

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.352 pf 2018

(PLA filed on 30.10.2018)

1. Deputy Inspector General of Police, Region Poonch, Rawalakot.
2. Inspector General of Police, having office at Central Police Office, New Secretariat, Muzaffarabad.
3. Deputy Inspector General of Police Headquarter, having his office at Central Police Office, New Secretariat, Muzaffarabad.
4. Deputy Inspector General of Police, Region Muzaffarabad.
5. Superintendent of Police, District Bagh.

.....APPELLANTS

VERSUS

Shafqat Shaheen, Lady Sub-Inspector, District Police Bagh.

.....RESPONDENT

[On appeal from the judgment of Service Tribunal dated 31.08.2018 in Service Appeal No.268/17]

FOR THE APPELLANTS: Mr. Saqib Javed,
Advocate.

FOR THE RESPONDENT: Mr. Maqsood Ahmed
Sulehria, Advocate.

Date of hearing: 10.12.2019

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The titled appeal by leave of the Court has been directed against the judgment of the Service Tribunal dated 31.08.2018, whereby the appeal filed by the respondent, herein, has been partly accepted.

2. The brief facts of the case are that the Inspector General of Police AJ&K, vide order dated 11.01.2017 transferred the respondent, herein, from District Neelum and her services were kept at the disposal of Deputy Inspector General, Poonch Region for appointment against the vacant post of Sub-Inspector subject to the conditions that (i) she would be entitled to seniority from the date of transfer in the Poonch Region; and (ii) she would not request for further transfer to any other region.

In pursuance this order, the Deputy Inspector General of Police, Poonch Region issued an order on 13.01.2018 while incorporating the terms and conditions as were mentioned in the order dated 11.01.2017. The respondent, herein, challenged both the orders before the Azad Jammu & Kashmir Service Tribunal through service appeal No.268/2017, on 11.04.2017. It was claimed that she is senior most in her cadre and cannot be deprived of her settled seniority. It was further claimed that the other condition attached to the order is also illegal and violative of law. The appeal was contested by the respondents/appellants, herein, on the ground that the transfer of respondent has been made on her own request. The disputed conditions have been incorporated in the transfer order on the basis of order of Inspector General of Police dated 18.08.2016, thus, according to rules the respondent would be entitled to seniority from the date of her transfer in the region. After hearing the parties the learned Service Tribunal through the impugned judgment dated

31.08.2018 partly accepted the appeal while holding that condition No.1 attached to the impugned transfer orders is illegal, hence, stands deleted, however, condition No.2 imposed by the authority was approved by the learned Service Tribunal.

3. Mr. Saqib Javed, Advocate, the learned counsel for the appellants after narration of necessary facts submitted that the impugned judgment is against law. He submitted that the service of police department is regulated under the provisions of Police Rules, 1934 and the rules made thereunder. While deriving the powers from the said Act and rules made thereunder the Inspector General of Police has formulated a policy on 18.08.2016 regarding the seniority of the upper subordinate employees of the police department. According to this Policy the seniority shall be prepared on the basis of region and for this purpose the seniority shall be determined from the date of appointment in the region. The contesting respondent at her own request and consent was

transferred from region Neelum and posted in region Poonch vide order dated 13.01.2017 and in this order in view of the enforced policy the authority had rightly imposed the condition that from the date of transfer to region Poonch she will be entitled to the seniority rights. She, without impleading the necessary parties, challenged the order before the Service Tribunal. The learned Service Tribunal has wrongly handed down the impugned judgment while deleting the condition No.1 of the transfer order. He further argued that the other employees of the region have not been arrayed as parties whose service rights have to be adversely affected, thus, the appeal before the Service Tribunal was not maintainable. The learned Service Tribunal has wrongly entertained such an incompetent appeal while placing reliance on some irrelevant judgments which are not applicable to the case in hand, thus, while accepting this appeal the impugned judgment may kindly be set-aside.

