

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-5954 of 2022

(Muhammad Rafiq v.Federation of Pakistan and others)

Date

Order With Signature Of Judge

Before:

**Muhammad Karim Khan Agha, J.
Adnan-ul-Karim Memon, J.**

Date of hearing and Judgment: 02.09.2025

Malik Naeem Iqbal, advocate for the petitioner
Ms. Wajiha M. Mehdi, Assistant Attorney General

J U D G M E N T

Adnan-ul-Karim Memon, J. Through this petition, the petitioner has sought the following relief:

- a. *Declare that the impugned notification dated 27-09-2022, whereby the petitioner has been granted the current charge of the Post of Registrar of Trade Marks, Trade Marks Registry, Karachi, for the period of Three (03) months w-e-f. 03-09-2022, the fixation of Pay and Other Allowances in BPS-20 is deemed illegal, without jurisdiction, malicious, and ultra vires to law, and is hereby set aside forthwith.*
- b. *Direct the respondents to issue a fresh notification of the petitioner fixing pay and other allowances as Registrar Of Trade Marks, Trade Marks Registry, Karachi, IPM-1/85-20), substantively being the incumbent Registrar Of Trade Marks in view of SRO No 1652 (1) / 2022 dated 03-09 2022.*
- c. *Respondents, as an interim measure, may also be directed that no coercive or adverse action be taken against the petitioner till the final disposal of the present petition.*

2. A senior employee of the Intellectual Property Organization of Pakistan (IPO) has filed the captioned petition for a pay upgrade and adjustment/ promotion to the newly created BPS-20 position of Registrar of Trade Marks. The petitioner, who claims to be a law graduate, has a spotless 32-year service record, with 14 of those years in senior roles in BPS-17 and above. He currently holds the BPS-19 position of Registrar of Trade Marks, in terms of the 1960 rules, a post he was promoted to in 2020. In 2022, the IPO amended its service rules 2022, upgrading the sole position of Registrar of Trade Marks from BPS-19 to BPS-20; as such, the incumbent was required to be adjusted on that post. The petitioner, as the incumbent, believes this upgrade should automatically apply to him, and he should be granted the new pay scale and allowances in that grade. However, despite his request, the IPO issued a notification giving him a "current charge" of the BPS-20 position instead of a permanent upgrade and fixation of pay in a higher grade due to his position as Registrar under the old rules. The petitioner submits that this is an attempt to sidestep

the old rules of 1960, where he qualifies for the higher pay fixation and his rightful promotion based on the upgraded post in BS-20.

3. The petitioner's counsel argues that the IPO Pakistan's actions are illegal and unjust for the reasons that the upgrade of the Registrar of Trade Marks position from BPS-19 to BPS-20 was specifically meant for the current occupant, the petitioner. This is a common legal principle used to provide financial and career progression for employees in "isolated posts" that have no promotion avenues, more particularly under the old rules. He added that denying the petitioner this upgrade benefits goes against the very purpose of the rule change position in 2022. The petitioner's counsel submitted that the petitioner is already in the substantive Registrar of Trade Marks position, which was earlier in BS-19, now in BS-20; and he cannot be "promoted" to the lower position of Additional Registrar BS-19 again, which has simpliciter been upgraded in BS-20 and shown in the new rules 2022. The counsel points out that the rules for the BPS-20 position are for a specific promotion path from the BPS-19 Additional Registrar, a path the petitioner does not need to follow since he already holds the senior position as Registrar, which was in BS-19 under the old rules. He emphasized that the decision was to give the petitioner a "current charge" of the BPS-20 post for a period of three months. The counsel argues this is a grave legal error because the petitioner is already a confirmed, regular employee of the respondent organization as such, he cannot be demoted. Granting a "current charge" to a permanent employee is described as a "misconstruction of rules" and a violation of his service rights under the Constitution. The counsel concludes by stating that the IPO's actions are arbitrary, discriminatory, and a misuse of power. He argues that the petitioner has been denied his vested rights and has been treated unequally, in violation of several Articles of the Constitution of Pakistan, including Articles 4, 5, 9, 14, 18, and 25. The petitioner is seeking this court's intervention to nullify the notification dated 27-09-2022 to the extent of granting the current charge of the Post of Registrar of Trade Marks, instead of fixation of Pay and Other Allowances in BPS-20; and ensure that he is treated in accordance with the law. In support of his contentions, learned counsel for the petitioner has placed reliance on the case of *Masood Ahmed v. Ministry of Shipping* (2008 PLC (C.S.) 87) and argues that since the petitioner was already a Registrar, he should have received the BPS-20 upgrade with effect from 2020. The counsel further contends that a new rule for initial appointment as Registrar, effective in 2022, does not apply to the case of the petitioner. Therefore, he requests to be considered for an upgrade to Registrar in BPS-20, effective since 2020, with the appropriate pay adjustments. He prayed for allowing the petition.

