SUPREME COURT OF AZAD JAMMU AND KASHMIR

(APPELLATE JURISDICTION)

PRESENT:

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

Civil appeal No.291 of 2014
(Filed on 15.09.2014)

Muhammad Saeed Durrani, Deputy Director Construction, Electricity, B-18, Muzaffarabad.

….APPELLANT

VERSUS

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary Azad Jammu and Kashmir, Muzaffarabad.
2. Secretary Electricity/ Power Development Organization new Secretariat Chattar Domail, Muzaffarabad.
3. Department of Electricity/Power Development Organization through

Secretary Electricity, Muzaffarabad.

4. Chief Engineer Electricity, Muzaffarabad.
5. Director General Commercial Electricity, Muzaffarabad.
6. Chief Engineer Central Design Office, Building Division, Muzaffarabad.
7. Accountant General, Muzaffarabad.
8. Waheed-ul-Zafar Gillani, XEN Electricity, B-18, presently posted as Deputy Director Electrical Central Design Office, Muzaffarabad.

….RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 27.08.2014 in service appeal No.834 of 2014)

FOR THE APPELLANT: Raja Anjam Feroz and Ch.M.latif Khan, Advocates.

FOR THE RESPONDENTS: Syed Mushtaq Hussain Gillani, Advocate.

Date of hearing: 17.11.2016

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal by leave of the Court has been directed

against the judgment of the Service Tribunal dated 27.08.2014, whereby the appeal filed by the appellant, herein, has been dismissed in limine.

2. The gist of the facts is that the appellant, herein, was serving in the Electricity Department, wherein, he proceeded abroad and after a period of 7 years, he re-joined the service. He was appointed/adjusted vide order dated 06.08.2014, against the post of Deputy Director Construction Electricity, Muzaffarabad. On 22nd August, 2014 another notification was issued through which he was transferred as Deputy Director Electrical Central Design Office, PWD, Muzaffarabad. He challenged the said order by way of appeal before the Service Tribunal on the ground that the appellant got sanctioned long leave and after availing the leave, he was posted as Deputy Director in place of Shabbir Hussain Qureshi and Shabbir

Hussain Qureshi was transferred as Executive Engineer Operation Division, Muzaffarabad. In compliance of the transfer notification dated 06.08.2014, the appellant joined the newly place of posting on 07.08.2014. Thereafter, only a period of sixteen days, the appellant has been transferred in violation of the transfer policy due to political influence. The Service Tribunal after hearing the parties dismissed the appeal in limine vide impugned judgment dated 27.08.2014, hence, this appeal by leave of the Court.

3. Raja Anjum Feroz and Ch. Muhammad Latif Khan, Advocates, the learned counsel for the appellant argued that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. They also submitted that during the pendency of this appeal respondent No.8, herein, has been transferred from the

post of Deputy Director Construction Electricity, Muzaffarabad, therefore, the appellant has no grievance against the said respondent. They added that an application has also been moved for deletion of the name of respondent No.8, from the line of respondents. They contended that the appellant was transfer only after a period of 16 days without any lawful justification and following due course of law, but the learned Service Tribunal failed to appreciate this aspect of the case in a legal manner. They further contended that while issuing the transfer notification the authority failed to consider the transfer policy and the dictum laid down by this Court in a number of pronouncements. They submitted that normally a civil servant cannot be transferred before completion of a minimum stay-period of at least two years, however, in the exigency of

service the transfer can be made even within the normal tenure, but in the matter in hand, no exigency was involved and the transfer notification was issued only to accommodate a favorite. They lastly submitted that in a plethora of judgments this Court has held that once an order has been issued validly and implemented the same cannot be cancelled by the authority without assigning any cogent reason, whereas, while issuing the impugned transfer notification no reason whatsoever has been assigned. In this way, the impugned transfer notification being violative of the transfer policy as well as the dictum laid down by this Court, is liable to be set aside.

4. On the other hand, Syed Mushtaq Hussain Gillani, Advocate, the learned counsel for respondent No.8, affirmed the stance taken by the learned counsel for the appellant that respondent No.8 has been transferred from

the post in question. He also contended that he has no objection on the deletion of the name of said respondent.

