

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

Raza Ali Khan, J.

Muhammad Younas Tahir, J.

Civil Appeal No.04 of 2022
(PLA filed on 03.05.2021)

1. Fahad Ibrar, Assistant Engineer, Public Works Department, Muzaffarabad.
2. Syed Mohd Ali-ul-Husnain Naqvi, Assistant Engineer Pubilc Works Department, Mechanical Division, Muzaffarabad.

.... APPELLANTS

VERSUS

1. Azad Government of the State of Jammu and Kashmir through Secretary Communication & Works having his office at New Secretariat, Muzaffarabad.

2. Secretary Physical Planning and Housing having his office at New Secretariat, Muzaffarabad.
3. Chief Engineer, Public Works Department (Building/Public Health Engineering (North), Muzaffarabad.
4. Khawaja Mohd Iqbal (impugned) Executive Engineer (XEN) Public Works Department Mechanical Division, Muzaffarabad.
5. Sajid Hussain (impugned) and illegal transferred and posted as Deputy Director Machinery Maintenance Division, Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 24.04.2021 in Service Appeal No.170 of 2021]

Appearances:

FOR THE APPELLANTS: Ch. Shoukat Aziz, Advocate.

FOR THE RESPONDENTS: Barrister Humayun Nawaz Khan & Raja Muhammad Mushtaq Khan, Advocates.

Date of hearing: 31.03.2022

JUDGMENT:

Raza Ali Khan, J.— This appeal, by leave of the Court, has been addressed against the judgment passed by the Service Tribunal, dated 24.04.2021, whereby, the appeal filed by the appellants, herein, has been dismissed.

2. The brief facts forming the background of the captioned appeal, are that the appellants, herein, filed an appeal before the Service Tribunal, stating therein, that they are qualified Mechanical Engineers and serving as the assistant engineers, BPS-17, in the Public Works Department, after being appointed as such on the recommendations of the Azad Jammu and Kashmir Public Service Commission. It was alleged by the appellants that they are standing ahead to respondents No. 4 & 5, in the seniority position for promotion against the posts of Executive Engineer (Mechanical), BPS-18,

(XEN) and Deputy Director Machinery Maintenance, BPS-18, but despite this respondents No. 4, and 5, have been appointed by transfer on current charge basis against the posts of the Executive Engineer, Mechanical Division, Muzaffarabad and the Deputy Director, Maintenance Division, Muzaffarabad. respectively, vide order dated 17.03.2021. They further alleged in the appeal, that in the year 2019, respondent No. 4, was appointed by transfer against the post of Executive Engineer, Mechanical Division, from the post of Deputy Director Maintenance, Mechanical Division. The appellants had challenged the said order by filing an appeal bearing No. 962 before the Service Tribunal. During pendency of the said appeal, the official respondents appointed respondent No. 4, herein, by transfer from the post of Deputy Director Mechanical, Maintenance

Division Muzaffarabad to the post of Executive Engineer, Mechanical Division Muzaffarabad and respondent No. 5, herein, has been posted as Deputy Director Machinery, Maintenance Division Muzaffarabad in place of respondent No.4, vide notification dated 17.03.2021 so that the above above-mentioned appeal may be made infructuous. It was alleged that respondents do not fulfil either the required educational qualification, or seniority position under law. It was further alleged that respondent No. 4, has been appointed on different posts from time to time on current charge basis. The appellants also alleged that the department compiled a tentative seniority list of Assistant Engineers BPS-17, on 13.03.2020, wherein, the names of the appellants have been placed at serial Nos. 57 and 58, whereas, the name of respondent No. 5, has been shown at serial No. 66, thus, in this

way, respondent No. 5, is most junior to the appellants but despite this, he has been posted as Deputy Director Machinery, Maintenance Division on current charge basis vide impugned notification. It was further alleged that according to Rule 10-B, of the Azad Jammu & Kashmir (Appointment and Conditions of Service) Rules, 1977 (Rules, 1977) where a post is likely to remain vacant for a period of less than six months and the appointing authority does not consider it expedient to make an appointment on ad-hoc basis, it may appoint a civil servant, who is eligible for promotion under Rules, to the post on current charge. It was alleged that the respondents are not holder of the decree of B.Sc Engineering thus they do not fall within the category of Engineers. Respondent No. 4 has been serving the post of grade BPS-18 on current charge basis for the last 13 years while the current charge

appointment remains effective for a period of six months only. The appellants fulfil the required qualification and experience for promotion against the posts in question but instead, the private-respondents have been posted against the said posts contrary to the Departmental Service Rules and seniority on the basis of political motivation and with mala-fide intention in order to accommodate them which is worst example of colourful exercise of powers. It was further stated that the terms and conditions of service of the appellants have badly been effected by the issuance of the impugned notification, hence, the appellants fall within the definition of aggrieved civil servant.

On filing of the appeal, the other side was summoned. Respondents No. 4 and 5, submitted their objections/written statement separately, on 19.04.2021 and 21.04.2021, respectively. It was

stated in the objections submitted by respondent No. 5, herein, that the appellants have got no locus-standi to file the appeal. According to the Azad Jammu and Kashmir Public Works Department Service Rules, 1992, the appellants do not qualify the service for promotion against the post of Deputy Director Machinery Maintenance Division, BPS-18, hence, they do not fall within the definition of aggrieved civil servants. The service under the credit of respondent No. 5 comes to more than 34 years in the Public Works Department who was promoted as Sub-Engineer, BPS-16, vide order, dated 26.06.2007, with effect from 1.02.1999 and subsequently appointed as Assistant Engineer on current charge vide order dated 17.04.2008 and vide notification dated 30.07.2009. It was further stated that respondent No. 5 has earned more than 34 years' service in his credit whereas, 15 year'

service is required for promotion to BPS-18 as Deputy Director Machinery Maintenance, hence, he has rightly been appointed as the Deputy Director Machinery, Maintenance, BPS-18, on current charge basis. The length of service of the appellants is only 8 years in the department, hence they are not eligible for promotion against the post of Deputy Director, BPS-18, under the departmental service rules. Respondent No. 5, herein, is senior to the appellants because he was promoted as Assistant Engineer with effect from 30.07.2009, vide notification dated 20.01.2020. The seniority of Assistant Engineers BPS-17, has not been finalized as yet so the same cannot be relied. Respondent No. 4 submitted in his objections that his name finds place at serial No. 3 in the seniority list whereas, the names of the appellants are entered at serial No. 57 and 58 in the seniority list. Respondent No. 4 is the

senior most Assistant Engineer and is eligible for promotion against the post of Deputy Director Machinery, Maintenance, BPS-18, under departmental Service rules. It was stated that this Court has declared respondent No. 4, as eligible for promotion against the post in question vide judgment, dated 04.12.2015 and he has been transferred, from the post of Deputy Director, Machinery, Maintenance Division, BPS-18, and appointed against the post of Executive Engineer Mechanical, Division Muzaffarabad, on current charge basis. Both the posts carry the grade BPS-18. The appellants have no right to challenge the appointment notification of respondent No 4, because he is senior to the appellants. The official respondents have stated in their objections that the private respondents have not yet been promoted on regular basis on the recommendations of the

concerned selection Board, hence, the appeal is not maintainable. The learned Service Tribunal after necessary proceedings, has dismissed the appeal through the impugned judgment, dated 24.04.2021.

