

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Khawaja M. Nasim
Mr. Justice Raza Ali Khan

CIVIL APPEAL No. 57 OF 2023

(Against the Judgment dated
28.01.2023 passed by the Service
Tribunal, in Service Appeal No.
615 of 2022.

Javaid Iqbal, Draftsman B-14, Highways Division,
District Poonch, Azad Jammu & Kashmir.

...Petitioner

VERSUS

1. Muhammad Faheem Kiani, Draftsman B-14,
Public Works Department Public Health
Engineering Division Haveli, Kahutta, Azad
Jammu & Kashmir.

...Respondent

2. Secretary Communication & Works Department,
Public Works Department, office situated at New
Secretariat, Muzaffarabad.
3. Secretary Physical Planning & Housing Azad
Government of the State of Jammu & Kashmir,
office situated at New Secretariat, Muzaffarabad.
4. Chief Engineer, Public Works Department,
Highways (North) office at Old Secretariat,
Muzaffarabad, Azad Jammu & Kashmir.
5. Chief Engineer, Public Works Department
Building, Public Health Engineering (North)
Muzaffarabad, Azad Jammu & Kashmir.
6. Kh. Muhammad Waqas, Draftsman (Highways),
Rawalakot Division, Azad Jammu & Kashmir.

...Proforma-Respondents

Appearances:

For the Appellant: Raja Muhammad Arif,
Advocate.

For Respondents: Mr. Mushtaq Ahmed
Janjua, Advocate.

Date of hearing: 10.05.2023

JUDGMENT

Raza Ali Khan, J:- Impugned herein, is the judgment dated 28.01.2023, rendered by the learned High Court, in Service Appeal No. 615/2022, whereby the appeal filed by respondent No.1, herein, has been disposed of in the manner indicated above.

2. The relevant facts for disposal of the instant appeal are that the appellant, herein, was posted as the Draftsman B-14, in the Public Works Department/Public Health Engineering Division Haveli, wherefrom he was transferred and posted as the Draftsman B-14, in the Public Works Department, Highways Division Haveli, in place of respondent No.1, herein, whereas, respondent No.1, herein, was transferred to the Public Works Department, Highways Division Rawalakot in place of one Muhammad Waqas. Likewise, Muhammad Waqas was transferred in place of the appellant, herein, vide order dated 25.07.2022. Later on, the official respondents, herein, cancelled the order dated 25.07.2022, from the date of its issuance, vide order dated 29.07.2022 and transferred the appellant, herein, from Public Works Department/Public Health Engineering Division Haveli to Public Works Department Highways Division Haveli,

in place of respondent No.1, herein, whereas respondent No.1, herein, was transferred in place of the appellant, herein. Respondent No.1, herein, challenged the order dated 29.07.2022, by filing an appeal in the Service Tribunal. After necessary proceedings the learned Service Tribunal vide its judgment dated 28.01.2023, disposed of the appeal in the following terms:-

“Under the above discussion we are constrained to hold that both the orders dated 25.07.2022 and 29.07.2022 issued by the Secretary Commission and Works Department are without lawful authority, which are hereby set aside. The appeal is disposed of in the manner indicated above.

No order as to costs.”

The petitioner has challenged the aforesaid judgment of the learned Service Tribunal by way of the instant appeal with the leave of the Court.

3. Raja Muhammad Arif Rathore, the learned Advocate, appearing for the appellant argued the sole point that while handing down the impugned judgment the learned Service Tribunal has travelled beyond the pleadings of the parties, hence, the same is not sustainable in the eye of law. He submitted that respondent No.1, herein, in his appeal filed before the Service Tribunal, challenged the order dated 29.07.2022, whereby the order dated 25.07.2022, was cancelled from the date of its issuance but while handing down the impugned judgment the learned Service Tribunal has also set aside the order dated 25.07.2022, which was not challenged before it. He further argued that the seniority list of appellant, respondent No.1 and proforma respondent is common and the order dated 29.07.2022, was issued by the

competent authority, but the learned Service Tribunal has not taken into consideration this aspect of the case while handing down the impugned judgment. He further argued that the learned Service Tribunal failed to appreciate the real controversy, which led it to the wrong conclusion. The learned Advocate requested that while accepting the appeal the impugned judgment of the learned Service Tribunal may be set aside.

