incommensurate with the qualifications and experience prescribed for appointment to that post.

(d) Up-gradation of a post on personal basis may not be allowed except if any officer, already holding on regular basis a higher-grade post, is posted against a post, carrying lower grade, due to exigencies of service.

3. Subject to the observance of the parameters referred to in sub-paras (a)-(d) above, the future proposals for the up-gradation/re-designation of posts shall be processed as under: -

(i) The cases for up-gradation/re-designation of the posts in BS-1 to 19 will be decided by the Finance Division in consultation with the Establishment Division. However, the decision about the proposed up-gradation/re-designation of posts in BS-1 to 19 will be taken at the level of Secretary, Finance Division and the Secretary, Establishment Division.

(ii) Cases of up-gradation/re-designation of posts in BS-20 and above will be submitted to the Chief Executive for approval but after seeking the concurrence of the Finance Division and the Establishment Division.

4. It may also be pointed out that the up-gradation of posts does not mean automatic up-gradation of the incumbents of these posts as well. In fact, the appointment against the upgraded post is required to be made in the manner prescribed in the Recruitment Rules for that particular post and with the approval of the competent authority therefore.

5. The above instructions may please be noted by the Ministries/Divisions for strict compliance thereof.

6. This supersedes Establishment Division's O.M No.8/130/91-R.I dated 12th May, 1992 on the subject of up-gradation of posts".

8. The minutiae of the upgradation policy insinuate that the grant of upgradation of posts lies exclusively within the sphere of influence and jurisdiction of the relevant Ministry or

Division. Of course, if the concerned Ministry or Division is satisfied that the endeavour of upgradation of a post is justifiable and falls within the prescribed parameters, then a proposal in this regard is to be initiated and forwarded to the Finance Division for concurrence. The approval of the Finance Division, however, is subject to the sanction of the Establishment Division. The essence of the upgradation policy is to upgrade certain posts to rationalize the administrative structure of a Ministry/Division or a Department, making it more effective or bringing uniformity to the pay scales of similar posts across different organizations. This applies where the duties and responsibilities attached to a post have considerably increased, and the pay scale of a post is considered grossly incommensurate. After detailed discussion, the learned High Court concluded that the respondents are performing the same duties as employees in other federal government departments whose posts have already been upgraded, and when the qualification and duties for both posts were identical, the respondents could not be treated differently. Since the case of the respondents had already been forwarded to upgrade their posts from BS-12 and BS-14 to BS-16, therefore, to ensure uniformity of pay scale for similar posts across different organizations, the directions were issued by the High Court to upgrade the posts in light of the upgradation policy dated 20.01.2001, as implemented in other departments, including the MoD.

9. We are mindful that the upgradation of a post is not a vested right, rather it stems from a policy decision intended to benefit a particular set of employees under the scheme embedded in the policy. Upgradation cannot be mixed up with promotion. In the case of upgradation, the employee continues to hold the same post without any change in his duties, but he is accorded a higher pay scale in order to mitigate the distress associated with stagnation due to a lack of progression or promotional avenues. Once the Government announces a policy, it is also responsible for enforcing such policy across the board to accord the benefit of the policy to all

those who are eligible under it and may be benefited because of it. No doubt, the Court cannot interfere in the policymaking domain of the Government, but when a widespread and comprehensive policy is announced to benefit employees, it should be implemented bigheartedly and generously, without adding any ifs and buts or discrimination that can stifle the main objective of the policy. In fact, an efficient policy implementation aligns with the actual targets and rationales of a policy to operationalize it and ensure its optimal impact rather than creating hindrances in its swift implementation. In the present cases, not only did the department of the respondents fully supported the upgradation, but also communicated with the concerned quarter in order to espouse the interest of their employees. The upgradation policy was approved by the Chief Executive, which should have been implemented in letter and spirit. However, it has often been observed that despite validly approved policies with a broad spectrum, instead of being implemented conscientiously within their purview and scope, the Finance Department or other departments, loyal more than the king, raise unwarranted objections to nullify the effect of these policies, rendering them unworkable or redundant; a demeanor that ought to be obviated.

10. The literal connotation of the word “discrimination” essentially refers to different treatment of the same kind or class of persons or behaving less favourably towards them. During the course of employment, discrimination occurs when an employer treats an employee less favourably or disadvantageously than others without any intelligible differentia. Equal treatment with equal opportunity is a cornerstone for an egalitarian society, while acts of discrimination in the workplace seriously undermine a harmonious working environment and create unrest among employees discriminated who are deprived of perks and privileges. In fact, the doctrine of equal treatment underscores the broad-spectrum canons envisioned for the protection of human rights. The philosophy of equality within the same

class or category of workers at the workplace evokes equal opportunities to work. Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, establishes a tremendous benchmark for maintaining equality amongst the citizens, stating that all citizens are equal before the law, and are entitled to equal protection of the law, and there shall be no discrimination on the basis of sex. However, the same article also provides a further clause which articulates that nothing in this Article shall prevent the State from making any special provision for the protection of women and children. This article cannot be interpreted with a narrow-minded, pedantic, or lexicographic approach to restrict or diminish its wide-ranging scope. Therefore, similar laws, rules, and policies should apply uniformly to all in similar situations, without any discrimination or distinction between one employee and another, within the sphere of legislation or policy, provided that their status is substantially equivalent and indistinguishable. Even in cases of classification or categorization, such distinctions must not be arbitrary but should be based on reasons, qualities, and characteristics that establish an intelligible differentia for those who have been left out of the arena or who have been excluded, with clarity regarding the objective sought to be achieved.

11. In wake of the above discussion, we do not find any illegality, perversity or impropriety in the impugned judgment. The appeal is dismissed accordingly.

Judge

Judge

Islamabad

06.11.2024

Khalid

Approved for reporting