

SUPREME COURT OF AZAD JAMMU & KASHMIR
[Review Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

1. Civil Review No.8 of 2017
(Filed on 1.2.2017)

1. Muhammad Tufail Mir, Assistant Engineer (LTR), Office of chief Engineer Electricity, Muzaffarabad.
2. Muhammad Imtiaz Khan, Assistant Engineer, Operation Division Electricity, Rawalakot.
3. Muhammad Shafique Awan, Assistant Engineer, Operation Sub-Division, Patehka, District Muzaffarabad.
4. Aamir Mehmood Wani, Assistant Engineer, Office of Director Commercial Electricity, Muzaffarabad.
5. Muhammad Habib Khan, Assistant Engineer, Construction Division, Rawalakot.
6. Irshad Ahmed Awan, Assistant Engineer, Operation Sub-division, Sharda, District Neelum.
7. Syed Aftab Hussain Shah, Assistant Engineer, Operation Sub-Division, Electricity, Hajira, District Poonch.
8. Tahir Mushtaq, Assistant Engineer, Operation Sub-Division, Electricity, Thorar, Rawalakot.
9. Fazal-e-Rabi, Assistant Engineer, Operation Sub-Division, Electricity, Panyola, Rawalakot.
10. Muhammad Raza Kausar Butt, Assistant Engineer, Operation Sub-Division, Jatlan.
11. Ejaz Ahmed Jarral, Assistant Engineer, Operation Sub-Division, Islam Garh, Mirpur.

..... PETITIONERS

versus

1. Muhammad Nazir Sheikh, Sub-Engineer, Operation Sub-Division, Hattian Bala, District Hattian.
2. Abdul Qayyum, Sub-Engineer, Operation sub-Division Garhi Dopatta, District Muzaffarabad.
3. Muhammad Iqbal, Assistant Engineer, Operation Sub-Division, Hattian Bala.
4. Zulfiqar Ali, Assistant Engineer, Operation Sub-Division, Electricity, Pallandari.
5. Ashfaq Ahmed Kiani, Assistant Engineer (Additional Charge) Electricity, Trarkhal, District Sudhenuti.
6. Muhammad Khaliq Khan, Sub-Engineer Electricity, In-charge, Workshop, Rawalakot.
7. Naseem Begum, wife of Aslam Khan Abbasi,
8. Afia Akram, Widow,
9. Hussain Abbasi,
10. Asfand Abbasi, sons,
11. Rubma Abbasi, daughter, legal heirs/representatives of Dawood Anwar Abbasi, Sub-Engineer (since deceased) residents of Garhi Dopatta, Tehsil & District, Muzaffarabad.
12. Azad Government of the State of Jammu & Kashmir through its Chief Secretary having his office at new Secretariat, Muzaffarabad.
13. Secretary Electricity Department, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
14. Services & General Administration Department, through its Secretary, having his office at New Secretariat, Muzaffarabad.
15. Chairman Selection Board No.III, Azad Govt. of the State of Jammu & Kashmir, Civil Secretariat, Muzaffarabad.

16. Chief Engineer Electricity Department, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
17. Committee for Determination of Seniority of Sub-Engineers Electricity Department through Muhammad Munir Qureshi, Chairman Committee/Chief Engineer, Electricity, Mirpur.
18. Muhammad Saleem Awan, Chief Engineer Electricity, Muzaffarabad/Member Committee for determination of Seniority of Sub-Engineers Electricity.

.....RESPONDENTS

19. Shoukat Aziz Mir, Assistant Engineer (LTR) Electricity, Transformer Workshop, Muzaffarabad.
20. Sanaullah, Assistant Engineer Electricity, Store Division, Mirpur.

..... PROFORMA RESPONDENTS

[In the matter of review from the judgment of this Court dated 20.1.2017 in Civil Appeals No.279/2014 and 286 & 287 of 2015]

FOR THE PETITIONERS: Mr. Abdul Rasheed Abbasi, advocate.

FOR THE RESPONDENTS: Mr. Raza Ali Khan, Advocate-General & Mr. Farooq Hussain Kashmiri, advocate.