4. Conversely, Mr. Mushtaq Ahmed Janjua, the learned Advocate, appearing for the respondent No.1, defended the impugned judgment on all counts stating therein, that the impugned judgment has been passed in the light of judgment dated 01.11.2022 rendered by this Court in the case titled *Arshad Mehmood vs. Azad Government & others*, hence, the same needs no interference by this Court. He further argued that respondent No.1, herein, was appointed by Communication and Works Department in 2011, whereas, the appellant was appointed in the Physical and Housing Department in 2019, as such they were appointed and are performing their duties in different departments and according to observation made by this Court in the case titled "*Farhat Nazili vs. Sonia Manzoor & others*" the Secretary Physical and Housing and Secretary Communication and Works Department cannot interfere in each other's domain. He argued that the appellant has failed to point out any illegality in the impugned judgment, hence, the same may be dismissed.

5. We have heard the learned Advocates representing the parties and gone through the record of the case along with the impugned judgment of the learned Service Tribunal. It transpires from the record that respondent No.1, herein, filed an appeal before the learned Service Tribunal, whereby he called in question the legality and correctness of order dated 29.07.2022, through which he and the appellant, herein, were transferred in each other's

places. The learned Service Tribunal while relying on the judgment of this Court rendered in the case titled "*Arshad Mehmood vs. Secretary Physical Planning & Housing and others* (Civil Appeal No. 126 of 2022, decided on 29.11.2022) has disposed of the appeal while setting aside the orders dated 25.07.2022 and 29.07.2022. The main argument of the learned counsel for the appellant is that the learned Service Tribunal has travelled beyond the pleadings while setting aside the order dated 25.07.2022, which was never challenged before it, hence, the impugned judgment is liable to be dismissed. This argument of the learned counsel is beyond comprehension as the order dated 25.07.2022 had already been cancelled by the department itself through subsequent order dated 29.07.2022, that's why respondent No.1, herein, filed an appeal before the Service Tribunal. Therefore, it cannot be said that the learned Service Tribunal has travelled beyond the pleadings of the parties. Although the learned Service Tribunal again recalled the order dated 25.07.2022 through the impugned judgment, it does not make any difference nor provide a chance to the appellant, herein, to raise such an argument.

6. So far as the merits of the case are concerned, it reflects from the record that the respondent, herein, in ground "د" of his appeal before the learned Service Tribunal categorically stated that he was posted and transferred from the Highways Division to Public Health Division without obtaining the consent of Public Health Division. Respondent No. 1 and 3, in reply to this ground while filing written statement stated that the copies of the impugned order have been transmitted to Secretariat Physical Planning and Housing. Respondent No.2 and 4 stated in their written statement that the seniority of the employees of Highways Division and Building Division is common and transfers are made with the consultation of

both the Secretariat. No written statement or objection on behalf of the present appellant, herein, appears to have been filed before the learned Service Tribunal. The respondents before the Service Tribunal did not deny the ground "ج" taken by the appellant, therein, in its appeal. The fact that the appellant and respondent No.1, herein, are employees of Public Health Engineering Building Division and Public Works Department Highways Division, respectively, is further elaborated from the orders dated 25.07.2022 and 29.07.2022. This Court has already held in its judgment referred to and relied upon by the learned Service Tribunal that transfers to and from one department to another, the competent authority is Secretary Services and General Administration, whereas, the order impugned before the learned Service Tribunal was issued by Secretary Communication and Works Department.

7. After carefully scrutinizing the material brought on record, we have not been able to persuade ourselves to arrive at a conclusion any different from the one reached by the learned Service Tribunal. The learned counsel for the appellant has also not been able to convince us that there was any legal, procedural, or jurisdictional error, defect, or flaw in the impugned judgment of the Service Tribunal that may furnish the basis for acceptance of the appeal.

The result of the above discussion is that finding no force in this appeal, it is hereby dismissed with no order as to costs.

JUDGE

JUDGE

Muzaffarabad,
11.05.2023