4. Conversely, Mr. Muhammad Maqsood Ahmed Sulehria, Advocate, the learned counsel for

the respondent defended the impugned judgment and submitted that the same is in accordance with provisions of the Civil Servants Act, 1976, rules made thereunder and the principle of law enunciated by the superior Courts including the apex Court. He submitted that there is a plethora of judgments in this context and it is settled law that for determination of the seniority the date of the appointment on the post or grade is the basic criterion and not the date of appointment and transfer to any place or region. He further argued that the Inspector General of Police is not vested with any such powers to frame any policy adversely affecting the legally recognized terms and conditions of the service of civil servants which are protected under the Act of the Assembly and the rules made thereunder. Even otherwise, the alleged policy/letter of the Inspector General of Police has been misconstrued. The letter is clear and its spirit is that the seniority shall be determined on the basis of regions but for determination of the seniority the criterion is the date of recruitment and

not the date of appointment by transfer at any place. The Service Tribunal has rightly passed the impugned judgment. He further submitted that along with the concise statement he has referred to the case law which may be considered, specially, this Court has already dealt with the proposition in the cases reported as *Raja Shaukat Mehmood vs. Secretary Home* [1999 PLC (CS) 349] and *Muhammad Riaz Khan vs. Inspector General of Police & others* [2010 SCR 131]. He submitted that relating to the determination of the seniority the special statutory provision of Police Rules, 1934 i.e. Rule 12.2(3) is relevant and according to this rule the seniority has to be determined from the date of first appointment. Therefore, this appeal has no substance and is liable to be dismissed.

5. We have heard the learned counsel for the parties and gone through the record. The sole proposition requiring resolution in this case is whether for the purpose of seniority the date of regular appointment/recruitment to a post/grade is criterion or the appointment by transfer to any

other region or place has any relevance?

Undisputedly, respondent No.1 is a civil servant and employee of the Police department and the special law and rules made thereunder are applicable to her terms and conditions of service. The specific provision of rule 12.2(3) of the Police Rules, 1934 dealing with the determination of seniority of upper subordinates reads as under:-

“(3) All appointments of enrolled police officers are on probation according to the rules in this Chapter applicable to each rank.

Seniority, in the case of upper subordinates will be reckoned in the first instance from the date of first appointment. Officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however be finally settled by dates of confirmation, the seniority inter se of several officers confirmed on the same date being that allotted to them on first appointment: Provided that any officer

whose promotion or confirmation is delayed by reason of his being on deputation outside his range or district shall, on being promoted or confirmed, regular the seniority which he originally held vis-à-vis any officers promoted or confirmed before him during his deputation.

The seniority of lower subordinate shall be reckoned from dates of appointment, subject to the conditions of rule 12.24 and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date.”

(underlining is ours)

Thus, it is very much clear that according to the statutory provisions the criterion for determination of the seniority is the date of first appointment which is also in consonance with the provisions of Civil Servants Act, 1976 and rules made thereunder.

6. It appears that the authority while issuing the impugned transfer order dated 13.01.2017 unnecessarily imposed the condition No.1 that the

respondent will be entitled to seniority from the date of her transfer in the region, Poonch. In this context, the reliance has been placed by the appellants on the letter of the Inspector General of Police dated 18.08.2016 which has been reproduced in the impugned judgment of the learned Service Tribunal. In our considered view, although Inspector General of Police is not vested with the powers to formulate any policy inconsistent with the provisions of Police Act, 1934 or rules made thereunder, however, leaving aside this aspect even otherwise the careful examination of the referred policy/letter of the Inspector General of Police reveals that it has also been misconceived. In this policy it has been clearly mentioned that the upper subordinates (SI and ASI) will be entitled for seniority in the region according to their dates of recruitment (تاریخ بھرتی). This word clearly connotes that it means first appointment to the grade/post and it is neither mentioned nor the spirit of the policy/letter that the seniority will be determined from the date of the transfer to the region.

According to this letter only the seniority has to be prepared region-wise but the criterion for inter se seniority is the date of recruitment/first appointment to the post/grade.

7. The learned Service Tribunal has also relied upon the principle of law laid down by the superior Courts and the counsel for the respondent has also rightly referred to the cases reported as *Raja Shaukat Mehmood vs. Secretary Home* [1999 PLC (CS) 349] and *Muhammad Riaz Khan vs. Inspector General of Police & others* [2010 SCR 131]. The principle of law laid down in the referred cases is fully applicable to the case in hand.

For the above stated reasons, finding no force this appeal is dismissed. No order as to costs.

Muzaffarabad,
12.12.2019

CHIEF JUSTICE

JUDGE