

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

**PRESENT:**

*Ch. Muhammad Ibrahim Zia, C.J.*

*Raja Saeed Akram Khan, J.*

Civil Appeal No.419 of 2019  
(PLA filed on 26.07.2019)

Ehsan-ul-Rehman, Senior (Accounts) Clerk presently reverted as Junior Clerk in the office of Deputy Inspector General Police Traffic, Muzaffarabad.

.....APPELLANT

**VERSUS**

1. Deputy Inspector General Police Traffic/Telecommunication Muzaffarabad.
2. Inspector General of Police, Azad Jammu and Kashmir, having his office at New Civil Secretariat block No.7, Chatter Muzaffarabad.
3. Additional Inspector General Police, Muzaffarabad, Azad Jammu and Kashmir having his office at New Civil Secretariat Block No.7, Chatter, Muzaffarabad.
4. Deputy Inspector General of Police, H.Q, Muzaffarabad Azad Jammu and Kashmir having his office at new Civil Secretariat Block No.7, Chatter Muzaffarabad.
5. Senior Superintendent of Police, District Muzaffarabad Azad Jammu and Kashmir.

6. Senior Superintendent of Police Traffic (Ex. Inquiry Officer), Azad Jammu and Kashmir.
7. Deputy Superintendent of Police Traffic Reign Muzaffarabad HQ/(Inquiry Officer) Azad Jammu and Kashmir.
8. Station House Officer (SHO) Police Station City Muzaffarabad, Azad Jammu and Kashmir.
9. Accountant General of Azad Jammu and Kashmir, having office at Sathra Muzaffarabad.

.....RESPONDENTS

[On appeal from the judgment of the Service Tribunal dated 28.05.2019 in appeals No.775 and 796 of 2018]

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FOR THE APPELLANT: Mr. Bashir Ahmed Mughal, Advocate.

FOR THE RESPONDENTS: Mr. Saqib Javed, Advocate.

Date of hearing: 09.01.2020.

**JUDGMENT:**

*Raja Saeed Akram Khan, J.-* Through the captioned appeal by leave of the Court the legality and validity of the judgment of the Service Tribunal dated 28.05.2019 has been challenged, through which the appeals filed by the appellant, herein, have been dismissed.

2. The brief facts of the case are that the appellant, herein, is the permanent employee of the Police Department and was serving as Senior Clerk. He was on leave for two days from 06.09.2018 and 07.09.2018 due to illness of his mother. According to the appellant on 07.09.2018, he left the office after completion of his official work and was going to his home through private car. During travel SI Raja Zahid Umar stopped him in the way near to Read Foundation School Gojra and told him that he has been called by the SSP. Resultantly, the appellant went to the office of SSP with Zahid Umar, SI. After some time, Zahid Umar ordered him to call Balal Rashid Constable as he had some personal work with him. The appellant accordingly called Balal Rashid, Constable who also came there. Meanwhile the appellant was arrested and later on, he was released on bail by the Tehsil Criminal Court on 08.09.2018. An FIR was lodged against the appellant on the basis of which he was suspended

vide order dated 11.09.2018. An inquiry was conducted against the appellant in the result of which he was reverted from the post of Senior Clerk to the post of Junior Clerk, vide order dated 29.10.2018. The appellant challenged the said order by filing appeal No.775/2018 before the learned Service Tribunal. During pendency of the said appeal the official respondents issued another order dated 02.11.2018, through which the appellant was transferred against the place of private respondent, which resulted into filing another appeal bearing No.796/2018, before the Service Tribunal. After necessary proceedings, the learned Service Tribunal through the impugned consolidated judgment dismissed both the appeals, hence this appeal by leave of the Court.

3. Mr. Bashir Ahmed Mughal, Advocate, the learned counsel for the appellant submitted that the impugned judgment of the learned Service Tribunal is based on misconception of law and facts

of the case, which is not sustainable in the eye of law. He submitted that admittedly the appellant is the employee of the Police Department and has been punished on the basis of inquiry proceedings conducted under the provisions of the Azad Jammu and Kashmir Removal from Service (Special Powers) Act, 2001, (*hereinafter to be referred as Act, 2001*). The learned counsel forcefully argued that according to the statutory provisions as well as the principle of law laid down by this Court in a number of cases the provisions of the Act, 2001 are not applicable to the employees of the Police Department and the proceedings conducted under the aforesaid Act, against the police employee are nullity in the eye of law, but this important aspect of the case has neither been considered by the competent authority nor the learned Service Tribunal attend this proposition. He referred to the cases reported as *Malik Hussian Shah vs. Superintendent of Police Rangers* [2014 SCR 1120] and

