

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.

Ghulam Mustafa Mughal, J.

Civil Appeal No.208 of 2018

(PLA filed on 08.06.2018)

1. Deputy Inspector General of Police, Azad Jammu & Kashmir Region Muzaffarabad, having his office at Central Police Office, New Secretariat Complex, Muzaffarabad.
2. Superintendent of Police District Hattian Bala, Azad Kashmir.
3. Senior Superintendent of Police, District Muzaffarabad.

.... APPELLANTS

**VERSUS**

Rizwan Riaz Dar, Sub Inspector, District Police, presently SHO, Police Station Leepa, District Hattian Bala, Azad Kashmir.

..... RESPONDENT

[On appeal from the judgment of the Service Tribunal dated 10.04.2018 in Service Appeal No.1064 of 2015]

FOR THE APPELLANTS: Mr. Saqib Javed,  
Advocate.

FOR THE RESPONDENT: Mr. Dawood Khan,  
Abbasi, Advocate.

*Date of hearing:* 01.11.2018.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J.***— The captioned appeal by leave of the Court has been preferred against the judgment dated 10.04.2018, passed by the Azad Jammu & Kashmir Service Tribunal in Service Appeal No.1064 of 2015.

2. The facts forming the background of the captioned appeal shortly stated are that the respondent, herein, filed an appeal before the Azad Jammu & Kashmir Service Tribunal challenging the departmental orders dated 09.09.2013 and 07.10.2015, whereby, he was awarded penalty of annual promotion grade stoppage. It was stated that the appellant/respondent, herein, is a permanent employee of the Azad Jammu & Kashmir Police Department with distinguished service record. It was further stated that time and again he was awarded commendation certificates from his department. It was alleged that vide order dated 09.09.2013, he was awarded minor penalty of two annual promotion grade stoppage, on the

ground of baseless allegation of inefficiency, quite secretly without following the due course of law and with *mala-fide* intention. It was further alleged that the he came to know about the said order when applied for obtaining certified copy of the order dated 07.10.2015 in the office of D.I.G. Region Muzaffarabad, whereby, he was again illegally awarded minor penalty of two annual promotion grade stoppage. It was averred that thereafter he obtained the copy of order dated 09.09.2013, and without wasting any time he filed the appeal. It was claimed that the orders dated 09.09.2013 and 07.10.2015 have been issued illegally, arbitrarily, against the law and without hearing the appellant/respondent, herein. It was also claimed that neither the charge-sheet was issued to the appellant/respondent nor any inquiry was held, therefore, the impugned orders are liable to be set at naught. The appeal was contested by the other side by filing comments, whereby, the claim of the appellant/respondent, herein, was

negated. It was stated that order dated 09.09.2013 had been dispatched to the appellant/respondent, herein, through dispatch No.4967-67 dated 09.09.2013 for information in due course of law but the appellant deliberately avoided the same and now filed the appeal at a belated stage on a self-concocted story. It was further stated that the appellant has been awarded minor penalty in accordance with the Rule 13 (A) of the Police Department Efficiency and Discipline Rules, 1992, against which no appeal lies. The learned Service Tribunal after necessary proceedings, through the impugned judgment dated 10.04.2018, has accepted the appeal and set aside the orders dated 09.09.2013 and 07.10.2015.

3. Mr. Saqib Javed, the learned Advocate appearing for the appellants argued that the judgment passed by the Service Tribunal is illegal, arbitrary and against the record and rules. He submitted that the respondent was found absent, hence, he was awarded

punishment vide order dated 9.9.20103, which was minor in nature and the appeal was competent before the learned Service Tribunal. In support of his contention the learned Advocate has placed reliance on the case reported as *Khurram Shahzad Khan vs. Secretary Agriculture, Animal Husbandry & others* (2018 SCR 14).

4. Conversely, Mr. Dawood Khan Abbasi, the learned Advocate appearing for the respondent argued that the reason assigned in the order dated 9.9.2013 is a stigma on the service and character of the respondent, therefore, it was enjoined upon the competent authority to issue a show-cause notice to the respondent before proceedings against him. The learned Advocate argued that even otherwise for awarding of punishment, the procedure visualized by the Police Departmental Efficiency and Discipline Rules, 1992 has to be followed, which in the case of the respondent has not been adhered to. The learned Advocate argued

that it is not correct that the appeal before the Service Tribunal was not competent on the ground that minor punishment was awarded to the respondent, herein. He argued that in the case referred to and relied upon by the learned Advocate for the appellants the matter was left open and it was not concluded that in case of minor penalty the appeal is not competent before the Service Tribunal.

5. We have heard the learned Advocate representing the parties and have gone through the record of the case. A perusal of the record reveals that the respondent, herein, has been punished vide order dated 9.9.2013 on the ground that his performance is not good. In view of the remarks listed in the order, it was necessary for the authority at least to issue a show-cause notice to the respondent/Civil Servant. Where an observation against a civil servant is made regarding his ill conduct and performance then issuance of show-cause notice is conditioned precedent and award of

punishment without observing the principle of natural justice and procedure of inquiry is illegal. The learned Service Tribunal has rightly concluded as such in the impugned judgment.

The upshot of the above discussion is that finding no force in this appeal, it is hereby dismissed with no order as to costs.

**JUDGE**

**CHIEF JUSTICE**

Muzaffarabad.  
7.11.2018

