

THE HIGH COURT OF SINDH, KARACHI

Before:
Justice Mohammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

CP No D-561 of 2018

[Muhammad Yousuf Malik and others v. Province of Sindh and others]

Petitioners : through Mr. Ali Asadullah Bullo, Advocate.
 Respondents : through Mr. Ali Safdar Deepar, AAG
 Dates of hearing : 30-04-2025
 Date of order : 30-04-2025

ORDER

Adnan-ul-Karim Memon, J. The Petitioners are asking the court to declare the BS-17 seniority list from June 15, 2017, illegal and to nullify it. They also want the court to order the Respondents to convene a Departmental Promotion Committee meeting for promotions from BS-17 to BS-18 within the Accounts Branch and to consider their cases for promotion. Furthermore, they are requesting the court to direct the Respondents to place their names in the BS-17 seniority list effective from the date they were upgraded, positioning them above individuals who joined BS-17 after their upgradation. Finally, they are seeking a court order compelling the Respondents to change their job title from Senior Accountant to Accounts Officer.

2. Senior Accountants (BS-17) in the Local Government Department since 1993, the Petitioners experienced service upgrades to BS-16 in June 2011 and BS-17 in October 2012 following this Court directive. Despite these upgrades and corresponding pay adjustments, they were never correctly positioned in the BS-16 and BS-17 seniority lists within the Accounts Branch, remaining listed under BS-11. Their designation also remained Senior Accountant, not Accounts Officer, despite attaining gazetted officer status. The Petitioners submitted that the Respondents neglected to hold regular Departmental Promotion Committee (DPC) meetings, choosing instead to upgrade posts without ensuring career advancement. They emphasized that colleagues in other departments received routine promotions with protected seniority. Despite a 2015 directive for biannual DPC meetings, none were held for their group. Their repeated requests for proper BS-17 seniority placement from their upgrade date, redesignation to Accounts Officer, and associated benefits were ignored. They highlighted precedents in other government bodies, including the Karachi Water & Sewerage Board, where similar roles were redesignated upon grade elevation. They cite Supreme Court

and High Court rulings mandating regular DPC meetings. The Petitioners alleged discriminatory treatment, asserting that certain officers received preferential treatment while they were denied proper seniority, impeding their promotion opportunities. Their counsel argued for equitable promotion quotas for the crucial Accounts Branch. They objected to being identified as BS-11 officers (upgraded to BS-17) in transfer orders, which they believed undermined their BS-17 status. They now seek re-designation as Accounts Officers to align with their responsibilities and facilitate future career progression. Feeling aggrieved by the final seniority list of June 15, 2017, which omitted their names, the Petitioners filed this petition, claiming it infringes upon their fundamental rights under Articles 4, 9, 18, and 25 of the Constitution, and seek a writ of mandamus due to the absence of other effective legal recourse.

3. The petitioners' lawyer stated that the petitioners were initially hired as Accountants in BS-11. Subsequently, their position was upgraded to BS-16, and later, by an order dated October 25, 2012, it was further upgraded to BS-17, with their salary adjusted accordingly. However, the lawyer pointed out that the respondents failed to include these individuals in the seniority list of BS-17 officers in their capacity as Senior Accountants. Petitioners' counsel now seeking re-designation of the post of the petitioners to Accounts Officer for career advancement, as the Petitioners challenged the omission of their names from the June 15, 2017, seniority list, alleging petitioners' fundamental service rights violations. He prayed to allow the petition.

4. The Assistant Advocate General (AAG) submitted that the Petitioners were initially in BS-11 and were upgraded to BS-16 in June 2011 and then to BS-17 in October 2012 for pay purposes only, following this Court's orders and Local Government Board recommendations. Their promotion from BS-11 to BS-16 will be considered on merit in a DPC based on seniority-cum-fitness. The AAG argued that since the upgradation was for pay and pension, the Petitioners cannot be treated as substantive BS-17 officers and requested the petition's dismissal for lack of jurisdiction, justification, and merit.

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

6. Whether an Accountant's position undergoes two upgrades (BS-11 to BS-16, then to BS-17) and legally forms the basis for further promotion and seniority in the subsequent grade? Also, was the upgradation solely for pay and pension benefits?

7. Upgradation (pay raise, same duties) differs from promotion (higher post, new duties) and does not automatically grant seniority. Promotion from an

upgraded post requires substantively holding it. If the BS-17 upgrade was solely for pay/pension (per respondent orders), DPC promotion is unlikely without formal re-designation, despite higher duties. Upgrading is a policy, not a right, for stagnation relief, distinct from promotion (same post, higher pay). Fair policy implementation is crucial. Here, the department and Board approved two upgrades, but the AAG opposes further promotion on an upgraded post, citing pay/pension purposes only. Valid post upgradation targets the post, not the holder; doesn't automatically upgrade incumbents (requires Recruitment Rules); is not for individual benefit. As per the *Syed Munawar Ali* case (**2016 SCMR 859**), post-upgradation needs restructuring, reform, or public interest; it is post-specific, not for personal gain or lateral moves, and is illegal without these justifications. Further, regarding upgradation, the Supreme Court in the *Anwar-ul-Haq* case (**2017 SCMR 890**) clarified that it is often mistaken for promotion. Promotion to a twice-upgraded post, bypassing the required selection process under the recruitment rules, is almost impossible. The established legal principle is that civil/public/government servants are appointed/promoted to posts, not just grades, as further clarified by the Supreme Court in *Ali Azhar Khan Baloch*, case (**2015 SCMR 456**), requiring no further discussion here.

8. Considering the case's specifics, ordering further promotion on a twice-upgraded post is not possible unless recruitment rules permit it. However, the respondent department must address the petitioners' seniority within three months, considering their current substantive roles (if not purely for pay/pension fixation) in their substantive rank, after hearing all parties involved. This petition, along with pending application(s), is disposed of accordingly.

JUDGE

HEAD OF CONST. BENCHES