4. The learned Assistant Attorney General opposed the petition, among other reasons, on the grounds that the petitioner, a civil servant in BPS-19, does not meet the eligibility criteria to be appointed as the Registrar (BPS-20). Instead, he has been assigned a "current charge" of the post, which is a temporary arrangement. She

further argued that the Intellectual Property Organization of Pakistan has formulated new Service Rules 2022 after following proper procedures and obtaining approvals from the Policy Board, Cabinet Committee, and the Cabinet. These rules are not amendments to the old rules but are entirely new, making the question of upgradation irrelevant. She also submitted that under the new rules, the previous position of Registrar (BPS-19) no longer exists; therefore, this post must be filled according to the new recruitment rules. According to the learned AAG, this position has been replaced by two new positions: Additional Registrar (BPS-19) and Registrar (BPS-20). Additionally, she pointed out that the Civil Servants Act, 1973, governs the petitioner's service based on his option. He is a BPS-19 officer, and under federal government rules, an officer cannot be upgraded to a higher pay scale (from BPS-19 to BPS-20) without being formally promoted to the next position via the recruitment process. She emphasized that the petitioner does not meet the required length of service in BPS-19 to qualify for promotion to BPS-20. Promotion criteria must be met before he can be substantively posted as Registrar (BPS-20). She further explained that to ensure the smooth functioning of the office, the petitioner was given the "current charge" of the Registrar (BPS-20) post, which does not constitute a promotion. It is a temporary arrangement, and he is receiving the relevant allowances. She emphasized that this is neither a promotion nor a permanent appointment. The learned AAG asserted that no rules or regulations have been violated and that the petitioner has not been treated unfairly. The notification of his current charge was issued to maintain the status quo and was not an act of prejudice. Lastly, she stated that the petitioner cannot be permanently placed in a BPS-20 position until he is formally promoted to that grade according to the recruitment rules, which he is currently ineligible for. She prayed for the dismissal of the petition.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. The main questions in this case are whether the petitioner, a Registrar of Trademarks (BS-19), can be reclassified into a BS-20 position and whether he meets the requirements under either the 1960 or the 2022 recruitment rules. These rules state that a Registrar (BS-20) must have at least five years of service as an Additional Registrar (BS-19) or 17 years in BS-17 and above, along with completing a mandatory training course.

7. To qualify for the Registrar (BPS-20) position under the 2022 recruitment rules, a candidate must have 5 years of service as an Additional Registrar (BPS-19), OR 17 years of service in a BPS-17 position or higher. He / She must also have completed a mandatory training course.

8. To see whether the petitioner has requisite length of service to claim the position of Registrar BS-20. The service profile of the petitioner prima facie show that he was appointed as a Clerk (BS-7) in 1990 and received several promotions,

eventually becoming a Registrar (BS-19) in 2020. His service is governed by the Civil Servants Act of 1973, as per his option recorded by the respondent organization.

9. On September 27, 2022, the petitioner was assigned temporary charge of a BPS-20 Registrar position, prompting him to file a petition on October 3, 2022. He argues that the upgrade of the Registrar post from BPS-19 to BPS-20 was a simple adjustment under the old 1960 rules, not a promotion requiring new qualifications under the 2022 rules. He contends that the new rules have no retroactive effect and that he should not be reverted to his former BPS-19 status. He requests that his BPS-19 Registrar position be upgraded to BPS-20, along with the incumbent of the post, with full benefits. However, this court cannot bypass the recruitment rules of 2022 for the position simply because the post was upgraded to BPS-20 as portrayed, since upgradation and promotion are distinct concepts in service jurisprudence, as clarified by various Supreme Court judgments. While both may lead to a higher pay scale, their core purpose, eligibility, and legal standing are fundamentally different. The Supreme Court of Pakistan, in cases such as Regional Commissioner Income Tax v. Syed Munawar Ali (2016 SCMR 859) and Federal Public Service Commission v. Anwar-ul-Haq (2017 SCMR 890), established that upgradation is a policy-based decision, not a vested right of an individual. Its primary purpose is to address stagnation and provide financial relief to employees who have remained in the same pay scale for an extended period, with limited or no opportunities for promotion. Upgradation applies to a post and a class of employees, not to a specific individual. It allows the employee to receive a higher pay scale while their duties, responsibilities, and designation remain unchanged. Regarding promotion, this is a formal advancement to a higher position or rank. It involves a progression that includes a change in job title, increased responsibilities, and often a higher pay scale. Promotion is not an absolute right, but rather a right to be considered for promotion, subject to fulfilling specific eligibility criteria, such as seniority, fitness, and the availability of a vacant position, in accordance with recruitment rules. The respondents deny that the post in question was upgraded to BPS-20; rather, they claim that new posts were created, and it is the domain of the Government to abolish and create posts in the exigency of service. Essentially, creating a post is a policy decision, and only the Executive is mandated to make such decisions and create posts whenever and wherever required. Therefore, this court must examine the recruitment rules to determine the petitioner's eligibility for the position.

