

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**CP. No. D- 475 of 2019**

-----  
Date Order with Signature(s) of Judge(s)  
-----

Direction

1. For order on Misc No.23692 /2019
2. For order on Misc No.23693 /2019

**05.04.2022**

Mr. Mushtaque Hussain Qazi, advocate for the petitioner.  
Mr. Zafar Imam, advocate for respondent No.05  
Mr. Bilal Bhatti, advocate for respondent No.06  
Abid Aziz, Additional Deputy Commissioner-IR, CTO, Karachi  
-----

The applicant has called in question the order dated 15.05.2019 passed by this Court, whereby captioned Constitutional Petition was dismissed on the analogy that the Chairman Departmental Promotion Committee (DPC) vide letters dated 22.2.2017, 27.11.2018 disputed the promotion of the applicant as Upper Division Clerk (UDC), in Chief Commissioner Inland Revenue Corporate Regional Tax Office, Karachi.

At the outset, we directed the learned Counsel for the applicant to satisfy this Court regarding the maintainability of the review application (CMA No. 23693/2019) on the premise that on 15.5.2019 the subject petition was dismissed, whereas the review application was filed after a lapse of three months.

Learned counsel for the applicant has pointed out that the case of the applicant was/is simple and could be decided without touching on the vires of the main order on the premise that the respondent FBR is required to correct the word "LDC" as "UDC" in the office order dated 04.05.2018 as the applicant has acquired vested right to remain on the post of UDC with effect from the date of his promotion in the year 2012. Learned counsel further argued that respondents vide order dated 04.5.2018 erroneously designated the applicant as Lower Divisional Clerk (LDC), whereas the applicant was UDC with effect from 2012 which factum needs to be corrected and the record of the case be made straight accordingly. Learned counsel further contended that the applicant was promoted to the post of UDC in BPS-09 on seniority-cum-fitness basis vide office order dated 13.09.2012. He further argued that the aforesaid factum has not been appreciated in its true perspective, in the impugned order dated 15.5.2019; therefore, the impugned order needs to be reviewed on this score alone. He next added that this matter may be reopened and decided under the law based on the documents available on record, more particularly in the terms of Grounds No.1 to 11 of the review application. He lastly prayed for allowing the listed applications and the matter may be posted for hearing.

Abid Aziz, Additional Deputy Commissioner-IR, CTO, Karachi, present in Court has filed a statement along with the office order dated 07.10.2019 and

submitted that the applicant had already been promoted and working as UDC with effect from 01.10.2019. As such this review application is liable to be dismissed.

When confronted with this position of the case, learned counsel for the applicant has submitted that the applicant needs to be promoted to UDC with effect from 2012 rather than 2019. He further submitted that the applicant could not be demoted to a lower post from a higher post without hearing him; and, there was no general or specific order regarding his demotion as portrayed by the respondent department. He further submitted that his designation was UDC vide letter dated 07.06.2018, however, the respondent department has treated his designation as LDC, which is illegal and needs to be corrected and effect may be given from 2012 when his actual promotion as UDC took place.

The aforesaid stance of the applicant has been refuted by the learned counsel representing the respondent department on the ground that the basic promotion of the applicant as UDC was sketchy and this was the reason, his promotion was recalled by the competent authority vide letter dated 05.03.2013, and now he has been promoted as UDC along with his batch mates vide office order dated 07.10.2019. He prayed for the dismissal of the review application.

I have heard the learned counsel for the parties and scanned the record with their assistance.

A perusal of the record shows that the applicant has not assailed the order dated 15.5.2019 passed by this Court, before the Honorable Supreme Court yet. In our view, the review of the order can only be made by the party, if there is a mistake or error apparent on the face of the record as provided under Order XLVII (Section 114 CPC).

The applicant through the review application has attempted to call in question the validity of the order dated 15.5.2019 passed by this Court without assailing the same before the Appellate Forum, however, the grounds agitated by the applicant require consideration for the simple reason that on 07.3.1996 the applicant was appointed as Naib Qasid in the office of Commissioner of Income Tax Companies Zone-V, Karachi, thereafter he was promoted as Lower Division Clerk (LDC) in the year 2004 and as Upper Division Clerk in BPS-9 (UDC) in the year 2012 and was also posted as Supervisor on OPS in the year 2013. However, vide office order dated 04.05.2018 he was transferred from ATU Karachi to RTO-III Karachi as LDC, which amounts to lowering his grade. Prima facie, there is no specific order about treating the applicant as LDC, the impugned order dated 04.05.2018 explicitly shows his designation as LDC. The recommendation of the Departmental Promotion Committee vide minutes of the meeting held on 24.9.2019 explicitly shows that the applicant along with his colleagues was promoted to UDC (BPS-11) with effect from 01.10.2019 vide office order dated 07.10.2019.

If this is the position of the case, prima facie, the applicant has already been working on the higher post as UDC with effect from 2012, however, due to the office order dated 4.3.2018, the applicant has been shown as LDC, which has triggered the cause to the applicant to file the instant petition and subsequent review application, therefore the only question remains to be looked into by the competent authority regarding the effective date of the promotion of the petitioner either from 2012 or from 2019. Let them undertake the aforesaid exercise in terms of a letter dated 21.03.2017 issued by the Chief Commissioner Inland Revenue FBR, within two weeks after providing a meaningful hearing to the petitioner.

For the aforesaid reasons, the review application stands disposed of in terms of the preceding paragraph.

Let a copy of this order be communicated to the respondents for compliance.

JUDGE