

**IN THE HIGH COURT OF SINDH, KARACHI**

**Constitutional Petition No.D-6225 of 2024**  
*[Mubarak Ali Khan versus Province of Sindh & others ]*

Before:

**Justice Muhammad Karim Khan Agha**  
**Justice Nisar Ahmed Bhanbhro**

**Date of hearing & Order: 11.11.2025**

Petitioner:

Mubarak Ali Khan

Mr. Muhammad Iqbal Choudhry, advocate

Respondents:

Province of Sindh & others:

Ms. Saima Imdad,  
Assistant Advocate General Sindh.

-----

**ORDER**

**Nisar Ahmed Bhanbhro, J.** Through the instant petition, the petitioner seeks following relief:-

*“To direct the respondent to grant approval of the up-gradation to the petitioner from BPS-18 to BPS-19 w.e.f. 23.12.2017.”*

2. Learned counsel for the petitioner argued that the petitioner has performed more than 17 years satisfactory service in Grade 17, therefore, he was entitled to up-gradation for BPS-19 as per office memorandum issued by the Finance Division, Government of Pakistan dated 23.12.2011. He further argued that the petitioner’s service was not counted properly, therefore, refusal of up-gradation was not justified under the law. He prayed for allowing the petition.

3. Learned AAG has controverted the submission of learned counsel for the petitioner and stated that for up-gradation of service of the Private Secretary in Grade-19, it was mandatory required that the employee should have served for a period of 12 years or more than in Grade-17 or above, which petitioner lack, therefore, he was not entitled for benefit of up-gradation. She prayed for dismissal of the Petition.

4. We have heard the arguments of learned counsel for the parties and perused the material available on record.

5. From perusal of record it transpired that the Petitioner was employed as Private Secretary in the office of Provincial Ombudsman (Mohtasib) Sindh in Grade-17. He filed representation for award of benefit of the upgradation to BS -19 in terms of the office memorandum dated 09.09.2021 issued by provincial government and memorandum dated 23.12.2011 issued by the Finance division Government of Pakistan, which provided for the grant of upgradation to BS – 19 when employee completes 12 years' service as Private Secretary in grade 17 or above. The office memorandum dated 23.12.2011 is reproduced below for ease of reference.

***“Government of Pakistan  
Finance Division  
(Regulations Wing)”***

***No.19(55)/Legal-II/ 2010-1055***

*Islamabad dated 23<sup>rd</sup> December 2011*

# OFFICE MEMORANDUM

**Subject:-** UPGRADATION OF THE POSTS OF STENO TYPIST, STENOGRAPHER AND PRIVATE SECRETARY

*The undersigned is directed to say that consequent upon approval of the Prime Minister of Pakistan, the posts of Private Secretary, Stenographer and stenotypist have been upgraded with immediate effect subject to fulfilment of conditions mentioned against each:-*

<b>Sr. No.</b>	<b>Name of the Post</b>	<b>Existing BS</b>	<b>Upgraded BS</b>	<b>Conditions</b>
1	Private Secretary	17		<p>Will continue remain in BS-17 and will be granted BS-18 after putting in 6 years satisfactory service instead of 7 years. The Private Secretaries in BS-18 will further be granted BS-19 after putting in 12 years service in BS-17 and above taking benefit of Establishment Division's O.M.No. 1/9/80-RII, dated 2.6.1983. However, on grant of BS-19 nomenclature of the post will be Senior Private Secretary.</p> <p>The existing Private Secretaries in BS-17 will be granted BS-18 on one time basis, irrespective of their length of service in BS-17</p>
2	Stenographer	15	16	With enhancement of qualification for initial appointment from Intermediate to Graduation.
3	Steno typist	12	14	With enhancement of qualification for initial appointment from Matriculation to Intermediate

*The incumbents of the upgraded posts will also stand upgraded and their pay will be fixed at the stage next above their basic pay in their lower pay scales. The Establishment Division will amend the recruitment rules of the above said posts, accordingly.*

*(Muhammad Azam Awan)*  
*Section Officer (R-1)"*

6. The petitioner was appointed in Grade-17 on 23.12.2011 and retired on 28.02.2022 on attaining the age of superannuation and fell short of 12 years mandatory feat for up-gradation to Grade-19. When confronted, learned counsel for the petitioner referred to the notification dated 02<sup>nd</sup> June 1983 issued by the Establishment Division, Cabinet Secretariat, Government of Pakistan where the method for calculation of the length of service has been provided. Per said notification the service rendered by the employee in Grade 16 and below must be calculated for the purpose of counting of service in Grade-17. The office memorandum dated 02<sup>nd</sup> June 1983 is reproduced below for ease of reference:-

