

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

**PRESENT:**

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

Civil Appeal No.43 of 2019  
(PLA filed on 26.01.2019)

Mukhtar Ali, DSP Reserve/Range, Mirpur, Azad  
Kashmir.

....APPELLANT

**VERSUS**

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat, Muzaffarabad.
2. Secretary, Services and General Administration Department, having his office at Chatter, Muzaffarabad.
3. Secretary, Home Department, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
4. Selection Board No.1, through its Chairman (Chief Secretary), Azad Jammu & Kashmir, Muzaffarabad.
5. Inspector General of Police, Azad Jammu & Kashmir, having his office at Chatter, Muzaffarabad.
6. Fayyaz Ahmed Khan, Superintendent of Police, Chinese Security, Neelum Jehlum Hydro Electric Project, Muzaffarabad.

....RESPONDENTS

[On appeal from the judgment of the Service Tribunal dated 27.11.2018, in Service Appeal No. 877 of 2015]

FOR THE APPELLANT: Mr. Muhammad Siddique Chaudhary, Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Zubair Raja, Additional Advocate-General.

*Date of hearing:* 20.05.2019.

**JUDGMENT:**

**Ghulam Mustafa Mughal, J.**— The captioned appeal with leave of the Court has been directed against the judgment dated 27.11.2018, passed by the Azad Jammu & Kashmir Service Tribunal in Service Appeal No.877 of 2015.

2. The facts forming the background of the captioned appeal are that the appellant, herein, is a permanent employee of the Azad Jammu & Kashmir Police Department and presently serving as Deputy Superintendent of Police (DSP), Reserve/Range, Mirpur. He filed an appeal before the Azad Jammu & Kashmir Service Tribunal alleging therein that the

Police Department prepared a seniority list of DSPs vide notification dated 10.12.2013, wherein, the appellant, herein, was placed at serial No.1, whereas, respondent No.6, herein, was placed at serial No.4. It was claimed that according to the seniority list the appellant, herein, is senior to respondent No.6, herein, but the official-respondents through the notification dated 18.08.2015 have illegally promoted respondent No.6 as Superintendent of Police (SP), Chinese Security, against the seniority and promotion quota of DSPs fixed for different branches/cadres of the Police Department as per the Police Service (Composition and Cadre) Rules, 1983. It was prayed that by issuance of the notification dated 18.08.2015, the terms and conditions of service of the appellant, herein, have been affected, hence, his appeal may be accepted and the notification dated 18.08.2015 may be set aside. The appeal was contested by the other side by fling comments/written statement, whereby, the claim of the appellant, herein, was refuted. It was stated for

promotion to the post of Superintendent of Police B-18, the required qualification is graduation, whereas, the petitioner, herein, does not fulfil the same, hence, he cannot be promoted and his appeal is liable to be dismissed. The learned Service Tribunal after necessary proceedings, through the impugned judgment dated 27.11.2018, has dismissed the appeal.

3. Mr. Muhammad Siddique Chaudhary, the learned Advocate appearing for the appellant argued that as per final seniority list published vide notification dated 10.12.2013, the appellant, herein, is at serial No.1, whereas, private-respondent, herein, was listed at serial No.4 but even then the appellant, herein, has been ignored for promotion as Superintendent of Police (SP) arbitrarily on the ground that he is not in possession of the required qualification i.e Graduation. The learned Advocate further argued that for promotion to the Post of Superintendent of Police, the minimum qualification as Graduation was fixed vide notification dated 01.07.2010, however, later on vide notification dated

12.11.2013, grace period of 4 years was granted in the said period. The learned Advocate further argued that the appellant, herein, was entitled to promotion as Superintendent of Police (SP) but has not been considered as such despite being senior most Deputy Superintendent of Police (DSP). The learned Advocate further argued that consideration for promotion is a vested legal right and no one can be deprived of from the same arbitrarily in violation of the rule of equality before law. The learned Advocate while referring to some notifications argued that in some cases, the Govt. has relaxed even minimum qualification for further promotion but in the case of the appellant, herein, this concession has not been considered. In support of his submissions, the learned Advocate has placed reliance on the case reported as *Muhammad Riaz Khan vs. Inspector General of Police and 19 others* [2010 SCR 131] and an unreported judgment rendered in the case titled *Muhammad Shabbir, D.S.P. vs. Azad Govt. &*

*others* (Writ Petition No.1047/2011, decided on 11.04.2013).

