

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.239 of 2018

(Filed on 06.06.2018)

Habib Hafeez, Motor Vehicle Examiner,
Muzaffarabad.

.....APPELLANT

VERSUS

1. Umar Pervaiz, Motor Vehicle Examiner, Azad Jammu and Kashmir Transport Authority, Poonch Division, Rawalakot, District Poonch.
2. Chairman Azad Jammu and Kashmir Transport Authority, Muzaffarabad.
3. Secretary Azad Jammu and Kashmir Transport Authority, Muzaffarabad.
4. Selection Board No.3 through its Chairman, Civil Secretariat, Muzaffarabad.
5. Adeel Nawaz, Motor Vehicle Examiner, Transport Authority, Bhimber.
6. Waqar Ahmed Khokhar, Motor Vehicle Examiner, Transport Authority, Mirpur.

.....RESPONDENTS

[On appeal from the judgment of the Service Tribunal dated 26.05.2018 in Service Appeals No.1147/2014 and 705/2015]

FOR THE APPELLANT: Mr. Mushtaq Ahmed
Janjua, Advocate.

FOR RESPONDENTS NO.2-4: Sardar Karam Dad
Khan, Advocate-General.

FOR RESPONDENT NO.5: Ch. M. Manzoor,
Advocate.

FOR RESPONDENT NO.6: Meer Sharafat Hussain,
Advocate.

Date of hearing: 10.04.2019

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The captioned appeal by leave of the Court is the outcome of the judgment of the Service Tribunal dated 26.05.2018, whereby the appeals Nos.1147/2014 and 705/2015 have been dismissed.

2. The brief summary of the facts as depicted from the pleadings of the parties and the record is that the contesting parties were appointed on one and the same date as Motor Vehicle Examiners. Subsequently, the issue of seniority arose between the parties. The authority issued the tentative seniority list on 02.12.2014. After having objections from the parties, the final seniority list was issued on 11.02.2014 and it was declared that the *inter se* seniority has been determined

according to the order of merit. This order was challenged by respondent No.1, Umar Pervaiz, before the Service Tribunal by filing appeal No.1147/2017 on 19.12.2014. In this appeal, the appellant, herein, filed an application on 09.04.2016 for arraying him as respondent, which was accepted. During the pendency of this appeal, on 23.02.2015 the competent authority i.e. the Azad Jammu and Kashmir Government, issued the acting charge promotion order of respondents No.5 and 6, herein. This promotion order was jointly challenged by respondent No.1 and the appellant, herein, before the Service Tribunal by filing appeal No.705/2015 on 24.08.2015. The learned Service Tribunal while consolidating both the appeals, dismissed the same through impugned judgment. The appeal relating to seniority was dismissed by the Service Tribunal while holding that the inter se seniority has been determined according to rules, whereas, the other appeal has been dismissed on main ground of non-arraying the authority who had issued the impugned order. The appellant has

challenged the impugned judgment on the sole ground that being older in age he is senior and inter se seniority has been determined against law, thus, he deserves to be declared senior to all others and eligible to be promoted prior to respondents No.5 and 6.

3. Mr. Mushtaq Ahmed Janjua, Advocate, the learned counsel for the appellant argued the case at some length. He narrated the brief case history and stressed that the contesting parties were appointed on one and the same date. The appellant being elder in age deserves to be treated senior to other contesting parties. He submitted that the appellant filed objections against the tentative seniority list which have not been considered by the authority and final seniority list has been issued in violation of law. He further argued that the appellant filed an application for impleading him as respondent in appeal No.1147 filed by respondent No.1 and he was accordingly arrayed but despite this the Service Tribunal has wrongly decided the appeal, whereas, the other promotion order has been issued during

the pendency of appeal which is against law. Admittedly, the appellant is older in age, hence, according to enforced law he is senior to others. The final seniority list and impugned promotion order are illegal and liable to be set-aside by declaring the appellant senior and entitled to be promoted.

4. Conversely, Sardar Karam Dad Khan, Advocate-General, Meer Sharafat Hussain and Ch. Muhammad Manzoor, Advocates, the learned counsel for the respondents opposed the appeal on the ground that the appellant has got no cause of action to file this appeal. He is estopped by his conduct. The principles of estoppel and acquiescence are fully attracted. They further submitted that the appellant by his conduct accepted the final seniority list and did not challenge the same. Respondent No.1 challenged the seniority list in appeal No.1147 in which the appellant himself filed an application on 09.04.2016 and was impleaded as respondent. Thus, it is established from the record that he not only got

knowledge of the seniority list but also contested the seniority position with respondent No.1 and did not challenge the seniority position of respondents No.5 and 6, thus, to his extent the seniority list has become final. He has no justification to file this appeal.

5. We have heard the learned counsel for the parties and examined the record made available. According to the appellant's own conduct and produced record, respondent No.1 challenged the seniority list through appeal No.1147 filed on 19.12.2014 in which he himself filed an application to be arrayed as respondent, thus, if not earlier at least on the day of filing of application he was fully aware of the seniority position but despite this he has not even bothered to challenge the seniority list by filing appeal. In this state of affairs, to his extent the matter of seniority has attained finality. The learned counsel for the respondents has rightly argued that the principle of acquiescence and estoppel are fully attracted in the light of the conduct of the appellant.

6. Even otherwise, the inter se seniority has been determined according to the merit position and the appellant has not disputed the same, thus, from this angle too the impugned judgment does not suffer from any illegality or infirmity.

7. So far as appeal No.705 is concerned, the Service Tribunal has rightly passed the order. The appellant challenged the impugned notification dated 23.02.2015 which reads as follows:-

"آزاد حکومت ریاست جموں و کشمیر
سیکرٹریٹ سپورٹس یوتھ کلچر اینڈ ٹرانسپورٹ
منظف آباد

"منظف آباد"

مورخہ 23 فروری 2015ء

نوٹیفکیشن:-

نمبر/اس سے کٹ/29-319/2015ء۔ جناب صدر آزاد جموں و کشمیر نے
حسب سفارش محکمہ سلیکشن بورڈ نمبر 03 (اجلاس منعقدہ 2014-12-24) بزیل موٹر
وہیکل ایگزامنرز (BS-11) آزاد کشمیر ٹرانسپورٹ اتھارٹی کو ایکٹنگ چارج بنیادوں پر موٹر
وہیکل ایگزامنرز (BS-16) ترقیاب کیے جانے کی منظور صادر فرمائی ہے:-

i- مسٹر عدیل نواز موٹر وہیکل ایگزامنرز (BS-11)

ii- مسٹر وقار احمد موٹر وہیکل ایگزامنرز (BS-11)

سیکشن آفیسر

ٹرانسپورٹ"

This order clearly speaks that it has been issued by the Government, thus, the Government is competent authority which has not been arrayed as

party in the appeal. According to general principle of administration of justice as well as enforced rules in every memorandum of appeal before the Service Tribunal the competent authority shall be shown as first respondent, whereas, in this case the appellant has failed to array the competent authority as respondent. This may be intentional, unintentional or due to lack of proper legal skills of the counsel but this lacuna is so fatal which results into dismissal of the appeal. The findings recorded by the Service Tribunal are quite consistent with the statutory law.

Therefore, finding no force this appeal stands dismissed with no order as to costs.

Muzaffarabad,
11.04.2019

CHIEF JUSTICE

JUDGE