2. Civil Review No.9 of 2017
(Filed on 1.2.2017)

Shoukat Aziz Mir, Assistant Engineer (LTR) Electricity, Transformer Workshop, Muzaffarabad.

.....PETITIONERS

versus

1. Muhammad Nazir Sheikh, Sub-Engineer, Operation Sub-Division, Hattian Bala, District Hattian.
2. Abdul Qayyum, Sub-Engineer, Operation sub-Division Garhi Dopatta, District Muzaffarabad.
3. Muhammad Iqbal, Assistant Engineer, Operation Sub-Division, Hattian Bala.
4. Zulfiqar Ali, Assistant Engineer, Operation Sub-Division, Electricity, Pallandari.
5. Ishtiaq Ahmed Khan, Assistant Engineer (Additional Charge) Electricity, Trarkhal, District Sudhenuti.
6. Muhammad Khaliq Khan, Sub-Engineer Electricity, In-charge, Workshop, Rawalakot.
7. Sanaullah, Assistant Engineer Electricity, Store Division, Mirpur.
8. Naseem Begum, wife of Aslam Khan Abbasi,
9. Afia Akram, Widow,
10. Hussain Abbasi,
11. Asfand Abbasi, sons,
12. Rubma Abbasi, daughter, legal heirs/representatives of Dawood Anwar Abbasi, Sub-Engineer (since deceased) residents of Garhi Dopatta, Tehsil & District, Muzaffarabad.
13. Muhammad Tufail Mir, Assistant Engineer (LTR), Office of Chief Engineer Electricity, Muzaffarabad.
14. Muhammad Imtiaz Khan, Assistant Engineer, Operation Division, Electricity, Rawalakot.
15. Muhammad Shafique Awan, Assistant Engineer, Operation Sub-Division, Pattika, District Muzaffarabad.
16. Aamir Mehmood Wani, Assistant Engineer, Office of Director Commercial Electricity, Muzaffarabad.
17. Muhammad Habib Khan, Assistant Engineer, Construction Division, Rawalakot.

18. Irshad Ahmed Awan, Assistant Engineer, Operation Sub-division Sharda, District Neelum.
19. Syed Aftab Hussain Shah, Assistant Engineer, Operation Sub-Division Electricity Hajira, District Poonch.
20. Tahir Mushtaq, Assistant Engineer, Operation Sub-Division, Electricity, Thorar, Rawalakot.
21. Fazal-e-Rabi, Assistant Engineer, Operation Sub-Division, Electricity, Panyola Rawalakot.
22. Muhammad Raza Kaousar Butt, Assistant Engineer, Operation Sub-Division, Jatlan.
23. Ejaz Ahmed Jarra, Assistant Engineer, Operation Sub-Division, Islam Garh, Mirpur.

.....RESPONDENTS

24. Azad Government of the State of Jammu & Kashmir through its Chief Secretary having his office at new Secretariat, Muzaffarabad.
25. Secretary Electricity Department, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
26. Services & General Administration Department, through its Secretary, having his office at New Secretariat, Muzaffarabad.
27. Chairman Selection Board No.III, Azad Govt. of the State of Jammu & Kashmir, Civil Secretariat, Muzaffarabad.

..... PROFORMA RESPONDENTS

[In the matter of review from the judgment of this Court dated 20.1.2017 in Civil Appeals No.279/2014 and 286 & 287 of 2015]

FOR THE PETITIONERS: Raja Amjad Ali Khan,
advocate.

FOR THE RESPONDENTS: Mr. Raza Ali Khan, Advocate-
General and Syed Sarosh
Gilani, advocate.

Date of hearing: 4.10.2017

JUDGMENT:

Raja Saeed Akram Khan, J.—Both the supra-titled petitions have been filed for seeking review of the judgment of this Court passed in Civil Appeals No.279, 286 & 287 of 2014, on 20.1.2017.

