

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

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

1. Civil Appeal No.45 of 2015  
(PLA filed on 2.12.2014)

Muhammad Aftab Khan, Assistant Sub-Inspector,  
Reserve Police, Muzaffarabad.

....APPELLANT

**VERSUS**

1. Inspector General of Police, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
2. Deputy Inspector General of Police Reserve/Rangers, Muzaffarabad.

....RESPONDENTS

3. Khurshid Anwar, Assistant Sub-Inspector, Reserve Police, Muzaffarabad.
4. Arshad Mahmood Khan, Assistant Sub-Inspector, Reserve Police, Muzaffarabad.

....PROFORMA-RESPONDENTS

(On appeal from the judgment of the Service Tribunal  
dated 30.9.2014 in service appeal No.633 of 2009)

-----

FOR THE APPELLANT:	Sardar Abdul Sammie Khan, Advocate.
--------------------	-------------------------------------

FOR RESPONDENTS NO. 1 & 2:	Mr. Raza Ali Khan, Advocate-General.
-------------------------------	---

FOR PROFORMA RESPONDENT NO.3:	Kh. Muhammad Nasim, Advocate.
----------------------------------	----------------------------------

2. Civil Appeal No.72 of 2015  
(PLA filed on 26.11.2014)

1. Khurshid Anwar, Assistant Sub-Inspector  
Traffic Police Neelum.
2. Muhammad Rafiq,
3. Saleem Akhter,
4. Ali Akbar (ASI) arrayed as party (vide order  
dated 10.11.2016).

....APPELLANTS

**VERSUS**

1. Muhammad Pervaiz, Head Constable No.1109,  
Reserve Police Head Quarter, Muzaffarabad.

....RESPONDENT

2. Deputy Inspector General of Police,  
Reserve/Rangers, Muzaffarabad.
3. Superintendent of Police, Police Line,  
Muzaffarabad.
4. Arshad Mehmood Khan, A.S.I. Reserve, Police  
Line, Muzaffarabad.

....PROFORMA-RESPONDENTS

(On appeal from the judgment of the Service Tribunal  
dated 30.9.2014 in service appeal No.633 of 2009)

-----

FOR THE APPELLANTS: Kh. Muhammad Naseem  
& Mr. Maqsood Ahmed  
Sulehria, Advocates.

FOR RESPONDENT No.1: Sardar Abdul Sammie  
Khan, Advocate.

FOR PROFORA  
RESPONDETS NO. 2 & 3: Mr. Raza Ali Khan,  
Advocate-General.

3. Civil Appeal No.124 of 2015  
(PLA filed on 19.12.2014)

1. Deputy Inspector General of Police,  
Reserve/Ranger, Azad Government of the State of  
Jammu and Kashmir, Muzaffarabad.
2. Superintendent of Police/Reserve, Muzaffarabad  
having his office at Police Line, Muzaffarabad.

....APPELLANTS

**VERSUS**

Muhammad Pervaiz, Head-Constable No. 1109, Reserve  
Police Headquarter, Muzaffarabad.

....RESPONDENT

(On appeal from the judgment of the Service Tribunal  
dated 30.9.2014 in service appeal No.633 of 2009)

-----

FOR THE APPELLANTS: Mr. Raza Ali Khan,  
Advocate.

FOR THE RESPONDENT: Sardar Abdul Sammie  
Khan, Advocate.

*Date of hearing:* 20.2.2017.

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— The above titled appeals by leave of the Court have been directed against the consolidated judgment passed by the Service Tribunal on 30.9.2014, whereby the appeal filed by Muhammad Pervaiz, the respondent, (in appeals No. 72 & 124 of 2015) has been accepted, whereas, the appeal filed by Muhammad Aftab Khan, the appellant, (in appeal No. 45 of 2015) has been dismissed on the ground of limitation. Since, all these appeals arise out of the same judgment; therefore, these are being disposed of through this single judgment.

