

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No.196 of 2019

(PLA filed on 23.01.2019)

Tabasam Ashraf, Lady Extension Officer, B-16,  
Agriculture Department Azad Jammu & Kashmir  
Govt. Muzaffarabad.

....APPELLANT

VERSUS

1. Azad Jammu & Kashmir Govt. through Chief Secretary, Muzaffarabad.
2. Secretary Agriculture, Food, Animal Husbandry, Irrigation and ASMA, Azad Jammu & Kashmir Govt. Muzaffarabad.
3. Director General Agriculture Azad Jammu & Kashmir Govt. Muzaffarabad.
4. Rukhsana But, Lady Extension Officer, Agriculture Department Azad Jammu & Kashmir Govt. Muzaffarabad.
5. Farhat Shaheen, Lady Extension Officer, Agriculture Department Azad Jammu & Kashmir Govt. Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 24.11.2018 in Service Appeal No.1042 of 2014)

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FOR THE APPELLANT:

Sardar Pervaiz Akhtar,  
Advocate.

FOR RESPONDENTS NO.4&5: Mr. Sakhawat Hussain  
Awan, Advocate.

Date of hearing: 04.02.2020

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**– The captioned appeal by leave of the Court has been directed against the judgment dated 24.11.2018 passed by the Azad Jammu & Kashmir Service Tribunal wherein the appeal filed by the appellant, herein, has been dismissed.

2. The precise facts forming the background of this appeal are that the contesting parties are serving as Lady Extension Officers, B-16. Their seniority was determined through notification dated 06.02.2014 wherein the appellant, herein, was placed at serial No.3. Feeling aggrieved, the appellant challenged the impugned notification by filing an appeal before the Service Tribunal on 17.11.2014 on numerous grounds. It was alleged that the impugned notification came into the

knowledge of the appellant a few days ago, therefore, the appeal is within time. The appeal was contested by the other side by filing objections/written statement whereby the claim of the appellant was refuted on the ground of limitation. After necessary proceedings, the learned Service Tribunal dismissed the appeal through the impugned judgment being time barred.

2. Sardar Pervaiz Akhtar, Advocate, the learned counsel for the appellant after narration of necessary facts seriously objected to the impugned judgment on the ground that the Service Tribunal has not applied judicial mind. The appeal has been dismissed on the sole ground of limitation. He submitted that the appellant was on leave due to death of her husband, hence, neither she could get knowledge of the impugned order nor the same was communicated to her. After gaining knowledge of the order she filed an appeal within time and also prayed for condonation of delay. In support of contents of the appeal she also filed her personal

affidavit which has not been refuted. According to law, the unrebutted affidavit is always deemed admissible, thus, the impugned judgment is against the law and not sustainable.

3. Conversely, Mr. Sakhawat Hussain Awan, Advocate, the learned counsel for the contesting respondents opposed the appeal on the ground that the arguments advanced on behalf of the appellant are misconceived. The appeal has been filed after delay of six months without any satisfactory explanation. The impugned order is a notification published in the official gazette and according to the principle of law the order published in the official gazette shall be deemed communicated from the date of its publication. Moreover, the ground that the appellant was on leave, has not been raised before the Service Tribunal. It amounts to build a new case before this Court which is not permissible. There is no illegality in the impugned judgment rather the same is in accordance with the principle of law enunciated by this Court in a

number of cases, therefore, this appeal is liable to be dismissed.

4. We have heard the learned counsel for the parties and gone through the record made available. The appeal has been dismissed on the sole ground of limitation. According to the admitted facts the appellant, herein, filed appeal No.1042/2014 on 17.11.2014 against the notification dated 06.02.2014, after a period of almost nine months. In paragraph 6 of memo of appeal the following sole reason for delay has been explained:-

“6. That the impugned notification could not be communicated to the appellant nor appellant was heard by the authority before issuing the impugned notification, therefore, appellant could not get knowledge of the impugned notification, appellant got knowledge regarding the impugned notification a few days ago, therefore, the appeal is within time from the date of knowledge, otherwise appellant seeks condonation of delay. An affidavit in support of contents of the Para is attached here with.”

The perusal of the record reveals that before the Service Tribunal the respondents

categorically took the stand that the order was duly communicated to the appellant. They also produced the copy of the notification dated 06.02.2014 (Annexure "DDD") published in the official gazette on 15.02.2014, thus, it is proved from the record that the impugned order was in shape of the notification which was published in the official gazette.

5. So far as the argument that the appellant was on leave due to death of her husband, is concerned, neither this ground was taken in memo of appeal before the Service Tribunal nor any documentary evidence has been brought on record in this regard. There is a chain of judgments wherein the principle of law has been enunciated that the question of fact which has not been raised before the lower forum cannot be allowed to be raised before the Supreme Court for the first time.

6. Regarding delay, the sole reason advanced by the appellant in paragraph 6 of memo of appeal filed before the Service Tribunal is that

she got knowledge of the impugned notification a few days ago. Even she has not mentioned any exact date of knowledge or source of knowledge. Be that as it may, according to the principle of law enunciated by this Court, any order published in the official gazette shall be deemed communicated to everybody. In this context, reliance may be placed on the case reported as *Tariq Javaid vs. Azad Govt. & others* [2015 SCR 653] wherein it has been held that the publication of a notification in the official gazette is sufficient for information of the general public. The word "communication" used in section 4 of the Azad Jammu and Kashmir Service Tribunal Act, 1976 has to be applied and construed according to the facts and circumstances of each case. Where the rules or law require any order to be communicated personally, such order shall be deemed communicated on personal service but where, according to the nature of the order, the rules or law require any order to be published in the official gazette, such order shall be deemed

communicated on the date of its publication. According to the celebrated principle of law laid down by this Court in a number of cases, it is the duty of the party to explain delay of each and every day to the satisfaction of the Court but in this case the appellant failed to justify the delay of six months occurred in filing of appeal. In this state of affairs, the learned Service Tribunal has committed no illegality while passing the impugned judgment.

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

Muzaffarabad,  
06.02.2020

CHIEF JUSTICE

JUDGE



Tabassum Ashraf VS Azad Govt. & others

**ORDER:**

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

Muzaffarabad,  
06.02.2020

CHIEF JUSTICE

JUDGE