2. The common facts giving rise to the filing of the captioned review petitions are that the respondents, herein, in both the cases, filed separate appeals before the Service Tribunal against certain notifications on the ground that they are permanent employees of the Electricity Department presently posted as Sub-Engineers, Electricity, who have also obtained the degree of B. Tech (Hons.). The private respondents, therein, who are junior to the appellants have illegally been appointed on current-charge basis and officiating basis as the Assistant Engineers (B-17) through the notifications challenged by them. The said notifications have not been communicated to them, however, on gaining the knowledge of the impugned

notifications the appeals were filed, hence, from the date of knowledge, the appeals are well in time. It was alleged that the department also issued the seniority lists of B. Tech (Hons.) and B.Sc. Electrical Sub-Engineers in violation of the departmental service rules. The appellants, therein, are senior to the private respondents, therein, and have also better merit and service record, whereas the private respondents, therein, who are junior to the appellants, have illegally been appointed to the posts of higher grade in clear violation of law, therefore, the impugned notifications are liable to be set aside. The learned Service Tribunal consolidated the appeals and decided the same through the impugned judgment dated 22.4.2015, in the manner that the impugned notifications relating to the officiating/current-charge promotion, have been issued without considering the appellants, therein, who are senior to the private respondents, therein, according to the seniority list of Sub-Engineers. The department has to firstly, determine the seniority of the relevant cadres diploma holders Sub-Engineers/B. Tech. (Hons.) employee of the department according to the departmental rules on

the basis of their first appointment/induction into service and after completion of seniority the process of selection of eligible employees through the Selection Board may be completed within two months from the date of this order, failing which the impugned notifications of current charge/officiating charge appointment of the private respondent shall be declared to have come to an end or deemed cancelled/set-aside. The consolidated judgment passed by the Service Tribunal on 22.4.2015 was challenged through appeals before this Court, which have been dismissed through the judgment under review.

3. Vide order dated 18.5.2017, after hearing the counsel for the parties, both the above-titled review petitions were admitted for regular hearing for examining the points in review.

4. M/s Abdul Rasheed Abbasi and Raja Amjad Ali Khan, advocates, counsel for the petitioners in both the petitions, raised a common argument that they are aggrieved of the judgment under review to the extent of conclusion recorded in the judgment. They added that after going through the findings recorded in para 11 and 12 of the judgment under review, it appears

that this Court was not in agreement with the findings recorded by the Service Tribunal whereas, while concluding the judgment, the appeal was dismissed, rather the same should have been accepted. They maintained that the notifications of promotion were challenged before the Service Tribunal *inter alia* on the ground that the persons, who were junior to the petitioners, have illegally been promoted on officiating basis as Assistant Engineers (B-17) through different notifications and it was alleged before the Tribunal that seniority list of Sub-Engineers of B-Tech (Hons.) and B.Sc. Electrical Engineering has been issued in violation of the rules, as the issue of seniority has been resolved by this Court while relying upon the case titled *Sana-Ullah vs. Irshad Ahmed Awan and others* (Civil Review Petition No.17 of 2011, decided on 25.06.2015), therefore, they do not press the petitions to that extent. The learned advocates submitted that in para 11 and 12 of the judgment under review, it appears that this Court was fully agreed with the contention raised while arguing the appeal, whereas the result is otherwise, which is an error apparent on the face of the record.

5. On the other hand, Mr. Farooq Hussain Kashmiri and Syed Sarosh Gilani, advocates, counsel for the respondents in both the petitions, while supporting the judgment under review, have submitted that the same is quite legal and has been passed after attending all the controversial questions, which is not open to interference in review. The learned counsel further submitted that in pursuance of the judgment under review, the seniority list has already been issued. They also submitted that the scope of review is very limited and provisions of review can only come into play when there is an error apparent on the face of the record. In this regard the learned counsel referred to and relied upon the cases reported as *Muhammad Gulzar vs. Qasim Hussain Shah* [1993 SCR 285], *Mobashir Ahmad vs. the State* [PLD 2010 Supreme Court 665] and *Messrs Blue Star Spinning Mills Ltd. vs. Collector of Sales Tax & others* [2013 SCMR 587].