The facts of *Muhammad Riaz Khan's* case, referred to hereinabove were totally different and the rule of law laid down therein is not applicable to the facts of the case in hand, therefore, no relief can be claimed on the basis of said judgment.

In *Muhammad Shabbir's* case, referred to and relied upon by the learned counsel for the appellant, a direction was given by the learned High Court for consideration of the petitioner, therein, because he moved the Court for sending his case to the selection board within the grace period, hence, this case is also not applicable.

4. Conversely, Mr. Muhammad Zubair Raja, the learned Additional Advocate-General appearing for the other side vehemently argued that promotion cannot be claimed as a matter of right and even otherwise for the purpose of consideration for promotion, the minimum qualification fixed for the purpose is to be fulfilled by a

civil servant claiming promotion. He further argued that as the appellant, herein, is lacking the required qualification for promotion to the post of Superintendent of Police (SP) i.e. Graduation, therefore, was superseded by competent authority and in such circumstances his appeal has rightly been dismissed by the learned Service Tribunal. He further argued that the appellant, herein, has not challenged his supersession on the ground of discrimination and even the notification dated 01.07.2010 through which minimum qualification of Graduation has been fixed has not been challenged by him, hence, he does not deserve any relief.

5. We have heard the learned counsel for the parties and have gone through the record of the case. It may be stated that the Govt. of AJ&K vide notification dated 01.07.2010, while exercising powers conferred on it by section 23 of the AJ&K Civil Servants Act, 1976, has fixed the minimum qualification of Graduation for promotion to the post of BPS-18 and above, however, subsequently in order to give concession to the officers

who were already in promotion zone and had right for consideration for promotion, 2 years grace period was granted vide notification dated 23.07.2010 which was later on enhanced to 4 years vide notification dated 12.01.2013. During this period, the appellant, herein, neither claimed promotion nor filed any writ petition for direction to the authority to send his case for promotion although he was at serial No.1 of the seniority list. The notification dated 12.11.2013 has not been issued for a particular clause of the employees rather it is applicable to all the civil servants serving in all the departments of the Government of AJ&K, therefore, the question of discrimination on the basis of inequality cannot be pleaded by the appellant, herein. Section 8 of the AJ&K Civil Servants Act, 1976, deals with the matter in hand which reads as under:-

“8. Promotion:- (1) A Civil Servant possession such minimum qualification as may be prescribed shall be eligible for promotion to a post, for the time being, reserved under the rules for department promotion in any higher grade of the service or cadre to which he belongs.



(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotion shall be made as may be prescribed.

(a) In the case of a selection post, on the basis of selection on merit; and

(b) In the case of non-selection post, on the basis of seniority-cum-fitness.”

Similarly, under rules 9 and 10 of the AJ&K Civil servants (Appointment and Conditions of Service) Rules, 1977, it is provided that only such persons who possess and meet the minimum qualification laid down for the purpose of promotion or transfer to a post shall be considered by the selection authority. As the appellant, herein, was lacking the required qualification postulated by section 8 of the AJ&K Civil Servants Act, 1976, reproduced, hereinabove, therefore, it cannot be said that he has been discriminated by the authority while refusing promotion by superseding him. He cannot claim consideration for promotion against the rules. The learned Service Tribunal in the impugned judgment has rightly observed that the appellant, herein, is not an aggrieved person.

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

**JUDGE**

**CHIEF JUSTICE**

Mirpur  
21.05.2019