

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

PRESENT:

MR. JUSTICE RAZA ALI KHAN

CIVIL PLA No. 619 OF 2023

Civil Misc. No. 425 of 2023
(Against the judgment of the
Service Tribunal dated
18.08.2023, passed in
service appeal No. 779 of
2022).

Azhar Hussain Banvi, Assistant Engineer (BPS-17), Local
Government and Rural Development District Bhimber.

...Petitioner

VERSUS

Raja Khurram Bashir, Assistant Engineer (BPS-17), Local
Government and Rural Development Office Rawalakot and 02
others.

...Respondents

Azad Government of the State of Jammu and Kashmir,
through Secretary Local Government and Rural Development
having his office at New Secretariat, Muzaffarabad and 05
others.

...Proforma Respondents

Appearances:

For the Petitioner:

Syed Zulqarnain Raza Naqvi,
Advocate.

For the Respondents: Raja Sajjad Ahmed Khan,
Advocate.

Date of hearing: 12.09.2023

ORDER:

Raza Ali Khan, J:- Leave to appeal has been sought in the instant petition from the judgment of the Service Tribunal dated 18.08.2023, through which, the learned Service Tribunal has accepted the appeal filed by the contesting respondents, herein.

2. In concise terms, the matter in hand revolves around the notification dated 07.09.2022, through which, the final seniority list of Assistant Engineers (BPS-17) was issued, wherein, the petitioner, herein, is figured at serial No. 13 and the contesting respondents are listed at serial No. 18, 19, 20 and 27 and in pursuance of the same the petitioner was assigned the additional charge of the office of Executive Engineer. Feeling aggrieved from the notification dated 07.09.2022, they approached the Service Tribunal by filing Service Appeal and took the stand that according to Azad Jammu and Kashmir Local Government Rural Department Service Rules, 1983, the qualification for promotion to Executive Engineer of Local Government and Rural Development Department, is provided as BSC (Civil Engineering) from any University recognized by HEC having five years' experience in BPS-17 on the basis of seniority-cum-fitness, whereas, the petitioner, herein, who is a Diploma holder having three years' experience could not be assigned the additional charge of the post of Executive Engineer but contrary to this, through the impugned notification dated 07.09.2022, the additional charge of the post of Executive Engineer has been assigned to the petitioner. The other side filed

comments/objections, wherein, they refuted the stance of the appellants, therein. The learned Service Tribunal after necessary proceedings through the impugned judgment dated 8.08.2023, while accepting the appeal, set-aside the notification dated 07.09.2022.

3. Syed Zulqarnain Raza Naqvi, the learned counsel for the petitioner submitted that the impugned judgment of the Service Tribunal is quite against law, the facts and the record of the case. He forcefully argued that the learned Service Tribunal has even not bothered to consider this important fact that the appeal filed by the respondents, herein, before the Service Tribunal was not maintainable owing to the fact that no terms and conditions of the service of the contesting respondents were affected by the impugned notification. The impugned notification dated 07.09.2022 does not come within the purview of final order, hence, they were not aggrieved from the impugned notification and under section 4 of the Azad Jammu and Kashmir Service Tribunals Act, 1975, only an aggrieved person can prefer an appeal before the Service Tribunal. In support of his contention, the learned counsel placed reliance on the case reported as *Raeesa Mustafa vs. AJ&K Government and others* [2014 SCR 165]. He further argued that the learned Service Tribunal has set-aside the legal notification through the impugned telegraphic order without assigning any justification and accepted the appeal of the contesting respondents without applying judicial mind, therefore, the same is not maintainable. He finally prayed for grant of leave.

