

Judgement Sheet
IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

Appeal No.175(R)CS/2012

Date of Institution : 23.01.2012
Date of Hearing : 11.12.2014
Date of Judgement : 05.01.2015

Appellant : **Mirza Nadeem Baig**, Upper Division Clerk O/o The Commissioner
Inland Revenue, IP/TF Division, RTO, Multan.

Respondents : 1. Government of Pakistan through Secretary, Establishment
Division, Islamabad.
2. Federal Secretary, Finance Division, Islamabad.
3. Chairman, Federal Board of Revenue, Government of
Paksitan, Islamabad

Before : Dr. Nazir Saeed, and
Mr. Muhammad Javed Iqbal Kasi, Members.

Present : Mr. M. Ramzan Khan, Counsel for the appellants.
Mr. Talat Abbas, Standing Counsel for the respondents.
Mr. M.D Shahzad, Counsel for the respondent No.3

JUDGEMENT

DR. NAZIR SAEED, MEMBER: The appellant has filed the instant appeal against non-consideration of his representation dated 28.9.2011 whereby he requested for upgradation of his post of UDC from BPS-09 to BPS-13 on the basis of anomaly created due to the up-gradation of the post of Junior Auditors from BPS-07 to BPS-11 carrying the lesser qualification of Matriculation. It thus jumped over the post of UDC (BPS-09) carrying the higher qualification of Intermediate. The representation of the appellant remained unresponded by the respondents during the statutory period. Hence the instant appeal.

2. The facts narrated in the memo of appeals are that the post of the Junior Auditors who were performing identical duties in the Accounts Department of Government of Pakistan were placed in BS-05 and were later awarded BS-07. Then these posts were further upgraded from BS-07 to BS-11 vide Order dated 1.4.2010 whereas the UDCs having the basic qualification of Intermediate for joining the cadre and were performing their duties in the Inland Revenue Services were altogether ignored. Irrespective to the fact that initially the post of Junior Auditor was at par with the post of UDC under the same job description. But it was strange to mention that the post of Junior Auditor was upgraded to the next four steps from BS-07 to BS-11 by ignoring the post of UDC which may be against the norms of justice.

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3. The learned counsel for the appellant stated that in view of the foregoing facts, coupled with documentary evidence, it was patently proved that the appellant had been treated discriminately. It was also stated that in the FBR, the next channel of promotion of UDC's were Supervisor who had now been granted BS-14 by the FBR vide Order dated 26.2.2011. Though the Supervisors who were previously placed in BS-10 and UDC's were working in BS-07, there was a difference of 3 pay scales between them but at present Supervisors are in BS-14 and UDCs are in BS-09 which means that 5 pay scales have been cropped up, whereas next promotion of UDC is a supervisor, which is plainly unjustified. In support of his arguments, the learned counsel placed reliance on the cases reported as 2004 SCMR 630 and 2004 PLC(CS) 1453 in which it was held that no one shall suffer for the act of omission of public functionaries. The learned counsel also referred to the Notification dated 20.5.2014 which was issued by the KPK Government during the pendency of the instant appeal, whereby the other contemporaries of the appellant in the province of KPK under the same job description stand upgraded which caused the frustration amongst the same category of employees in the Federal Government.

4. The respondents vehemently opposed the appeal by controverting the facts as narrated in the memo of appeal. It was stated that the post of UDC and LDC had already been upgraded in the financial year 2007-2008 and as far as it was concerned for the posts of Junior Auditors, it was stated that the Recruitment Rules for the said post were currently under consideration in the Regulations Wing of the Establishment Division with the qualification of bachelor's degree which were annexed with the objections filed in this appeal. It was also argued by the respondents that according to upgradation policy circulated vide O.M dated 20.1.2001, the upgradation shall be considered on certain circumstances which restrained the proposal to upgrade the post of UDC as it could not be covered in the said policy.