**“GOVERNMENT OF PAKISTAN CADINET SECRETARI AT  
ESTABLISHMENT DIVISION**

*No. 1/9/80-R.2.*

*Rawalpindi, the 2nd June, 1983*

**OFFICE MEHORANDUM**

***Subject: MINIMUM LENGTH OF SERVICE FOR ELIGIBILITY IN PROMOTION OF OFFICEAS.***

*In pursuance of rule on of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and in supersession of the Instructions laid down in the Establishment Division's Office Memorandum No. 1/9/80-R.II(A), dated the 12th January 1981, the President is pleased to decide that the minimum length of service for promotion to various grades shall he as follows:-*

<i>For grade 18</i>	<i>5 years in grade 17</i>
<i>For grade 19</i>	<i>12 years in grade 17 and above</i>
<i>For grade 20</i>	<i>17 years in grade 17 and above</i>
<i>For grade 21</i>	<i>22 years in grade 17 and above</i>

***Provided that:-***

- i) *Where initial appointment of a person not being a person in Government service taken place in a post in grade 18, 19 or 20, the length of service specified in this office memorandum shall be reduced by the following periods:*

<u><i>First appointment in</i></u>	<u><i>Reduced by</i></u>
<i>Grade-18</i>	<i>5 years</i>
<i>Grade-19</i>	<i>12 years</i>
<i>Grade-20</i>	<i>17 years</i>

- ii) *Where initial appointment of a person, already in government service takes place, on recommendations of the Federal Public Service Commission, in a post in grade 18, or 20, the length of service specified in this office memorandum shall be reduced by the periods specified in proviso (i);*
- iii) *Where first appointment of a person other than a person covered by proviso (ii) was made to government service in grade 16 or below, one-half of the service in grade 16 and one-fourth in grade 15 and below may be counted as service in grade 17 for computing" length of service for the purpose of promotion only.*

*(Mashkoor Ahmad Khan)  
Joint Secretary  
to the Government of Pakistan”*

7. The clause (iii) of the above referred notification will apply to the case of the petitioner, which provides that one-half of the service by a person if appointed in grade 16 or below and one-fourth of the service in Grade-15 and below may be counted as Grade-17 for computing length of service for the purpose of upgradation. From the record it transpired that the petitioner was appointed in Grade-5 in the year 1980 and was promoted in Grade-16 on 09.08.2008 where he worked in said grade until 22.02.2011. The total length of service rendered by the petitioner in Grade-16 is 03 years, 04 months and 13 days and one-half of that period 01 year, 08 months and 06 days, whereas, the petitioner has also served as Private Secretary from 27.10.1992 to 08.08.2008 for the period of about more than 15 years and one-fourth of the service would be 03 years and 11 months. The petitioner has served in Grade-17 and above for the period of 10 years and 03 months, if the portion of the service rendered by the petitioner in Grade 15 and 16 in terms of the office memorandum dated 02<sup>nd</sup> June 1983 than the total length of service rendered by the petitioner would be 18 years and 11 months. However, under the above referred memorandum, this calculation has been left at the discretion of the competent authority by using word “May” in clause (iii) of the notification. Per notification dated 17<sup>th</sup> September 2021, the Services General Administration Department, Government of Sindh, has also granted same benefits as has been granted to the Private Secretary of the Federal Government.

8. In the reply furnished by the Secretary Services, General Administration Department, Government of Sindh, the petitioner’s service rendered in Grade-15 and 16 has not been counted as mandated under the notification of 1983. It is settled proposition of law that if the competent authority is vested with the discretion power, the discretion has to be exercised fairly, justly and strictly in accordance with law. Since no reason has been assigned to exclude the period of service rendered by the petitioner in Grade-15 and 16 for counting towards his up-gradation in grade 19, which if counted would bring his case within the parameters fixed under the office memorandum referred supra. The Respondents have failed to exercise the discretionary powers, in the case of the Petitioner, therefore, a case for indulgence of this Court is made out to exercise the power of judicial review conferred under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 for issuance of the appropriate writ.

9. In view of the above discussion, this petition is allowed. The respondents are directed to decide the case of the petitioner for up-gradation in Grade-19 afresh after giving him right of hearing strictly in accordance with law within a period of two (2)

months from the date of this order. Office to send copy of this order to the respondents for compliance.

JUDGE

HEAD OF CONST. BENCHES

Shahzad Soomro