3. Ch. Shoukat Aziz, Advocate, the learned counsel for the appellants argued with vehemence that the judgment passed by the Service Tribunal is patently illegal. He submitted that under the Departmental Service Rules, against the post of Executive Engineer, BPS-18, only the Assistant Engineers, BPS-17, possessing requisite qualification fixed for initial recruitment can be appointed against the disputed posts, whereas, the diploma holders and B.Tech, Assistant Engineers, cannot be appointed against the impugned posts of Executive Engineer Mechanical, BPS-18, either by promotion or transfer but despite this the disputed

post has been filled in by appointment of private respondent No.4, who does not fulfil the required qualification. He further submitted that appellant No.1 is the most senior Assistant Engineer and he was also assigned an additional charge of the post of Executive Engineer, Mechanical, through notification dated 04.06.2016. He submitted that in the said notification, it was clearly admitted that the appellant No.1, is most senior amongst the Assistant Engineers (Mechanical) but despite this admission by the department itself, he has been deprived of his right to promotion. So far as the post of Deputy Director Machinery, Maintenance Division BPS-18, is concerned, the promotion against the said post can only be made on the basis of seniority cum fitness and according to the seniority list, the appellants figure at serial Nos.57 and 58, whereas, private respondent falls at serial

No.66, hence, his promotion has also been made while violating the seniority position. He further added that the appellants were appointed on the recommendations of Public Service Commission, hence, for their promotion against the post of Deputy Director, BPS-18, the required length of service is provided as five years, whereas, for the Assistant Engineers (diploma holders), the required length of service is 15 years but the learned Service Tribunal failed to understand the law and declared the appellants as not aggrieved persons. He contended that respondent No. 4, herein, who was illegally promoted on current charge basis and the said illegal arrangement kept continued by the department for 13 years, whereas, according to Rule 10-B of Rules, 1977, an appointment made on current charge basis shall come to an end on the appointment of a person on regular basis or on the

expiry of 06 months' period whichever is earlier, that is why, the current charge arrangement could not be legally continued for more than six months but in the case in hand, the Government is bent upon to keep him appointed against the post of XEN, continuously on political motivation, illegally and to deprive the appellants of their right to promotion. All these grounds, call for serious attention of this Court for interference in the impugned judgment.

4. Conversely, Barrister Humayun Nawaz Khan and Raja Muhammad Mushtaq Khan, Advocates, representing the private respondents submitted that the impugned judgment passed by the Service Tribunal is perfectly legal. According to the Departmental Rules, the post of Deputy Director Machinery, Maintenance Division is to be filled in by promotion on the basis of seniority-cum-

fitness from amongst the Assistant Engineers, Mechanical, with 15 years' of service in the department having experience in maintenance of construction Machinery and launching of pre-fabricated steel bridge. In this way, the private respondent No.5 fulfils the required length of service and qualification for the purpose of promotion, hence, the learned Service Tribunal rightly dismissed the appeal. While referring to the seniority list dated 13.03.2020, they submitted that the private respondent No.4 figures at serial No.3, whereas, the appellants, being at serial Nos.57 and 58 are junior to them. They further argued that the argument of the counsel for the appellants that respondent No. 4 is not eligible to hold the post of Executive Engineer Mechanical Division is quite baseless and incorrect as respondent No. 4 is fully competent under the Departmental Service Rules

for promotion to the post of Executive Engineer. They added that the method of recruitment to the post of Executive Engineer as prescribed in the Departmental Service Rules is provided by promotion on the basis of seniority-cum-fitness from amongst the Assistant Engineers with at least 05 years' service possessing the qualification prescribed for initial recruitment to the post of Assistant Engineer who have passed the departmental professional examination prescribed in PWD code, thus, it is clear from the Departmental Service Rules that respondent No. 4 is fully qualified for the post of Executive Engineer. They finally submitted that the learned Service Tribunal has passed the impugned judgment quite in accordance with law calling for no interference by this Court, therefore, this appeal is not maintainable.

5. We have given our dispassionate thought to the arguments advanced by the learned Advocates on behalf of parties and gone through the record of the case made available.

6. Before stepping towards the merits of the case, it may be observed here that under the Constitutional scheme, the executive branch i.e., the Government has been bestowed with the powers to execute numerous administrative functions to run the affairs of the Government and its departments. A gigantic work force is required to help out the smooth functioning of the Government and its departments. This work force is regarded as the civil servants. Obviously, like any other labour force a structure is required to regulate the service of civil servants and their terms and conditions of service. Hence, the framers of the AJ&K Interim Constitution 1974, under Article 49, provided that

subject to the Constitution, the appointment of persons to and the terms and conditions of service of persons in, the service of Azad Jammu and Kashmir may be regulated by law. It is the Constitutional demands that civil service, may be regulated by laws, meaning thereby the service laws i.e., acts, rules and statutory instructions enforced, time to time, to regulate the civil service have Constitutional backing and it is command and will of the Constitution that the civil service laws are to be followed as prescribed by same. Further, the Government and the executive authorities are required to make appointments, promotions, transfers and make orders regarding terms and conditions of the civil servants as per the enforced civil servants act, rules, regulations and statutory instructions. In the case reported as *Raja Muhammad Wasim Khan & others vs. Azad*

Government & others [2017 SCR 623], the same view was taken, wherein, this Court has formed an opinion that: -

"مسلمہ طور پر آزاد کشمیر میں رائج الوقت قانون آزاد جموں و کشمیر سول سروسٹس ایکٹ 1976 اور اس کے تحت مرتبہ قواعد آزاد جموں و کشمیر مینجمنٹ گروپ (کمپوزیشن، ریکروٹمنٹ و پروموشن) رولز 1980 کا تعلق معاملہ زیر نزاع سے ہے۔ آزاد ریاست جموں و کشمیر عبوری آئین ایکٹ 1974 کی دفعہ 49 کے تحت سول سروس میں افراد کی تقرری اور ان کی شرائط ملازمت کو قانون کے تحت منضبط کرنا آئینی تقاضا ہے اور حکومت اور مجاز حکام تقرری کی شرائط کے حوالہ سے قانون میں متعینہ اختیارات اور وضع کردہ طریقہ کار کے مطابق ہی اپنے اختیارات کا استعمال کر سکتے ہیں۔"

(Underlining is ours)

In the judgment (*supra*), this Court has observed that in the civil Service, the appointments and terms and conditions of service, are required to be made in the light of relevant law as enshrined under Article 49 of the Constitution. Article 49 of the Interim Constitution, 1974 is reproduced hereunder for better appreciation: -

49. The Services.- (1) Subject to the Constitution, the appointment of persons to and the terms and conditions of service of persons in, the Service of Azad Jammu and Kashmir may be regulated by law.

