

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Raza Ali Khan, J.

Muhammad Younas Tahir, J.

Civil Appeal No. 125 of 2020

(PLA Filed on 29.2.2020)

Zafar Azam, Deputy Secretary B-18, Azad Jammu & Kashmir Legislative Assembly, Muzaffarabad, Azad Kashmir.

.... APPELLANT

**VERSUS**

1. Speaker, Azad Jammu & Kashmir Legislative Assembly, having his office at New Secretariat, Muzaffarabad.
2. Azad Jammu & Kashmir Legislative Assembly through Speaker, having his office at New Secretariat, Muzaffarabad.
3. Secretary, Azad Jammu & Kashmir Legislative Assembly, having his office at New Secretariat, Muzaffarabad.
4. Selection Committee for promotion to the post of Deputy Secretary B-18 through its Chairman Legislative Assembly, Azad Jammu & Kashmir, Muzaffarabad.
5. Assistant Secretary Admin, Azad Jammu & Kashmir Legislative Assembly, having his office at New Secretariat, Muzaffarabad.
6. Accountant General of Azad Jammu & Kashmir, Muzaffarabad.
7. Naseer Ahmed Abbasi, Assistant Secretary, Retired r/o Lower Plate near Agha Khan Liberatory c/o Assistant Secretary Admin, Azad Jammu & Kashmir Legislative Assembly, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 24.12.2019 in Service Appeal No. 680 of 2018)

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**APPEARANCES:**

FOR THE APPELLANT: Mr. Shahid Ali Awan,  
Advocate.

FOR THE RESPONDENTS: Raja Waseem Younis,  
Additional Advocate General  
and Raja Muhammad Arif  
Rathore, Advocate.

*Date of hearing:* 29.11.2021

**JUDGMENT:**

***Raza Ali Khan, J.***— The captioned appeal by leave of the Court arises out of the judgment dated 24.12.2019 passed by the learned Service Tribunal of Azad Jammu & Kashmir in service appeal No. 680 of 2018.

2. The facts forming the background of the captioned appeal are that the appellant, herein, filed an appeal before the Azad Jammu & Kashmir Service Tribunal, stating therein that being Assistant Secretary, he was promoted to the post of Deputy Secretary B-18 initially on officiating basis vide notification dated 24.01.2013 and thereafter,

he was promoted on regular basis with effect from 01.01.2013 vide notification dated 02.12.2013. It was stated that respondent No. 7, herein, was retired after attaining the age of superannuation with effect from 11.08.2013 vide notification dated 12.06.2013 from the post of Assistant Secretary B-17. It was further stated that vide notification dated 26.06.2018, one Mr. Sheikh Masood Ahmed Additional Secretary who has retired, was earlier promoted retrospectively with effect from 19.04.2012 to the post of Additional Secretary B-19 and respondent No. 7, has also been given retrospective promotion with effect from the same date i.e. 19.04.2012 with the condition that his promotion shall not affect the seniority of any other senior officer. The learned Service Tribunal after necessary proceedings has dismissed the appeal through the impugned judgment dated 24.12.2019.

3. Mr. Shahid Ali Awan, the learned counsel for the appellant reiterated the grounds taken in the memo of appeal and submitted that the impugned judgment passed by the Service Tribunal is against law, the facts and the record. He argued that vide order dated 26.06.2018, one Mr. Sheikh Masood

Ahmed, Additional Secretary, who retired on 23.12.2013, was earlier promoted to the post of Additional Secretary B-19 with effect from 22.11.2013 and thereafter, on his departmental representation, he was promoted retrospectively with effect from 19.04.2012. The learned Advocate further submitted that respondent No. 7 has also been given the retrospective effect from the same date i.e., from 19.04.2012, whereas, the appellant, herein, was entitled to be promoted to the post of Deputy Secretary B-18 with effect from 19.04.2012. He further argued that the impugned notification has been issued in violation of law and rules which was liable to be declared without lawful authority by the Service Tribunal but the learned Service Tribunal has dismissed the appeal filed by the appellant, herein, hence, the same is liable to be set-aside. The learned Advocate added that the learned Service Tribunal fell in grave error while holding that the appellant never challenged the recommendations of the departmental committee before any competent forum as well as the notification dated 2.12.2013, which has attained finality, because the recommendations of

departmental committee had turned into notification, and the said notification was final order, which was rightly assailed in appeal. The learned Advocate maintained that the private respondent was given retrospective effect of notional promotion on the pretext of acceptance of his application/appeal, review filed after a period of more than five year, whereas according to law, an appeal/review can only be filed by a civil servant within stipulated period, but the learned Service Tribunal failed to consider this aspect of the case. The learned Advocate lastly prayed that by accepting the appeal, the impugned judgment of the learned Service Tribunal may be set aside.

