

**SUPREME COURT OF AZAD JAMMU & KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No.190 of 2018  
(PLA filed on: 28.6.2018)

Ch. Muhammad Ayub, s/o Muhammad Din, Extra Assistant commissioner (B-17), Principal Revenue Academy, Muzaffarbad, presently Collector Mangla Dam Affairs, Mirpur.

.....APPELLANT

V E R S U S

1. Competent Authority/PM of Azad Jammu & Kashmir, through Secretary PM Secretariat, having his office at New Secretariat Complex, Lower Chattar, Muzaffarbad.
2. Azad Government of the State of Jammu & Kashmir through Senior Member, Board of Revenue, AJ&K, New Secretariat Complex, Lower Chattar, Muzaffarbad.
3. Senior Member Board of Revenue, AJ&K, at Lower Chattar, Muzaffarbad.
4. Board of Revenue, Azad Jammu & Kashmir, through Secretary Board of Revenue, Lower Chattar, Muzaffarbad.
5. Departmental Selection Board No.3, constituted for the promotion of Extra Assistant Commissioner (B-17), AJ&K through its Chairman/Senior Member Board

of Revenue, AJ&K, Lower Chattar, Muzaffarbad.

6. Shahid Mehmood, Ex-Secretary Transport Authority, Muzaffarbad, presently D. C. Neelum.
7. Talib Hussain, Ex-Collector Land Acquisition Mangla Dam Affairs, Mirpur, presently Settlement Affairs, Muzaffarbad.
8. Abdul Hameed Kiyani, Deputy Commissioner, District Hattian/Jehlum Valley.
9. Amjid Iqbal, Deputy Commissioner Pallandri.
10. Farooq Akram, Additional Deputy Commissioner General (ADCG), Mirpur.
11. Muhammad Ayub Awan, Additional Deputy Commissioner General (ADCG), Bagh.

.....RESPONDENTS

[On appeal from the judgment of the Service Tribunal, dated 7.5.2018, in Service Appeal No.773/2017]

FOR THE APPELLANT: Ch. Muhammad Ashraf Ayaz, Advocate.

FOR THE RESPONDENTS: Raja Inaamullah Khan, Mr. Masood A. Sheikh and Mr. Asghar Ali Malik, advocates.

*Date of hearing:* 18.2.2019

**JUDGMENT:**

***Raja Saeed Akram Khan, J.***—The titled appeal, by leave of the Court, arises out of the

judgment of the Service Tribunal dated 7.5.2018, whereby the appeal filed by the appellant, herein, has been dismissed.

2. Precise facts, forming the background of the case, are that the appellant, herein, was promoted on officiating basis as Extra Assistant Commissioner (BPS-17), vide notification dated 31.07.2008. Due to non-convening of the meeting of the concerned selection board, he was constrained to file a writ petition before the High Court. During pendency of the writ petition, the appellant stood promoted on regular basis, vide notification dated 08.04.2016, whereupon the writ petition was disposed of with the direction to the authority to consider his case of seniority according to rules. Feeling aggrieved from the notification dated 08.04.2016, he filed a departmental appeal before respondent No.1, claiming therein that the benefit of seniority should have been given to him from the date of his officiating promotion i.e. 31.07.2008. The appeal was rejected vide notification dated 28.04.2017. The claim of the appellant is that his case was presented before Selection Board No.3,

which deferred his promotion, vide notification dated 06.10.2011 and provided two more opportunities for passing the departmental examination. Against the said notification, Shahid Mehmood, respondent herein, and others, filed departmental representation, which was accepted vide notification dated 24.01.2013 and the word "defer" was replaced by the word "supersede". Feeling aggrieved, he filed an appeal before the Service Tribunal against the notifications dated 24.1.2013 and 28.4.2017. After necessary proceedings, the learned Service Tribunal dismissed the appeal through the impugned judgment, hence, this appeal, by leave.

3. Ch. Muhammad Ashraf Ayaz, advocate, counsel for the appellant, submitted that the impugned judgment is based on misconception of law and the facts of the case, as the Court below failed to attend the real controversy involved in the matter, while handing down the judgment. He submitted that the learned Service Tribunal failed to apply its judicial mind while attending to the controversy. He added that the learned Tribunal erred in law while deciding the issue, which was

never put before it. He also submitted that the learned Service Tribunal has wrongly held that the appeal of the appellant has become ifructuous, while observing that even if the notification dated 24.1.2013 is set aside, the notification dated 6.10.2011, whereby his case was deferred, stands restored, without taking into account that the order dated 24.1.2013 was not communicated to the appellant and on attaining the knowledge about the same, the appellant immediately filed an appeal before the Service Tribunal and in this regard, plausible explanation was offered in ground 'H' of the appeal. The learned counsel further submitted that the Service Tribunal has committed grave illegality while not taking into consideration that the order dated 24.1.2013 was not communicated to the appellant. The learned counsel next argued that the learned Service Tribunal has also not taken into account that the recommendations of the Hearing Officer were recorded in his favour and the case of the appellant before the Service Tribunal was to restore the same but instead of deciding the real controversy, the case has been decided on the point,

which was not subject of the appeal. The learned counsel submitted that the learned Service Tribunal also failed to distinguish the words 'defer' and 'supersede' and also that the appellant has been superseded without providing the opportunity of hearing to him. The learned counsel submitted that the above questions have been overlooked by the learned Service Tribunal and the appeal has been decided in a slipshod manner, which is not warranted under law.

4. On the other hand, Raja Inaamullah Khan, Mr. Masood A. Sheikh and Mr. Asghar Ali Malik, advocates, counsel for the respondents, submitted that the original order dated 8.4.2016, challenged before the appellate authority, has not been challenged before the Service Tribunal in the appeal whereas the order dated 24.1.2013 was challenged after a considerable delay. When they were confronted that the learned Service Tribunal has not recorded any finding in the light of the submission made by the appellant in para 'H' of the grounds of appeal, they were unable to satisfy the Court. The learned counsel further submitted that the condition

for qualifying the departmental examination, as claimed by the appellant, was deleted much later and the appellant cannot claim benefit of the same.

5. We have heard the learned counsel for the parties and gone through the impugned judgment along with the other record made available.

6. The main thrust of the arguments of the counsel for the appellant is that notification dated 24.1.2013 was never communicated to the appellant and on attaining knowledge, he immediately rushed to the Service Tribunal, therefore, the appeal cannot be declared infructuous. To attend the argument, we have examined the record minutely in the light of grounds taken by the appellant in the memo of appeal and failed to find out any finding in the impugned judgment on the moot point, which goes to the roots of the case that the recommendations of the Hearing Officer, (annexure 'E'), which were very much part of the record of the Service Tribunal, neither have been taken into account, nor any finding has been recorded in this regard. In this scenario, we are constrained to remand the case to the Service Tribunal to decide the same afresh, while

recording the findings *inter alia* on the following points:-

- i) Whether the order dated 24.1.2013 was ever communicated to the appellant and if answer is in negative, as to how the appeal is time barred?;
- ii) What is the effect of recommendations recorded by the Hearing Officer, (annexure 'E')? And;
- iii) Whether the words 'defer' and 'supersede' are the same terms and in case of replacing the word 'defer' with the word 'supersede', whether the promotion is affected?

In view of the above, while accepting the appeal, the case is remanded to the Service Tribunal for decision *inter alia* on the above-formulated points, after providing the opportunity of hearing to the parties. No order as to costs.

**JUDGE**

**CHIEF JUSTICE**

Mirpur