(2) Until an Act of the Council in respect of persons in the service of Azad Jammu and Kashmir employed in connection with the affairs of the Council, or an Act of the Assembly in respect of such persons employed in connection with the affairs of Government, makes provision for the matters referred to in sub-Article (1), all rule and orders in force immediately before the commencement of the Constitution, shall continue in force and may be, amended from time to time by the Council or, as the case may be, the Government."

7. Deriving the power from the above cited

article 49 of the Constitution, the legislature has

promulgated the Civil Servants Act, 1976, (Act,

1976) to regulate the service of civil servants of

Azad Jammu and Kashmir. The preamble of the Act,

1976, envisages that the Act has been made to

regulate the appointment of persons to, and the

terms and conditions of Service of persons in, the service of Azad Jammu and Kashmir and it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons in, the service of Azad Jammu and Kashmir, and to provide for matters connected therewith or ancillary thereto.

8. By virtue of the powers contained under section 23 of the Civil Servants Act, 1976, the Government has promulgated the AJK Civil Servants (Appointment & Conditions of Service) Rules, 1977 (Rules 1977). Under these rules different modes have been prescribed for appointment against the posts in the civil service i.e. appointment by initial recruitment, promotion, on acting charge basis, by transfer, on officiating basis, on deputation and appointment on adhoc basis. Whereas, section 4 of Act, 1976 provides that the appointments to a civil

service of Azad Jammu & Kashmir or a civil post in connection with the affairs of the Government, shall be made in the prescribed manner by the Government, or by a person authorized by it in that behalf. This Court in the case reported as *Ejaz Hussain vs. Azad Govt. & others* [2015 SCR 367], while recording findings on section 4, has observed as under: -

“According to law the appointment against the civil post can only be made in the prescribed manner. In this regard reference to Section 4 of the Azad Jammu and Kashmir Civil Servants Act, 1976 (hereinafter to be referred as Act, 1976) read with Rule 3 of the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977, (hereinafter to be referred as Rules, 1977), can be made. Section 4 of Act, 1976 is reproduced as under:-

4. **Appointments:-** Appointments to a civil service of Azad Jammu and Kashmir or a civil post in connection with the affairs of the Government, shall be made in the prescribed manner by the Government, or by a

person authorized by it in that behalf.

Whereas Rule 3 of the Rules, 1977 is reproduced as under:-

- “3. (1) Appointment to posts shall be made by promotion, transfer or initial recruitment, as may be prescribed by the Government in relation to the posts in a grade from time to time.
- (2) Appointments by promotion or transfer shall be made in accordance with part II and by initial recruitment in accordance with Part III of these rules.
- (3) The appointment shall be made from among such persons possessing such qualifications and the fulfilling such other conditions as may be prescribed by the Government from time to time.
- (4) The Government may, with due regard to the population, provide, for the proper representation of the component units of Azad Jammu and Kashmir and the refugees settled in Pakistan in the services of Azad Jammu and Kashmir.
- (5) All orders, notifications issued for determining the quota for the initial recruitment, in the services, shall be deemed to have been issued under sub-rule (4).”

9. Similarly, the appointments should be made in the transparent manner. As per principle of law, appointments in the public services ought to be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the Rules, 1977 for the post. However, to this general rule which is to be followed strictly in each and every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. In *Muhamad Matloob Khan vs. Iftikhar Ahmed & others*, this Court while dealing with the identical question of transparency of appointments observed in para 11 of the judgment that: -

“11. It is also very strange that all the concerned stated that despite advertisement and submission of four applications only one candidate appeared. It is impossible. Everybody knows that due to unemployment the people seeking job are running from pillar to post so how it is possible that only one candidate appeared in the test and interview. The whole story clearly speaks that the proceedings have not been conducted in a transparent manner rather these are totally fishy and doubtful. However, all these aspects can only be entertained if any person aggrieved in legal sense approaches the Court. We deem it necessary in the public interest to direct the Secretary of the Department to take necessary steps for transparency of proceedings conducted while making appointments and strict compliance of law.”

10. Moreover, various matters are to be considered in Service hierarchy such as powers, administration and control of institution and the privileges etc. This Court in the case reported as *Akbar Khatoon vs. Farhat Khizer & others* [1999 SCR 305], observed that in the service hierarchy it is not

only the pay scale that matters but it is the office, the privileges, the powers and the over-all control and administration of the institution which really matters and also the position that one enjoys by becoming the head of the institution or holds senior position to others.

11. Heading towards the most crucial point involved in the instant matter regarding the current charge appointment, it would be appropriate to reproduce Rule 10-B of Rules, 1977, which reads as under: -

“10-B. Appointment on current charge basis: - (1) Where a post is likely to remain vacant for a period of less than six months and the appointing authority does not consider it expedient to make an appointment on ad-hoc basis it may appoint a Civil Servant, who is eligible for promotion under rules, to that post on current charge basis. (2) An appointment made on current charge basis shall come to an end on appointment of a person

on regular basis or on the expiry of six months whichever is earlier.”

The rule reproduced hereinabove, postulates that the appointment on current charge basis can be made when a post is likely to remain vacant for a period of less than six months and appointing authority doesn't consider it expedient to make an appointment on ad-hoc basis, it may appoint a civil servant, who is eligible for promotion under rules, to that post on current-charge basis. Rule 13 of Rules, 1977, provides that where a post falls vacant as a result of (ex-cadre) transfer, deputation, leave or appointment on acting charge/officiating basis of the regular incumbent or is reserved under the rules to be filled by transfer or permanently available as vacant and is reserved for regular promotion on the recommendations of the appropriate Selection Board/Committee, the appointing authority may make appointment by

promotion against such post on officiating basis.

The matter of appointment on current charge and promotion on officiating basis came under the consideration of this Court in the case reported as *Muhammad Yaqoob Awan vs. Secretary Electricity Department and others* [2014 SCR 1], where in paras 7 & 8 of the report it was observed as under:

-

“7. The appointment on current-charge basis under Rule 10-B of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, is made when a post is likely to remain vacant for a period of less than six months and appointing authority doesn’t consider it expedient to make an appointment on ad-hoc basis, it may appoint a civil servant, who is eligible for promotion under rules, to that post on current-charge basis.