4. Contrarily, Raja Sajjad Ahmed Khan, the learned counsel for the respondents vociferously opposed the arguments advanced on behalf of the learned counsel

for the petitioner and submitted that the judgment of the learned Service Tribunal is quite in accordance with law and facts of the case. He argued that the notification dated 07.09.2022, whereby, the petitioner was assigned an additional charge of Executive Engineer Local Government and Rural Development Department, has been issued in violation of the office memorandum dated 16.12.2015, issued by the Government of Pakistan as adopted by the Government of AJ&K vide letter dated 04.01.2016. In support of his contentions, the learned counsel placed reliance on the cases reported as *Syed Rasheed Hussain vs. Azad Govt. & others* [2016 SCR 1327], *Azad Jammu and Kashmir Government through Chief Secretary, Muzaffarabad and another vs. Syed Zaman Ali Shah & others* [PLD 1991 SC (AJ&K) 57] and *Azad Government of the State of Jammu and Kashmir through its Chief Secretary Muzaffarabad and others vs. Muhammad Hameed Mughal, Forest Ranger, Reforestation Bagh and others* [1994 PLC (C.S) 637]

5. I have heard the learned counsel for the parties and gone through the record of the case with utmost care and caution. The moot and foremost point of the learned counsel for the petitioner is that the notification dated 07.09.2022, was not a final order, nor the respondents were aggrieved from the aforesaid order, therefore, under the Azad Jammu and Kashmir Service Tribunals Act, 1975, (*hereinafter to be referred as Act, 1975*) only an aggrieved party can approach the Service Tribunal. On the other hand, the learned counsel for the respondents has taken a stand that the due to the issuance of the impugned notification, the terms and conditions of the service of the respondent were badly affected, hence, the same was a final order and they, being aggrieved, rightly approached

the Service Tribunal for redressal of their grievance. Whether the order dated 07.09.2022, falls within the definition of a final order, for proper appreciation the said order is reproduced as under: -

"نوٹیفکیشن:-

س ل گ / شعبہ انتظامیہ / 14-17204/2022، جناب صدر آزاد جموں و کشمیر نے مسٹر اظہر حسین بانوی اسسٹنٹ انجینئر لوکل گورنمنٹ و دیپٹی ترقی ضلع بھمبر کو مہاجرین جموں کے 06 حلقہ جات میں محکمہ لوکل گورنمنٹ و دیپٹی ترقی کے زیر انتظام منصوبہ جات کی دیکھ بھال کیلئے قطعی عارضی طور پر مہتمم کے اضافی فرائض تفویض کئے جانے کی منظور صادر فرمائی ہے۔

سیکشن آفیسر

لوکل گورنمنٹ و دیپٹی ترقی"

6. The perusal of the notification, supra, reveals that the same lacks clarity on the vacant position as there is no specific provision in Civil Servant Act for temporary/additional charge except the current/ acting promotion. It is a settled principle that any appointment on acting/ officiating charge is valid for six months but despite elapsing the aforesaid period, the departmental authority is reluctant to fill the same on permanent basis which surely affect the terms and conditions of the other civil servants. According to Section 4 of the 1975 Act, a civil servant can appeal in the Service Tribunal if he is aggrieved by a final order. A final order is one that conclusively determines the rights and resolves the controversy within a specific forum. This usage in the Act implies that a civil servant can appeal only when his/her terms and conditions of service are definitively decided and the controversy is settled. If the term "final order" were not used in the law, a civil servant could appeal any order he/she believed negatively impacted his/her service terms, whether or not it conclusively resolved the dispute. A final order is one that determines the parties'

rights and settles the controversy within a specific authority or forum, even if it can be challenged on appeal. This matter was extensively discussed in the case *M. Rashid Chaudhary vs. Chairman AKLASC and others*¹, where it was held accordingly: -

“The prevalent practice of ordering civil servants to posts carrying higher grades should be brought to an end because sometime the senior persons are left to work in the same position while their juniors enjoy higher status and ; enhanced powers without adjudication of their suitability for promotion by the Promotion Board.”

In the other case reported as *The Azad Government and another vs. Dr. Latafat Amin and another*², it has been observed that any order which give rise to the grievance of any of the civil servant is final in nature hence, is challengeable. The same is reproduced for better appreciation: -

“An order for the purpose of Service Tribunals Act which gives rise to grievance of civil servant and is final in nature can be challenged before the Service Tribunal.”

This Court in its latest judgment reported as *Syed Rasheed Hussain vs. Azad Govt. & others*³, where it was held accordingly.

