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

**PRESENT**:
Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 167 of 2018
(PLA filed on 28.05.2018)

1. Malik Abdul Jabbar, Closure Watcher, B-1 Reforestation (Tajdeed) Division, Muzaffarabad.
2. Muhammad Younas, Closure Watcher, B-1, Reforestation (Tajdeed) Division, Muzaffarabad.

.... APPELLANTS

**VERSUS**

1. Chief Conservator of Forest, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
2. Conservator of Forest, Reforestation (circle) Division Muzaffarabad having his officer at Bank Road, Muzaffarabad.
3. Divisional Forest Officer, Reforestation Division, Muzaffarabad.
4. Accountant General of Azad Jammu and Kashmir having his officer at Sathra, Muzaffarabad.
5. Abdul Shakoor, Baildar, Tajdeed Range, Kotla, Tajdeed Division, Muzaffarabad.
6. Iftikhar Ahmed, Baildar, Tajdeed Range Kotla, Tajdeed Division, Muzaffarabad.

7. Tanveer Ahmed, Baildar, Tajdeed Range Kotla, Tajdeed Division, Muzaffarabad.
8. Selection Committee through its Chairman, Divisional Forest Officer, Reforestation Division, Muzaffarabad.

..... RESPONDENTS

9. Khawaja Khursheed-ul-Hassan, Closure Watcher, B-1 Tajdeed Division, Muzaffarabad.

.....PROFORMA-RESPONDENT

(On appeal from the judgment of the Service Tribunal dated 12.05.2018 in Service Appeal No. 1081 of 2012)

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| FOR THE APPELLANTS: | Chaudhary Ghulam Nabi, Advocate. |
| FOR RESPONDENTS NO. 1 TO 3: | M. Hanif Khan Minhas, Advocate. |
| FOR RESPONDENTS NO. 5,6 & 7: | Syed Wasif Ali Gardazi, Advocate. |
| *Date of hearing*: | 12.03.2019. |

**JUDGMENT:**

***Ghulam Mustafa Mughal*, J—** The captioned appeal by leave of the Court is directed against the judgment dated 12.05.2018 passed by the learned Service Tribunal in service appeal No. 1081 of 2012.

2. The brief facts of the case are that the appellants, herein, were appointed as Baildar. Subsequently, they were adjusted as Closure Watchers, B-1 vide order dated 30.06.2011 on the recommendation of the Selection Committee. In compliance of the appointment order dated 30.06.2011, the appellants, herein, submitted their joining reports. Feeling aggrieved, the private-respondents filed a departmental appeal against the appointment order dated 30.06.2011, which was accepted vide order dated 17.09.2012 and the appointment order of the appellants dated 30.06.2011 was cancelled from its date of issuance. After cancellation of the said order, the private respondents were appointed as Closure Watcher vide order dated 25.09.2012. The appellants and proforma-respondent, herein, filed an appeal before the Service Tribunal against the departmental order dated 17.09.2012. Subsequently, the appeal was got amended and the appointment order of the private-respondents dated 25.09.2012 was also

challenged. The learned Service Tribunal after necessary proceedings vide impugned judgment dated 12.05.2018 partly dismissed the appeal to the extent of one Ali Haider Shah due to issuance of his retirement order, whereas, to the extent of the appellants, herein, the same was dismissed on merit.

3. Ch. Ghulam Nabi, the learned Advocate appearing for the appellants, argued with vehemence that on the recommendation of the respective selection committee, the appellants, herein, were promoted as Closure Watchers, B-1 against the normal budget in the Forest Department vide order dated 30.06.2011. The learned Advocate argued that the private-respondents, herein, filed an appeal before the Chief Conservator Forest who accepted the same on 17.09.2012 and cancelled the appointment order of the appellants dated 30.06.2011. He argued that the appellants filed an appeal before the learned Service Tribunal against the order dated 17.09.2012. The learned Service Tribunal

vide order dated 21.10.2013 directed the appellants, herein, to amend the appeal and implead the newly appointed candidates in the line of the respondents and also challenged the appointment order dated 25.09.2012. The learned Advocate further argued that the amended appeal as directed was filed. He further submitted that during pendency of the appeal one Ali Haider Shah, was retired from service with all pensionary benefits, while acting upon the order dated 30.06.2011. He submitted that the appellants, herein, have been condemned unheard as no right of hearing was provided by the Chief Conservator Forest and appeal of the respondents before him was also time-barred.

4. Mr. Hanif Khan Minhas and Syed Wasif Ali Gardazi, the learned Advocates appearing for the other side, have defended the impugned judgment and argued that the adjustment order of the private-respondents has not been challenged, therefore, the appeal has rightly been dismissed by the learned Service

Tribunal. They argued that the appellants, herein, cannot take any benefit of the retirement of Ali Haider Shah until and unless the appointment order of newly impleaded respondents was clearly challenged in appeal before the learned Service Tribunal.

5. We have heard the learned Advocates representing the parties and gone through the record of the case. In view of the proposed conclusion, the deliberation on the argued points is not at all required. It is an admitted position that the appellants, herein, were promoted/adjusted vide order dated 30.06.2011 against the vacant posts of Closure Watchers, B-1. Ali Haider Shah, one of the appellants before the learned Service Tribunal was retired from service with full pensionary benefits while acting upon the order dated 30.06.2011. The private respondents, herein, filed an appeal before the Chief Conservator Forest. On receiving the inquiry report as well as the comments, the Chief Conservator Forest has

accepted the appeal on 17.09.2012 as a result whereof vide order dated 25.09.2012, the private respondents, herein, have been appointed. The argument of the learned Advocate for the appellants that in appeal, the appellants, herein, have not been heard, has substance. It is obligatory on the authority to provide a right of hearing to the appellants, herein.

In view of the above, this appeal is accepted and the appeal filed by the appellants before the learned Service Tribunal is also accepted. The case is remanded to the Chief Conservator Forest to decide the appeal filed by the respondents afresh after providing a right of opportunity to both the parties. No order as to costs.

Muzaffarabad.
13.03.2019. JUDGE CHIEF JUSTICE

Malik Abdul Jabbar & another vs. Chief Conservator Forest & others

*ORDER:*

The judgment has been signed. The same shall be announced by the Registrar after notifying the learned counsel for the parties.

Muzaffarabad.
13.03.2019. CHIEF JUSTICE JUDGE