2. The brief facts involved in appeal No. 45 of 2015 titled *Muhammad Aftab Khan vs. Inspector General of Police & others* are that the appellant was appointed as Constable in the Reserve Police Force on 1.7.1989. He was promoted as Head Constable, Reserve on

1.3.1993. After passing the lower school and intermediate course, the name of the appellant was entered in list 'D-2' vide order book No. 75 on 25.8.2003 but later on the name of the appellant was deleted from the list 'D/2' vide order book No. 78 dated 4.9.2003 on the ground that his name was entered in violation of the standing order No. 7 of 2001. The appellant filed an appeal before the Appellate Authority against the order book No.78 dated 4.9.2003 but no order was passed by the Appellate Authority, therefore, the appellant filed a writ petition in the High Court. The learned High Court directed the Appellate Authority to dispose of the appeal within a period of 90 days. The appeal filed by the appellant was rejected by the competent authority on 12.8.2009 and therefore, he filed an appeal before the learned Service Tribunal, which was dismissed vide

impugned judgment dated 30.9.2014 on the ground of limitation.

3. The brief facts involved in appeals No. 72 & 124 of 2015 titled *Khurshid Anwar & others vs. Muhammad Pervaiz & others* are that appellant No.1, herein, is permanent employee of the Police Department. The appellant passed the course of 'Platoon Commander' vide Order Book No. 125 dated 12.11.2003 and therefore, his name was entered at serial No. 2 in the list 'D-2'. The appellant was promoted as Assistant Sub-Inspector on probation. After completion of probation period, the services of the appellant were confirmed w.e.f. 7.1.2006 vide order book No. 10 dated 16.1.2009. Initially, the name of the respondent, Muhammad Pervaiz, was entered in the list 'D-2' at serial No. 6 vide order book No. 75 dated 25.8.2003. Later on, the order dated 25.8.2003 was cancelled from the date of its issuance vide order book No. 78 dated

4.9.2003. Feeling aggrieved, the respondent filed an appeal in the Service Tribunal against the order book No. 78 dated 4.9.2003. The learned Service Tribunal while issuing direction dismissed the appeal filed by the respondent vide judgment dated 26.11.2004. Feeling dissatisfied, the respondent challenged the judgment of the learned Service Tribunal dated 26.11.2004 before this Court by filing a petition for leave to appeal. This Court while dismissing the petition for leave to appeal vide order dated 17.3.2005, kept intact the direction issued by the Service Tribunal that the case be remanded to the relevant authorities to finalize the case after providing the respondent an opportunity of hearing. The Deputy Inspector General of Police, (DIG), Reserve/Rangers, Muzaffarabad heard the respondent, in the light of the orders passed by the Service Tribunal and this Court. The DIG, Reserve/Rangers, after hearing the respondent

held that under rules the name of the respondent could not be entered in list 'D-2', therefore, the name of the respondent be deemed to have been excluded from list 'D-2', therefore, the name of the respondent vide book No. 118 dated 24.12.2004 has been excluded from list 'D-2'. The respondent challenged the order book No. 118 dated 24.12.2004 by filing an appeal in the Service Tribunal. The learned Service Tribunal dismissed the appeal filed by the respondent vide order dated 24.1.2008. The respondent preferred an appeal before this Court, which was accepted with the direction to the official respondents to enter the name of the respondent in list 'D-2' vide judgment dated 15.5.2009. The DIG, Reserve/Rangers vide order book No. 108 dated 26.8.2009, entered the name of the respondent in list 'D-2' at serial No. 13 in the light of the judgment passed by this Court on 15.5.2009. The respondent filed an



application for initiation of contempt of Court proceedings before this Court against the DIG, Reserve/Rangers that his name had not been entered in the light of the direction issued by this Court on 15.5.2009. This Court dismissed the application filed by the respondent on the ground that this Court has not issued any direction in relation to enter the name of the respondent with effect from any particular date or day. The respondent challenged the order book No. 108 dated 26.8.2009 by filing an appeal before the learned Service Tribunal which was admitted for regular hearing. Appellant No.1, herein, filed an application for impleading him as party in the line of the respondents, which was allowed and he was impleaded as party. After hearing the arguments, the learned Service Tribunal accepted the appeal filed by the respondent with the direction to the official respondents to enter the name of the

respondent in list 'D-2' from the date i.e. 25.8.2003.