5. We have heard the learned counsel for the parties and gone through the record along with the impugned judgment. Before going into the controversy involved in the matter in hand, it would be appropriate at first to dispose of the application filed by the appellant for deletion of the name of respondent No.8, from the line of the respondents. The version of the appellant is that respondent No.8, has been transferred from the post in question and he has no more grievance against him. The application is supported by the transfer order of respondent No.8. The learned counsel for respondent No.8, has also affirmed the stance taken by the appellant and submitted that he has no objection if the name of respondent No.8 is

deleted. Thus, in view of the submissions made by the learned counsel for the parties, the application is allowed accordingly and the office is directed to make necessary correction in the concerned record. Moreover, the name of respondent No.8 appearing in the title of the judgment shall not be read as part of this judgment rather the said name appears just for reference of the case.

6. While attending the merits of the case, we have gone through the record. It appears from the record that vide notification dated 06.08.2014; the appellant was posted as Deputy Director Construction Electricity, Muzaffarabad. On 07.08.2014, in compliance of the notification (supra) the appellant joined the newly place of posting. On 22.08.2014, another notification was issued through which he was transferred against the post of Deputy Director Electrical Central Design Office PWD,

Muzaffarabad, meaning thereby, that the appellant was transferred after a very short span of time, i.e. 16 days from the date when he joined the post of Deputy Director Construction Electricity. It is spelt out from the impugned transfer notification that while issuing the same no reason whatsoever has been assigned. This Court in a number of pronouncements has held that such practice of cancellation of the transfer orders within a short span of time without assigning any reason, on the face of it, is a malpractice which cannot be approved. Reliance may be placed on a case reported *Raja Muhammad Kamran v. Secretary Local Government & 4 others* [2015 SCR 968], wherein it has been held that:-

> "6. According to the facts of the case, the departmental authority issued the transfer order on 3.1.2012 which was allegedly acted

> upon and the same was recalled through the impugned departmental order dated 11th, January 2012 without assigning any reason. This Court has in number of cases observed that such practice of cancellation of the transfer orders within a short span of time without assigning any reason, on the face of it, is a malpractice and such orders cannot be protected by the Courts. Therefore, without recording any detail observations in our view the impugned departmental order dated 11.1.2012 on the face of it is prima facie proof of exercise of powers in an injudicious manner and without proper application of mind."

This Court has also disapproved the successive transfers in a number of judgments on the ground that the same create a fear of insecurity among the civil servants to perform their duties. In a case reported as *Imtiaz*

Ghani v. Azad Gov. & 6 others [2016 SCR 1094], this Court has held as under:-

> "It may be observed here that normally, this Court does not interfere with the orders passed by the competent authority in exigency of service, however, if the order seems to be illegal *ab initio* void, then this Court always intervenes. In a number of pronouncements, it has constantly been held by this Court that normal tenure of stay at one place will not be less than three years. The wisdom behind it is that a civil servant can perform his duties without any fear of successive transfers."

It may be observed here that there is no cavil with the proposition that under section 9 of the Civil Servants Act, 1976, every civil servant is liable to serve anywhere within or outside the State of Azad Jammu and Kashmir, moreover, in exigency of service there is no bar on the

authority to transfer a civil servant even before the completion of the normal tenure, but at the same time, it is also settled that if a civil servant is transferred within a short span of time, the authority is bound to assign the reasons, whereas, this obligation has not been realized by the authority in the matter in hand. As we have reached the conclusion that the impugned transfer notification dated 22.08.2014, was issued in violation of the transfer policy and the norms of justice, therefore, the same is hereby set aside, however, it may be clarified here that the contesting civil servant who was transferred through the impugned notification has further been transferred, therefore, his further transfer may not be disturbed while making the arrangement for the appointment/adjustment of the appellant,

herein, against the post of Deputy Director Construction, Electricity.

This appeal is accepted in the terms indicated above. No order as to costs.

Mirpur, **JUDGE** **CHIEF JUSTICE**
__.11.2016