

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

(Appellate Jurisdiction)

**PRESENT**

Mohammad Azam Khan, C.J.

Ch. Muhammad Ibrahim Zia, J.

Civil Appeal No. 369 of 2015

(PLA filed on 24.08.2015)

1. Director General Veterinary and Animal Husbandry  
Department, Muzaffarabad.
2. Director Animal Health Services Department,  
Muzaffarabad.
3. Additional Principal Veterinary Officer,  
Muzaffarabad.
4. Incharge Dispensary Panjkot, District  
Muzaffarabad.

.... APPELLANTS

VERSUS

1. Muhammad Shabbir, Ex-Chokidar Veterinary  
Dispensary Panjkot, District Muzaffarabad, r/o Seri  
Darah, Tehsil and District Muzaffarabad.

.... RESPONDENT

2. Syed Azhar Hussain Shah appointed as temporary  
Chowkidar at Veterinary Dispensary Panjkot,  
District Muzaffarabad.

.... PROFORMA RESPONDENT

(On appeal from the judgment of the Service Tribunal  
dated 15.05.2015 in Service Appeal No. 208/2014)

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FOR THE APPELLANTS: Sardar Muhammad Habib Zia, Advocate.

FOR RESPONDENT NO. 1: M. Dawood Khan Abbasi, Advocate.

FOR THE PROFORMA-RESPONDENT: Syed Mehar Ali Bukhari, Advocate.

Date of hearing: 18.01.2017

### **JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, J.—** This appeal by leave of the Court has been preferred against the judgment of the Service Tribunal dated 15.05.2015, whereby the appeal filed by respondent No. 1, herein, has been accepted.

2. The necessary facts of the case are that respondent No. 1, herein, was serving as Chwokidar in the Veterinary and Animal Husbandry Department. Vide order dated 20.01.2014 on the allegation of continuous absence from service he was removed from the service under the Azad Jammu and Kashmir Removal From Service (Special Powers) Act, 2001 (hereinafter to be referred as Act, 2001). Subsequently, vide order dated 13.02.2014 the proforma respondent, herein, was appointed at his place on temporary basis. The

appellant challenged both the orders before the Service Tribunal. The learned Service Tribunal, through the impugned judgment dated 15.05.2015 while setting aside both the orders restored the appellant in his service with all back benefits, hence this appeal by leave of the Court.

3.           Sardar Muhammad Habib Zia, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the impugned judgment of the learned Service Tribunal is against the law and facts. The respondent committed serious misconduct. He is habitual absentee, therefore, after following due course of law he has been removed from service under the provisions of Act, 2001. The record reveals that a number of notices were issued to him but he failed to appear. The department passed quite legal order calling for no interference. The learned Service Tribunal fell in error of law and facts while setting aside the impugned departmental orders.

4.           Syed Mehar Ali Shah, Advocate, the learned counsel for the proforma-respondent supported the arguments of counsel for the appellant.

5. Conversely, Mr. Muhammad Dawood Khan Abbasi, Advocate, the learned counsel for respondent No. 1 forcefully defended the impugned judgment of the Service Tribunal and argued that the whole proceeding of the departmental authority is illegal and violation of law. No inquiry has been held. Even the authority has not bothered to appoint the inquiry officer or inquiry committee or designate any authorized officer. He submitted that under the provisions of section 5 of Act, 2001 the authority is vested with the powers but under the provisions of section 5 of this Act it is also bound to appoint inquiry officer or inquiry committee before passing any order under section 3. Without following the legal procedure imposing major penalty of removal from service is violation of law and void. The whole so called proceeding is based upon mala-fide only to accommodate the proforma-respondent on the basis of favouritism and nepotism. The judgment of the Service Tribunal is legal one calling for no interference.

6. When the learned counsel for the appellant was asked whether the inquiry officer has been appointed or inquiry has been held, he submitted that

according to the record the authority itself after going through the record and issuing notices according to law was satisfied and passed the impugned order. There was no need to appoint inquiry officer or the inquiry committee.

7. We have considered the arguments of learned counsel for the parties and examined the record made available. Admittedly, the respondent, a permanent civil servant, was removed from service. The authority claimed that he has exercised powers vested in him under the provisions of Act, 2001. No doubt under the provisions of section 3 the competent authority is vested with the powers but according to the provisions of section 5 of the same Statute before passing an order under the provisions of section 3 it is enjoined upon the competent authority to appoint an inquiry officer or inquiry committee and after proper inquiry and compliance of the statutory provisions the order of removal from service has to be passed. As in this case, admittedly the authority failed to comply with the mandatory statutory provisions of section 5 of the Act, 2001, therefore, no further deliberation is required. There is no justification or requirement to

discuss the other aspects of the matter. The learned Service Tribunal has rightly passed the impugned judgment which does not suffer from any legal infirmity or illegality.

Therefore, finding no force this appeal stands dismissed with costs.

Muzaffarabad,  
20.01.2017

JUDGE

CHIEF JUSTICE