4.           Sardar Abdul Sammie Khan, Advocate, the learned counsel for the appellant in appeal No. 45 of 2015, argued that the judgment passed by the learned Service Tribunal is against law and the facts of the case, which is not sustainable in the eye of law. He contended that the learned Service Tribunal while recording the findings that the appeal filed by the appellant was time-barred failed to adhere to the law on the subject. He further contended that the order dated 4.9.2003 passed by DIG, Reserve was assailed before the Inspector General of Police (IGP), on 30.3.2004 and the appeal was filed before the learned Service Tribunal on 6.10.2009, which was well within time. He argued that the learned Service Tribunal while delivering the impugned judgment has not

resolved the question of limitation in a legal manner.

5. On the other hand, Mr. Raza Ali Khan, Advocate-General, counsel for respondents No.1 & 2, argued that the appeal filed by the appellant is based on false, baseless and frivolous grounds. He argued that the appellant filed appeal before the learned Service Tribunal after lapse of a considerable delay, therefore, the learned Service Tribunal has rightly dismissed the appeal on the ground of limitation. He submitted that the judgment passed by the learned Service Tribunal is in accordance with law. The appellant failed to point out any illegality in the impugned judgment passed by the learned Service Tribunal.

6. Kh. Muhammad Nasim, Advocate, the learned counsel for proforma respondent No. 3, argued that the judgment passed by the Service

Tribunal is perfect and legal which does not warrant any interference by this Court. He submitted that neither the revision was competent against the order passed by the Inspector General of Police (IGP), nor anybody can seek remedy in the form of representation. Whereas, the remedy against such order is appeal before the Service Tribunal and the limitation for filing the same is 90 days. He argued that admittedly, the appellant filed an appeal before the Service Tribunal against the order dated 4.9.2003 after a considerable delay of 6 years for which no plausible explanation has been assigned. In this way, the learned Service Tribunal rightly dismissed the appeal being time-barred.

7. Kh. Muhammad Nasim and Maqsood Ahmed Sulehria, Advocates, the learned counsel for the appellants, in appeal No. 72 of 2015, argued that the judgment passed by the learned

Service Tribunal is against law and the facts of the case which is not sustainable in the eye of law. They further argued that this Court in the judgment dated 15.5.2009 has not issued any direction to enter the name of the respondent in list 'D-2' from 25.8.2003. The learned Service Tribunal fell in error while directing the department to enter the name of the respondent in list 'D-2' from 25.8.2003, therefore, the impugned judgment passed by the learned Service Tribunal is liable to be set aside. They contended that the learned Service Tribunal has wrongly interpreted the judgment of this Court, whereas, it has no jurisdiction to direct the department to enter the name of the respondent in list 'D-2' from any particular date. They submitted that the appellant is the most senior in the department and in case the name of the respondent is entered in list 'D-2' from 28.5.2003, the rights of the appellant will get

infringe but the learned Service Tribunal has not taken into account this important aspect of the case.

8. On the other hand, Sardar Abdul Sammie Khan, Advocate, the learned counsel for respondent No.1, in appeal No. 72 & 124 of 2015, while controverting the arguments addressed by the learned counsel for the appellants, argued that the judgment impugned has been passed in the light of the judgment of this Court delivered in civil appeal No. 75 of 2008 decided on 15.5.2009. He argued that this Court after accepting the appeal No. 75 of 2008, declared that *'in view of above, the appeal is accepted with cost and it is directed that he shall be placed in list 'D-2' for which he is due according to his acquired qualification on the basis of certificates and recommendations of intelligence bureau.'* He contended that the appellants have no locus standi to file appeal

before the Service Tribunal as they do not fall within the definition of aggrieved persons. He argued that the learned Service Tribunal while delivering the impugned judgment has resolved all the controversial issues involved in the matter, therefore, the appeal is liable to be dismissed.

9. Mr. Raza Ali Khan, the learned Advocate-General, in appeal No. 124 of 2015, almost reiterated the same arguments taken in appeal No. 72 of 2015 while arguing that the learned Service Tribunal failed to resolve the real controversy involved in the matter. He submitted that the learned Service Tribunal while delivering the impugned judgment has totally relied upon the contents of the appeal and did not consider the version of the appellants. He further submitted that this Court has not issued any direction in order to enter the name of the respondent with effect from any

particular date or day. He averred that this Court vide judgment dated 15.5.2009 directed the official respondents to enter the name of the respondent in list 'D-2' for which he is due according to his acquired qualification on the basis of certificate and recommendation of the Intelligence Bureau.