8. The appointment by promotion on officiating basis is made under Rule 13 of the Azad Jammu & Kashmir Civil Servants (Appointment & Constitutions of

Service) Rules, 1977, where a post falls vacant as a result of deputation, leave or the appointment on acting-charge basis of the regular incumbent or is reserved under the rules to be filled in by transfer, the appointing authority may make appointment by promotion against such post on officiating basis. The rule lays down that no person shall be promoted on officiating basis unless he possesses the qualification and experience prescribed for the post and his promotion as such is approved by the Chairman of the appropriate selection authority and that an officiating promotion shall not confer any right of promotion on regular basis but shall be liable to be transmitted as soon as a person becomes available for promotion on regular basis.”

Thus, an officiating promotion order can be made when the post falls vacant as a result of deputation, leave or on current charge basis of the regular incumbent. A qualified civil servant having the relevant experience and qualification prescribed for the post may be appointed/promoted but such promotion shall not confer any right for regular promotion.”

12. Here It is worth mentioning that according to Rule 10-B (2) of Rules, 1977, appointment on current charge basis is not a promotion and it is only valid for a period of six months. It is a fact of elementary knowledge that appointment on current charge basis cannot be deemed as a promotion. The actual position is that "appointment on current charge basis" and the "promotion" are distinctly different in every sense. The position becomes clear when we examine the relevant provisions. From the perusal of the relevant provisions i.e. Rule 10-B, of the Rules, 1977, it transpires that the word promotion does not occur in the said rule. From it, the conclusion is obvious that an order under rule 10-B of Rules, 1977, is not an order of promotion. From the fact that pay scale is not mentioned in rule B-10, it is clear that appointment on current charge basis is an

appointment to a higher post and not to a higher grade. Sub-rule (2) makes it clear that appointment made under this rule is a temporary arrangement which is terminated on appointment of a person on regular basis or on the expiry of six months whichever is earlier. The phraseology of sub-rule (2) also depicts that appointment on regular basis is a stage which is reached after appointment on current charge basis and the two are not the same. The matter becomes more clear when we peruse rule 13 of Rules, 1977, which falls in the same chapter. It reads as follows:

"13... Appointment by promotion on officiating basis. (1) Where a post falls vacant as a result of deputation, leave or appointment on acting charge basis of the regular incumbent or is reserved under the Rules to be filled by transfer, the appointing authority may make appointment by promotion against such post on officiating basis.

(2) If an officer appointed or promoted to a post on ad hoc basis continues to hold office beyond six months without approval of the Public Service Commission/Selection Board he shall be deemed to continue on ad hoc basis, till the approval of Public Service Commission/Selection Board and formal confirmation orders issued by the competent Authority.

(3) An officiating promotion shall not confer any right of promotion on regular basis but shall be liable to be terminated as soon as a person becomes available for promotion on regular basis.

(4) Officiating promotion shall be made on the same terms and conditions as to pay as are prescribed for regular appointment by promotion."

It follows that an appointment on officiating basis is a promotion, but the word promotion is conspicuous by absence from rule 10-B of Rules, 1977. The obvious conclusion is that appointment on current charge basis is not a promotion. The same proposition came under the

consideration of this Court in the case reported as

Akbar Khatoon vs. Farhat Khizar & others [1999 SCR

305], wherein, it has been observed that: -

“From the record it is established that the appellant is junior to respondent No,1 according to the seniority list as appended with the appeal. The seniority list was challenged by the present appellant up to this Court but she failed to establish her claim. In accordance with the relevant rules even in case of officiating or acting charge basis the senior is to be given preference. Respondent No,1 being senior was not given the charge so she submitted the review petition before the pro forma respondent well within time but the same remained pending for a considerable time and without deciding it the appellant was appointed permanently as Principal. According to rules 9 and 10 of the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977, appointment by promotion or transfer is also to be made to the higher post on the basis of recommendations of Selection Board. In the instant case the post

of Principal, Degree College being selection grade post could not have been filled in by any other method except by promotion on the recommendations of the Selection Board or by direct recruitment.”

In another case reported as *Muhammad Arshad Khan, Tehsildar and others vs. Azad Govt. & others* [2000 PLC (C.S), 247], it has been held by this Court that: -

“11. The next question pertains to conditions of officiating appointments. It is evident from sub-rule (1) of rule 13 of Rules that officiating appointment can only be made if the post falls vacant as a result of deputation, leave or appointment on acting charge basis of a regular incumbent or is reserved under the rules to be filled by transfer. In the present case it is nobody's case that the posts against which 17 persons were promoted on officiating basis fell vacant due to any of the aforesaid eventualities. Rather the said posts appear to have been reserved for direct recruitment. If the posts fell vacant due to retirement of previous incumbents or the same were newly created the same could not be filled

in on officiating basis under rule 13(1); similarly, under sub-rule (3) of rule 13, the officiating promotion would not confer any right of the promotion on regular basis and same is liable to be terminated as soon as a person becomes available for promotion on regular basis. Therefore, it cannot be said that officiating promotion of some of the respondents was envisaged under rules or same could be made basis for giving ante-date promotion to the said 'incumbents.'"

13. It would not be out of context to mention here that the seniority takes effect from the date of regular appointment to a post in that grade. The basic provision dealing with the seniority is section 7 of Act, 1976. For convenience Section 7 is reproduced hereunder: -

"7. (1) Seniority:- Seniority on initial appointment to a service, cadre, grade or post shall be determined in the prescribed manner.

(2) Seniority in the grade to which a Civil Servant is promoted shall take effect from the date of

regular appointment to a post in that grade.

Provided that Civil Servants who are selected for promotion to the higher grade in one batch shall, on their promotion to the higher grade, retain their inter se seniority as in the lower grade.

(3) For proper administration of service, cadre or grade, the appointing authority shall from time to time cause a seniority list of the members of such service, cadre or grade to be prepared.

(4) Subject to the provisions of sub-section (3) the seniority of a Civil Servant in relation to other Civil Servants belonging to the same service, cadre or grade, whether serving the same department or office, shall be determined in such manner as may be prescribed.