7. We have heard the learned advocates for the parties and gone through the judgment under review as well as the record made available.

8. The case of the petitioners before this Court in appeal was that the Service Tribunal has erred in law while not taking into consideration that the separate seniority list for both the cadres has to be prepared for determination of the quota of each cadre and process for promotion. The direction issued by the Service Tribunal for determining the seniority on the basis of first appointment/induction into service is against the very provisions of the rules. Moreover, that the final seniority list has not been challenged by any of the respondents at any forum within prescribed time, which has become final, therefore, the direction issued by the Service Tribunal for redetermination of the seniority list is against the law, which is liable to be set aside. The question of the seniority was resolved by this Court on the strength of the case titled *Sana-Ullah vs. Irshad Ahmed Awan and others* (Civil Review Petition No.17 of 2011, decided on 25.06.2015), in para 11 and 12 of the judgment under review in the following terms:-

"11. The basic difference between categories 'b' and 'c' provided for promotion against the posts of Assistant Engineers (B-17) is that for promotion against the posts reserved for 15% quota, it is necessary that the person should have served as Sub-Engineer

having qualification of B.Sc. Electrical Engineering/B. Tech. (Hons) for a specified period, whereas, for promotion against 20% quota reserved in category 'c' there are two conditions that a Sub-Engineer must have served in the department for the last 7 years and possessed the initial qualification necessary for appointment as Sub-Engineer. There is no ambiguity in the rules that for appointment as Assistant Engineer (B-17), three types of quota have been reserved for three types of categories. The seniority of categories 'b' and 'c' is not common. The matter came under consideration of this Court in the case titled *Sana-Ullah vs. Irshad Ahmed Awan and others* (Civil Review Petition No.17 of 2011, decided on 25.06.2015), whereby it was observed as under:-

"7. Now we advert to the next argument raised by the counsel for the respondent regarding the application of the Electricity Department Service Rules, 1993 which deals with the method of recruitment against the post of Assistant Engineer, B-17. As per column 6 of the said rules, the mode for initial recruitment against 65% quota reserved for the purpose has been provided. The case of both the constant civil servants is not covered by the academic requirement envisaged in the said column, therefore, the same need not be discussed. Column 8 provides the method of recruitment, clause 'a' and 'b' of which postulate that 15% posts shall be filled in by promotion on the basis of seniority-cum-fitness amongst the Sub-Engineering possessing the qualification of

B.Sc. Electrical Engineering/ B. Tech. (Hons). In this column, a proviso has also been attached to the clauses 'a' and 'b', which is as under:-

'Provided that those with B.Sc. Electrical Engineering shall have three years Experience and while those who possess B. Tech (Hons) will have five years experience as such if none is available for promotion then by initial recruitment.'

The above reproduced proviso of the Rules clearly conveys that a person who claims promotion under clause 'b' of the Electricity Department Service Rules, 1993, he has to fulfill the requirement of the qualification of B.Sc. Electrical Engineering with 3 years' experience or possesses B. Tech (Hons) with 5 years' experience. In case, the persons of both the categories are not available for promotion, then the post shall be filled in by initial recruitment.

8. At first, we would like to discuss clause 'b' of the Electricity Department Service Rules, 1993. To examine, whether the case of the contestant parties comes within the purview of clause 'b' of the Electricity Department Service Rules, 1993 or not. From the perusal of record, it reveals that the petitioner was appointed on temporary basis as Sub-Engineer, B-11 on 11.10.2008 and he was confirmed on the recommendations of the Selection Committee vide order dated 14.11.2008. The petitioner was appointed as

Assistant Engineer, B-17 on current charge basis against 15% departmental quota vide notification dated 4.9.2009. Under clause 'b' of the Electricity Department Service Rules, 1993, the petitioner who possessed B.Sc. Electrical Engineering Degree can be eligible for promotion as Assistant Engineer, B-17 after 3 years' experience but the petitioner fell short of length of 3 years' service as prescribed by the promotion under the departmental Rules.

