

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.  
Raja Saeed Akram Khan, J.  
Sardar Abdul Hameed Khan, J.

**1. Civil Appeal No.253 of 2017**  
(PLA filed on 11.09.2017)

1. Azad Govt. of the State of Jammu and Kashmir through its Secretary S&GAD, Muzaffarabad.
2. Secretary Services & General Administration Department, Muzaffarabad.
3. Secretary Finance, Muzaffarabad.
4. Selection Board No.1 through its Chairman (Secretary Services & General Administration Department), New Secretariat, Muzaffarabad.

.....APPELLANTS

VERSUS

1. Ghulam Murtaza Mughal, Additional Secretary Finance, Muzaffarabad.

.....RESPONDENT

2. Nadeem Iqbal Qureshi, Additional Secretary Finance, Muzaffarabad.

..... PROFORMA RESPONDENT

(On appeal from the judgment of the Service Tribunal dated 11.07.2017 in Service Appeal No.12/2017)

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

FOR RESPONDENT NO.1: Raja Muhammad Hanif  
Khan, Advocate.

2. Civil Appeal No.271 of 2017  
(PLA filed on 11.09.2017)

1. Razaqat Hussain Awan, Senior Additional Secretary at present officiating Managing Director, Small Industries Department, Muzaffarabad.
2. Aamer Mehmood Mirza, Additional Secretary, Service Tribunal present officiating Senior Additional Secretary, Services & General Administration Department, Muzaffarabad.
3. Muhammad Rashid Haneef, Additional Secretary, Services & General Administration Department, Muzaffarabad.
4. Anayat Ali Qazi, Additional Secretary, Finance Department, Muzaffarabad.

.....APPELLANTS

VERSUS

1. Ghulam Murtaza Mughal, Additional Secretary Finance (Budget), having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.

.....RESPONDENT

2. Azad Govt. of the State of Jammu & Kashmir through Secretary Services & General Administration Department, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.

3. Secretary, Services & General Administration Department, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
4. Finance Department through Secretary Finance, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
5. Selection Board No.1 through its Chairman/Secretary Services & General Administration Department, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
6. Nadeem Iqbal Qureshif, Additional Secretary Finance, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.

..... PROFORMA RESPONDENT

(On appeal from the judgment of the Service Tribunal dated 11.07.2017 in Service Appeal No.12/2017)

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FOR THE APPELLANTS: Mr. M. Noorullah Qureshi, Advocate.

FOR THE RESPONDENTS: M/s. Raza Ali Khan, Advocate-General and Raja Muhammad Hanif Khan, Advocate.

3. Civil Appeal No.275 of 2017  
(PLA filed on 03.10.2017)

Jumma Khan, Additional Secretary Budget (B-19), Finance Department, New Secretariat, Muzaffarabad.

.....APPELLANT

VERSUS

1. Ghulam Murtaza Mughal, Additional Secretary Development/Budget, Finance Department, New Secretariat, Muzaffarabad.

.....RESPONDENT

2. Azad Govt. of the State of Jammu & Kashmir through Secretary Services & General Administration Department having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
3. Secretary Services & General Administration Department, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
4. Finance Department through Secretary Finance, having his office at New Secretariat, Lower Chatter, Muzaffarabad.
5. Selection Board No.1 through its Chairman / Secretary, Services & General Administration Department, having his office at New Secretariat, Lower Chatter, Muzaffarabad.
6. Nadeem Iqbal Qureshi, Additional Secretary Finance, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 11.07.2017 in Service Appeal No.12/2017)

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FOR THE APPELLANT: Raja Gul Majeed Khan,  
Advocate.

FOR THE RESPONDENTS: M/s. Raza Ali Khan,  
Advocate-General, Raja  
M. Hanif Khan,  
Advocate.

FOR THE INTERVENORS  
(In all appeals):

Barrister Humayun  
Nawaz Khan, Advocate.

Date of hearing: 13.12.2017

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**– All the captioned appeals by leave of the Court have arisen out of the common judgment of the Service Tribunal involving identical propositions, hence, are disposed of through this single judgment.

2. The facts constraining the parties to file the titled appeals are that respondent No.1, herein, Ghulam Murtaz Mughal, filed an appeal before the Service Tribunal on 09.01.2017 claiming therein that he was promoted to the post of Additional Secretary BPS-19 in the Finance Department vide notification dated 18.08.2015. This promotion was given retrospective effect from 02.08.2015. He alleged that one post of Additional Secretary BP-19 was upgraded vide notification dated 23.07.2010 in continuation of which Mr. Mumtaz Ahmed Mir, the

then Acting Senior Additional Secretary, was promoted to the upgraded post in the Finance Department upon the recommendations of respective Selection Board vide notification dated 25.11.2010. The said upgradation was conditional that as and when the incumbent holding the post of Senior Additional Secretary BPS-20 is transferred or retired the post shall automatically be downgraded. On retirement of Mr. Mumtaz Ahmed Mir on 21.08.2014 the post stood downgraded. He claimed that in the manner Mr. Mumtaz Ahmed Mir was promoted, he being eligible is also entitled to be promoted but Mr. Nadeem Iqbal Qureshi (proforma respondent herein), who was an incumbent of the Services and General Administration Department was firstly transferred to the Finance Department as Additional Secretary and thereafter vide notification dated 28.11.2016 promoted to the post of Senior Additional Secretary BPS-20 in the Services and General Administration Department. Through the notification dated 27.12.2016 one post of Additional Secretary BPS-19 in the Finance