(5)"

A bare reading of sub-section (3) of section 7 of Acts, 1976, shows that the authority has been conferred with the powers to cause the seniority list from time to time of the members of such service, cadre or grade. The section provides

that the seniority takes effect from the date of regular appointment to a post in that grade. A proviso has been attached to sub-section 2 of section 7 that the civil servants who are selected for promotion to the higher grade in one batch shall, on their promotion to the higher grade, retain their inter-se-seniority. It was observed in the case reported as *Syed Subtain Husain Kazmi and 2 others vs. Syed Mumtaz Hussain Kazmi and 5 others* [2013 SCR 889] in para 10 of the report as under:-

“The basic provision dealing with the seniority is section 7 of the Act. According to this statutory provision, the seniority on initial appointment to service, cadre, grade or post shall be determined in the prescribed manner. Whereas, the seniority in the grade to which a civil servant is promoted shall take effect from the date of regular appointment to the post in that grade. The term “regular appointment’ used in this statutory provision is of vital importance. The sub-section (2) of section 2 of the Act, speaks that “for the purpose of

this an appointment whether by promotion or otherwise shall be deemed to have been made on regular basis if it is made in the prescribed manner.” According to clause (i) sub-section (1) of section 2 of the Act, “prescribed” means prescribed by rules. Thus, this statutory provision clearly convey that the appointment whether by promotion or otherwise made in prescribed manner shall be deemed on regular basis. Under the provision of section 3 of the Act, the terms and conditions of Civil Servant shall be provided in this Act, and rules made there under. When the scope of legal terms ‘regular appointment’ hereinabove, is judged in the light of the statutory provision of the Act in juxtaposition with the Rules, 1977, it become clear that it refers only to the regular permanent appointment either; by initial recruitment, transfer or promotion excluding the appointments on the acting charge, current charge and promotion on officiating basis. Regarding these appointments the statute itself clarifies that these are no regular appointment. Rule 10-A of the Rules, 1977 deals with the appointment on the acting charge basis. Under sub-rule 4 it has been clarified that such appointment

shall not be deemed to have been made on regular basis for any purpose nor shall confer any right for regular appointment. Sub rule 2 of this rule deals with the appointment on current charge basis which clearly speaks that the appointment shall come to an end on appointment of a person on regular basis or on expiry of six months whichever is earlier. Same like rule 13 of the Rules, 1977 deals with the promotion on officiating basis. Sub rule 3 of this rule speaks that the officiating shall not confer any right of promotion on regular basis and shall be liable to be terminated as soon as the person becomes available for promotion on regular basis. Thus, the cumulative examination of the statutory provision dealing with the subject, it becomes clear that 'regular appointment' against a post or grade used in section 7 of the Civil Servants Act, refers only to the regular appointment made through initial recruitment by transfer or by promotion or not otherwise.....”

14. Appreciating the command of Rule 10-B (2) of Rules, 1977, that current charge appointment can only be made for six months. Keeping in view

the prevailing practice as in the instant case that the current charge orders of the respondents, herein, have been extended from time to time and continued for years, whereas, the relevant rule requires that the appointment on current charge shall be valid for six months. This practice of extending the appointment orders on current charge basis for years has been depreciated by the Courts. In the case reported as *Pakistan Railways, through GM Lahore vs. Zafarullah, Assistant Electrical Engineer* [1997 SCMR 1730], the Supreme Court of Pakistan also elaborated the status of current charge/acting charge appointments as under: -

"We would like to observe that appointments on current or acting charge basis are contemplated under the instructions as well as the Rules for a short duration as a stop-gap arrangement in cases where the posts are to be filled by initial

appointments. Therefore, continuance of such appointees for a number of years on current or acting charge basis is negation of the spirit of the instructions and the Rules. It is, therefore, desirable that where appointments on current or acting charge basis are necessary in the public interest, such appointments should not continue indefinitely and every effort should be made to fill posts through regular appointments in shortest possible time. A copy of this judgment be sent Establishment Division for future guidance."

Considering the point of current charge appointments, this Court in the case reported as *Muhammad Imtiaz vs. Azad Government & others* [1999 PLC (C.S) 1007], has observed that: -

"Current Charge appointment is only for Rule 10-B reproduced above is in sharp contrast to rule 9, providing for appointment by promotion or transfer on the recommendation of the appropriate Selection Board, rule 10-A, which lays down that a senior most civil servant in a cadre who is eligible for promotion but does not possess specified length of service

may be appointed to the higher post on acting charge basis on recommendation of the Selection Board, and rule 13, which makes provision for promotion on officiating basis subject to confirmation by the selection authority. The appointment on current charge basis is not made on the recommendation of Selection Board but is only an appointment till the appointment of a person on regular basis or the expiry of six months whichever is earlier. It follows that respondent Aurangzeb Khan was not promoted but was only appointed as a stop-gap arrangement. It also follows from the above that the disputed post of Assistant Electric Inspector was vacant for all practical purpose and the appointment on current charge basis of respondent Aurangzeb Khan created no hurdle in appointment on regular basis of a person to be selected by the selection authority as it did not bring about any material change. Therefore, the view taken by the High Court that the disputed post is no longer vacant is not correct.”

This Court in its authoritative judgment titled *Muhammad Yaqoob Awan vs. Secretary*

Electricity Department and 3 others [2014 SCR 11],

while dealing with the identical proposition,

observed as under: -

“The matter of appointment on current charge and promotion on officiating basis came under consideration of this Court in the case reported as, whereby in paras 7 and 8 of the report it was observed as under:

"17. The appointment on current-charge basis under Rule 10-B of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, is made when a post is likely to remain vacant for a period of less than six months and appointing authority doesn't consider it expedient to make an appointment on ad-hoc basis, it may appoint a civil servant, who is eligible for promotion under rules, to that post on current-charge basis.

8. The appointment by promotion on officiating basis is made under Rule 13 of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, where a post falls vacant as a result of deputation, leave or the appointment on acting-charge basis

of the regular incumbent or is reserved under the rules to be filled in by transfer, the appointing authority may make appointment by promotion against such post on officiating basis. The rule lays down that no person shall be promoted on officiating basis unless he possesses the qualification and experience prescribed for the post and his promotion as such is approved by the Chairman of the appropriate selection authority and that an officiating promotion shall not confer any right of promotion on regular basis but shall be, liable to be transmitted as soon as a person becomes available for promotion on regular basis.”

The matter of appointment on current charge and promotion on officiating basis came under consideration of Supreme Court of Pakistan in the case reported as *Province of Sindh vs. Ghulam Farid* [2014 SCMR 1189], wherein, para 12 of the report it was observed as under: -

"12. At times officers possessing requisite experience to qualify for regular appointment may not be

available in a department. However, all such exigencies are taken care of and regulated by statutory rules. In this respect, Rule 8-A of the Sindh Civil Servants Appointment, Promotion and Transfer) Rules, 1974, empowers the Competent Authority to appoint a Civil Servant on acting charge and current charge basis, it provides that if a post is required to be filled through promotion and the most senior Civil Servant eligible for promotion does not possess the specific length of service, appointment of eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board. Sub-Rule 4 of the afore-referred Rule 8 further provides that appointment on acting charge basis shall be made for vacancies lasting for more than 6 months and for vacancies likely to last for less than six months. Appointment of an officer of a lower scale on higher post on current charge basis is made as a stop-gap arrangement and should not under any circumstances, last for more than 6 months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any D purposes including seniority, nor

it confers any vested right for regular appointment. In other words, appointment on current charge basis is purely temporary in nature or stop-gap arrangement, which remains operative for short duration until regular appointment is made against the post. Looking at the scheme of the Sindh Civil Servants Act and Rules framed thereunder, it is crystal clear that there is no scope of appointment of a Civil Servant to a higher grade on OPS basis except resorting to the provisions of Rule 8-A, which provides that in exigencies appointment on acting-charge basis can be made, subject to conditions contained in the Rules.”

