

IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

Appeal No. 2652(R)/CS/2012

Date of Institution: 02.08.2012

Date of Hearing: 08.07.2013

Date of Judgment: 10.07.2013

APPELLANT: Khurshid Ahmad, Director-MIS BPS-19, National Highway Authority, Islamabad.

RESPONDENTS: 1. The Chairman, NHA, Islamabad.
2. The Secretary Establishment Division, Islamabad.
3. The Secretary Finance Division, Islamabad.

BEFORE: Mr. Mehmood Salim Mehmood, and
Mr. Muhammad Ali Afridi, Members.

PRESENT: Appellant with Mr. Khalid Munir, Advocate.
Mr. Abid Hussain Ranjha, Counsel for NHA.
Mr. Zafar Mahmood, S.O. Establishment Division for
respondent No.2 a D.R.

JUDGEMENT

MUHAMMAD ALI AFRIDI, MEMBER: The appellant was aggrieved by non consideration of his departmental representation dated 04.04.2012 submitted by the appellant for upgradation to the post of Director-MIS, BPS-19 to BPS-20.

2. The appellant has prayed that his post may be upgraded from Director-MIS, BPS-19 to BPS-20 as personal in the interest of justice.

3. Briefly stated the facts of the case are that the appellant joined NHA as Deputy Director (BS-18) on 02.08.1988. Later on due to non availability of promotion this post was upgraded to Director (MIS) BS-19 on 29.05.2002 after 14 years. The appellant has prayed for upgradation of the post of BPS-20 as his further career advancement is blocked as the post of Director (MIS) is a dead-end position and no

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post of G.M. is available for promotion. The appellant preferred departmental appeal dated 04.04.2012 which has not been responded to despite lapse of statutory period of 90 days. Hence this appeal.

4. The Learned counsel for the appellant contended that in almost all the departments of Governments, Federal or Provincial the officers/officials in the Computer department have been upgraded whereas he has been ignored. He further argued that the Computer Programmer in FBR have been upgraded to the post of Director BPS-20 vide its Notification dated 23.11.1998. Ministry of Information Technology, the upgradation to BPS-20 was allowed on 30.07.2008. The learned counsel further cited the cases of PMAD Notification No.1/8/D-7(MAG)/201- dated 12.05.2010 and another Notification No.8/1/D-7(MAG)/2008/1881 dated 25.06.2010 wherein some posts of IT Personnel of Military Accounts Department were also upgraded from BS-14 to BS-16 and BPS-12 to BS-16. The learned counsel also relied on the FST's Judgment 29.07.2011 in Appeals No.1838 to 1852(R)(CS)2010.

5. The appeal has been resisted by the respondents. The learned counsel for the respondents stated that NHA being an autonomous body has nothing to do with such precedents in other Government departments as NHA being an autonomous body is not bound to follow the policies of other Government departments. He further contended that precedents quoted by the appellant are with regard to civil servants of Ministries/Divisions/Departments to which the policy of upgradation apply and the same policy is not applicable to NHA employees being an autonomous body. The learned counsel further

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pleaded that the post of appellant of Deputy Director (MIS) has already been upgraded personal to him on 29.05.2002 and no post can be upgraded twice under NHA rules. The Learned counsel for the respondents did not address arguments on the issue involved in this case as such and only confined to jurisdiction of FST.

6. We have heard the learned counsels for the parties and have also perused the record.

7. The learned counsel for the appellant has cited many examples wherein upgradation had been allowed to the various categories of employees either by Government itself or on the directions of this Tribunal, upheld by the Hon'ble Supreme Court of Pakistan. The Learned counsel for the appellant has placed on record various orders of upgradation and re-designation. As regards the arguments of the respondents counsel regarding jurisdiction of the FST in the instant case is not tenable as this Tribunal is hearing the cases of NHA and recently Judgment was passed by this Tribunal in Appeal No.208(P)(CS)/2011 in the case of Mr. Yousaf Ali Vs. NHA in his seniority case.

8. Federal Service Tribunal has passed a consolidated Judgment dated 08.05.2012 in Appeals No.1459 to 1461(R)(CS)/2011 where the post of Director (MIS) has been upgraded to BPS-20 as has been held by Hon'ble Supreme Court of Pakistan in its Judgment 1996 SCMR 1185 that:

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"If a Service Tribunal or Supreme Court of Pakistan decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of others civil servants, who may have not taken any legal proceedings. In such

case, the dictates and rules of good governance demand that the benefits of such Judgment by Service Tribunal, Supreme Court be extended to other civil servants, who may not be parties to litigation instead of compelling them to approach the Service Tribunal or any other forum.”

9. The record also reveals that Secretary NHA (Ch. Khalid Naseem) in his note vide Dy.No.2664/Mem/Admn/NHA/12 (Page-6) dated 12.04.2012 addressed to Chairman NHA, states as under:

“Sub:- Appeal for Further Advancement in Career: M. Khurshid Ahmed, Director (MIS).

26. The above revised (withdrawn) status, provided a decent pyramid for the MIS Section, however, it was also lacking in as much as no post of GM was earmarked. This appeared desirable as intake at the level of AD(MIS) requires reasonably high qualification viz MCS/MIT or BCS (4 years) and such individuals deserve elevation at least upto the level of BS-20 during their career span.

27. Since Mr. Khurshid, Director (MIS) has rendered substantial service in BS-18 & 19 (Paras 1-2); he deserves elevation to GM (MIS, BS-20). This could be achieved through any of these options:-

- I. A post of GM (MIS, BS-20) may be specifically created and filled through promotion of Mr. Khurshid after due process of DPC.
- II. One of the 2 posts of Director (MIS) catered for in Stage-II of NHA's restructuring, presently held in abeyance, allowed to be activated and also upgraded to GM (BS-20) as personal to Mr. Khurshid and to revert to its original status ie BS-19 on vacation by him.
- III. One of the 2 posts of Director (MIS) catered for in Stage-II allowed to be activated and also upgraded to GM (BS-20) and, thereafter, filled through promotion of Mr. Khurshid after due process of DPC. This post of GM may be retained as a permanent arrangement.

Note: Options I & III might also require incorporation of a suitable provision in NHA's Service Rules.

28. The Option-III is recommended for consideration and approval, please.

Sd/-
(Ch.Khalid Naseem)
Secretary NHA
12.04.2012

Chairman NHA

Through Member (Admin)”

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10. The Federal Service Tribunal had allowed the claim of many civil servants for upgradation. The Apex Court had upheld the findings of the Tribunal. The respondents are under legal and constitutional obligation to resolve the claim of the appellant especially when upgradation has been allowed to his contemporaries in other departments of Federal and Provincial Governments. Moreover the appellant has first class academic record and possess Master's degree in Computer Science and have also done M.Phil in Business Administration. This is unfair treatment to an officer who is highly qualified to deprive him from further advancement in his career.

11. For the reasons stated above, there is absolutely no justification for depriving the appellant from upgradation 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 upgradation within a period of three months from the date a copy of this ^{Submitt} Tribunal is received in the office of the respondents.

There shall be no order as to cost. Parties be informed.

Sd-
MEMBER

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MEMBER

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