

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

**PRESENT:**

Raja Saeed Akram Khan, J.  
Ghulam Mustafa Mughal, J.

Civil Appeal No.161 of 2019  
(PLA Filed on 11.6.2019)

Hamid Hussain, Account Officer, Azad Jammu & Kashmir Local Government Board, presently at Municipal Corporation Mirpur.

.... APPELLANT

**VERSUS**

1. Azad Govt. of the State of Jammu & Kashmir through Secretary Local Government and Rural Development Department, Azad Jammu & Kashmir, Muzaffarabad.
2. Competent Authority through Chairman, Local Government Board Minister for Local Government and Rural Development Department, Azad Jammu & Kashmir, Muzaffarabad.
3. Secretary Local Government Board, Azad Jammu & Kashmir having his office at Muzaffarabad.
4. Secretary Local Government and Rural Development, Azad Jammu & Kashmir Muzaffarabad.
5. Selection Board No. II through Chairman Selection Board Secretary Local Government and Rural Development, Azad Jammu & Kashmir Muzaffarabad.
6. Accountant General, Azad Jammu & Kashmir, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the Service Tribunal  
dated 12.4.2019 in Service Appeal No. 210 of 2018)

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FOR THE APPELLANT: Sh. Masood Iqbal, Advocate.

FOR THE RESPONDENTS: Raja Saadat Ali Kiani,  
Additional Advocate  
General.

*Date of hearing:* 19.2.2020.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeal by leave of the Court arises out of the judgment dated 12.4.2019 passed by the Azad Jammu & Kashmir Service Tribunal in service appeal No. 210 of 2018.

2. The brief facts forming the background of the captioned appeal are that the appellant, herein, filed an appeal before the Azad Jammu & Kashmir Service Tribunal alleging therein that he is a permanent employee of the Local Government Board and is serving as Assistant Accounts Officer, B-16. It was stated that a post of Accounts Officer, B-17 against departmental

promotion quota fell vacant on 15.2.2015 due to retirement of one Abdul Rashid Mughal. It was further stated that one M. Farhan had been appointed against the said post on ad-hoc basis vide notification dated 16.2.2015. The appellant, herein, filed an appeal in the Service Tribunal which was accepted vide judgment dated 17.8.2015 and in compliance of the judgment of the learned Service Tribunal dated 17.8.2015, the appellant was promoted as Accounts Officer in grade B-17 on officiating basis on 26.2.2016. It was asserted that after that vide order dated 22.8.2017, the appellant on the recommendations of the selection board No. II was promoted as Accounts Officer on regular basis. The claim of the appellant was that he should have been promoted from the date of officiating appointment i.e. 16.2.2015. It was further stated that the appellant filed a departmental appeal before the Higher authority for modification of the notification dated 22.8.2017 but the same has been dismissed

being time barred. The learned Service Tribunal after hearing the counsel for the parties vide judgment dated 12.4.2019 has dismissed the appeal.

3. Sh. Masood Iqbal, the learned Advocate appearing for the appellant argued with vehemence that the appellant, herein, was promoted as Accounts Officer in grade B-17 on officiating basis vide notification dated 26.2.2016 and subsequently was promoted on regular basis vide notification dated 22.8.2017. The learned Advocate further argued that while making regular promotion, the appellant has not been given effect from the date of officiating appointment/promotion i.e. 15.2.2015. He submitted that the appellant filed an appeal before the authority for modification in the notification dated 22.8.2017 but the same was dismissed by the authority on the ground that the appeal has been filed beyond the prescribed period of limitation. The learned Advocate submitted that the appellant deserves to be

promoted from 15.2.2015 the date on which he was given officiating charge of the post. The learned Advocate has relied upon the case reported as 2015 SCR 123. He added that only financial benefit was to be given to the appellant due to promotion, therefore, it was enjoined upon the authority as well as the learned Service Tribunal to admit the appeal for regular hearing.

