

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-2949 of 2016
(Mukhtar Ali Abro & others v Federation of Pakistan & others)
Constitutional Petition No. D-2950 of 2016
(Hasnain Raza & others v Federation of Pakistan & others)
Constitutional Petition No. D-2951 of 2016
(Faheem & others v Federation of Pakistan & others)
Constitutional Petition No. D-2952 of 2016
(Nazakat ali Shah v Federation of Pakistan & others)

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order 16.4.2025

M/s. Asghar Malik advocate along with Herchand Rai advocates for the petitioner.
Ms. Wajiha Mehdi Assistant Attorney General.

ORDER

Adnan-ul-Karim Memon, J: Petitioners claim to be Senior Research Assistants/Research Assistant/Assistant Inspectors/Inspector at the Marine Fisheries Department, under the Ministry of Ports and Shipping, have approached this Court by seeking this court’s order to upgrade their job positions and salaries, submitting that the refusal by the Marine Fisheries Department and the Ministry of Ports and Shipping, along with the potential inaction of the Cabinet Secretariat and the Finance Division, constitutes discrimination and violates their fundamental/service rights as guaranteed by the Constitution of Pakistan. The Petitioners highlight their current BPS-07/10/11/12 status and their regularization or promotion to these roles in 2008. They pointed out a past (2003) recommendation to elevate Research Assistant and Assistant Biochemist posts to BPS-11 and onwards, which was ultimately rejected. Despite repeated appeals to the concerned authorities, their posts have not been upgraded. The Petitioners emphasized that the up-gradation of various positions within the Marine Fisheries Department remained unresolved. They submitted that the respondent department itself proposed upgrading the Research Assistant role to BPS-14 in 2014; and that employees in similar roles within other government bodies and provincial administrations have successfully obtained higher pay scales through legal means. To support their claim of discrimination, the Petitioners cite court precedents emphasizing equal treatment for individuals in similar roles with comparable duties. They also provide examples of Research Assistants and analogous positions in other federal and provincial entities being classified at BPS-14 to BPS-16, including the Pakistan Computer

Bureau (where the post was upgraded to BS-16 in 2005), the National Physical and Standards Laboratory, Pakistan Aeronautical Complex, Establishment Division, Civil Hospital Karachi, Punjab Public Service Commission, and various upgraded positions. In their plea, the Petitioners request a declaration that the respondent's denial of their post up-gradation is unlawful, illegal, in bad faith, and discriminatory. They also seek a directive compelling the respondents to upgrade the Research Assistant post to BPS-11 and onwards, based on the 2003 recommendation, with all associated benefits. Furthermore, they request an order for their subsequent up-gradation to BPS-14 or a higher scale, ensuring parity with similarly qualified civil servants in other government departments. In support of their contention they relied upon the unreported cases of Pakistan Railway through its Chairman v Muhammad Amin in **Civil Petition No. 512 of 2022** and Secretary to the Government of Pakistan Establishment Division Islamabad and another v Muhamamd Ahmed Khan & others **2025 SCMR 434**.

2. The petitioners' counsel submitted that the respondents' discriminatory actions have violated fundamental rights of the petitioners and resulted in a loss of potential income, which constituted a deprivation of property. He further argued that due to the Federal Service Tribunal's (FST) dismissal of their appeal for want of jurisdiction, as dictated by Supreme Court precedent, resorting to this Court's constitutional jurisdiction is the only viable legal recourse available to the petitioners. He prayed for allowing the petition by directing the respondents to either promote the petitioners in the next rank or upgrade their posts in according with the policy decision made in 2003 and onwards.

3. In their initial response, the Respondents raised preliminary objections, asserting that the Petitioners lack the legal standing (locus standi) and a valid legal basis (cause of action) to file this petition, suggesting the case is based on ill intent (mala fide). They emphasized that any up-gradation of posts necessitates the agreement of the Finance Division and the Establishment Division, along with approval from the relevant authority. They clarified that a post's up-gradation does not automatically elevate the current holder and that appointments to higher-grade positions must adhere to establish recruitment regulations and approval procedures. The Respondents further state that Ministries and Divisions cannot unilaterally upgrade posts without the concurrence of the Finance Division (Regulations Wing) and the Establishment Division, as well as the Prime Minister's approval. They outlined the policy considerations for up-gradation, which include rationalizing administrative structures, increased job responsibilities, and significant discrepancies

between pay scales and required qualifications/experience, submitting that personal up-gradations are generally not permitted under the law. They also explained that future up-gradation proposals for BPS-1 to 19 posts will be decided by the Finance Division in consultation with the Establishment Division and that appointments to any upgraded positions must comply with the Civil Servants (Appointment, Promotion, and Transfer) Rules, 1973. While acknowledging some of the factual background presented by the Petitioners, the Respondents clarified that the Marine Fisheries Department (MFD) did forward consolidated up-gradation proposals, including one for Research Assistants to BPS-14, to the Ministry of Ports & Shipping for consideration by the Establishment Division and Finance Division. They also mentioned earlier, delayed proposals due to the anticipated devolution of the Ministry of Livestock & Dairy Development. Crucially, the Respondents denied the Petitioners' claims of mala fide treatment and discrimination by the Marine Fisheries Department (Respondent No. 2) and the Ministry of Ports & Shipping (Respondent No. 3). They maintained that the authority to decide on up-gradation rests with the Establishment Division (Respondent No. 1) and requires the agreement of the Finance Division (Respondent No. 4). They asserted that the up-gradation of MFD posts is currently under consideration by these central bodies, not solely by Respondents No. 2 and 3. The Respondents request that the Petitioners provide evidence to substantiate their claims of discrimination, which they failed to do so. Furthermore, they stated that the MFD did address the Petitioners' appeal and submitted a report to the Establishment Division. They submitted that the Establishment Division had requested the recruitment rules for comparable positions in other government entities, which the MFD had sought but has not yet received the response. The Respondents reiterated their stance that Respondents No. 2 and 3 had not engaged in discriminatory practices and now are operating within legal and policy frameworks. The learned AAG concluded by arguing that the Petitioners lack the necessary legal standing and a valid cause of action to seek intervention from this Court under Article 199 of the Constitution. She prayed for dismissal of the instant petition.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. The primary argument from the learned AAG is that any post-upgradation necessitates approval from the Finance and Establishment Divisions and the relevant authority, emphasizing it's not automatic for current employees and adheres to specific regulations. Furthermore, Ministries lack the independent power to upgrade posts without the central

agreement and the Prime Minister's endorsement. The policy governing up-gradation takes into account structural improvements, increased responsibilities, and pay scale inconsistencies, generally disallowing individual-based up-gradations. However, the Respondents also acknowledged that the Marine Fisheries Department (MFD) had already submitted up-gradation proposals for Research Assistants to BPS-14 to the relevant central bodies, with previous proposals facing delays, and that this matter is currently under their review. If this is the position of the case, these cases need to be referred back to the competent authority within the Respondents' administration. This authority needs to examine the issue of either upgrading the Petitioners' posts or considering them for promotion according to the prevailing recruitment rules, provided they meet the eligibility and fitness criteria for the position as requested, and after providing them an opportunity to be heard if they are still employed in the respondent department. This approach aligns with the Supreme Court's decisions in similar cases as discussed *supra*. Consequently, these petitions are being disposed of under these specified terms. Let a copy of this order be transmitted to the respondents for compliance.

JUDGE

Head of Constitutional Benches