9. The respondent got degree of Bachelor of Technology (Hons) in Electrical Technology from Preston University in January, 2009 and he was appointed as Assistant Engineer on current charge basis on 13.5.2010. Under clause 'b' of the rules, the respondent, who possesses B. Tech. (Hons) Degree can be eligible for promotion as Assistant Engineer, B-17 after 5 years' experience. According to the letter dated 11.3.2009 issued by the Pakistan Engineering Council, the degree of B. Tech (Hons) cannot be treated at par with the person who is holding the degree of B.Sc. Engineering and on the basis of above degree, no promotion/appointment to the post involving professional engineering work can be made, therefore, the respondent does not fulfill the required qualification.

10. Another clause, i.e., clause 'c' of the Electricity Department Service Rules, 1993 provides that 20% seats shall be filled in by promotion while adopting the criteria of seniority-cum-fitness on

the strength of the qualification prescribed for initial recruitment as Sub-Engineers provided they completed seven years service as Sub-Engineer in the department and have been placed in grade, B-16 after passing Sub-Engineers professional examination.

11. After discussing the above said three eventualities, we are of the consistent view that the respondent can claim the promotion if he fulfills the qualification mentioned in clauses 'b' & 'c' of the Electricity Department Service Rules, 1993. The argument of the learned counsel for the respondent that two terms, i.e., experience and services have been used in the Electricity Department Service Rules, 1993. No doubt, both the terms used in the Electricity Service Rules, 1993 are quite different. In clause 'b' of the proviso, the term "shall have three years' experience" has been used in case of Electrical Engineering, whereas, the term "will have five years' experience" has been used in case of B. Tech (Hons). Whereas, in clause 'c' of the Rules, the term "7 years' services" has been used in case of degree in Engineering in the requisite discipline from a recognized University or an equivalent qualification and registration as a professional engineering with Pakistan Engineering Council. The respondent does not fulfill the qualification mentioned in clauses "b' & 'c' of the Electricity Department Service Rules, 1993. Therefore, we are of the view that

the respondent cannot claim promotion on the basis of B. Tech (Hons) Degree to the post involving professional engineering work. This Court while delivering the impugned judgment has not attended this crucial point in its true perspective... "

Thus, it is concluded that the seniority of two categories 'b' and 'c' provided for promotion against the post of Assistant Engineers (B-17) cannot be common. The seniority of category 'b' is common with a distinction drawn in the proviso that the persons who are serving as Sub-Engineers and have three years' experience while the Sub-Engineers who have the qualification of B. Tech. (Hons) shall have five years' experience and Sub-Engineers falling in category 'c' of 20% quota, they shall be working as Sub-Engineer for 7 years and are placed in B-16.

12. The Service Tribunal has observed that the department has to firstly determine the seniority of the relevant cadres, i.e. diploma holder, Sub-Engineers/B-Tech. (Hons), employees of the department according to the departmental rules on the basis of their first appointment/ induction into service. The scheme of Rules 1993 is unambiguous. Different qualification for promotion for two different quotas is provided, so seniority of two cadres in category 'b' and 'c' cannot be common."

9. The learned counsel for the petitioners have not pressed their arguments in this regard and appear to be satisfied from the findings recorded above. The main thrust of the argument of the counsel for the

petitioners is that in para 11 and 12, this Court in unambiguous language has held that the scheme of the Electricity Department Service Rules, 1993 is very much clear, which provides separate qualification for promotion against the categories mentioned therein, for the posts of Assistant Engineers (B-17), thus, the seniority of two cadres provided under categories 'b' and 'c' cannot be common, therefore, while reiterating and endorsing the findings recorded in para 11 and 12 of the judgment under review, we hold that the Department shall strictly follow the same while processing the cases of promotion against the posts of Assistant Engineers (B-17) of the categories (B) and (C). Resultantly the order of dismissal of the appeal is recalled. The appeal stands partly accepted in the light of the findings in para 11 and 12, reproduced hereinabove.

With the above observations, the review petitions stand disposed of accordingly, with no order as to the costs.

JUDGE

JUDGE

Muzaffarabad
13.10.2017.