“Under section 4 of the Azad Jammu & Kashmir Service Tribunals Act, 1975, any civil servant aggrieved by any final order may file appeal in the Service Tribunal. Any order which finally determines the rights of a party and concludes the controversy so far as a particular forum is concerned, is a final order. Although, the term “final order” has not been defined in the Azad Jammu & Kashmir Service Tribunals Act, 1975, or the rules made thereunder, however, the term “final order” came under consideration of this Court in a number of cases. This Court in the case reported as *Raeesa Mustafa vs. AJ&K Government and 6 others* [2014 SCR 165]

¹ [1995 SCR 73]

² [2006 SCR 116]

³ [2016 SCR 1327]

defined the term “final order” in para 6 of the judgment as under:-

“6. The use of the term “final order” in section 4 of the Service Tribunals Act, 1975 seems to be that if the terms and conditions of service of a civil servant are finally determined and controversy is concluded, he may file an appeal from such order. If the words “final order” had not been used in the aforesaid provision of law, then a civil servant would have been at liberty to file an appeal from any order which in his wisdom adversely affects the terms and conditions of his service whether it finally concludes the controversy or not. Any order which determines the rights of the parties and concludes the controversy so far as a particular authority or forum is concerned, notwithstanding that such an order may be opened to challenge in appeal etc. is a final order. While dealing with the definition of “final order”, the Supreme Court of Pakistan in a case titled *S.H.M. Rizvi and 5 others vs. Maqsood Ahmed and 6 others* [PLJ 1982 SC 36] observed as under:-

‘Right of appeal has been conferred by subsection (1) of section 4 only against a “final order whether original or appellate”. A final order has the distinction of determining the rights of the parties. Where any further step is necessary to perfect an order, in this case the disposal of the objections received or finalization of the provisional seniority list, the order cannot be taken to be final. An order may be final, if it determines the rights of the parties, concludes the controversy so far as a particular authority or forum is concerned notwithstanding that such an order may be opened to challenge in appeal etc. This aspect of the concept of the finality of an order has been taken care of by adding the words “whether original or appellate” in the enacted law itself.’”

The term “final order” also came under consideration of this Court in the case reported as *Abdul Qayyum Durrani vs. Legislative Assembly and 4 others* [2007 SCR 250]. It was observed in para 12 of the report as under:-

“12. ... therefore, we are of the considered view that the final order as far promotion to B-21 or B-20, is concerned, shall be one issued

on the recommendations of the concerned Selection authority on regular basis and that the final order for the purposes of filing appeal shall be the same through which an incumbent has been promoted on regular basis.”

7. The perusal of the judgments, (ibid) and the notification dated 07.09.2022, it is crystal clear that the same has been issued in order to defeat the provisions of section 4 of the Act, 1975, which affects the terms and conditions of the service of the respondents, hence, they rightly challenged the same in the Service Tribunal. Moreover, in accordance with the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977 the term “Additional Charge” is not explicitly mentioned, hence, this term is not recognized by our service laws and structures, however, Rule 10-A and 10-B outlines the method of appointment as Acting Charge and likely Rule 13 deals with appointment on officiating basis but certainly there is no concept of additional charge in the entire civil service laws. In this way, the learned Service Tribunal has rightly set-aside the notification dated 07.09.2022.

8. Before letting go of, candidly, the procedure for appointment, promotion and transfer has already been lineated under the Azad Jammu and Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977 in conjunction with Act, 1975 in exigent circumstances. The Government may temporarily appoint an individual on Acting Charge, Officiating or Current Charge basis, however, this does not confer any discretionary authority or contravene the explicit provision to the law and regulations and does not commit protraction of these arrangements indefinitely. Foster such practices would inevitably breed frustration among the fellow

employees of the same rank and category and it would undue impeded the rightful promotion of deserving persons. The principle of sound governance mandates the concerted effort to expeditiously fill the remaining vacant posts and vacancies within a reasonable time frame. Our Constitutional and legal framework places paramount importance on transparency and impartiality in the matters pertaining to the appointment and career advancement of civil servants. There is categorically no room for a patronage system/spoil system within our legal prudence and the same should be discouraged by the Courts of law.

9. In the light of above detailed discussion, the learned Service Tribunal has not committed any illegality while handing down the impugned judgment. The same is quite in accordance with law and the facts of the case. Therefore, leave refused, petition along-with application for interim relief fails.

JUDGE

Muzaffarabad,
12.09.2023