15. The practice of extending the orders of current charge appointments beyond six months period without resorting to making appointments on regular basis, tantamount to promote ad-hocism in the departments and cause undesired practices in the way of good governance and efficient working of the departments, whereas, the spirit of law is that the appointments should have been

made on the basis of merit determined by the concerned selection authorities. The Interim Constitution, 1974, has guaranteed the right of equality before law and equal treatment of law; thus, this right can only be enforced by following the prescribed mode of appointment by advertising the vacancies and determining the merit of the eligible candidates through transparent selection process. Law does not admit any such tactics that any person, who has been appointed on current charge basis and thereafter, for one or the other reason continue as such for an indefinite period and then become entitled for the regular promotion. Such appointment on current charge basis without considering the contesting eligible civil servants, amounts to violation of constitutionally guaranteed fundamental right of equality before law and the enforced law regulating the mode of appointment.

Such a practice is not only violative of law and fundamental rights but also at the end of the day may result into inefficiency, maladministration and may also be a main cause of generating the corrupt practices. Our this view finds support from the reported judgment of this Court titled *Dr. Mehmood Hussain Kiyani vs. Azad Govt. & 26 others* [1996 SCR 165], wherein, it has been held that: -

“The reading of the Rule provides that even the ad hoc appointment is to be made in the interest of public and for a limited period of 6 months and must be made on the basis of merit and the same can only be made after requisition has been sent to the Public Service Commission. The first step to be taken in this regard is to forward a requisition to the Selection Authority and then under sub-rule (4) the appointment order should contain a certificate that a requisition has been sent to the Selection Authority. We regret to point out that time and again despite the observations of this Court, ad hoc appointments are made in flagrant violation of law and

contumacious disregard of the relevant rules. This practice is highly deplorable and has to be deprecated. In the instant case the appellant before us has not specifically challenged the method of ad hoc appointment of respondents Nos. 2 to 21. There is a general allegation that the appointments have not been made in accordance with the relevant law and rules. Whether the ad hoc appointments were made keeping in view the provisions of Rule 23 of the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977 and whether the persons appointed were duly qualified or their selection has been made on the basis of objective criteria or that the requisition has been sent to the Selection Authority are all questions of fact which cannot be gone into while exercising the appellate jurisdiction but at the same time we want to observe that in future the Government must ensure that even the ad hoc appointments are made strictly in conformity with the relevant rules and any departure or deviation from the relevant provisions of law would tantamount to perpetuating a grave injustice to those candidates who have the requisite qualifications but

unfortunately have no political backing or background. Indeed the discretion for making ad hoc appointments vests with the Government but the discretion must be exercised in accordance with the provisions of relevant rules or law and it must appear to be just and equitable."

(underlining is ours)

The same view was taken by the Hon'ble Supreme Court of Pakistan in the case titled *Naveeda Tufail vs. Government of Punjab* [2003 SCMR 291], and observed as under: -

"The ad hoc appointment by its very nature is transitory which is made for a particular period and creates no right in favour of incumbent with lapse of time and the appointing authority may in his discretion if necessary, make ad hoc appointments but it is not open for the authority to disregard the rules relating to the filling of vacancies on regular basis in the prescribed manner. We may observe that practice of making appointments on ad hoc basis for continuous period without taking steps for fulfilling the vacancies through the process of selection in the, prescribed manner

amounts to misuse the authority and this Court at more than one occasions observed that the appointments on ad hoc basis should be discouraged and except in exceptional circumstances, it should not be allowed to continue beyond the period for which the appointment was initially made. The appointments in the public sector is a trust in the hands of public authorities and it is their legal and moral duty to discharge their function as trustee with complete transparency as per requirement of law so that no person who is eligible to hold such posts, is excluded from the process of selection and is deprived of his right of appointment in service.”

16. We find such problems, as in the present case, arise quite often when delay is caused by the authorities in making the regular promotion. If the authorities fill up these vacancies at the earliest, the culture of ad-hocism/ current charge could not develop. This deteriorates the fibre of the institution affecting institutional good governance. Even Section 3(3) of the Act does permit ad-hoc

appointment but only for a short period, not to continue for years. Institutions not filling up the vacancies for a long time develop the culture of ad-hocism. Sometimes not filling is for a coloured purpose to favour one or the other. This practice has to be denounced. This not only permits irregular appointees to hold posts continuously for a longer period of time against the statutory limits but also deprive otherwise eligible and competent civil servants. This not only deteriorates the very standards of the institution but adversely effects the professionalism and professional ethics. It is presumed that the posts created or existed, were essential for efficient and requisite working of the department and in absence of filling up of same against the prescribed mode and for duration, may adversely effect the performance of the department and good governance, therefore,

eligible persons are required to be appointed against the vacant posts. This Court in its latest judgment reported as *Raja Muhammad Wasim Khan vs. Azad Government and others* [2017 SCR 623], also dealt with the same matter and resolved the same authoritatively in the manner that: -

"کیونکہ اسامیاں مفاد عامہ اور بہتر نظام حکومت چلانے کو مد نظر رکھتے ہوئے تخلیق کی جاتی ہیں تصور یہی کیا جاتا ہے کہ جہاں کوئی اسامی تخلیق کی گئی ہے وہ ناگزیر تھی اور اس کی عدم موجودگی میں نظام میں خلل واقع ہو سکتا ہے۔ اس لیے حکومت اور سرکاری محکمہ جات کی کارکردگی کو بہتر بنانے اور اہداف حاصل کرنے کے لئے قومی مفاد کا تقاضہ ہے کہ بروقت اہل افراد کا تقرر عمل میں لایا جائے اور تمام منفی اثرات کا تدارک کیا جائے۔

عارضی کام چلاؤ کے لیے خلاف قانون آسامیوں کی منتقلی کی بجائے قواعد میں درج طریقہ کار اپنایا جائے اور دستیاب آسامیوں پر بروقت تقرریاں قانون کی منشاء کے مطابق عمل میں لائی جائیں تاکہ ایسی صورت حال کا سامنا نہ ہو اور اس کے دیرپا منفی اثرات سے بچا جاسکے۔