5. We have heard the learned counsel for the parties and have also perused the

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6. Irrespective of the submissions made by the respondent No.3, it is noted that they have already sought concurrence regarding upgradation of the post of (LDCs from BS-07 to BS-11) and (UDC from BS-09 to BS-13) vide Office Memorandum No. C.No.25(20) IR.III/2012 dated 26th March, 2013 from the Establishment Division which remained unresponded. We have also perused the Notification dated 20.5.2014 issued by the Government of KPK, Finance Department (Regulations Wing) whereby the other contemporaries of the appellants in the province of KPK stand upgraded with immediate effect which is also not controverted by the respondents. The relevant portion of the Notification is reproduced as follows:

**"GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

Dated Peshawar, the 20-05-2014

NOTIFICATION

NO.FD/SO(FR)10-22/2014 *The competent authority has been please to accord sanction to the upgradation of pay scales of the following posts wherever exist, in all the Departments/Office (except Civil Secretariat) of the Government of Khyber Pakhtunkhwa with immediate effect:*

S.No.	Nomenclature of the post	Existing Scale	Upgraded Scale
1	Superintendent	BS-16	BS-17
2.	Assistant	BS-14	BS-16
3.	Senior Clerk	BS-09	BS-14
4.	Junior Clerk	BS-07	BS-11

- i. *The pay of the existing incumbents of the posts shall be fixed in higher pay scales at stage next above the pay in the lower pay scale. All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner."*

Sd/-

**SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT"**

Sd/-

7. It is observed that the appellants felt aggrieved of the discriminatory treatment meted out to them when similar post involving identical duties was upgraded by the Provincial Government in the year 2014 by issuing aforesaid Notification No.FD/SO(FR)10-22/2014 while the appellant alongwith others belonging to the Federal Department/Ministry have been treated with different yard stick against Article 25 of the constitution which clearly states that all citizens are equal before law and entitled to equal protection of law. Thus a feeling of discrimination has been created between the appellant and their other counterparts under the jurisdiction of Province (i.e KPK) under the same job description. The parity of treatment could only

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be established under the law if same prospects and career planning is adopted equitably. In this regard, reliance is placed on the case reported as 1990 PLC(CS)156 in which it was held as follows:-

“where a post is a specific, specialized and an ex-cadre post and that is upgraded or all the posts in a cadre are upgraded, the incumbent of the post or all the incumbents would be placed in higher grade.”

8. We have also perused the judgment of the Hon'ble Supreme Court in Civil Petition No. 40 of 1999 regarding disparity amongst the same class of civil servants.

The operative part of the judgment is reproduced as follows:-

“Under Article 37 and 38 of the Constitution of Pakistan, the State is bound to promote social justice, social and economic well being of the people and particularly under clause (c) of Article 38 it is the obligation of the State to reduce disparity in the income and earnings of individuals, including persons in various classes of the service of Pakistan, thus, it is the duty of the State to remove disparity and discrimination in Pay Scales of similarly placed persons in various classes of service of Pakistan. (Underlined to provide emphasis)

In view of the above, we dispose of this petition with the direction to the respondents to redress the grievance of the petitioners in view of Article 25(1) read with Article 38(c) of the Constitution of Islamic Republic of Pakistan and to resolve the long standing issue of disparity in pay scales of various classes of service of Pakistan, within 4 months from the date of receipt of this order.” (Sic)

9. As a sequel to the above discussion, the respondents are directed to take necessary/appropriate steps to finalize the matter by removing the disparity in the pay scales of LDC and UDC which has occurred among the similar posts of different organization of the Federal Government as well as of the Provincial Governments. The Constitution of Islamic Republic of Pakistan vide Article No.25(1) read with Article 38 also states that disparity in pay scales of various classes of service of Pakistan must be resolved. The process shall be completed by the respondents within a period of two months from the date of receipt of this judgment in their offices.

10. The appeal is disposed of in the above terms.

11. There shall be no order as to costs. Parties be informed.



MEMBER

MEMBER

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IN THE FEDERAL SERVICE TRIBUNAL, 47-ATTATRUK AVENUE,
SECTOR. G-5/2, ISLAMABAD.

D. No. 4627

Dated. 04 MAY 2015

SUBJECT:- ORDER PASSED IN APPEAL NO. 175(R)CS-2012 FILED BY MIRZA
NADEEM BAIG VS ESSTI. DIVISION ETC.

A certified copy of the judgment passed by this Honourable
Tribunal in the appeal noted in the subject is sent herewith for your
information/compliance.

By Order



REGISTRAR
051-9216214

To,

- ✓ 1. Mirza Nadeem Baig, R/o House No.309, Ward No.5, Mohallah Kora Taili (New Makkah Market) Inside Haram Gate, Kalay Mandi **Multan City**.
2. Government of Pakistan through Secretary, Establishment Division, Islamabad.
3. Federal Secretary, Finance, Islamabad.
4. Chairman, Federal Board of Revenue, Islamabad.
5. The Secretary, Establishment Division, Government of Pakistan, Islamabad.
6. The Solicitor, Law & Justice Division, Islamabad.