

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

**PRESENT:**

*Mr. Justice Raza Ali Khan, J.*

**CIVIL PLA No. 357 OF 2023**

(Against the order dated 21.02.2023 passed by the Service Tribunal, in Service Appeal No.29 of 2020.

Azad Govt. through Secretary Electricity, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat, Muzaffarabad and 07 others.

**...Petitioners**

**VERSUS**

Muhammad Tasleem Mughal, Junior Clerk, Revenue Office Electricity Department, Azad Jammu & Kashmir Muzaffarabad.

**...Respondents**

Minister Electricity, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat, Muzaffarabad and 02 others.

**...Proforma respondents**

**Appearances:**

For the Petitioners:

Raja Muhammad Kabir  
Kiani, Advocate.

For the Respondents:

Mr. Muhammad Yaqoob  
Khan Mughal, Advocate.

Date of hearing:

13.09.2023

**ORDER**

**Raza Ali Khan, J:-** Impugned herein, is the judgment dated 21.02.2023 rendered by the learned Service Tribunal in Service Appeal No. 29/2020, whereby the appeal filed by respondent, herein, has been disposed of in the terms that the Department may initiate inquiry de novo, strictly, in accordance with the judgments and the Azad Jammu & Kashmir Civil Servants (Efficiency and Discipline) Rules, 1977 within a period of three months.

2. The brief facts giving rise to the instant petition for leave to appeal are that the respondent was posted as Junior Clerk in the Revenue Office, Electricity Department, Muzaffarabad. Previously, vide order bearing No.SE/14595-14602/2014, dated 05.09.2014, along with others, the appellant was dismissed from Service on the allegations of negligence, fraud, financial irregularity and misconduct etc., under The Civil Servants Removal from Service (Special Powers) Act, 2001, and the recovery of an embezzled amount of Rs.3286440/- also ordered. Later on, through the order bearing No.SE/21748-54/2014, dated 21.11.2014, a further amount of Rs.26833226/- was also added to be recovered as embezzled amount. The respondent and others challenged the aforesaid orders by way of appeals before the learned Service Tribunal. The learned Service Tribunal vide its judgment dated 15.11.2017, while accepting the appeals of respondent and others directed the Department to initiate a fresh inquiry with due process of law and pass an appropriate order within a period of three

months. Feeling aggrieved from the judgment of the Tribunal dated 15.11.2017, the Secretary Electricity Department and others have filed a petition for leave to appeal before this Court on 08.01.2018, which was dismissed and it was directed that the Inquiry Committee, as has been ordered by the Service Tribunal shall be constituted by the Secretary Electricity, within a period of three months. Through the impugned notification dated 01.01.2020, on the recommendations of the Inquiry Committee, the petitioner was dismissed from service on account of financial corruption, fraud and misconduct under The Civil Servants Removal from Service (Special Powers) Act, 2001 and the embezzled amount to the tune of Rs.1,66,19,508/- has also been ordered to be recovered from the respondent. The respondent, challenged the afore-said order by filing an appeal before the learned Service Tribunal, which has been disposed of in the manner indicated in para 15 of the impugned judgment.

3. Raja Muhammad Kabir Kiani, the learned Advocate representing the petitioners argued that the impugned judgment has been passed in a hasty manner without having regard to law, rules and the record, hence, the same is liable to be set aside. He further argued that the allegation of embezzlement levelled against the petitioner was fully proved by conducting a detailed inquiry but the learned Service Tribunal did not pay any heed towards this report. The learned Advocate further argued that the notification for constitution of inquiry committee was issued on 09.08.2018, whereas, the Special Power Act, 2001, was repealed on 08.01.2020, the inquiry proceedings were completed as per prevailing law after giving opportunity

of hearing to the accused employee, but the learned Service Tribunal has failed to appreciate the controversy in its true sense. He added that the stance taken by the respondent regarding involvement of Chairman Inquiry Committee in the allegation of embezzlement is not correct as after seeking written reply, the competent authority deleted his name after satisfaction but the learned Service Tribunal has also not taken into consideration this point. He further argued that substantial questions of law of public importance are involved in the petition for leave to appeal, hence, the same merits admission.

4. Conversely, Mr. Muhammad Yaqoob Khan Mughal, the learned Advocate representing the respondents vehemently argued that the impugned judgment passed by the learned Service Tribunal is quite in accordance with law and the record. He contended that the person who was appointed as Chairman Inquiry Committee, was the principal accused of misappropriation of state revenue and in this regard the respondent, herein, categorically taken the stance in his appeal before the learned Service Tribunal. The learned Service Tribunal has rightly appreciated the same through the impugned judgment. The learned Advocate submitted that the inquiry process was not completed in accordance with the earlier judgment of this Court dated 02.05.2018, therefore, the direction issued by the learned Service Tribunal for de-novo inquiry is quite in line with law. He further argued that no question of law of public importance is involved in the petition for leave to appeal, hence, the same merits dismissal.

5. I have heard the learned Advocates representing the parties and also gone through record of the case

along with the impugned judgment of the learned Service Tribunal. The respondent, herein, challenged the validity of notification dated 01.01.2020 before the learned Service Tribunal, whereby in the light of the recommendations of the Inquiry Committee the embezzled amount was ordered to be recovered from the respondent and he was removed from service under section 3(1)C of Removal from Service (Special Power) Act, 2001. The learned Service Tribunal has disposed of the appeal with the direction to the Department to hold de-novo inquiry under the Azad Jammu and Kashmir Civil Servants (Efficiency and Discipline) Rules, 1977, within a period of three months. The learned counsel for the respondent while referring to para No.13 of the impugned judgment pointed out that the person appointed as Chairman of the Inquiry Committee was implicated in misappropriation offences, as is evident by the show cause notice issued by the Secretary Electricity on 12.11.2015, which was attached to the respondents appeal before the Service Tribunal. When the learned counsel for the petitioners was questioned about this issue, he failed to provide a satisfactory explanation to the Court. Appointing an individual facing charges of financial corruption in some case, as the Chairman of Inquiry Committee raises significant ethical and practical concerns. Such a decision can compromise the integrity and impartiality of the investigation process in several ways. It creates a clear conflict of interest, as the person under investigation may have personal stake in the outcome, potentially leading to the biased findings. This lack of objectivity and fairness can undermine the credibility of the inquiry and erode the public trust in the process. The perception of fairness and transparency is crucial in

any investigation and appointing an individual, who is directly or indirectly involved or faced the same charges within the same case, send a message that authorities may not be genuinely interested in conducting a fair and impartial inquiry, it can erode trust in fairness and transparency of the authorities' actions, which are essential for upholding justice and maintaining public confidence in legal system.

6. After thorough examination and careful scrutiny of the impugned judgment and the material, I find no ground to arrive at a conclusion different from the one recorded by the learned Service Tribunal. The counsel representing the petitioners failed to convince me that there were any jurisdictional, legal or procedural error, defect or flaw in the impugned judgment that would justify granting leave to appeal. As a result, leave to appeal is refused. Since the designated time frame set by the Learned Service Tribunal has elapsed, the authority is granted an additional three months' time from the date of receiving this order/judgment to conduct the inquiry.

No order as to costs.

**JUDGE**

Muzaffarabad,  
13.09.2023