4. Conversely, Raja Saadat Ali Kiani, the learned Additional Advocate General argued that the appellant was promoted on 22.8.2017 as Accounts officer with immediate effect and he has filed departmental appeal on 21.11.2018 for giving retrospective effect to his promotion from 16.2.2015. The learned Additional Advocate General further argued that as the appeal was time barred, therefore, has rightly been rejected by the authority. He submitted that under Appeals Rules, 1991, the appeal before the Department was to be filed within 60 days, but the same was filed by the appellant after limitation, hence, the learned Service Tribunal

has not committed any illegality while dismissing the same.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. It may be stated that the appellant, as per his claim, was promoted on officiating basis on 16.2.2015 and subsequently he was promoted on regular basis vide notification dated 22.8.2017. He filed departmental appeal on 21.11.2018 for giving effect to his promotion retrospectively from 16.2.2015. His appeal against the orders dated 24.1.2018 and 14.2.2018 impugned before the Service Tribunal was time barred as the appeal filed by him before the authority was beyond the prescribed period of limitation, therefore, the authority has rightly rejected the same. The learned Service Tribunal has supported his judgment while relying upon the cases reported as *Javaid Ejaz vs. Authority under AJK and others* (2015 SCR 744) and *Muhammad Rafi Abbasi vs. Inspector General Police and others*

(Civil Appeal No. 27 of 2018) decided on 3.5.2018. In the first case it has been observed as under:-

“10. “The term aggrieved by any final order is of much importance. The right of appeal before the Service Tribunal is qualified with the grievance of a civil servant from the final order. Thus, the moment, a final order through which a civil servant is aggrieved is communicated, a right of appeal vests in him and he can seek the judicial remedy of appeal before the Service Tribunal. This remedy is not subservient or qualified with the departmental, domestic remedy of appeal. Even delay of 90 days period in the light of deleted proviso (a), sub-section (1) of Section 4 of the Act, 1975 has not been accepted by the Courts and declared as unconstitutional. The interpretation of Sub-section (1) of Section 4 of Act, 1975 by accepting two options of appeal will surely amount to frustrate the spirit of the final judgment of Constitutional Courts as well as amended law through which proviso (a) of section 4(1) of Act, 1975 has been deleted.

Such interpretation indirectly amounts to practically revival of the deleted proviso (a) of Section 4 of the Act, 1975 authorizing the departmental authority to keep the matter pending for an indefinite period.”

In the second case, it has been observed as under:

“5. We have considered the arguments of learned counsel for the parties and gone through the record made available. Admittedly, the basic final departmental order giving rise to appellant’s grievance was passed on 2.4.1983. In the appeal before the Service Tribunal the appellant claimed that the order dated 2.4.1983 is void, illegal and from the date of this order he is entitled to be promoted as Head Constable. In ground (xi) he has further explained the delay that the appeal from the date of order dated 27.1.2016 is within time and as an alternate he prayed for condonation of delay. According to the record and stated facts, the order from which the appellant felt aggrieved was passed on 2.4.1983, whereas, through the order dated 27.1.2016 his representation



has been dismissed by the departmental authority that too being time barred. According to the principle of law enunciated by this Court in a number of cases since Shabir Ahmed's (supra) a civil servant has to approach the Service Tribunal within 90 days from the order aggrieved from irrespective of the fact whether any departmental appeal is pending or not. Now it is almost settled that the limitation will start running from the communication of final departmental order. In this case, the order from which the appellant is aggrieved was passed on 2.4.1983 against which he has filed an appeal on 10.3.2016 almost after two decades period. No reasonable explanation has been extended. The learned Service Tribunal has rightly passed the impugned judgment which is also supported by the principle of law enunciated by this Court in a number of cases some of which have also been referred to in paragraphs 8 and 9 of the impugned judgment. The impugned judgment of the Service Tribunal is quite in accordance with law, which does not suffer from any legal infirmity. The

appellant has failed to make out any valid ground for interference.”

As the appeal before the authority is admittedly time barred, therefore, appeal before the Service Tribunal cannot be deemed to have been filed within limitation. It was enjoined upon the appellant to approach the Service Tribunal immediately within statutory period. In presence of above settled law, we have not found any illegality or legal infirmity in the impugned judgment of the Service Tribunal.

The upshot of the above discussion is that this appeal has no merit, hence, the same stands dismissed with no order as to costs.

JUDGE

JUDGE

Muzaffarabad  
21.1.2020.

