SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction**]**

PRESENT:
Mohammad Azam Khan, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No.144 of 2016
(PLA filed on 30.04.2016)

Muhammad Shafique Abbasi, Sub-Divisional Officer, Highways Division No.1, Communication & Works Department, Azad Government of the State of Jammu & Kashmir, Muzaffarabad.

……APPELLANT

VERSUS

1. Qazi Irshad Hussain, Officiating Sub-Divisional Officer, Public Health Engineering, Division Rawalakot.

…..RESPONDENT

2. Azad Government of the State of Jammu & Kashmir through Chief Secretary to Azad Government, Civil Secretariat, Muzaffarabad.
3. Secretary Communication & Works, Azad Government of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

4. Secretary Physical Planning & Housing, Azad Government of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.
5. Chief Engineer, Communication & Works Highways (North), Azad Government of the State of Jammu & Kashmir, Muzaffarabad.
6. Chief Engineer, Physical Planning & Housing/Public Health Engineering, Azad Government of the State of Jammu & Kashmir, Muzaffarabad.
7. Executive Engineer, Compunction & Works Highways Division Hattian Bala.
8. District Accounts Officer, Hattian Bala.
9. Mr. Muhammad Aftab Kiani, Sub-Divisional Officer, Communication & Works Department Highways Division Muzaffarabad.

…..PROFORMA-RESPONDENTS

[On appeal from the order of the Service Tribunal dated 12.04.2016 in Service Appeal No.188/2016]

FOR THE APPELLANT: Mr. Abdul Rashid Abbasi, Advocate.

FOR RESPONDENT No.1: Sardar Muhammad Habib Zia, Advocate.

Date of hearing: 18.05.2016.

JUDGMENT:

Mohammad Azam Khan, C.J.– The above titled appeal by leave of the Court arises out of an order

passed by the Service Tribunal dated 12th April, 2016 in the following circumstances:-

2. The appellant was serving as Sub-Divisional Officer in the Public Works and Health Engineering Department, Rawalakot. A proposal was prepared by the Department on 4th March, 2016. In the light of said proposal, he was to be transferred in place of Muhammad Aftab Kiani, respondent No.9, herein, in the Highways Division Muzaffarabad and respondent No.1, Qazi Irshad Hussain who was an officiating Sub-Divisional Officer, was proposed to be transferred from Highways Division Hattian Bala to Highways Division, Rawalakot in place of one Shabir Ahmed. Respondent No.1, challenged the said order by way of an appeal in the Service Tribunal. After necessary proceedings, the Service Tribunal admitted the appeal for regular hearing on 7th March, 2016 and the transfer notification was suspended subject to the objections by the other party. After hearing the counsel for the parties, the Service Tribunal on 12th April, 2015 ordered that the suspension order shall remain intact till

disposal of the writ petition filed by one Shabir Ahmed, in the High Court. This order is subject of the present appeal.

3. At the time of hearing the arguments on the stay order application we summoned the petition for leave to appeal from the office, converted the same into appeal and heard the arguments on the appeal.

4. Mr. Abdul Rashid Abbasi, Advocate, counsel for the appellant, submitted that the Service Tribunal has suspended the order on the ground that the authority for appointment of the Sub-Divisional Officer is the Minister and order has been passed without the approval of the Minister. The learned counsel referred to annexure "PH" finding place at page 28 of the paper book and argued that the Secretary Works submitted the proposal and the Minister concerned accorded the approval. The order has been issued after approval of the Minister. The learned counsel further submitted that the Service Tribunal has ordered that the suspension order shall remain operative till disposal of the writ petition in the High Court. The order is bad in law.

5. Sardar Muhammad Habib Zia, Advocate, while representing, respondent No.1, Qazi Irshad Hussain, submitted that it is correct that the order has been issued after approval of the Minister, but the order has not been issued according to the proposal. It has been issued in contravention of the proposal. As such, the order is not maintainable. He submitted that the order to the extent of Qazi Irshad Hussain has validly been passed.

6. We have heard the learned counsel for the parties and perused the record. The following proposal was submitted for transfer of the Sub-Divisional Officers on 4th March, 2016:-

آزاد حکومت ریاست جموں و کشمیر
سیکرٹریٹ ورکس/مواصلات
* * *

(خلاصہ برائے جناب وزیر تعمیرات عامہ)

عنوان۔ منظوری تبادلہ جات نائب مہتمان محکمہ تعمیرات عامہ

انتظامی امور مفاد عامہ سرکار کے پیش بذیل نائب مہتمان محکمہ تعمیرات عامہ کے تبادلہ جات مطلوب ہیں۔

1. مسٹر قاضی محمد ارشاد آفیشٹنگ نائب مہتمم محکمہ تعمیرات عامہ شاہرات ڈویژن ہٹیاں بالا (جن کا عرصہ تعیناتی زائد از 4 سال ہے) کو تبدیل کر کے بطور نائب مہتمم مسٹر شبیر احمد آفیشٹنگ نائب مہتمم شاہرات ڈویژن روالاکوٹ تعینات کئے جانے کی تجویز ہے۔

2. مسٹر محمد آفتاب کیانی نائب مہتمم تعمیرات عامہ شاہرات ڈویژن مظفرآباد (سب ڈویژن ہیڈ کوارٹر) کو تبدیل کر کے بطور نائب مہتمم بجائے نمبر شمار 1بالا شاہرات ڈویژن ہٹیاں بالا تعینات کئے جانے کی تجویز ہے۔

3. مسٹر محمد شفیق عباسی نائب مہتمم محکمہ تعمیرات عامہ پبلک ہیلتھ انجینر ڈویژن راولاکوٹ کو تبدیل کر کے بطور نائب مہتتم بجائے نمبر شمار2شاہرات ڈویژن مظفرآباد (سب ڈویژن ہیڈ کوارٹر) تعینات کئے جانے کی

تجویز ہے۔

4. مسٹر شبیر احمد آفیشٹینگ نائب مہتمم شاہرات ڈویژن روالاکوٹ کو تبدیل کر کے بجائے نمبر شمار 3 بالا بطور نائب مہتمم پبلک ہیلتھ انجینرنگ ڈویژن روالاکوٹ تعینات کیے جانے کی تجویز ہے۔

سیکرٹری
ورکس/موصلات"

On the said proposal the concerned Minister accorded the approval and the order was issued accordingly on 4th March, 2016, expect to the extent of Shabir Ahmed, Officiating Sub-Divisional Officer, on the ground that he has got stay order from the High Court. But the perusal of the order dated 4th March, 2016, finding place at page No.27 of the paper book reveals that order to the extent of Mr. Muhammad Shafique Abbasi, has been issued in accordance with the proposal, while order to the extent of Qazi Muhammad Irshad is not in accordance with the proposal, therefore, we accept the appeal set-aside the order passed by the Service Tribunal. The Service Tribunal is directed to pass fresh order after hearing the counsel for the parties and considering the proposal submitted and the order passed on 4th March, 2016. It is further observed that the Service Tribunal has no authority to pass such stay order that it shall remain operative till disposal of the writ petition in the High Court. The Service

Tribunal is directed to pass order while considering the relevant law.

With the above observation the appeal is accepted. There will be no order as to costs.

CHIEF JUSTICE **JUDGE**

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