10. We have heard the arguments of the learned counsel for the parties and gone through the record made available. The record reveals that the appeal titled *Muhammad Aftab vs. Inspector General of Police and another* was dismissed by the learned Service Tribunal on the point of limitation. During the course of arguments, when the learned counsel for the appellant was confronted that the appellants filed appeal against the order book No. 78 dated 4.9.2013 after a considerable delay of six years, whereas, the limitation for filing the appeal before the Service Tribunal is 90 days in the



light of the judgment of this Court reported as *Gulzar Hussain vs. Ch. Abdul Aziz & 6 others* [2016 SCR 742], the learned counsel for the appellant was unable to controvert the legal position and frankly conceded that in the light of the dictum laid down by this Court in the case *supra*, the appeal filed by the appellant before the learned Service Tribunal was hopelessly time-barred. In this state of affairs, we do not discuss the other points involved in the case as the same would be a futile exercise. The learned Service Tribunal has not committed any illegality while dismissing the appeal on the ground of limitation as the same was hopelessly time barred.

11. The claim of the appellants in appeals No. 72 & 124 of 2015 is that the learned Service Tribunal issued the direction to the department to enter the name of the respondent in list 'D-2' from 25.8.2003 which is against the judgment of

this Court dated 15.5.2009. To appreciate the argument, we have examined the judgment of this Court passed in civil appeal No. 75 of 2008, decided on 15.5.2009. The operative part of the judgment of this Court dated 15.5.2009, reads as under:—

“In view of above, the appeal is accepted with costs and it is directed that he shall be placed in list ‘D-2’ for which he is due according to his acquired qualification on the basis of certificate and recommendation of the Intelligence Bureau.”

12. It is admitted position that in compliance of the judgment of this Court dated 15.5.2009, the DIG, Reserve/Rangers entered the name of the respondent in list ‘D-2’ at serial No. 13. A review petition has been filed on 8.6.2009, against the judgment of this Court dated 15.5.2009, which was dismissed in the following manner:—

“The Court has not ordered anything else against anybody so as to affect anybody’s right but the Court has ordered that the name of respondent be entered in ‘D-2’ list on the basis of acquired qualification. If entry of his name in list ‘D-2’ is against the rules or order of the Court and affects the service rights of any of the officials, he is at liberty to seek remedy from the proper Court, hence, the review application is misconceived and is hereby dismissed.”

The respondent filed contempt application on 8.5.2011 before this Court on the ground that his name has not been entered in the light of the direction issued by this Court. This Court vide order dated 22.4.2011 while dismissing the contempt application held that this Court had not issued any direction in order to enter the name of the respondent with effect from any particular date or day. The relevant paragraph of the order dated 22.4.2011 reads as under:—

“2. We have categorically recorded that the applicant shall be included in list D-2

which he is due according to his acquired qualification on the basis of certificate and recommendation of Intelligence Bureau. We have not directed the concerned Police authorities to enter his name on a particular date or day. The application for initiation of contempt proceedings by a subordinate officer of the Police service against Deputy Inspector General of Police is highly deprecated. The application consequently fails, which is rejected.”

After careful reading of the reproduction paragraph (supra) we failed to gather anything regarding the direction to enter the name of the respondent in list 'D-2' from 25.8.2003. In compliance of the judgment of this Court dated 15.5.2009, the DIG, Reserve/Rangers has already entered the name of the respondent in list 'D-2' at serial No. 13. The argument of the learned counsel for the appellants that if the effect from the date i.e. 25.8.2003 has given to the respondent, the whole seniority list will be disturbed, is not without substance. There was no

direction of this Court to enter the name of respondent in list 'D-2' from any specific date. Therefore, the learned Service Tribunal was not justified to issue the direction to the department to enter the name of the respondent in list 'D-2' from 25.8.2003.

In the light of what has been discussed above, we inclined to accept appeals No. 72 & 124 of 2015 while setting aside the order passed by the learned Service Tribunal on 30.9.2014, whereas, appeal No.45 of 2015 stands dismissed. No order as to costs.

Muzaffarabad.

\_\_\_3.2017

**JUDGE**

**CHIEF JUSTICE**

Date of announcement: 15.03.2017