4. Conversely, Raja Waseem Younis, the learned Additional Advocate General strongly opposed the arguments advanced on behalf of the learned counsel for the appellant and submitted that the judgment passed by the learned Service Tribunal is quite in accordance with law. He argued that the arguments advanced by the learned Advocate for the appellant are misconceived. The learned Advocate submitted that notification dated 26.06.2018 was modified and respondent No. 7 was

given the retrospective effect from 19.04.2012. He further submitted that on the recommendations of selection committee, the notification dated 26.06.2018 was issued, which has not been challenged by the appellant before any forum. The learned Additional Advocate General submitted that the appellant has failed to point out any illegality or legal infirmity in the impugned judgment, hence, the appeal filed by the appellant, may be dismissed.

5. Raja Muhammad Arif Rathore, the learned Advocate appearing for the private respondent while adopting the arguments advanced on behalf of the learned Additional Advocate General, submitted that the impugned judgment has been passed after due appreciation of record, which warrants no interference by this Court. He argued that from the order impugned before the learned Service Tribunal neither the terms and conditions of service nor seniority of any senior officer is affected. The learned Advocate requested that the appeal filed by the appellant may be dismissed.

6. We have heard the learned Advocates representing the parties and have gone through the

record of the case made available along with the impugned judgment. The record reveals that the appellant, herein, filed an appeal before the learned Service Tribunal challenging the legality and validity of notification dated 26.6.2018, whereby the private respondent, herein, was promoted as Deputy Secretary B-18 on the post fell vacant as a result of retrospective promotion of one Sheikh Masood Ahmed, (Rtd.) Additional Secretary B-19, on 19.4.2012 with the condition that this promotion shall not affect the seniority of any senior officer. The claim of the appellant before the Service Tribunal was that he was promoted on officiating basis against the post of Deputy Secretary B-18 on 1.1.2013 and this officiating promotion was, later on, confirmed as regular promotion on 2.12.2013 from the date of promotion, whereas, the private respondent, who was retired as Assistant Secretary B-17 after attaining the age of superannuation on 12.6.2013, was promoted vide notification dated 26.6.2018 against the available post of Deputy Secretary B-18 w.e.f. 19.4.2012 with the condition that seniority of any senior officer shall not be affected by this promotion. The learned Service

Tribunal after hearing the parties has dismissed the appeal through the impugned judgment for having no substance in it.

7. Admittedly, the appellant, herein, is senior to the private respondent and he was promoted on officiating basis as Deputy Secretary B-18 while giving retrospective effect on 1.1.2013 and this officiating promotion was confirmed from the date of promotion vide notification dated 2.12.2013. Whereas, the private respondent, herein, was given the retrospective effect of the post of Deputy Secretary B-18 on 19.4.2012 vide notification dated 26.6.2018. From the juxtapose perusal of both the notifications mentioned above, it becomes crystal clear that from the said notification the terms and conditions of the service of the appellant appear to be affected. The observation made by the learned Service Tribunal in the impugned judgment that the appellant neither challenged the recommendations of Departmental Committee nor the notification dated 2.12.2013 before any forum, appears to be misconceived for the simple reason that due to recommendations of the Departmental Committee as well as notification

dated 2.12.2013, the appellant was not aggrieved and when he was not aggrieved from any order or notification, why would he have challenged the same? Moreover, the learned Service Tribunal also observed that the private respondent was promoted on the basis of recommendations of the Departmental Committee while accepting his application/appeal or review, but no such record/proof has been brought on record neither before the Service Tribunal nor before this Court. This observation of the learned Service Tribunal appears to have been made in vacuum, which is not supported from the record. If there was any such record/proof, it was imperative for the respondents to produce the same before the Court. The appellant, herein, has categorically incorporated in his appeal before the learned Serviced Tribunal that he is senior to the private respondent and if notional promotion was necessary to be given to private respondent w.e.f. 19.4.2012, then the same should have been given to the appellant being senior to the respondent. The contention of the counsel for the appellant that due to notification dated 26.6.2018 the terms and conditions of service

of the appellant for almost 8 months have badly been affected, has substance because when admittedly the appellant is senior to the private respondent, then he is entitled to be given retrospective effect of the post of Deputy Secretary B-18 from 19.4.2012 vis-à-vis to the private respondent. The impugned judgment of the learned Service Tribunal appears to have been passed in a hasty manner without having regard to the real controversy between the parties and the record as well. The appellant has succeeded in making out his case for acceptance of appeal.

The upshot of the above discussion is that the appeal is accepted. The impugned judgment of the learned Service Tribunal is set aside, resultantly the notification dated 26<sup>th</sup> June, 2018 is vacated and the appellant is held entitled to be promoted from 19.4.2012.

JUDGE

Muzaffarabad.  
3.12.2021.

JUDGE.