Department was upgraded as Senior Additional Secretary BPS-20 and against the said upgraded post, Mr. Nadeem Iqbal Qureshi was posted by transfer. The respondent challenged both the notifications and prayed for setting-aside the same. The learned Service Tribunal, after necessary proceedings, vide impugned judgment dated 11.07.2017 disposed of the appeal in the following terms:-

“The upshot of the above discussion is that the instant appeal is accepted partly, the impugned notification No.S&GAD/MG-2(1)2016(Gazetted-I) dated 27.12.2016 to the extent of clause II of posting of the respondent No.4 as Senior Additional Secretary Finance BS-20 is set aside. While the appeal is dismissed partly to the extent of promotion notification No. S&GAD/A-1(84)I/2016 (Gazetted-I) dated 28.11.2016. The official respondents, as such, are directed to process the case of the appellant for promotion against the upgraded post of Senior Additional Secretary Finance in BS-20 in accordance with departmental rules in vogue.”

Through the titled appeals the impugned judgment of the Service Tribunal has been challenged by the Government, Rafaqat Hussain Awan & others (Senior Additional Secretary and

Additional Secretaries, Finance) and Jumma Khan (Additional Secretary Budget, Finance).

3. Mr. Raza Ali Khan, Advocate-General appearing on behalf of the Azad Government and others, after narration of necessary facts seriously objected to the impugned judgment of the Service Tribunal on the ground that the same is against law and the facts. The learned Service Tribunal has failed to properly appreciate the legal and factual propositions involved in the case. According to the enforced rules amended in the year 2010, the post of Senior Additional Secretary BPS-20 can be filled either by promotion or by transfer of a suitable person serving in other departments. The proforma respondent, Nadeem Iqbal Qureshi, who was already serving in BPS-20 was transferred to Finance Department in view of his requirement for the purpose. In the Finance Department there was no post of BPS-20 and according to law no person can be transferred against a lower grade post, thus, to meet this eventuality the post was upgraded. The order impugned before the Service Tribunal



was quite legal calling for no interference. He further argued that the Service Tribunal on one hand upheld the promotion order of the proforma respondent and on the other hand recalled his transfer order against the post of BPS-20, thus, the judgment is self-contradictory. He further argued that if at all the transfer order of proforma-respondent is recalled then the question of upgradation of the post does not arise. In this state of affairs, the direction issued by the Service Tribunal for sending the case of respondent No.1 for promotion is against law and cannot be enforced as on the cancellation of transfer order of the proforma respondent the conditional upgradation is also automatically recalled. He further argued that respondent No.1 has got no locus standi or cause of action as his induction in the Finance Department is against law. In this state of affairs, his appeal before the Service Tribunal was not competent, therefore, while accepting this appeal and recalling the impugned judgment of the Service Tribunal the

appeal filed by respondent No.1 before the Service Tribunal may kindly be dismissed.

4. Raja Muhammad Hanif Khan, Advocate, the learned counsel for respondent No.1, Ghulam Murtaza Mughal, while controverting the arguments of the learned counsel for the appellants submitted that the civil servant against whom the Service Tribunal has passed the judgment has not filed any appeal. He has accepted the judgment of the Service Tribunal, thus, the appeal filed by the Government is incompetent. He further argued that the Government is not empowered to upgrade the post in such like manner for a specific person. According to law there is a prescribed mode for upgradation of the post. The law also provides the method to be adopted for filling such post. Respondent No.1 being senior most having requisite special training and qualification, is entitled to be promoted against the post, thus, the Service Tribunal has rightly issued the direction for sending his case for promotion. This appeal is not maintainable and is liable to be dismissed.

5. Barrister Humayun Nawaz Khan, filed an application on behalf of the intervenor, Muhammad Idress Khan (Director I.T. Finance BPS-19) and argued that in view of the legal and factual proposition the applicant is an aggrieved person. He may be arrayed as party in the appeal and a direction for sending his case for promotion against the upgraded post may also be issued.

6. The learned counsel for the appellants in appeals No.271 and 275, Muhammad Noorullah Qureshi and Raja Gul Majeed Khan, Advocates, submitted that respondent No.1 is neither legally entitled for promotion nor his induction is valid, therefore, the direction issued by the Service Tribunal for sending his case for promotion against the upgraded post is against law. They further claimed that the appellants being qualified have vested right of promotion against the post.