کی خلاف ورزی۔۔۔ ہمارا عمومی طرز عمل۔۔۔ انفرادی معاملہ میں خلاف ورزی۔۔۔ لامحدود اثرات۔۔۔ دیگر شعبہ جات کو بھی متاثر کرتی ہے۔۔۔ قومی مفاد اور آنے والی نسلوں کی بہتری کے لیے قانون کی عمل داری یقینی ہو۔۔۔ ہم ایک مقابلہ کے دور سے گزر رہے ہیں دنیا کی قومیں اور معاشرے تیز تر ترقی اور بہتر سے بہتر معیار زندگی کے لیے قانون پر عملداری اپنائے ہوئے ہیں جب کہ ہم میں سے ہر ایک نہ صرف قانون کی خلاف ورزی کا رونا روتا ہے بلکہ یہ بات بھی عام مشاہدہ میں ہے کہ جب قانون کی خلاف ورزی کسی ایک معاملہ میں ہو تو اس کے اثرات محدود نہ رہتے ہیں بلکہ وہ لامحدود اور کئی ایک شعبہ جات کو متاثر کر دیتے ہیں جس سے نہ صرف بد معاہلی بلکہ اخذ ناجائز اور دوسری کئی طرح کی قباحتیں جنم لیتی ہیں۔ اس لیے حالات و واقعات کا تقاضہ یہ

ہے کہ قومی مفاد میں اور آنے والی نسلوں کے لیے بہتر بنیاد فراہم کرنے کے
لیے قانون کی عمل داری کو یقینی بنایا جائے"

17. After minute and careful survey of law and the case law we have come to the conclusion that with a view to ensure the good governance in the State of Azad Jammu and Kashmir, suffice to observe that the object of the good governance can only be achieved, when the laws, rules and regulations meant to apply for all modes of appointments, shall be complied with in letter and spirit. In the matter of posting, transfers as well as promotion in the civil service of Azad Jammu and Kashmir the object of good governance cannot be achieved while posting a junior officer to hold the charge of a senior post, ignoring seniors who are eligible for promotion. In the aforesaid perspective of the matter, we are constrained to hold that it is the duty and obligation of the competent authority to consider the merit of

all the eligible candidates while putting them in juxtaposition to find out the meritorious amongst them otherwise one of the organs of the State i.e executive could not sustain as an independent organ which is the command of the Constitution. Having regard to a careful perusal of rule 10(b) of Rules, 1977 (ibid) it reflects, that in cases, where the appointing authority is satisfied that no suitable officer is available to fill the post and it is expedient to fill the same, it may appoint to that post on current charge or acting charge basis, the most senior officer, otherwise eligible for promotion in the cadre or service as the case may be. The acting charge or current charge appointment can only be made in the exigency of the service but it should not be for an indefinite period as has been practiced in this case. After the survey of the case law on the point we are constrained to observe that appointments on current

charge or acting charge basis in AJK are being extended repeatedly by the government functionaries in flagrant disregard of the statutory limits and commands. The appointments on current or acting charge basis are made for a short duration as a stop gap arrangement in cases where the posts are to be filled in as per requirement of the rules and the continuation of such current or acting charge appointments for a number of years is negation of the spirit of the rules as well as the rule of law laid down by this Court from time to time. It is therefore, desirable that where appointment on current or acting charge basis are necessary in the public interest, such appointment should not continue indefinitely and every effort should be made to fill the post in accordance with the rules of the post for regular appointment in shortest possible period of time. We accordingly direct the functionaries of the

Government to discontinue the duration of current or acting charge basis appointment beyond the period stipulated in the rules.

18. We have considered the merit of the case of the Appellants and the Respondents. The counsel for the Appellants contended that the Appellants are holding the requisite qualification so as to hold the post of Executive Engineers, whereas, the Respondents 4 and 5 do not hold the requisite qualification. For the purpose, the rules for the post of “Executive Engineers” as well as the rules for recruitment to the post of “Assistant Engineers” on initial basis were framed by the Government keeping in view the object of Rule 3(3) of AJK Civil Servants (Appointment and Condition of Service) Rules 1977. A perusal of Azad Jammu and Kashmir Public Works Department Service Rules 1992 as amended vide Notification 26.09.2003, prescribes that the post of

“Executive Engineer” shall have to be filled in the manner provided in the said rules, the relevant statutory provision is reproduced as under:-

Rules for recruitment to the post of Assistant Engineers B-17 on initial basis.

Qualification (6)	Method of recruitment (8)
<i>Degree in Engineering in the requisite discipline from a recognized University or an equivalent qualification as a <u>professional engineer with the Pakistan Engineering Council.</u></i>	a) 75% by initial recruitment as per col. 6. b) 5% by promotion on the basis of seniority-cum-fitness from amongst sub-Engineers with not less than 8 years service and possessing qualifications prescribed for initial recruitment. If no such person is available, then by initial recruitment. c) 20% by promotion on the basis of seniority-cum-fitness from amongst Sub-Engineers of the requisite Discipline who held the minimum qualifications prescribed for initial recruitment as sub-Engineers, have completed 10 years service as Sub-Engineers in the Department and have been placed in BPS-16, after passing the sub-Engineer professional examination.

Method of Recruitment i.e. by Promotion to the post of Executive Engineer B-18.

“By promotion on the basis of seniority-cum-fitness from amongst Assistant Engineers with at least 5 years service as such, who possess qualification as prescribed for initial recruitment to the post of Assistant Engineer who has passed Departmental Professional Examination prescribed in the PWD Code and are registered with Pakistan Engineering Council as “Professional Engineers” under the Pakistan Engineering Council Act 1976.”

The learned Service Tribunal has not considered or given any findings regarding the post of XEN and amended departmental Rules, 1992, vide notification dated 26.09.2003 and the version of the appellants is that respondent No. 4 is not eligible to be promoted, as we intend to dispose of the case with certain direction, therefore, we do not make definite observation what is the effect of the said rules on respondent's appointment order. The appellants, herein, admittedly are holding the post of

Assistant Engineers (Mechanical) upon the recommendations of the Public Service Commission and are registered as “Professional Engineers” with the Pakistan Engineering Council. The combined tentative seniority list available on record shows the aforesaid status of the Appellants with the additional facts that the Appellants are senior than the Respondents. Whereas, Respondent No. 4 is holding the qualification of B-Tech, who is not registered as “Professional Engineers” with the Pakistan Engineering Council. The term “Professional Engineer” is defined in Section 2(xxiii) of Pakistan Engineering Council Act 1976 as adopted in Azad Jammu and Kashmir. In similar circumstances the Supreme Court of Pakistan in the case of “Maula Buksh Sheikh and others” [2019 PLC(CS) 282] examined the status of holding the post of “Assistant Engineers” registered with Pakistan Engineering

Council as “Professional Engineers” and the holder of such post of the persons having the qualification of B-Tech (Hons). It is held in paras 21 to 23 of the report as under:-

