

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raza Ali Khan, J.

Civil PLA No. 03 of 2021
Civil Misc. No. 05.2021
(Filed on 19.01.2021)

Muhammad Iqbal Mir, son of Sahib Dad Patwari Tehsil &
District Bhimber.

.....PETITIONER

VERSUS

1. Commissioner Mirpur Division, Mirpur.
2. Board of Revenue AJK Muzaffarabad through its Senior Member.
3. Director General, Mangla Dam Housing Authority Mirpur.
4. Deputy Commissioner/ Collector, District Bhimber.
5. District Accounts Officer, Bhimber.
6. Muhammad Nawaz Patwari under deputation in Mangla Dam Housing Authority Mirpur (now promoted/posted as Girdawar on current charge basis, Tehsil & District Bhimber.

.....RESPONDENTS

[On appeal from the judgment of the Service Tribunal dated
30.11.2020 in Service Appeal No. 53 of 2020]

FOR THE PETITIONER: Ch. M. Suleman, Advocate.

FOR RESPONDENT NO. 6: Miss. Nosheen Iqbal,
Advocate.

Date of hearing: 14.06.2021.

ORDER:

Raza Ali Khan, J.– The captioned petition for leave to appeal has been directed against the judgment of the Service Tribunal of Azad Jammu & Kashmir dated 30.11.2020, passed in service appeal No. 53 of 2020.

2. The facts forming the background of the captioned petition for leave to appeal are that the petitioner, herein, filed an appeal before the Service Tribunal of Azad Jammu & Kashmir, stating therein, that he is a permanent employee of the Revenue Department and is rendering his duties as Patwari. It

was stated that the Department compiled a final seniority list of Patwaris in the year 2015, wherein, the name of the petitioner was placed at serial No. 05 and the name of respondent No. 6, herein, was entered at serial No. 14. It was further stated that a post of Girdawar fell vacant in the District Bhimber due to the promotion of one Ajaz Ahmed Girdawar, as Naib Tehsildar and the petitioner, herein, was senior to respondent No. 6 and was entitled for promotion but respondent No 1, herein, promoted respondent No. 6 as Girdawar on current charge basis contrary to the seniority list and service rules, vide order dated 24.09.2020. The learned Service Tribunal after hearing the preliminary arguments, has dismissed the appeal in limine through the impugned judgment dated 30.11.2020.

3. Ch. Muhammad Suleman, the learned Advocate for the petitioner after narration of necessary facts submitted that impugned judgment of the learned Service Tribunal is contrary to law, the facts and the record of the case. He argued that pick and choose has been made while promoting the contesting respondent and the petitioner has been deprived of his legal right. He further argued that the learned Service Tribunal has dismissed the appeal on the sole ground of qualification mentioned in the amended service rules, wherein, for promotion of Girdawar, the qualification of Intermediate has been prescribed. The learned advocate argued that the learned Service Tribunal has ignored the relevant law on the point that when a vested right of promotion has accrued to the petitioner, the same cannot be

taken away. He further argued that at the time of appointment of the petitioner, the prescribed qualification was matriculation. He submitted that the learned Service Tribunal did not go through the record of the case while handing down the impugned judgment, therefore, leave may be granted to resolve the controversy.

4. Conversely, Miss Nosheen Iqbal, the learned advocate for the contesting respondent strongly defended the impugned judgment and submitted that the no illegality has been committed by the learned Service Tribunal and the same has been passed after due appreciation of facts and record of the case. She further argued that criteria for promotion as Girdawar in the rules has been prescribed as Intermediate but the petitioner is a Matriculate, hence, respondent No.

6, herein, has rightly been promoted. She submitted that no question of law of public importance is involved in the instant case, therefore, this petition is not maintainable which is liable to be dismissed.

5. I have heard the learned advocates for the parties and have gone through the record of the case. The basic grievance of the petitioner before the Service Tribunal was that respondent No.6, herein, who is junior to the petitioner, has been promoted as Qanongo/Girdawar on current charge basis by the official respondents, whereas, as per the final merit list issued by the official respondents themselves, shows that the petitioner is at serial No. 5 and the contesting respondent has been listed at serial No. 14. The contention of the learned advocate for the petitioner appears to be misconceived. In my view here the controversy does not relate to the seniority list; even the learned advocate for

the respondent has not argued this point. For promotion, the petitioner firstly, has to prove himself as an aggrieved person. The Azad Jammu & Kashmir Revenue Department, Patwari, Qanoongo, Naib Tehsildar and Tehsildar Service Rules, 2014, provides the mode for promotion to the post of Girdawar/Qanoongo, whereby, the minimum qualification for promotion to the post of Girdawar is provided as intermediate. The learned advocate for the petitioner has also admitted this fact in the open Court that the petitioner is a Matriculate. The question of seniority would arise only when the petitioner shows that he had any right to be considered for promotion as Qanoongo/Girdawar, therefore, I am not persuaded by the contentions made by the learned advocate for the petitioner. Section 4 of the Service Tribunal Act 1975, postulates that a civil servant is competent to prefer an appeal only if he is an aggrieved

person. The civil servant who invokes the jurisdiction for redressing his grievance must show that he was an aggrieved person as was envisaged under the relevant law. The learned Service Tribunal after deep scrutiny of record has rightly observed that the petitioner is a matriculate who has not attained the qualification of Intermediate, so he is not eligible for promotion. The learned Service Tribunal has also rightly relied upon the judgment of this Court titled *Tariq Zia Abbasi vs. Speaker AJK Legislative Assembly and others*” (Civil PLA No. 109 of 2015 dated 10.02.2016), wherein, it has been observed that:-

“Section 4 of the Azad Jammu & Kashmir Service Tribunals Act, 1975, postulates that a civil servant aggrieved by any final order made by the departmental authority in respect of any of the terms and conditions of his service may file appeal in the Service Tribunal. The petitioner was not qualified to be promoted as Secretary Assembly in

the light of the relevant rules, he is not an aggrieved person and cannot file appeal in the Service Tribunal.”

In the light of above reproduction, the petitioner, herein, has not proved himself to be an aggrieved person, hence, he has no locus-standi to file the appeal before the Service Tribunal. The learned Service Tribunal has passed the impugned judgment after detailed deliberation of the record of the case which is hereby upheld.

For what has been state above, finding no force, this petition for leave to appeal stands dismissed.

JUDGE

Mirpur,
14.06.2021.