7. While opposing the appeals, the learned counsel for respondent No.1, Raja Muhammad Hanif Khan, Advocate, submitted that according to the enforced rules none of the appellants is eligible as

they are lacking the required qualification. They have got no legal cause of action and locus standi to file these appeals. Furthermore, they have not challenged the impugned order of transfer of Nadeem Iqbal Qureshi, thus, if at all they have any legal grievance they have lost the opportunity of seeking remedy within the prescribed limitation. Hence, their appeals are not maintainable.

8. We have considered the arguments of the learned counsel for the parties and examined the record made available. According to the admitted facts Mr. Nadeem Iqbal Qureshi (proforma respondent), Additional Secretary Finance BPS-19 was promoted on regular basis as Senior Additional Secretary Services and General Administration Department vide notification dated 28.11.2016. He assumed the charge of the post on 29.11.2016. His promotion order was challenged by respondent No.1 in his appeal before the Service Tribunal but through the impugned judgment the learned Service Tribunal while upholding the promotion order dismissed the appeal to this extent. Neither

respondent No.1 nor any other person has challenged the judgment of the Service Tribunal to this extent, consequently, the controversy relating to the promotion of Mr. Nadeem Iqbal Qureshi has come to an end and his promotion order dated 28.11.2016 is holding the field.

9. The Service Tribunal has set-aside the transfer order of Nadeem Iqbal Qureshi dated 27.12.2016. It will be useful to reproduce the same as under:-

“Azad Government of the State of Jammu & Kashmir  
Services & General Administration Department  
“Muzaffarabad”  
Dated:27.12.2016

**NOTIFICATION:**

No.S&GAD/MG-2(1)2016(Gazetted-I). The President Azad Jammu & Kashmir has been pleased to accord following approvals:

1. ....
2. ....
3. ....
4. i) One post of Additional Secretary (BS-19) in Finance Department is upgraded as Senior Additional Secretary (BS-20).  
ii) Mr. Nadeem Iqbal Qureshi, Additional Secretary (BS-19), Finance Department, promoted in BS-20 against the post of Senior Additional Secretary S&GAD, is posted as Senior Additional Secretary (BS-20), Finance Department.  
iii) This upgradation shall be to the extent of posting of Mr. Nadeem Iqbal Qureshi and shall be downgraded as Additional Secretary (BS-19) on his transfer/posting .

(Khalique Ahmed Khan)  
Section Officer  
(Gazetted-I)”

The above reproduced order clearly speaks and proves that in the Finance Department no post of Senior Additional Secretary BPS-20 was available, thus, one post of Additional Secretary BPS-19 was upgraded for the purpose of posting of Mr. Nadeem Iqbal Qureshi with the condition that in case of his transfer/posting the same shall be downgraded. It is clear that the post of Additional Secretary in the Finance Department has not been regularly upgraded according to rules.

10. So far as the argument of Mr. Raza Ali Khan, Advocate-General, relating to the validity of the posting by transfer order of Mr. Nadeem Iqbal Qureshi, is concerned, in our considered view to this extent the judgment of the Service Tribunal is consistent with the spirit of law. Although, in the impugned judgment in this context reasons have not been expressly advanced but as the posting by transfer in other department can only be made in the mode prescribed in rule 9 of the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977 and the

impugned order reproduced hereinabove is clearly lacking the compliance of rule (supra), thus, the argument has no substance which is hereby repelled.

11. Be that as it may, as Mr. Nadeem Iqbal Qureshi has not filed appeal against the judgment of the Service Tribunal, thus, his transfer in the Finance Department shall be deemed recalled and inoperative. When his transfer against the conditionally upgraded post is declared illegal, then irrespective of the nature of the upgradation whether it was valid or not, the conditional upgradation order shall also be deemed recalled. In this scenario, after recalling of transfer order of Mr. Nadeem Iqbal Qureshi there remains no post of Senior Additional Secretary in the Finance Department. Thus, the direction issued by the Service Tribunal in the impugned judgment to process the case of respondent No.1 for promotion against the upgraded post of Senior Additional Secretary BPS-20 in the Finance Department is superfluous and uncalled.

12. As the civil servant against whom the Service Tribunal has passed the judgment has neither challenged the same nor he has contested the appeals, hence, there remains no necessity to deliberate upon other propositions raised in the appeals relating to the eligibility of the contestants for promotion, specially, when in consequence of recalling of the transfer order of Mr. Nadeem Iqbal Qureshi the upgraded post has vanished. In this state of affairs, in absence of availability of post it would be futile exercise to enter into discussion of determination of the eligibility of the contestants for sending their cases to the Selection Board.

13. In view of the final conclusion drawn by this Court, appeals No.271 and 275 and the application filed by Muhammad Idrees Khan, intervenor, stand dismissed. While disposing of appeal No.253 the impugned judgment of the Service Tribunal is modified and the direction issued for processing the case of respondent No.1 for promotion is recalled. It is also held that on recalling of the transfer order of Mr. Nadeem Iqbal



Qureshi, the conditional upgradation order of the post is also recalled, hence, no question of issuance of direction for initiating the process arises.

All the appeals stand decided in the above indicated terms. No order as to cross.

CHIEF JUSTICE

JUDGE

JUDGE

Muzaffarabad,  
08.01.2018