10. The condition for promotion at Trademarks Registry, IPO-Pakistan, Karachi is as under: -

Sr. No.	Designation and BPS of the post	Persons eligible	Conditions of eligibility
(1)	(2)	(3)	(4)
1	Registrar of Trademarks	Additional	Minimum 05 years'

	(IPM-I)/BS-20	Registrar of Trademarks (IPM-II/BS-19)	service in IPM-II/BS-19 Minimum 17 years' service in IPM-IV/BS-17 & above. Successful completion of mandatory training course
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11. In Civil Service, promotions are based on a post's category: "selection" or "non-selection." Non-selection posts (below BPS-19) are based on "seniority-cum-fitness." Selection posts (BPS-19 to BPS-21) are based on "merit," which requires a higher standard of excellence. The qualifications for each selection post are distinct. BPS-19, the first supervisory role, requires policy-making contributions. BPS-20, a "middle management" role requiring broad experience. BPS-21, the "highest echelons of policy making," requires exceptional qualities like an analytical mind and vision. For BPS-20 and BPS-21, promotions are based on a subjective evaluation by a board, which considers performance evaluations (PERs), and each post has distinct requirements and job descriptions. However, the authority that creates promotion posts/policies is the most qualified to do so, as it has the best understanding of the job and its requirements. It is well settled that government employees do not have a guaranteed right to a promotion or to keep the same promotion standards.
12. The government is legally allowed to raise the qualifications for promotions and recruitment to ensure the efficiency of its workforce. An employee's only vested right is to the specific position they currently hold, not to any higher-level jobs. The Supreme Court has consistently held that the government has the exclusive right to set and change the terms and conditions of service to maintain efficiency. This includes enhancing qualifications or standards for promotion.
13. In principle, Courts, under Article 199 of the Constitution, cannot interfere with the government's administrative decisions on eligibility criteria or promotion policies. A change in rules is not considered "detrimental" to an employee's interests. Rules can be changed as long as they are not specifically targeting a person or made in bad faith. The eligibility for a promotion is determined by the rules in effect at the time of the appointment, not by previous rules.
14. However, in the present case, the petitioner is currently a BS-19 officer who was given temporary charge of a BS-20 post. The BS-20 post was created under the 2022 rules and was not an upgrade of an existing BS-19 position. Therefore, the petitioner's claim for an automatic upgrade is incorrect. To be eligible for promotion to BS-20 under the 2019 Civil Servants Promotion Rules and the 2022 recruitment rules, an individual must have a minimum of 17 years of service in BS-17 or above.

The petitioner only has 14 years of service in BS-17 as claimed, which makes him ineligible for the subject position in BS-20.

15. Primarily, appointments to government positions made on an officiating or additional/current charge basis are temporary, for a specific purpose, and cannot violate established laws or be continued indefinitely. Such practices can cause frustration among other employees, hinder the promotion of deserving candidates, and undermine the principles of transparency and fairness essential for good governance. The legal system requires that permanent vacancies be filled promptly to avoid the spoils system and ensure that civil servants are appointed based on merit. However, in the present case, this Court finds that the petitioner has no vested right to claim BS-20 position without regular promotion under the current recruitment rules, even though he currently has temporary charge of it, which is a stop gap arrangement till eligible officer of that cadre is appointed.

16. The petition is deemed "misconceived" and is dismissed along with pending application(s) without any order for costs.

JUDGE

Head of Const. Benches