SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT

Ch. Muhammad Ibrahim Zia, J.
Raja Saeed Akram Khan, J.

Civil Appeal No. 25 of 2016
(PLA filed on 21.10.2015)

Inspector General Police, Muzaffarabad.

…. APPELLANT

VERSUS

Muhammad Munir Sub-Inspector District Rawalkot presently posted at District Sudhnuti.

…. RESPONDENT

(On appeal from the judgment of the Service Tribunal dated 19.08.2015 in Service Appeal No. 01/2015)

FOR THE APPELLANT: Raja Ikhlaq Hussain Kiani, Additional Advocate-General.

FOR THE RESPONDENTS: Barrister Humayun Nawaz Khan, Advocate.

Date of hearing: 17.01.2017

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— The titled appeal by leave of the Court has been preferred against the judgment of the Service Tribunal dated

19.08.2015, whereby the appeal filed by the respondent has been accepted.

2. According to the summarized facts of the case through order book No. 3 dated 07.01.2015 five sub-Inspectors were promoted as Inspectors in BPS-16 while superseding the respondent in the light of report bearing No. 4232 dated 31.05.2014 on the grounds that total period of stoppage of his increments comes to 5 years and there are adverse remarks in the ACR relating to the year 2013. Vide order book No. 9 dated 14.01.2015 two more sub-Inspectors were promoted. The respondent, feeling aggrieved, challenged both the orders before the Service Tribunal by filing an appeal. The learned Service Tribunal after necessary proceedings accepted the appeal and suspended the impugned orders, hence this appeal by leave of the Court.

3. Raja Ikhlaq Hussain Kiani, Additional Advocate-General the learned counsel for the appellant after brief statement of the facts submitted that the impugned judgment of the learned Service Tribunal is violative of basic principle of administration of justice i.e., *Audi Alteram Patrem*. The learned Service Tribunal

has set-aside the orders dated 07.01.2015 and 14.01.2015 through which seven sub-Inspectors were promoted as Inspectors. Amazingly, none of the promotees have been arrayed as parties in appeal before the Service Tribunal. Setting aside the promotion order without hearing them is totally against the law, hence, on this sole ground the impugned judgment of the Service Tribunal is not maintainable. So far as the merits of the case are concerned, the respondent in the light of service record was not found suitable and eligible for promotion. It is the sole prerogative of the appointing authority or selection committee to determine the suitability and eligibility for promotion. Therefore, while accepting this appeal the impugned judgment be set aside.

4. Conversely, Barrister Humayun Nawaz Khan, Advocate, the learned counsel for the respondent forcefully defended the impugned judgment and submitted that although inadvertently the persons promoted through impugned departmental orders have not been arrayed as parties but due to this omission the respondent cannot be deprived of his legally vested right. The Service Tribunal has rightly passed the

impugned judgment. The appellant according to his performance and other rules relating to the subject-matter deserves to be considered for promotion, therefore, this appeal has no substance and the same is liable to be dismissed.

5. We have heard the learned counsel for the parties and examined the record made available. The first and foremost point involved in this case is regarding setting aside the promotion orders dated 07.01.2015 and 14.01.2015. Both the orders are available at record as Annexure “PC” and “PC/1”. The bare reading of these orders reveals that through order dated 07.01.2015 Muhammad Saeed Khan, Mirza Muhammad Nasim, Muhammad Siab Khan, Muhammad Shehzad Khan and Sikandar Azam have been promoted as Inspectors, whereas, through order dated 14.01.2015 Syed Shuja-ul-Hassan Gillani and Sohail Yousaf have been promoted. Despite their clear promotion orders none of them has been arrayed as party in the appeal before the Service Tribunal but amazingly the learned Service Tribunal without hearing the promotees set aside the promotion orders. According to celebrated principle of law, no one can be

condemned unheard, thus, no other deliberation is required. The impugned judgment on this sole ground is not maintainable and the same is hereby recalled.

6. So far as the contention of the learned counsel for the respondent that the respondent deserves to be considered for promotion, is concerned, there is no restriction if he is eligible and fulfills the prescribed conditions. The authority according to law and rules is bound to consider the matter of a civil servant for promotion if he deserves so.

For the above stated reasons this appeal stands accepted with no order as to costs.

Muzaffarabad,
18.01.2017 JUDGE JUDGE

IGP Muzaffarabad VS Muhammad Munir

ORDER:

The judgment has been signed. It shall be announced by the Registrar, after notifying the learned counsel for the parties.

Muzaffarabad,
18.01.2017 JUDGE JUDGE