“21. The PEC Act as its preamble itself shows so also reading of the whole Act shows that it essentially deals with regulations of engineering profession in it, inter alia, it prescribes for qualifications of professional engineers, maintenance of register of professional engineers and accrediting of engineering universities etc. and not as a regulator of employment be that be of government service or in the private service. The reasons for it could be found that all sort of engineering work could not be and may not be a professional engineering work for performance of which professional engineers are required. For example, technician be a skilled workman who may work independently or under the supervision of professional engineer and for such technician, mechanic, draftsman, foreman, supervisor and overseers/ the employer may not require holding of professional engineering degree. However, if the person is required to perform any of professional engineering work as defined under the PEC Act, the

provisions of this Act shall come into operation for ensuring as the work of professional engineering can and only be performed by professional engineer as recognized by PEC Act. The section 2(xxv) of the PEC Act which has already been reproduced above and lays down in sufficient detail the works which are noted to be as professional engineering works and such works as mandatorily required by the PEC Act to be performed by a professional engineer possessing accredited engineering qualification from accredited engineering institutions in Pakistan and abroad with experience and passing of test of the Council and no other person is allowed to perform professional engineering works be that be a diploma holder or B.Tech. degree holder. This aspect of the matter has been substantially addressed by the PEC Act itself when making provision of section 27(5A) that “No person shall unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work. “Thus professional engineering work can only be performed by a person who is registered as registered engineer or professional engineer and both registered engineer and professional engineer in terms of the PEC Act are by law required to possess accredited engineering qualification as prescribed

by the PEC Act from accredited engineering institution.

22. We may further observe that section 27 of the PEC Act provides for penalty for a person who undertakes any professional engineering work if his name is not borne on the Register but it also makes the employer who employs for any professional engineering work any person whose name is not, for the time being, borne on the Register to perform professional engineering work, shall also be liable for penalty as prescribed in the PEC Act itself. Thus, both civil servant/employee and their employer would be liable to penalty as provided under section 27 if they undertake or allow a person to undertake professional engineering work whose name is not borne on register under PEC Act.

23. The net result of above discussion is that this petition fails. It is dismissed and leave refused, however with note of caution that government shall not allow or permit any person to perform professional engineering work as defined in the PEC Act, who does not possess accredited engineering qualification from the accredited engineering institution and his name is not registered as a registered engineer or professional engineer under the PEC Act."

The Azad Jammu and Kashmir Public Works Department Service Rules, 1992 as amended on 26.09.2003, finds place at page 56 of the paper book provides that for promotion to the post of Executive Engineer B-18, only Assistant Engineer with 5 years' service, as such who possess qualification prescribed for initial recruitment to the post of Assistant Engineer and who have passed Departmental Professional Examination prescribed in PWD Code and except the case where section 28(b) of Pakistan Engineering Council Act, 1976 applied are registered as professional Engineer with the Pakistan Engineering Council. Besides, the Rules for the post of Deputy Director (Machinery Maintenance/Automobile) B-18 were notified vide Notification dated 05.12.1997. The relevant provision of the rules is reproduced as under:-

Name of Department	Functional Unit	Name of Post with grade	Appointing Authority	Method of recruitment
Public Works Department	PWD	Deputy Director Machinery Maintenance/ Automobile (B-18)	Minister Incharge	By promotion on the basis of seniority-cum-fitness from amongst Assistant Engineers (Mech) PWD/Diploma Engineers (Mech) PWD with 15 years of service in the Department with having experience in Maintenance of constt; machinery and launching of pre-fabricated steel Bridges.

19. We have arrived at the conclusion that comprehensive service rules for the post of “Executive Engineer” and “Deputy Director Machinery” were framed by the Government. The contesting Respondents having qualifications B-Tech Diploma Engineers were appointed on current charge basis vide Notification dated 29.08.2019, respondent No.4 herein was transferred from the post of Deputy Director Maintenance Division to the post of

Executive Engineer Mechanical Division Muzaffarabad. Against Respondent No. 4 was transferred from the post of Deputy Director Machinery Maintenance Division Muzaffarabad to the post of Executive Engineer Mechanical Division Muzaffarabad and Respondent No. 5 has been posted as Deputy Director Machinery Maintenance Division Muzaffarabad in place of Respondent No. 4 vide Notification dated 17.03.2021.

20. As discussed above, no current charge appointment could be extended after six months, hence, the extensions granted to the respondents is a clear violation of relevant statutory provisions. The learned counsel for the appellant has also drawn the attention of the Court towards the tentative seniority list of Assistant Engineers BPS-17 dated 13.03.2020, wherein, the names of the appellants have been placed at serial No. 57, 58, and the name of

respondent No.5, herein, is shown at serial No. 66, therefore, apparently, as per the abovesaid seniority list, the appellants are senior to respondent No.5. However, while avoiding any findings on the merit of the case, we are of the view that the impugned notifications relating to the current-charge appointment, have been issued without considering the appellants, who are senior to the private respondent No.5 according to the common seniority list of Sub-Engineers, civil and mechanical.

21. We have examined the statutory law on the subject as well as the various pronouncements of the superior courts. We are of the considered view that it is a settled principle of law that the object of “good governance” cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objectives can be achieved by following the rules of justness, fairness

and openness in consonance with the command of the Constitution and law enshrined in various provisions of the statute applicable in the State. We, therefore, constrained to hold that in the civil service of Azad Jammu and Kashmir the persistent system of adhocism having adverse effects on the civil service of Azad Jammu and Kashmir and this practice does not maintain efficiency, merit and good governance. We therefore, issue following directives to the government and its functionaries:-

- i. The government and its all functionaries are directed to make appointment orders on current charge, acting charge basis strictly in accordance with the spirit of the relevant laws as interpreted from time to time by the pronouncements of the Supreme Court.
- ii. No current charge and acting charge appointment shall be extended beyond the

period of six months as required under Rule 10(b) *ibid*.

- iii. The principle of seniority-cum-fitness shall be followed while making appointments on current charge and acting charge basis.
- iv. All efforts shall be made to fill the all the posts by promotion on regular basis in accordance with the rules of the post as well as the interpretation of the rules made by the pronouncement of the superior courts.
- v. So far, the case of the appellants and respondents 4 and 5 as well as the matter relating to filling the post of “Executive Engineer Mechanical Division” and the post of “Deputy Director Mechinary Maintenance Division” Muzaffarabad are concerned, the department has to firstly, determine the seniority of Assistant

Engineers Mechanical according to the departmental rules on the basis of their regular appointment against the posts of Assistant Engineers of Mechanical Division, after completion of the seniority list the process of selection of eligible employees through the Selection Board may be completed within two months from the date of this order, failing which, the impugned notifications of current, officiating charge, appointment of the private respondents shall be deemed to have come to an end or set-aside. The authority concerned is further directed that after the said dates, no other officer shall be appointed on temporary, ad-hoc, acting charge, additional charge or current charge basis other than on regular basis. The posts

shall be filled in on permanent basis strictly following the relevant rules of respective posts.

22. The appeal stands disposed off in the manner indicated above. Copy of this Judgment shall be sent to the Chief Secretary and all other concerned secretaries to the Government of Azad Jammu and Kashmir for implementation of the Judgment in letter and spirit.

JUDGE

JUDGE

Mirpur
25.05.2022.