*Gulfraz Ahmed vs. D.I.G. Police & w others* [2015 SCR 1240]. The learned counsel further added that the learned Service Tribunal has also fell in error of law while holding that the allegations levelled against the appellant have been proved as he failed to produce any evidence in support of his innocence. He submitted that the criminal case against the appellant is subjudice before the Trial Court, wherein, the evidence has yet to be recorded, therefore, prior to the completion of the trial the findings of the learned Service Tribunal are premature and unwarranted. He requested for acceptance of appeal.

4. Conversely, Mr. Saqib Javed, Advocate, the learned counsel for the respondents submitted that the impugned judgment of the learned Service Tribunal is perfectly legal which is not open for interference by this Court. He submitted that the appellant being an employee of the Police Department was involved in committing the

heinous offences for which criminal proceedings are pending. The act of the appellant resulted into bad name to the Police Department which itself is meant for maintaining peace and eradicating crimes from the Society, therefore, the appellant has rightly been proceeded under the relevant law and demoted from the post of Senior Clerk to the post of Junior Clerk. The learned counsel defended the impugned judgment on all counts, however, when he was confronted to the dictum laid down by this Court in numerous judgments regarding the applicability of the provisions of Act, 2001 to the employees of the Police Department, he failed to controvert the same.

5. We have heard the arguments of the learned counsel for the parties and gone through the impugned judgment along with the other record made available. The proposition involved in the case in hand is whether the provisions of Act, 2001 are applicable to the members of the police

force or not. This proposition was resolved by this Court firstly in the case reported as *Malik Hussain Shah vs. Superintendent of Police Rangers* [2014 SCR 1120] and thereafter, while relying upon the said report this Court in the case reported as *Gulfraz Ahmed vs. D.I.G. Police & others* [2015 SCR 1240], observed in the following terms:-

“.... The employees of the Police force are governed under the Police Act, 1861 and Police Efficiency and Discipline Rules, 1992. Through notification dated 25<sup>th</sup> May, 2011, the employees of the police force have been exempted from purview of Removal from Service (Special Powers) Act, 2001. The matter came under consideration of this Court in the case titled *Malik Hussain Shah vs. Superintendent of Police Rangers* (2014 SCR 1120). This Court observed that the Police Act is a special Act and in presence of one special Act, provisions of Removal from Service (Special Powers) Act, 2001 are not applicable on the police force and the employees of the police force cannot be governed under the provisions of Removal from Service (Special Powers) Act, 2001. It was observed at page 1155 of the referred judgment as under:-

“Prior to promulgation of Act, 2001, the members of Police force were governed by the Police Act, 1861, the Police Rules, 1934 and Police E&D



Rules, 1992. The provisions of a special Act cannot be implication repeal the provisions of an Act of general nature. The Police Act being special law shall be applicable to the members of Police force in the presence of Act, 2001 as the members of Police service have been declared civil servants for the purpose of Section 4 of the Service Tribunals Act, 1975. Prior to the enactment of Act, 2001 the members of Police service were not governed by the Civil Servants Act, 1976 or the rules made thereunder. Thus, the Police Act and Rules made thereunder regarding the Efficiency & Discipline being special law, shall prevail and Act, 2001 being general law is not applicable to the members of Police force.”

After going through the referred pronouncements it is clear that the Police Act and Rules made thereunder regarding the Efficiency & Discipline being special law, shall prevail and Act, 2001 being general law is not applicable to the members of the Police force. Admittedly, the appellant is the employee of Police Force/department and in the light of the above reproduced dictum, he cannot be proceeded under the provisions of the Act, 2001. Thus, the

proceedings, conducted and punishment awarded to the appellant under the provisions of Act, 2001, are nullity in the eye of law. The learned Service Tribunal has not considered this important legal proposition, while handing down the impugned judgment, therefore, the same is not maintainable.

Resultantly, this appeal is accepted, the impugned judgment of the learned Service Tribunal is set aside and the notifications dated 29.10.2018 and 02.11.2018 passed by the departmental authority are also hereby set aside.

No order as to costs.

**JUDGE**

Muzaffarabad,  
16.01.2020.

**CHIEF JUSTICE**