

IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-2872 of 2021
(Amir Ali & others v Federation of Pakistan & others)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 29.05.2025

Mr. Ali Asadullah Bullo advocate for the petitioners.
Ms. Wajiha Mehdi, Assistant Attorney General.

ORDER

Adnan-ul-Karim Memon, J: The petitioners seek the following relief (s) from this court:

Declaration that the non-upgradation of MIS/IT cadre positions in FBR is illegal and violates fundamental rights.

Directions to respondents to upgrade the MIS/IT cadre of FBR, adopting the analogy mentioned in the Office Memorandum dated January 24, 2013, and grant consequential benefits.

Directions to respondents to act strictly following the law and refrain from any coercive actions against the petitioners.

Any other relief the court deems fit in the interest of justice.

2. The petitioners, employed in various IT-related roles (Computer Programmer BS-17, MIS Officer BS-16, Key Punch Operator BS-10) since 1994, claim that the Federal Board of Revenue (FBR) has unfairly denied them post-upgradation in terms of an Office Memorandum dated 24 January 2013.

3. The learned counsel for the petitioner argued that an existing government policy for upgradation, in effect since 2001, has been applied to other departments but not to the FBR. This policy permits upgradation to rationalize administrative structures, compensate for increased duties, or address inadequate pay scales. The petitioner's counsel also highlighted discrimination, citing instances where similar positions, such as Data Coder, were upgraded to MIS Officer (BS-16) in other departments of the Government of Pakistan, while their requests were ignored. This, he contended, constitutes a denial of financial benefit and violates their right to equal treatment under Article 25 of the Constitution. Furthermore, he pointed out the FBR's failure to act on official recommendations. He mentioned a 2013 Office Memorandum from Respondent No. 1 that acknowledged the need to address service structure anomalies arising from upgradations, and a 2018 Office Memorandum from Respondent No. 2 that urged ministries to resolve IT/MIS cadre disparities. He further submitted that despite these directives and their appeals, no action has been taken for positions at BS-17 and above within the FBR. The petitioner's counsel asserted that this denial is a violation of their vested

rights and due process, arguing that a right to upgradation has been established in their favor. He claimed that the FBR's actions are arbitrary and unlawful, infringing upon their constitutional rights to freedom of profession (Article 18) and equality (Article 25). He also accused the respondents of misconduct and inefficiency for intentionally disregarding their rights and acting capriciously, despite their unblemished service records spanning over two decades. He prayed to allow the instant petition.

4. The learned AAG first asserted that the petition is not maintainable because it concerns the terms and conditions of civil servants. She added that this falls under the exclusive jurisdiction of the Federal Service Tribunal, as stipulated by Article 212 of the Constitution and upheld by Supreme Court judgments (e.g., **2015 SCMR-456**). The AAGs clarified that up-gradation is generally reserved for isolated cadres without existing promotion avenues, as outlined in their 2018 Office Memorandum. She argued that the petitioners' cadre *does* have clear promotion opportunities, with career progression available up to BS-20 under SRO 953(I)/2012. She also cites Supreme Court rulings (Civil Appeals No. 101 & 102-P of 2011), which state that upgradation cannot be solely for an individual's benefit or promotion. Instead, it must be justified by a demonstrable need for departmental restructuring, reform, or public interest exigencies. The AAG maintains that no fundamental right of the petitioners has been infringed, thereby eliminating any valid cause of action for the current petition. Finally, learned AAG argues for dismissal of the petition.

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

6. The petitioners' case relies entirely on the Office Memorandum (O.M.) dated January 24, 2013, which upgraded the post of National Savings Officer from BS-16 to BS-17. However, this upgrade was conditional, and the policy for upgrading or re-designating posts has specific requirements, as established by the Supreme Court's judgment on February 17, 2016, in the Regional Commissioner Income Tax case. It is important to understand that "up-gradation" is distinct from "promotion." An upgrade applies to the *post itself*, not the individual occupying it. Upgrading a position cannot be used to benefit a specific person by promoting them to a higher post or by providing opportunities for lateral appointments, transfers, or postings. For the government to justify an up-gradation, it must demonstrate a need for departmental restructuring, reform, or to meet an exigency of service in the public interest. Without these preconditions, an up-gradation is not permitted.

7. In this specific case, the petition appears to be in conflict with the Federal Government's up-gradation policy outlined in the Establishment Division O.M. dated September 11, 2018. Furthermore, the petitioners' cadre already has a clear

path for promotion under the Recruitment Rules notified on August 2, 2012, which provide for career progression up to BS-20. The respondents have pointed out that the petitioners are only citing paragraph 1 of the O.M. dated February 2, 2012, while deliberately omitting paragraph 2, which clearly upgrades various posts. The formulation of SRO 953(1)/2012 dated August 2, 2012, was necessary due to the merger of the Inland Revenue cadres of the former Income Tax Group (ITG), Sales Tax Department (STD), and Directorate of Reforms & Statistics (DR&S) into the newly formed Inland Revenue Department under the Federal Board of Revenue (FBR). Given this existing promotion avenue, up-gradation is not permissible under the law for the petitioners. The Office Memorandum dated September 11, 2018, explicitly states that up-gradation is only considered for isolated cadres that lack promotion opportunities. Since the petitioners' cadre has clear avenues for promotion, they have no valid claim for an up-gradation as a matter of right. They have a defined career progression up to BS-20 as per the Recruitment Rules.

8. In view of the above facts and circumstances of the case, this petition stands dismissed along with the listed application(s).

JUDGE

Head of the Const. Benches